

TRANSPOSAL OF DIRECTIVE 33/94/EC  
CONCERNING THE PROTECTION OF  
YOUNG PEOPLE  
IN THE 15 MEMBER STATES OF THE  
EUROPEAN UNION

## Belgium

The law on employment of 16 March 1971, amended by the law concerning work by children of 5 August 1992, was amended once again by the law of 21 March 1995 concerning work by students and young people in order to transpose a number of provisions of Council Directive 94/33/EC.

A Royal Decree on the protection of young people at work was adopted on 3 May 1999 to complete incorporation into Belgian law of the Directive in respect of specific health and safety protection at work.

### **Definitions**

For the purposes of applying Belgian law,

*"young workers"* means workers who are minors aged 15 or more and no longer subject to compulsory full-time schooling; this definition is consistent with the concept of adolescent in Directive 33/94/EC;

*"children"* means minors aged less than 15 who are still subject to compulsory full-time schooling.

Article 2 of the Royal Decree contains a definition of *"young person at work"* which covers any worker referred to in points 2 to 5 of that Decree and any worker who is a minor aged 15 or more and no longer subject to compulsory full-time schooling. Points 2 to 5 cover "apprentices", "trainees", "student workers" and "pupils and students".

### **Article 4: Prohibition of work by children, Article 5: Cultural or similar activities**

The ban on work by children is very clearly expressed in Belgian law. Under Article 7(1)(1) having children work or letting children work is prohibited as is having or letting them pursue any activity beyond the scope of their education or training.

In accordance with the Directive, Belgian law provides for derogations from the ban in individual cases.

Article 7(2)(1) makes express provision for derogations in individual cases to allow children to appear as actors or in walk-on parts in performances of a cultural, scientific, educational or artistic nature and for children to take part in shootings or recordings for films and broadcasting, fashion shows and garment displays.

Only the activities listed in the law may be pursued provided that prior authorisation has been obtained (Article 7(9)).

Belgian law lays down the procedures for the grant of authorisation (Article 7(5)) and stipulates that derogations in individual cases may not be granted unless the person requesting the derogation undertakes to ensure that the pursuit of the activity does not have a harmful effect on the child's development in pedagogical, intellectual and social terms, does not jeopardise his/her physical and moral integrity and is not harmful to his/her well-being.

### **Article 6: General obligations on employers**

1. In accordance with Article 3 of the Royal Decree of 3 May 1999, the employer is required to analyse the risks to young people arising from their work to assess any possible risk in respect of safety, physical and mental health or development

which are a consequence of their lack of experience, of absence of awareness of existing risks or the fact that young people have not yet fully matured.

2. This analysis has to be carried out before young people start work and must be repeated and adjusted at least once a year and on the occasion of any significant change in their job. It must provide details on any agents to which the young people may be exposed at work, the processes and work in which they may be involved and the places where they may be present listed in the annex to the Decree.

In that context, the employer is required to define, determine and assess the points listed in Article 3 of the Decree which are the same as subparagraphs (a) to (e) of Article 6(2).

The employer is required to take the necessary prevention measures to protect the health and safety of young people at work to ensure that they are protected against any risk which might harm their safety, physical or mental health and development (Article 4).

Where a risk is revealed on the basis of the abovementioned analysis, the employer has to implement the measures appropriate to the situation of the young person concerned in cooperation with the prevention adviser from the labour protection services (Article 5).

3. The employer is required to inform young people at work of the potential risks and all measures relating to their health and safety (Article 7).
4. The labour prevention and protection services are associated by virtue of Article 5 of the Royal Decree (see above).

#### **Article 7: Prohibition of work**

1. and 2. Article 8 of the Decree prohibits the employment of young people in work regarded as dangerous, as listed in subparagraphs 1 to 5 of the first paragraph of Article 8.

This ban applies in all cases to:

- i. work involving exposure to the chemical, physical and biological agents listed in the annex to the Royal Decree, points A.1, A.2 and A.3, a), b), c) and d);
- ii. work for which it is impossible to establish by means of analysis that the limit values for the chemical agents listed in the annex to the Royal Decree, point A.3, e) are consistently respected;
- iii. the processes and work referred to in point B of the annex;
- iv. the presence of young people in the places listed in point C of the annex.

Points A and B of the annex to the Royal Decree are the same as points I and II of the annex to Directive 33/94/EC.

3. The possible derogation provided for by the Directive has been implemented under Article 10 of the Decree which lays down that the ban in Article 8 does not apply to young people at work where the work, job or presence is indispensable to their vocational training, provided that the prevention measures are effective and the work is carried out in conjunction with an experienced worker.

#### **Article 8: Working time**

1. It appears that the possible derogations under Article 4(2)(b) and (c) have not been used.
2. Where adolescents are concerned, Article 31 of the Law of 16 March 1971, amended in 1995, stipulates that the duration of work by young workers may not exceed eight hours per day and 40 hours per week.
3. The rule in paragraph 3 has been transposed into Belgian law by Article 19a of the abovementioned law, added via the Law of 21 March 1995.
4. Paragraph 4 has also been incorporated into Belgian law: under Article 30 of the above law, supplemented by the Law of 21 March 1995, the duration of work is the time during which the young worker is at the disposal of one or more employers.
5. Article 31 provides for a possible derogation whereby the King, on the unanimous opinion of the joint body referred to in Article 47, may set a higher daily or weekly limit up to a maximum of ten hours per day and 50 hours per week in the event of Article 26 being applied. The latter article of the Belgian law specifies the limits to working time which may be exceeded in the event of work connected with an accident, certain specific urgent work and necessary work on account of unforeseen circumstances.

#### **Article 9: Night work**

1. Article 35(1) of the abovementioned Belgian law includes a general ban on night work. The night is defined as the period between 20 hours and six hours. However, if the young worker is employed on continuous shiftwork or employed on work which cannot be interrupted, the concept of the night is reduced to the period between 22 hours and five hours or between 23 hours and seven hours (Article 35(3)).
2. Exceptions to the ban on night work for young people over 16 may be made in certain sectors of activity, undertakings or professions with a view to the performance of certain work and under conditions to be laid down by the King (Article 36(1)). In such cases work remains prohibited between midnight and 4 a.m.

In addition, Article 38 of the Belgian law authorises work until 23 hours by young people over 16 in the event of the force majeure referred to in Article 26.

## **Article 10: Rest period**

1.
  - a) As the Belgian lawmaker has not opted for any of the derogations under Article 4(2)(b) and (c) of the Directive, it is not necessary to transpose this point into Belgian law.
  - b) Article 36(2) of the Belgian law lays down a minimum rest period of 12 consecutive hours for young workers.
2. As for the weekly rest period, in addition to Sunday rest, young workers must be granted an additional rest day immediately before or after the Sunday (Article 32(1)).

Where young workers are employed on a Sunday or the additional rest day, the weekly rest may not be less than 36 consecutive hours (Article 33(2)).

Young workers may not work on a Sunday or public holiday or carry out additional work save in the following cases:

- work to deal with an accident which has occurred or is imminent;
- urgent work to be carried out in respect of machines or equipment, provided that the undertaking's operations are such that it could not be carried out on another day;
- necessary work on account of unforeseen circumstances provided that it cannot be carried out another day.

## **Article 11: Annual rest**

This article has not been transposed in any explicit provision.

## **Article 12: Breaks**

Article 34 of the Belgian law provides for a break of at least 30 minutes where a young person works for more than four and a half hours.

## **Article 13: Work by adolescents in the event of force majeure**

Certain derogations in the event of force majeure are provided for in respect of working time (Article 31 of the Belgian law) and rest (second subparagraph of Article 32(1)). The possible exceptions to the ban on night work in the event of force majeure (Article 35(3)) have no bearing on the night period laid down by the Directive and are not regarded as a derogation from Article 9(1)(b).

## **Article 14 - Measures**

( no measures have been communicated )

## Denmark

Directive 94/33/EC was implemented in Denmark primarily by Act No 458 of 12/06/1996 amending Chapter 10 of the Working Environment Act. The Ministry of Labour issued Statutory Instrument No 516 of 14/06/1996 on the work of adolescents. Special questions are covered by other legislative provisions.<sup>1</sup>

### **Purpose**

In accordance with the Danish lawmaking tradition, there is no explicit provision in the Danish Working Environment Act on the purpose of Chapter 10 on young persons' work.

Section 60.1 of the Working Environment Act forms a general provision on protection, indicating the specific factors to be taken into consideration when young persons are employed, including age, development and state of health.

### **Work by children**

For the purposes of Directive 94/33/EC, Article 3(b) defines "child" as any young person of less than 15 years of age or who is still subject to compulsory full-time schooling under national law.

This definition is contained in Section 60.2 of the Working Environment Act.

### **Article 4 - Prohibition of work by children**

Under Article 4 of Directive 94/33/EC Member States are to adopt the measures necessary to prohibit work by children. Taking into account the objectives set out in Article 1 of the Directive, Member States may make legislative or regulatory provision for the prohibition of work by children not to apply to:

- (a) children pursuing the activities set out in Article 5;
- (b) children of at least 14 years of age working under a combined work/training scheme or an in-plant work-experience scheme, provided that such work is done in accordance with the conditions laid down by the competent authority;
- (c) children of at least 14 years of age performing light work other than that covered by Article 5; light work other than that covered by Article 5 may,

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<sup>1</sup> See, for example, Ministry of Environment and Energy Order No 711 of 16.11.1987; Ministry of Labour Order No 516 of 14.06.1996; Ministry of Labour Order No 867 of 13.10.1994; Ministry of Labour Order No 562 of 16.12.1985; Ministry of Labour Order No 660 of 24.09.1986; Act on Public Health Insurance; Danish Maritime Authority Order No 662 of 05.07.1996; Seafarers Act, cf. Consolidating Act No 766 of 19.09.1995; Ministry of Industry Order No 400 of 07.06.1989 on medical examinations for seafarers; Danish Maritime Authority Order No 523 of 21.06.1993; Danish Maritime Authority Technical Regulation No 2 of 07.04.1995 on safety work on board merchant vessels. Danish Maritime Authority Technical Regulation No 7 of 15.12.1992.

however, be performed by children of 13 years of age for a limited number of hours per week in the case of categories of work determined by national legislation.

Section 60.2 of the Danish Working Environment Act prohibits work by children under 15 years of age or children who are still subject to compulsory full-time schooling. There is nine years' compulsory schooling in Denmark. Many children start school at 7 and are not allowed to work until they are 16.

The exceptions from the ban on work by children under the Directive also apply in Danish law by virtue of Section 60 of the Danish Working Environment Act<sup>2</sup> and the abovementioned Statutory Instrument No 516 of 14/06/1996 on the work of adolescents issued by the Ministry of Labour under the powers accorded to the Minister by the Working Environment Act (hereinafter referred to as the Statutory Instrument).

### **Article 5 - Cultural or similar activities**

Under Article 5 of the Directive employment of children for the purposes of performance in cultural, artistic, sports or advertising activities is subject to prior authorisation to be given by the competent authority in individual cases.

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<sup>2</sup>

§ 60 reads:

When employing young people of under 18, the employer shall plan, organise and carry out the work in such a way that allowance is made for the young person's age, maturity and health, as well as the possible effects on education and training.

(2) Young persons of under 15 or still subject to compulsory full-time schooling may not be employed.

(3) The Minister of Labour will lay down more detailed rules on the employment of young persons, including age limits higher than 15 for certain types of job, to ensure that the work can be carried out without risk to safety and health. Special rules may be laid down for young persons undergoing training.

(4) The Minister of Labour may specify that occasional or short-term work carried out either in the employer's domestic service or exclusively by members of the employer's family who belong to the household (including agricultural work), may be exempt from the prohibition in (2) and §§61 and 62 under certain conditions and subject to certain restrictions, as long as the work does not put the young person's safety and health at risk.

(5) In the case of young persons who are members of the employer's family and household (including those involved in agricultural work – in view of their particular familiarity with the work), the Ministry of Labour may grant exemption from the age limit laid down in accordance with (3) under certain conditions and subject to certain restrictions.

(6) The Minister of Labour may also lay down rules to the effect that 1) young persons of over 13 may be given light work of specified categories, subject to conditions and requirements laid down in more detail, 2) young persons of over 14 whose work forms an integral part of a training course may be exempt from the prohibition in (2) and §61, and 3) young persons performing in cultural, artistic or sports events, or films, etc. may be exempt from the prohibition in (2) and §§61 and 62, subject to conditions and requirements laid down in more detail. In the case of young persons of under 13, however, prior authorisation shall be sought in each individual case.

(7) Employers employing young persons of under 15 or still subject to compulsory full-time schooling shall notify the young persons' parents or guardians of the nature of the job, working hours, any accident or health hazards which may be associated with the work and measures taken to ensure safety and health.

(8) Employers employing young persons of under 18 shall report to the municipality in order to determine any educational guidance available to them. This report shall be made when the young person has been employed full-time for a continuous period of three months. A report is not required in the case of young persons whose work forms an integral part of a training course. The Minister of Labour may, in consultation with the Minister of Education, lay down more detailed rules on the obligation to report and on educational guidance.

Chapter 7 of the Statutory Instrument deals with cultural and similar activities.<sup>3</sup> For children under 13 the prior authorisation to be given by the competent authority in individual cases is given by the police. For children aged 13 or 14, under Chapter 7 of the Statutory Instrument, the employment of children for the purposes of performance in cultural, artistic, sports or advertising activities is authorised in accordance with the conditions which have been laid down.

## **Article 6 - General obligations on employers**

Article 6 of Directive 94/33/EC requires the employer to adopt the measures necessary to protect the safety and health of young people, taking particular account of the specific risks referred to in Article 7(1). The employer is to implement those measures on the basis of an assessment of the hazards to young people in connection with their work.

Under Section 60 of the Danish Working Environment Act, when employing young people the employer has to plan, organise and carry through the work in a way that takes the young person's age, maturity and health into consideration as well as the possible impact on education and training. This provision is complemented by Chapter 2 of the Statutory Instrument.<sup>4</sup>

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Chapter 7 reads:

### *Cultural and similar activities*

Young persons participating in cultural or similar activities may be exempt from §43, §§17-42 on age limits for access to work, working hours, breaks and days off, provided that these activities comply with §60.1 of the Working Environment Act.

§44. The timing of breaks shall be the same as for adults, in the case of young persons participating or assisting in cultural or similar activities.

### *Adolescents of over 13*

§45. Adolescents of over 13 may participate in cultural or other activities, on condition that this does not present a risk to their safety or health. Particular attention shall be paid to the young person's age, state of health, maturity and schooling.

### *Children of under 13*

§46. The police may grant prior authorisation for the employment of children of under 13 to perform, participate or assist in cultural or similar activities, including sports, plays, variety acts, concerts, circus performances, radio, TV or the shooting of ordinary or advertisement films. An application must, however, be made in each individual case.

(2) This authorisation shall be granted only if the child's participation in the cultural activity in question is regarded as appropriate. Particular attention shall be paid to the child's age, state of health and environment, schooling, type and frequency of participation, the daily working hours necessary for preparation, rehearsals and performance, the place of work and the duration of the engagement.

(3) Prior authorisation is granted by the chief constable of the police district in which the cultural activity is taking place or where the film producers have their premises or, in Copenhagen, by the Commissioner.

(4) If the child is to participate in the performances of a touring theatre company, circus or similar, or in the shooting of a film being produced by a foreign film producer, prior authorisation is granted by the chief constable of the police district in which the first performance is to take place.

§47. The authorisation shall indicate the period of the day during which the child may be employed, in order to ensure that the child has enough sleep at night and is able to attend school. Specific conditions for authorisation may be laid down if deemed necessary in individual cases.

§48. The police carry out the normal checks to ensure compliance with the above conditions and the provisions governing them laid down in the authorisation.

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### *General provisions on the employment of all young persons under 18*

§4. Whenever a young person of under 18 is being employed, care shall be taken, in the choice of duties and the organisation of the work, to ensure that the work presents no safety or health risk.

§5. The employer shall take the measures laid down in §4, cf. §4 of the Order on the performance of the work, on the basis of a specific assessment of the risks the work presents to young people, given that they are particularly vulnerable because they lack experience and awareness of risk factors, and are not



## Article 7- Vulnerability of young people - Prohibition of work

Under Article 7 of the Directive Member States are to ensure that young people are protected from any specific risks to their safety, health and development which are a consequence of their lack of experience, of absence of awareness of existing or potential risks or of the fact that young people have not yet fully matured.

Chapter 3 of the Statutory Instrument contains more detailed provisions.<sup>5</sup>

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yet fully mature. Account shall also be taken of the physical, biological, chemical and psychological effects to which the young persons may be exposed in both the short and long term.

§6. The employer shall ensure that the young persons in question receive thorough training and instructions to ensure that the work can be carried out without risk to health and safety. The employer shall also inform them of the measures taken to safeguard their safety and health.

6.2. Where directions for use are required for the substances and materials, technical aids, etc. being used by employees at work, the employer shall ensure that the young persons are familiar with the explanations in the directions for use.

6.3. The work shall be effectively supervised by a person of over 18 who has the necessary knowledge of the work. The kind of supervision required will depend on the nature of the work.

§7. The employer shall involve the workers and the safety organisation (where there is one) in the planning, implementing and monitoring of safety and health in connection with young persons at work.

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Chapter 3.

*Certain categories of work which may not be carried out by young persons of under 18*

§8. Young persons of under 18 may not be employed in the categories of work listed in §§10-16 unless otherwise expressly laid down.

§9. Work carried out by young persons of over 15 which forms an integral part of a two-year vocational training scheme governed by law or organised in accordance with the law, is exempt from the prohibitions in §§10.1, 11.1, 14, 15 and 16, provided that the training actually depends on it.

9.2. In the case of work carried out after the end of the training course, the same exemption applies, provided that the young person's employment in the trade depends on it.

9.3. The provisions of §9.1 & 9.2 do not, however, apply to work processes which present a risk of explosion, work involving the handling of equipment for the production, storage or use of compressed, liquefied or dissolved gases, work at high atmospheric pressure or work involving a risk of asphyxia in a fire (oxygen-) depleted atmosphere.

§10. Young persons may not be employed to use the technical aids, installations or processes listed in Annex 1A, cf., however, §10.3 and 10.4.

10.2. Young persons may not be employed to work under conditions presenting dangers corresponding to those listed in Annex 1A.

10.3. Young persons of over 16 may, however, be employed to use the technical aids and installations listed in Annex 1B.

10.4. Young persons of over 15 may be employed to do the kind of work outlined in Annex 1C in family businesses, including agricultural units, as long as they have been given thorough training and instructions, and are being supervised.

§11. Young persons may not be employed to work with the substances and materials listed in Annex 2A, or to work where they will be exposed to the effects of these substances and materials in some other way, cf., however, §11.2 and 3.

11.2. Young persons of over 15 may be employed in connection with processes involving the substances and materials listed in Annex 2A, if the processes take place in sealed systems or the young persons are protected in a similar way from the effects.

11.3. Young persons of over 15 may, however, be employed to work in the categories of agricultural and cleaning work listed in Annex 2B.

§12. Young persons may not be exposed to physical strain which will, in the short or long term, present a risk to their health or development, and unnecessary physical strain or inappropriate work postures or movements shall be avoided (cf. Annex 3, Nos 9 and 10).

§13. Young persons may not participate in the transport of money.

13.2. Young persons working during opening hours in bakeries, newspaper shops, grill bars, video shops, petrol stations and similar, may not be employed between 6pm and 6am on weekdays or between 2pm and 6am on Saturdays, Sundays and public holidays, unless they are working with a person of over 18.

13.3. In the case of work covered by §13.2 which takes place in a large shopping centre, the young person may, however, work alone or with other young persons during the shopping centre's normal

## **Article 8 - Working time**

### **Children**

Under Article 8 of Directive 94/33/EC Member States which make use of the option in Article 4 (2) (b) or (c) are to adopt the measures necessary to limit the working time of children.

These provisions are implemented in Section 61, Subsection 2 of the Danish Working Environment Act which mirrors the text of the Directive.

### **Adolescents**

The Directive defines adolescents as persons under 18 years. Under Article 8(2) Member States are to adopt the measures necessary to limit the working time of adolescents to eight hours a day and 40 hours a week.

Under Section 61.1 of the Danish Working Environment Act the working time of young people below the age of 18 years must not be higher than the ordinary working time for adults working in the same trade, nor may it exceed 8 hours per day and 40 hours per week. The usual working time laid down by collective agreement in Denmark is 37 hours a week.

## **Article 9 - Night work**

Under Article 9 of the Directive Member States which make use of the option in Article 4 (2) (b) or (c) are to adopt the measures necessary to prohibit work by children between 8 p.m. and 6 a.m. In addition, Member States are to adopt the measures necessary to prohibit work by adolescents either between 10 p.m. and 6 a.m. or between 11 p.m. and 7 a.m.

Section 61, Subsection 4 of the Danish Working Environment Act and Section 39 of the Statutory Instrument prohibits work by persons under the age of 18 years between 8 p.m. and 6 a.m.

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opening hours between 6pm and 8pm on weekdays and 2pm and 8pm on Saturdays, Sundays and public holidays, provided that the shopping centre either has regular security staff rounds at these times or work in the shop is supervised in some other way.

13.4. In the case of work where young people are employed during opening hours in shops in areas isolated from normal traffic, §13.2 applies.

13.5. In the case of other work presenting a particular risk of attack, young persons may not be employed unless they are working with a person of over 18.

§14. Young persons may not be employed where there is a risk of subsidence or collapse until the danger has been effectively averted by technical measures which do not involve the use of personal protective equipment.

§15. Young persons may not be employed to do work involving exposure to the other safety and health hazards listed in Annex 3.

15.2. Young persons may not be employed to do work involving risks similar to those listed in Annex 3.

§16. Where young persons are employed to do work not prohibited under §11.1 and §15 but which, on the basis of a health assessment, requires the use of fresh air respirators, this work may not exceed four hours per working day.

In Section 61, Subsection 5 of the Act and in Sections 22-23 of the Statutory Instrument possibilities for derogation are provided.

### **Article 10 - Rest period**

Article 10 of Directive 94/33/EC is implemented by Section 62, Subsection 1 of the Danish Working Environment Act which provides that, for each 24- hour period, children are entitled to a minimum rest period of 14 consecutive hours and adolescents to a minimum rest period of 12 consecutive hours.

Section 62, Subsection 2 provides that for each seven-day period children and adolescents are entitled to a minimum rest period of two days, which shall be consecutive if possible.

More detailed provisions are contained in Sections 26-29 of the Statutory Instrument.

### **Article 12 - Breaks**

Under Article 12 of the Directive Member States are to adopt the measures necessary to ensure that, where daily working time is more than four and a half hours, young people are entitled to a break of at least 30 minutes, which shall be consecutive if possible.

Section 61, Subsection 3 of the Danish Working Environment Act provides that, where daily working time is more than four and a half hours, young persons under 18 years of age are entitled to a break of at least 30 minutes, which shall be consecutive if possible.

### **Article 14 - Sanctions**

Under Article 14 of the Directive each Member State is to lay down any necessary measures to be applied in the event of failure to comply with the provisions adopted in order to implement this Directive; such measures must be effective and proportionate.

No specific sanctions concerning young workers have been adopted in Denmark. That means that the sanctions applicable in relation to working environment and working time in general also apply to situations involving work by young people.

Under Section 82.4 of the Working Environment Act, an aggravating circumstance affecting the punishment meted out is that the life or health of a young person of under 18 has been damaged or put at risk.

## Germany

### **Introduction**

The amendments to German labour law required to transpose Directive 94/33/EEC were made when the second law amending the *Jugendarbeitsschutzgesetz* (Law on the protection of young people at work)<sup>6</sup> was adopted and came into force on 1.3.1997. § 61 of the amended *JArbSchG* also amended the provisions of the *Seemannsgesetz* (*SeemG* – Seamen's law) because it is the *SeemG*, not the *JArbSchG* that governs work by children and adolescents as crew members in merchant shipping within the meaning of § 3 *SeemG*.

### **Article 2 – Scope**

§ 1(1) provides that the *JArbSchG* applies to persons under 18 years of age working as employees or homeworkers during vocational training, providing services which are similar to the work done by employees or homeworkers, or in a training relationship which is similar to vocational training.

§§94 ff. *SeemG* apply to children and adolescents within the meaning of § 8 *SeemG*, i.e. to all persons under 18 years of age who are contracted to join the crew.

According to § 1 (2), the *JArbSchG* does not apply to a "helping hand", as long as it is offered occasionally either as a favour, as a result of the provisions of family law, in youth welfare institutions or in institutions to integrate the disabled. The same applies for employment by persons having the care and custody of children in the family household.

### **Article 3 – Definitions**

#### **“Child”**

§2 (1) defines a child, for the purposes of the *JArbSchG*, as a person who is not yet 15 years old. Provisions for children also apply to adolescents who are still in compulsory full-time schooling. § 8 (1)(2) and (3) of the *SeemG* contain provisions to this effect.

#### **“Adolescent”**

For the purposes of the law an adolescent is a person who is over 15 but under 18 years old (§ 2 (2) *JArbSchG* and § 8 (2) *SeemG*).

#### **“Light work”**

§ 5 (3) stipulates that: “Work is light when, due to its nature and the special conditions under which it is carried out, it has no deleterious effect on children's 1. safety, health and development, 2. school attendance, participation in measures to prepare them for choosing a career or vocational training which are recognised by the competent authorities and 3. ability to benefit from schooling.”

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6 BGBl. (Federal Gazette) I 1997, 311, in force since 1.3.1997.

**“Working time”**

§ 4 (1) defines working time as the time from the beginning to the end of daily work not including rest periods.

**Article 4 – Prohibition of work by children**

1. § 5 (1) and § 94 (1) *SeemG* explicitly prohibit work by children.
2.
  - a) The German legislature has made use of this exemption by adopting/maintaining § 6, which permits the authorities, upon request, to authorise children to participate in theatrical, musical and other performances, in advertising and in radio and audio and visual recordings, in filming and photography shoots and in rehearsals. Exemptions may not, however, be granted for cabarets, dance halls and similar establishments and at entertainment parks, fairs and similar events, or performances.
  - b) § 5 (2)(2) permits exemptions from the prohibition of work by children for work experience schemes during compulsory full-time schooling.
  - c) The German legislature has transposed the second alternative here. § 5 (3) stipulates that the ban does not apply to work by children over 13 which has been approved by the persons having care and custody of them, as long as the work is light and suitable for children and they do not work for longer than two hours a day and, in family agricultural holdings, no longer than three hours a day.
3. § 5 (3)(3) stipulates that children may not do light work between 6 p.m. and 8 a.m. or before and during school. §§ 8 to 31 also apply to such work.

**Article 5 – Cultural and similar activities**

1. In accordance with § 6 (1)(4), children may be employed in theatrical, musical and other performances, in advertising and in radio and audio and visual recordings, and in filming and photography shoots only when the employer has obtained approval in writing from the authorities.
2. The working conditions for children in the cases referred to in Article 5 (1) are covered by § 6 (1) and (2). According to § 6 (1)(1), children may participate in theatrical performances for only four hours a day between 10 a.m. and 11 p.m. and must also be over six. Children between three and six may participate in the performances and recordings referred to in § 6 (1)(2) for up to two hours a day between 8 a.m. and 5 p.m. and may take part in rehearsals; the same applies to children over six who can participate for up to three hours a day in the time between 8 a.m. and 10 p.m. § 6 (2) also stipulates that care and supervision must be available for children when they are working and that they must be free for an uninterrupted period of at least 14 hours after they finish work.  
The authorities may approve work under § 6 (2) only when, *inter alia*, a medical certificate issued within the last three months is presented to the

authorities which states that there are no reservations about the work in terms of health, that the necessary precautions and measures to protect the child against risks to life and health and to prevent any impairment of their physical or emotional or mental development have been taken and that their progress in school will not suffer.

## **Article 6 – The employers’ general obligations**

1. The employers’ general obligations are transposed in § 28 which states that employers must take precautions and measures when fitting out and maintaining the workplace (and any machinery, tools and equipment) and organising work to protect adolescents against risks to life and health and to prevent any impairment of their physical or emotional and mental development. Here, the lack of self-confidence and experience and the state of development of adolescents must be taken into account and the generally accepted rules for occupational safety and health and other established findings relating to safety and health at work should be taken into account.  
§ 95 (1) *SeemG* contains a provision to this effect.
2. § 28 a stipulates that employers must assess any hazards associated with work by adolescents before work begins and whenever the working conditions undergo any major change. A parallel provision is contained in the *SeemG*. The provisions of the *Arbeitsschutzgesetz (ArbSchG)* also apply under § 28 a and 95 (1) (a) *SeemG*. This reference means that when an assessment is made under § 28 a or § 95 (1) (a) *SeemG*, § 5 *ArbSchG* is applicable, which contains the general obligation of the employer to assess the risks to workers associated with their work. § 5 (3) *ArbSchG* contains a non-exhaustive list of circumstances which can give rise to such risks:
  - a) equipment and design of the workstation and the place of work (§ 5 (3)(1) *ArbSchG*);
  - b) type, extent and duration of exposure to physical, chemical and biological agents (§ 5 (3)(2) *ArbSchG*);
  - c) design, selection and use of working materials, especially substances, machinery, equipment and plant, and the way in which they are handled (§ 5 (3)(3) *ArbSchG*);
  - d) arrangement of working processes and operations and the way in which they are combined (§ 5 (3)(4) *ArbSchG*);
  - e) the level of training and instruction given to adolescents (§ 5 (3)(5) *ArbSchG*).§§ 32-46 cover the healthcare of adolescents. These stipulate that an adolescent must always be examined by a doctor before starting work (§ 32). § 37 (2) details the points the doctor must take into account. A follow-up examination must be carried out at the latest one year after work is first started (§ 33); further follow-up examinations may be carried out every subsequent year (§ 34), the costs of which, in accordance with § 44, are borne by the *Land*.
3. According to § 29, the employer must inform adolescents before they start work and when there is any major change in the working conditions about the accident and health risks to which they are exposed during work and about the equipment and measures for avoiding these risks. Before adolescents start

work on machines or at dangerous workstations or work which brings them into contact with harmful substances, the employer must inform them of the special risks involved and instruct them how to go about such work.

§ 95 (2) *SeemG* contains a parallel provision.

Article 6 (3)(2) is transposed by § 5 (4) (b), which provides that the employer shall inform the person with the care and custody of the children he employs about the risks and all the measures which have been taken to protect their health and safety.

4. § 29 (3) which transposes Article 6 (4) states that “the employer shall involve occupational physicians and health and safety experts in planning, implementing and supervising safety and health provisions relating to the employment of adolescents”.

§ 95 (5) *SeemG* contains a parallel provision.

### **Article 7 – Vulnerability of adolescents, prohibition of work**

1. Article 7 (1) is transposed by § 28 (1) and the largely parallel provision of § 95 (1) *SeemG*.

2. Article 7 (2) is transposed in § 22 and in § 94 (2) *SeemG*. § 22 (1) and § 95 (2) *SeemG* respectively describe work which may not be done by adolescents:

This includes work which is objectively beyond their physical or mental capacity (1). Work during which adolescents are exposed to the harmful effects of dangerous substances within the meaning of the *Chemikaliengesetz* (Law on chemicals) is deemed to be dangerous and is prohibited for adolescents (6). For the purposes of the *Chemikaliengesetz*, these include substances and preparations which are, *inter alia*, toxic, carcinogenic, mutagenic, toxic to reproduction or simply damaging to health.

Work which is dangerous and which is prohibited for adolescents also includes work involving harmful exposure to radiation (5).

Adolescents may not be engaged in work involving risks of accidents which they would not be expected to recognise or avoid due to their lack of safety awareness or experience (3).

The above provisions also prohibit work for adolescents involving a risk to health from extreme heat or cold or wet (4) or involving exposure to noise or vibrations (5).

Finally, adolescents may not do any work involving harmful exposure to biological agents within the meaning of Directive 90/679/EEC (7).

Section 2 of the annex is transposed by § 22 (1) (7) and § 94 (2) (7) *SeemG*.

The German legislature has made use of the exemption under Article 7 (3) of the Directive by adopting § 22 (2). Hence § 22 (1)(3) to (7) do not apply to the employment of adolescents if this is necessary for them to meet their training requirements, protection is guaranteed by a trained supervisor and the concentration of dangerous substances in the air is below the limit provided for in § 22 (1)(6). This does not, however, apply to deliberate handling of biological substances of Group 3 and 4 within the meaning of Council Directive 90/679/EEC of 26 November 1990 on the protection of workers against exposure to biological agents at work; here no exceptions to the prohibition are permitted. Adolescents employed in a plant where there is an

occupational physician or an expert for safety and health at work must be given their support.

The same applies under § 94 (2) (2) *SeemG*.

## Article 8 – Working time

1. As the German legislature made use of the exemption under Article 4 (2) (b) and (c) within the scope of the *JArbSchG*, it was also obliged to limit the working time of the children concerned as provided for by Article 8 (1), the corresponding provisions being found in § 5 (2) and (3) and § 7.
  - a) § 7 (2) authorises working time of seven hours a day and 35 hours a week. In vocational training an eight-hour day and 40-hour week are permitted (§ 8 (1)).
  - b) § 5 (3), which was adopted to transpose Article 4 (2)(c), restricts working time to two hours a day in general. Since the reference in § 5 (3) (3) brings this within the scope of § 15, maximum weekly working time is thus limited to ten hours.

In agricultural family holdings, however, light work may be done for up to three hours a day; in conjunction with § 15, this means that the maximum weekly working hours are 15.
  - c) Within the scope of § 5 (2), working time is limited to seven hours a day and 35 hours a week as a result of the reference to § 7 (1) (2); the same applies within the scope of § 5 (3) as a result of the reference to § 15.
2. Article 8 (2) was transposed in § 8 (1). This provides that adolescents may not work longer than eight hours a day and 40 hours a week.

§ 96 *SeemG* contains a parallel provision.
3. The practice of counting training time as working hours, required by Article 8 (3), is guaranteed by § 9 (2) and § 10 (2). Under § 9 (2), a day at vocational training school with more than five lessons of at least 45 minutes each is counted as eight working hours and a week with at least 25 scheduled lessons on five days is counted as a 40-hour week. Otherwise, actual teaching time including breaks is counted as working time. § 10 (2) also provides that time for taking tests and going on external training courses also counts as working time.

In the case of authorised work by children, §§ 9 and 10 apply in accordance with §§ 5 (2) (2) and 7 (2).
4. § 4 (5) corresponds to Article 8 (4). This provides that working time and shift time and working days are cumulative if a child or an adolescent is employed by more than one employer.
5. Exceptions to Article 8 (2) are explicitly authorised in § 8 (2) (2a) and (3). Under § 8 (2), if any days are taken off in conjunction with a public holiday in order to give employees a longer uninterrupted break, the time which has not been worked may be spread over the working hours of five consecutive weeks, including the days which have not been worked, only if weekly working hours



do not exceed an average of 40 over these five weeks and daily working hours do not exceed eight and a half.

§ 8 (2a) further stipulates that, in the event of working time being reduced to fewer than eight hours on any day, adolescents may work for eight and a half hours on the other working days of the same week. Finally, under § 8 (3), adolescents over 16 may be employed in agriculture during the harvest period for no longer than nine hours a day and no longer than 85 hours in a double week. § 100 (3) and (4) *SeemG* stipulate that adolescents at sea may work up to six days and 48 hours a week; adolescents over 16 who are on watch at sea may work up to eight hours a day on any day of the week.

### **Article 9 – Night work**

1.

- a) Work by children is limited directly by § 5 (3)(3), which stipulates that they may not work between 6 p.m. and 8 a.m.

§§ 5 (2)(2) and § 7 (2) also refer to §§ 9 to 46. § 14 therefore applies, *inter alia*, which means that work by children is prohibited between 8 p.m. and 6 a.m.

- b) § 14 (1) and § 99 *SeemG* respectively prohibit work by adolescents between 8 p.m. and 6 a.m.

2.

- a) § 14 (2) to (7) provide for exemptions to the ban on night work for adolescents in specific fields of activity.

Under § 14 (2), adolescents over 16 may work until 10 p.m. in the hotel and catering trade and in show business, until 11 p.m. in multiple-shift plants, from 5 a.m. onwards or up to 9 p.m. in agriculture and from 5 a.m. onwards in bakeries. However, § 14 (4) stipulates that adolescents may not work after 8 p.m. on the day before a vocational training school day, even in the cases covered by § 14 (2) (1) to (3), if school starts before 9 a.m. Under § 14 (3), adolescents over 17 may work in bakeries from 4 a.m. onwards. The supervisory authorities can also, in accordance with § 14 (6), grant approval for adolescents working in plants in which employees are exposed to extreme heat to work from 5 a.m. onwards at the warmer times of year. Furthermore, § 14 (5) permits - as long as the supervisory authorities are notified in advance - all adolescents to work up to 9 p.m. and adolescents over 16 in multiple-shift plants to work from 5.30 a.m. up to 11.30 p.m. in establishments where transport is involved and normal working hours therefore end later than 8 p.m., as long as unnecessary waiting periods can be avoided. Finally, the supervisory authorities can, upon application under § 14 (7), grant approval for adolescents to take an active part in musical, theatrical and other performances, in radio and audio and visual recordings and in filming and photography shoots up to 11 p.m.

No exception may be approved for events, shows or performances in which the presence of adolescents is not permissible under the provisions of the Law to protect adolescents in public. When they have finished work, adolescents must have an uninterrupted rest period of at least 14 hours. Under § 20 (2),

adolescents over 16 may, by derogation from § 14 (1), work up to 10 p.m. when travelling.

Exemptions from the prohibition on night work for adolescents are also provided for in the *SeemG*. § 100 (4) *SeemG* permits adolescents over 16 to work from 4 a.m. and § 100a (1)(3) *SeemG* permits adolescents to work once a week between 8 and 12 p.m. under a collective agreement or an agreement covering a plant or vessel based on a collective agreement.

Under § 21b (2), the Federal Ministry of Labour and Social Affairs is authorised, in the interests of vocational training or cooperation between adolescents and adults, to permit exemptions to § 14 on the basis of a legal order approved by the *Bundesrat*, as long as no impairment of the health or the physical or emotional and mental development of adolescents is to be feared. This authorisation is limited to the hours between 5 a.m. and 12 p.m. but not to any specific areas of activity.

- b) The German legislature has not made use of the exemption in the second indent of Article 9 (2)(b).
3. Article 9 (3) is transposed by § 6 (3) of the *Arbeitszeitgesetz (ArbZG - Law on working time)*. This provision which, under § 2 (2) *ArbZG*, applies to employees and to people engaged in vocational training, entitles night-workers to an examination by the occupational physician before they start work and subsequently at regular intervals of not less than three years. The employer must bear the costs of these examinations, if he does not offer them free of charge to be carried out by an occupational physician or an occupational medical service serving several plants.

### **Article 10 – Rest periods**

1.
  - a) Children employed under § 5 (2) may only work for a maximum of seven hours a day. § 7 (1)(2) and § 5 (3) prohibit work by children between 6 p.m. and 8 a.m. without exception. This ensures that they have an uninterrupted rest period of 14 hours.
  - b) § 13 corresponds to Article 10 (1)(b). § 96 *SeemG* guarantees the same rest period indirectly by limiting working time for adolescents to eight hours a day as a general principle.
2. In accordance with § 15, adolescents may work only five days a week, whereby the two rest days should, as far as possible, be consecutive. § 100 (2) *SeemG* stipulates that adolescents in port may work only five days a week, the days off being, as far as possible, Saturdays and Sundays.  
§ 21a (1) and the parallel provision of § 100a (1)(1) *SeemG* permit, by way of derogation from, *inter alia*, § 15, working time to be spread over up to five and a half days a week under a collective agreement or a plant agreement based on a collective agreement. § 21b (1) contains a corresponding authorisation for the Federal Minister of Labour and Social Affairs.  
§ 17 (1) prohibits work by adolescents on Sundays as a general principle. §§ 17 (2) contains a list of areas of activity in which work on Sundays is permissible by way of an exception, whereby every second Sunday and at least

two Sundays a month must be free. In the case of permitted work by children, §17 applies in accordance with §5 (2)(2), (3)(4), (4), §6 (2)(3) and §7 (2).

3. The German legislature has not taken up this option.

4.

a) Exceptions to §§ 13 and 15 on the basis of Article 10 (1)(b) and (2) are permitted for internal navigation under § 20 (1)(2) and (3), where the daily rest period for adolescents may be reduced to 10 hours to correspond to the duration of a shift, by way of derogation from § 13.

Exceptions to Article 10 (2) are also provided for in § 100 (3) *SeemG*, which stipulates that adolescents at sea may work for up to 6 days a week, work on the sixth day being compensated for by another day off. Furthermore, § 100 (4) *SeemG* provides that adolescents over 16 may be employed on watch at sea every day of the week. Adolescents are to be compensated for work on the sixth and seventh days.

The German legislature did not take up the options under Article 10 (4)(b) to (f).

### **Article 11 – Annual rest periods**

According to § 5 (4) of the amended *JArbSchG*, children may be employed during the school holidays for not more than four weeks per calendar year.

### **Article 12 – Breaks**

Under § 11 and § 98 *SeemG*, adolescents must be given breaks from work of at least 30 minutes if they are working for between four and a half and six hours and 60 minutes if they are working for over six hours. Work breaks must last at least 15 minutes and may be taken not earlier than one hour after work starts and not later than one hour before it ends. Adolescents may not be employed for longer than four and a half hours consecutively without a break.

### **Article 13 - Work by adolescents in cases of *force majeure***

The legislature made use of this exemption by adopting § 21 under which §§ 8 and 11 to 18 do not apply to work of a temporary nature which must be performed immediately in an emergency when no adult employees are available. If the hours worked in such a case are longer than the working time under § 8, they should be offset by reducing working time within the subsequent three weeks.

§§ 88 and 89 (2) *SeemG* contain other special provisions for emergencies and other cases of urgency which, under § 97 (1) *SeemG*, apply to adolescents. The captain can order the regular daily working time to be extended indefinitely in specific emergencies or in other cases of urgency. Under § 97 (3), however, adolescents may work such hours only if there are no adult crew members available. Compensatory rest periods for the overtime worked are to be granted over the subsequent three weeks in accordance with § 97 (5).

## Article 14 – Measures

Infringements of provisions of the *JArbSchG* by the employer will be punished as administrative or even as criminal offences in accordance with §§ 51ff and §§ 121, 126 *SeemG*.

Infringements of §§ 8 to 27 are punishable as administrative offences under §§ 53 ff. by a fine of up to DM 30 000 (§ 53 (4)) or DM 50 000 DM (§ 5 (3)). Deliberate infringements which jeopardise the health or capacity for work of a young person are punishable by imprisonment of up to one year or a fine. The same applies in the event of persistent infringement (§ 53 (5)). The *SeemG* contains parallel provisions in §§ 94 to 100a and §§ 121 and 126.

§ 58 (1) lists 29 administrative offences and § 58 (2) and (3) describe further irregularities which are punishable by fines. Such administrative offences can be punishable by fines of up to DM 30 000.

Furthermore, §§ 58 (5) and (6) catalogue two criminal offences. It is a criminal offence for an employer to deliberately or negligently infringe one of the provisions under § 58 (1) to (3), jeopardising the health or capacity for work of a child or an adolescent. In the case of § 58 (5), the offence is punishable by imprisonment of up to one year or a fine and, in the case of § 58 (6), by imprisonment of up to six months or a fine of up to 180 daily rates.

Further offences punishable by fines are listed in § 59. Unlike § 58 (1) and (3), § 59 describes administrative offences deemed to be less serious, which are punishable by smaller fines of up to DM 5 000.

§§ 58 (1) to (3) and 59 also cover any infringements of the provisions of the *JArbSchG* transposing the Directive, which are punishable by fines. The same applies to §§ 121 and 126 *SeemG*.

## Greece

### **Analysis of the Presidential Decree of the Greek Republic transposing Directive 33/94/EC on the protection of young people at work (Decree No 62, published in the Official Journal of 26 March 1998)**

#### **Article 1: Purpose**

In accordance with the Greek Decree a minimum age has been laid down for paid employment, works contracts, the provision of services and self-employment. Accordingly, the scope of Greek law is vaster than that of the Community Directive as it concerns not only activity as an employed person, but also the various forms of self-employment.

#### **Article 2: Scope**

The Greek decree excludes family work carried out in stockrearing, agriculture and forestry.

#### **Article 3: Definitions**

Article 2 of the Greek Decree transposes the definitions of Article 3 of the Directive.

#### **Article 4: Prohibition of work by children**

Article 4 of the Greek Decree corresponds to Article 4(1). Paragraphs 2 and 3: as regards the possible derogations from the prohibition provided for under the Directive, the Greek Decree (joint reading of Articles 4 and 5 of the Decree) has availed only of Article 4(2)(a) of the Directive, which provides that the prohibition on the employment of children does not apply to children performing cultural or similar activities.

#### **Article 5: Cultural or similar activities**

The Greek Decree specifies a minimum age of two years which is not mentioned in the Directive; the latter uses the generic term "children" (that is under 15) without fixing an age limit.

The Greek Decree specifies the content of the authorisation required (application from the employer giving the name of the child, age, type of activity, daily work programme and duration of work) and the conditions to be met in the event of extension of the authorisation for a period which, at all events, may not exceed two months, notably a report by the undertaking's safety or occupational medicine manager or by the prevention and protection services certifying that all the measures essential to protect the health of the child have been taken, the consent of the child's guardian and a statement by the latter certifying the child's regular school attendance together with a medical certificate.

For these particular types of activity the Greek Decree specifies: the maximum duration of working hours, the minimum daily rest period of 12 consecutive hours for each period of 24 hours' work and a ban on night work between (22h00 and 06h00).

## **Article 6: General obligations on employers**

1. Paragraph 1 of this article is reproduced in full in Article 6(1) of the Greek Decree.
2. Paragraph 2 is taken over in full in Article 6(2) of the Greek Decree.
3. Paragraph 3 is transposed by means of Article 6(5) of the Greek Decree which also provides that the workers' hygiene and safety representatives must be informed about the post and the tasks assigned to the young person who has been recruited or is already performing his/her activity.
4. Paragraph 4 is transposed by means of Article 6(4) of the Greek Decree which requires the undertaking's safety manager and/or occupational physician or the protection and prevention services which cooperate with the employer to give their opinion on problems relating to the employment of young people for certain work.

Compared to the Directive, the Decree contains two further paragraphs: paragraph 38 giving details of certain characteristics peculiar to young people (curiosity, thoughtlessness, playfulness, desire to perform activities reserved for adults) which make special protection necessary, and paragraph 68 which provides for supervision and monitoring by a competent person of work by young people during the initial period when young people are also taught the safest ways of carrying out their tasks at work.

## **Article 7: Vulnerability of young people - prohibition of work**

Article 7 of the Greek Decree transposes Article 7 of the Community Directive.

1. Paragraph 1 is set out in Article 7(1) of the Greek Decree.
2. Paragraph 2 is taken over in Article 7(2) and (3) of the Greek Decree.
3. Article 7(5) of the Greek Decree is similar to Article 7(3) of the Directive.

Under the Directive the Member States may, by legislative or regulatory provision, authorise derogations from the ban in question. To that end, the Greek Decree specifies that, at the employer's request and with authorisation from the labour inspectorate, the derogations in paragraphs 2 and 3 of the Decree (mentioning the bans in respect of certain dangerous work) are to be granted in so far as they are essential for vocational training purposes and the work is supervised by a competent person. The derogations must be notified to the directorate-general for working conditions and safety at work which notifies them to the SYAE (Council on Hygiene and Safety at Work).

The Decree contains an additional paragraph, 48, which refers to Annex 2 to Article 11 listing, by way of example (that is not exhaustively), work considered as dangerous, heavy, unhygienic and dangerous as a general rule to the mental health and development of the young person's personality to which the ban on work applies. The Community Directive contains a two-part annex, while the Greek Decree has two annexes; their content is the same however.

## **Article 8 - Working time**

1. As the Greek Decree makes no mention of work which may be performed by children, with the exception of artistic activities, there is no related limit on working time.
2. Article 3(1) of the Greek Decree takes over Article 8(2).
3. Article 3(3) of the Greek Decree corresponds to Article 8(3) of the Directive.
4. Article 3(4) of the Greek Decree corresponds to Article 8(4).
5. The Greek Decree does not provide for any derogations from the working time of adolescents; Article 6(3) even imposes a ban on adolescents performing exceptional or additional work.

Compared to the Community Directive, the Greek Decree also specifies that, for children aged at least 16 and adolescents still attending school, working time is reduced to six hours per day and 30 hours per week. Adolescents may work for two hours per day during term time (in the Directive, the same limit is established for children in Article 8(1)(b)).

## **Article 9: Night work**

The Greek Decree merely specifies in Article 8 that night work by adolescents is prohibited between 22 hours and six hours. The Greek Decree makes no provision for derogations for the whole night (22-6 or 23-7) or part of the night (24-4) in the sectors referred in Article 9(2) of the Community Directive (shipping, fisheries, armed forces, police, hospitals or similar establishments, cultural, artistic, sports or advertising activities).

Accordingly, the Greek Decree has not transposed Article 9(3) of the Community Directive whereby, in the event of assigning adolescents to night work, they are to be entitled to a free assessment of their health and capacities.

## **Article 10: Rest period**

Article 9 of the Greek Decree lays down only a minimum rest period of 12 consecutive hours for each 24-hour period for adolescents (Article 10(1)(b) of the Directive) and a weekly rest period of two days, one of which must be a Sunday (in the Community Directive, the two rest days must be consecutive is possible and, in principle, include a Sunday). The Greek Decree contains no derogations concerning breaks.

## **Article 11: Annual rest**

The Greek Decree makes no reference to annual rest because Greece has not availed of the derogation provided for in Article 4(2)(b) and (c) of the Directive.

### **Article 12: Breaks**

Article 10 of the Greek Decree has taken over the Community Directive in full (where the daily working time is more than 4 ½ hours, young people are entitled to a break of at least 30 minutes, if possible consecutive).

### **Article 13: Work by adolescents in the event of force majeure**

The Greek Decree does not provide for any of the derogations referred to in the Directive (in Article 8(2), Article 9(1)(b), Article 10(1)(e) and Article 12) and does not refer to any case of force majeure.

### **Articles 14 - Measures**

Articles 12 and 13 of the Greek Decree concern penalties in the event of infringement of its provisions and the supervisory bodies responsible for implementing it.



## Spain

### **Introduction**

Spain has had bans and limits in respect of work by children and adolescents for a long time. When Directive 94/33/EC was adopted, work by minors was covered by various national rules.

### **Article 1: Purpose**

The minimum employment age in Spain is 16 (Article 6 of the *Texto Refundido del Estatuto de los Trabajadores* - TRET), the age when compulsory schooling comes to an end in accordance with Article 17 (a) of the *Ley Orgánica de Ordenación General del Sistema Educativo* of 1990.

### **Article 2: Scope**

#### ***Paragraph 1***

A worker having a contract of employment or an employment relationship means any person voluntarily offering his/her services against remuneration to another person in the context of his/her organisation and under his/her guidance (Article 1 of the TRET).

#### ***Paragraph 2***

In accordance with Royal Decree No 1424/1985, the Spanish lawmaker regards domestic service as a special employment relationship, but no exceptions are made from the employment rules on grounds of age. Accordingly, minors are subject to the general rules and may not perform domestic service if they are under 16.

### **Article 3: Definitions**

A parallel may be drawn between the Spanish concept of "*trabajo infantil*" and "work by children" in the Directive and "*trabajo de los menores*" and "work by adolescents" within the meaning of the Directive.

### **Article 4: Prohibition of work by children**

#### ***Paragraph 1***

The ban on work by under-sixteens was dealt with under Article 1.

#### ***Paragraph 2***

Spain has applied the exemption relating to cultural or similar activities as referred to in Article 5. Apart from this exemption, there is an absolute ban on work by under-sixteens.

### ***Paragraph 3***

Spain has not made use of the option under paragraph (2)(c).

## **Article 5: Cultural or similar activities**

### ***Paragraph 1***

Under Spanish legislation prior authorisation is required from the labour authorities where young people under sixteen are employed in public performances. The concept of public performances may be regarded as equivalent to the activities referred to in the Directive.

### ***Paragraph 2***

The working conditions of under-sixteens are not subject to any special rules apart from monitoring by the labour inspectorate of the conditions authorised originally by the labour authorities. Accordingly, the authorisation must be given in writing and cover specific activities (Article 2 of Royal Decree No 1435/1985 of 1 August on the special labour relationships of artists and Article 6 of the TRET). Spanish law provides only for two categories or levels of working conditions depending on the worker's age, that is more or less than eighteen years. Young people under sixteen fall into the second category and qualify for any concessions the employer has to make to obtain the administrative authorisation which is strict in terms of hours of work, working time, and health and safety.

Article 6 of the TRET stipulates that work in the context of public performances can be authorised provided that it is not harmful to the physical health, vocational training and personal development of the minor.

### ***Paragraph 3***

There is no provision in Spanish law for a general authorisation concerning employment by children older than thirteen in any kind of performance.

## **Article 6: General obligations on employers in regard to health and safety**

### ***Paragraph 1***

Law No 31/1995 on the prevention of risks at work (*Ley de prevención de riesgos laborales*, LPRL) requires the employer to protect all workers taking account of their specific characteristics by means of collective and individual protection equipment, assessments and regular analyses of hazardous situations, etc (Articles 16, 17 and 25 in particular).

### ***Paragraph 2***

Under Article 27 of the LPRL, the employer is required to assess the risks run by the worker under eighteen at his workplace in order to determine the risks to his health and safety. This assessment must be made before the minor takes up his post and before any significant change in working conditions. Its aim is to determine the nature, extent and duration of exposure to risk and explicit mention must be made of the specific risks connected with "agents, processes or working conditions" which may endanger the health and safety of such workers.

Article 16 of the LPRL specifies that the risk assessment must be carried out regularly if necessary and is free of charge to the worker.

### ***Paragraph 3***

In addition to the requirement concerning general information for all workers as regards specific risks connected with their work and measures of protection, Article 27 of the LPRL repeats this requirement with regard to young workers. This requirement to provide information also extends to young people's legal representatives.

### ***Paragraph 4***

Under Articles 30 and 31 of the LPRL, protection for young people is one of the activities in which the employer is required to associate the prevention services.

## **Article 7: Vulnerability of young people, prohibitions**

### ***Paragraph 1***

Under Spanish law the employer is required to assess the risks which are a consequence of the minor's lack of experience, inability to assess risks and incomplete development.

### ***Paragraph 2***

Some of the bans in this paragraph of the Directive are provided for in the Decree of 25 July 1957 concerning work from which minors are prohibited and in the Royal Decrees concerning specific risks adopted in recent years under specific Community directives. The 1957 decree is entitled "work prohibited for women and minors" but it applies nowadays only to minors.

### ***Paragraph 3***

There is no derogation relating to vocational training.

Under Article 3 of the 1957 decree, labour inspectors may authorise work by minors in prohibited areas provided the worker's health and safety is fully protected.

## **Article 8: Working time**

### ***Paragraph 1***

Traineeships in companies for students as part of their studies are excluded from the scope of Spanish labour law.

In Spain children are not authorised to perform light work with the exception of public performances and subject to administrative authorisation.

### ***Paragraph 2***

The limit of eight hours per day and forty hours per week has been transposed in part by Article 34 (3) of the TRET which sets at eight hours per day the maximum working time of under-eighteens. Article 37 No 1, first paragraph, final subparagraph, of the TRET states that persons aged under eighteen must have at least two consecutive days' rest each week. Taken together, these two provisions indicate that under-eighteens may not work more than forty hours a week and, given that they must have two days' rest per week, they cannot work more than a five-day week. Given the further fact that they may only work eight hours each day, it follows that their working time may not under any circumstances exceed forty hours a week.

### ***Paragraph 3***

The daily eight-hour limit includes training by apprentices.

### ***Paragraph 4***

Where a person works for more than one employer, the actual working time is added up with a view to the eight-hour limit.

### ***Paragraph 5***

There is no special exception in respect of limits on working time by minors, apart from the general exceptions concerned with prevention and repair in the event of an accident or other exceptional damage (Article 35 (3) of the TRET).

## **Article 9: Night work**

### ***Paragraph 1***

As regards paragraph 1 (a), light work for children is banned and in-company traineeships for students are not covered by labour law. Where paragraph 1 (b) is concerned, Spanish legislation prohibits night work for under-eighteens (Article 6 (1) of the TRET). In accordance with the Directive, night work means work between 22 hours and 6 hours (Article 36 (1) of the TRET).

### ***Paragraph 2***

The Spanish rules on night work for minors make no exception from the ban on night work. The extensive rules on special working time (*Reglamento de Jornadas Especiales de Trabajo*, Royal Decree No 1561/1995 of 21 September), which lay down specific provision for work on farms, at sea, in mining, transport, construction, etc, merely exclude the under-eighteens (Article 1(3)), with the exception of the chapter on reductions of working time. Night work is also prohibited in cultural, artistic, sporting and advertising activities.

As regards some of the work mentioned in this paragraph, it should be mentioned that work in the armed forces or the police may be performed only by over-eighteens.

***Paragraph 3***

Night work is prohibited for under-eighteens.

**Article 10: Rest period**

***Paragraph 1***

As regards adolescents covered by paragraph 1 (b), under Spanish law (Article 34 (3) of the TRET) all workers are entitled to a minimum rest period of 12 hours for each 24-hour period, so it did not seem necessary to introduce a special reference to minors. Moreover, the rules on special working time, which provide for specific exceptions to the daily 12-hour rest period, specify in Article 1 (3) that they are not applicable to minors.

***Paragraph 2***

Under Article 37 of the TRET, under-eighteens are entitled to a rest period of two consecutive days per week. This article also stipulates that, on the whole, the rest period for all workers must, in principle, include a Sunday.

There is no provision in Spanish law for any exception to this rule for technical or organisational reasons.

***Paragraph 3***

The daily and weekly rest periods may not be interrupted in the event of periods of work that are split up. The typical case is the service sector: under the rules on special working time, the daily rest period may be reduced from 12 to 9 hours through collective bargaining, but this option does not extend to under-eighteens (Article 1 (3) and Article 22 of the rules).

***Paragraph 4***

There are no exceptions to the daily and weekly rest for minors in the sectors listed in Article 10 (4).

**Article 12: Breaks**

Article 34 (4) of the TRET provides for a thirty-minute break for workers under 18 where the *continuous* day exceeds four and a half hours. A continuous working day in Spain means work not interrupted by a meal break.

**Article 13: Work in the event of force majeure**

Spanish legislation only allows work to be done by under-eighteens in exceptional circumstances.

## **Article 14: Measures**

Infringement of the TRET provisions on working time is regarded as very serious; a fine may be imposed of between ESP 500 001 and 15 million depending on the employers' negligence or intention, warnings from the labour inspectorate, number of young people concerned, harm done, etc (Article 96 (4) of the TRET).

Where health and safety is concerned, breach of the provisions of the LPRL in respect of workers under 18 is regarded as a very serious infringement; pecuniary sanctions of between ESP 5 000 001 and 100 000 000 may be imposed depending on any extenuating or aggravating circumstances.

In both cases, the penalty is imposed by the administrative authority competent for employment and, in the most serious cases, by the Council of Ministers.

Workers aged between 16 and 18 may take action before the labour courts to defend rights and interests under an employment contract unless they have not obtained the authorisation to work which has to be granted by their representatives (Article 16 (2) of the amended text of the law on labour procedures (2/1995).

One of the most serious infringements established by labour inspectors is clandestine work by children, notably in villages.

## France

Although many provisions of the Directive concerning young people have been transposed into French law, some of its requirements have still not been incorporated. The French Ministry of Labour and Employment is preparing a text to bring French law into line, but the draft has not yet been forwarded to us.<sup>7</sup>

### **Article 4: Prohibition of work by children**

In accordance with Article L. 211-1 of the Labour Code, children of either sex may not be employed in industrial and commercial establishments of any nature, public or private, religious or secular, public or ministerial offices, the professions, trade unions and associations of any kind before having completed compulsory education (which comes to an end at the age of 16). This ban on work by young people under the age of 16 also applies to agricultural undertakings (the conditions governing work in agricultural undertakings are laid down by a ministerial decree of 3 December 1970, amended by a decree of 13 July 1977).

The derogations from this principle which are allowed by law appear to be consistent with the Directive. The Labour Code (Article L. 211-1, subparagraph 2 et seq.) authorises under exceptional circumstances work by young people under 16 in the field of cultural or similar activities and in the context of a combined work/training scheme, and the employment of adolescents over 14 on light work during school holidays.

### **Article 5: Cultural or similar activities**

French law regulates work by children in entertainment and the employment of children as models in advertising and fashion (Article L. 211-6 et seq. of the Labour Code). The administrative authority must issue prior authorisation in individual cases unless the child is recruited as a model by a model agency holding a licence for the employment of children.

### **Article 6: General obligations on employers**

French law prohibits directly through numerous provisions in the Labour Code (Article L. 234-1 et seq., R.234-3 et seq. and R. 234-11 et seq.) tasks involving risks for the physical health and moral wellbeing of young workers; the French authorities have preferred to assess for themselves the risks of work rather than making employers assess the risks to young people.

### **Article 7: Vulnerability of young people**

Articles L. 234-1 et seq. and Articles R. 234-1 et seq. and R.234-11 et seq. transpose Article 7 of the Directive.

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<sup>7</sup> The failure to communicate implementation measures is the subject of a judgement of the ECJ of 18/5/2000; case C-45/99 (Commission/France)

## **Article 8: Working time**

As things now stand, French law contains no special provisions concerning children so *Article 8(1) has not yet been transposed*.

However, under Article 212-13, the duration of work by a worker under 18 may not exceed 8 hours per day and 39 hours per week. French law makes use of the possible derogation under Article 8(5) of the Directive: it authorises by way of exception a derogation from the maximum working time of up to 5 hours per week; this derogation must be granted by a labour inspector in the light of the opinion of the establishment's occupational physician.

Article 8(3) and (4) have not yet been incorporated into French law. There is no express provision in French law for time spent on theoretical training to be included in working time, nor is there any provision for working time for more than one employer to be cumulative.

## **Article 9: Night work**

French law makes no distinction between children and adolescents as regards night work. Article 213-7 prohibits all work between 22 hours and 6 hours for young workers under 18. Accordingly, Article 9(1)(a) has not been transposed; only Article 9(1)(b) concerning adolescents has been transposed into French law.

Where work by adolescents is concerned, under Article L. 213-7(2), derogations from the ban on night work may be granted by the labour inspectorate for commercial and entertainment establishments.

## **Article 10: Rest period**

Paragraph 1: Daily rest: French law makes no distinction between children and adolescents.

The rule laid down by Article 10 of the Directive is covered by French law: the minimum duration of night rest by young workers may not be less than 12 consecutive hours (Article L. 213-9).

Paragraph 2: Weekly rest: the Community rule on a minimum two days' rest, if possible consecutive, has not yet been transposed into French law. The latter lays down only a minimum duration of 24 consecutive hours for all employees (Article L. 221-4).

## **Article 11: Annual rest**

Under Article L. 211-1 of the Labour Code young people over 14 carrying out light work during their school holidays must be afforded actual rest of a duration at least equal to half the holiday period.

## **Article 12: Breaks**

Article 12 has also been transposed into French law; under Article L. 212-14 of the Labour Code no actual continuous period of work may exceed a minimum duration of



four and a half hours. French law does not, however, lay down any minimum duration of break, whereas the Directive establishes a break of at least 30 minutes.

### **Conclusion**

Although French law contains many provisions protecting young workers both as regards working time and health and safety, a legislative or regulatory text is needed to assure full transposal of the Directive.

## IRELAND

### **Introduction**

The Directive is implemented in Ireland by the Protection of Young Persons (Employment) Act 1996 (hereafter referred to as the 1996 Act) and the Safety, Health and Welfare at Work (Children and Young Persons) Regulations 1998 (S.I. No. 504 of 1998) (hereinafter referred to as the 1998 Regulations).

### **Article 2 - Scope**

- 1) The 1996 Act applies to “employees” who are defined in section 1(1) as meaning a child or a young person who has entered into or works under “a contract of employment”. There is no requirement that the child or young person have been in the continuous service of the employer for any specific period, nor is there a requirement that the child or young person be expected to work for more than a specified number of hours in order for the 1996 Act to apply.
- 2) By ministerial order - the Protection of Young Persons (Employment of Close Relatives) Regulations 1997 (S.I. No. 2 of 1997) - certain sections of the 1996 Act do not apply to the employment of “close relatives”.

### **Article 3 - Definitions**

Section 1(1) of the 1996 Act and Regulation 2(1) of the 1998 Regulations define "young person" as meaning "a person who has reached 16 years of age or the school leaving age (whichever is higher) but less than 18 years of age". The school leaving age is, at present, 15.

"Child" is defined as meaning "a person who is under 16 years of age or the school leaving age, whichever is the higher".

"Light work" is "all work which is not industrial work and 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 safety, health or development of children, and is not such as to be harmful to their attendance at school, their participation in vocational guidance or training programmes approved by the competent authority or their capacity to benefit from the instruction received".

"Working time" is defined as meaning "any period" during which a young person is at work, at the employer's disposal and carrying out his or her activity or duties.

"Rest period" is "any period which is not working time".

### **Article 4 - Prohibition of work by children**

- 1) Section 3(1) of the 1996 Act provides that, subject to that section and section 9 (Close Relatives), “an employer shall not employ a child to do work”.

2)

- a) Section 3(2) then provides that the Minister may, by licence, authorise in individual cases, the employment of a child in cultural, artistic, sports or advertising activities which are not likely to be harmful to the safety, health or development of the child and which are not likely to interfere with the child's attendance at school, vocational guidance or training programmes or capacity to benefit from the instruction received.

Section 3(3) then provides that the Minister may, by regulations, authorise the employment of children over the age of 13 years in cultural, artistic, sports or advertising activities which are not harmful to the safety, health or development of children and which are not likely to interfere with the child's attendance at school, vocational guidance or training programmes or capacity to benefit from the instruction received. No such regulations have yet been promulgated.

- b) Section 3(6) of the 1996 Act permits the employment of a child who is over the age of 14 and who is a full-time secondary school student pursuant to any arrangements made or approved of by the Minister for Education and Science as part of a programme of work experience or educational programme provided that the hours of work do not exceed eight hours in any day or 40 hours in any week. Similarly section 3(8) permits the employment of a child who is over the age of 15 to participate in a training or work experience programme made or approved of by the Minister or by FAS (the Employment and Training Authority) provided again that the hours of work do not exceed eight hours in any day or 40 hours in any week.
- c) Subsections (4) and (5) of section 3 cover the employment of 14 and 15 year olds to do "light work". The former subsection permits an employer to employ a child who is over the age of 14 to do light work during any period outside the school term, subject to a maximum of 7 hours in any day or 35 in any week.

The latter subsection permits an employer to employ a child who is over the age of 15 to do light work during school term time, provided that the hours of work do not exceed eight hours in any week.

#### **Article 5 - Cultural or similar activities**

Section 3(2) provides that the Minister may, by licence, authorise in individual cases, the employment of a child in cultural, artistic, sports or advertising activities which are not likely to be harmful to the safety, health or development of the child and which are not likely to interfere with child's attendance at school, vocational guidance or training programmes or capacity to benefit from the instruction received.

In the departmental guidelines on employing a child by licence a summary of the conditions which may apply to a licence are set out.

#### **Article 6 - General obligations on employers**

- 1) Regulation 3 (a) of the 1998 Regulations imposes a duty on every employer to assess the risk to the safety or health of a child or young person and any specific

risk to their safety, health and development arising from his or her lack of experience, absence of awareness of existing or potential risks or lack of maturity; any work activity likely to involve a risk of harmful exposure to the physical, biological and chemical agents specified in the Part 1 of the Schedule to the 1998 Regulations, and the process and work specified in Part II of the schedule to the 1998 Regulations and to take the preventive and protective measures necessary.

- 2) Regulation 3 (b) imposes a duty on every employer to carry out a risk assessment before employing a child or young person and whenever there is a major change in the place of work which could affect the safety or health of such child or young person.
- 3) Regulation 3 (f) imposes a duty on employers to inform a child or young person of any risk identified as a result of the risk assessment and of the preventive and protective measures taken and, in the case of a child, to inform the parent or guardian of such child of such risk and such preventive and protective measures. Where the risk assessment reveals a risk to safety or health or to the physical or mental development of a child or young person, the employer is required, by Regulation 3 (g), to make available health surveillance and is also required by Regulation 3 (i) to inform a child or young person of the result of any such health surveillance and, in the case of a child, to inform a parent or guardian of such child of the result of such surveillance.

#### **Article 7 - Vulnerability of young people - Prohibition of work**

- 1) See Article 6 (1) supra.
- 2) Regulation 3 (d) requires an employer not to employ a child or young person where the risk assessment reveals that the work involves the risks mentioned under Article 7 (2) lit. a-e.

#### **Article 8 (Working Time)**

- 1) See Article 4 (2) b) and c) supra.
- 2) Further, section 6(1) (a) of the 1996 Act provides that an employer shall not employ a young person on any work or except where, subject to sections 6 (Employment of young persons), 7 (Employment of young persons under licence), 8 (Employment of young persons under regulations) and 9 (Close Relatives), the employer does not require or permit the young person to work for more than eight hours in any day or 40 hours in any week.
- 3) Section 11 provides subject to section 9 ( close relatives ) that any time spent, with the consent of his or her employer, by an employee who is a young person working under a combined work/training scheme or an in-plant work experience scheme shall be deemed to be “working time” for the purposes of section 6 (Employment of young persons).
- 4) Section 10(1) subject to section 9 ( close relatives ) provides that an employer shall not permit an employee to do for him or her any form of work on any day on

which the employee has done any form of work for any other employer, except where the aggregate of the periods for which the employee does work for such employers on that day does not exceed the period for which such employee could lawfully be employed to do work for one employer on that day.

- 5) Section 7 of the 1996 Act enables the Minister to permit, by licence, an individual employer to employ young persons on terms specified in the licence in lieu of any of those referred to in section 6(1) and may attach to the licence such conditions as the Minister sees fit, provided that the Minister is satisfied that a) the terms of the licence are in compliance with the terms of the Directive, b) the health, welfare and safety of the employees affected will not be endangered, and c) compliance with one or more of the terms of section 6(1) would be impractical due to the seasonal nature of the work or the technical or organisational requirements of the work or for other substantial reasons. Before granting such a licence, the Minister is required to consult such representatives of employers and representatives of employees as she considers appropriate. No such licenses have, so far, been issued.

Section 8 of the 1996 Act provides, in similar terms to those of section 7, that the Minister may, by regulations, permit any group or category of employers to employ young persons on terms specified in the regulations in lieu of any of those referred to in section 6(1). No such regulations have yet been made. However, draft regulations are currently being prepared to cover apprentices in the licensed trade.

### **Article 9 - Night Work**

- 1)
  - a) Section 4(1) of the 1996 Act provides that an employer shall not employ any child on any work between 8 p.m. on any one day and 8 a.m. on the following day.
  - b) Section 6(1) (b) of the 1996 Act provides that an employer shall not employ a young person on any work except where, subject to sections 6, 7, 8 and 9, the employer does not require or permit the young person to work (i) between 10 p.m. on any one day and 6 a.m. on the following day, or (ii) between 11 p.m. on any one day (provided the day is not before a school day during a school term where such young person is attending school) and 7 a.m. on the following day, where the Minister is satisfied, following consultation with such representatives of employers and representatives of employees as the Minister considers appropriate, that there are exceptional circumstances affecting a particular branch of activity or a particular area of work as may be prescribed.
- 2)
  - a) The Minister may provide, following consultation with such representatives of employers and representatives of employees as the Minister considers appropriate, that there are exceptional circumstances affecting a particular branch of activity or a particular area of work as may be prescribed. The limitations on night work specified in section 6(1)(b) do not apply to young persons who are members of the Defence Forces when they are on active service, provided that such young persons

are allowed equivalent compensatory rest times within three weeks of having ceased to engage in the specific activities.

- 3) Regulation 3 (h) of the 1998 Regulations requires an employer to make available to a child or young person a free assessment of his or her health and capabilities before assignment to night work and at regular intervals thereafter and Regulation 3 (i) requires the employer to inform the child or young person of the result of any such assessment and, in the case of a child, to inform the parent or guardian of such child of the result of such assessment.

#### **Article 10 - Rest period**

- 1)
  - a) Section 4(2) of the 1996 Act provides that an employer must ensure that an employee who is a child receives a minimum rest period of 14 consecutive hours in each period of 24 hours.
  - b) Section 6(1) (c) of the 1996 Act provides that an employer must ensure that an employee who is a young person receives a minimum rest period of 12 consecutive hours in each period of 24 hours.
- 2) Section 4(4) of the 1996 Act provides that an employer must ensure that an employee who is a child receives in any period of seven days, a minimum rest period of two days which shall as far as is practicable be consecutive. Subsection (5) then provides in similar terms to subsection (3) that, in each period of seven days, the cumulative rest period is two days. Section 6(1) (d) and Section 6(2) and 6(3) makes similar provision for young workers.

Section 4(6) enables the Minister, by regulations, to reduce the minimum period of rest specified in subsection (4) to 36 consecutive hours in respect of any class of employees or class of work where, in the opinion of the Minister, this is justified for technical or organisational reasons.

- 3) Section 4(3), however, provides that the minimum consecutive hours of rest in each 24 hour period may be interrupted by an employer in the case of a child employed on activities that do not extend beyond two hours in each day or are separated, exclusive of breaks, over the day, provided that, in each period of 24 hours, the child receives a minimum rest period of 14 hours.

Subsections (2) and (3) of section 6 then provide in similar terms that the minimum consecutive hours of rest in each 24 hour period and the minimum periods of rest during each seven-day period may be interrupted by an employer in the case of a young person employed in activities that do not extend beyond two hours in each day or are separated, exclusive of breaks, over the day provided that in each period of 24 hours, the young person receives a minimum rest period of 12 hours and that, in each period of seven days, the cumulative rest period is two days.

- 4) These minimum rest periods do not apply to young persons employed in the shipping or fishing sectors provided that a) there are objective grounds justifying

the non-application of the provisions; b) such young persons receive appropriate compensatory rest times at some time during each period of 24 hours and each period of seven days; and c) the trade union or representative of the young person is consulted. Nor do the minimum rest periods apply to young persons who are members of the Defence Forces.

### **Article 11 - Annual Rest**

Under subsection (4) of section 3 an employer may employ a child who is over the age of 14 to do light work during any period outside the school term provided that during the period of the summer holidays, the child does not do any work for a period of at least 21 days.

### **Article 12 - Breaks**

Section 4(8) of the 1996 Act provides that an employer shall not permit a child employed by him or her to do for him or her any work for any period exceeding four hours without a break of at least 30 consecutive minutes. Subsection (9) then provides that a child shall not be entitled to be paid in respect of this break.

Section 6(1)(e) of the 1996 Act provides that an employer shall not permit a young person employed by him or her to do for him or her any work for any period exceeding 4½ hours without a break of at least 30 consecutive minutes. Subsection (6) then provides that a young person shall not be entitled to be paid in respect of this break.

### **Article 13 - Work by adolescents in the event of force majeure**

Section 14 of the 1996 Act provides that it shall be a defence to any proceedings taken against any employer for a breach of any of the provisions of the Act in relation to an employee who is a young person if such employer shows to the satisfaction of the court before which such proceedings are brought that any act occasioning such breach was rendered necessary or reasonably proper by the actual occurrence or the threat or reasonable anticipation of fire, flood, storm, violence, or breakdown of plant or machinery or any other emergency provided that a) the work is of a temporary nature and has to be performed immediately, b) adult workers are not available, c) the young person is allowed equivalent compensatory rest time within three weeks of the date of occurrence of the breach concerned, and d) the young person is paid at the rate of time plus a quarter for any time worked as a result of the emergency.

Section 14(2) goes on to provide that a certificate signed by or on behalf of any Minister of the Government that an act done by or in relation to any young person employed by that Minister was rendered necessary by an emergency shall be evidence that such act was so rendered necessary.

### **Article 14 - Measures**

The 1996 Act adopts a dual strategy of enforcement of employer obligations. First, the Act provides that an employer who contravenes the prohibitions on employment of children, the requirements as to night work, rest periods and rest breaks and the

requirements as to display of the prescribed abstract of the Act or the keeping of records is guilty of a criminal offence. Complaints are made to the Employment Rights section of the Department of Enterprise, Trade and Employment, whose inspectors are given powers by section 22 of the 1996 Act to enter places of employment, to question employers and employees and to examine records.

Section 24(1) of the 1996 Act provides that the offence may be prosecuted summarily by the Minister or (other than an offence under Section 19 or 22) by the trade union of which the employee is a member. Section 25(1) then provides that a person found guilty of an offence shall be liable on summary conviction to a fine not exceeding £1,500.

Secondly, section 17 of the 1996 Act provides that an employer shall not penalise an employee for having in good faith opposed by lawful means an act which is unlawful under the legislation. The Act then provides in section 18 that a complaint that an employer has contravened section 17 may be presented to a rights commissioner. If such a complaint is presented, the rights commissioner must give the parties an opportunity to be heard and to present any evidence relevant to the complaint. The rights commissioner is further obliged to give a written recommendation in relation to the complaint and must communicate the recommendation to the parties.

A recommendation shall do one or more of the following: a) declare that the complaint was or was not well founded; b) order the employer to take a specific course of action; c) order the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances.

Section 18(4) of the 1996 Act provides that a rights commissioner shall not entertain a complaint unless it is presented within 6 months of the contravention to which the complaint relates or ( in a case where the rights commissioner is satisfied that exceptional circumstances prevented the presentation of the complaint within the period aforesaid) such further period not exceeding 6 months as the rights commissioner considers reasonable. Section 18 (5) provides both that a complaint shall be presented by giving notice thereof in writing to a rights commissioner and that a copy of the said notice shall be given to the employer by the rights commissioner concerned. Section 18 (6) provides that the proceedings before a rights commissioner shall be conducted “otherwise than in public”.

An appeal against a recommendation of a rights commissioner may be taken to the Employment Appeals Tribunal (hereafter referred to as the Tribunal) within six weeks of the date on which the recommendation was communicated to the party concerned and section 19 of the 1996 Act provides that the Tribunal may affirm, vary or set aside the recommendation. A further appeal on a point of law only may be taken to the High Court whose decision is stated to be “final and conclusive”.

Where a recommendation of a rights commissioner has not been carried out and the time for bringing an appeal has expired and no such appeal has been brought, the employee concerned may bring the complaint before the Tribunal and the Tribunal, without hearing the employer concerned or any evidence other than in relation to non-compliance, shall make a determination to the like effect as the recommendation.



If an employer fails to carry out a determination of the Tribunal within six weeks from the date on which the determination is communicated to the parties, application may be made by the employee concerned or his or her trade union or the Minister (if the Minister considers it appropriate) to the District Court. That court is empowered by section 20 to make an order, again without hearing the employer or any evidence other than in relation to non-compliance, directing the employer to carry out the determination in accordance with its terms. The District Court may also direct the employer to pay interest on any compensation awarded.

In addition the Minister has established a monitoring group, comprised of an Irish Congress of Trade Unions nominee and an Irish Business and Employers' Confederation nominee together with various departmental officials and a nominee from each of the following: the<sup>8</sup>, National Youth Council, the<sup>9</sup> Children's Rights Alliance to appraise the effectiveness, and to monitor the enforcement, of the legislation.

## **Appendix A**

In the departmental guidelines on employing a child by licence under section 3(2) a summary of the conditions which may apply to a licence are set out as follows:

1. A child under seven years may not be present at the place of employment
  - for more than five hours a day,
  - before 9.30 a.m. or after 4.30 p.m. except in special circumstances,
  - may not be present at the place of employment for more than 250 hours in any twelve month period,
  - may not take part in a performance or rehearsal on any day for a continuous period of more than 30 minutes without an interval for rest,
  - may not take part in a performance or rehearsal on any day for a total period of more than two hours.
  
2. A child between seven and thirteen years may not be present at the place of employment
  - for more than 7½ hours a day,
  - before 9 a.m. or after 5 p.m. except in special circumstances,
  - may not be present at the place of employment for more than 700 hours in any twelve month period,
  - may not take part in a performance or rehearsal on any day for a continuous period of more than 45 minutes without an interval for rest,
  - may not take part in a performance or rehearsal on any day for a total period of more than three hours.

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<sup>8</sup> The National Youth Council of Ireland is the representative body for youth organisations in Ireland. It has 47 member organisations representing approximately 750 000 young people.

<sup>9</sup> The Children's Rights Alliance is a group of organisations and individuals, currently over 50 members, concerned with promoting the rights and welfare of children.

3. A child over thirteen years may not be present at the place of employment
  - for more than eight hours a day,
  - before 9 a.m. or after 7 p.m. except in special circumstances,
  - may not be present at the place of employment for more than 900 hours in any twelve month period,
  - may not take part in a performance or rehearsal on any day for a continuous period of more than one hour without an interval for rest,
  - may not take part in a performance or rehearsal on any day for a total period of more than four hours.
4. A child may not take part in a performance after the latest relevant hour permitted unless it is essential for such performance to take place after that hour.
5. A child must have a break for a meal of at least one hour and a separate 15 minute rest break for each period of 3½ hours at the place of employment.
6. A child may not take part in performances or rehearsals on more than five days in any seven day period (or six days in any seven day period provided such performances or rehearsals do not take place on more than 20 days in any 28 day period).

A suitably qualified chaperon must be in charge of the child at all times while he or she is present at the place of employment except while the child is in the charge of a parent or guardian.

Where the hours of work of the child involve an absence from school of more than one week, alternative teaching arrangements must be arranged.

## Italy

### **Introduction**

Decree-Law 345 of 4 August 1999 amends and supplements Act 977 of 17 October 1967, previously the main instrument governing the protection of minors at work, in order to adapt it to the principles and requirements of the Directive.

### **Article 1 – Purpose of the Directive**

The Directive begins by requiring that Member States “shall ensure that young people are protected against economic exploitation and against any work likely to harm their safety, health or physical, mental, moral or social development or to jeopardise their education”. Article 1 also defines the minimum working or employment age, which may not be “lower than the minimum age at which compulsory full-time schooling as imposed by national law ends or 15 years in any event”.

Article 3(1) of Act 977 as amended by Article 5 of Decree-Law No 345 expressly provides that “the minimum working age begins when the minor has completed compulsory schooling and therefore he or she may not be under 15 years of age”.

### **Article 2 – Scope**

The Directive applies to all persons under 18 years of age and provides that they must have working conditions that suit their age. Article 1(1) of Act 977 as amended by Article 3 of Decree-Law No 345 transposes this provision, specifying that, in this instrument, persons under 18 years of age are defined as “minors”.

The Directive then provides that Member States may make legislative or regulatory provision for the Directive not to apply to occasional work or short-term work involving domestic service in a private household or work in a family undertaking. Article 2(1) of Act 977, as amended by Article 4 of Decree-Law 345, uses exactly the same wording as the Directive, but specifies that these provisions concern only adolescents.

### **Article 3 – Definitions**

Article 3 of the Directive contains a number of definitions.

Article 1(2) of Act 977 as amended by Article 3 of Decree-Law 345 reproduces these definitions word by word, except for two differences:

- the term “young person” is replaced by the term “minor”
- the term “child” (“fanciullo”) is replaced by the term “young child” (“bambino”).

Note that the Italian law does not define “light work”. This is because the new legislation, as opposed to the previous legislation, does not provide for the possibility of light work for children less than 15 years of age.

#### **Article 4 – Prohibition of work by children**

The Directive enshrines the prohibition of work by children as a general principle which can only be derogated from in the expressly specified cases (Articles 4 and 5). The principle of prohibition is enshrined in the first paragraph of the new Article 4 of Act 977 as amended by Article 6 of Decree-Law 345. The only exception is the employment of minors for the purposes of performance of cultural, artistic, sports or advertising activities and in show-business.

#### **Article 5 – Cultural or similar activities**

Pursuant to the Directive, the employment of children for the purposes of the activities referred to in Article 5 is subject to prior authorisation to be given by the competent authority in individual cases. Article 5 also specifies that the authorisation may be delivered provided the activities are not likely to be harmful to the safety, health or development of children or to their attendance at school or participation in vocational guidance or training programmes.

Paragraph 2 of the new Article 4 of Act 977 as amended by Article 6 of Decree-Law 345 provides that it is for the Provincial Labour Directorate to give such authorisations, subject to the written agreement of the parent or guardian and the conditions referred to above.

#### **Article 6 – General obligations on employers**

Pursuant to Article 6(1) of the Directive, the employer must adopt the measures necessary to protect the safety and health of young people. Article 6(2) provides that the employer must implement the abovementioned measures “on the basis of an assessment of the hazards to young people in connection with their work”. The Directive goes on to stipulate that, where the assessment shows that there is a risk, an appropriate free assessment and monitoring of the health of young people shall be provided at regular intervals.

The provisions of these two paragraphs of the Directive are incorporated in the new Article 7 of Act 977 as amended by Article 8 of Decree-Law 345. Specifically as regards assessing and monitoring the health of young people, the Italian legislation goes beyond the requirements of the Directive and provides even greater protection. Notably it provides that young children and adolescents may only work provided they have been recognised in advance as suitable for performing the task to be assigned to them on the basis of a medical examination (Article 8(1) of Act 977 as amended by Article 9 of Decree-Law 345). The suitability of minors to perform a task must be certified by regular medical examinations performed at least once a year (Article 8(2) of Act 977 as amended by Article 9 of Decree-Law 345); these examinations shall be organised and paid for by the employer (Article 8(3) of Act 977 as amended by Article 9 of Decree-Law 345); the results of these examinations must be entered in a special certificate and the physician must clearly indicate the work which may not be performed by the minor (Article 8(4) and (5)); the opinion on the minor’s partial or temporary or total suitability or unsuitability for work must be communicated in

writing to the employer and to the parents or guardians (Article 8(6)); minors who, following a medical examination, are declared unsuitable for a given task may not be assigned to this task at a later stage (Article 8(7)); a derogation is provided for in the case of adolescents performing professional activities subject to the standards governing the health surveillance of workers (Article 8(8)).

Pursuant to Article 6(3) of the Directive, the employer must inform “young people of possible risks and of all measures adopted concerning their safety and health”. Besides, he must “inform the legal representatives of the children of possible risks and of all measures adopted concerning children’s safety and health”. Article 3(s) of Decree-Law 626 of 19 September 1994 provides that the workers or their representatives shall be informed on matters concerning safety and health at work. Article 7(2) of Act 977 as amended by Article 8 of Decree-Law 345 also provides that the parents or guardians shall receive suitable information on the activities performed by the minors.

Finally, Article 6(4) of the Directive provides that the employer shall involve the protective and preventive services in the planning, implementation and monitoring of the safety and health conditions applicable to young people.

Decree-Law 626 provides that the employer shall appoint the person responsible for the protective and preventive service (Articles 8 to 11).

#### **Article 7 – Vulnerability of young people – Prohibition of work**

Pursuant to the Directive, Member States must ensure that young people are protected from any specific risks to their safety, health and development which are a consequence of their lack of experience, of absence of awareness of existing or potential risks or of the fact that young people have not yet fully matured. In this way the Community legislator has endeavoured to enshrine a general principle making it possible to protect young people at work in respect of their specific weaknesses. Article 7(2) then enumerates a series of special situations in which this vulnerability is of particular relevance.

The new Article 6(1) of Act 977 as amended by Article 7 of Decree-Law 345 provides that adolescents may not be assigned to the operations, procedures or activities listed in an annex, which includes a list of activities involving exposure to harmful physical or chemical agents and various work processes which are deemed dangerous for the health and development of minors.

The Directive provides that Member States, by legislative or regulatory provision, may authorise derogations in the case of adolescents where such derogations are indispensable for their vocational training, provided that protection of their safety and health is ensured by the fact that the work is performed under the supervision of a competent person. The new Article 6(2) of Act 977 as amended by Article 7 of Decree-Law 345 also contains a derogation. Employment of adolescents is authorised in respect of the activities listed in the annex only in the case of teaching activities or activities of relevance to vocational training, performed under the supervision of a competent person. The Italian instrument also specifies that the training activity must be authorised in advance by the Provincial Labour Directorate.

## **Article 8 – Working time**

In the case of children, Italian law does not provide for any measure limiting working time because Italy has not availed of Article 4(2)(b) or (c).

In the case of adolescents, maximum working time is eight hours a day and 40 hours a week; adolescents may not be assigned to shift work although, in cases in which the system is provided for in collective agreements, their participation may be authorised by the Provincial Labour Inspectorate.

Italian law is silent as regards the situations referred to in Article 8(3) and (4) of the Directive concerning young people in training and young people employed by more than one employer.

## **Article 9 – Night work**

The Directive prohibits night work for children and adolescents, for whom the concept of “night” differs.

Article 15 of Act 977 as amended by Article 10 of Decree-Law 345 in principle prohibits night work by minors and provides the following definition: “Night is understood to be a period of less than 12 consecutive hours, including the period between 10 p.m. and 6 a.m., or between 11 p.m. and 7 a.m. These periods may be interrupted in the case of activities involving periods of work that are split up over the day or are of short duration.” There is no specific provision on children since children are prohibited from working in Italy.

The Directive provides for two types of derogation (Article 9(2)): Member States may, by legislative or regulatory provision, authorise work by adolescents in specific areas of activity during the period in which night work is prohibited; in that event, work between midnight and 4 a.m. remains prohibited. Besides, the Directive allows derogations from this latter limit in certain expressly specified cases – shipping, fisheries, work performed in the context of the armed forces or police, in hospitals or similar establishments and cultural, artistic, sports or advertising activities.

The new Article 17(1) of Act 977 as amended by Article 11 of Decree-Law 345 provides that, by derogation from Article 15, minors may work between 11 p.m. and midnight, exclusively in the case of cultural, artistic, sports or advertising activities,, or in show-business.

Italian law provides for another derogation in the case of force majeure (see Article 13).

The Directive goes on to provide that, prior to any assignment to night work and at regular intervals thereafter, adolescents shall be entitled to a free assessment of their health and capacities, unless the work they do during the period during which work is prohibited is of an exceptional nature. In Italian law there is no rule similar to that of Article 9(3) of the Directive.

## **Article 10 – Rest period**

The rest period provided for by the Directive for each 24-hour period corresponds to a minimum period of 12 consecutive hours for adolescents. Act 977 does not provide for any minimum consecutive daily rest period.

As regards the weekly rest period, the Directive provides that, for each seven-day period, adolescents shall be entitled to a minimum rest period of two days, if possible consecutive. When justified by technical or organisation reasons, the minimum rest period may be reduced but may in no circumstances be less than 36 consecutive hours.

The new Article 22(2) of Act 977 as amended by Article 13 of Decree-Law 345 takes over the wording of the Directive.

Finally, the Directive provides that Member States may, by legislative or regulatory provision, authorise derogations from the rules governing rest periods for adolescents when they are assigned to certain specific activities. The new Article 22(3) of Act 977 as amended by Article 13 of Decree-Law 345 provides for derogations to the Sunday weekly rest period for minors involved in cultural, artistic, sports or advertising activities and in show-business and in respect of adolescents employed in the hotel, tourist and catering trades.

## **Article 11 – Annual rest**

In the case of annual rest, Italy is not affected by the Directive, which only concerns Member States which avail of Article 4(2)(b) or (c).

However, it should be noted that Article 22 of Act 977 provides that minors under 16 years of age shall be entitled to a minimum period of 30 days and minors aged 16 and over to a minimum of 20 days.

## **Article 12 – Breaks**

The Directive provides that where daily working time is more than four and a half hours, young people shall be entitled to a break of at least 30 minutes, which shall be as consecutive as possible. Italian law does not contain any provision of this kind.

## **Article 13 – Work by adolescents in the event of force majeure**

The Directive provides that in the event of force majeure and exclusively as regards work performed by adolescents, Member States may authorise certain derogations from the Directive's provisions governing weekly working time, night work and the weekly rest period. The Directive specifies the conditions in which these derogations may be authorised and the compensatory rest time to be granted to the adolescents concerned.

The new Article 17(2) provides for a derogation for night work and takes over the wording of the Directive laying down the conditions and the compensatory periods. It stipulates that adolescents may be assigned to night work in the case of force majeure

preventing the operation of the firm “provided that such work is of a temporary nature and must be performed immediately, that adult workers are not available and that the adolescents are allowed equivalent compensatory rest time...”.

#### **Article 14 – Measures**

The Italian law provides that failure to comply with the provisions in force is punishable by administrative fines whose amount is indexed and by imprisonment.



## Luxembourg

On 22 June 1996, the date set in Article 17(1)(a) of the Directive concerning young people at work, the Luxembourg authorities had not adopted the legal, regulatory and administrative provisions required to comply with the Directive.<sup>10</sup>

Since then, a preliminary draft law has been prepared; it substantially amends the law of 28 October 1969 concerning the protection of children and young people at work. The text, dated 25 February 1997, recasts the previous law and incorporates the provisions of the Directive.

Taking into account all details of the Directive, the preliminary draft law contains a Chapter I, "Scope", a Chapter II, "Vulnerability of young people – prohibition of work", which takes over the wording of Article 7 of the Directive and a Chapter III, "General obligations on employers", which incorporates into Luxembourg law Article 6 of the Directive.

The former Chapter II retains its title, "Work by children", and becomes Chapter IV of the law. Article 6 (former Article 5) of this chapter is amended to incorporate the option in Article 4 of the Directive whereby "work under a combined work/training scheme or an in-plant work-experience scheme" is not deemed to be work by children "provided that such work is done in accordance with the conditions laid down by the competent public authorities and the children are at least 14"; Article 6 also transposes the option in Article 2 of the Directive whereby children may perform occasional or short-term work involving domestic service in a private household, specifying that such work may be performed by children who are family members.

Articles 7, 8, 9, 10 and 11 have been added to Chapter IV. Article 7 takes over Article 8(1)(a) and (b) of the Directive. Article 8 takes over the ban on employing children between 20 and 6 hours (Article 9(1)(a)). Article 9 lays down a minimum rest period of 14 consecutive hours for each 24-hour period (as required by Article 10(1)(a) of the Directive) and two rest days, consecutive if possible, in principle including a Sunday, for each 7-day period (as required by Article 10(2) of the Directive). Article 10 incorporates into Luxembourg law the entitlement to a break of at least 30 minutes where the daily working time is more than 4½ hours (as required by Article 12 of the Directive). Article 11 concerns work by children in cultural, artistic, sports or advertising activities. This work is subject to prior authorisation in individual cases given by the director of the labour inspectorate on the joint opinion of the education ministry and the attending physician. This provision specifies that participation by children in entertainment must not be harmful to their safety, health, development or character nor harmful to their attendance at school.

Chapter V of the amended law concerns "Work by adolescents". A number of points in the former Chapter III have been amended to take into account the rules laid down by the Directive. A new section "Derogation from the prohibition of work" has been added; its text takes over the wording of Article 7(3) of the Directive.

Section 2, "Duration of work", covers Articles 12 to 14.

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<sup>10</sup> See judgement of the ECJ of 16/12/99; case C-47/99 (Commission/Luxembourg)

Sections 3 “Additional work” and 4 “Work on Sundays and public holidays” do not call for comment.

Section 5 concerns “Night work”. Article 20 first lays down a ban on night work by adolescents and then transposes Article 9 of the Directive.

Sections 7 to 10 do not call for any comment.

**In conclusion**, the preliminary draft law amending the law of 28 October 1969 on the protection of children and young people at work has to be adopted to implement the Directive on the protection of young people at work.

## The Netherlands

### **Introduction**

Directive 94/33/EC has been implemented in the Netherlands primarily through the Working Time Act (Arbeidstijdenwet, Staatsblad 598, 23/11/1995). Additional provisions are included in the Besluit van 15/01/1997 houdende regels in het belang van de veiligheid, de gezondheid en het welzijn in verband met de arbeid (Arbeitsomstandighedenbesluit, hereinafter: Arbobesluit) and in the Arbeidsomstandighedenregeling van 07/03/1997 (Arboregeling).

### **Definitions**

For the purposes of Directive 94/33/EC the term 'child' means, according to Article 3(b), any young person of less than 15 years of age or who is still subject to compulsory full-time schooling under national law.

Under Article 1(2) of the Dutch Working Time Act (WTA) and in accordance with the provisions founded thereon, the term child refers to a person of less than 16 years of age.

Under Article 1(1) of the WTA and in accordance with the provisions founded thereon, the term young worker refers to a worker aged 16 or 17.

### **Article 4 – Prohibition of work by children**

#### **Article 4(1) and (2)**

Article 3(2) of the WTA lays down that:

- "1. Those who are legally responsible for a child and all employers have to ensure that a child does not work.
2. The first paragraph does not apply to the performance of
  - a. work by a child aged 12 or older as part of an alternative penalty to the extent that this work is not performed during school hours;
  - b. light, non-industrial work by a child of 13 or older to the extent that this work is not performed during school hours;
  - c. light work by a child of 14 or older to the extent that this work is performed in addition to and in conjunction with the education;
  - d. work consisting of delivering the morning paper, by a child of 15, to the extent that this work is not performed during school hours.
3. Further rules will be established by ministerial regulation in respect of paragraph 2.

Exemption and dispensation (Article 3(3) WTA)

"1. The Minister may grant exemption from Article 3(2)(1) for types of light industrial work to be carried out by children aged 13 or older to the extent that this work is not performed during school hours.

2. A public servant designated for this purpose may grant exemption from Article 3(2)(1) for work performed by a child consisting of participation in performances of a cultural, scientific, educational or artistic nature, fashion shows, audio, visual or audio-visual recordings and comparable light non-industrial work. Applications for exemption shall be submitted by the employer."

## **Article 5 – Cultural or similar activities**

### **Article 5(1) and (2)**

(See above (Article 3(3) of the WTA). The responsible person and the employer must observe the related rules and regulations.

## **Article 6 – General obligations on employers**

### **Article 6(1) and (2)**

The WTA is complemented by the Arbobesluit which provides in its Article 1(36) for "Detailed rules concerning inventories and assessments":

"1. If one or more young persons are employed or are habitually present in an undertaking or establishment, the inventory or assessment referred to in Article 4 of the Act shall pay particular attention to:

- a. the age of the young person;
- b. the specific risks to their safety, health and well-being connected with their work, owing to their lack of experience, poor awareness of risks or the fact that they have not yet fully matured physically or mentally;
- c. the fitting-out and layout of the workplace;
- d. the nature, degree and duration of exposure to substances, agents and physical factors;
- e. the choice and use of work equipment and personal protective equipment;
- f. all activities carried out in the undertaking or establishment and how these are organised;
- g. the level of training given to the young employees and the information provided to them."

### **Article 6(3)**

General provisions concerning information for workers are set out in Article 4 of the **WTA**.

In addition, Article 3(4) of the WTA provides that "the employer shall ensure that anyone holding parental rights over or who has custody of the child, or who has taken the child into his or her household is effectively informed about the nature of the work and possible related hazards and about the measures aimed at preventing or limiting these hazards."

#### **Article 6(4)**

This provision is covered by Article 17 of the **WTA**.

#### **Article 7 – Vulnerability of young people – Prohibition of work**

##### **Article 7(1)**

Article 7 (1) is covered by Article 3 of the **WTA**, Article 3(5)(1) and (2) of the **WTA** that provides that “as regards the work permitted under Article 3(2), the responsible person shall at all times ensure that, in the course of the work allowed pursuant to that article, the safety of the child shall not be endangered, nor shall work be performed which could have a harmful effect on the physical or intellectual development of the child. In prescribing the further regulations referred to in Article 3(2)(3), and on granting an exemption or dispensation as referred to in article 3(3), steps shall be taken to ensure at all times that the safety of the child shall not be endangered, nor work performed which could have a harmful effect on the physical or intellectual development of the child.”

##### **Article 7(2)**

Article 4(105) (Prohibition of work with hazardous substances and biological agents) of the *Arbobesluit* reads: "Young persons shall not carry out any work with substances meeting the criteria laid down in Articles 34(3) and 39 of the Chemical Substances Act for the classification of such substances in one or more of the categories "very toxic", "toxic", "sensitising", "carcinogenic", "mutagenic" and "toxic to reproduction" or with substances meeting the criteria laid down in or by virtue of the same Act for classification with one of the following risk phrases:

- a. danger of cumulative effects (R33);
  - b. danger of serious damage to health by prolonged exposure (R48).
2. Young persons shall not carry out work with biological agents belonging to categories 3 or 4 referred to in section 9 of this Chapter.
  3. Furthermore, young persons shall not carry out work on or with vats, tanks, pipes or reservoirs containing one or more of the substances or biological agents referred to in the first and second paragraphs above."

Article 4(106) (Supervision by experts of work with hazardous substances) also specifies that: Article 1(37)(2) applies *mutatis mutandis* to young persons who:

"a. carry out work with substances meeting the criteria laid down in Articles 34(3) and 39 of the Chemical Substances Act for the classification of such substances in:

1. one or more of the categories "explosive", "corrosive" and "irritant";
  2. the category "harmful" if these substances also meet the criteria laid down in or by virtue of the Chemical Substances Act for classification with the risk phrase "possible risks of irreversible effects" (R40);
- b. carry out work with compressed gases, gases liquefied under pressure or through greatly reduced temperature, or dissolved gases;
  - c. carry out work on or with vats, tanks, pipes or reservoirs containing one or more of the substances or gases referred to in a or b above;
  - d. manufacture or handle devices containing explosive substances."

### **Article 7(2)(c)**

Article 7 (2)(c) is covered by Article 6(27)(1) and (2) of the Arbobesluit (Ban on work under increased atmospheric pressure and with non-ionising radiation):

"1. Young persons shall not carry out any diving work, work in caissons or other work under increased atmospheric pressure referred to in Article 6(13).

2. Young persons shall not carry out any work with apparatus which may emit harmful, non-ionising electromagnetic radiation."

### **Article 7(2)(d)**

Article 7 (2)(d) is covered by Article 1(37) (Supervision by experts):

"1. If young people are carrying out work in an undertaking or establishment, adequate supervision shall be ensured. The nature and degree of supervision shall depend on the risks which, according to the inventory or assessment referred to in Article 4 of the Act, may arise in the absence of any supervision.

2. If it emerges from the inventory or assessment referred to in Article 1.36 that young people are required to carry out work involving risks which are a consequence of their lack of experience, poor awareness of such risks or of the fact that they have not yet fully matured physically or mentally, then such work may be carried out only if supervision is provided which prevents such risks from occurring. If this is not possible, then such work may not be carried out by young persons."

Article 3(46) (Supervision by experts) provides for further supervision:

"Article 1(37)(2) shall apply *mutatis mutandis* to young persons who:

a. carry out work in which there is a risk of structural collapse;

b. carry out work on, with or in the immediate vicinity of high-voltage installations as referred to in Article 3(1)."

Similarly Article 7(39) (Supervision by experts):

"Article 1(37)(2) shall apply *mutatis mutandis* to young persons who:

a. carry out work involving the operation of tractors and the hitching and unhitching of trailers;

b. work with wild, poisonous or otherwise dangerous animals;

c. work in animal slaughtering on an industrial scale;

d. carry out monotonous and repetitive work on a piece rate basis, or work the pace of which is determined by machinery or a conveyor belt and over which the young person has no influence."

### **Article 7(2)(e)**

Article 7 (2)(e) is transposed by Article 6(27)(3) and (4) Arbobesluit:"3. Young persons shall not carry out work at any location where they are exposed to an equivalent noise level of 90 dB(A) or more.

4. Young persons shall not be exposed to harmful vibrations."

### **Article 7(3)**

Article 3(45)(2) and Article 7(38) of the Arbobesluit provide for exceptions for "young employees aged 16 or over who, in connection with occupational training regulated in or by virtue of a legal provision - or occupational training deemed, under

a ministerial order, to be equivalent thereto for the purposes of implementing this paragraph -, are obliged to carry out the work referred to in this paragraph, where there is supervision by experts to ensure that they are adequately protected."

## **Article 8 – Working time**

### **Article 8(1)**

Article 3(2)(2) of the WTA provides for exemptions from the prohibition of child labour. Article 3(2)(3) states that further rules on application of these derogations will be established by ministerial regulation.

**Article 8(2)** Article 5(6) of the WTA provides that "the employer shall organise the work in such a way that young workers work no more than 9 hours per work shift, 45 hours per week and in every period of 4 consecutive weeks an average of 40 hours per week."

### **Article 8(3)**

Article 4(4) of the WTA ensures that young workers' work is organised in such a way that they are able to attend school in accordance with the legislation applicable. The time during which a young worker attends school, or wants to attend school, including breaks, shall be regarded as working time.

### **Article 8(4)**

There is no specific provision in Dutch legislation to implement this provision.

### **Article 8(5)**

Article 5(1)2 of the WTA provides for possible adoption of special rules on specific work or work under certain conditions which may derogate from or supplement provisions on working time.

## **Article 9 – Night work**

### **Article 9(1)(a)**

Article 3(5)(3) of the WTA states that a child must at all times be afforded an uninterrupted rest period of at least 12 hours in every period of 24 consecutive hours, including the period between either 22.00 hours and 6.00 hours or 23.00 hours and 7.00 hours.

**Article 9(1)(b)** Article 5(5) of the WTA requires the employer to organise the work in such a way that young workers have an uninterrupted rest period of at least 12 hours in every 24-hour period including the period between either 22:00 and 06:00 or 23:00 and 07:00 hours.

### **Article 9(2)**

Under Article 5(12) of the WTA special rules may be adopted on specific work or work under certain conditions which may derogate from or supplement the provisions on night work.

3) General provisions on health assessment are contained in Article 24a of the WTA. There are no specific provisions for young workers.

### **Article 10 – Rest period**

#### **Article 10(1)(a)**

As mentioned above, Article 3(5)(3) of the WTA stipulates that a child must be afforded an uninterrupted rest period of at least 12 hours in every period of 24 hours.

#### **Article 10(1)(b)**

Article 5(5) of the WTA provides that the employer is to organise the work in such a way that young workers have an uninterrupted rest period of at least 12 hours in every period of 24 consecutive hours.

#### **Article 10(2)**

As regards the weekly rest period for young workers, Article 5(3) of the WTA requires employers to organise the work in such a way that the young worker has an uninterrupted rest period of no less than 36 hours in every consecutive period of 7 times 24 hours.

Article 5(4) requires the employer, in the event of need for a young person to work on a Sunday, to organise the work in such a way that he/she does not work on the day preceding that Sunday.

#### **Article 10(4)**

Article 5(12) provides for possible adoption of special rules on specific work or work under certain conditions which may derogate from or supplement the provisions on rest periods.

### **Article 11 – Annual rest**

No specific provision

### **Article 12 – Breaks**

Under Article 5(10)(1) of the WTA, a young worker must be afforded a break in the event of work lasting more than 4.5 hours per work shift.

### **Article 13 – Work by adolescents in the event of force majeure**

No special provision

### **Article 14 – Measures**



## AUSTRIA

### **Introduction**

The requirements of Directive 94/33/EEC have been transposed into Austrian labour law primarily through the 1987 Federal Act on the Employment of Children and Adolescents (KJBG)<sup>11</sup> and the Adolescents (Employment Prohibitions and Restrictions) Ordinance (KJBG-VO)<sup>12</sup>. The provisions of the safety and health directive are also transposed by the general Austrian legislation on worker protection.

### **Article 2 – Scope**

1. According to §1 (1) of the KJBG, the KJBG applies to the employment of children in work of any kind and to the employment of adolescents up to the age of 18 in an employment relationship, an apprenticeship or another form of training relationship.

The KJBG does not apply to occasional or minor assistance provided by children as favours, provided that such assistance is of short duration and does not correspond by its nature to a service provided by employees, apprentices or home workers and that the children are not thereby exposed to any risk of accident or endangered in their physical and mental development or morality.

2. The legislator has made use of the exemption authorisation in Article 2(2) of the Directive by adopting §5a. Under this provision, children over the age of 12 may be employed outside the hours prescribed for school attendance in work in firms in which only members of the owner's family are employed, provided that the children concerned are relatives of the owner no more than three times removed or are related to the owner as stepchildren or adopted children and live with the owner in the same household; children who are related to the owner as relatives three times removed may only be employed if their legal representative agrees to the employment (§5a (1) No 1). The same applies under §5a (1) No 2 for the employment in work in a private household and under §5a (1) No 3 for employment on errands, in assistance at sports grounds and playgrounds, in the picking of flowers, herbs, mushrooms and fruit and in equivalent activities. In each case, however, the work must involve light and occasional activities; furthermore, the types of work listed under §5a (1) No 3 may not be performed in a commercial enterprise, nor may an employment relationship exist.

### **Article 3 – Definitions**

#### ***“Child”***

Under the legal definition in §2 (1), children within the meaning of the KJBG are minors under the age of 15 or minors over this age who have not yet completed their compulsory schooling.

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11 BGBl. No 599, in the version of BGBl. I No 126/1997.

12 BGBl. II No 436/1998.

### ***“Adolescent”***

According to §3, adolescents within the meaning of the KJBG are persons under the age of 18 years who are not considered to be children within the meaning of the KJBG.

***“Light work”*** is not defined. The only provision of the Directive in which this term is used is Article 4(2)(c). As the legislator has not made use of this exemption authorisation, this definition does not need to be transposed.

### ***“Working time”***

Working time is defined in §10 (1) sentence 1 as the time from the beginning to the end of work, excluding rest breaks.

### ***“Rest period”***

The term “rest period” is not used. However, it is clear from the relevant provisions of the KJBG that a rest period is a period outside working time.

## **Article 4 – Prohibition of work by children**

1. The employment of children is expressly prohibited in §5.
  - a) The legislator has made use of the exemption authorisation for activities that come under Article 5 of the Directive by adopting/maintaining §6.
  - b) §2 (1a) stipulates that children who have completed their compulsory schooling may be employed in an apprenticeship, on work experience during the school holidays or compulsory work experience under the School Organisation Act.
  - c) The legislator has not made use of the exemption authorisation under (c).

## **Article 5 – Cultural and similar activities**

1. Article 5(1) is transposed by §6 (1). Under this provision, the head of a provincial government may approve the use of children in concerts, plays and other performances and in photography, filming, television and tape recordings.
2. The working conditions of children in the cases referred to in Article 5(1) are set out in §7 (2); the individual steps of the authorisation procedure are laid down in §6 (1)-(5). The requirement set out in Article 5(2) was taken into account by the adoption of §7 (1), under which children may be used only insofar as these activities do not harm their physical or mental development or morality, do not hamper their ability to benefit from their school education and do not prevent them from fulfilling their religious duties.
3. The Austrian legislator has not made use of this exemption authorisation; children’s work for the purposes mentioned in Article 5 needs to be authorised in the Republic of Austria without exception.

## Article 6 – General obligations on employers

1. These general obligations on employers were transposed in §23 (1a). Under this provision, the employer must adopt all the measures needed to protect safety, health and morality. In the case of permitted work by children pursuant to §2 (1a), §23 (1a) applies *mutatis mutandis*.
2. Under §23 (1), the employer must make an assessment of the hazards to the safety, health and morality of the adolescent before he begins work and when there is any major change in working conditions. A non-exhaustive list of the points which must be taken into account is set out in the second sentence of §23 (1):
  - a) the assessment of the hazards for adolescents in connection with their employment pursuant to No 1 of the second sentence of §23 (1) must pay particular attention to the equipment and design of the workplace and the workstation;
  - b) the hazards referred to in Article 6 are not mentioned explicitly in the second sentence of §23 (1);
  - c) furthermore, pursuant to No 2 of the second sentence of §23 (1), the design, range and use of work equipment must be taken into account; the same applies to the use of agents pursuant to No 3 of the second sentence of §23 (1);
  - d) in addition, pursuant to No 4 of the second sentence of §23 (1), the arrangement of work processes and operations and the way in which they interact must be taken into account;
  - e) finally, No 5 of the second sentence of §23 (1) stipulates that the physical strength, age and level of training and instruction of the adolescents must be taken into account.

Where the assessment under §23 (1) shows that there is a risk to the safety or health of adolescents, the employer must ensure, pursuant to §25 (1a), that an examination is carried out annually pursuant to §132a of the ASVG. In cases where work by children is permitted under §2(1a) §25 shall apply *mutatis mutandis*.

3. Pursuant to §24 (1), before adolescents start work it is the responsibility of the employer to inform them of any risks at work, the measures taken to prevent these risks and the corresponding equipment and its use. Pursuant to §24 (2), they must also be informed of the way to act and of the precautions in force and how to implement them before they use machines for the first time, are involved for the first time in work with gases, chemicals or other agents that are harmful to health or in work at dangerous workstations for the first time. The same applies to the employment of children in the event of permissible work by children pursuant to §2 (1a). In this case, §24 applies *mutatis mutandis*.

According to the second sentence of §24 (1), if the persons concerned are under the age of 15, their legal representatives must also be informed.

4. In transposition of Article 6(4), §23 (1b) states that "the employer shall involve the prevention services in the assessment of hazards and the establishment of protective measures". For the employment of children pursuant to §2 (1a), §23 (1b) applies *mutatis mutandis*.

## **Article 7 – Vulnerability of young people, prohibition of work**

1. The KJBG does not contain a general provision, apart from §23 (1a), which requires the employer to adopt all the measures needed to protect safety, health and morality.
2. The Adolescents (Employment Prohibitions and Restrictions) Ordinance (KJBG-VO) was issued pursuant to §23 (2). Its prohibitions and restrictions apply to certain firms where the employment of adolescents is banned, and to
  - work with dangerous working materials
  - work involving exposure to physical agents
  - work exceeding the mental or physical capacity of adolescents
  - work with dangerous equipment and
  - other dangerous work and work procedures.

The prohibitions are listed individually. The competent authorities may issue notices imposing additional prohibitions or restrictions for work posing a particular threat to adolescents' safety, health or morality. The KJBG-VO stipulates how far derogations from the prohibitions are permissible for each of the types of work listed. Generally, derogations are permissible only if

- they are essential to allow training of the adolescents;
- the work is carried out under the supervision of a suitable competent person, who is available to intervene immediately at all times;
- the protection required by Directive 89/391/EEC is ensured.

## **Article 8 – Working time**

1. As the Austrian legislator made use of the exemption authorisation in Article 4(2)(b) in §2 (1a), it was also obliged to limit the working time of the children concerned in line with the requirements of Article 8(1). Corresponding regulations can be found in §§11-13 of the KJBG.
  - a) The working time of children who are no longer subject to compulsory schooling and are following an apprenticeship is limited to eight hours a day and 40 hours a week.
  - b) If the teaching time of children who are employed on a work experience scheme during the school holidays or on a compulsory work experience scheme (§2 (1a) Nos 2 and 3) lasts for at least seven hours on a school day or at least 35 hours in a school week, employment in the firm concerned is no longer permissible pursuant to the first sentence of §13 (3). If the teaching time lasts less than seven hours, employment is only permissible under the following conditions: the teaching time, the time needed to travel between the enterprise and the school and the time to be spent in the enterprise must not exceed seven hours; moreover, the time to be spent in the enterprise must not exceed two hours.
  - c) For children who are employed under a work experience scheme during the school holidays or a compulsory work experience scheme (§2 (1a) Nos 2 and 3), during

periods when school is not open the daily working time may not exceed seven hours and the weekly working time may not exceed 35 hours pursuant to §13 (2).

2. Pursuant to §11 (1), adolescents may not be employed for more than eight hours a day and 40 hours a week.

3. The requirement of Article 8 (3) that time spent on training be counted as working time is transposed by §11 (5), which applies *mutatis mutandis* in the event of permissible work by children pursuant to §2 (1a). Under this provision, training time at vocational school which adolescents are obliged by law to attend must be counted towards weekly working time.

If the teaching time on a school day lasts at least eight hours, employment in a firm is no longer permissible. If the teaching time lasts less than eight hours, employment is only permissible insofar as the teaching time, the necessary travelling time between the enterprise and school and the time to be spent in the enterprise does not exceed the statutory working time.

4. Pursuant to §10 (2), which applies *mutatis mutandis* in the case of the employment of children pursuant to §2 (1a), where an adolescent is employed by more than one employer, the total duration of such employment must not exceed the limit on working time laid down in §§11 ff.

5. The Austrian legislator has expressly approved derogations from Article 8 (2) in §11 (2), (2a), (2b) and (3), and §12.

Accordingly, the maximum permissible working time of 40 hours can be distributed in order to increase the length of free time, which must be connected to weekly free time, by way of derogation from the permissible weekly working time pursuant to §11 (1). This must be provided for in a collective agreement.

§11 (2a) also states that the working time in the individual weeks of a multi-week calculation period may be extended, provided that the weekly working time does not exceed 40 hours on average. §11 (2a) goes on to stipulate, however, that this must be permitted in a collective agreement, that a similar distribution of working time must exist for comparable adult workers in the enterprise and that the employer cannot be expected to organise working time differently for adolescents. If no work is performed on a working day because of a public holiday, the normal working time lost may be spread between the other working days during a maximum of seven weeks containing the days lost, in order to make it possible for adolescents to enjoy a longer continuous period of time off. The familiarisation period may be extended to a maximum of 13 weeks by works agreement.

If adolescents are used for preparatory and shutting-down tasks, §12 (1) stipulates that the time taken up in this work should, as a matter of principle, be offset by allowing the adolescents to finish their actual work earlier or to begin this work later; as far as possible, the working time should be balanced out in the same calendar week, but at the latest in the following calendar week. If required for urgent business reasons, the permissible duration of working time pursuant to §11 may be extended, pursuant to §12 (2), for adolescents over the age of 16 by half an hour a day in order to carry out preparatory and shutting-down tasks in the following cases: cleaning and maintenance work, if such work cannot be carried out during normal operation without causing an interruption or considerable

disruption (§12 (2) No 1); work that is essential for the resumption or continuation of full operation (§12 (2) No 2); work on subsequent customer service, including the associated clearing-up operations required (§12 (2) No 3). However, the duration of the overtime exceeding maximum working hours pursuant to §12 (2) may not exceed a total of three hours a week; the daily working time resulting from §12 (2) and §11 may not exceed nine and a half hours under any circumstances.

§11 (2) and (3) and §12 apply to children who are following an apprenticeship pursuant to §2 (1a) *mutatis mutandis*.

### **Article 9 – Night work**

1. Pursuant to §17 (1), children as defined in § 2 (1a) may not be employed between 8 p.m. and 6 a.m.

§17 (1) also transposes Article 9 (1) (b): adolescents may not be employed between 8 p.m. and 6 a.m.

- 2.

- a) §17 (2)-(6) authorise exceptions from the ban on night work for adolescents.

Accordingly, adolescents over the age of 16 may be employed in the hotel and catering industry up to 10 p.m. pursuant to §17 (2). In firms operating more than one shift, §17 (3) permits the employment of adolescents over the age of 16 up to 10 p.m. every other week. In firms operating more than one shift, pursuant to §17 (3a) it is also permissible to employ adolescents from 5 a.m. if there is no reasonable way of reaching work for a later starting time. However, this expressly does not apply to children within the meaning of §2 (1a).

In the case of concerts, theatrical performances, other performances and in photography, film recording, television recording and tape recording, pursuant to §17 (4) adolescents may be employed up to 11 p.m.

In bakeries that do not come under the 1996 Bakery Workers Act, trainee bakers aged 15 and over may be employed from 4 a.m. in work that forms part of vocational training, pursuant to §17 (5).

In addition, adolescents who are being trained in the executive class for health and patient care may be employed at night in the last year of their training pursuant to §17 (6) - where this is necessary to achieve the training objective - under the following conditions: the maximum number of night shifts may not exceed 30 in any one training year; the maximum number of night shifts must not exceed five a month; it is not permitted to work successive night shifts; night work may only be performed under the supervision of a qualified nurse; after the night work, rest time of at least 12 hours must be granted.

- b) None of the exceptions defined in §17 (25) justifies the employment of adolescents between midnight and 4 a.m.

The Austrian legislator has used the exemption authorisation in Article 9 (2) (b), second sentence, only in §17 (6) for the area of health and patient care (see above).

3. Article 9 (3) of the Directive is transposed by §17 (7).

## Article 10 – Rest periods

1.
  - a) This provision is transposed in §16 (1) No 1, which stipulates that children must be given an uninterrupted rest period of at least 14 hours. Pursuant to § 16 (2), the rest period must be granted within 24 hours of the start of work.
  - b) In application of Article 10 (1) (b), §16 (1) No 2, in conjunction with the first sentence of § 16 (2), stipulates that adolescents must be given an uninterrupted rest period of at least 12 hours at the end of the working day and within 24 hours of the start of work.
2. The first sentence of §19 (1) corresponds to Article 10 (2) of the Directive: adolescents must be provided with an uninterrupted rest period of two calendar days per week. The second sentence of §19 (2) goes on to stipulate that whenever adolescents are employed on Saturdays, they may not be employed on the Monday of the following calendar week. Furthermore, adolescents who are employed on Saturdays and then on the immediately following Sunday are entitled to an uninterrupted rest period of two successive calendar days in the week following the Sunday work, pursuant to the first sentence of §19 (3). In addition, the first sentence of §19 (4) stipulates that adolescents in the hotel and catering trade are entitled to an uninterrupted weekly rest period of two consecutive calendar days. §19 applies *mutatis mutandis* to children who perform work within the meaning of §2 (1a).

The legislator took advantage of the possibility of shortening the rest period by the adoption of §19 (1a). Under this provision, the two calendar days of the weekly rest period do not have to be consecutive if this is required for organisational reasons or in the interests of the adolescents. The part of the weekly rest period that contains the Sunday must last at least 43 hours, except where the collective agreement provides otherwise.

Moreover, the second sentence of §19 (4) stipulates that an uninterrupted weekly rest period need not be provided in the hotel and catering trade if a weekly rest period of at least 43 hours is provided and if the following working week includes a day on which the hotel or restaurant is shut and on which the adolescents concerned are not employed.

Pursuant to the exemption provision in §19 (5), a collective agreement may permit a reduction in the weekly rest period pursuant to §19 (1) and (2) for adolescents who are receiving training in the occupations of baker, pastry cook, butcher or dairy expert and who are employed primarily in the handling or processing of fresh foodstuffs, provided that the rest needs of the adolescents are met through other measures. In any given week, the uninterrupted rest period must not be less than 43 hours.

For adolescents who do not come under §19 (4) or (5), the collective agreement may allow, pursuant to §19 (7), notwithstanding subparagraphs (1) and (2), for organisational reasons or in the interests of the adolescents, the duration of the weekly rest period to be reduced to 43 uninterrupted hours in individual weeks if the average weekly rest period lasts at least 48 hours over a calculation period to be laid down by collective agreement.

According to §18 (1) and (2), and the second sentence of §19 (1), which, under §2 (1a), apply to children *mutatis mutandis*, adolescents may not be employed on Sundays or statutory public holidays; a slightly different arrangement applies

according to §18 (2), only in the hotel and catering trade, patient care institutions and nursing homes, for concerts, theatrical and other performances and to work at sports grounds and playgrounds. Accordingly, the second sentence of §19 (1) stipulates that the weekly rest period must include Sundays, unless employment on Sundays is permitted pursuant to §18.

3. and 4. The Austrian legislator has not made use of these exemption authorisations.

### **Article 11 – Annual rest**

The Austrian legislator took advantage of the opportunity provided in Article 4 (2) (b) and (c) only by adopting §2 (1a). However, this applies only to children who are no longer subject to compulsory schooling. Consequently, Article 11 did not need to be transposed into Austrian law.

### **Article 12 – Breaks**

§15 (1) corresponds to Article 12, which, pursuant to §2 (1a), applies *mutatis mutandis* to the employment of children. Under this provision, where daily working time lasts longer than four and a half hours, a break of at least 30 minutes must be provided. Under § 15 (2), the break must be given after 6 hours at the latest. Pursuant to §15 (4), the adolescents may not do any work during breaks and may not be obliged to be on call.

### **Article 13 – Work by adolescents in the event of *force majeure***

According to §20, in the case of temporary work which needs to be carried out immediately in an emergency and for which no adult workers are available, §17 does not apply to adolescents over the age of 16. In these cases, the limits of regular working time pursuant to §11 may be exceeded for adolescents over the age of 16; compensation in the form of time off must be provided within three weeks. Moreover, the breaks within the meaning of §15 and the rest periods within the meaning of §16 may be reduced, in which case a rest period must be extended accordingly within three weeks.

Under §20, adolescents must be at least 16. There can therefore be no corresponding application to children within the meaning of §2 (1a).

### **Article 14 – Measures**

Article 14 is transposed by §§30 and 31. §30 stipulates that any person who fails to comply with the KJBG or an ordinance issued on the basis of the KJBG shall be punished by the district administrative body with a fine of ATS 1 000-15 000, and of ATS 3 000-30 000 in the event of a repeat offence, or be imprisoned for between three days and six weeks. This applies unless the act is already liable to a more serious punishment under other laws. Employers and their representatives who are repeatedly punished for infringements of §30 may, under §31 (1), be banned from employing adolescents for a limited period or permanently. The same possibility exists under §31 (2) if the employer or his authorised representative has been found guilty of a gross breach of duty concerning the adolescents employed by him or if there are grounds to consider the employer or his authorised representative to be morally unsuitable to employ adolescents.



## Portugal

Law 58/99 of 30 June 1999 transposed Directive 33/94 into Portuguese law. It amended several elements of the legal framework for individual labour contracts as approved by Decree-Law 49408 of 24 November 1969 (hereafter referred to as the LCT) and Decree-Law 409/71 of 27 September 1971. Law 116/99 on the general system of administrative penalties in the area of employment and Law 118/99 of 11 August 1999 on administrative penalties for failure to comply with the general system of employment contracts complemented this transposing provision by re-defining the penalties to be applied when regulations protecting young people at work were not respected.

### **Article 1 - Subject**

#### ***Paragraph 1***

Article 74 (4) of the 1976 Constitution of the Portuguese Republic, as amended by Constitutional Law 1/89, prohibits work by young people of school age.

Until the end of the 1980s the duration of compulsory education was six years. It was then increased to nine years, which means that compulsory education today can continue until the age of 15.<sup>13</sup>

### **Article 2 - Scope**

#### ***Paragraph 1***

Article 6 of Law 58/99 states that “the regulations governing work by young people, irrespective of the legal text on which they are based, shall apply to all work performed by young people as a result of an employment contract. Under this provision, all regulations within the LCT and Decree-Law 409/71 governing work by young people are henceforth applicable to all areas of activity, including those which were previously covered by specific regulations, such as domestic service, temporary employment, agricultural labour, maritime and dock labour and artistic and sporting activities.

### **Article 3 - Definitions**

Portuguese labour legislation does not contain any definitions comparable to those established in this Article of the Directive. Generally speaking, the concept of ‘minors’ as defined by Portuguese law corresponds to the concept of ‘young people’ in the Directive.

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<sup>13</sup> Framework Education System Act, Law 46/86 of 14 October 1986; Decree-Law 35/90 of 25 January 1990 on compulsory schooling.

Article 122(2) of the Decree-Law governing employment contracts, however, does contain a definition of light work. The definition contained in Ministerial Order No 714/93 of 3 August 1993, which follows up this Article, limits light work to simple, specific tasks requiring elementary knowledge and not requiring any physical or mental effort likely to harm the minor's health or general development. Law 58/99 amended Article 122(2) of the LCT by specifying that future regulations on light work should cover minors under the age of 16 who are no longer in compulsory education.

As regards the concepts of working time and rest period, Portuguese legislation considers these to be well known and defines notions such as the normal working period and special work, rest times, weekly rest periods, public holidays and leave.

#### **Article 4- Prohibition of work by children**

##### ***Paragraph 1***

The Portuguese Constitution prohibits work by children of school age. At the end of the 1980s the length of children's compulsory education increased to nine years from age six onwards, and generally continues until age 15.

##### ***Paragraph 2***

- a) Portugal has not made use of the derogation from the principle of the prohibition of work by children to cover work performed in cultural or similar activities, as provided for by Article 4(2)a of the Directive.
- b) Portugal has not made use of the derogation, provided by Article 4(2)b of the Directive, from the principle of the prohibition of work by children to cover work performed under a combined work/training scheme or an in-plant work-experience scheme. Apprenticeship contracts are governed by Decree-Law 102/84 of 29 March 1984 and resemble the German work/training model, involving technical-professional training provided by companies and general training provided by a school institution or an appropriate establishment associated with the undertaking. There are no employment contracts in this area, as the company gives the apprentice a 'training scholarship', which is amply subsidised by the Institute for Employment and Professional Training (IEFP). Apprentices should have reached the age of 14 (Article 7 (1)), in accordance with the Directive. They enjoy certain rights and entitlements, such as annual medical examinations, thirty days' paid leave per year, a maximum of eight hours of work per day and forty hours per week, and daytime working between 8 a.m. and 8 p.m.
- c) Light work: Article 122 (2) of the LCT authorises work by minors aged under 16 on the following two conditions: that they have completed their compulsory education and that the activity consists of "light work which, because of the nature of the tasks involved or the particular conditions under which they are performed, will not harm the young person's safety, health, school performance, participation in training or guidance programmes, aptitude to benefit from the training received, or physical, mental or moral development."

### ***Paragraph 3***

The working conditions set out in paragraph 2 (c) were defined by Ministerial Order 714/93, which is currently being amended and remains in force temporarily for those areas not covered by Law 58/99. Law 58/99 formalised the following working conditions established by Order 714/93:

- i. limits of 7 hours of work per day and 35 hours per week;
- ii. the performance of work is prohibited between 8 p.m. and 7 a.m.;
- iii. two rest days per week;
- iv. a mid-day break so that the minor works no more than 4 hours consecutively;
- v. a medical examination certifying that the minor has the mental and physical capacity to perform the tasks required, to be carried out before or, at the latest, two weeks after work starts if the work is urgent and with the agreement of the minor's legal representatives;
- vi. the employer, having assessed the risks associated with the work before the minor begins work and before any major changes to working conditions, is required to inform the minor and his/her legal representatives of the risks identified and the preventive measures adopted.

**Article 5 - Cultural or similar activities:** see the comments on Article 4(2)a of the Directive.

### **Article 6 - General obligations on employers**

#### ***Paragraph 1***

In accordance with Article 121(1) of the current version of the LCT, "*employers must ensure that minors are protected from specific risks to their safety, health, physical, mental and moral development, education and training which are a consequence of their lack of experience, absence of awareness of existing or potential risks or degree of maturity.*"

#### ***Paragraph 2***

Article 121(2) and (3) of the LCT, as amended by Law 58/99, expressly reiterate the provisions of Article 6(2) of the Directive on the hazard assessment to be carried out before work can start. Article 16 of Decree-Law 26/94 of 1 February 1994 states that minors should undergo a medical examination before recruitment and at regular intervals.

### ***Paragraph 3***

Employers are required to inform minors and their legal representatives of the risks associated with the work they will be performing and the relevant preventive measures.

### ***Paragraph 4***

Safety, health and hygiene activities encompass monitoring of minors' working conditions. The general provisions of Decree-Law 26/94 require employers, irrespective of the organisation method chosen, to take all of their workers into account in connection with activities in the area of health, hygiene and safety at work (Article 3(2)). All organisation methods for activities in the area of health, safety and hygiene at work must comply with the legal obligations on the employer as regards protection of the safety, health, physical, mental and moral development of minors and the prevention of specific risks which are a consequence of their lack of experience, absence of awareness of existing or potential risks or degree of maturity.

## **Article 7 - Prohibition of work**

### ***Paragraph 1***

Article 121(1) of the LCT as amended by Law 58/99 states that "employers must prevent" any specific risk which is a consequence of the minors' lack of experience, absence of awareness of existing or potential risks or degree of maturity.

### ***Paragraph 2***

Ministerial Order 715/93 of 3 August 1993 sets out a list of activities prohibited to people under the age of 18 because they involve exposure to substances, procedures or working conditions which are harmful for their physical, mental or moral development.

### ***Paragraph 3***

Portuguese legislation does not provide for any derogation from the prohibitions set out in the above paragraph for the purposes of vocational training.

## **Article 8 - Working time**

### ***Paragraph 1***

a) If apprenticeship is involved, see comments on Article 4(2)b).

b) As regards light work, Article 9-A of Decree-Law 409/71, added by Law 58/99, sets a limit of seven hours per day, or 35 hours per week, for minors who have completed their compulsory education.

## ***Paragraph 2***

The term "adolescents" as used by Portuguese law, covers young people in two age categories:

- those aged fifteen who have completed their compulsory education. They may only carry out light work. The working time limits applicable to them are 7 hours per day and 35 hours per week;

- those who have reached the age of 16. In accordance with Article 9-A (1) of Decree-Law 409/71 their normal working time cannot exceed eight hours per day and 40 hours per week.

***Paragraph 3:*** see comments on Article 4(2)b of the Directive.

## ***Paragraph 4***

Article 9-A of Decree-Law 409/71, adopted by law 58/99, establishes that: "If the minor works for several employers, the weekly rest periods must coincide and the total working periods must not exceed the limits previously referred to", namely 8 hours per day and 40 hours per week or, for light work performed by minors under the age of 16, 7 hours per day and 35 hours per week.

## ***Paragraph 5***

### **Article 9 - Night work**

#### ***Paragraph 1***

a) Light work shall be performed between 7 a.m. and 8 p.m.

b) Law 58/99 amended Article 33 of Decree-Law 409/71, on the night working arrangements for young people covered by an employment contract.

The term "adolescents" in Portuguese law covers young persons having reached the age of 15 who are no longer subject to compulsory schooling and young people having reached the age of 16.

For the former, the law prohibits "*night working for young persons aged under 16, as collective agreements cannot reduce the span of night working time as defined by law*" which is between 8 p.m. and 7 a.m.

Young persons having reached the age of 16 "*may not work at night between 10 p.m. and 6 a.m. or between 11 p.m. and 7 a.m....*"

***Paragraphs 2 a) and b)*** Article 33(3) of Decree-Law 409/71 states that: "*a collective agreement may authorise night work by young people over the age of 16 in specific areas of activity, although night work is still prohibited between midnight and 4 a.m.*" Paragraph 4 continues: "*Young persons over the age of 16 may work at night, including between midnight and 5 a.m., when justified by objective reasons, in cultural, artistic, sporting or advertising activities, provided that compensatory rest time of an equal number of hours is granted to them on the following day or as soon as possible.*"

In both cases paragraph 5 states that " *young persons shall be supervised by an adult during night work where such supervision is necessary to protect their health or safety*".

### **Paragraph 3**

Young people over the age of 16 who perform night work must undergo medical examinations before being assigned to night work, and these examinations must be repeated each year (Article 34 of Decree-Law 409/71 as amended by Law 58/99). The cost of the medical examinations is borne by the employer (Article 15 (3) of Decree-Law 441/91).

## **Article 10 - Rest period**

### ***Paragraph 1***

The new Article 10-A 1 of Decree-Law 409/71 states that: "working hours for young persons under 16 or having reached the age of 16 must include, respectively, a minimum rest period of 14 consecutive hours or 12 consecutive hours between working periods on two successive days."

### ***Paragraph 2***

Weekly rest for young people is regulated by Article 1(1) of Law 58/99 which states that: "*young persons are entitled to two rest days, consecutive if possible, for every seven-day period unless technical reasons or work organisation reasons to be defined by collective agreement justify a weekly rest period of 36 consecutive hours for young persons having reached the age of 16*".

In principle the weekly rest period includes Sundays (Article 51 LCT).

### ***Paragraph 3***

Neither daily nor weekly rest periods for young people may be interrupted.

### ***Paragraph 4***

Law 58/99 provides for derogations from daily and weekly rest periods.

As regards daily rest periods, young persons having reached the age of 16 are authorised (Article 10-A(4) of Decree-Law 409/71) to reduce their daily rest period to 12 consecutive hours when justified for objective reasons, provided this does not harm their health and safety and that compensatory rest is granted on the three days following:

- a) by collective agreement, or authorisation from the general labour inspectorate, to perform work in tourism, hotels, restaurants, hospitals and similar establishments and in activities involving periods of work split up over the day;
- b) where necessary, in order to guarantee rest periods within the normal daily working time, the frequency or duration of which are determined by collective agreement.

The possibility of reducing the daily rest period does not apply to young people performing occasional work for no longer than one month or work which does not normally exceed twenty hours per week (Article 10-A(5) of Decree-Law 409/71):

- a) in domestic service in a private household;
- b) in a family undertaking, provided the work is not harmful, damaging or dangerous to the young person.

Weekly rest may amount to one day for young persons having reached the age of 16 who are performing occasional work for no longer than one month or work which does not normally exceed twenty hours per week:

- a) in domestic service in a private household;
- b) in a family undertaking, provided the work is not harmful, damaging or dangerous to the young person.

In accordance with collective agreements, the weekly rest period may also amount to one day for young people having reached the age of 16 and working on merchant navy vessels, or in hospitals or similar establishments, agriculture, the tourism or hotel sector, restaurants or activities involving periods of work split up over the day, provided there are objective reasons for this reduction and the young people are granted appropriate compensatory rest periods (Article 1 (2) and (3) of Law 58/99).

#### **Article 11 -Annual rest**

Light work does not include provision for a period free of any work during school holidays, but it should be borne in mind that this light work is only authorised for persons who have completed their compulsory education.

#### **Article 12 -Breaks**

Portuguese legislation provides for a break lasting between one and two hours:

- after 4 hours of work for persons under 16,
- after 4 hours 30 minutes of work for persons aged over 16.

#### **Article 13 - Work by adolescents in the case of *force majeure***

This article authorises derogations from the regulations governing work by adolescents as regards the daily and weekly working time, the prohibition of night work, daily rest periods and breaks.

Portuguese legislation provides for only one derogation relative to the prohibition of night work. Young persons having reached the age of 16 may carry out night work which is indispensable because of unusual and unforeseeable elements or exceptional though foreseeable circumstances, the consequences of which could not be avoided, provided no other workers are available and the period does not exceed five working days. In such situations, the young person is entitled to the same number of hours of compensatory rest during the following three weeks (Article 33(6) and (7) of Decree-Law 409/71).

## **Article 14 -Measures**

The system of labour penalties, adopted by the laws of August 1999, establishes the penalties for failing to comply with the rules on the protection of young people at work.

The amount of fines (pecuniary penalties) is determined on the basis of:

- the seriousness of the infringement, classified by the law as minor, serious or very serious;
- the size of the company, classified on the basis of the number of workers and turnover as micro, small, medium-sized or large;
- the intentional fault or negligence of the offender.

Law 116/99 of 4 August 1999 sets the level of fines, in accordance with the classification of the infringement, the size of the business and/or the degree of responsibility.



## Finland

### **INTRODUCTION**

Protection for young workers is based on the current Young Workers Act 998/1993 and on Decree 508/1986 which were adopted in Finland in 1993. Several amendments to the aims of the Directive and certain obligations in accordance with the Directive, for the appropriate implementation of the Act, were carried out in 1996 (amended Act 14.6.1996/408) and came into force on 22.9.1996. Two decisions of the Ministry of Labour have also been adopted in respect of this matter. Finland has undertaken to comply with the ILO Convention No 138 which applies to the minimum age at which young people enter the labour force.

There are additional legal provisions applying to young workers in Finland which also apply to the occupational safety, working time, rest periods and annual holiday entitlement of all workers. There is a very comprehensive body of occupational health and safety authorities as well as occupational safety mechanisms at workplace level.

The number of young people under the age of 18 years in employment is small, although, in accordance with the Act, a young person of 15 can sign a contract of employment on his or her own behalf.

Article 2 of the Young Workers Act lays down the lower age limit of 15 years with the additional requirement that compulsory education be completed.

Before a young person under the age of 18 is employed, there must be reliable evidence of age and proof that compulsory schooling has been completed.

### **Article 2 - Scope**

1. In order to protect young workers and implement the Directive, the existing provisions for the protection of young workers in contractual employment or work performed in public sector service apply to young workers under the age of 18 years in Finland. The provisions which apply to occupational health and safety also apply to the young worker when the work performed includes that in their capacity as a trainee, or involves work in connection with institutional care.
2. The scope of the provisions adopted by virtue of the Finnish Young Workers Act is not restricted by the way in which these are enabled by the Directive, so that domestic work in the home of a private employer is still within the scope of the Act. The Act which applies to employment in domestic work (951/1977) is superseded by the regulatory provisions of the Young Workers Act.

Nor is work carried out in family enterprises outside the scope of the Young Workers Act. The starting point, however, is that the predominant type of employment relationship which comes about in family undertakings in Finland specifically requires entering into a binding contract, based on remuneration. As a result of this, employment relationships between family members are not generally conducted on a contractual basis.

Work on ships, however, is regulated by separate existing legal provisions. The Merchant Shipping Act (423/78), the Seamen's Hours of Work Act (296/76) and the Act on Hours of Work on Vessels plying Finnish Domestic Routes (248/82) also regulate the position of young people who work on ships. An assessment of

the provisions which apply to work on ships in relation to the implementation of the Directive is enclosed as a separate Annex to this report.

### **Article 3 - Definitions**

The terms "young person" and "child" as used in Finnish legislation are equivalent to the definitions of the Directive.

The term "light work" has been defined by the Ministry of Labour Decision on Light Work Suitable for Young People (756/1996). The definition also includes a list of eleven types of employment, which are defined as light work.

### **Article 4 - Prohibition of work by children**

1. Article 2 of the Young Workers Act lays down the lower age limit of 15 years for the hiring of young people, with the additional requirement that compulsory education has been completed.
2.
  - a) Finland has made provision in the legislation such that the prohibition does not apply to children engaged in activities which are referred to in Article 5 of the Directive as cultural activities.
  - b) Finnish law has not made provision for the exemptions.
  - c) Finnish legislation has adopted the regulatory alternative in accordance with Article 4(2)(c). According to Article 2 of the Young Workers Act, a young person of 14, or who will be 14 during the same calendar year in which they are recruited, may be employed when they reach the age of 14 years, provided that the work in question is the type of light work which does not adversely affect their health or development or interfere with their attendance at school.

### **Article 5 - Cultural or similar activities**

1. Permission from the competent authority, which authorises exemptions from the legislation, is a condition of employing children in artistic or cultural performances or similar events, concerned with sport or advertising.
2. Article 15 of the Young Workers Act provides for advance application for permission from the competent authority in respect of the requirements for the employment of children. The exemptions department may allow children to be engaged in work in artistic or cultural performances and in similar events, provided that the activity concerned does not endanger the child's safety, or cause a risk to his or her health, development or attendance at school. Chapter 2a of the Act on the Labour Council and Exemptions concerning Labour Protection (608/1948) contains provisions on the procedures for matters connected with exemptions.
3. Permission from the exemptions department is also required for the employment of a 14-year-old in Finland where the performance of such work involves cultural activities, where called for by reason of vocational education or other important ground. An exemption may, however, be granted to allow a child of 14 to remain

in work which is other than temporary, during school hours; exemptions may also be made from the provisions which apply to the limiting of working hours.

### **Article 6 - General obligations on employers**

1. Under Article 9 of the Young Workers Act, the employer is responsible for ensuring that work performed is not harmful to the physical or mental development of the young person and that it does not require greater effort or responsibility than can reasonably be expected from young persons of their age and strength.
2. According to Article 4 of the decree adopted for the protection of young workers, an adolescent who has reached the age of 16 years may carry out work regarded as being hazardous, provided that protective measures or other forms of protection are provided, so that there is no specific risk to health or from accidents. An assessment of the health risks involved must be made before work begins or if a significant change occurs in working conditions with the assistance of staff from the Occupational Health services. The assessment must attach particular attention to installations, materials and working conditions as well as the personal circumstances of the young worker.

The employer must notify the competent authorities before work begins.

There is provision for an assessment of the state of health of a worker under the age of 18 years in Article 11 of the Young Workers Act. This general legal provision obliges the employer to have the young worker examined medically, at the employer's expense, before work commences, or within one month of its commencement. The medical assessment has to report on the young person's suitability for the work he or she is intending to do and must confirm that the work is not hazardous. Such health assessments are not, however, required when the work involved is: 1) light office or commercial work or similar, 2) not more than three months duration, and 3) where the worker presents a medical certificate which is less than one year old and which adequately demonstrates the suitability of the young worker for the employment in question.

There are additional general provisions on physical examinations at the workplace in the Occupational Health Care Act and in the Council of State decision 1348/1994. According to Article 4 of this decision, a physical examination of the worker must be performed when there are fundamental changes in the tasks carried out at the workplace.

There are provisions in the decision of the Council of State (1672/1992) for initial health assessments and for periodic health assessments and examinations for work in which there is a specific risk of illness. These provisions also apply to young people. In accordance with Article 4 of the decision, a preliminary examination for work which may cause a risk of illness must be carried out before work commences, or at the latest one month after work has commenced. Periodic health checks must be performed in the course of employment, generally at intervals of one to three years.

3. In accordance with Article 10 of the Young Workers Act, the employer has to provide the young person with the necessary training and instruction for performing work to ensure that he or she avoids the risks arising from it. Article 5 of Decree 508/1986 provides that young people be familiarised with matters relating to health risks and health and safety at work, etc. Before work begins, it

has to be ascertained that the worker is sufficiently familiar with the risks associated with that type of work and that he or she is able to comply with the instructions for health and safety at work. The young worker must be placed with an experienced and skilled person for guidance and instruction for the period of time necessary to assimilate the working method or operation.

Article 5 (4) of the abovementioned decree requires the employer to inform the parent or guardian of a young person still subject to compulsory education of any possible risks as well as all the measures which have been put in place regarding health and safety.

4. The measures which apply to the protection of young workers have been linked with the general occupational health and safety arrangements in Finland.

### **Article 7 - Vulnerability of young people - Prohibition of work**

1. The provisions of Article 10 of the Young Workers Act, in conjunction with Article 5 of Decree (508/1986), protect young workers from those types of hazards which they cannot recognise on account of their immaturity and inexperience and requires the employer to guide, train and otherwise make the young worker familiar with these hazards.
2. Young people are prohibited in general from performing work which, in accordance with Article 2 of Decree 508/1986, is hazardous to the young workers' physical or mental development or which demands greater effort or responsibility than can reasonably be expected, taking account of the young person's age and strength .

Points a) and d): The prohibition has been implemented in Article 2 (1-3) of the above-mentioned decree in addition to the general provisions therein.

Points b) and c): The prohibition has been implemented in Article 2 (6-8) of the decree.

Point d): The prohibition has been implemented in Article 2 (2-3) of the decree.

Point e): The prohibition has been implemented in Article 2 (9).

3. On the basis of Article 6 of Decree 508/1996, the competent authorities have the right to issue permission for exemptions to the prohibition, on conditions they specify, in respect of a young person who has reached the age of 15 years, where it is necessary in terms of the occupational development of the young person and on condition that the young person works under the supervision of an experienced and skilled worker and that the intention of the decree is adequately ensured in other ways.

### **Article 8. Working time**

1.
  - a) Provisions have been made for children in respect of compulsory attendance at school; the total length of the time spent at school and in work must not exceed 8 hours. The total number of weekly working hours must not exceed 12.

- b) In accordance with Article 4 (2) of the Young Workers Act, the daily working hours of a child in compulsory education are a maximum of two hours during school days and seven hours on other days.
  - c) A child under the age of 15 years may not work more than a maximum of seven hours per day and thirty-five hours per week during the school holidays in accordance with Article 4 (3) of the Young Workers Act.
2. According to the Young Workers Act, the regular working time of young people between 15 and 17 must not be longer than the hours for the same work carried out by a person who has reached the age of 18. In accordance with Article 6 of the Working Hours (Restriction) Act (605/1996), the regular number of hours of work may not exceed eight hours per day and in general a maximum of forty hours per week. There may be exceptions so that weekly working hours are levelled out to be forty hours over a period of 52 weeks. This flexibility option is, however, restricted in Article 6 of the Young Workers Act by the provision that the young worker's hours of work must not exceed either nine hours per day or forty-eight hours per week.
  3. The Apprenticeship Contracts Act (1605/1992) includes an arrangement in which vocational study is carried out at the workplace in conjunction with practical work and is supplemented by theoretical study. This vocational apprenticeship system can generally apply to those who have reached the age of 15 and completed their compulsory education. Article 4 of the Young Workers Act provides that combined training and work schemes may not exceed eight hours per day and forty hours per week.
  4. The entire Finnish system regarding working hours is based on the principle that hours of work are regulated by the employer. The matter of working hours is in general the responsibility of each individual employer.
  5. Overtime work by young people aged between 15 and 17 may be permitted on condition that it does not jeopardise the general scheme of the Directive. Young people in this age group can work a maximum of 80 hours' overtime per year. Children under 15 years may not do overtime or emergency work.

### **Article 9 - Night work**

1.
  - a) The working hours of a child under the age of 15 must fall between 8 a.m. and 8 p.m. in accordance with Article 7(3) of the Young Workers Act, except where there are justifiable reasons, when they may fall between 6 a.m. and 8 p.m.
  - b) The working hours of adolescents aged 15 to 17 years must be between the hours of 6 a.m. and 10 p.m.
2. Work carried out by a 15 to 17 year old which is approved and supervised by the public authorities for the purpose of obtaining vocational training may, however, be arranged in two shifts, in accordance with Article 7 (3) of the Young Workers Act, but no later than midnight. A young worker carrying out domestic work in the home of his or her employer may, subject to the consent of the young worker, work until 11 p.m. for specific reasons.

The exemptions department of the Industrial Safety authority may also grant an exception from the ban on night work performed by a young person who has reached the age of 14 years provided that it is necessary for the adolescent's occupational development or for some other important reason.

3. There are no specific provisions for special free medical examinations for young workers who regularly carry out night work. The provision in Article 11 of the Young Workers Act does, however, require that a health assessment be carried out before a young worker commences employment, or within a month of commencing employment, at the employer's expense.

### **Article 10 - Rest period**

1.
  - a) A child under the age of 15 years must be given a minimum uninterrupted rest period of 14 consecutive hours for each twenty-four hour period in accordance with Article 8 (2) of the Young Workers Act.
  - b) According to Article 8 (1) of the Young Workers Act, a young worker who has reached the age of 15 years must be given a minimum uninterrupted period of rest of 12 hours duration in each twenty-four hour period.
2. A young worker must be given an uninterrupted rest period of 38 hours of free time each week in accordance with Article 8 (4) of the Young Workers Act.

### **Article 11 - Annual rest**

According to Article 2 (2) of the Young Workers Act, a child of 14e, or a child who will reach the age of 14 in the calendar year he/she commences work, may undertake light work if the duration of work does not exceed half the child's school holiday.

### **Article 12 - Breaks**

In accordance with Article 8 of the Young Workers Act, when the daily working time of a young worker is more than four and a half hours, the young worker must be given a break of at least 30 minutes during which he is entitled to leave the work premises.

### **Article 13 - Work by adolescents in the event of force majeure**

According to article 5 of the Young Workers Act relating to emergency work Article 21 of the Working Hours (Restriction) Act) has to be applied to young workers, provided that adult workers are not available and that the adolescents are allowed equivalent compensatory rest time within the following three weeks.

### **Article 14 - Measures**

According to Article 18 of the Young Workers Act, the penalty for infringement of the health and safety and working time provisions is to be found in Chapter 47, Parts 1 and 2 of the Criminal Code. The penalty imposed for failure to comply can be a fine

or a custodial sentence of six months or a year. According to Article 18 (3) of the Young Workers Act, the employer, or representative of the employer, who contravenes the provisions applying to the protection of young workers in ways other than those indicated above is be liable to a fine for failure to comply with therewith.

## Sweden

### **Introduction**

The Swedish law on the working environment (AML 1997:1160) and the Swedish statute on the working environment (AMF 1997:1166) contain the general provisions regarding labour protection. The fifth chapter of the above mentioned law concerns in particular persons under the age of 18.

In order to implement Council Directive 94/33/EC, more detailed provisions for underage persons came into force on 1 November 1996 (AFS 1996:1, sections 5, 7, 8 and 9).

The AML section 2, chapter 5 prohibits the employment of any person under the age of 16 or any young person who has not completed compulsory education. However, some exemptions have been issued.

In Sweden, therefore, work by young people is regulated through the above mentioned provisions and regulations.

### **Article 2 - Scope**

1. Chapter 5 of the AML and the AFS provisions based on it apply, in principle, to all work carried out by persons under the age of 18, including those who work without employee status, for example, as an entrepreneur or in a self-employed capacity. Employment on ships is regulated separately. However, certain provisions relate only to work carried out as an employee.
2. Work carried out in private households and family businesses is not explicitly excluded from these protective provisions in Sweden.

### **Article 3 - Definitions**

In section 1 of article 5 of the AML only the concept "underage" is defined (under the age of 18). But the provisions concerning underage persons include more detail on age.

### **Article 4 - Prohibition of work by children**

1. In general, children under the age of 16 and those still in compulsory education are prohibited from working as per section 2 of chapter 5 of the AML. However, a 13-year-old may do light work that does not damage his/her health, development or schooling.

The AFS section 9, subparagraph 7 requires that permission for the child to work be obtained from the child's guardian. If the work is done before or after school, permission must be obtained from the school management if it is performed on more than five schooldays in a term.

2.
  - a) Under the AFS article 10, subparagraph 3 a child under the age of 13 may be given permission by the labour inspection authority to work as an artist performer, actor/actress or similar, if the work results only in minor physical and mental fatigue.
  - b) There are no specific provisions concerning combined work and education.



- c) The special provision in section 2 of chapter 5 of the AML covers this option in respect of 13-year-old children. The jobs which a child under 13 is permitted to undertake are listed in section 10 of the AFS.
- 3) Sweden has defined, in accordance with Article 4(2)(c), the conditions for light work carried out by children.

**Article 5 - Cultural or similar activities**

- 1. A temporary permit from the labour inspection (AFS sec. 10) is required for employment of children under the age of 13 for cultural or artistic activities.
- 2. The general provisions concerning underage persons, which safeguard children's health and safety and ensure that their education is not jeopardised, apply to children employed in cultural activities.

Under the AML chapter 5, section 2 subparagraph 3, exceptional permission to employ children under the age of 13 is granted with reference to the employee protection regulations, and any divergence therefrom can apply only to very light work, the nature of which is such that specific and significant implementation problems would arise should the exemption not be granted.

- 3. Employing children no younger than 13 years of age is permitted (AML section 2, paragraph 2) without prior authorisation from the competent authority in cases where the work is for cultural purposes.

**Article 6 - General obligations on employers**

- 1. Those employing young people are responsible for fulfilling the obligations concerning the protection of health and safety of underage persons. According to the AML chapter 5, section 3, paragraph 1 underage children must not be employed or asked to do any work which could lead to a risk of injury or overexertion, or which would have other harmful effects on the young person's health or development. There is a total ban on employment of young people in any of the jobs mentioned in the dangerous jobs list.
- 2. The obligation to assess risk factors concerning work by young people has not been regulated separately as an obligation on the employer. There is no specific provision, as far as young people are concerned, regarding the timing of and the obligation to fulfil such an assessment where there is a significant change in working conditions. However, in chapters 2 and 3 of the AML there are general provisions regarding the employer's obligations concerning safety at work. The AML chapter 3, section 2a contains a specific provision concerning the employer's obligation to plan, manage and control activities systematically in such way that the working environment fulfils the conditions of the AML and the regulations based on it. Section 2 of the AFS also contains regulations concerning the careful selection of jobs for underage persons and ensuring that these jobs are safe.

Section 3 of the AFS requires assessment of particular risk to underage children caused by work. Such assessment must, if necessary, be based on a health check of the underage child which is to be repeated when necessary. The health check is free for the young person.

- 3. Under Section 2 of the AFS it is compulsory for the underage person to receive all necessary information, notably on safety at work. According to section 4 of the

relevant provision, the labour protection representative must be advised as to when and for which duties an underage person is employed. If the young person has not reached the age of 16 during the calendar year, or has not yet completed compulsory education, his/her guardian must be informed of the safety conditions.

4. General health and safety at work conditions, which are also applied at workplaces, have been combined with safety mechanisms relating to young people.

#### **Article 7 - Vulnerability of young people / prohibition of work**

1. The AML chapter 5, section 3, paragraph 1 prohibits the employment or use of underage children for any work which could lead to a risk of injury, overexertion, or any other harmful occurrence which would affect the young person's health or development.
2. Under section 5 of the AFS, underage persons are prohibited from doing the jobs listed in the dangerous jobs appendix 1. However, some exceptions are permitted in relation to planned training situations where the work is supervised and monitored by a third party.

In addition, under section 7 of the AFS, young people are expressly prohibited from performing the work mentioned in appendix 2 to the AFS.

3. The exemption option in subparagraph 1 of the AFS section 5 relating to hazardous jobs for underage persons concerns all young people and not solely 15 to 17-year-olds as in exemption 2. According to exemption 1, an underage person may undertake hazardous jobs provided that the jobs are a part of teaching supervised by a teacher and take place in a school building or other similar place specially organised for teaching. The teaching must also follow a curriculum confirmed by an authority or labour market organisation. Furthermore, for certain jobs, as mentioned in appendix 1, a doctor's assessment is required of the risks involved in employing a young person.

#### **Article 8 - Working time**

1.
  - a) Section 9 of the AFS does not contain a specific provision limiting the total working time of a child in combined education and work or at work experience to eight hours per day and 40 hours per week. The relevant provision concerns persons under the age of 16 in compulsory education who work as employees: regular working hours and overtime worked as an employee are deemed to be part of working time. So this provision does not impose restrictions on work done by a student in full-time education. Under Article 8(3) of the Directive a child's time in education and at work are to be added together for the purposes of the total working time which, for example, during work experience as a part of education must not exceed 8 hours per day and 40 hours per week in the case of children. Such restrictions on combined working time are not included in the Swedish statutes.
  - b) The AFS section 9, subparagraph 2 restricts the daily working time of an employed child to a maximum of two hours a day and 12 hours a week during school days, but does not regulate teaching hours during school days.

- c) According to the second sentence in AFS section 9, subparagraph 2, working time for a child in education is restricted to seven hours on non-school days. During school holidays lasting at least one week, the child's working time must not exceed 35 hours a week. However, for children aged 15 and over, this working time may not exceed 8 hours per day, 40 hours per week.
- 2. The AFS section 8, subparagraph 1 limits the working hours for 15 to 17-year-old workers to 8 hours per day and 40 hours per week.
- 3. As far as combined education and working situations are concerned, there are no provisions in Sweden where a young person's time in education and at work as an employee would be combined. The working time limits relate solely to working hours on an employee basis.
- 4. The Swedish system for regulating working hours is based on a mechanism which applies, as far as employees are concerned, to the employer and is regulated by the general law on working time (SFS 1982:673).
- 5. Under section 14 of the AFS, the trade supervisory authority may, should there be specific grounds, grant an exemption from the working time restrictions in the AFS section 9 for a particular underage person; however, as far as children are concerned, this is only for case 1 (cultural activities) mentioned in the provision. An exemption may be granted in respect of the working time of a 15 to 17-year-old on a specific ground. In the comments on the above mentioned provision of the AFS, there are more detailed clauses concerning application of an exemption. The conditions for the exemption include, for example, the nature of the work, its importance to the underage person's upbringing or social reasons.

#### **Article 9 - Night work**

- 1.
  - a) Under the AFS section 9, subparagraph 3, children are not allowed to work between the hours of 20.00 and 06.00.
  - b) Under the AFS section 8, 15 to 17-year-olds are not permitted to work either between the hours of 22.00 and 06.00 or between 23.00 and 07.00.
- 2. According to the AFS section 13, the Swedish trade supervisory authority may, for a specific reason, grant an exemption from the prohibition on night work for a particular underage person or for a specific task but not between the hours of 24.00 and 04.00. In addition, as far as the prohibition on night work for 15 to 17-year olds is concerned, permission may be granted to deviate from the restriction concerning the hours between 24.00 and 04.00, if the work is carried out in health care, or for cultural, artistic, sporting or advertising activities.
- 3. There is no specific provision for 15 to 17-year-olds who have been granted an exemption for night work to receive a free health check and ability assessment or subsequent repetition thereof, prior to starting night work. However, the comments in the special provisions of the AFS sections 12 to 15 state that, when granting an exemption, the Swedish trade supervisory authority may request a health check, a statement from a school or work safety representative, or may lay down any other special condition.

## **Article 10 - Rest period**

1.
  - a) According to the AFS section 9, subparagraph 4, a worker under 16 must have a continuous break from work of at least 14 hours for rest.
  - b) According to the AFS section 8, subparagraph 3, a 15 to 17-year-old worker must have a continuous break from work of at least 12 hours for rest.
2. According to the AFS section 9, subparagraph 5, children under the age of 15 must have a continuous break from work for each seven day period. This weekly break should, where possible, consist of two consecutive days and be at a weekend. The weekly break must be not less than 36 hours and should be combined with a break from school. Under the AFS section 8, subparagraph 4, 15 to 17-year-olds should be given the same weekly break, without the stipulation concerning the break from school.
3. et
4. According to the AFS section 14, subparagraph 2, the Swedish trade supervisory authority may, on specific grounds, grant an exemption from the provision concerning the 15-year-old's weekly break, if the child's work consists of work in several places and is of short duration. In addition, under the AFS section 13, subparagraph 4, the weekly breaks in respect of 15 to 17-year-olds can be set aside in the abovementioned situations and also where the work is in healthcare, agriculture, tourism, hotel and catering or cultural activities.

## **Article 11 - Annual rest**

According to the AFS section 9, subparagraph 6, children must be allowed at least 4 weeks continuous break from work each calendar year. This annual leave must be in conjunction with school holidays.

## **Article 12 - Breaks**

According to the AFS section 11, an underage worker must be allowed at least 30 minutes break, and if possible it should be continuous when the working day exceeds 4.5 hours.

## **Article 13 - Work by adolescents in the event of force majeure**

The provisions and regulations concerning the protection of adolescents do not contain any special provisions regarding emergency overtime by underage persons so the general provision of the general Working Hours Act (1982:373) section 9 applies. However, it does not contain supplementary clauses concerning 15 to 17-year-olds which establish that young people may be used for emergency overtime when no adults are available and they must be compensated with free time within 3 weeks.

## **Article 14 - Measures**

In accordance with the AFS section 16, sections 5, 7, 8 and 9 of the special provision are comparable with the legal provisions of section 5 of the AML. Based on the law on working environment, chapter 8, section 2, intentional or negligent infringement of the provision concerning young people in particular may result in a fine. In addition, the labour protection authority ensures that other provisions and regulations concerning underage persons are observed (AML chapter 7). The authorities have the right to take the necessary action in the event of infringement.

## United Kingdom

### **INTRODUCTION**

The Directive is implemented in Great Britain and Northern Ireland by various sets of Regulations some of which amend existing legislation. In Britain, the Health and Safety (Young Persons) Regulations 1997<sup>14</sup> amend the Management of Health and Safety at Work Regulations 1992<sup>15</sup> so as to implement Articles 6 and 7 of the Directive. Similarly, in Northern Ireland, the Health and Safety (Young Persons) Regulations 1992<sup>16</sup> amend the Management of Health and Safety at Work Regulations<sup>17</sup> so as to implement Articles 6 and 7 of the Directive in that part of the United Kingdom. These Regulations came into force, respectively, on 3 March 1997 and 1 October 1997 and are referred to hereafter collectively as the 1997 Regulations.

In Britain, the Children (Protection at Work) Regulations 1998<sup>18</sup> amend the Children and Young Persons Acts 1933 and 1963 and the Children and Young Persons (Scotland) Act 1937 in order to implement, in relation to children, the relevant provisions of the Directive. These Regulations came into force on 4 August 1998 and are hereafter referred to as the 1998 Regulations (similar Regulations for Northern Ireland).

Two further sets of Regulations are adopted. The Working Time Regulations (SI 1998 No. 1833) implements not only the Directive's requirements in relation to "adolescent" workers but will also implement the provisions of Council Directive 93/104/EC concerning certain aspects of the organisation of working time. These Regulations came into force in Great Britain on 1 October 1998 (similar Regulations for Northern Ireland). The second set of Regulations implements the Directive's requirements in relation to children and young persons employed on sea-going vessels: the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations<sup>19</sup>.

Under Merchant Shipping Act 1995 (section 55), no person under school-leaving age may be employed at sea, except as specified in regulations made under that section. There are no such regulations in force.

### **Article 2 - Scope**

1. The 1997 Regulations define a "child" as "a person who is not over compulsory school age" and a "young person" as "any person who has not attained the age of eighteen". The Working Time Regulations defines an "adult worker" as a "worker who has attained the age of 18" and a "young worker" as a worker who has attained the age of 15 but not the age of 18 and who is over compulsory school age. A worker

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14 (SI 1997/135).

15 (SI 1992/2051 as amended by SI 1994/2865).

16 (NI) (SR 1997/387).

17 (NI) (SR 1992/459 as amended by SR 1994/478).

18 (SI 1998/276).

19 (SI 1998/2411)

is defined as an individual who has entered into or works under a contract of employment or any other contract, whether express or implied, oral or in writing, "whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual."

Consequently the Working Time Regulations apply to all those under contract to carry out work in person unless such persons are genuinely in business on their own account. Except in relation to the entitlement to paid annual leave there is no requirement for the person to have been in the continuous service of the employer for any specific period, nor is there a requirement that the person is expected to work for more than a specific number of hours before they have entitlements under the Regulations.

2. Regulation 2 (3) of the 1997 Regulations provides that the Management Regulations do not apply to "occasional work or short-term work involving (a) domestic service in a private household; or (b) work regarded as not being harmful, damaging or dangerous to young people in a family undertaking".

3. The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998 apply to all activities of young persons engaged as workers on UK ships, and the inspection and detention provisions apply to non-UK ships in UK waters - subject to the force majeure provisions below.

### **Article 3 - Definitions**

For the definition of "child" and "young person" see Article 2 supra.

"Light work" is meaning 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 safety, health or development of children and is not such as to be harmful to their attendance at school or their participation in work experience or their capacity to benefit from the instruction received or the experienced gained (Regulations 2 and 8 of the 1998 Regulations).

The Working Time Regulations and the Merchant Shipping and Fishing Vessels Regulations define "working time" as meaning any period during which the worker is working, at his employer's disposal and carrying out his or her activity or duties and any additional period which is deemed to be relevant training or treated as working time under a relevant agreement.

"Rest period" is defined by the Working Time Regulations as meaning "a period which is not working time, other than a rest break or leave to which the worker is entitled under these Regulations".

The Merchant Shipping and Fishing Vessels Regulations define rest period as any period which is not working time.

### **Article 4 - Prohibition of work by children**

1. The 1998 Regulations raise to 14 years the age at which a child may be employed in any work, other than as an employee of his or her parent or guardian in light agricultural or horticultural work on an occasional basis.

In Northern Ireland, the Employment of Children Regulations (NI) 1996 provide that no person under school leaving age (a “child”) shall be employed in any occupation other than: delivery of newspapers, milk, groceries, foodstuffs, flowers or drapery goods; office work except in premises licensed for the sale of intoxicating liquor, betting or gaming; hotel and catering work except in the kitchen or portions of premises licensed for the sale of intoxicating liquor; work as a shop assistant excluding any premises licensed for the sale of intoxicating liquor, betting or gaming; domestic work; light agricultural work or horticultural work for the parents of the child concerned.

The employment of Women, Young Persons and Children Act 1920 prohibits the employment of children below compulsory school leaving age in industrial undertakings. Under the Education (National Curriculum) (Exceptions at Key Stage 4) Regulations 1998, school pupils above 14 years may take part in work experience under strictly supervised circumstances in industrial undertakings, with the permission of the local education authority.

2. a) Sections 37 to 43 of the Children and Young Persons Act 1963 and the Children (Performances) Regulations 1968 (SI 1968/1728) apply to any child under the minimum school leaving age who takes part in a performance in connection with which a charge is made or in licensed premises or broadcast or recorded for broadcasting or filmed for public exhibition: for Northern Ireland see Regulation 137 of the Children (NI) Order 1995 (SI 1995/755 (N.I. 2)). The general rule is that no child may take part in any such performance unless licensed to do so by the local authority in which area he or she lives. Such licenses will only be granted where the local authority is satisfied about the child’s fitness and about provisions made for his or her health, treatment and education. A child under the age of 14 may not be licensed at all unless to act or dance a part, which cannot be taken by someone older, or the performance and the child’s part in it is wholly or mainly musical.

The 1963 Act and the Regulations made thereunder provide that a child may not take part in a performance which is not a sound or television performance (live or recorded) or a performance pre-recorded with a view to use in a film, if the duration of the entire production, including intervals, exceeds 3½ hours; or if his or her part, or the aggregate of his or her appearances, exceeds 2½ hours. No child may remain at the place of performance later than 30 minutes after the end of his or her part, or 10 p.m., if he or she is under 13, or 10.30 p.m., if he or she is 13 or over, whichever is earlier. If, however, the performance could not be given without his or her remaining until later, he or she may be present until 11 p.m. on not more than eight evenings in any period of four consecutive weeks and not more than three evenings in any one week. Nor may a child be present at a place of performance or rehearsal before 10 a.m. on any day. The daily regime of children taking part in broadcast and recorded performances is set out in annex I.

c) The 1998 Regulations permit the employment of children over the age of 13 years in categories of “light work” specified in local authority bylaws.

### **Article 5 - Cultural or similar activities**

Regulation 12 of the 1998 Regulations amends section 37 of the 1963 Act, which contains restrictions on children taking part in public performances. The present requirements for a Local Authority licence are extended to require a licence to be obtained before a child may take in a sport or work as a model in circumstances where

payment is made either to the child or to someone else. Performing days in any 12-month period must not exceed 40 for children under the age of 14 or 80 for children aged 14 and over. All licences are subject to Local Authority approval of arrangements for education, lodgings (where relevant) and place of performance and/or rehearsals.

#### **Article 6 - General obligations on employers**

1. Regulation 13D, paragraph 1 of the Management Regulations provides that every employer must ensure that young persons are protected at work from any risks to their health or safety which are a consequence of their lack of experience, of absence of awareness of existing or potential risks or of the fact that young persons have not yet fully matured.

2. Regulation 2(4) amends the Management Regulations so as to provide that an employer shall not employ a young person unless the employer has, in relation to risks to the health and safety of young persons, made or reviewed a risk assessment. In making or reviewing this assessment, an employer shall take particular account of : the inexperience, lack of awareness of risks and immaturity of young persons; the risks from agents, processes and work listed in the Annex to the Directive, and the points mentioned in Article 6 (2) lit a) – e).

The same provisions are contained in the Merchant Shipping and Fishing Vessels Regulations (reg 5(1) and 2 (2) )

3. The 1997 Regulations further provide in Britain and Northern Ireland that every employer, before employing a child, must provide a parent of the child with comprehensible and relevant information on the risks to his or her health and safety, identified by the risk assessment, the preventive and protective measures and the notified risks.

#### **Article 7 - Vulnerability of young people - Prohibition of work**

1. 2. Regulation 13D (2) of the amended Management Regulations and regulation 5 (4) of the Merchant Shipping and Fishing Vessels Regulations provides that no employer shall employ a young person for work which is beyond his or her physical or psychological capacity, work involving harmful exposure to agents which are toxic or carcinogenic, or which cause heritable genetic damage or harm to the unborn child or which in any other way chronically affect human health; work involving harmful exposure to radiation; work involving the risk of accidents which it may be reasonably assumed cannot be recognised or avoided by young persons owing to their insufficient attention to safety or lack of experience or training, or in which there is a risk to health from extreme cold, extreme heat or vibration.

3. Regulation 13.D (3) of the Management regulations, and regulation 5(6) of the Merchant Shipping and Fishing Vessels Regulations, however, provides that nothing in paragraph (2) shall prevent the employment of a young person who is no longer a child from work where it is necessary for his or her training; where the young person will be supervised by a competent person; and where any risk will be reduced to the lowest level that is reasonably practicable.



## **Article 8 - Working Time**

1. Regulations 2 and 8 of the 1998 Regulations amend the 1993 and 1937 Act to provide that a child may not be employed for more than eight hours or, if he or she is under the age of 15, for more than five hours in any day on which he or she is not required to attend school, and which is not a Sunday; or for more than 35 hours or, if he or she is under the age of 15, for more than 25 hours in any week in which he or she is not required to attend school.

The 1998 Regulations also provide that no child under the minimum school leaving age may be employed for more than two hours on any school day or on a Sunday. .

In Northern Ireland according to Regulations 4 and 5 of the Employment of Children Regulations (NI) 1996 a child under the age of 15 shall not be employed for more than five hours on a Saturday or weekday other than a day on which he or she is required to attend school and shall not be employed for more than twenty-seven hours in any week. Regulation 3 provides that no child shall be employed for a period more than one hour before the commencement of school hours on any day on which he or she is required to attend school, and such period shall end not later than half an hour before the school he or she is required to attend is due to open on that day. It further provides that no child shall be employed for more than two hours on a Sunday, and that no child shall be employed without the written consent of his or her parent.

In Northern Ireland according to Regulations 4 and 5 a child over the age of 15 shall not be employed for more than seven hours on a Saturday or weekday other than a day on which he or she is required to attend school; shall not be employed for more than thirty-seven hours in any week.

3. The definition of working time in the Working Time regulations provides that working time also includes any time spent in receiving relevant training. Relevant training means work experience provided pursuant to a training course or programme, training for employment, or both, other than work experience or training the immediate provider of which is an education institution or a person whose main business is the provision of training, and which is provided on a course run by an institution or person.

Regulation 6 (3) of the Merchant Shipping and Fishing Vessels Regulations stipulates that the time spent on training shall be counted as working time.

The working time limit set by the Working Time Regulations, specifically that working time should not exceed an average of 48 hours a week, is also applicable to young workers.

## **Article 9 - Night Work**

No child below the minimum school leaving age may be employed before 7:00 am or after 7:00 pm.

Regulation 7(2) of the Working Time Regulations provides that an employer shall not assign a young worker to do work during the period between 10 p.m. and 6 a.m. (the restricted period) unless the employer has ensured that the young worker will have the opportunity of a free assessment of his or her health and capacities before he or she takes up the assignment; or the young worker had an assessment of his or her health and capacities before being assigned to work during the restricted period on a earlier occasion and the employer has no reason to believe that the assessment is no longer valid. The employer must also ensure that these young workers have the opportunity

of a free assessment at regular intervals. Paragraph (4) provides that these requirements do not apply in a case where the work young worker is assigned to do is of an "exceptional nature".

Regulation 7 of the proposed Merchant Shipping and Fishing Vessels Regulations will provide that where a young person is likely to be required to work at night, an appropriate free assessment of the young person's health and capacities before he or she starts work, and monitoring of his or her health at regular intervals thereafter, shall be provided. The requirement will not apply where the only night work carried out is of "an exceptional nature".

The night work limits set by the Working Time Regulations, specifically that the normal hours of night workers do not exceed an average of 8 hours for each 24 hours over a 17 week period, are also applicable to young workers.

### **Article 10 (Rest Period)**

1. b) Regulation 10(2) of the Working Time Regulations provides that a young worker is to be entitled to a rest period of not less than 12 consecutive hours in each 24 hour period during which he or she works for an employer. Regulation 10(3), however, provides that the aforesaid minimum rest period may be interrupted in the case of activities involving periods of work that are split up over the day or are of short duration.

2. 3. Regulation 10(3) of the Working Time Regulations provides that, subject to paragraph (8), a young worker is to be entitled to a rest period of not less than 48 hours, in each seven day period during which the young worker works. Paragraph (8) states that the minimum rest period to which a young worker is to be entitled may be interrupted in the case of activities involving periods of work that are split up over the day or are of short duration and may be reduced where this is justified by technical or organisational reasons, but not to less than 36 consecutive hours.

4. Regulation 25(2) of the Working Time Regulations provides that Regulations 10(2) and 11(3) will not apply in relation to a young worker serving as a member of the armed forces but, where such a person is required to work during a period which would otherwise be a rest period, Regulation 25(3) provides that he or she must be allowed an appropriate period of compensating rest.

The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998 require that any young person engaged as a worker on any ship is provided with a rest period of at least 12 consecutive hours in every 24 hour period; and a rest period of at least 2 days which shall be consecutive if possible, in every week (regulation 6(1)). Where the hours of work of a young person are subject to a schedule of duties complying with regulation 9 of the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, or there is some other collective agreement in place, the requirement is waived, provided that compensatory rest time is allowed, and measures are taken to ensure that there is no risk to the health and safety of the young persons by reason of their hours of work.

### **Article 11 - Annual Rest**

The 1998 Regulations amend the 1933 and 1937 Acts to provide that a child may not be employed at any time in a year unless at that time he or she has had, or could still

have, during a period in the year in which he or she is not required to attend school, at least two consecutive weeks without employment.

In Northern Ireland, Regulation 3(3) of the Employment of Children Regulations(NI) 1996 provides that a child engaged in employment must be allowed an uninterrupted period of two weeks holiday during the period between 1st July and 31st August (both dates inclusive).

#### **Article 12 - Breaks**

The 1998 Regulations amend the 1933 and 1937 Acts to provide that a child may not be employed for more than four hours in any day without a rest break of one hour. Regulation 12(4) of the Working Time Regulations provides that, where a young worker's daily working time is more than 4½ hours, he or she will be entitled to a rest break of at least 30 minutes, which shall be consecutive if possible.

#### **Article 13 - Work by adolescents in the event of force majeure**

Regulation 27 of the Working Time Regulations provides, in paragraph (1), that Regulation 10(2) (Rest period) and Regulation 12(4) (Breaks) will not apply in relation to a young worker where the employer requires him or her to undertake work which no adult worker is available to perform and which is occasioned by unusual and unforeseeable circumstances, beyond the employer's control, or exceptional events, the consequences of which could not have been avoided despite the exercise of all due care; is of a temporary nature; and must be performed immediately.

Where this occurs, Regulation 27(2) provides that the employer must allow him or her to take an equivalent period of compensatory rest within the following three weeks.

#### **Article 14 - Measures**

Any person who contravenes the Management Regulations, as amended by the 1997 Regulations, or any requirement or prohibition imposed by them is guilty of an offence and is liable, on summary conviction, to a fine not exceeding (currently) £5,000 and on conviction on indictment to an unlimited fine.

Any person who employs a child or young person in contravention of the Children and Young Persons Acts, or of the provisions of any bye-laws made thereunder, is guilty of an offence and is liable, on summary conviction, to a fine not exceeding (currently) £1,000. If there is reasonable cause to believe that the provisions of the Acts relating to employment are being contravened, a justice of the peace may empower an officer of a local authority to enter any place where the contravention is believed to be taking place and to make enquiries.

The Working Time Regulations provides that an employer who fails to comply with the requirements of Regulation 7(2) is guilty of an offence and is liable, on summary conviction, to a fine not exceeding (currently) £5,000 and on conviction on indictment to an unlimited fine.

As regards rest periods and rest breaks, workers may present a complaint to an employment tribunal that an employer has refused to permit them to exercise their rights as regards rest periods and breaks. Such a complaint must be presented within three months from the date on which it is alleged that the exercise of the right should have been permitted, or permitted to begin; the tribunal, if satisfied that it was not

reasonably practicable for the complaint to be presented before the end of that three month period, may extend the period.

Where the tribunal finds a complaint well founded, it must make a declaration to that effect and, may make an award of compensation. The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to: the employer's default in refusing to permit the worker to exercise his or her right, and any loss sustained by the worker which is attributable to the matter complained of.

Further the Employment Rights Act 1996 and the Employment Rights (Northern Ireland) Order 1996 are amended so as to provide that a worker has the right not to be subjected to any detriment by the employer done on the ground that the worker refused to comply with a requirement which the employer imposed in contravention of his or her obligations under the Working Time Regulations or refused to forego a right conferred by those Regulations. A further amendment provides that a dismissal, the principal reason for which is the worker's refusal to comply with a requirement contravening the Regulations or the worker's refusal to forego a right conferred thereby, will be regarded as an unfair dismissal.

Any contravention of the Merchant Shipping and Fishing Vessels Regulations will be an offence punishable on summary conviction to a fine, probably not exceeding £1,000.

## Annex I: Working time schedule in cultural or similar activities

Age of Child	Maximum numbers of hours permitted at the place of performance or rehearsal	Earliest and latest permitted times at that place	Maximum period of continuous performance or rehearsal	Maximum number of hours performance or rehearsal	Minimum interval for meals and rest
13 or over	8	9.00 a.m. to 7.00 p.m. (or 8.30 am provided that the child left by 6.30 p.m. the previous day)	1 hour	3 ½	<p>If present at the place of performance or rehearsal for more than four consecutive hours two, one of which must be at least an hour and the other at least 15 minutes.</p> <p>If present at the place of rehearsal for more than eight consecutive hours three, two of which must each be at least an hour and the others at least 15 minutes.</p>
5 but under 13	7 ½	9.00 a.m. to 4.30 p.m., or if the child is aged 10 or over, 5.00 p.m.	45 minutes	3	<p>If present at the place of performance or rehearsal for more than 3 ½ consecutive hours two, one of which must be at least an hour and the other at least 15 minutes</p> <p>If present at the place of rehearsal for more than eight consecutive hours three, two of which must each be at least an hour and the others at least 15 minutes.</p>
Under 5	5	9.30 a.m. to 4.30 p.m.	30 minutes	2	Any time during which the child is not taking part in a performance or rehearsal must be used for meals, rest and recreation.