

Guidance on the Employment of Children



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Section 1

Introduction

This guidance is intended to set out the key provisions of the law on child employment for local authorities, employers, parents and other stakeholders to promote understanding and effective operation of the law. It seeks to explain the law and include some best practice advice to help those implementing it to deal with the sorts of practical questions they regularly face. This will enable employers to operate as prudently as possible within the legal framework to their benefit and to the benefit of the young people themselves. Local authorities are also reminded of the importance of raising awareness among employers of the legal requirements.

This guidance is not, and cannot be, an authoritative legal interpretation of the provisions of the relevant Acts of Parliament, byelaws and regulations, which is a matter for the Courts, nor is it intended as a substitute for specific legal advice on particular issues.

This guidance is about the special rules which apply to the employment of children under the school leaving age. It does not cover general employment law, which, except for:

- the national minimum wage; and
- the rules requiring 4 weeks holiday;

applies to the employment of such children just as it applies to the employment of adults. This means in particular that the rules against discrimination in employment on the grounds of race, sex, religion or belief, disability, sexual orientation, gender reassignment or age will apply to the employment of children just as they apply to the employment of adults.

This guidance covers employment in England. The Welsh Assembly Government will be issuing separate guidance for Wales. Separate but similar legislation applies in Scotland.

This guidance does not cover the rules which apply where a child is engaged in a performance.

Section 2

Glossary

What is meant by the 'school leaving age'?

This guidance frequently refers to a child under the school leaving age. A child reaches the school leaving age on the last Friday in June in the school year in which the child has his or her 16th birthday. This means that a child can still be 15 when reaching the school leaving age if his or her 16th birthday is in the summer holidays. The school leaving age applies whether the child is at a local authority maintained school or an independent school.

The Education and Skills Act 2008 which has recently been passed will in general require young people to continue to participate in education or training post-16 from 2013 (until 17 from 2013 and until 18 from 2015). This does not necessarily mean staying at school and young people will still be able to work, provided they are learning as well. Participation could be through school, college, work based training or part-time training if they are employed full time. As this new Act does not affect the school leaving age it does not affect the meaning of 'child under the school leaving age' as far as the rules relating to the employment of children are concerned.

What is meant by 'local authority'?

In this guidance 'local authority' is the county council in areas where there is both a county council and a district council; in other areas it is the unitary authority i.e. the metropolitan district council, London borough council or the councils of the City of London and the Isles of Scilly.

Section 3

Rules on the employment of children – general

The rules which cover the employment of children under the school leaving age are mainly found in the Children and Young Persons Act 1933 although there are some rules contained in other Acts and regulations, for example the Management of Health and Safety at Work Regulations 1999. For more detail see the list of Acts and regulations at the end of this guidance.

In addition there are rules in local authority byelaws made under the Children and Young Persons Act 1933. In 1998, the Department of Health published model byelaws. Many authorities have made byelaws which broadly follow this model although some authorities have departed from it to suit local circumstances. So employers will always need to check the position about byelaws with the local authority before employing a child. The Act does not say whether the relevant byelaws are the byelaws made by the authority where the child lives or the byelaws made by the authority where the employment is to take place. However the view of the Department for Children Schools and Families (DCSF) and local authorities is that the relevant byelaws are the byelaws made by the authority where the employment is to take place.

The rules covering age limits and hours are described in section 4 below, the rules covering what type of work can and cannot be done by children in sections 5 and 6 and the system of permits in section 7.

What is meant by employment?

As well as employment in its normal meaning, the Children and Young Persons Act 1933 states that a person who assists in a trade or occupation carried on for profit is considered as employed even though he or she may receive no payment. So the rules in the Children and Young Persons Act will apply where, for example, children help their parents in a shop without receiving any payment. The actual words used in the Act here are a “person who assists in a trade or occupation carried on for profit”. In today’s circumstances DCSF considers that any occupation where the aim is to make a surplus would be considered as a trade or occupation carried on for profit so, in DCSF’s view, unpaid work at a charity shop would count as employment, but not, for example, unpaid work at a youth club.

Section 4

Age limits and hours

How old does a child need to be before they can be employed?

- A child under 14 may not be employed, but this rule can be, and often is, relaxed by byelaws to allow the employment of 13 year-old children in certain occupations. The typical occupations in which a 13 year-old child can be employed under byelaws are described in section 5, but it is important to check with the local authority where the employment is to take place to see what byelaws they have made about the employment of 13 year-old children.

When during the day can a child under the school leaving age be employed ?

- A child may not be employed before 7.00 a.m. or after 7.00 p.m.
- A child may not be employed before the end of the school day on any day on which the child has to go to school. But this rule can be, and frequently is, relaxed by byelaws to permit an hour's employment in the morning before school starts. So again it is important to check with the local authority where the employment is to take place what their byelaws say about employment on school days.

How many hours can a child under the school leaving age be employed for?

- A child may not be employed for more than two hours on a day on which he or she has to go to school, or on a Sunday.
- A child under 15 may not be employed for more than five hours on any day from Monday to Saturday on which he or she does not have to go to school.

- A child aged 15 or over may not be employed for more than 8 hours on a weekday on which he or she does not have to go to school.
- A child may not be employed for more than 12 hours in any week if that week includes a day on which the child has to go to school. 'Week' here is any period of seven consecutive days.
- A child under 15 may not be employed for more than 25 hours in any week where that week does not include a day on which the child has to go to school. 'Week' here is any period of seven consecutive days.
- A child aged 15 or over may not be employed for more than 35 hours in any week where that week does not include a day on which the child has to go to school. Again, 'week' here is any period of seven consecutive days.

These restrictions on hours are summarised in the table in the Annex to this guidance.

Absence from school

As well as the restrictions outlined above under the Children and Young Persons Act, any absence from school due to employment whether paid or unpaid would be treated as unauthorised absence and could lead to action against the parents.

Children not at school

In the restrictions outlined above there are references to the school day and any day on which the child has to go to school. In the case of a restriction which relates to the school day or a day on which the child has to go to school the Act does not deal with the position of home educated children, children excluded from school or any other children who for any reason are not registered pupils at a school. However where a child has been excluded from school and is required to attend alternative educational provision, absence from the educational provision due to employment, whether paid or unpaid, would again be treated as unauthorised absence and could lead to action against the parents.

What about breaks and holidays?

- A child may not be employed for more than 4 hours without at least one hour's break. Consequently, in DCSF's view, once a child has been working for more than 4 hours the child must have the hour's break. It makes no difference if the child has already had shorter breaks within that 4 hour period.
- A child under the school leaving age must have a two-week break from any employment in each year. 'Year' here is a calendar year, not a school year. This break must be taken during the school holidays. However as mentioned in section 1 the rules requiring 4 weeks holiday which apply to adult employees do not apply to children.

Section 5

What kind of work can a child do?

All children

A child under the school leaving age may only be employed to do 'light work'. This is:

"work which on account of the inherent nature of the tasks which it involves and the particular conditions under which they are performed is not likely to be harmful to the health, safety or development of children and is not such as to be harmful to their attendance at school or to their participation in work experience, or their capacity to benefit from the instruction received or the experience gained".

In the context of newspaper delivery the National Federation of Retail Newsagents have issued safety guidelines for news deliverers which recommends a maximum weight of 15 kg (35 lbs).

Children aged 13

The model byelaws allow the employment of children aged 13 in some kinds of light work. Again however it is important to check the byelaws made by the local authority where the employment is to take place as there are variations among authorities. The types of light work listed in the model byelaws are:

- Agricultural or horticultural work. Some authorities' byelaws may allow this type of work without restriction. Other authorities' byelaws may allow light agricultural or horticultural work on an occasional basis under the direct supervision of the child's parent. In addition some authorities' byelaws may still state that they allow the employment of children aged 10 or over on an occasional basis in light agricultural or horticultural work under the direct supervision of the child's parent. However, following a change in the law in 2000, DCSF's view is that a byelaw in this form, allowing the employment of children under 13 no longer has any effect and, as mentioned in section 4, all employment

of children under 13 in any type of work is now illegal.

- Delivery of newspapers, journals or other printed material and collecting payment for them. However, although this byelaw allows collection of payment the prohibition in the model byelaws set out in section 6 on collecting money except under the supervision of an adult still applies, if the authority's byelaws follow the model.
- Shop work, including shelf stacking.
- Hairdressing salons.
- Office work.
- Car washing by hand in a private residential setting.
- In a café or restaurant, but byelaws are likely to prohibit employment in the kitchen of a café or restaurant (see section 6) so the employment which would be allowed would be employment as a waitress or waiter or employment serving at the counter.
- In riding stables, but the licence for the riding stables under the Riding Establishments Act 1964 will contain restrictions that a child under 16 cannot supervise riding or be left in charge of a riding stables.
- Domestic work in hotels and other establishments offering accommodation.

The work has to be light work, so although, for example, agricultural or horticultural work or work in a riding stables may be permitted for 13 year-old children, lifting bales of hay at a farm or riding stables would probably not be permitted as that would not be light work.

Children aged 14 and above

Children aged 14 and above but under the school leaving age can do any light work except work prohibited or restricted as described in section 6.

Section 6

What kinds of work is prohibited or restricted?

This section sets out the kinds of work which a child may not do and restrictions on what a child can do.

Health and safety

A child under 18 cannot be employed for work:

- which is beyond the child's physical or psychological capacity;
- involving harmful exposure to toxic or carcinogenic substances;
- involving harmful exposure to radiation;
- involving a risk which cannot be recognised or avoided by young persons because of their lack of attention to safety or lack of experience or training; this is likely to mean that any employment involving the use of sharp knives or slicers will be prohibited; or
- in which there is a risk to health from extreme cold or heat, noise or vibration.

Employment prohibited or restricted by local authority

The local authority has power to forbid the employment of a child under the school leaving age who is at a local authority maintained school or to impose restrictions on the child's employment. The authority can only use this power if they think that the child is being employed in a way which prejudices the child's health or makes the child unfit to obtain the full benefit of his or her education. This power does not apply however where the child is a pupil at an independent school or an Academy.

Industrial undertakings

As well as the rule restricting children to light work the employment of children under the school leaving age in industrial undertakings is forbidden. 'Industrial undertakings' includes:

- mines and quarries;
- any manufacturing;
- construction or repair of buildings, roads etc; and
- transport of passengers or goods, including handling goods in a warehouse.

The relevant Act forbids employment in industrial undertakings rather than forbidding any particular type of employment. So employment in, for example, the office of a road haulage firm would be forbidden because the road haulage firm would be an industrial undertaking. There is however an exception for family undertakings. A child can be employed in an industrial undertaking if it is an undertaking where only members of the same family are employed, although if a child is employed in such an undertaking the child must, in DCSF's view, only be employed to do light work (see above).

Sale of alcohol

Under the Licensing Act 2003 it is an offence for an unaccompanied child under 16 to be present in premises solely or mainly involved in the sale of alcohol. Furthermore, licensing authorities may attach conditions to a licence forbidding access to older children for the promotion of the four licensing objectives (including the protection of children from harm) but only if representations have been received by responsible authorities such as the police or interested parties such as local residents and following a hearing.

The Act also restricts the unsupervised sale of alcohol by anyone under 18 except where it is sold or supplied for consumption with a table meal in a part of the premises used only for that purpose. The effect of this exemption is that, for example, a child under the school leaving age working as a waitress or waiter is, under the Act, able to serve alcohol lawfully in a restaurant.

However authorities may have byelaws prohibiting or restricting the employment of children in the sale of alcohol except in sealed containers (see below) and any such byelaws will remain effective. So if an authority has such a byelaw it will be an offence under that byelaw to employ a child in the sale of alcohol in a restaurant (unless it is in a sealed container) even though the Licensing Act permits the unsupervised sale of alcohol by children in these circumstances.

Gambling

The employment of children under 16 in almost all forms of gambling is forbidden. This includes casinos, bingo, lotteries (including the National Lottery) betting shops, machine arcades and the pools. There are limited exceptions covering fairs (although byelaws may well prohibit employment as an attendant at a fairground) and gambling which is not carried out commercially.

Employment on boats

A child under the school leaving age cannot be employed on any ship registered in the United Kingdom. 'Ship' here includes all types of boat. There is also a separate prohibition on employment of a child under 16 on a sea going ship registered in the United Kingdom.

Additional prohibitions likely to be found in byelaws

The model byelaws contain further prohibitions on employment of children under the school leaving age. Again however it is important to check the actual byelaws made by the authority where the employment is to take place; some byelaws may have additional prohibitions. The model byelaws forbid employment of any child under the school leaving age:

- In a cinema, theatre, discotheque, dance hall or nightclub except in connection with a performance given entirely by children. In DCSF's view a byelaw in this form would prevent children working in the box office or in a kiosk, or indeed a franchised coffee shop in a cinema or theatre as this could result in unsupervised access to an inappropriate production or event.
 - To sell or deliver alcohol except in sealed containers; as mentioned above a byelaw in this form would be in addition to the restrictions on the employment of children in the sale of alcohol under the Licensing Act described above.
 - To deliver milk, but not all authorities include this prohibition in their byelaws and some authorities' byelaws only prohibit delivery of milk if the vehicle is not fitted with a seatbelt.
 - To deliver fuel oils; in addition it is likely that any licence for a filling station required under the Petroleum (Consolidation) Act 1928 will contain a prohibition on operating attendants being under 16.
 - In a commercial kitchen; various points have arisen on the effect of a byelaw in this form. In DCSF's view this byelaw is aimed at the process of cooking and would not prevent:
 - serving at the counter of a fish and chip shop provided this does not involve getting fish or chips out of a deep fryer or working in an area where fish or chips are prepared;
 - washing up in an area separate from where food is prepared;
 - making sandwiches at the counter of a sandwich bar; and
 - collecting meals from a kitchen or returning empty plates to a kitchen.
- However employers in catering establishments need, of course, to bear in mind the prohibitions on employment on health and safety grounds mentioned above. For example if sharp knives or slicers have to be used in making sandwiches employment of children in making those sandwiches might well be prohibited on health and safety grounds:
- To collect or sort refuse. In DCSF's view a byelaw in this form would prevent employment of a child in picking up litter.
 - In any work which is more than 3 metres above ground or, in the case of internal work, more than 3 metres above floor level.
 - In employment involving harmful exposure to physical, biological or chemical agents. Employment of children in this type of work is also likely to be forbidden on health and safety grounds (see above) and, as far as hairdressing products are concerned, employers should also note the Health and Safety Executive Guidance www.hse.gov.uk/hairdressing/information.htm
 - To collect money or to sell or canvass door to door except under the supervision of an adult; many authorities' byelaws however have a complete prohibition on these activities. If the byelaws do have an exception for collecting money etc. under the supervision of an adult the adult must, in DCSF's view, accompany the child at all times. There is also a prohibition in the House to House Collection Regulations 1947 on children under 16 making house to house collections for charities.
 - In work involving exposure to adult material or in situations which are for this reason otherwise unsuitable for children.
 - In telephone sales.

- In any slaughterhouse or in that part of any butcher's shop or other premises connected with the killing of livestock, butchery or the preparation of carcasses or meat for sale. In DCSF's view "preparation of meat for sale" here would include slicing meat but not simply weighing meat in a butcher's shop or putting it into a packet.
- As an attendant or assistant in a fairground or amusement arcade or in any other premises used for the purpose of public amusement by means of automatic machines, games of chance or skill or similar devices.
- In the personal care of residents of any residential care home or nursing home unless under the supervision of a responsible adult. Now however National Minimum Standards issued under the Care Standards Act 2000 require staff providing personal care to be aged at least 18 and so a byelaw in this form would be of very limited application.

The model byelaws also contain a prohibition on employment of a child outdoors unless the child is wearing suitable clothes and shoes.

Street trading

A child under the school leaving age may not engage or be employed in street trading. 'Street' here can include any public place. This rule can, however, be relaxed by byelaws to allow street trading if the child is aged 14 or over and employed by his or her parent and holds a licence. Again employers should check with the local authority where the child lives about what that authority's byelaws say about street trading.

There is an exception where the engagement or employment in street trading is in the "carrying on in any place of a retail trade or business on any occasion on which it is customary for retail trades or businesses to be carried on in that place" so, in DCSF's view, these restrictions on street trading would not apply in some markets.

The model byelaws allow a child aged 14 or over to engage in street trading, if:

- the child is employed by his or her parent in connection with their retail business;
- the child is employed under the direct supervision of the parent; or
- the child holds a street trader's licence.

A street traders' licence is only to be granted if a local authority consider that the employment of the child in street trading would not prejudice the child's health, welfare or ability to take full advantage of the child's education. There are also provisions for revocation of a street trader's licence in certain circumstances. The licence is given to the child, not the parent.

Section 7

Permits

Is a permit needed?

The model byelaws require permits for employment of children under the school leaving age and many authorities have made byelaws which follow the model, so again employers need to check with the local authority where the employment is to take place whether there is a permit system in their byelaws. What follows in this section is based on the model byelaws.

How does the permit system work?

The employer has to provide certain information to the local authority within a week of employing a child. The information which has to be provided is:

- the employer's name and address and the name and address and date of birth of the child;
- the hours and days on which the child is to be employed, the occupation in which the child is to be employed, details of the task involved and the place of employment;
- a statement, by a parent of the child, that the child is fit to work and that the parent agrees to the employment;
- details of the school at which the child is a registered pupil; or
- a statement to the effect that an appropriate risk assessment has been carried out by the employer (see section 9).

The local authority will issue an employment permit to the child if it is satisfied that the proposed employment is lawful, that the child's health, welfare or ability to take full advantage of his or her education would not be jeopardised and that the child is fit to undertake the work for which he or she is to be employed. However before issuing a permit a local authority may require a child to have a medical examination although in practice this is rarely necessary. The permit will give details of the child, the hours and days on which the child is to be employed, details of the

tasks involved and the place of employment and is issued to the child, rather than the employer. Although the byelaws do not expressly require it, the local authority should give a copy of the permit to the employer.

The local authority may amend a child's employment permit if the child's employer applies to have it amended.

The local authority may revoke a child's employment permit if the authority thinks that:

- the child is being illegally employed, or
- the child's health, welfare or ability to take advantage of education is likely to suffer.

Permit needed to employ a child

An employer must:

- send details to the local authority within a week of the start of the child's employment (see above);
- once the permit has been issued, only employ a child in accordance with the permit; or
- in DCSF's view, cease to employ the child if the permit is refused or if it is revoked.

In DCSF's view the child can be employed without a permit during the period before the permit is issued, provided that the necessary details have been sent to the local authority within the week from the start of the employment.

If these rules are broken it is likely that the employers liability insurance of the person employing the child will no longer be effective, so that if there was an accident involving the child the employer would be uninsured, and would commit an offence.

Section 8

Offences

In general if a child is employed in contravention of any of the rules set out in sections 4 to 7, the employer commits an offence. The case would be heard in a Magistrate's Court and the maximum fine is currently £1,000.

In addition in general any person other than the child, whose act or default contributed to the contravention, also commits the offence.

In some cases the penalties are higher or occasionally lower. In particular the maximum penalty for employing a child in any of the types of work described under the heading 'health and safety' in section 6 is:

- if the case is heard in a Magistrate's Court, a fine of £20,000; or
- if the case is heard in the Crown Court an unlimited fine.

If a child engages in street trading in contravention of any rule described in section 6, the child commits an offence as well as the employer. If the child is convicted the maximum fine that can be imposed on the child is £200 which would normally have to be paid by the child's parent.

Section 9

Additional health and safety requirements

Section 6 described the types of work children cannot do on health and safety grounds. This section describes additional health and safety rules which apply.

What general health and safety requirements apply?

All employers have a general duty to ensure, so far as is reasonably practicable, the health, safety and welfare of all their employees.

In addition, where young persons are employed, every employer must ensure that young persons employed by that employer are protected at work from any risks to their health or safety which are a consequence of their lack of experience or absence of awareness of existing or potential risks or the fact that young persons have not fully matured. This duty applies to anyone employing a young person; that is anyone who is under 18, and so will apply to the employment of children under the school leaving age. The employer has to look at the results of the risk assessment (see below) in deciding whether work involves the risks described above.

What about risk assessments?

All employers have to carry out risk assessments but there are special rules where young persons are to be employed.

Employers are required to:

- Assess risks to all young people under 18 **before** they start work.
- Ensure that the risk assessment takes into account the inexperience, lack of awareness of risks and immaturity of young persons.
- Introduce control measures to eliminate or minimise the risks, so far as is reasonably practicable.

Where the employer employs five or more employees, he or she must record the significant findings of the assessment and any group of employees identified by the employer as being especially at risk. Risk assessments do not however have to be recorded if there are fewer than five employees.

These requirements about risk assessments do not apply where work is occasional or short term work in a family undertaking and is regarded as not being harmful, damaging or dangerous.

What information has to be given to parents

Before employing a child under the school leaving age the employer must let a parent of the child know the key findings of the risk assessment and the control measures introduced.

The regulations do not require this information to be in writing. However good practice would be to do this in writing so that a record is kept and all parties have relevant information.

Again this requirement does not apply where the work is occasional or short-term work in a family undertaking and is regarded as not being harmful, damaging or dangerous.

Offences

An employer who does not comply with any of these requirements commits an offence. The case can be heard either in a Magistrates Court or in a Crown Court. If the case is heard in a Magistrates Court the maximum fine is £20,000. If the case is heard in a Crown Court there is no limit on the maximum fine which can be imposed.

Section 10

Work experience

Some of the rules set out in the earlier sections of this guidance do not apply where the child's employment is work experience. The work experience must however be arranged by the local authority or by the governing body of a school acting on behalf of the local authority if these rules are to be relaxed. This relaxation of rules is contained in section 560 of the Education Act 1996. The work experience must be in the last two school years during which the child is of compulsory school age.

Do the restrictions on hours apply?

None of the restrictions relating to hours set out in section 4 apply, but there are other rules, which normally apply to 16 and 17 year-olds rather than children under the school leaving age. Children on work experience should normally only work for no more than eight hours each day and 40 hours each week. In some cases this will be a legal requirement under the Working Time Regulations 1998. In other cases, although it may not be a legal requirement, DCSF would recommend that children on work experience should not work longer than these hours.

Does the restriction to light work apply?

This rule, described in section 5 does not apply.

Do any of the prohibitions or restrictions in section 6 apply?

The following still apply:

- The rules under the heading 'health and safety'.
- The rules governing employment in the sale of alcohol.
- The rules prohibiting employment in gambling.
- The rules prohibiting employment in boats.
- In addition the Education Act 1996 preserves the effect of any rules about employment of persons below any specified age. This means that if any byelaws go beyond the model and set out additional prohibitions on, say, employment of children under 15 then those prohibitions will continue to apply.

The following will not apply:

- The restrictions in the model byelaws, which means that permits are not required where the employment is work experience.
- The restrictions on street trading.
- The prohibition on employment in industrial undertakings.

Section 11

Implications for local authorities

As has been seen the law on employment of children comes from a variety of sources including byelaws. As far as byelaws are concerned this guidance has described the model byelaws but clearly not all authorities' byelaws will stick precisely to the model. For example, as mentioned in section 6, although the model byelaws prohibit employment in milk delivery some authorities allow it.

Consequently it is very important that local authorities have good arrangements for making people aware of the general rules about employment of children and the rules in their byelaws.

Section 12

Implications for parents and children

We expect parents to take an active interest in their child's employment experience and be satisfied that their child's health, safety, welfare and education will not be jeopardised by the employment. We would expect employers to respond to enquiries from parents seeking to satisfy themselves about this. Parents should ensure that employers are given all relevant information about any special needs or medical conditions their child may have. It is also important that emergency contact arrangements are in place between the child, the employer and the parents.

As can be seen from section 9 the employer must let a parent of the child know the key findings of the risk assessment and the control measures and this information must be given before employing the child. Then, if the local authority's byelaws require permits, a parent has to agree to the employment. This information from the employer will help a parent to decide whether to agree to the employment.

Children should inform their parents when they obtain employment. They should be aware that they may need a permit and if so it is likely that the parent must agree to the employment.

Section 13

Safeguarding children

Introduction

The law here will shortly be changing with the coming into force of the Safeguarding Vulnerable Groups Act 2006. This guidance first of all describes the current rules and then describes the position as it will be under the Safeguarding Vulnerable Groups Act.

The current rules

The present rules will remain in place until October 2009. Currently, if a person is disqualified from working with children, it is an offence:

- for that person knowingly to apply for, offer to do, or accept any work in a regulated position;
- for anyone knowingly to offer work in a regulated position to that person; and
- for anyone knowingly to fail to remove the person from the regulated position.

If convicted of this offence the maximum penalty is:

- If the case is heard in a Magistrates Court, a fine of £5,000 or 6 months imprisonment, or both.
- If the case is heard in the Crown Court an unlimited fine or 5 years imprisonment, or both.

When is a person disqualified from working with children?

A person is disqualified from working with children if:

- the person is included in the list of persons barred from teaching (List 99) on the grounds that they are unsuitable to work with children or a list kept by DCSF of individuals considered unsuitable to work with children; or
- the Court has made an order disqualifying the person from working with children. The Court would only make an order if the person has been convicted of certain criminal offences against children.

What is a regulated position?

A 'regulated position' is defined by the Criminal Justice and Court Services Act 2000 and includes a position where the normal duties involve caring for children under 16 in the course of their employment or where a substantial part of the duties include supervising or training children under 16 in the course of the children's employment.

CRB Disclosure

Currently persons who employ or propose to employ a person in a 'regulated position' are eligible to obtain an enhanced Criminal Records Bureau Disclosure.

The position under the Safeguarding Vulnerable Groups Act 2006

The detailed law is scheduled to change in October 2009 with the coming into force of the Safeguarding Vulnerable Groups Act 2006 although the main structure of regulation will be the same in the case of employment of children. Offences will be committed if a person who is barred from working with children engages in regulated activity (discussed below). The Act also includes provisions forbidding people from engaging in regulated activity unless they are registered with the Independent Safeguarding Authority, but the Government intends to exempt people in settings involving employment of children from this requirement.

In addition to the new provisions in the Act, where a local authority's byelaws require permits (see section 7 above) it may be possible for a local authority to rely on provisions in the byelaws to revoke a permit if it considers that the child's welfare is likely to suffer

The offences under the Act

Under the Act, if a person is barred from working with children, it is an offence:

- for that person to seek to engage, offer to engage or engage in regulated activity; and
- for anyone who knows or has reason to believe that the person is barred from working with children to permit that person to engage in regulated activity.

If convicted of this offence the maximum penalty is:

- If the case is heard in a Magistrates Court, a fine of £5,000 or 12 months imprisonment or both.
- If the case is heard in the Crown Court an unlimited fine or 5 years imprisonment or both.

What is meant by barred from working with children?

This means being included in a list of persons barred from working with children kept by the new Independent Safeguarding Authority. This list replaces the lists which currently operate, mentioned earlier in this section.

What is regulated activity?

Regulated activity includes:

- teaching training or instruction of a child under 16;
- care for or supervision of a child under 16;
- advice or guidance provided for a child under 16; or
- treatment or therapy provided for a child under 16;

in the course of the child's employment.

Employment here includes any form of work carried out under the supervision or control of another person and it makes no difference if the child is not paid. So teaching, training, instruction etc of a child under 16 where the child is on work experience will be regulated activity. In all cases however the teaching, training, instruction etc must be part of the person's job.

Checking with the Independent Safeguarding Authority

It will be possible, but not a requirement, for anyone who employs or is proposing to employ a person to engage in 'regulated activity' in a setting where children under 16 are being employed, including where they are on work experience, to check whether the person is registered with the Independent Safeguarding Authority (ISA) if the person consents to the check. If an employer has not checked whether an employee is ISA registered, or has established that the employee is not registered and the employee turns out to be barred but the employer does not know this or has no reason to believe it, the employer would not have committed an offence.

Examples

A 15 year-old girl is employed in a Saturday job in a hairdressing salon and it is the job of one member of the staff to supervise and instruct her. That person is engaged in regulated activity but does not have to be ISA registered. However if that person was barred from working with children:

- He or she would commit an offence.
- Anyone else who allows the person to supervise and instruct the girl, who knows or has reason to believe that the person is barred from working with children, also commits an offence; such a person could be the person's employer, or the branch manager of the salon.

The girl may well come into contact with other employees at the salon who might give her advice but if that is not part of their job description then it would not mean that they were engaged in regulated activity.

A 15 year-old boy has a job doing a paper round. If the owner of the newsagent is a sole proprietor and there are no other employees, there will be no requirement on the owner to be ISA-registered. If there is a shop assistant who instructs or supervises the paper boy in any way (such as being ready to correct, warn or dismiss him further to a complaint by a householder), the shop assistant will not have to be ISA-registered and the proprietor will not have to check whether the shop assistant is ISA-registered. However a proprietor or shop assistant who provides any form of instruction or supervision of the boy will be engaging in regulated activity and will be committing an offence if he or she is barred from working with children. A proprietor will commit an offence if the proprietor allows a shop assistant who is barred to provide any such instruction or supervision and the proprietor knows or has reason to believe that the shop assistant is barred.

Further information

Guidance to be published in 2009 on the Vetting and Barring Scheme will explain the ISA registration and checking process and offer advice on good practice. This advice is likely to build on existing guidance in the area of work experience, which advocates a risk-based approach to decisions as to whether or not to obtain CRB disclosures on adults in the workplace.

For more information see also ISA's website

www.isa-gov.org.uk

Section 14

References

Apart from local authority byelaws the main Acts and regulations which govern employment of children are:

- The Children and Young Persons Act 1933 Part II and section 107, amended by the Children (Protection at Work) Regulations 1998 (S.I. 1998/276), the Children (Protection at Work) Regulations 2000 (S.I. 2000/1333) and the Children (Protection at Work) (No 2) Regulations 2000 (S.I.2000/2548).
- Children and Young Persons Act 1963 section 35(2).
- The Criminal Justice and Court Services Act 2000 Part II.
- The Education Act 1996, sections 558 to 560.
- The Employment of Women, Young Persons and Children Act 1920.
- The Gambling Act 2005, sections 51 to 55.
- The House to House Collections Regulations 1947 (SR&O 1947/2662) amended by the House to House Collections Regulations 1963 (S.I. 1963/684), regulation 8.
- The Licensing Act 2003, sections 145 and 153.
- The Merchant Shipping Act 1995 section 55.
- The Riding Establishments Act 1964, amended by the Riding Establishments Act 1970, section 1(4A).
- The Safeguarding Vulnerable Groups Act 2006.
- The Management of Health and Safety at Work Regulations 1999 (S.I. 1999/3242) amended by the Management of Health and Safety at Work and Fire Precautions (Workplace) (Amendment) Regulations 2003 (S.I. 2003/2457).
- The Working Time Regulations 1998 (S.I.1998/1833).

Annex

Children – permitted hours of work – daily and weekly limits

	Daily limit			Weekly limit	
	<i>School day</i>	Non – School day Mon – Sat	Sunday (school terms or holidays)	School term	School holidays
Children Under 15	2 hours	5 hours	2 hours	12 hours	25 hours
Children aged 15 and over but under the school leaving age	2 hours	8 hours	2 hours	12 hours	35 hours

