

STATES OF JERSEY



CHILDREN: REGULATION OF EMPLOYMENT – GREEN PAPER OCTOBER 2008

**Presented to the States on 24th October 2008
by the Minister for Health and Social Services**

STATES GREFFE

Green Paper

1: Regulation of Employment

20th October 2008

Purpose of consultation

To invite comments on the Draft Children (Regulation of Employment) (Jersey) Order 200- which is dated May 2008.

Comments will be considered as the draft proposition is prepared for debate by the States Assembly.

Type of consultation

It is anticipated that a combination of written, questionnaire and presentation type methods will be employed. This will vary according to the audience.

Closing date for consultation

Friday 27th February 2009

Period for consultation within the States of Jersey is Monday 3rd to Friday 28th November 2008

Period for public consultation is Monday 5th January to Friday 27th February 2009

Summary of issues or questions to consider

The United Nations Convention on the Rights of the Child was adopted by the UN General Assembly in 1989. The Convention lays out minimum standards relating to children's rights and has been signed by all our neighbours in the western world.

Jersey, however, has not signed the Convention and it has been suggested, that by not signing, Jersey appears less committed to protecting the rights of children than is actually the case.

Jersey does not currently fulfil all the requirements of the Convention and one area of concern relates to Article 32 of the Convention which requires –

'States Parties to recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. States Parties must introduce legislative measures to ensure the implementation of this Article which must provide for:

- *A minimum age for admissions to employment*
- *Appropriate regulation of the hours and conditions of employment*
- *Appropriate penalties to ensure the effective enforcement of the Article.*

Whilst Jersey already has a Children's Law which protects children in many different ways, it does not set out –

- the minimum age children must be before they can accept paid work
- how many hours a day they are allowed to work.

The introduction of new legislation will ensure our compliance with Article 32 and will help enable Jersey to sign up to the Convention. The new legislation will be called the Children (Regulation of Employment) (Jersey) Order 200-.

Comments on the draft of this Order are now sought.

Areas of special interest may include –

(1) The **upper** age of children to which this Order should apply

The Convention on the Rights of the Child says the Order must apply up to the age of majority within the relevant state. In Jersey the age of majority is 18 years.

However, some children leave school and go into full-time employment at 16 years old. Taking this into account there are a number of options as to whom this Order might apply. These are –

- All children up to 18 years old whether in full-time employment or education.
- All children up to 16 years old only.
- All children up to 18 years old except for those who have left full-time education and are employed.

The current draft of this Order relates to children up to 16 years of age only.

(2) The number of hours children should be allowed to work

The Convention requires that a Law is drafted which will restrict the number of hours a day and a week a child can work.

Consideration needs to be given as to how this restriction will be enforced.

Difficulties could arise where a child has several jobs. For instance, how will the employers know how many hours the child has worked if they are accumulating hours job by job?

It is anticipated that views will be varied and possibly emotive. For this reason the comments of a wide group of stakeholders will be sought.

Definitions

The United Nations Convention on the Rights of the Child

This is the Convention that Jersey would like to sign up to.

Children (Jersey) Law 2002

This is the Law already in place which protects our children.

Children (Regulation of Employment) (Jersey) Order 200-

This is the Order we would like to put to the States for debate and which we are asking for your views on. It is currently in draft form and the draft is attached to the end of this document.

Further information The United Nations Convention on the Rights of the Child is available at <http://www.everychildmatters.gov.uk>

Please send your comments to:

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Public submissions – Please note that responses submitted to all States public consultations may be made public (sent to other interested parties on request, sent to the Scrutiny Office, quoted in a final published report, reported in the media, published on a States of Jersey website, listed on a consultation summary, etc.). If a respondent has a particular wish for confidentiality, such as where the response may concern an individual's private life, or matters of commercial confidentiality, please indicate this clearly when submitting a response.

This Consultation Paper has been sent to the following individuals/organisations:

The Public Consultation Register

Supporting documents

Children (Regulation of Employment) briefing paper October 2008
(see MD-HSS-2008-0045 at
<http://www.gov.je/StatesGreff/MinisterialDecision/default.htm>)



Jersey

CHILDREN (REGULATION OF EMPLOYMENT) (JERSEY) ORDER 200

Draft dated 1st May 2008

Explanatory Note

Introduction

This Order is made under the Children (Jersey) Law 2002, in exercise for a power for the Minister for Health and Social Services to make Orders with respect to the employment of children – meaning, according to that Law, a person who has not attained the age of 18.

The Minister has powers, under the 2002 Law, to take action if he or she is of the opinion that a child is being employed in a manner that is prejudicial to the child's health or otherwise to render the child unfit to obtain the full benefit of any education. The Minister may give notice to the employer prohibiting or restricting the child's employment by the employer. The Minister has further powers to require an employer, parent or guardian of a child with information regarding the child's employment.

It should be noted that, by virtue of the 2002 Law, the prohibitions and restrictions in the Order apply to any situation where a child assists in a trade or occupation carried on for profit, even though the child is not remunerated in any way for his or her labour.

Under the 2002 Law, employment of a child in contravention of the Order would be an offence by the employer and by any person (but not the child) to whose act or default the contravention is attributable. The maximum penalty for the offence is a fine of level 3 on the standard scale.

Articles 3 to 6 of the Order are concerned with numbers of hours worked.

Article 7 of the Order is concerned with the kind of work undertaken.

In addition to this Order, the Shipping (Employment of Young People) (Jersey) Order 2007 regulates the employment, on Jersey ships, of children from the age of 14 to the age of 18. The Health and Safety at Work (Jersey) Law 1989 imposes duties on employers to ensure the health, safety and welfare at work of all of their employees.

The Order

Article 1– Interpretation

This Article defines expressions used in the Order.

“Child” is defined so as to be a person who is both under the age of 16 and below the upper limit of compulsory school age. The “upper limit of compulsory school age” is defined in the Education (Jersey) Law 1998. A child reaches it on the 30th June in the school year in which he or she has his or her 16th birthday. A school year is also defined in that Law, and is a year commencing on 1st September. The effect of this definition is that –

- (a) the Order does not apply to any child who has attained the age of 16
- (b) the Order will cease to apply to a child who is under 16 but no longer of compulsory school age: this would be a child whose 16th birthday is between 1st July to 31st August inclusive and who, by virtue of the Education (Jersey) Law 1998, ceases to be of compulsory school age on 30th June.

Paragraph (2) provides that references to “employment” in the Order are read so as to include arrangements where a child assists in a trade or occupation carried on for profit, even though the child is not remunerated in any way for his or her labour.

A child may have more than one employment, and paragraph (3) makes it clear that, for the purposes of all the restrictions on numbers of working hours in a week, or on a day, the aggregate of the child's working hours, for all of his or her employments, must be taken into account.

Article 2– Prohibition on employment of children under 13 years of age

This doesn't require any explanation.

Article 3– Permitted hours of employment

This Article prohibits any child being employed on any day, whether or not it is a school day, before 6 a.m. or after 8 p.m. It further prohibits employment at any time during school hours.

Article 4– Restriction on number of hours of employment in a day and week

Paragraph (1) applies to all children. It prohibits the employment of the child for more than 2 hours on a school day or for more than 12 hours in a week in school term.

Paragraph (2) applies to children under the age of 15. It prohibits the employment of the child for more than 7 hours on a non-school day or for more than 25 hours in a week in a school holiday.

Paragraph (3) applies to children aged 15. It prohibits the employment of the child for more than 8 hours on non-school day or for more than 35 hours in a week in a school holiday.

Paragraph (4) explains what is meant by a week in a school term. A week is defined in Article 1 as the 7 day beginning on a Monday. So, if a school term starts on a Friday, the whole of that week, commencing on the Monday, is a week in a school term. If a school term ends on a Monday, the whole of that week, beginning on the Monday, is a week in a school term.

Article 4 needs to be read in conjunction with Article 5.

Article 5– Restriction on days of employment in a week

This is a straightforward prohibition on employing a child on more than 5 days in a week.

Article 6– Rest periods and breaks

This Article requires that a child has a rest period of 14 consecutive hours in each 24 hour period. It also entitles a child to an uninterrupted rest period of 30 minutes if the child works for more than 4 and a half hours in one day. However, it does not specify when that rest period must be taken. Each year, during a school holiday, a child must have a period of 2 consecutive weeks in which the child doesn't work.

Article 7– Prohibited work

Paragraph (1) is a general, descriptive limitation. It restricts a child's employment to what is known as "light work", within Council Directive 94/33/EC of 22.6.1994 on the protection of young people at work.

Paragraph (2) prohibits the employment of a child in specific areas of work, which are listed.

Article 8– duty of employer of child

This Article requires the child's employer to assess risks to the child in the workplace and take reasonable steps to eliminate or reduce those risks.

Article 9– Employment authorized by other enactments

This Article disapplies certain provisions of this Order to certain employments where alternative regulation applies, whether under a licence granted by the Minister for Health and Social Services authorizing a child to take part in a public performance or whether the employment is on a Jersey ship and regulated by the Shipping (Employment of Young People) (Jersey) Order 2007.

Article 10– Citation and commencement

This Article is self-explanatory.



Jersey

CHILDREN (REGULATION OF EMPLOYMENT) (JERSEY) ORDER 200

Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Prohibition on employment of children under 13 years of age</u>
<u>3</u>	<u>Permitted hours of employment</u>
<u>4</u>	<u>Restriction on number of hours of employment in a day and week</u>
<u>5</u>	<u>Restriction on days of employment in a week</u>
<u>6</u>	<u>Rest periods and breaks</u>
<u>7</u>	<u>Prohibited work</u>
<u>8</u>	<u>Duty to child who works without pay</u>
<u>9</u>	<u>Employment authorized by other enactment</u>
<u>10</u>	<u>Citation and commencement</u>



Jersey

CHILDREN (REGULATION OF EMPLOYMENT) (JERSEY) ORDER 200

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE MINISTER FOR HEALTH AND SOCIAL SERVICES, in pursuance of Article 48 of the Children (Jersey) Law 2002, orders as follows—

1 Interpretation

- (1) In this Order, unless the context otherwise requires –
 - “child” means a person who has not attained the age of 16 years and is below the upper limit of compulsory school age;
 - “premises” includes land, a vehicle and a trailer;
 - “school day” means, in relation to a child, any day on which the school at which a child is registered is open for instruction;
 - “school term” means, in relation to a child, a term for the school at which the child is a pupil;
 - “week” means any period of 7 consecutive days commencing with Monday.
- (2) For the purposes of this Order –
 - (a) any reference to employment shall be construed so as to include work done for another person;
and
 - (b) any reference to an employer shall be construed as to include the person for whom that work is done,

where the work is done in the circumstances described in Article 48(5) of the Children (Jersey) Law 2002.
- (3) Where a child is employed by more than one employer, the child’s working hours shall be cumulative.
- (4) For the purposes of this Order, a person is a member of a child’s family if the person is the child’s parent, guardian, grandparent, step-parent, brother, sister, step-brother, step-sister, uncle or aunt.

2 Prohibition on employment of children under 13 years of age

A child who is under the age of 13 years shall not be employed in any capacity.

3 Permitted hours of employment

A child may only be employed, on any day, outside school hours, between 6 a.m. and 8 p.m.

4 Restriction on number of hours of employment in a day and week

- (1) A child shall not be employed –
 - (a) on any school day, for more than 2 hours;
 - (b) in any week during a school term, for more than 12 hours.
- (2) A child aged under 15 years shall not be employed–
 - (a) on any day which is not a school day, for more than 7 hours;
 - (b) in any week during a school holiday, for more than 25 hours.
- (3) A child aged 15 years shall not be employed–
 - (a) on any day which is not a school day, for more than 8 hours;
 - (b) in any week during a school holiday, for more than 35 hours.
- (4) For the purposes of this Article –
 - (a) any reference to a week during a school term includes a week in which a school term begins or ends;
 - (b) any week that that is not a week during a school term is a week during a school holiday.

5 Restriction on days of employment in a week

A child shall not be employed on more than 5 days in a week.

6 Rest periods and breaks

- (1) In each period of 24 hours, a child shall have a rest period of at least 14 consecutive hours.
- (2) Where a child works for more than 4½ hours in a day, the child shall be entitled to an uninterrupted rest period of at least 30 minutes.
- (3) In each period of one year, during a school holiday, a child shall have a rest period free of work of at least 2 consecutive weeks.

7 Prohibited work

- (1) A child shall not be employed in work which –
 - (a) is likely to be harmful to the child's safety, health or development; or
 - (b) is such as to prejudice the child's attendance at school, the child's participation in vocational orientation or training programmes, or the child's capacity to benefit from the instruction received.
- (2) Without prejudice to the generality of paragraph (1), a child shall not, in the course of his or her employment –
 - (a) undertake work of any kind in premises which are a nightclub, dance hall, discotheque, bar or public house or like establishment unless the work is licensed under Article 50(1) of the Law or work for which a licence is not required by virtue of paragraph (3) of that Article;
 - (b) undertake work of any kind in a kitchen in which food is prepared for sale in the course of a business;
 - (c) undertake work of any kind in a slaughterhouse or in any part of a butcher's shop or other premises connected with the killing of livestock, butchery or the preparation of carcasses or meat for sale;
 - (d) sell or deliver liquor, other than in sealed containers;

- (e) sell or deliver tobacco, other than in sealed packages;
- (f) deliver milk;
- (g) deliver fuel oil;
- (h) collect or sort refuse;
- (i) undertake any work, whether in a fairground or amusement arcade or like place, connected with the provision of public amusement by means of automatic machines, shooting ranges or games of chance or skill;
- (j) undertake any work which involves harmful exposure to physical, biological or chemical agents;
- (k) undertake any work which involves door-to-door sales or canvassing or collection of money in payment for goods delivered to households, or any related work, unless the child works under the direct and constant supervision of an adult;
- (l) undertake any work at an elevation from which the child could fall more than 3 metres, whether or not the work is undertaken using a ladder, scaffold, harness, platform or any other temporary or permanent structure.
- (m) undertake any work administering personal care to residents of a nursing home, mental nursing home or residential care home, within the meaning of the Nursing and Residential Homes (Jersey) Law 1994;
- (n) undertake telephone or internet sales.

8 Duty to child who works without pay

Where, by virtue of Article 48(5) of the Children (Jersey) Law 2002 a child is, for the purposes of this Order, treated as employed, the employer shall have the same duties to the child as an employer would have to an employee under the Health and Safety at Work (Jersey) Law 1989.

9 Employment authorized by other enactment

- (1) Article 2 or 3 of this Order shall not apply to the employment of a child to the extent that, as the case requires, the employment of a child under the age of 13 or the employment of a child outside the hours permitted by Article 2 is authorized by a licence granted by the Minister under Article 50 of the Children (Jersey) Law 2002 or permitted, without a licence, by paragraph (3) of that Article.
- (2) Articles 6, 7 and 8 of this Order shall not apply to the employment of a child to which the Shipping (Employment of Young People) (Jersey) Order 2007 applies.

10 Citation and commencement

This Order may be cited as the Children (Regulation of Employment) (Jersey) Order 2007 and shall come into force on [.....].