

**LegCo Panel on Manpower
(Meeting to be held 16 May 2002)**

**Amendment of Labour Legislation relating to the Application of
International Labour Convention No. 182 to HK**

PURPOSE

This paper informs Members of the Administration's proposal to amend two labour regulations for the purpose of applying International Labour Convention No. 182: the Worst Forms of Child Labour Convention, 1999 (the Convention) in the Hong Kong Special Administrative Region (HKSAR). These regulations are:

- (a) Employment of Young Persons (Industry) Regulations (EYPIR) made under the Employment Ordinance (Cap. 57); and
- (b) Factories and Industrial Undertakings (Woodworking Machinery) Regulations (FIUWMR) made under the Factories and Industrial Undertakings Ordinance (FIUO) (Cap. 59).

BACKGROUND

The Convention

2. The Convention (Annex 1) calls for immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour. Under the Convention, a "child" is defined as a person under the age of 18. One form of child labour that is to be prohibited and eliminated under the Convention is work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

3. While the Convention aims to provide protection to children under the age of 18, some flexibility is provided to enable children from the

age of 16 to be engaged in hazardous work. This is on condition that the competent authority will ensure the health, safety and morals of the children concerned are fully protected, and that the children have received adequate specific instruction or vocational training in the relevant branch of activity. Such flexibility is contained in the Worst Forms of Child Labour Recommendation No. 190 (Annex 2).

4. The Convention and Recommendation No. 190 were unanimously adopted by the International Labour Conference in June 1999. It is a core convention of the International Labour Organization and is widely ratified by member States. As at 29 April 2002, 119 countries have ratified the Convention.

5. The Central People's Government is considering ratifying the Convention and has asked the Government of the HKSAR to consider if the Convention can be applied in the HKSAR. The Administration, having consulted the Committee on the Implementation of International Labour Standards of the Labour Advisory Board, has concluded that the Convention should be applied to the HKSAR and has notified the CPG of this in September 2001.

Current Legislation

6. We have thoroughly examined our labour legislation and found that the two regulations identified in paragraph 1 above do not currently comply with the Convention in the following areas:

- (a) Regulation 5(1) of the EYPIR (Annex 3) allows young persons under the age of 16 years to be employed in dangerous trades after obtaining the written permission of the Commissioner for Labour (the Commissioner). A list of the dangerous trades is at Annex 4; and
- (b) Regulation 9(2) of the FIUWMR (Annex 5) allows persons under 16 years of age to be employed on a woodworking machine with the written permission of the Commissioner.

7. The Convention requires that the minimum age of employment

for dangerous trades and hazardous work should be set at 18 years. Even where flexibility is provided (see paragraph 3 above), the minimum age cannot fall below 16.

PROPOSAL

8. In order to comply with the Convention, it is recommended that:
 - (a) Regulation 5(1) of the EYPIR be amended to remove the discretion by the Commissioner to permit the employment of young persons under 16 years of age in dangerous trades and to prohibit the employment of young persons under 18 years of age in such trades; and
 - (b) Regulation 9(2) of the FIUWMR be amended to remove the discretion by the Commissioner to permit the employment of persons under 16 years of age on any woodworking machine.

JUSTIFICATION

9. The Women and Young Persons (Industry) Regulations were enacted in 1980 (renamed as EYPIR in April 2001). At the time, the provision of allowing persons under 16 to work in dangerous trades with the Commissioner's permission was modeled on similar provision in the Factories and Industrial Undertakings Regulations, which can be traced back to the mid-1950s. The flexibility was introduced to provide more employment opportunities for school leavers aged 15. Since the Women and Young Persons (Industry) Regulations came into effect in 1980, the Labour Department has not received any application requesting the Commissioner to permit persons under the age of 16 to be employed in dangerous trades. In fact according to Labour Department's record there has not been employment of young persons under the age of 18 in dangerous trades for many years. Given the dangerous nature of these trades and the lack of demand from young persons below the age of 18 to join such trades, it would appear to be appropriate to raise the age of employment to 18.

10. The FIUWMR was enacted in 1971. In the 1970s, it was not

uncommon that young persons were employed to operate machines. Owing to the relatively dangerous nature of woodworking machines, it was considered necessary and appropriate to minimize the risks of young persons under 16 who were employed to operate such machines. Hence, only with the written permission of the Commissioner would employment of young persons under 16 be allowed. In granting the permission, the Commissioner could impose additional safety precautions as deemed necessary to ensure the safety of the young persons in operating woodworking machines.

11. The proposal to amend Regulation 9(2) of the FIUWMR to prohibit all persons under the age of 16 years from operating woodworking machinery will not have any impact on employers and young persons under 16 years of age. The Labour Department has not received any application for such permission since the FIUWMR came into operation in 1971.

12. We do not recommend raising the age limit to 18 years for the amendment of Regulation 9(2) of the FIUWMR as we consider that there is still a need to allow persons aged 16 and 17 to operate woodworking machines for practical reasons. Currently, there are two designated trades under the Apprenticeship Ordinance (Cap. 47), involving the use of woodworking machines, i.e. “Carpenter/Joiner” and “Wood Furniture Maker”. Some young persons who would like to join the apprenticeship training or work in these trades may not have reached the age of 18. In order not to jeopardise the employment opportunity of this particular group of young persons, we do not propose to raise the minimum age limit beyond 16 for employment on woodworking machines.

13. Although young persons aged 16 and 17 will be allowed to work on woodworking machines after the proposed amendments are made, this is permitted under Paragraph 4 of Recommendation No. 190. We are satisfied that young persons aged 16 and above employed on woodworking machines have adequate instruction and training and are fully protected under the general duties provisions of the Occupational Safety and Health Ordinance (Cap. 509) and the FIUO as well as the statutory safety requirements of the FIUWMR.

ECONOMIC IMPLICATIONS

14. According to information available from the Census and Statistics Department, there are very few establishments that would fall within the list of dangerous trades as defined under the FIUO. Records of the Labour Department also show that no industrial undertaking is currently employing any person under the age of 18 years in the dangerous work processes.

15. So far, the Labour Department has not received any request for permission to employ young persons under the age of 16 to work in these dangerous trades or on woodworking machines.

16. Since the proposed amendments do not appear to have any impact on the employment opportunities of young persons under 18 years of age, there should not be additional compliance cost on the part of the business sector.

CONSULTATION

17. The Labour Advisory Board has been consulted and agreed to the proposed amendments.

LEGISLATIVE TIMETABLE

18. We intend to introduce the legislative amendments to the Legislative Council within 2002.

ADVICE SOUGHT

19. Members are invited to note the proposed amendments set out in paragraph 8.

Education and Manpower Bureau
May 2002

C182 Worst Forms of Child Labour Convention, 1999

Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. (Note: Date of coming into force : 19:11:2000) Convention: C182

Place : Geneva

Session of the Conference: 87

Date of adoption:17:06:1999

See the ratifications for this Convention.

Display the document in : French Spanish

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999, and

Considering the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour, as the main priority for national and international action, including international cooperation and assistance, to complement the Convention and the Recommendation concerning Minimum Age for Admission to Employment, 1973, which remain fundamental instruments on child labour. and

Considering that the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education and the need to remove the children concerned from all such work and to provide for their rehabilitation and social integration while addressing the needs of their families, and

Recalling the resolution concerning the elimination of child labour adopted by the International Labour Conference at its 83rd Session in 1996, and

Recognizing that child labour is to a great extent caused by poverty and that the long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education.

Recalling the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989, and

Recalling the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998, and

Recalling that some of the worst forms of child labour are covered by other international instruments, in particular the Forced Labour Convention, 1930, and the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, and

Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Convention, which may be cited as the Worst Forms of Child Labour Convention, 1999.

Article 1

Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

Article 2

For the purposes of this Convention, the term child shall apply to all persons under the age of 18.

Article 3

For the purposes of this Convention, the term the worst forms of child labour comprises:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Article 4

1. The types of work referred to under Article 3(d) shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the Worst Forms of Child Labour Recommendation, 1999.
2. The competent authority, after consultation with the organizations of employers and workers concerned, shall identify where the types of work so determined exist.
3. The list of the types of work determined under paragraph 1 of this Article shall be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned.

Article 5

Each Member shall, after consultation with employers' and workers' organizations, establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to this Convention.

Article 6

1. Each Member shall design and implement programmes of action to eliminate as a

priority the worst forms of child labour.

2. Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of other concerned groups as appropriate.

Article 7

1. Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.

2. Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:

(a) prevent the engagement of children in the worst forms of child labour;

(b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;

(c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;

(d) identify and reach out to children at special risk; and

(e) take account of the special situation of girls.

3. Each Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.

Article 8

Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.

Article 9

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 10

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member 12 months after

the date on which its ratification has been registered.

Article 11

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 12

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and acts of denunciation communicated by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 13

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 14

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 15

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides --

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 11 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 16

The English and French versions of the text of this Convention are equally authoritative.

Cross references

Conventions: C029 Forced Labour Convention, 1930

Conventions: C138 Minimum Age Convention, 1973

Recommendations: R035 Forced Labour (Indirect Compulsion) Recommendation, 1930

Recommendations: R036 Forced Labour (Regulation) Recommendation, 1930

Recommendations: R146 Minimum Age Recommendation, 1973

Supplemented: R190 Complemented by the Worst Forms of Child Labour Recommendation, 1999

Constitution: 22:article 22 of the Constitution of the International Labour Organisation

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R190 Worst Forms of Child Labour Recommendation, 1999

Recommendation concerning the prohibition and immediate action for the elimination of the worst forms of child labour

Place: Geneva

Session of the Conference:87

Date of adoption:17:06:1999 Display the document in: French Spanish

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-seventh Session on 1 June 1999, and

Having adopted the Worst Forms of Child Labour Convention, 1999, and

Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Worst Forms of Child Labour Convention, 1999;

adopts this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Recommendation, which may be cited as the Worst Forms of Child Labour Recommendation, 1999.

1.The provisions of this Recommendation supplement those of the Worst Forms of Child Labour Convention, 1999 (hereafter referred to as "the Convention"), and should be applied in conjunction with them.

1.Programmes of action

2.The programmes of action referred to in Article 6 of the Convention should be designed and implemented as a matter of urgency, in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of the children directly affected by the worst forms of child labour, their families and, as appropriate, other concerned groups committed to the aims of the Convention and this Recommendation. Such programmes should aim at, inter alia:

(a) identifying and denouncing the worst forms of child labour;

(b) preventing the engagement of children in or removing them from the worst forms of child labour, protecting them from reprisals and providing for their rehabilitation and social integration through measures which address their educational, physical and psychological needs;

(c) giving special attention to:

(i) younger children;

(ii) the girl child;

(iii) the problem of hidden work situations, in which girls are at special risk;

(iv) other groups of children with special vulnerabilities or needs;

(d) identifying, reaching out to and working with communities where children are at special risk;

(e) informing, sensitizing and mobilizing public opinion and concerned groups, including children and their families.

II. Hazardous work

3. In determining the types of work referred to under Article 3(d) of the Convention, and in identifying where they exist, consideration should be given, inter alia, to:

(a) work which exposes children to physical, psychological or sexual abuse;

(b) work underground, under water, at dangerous heights or in confined spaces;

(c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;

(d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;

(e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

4. For the types of work referred to under Article 3(d) of the Convention and Paragraph 3 above, national laws or regulations or the competent authority could, after consultation with the workers' and employers' organizations concerned, authorize employment or work as from the age of 16 on condition that the health, safety and morals of the children concerned are fully protected, and that the children have received adequate specific instruction or vocational training in the relevant branch of activity.

(III) Implementation

5. (1) Detailed information and statistical data on the nature and extent of child labour should be compiled and kept up to date to serve as a basis for determining priorities for national action for the abolition of child labour, in particular for the prohibition and elimination of its worst forms as a matter of urgency.

(2) As far as possible, such information and statistical data should include data disaggregated by sex, age group, occupation, branch of economic activity, status in employment, school attendance and geographical location. The importance of an effective system of birth registration, including the issuing of birth certificates, should be taken into account.

(3) Relevant data concerning violations of national provisions for the prohibition and elimination of the worst forms of child labour should be compiled and kept up to date.

6. The compilation and processing of the information and data referred to in Paragraph 5 above should be carried out with due regard for the right to privacy.

7. The information compiled under Paragraph 5 above should be communicated to the International Labour Office on a regular basis.
8. Members should establish or designate appropriate national mechanisms to monitor the implementation of national provisions for the prohibition and elimination of the worst forms of child labour, after consultation with employers' and workers' organizations.
9. Members should ensure that the competent authorities which have responsibilities for implementing national provisions for the prohibition and elimination of the worst forms of child labour cooperate with each other and coordinate their activities.
10. National laws or regulations or the competent authority should determine the persons to be held responsible in the event of non-compliance with national provisions for the prohibition and elimination of the worst forms of child labour.
11. Members should, in so far as it is compatible with national law, cooperate with international efforts aimed at the prohibition and elimination of the worst forms of child labour as a matter of urgency by:
 - (a) gathering and exchanging information concerning criminal offences, including those involving international networks;
 - (b) detecting and prosecuting those involved in the sale and trafficking of children, or in the use, procuring or offering of children for illicit activities, for prostitution, for the production of pornography or for pornographic performances;
 - (c) registering perpetrators of such offences.
12. Members should provide that the following worst forms of child labour are criminal offences:
 - (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
 - (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; and
 - (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties, or for activities which involve the unlawful carrying or use of firearms or other weapons.
13. Members should ensure that penalties including, where appropriate, criminal penalties are applied for violations of the national provisions for the prohibition and elimination of any type of work referred to in Article 3(d) of the Convention.
14. Members should also provide as a matter of urgency for other criminal, civil or administrative remedies, where appropriate, to ensure the effective enforcement of national provisions for the prohibition and elimination of the worst forms of child labour, such as special supervision of enterprises which have used the worst forms of child labour, and, in cases of persistent violation, consideration of temporary or permanent revoking of permits to operate.

15. Other measures aimed at the prohibition and elimination of the worst forms of child labour might include the following:

- (a) informing, sensitizing and mobilizing the general public, including national and local political leaders, parliamentarians and the judiciary;
- (b) involving and training employers' and workers' organizations and civic organizations;
- (c) providing appropriate training for the government officials concerned, especially inspectors and law enforcement officials, and for other relevant professionals;
- (d) providing for the prosecution in their own country of the Member's nationals who commit offences under its national provisions for the prohibition and immediate elimination of the worst forms of child labour even when these offences are committed in another country;
- (e) simplifying legal and administrative procedures and ensuring that they are appropriate and prompt;
- (f) encouraging the development of policies by undertakings to promote the aims of the Convention;
- (g) monitoring and giving publicity to best practices on the elimination of child labour;
- (h) giving publicity to legal or other provisions on child labour in the different languages or dialects;
- (i) establishing special complaints procedures and making provisions to protect from discrimination and reprisals those who legitimately expose violations of the provisions of the Convention, as well as establishing helplines or points of contact and ombudspersons;
- (j) adopting appropriate measures to improve the educational infrastructure and the training of teachers to meet the needs of boys and girls;
- (k) as far as possible, taking into account in national programmes of action:
 - (i) the need for job creation and vocational training for the parents and adults in the families of children working in the conditions covered by the Convention; and
 - (ii) the need for sensitizing parents to the problem of children working in such conditions.

16. Enhanced international cooperation and/or assistance among Members for the prohibition and effective elimination of the worst forms of child labour should complement national efforts and may, as appropriate, be developed and implemented in consultation with employers' and workers' organizations. Such international cooperation and/or assistance should include:

- (a) mobilizing resources for national or international programmes;
- (b) mutual legal assistance;

(c) technical assistance including the exchange of information;

(d) support for social and economic development, poverty eradication programmes and universal education.

Cross references

Conventions : C182. Worst Forms of Child Labour Convention, 1999.

Supplemented : C182 Complementary to the Worst Forms of Child Labour Convention, 1999

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Section of Enactment			
Chapter : 57C	Title :	EMPLOYMENT OF YOUNG PERSONS (INDUSTRY) REGULATIONS	Gazette Number : 7 of 2001
Regulation : 5	Heading :	Employment of young Persons under 16 in dangerous trades	Version Date : 12/04/2001

(1) Except with the written permission of the Commissioner, no person shall employ any young person under 16 years of age in any dangerous trade. (L.N. 229 of 1997)

(2) In paragraph (1), "dangerous trade" (危險行業) has the meaning assigned to it in the Factories and Industrial Undertakings Ordinance (Cap 59).

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Section of Enactment

Chapter :	59	Title :	FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE	Gazette Number :	
Schedule :	1	Heading :	DANGEROUS TRADES	Version Date :	30/06/1997

[sections 2 & 8]

1. Boiler chipping.
2. (Repealed L.N.222 of 1983)
3. The manufacture of glass from basic raw materials. (Replaced L.N. 222 of 1983)
4. Manufacturing processes involving the use of arsenic, lead, manganese, mercury, phosphorus, or any compound of any of them. (Amended L.N. 222 of 1983)
5. Vermillion manufacture.
6. Chromium plating.
7. The machining or grinding of celluloid or magnesium, or of any article wholly or partly made of celluloid or magnesium in any manufacturing process. (Replaced L.N. 222 of 1983)
8. The manufacture of hydrochloric, nitric or sulphuric acids.

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Section of Enactment

Chapter : 59G Title : **FACTORIES AND INDUSTRIAL UNDERTAKINGS (WOODWORKING MACHINERY) REGULATIONS** Gazette Number :

Regulation : **9** Heading : **Training** Version Date : 30/06/1997

(1) A person while being trained to work a woodworking machine shall be fully and carefully instructed as to the dangers arising in connection with such machine and the precautions to be observed.

(2) Except with the written permission of the Commissioner for Labour, no person under 16 years of age shall be employed on any woodworking machine.

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