

The complicated picture of child employment dazed and confused

Introduction

The TUC and NSPCC commissioned the Children's Legal Centre to prepare a report on child employment¹ and also to undertake a survey of local authority by-laws on child employment. The purpose was to ascertain what form of employment could be taken by 13 and 14-year-olds, the accessibility of those by-laws and the extent to which they complied with national laws.

S.18(2) Children and Young Persons Act 1933, implementing EU Directive 94/33/EC, contains restrictions on the employment of children below compulsory school age. In essence, this legislation provides that no children may be employed in part-time work under the age of 14, with a number of exceptions. The major exception is that children who have reached the age of 13 may work if a local authority, in its by-laws, permits such employment. Any such by-laws may distinguish between children of different ages and sexes and between different localities, trades, occupations and circumstances. Such by-laws may authorise the employment of children aged 13² on an occasional basis by their parents or guardians in light agricultural or horticultural work and in categories of light work specified in the by-law.

While local authorities are permitted to set by-laws detailing the restrictions on child employment, the content of the by-laws must comply with national legislation, which has precedence. Thus, the by-laws must not contradict s.18 Children and Young Persons Act 1933. It is clear from our findings, however, that a significant number of local authorities are failing to discharge this fundamental

¹ See also Too Much, Too Soon: The Law relating to Employment of Children, Carolyn Hamilton, presented at TUC seminar 6th November 2002.

² The age of 13 was introduced by the Children (Protection at Work) Regulations 2000 SI 2000/1333 reg. 2(1), which came into force 7th June 2000

legal duty. A number of local authorities maintain by-laws which contain provisions on child employment that conflict with national legislation.

It is also apparent that due to the discretion given to local authorities to set out in the by-laws the nature of work to be undertaken by 13-year-olds, and the hours and terms and conditions for working children, that there is a considerable level of local variation in the forms of employment that may be taken by children.

Methodology of the survey

The findings in this paper are based upon the information provided by local authorities. In the first wave of the research, all local authorities, other than unitary authorities, were asked to provide a copy of any by-law maintained by them relating to child employment.³ In only eight instances were we able to obtain the relevant by-law on line via the internet. 89 local authorities sent the information requested by post.⁴ However, in some cases, although a by-law was requested, the local authority sent an information leaflet instead. When further requested to send a by-law, some again sent only an information leaflet.

When a phone call was made to a local authority, it was rare for the operator to know who had responsibility for providing such information. Sometimes a referral was made to the education welfare service, sometimes to the legal department and sometimes to social services or the enterprise department. By-laws are, of course, public documents and are available, on request, to any member of the public. However, one council, the London Borough of Southwark, required that a request

³ The by-law was first sought on the internet. If the by-law was not obtainable on the internet, the local authority was telephoned, and the relevant person sought. A request was made for a copy of the by-law. If no by-law was sent, the council was phoned for a second time. This was followed up by an email request where an email address was available. By-laws were not sought from unitaries due to the available timespan for the research. It was the view of the researchers that the lack of such by-laws did not fundamentally effect the validity of the research.

⁴ The research was carried out between July and September 2002.

for the by-law be put in writing with an explanation as to why we wished to obtain a copy.⁵

In the second wave of research, councils were broken down into the following categories:

- English county councils (all of whom responded)⁶
- London boroughs (23 out of 32 responded. Of the nine who failed to respond, one, Lambeth, stated that they did not have a relevant by-law)
- English metropolitan district councils (32 out of 36 responded)⁷
- unitary authorities (43 out of 47 responded). Three failed to reply⁸ and one authority (Bath and North East Somerset) stated that they did not have a by-law on child employment.

All non-unitary councils were also asked whether they had changed their by-laws since 2002 when the initial research was undertaken. Of these, six county councils had changed their by-laws.⁹

The failure to make by-laws accessible on line reduces the availability of information on child employment to children, parents and employers. Further, the lack of an agreed body within local authorities to handle child employment also reduces accessibility and is an issue that needs to be addressed by local authorities.

⁵ When an objection was made to this by the CLC in an e-mail, it was agreed that we could have the by-law on demand. The reason for requesting authorisation was that too many people asked for the by-law.

⁶ Initially, in the 2002 research one county council failed to respond. All 34 responded during the November 2003 survey

⁷ North Tyneside and Wolverhampton failed to respond, despite repeated requests.

⁸ Although follow up calls were made when there was a failure to send the by-law

⁹ Buckinghamshire, Cornwall, Gloucestershire, Norfolk, Nottinghamshire and Somerset.

Part I: compliance with national legislation

Definitions

A child is, according to s.8 Education Act 1996, a person not yet over compulsory school age. Children of 14 up to compulsory school leaving age may be employed in 'light work'. 13-year-olds may take light work as well, but only in categories specified in a local authority by-law.¹⁰

Employment is defined in s.30 Children and Young Persons Act as assistance in any trade or occupation which is carried on for profit, whether or not payment is received.

'Light work'¹¹ is defined as '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 to their participation in work experience in accordance with section 560 of the Education Act 1996, or their capacity to benefit from the instruction received or, as the case may be, the experience gained'.

These definitions were all repeated in the by-laws relating to child employment.

Minimum age

The Children (Protection at Work) Regulations 2000 amended the Children and Young Persons Act 1933 s.18. Before the relevant amendments it was possible for children as young as 10 to be employed by parents in light agricultural or horticultural work. However, since 7 June 2000 when the Regulations came into force, the minimum age for employment, with some very limited exceptions relating mainly to public performances, has been 13 years of age.

¹⁰ Children and Young Persons Act 1933 s.18(2)(a)

¹¹ s.18(2A) Children and Young Persons Act 1933

One council, Coventry, has chosen not to authorise the employment of 13-year-olds at all, and sets the minimum age of child employment at 14. In 2003, 10 out of 34 county councils, 9 out of 23 London boroughs, 12 out of 32 metropolitan district councils and 18 out of the 43 unitary authorities who replied had failed to take into account the Children (Protection at Work) Regulations 2000 and still permit the employment of 10 year olds on an occasional basis in agricultural and horticultural work when supervised by their parents.¹²

The fact that so many by-laws do not comply with national legislation on the minimum age is a cause of concern to those seeking to protect children. The major reason for such a discrepancy between by-laws and national legislation is quite simply that many local authorities have failed to update their by-laws following a change in the national laws.¹³ While the national law clearly states the minimum age at which a child may be employed is 13, parents and children will inevitably be confused if their local authority permits earlier employment.

Differentiating between 13 and 14-year-olds

National legislation demands that a distinction is made between 13 and 14-year-olds. A 13-year-old does not have a right to take employment, while a 14-year-old does. A further important difference in the treatment of 13 and 14-year-olds is that a child aged 14 may work in *any* form of light work. A child aged 13, however, may only be employed in light work *specified* in the by-laws or, on an *occasional* basis, in light agricultural or horticultural work for his or her parents.¹⁴

¹² Cambridgeshire, Durham, Essex, Lancashire, Leicestershire, Northumberland, Shropshire, Suffolk, Warwickshire and Wiltshire County Councils; The London Boroughs of Bexley, Bromley, Camden, Croydon, Ealing, Harrow, Hounslow, Lewisham and Waltham Forest; Bury, Doncaster, Gateshead, Knowsley, Leeds, Oldham, Rochdale, Salford, Sefton, Tameside, Trafford and Wigan MDCs; Medway, Swindon, Southend on Sea, Bracknell Forest, North Somerset, Telford, Blackburn and Darwen, Rutland, Darlington, Luton, Redcar and Cleveland, Thurrock, Warrington, South Gloucestershire, Bournemouth, Nottingham, Hartlepool and Blackpool UAs.

¹³ eg South Tyneside (1977), Sunderland (1980) and Cardiff (1995) all have by-laws dated well before the 2000 legislative changes.

¹⁴ S.18(2) Children and Young Persons Act 1933

These differences in the legal position of 13-year-old and 14-year-old children are, however, often difficult to see in the by-laws. Although, the employment of 13-year-old children is to be regarded as an exception, the by-laws specify such wide categories of light work that may be undertaken by 13-year-olds, that it can be argued the differentiation between 13 and 14-year-olds has virtually ceased to exist, and the rule that 13-year-olds should only work as an exception, has largely disappeared.

What work can be taken by 14-year-olds that can't be taken by 13-year-olds?

All the by-laws specify jobs that children of any age are forbidden from taking. The list of forbidden jobs varies, but generally includes a ban on employment:

- in a cinema, theatre, discotheque, dance hall or night club, except in connection with a performance given entirely by children;
- selling or delivering alcohol, except in sealed containers;
- delivering milk (though this is not excluded in Kirklees, South Tyneside and Sunderland, North Yorkshire, Somerset, Warwickshire, Croydon,¹⁵ Harrow and Waltham Forest. Nor is it excluded by seven unitary councils¹⁶);
- delivering fuel oils;
- in a commercial kitchen;
- collecting or sorting refuse;
- in any work which is more than three metres above ground level or, in the case of internal work, more than three metres above floor level;
- involving harmful exposure to physical, biological or chemical agents;
- collecting money or selling or canvassing door to door, except under the supervision of an adult;
- involving exposure to adult material or in situations which are for this reason otherwise unsuitable for children;
- in telephone sales;
- in any slaughter house or in that part of any butcher's shop or other premises

¹⁵ Croydon by-laws provide that it children may only deliver milk on a Saturday or Sunday.

¹⁶ Bracknell Forest, Derby City, Slough, Darlington, Peterborough, West Berkshire and South Tyneside.

connected with the killing of livestock, butchery, or the preparation of carcasses or meat for sale;

- as an attendant or assistant in a fairground or amusement arcade or in any other premises used for the purpose of public amusement by means of automatic machines, games of chance or skill or similar devices;
- involving the personal care of residents of any residential care home or nursing home unless under the supervision of a responsible adult (but not Birmingham, Kirklees and South Tyneside);
- in or in connection with any racing course or track or other place where any like sport is carried on or as an assistant in any business conducted therein (this is only referred to in the by-laws of Calderdale, Northumberland and West Sussex);
- in a factory or industrial undertaking (this is only referred to in the by-laws of Dudley and Staffordshire);
- involving firearms (this is only referred to in the by-laws of Kent);
- involving the sale and delivery of tobacco products (but this is only referred to in the by-laws of Croydon and Lewisham).

Some by-laws are very brief. Islington London Borough contains only six categories of work that will never be approved.¹⁷

One significant difference between 13 and 14-year-old children is the ability to take employment in street trading. S.20 Children and Young Persons Act 1933 provides that no child shall engage or be employed in street trading. However, a local authority may make by-laws authorising children who have attained the age of 14 to be employed by their parents in street trading. 21 out of the 32 metropolitan councils, six out of 34 county councils and three London Boroughs explicitly state that no child of any age shall be employed in street trading.

¹⁷ Work in commercial kitchens, work in amusement arcades, serving in pubs, cooking food, selling goods on the street, delivering milk. No distinction is made between 13 and 14-year-olds in terms of prohibited work.

Thirteen county councils¹⁸ do not mention street trading at all in their by-laws. The result of that omission is that children over 14 are not permitted to take employment in street trading. The rest explicitly permit 14-year-olds to take employment in street trading, provided that the employment is by a parent.

There are a number of similarities in the treatment afforded to both age groups. Both 13 and 14-year-olds are only allowed to do light work. They also share the same time restrictions as regards hours worked.

The differences relate to the categories of work available. S.18 Children and Young Persons Act 1933 only permits children aged 13 to be employed on an occasional basis by their parents in agricultural and horticultural work. 14-year-olds can also be employed in industrial undertakings whilst 13-year-olds are excluded. 14-year-olds can also perform abroad with a licence and, if authorised by a by-law, engage in street trading. Under no circumstances is that true for 13-year-olds.

To what extent do by-laws reflect this age differentiation? 29 county councils, 19 out of 23 London boroughs and 28 out of 32 Metropolitan district councils provide that 14-year-olds may be employed in light work, and specify categories of work that 13-year-olds may undertake. However, the categories of work that may be undertaken by 13-year-olds are so wide, that the differentiation between the two groups is rather academic. The categories of work that 13-year-olds may be employed in include:

- agricultural or horticultural work
- delivery of newspapers, journals and other printed materials;
- shop work, including shelf stacking;
- hairdressing salons;
- office work;
- car washing by hand in a private residential setting;
- in a café or restaurant
- in riding stables

¹⁸ Cornwall, Cheshire, Derbyshire, Devon, Durham, East Sussex, Essex, Kent, Lincolnshire, North Yorkshire, Oxfordshire, Somerset, Warwickshire

- domestic work in a hotel and other establishments offering accommodation¹⁹

It is somewhat surprising to see the inclusion of agricultural and horticultural work. S.18(2)(a) (ia) Children and Young Persons Act 1933 makes it clear that children of 13 may be employed on an occasional basis by their parents in agricultural or horticultural work. The implication of this restriction is that children should not be employed on a non-occasional basis by non-parents. This would appear to have been ignored by most local authority by-laws. Eighty-five per cent of by-laws state agriculture and horticulture as a category of work available for 13-year-old children.

There are a number of authorities who fail to specify the categories of work that a child of 13 may take. While Coventry makes it clear that the minimum age of employment within their authority is 14, and thus does not provide categories of work that 13-year-olds may undertake, this is not the case in other areas. Thus, in South Tyneside, Sunderland, East Sussex, Surrey and Islington, 13-year-olds are permitted to work. However, the information provided does not indicate the categories of work in which a 13-year-old may take employment. If the by-law fails to specify categories, then a child of 13 may not take employment.²⁰

Time restrictions

Any child who is employed while still the subject of compulsory schooling may only take part-time employment.

¹⁹ Hampshire County Council employment of children by-laws. This is a typical by-law in relation to categories of work that a child may take. However, they are somewhat misleading. While a child may work in a café or restaurant, they cannot work in the kitchen.

²⁰ Although each authority was clearly asked for their by-law, some provided only leaflets on child employment. There appeared to be some lack of understanding about the difference between a by-law and information. When information alone was sent, some authorities were asked once again for their by-law. In a number of cases, the information leaflet and not the by-law was sent once again. This is in itself of interest as it indicates the difficulties that children, parents and employers have in obtaining information about employment.

Time restrictions in relation to 14-year-old children are set out in s.18(2)(c) Children and Young Persons Act 1933. In term time, a 14-year-old may not work more than:

- 2 hours per day (only one hour before school);
- 12 hours per week; and
- Not before 7am or 7pm.

In the case of 13-year-olds, local authorities may impose stricter restrictions, but must not exceed the maximum work hours set out in s.18 Children and Young Persons Act 1933.

Of the local authorities who responded to the survey 38 state that a child under the age of 15 may work for no more than one hour before school, but do not mention that there is a maximum working time limit of two hours in any one school day or a maximum of 12 hours a week during the school term. Eighteen state no time limit and eleven set the maximum number of hours per week during term-time as 17.

The working hours for children are different in holiday times, but only 76 out of 132 mention these time restrictions correctly.²¹ Fifty-three made no mention of these, while three stated the time restrictions incorrectly.

Where there are no time limits mentioned in the by-laws, national law, as contained in s.18 Children and Young Persons Act 1933, applies. However, few children, parents and employers are likely to realise that if the by-law is silent on an issue, they should refer back to the statute. Nor is it likely that they will be able to access the statute easily. Local authorities do not provide a copy of s.18 Children and Young Persons Act 1933 with information that is sent out on child employment.

²¹ The maximum working times during school holidays are: 5 hours Monday-Saturday and 2 hours Sunday, with a maximum of 25 hours per week.

Conclusion

There is an unacceptable level of variation within local authority by-laws in respect of child employment. Children may take different forms of work dependent on where they live and where they are employed. Such local variation not only leads to uncertainty amongst children, parents and employers as to the work children are permitted to do, but shows a lack of agreement between local authorities on which forms of employment are likely to be harmful to the safety, health or development of children.

More worryingly, the information given in some by-laws does not reflect national law, particularly in relation to the minimum age of employment. 49 local authorities in our survey permitted the employment of 10 year olds on an occasional basis by their parents in agricultural or horticultural work. In addition, a considerable number of by-laws do not specify the times that children may work, and some provide incorrect information. While children, parents and employers could refer to the primary legislation, it is unlikely that they will do so.

A further concern is that the by-laws have blurred the distinction between the employment of 13 and 14-year-olds. The age at which children may take part-time employment in the Children and Young Persons Act 1933 (implementing EU Directive 94/33/EC) is 14. The employment of 13-year-olds is to be regarded as an exception and to be undertaken in only limited circumstances. The Children and Young Persons Act 1933 s.18 permits local authorities to authorise work by 13-year-olds in categories of light work specified in a by-law. Apart from Coventry, which places the minimum age of employment at 13, none of the local authorities make any distinction between the work that may be taken by 13-year-olds and by 14-year-olds, with the exception of street trading, which national legislation forbids to any child under the age of 14. None of the by-laws differentiate in the hours that a 13 and 14-year-old may work. The result of this is, in reality, to reduce the age at which children may take employment from 14 to 13.

The conclusion reached from this survey is that local authorities, children, parents and employers are poorly informed about the rights of children in employment. It is arguable that in relying on local authorities to regulate child employment through by-laws, the government is neither implementing EU Directive 94/33/EC or the UN Convention on the Rights of the Child, both of which require national legislation on child employment. Further, the evidence of this survey indicates that

local authority by-laws are an uncertain method of implementing national legislation. The level of variation, invalidity and inconsistency in the by-laws raises the issue of whether such a system can provide adequate protection to children in employment.

Annex

Local authorities surveyed

County Councils	Unitary Authorities	London Boroughs	Metropolitan District Councils
Bedfordshire	Blackburn with Darwen	Barking and Dagenham	Barnsley
Buckinghamshire	Blackpool	Barnet	Birmingham
Cambridgeshire	Bournemouth	Bexley	Bolton
Cheshire	Bracknell Forest	Brent	Bradford
Cornwall	Brighton & Hove	Bromley	Bury
Cumbria	Bristol	Camden	Calderdale
Derbyshire	Darlington	Croydon	Coventry
Devon	Derby	Ealing	Doncaster
Dorset	East Riding of Yorkshire	Enfield	Dudley
Durham	Halton	Greenwich	Gateshead
East Sussex	Hartlepool	Hammersmith and Fulham	Kirklees
Essex	Herefordshire	Harrow	Knowsley
Gloucestershire	Isle of Wight	Havering	Leeds
Hampshire	Kingston upon Hull	Hounslow	Manchester
Herefordshire	Leicester	Islington	Newcastle upon Tyne
Kent	Luton	Lewisham	Oldham
Lancashire	Medway	Merton	Rochdale
Leicestershire	Milton Keynes	Newham	Salford
Lincolnshire	North East Lancashire	Redbridge	Sandwell
Norfolk	North Lincolnshire	Southwark	Sefton
North Yorkshire	North Somerset	Sutton	Sheffield
Northamptonshire	Nottingham	Waltham Forest	Solihull
Northumberland	Peterborough	Westminster	South Tyneside
Nottinghamshire	Plymouth		St Helens

Oxfordshire	Poole	Stockport
Shropshire	Portsmouth	Sunderland
Somerset	Reading	Tameside
Staffordshire	Redcar & Cleveland	Trafford
Suffolk	Rutland	Wakefield
Surrey	Slough	Walsall
Warwickshire	South Gloucestershire	Wigan
West Sussex	South Tyneside	Wirral
Wiltshire	Southampton	
Worcestershire	Southend on Sea	
	Stockton on Tees	
	Swindon	
	Telford and Wrekin	
	Thurrock	
	Torbay	
	Warrington	
	West Berkshire	
	Wokingham	
	York	

Tables

Table 1: By-laws – accessibility

By-laws - how accessible are the by-laws (total councils England)

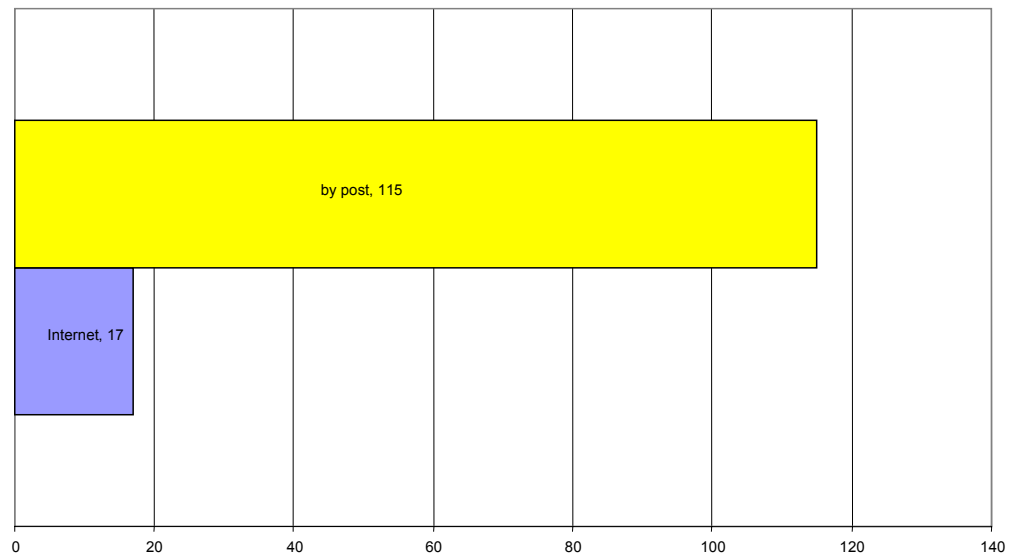


Table 2. Date on by-laws

Date on by-laws (all councils in England)

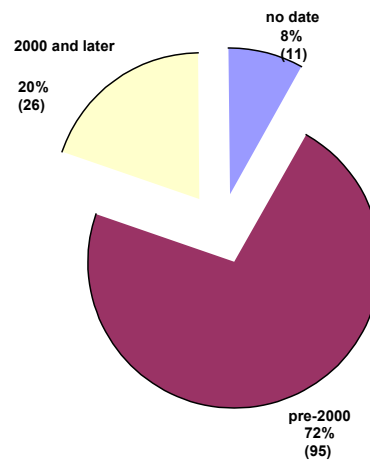


Table 3. Minimum age when children can work

By-laws: minimum age of child to get employment (all councils)

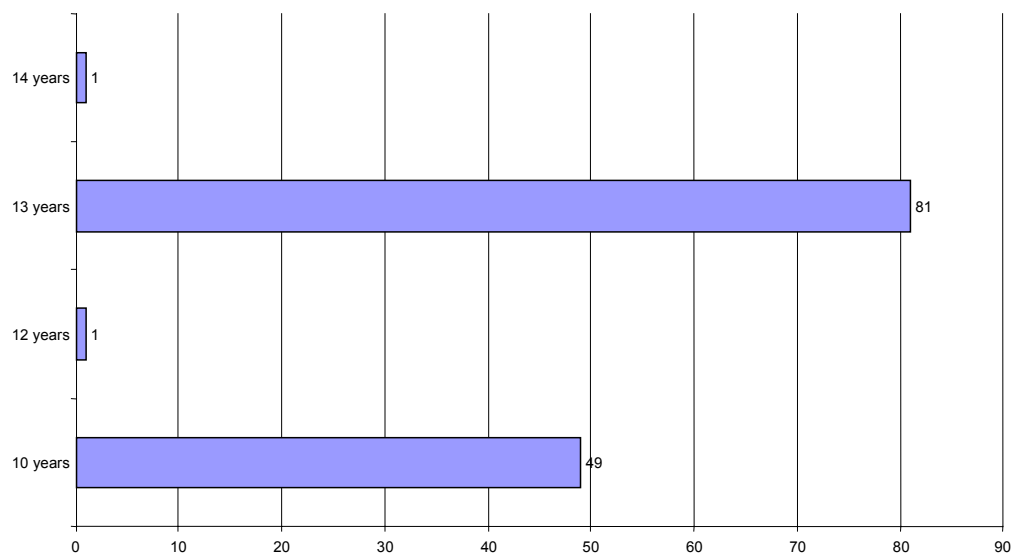
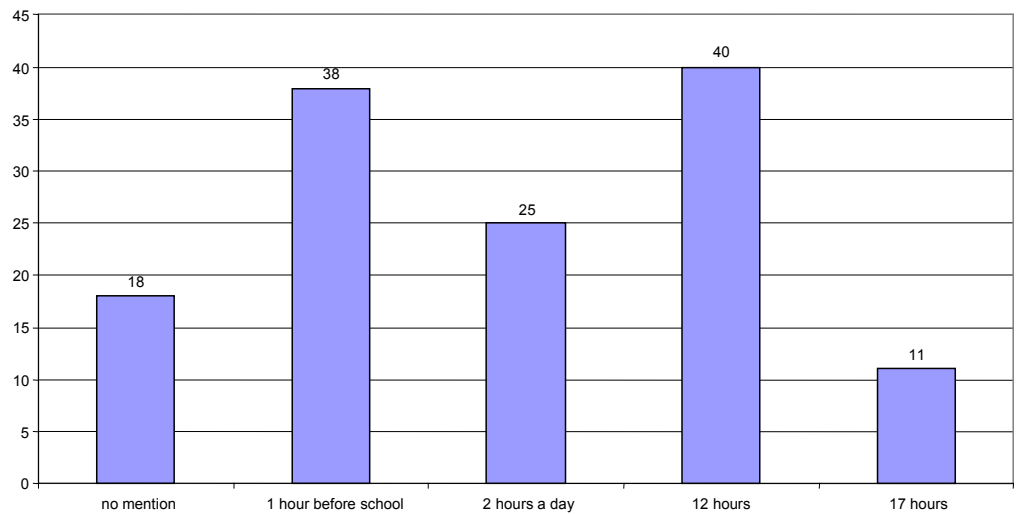


Table 4. Max hours of work (term time)

By-laws: maximum hours of work during term time
(all councils England)



Councils with the correct by-laws appear in the 12 hours category²².

²² The correct by-law should state that children can work for 2 hours per day (only one hour before school) and no more than 12 hours per week

Table 5. Maximum hours allowed (holiday time)

By-laws - maximum hours of work during holiday time

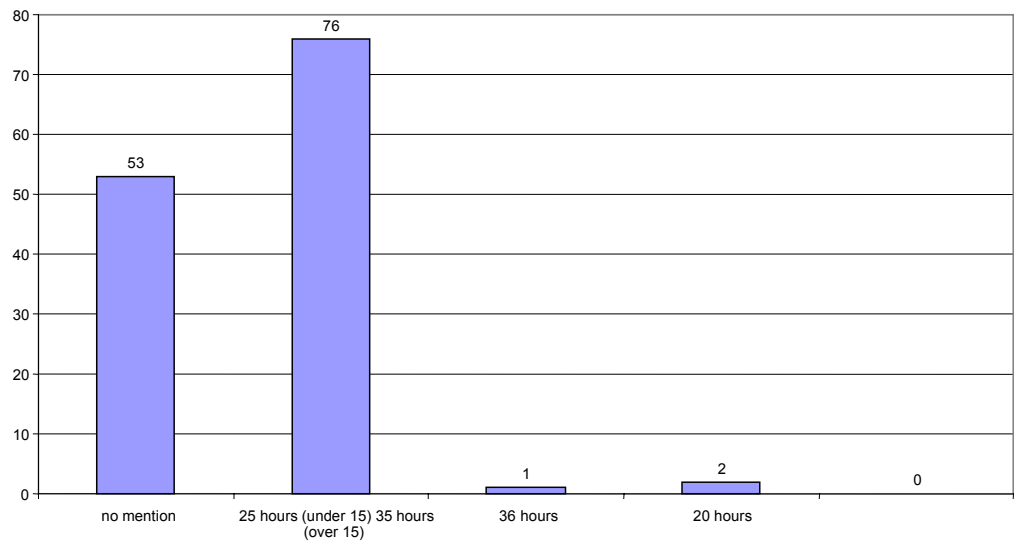


Table 6. Difference made between 13 and 14-year-olds

By-laws - difference made between 13 and 14 year olds (all councils)

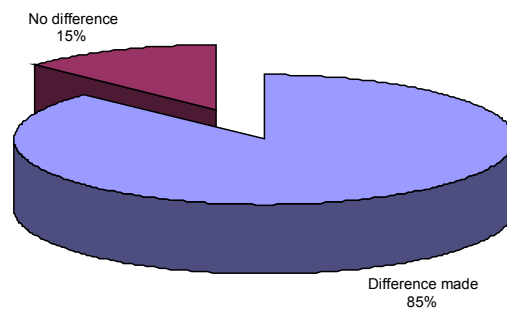


Table 7. Street Trading

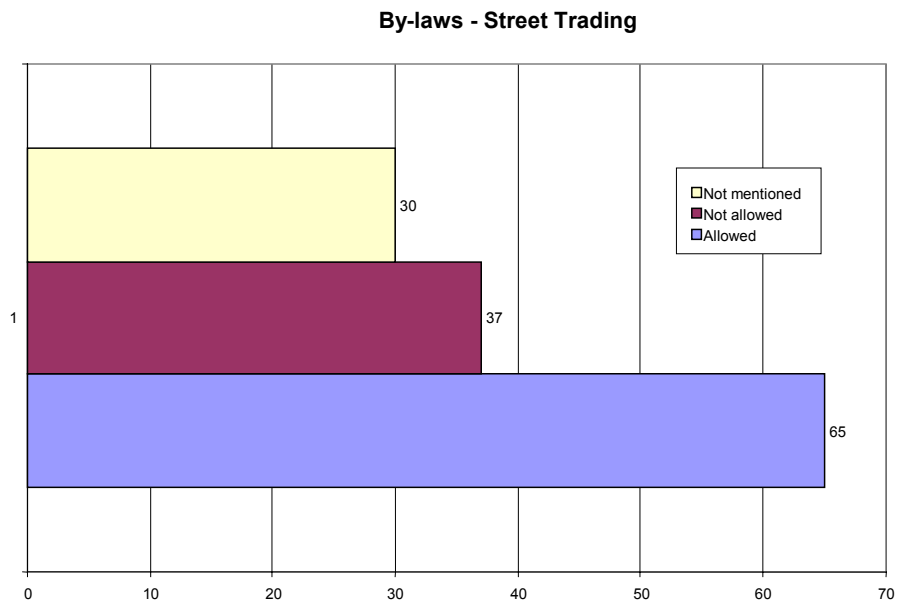


Table 8. Enforcement

