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STATUTORY INSTRUMENTS

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**1995 No. 755**

**The Children (Northern Ireland) Order 1995**

**PART XII**

**EMPLOYMENT OF CHILDREN**

*Introductory*

**Interpretation**

**133.**—(1) In this Part—

“broadcasting studio” means a studio used in connection with the provision of a programme service;

“child” means a person who is not over school-leaving age;

“performance of a dangerous nature” includes all acrobatic performances and all performances as a contortionist;

“programme service” has the same meaning as in the Broadcasting Act 1990(1);

“school-leaving age” means the upper limit of compulsory school age;

“street trading” includes the hawking of newspapers, matches, flowers and other articles, playing, singing or performing for a profit, shoe-polishing and other similar activities carried on in streets or public places.

(2) For the purposes of this Part a child who assists in a trade or occupation carried on for profit shall be deemed to be employed notwithstanding that he receives no reward for his labour.

**Exemptions and saving**

**134.**—(1) The provisions of this Part and of any regulations made under it shall not apply to a child detained in a training school.

(2) The provisions of this Part are in addition to any statutory provision—

(a) relating to the employment of children; or

(b) for giving effect to any international convention regulating employment.

*General*

**General restrictions on the employment of children**

**135.**—(1) No child shall be employed—

(a) so long as he is under the age of 13 years; or

(b) before the close of school hours on any day on which he is required to attend school; or  
(c) before seven o'clock in the morning or after seven o'clock in the evening on any day; or  
(d) for more than two hours on any day on which he is required to attend school,  
except in accordance with any statutory provision (including this Part and regulations made under it).

(2) No child shall be employed in any occupation likely to be injurious to his life, limb, health or education, regard being had to his physical condition.

(3) If any education and library board serves on the employer of any child a copy of a certificate signed by a medical practitioner that any specified occupation is likely to be injurious to the life, limb, health or education of the child, the certificate shall be admissible as evidence in any subsequent proceedings against the employer in respect of the employment of the child.

(4) No child shall engage in or be employed in street trading.

### **Regulations with respect to the employment of children**

**136.**—(1) The Department may, with the approval of the Department of Education, make regulations with respect to the employment of children and any such regulations may contain provisions—

- (a) authorising the employment of children (notwithstanding anything in paragraph (1)(b) of Article 135) for not more than one hour before the commencement of school hours on any day on which they are required to attend school;
- (b) specifying the occupations in which children may or may not be employed;
- (c) prescribing—
  - (i) the age below which children are not to be employed;
  - (ii) the number of hours in each day, or in each week, for which, and the times of day at which, they may be employed;
  - (iii) the intervals to be allowed to them for meals and rest;
  - (iv) the holidays or half-holidays to be allowed to them;
  - (v) any other conditions to be observed in relation to their employment.

(2) Except in so far as is expressly permitted by paragraph (1)(a) and (c)(i), regulations under this Article shall not modify the restrictions contained in Article 135, and any restrictions contained in regulations under this Article shall have effect in addition to the restrictions contained in that Article.

(3) Nothing in Article 135 or in regulations under this Article shall prevent a child from taking part in a performance—

- (a) under the authority of a licence granted under this Part; or
- (b) in a case where by virtue of paragraph (3) of Article 137 no licence under that Article is required for him to take part in the performance.

### *Performances*

### **Restrictions on taking part in public performances, etc.**

**137.**—(1) A child shall not take part in a performance to which this Article applies unless—

- (a) a licence has been granted under Article 138, or
- (b) by virtue of paragraph (3), no licence is required.

(2) This Article applies to—

- (a) any performance in connection with which a charge is made (whether for admission or otherwise);
- (b) any performance in licensed premises within the meaning of the Licensing (Northern Ireland) Order 1990<sup>(2)</sup>, or in any premises in respect of which a club is registered under the Registration of Clubs (Northern Ireland) Order 1987<sup>(3)</sup>;
- (c) any broadcast performance;
- (d) any performance not falling within sub-paragraph (c) but included in a programme service;
- (e) any performance recorded (by whatever means) with a view to its use in a broadcast or a programme service or in a film intended for public exhibition;

and a child shall be treated for the purposes of this Article as taking part in a performance if he takes the place of a performer in any rehearsal or in any preparation for the recording of the performance.

(3) A licence under Article 138 shall not be required for any child to take part in a performance to which this Article applies if—

- (a) in the six months preceding the performance he has not taken part in other performances to which this Article applies on more than three days; or
- (b) the performance is given under arrangements made by a school or made by a body of persons approved for the purposes of this Article by the Department of Education or by the education and library board in whose area the performance takes place, and no payment in respect of the child's taking part in the performance is made, whether to him or to any other person, except for defraying expenses;

but the Department of Education may, with the approval of the Department, by regulations prescribe conditions to be observed with respect to the hours of work, rest or meals of children taking part in performances as mentioned in sub-paragraph (a).

### **Granting of licences**

**138.**—(1) The appropriate education and library board may grant a licence for a child to take part in a performance to which Article 137 applies.

(2) The appropriate education and library board referred to in paragraph (1) is—

- (a) the education and library board in whose area the child resides; or
- (b) if the child does not reside in Northern Ireland, the education and library board in whose area the applicant or one of the applicants resides or has his place of business; or
- (c) if the child does not reside in Northern Ireland and the applicant or every applicant neither resides nor has his place of business in Northern Ireland, any education and library board.

(3) Subject to paragraph (4), the education and library board shall not refuse to grant a licence for a child to take part in a performance or series of performances if the board is satisfied—

- (a) that the child is fit to do so; and
- (b) that proper provision has been made to secure the child's health and kind treatment; and
- (c) that, having regard to such provision, if any, as has been or will be made for the child's education, his education will not suffer.

(4) The education and library board shall not grant a licence in respect of a child who is under the age of 14 unless—

- (a) the licence is for acting and the application for the licence is accompanied by a declaration that the part he is to act cannot be taken except by a child of about his age; or

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(2) 1990 NI 6

(3) 1987 NI 14

- (b) the licence is for dancing in a ballet which does not form part of an entertainment of which anything other than ballet or opera forms part and the application for the licence is accompanied by a declaration that the part he is to dance cannot be taken except by a child of about his age; or
- (c) the nature of his part in the performance is wholly or mainly musical and either the nature of the performance is also wholly or mainly musical or the performance consists only of opera or ballet.

(5) The power of the education and library board to grant licences under this Article shall be exercisable subject to such restrictions and conditions as the Department of Education may with the approval of the Department prescribe by regulations, and such conditions may include—

- (a) conditions requiring the approval of an education and library board (and may provide for that approval to be given subject to conditions imposed by the board);
- (b) a condition requiring sums earned by the child in respect of whom the licence is granted in taking part in a performance to which the licence relates—
  - (i) to be paid into the county court and, subject to county court rules, applied or otherwise dealt with for the benefit of that child in such manner as the county court may direct, or
  - (ii) to be applied or otherwise dealt with in a manner approved by the education and library board.

(6) A licence under this Article shall specify the times, if any, during which the child in respect of whom it is granted may be absent from school for the purposes authorised by the licence; and for the purposes of determining whether, under Article 45 of, and Schedule 13 to, the Education and Libraries (Northern Ireland) Order 1986(4), a registered pupil of a school has failed to attend regularly at the school, his absence at such times shall be disregarded.

(7) An education and library board which grants a licence under this Article authorising a child to take part in a performance in the area of another education and library board shall send that other board such particulars as the Department of Education may with the approval of the Department prescribe by regulations.

### **Variation and revocation of licences**

**139.**—(1) A licence under Article 138 may be varied on the application of the person holding it by the appropriate education and library board.

(2) The appropriate education and library board may vary or revoke a licence under Article 138 if—

- (a) any condition subject to which the licence was granted is not observed; or
- (b) the board is not satisfied as to the matters mentioned in paragraph (3) of that Article,

but before varying or revoking the licence, the board shall give to the holder of the licence such notice, if any, of the board's intentions as may be practicable in the circumstances.

(3) The appropriate education and library board referred to in paragraphs (1) and (2) is—

- (a) the education and library board which granted the licence; or
- (b) any education and library board in whose area the performance or one of the performances to which it relates takes place.

(4) An education and library board which proposes to vary or revoke a licence which was granted by, or relates to a performance in the area of, another education and library board shall, if practicable, consult that other board.

(5) An education and library board which varies or revokes such a licence shall inform that other board.

#### **Requirement to keep and produce records**

**140.**—(1) The holder of a licence shall keep such records as the Department of Education may, with the approval of the Department, prescribe by regulations.

(2) At any time not later than six months after the performance or last performance to which the licence relates, the holder of the licence shall on request produce the records to an officer of the education and library board which granted, or any education and library board which varied, the licence.

#### *Dangerous performances*

#### **Performances endangering life or limb**

**141.** No child shall take part in any performance to which Article 137 applies and in which his life or limbs are endangered.

#### **Training for performances of a dangerous nature**

**142.** No child under the age of twelve shall be trained to take part in performances of a dangerous nature.

#### **Licensing of training children over twelve for performances of a dangerous nature**

**143.**—(1) The appropriate education and library board may grant a licence for a child who is not under the age of twelve to be trained to take part in performances of a dangerous nature and no such child shall be so trained except under and in accordance with the terms of a licence under this Article.

(2) The appropriate education and library board referred to in paragraph (1) is—

- (a) the education and library board in whose area the child resides; or
- (b) the education and library board in whose area the place or any of the places at which the child is to be trained is situate.

(3) The education and library board shall not refuse to grant a licence under this Article if the board is satisfied—

- (a) that the child is fit and willing to be trained; and
- (b) that proper provision has been made to secure his health and kind treatment.

(4) A licence under this Article shall—

- (a) specify the place or places at which the child is to be trained;
- (b) contain such conditions as the education and library board considers necessary for the child's protection.

(5) The education and library board by which a licence under this Article is granted may vary or revoke the licence—

- (a) if any condition subject to which the licence was granted is not observed; or
- (b) if it appears to the board that—
  - (i) the child is no longer fit and willing to be trained; or
  - (ii) proper provision is no longer being made to secure his health and kind treatment,

but before varying or revoking the licence, the board shall give to the holder of the licence such notice, if any, of the board's intentions as may be practicable in the circumstances.

### *Supplementary*

#### **Notice of refusal of licence, etc.**

**144.**—(1) This paragraph applies where an education and library board—

- (a) refuses an application for a licence under this Part; or
- (b) revokes such a licence; or
- (c) in the case of a licence under Article 138—
  - (i) varies it otherwise than on the application of the holder, or
  - (ii) in granting it or in giving approval under paragraph (5)(a) of that Article imposes any conditions otherwise than with the consent of the applicant or holder;
- (d) in the case of a licence under Article 143—
  - (i) varies it, or
  - (ii) in granting it, imposes any conditions otherwise than with the consent of the applicant.

(2) Where paragraph (1) applies, the education and library board shall serve a notice on the applicant or holder of the licence informing him of—

- (a) the board's reasons for acting as described in paragraph (1); and
- (b) his right of appeal under Article 145.

#### **Appeal against refusal of licence, etc.**

**145.**—(1) The applicant or holder of a licence may, where Article 144(1) applies, appeal to the court.

(2) An appeal shall not be brought under paragraph (1) by the applicant or holder of a licence more than 28 days after the service on him of the notice required by Article 144(2).

#### **Powers of entry**

**146.**—(1) Where, on an application made by any person for a warrant under this Article, it appears to the court that there is reasonable cause to believe that the provisions of this Part or of any regulations made or licences granted under this Part are being contravened with respect to any child, the court may issue a warrant authorising any officer of an education and library board or any constable to enter, at any reasonable time within 48 hours of the issue of the warrant, any place in or in connection with which the child in question is, or is believed to be, employed or taking part in a performance, or being trained, and to make inquiries there with respect to that child.

(2) Any authorised officer of an education and library board or any constable may—

- (a) at any time enter any place used—
  - (i) as a broadcasting studio or film studio; or
  - (ii) for the recording of a performance with a view to its use in a programme service or in a film intended for public exhibition,

and make inquiries there as to any children taking part in performances to which Article 137 applies;

(b) at any time during the currency of a licence granted under Article 138 or 143 enter any place (whether or not it is such a place as is mentioned in sub-paragraph (a)) where the child to whom the licence relates is authorised by the licence to take part in a performance or to be trained, and make inquiries there with respect to that child.

(3) A person (other than a constable in uniform) exercising any power of entry conferred by this Article shall, if so required, produce some duly authenticated document showing his authority to do so.

(4) An application for a warrant under this Article shall be made in the manner and form prescribed by rules of court.

### **Offences**

**147.**—(1) Any person who employs a child in contravention of—

- (a) Article 135; or
- (b) regulations under Article 136,

and any person (other than the child) to whose act or default the contravention is attributable shall be guilty of an offence.

(2) Any person who—

- (a) causes or procures a child; or
- (b) being his parent, allows a child,

to take part in any performance in contravention of Article 137 or 141 or to be trained to take part in performances of a dangerous nature in contravention of Article 142 or 143 shall be guilty of an offence.

(3) In paragraph (2)(b) “parent” includes—

- (a) any person who is not a parent of the child but who has parental responsibility for him; and
- (b) any person who has care of the child.

(4) Any person who—

- (a) fails to observe—
  - (i) any condition subject to which a licence under this Part is granted; or
  - (ii) any condition prescribed under Article 137(3); or
- (b) in or in connection with an application for a licence under this Part or for the variation of a licence under Article 139, knowingly or recklessly makes any statement which is false in a material particular or in a material respect misleading;
- (c) fraudulently alters or uses, or permits to be fraudulently altered or used—
  - (i) any licence under this Part; or
  - (ii) any record which he is required to keep under Article 140;
- (d) fails to keep or produce any record which he is required to keep or produce under Article 140,

shall be guilty of an offence.

(5) Where the commission by any person of an offence under paragraph (1) is due to an act or default of some other person, that other person may be charged with and convicted of the offence whether or not proceedings are taken against the first-mentioned person.

(6) Any person who is guilty of an offence under paragraph (1), (2) or (4) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) The court by which the holder or one of the holders of a licence under this Part is sentenced for an offence under paragraph (2) or (4) may revoke the licence.

(8) Any child who engages in street trading in contravention of Article 135(4) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(9) Any person who intentionally obstructs any officer of an education and library board or any constable in the exercise of any powers conferred on him by or under Article 146 shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### **Defences**

**148.**—(1) Where a person is charged with the commission of an offence under Article 147(1) and it is proved—

- (a) that the commission of the offence was due to an act or default of some other person; and
- (b) that the person charged took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by him or any person under his control,

then, subject to paragraph (2), the person charged shall be acquitted of the offence.

(2) The person charged as described in paragraph (1) shall not be entitled to be acquitted under that paragraph unless not more than 14 days after the date of the service of the summons on him nor less than seven days before the date of the hearing he has given notice in writing to the complainant of his intention to rely on the provisions of that paragraph, specifying the name and address of the person to whose act or default he alleges the commission of the offence was due, and has sent a like notice to that person; and that person shall be entitled to appear at the hearing and to give evidence.

(3) In any proceedings for an offence under Article 147(2) alleged to have been committed by causing, procuring or allowing a child to take part in a performance without a licence in contravention of Article 137, it shall be a defence to prove that the person charged believed that the condition specified in Article 137(3)(a) was satisfied and that he had reasonable grounds for that belief.