



COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION

on the effects of the transitional period granted to the United Kingdom concerning certain provisions of Council Directive 94/33/EC on the protection of young people at work

1. INTRODUCTION

- 1.1. Council Directive 94/33/EC on the protection of young people at work (hereafter referred to as “the Directive”) was adopted on June 22, 1994 and published in OJ L216/12 (20.8.94).
- 1.2. The Preamble to the Directive indicates that “children and adolescents” must be considered “specific risk groups” and that measures must be taken with regard to their safety and health and further recites that the maximum working time of young people should be “strictly limited” and night work by young people should be prohibited, with the exemption of certain jobs specified by national legislation or rules.
- 1.3. The final recital of the Preamble, however, provides that:

“Whereas the implementation of some provisions of this Directive poses particular problems for one Member State with regard to its system of protection for young people at work; whereas that Member State should therefore be allowed to refrain from implementing the relevant provisions for a suitable period”.
- 1.4. The Member State in question was the United Kingdom and Article 17 (1) (b) provides that:

"The United Kingdom may refrain from implementing the first subparagraph of Article 8 (1) (b), with regard to the provision relating to the maximum weekly working time, and also Article 8 (2) and Article 9 (1) (b) and (2) for a period of four years from the date specified in subparagraph (a)." (June 22, 1996, the implementation date).
- 1.5. Article 17 (1) (b) goes on to provide that the Commission “shall submit a report on the effects of this provision”.

2. THE DIRECTIVE

- 2.1. The relevant provisions of the Directive are as follows. Article 8, which is entitled “Working time”, provides, in paragraph (1), that:

“Member States which make use of the option in Article 4 (2) (b) or (c) shall adopt the measures necessary to limit the working time of children to:

 - (a)
 - (b) two hours on a school day and 12 hours a week for work performed in term-time outside the hours fixed for school attendance, provided that this is not prohibited by national legislation and/or practice; in no circumstances may the daily working time exceed seven hours, this limit may be raised to eight hours in the case of children who have reached the age of 15;
 - (c)
 - (d)

Article 4, which is titled “Prohibition of work by children”, provides, in paragraph (2), that:

“Taking into account the objectives set out in Article 1, Member States may make legislative or regulatory provision for the prohibition of work by children not to apply to:

- (a)
- (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, 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.”

2.2. Article 8 (2) provides that the Member States “shall adopt the measures necessary to limit the working time of adolescents to eight hours a day and 40 hours a week.”

Article 8(5) provides that Member States may, by legislative or regulatory provision, authorize derogations from paragraph 1 (a) and paragraph 2 either by way of exception or where there are objective grounds for so doing.

Member States shall, by legislative or regulatory provision, determine the conditions, limits and procedure for implementing such derogations.

2.3. Article 9, which is titled “Night work”, provides, in paragraph (1) (b), that the Member States “shall 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.” It goes on to provide, in paragraph (2) that:

“(a) Members 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 as referred to in paragraph (1) (b).

In that event, Member States shall take appropriate measures to ensure that the adolescent is supervised by an adult where such supervision is necessary for the adolescent’s protection.

(b) If point (a) is applied, work shall continue to be prohibited between midnight and 4 a.m.”

2.4. Article 3, which is titled “Definitions”, provides that:

- i. “child” shall mean “any young person of less than 15 years of age or who is still subject to compulsory full-time schooling under national law”;
- ii. “adolescent” shall mean “any young person of at least 15 years of age but less than 18 years of age who is no longer subject to compulsory full-time schooling under national law”; and

- iii. “working time” shall mean “any period during which the young person is at work; at the employer’s disposal and carrying out his activity or duties in accordance with national legislation and/or practice”.

The term “young person” is further defined as “any person under 18 years of age referred to in Article 2(1)” “which provides that the Directive shall apply to “any person under 18 years of age having an employment contract or an employment relationship defined by the law in force in a Member State and/or governed by the law in force in a Member State”.

3. THE LEGISLATIVE BACKGROUND TO THE DIRECTIVE

- 3.1. Neither the Commission’s original proposal (OJ C84/7, 4.4.92) nor its amended proposal (OJ C77/1, 18.3.93) contained any clause to allow the United Kingdom to refrain from implementing the relevant provisions for a transitional period. The opinion of the Economic and Social Committee (OJ C313/70, 30.11.92) did not, therefore, address this issue. Similar observations apply to the opinion of the European Parliament (OJ C21/167, 25.1.93) (First Reading).
- 3.2. The first time the transitional period appears is in the common position of the Council of 24 November 1993 (C3-0504/93-94/O383 (SYN)). Under the co-operation procedure set out in Article 189c of the Treaty, the proposal, as set out in the Council Common Position, returned to the Parliament for a second reading.
- 3.3. The Council Common Position was examined by the Parliament’s Committee on Social Affairs, Employment and the Working Environment. In its report (PE Doc A3-108/94) at p.15, the Committee stated that a UK committee member had announced that the United Kingdom already had rules which limit the working hours of children in line with the proposed directive. The Committee consequently found the proposed transitional period to be “incomprehensible”. The Parliament’s Decision of March 9, 1994 (OJ 91/98, 28.3.94) recommended that both Article 17 (1) (b) and the final recital of the Preamble be deleted.
- 3.4. Despite this recommendation, the Directive, when adopted by the Council on June 22, 1994 extended the transitional period to the limits on weekly working hours for children. It appears from the minutes of the Council meeting that the delegations of two Member States opted to abstain when the Directive was adopted. The Commission, although expressing strong reservations on the initial provision allowing the United Kingdom temporarily not to apply certain obligations provided for in the Directive, was prepared to accept this solution for adolescents, "so as to provide the United Kingdom with the opportunity for a transitional period to adapt its system for adolescents, but the situation as regards children is different".

4. THE LEGISLATIVE SITUATION IN THE UNITED KINGDOM

- 4.1. The Directive was implemented in Great Britain and Northern Ireland by various sets of Ministerial Regulations amending existing legislation. Articles 6 and 7 of the Directive, for example, were implemented in Britain by the Health and Safety (Young Persons) Regulations 1997 (SI 1997/135), which amend the Management of Health and Safety at Work Regulations (SI 1992/2051 as amended by SI 1994/2865), and in Northern Ireland by the Health and Safety (Young Persons) Regulations (NI)

1997 (SR 1997/387), which amend the Management of Health and Safety at Work Regulations (NI) 1992 (SR 1992/459 as amended by SR 1994/478). These regulations came into force, respectively, on March 3, 1997 and October 1, 1997 and are hereafter referred to as the 1997 Regulations.

- 4.2. The relevant provisions of the Directive in relation to “children” were implemented in Great Britain by the Children (Protection at Work) Regulations 1998 (SI 1998/276) which amend the Children and Young Persons Acts 1933 and 1963 (which applied to England and Wales) and the Children and Young Persons (Scotland) Act 1937. These regulations came into force on August 4, 1998 and are hereafter referred to as the 1998 Regulations. Similar Regulations were enacted for Northern Ireland.
- 4.3. The relevant provisions of the Directive in relation to “adolescents” were implemented in Great Britain by the Working Time Regulations 1998 (SI 1998/1833) which also implement the provisions of Council Directive 93/104/EC concerning certain aspects of the organisation of working time. These regulations came into force on October 1, 1998 and are hereafter referred to as the Working Time Regulations. Similar Regulations were enacted for Northern Ireland.
- 4.4. 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 18”. The Working Time Regulations define 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. The formula for determining the school leaving age is that, where a person attains the age of 16 on any date occurring between September 1st and January 31st next, he or she shall be deemed not to have attained the upper limit of compulsory school age until the end of the spring term which includes such month of January. A person whose 16th birthday occurs between February 1st and August 31st shall be deemed not to have attained the upper limit of compulsory school age until the Friday before the last Monday in May in that year.
- 4.5. Regulations 2 and 8 of the 1998 Regulations amend the 1933 and 1937 Acts (referred to in para 4.2 above) so as 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 both 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.
- 4.6. The Working Time Regulations provide that a worker’s working time, including overtime, in any reference period which is applicable in his or her case shall not exceed an average of 48 hours for each seven days (see regulation 4). No distinction is drawn between “young” and “adult workers”. A distinction, however, is drawn between such workers’ entitlements to a daily and a weekly rest period and rest breaks (see regulations 10, 11 and 12).
- 4.7. A distinction is also drawn in relation to an employer’s obligations as regards night work. The Working Time Regulations define “night work” as “work during night time” and “night time” is further defined as a period, the duration of which is not less than seven hours, and which includes the period between midnight and 5 a.m. which

is determined by a relevant collective agreement or, in default of such a determination, the period between 11 p.m. and 6 a.m.

- 4.8. The Working Time Regulations go on to provide in regulation 6 that an employer shall not assign a young worker to work during the period between 10 p.m. and 6 a.m. (“the restricted period”) unless:
- i) the employer has ensured that the young worker will have the opportunity of a free health assessment before he or she takes up the assignment; or
 - ii) the young worker had an assessment of his or her health and capacities before being assigned to work during the restricted period on an earlier occasion, and the employer has no reason to believe that the assessment is no longer valid.

The employer must also ensure that each young worker assigned to work during the restricted period has the opportunity of a free assessment of his or her health and capacities at regular intervals.

- 4.9. Paragraph (4) of regulation 6 provides that the requirements outlined above do not apply in a case where the work the young worker is assigned to do is of “an exceptional nature”.
- 4.10. It can be seen, therefore, that the United Kingdom has taken advantage of the possibility to refrain temporarily from implementing the relevant provisions as foreseen under Article 17 (1) (b).

5. THE RATIONALE FOR THE TRANSITIONAL PERIOD

- 5.1. Prior to the implementation of the Directive, the Department of Trade and Industry issued a *Consultation Document on Measures to Implement Provisions of the EC Directive on the Protection of Young People at Work* (URN97/508). This document dealt with the Directive’s provisions requiring measures to ensure that young workers (i.e. those above minimum school leaving age but under 18) are entitled to rest periods, rest breaks and free assessment of health and capacities prior to assignment to night work and at regular intervals thereafter.
- 5.2. The then U.K. Government’s approach was set out in paragraphs 1.5 and 1.6 of the *Consultation Document* as follows:

“The Government believes that under the Health and Safety at Work *etc* Act 1974 the UK already has effective arrangements for protecting the health and safety of young people at work. Implementation of the directive should not be allowed to disrupt employment or training opportunity for young people which pose no real health or safety risk. These arguments are integral to the Government’s successful resistance to the application to the UK of provisions in the directive which would otherwise have imposed maximum weekly hours of work for young people (articles 8 (1) (b) and (2)) and would have prohibited night work (articles 9 (1) and (2)). The UK is allowed, under article 17 (1) (b) of the directive, to refrain from implementing these provisions until June 2000. The Council of Ministers have the option to extend the exemption beyond that date. This provides the UK with a ‘renewable opt-out’ from potentially costly and inappropriate restrictions on young people’s working time.

However the UK is obliged to enact measures sufficient to ensure compliance with the requirements of the directive described above. The Government hopes that responses to this consultation document will help it to satisfy this obligation in such a way that young people's employment and training opportunities are not significantly reduced."

- 5.3. The rationale for the transitional period thus appears to be that the imposition of maximum weekly hours of work and the prohibition on night work, even with the flexibility permitted by the Directive, would disrupt and/or reduce employment or training opportunities for young people which pose no real health or safety risk.
- 5.4. It must be remembered that the then UK Government had initiated a challenge to the legal basis of Council Directive 93/104/EC concerning certain aspects of the organisation of working time on the basis, *inter alia*, that there was no reliable evidence linking "working time" with health and safety : see Case C-84/94, *United Kingdom v Council of the European Union* [1996] E.C.R. 1-5755.

The Court rejected the UK arguments (judgment of 12 november 1996).

- 5.5. The transitional period contained in Article 17 (1) (b) appears to have been welcomed by the Confederation of British Industry (CBI), which took the view that young workers were adequately protected by existing statutory provisions. The Trades Union Congress (TUC), however, in its response to the Department of Trade and Industry's *Consultation Document* were opposed to the use of the transitional period contained in article 17 (1) (b) relating to the hours of work of adolescent workers.
- 5.6. In general the responses to the Government's *Consultation Document* were varied. Two examples are given here. The Small Business Bureau supported the transitional exemption "from the arbitrary limits of young people's working hours contained in the Young Workers Directive, including the prohibition of night work". The Bureau thought it "clearly sensible" that opportunities for the training and employment of young people should not be disrupted by the imposition of such limits since any concerns about such hours were "properly dealt with" under existing health and safety arrangements. The Bureau went on to say that it was "difficult not to conclude that these provisions were drafted by persons who do not appreciate the factors associated with the employment of young people and the measures already in place to protect them".
- 5.7. The transitional period was criticised, however, by the Greater Manchester Low Pay Unit which considered that, by denying young people in the United Kingdom the protection afforded in other Member States, the Government was placing them "at a considerable disadvantage". The Unit disagreed with the assessment that existing legislation provided adequate protection and said that full implementation was essential to protect "these young workers who do not receive proper treatment from employers". It "strongly believed" that employment for young people "should not be at the cost of their health and safety or be weighed against any possible cost to business".

6. THE PREPARATION OF THIS REPORT

- 6.1. In order to prepare the report foreseen under Article 17 (1)(b) of the Directive, the Commission engaged an independent expert to provide evidence of the application of the transitional period in the United Kingdom and the position of social partners on this issue.
- 6.2. Meetings were arranged with the relevant personnel in the CBI, the TUC and the Department of Trade and Industry, at which the question of the transitional period of Article 17 (1) (b) was extensively discussed. Documentation was either provided at or subsequent to these meetings.
- 6.3. The attitude of the CBI's Human Resources Directorate was that the transitional period granted to the United Kingdom by Article 17 (1) (b) should be extended. The CBI expressed the view that protection in the United Kingdom for children and adolescents was both "appropriate and adequate" and that non-renewal of the transitional period in question "would create rigidities and impracticalities in sectors such as broadcasting, retailing, hotel and catering". The CBI also expressed the view that non-renewal would affect the "employability" of young people and "could undermine innovative schemes designed to provide practical skills to disaffected young people".
- 6.4. The non-application of Article 8 (1) (b) and (2) was seen as being of particular importance for the performing arts industry (especially broadcasting) and the hotel & catering industry. The CBI stated that it knew of no evidence which suggested that the health and safety of "older adolescents" (i.e. those who had left school) were damaged by working longer hours than the 40 hour limit in the Directive.
- 6.5. As regards the non-application of Article 9 (1) (b) and (2), the CBI's attitude was that many sectors employed adolescent workers for whom the limit set on night work in the Directive would prove impractical. Apart from the hotel & catering industry, the CBI mentioned postal services, newspaper agents and retailers as being most affected. A non-renewal of the transitional period would prohibit early starts and would prevent adolescents from performing postal and newspaper delivery duties. It would also restrict the ability of postal services to take school leavers on their postal cadet scheme. In the retail sector, adolescents are often employed on "night time teams", mainly shelf filling. In addition, at peak trading times evening time might be extended beyond the 10 p.m. / 11 p.m. limit. If the transitional period were not renewed and work could not be re-arranged within the limits of the Directive, the contracts of employment of these adolescents would come to an end and evening cover at peak times would be restricted to employees over the age of 18.
- 6.6. Essentially the view of the CBI was that the effect of the transitional period in Article 17 (1) (b) was to increase employment opportunities for young people in the aforementioned sectors and that its non-renewal would reduce those opportunities. The CBI were also concerned that, if there was not sufficient flexibility, young workers would be tempted into the "black economy" which would be more damaging to their health and safety.
- 6.7. The CBI accepted that there are many possibilities for derogation in the Directive which could potentially provide the necessary flexibility so as to minimise the possible reduction in employment opportunities for young people. The CBI were

concerned, however, that these derogations posed problems in the United Kingdom whose system “provides for individual rights rather than the system of collective rights operating in other EU states”. That meant that terms such as “objective justification” could not be decided by collective agreement but were matters to be decided in each individual case and, consequently, without the continuance of the Article 17 (1) (b) transitional period, employers could face “considerable uncertainty” until the necessary case law was established.

- 6.8. The attitude of the TUC’s Economic and Social Affairs Department was that the transitional period in Article 17 (1) (b) should not be extended. Indeed the TUC were of the opinion that it should not have been availed of in the first place. The TUC maintain that those aged between 16 and 18 are “in a transitional phase from full-time education to full-time employment” and are not fully integrated into the labour market.
- 6.9. The TUC also expressed the view that adolescent workers have yet to reach “intellectual or physical maturity” and that their personal development could be impaired in the absence of special protection. The TUC were of the opinion that the working hours provisions of the Directive would “reintroduce a modest level of regulation essential for the protection of young people at work.” (The use of the word “reintroduce” was due to the fact that the provision in the Employment of Women, Young Persons and Children Act 1920 which prohibited the employment of young people on night work in industrial undertakings was repealed by the Employment Act 1989).
- 6.10. The TUC referred to a report on school age labour, which was based on a survey it had commissioned in 1996. The TUC were “alarmed” that many children were working illegally and for long hours and that this was “adversely affecting their health and education”. 23% of the under-13s surveyed reported having a paid job, generally paper deliveries (boys) and baby-sitting (girls) but also some shop work. 36% of those surveyed reported having worked before 7 a.m. and 53% reported having worked after 7 p.m.. The survey showed that working these hours was “clearly having a bad effect on school performance” in that 28% of those surveyed were “too tired” to do their homework or schoolwork because of their job. 19% also reported having had an accident or injured themselves at work.
- 6.11. The TUC expressed the view that the transitional period in Article 17 (1) (b) had the effect of perpetuating the risk to young persons’ health, education and welfare.
- 6.12. The TUC were also of the opinion that there had been no “jobs boost” for young workers following the repeal in 1989 of the relevant provisions of the Employment of Women, Young Persons and Children Act 1920. The TUC also stated that, as regards the position of newspaper deliveries, the Newsagents Federation were not opposed to the full implementation of the Directive.

7. CONCLUSIONS

- 7.1. On the basis of the views expressed by the relevant personnel of the principal organisations representing the two sides of industry in the United Kingdom and on the documentation provided either during or after those discussions, the effects of the transitional period contained in Article 17 (1) (b) of the Directive, as perceived by

those organisations, may be summarised as follows. Employers favour the transitional period because it increases the employment opportunities for young persons whereas the trade unions are opposed to the transitional period because it perpetuates a risk to young persons' health, education and welfare.

- 7.2. The views of the trade unions are supported by a survey carried out by Market and Opinion Research International (MORI), although that survey was confined to pupils aged between 11 and 16.
- 7.3. No evidence was provided by either side of industry that employment opportunities for young people were affected by the non-implementing of the relevant provisions of the Directive. Furthermore, it is significant that there appears to be no statistical data to support the argument that the removal in 1989 of the control on the hours of work of persons between the ages of 16 and 18 increased the employment opportunities of such persons.
- 7.4. The Commission services have been in contact with the United Kingdom competent authorities with a view to informing them of the imminent adoption by the Commission of the Article 17(1)(b) report. The United Kingdom authorities were aware of the expiration of the transitional period and were informed by the Commission officials of the flexibility rules allowed for by articles 8 (5) and 9 (2) of the Directive.

In the light of the foregoing the Commission considers:

- The six-year implementation period was sufficient to allow the United Kingdom to adapt its legislation progressively to all the minimum requirements laid down at Community level in the Council Directive on the protection of young people at work. As the protection of the safety and health of young people is at issue, full implementation and effective application of its provisions in all fifteen Member States must be an over-riding responsibility for each of them.
- The Directive contains sufficient possibilities for derogation in Articles 8 (5) and 9 (2), which would provide the necessary flexibility. The particular difficulty identified by the CBI about the use of these individual derogations does not appear to be supported by the experience of the other common law Member State - Ireland - whose system also provides for individual rights.
- As the deadline for implementing the first subparagraph of Article 8(1)(b) with regard to the provision relating to the maximum weekly working time, and also Article 8(2) and Article 9(1)(b) and 2 expired on 22 June 2000, the UK must ensure the full implementation of the provisions of Council Directive 94/33/EC.