

Executive Note

The Children (Protection at Work) (Scotland) Regulations 2006 (SSI/2006/140)

1. The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to negative resolution procedure.

Policy Objectives

2. The purpose of the instrument is to bring legislation in Scotland into line with European Council Directive 94/33 which limits to 12 hours per week the number of hours that a child below the minimum school leaving age (usually 16) can work during term time. Current limits are 17 hours per week for those aged under 15 and 20 hours per week for those aged over 15 but below the minimum school leaving age.

3. Limiting the hours that children work is intended to safeguard their educational opportunities and their health and physical wellbeing while allowing them to enjoy the rewards and experience of work.

4. Member States were required to bring their domestic legislation into line with the Directive by June 1996. The UK however had an opt-out that allowed it not to implement various parts of the Directive. That opt-out expired in 2000 and no extension was sought.

5. While responsibility for negotiation of the terms of the Directive fell to the UK Government, implementation of the devolved elements would normally take place through the devolved administrations as the Directive is about children's protection and welfare rather than employment rights. Regulations bringing legislation into line with Article 8.1 are in place elsewhere in the UK. Child protection and children's right activities within the Executive have focused on the Child Protection Reform Programme and the establishment of the Children's Commissioner in recent years and implementation of the Directive has been delayed.

Consultation

6. The regulations were subject to public consultation from 9 December 2005 until 27 January 2006. The consultation generated 8 written responses from Cosla, local authorities, voluntary organisations, teaching unions and the Commissioner for Children and Young People. All responses supported the proposal to limit to 12 the number of hours in which a child below the minimum school leaving age can work during term time.

Financial Effects

7. There is no evidence to suggest that the proposed limitation of the hours which children will be able to work during term-time will incur additional costs on employers or those working in the voluntary or community sectors. We do not envisage either that the proposed change will impose any additional financial or other burdens on local authorities, including their staff who issue individual work permits since they already consider the number of hours to be worked in each case as part of their standard procedures. We do not envisage that substantial changes to local byelaws will be necessary.

8. The instrument has no additional financial effects on the Scottish Executive.

Scottish Executive Education Department

March 2006

Regulatory Impact Assessment

The Children (Protection at Work) (Scotland) Regulations 2006 S.S.I. 2006/140

Introduction

This Regulatory Impact Assessment provides information on the Children (Protection at Work) (Scotland) Regulations 2006 (the Regulations) and their likely impact.

Purpose and intended effect of regulation

(i) Objective

To bring Scottish legislation fully into line with the EU Directive on the Protection of Young People at Work (94/33). Legislation in Scotland already complies with the Directive in all but one respect - the Regulations will bring Scottish legislation into line with the requirement in Article 8.1 of the Directive by amending the legal limits on the hours which a child below the minimum school leaving age can work during school time.

(ii) Background

The Directive was adopted in 1994. Its purpose was to ensure that young people up to age 18 are not allowed to perform any work likely to harm their physical, psychological or social development or compromise their education. Article 8.1 of the Directive limits the number of hours a child below the minimum school leaving age (usually 16) may work to 2 hours per day on school days but subject to an overall limit of 12 hours in any week during term time, including weekends and public holidays.

Member States were required to bring their domestic legislation into line with the Directive by June 1996. The UK however had an opt-out that allowed it not to implement various parts of the Directive. That opt-out expired in 2000 and no extension was sought.

While responsibility for negotiation of the terms of the Directive fell to the UK Government, implementation of the devolved elements would normally take place through the devolved administrations. The Scottish Executive regards implementation of this Directive as a devolved matter, in essence because it is about children's protection and welfare rather than employment rights. Regulations bringing legislation into line with Article 8.1 are in place elsewhere in the UK. Child protection and children's right activities within the Executive have focused on the Child Protection Reform Programme and the establishment of the Children's Commissioner in recent years and implementation of the Directive has been delayed.

The main legislative provision in Scotland is the Children and Young Persons (Scotland) Act 1937 (as amended) which controls the generality of children's employment eg. paper rounds, shop work, Saturday jobs etc. Currently, the 1937 Act allows a young person under the age of 15 to work a maximum of 17 hours a week in term time and for a young person aged at least 15 but below the minimum school leaving age to work 20 hours. The current daily limits in respect of term time ie 2 hours per school day, 2 hours on a Sunday and 8 hours (over 15) or 5 hours (under 15) on Saturdays are not affected. However, these limits will need to be applied within the revised aggregate weekly limit of

12 hours for all children below the minimum school leaving age which will result from implementation of Article 8(1). Current limits on children's working hours out of term time are not affected.

(iii) Rationale for government intervention

The proposed change to Scottish legislation is necessary to ensure that we comply with the Directive. The aims of the Directive are consistent with Executive policies to protect the health, welfare and education of children, while still allowing them to engage in light work.

Consultation

Within government

Officials from across the Scottish Executive have been consulted in preparation of this RIA, as have the Department for Education and Skills, the Department of Health and the Department of Health, Social Services and Public Safety (Northern Ireland).

Public consultation

A public consultation was carried out between early December 2005 and end January 2006. The consultation generated 8 written responses from Cosla, local authorities, voluntary organisations, teaching unions and the Commissioner for Children and Young People. All responses supported the proposal to limit to 12 the number of hours in which a child below the minimum school leaving age can work during term time.

Options

Option 1: Do nothing

Taking no action on this issue is not feasible given that Scotland has no alternative but to comply with the Directive in view of the expiry of the UK opt-out and to avoid infraction proceedings by the European Commission.

Option 2: Implement the Regulations

The regulations reinforce the policy intention to safeguard the educational opportunities and the health and physical wellbeing of children in employment by limiting the number of hours they work, while allowing them to continue to enjoy the rewards and experience of work.

Costs and benefits

Sectors and groups affected

The Regulations will impact primarily on those children who choose to work during term time and employers of those children. The impact on other groups or individuals should be minimal.

Research suggests that secondary school children in Scotland work an average of 9.90 hours per week, although this figure rises to 12.47 hours per week for pupils in S6, the

vast majority of whom are over the minimum school leaving age and will not be covered by the Regulations. The Executive does not anticipate, therefore, that the proposed change is likely to cause difficulties for the majority of working children. Nor should it mean that employers will incur additional costs.

The Executive does not believe that the proposed change will have a different or adverse impact between children or employers on grounds of different religious belief, political opinion, racial grouping, age, marital status or sexual orientation or between men and women, between persons with a disability and persons without; or between persons with dependents or those without. We are not aware of any evidence which suggests that there are higher or lower participation rates in employment among any specific groups of children.

Benefits

Option 1: Do nothing

There would be no benefit to children from doing nothing and it would leave us open to the possibility of infraction proceedings by the European Commission.

Option 2: Implement the Regulations

Implementing the regulations will safeguard the educational opportunities and the health and physical well-being of children and young people in employment.

Costs

Option 1: Do nothing

There are no direct costs related to this option.

Option 2: Implement the Regulations

There is no evidence to suggest that the proposed limitation of the hours which children will be able to work during term-time will incur additional costs on employers or those working in the voluntary or community sectors. We do not envisage either that the proposed change will impose any additional financial or other burdens on local authorities, including their staff who issue individual work permits since they already consider the number of hours to be worked in each case as part of their standard procedures. We do not envisage that substantial changes to local byelaws will be necessary.

Small Firms Impact Test

It is not anticipated that implementing the regulations will have an adverse impact on small businesses.

Competition assessment

There is no evidence to suggest that implementing the regulations will have an adverse effect on competition since the Directive applies across the UK.

Enforcement, sanctions and monitoring

There is some evidence of a lack of knowledge of the legislation governing the employment of children and the limitations and requirements imposed by it and of variation existing at local level in the effective implementation of local bye-laws on child employment and monitoring of children in employment. The Department have had some reports that there are children who regularly work in excess of the permitted hours for their age group. A recent report on child employment policy and practice, produced by Jim McKechnie et al of the University of Paisley raised concerns about these issues, and noted that there seemed to be a lack of clarity about the regulations governing the limits on hours worked by children. To promote awareness and understanding of the regulations the Executive will publish guidance for, children and parents on the regulations and the changes to working hours they will introduce. The Executive will also discuss with local authorities and others how best we can monitor implementation and enforcement of the regulations, taking account of the availability of resources.

Implementation and delivery plan

Following the laying of the new Regulations, the Executive will write to local authorities, employers and schools informing them about the new regulations and offering guidance on compliance. Separate advice for local authorities on the content and enforcement of local bye-laws will also be issued.

Post-implementation review

Following implementation, the Executive will carry out regular monitoring of local byelaws and the arrangements for monitoring and enforcing the employment of children regulations at local level – for example through the Integrated Children’s Services Planning framework.

Summary and recommendation

Current Scottish legislation, set out in the Children and Young Persons (Scotland) Act 1937 is intended to safeguard the educational opportunities and the health and physical wellbeing of children and young people in employment by imposing limitations on the number of hours they may work. The proposed change to the Act reinforces this policy intention, while allowing children to continue to enjoy the rewards and experience of work, and will ensure that Scotland complies fully with EC Directive 94/33.

Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed

Date

Minister’s name, title, department

Contact point for enquiries and comments: name, address, telephone number and email address.