

**PART-TIME EMPLOYMENT AND SECONDARY
EDUCATION: THE NATURE AND IMPLICATIONS
OF THE PART-TIME EMPLOYMENT OF SCHOOL
PUPILS**

**CHILD EMPLOYMENT: POLICY AND PRACTICE IN
SCOTLAND**

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ABSTRACT

The 'Part-Time Employment and Secondary Education: The nature and implications of the part-time employment of school pupils' research commissioned by the Scottish Executive has a number of strands embedded within it. It was recognised that one strand of the research would need to develop an understanding of policy in this area.

In considering the policy and practice as it relates to child employment in Britain it is important to understand that this has a national and local dimension. National legislation identifies and defines the acceptable limits of child employment. In this legislation a 'child' is anyone under the age of 16 years and covered by compulsory education requirements. While the legislation outlines the parameters within which children can and cannot work, local government implements the day-to-day administration of the policy.

In developing our understanding of this area it is important that some consideration is given to the implications of any proposed changes, for example, recognition of school pupils' employment. The report provides a summary of the findings from the first Scottish wide review of local authority's policy and practice in this area.

EXECUTIVE SUMMARY

Background

This report forms one part of the research 'Part-Time Employment and Secondary Education: The Nature and Implications of the Part-Time Employment of School Pupils', commissioned by the Scottish Executive.

Responsibility for implementing legislation on child employment lies with local authorities. They in turn have the power to make byelaws on child employment.

This study is the first of its kind in Scotland. All 32 local authorities participated. They provide copies of their byelaws and other information made available to the public. In addition, staff nominated by chief executives completed questionnaires and participated in interviews. The data was collected in the period February-April, 2004.

Findings

Section A: Legislation

All but one of the authorities have byelaws on child employment. Some are in the process of changing the byelaws, which can take some considerable time.

The majority of the byelaws have relevant definitions of 'child', 'employment' and 'light work'.

More than half of the authorities have byelaws which set a minimum age for work which is not in line with current Scottish legislation.

There is a lack of clarity, and some confusion, in the specification of the number of hours that children are permitted to work.

Lists of prohibited jobs vary considerably between authorities, so that work which permitted in one area may be prohibited in another. Some lists seem outdated.

Section B: Local Authority Policy and Practice

All but one of the authorities have adopted a 'permit' system to register child employees. However, there is considerable variation in the particular procedures employed.

The majority of authorities have no system in place either to ensure employers and employees conform to the byelaws or to deal with amendments to permits.

The majority of authorities keep records of the number of permits issued. However, some authorities devolve the issuing of permits to schools and keep no central records.

There is a high degree of variability in the number of permits issued by different authorities.

Although some authorities produce leaflets or information packs on child employment regulations, a significant minority do not.

Authorities vary in terms of which department is assigned responsibility for child employment.

With one exception, all authorities assign staff to deal with child employment issues. However, for the majority of the staff concerned, child employment constitutes a minor part of their work.

Discussion

Section A: Legislation

Part of the rationale for devolving child employment regulation to the local level was to allow for local needs to be reflected. There appears to be little evidence that authorities are actually accommodating unique features of the regional labour market in their byelaws.

The maximum number of term-time hours of work permitted in Scotland, at the national level, do not conform to current European Union standards.

The time taken to amend byelaws and have byelaws ratified by the Scottish Executive may be seen as an impediment to effective regulation of child employment.

The rationale for allowing regional flexibility in the content of byelaws may be questioned in the 21st century.

Section B: Local Authority Policy and Practice

Interviews with staff indicated that the majority were of the opinion that the present system is inadequate, in that

it did not give rise to sufficient public awareness of child employment and its regulation, and it failed to protect children.

In interview, staff provided a number of suggestions for improving the regulation of child employment. However, they were aware that since their suggestions would require greater resources, this could be a major constraint.

Staff interviewed had a mixed response to the suggestion that children's part-time work might be given some sort of recognition as a form of educational experience. Many pragmatic concerns were expressed.

Conclusion

The sharing of good practice across local authorities should be encouraged.

Harmonisation of legislation and policy needs to be encouraged.

This report may provide an opportunity to raise the profile of child employment and encourage constructive thinking on the issue.

CHAPTER ONE **BACKGROUND: A BRIEF REVIEW OF POLICY**

Systematic research into child employment is a relatively recent phenomenon in Britain. While there were periods throughout the twentieth century when the topic received the attention of researchers it was only in the 1990s that a sustained period of research started, which has continued to the present day.

The emergence of this topic in the 1990s can be attributed in part to the publication of two reports at the start of the decade. The reports, *The Hidden Army* (Pond & Searle, 1991) and *The Forgotten Workforce* (Lavalette, McKechnie & Hobbs, 1991), drew attention to child employment in contemporary Britain. It has been argued that the significance of these early reports were that they challenged existing beliefs about child employment in Britain. For example, Lavalette, Hobbs, Lindsay & McKechnie (1995) suggested that three myths dominated any discussion of this area within Britain. These were:

- child employment in Britain was a minority experience
- if children did work they were employed in ‘children’s jobs’
- legislation was in place to monitor and protect child employees.

The research findings that emerged over the subsequent years challenged each of the myths identified by Lavalette and his colleagues. They argued that the research evidence pointed to the fact that child employment was a majority experience, that children worked in a wide range of jobs many of them comparable to adult forms of employment and finally that legislation was ineffective in monitoring or protecting child employees (See Hobbs and McKechnie, 1997 for a fuller discussion).

In the context of the current report, the conclusion that is of specific interest relates to the efficacy of legislation in this area. In Britain the existing legislation on child employment applies to those children under 16 years of age, that is children within compulsory education. The legislation (see below for a fuller explanation) sets minimum ages for employment, prohibits employment in certain sectors, sets maximum hours that can be worked, specifies when these hours can be worked and requires that employment is monitored. Research has shown that, irrespective of which of these criteria are used, the legislation is largely ineffective (Leonard, 1999).

While research in the 1990s was highlighting the issue of child employment, the topic’s profile was increased because of a European Union initiative. In 1994 The EU passed the Directive on the Protection of Young People at Work, which was to come into force on the 22nd June 1996. The intention of the directive is clear in that it sets out to ensure that the full-time employment of children under the age of compulsory schooling is prohibited and that part-time employment of children who are still in compulsory schooling is regulated (Cornwell, Graham & Hobbs, 1999; Hamilton, 2002).

The then Conservative Government’s reaction was to seek an opt out from parts of the Directive. They were successful in this but had to bring policy into line with the directive by 2000. In 1997 when the Labour Party won the General Election, Chris Pond, a new Labour MP and an active campaigner on child employment issues (Pond & Searle, 1991), was

successful in the ballot for a Private Members Bill. He indicated that it was his intention to introduce an Employment of Children Bill. The effect of this was to focus the new government's attention on their policy on children at work and the need to implement the EU directive.

The government announced its intention to carry out a full review of child employment legislation in Britain and agreed to the adoption of the EU Directive. Chris Pond in the light of the Government response withdrew his Bill. Early action from the Government identified the need for greater standardisation of the regulation of child employment. They introduced a set of model byelaws for local authorities. In doing so they continued with the practice of allocating the day-to-day implementation of policy to local government (Cornwell et al., 1999).

The review of child employment instigated at this time had a target date of June 2000 for reporting its findings. The outcome of this review has never been made public (Stack & McKechnie, 2002) and some have queried whether there was ever a final report produced (Hamilton, 2002). However, there was some change in policy with the introduction of the Children (Protection at Work) Regulations in 2000.

In recent months [2004] the Better Regulation Task Force (BRTF), an organisation established by the government to comment on the relationship between policy and practice, have undertaken a review of legislation in this area (BRTF, 2004). They have concluded that the legislation needs to be clarified and have made a series of recommendations (See Appendix 1). At the time of writing the government minister involved, Margaret Hodge, Minister for Children, Young People and Families, has responded indicating her acceptance, in principle, of the recommendations subject to some provisos. A period of consultation is to be undertaken. The net effect of this is that the Westminster government will be re-visiting the issue of child employment legislation.

Since child employment legislation is a devolved issue, the BRTF proposals do not apply to Scotland. However, national legislation may be amended to accommodate the BRTF proposals and this will, directly or indirectly, impact on all aspects of the UK.

The Present Study

From the brief overview outlined above it is apparent that concerns have been raised about the efficacy and consistency of practice in applying the legislation on child employment in Britain.

To date there has been no nationwide study in Scotland of policy and practice in this area. The present study aims to fill a specific gap in knowledge.

There are two distinct strands to the present review:

- i) Legislation – the report outlines the current legislation within the context of Scotland and reviews existing local authority byelaws.
- ii) Practice – since the implementation of policy in this area resides at the local level a review of the current practices of all Scottish local authorities is required to identify the extent of variability or consistency in practice.

CHAPTER TWO METHODOLOGY

The 32 local authorities in Scotland were initially contacted by letter, outlining the nature of the research and requesting their participation. Chief Executives were the first point of contact and they were asked to provide two pieces of information: a copy of the local byelaws and a named individual that the research team could contact. The latter person was to be someone with direct responsibility for the issue of child employment within the local authority. It was anticipated that Chief Executives might wish to propose more than one contact name and provision was made for this within the initial letter.

On receipt of the contact details of the individual(s) within each authority telephone contact was made, the research explained and a request made for their participation. All participants, and local authorities, were guaranteed confidentiality in all their dealings with the research team.

A questionnaire was forwarded to each participant. The questionnaire asked for detailed information, eg number of permits issued within different periods, and all participants were asked to complete and return the form within an agreed timeframe. Following receipt of the questionnaire a telephone interview was arranged. This interview reviewed the information provided in the original questionnaire but more importantly allowed the collection of additional information on the opinions and views of the interviewees regarding their experience on policy and practice.

The survey covered a range of issues including: systems used to monitor child employment, information available to the public, prosecutions and warnings, record keeping and staffing levels. The telephone survey included open-ended questions covering perceived effectiveness, changes that participants would propose and implications of formally recognising part-time employment. Requests were also made to supply the researchers with copies of any publicity material or information packs that their authority used with regard to child employment.

Independently of the above process, the researchers carried out a search of each local authority web site to explore the extent to which child employment related material was accessible eg information on procedures, copies of byelaws, registration forms.

The activities detailed above were carried out from February through to April 2004. The majority of the telephone interviews took place in March and April.

Participation rates

All local authorities in Scotland agreed to participate in this part of the research and all provided information to the research team. However, it is worth noting that there was some variation in the responses. As expected, not all local authorities had web sites that we could utilise within the study. Similarly, not all local authorities had supplementary material which they could forward to us.

Finally, while all local authorities returned the questionnaire there was some variation in the level of detail provided. In some cases the local authority had allocated the administration of child employment policy to the school level. It was not possible for the research team to

survey all the secondary schools within an area where local authorities had no central records. In such cases there may be missing information or only partial records available.

Table 1 below provides a summary of the information drawn upon within the rest of this report.

Table 1: Information base

Information	Total Number of local authority responses
Questionnaires completed	32
Telephone interviews	27
Byelaws provided	30
Notes & Guidance	17
Leaflets & booklets	14
Website information	16

SECTION A LEGISLATION

It has been acknowledged for some time that the domestic legislation covering child employment is confusing and covered by a multiplicity of Acts (for example see Hamilton 2002). For example, in the late 1990s the British government issued a set of model byelaws in an attempt to bring greater homogeneity to local government regulations in this area. The 1998 government review evolved, in part, from debates about the efficacy and appropriateness of outdated legislation. Most recently the BRTF (2004) report has argued that regulation in this area is confusing and would benefit from simplification.

A further layer of complexity is added to the discussion of legislation when international perspectives are considered. At this level child employment is covered within the United Nations Convention on the Rights of the Child (UNCRC), the International Labour Organisation (ILO) and European Union legislation (Hamilton & Watt, 2004).

It is not the aim of this report to provide an exhaustive review of national and international legislation as it applies to Scotland. Our primary focus is on domestic legislation [Note 1]. However, even here a complex picture emerges. The main piece of national legislation on child employment is the Children and Young Persons (Scotland) Act 1937 (in England and Wales the relevant Act was enacted in 1933). This Act has been amended on a number of occasions and several other pieces of subsequent legislation also refer to child employment.

Devolution had an impact on the responsibility for child employment. The issue of child employment had previously been the concern of the Westminster government. However, with devolution the Westminster government has retained responsibility for England while the Scottish Executive is now responsible for Scotland.

One consequence of this is that variations in legislation start to appear. For example, the last amendment to child employment legislation in England involved changing the minimum age for work from 10 to 13 years of age and reducing the number of hours that children can work during term time from 17 to 12 hours per week. In Scotland the Scottish Executive has implemented the former change but not the latter. The Executive has indicated that it intends to implement the change to the maximum weekly hours however this has not yet taken place. This effectively means that Scottish legislation is currently out of step with the European Directive (94/33/EC) on child employment (see Addendum, p.445).

The primary aim of this report is to consider the legislation within a Scottish context. However, where relevant we will draw attention to UK wide and international aspects. The Children and Young Persons (Scotland) Act 1937 sets out the parameters for child employment. A central feature of this Act is that local authorities are charged with the regulation of children's work. They are empowered to make byelaws which can contain additional conditions on the employment of children, specify the regulation of such employment and reflect local variations in practices.

In reviewing local authority policy and practice in this area all authorities were asked to supply copies of their byelaws. All authorities which had byelaws supplied copies, and some supplied additional material such as notes and guidance.

Our primary focus is on the degree of variation in local authority byelaws amongst the 32 Scottish local authorities and the extent to which they reflect national legislation. Such a

comparison could be unwieldy therefore we concentrate on key aspects of regulation within the legislation, considering the degree of consistency in the approaches adopted by local authorities. For example, how does each set of byelaws handle the issue of minimum ages for employment or the provision of information on the hours that children can work?

The Byelaws

The initial request for copies of each authority's byelaws highlighted the first variation between authorities, namely that they were not all able to comply with the request.

Of the 32 Scottish authorities 7 have byelaws that are 'pending'. In effect the authority is in the process of amending their byelaws on child employment and the new byelaws are not yet in place. In some cases authorities are awaiting Scottish Executive approval before they can implement proposed changes. For others the authority has still to complete the process by bringing the new byelaws into force. It was apparent that a significant period of time can elapse during which byelaws can be classified as 'pending' for one reason or another.

For the 7 authorities with 'pending' byelaws 6 have current byelaws, however, in one case the authority reported that it had no byelaws covering the employment of children and would not until the 'pending' byelaws were processed.

One other authority reported that it had no byelaws covering this area of employment. It was apparent that this authority was of the view that it had no need for byelaws. This position was based on their reading of the legislation in this area. It is not the function of this report to make a definitive legal judgement but it is remarkable that the authority is unique in its interpretation of the law. However, what it demonstrates is the potential variation in interpretation of responsibilities in this area.

The variability in the status of byelaws adds a further layer of complexity to the comparison across authorities. To simplify the process of comparison five areas have been selected: definitions, minimum age, age differences, time restrictions and prohibited jobs. One justification for allowing local authorities to make byelaws in this area is to accommodate regional variations. We therefore conclude this section by considering the extent to which any unique regional aspects were evident.

1. Definitions

There are a number of key terms defined in national legislation relating to child employment: 'child', 'employment' and 'light work'. In the case of national legislation a child is a person who is not over the compulsory school age. Children aged from 14 years through to the end of compulsory schooling can be employed in 'light work'. In contrast 13-year-old children may take light work but can only work in forms of employment defined by the local authority.

The concept of employment is also outlined in national legislation. The term is applied to assistance in any trade or occupation that is carried out for profit. The receipt of payment is not included in the definition. While children are allowed to work they are restricted to 'light work'. This is defined as work that is not likely to be harmful to the safety, health or development of children. Furthermore it should not impact on their attendance at, or ability to benefit from, school.

Reviewing the 30 sets of active byelaws it was apparent that all of the byelaws included accurate definitions of 'child'. The majority, 27, also had accurate definitions of employment and light work. Three sets of byelaws provided no definition of light work and the definition of employment does not conform to the legislation. It is worth noting that all three authorities have submitted new byelaws, currently pending, which address these problems.

2. Minimum age

National legislation has always included a minimum age at which children can work, however, changes have been made to this over time. In 2000 the Scottish Executive made Regulations in order to implement the European Directive 94/33/EC with respect to minimum age for employment. These were The Children (Protection at Work) (Scotland) Regulations 2000 (SI 2000/149). The Regulations came into effect on 9th June 2000. The Executive informed all authorities of this change and the need to revise their byelaws.

The 2000 Regulations meant that local byelaws could no longer allow 10-12 year old children to undertake light agricultural or horticultural work under the supervision of their parents [Note 2 and 3]. As a result of these changes the minimum age at which a child can be employed is now 13 years of age, though it should be noted that exceptions are made for children involved in public performance [see Note 1].

Across Scotland there is some variability in the minimum age defined within the byelaws. Of the 30 active byelaws only 13 specify that the minimum age for employment is 13 years age. Of the remaining 17 authorities, 16 have the minimum age specified as 10 years of age and one authority's byelaws do not specify the minimum age. Ten years of age was the minimum age for employment pre-2000, where 10 year olds could work in light agricultural or horticultural work if supervised by their parents.

It should be noted that of the 17 authorities with the wrong minimum age specified, 7 of them have new byelaws that are pending. The pending byelaws raise the minimum age in line with the Regulations change. This raises two questions. First, how do we explain the time lag between the 2000 Regulation change and the time of the present study, mid-2004? Second, if 7 authorities have pending byelaws which address this issue, what about the other 10 that are currently out of step with national benchmarks?

There is an added level of confusion in the minimum age discussion. Two of the authorities that specify the minimum age as 13 years have supplementary literature where the minimum age is specified as 10 years of age. One other authority reverses this pattern. The supplementary literature indicates that 13 years of age is the minimum, however, the byelaw sets this at 10 years of age.

3. Age differences

National legislation distinguishes between the employment regulations for children who are 13, 14 and 15/16 years of age. While children 14 years and over have the right to seek employment, 13 year olds do not have the right to take employment [Note 2]. A further distinction is that while children 14 years and over can take any form of 'light work', 13 year olds are only allowed to work in areas specified by the byelaws.

A further age distinction is made between 14 year olds and school pupils who are 15/16 years of age (in the case of 16 year olds this refers to those who are 16 but covered by compulsory school regulations). The distinction relates to the number of hours that can be worked under the legislation (see section 4 for details).

All of the authorities that correctly specified that the minimum age for employment is 13 years of age also correctly identified the distinctions between the age groups. Of the remaining 17 authorities, who had the wrong minimum age, 14 did have information discriminating between the age groups. However, three authorities did not have any differentiation between age groups.

A key point of differentiation is that authorities must provide a list of jobs that are acceptable for 13 year olds to undertake. From the 30 local authorities with active byelaws, three failed to provide such information, the same three authorities that failed to discriminate between age groups.

The remaining 27 authorities did provide lists of acceptable jobs for 13 year olds. The model byelaws provided by the Executive in 2000 includes such a list but acknowledges that authorities may vary this list. Six authorities did in fact vary the list, some added jobs to the list, while others removed forms of employment. Amongst these six authorities there was variation in the lists they adopted. The net effect is that in some authorities a job deemed to be acceptable for a 13 year old may be illegal in another authority.

4. Time restrictions

The number of hours that school pupils may work is set out in the 1937 Act and subsequent amendments. During term-time 14 year olds are not allowed to work for more than 2 hours per day (only one hour of which can be before school) or more than 2 hours on a Sunday and 5 hours on a Saturday. Children are not allowed to work before 7 a.m. or after 7 p.m.

In the case of 15/16 year olds the same restrictions apply during term time, however, during school holidays they can work up to 8 hours on week days and for a total of 35 hours in a non-school week. During holiday times 14 year olds are allowed to work a maximum of 25 hours in a week.

For 13 year olds a local authority can impose tighter control of the hours worked and at the very least cannot allow younger children to work in excess of the maximum hours allowed for 14 year olds.

Reviewing the local authority byelaws in this area proved problematic. It was apparent that the majority of byelaws do not provide a detailed breakdown of the hours that can be worked within the byelaws themselves. Virtually all byelaws did specify that they allowed children to work one hour before school. Information on the hours that could be worked were in some cases included in 'notes' or 'guidance' that accompanied the byelaw, but it was apparent that there was some variability in this.

Based on the byelaws, and any notes and guidance provided or accessed via websites, 24 authorities were found to provide some information on the hours that children could work. The remaining 6 specified the 'one hour before school' regulation or in some cases had no information on the hours that could be worked.

One aspect of working hours that tended to be neglected was the total number of hours that children could work. It was common for authorities to state the number of hours that could be worked during holiday times, however, it was rare to find any mention of the total number of hours that could be worked during term time.

It is possible to calculate this figure based on the restrictions on when children can work. While this was relevant for the research team to do, it is unlikely that children, parents, schools or employers would do so. Based on the information accessed in this research it was possible to look at the total hours permitted for term-time employment in 23 authorities. In 19 cases the maximum term time figure for 14 year olds of 17 hours per week and 20 hours per week for 15/16 year olds. In 4 authorities the term time hours differed.

For two of these authorities it was still necessary to calculate the maximum number of hours allowed during term-time based on the restrictions. The totals were 16 hours and 19 hours, with no age discrimination. The remaining two authorities clearly specified the maximum number of hours that children could work during term time, and these hours were less than those calculated by aggregating the times available to child employees for employment.

The maximum hours that could be worked during term time in these two authorities were in the first case 15 hours for 14 year olds and 18 hours for 15/16 year olds. In the second case the maximum number of hours was specified as 12 hours, irrespective of age.

In 2000 the Scottish Executive wrote to all authorities indicating that the new European Directive set an upper limit of 12 hours per week for term-time employment for all child employees. The Executive indicated its intention to introduce a statutory instrument to amend the 1937 Act. Such an instrument is in place for England but has still to be put in place in Scotland.

The net result is that only one local authority's byelaws are currently in line with European legislation. The remaining 31 authorities, for a variety of reasons, are failing to meet the European standards to which the United Kingdom agreed.

5. Prohibited jobs

Since its conception, legislation in this area has identified jobs or occupations that are prohibited. This list applies to all children covered by the legislation, irrespective of age. One issue with such a list is that it has contemporary significance. The Scottish Executive's model byelaw circulated in 2000 contained a list of employments deemed inappropriate for children. This list emerged from discussions that took place in 1995 between the Department of Health and the Child Employment Network. This list is in addition to those occupations covered by specific legislative prohibitions eg factory or other industrial undertakings.

The list of jobs is illustrative and local authorities have the ability to add or remove activities which they view as relevant to their area.

In reviewing the 30 active byelaws it was apparent that all included a list of prohibited employment. In total 16 authorities have lists which differ from the Executive's model byelaws. In 9 cases the impression is that authorities have amended a relatively contemporary list, either by adding or removing occupations. In the remaining 7 cases the list of occupations appears to be rather outdated. For example, one authority's list prohibits children

from working as chimney sweeps. Three of these authorities have new byelaws pending. The remaining 4 who have outdated lists (including the chimney sweep example) do not.

It is apparent that there is a degree of variability across local authorities in terms of the perception of an acceptable or unacceptable occupation for children. This level of disagreement has the net effect of creating the situation in which a job that is acceptable in one area may be deemed illegal in another.

Regional variations

Finally, in the context of reviewing legislation there is one general issue that should be mentioned, namely the principle of regional variation.

Part of the rationale in devolving responsibility for child employment to the local authority was that they should have the capacity to accommodate regional variations. As we have seen, authorities have taken the opportunity to vary legislation in a number of the areas that have been reviewed. The majority of variations found were linked to prohibition of job types or when children could work, particularly in the morning, eg cannot work before 7.30 a.m. rather than the 7.00 a.m. proposed in the 1937 Act.

Two other variations are worth noting. In one case the authority has prohibited children from being employed in any activity where payment is based upon a 'commission-only' system. The second example comes from one authority where children require a 'Harvesting Work Licence', allowing a child to be employed in harvesting. Children licensed in this way can only be employed by employers who hold an 'Employment of Children Licence'. This latter case appears to be unique example of an employer licensing system.

Summary

- All authorities, with one exception, have byelaws addressing the issue of child employment. A number of authorities are in the process of changing their byelaws and this can take some considerable time.
- A review of the byelaws showed that the majority have relevant definitions of the key concepts of 'child', 'employment' and 'light work'.
- More than half of the authorities have byelaws which incorrectly state the minimum age for employment.
- There is a lack of clarity, and some confusion, in the specification of the number of hours that children are permitted to work. Only one authority clearly indicates the correct maximum term-time hours permitted by European standards.
- All authorities include lists of prohibited jobs, however, in a number of cases the lists were outdated. Variations in byelaws results in the situation that work which is permitted in one area may be prohibited in another.
- Part of the rationale for devolving child employment regulation to the local authority level was to allow byelaws to reflect local needs. There was little evidence that authorities were accommodating unique regional labour market features in their child employment byelaws.

SECTION B LOCAL AUTHORITY POLICY AND PRACTICE

The previous section has focused on the legislation, however, it is recognised that there may be a gap between this and the daily practice involved in implementing the legislation. This section, based on the survey returns and interviews, reviews the practices adopted by authorities.

Monitoring system

While national legislation specifies when children are, and are not, allowed to work the implementation of this legislation falls within the remit of local government. It is possible for local authorities to adopt different approaches to the regulation of child employment. Within this research three areas were focused on which reflect the nature of the regulatory system adopted:

- (i) The monitoring of employment. How does a local authority know if a child is working and the nature of the work that they are doing?
- (ii) Changes in employment. Research in this area has suggested that children move in and out of work and that their work may change over time, eg the tasks done or time worked. Does the system used by local authorities have any means of recording changes in work status?
- (iii) System checks. What checks are there within local authority procedures to ensure that children are working within the legislation?

The survey requested local authorities to respond to a range of questions addressing these three areas. Each will be considered in turn.

(i) Monitoring child employment

Previous research in Scotland and England has shown that many local authorities have developed a 'permit' system to regulate child employment. Typically these systems require any child employee to have obtained a permit from their local authority. The process by which such permits are given allows the authority to check whether the intended employment is appropriate and falls within the legislation. However, previous research suggests there is some variation in practice across local authorities.

In this survey local authorities were asked if they used a 'permit' system or some alternative. If they did use such a system they were asked to provide some details on how the system worked.

Responses indicated that 31 of the 32 local authorities had a 'permit' system of some form in place. One local authority definitively stated that it did not have a permit system and did not monitor child employment through any system. Of the 31 local authorities that indicated that a 'permit' system was in place, four indicated that the system had either lapsed, was not functioning or could provide no detailed information on the system.

In the 27 authorities where information was available the registration forms for a permit required the signature of the child's parents and the proposed employer. Only four required the child's signature. However, in some cases other signatures are required. The most

frequently requested (26 cases) is the signature of the school, this is usually defined as the headteacher but some forms refer to 'an appropriate staff member'. In three authorities there was a specific request for the Guidance tutor's signature.

In a number of cases there is a request for a doctor's signature as well. In five cases a doctor's signature is specifically requested while in another five cases it is required 'if applicable', however, there is a lack of clarity in defining when it is applicable.

By definition 'permit' systems require someone to start the process by requesting the permit registration form. In the 27 authorities where responses were provided, the majority (20) indicated that the child initiated the request for the permit/registration document. Three indicated that it could be either the child or the employer who initiated the process. The remaining four authorities placed the responsibility on the employer or parents.

(ii) Changes in work status

Research suggests that aspects of a child's job may vary over time. For example they may change the hours they work or the tasks that they do. Each local authority was asked if they kept records of the number of permits that were amended. In total 13 indicated that they did have a system for recording amendments, while 17 replied that they did not. Of the 13 authorities with a system for recording changes there was no evidence that they had used such a system in the last few years, ie no recorded cases of amendments.

(iii) System checks

A number of indicators were used to assess the extent to which local authorities had checks within their permit systems. One obvious indicator is evidence of permit requests that had been refused or revoked. Twenty-one authorities indicated that they kept records of permit requests that were refused. In six authorities records indicated that requests had been refused in the last few years. When considering if permits have ever been revoked, 16 authorities indicated that they had a system for recording such cases, but only two authorities have any record of revoking permits in the last few years. It is worth noting that a total of 14 authorities indicated that they had no system in place to record cases where permits were revoked.

When asked specifically if their authority had any mechanism for checking whether child employees or employers were conforming to the laws and byelaws, 24 indicated that they had no process for checking on working pupils or employers. A further six indicated that they did not know if such a system existed in their area. Only one authority responded positively. In this case the respondent indicated that Trading Standards Officers took on this responsibility when visiting employers.

A number of respondents indicated that there was an informal system within their authority. This typically involved responding to information provided by teaching staff or personal communications received from the community.

The final indicator explored was the extent to which authorities issued warnings or carried out prosecutions. Across the 32 authorities five indicated that they had issued warnings since 1998, while one local authority had been involved in a prosecution. These findings are

incomplete since 17 authorities indicated that they kept no records of warnings issued, and 18 authorities indicated that they kept no records of prosecutions.

Registered to work

The previous section has shown that the majority of authorities use a permit system to register children for employment. Within the survey we addressed the extent to which information on these registration systems was recorded. Two specific aspects were considered, the number of permits issued and the types of employment for which the permit had been issued.

Local authorities were asked to provide information on the number of permits issued for:

- (i) the current academic year, ie since August 2003 to the time of the survey
- (ii) the previous academic year 2002-03
- (iii) the period 1998-2002.

Table 2: Permission to Work (13-16 year olds)

Local Authority	Current Academic year 2003- present	Last Academic year 2002-2003	<i>In previous years 1998-2002</i>
LA1	66	?	?
LA2	146	175	?
LA3	324	468	1603
LA4	0	0	0
LA5	47	?	?
LA6	24	31	110
LA7			
LA8	60 (approx)	?	?
LA9	17	14	5 (2001-02)
LA10	2	1	5
LA11			
LA12	7	?	7
LA13	0	1	7
LA14	17	28	108
LA15			
LA16	165	338	1862
LA17	1	0	7
LA18	?	22	94
LA19	109	141	82 (2000-01)
LA20	15	42	58 (2000-02)
LA21	25	49	342
LA22			
LA23	99	302	324 (2000-02)
LA24	30	40	?
LA25	69	165	98 (2001-02)
LA26	1	1	12
LA27	11	24	19
LA28	169	?	?
LA29			
LA30	11	13	17
LA31	121	?	?
LA32	0	4	4

Key: '?' indicates that permits were issued but there are no figures available blank cells indicate that no information was available – see text for explanation

Table 2 summarises the findings. A number of authorities were unable to provide complete figures for the period 1998-2002, where this occurs the table includes the time period covered.

The table illustrates that the majority of authorities keep records of the number of permits issued by staff. In those cases where no information is recorded some additional explanation is needed. For LA7, 11 and 15 the permit system is devolved to the secondary school level and no central records are kept regarding the number of permits issued. LA5 and 31 also use a school-based procedure for the issuing of permits, however, they were able to provide partial information on the number of permits issued.

In the case of LA22 and LA29 no information is recorded. Within LA22 there is no requirement for children to register for employment. The situation in LA29 is more problematic. The staff interviewed disagreed as to the existence of a registration system. Whether in principle there is, or is not, a system was unresolved. It is worth noting that staff indicated that, even if a permit system existed in principle, there were no permit or registration forms to use.

It is apparent from Table II that there is considerable variability in the number of permits issued. There are a number of alternative explanations for this variability. First, it could simply reflect the populations covered by each local authority and the level of employment within the area. Second, it could be that authorities differ in the extent to which they promote the systems that are in use. Third it may be that the type of area, eg rural or urban, explains the variation.

While Table II shows the extent to which authorities issue permits it is not possible to identify whether these permits cover all working children within an area. The data from the main pupil survey will allow us to address this question more fully.

Authorities were also asked to indicate the type of work for which the permission to work had been granted. This information was requested only for the current academic year. Table 3 provides a summary of the information supplied. In total 18 authorities were able to provide this level of information. The table is informative in that it demonstrates that it is possible to have this level of information recorded but also suggests that some employment sectors may be more likely to secure permission to work.

Table 3 shows that newspaper delivery employees are represented across all of the authorities that could provide this information. A similar pattern emerges for shop work. The table also shows the variability in job types between areas.

Table 3: Permission to work and job type

Authority	Delivery (papers)	Delivery (other)	Baby-sitting	Care work	Hotel/ B&B	Café/ Restaurant	Fast food	Entertainment	Super market	Chain store	Other shop	Office	Door-to-Door	Farm	Other
LA1	35					10					21				
LA2	122	1			5	3			1	8	2	4			
LA3	232				18		1				27	4			35
LA5	43										1	3			
LA6	24														
LA9	15									1	1				
LA10	1	1													
LA12	6	1													
LA14	16					1	2				11	1			1
LA16	128			9		5				1	4	1			17
LA17											1				
LA20	8									1	4				
LA21	16	1			1	1	1			1	2				2
LA23	65			1	2	2					16				13
LA24					22				1		4				3
LA25	20	2			5	7					8			20	7
LA28	156				6	2					3				
LA30	10										1				

Information on Child Employment

To assess the availability and accessibility of information authorities were asked to indicate the type of material that they produced, for example did they produce leaflets or information booklets. Table 4 provides a summary of the responses.

Table 4: Information sources

Leaflets/Booklets	Website	Both	Neither
14	16	11	10

In total 10 authorities indicated that they produced no such material. Amongst those local authorities who did produce printed material there was some variation in the range, scope and intended target audience for this material.

An additional strategy would be to make material available on the internet. During interviews staff were asked about the use of the authority web site with respect to child employment information. The research team also carried out an independent review of all authorities web sites. The results indicated that half of the authorities, 16, provided some information regarding child employment on their web sites.

Amongst the authorities who did produce leaflets and booklets we asked them to classify the distribution system. The majority of personnel viewed the system as a reactive one, ie responding to specific requests for material. Only three authorities indicated that they had an active system, which set out to promote and distribute the material. The Case Study outlines the action taken by one of these authorities.

Case Study

In one authority school handbooks contain relevant information on child employment legislation. This material is sent to parents. At the same time all S1 to S4 pupils receive leaflets, via their school, informing them of the issues in this area.

Employers were also targeted with information regarding the byelaws and provided with guidance notes. While some of these activities were classified as ‘one-off’ events, for example press advertisements when the byelaws were changed, the authority does ensure that the handbook and leaflets are reviewed each year and distribution repeated to ensure new pupils are made aware of the policy and practice in this area.

While the majority of interviewees perceived the distribution of material as reactive it is worth noting that a number of authorities have taken steps to highlight child employment. Just under half of all authorities, 14, had at some time been involved in attempts to raise awareness regarding this issue. In the majority of cases this involved some press advertisement or article that drew attention to changes in the byelaws. In a small number of cases the impetus for press coverage had been linked to research findings within specific local authorities. It was reported that the majority of these ‘consciousness raising’ initiatives were ‘one-off’ events.

Resources

The present level of resources targeted at the area of child employment was evaluated by reviewing the staff involved in the day-to-day policy and practice within each authority. Table 5 summarises the total number of staff in each local authority involved with child employment issues, typically the administration of the permit system. It is acknowledged that the number of staff involved will reflect the size of the authority and the system adopted, eg a school based system versus a centralised one.

Table 5: Staff involved in child employment policy & practice

Local Authority	<i>Sole responsibility</i>	Main role	Minor role	Total
LA1			10	10
LA2			3	3
LA3				2
LA4			1	1
LA5			2	2
LA6			2	2
LA7			2	2
LA8			1	1
LA9			5	5
LA10			5	5
LA11			4	4
LA12			1	1
LA13			2	2
LA14			1	1
LA15			1	1
LA16			2	2
LA17			2	2
LA18			7	7
LA19			1	1
LA20			2	2
LA21			8	8
LA22				
LA23		1	1	2
LA24			5	5
LA25			3	3
LA26			1	1
LA27			9	9
LA28		1	1	2
LA29			1	1
LA30			12	12
LA31			16	16
LA32			3	3

In addition to requesting information on the overall staffing levels interviewees were asked to indicate the extent to which child employment was the sole role of the individual in the authority or a main or minor role. While such classifications are only indicative they are informative in that only two authorities have one member of staff devoted to this area as their main role. No authority has a member of staff whose sole responsibility is child employment.

For the majority of local authorities irrespective of the number of staff involved it is perceived as a minor role.

Table 5 suggests some variation in the staff involved with this issue. There was also evidence that authorities adopted different strategies in terms of the departments that were responsible for handling registration systems. From a total of 27 responses, 12 indicated that the Education Department of their authority was responsible. The remaining responses were evenly distributed, 7 local authorities stated that the Registrar or Registration Department was responsible while 7 indicated that the permit system was devolved to the school level. One respondent indicated that they did not know which department was responsible.

In seven cases authorities have devolved responsibility for issuing permits down to the school level. While this might appear to have a certain logic, since it means that children are in direct contact with those running the system, there are some issues associated with such a system. It was apparent that in the majority of authorities adopting this strategy there was no central data store. In effect local authorities were unable to provide information on the number of children working in their area. An additional question arises regarding the consistency of practice across schools. In at least one study that was carried where a school based system was in use there is evidence of between school variations in permit levels (McKechnie, Lindsay and Hobbs, 1994).

Senior School Pupils: Local authority policy and practice

Local authority responsibility for child employment is limited to pupils in compulsory education and does not extend beyond the end of the compulsory school period. However, the majority of school pupils now stay in school beyond this point and research findings indicate that significant percentages of post-16 year old school pupils combine school with part-time employment. In some areas local authorities have been concerned enough to sponsor research into this phenomenon, particularly the potential impact on educational performance (McKechnie, Hill and Hobbs, 2002).

Within the present study authorities were asked if they had any specific policy or practice with respect to 16-18 year old school pupils' part-time employment. We were particularly interested in whether there was any systematic attempt to inform pupils of the potential link between work and educational performance, health and safety issues or employment rights.

In at least one authority there has been an information campaign across all schools targeting post-16 year old pupils. However, this was a unique event and all of the authorities indicated that they provided no information of the type outlined above to this age group. The typical response was to indicate that this was not the responsibility of local authorities.

Views/opinions of key staff

In the final section of the telephone interview the local authority personnel were asked, through a number of open-ended questions, for their views and opinions on a range of issues. These included the effectiveness of policy and practice, ideas that they may have for changing the system and the issue of recognising children's part-time employment. The majority of interviewees were willing to provide some comment on these topics given the confidentiality agreement underpinning the interview.

It should be borne in mind that the interviewees are not expressing the views of their local authority. However, this group of individuals have a number of years of experience within this area and as a result can provide a number of insights.

The responses to the open-ended questions were reviewed with the intention of identifying the key themes within the responses. These are summarised below.

Effectiveness of the system

We asked respondents how effective they thought the current policy and practice in their authority was in protecting children, highlighting the legislation and providing information about child employment.

(i) Protecting children

A key aspect of the legislation on child employment is that it is couched in terms of child protection. This perception of the area of child employment regulation was also cited in the decision to devolve this area to the Scottish Executive.

Of the 27 respondents who commented, 70% stated that in their view it was ineffective, 11% that it was effective and 19% that they thought it might be effective. Clearly the majority were of the view that the present system is not offering child employees a high degree of protection.

First, let us consider the minority view. Amongst the group who were positive about the effectiveness of the system in protecting children it was clear that this was based on the premise that children were registered to work:

'... if we know they're working we are OK'

In one case the reply indicated that the nature of the authority facilitated this:

'... close community, schools are close to the children, employers are close to the authority'

Other respondents indicated that their views on effective protection needed qualification, namely that they thought it was working but that it was difficult to know with any certainty. For example in one authority where schools are responsible for implementing the permit system, the respondent indicated that things were alright but that schools had the responsibility and it was up to them to deal with it.

The majority view questioned the effectiveness of the system in protecting child employees. The quotes below give some insight into the reasons behind this position:

‘Completely ineffective, the wrong people are administrating it in the wrong way, we’ve no knowledge of who’s employed in work’ The same respondent went on: ‘It’s not a priority at all for the education department, it’s an irrelevance to us. In strategic terms or operational terms it’s a nonsense.’

‘There is no protection, no process, no methodology, so it’s ineffective’

‘Not effective at all because we are not monitoring it, there is nothing to monitor because we haven’t had the applications in to monitor’

‘There are gaps in the system. Monitoring and child protection that’s the bit that’s missing. We, as a local authority, have legal responsibility to permit young people to work, our current system isn’t up to scratch, but neither is it nationally.’

The key themes that emerged related to the fact that within local authorities there are no monitoring processes and that the systems are ineffective, with gaps or failure to join up the elements needed to ensure that children are protected. One respondent pointed to the future and predicted that a larger issue was on the horizon. Drawing on their awareness of work experience programmes they predicted that:

‘the big issue in the future for this is going to be child protection as soon as that comes on the scene there’s going to be no young people working’

This respondent’s prediction for the future was linked to work experience programmes. However, it has relevance for the area of child employment regulation as well. At present the BRTF review has proposed that legislation be changed so that employers are registered to employ children. Some non-governmental organisations have argued that such employers should also be checked under the CRB system.

The issues behind such a change in emphasis are demonstrated by one respondent’s comments:

‘Systems to ensure health and safety should be in place but you can’t be too intrusive. [Highlighting legislation] will probably drive more people underground. There is a balance between protection and allowing people to live their life and be all they can be and the positive benefits that actually come from working.’

(ii) Highlighting legislation

The interviewees were asked to comment on their perception of the impact of local authority practice in highlighting the present legislation. From a total of 26 responses 77% indicated that the present system was ineffective, 15% that it was effective and 8% that they thought it might be effective.

Amongst those expressing negative views regarding the effectiveness the dominant comments related to the lack of attention to this issue. For some the ability to highlight legislation was dependent on the staff available. The implication was that some staff were more informed than others on this topic:

‘... A change of staff can cause that.....if someone says that I was never told about that, I didn’t know I had to give these forms out...’

However, the majority of responses indicated that the idea of highlighting the legislation was not attended to within their authority: ‘... it doesn’t happen’ or ‘not sufficiently’. For others

legislation was not highlighted because the system within their local authority was a re-active one, dependent on employers, parents or children contacting them.

Some respondents queried whether highlighting legislation was best tackled at the local authority level. They proposed that the Scottish Executive should tackle the issue at a national level.

For those interviewees who were more positive about this aspect within their authority it was apparent that this was based upon the pro-active stance that they perceived to exist. Those respondents who felt that legislation was highlighted drew attention to leaflets that were distributed, or the level of information that they passed onto schools. However, it was also acknowledged that this was an ongoing issue:

‘have moved on in the last 4-5 years, things could still be a lot better but I feel comfortable that we are making a reasonable step to ensure young people are aware of the employment issues’ but ‘ we are always looking for continuous improvement’

An underlying theme that emerged when discussing the authority’s ability to highlight legislation was the view that the legislation itself is problematic. For some interviewees this was linked to a lack of awareness:

‘...there is a very, very, general ignorance of the law in this regard’

For others the problems were associated with the fact that the legislation is outdated and the system adopted by authorities too bureaucratic. In effect these appeared to be offered as explanations for the failure to highlight legislation.

(iii) Providing information about child employment

Responses to the effectiveness of policy and practice in this area were largely negative. In total 78% of those responding indicated that in their view the systems were ineffective in providing information on child employment. The remaining 22% of respondents suggested that their authority was effective on some level.

In the case of the positive responses it was evident that for a number of interviewees the pro-active practice of circulating information provided the justification for their views. Some respondents drew attention to leaflets that they provided or information that they sent to schools. In one case there was an indication that schools within Personal and Social Education classes used some of this material. Interestingly one interviewee believed that the information flow was effective because of informal systems within their area:

‘they know exactly what they can and can’t do and generally the schools and parents stick to that’

However, for the majority it was clear that the provision of information was largely neglected. The majority of replies indicated that the issue was not attended to, either because of resources or the lack of any system to attend to this particular aspect. Many interviewees in acknowledging the lack of information provided indicated that in their view more attention needed to be drawn to the topic.

Suggestions for change

As we have noted in the previous section a number of interviewees suggested that there was a need to increase the profile of this subject for a range of people; children, employers, parents and schools. In addition to these comments interviewees were asked if they had any specific proposals for changing the current system, with the aim of improving the overall effectiveness. In some cases respondents made suggestions for improving the system when addressing other questions. We have drawn on such material in this section.

Permits and byelaws

In total 27 interviewees commented in this section and 48% indicated that they felt that in principle the present permit system was fine. Their concerns focused on the lack of awareness and monitoring. A small number of interviewees were less satisfied with the current permit system. One respondent suggested that the focus should shift to employers, in effect registering them to employ children. This idea is also at the heart of one of the BRTF's proposals to the Westminster government.

Others felt that the byelaws that they had were 'outdated' and that the language was not helpful. The examples of work used were out of touch with the 21st century, the time constraints were questionable, for example not being able to work beyond 7.00 p.m. at weekends, and the definition of terms was poor. For some the term 'light work' was unclear and left staff with the task of classifying jobs based on fuzzy concepts. These views are summed up by one interviewee:

'whole system needs to be clarified and made transparent.'

It was notable that one local authority, that had recently updated their byelaws, did engage in consultation with a range of parties on the content of the byelaws and achieved some consensus. Such an approach merits consideration.

Awareness of legislation

Across all of the respondents a common view emerged, irrespective of their views on the present byelaws. In their opinion the system needs to be brought to the public's attention. The need for advertising was mentioned on numerous occasions. It was also clear that such advertising needed to be targeted at parents, schools, employers and children. One respondent suggested that school pupils should be given information in P7 on this subject and then have it reinforced as they move through secondary school. Others suggested that the Scottish Executive should take a lead and instigate a national campaign.

It is worth noting that some respondents felt that there was a need to attend to the way such information was provided. In one interview the respondent said that the *'marketing needed to be improved'*. The use of the term 'marketing' is interesting. For some interviewees there is a need to sell this issue, especially to children and employers. In the case of children who have to conform to the legislation it is apparent that some respondents perceive the need to make this issue relevant and meaningful for the children it is supposed to protect. As such it needs to be justified.

Monitoring child employment

In addition to improving awareness through advertising a number of respondents indicated that a major change that they would make was in the monitoring of child employment. It was apparent that across authorities there is no practical monitoring of child employment and limited policing of the system.

‘it’s [the permit] just a piece of paper..... no monitoring.’

Interviewees indicated that they felt it important that this was addressed, while acknowledging the resource implications of such a move.

However, in promoting the need for some effective monitoring there was some recognition that a Catch-22 situation may emerge. For example:

‘the fact that it’s not being policed or monitored doesn’t help the situation..... if you come down on these things too hard you’ll frighten the people who would normally apply’

‘[highlighting the legislation] will probably drive more people underground’

Such comments were not unique and indicated that respondents were concerned that advertising and monitoring, if inappropriately handled, could hamper compliance with the legislation and its aims.

While interviewees were able to identify a number of ways in which they felt the system could be improved it was generally acknowledged that two problems existed. First, the topic is not considered to be a priority. Second, resources in this area are inadequate and would need to be improved if any of the suggested changes were to be implemented.

Recognition of part-time employment

The motivation for asking about the issue of recognising school pupils’ part-time employment was to consider the impact that this may have within local authorities. In total 23 of the interviewees commented on this issue. While their comments referred to the issue of impact they also expressed views on the principle of recognition and commented on what they perceived as practical considerations [Note 4].

Principle of recognition

Two-thirds of those commenting expressed a view on the general idea of recognising part-time employment. The views expressed covered a range of positions from highly positive to extremely negative. Those in favour of the idea suggested that it would highlight the skills that young people can gain from employment. This view is encapsulated in the words of one respondent:

‘... that’s a good idea [recognition]..... work is valuable in their development and in taking responsibility – it should be recognised.’

Another respondent suggested that recognition of part-time employment could replace work experience programmes. In their view children’s part-time employment was more meaningful, and of more relevance, in learning about the world of work.

Other interviewees were less enthusiastic about the principle of recognition. In the view of some of the interviewees children's part-time employment involved '*menial jobs*' that had '*no value*'. Also in the negative camp were those who questioned the need for recognition, that it would produce another '*piece of paper*' which would have little value. One respondent raised the question of whether school pupils would engage with such a system. In their view children had part-time jobs in order to earn money, not qualifications.

Practical issues

For some the issue was not whether recognition had merit or not, rather they indicated that the nature of the system underpinning recognition was the key issue. In the words of one interviewee for work to be recognised:

'You would have to have a significantly more structured work environment than I suspect is the case'.

Comments on the practical issues associated with recognising part-time employment was a common theme that emerged. A number of interviewees identified key questions; What would count as work? How is it to be monitored? Would there be a minimum time period that pupils had to work? For others the practical concerns focused on the form of assessments that would be involved, the training of teaching staff and the potentially complex nature of the inter-face between schools, employers and local authority personnel. Other interviewees identified the need to ensure that employers saw the value of any system and were willing to participate.

Impact on local authority resources and policy

The final theme that emerged from the responses related to the impact of recognition for local authorities. The majority of comments drew attention to the resource implications. By its very nature a recognition system would have to ensure that all children were working legally. A number of interviewees acknowledged that large numbers of children were working without permits and that if they all sought permits the present systems and staffing levels would be unable to cope. As one respondent commented:

'Huge impact on the whole system, we would imagine loads of applications – something on that scale means monitoring procedures would have to be put in place..... huge implications'.

The underlying theme in all these responses was a general recognition that the staffing resources would have to be increased dramatically within their local authority:

'it would impact on the workload I see youngsters working morning and night, if I was to be issuing permits for all these kiddies I would need extra staff in here'

In contrast a small minority of respondents indicated that the impact would be minimal. This seemed to be related to their view that the work permit system was already in place.

While the general trend was for interviewees to highlight the staffing and resource issues a number of interviewees pointed to the positive impact that would emerge. In their view recognising part-time employment would have the effect of:

'..... raising the profile of it and importance of it'

Others suggested that recognition would provide the opportunity to review the whole monitoring process. By implication recognition would require that a more rigorous system be put in place than currently exists. This would involve monitoring of the workplace and would have spin-off effects by addressing health and safety issues, which at present are largely ignored. For these interviewees the present work permit system has a major weakness in that there are no resources for monitoring children in the work place.

Overall the interviewees had mixed views on the issue of recognition. However, there was a clear consensus in the views expressed that present local authority resource levels would not be adequate if significant numbers of children wished to apply for work permits.

Summary

- Of the 32 local authorities in Scotland, 31 had adopted a 'permit' system to register child employees. There was considerable variation in the procedures adopted in implementing this practice.
- The majority of authorities had no system in place to deal with amendments to permits and no systematic checks to ensure employers and employees were conforming to the byelaws.
- The majority of authorities kept records of the number of permits issued. Variations in the permit issuing systems between authorities meant that some local authorities have no central records. There is a high degree of variability in the number of permits issued between authorities.
- A number of authorities produce leaflets and information packs on child employment regulations. A significant minority appear to have no such information available. In the majority of authorities 'reactive' dissemination strategies exist.
- With one exception, all authorities have staff assigned to deal with child employment issues. Authorities vary in terms of the department assigned responsibility for child employment. For the majority of staff child employment constitutes a minor part of their work role.
- Interviews with staff indicated that the majority were of the view that the present system:
 - failed to protect children
 - did not highlight legislation adequately
 - did not provide adequate information on child employment
- Staff provided a number of suggestions to improve the present system and expressed a range of views on the idea of recognising children's part-time employment. In discussion of both areas resource issues were highlighted as a major constraint.

CHAPTER THREE DISCUSSION

The primary aim of this report is to review the current legislation, policy and practice in Scotland relating to child employment. While it is recognised that these aspects are inter-related a division has been made between them in the body of the report. This section continues to apply that division, and discusses the findings under two main headings, legislation and policy and practice.

Legislation

This is the first systematic review of the legislation to be undertaken in Scotland. The findings highlight the complex nature of legislation in this area. Our focus on national legislation draws attention to the important role of local authority byelaws in defining what is, and what is not, acceptable practice. However, it is apparent that there are a number of problems with the present state of these byelaws. The most obvious example of this is that two authorities report that they have no byelaws, currently in force, relating to child employment.

A number of other authorities, while having current byelaws, also have a set of byelaws 'pending'. This is positive in that it shows that authorities are attending to the need to change their byelaws, update them and keep them current. However, it is apparent that 'pending' status can exist for a significant period of time. Based on our conversations with local authorities it is evident that this can lead to some confusion among administrators regarding their current responsibilities on child employment.

The issue of a time lag also arose when national changes were required. In 2000 the Scottish Executive introduced a statutory instrument which had the effect of raising the minimum age for employment from 10 to 13 years of age. All local authorities were required to amend their byelaws to ensure that they conformed to this new instrument. As we have seen, 57% of authorities still have the younger age specified in their byelaws.

The gap of four years suggests that there are some problems with the system. It is possible that the system for changing byelaws is complicated given the balance and checks that are needed between local authority and the Scottish Executive, hence the delay. However, given that a number of authorities have apparently not submitted new, or revised, byelaws to accommodate this instruction an alternative explanation may be that this area has low priority and little central monitoring.

The fact that some authorities have byelaws in place, which meet the needs of the 2000 statutory instrument, and that others have byelaws pending draws attention to the variations in the way that authorities respond to this issue. This variability also emerges when we consider the content of the byelaws.

At present legislation requires that authorities specify a list of prohibited jobs that children cannot do and a list of jobs that are acceptable for 13 year olds to do. In both cases we found local variability. This may reflect some unique aspects of the local economy, however, it also has the potential to confuse. For example, in the majority of areas the list of acceptable jobs for 13 year olds includes 'light work' in a café or restaurant. The Scottish Executive model byelaw, issued for guidance purposes in 2000, lists this as an acceptable job for this age

group. However, one authority does not allow this type of work to be undertaken by 13 year olds in their area. In contrast other authorities add jobs to this list of 'acceptable employment'. In one authority 13 year olds are allowed to work in 'light work' in medical and dental surgeries. However, this does not appear on any other authorities list of acceptable jobs for 13 year olds. In comparing authorities such variability raises questions about the inconsistencies between byelaws, and the rationale for such variations.

Variation was also apparent in the information available on the number of hours that children can work and when they can work these hours. While one local authority included detailed information in its byelaws on the number of hours that could be worked and when they can be worked this was the exception. For the majority the byelaws contained the minimum requirement, namely specifying whether children were allowed to work one hour before school. If anyone wished additional information regarding the hours that could be worked they had to seek this elsewhere, for example in 'notes and guidance', leaflets or websites. While it is not a pre-requisite to state the hours that can be worked in byelaws (the Scottish Executive model byelaw excludes this information as well) it does appear logical that these should be readily accessible and consistently presented across authorities.

Even where information is available on the hours that can be worked, problems emerge. The majority of authorities specify the maximum number of hours that can be worked by children in any given week during vacation time. However, few specify what the maximum weekly figure is for term-time employment.

A fundamental principle of the national legislation on child employment appears to be the argument that local control of the legislation is necessary to accommodate regional variations. In this study we could find few examples of unique local variations. In one case an authority has developed a licence system for harvesting work, and it is possible to argue that this reflects the nature of the authority. However, other authorities, which also have an agrarian base, do not have such a system in place. Some authorities seem to tinker with aspects of the legislation in a way that creates variability but without any clear region specific justification. For example, in one case an authority has specified that children cannot work before 7.30 a.m. on non-school days, rather than the 7.00 a.m. watershed that is in the 1937 Act. All other authorities appear to be content with the 7.00 a.m. watershed.

It may have been possible to argue that there was a need for regional flexibility when the original legislation was introduced in the 1930s. It is less clear that in the 21st century that such a high degree of flexibility is needed, or indeed helpful.

While there are a range of problems associated with byelaws in this area there are also some issues relating to national legislation. In 2000 the Scottish Executive indicated that it would be introducing a statutory instrument to ensure that Scotland conformed to European legislation with respect to child employment. The statutory instrument was designed to address the total number of hours that children could commit to part-time work during term-time. The review has found that one local authority at present complies with European legislation by specifying a 12-hour maximum for term-time employment. To the best of our knowledge no statutory instrument has been issued.

In England a statutory instrument has been issued, however, as Hamilton (2002) noted, few authorities have taken this on board and amended their instructions to potential employees or

employers. From a policy perspective this raises a concern over the disparity in legislation across the UK. Such disparity is already evident in this respect and has the potential to grow in the future. As noted earlier the BRTF has submitted a set of proposals on child employment legislation in England. If the Westminster government accepted their proposals it is unclear what impact this would have across a UK context.

We have purposefully avoided a full review of the international legislation on child employment (see Hamilton and Watt, 2004, for a discussion of this issue). This does not mean that there are no issues to be addressed in the international context, rather that time and resource constraints have precluded this. Two brief examples indicate the type of issues that arise with international comparisons. First, the UNCRC indicates that states are responsible for ensuring that they protect child employees from economic exploitation. Hamilton and Watt (2004) present a persuasive argument that to comply with this the National Minimum Wage should be extended to cover child employees. By failing to do so a group of employees are being economically discriminated against because of their status as children.

The second example arises from the European Working Time Directive. It is argued that children should have the right to paid annual holiday entitlement, comparable to adult employees. This has been tested at an Employment Tribunal, which concluded that the Working Time Directive did not apply to children under 15 years of age (Note: this means that 15 year olds are covered by the Directive). This view is contested by Hamilton and Watt (2004) who point out that an appeal case, involving a child who claimed holiday pay from his employer and was refused, is currently in the Court of Appeal system. The outcome of this should clarify the interpretation of the Working Time Directive and child employees.

Clearly adding an international dimension to the discussion highlights the complex nature of child employment legislation. However, while there is a need to engage with the issues raised by adopting an international perspective it is clear that present domestic legislation needs attention.

Policy and Practice

The majority of local authorities have adopted a permit system to regulate child employment in their area and records are kept regarding the numbers issued. However, the range of information that is collected is limited. While permit systems are common there is a degree of variability in the nature of the permit, who should apply for it and the number of signatures that are required. It is difficult to escape the conclusion that the present permit systems are rather cumbersome and potentially time consuming procedures.

A counter to the idea of the bureaucratic nature of the system would be its effectiveness. There are at least two grounds on which effectiveness can be queried. First, the monitoring systems within local authorities are at best minimal and may be completely absent. Only one authority indicated that they had a monitoring system involving Trading Standards officers. Second, permit systems could be viewed as effective if significant numbers of working children had the necessary permits. The results from this study shows variability in the number of permits issued between areas. However, there is reason to question whether the numbers registered are related to the numbers working.

Previous research in Britain has shown that the majority of children do not have work permits (McKechnie & Hobbs, 2002; McKechnie & Hobbs, 1997). For example, in 2002-2003 the Child Employment Research Group at Paisley University was involved in a project surveying S3 pupils about their part-time work (to maintain confidentiality we are unable to reference this study). In total 146 pupils were working at the time of the study, the majority should have had a work permit. The local authority records for this area indicate that they had issued a total of less than one third of that number of permits. Even then this does not represent the size of the gap since the study outlined above involved 25% of the schools in that area and focused only on the S3 pupils.

Such problems are not unknown to those who administer the system. As we can see from our interviewees' comments, many are aware that numerous pupils, engaged in part-time work, fail to register for permits.

It is possible that part of the explanation for the low registration figures is that the application process is too removed from children. Some authorities have adopted a policy of devolving their permit system down to the school level. In theory this might improve the uptake level. There is some evidence to support this view. McKechnie et al. (1994) found that in one area permit levels were running at approximately 1:4, in contrast to the standard 1:10, amongst working children. The area involved had a school based permit system. However, it should be noted that there was considerable variability between schools in terms of the numbers registered, suggesting that individual teachers were motivated to 'push' the issue in their school.

In the present research, a number of local authorities had adopted a school based system. However there was no evidence that this was driven by a specific policy to shorten the application system. It was also apparent that few authorities collated any central records on part-time employment. Rather the impression gained in some cases was that for some authorities devolving this issue to schools resulted in an 'out of sight, out of mind' situation.

The researchers found that across all authorities that there were few prosecutions or warnings issued regarding byelaw infringements. Previous research has shown that the majority of children are working illegally across a range of criteria, eg hours worked and job type. Therefore the low uptake of permits and the lack of any monitoring procedures are the most likely explanation for the lack of warnings and prosecutions.

We have already suggested that the reason for the poor uptake of permits could be explained by the nature of the application process or the centralised process. A further explanation may be a general lack of awareness about the legislation. Over a period of time researchers have shown that children, parents and employers are largely unaware of the legislation in this area. Unfortunately less than half of the authorities produce any literature on this subject. A total of 14 authorities do produce leaflets or booklets which outline the acceptable and unacceptable aspects of child employment. However, even where information is available the dominant model adopted by authorities is a re-active one, where they respond to requests for information. Few authorities adopt a pro-active stance in this area.

The fact that only a small number of authorities viewed themselves as 'pro-active' is probably related to resource issues. As Table V shows staffing levels in this area are typically low and for the majority of staff child employment is a minor role for them. It was also

apparent that in some cases responsibility for this issue cuts across departments. This contrasts with a growing trend in England. It is not uncommon to find local government appointing staff under the title of 'child employment officers'. For example, Cumbria County Council has recently appointed two such staff. This trend may continue to grow in England given that OFSTED now include child employment as a topic in their review of an authorities education policy.

The nature of this research provided a unique opportunity to interview local authority personnel who deal with child employment as part of their remit. In summarising their views on the effectiveness of the present system it is evident that they are largely negative. For the majority the present policy and practice within their authority fails to protect children, draw attention to legislation and provide information on child employment. A small minority have a more positive perception of the system. This is based on the assumptions that children are registered for employment. As we have shown the majority of children are not registered for work and are therefore outside of the system.

A number of individuals were frustrated by the present state of the system in their authority, indicating that the issue is under-resourced and given a low priority. However, based on their experiences the interviewees had a number of solutions to propose.

A high percentage of those interviewed, 48%, were of the opinion that the permit system was fundamentally sound, it was the practice that needed attention. This level of support for the present permit system is interesting since a central plank of the BRTF position is that the permit system should be replaced by an employer registration system, thereby shifting the emphasis on registration from the child to the employer. In the present survey one interviewee proposed this but indicated that this would raise a different set of practical issues. It could also be argued that the issue of checks on employers, for example Criminal Records Board checks, and the additional costs involved may result in a reduction of employers willing to employ children.

For the majority of interviewees the central concern was the lack of awareness of legislation in this area. They proposed that the emphasis should be on raising the profile through advertising and some suggested that this should be a national initiative involving the Executive. It was also recognised that any system is only as good as the level of monitoring that accompanies legislation. For a number of interviewees it was important that some effort is directed towards developing an effective monitoring system. However, it was recognised that there was a danger inherent in this and that a balance needed to be struck to avoid driving such employment underground.

A small number of interviewees suggested that in raising the profile of child employment legislation it should be recognised that an important audience were children themselves. In effect they proposed that there would be a need to 'sell' such legislation and procedures to children in order that they would perceive the benefits and engage with it. One way of achieving this would be to have effective consultations with young people in the construction and content of legislation that affects their lives.

Raising the question of some formal recognition of school pupils' part-time employment produced a mixed set of responses. While some of those in favour of recognition based their position on the value of the experience of employment a number of those with positive views

adopted a more pragmatic position. In their view recognition was a good thing since it would mean that the present systems would have to be overhauled and replaced by a far more structured child employment system.

The more negative responses to the idea of recognition expressed the view that in their opinion children's jobs were menial and low level. In their view there was little merit in recognising such activities. One respondent's negative position on recognition was based on their belief that children would not want to engage with such a system, for them the motivation to work was for money, not qualifications.

Respondents in both of these camps drew attention to a raft of practical issues. Consensus emerged on the impact of such a change in policy. For the majority of respondents recognition would increase the levels of children registering for permits. Present levels of resource, particularly staffing levels, would be unable to cope with such an increase.

However, it could be argued that the issue of resources are not simply linked to a hypothetical recognition system. The argument that increased resources are required could be applied to the present situation. If staff are suggesting that an increase in numbers registering for permits would create problems there is an implicit acceptance that present resource levels could not cope with all of the children who are presently working, if they decided to seek work permits. The question of resources is central to any discussion of this topic irrespective of whether there is a move to recognise children's part-time work or maintain the *status quo*.

Methodological Issues

A major strength of this research is that all local authorities are represented in the data set. While it was not possible to carry out interviews for all authorities the database underpinning this research has been able to compensate by drawing on a range of information sources for all authorities.

The interviews were carried out with individuals within the authority who were responsible for child employment. However, the views they expressed are the views of the individual not the authority. More detailed discussions with each authority would be required to gain the 'collective' view on the issues covered here.

It is possible that some relevant material may not have been accessed. Each authority was asked to forward any relevant literature that they had on this topic. In addition the researchers independently gathered relevant material. However, it is worth noting that any material that has been missed does not have a high profile in the authority, nor is it necessarily easy to access.

Conclusion

For a number of years researchers interested in child employment issues have raised concerns regarding the legislation in this area. This review indicates that there is evidence to support the view that the current legislation needs to be reviewed. Decisions need to be taken regarding the rationale for managing this legislation at a local level and the philosophy underpinning the legislation. The present review highlights the fact that this issue is of low priority for the majority of local authorities. One interviewee suggested that it was the 'Cinderella area' of local government in terms of attention and resources. In commissioning

the present research on school pupils' part-time work, the Scottish Executive could be providing Cinderella's long awaited 'invitation to the ball', allowing for a comprehensive review of legislation, policy and practice in this area.

Notes about legislation

1. The legislation on the employment of children is complicated by the fact that regulations apply to children involved in a wide range of activities. The most problematic issue relates to young children involved in entertainment and public performance. The national legislation applies to all forms of work and includes references to child performers.

In this report we have excluded discussions of legislation as it applies to the area of performance/entertainment. There are two reasons for this. First the main research focuses upon the employment of secondary school aged children from S3 to S6. The majority of this employment is not in the area of performance/entertainment. Second, a number of local authorities in practice separate the monitoring of these different activities.

2. The legislation states that the minimum age for employment is 14 years of age. Local authorities can, if they wish, allow 13 year olds to work, however, this must be stated in the byelaws. Hamilton (2002) argues that the majority of authorities have opted to allow 13 year olds to work and have by default created the 'norm' of 13 years of age being the minimum age for part-time work.
3. Two other amendments were included in this Regulation: (i) that byelaws are required to specify the hours, days and places where children may take part in street trading. This information is additional to the existing regulations that children must be 14 years of age to undertake his work and employed and supervised by their parents (ii) children must be at least 16 years of age and over compulsory school age before they can take part in dangerous performances. The latter change impacts on the 1937 Act and does not affect byelaws.
4. The issue of recognition of children's part-time employment is also covered in the interviews with members of SCEIN (see Appendix 11).

Addendum

Since the collation of the information for this report the Scottish Executive has introduced a new statutory instrument. As of April 2006 the national legislation on the maximum number of term time hours a pupil can work has been reduced from 17 to 12 hours per week. This regulation applies to those pupils who are still within the period of compulsory education.

The introduction of this statutory instrument brings the national legislation into line with the EU Directive of 2000. Local authorities will now have to ensure that this new maximum figure is reflected in their documentation relating to child employment.

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APPENDIX 1

The BRTF made 5 recommendations:

1. The Department for Education and Skills should commence work on consolidating child employment legislation by September 2004.
2. By February 2005, the Department for Education and Skills should consult on moving to a system of regulation in which employers register with their local authority as an employer of school-age children, rather than applying for a permit for each child employee.
3. By February 2005, the Department for Education and Skills should consult on allowing children to work for more than two hours on a Sunday.
4. Following consolidation of the law, the Department for Education and Skills, working closely with local authorities, should produce simple, best practice guidance on the law which can be used by local authorities, employers, children and parents.
5. Guidance to local authorities on the role of Director of Children's Services should provide for Directors to have local authority functions relating child employment as part of their remit.