

## **A BRIEF HISTORY OF THE LAW AND REGULATIONS RELATING TO CHILD EMPLOYMENT AND CHILDREN IN ENTERTAINMENT.**

Following the enactment of the Prevention of Cruelty to, and Protection of Children Act 1889 the control of street hawking by children became the duty of the local authorities. The Act also stated that:- *“provided that in the case of any entertainment or series of entertainments to take place in premises licensed according to law for public entertainments (etc) where it is shown to the satisfaction of a petty sessional court or in Scotland, the school board, that proper provision has been made to secure the health and kind treatment of any children to be employed thereat, it shall be lawful for the court or school board, to grant a licence for such time and during such hours of the day”*.

Interesting to note that it was the petty sessional court, or in Scotland the school board, that issued performance licenses and, at that time placed the supervision of children who perform in theatres within the province of factory inspectors under the Factory and Workshop Act 1878. These measures were strengthened by the Employment of Children Act 1903.

Five years later came the Children Act 1908 which was divided into 6 parts namely;

1. Infant life protection.
2. Prevention of cruelty to children and young persons
3. Juvenile smoking
4. Reformatory and industrial schools
5. Juvenile offenders
6. Miscellaneous and general

However little in the above Act referred to child employment, but it made an offence for *“the custodian of any child or young person who allows him to be in any street, premises or place for the purposes of begging or receiving alms or the inducement of giving of alms, whether or not there is any pretence of singing, playing, performing or offering anything for sale”* which attracted a fine of not exceeding £25 or *“alternatively in addition thereto, imprisonment with or without hard labour for any term not exceeding 3 months”*.

The Children Act 1918 formally acknowledged that local education authorities should become more involved in connection with the hidden area of child abuse that encompasses the illegal employment of children and young persons. *This Act is now fully repealed but did provide that local education authorities should employ officers to specifically inspect and regulate the employment of children and young persons.*

**However this provision would not become mandatory unless the then relevant Minister of State gave his assent, which, unfortunately the Minister of State never did.**

Following a general conference in Washington DC in 1919 came the great Employment of Women, Young Persons and Children Act 1920 which referred, in the main, to children employed in industrial undertakings (i.e factories, mines and quarries etc) and to young persons employed in coastal fishing boats. This part of the Act is still in force today.

Part 8 of the Education Act 1921 provided that local education authorities be granted powers to enact byelaws prohibiting employment of children in certain trades or occupations and limiting the working hours that children and young persons could be employed. This Act also transferred the responsibility for the supervision of children taking part in theatrical performances to LEA's, and, further, it enacted appropriate safeguards for persons under 16 taking part in dangerous performances.

**However, again, no assent was given to the provision of “Child Employment Inspectors” to be formally employed by LEA’s.**

The Children and Young Persons Act 1933 consolidated and extended all previous legislation relating to the care and welfare of young people. Part 1 of the Act strengthened provisions relating to child cruelty and neglect, children begging in streets, the sale of cigarettes to juveniles etc etc.

Sections 18, 19 related to general provisions of the employment of children and provided for local authorities to make byelaws governing such employment. Section 20 related to street trading of those under the age of 16, and section 21 set out the penalties and legal proceedings for those contravening those sections.

Section 22 related to entertainments and performances by children and was strengthened by the Children and Young Persons Act 1963 which was consolidated by the Children (Performances) Regulations 1968, and has remained relatively unchanged to today.

**Part 2 of the (1933) Act strengthened the provisions of Part 8 of the Education Act 1921 but again did not compel LEA’s to appoint Child Employment Officers.**

Local authorities set up their own “Children’s Departments” after the inception of the Children Act 1944 and from the mid 1950’s the Education Welfare and Attendance Officers carried “Warrant Cards” denoting that their duties were:-

1. To carry out the statutory provisions of the Education Acts 1944 to 1953, and
2. To take any necessary lawful action under Parts 1 and 2 of the Children and Young Persons Act 1933, as amended, and the byelaws made thereunder. These “Child Employment Officers” were, in addition to the above, authorised to take action under certain sections of the Mines and Quarries Act 1954.

In the early 1970’s the BBC constructed a short programme on the subject of child employment with assistance of the Birmingham Education Welfare Service, who showed that the Birmingham LEA had instituted 54 prosecutions for the illegal employment of children out of a total of 74 within England and Wales, in the same year.

In 1972 a DHSS study “Work out of School” contended that the education of school children suffered considerably if they spent most of their out of school time in employment, along with decreased academic ability, irregular attendance, truancy and increased behavioural problems.

This report prompted the Government of the day to enact the Employment of Children Act 1973, which would have radically strengthened existing legislation. **This has never been given assent and 36 years on this piece of legislation still remains in a legal limbo.**

In the early 1990’s Ann Searle of Birmingham’s Child Employment Service and Chris Pond, the then Director of the Low Pay Unit, produced a report entitled “The Hidden Army” which reviewed past and present child law and pleaded for more constructive legislation that might consolidate and strengthen that on the Statute Books.

As a result of this report, the National Child Employment Network came into being, founded by like minded representatives of 6 local education authorities with the protection of working children a common concern.

June 1994 saw the issue of European Directive 94/33/EC on the Protection of Young People at Work which allowed for 14 year olds to be employed in "light work" and 13 year olds to be employed in certain occupations in "light work".

The Directive also set a maximum working week of 12 hours during term time and a higher limit during holiday periods. Rest breaks were made compulsory, and obliged employers to carry out risk assessments for each child employee prior to the work commencing.

(The UK obtained an 'opt-out' from some sections of the Directive for a period of 4 years. This 'opt-out' was reconsidered in 2000 and came to an end in October that year, when the Children (Protection at Work) (No 2) Regulations 2000 were introduced).

In October 1995 the Department of Health distributed a consultation document on the employment of children to a wide range of interested parties, including the NCEN, all local authorities, business and trade federations and professional groups. The result of which was reported to those that had responded to the consultation in November 1996.

On the whole the response was supportive of the suggestions made and it was anticipated that changes to primary legislation could be made.

**However, the General Election in May 1997 saw a change of Government which resulted in the proposals to changes being 'shelved'.**

Chris Pond, a new Labour Member of Parliament, tabled a Private Members Bill on the Employment of Children. The 'Bill' passed its first reading in the House in 1997 and was to receive a second reading on 13<sup>th</sup> February 1998.

On the 12<sup>th</sup> of February 1998 the Government laid the necessary regulations to amend the primary legislation and required all local authorities to amend their bye-laws regulating the employment of children. The Children (Protection at Work) regulations 1998 came in to force on 4<sup>th</sup> August 1998. The Regulations amended the primary legislation in order to implement the provisions of the 1994 EC Directive on the protection of young people at work, and was the most significant change to child employment legislation for over 65 years.

Chris Pond's Private Members Bill was withdrawn after its second reading in the House, following an announcement from the responsible Minister in the Department of Health, that he intended to undertake a review into child employment legislation.

April 1998, the Department of Health wrote to all local authorities advising them to revise their bye-laws on children's employment, and issued a 'Model Bye-Law' which would standardise bye-laws across the Country, and recommended that local authorities "*should employ a child employment officer*".

The year 2000 saw the issue of two separate sets of Regulations. The Children (Protection at Work) Regulations 2000, which came into force on 7<sup>th</sup> June 2000 and removed the exemption in local bye-laws which allowed children over the age of 10 to work in light agricultural or horticultural work, and tightened up street trading bye-laws.

The Children (Protection at Work) (No 2) Regulations 2000 became law on the 11<sup>th</sup> of October 2000, and placed a limit of 12 on the number of hours that a child may be employed in any week in which he/she is required to attend at school.

2002/3 saw the metamorphosis of the NNCEE from the NCEN as well as closer professional relationships between the TUC, NSPCC and Children's Legal Centre and, as a consequence the TUC and NSPCC jointly commissioned The Children's Legal Centre to provide a report on the work of children and the relevant legislation.

In November 2002 the report 'Too Much Too Young' was published, in which the reports author, Professor Caroline Hamilton, commented "*The TUC, the NSPCC and the Children's Legal Centre believe that the review promised by the Working Group when Chris Pond's Bill was withdrawn (Feb 1998) should be completed. If the review has indeed been completed, then its findings should be made public*".

*Caroline went on to say,*

*"The three organisations believe that such a review must address the following points:*

*there is a clear need for a national code which brings together all of the different aspects of the law affecting school age workers. This should clarify the law and ensure that parents, employers and young people themselves are aware of their rights and the risks that they should be protected from;*

*the code should end local variation and seek to remove the contradictions that appear to exist in the current legislation;*

*there should be a Government-sponsored publicity campaign to ensure employers understand their obligations and parents, teachers and school children understand their rights".*

The Better Regulation Task Force (BRTF) examined Regulations relating to child employment and made 5 recommendations which included;

*"The Department for Education and Skills should commence work on consolidating child employment legislation by September 2004".*

*The BRTF also recommended, as well as a system of employer registration, a consultation on allowing children to work for more than two hours on a Sunday, the production of best practice guidelines on law and the issue of guidance on the role of Directors of Children's Services to have local authority functions relating to child employment as part of their remit.*

The then Children's Minister, Margaret Hodge MP agreed to a further consultation taking into account the recommendations made by the BRTF, **but the General Election in May 2005 saw Margaret Hodge MP moved to another office and Beverley Hughes took over as Children's Minister and side-lined the recommendations.**

November 2007 saw the launch of the ITV DVD "Every Child Matters Even When They're At Work" at the House of Lords, supported by Baroness Walmsley, Annette Brooke MP, William Roach MBE (Ken Barlow) Ester Ranza and several other eminent Lords and MP's as well as TV 'stars'.

The DVD outlined the problems faced by producers, employers and local authorities when dealing with children in employment and entertainment and was voted 'Best Promotion Award Royal Television Society – Non Documentary' in 2008.

The NNCEE conference of 2009 at Doncaster welcomed Jenny Ballentyne, Team Leader DCSF's Safeguarding Unit, Matthew Purves and Gerald Staines of the DCSF's Safeguarding Unit, who outlined the review of the 1968 performance regulations and the proposals submitted to the relevant Ministers with a view of updating the 1968 Regulations.

**However, November 2009 saw that the Children's Minister, Mr E Balls MP had personally intervened in the matter and the review shelved.**

On the 14<sup>th</sup> of December 2009 the DCSF published the 'Children's Plan Two Years On - next steps to achieve outstanding children's services' document in which Mr E Balls MP, Children's Minister and Mr B Bradshaw Culture Secretary, announced that Sarah Thane, former chair of the Royal Television Society and former advisor to Ofcom will review the 1968 Regulation.

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With thanks to:-

John McCance, former Senior Child Employment Officer, John Singles, former Senior Education Welfare Officer, both of City of Birmingham Education Department and Social Services Department.

Chris Small, author of 'Exposing the Hidden Army'.

Professor Caroline Hamilton of the Children's Legal Centre, author of 'Too Much Too Young'.