


<p>EXPLANATORY NOTE to the</p> <p><b>Welfare of Children (Amendment) Ordinance</b></p>	<p>Prepared by the Attorney General on 31.08.2017</p>	
--	---	---

1. These Explanatory Notes relate to the Welfare of Children (Amendment) Ordinance and have been prepared to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by a legislative committee, Executive Council or Legislative Council.
2. The Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
3. These Notes might be best read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

#### **Purpose of the Bill**

4. This Bill is proposed in view of St Helena's ratification of the International Labour Organisation (ILO) Convention and United Nations Convention on the Rights of the Child. Both Conventions are extended to St Helena, Ascension and Tristan Da Cunha.
5. Furthermore, on 30.09.2016 the U.S. Department of Labor (DoL) published its annual Findings on the Worst Forms of Child Labor report. St Helena was one of the 137 jurisdictions that were scrutinised because BOT governments are in receipt of certain trade benefits under the U.S. Generalized System of Preferences. The report by the DoL assessed St Helena as exhibiting 'Minimal' to 'No Advancement' since the last report.
6. The FCO provided the Report to SHG on 03.10.2016 and the AG brought this to the attention of the SCDC and a mandate was obtained to address this gap in the legislation of St Helena. At the same time, EMs raised issues about the legal requirements for young people undertaking work experience on St Helena. So the draft incorporates provisions about this.
7. It is recognised that the worst forms of labour are not necessarily a current problem in St Helena; however, there are gaps in the existing legislative framework to prevent children becoming involved in the worst forms of child labour.
8. In view of the required amendments, it was also considered an opportune time to propose an amendment to the Liquor Ordinance. This amendment seeks to amend the current provision that prohibits a person under the age of 18 years from being employed in tavern

premises. The amendment is proposed only in so far as allowing young persons on these premises for the purposes of providing occasional musical entertainment.

9. This proposal follows on the back of community dissatisfaction that the law as it stands, was restricting young musical talent, especially since young people themselves wanted to perform at these establishments, and had to be told otherwise.

#### **Policy background:**

10. This Bill will encourage Children to undertake work experience, whether it is simply for experience or financial gain. These legal changes will put St Helena in line with practices that are adopted in the UK in terms of children being allowed to take up employment as an aside, but not to interfere with, their educational commitments. The proposed changes are balanced with safeguards to ensure children are not being employed to their detriment, both mentally or physically, and that the employment does not breach any other rights such as their right to an education.

#### **Clause 1:**

11. This is the short title and is self-explanatory.

#### **Clause 2: employment of children**

12. This section establishes that the Bill will amend the Welfare of Children Ordinance by becoming its new part XVI and that it will be known as “Part XVI - Employment of Children”.
13. From this point on reference is made to the section number given in the Amendment Bill.

#### **Section 158**

14. Currently, section 158 of WOCO deals with employment of children.<sup>1</sup> However, this is very basic. It is proposed that an interpretation section be inserted to include the definitions of

---

<sup>1</sup> Employment of children

158(1) No child shall be employed or engaged in any activity that may be detrimental to his health, education or development and a child shall be entitled to be protected from such activity.

(2) Children under the age of 15 years shall not be employed or work on vessels, other than vessels upon which only members of the same family are employed.

(3) The master of every vessel must keep a register of all persons under the age of sixteen years employed on board his vessel or a list of them in the articles of agreement, with in each case, their respective dates of birth.

(4) This section does not apply to work done by children on school-ships or trainingships, provided that such work is approved and supervised by public authority.

the terms and expressions used in dealing the employment of children such as hazardous work, illicit activities, light work, work and work experience.

#### **“Hazardous work”**

15. The definition of “hazardous work” is extracted from various reputable documents including those of the International Labour Organisation and has been adapted accordingly.

16. Currently, section 158(2) of Welfare of Children Ordinance 2008 states as follows:

“Children under the age of 15 years shall not be employed or work on vessels, other than vessels upon which only members of the same family are employed.”

17. Working on vessels is considered a hazardous occupation and has therefore been included in the definition. The International Labour Organisation Convention considered this minimum age of 15 to be too low. This Bill seeks to address this, and raises the age to 16.

#### **“Illicit activities”**

18. The Amendment Bill lists a series of activities that are considered “illicit”. The list is not exhaustive.

#### **“Light work”**

19. Defines the nature of employment that children aged 13 and 16 may be engaged in so that it is not detrimental to their physical or mental wellbeing and does not interfere with their education.

#### **“Work”**

20. For the purposes of the Amendment Bill “Work” is not considered to include household chores, provided that the chores are not detrimental to the child’s wellbeing.

#### **“Work experience”**

21. Are activities that are done as part of an educational programme intended to give a child experience and skills of work. The activity must be approved by the child’s school and cannot be for financial or other gain.

---

(5) For the purposes of this section the term “vessel” includes all ships and boats of any nature whatsoever, engaged in maritime navigation, whether publicly or privately owned, but excluding ships of war.

(6) A person who employs or engages a child, or causes a child to be employed or engaged, in any activity that may be detrimental to his health, education or development, is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000, or both.

### **Section 158A (1) Employment of Children**

22. This subsection establishes the legal employment age for persons as 18 years but lists exceptions for when children (persons under 18) may be employed. This amends section 63 of the Education Ordinance<sup>2</sup> by repealing it as section 63 currently prohibits children of compulsory school age (5-16 years) from being employed in *any type* of work. Repealing 63 is necessary because these amendments deal fully with employment of children which is now going to be dealt under Part XVI.
23. Section 158A(1) specifies the type of work suitable for each age group (11 onwards – 13 to 15 – 16 onwards).

### **Section 158A(2)**

24. This subsection introduces situations where work that normally would be defined as “hazardous” would not be such if the conditions under the subsections are met. In regards to working with dangerous machinery, equipment or tools, this provision allows children to do so where they have received adequate training in the use of such machinery, equipment and tools, and are supervised where reasonably necessary to do so. This mitigates the UN Convention and ILO Convention’s warnings concerning children working with machinery, equipment and tools, and still allows children in St Helena to take up practical apprenticeships and to develop practical skills. Regarding work on a vessel, this provision takes into account the local circumstances of St Helena and its “fishing culture” by allowing children aged 16 and over to be on vessels in order to support a program of training, or on a vessel where a family member is employed or commands the vessel. The amendment satisfies the UN Conventions by raising the minimum age, and mitigates against the “hazardous element” by allowing children to work, or to be employed or trained, under supervision on vessels, and subject to other safety provisions.

### **Section 158A(3)**

25. This subsection prescribes the hours of work in which a child can be employed as described in s158(1). The exceptions offer a degree of flexibility and take into account jobs or events that take place outside of these hours where children who are employed may be expected

---

<sup>2</sup> Non-employment of children

63. (1) No person shall employ any child of compulsory school age during school hours to perform any work whatsoever, and no parent shall allow a child to be so employed.

(2) Any person wilfully employing a child in contravention of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding £500.

(3) Any parent allowing a child of compulsory school age to work for any person in breach of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding £300.

to work. This is balanced by provisions that ensure children are safeguarded from detriment and/or exploitation.

#### **Section 158A(4)**

26. This subsection prevents children aged 5-16 years from being employed during school hours. This makes it clear that education comes first and must be prioritised.

#### **Section 158A(5)**

27. This subsection creates an offence for persons who contravene the provisions of section 158A.

#### **Section 158B - Illicit Activities**

##### **Section 158B(1)**

28. This subsection prohibits children from being employed or engaged in illicit activities which are defined as including:
- a. producing and trafficking drugs;
  - b. trafficking of other goods;
  - c. gambling operations;
  - d. begging or stealing;
  - e. sexual exploitation;
  - f. activities which involve the unlawful carrying or use of firearms or other weapons;
  - g. other organised criminal activities.

29. This provision ensures that St Helena complies with its obligations under the International Conventions on Child Labour.

##### **Section 158B(2)**

30. This subsection creates a punishable offence for any person who contravene s158B(1).

#### **Section 158C - Regulations as to the employment of Children**

31. This sections gives power to the Governor in Council to make regulations.

#### **Section 3(1) Amendment of Legislation**

32. This subsection repeals section 158 of the Welfare of Children Ordinance 2008 (see paragraph 14 above).
33. Subsection 3(1)(b) rennumbers **Part XVI Miscellaneous And Supplemental** to read **Part XVII Employment of Children**

### Section 3(2)

34. Amends the Education Ordinance 2008 by repealing section 63 (see paragraph 22 above).

### Section 3(3)

35. This subsection amends section 29 of the Liquor Ordinance Cap 56 and refers to section 27 and 28 of that Ordinance.<sup>3</sup>

---

#### <sup>3</sup> Provisions concerning young persons

27.(1) A holder of a licence shall not knowingly sell or allow any other person to sell, and a servant of a holder of a licence shall not knowingly sell, intoxicating liquor to a person under the age of eighteen years.

(2) A person under the age of eighteen years shall not buy or consume intoxicating liquor on licensed premises.

(3) No person shall buy or attempt to buy intoxicating liquor for consumption on licensed premises by a person under the age of eighteen years.

(4) The holder of a licence or his servant shall not knowingly deliver, nor shall the holder of a licence allow any person to deliver, to a person under the age of eighteen years, intoxicating liquor sold on licensed premises for consumption off such premises, except where the delivery is made at the residence or work place of the purchaser.

(5) No person shall knowingly send a person under the age of eighteen years for the purpose of obtaining intoxicating liquor sold or to be sold on licensed premises for consumption off the premises, whether the liquor is to be obtained from the licensed premises or other premises from which it is delivered in pursuance of the sale.

(6) Subsections (4) and (5) shall not apply where the person under the age of eighteen years is a member of the licence holder's family or his servant or apprentice and is employed as a messenger to deliver intoxicating liquor.

(7) Any person who contravenes the provisions of this section, other than the provisions of subsection (2), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding £100.

(8) Any person contravening the provisions of subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding £50.

#### Persons under eighteen not to be employed in taverns

28. (1) If any person under the age of eighteen years is **employed** in any tavern at a time when the tavern is open for the sale or consumption of intoxicating liquor, the holder of the licence shall be guilty of an offence and shall be liable on conviction to a fine not exceeding £50.

(2) For the purposes of this section a person **shall not be deemed to be employed** in a tavern by reason only that in the course of his employment in some other part of the premises he enters the tavern for the purpose of giving or receiving any message or of passing to or from some part of the premises which is not a tavern and to and from which there is no other convenient means of access or egress.

(3) For the purposes of this section a person shall be deemed to be employed by the person for whom he works notwithstanding that he receives no wages for his work.

36. The amendment of section 29 is by the addition of subsection 2 so that the prohibition from employing a child under 18 by “any tavern at a time when the tavern is open for the sale or consumption of intoxicating liquor” does not apply in respect of employment by a licensed premises of a 16-year-old for the purposes of occasional musical entertainment as long as other conditions are met.
37. This amendment is as a result of representations made by Cllr B Isaac and H Lawson in relation to a young person who is a member of a band and under the current provisions cannot perform with the band in licensed premises.
38. When advising on the law as it is, there is no distinction in the premises so as to separate the area used for the sale and consumption of intoxicating liquor from that where the musical entertainment was to be provided. The whole of the premises fell within the definition of “tavern” under the Liquor Ordinance, and therefore persons under the age of 18 prohibited from being employed (whether for payment or not).
39. So this amendment, if enacted, will allow a young person with musical talent to perform in licensed premises only if the requirements in paragraphs (a) to (d) are met. This is a compromise between the need to safeguard young people and recognition that more responsibility ought to be given to 16-year-old people as long as there are appropriate safeguards.

**J. Angelo Berbotto**  
**Attorney General**

[angelo.berbotto@sainthelena.gov.sh](mailto:angelo.berbotto@sainthelena.gov.sh)



**Attorney General's Chambers**  
**St Helena, Ascension and Tristan da Cunha**  
**Address:- The Castle, Jamestown, Saint Helena**  
**South Atlantic Ocean STHL 1ZZ**  
**Telephone:- +290 22470**

---

(4) Where in any proceedings under this section it is alleged that a person was at any time under eighteen years of age, and he appears to the court to have then been under that age, he shall be deemed for the purposes of the proceedings to have been then under that age unless the contrary is shown.

Administratively, the Attorney General's Chambers are part of **Corporate Services**, but (in accordance with section 46(8) of the Constitution) the Attorney General acts independently and is not subject to the direction or control of any other person or authority.