Article 10
1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11
The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 12
At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 13
1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:
   (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;
   (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14
The English and French versions of the text of this Convention are equally authoritative.

ILO Convention 138
Minimum Age Convention, 1973 (No. 138)

I. Introduction

Child labour is one of the first issues that was legislated by labour law, both at national and international level. Indeed, concerning specifically international law and the ILO, the "abolition of child labour and the imposition of such limitations on the labour of young persons as shall permit the continuation of their education and their proper physical development" was mentioned along with eight other general principles in Article 41 of the 1919 ILO Constitution as guiding the policy of the League of Nations. Moreover, a convention dealing with this theme was adopted at the very first session of the International Labour Conference, in 1919 (Convention No. 5 on Minimum Age (Industry)).

Convention No. 5 approached the issue, as its title suggests, through establishing a minimum age under which children should not be employed or work. Subsequent instruments that were adopted took the same approach, first establishing a minimum age

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2 Article 41 was integrated in the Declaration of Philadelphia in 1946. After 1946, the more general concern of 'protection of children' remained in the preamble of the Constitution however.
3 10 conventions and 4 recommendations have been adopted between 1919 and 1973. These include C010 – Minimum Age (Agriculture) Convention, 1921 (No. 10); C015 – Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15); C033 – Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33); C059 – Minimum Age (Industry) Convention (Revised), 1937 (No. 59); C060 – Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60); C112 – Minimum Age (Fishermen) Convention, 1959 (No. 112); C123 – Minimum Age (Underground Work) Convention, 1965 (No. 123). The literature divides them in two groups – those adopted before 1932, and those adopted between 1936 and 1965. The latter group of conventions revised the former (see e.g. Matteo Borzaga, 'Limiting the minimum age: Convention 138 and the origin of the ILO's action in the field of child labour', in Giuseppe Nesi, Luca Nogler, and Marco Pertile (eds), *Child Labour in a Globalized World. A Legal Analysis of ILO Action* (Ashgate, Aldershot 2008) p. 43.
of 14 and then of 15, with exceptions, and insisting on school attendance. These instruments covered various sectors: industry, agriculture, non-industrial, maritime, and underground. The Minimum Age Convention, 1973 (No. 138), supplemented by Recommendation No. 146, aims, as its preamble states, to consolidate and replace these previous ILS prohibiting work under a certain age in particular sectors. Moreover, it explicitly has the objective of ensuring the effective abolition of child labour. It is one of the eight fundamental conventions of the ILO and it has been ratified by 170 countries (September 2017). Ratifications remained low for a number of years after its adoption however – it had, for example, only 47 ratifications in 1994. These increased after it was declared a fundamental convention in 1995, and after Convention No. 182 was adopted. Conventions Nos. 138 gives rise to contrasting opinions. The abolitionist approach adopted by this convention – similar, in fact, to the one included in the 1919 original Constitution – is either saluted or vehemently criticised. The perception that Convention No. 138 reduces the question of child labour to calculations of minimum age without taking into account the social value of work, for example, has been raised by many scholars from different disciplines. Similarly, the possibility that some children might be moved “from activities covered by labour legislation to others that are not covered at all, or which are only covered partially” because of the implementation of a minimum age has also been raised. The Convention is also considered quite complex – this is one of the reasons why its ratifications have stayed low for so long. Many observers feel that a distinction has to be made between “child labour” (unacceptable) and “child

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4 See e.g. Convention No. 10, Article 1 (‘Children under the age of fourteen years may not be employed or work in any public or private agricultural undertaking, or in any branch thereof, save outside the hours fixed for school attendance. If they are employed outside the hours of school attendance, the employment shall not be such as to prejudice their attendance at school’).
5 Convention No. 138 came into force on 19 June 1976.
10 The International Labour Office itself has recognised that ‘an obstacle to ratification has been that some member States view the text as too complex and too difficult to apply it in detail’ (ILO, Report VI(1), Child labour: targeting the intolerable, ILC 86th Session, p. 22).
work” (acceptable);¹¹ this is in fact what Convention No. 138 proceeds to do. In the ILO, “child labour” refers to labour that needs to be eliminated.¹²

II. Commentary

Preamble

The General Conference of the International Labour Organisation,
Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty-eighth Session on 6 June 1973, and
Having decided upon the adoption of certain proposals with regard to minimum age for admission to employment, which is the fourth item on the agenda of the session, and
Noting the terms of the Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, the Minimum Age (Trimmers and Stokers) Convention, 1921, the Minimum Age (Non-Industrial Employment) Convention, 1932, the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fishermen) Convention, 1959, and the Minimum Age (Underground Work) Convention, 1965, and
Considering that the time has come to establish a general instrument on the subject, which would gradually replace the existing ones applicable to limited economic sectors, with a view to achieving the total abolition of child labour, and
Having determined that these proposals shall take the form of an international Convention, adopts this twenty-sixth day of June of the year one thousand nine hundred and seventy-three the following Convention, which may be cited as the Minimum Age Convention, 1973:

ILO Convention No. 138 aims at consolidating and gradually replacing previous ILS prohibiting employment or work under a certain age in particular sectors. It also has the clear objective, mentioned in its preamble, of “achieving the total abolition of child labour”. As has been observed, Convention No. 138 does not define “child”, “labour” or “child labour” however.¹³

1. Article 1

Article 1

Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

Convention No. 138 has a dual objective: (1) abolish child labour, and (2) increase the minimum age. It is therefore considered to be a dynamic instrument which is not “in-

¹¹ See e.g. Vitit Muntarbhorn, ‘Child Rights and social clauses: Child labour elimination as a social clause?’, International Journal of Children's Rights 6 1998, p. 255. The term “child work” does not exist in international law however, and, as Yoshi Noguchi points out, the distinction between “work” and “labour” does not exist in many languages other than English (Yoshi Noguchi, ‘20 years of the Convention on the Rights of the Child and International Action against Child Labour’, International Journal of Children's Rights’ 18, 2010, p. 527).
¹² Yoshi Noguchi, ‘20 years of the Convention on the Rights of the Child and International Action against Child Labour’, International Journal of Children's Rights’ 18, 2010, p. 527. See also Lee Swepton, who explains that ‘[w]hat ILO instruments do prohibit is the imposition on children of labour which calls for greater physical and mental resources than they normally possess or which interferes with their educational development, and they attempt to regulate the conditions under which these young people may be allowed to work’ (Lee Swepton, ‘Child Labour: Its Regulation by ILO Standards and National Legislation’, ILR, 121 1982, p. 578).
tended simply as a static instrument prescribing a fixed minimum standards but [is] aimed at encouraging the progressive improvement of standards and of promoting sustained action to attain the objectives”.14

6 In order to achieve the aim of total abolition of child labour and the obligation to progressively raise the age for admission to employment or work, Convention No. 138 establishes, in Article 1, an overall obligation to undertake an effective national policy in that regard. The rationale behind this is to allow “the fullest physical and mental development of young persons”.15

7 As noted by the CEACR, Convention No. 138 is the first instrument concerning minimum age that uses the terms “national policy”.16 According to the preparatory work, “Article 1 does not impose an obligation to take any specific measures beyond those described in the subsequent provisions”.17 The CEACR has thus noted that “the requirement is that policies and measures be oriented so as eventually to achieve the stated objectives [of abolishing child labour and increasing minimum age], and thus Article 1 must be read together with the other Articles of the Convention”.18 Paragraph 2 of Recommendation No. 146 further elaborates on the content of a national policy, stating that special attention should be given to, for example, the objective of full employment, the extension of social security, poverty alleviation, the development and extension of adequate education facilities.19

2. Article 2

Article 2

1. Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and on means of transport registered in its territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation.

2. Each Member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office, by further declarations, that it specifies a minimum age higher than that previously specified.

3. The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.

4. Notwithstanding the provisions of paragraph 3 of this Article, a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.

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15 The “fullest physical and mental development of young persons” was considered too vague by some governments during the discussions that preceded the adoption of Convention No. 138, but was kept nevertheless. See Marianne Dahlén, The Negotiable Child – The ILO Child Labour Campaign 1919-1973 (Upsala University Press, Upsala 2007) p. 296.
16 ILO CEACR, General Survey of the Reports relating to Convention No. 138 and Recommendation No. 146 concerning Minimum Age, 67th Session of the International Labour Conference, 1981, para 57. Note that reference is made to the 1981 General Survey even though a more recent one has been published, in 2012. This is because the 1981 General Survey is more detailed, as it only concerns Convention No. 138. The General Survey published in 2012 concerns all six fundamental conventions, and is more condensed.
19 See also ILO, General Survey (2012) para 337. As the CEACR noted, Paragraph 2 “occasioned very little discussion when the instruments were being adopted “in view of the general acceptance of the relation. However, as pointed out by some countries, some of the objectives expressed [in paragraph 2] are long-term goals and cannot be achieved in the immediate future in view of the general social and economic conditions prevailing in developing countries in particular” (ILO CEACR, General Survey, 1981, para 60, referring to ILO, Minimum Age for Admission to Employment, Report IV(2), ILC, 57th Session, Geneva, 1972, pp. 48-50).
5. Each Member which has specified a minimum age of 14 years in pursuance of the provisions of the preceding paragraph shall include in its reports on the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organisation a statement—
(a) that its reason for doing so subsists; or
(b) that it renounces its right to avail itself of the provisions in question as from a stated date.

The general minimum age “shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years” (Article 2, para 3). This minimum age, however, can initially be fixed at 14 years by ratifying states “whose economy and educational facilities are insufficiently developed”\(^{20}\) and this, “after consultation with the organisations of employers and workers concerned” (Article 2, para 4).

It is interesting to note that the original proposal was to set the minimum age at 14 and that it is the discussions in the ILC which led to the adoption of an age of 15 with the possibility of an initial specification of 14 in some cases. As the CEACR has noted, “many delegates were concerned that if the minimum age were set too high, developing countries would be unable to ratify the Convention, in spite of the possibilities of exceptions offered in other articles”.\(^ {21}\) At the same time, other delegates considered that “international labour Conventions should represent advances over earlier Conventions on the same subject, and that to adopt a Convention with a minimum age of 14 after the adoption of several with a minimum age of 15 would be retrograde.”\(^ {22}\) As the CEACR notes, Article 2 can be read as an attempt to strike a balance between these two positions.\(^ {23}\)

In all cases – and this has been considered to be the core obligation of Convention No. 138 –\(^ {24}\) the minimum age for admission to employment or work is specified by the ratifying state in a declaration appended to the ratification (Article 2, para 1). The CEACR has stated that this age cannot be lowered once it has been declared.\(^ {25}\) Indeed, this would not be in line with the Convention, the aim of which is to increase the age of admission to employment and work (Article 2, para 2). According to this provision, a ratifying State may notify the Director-General of any decision in that sense, which has, however, rarely occurred in practice.\(^ {26}\) It should be noted that the minimum age can of course be fixed at higher than 15, and that, according to paragraph 7(1) of Recommendation No. 146 indicates that raising progressively the general minimum age to 16 years should be taken as an objective. Out of the 170 countries that had ratified Convention No. 138 in April 2017, 75 countries had set the general minimum age for admission to employment or work at 15 years of age, 44 countries had set it at 16 years, and 51 developing countries had set the minimum age at 14 years.\(^ {27}\)

The requirement to consult with employers and workers’ organisation is mentioned explicitly in Article 2, and throughout the Convention (Article 3 to 6, and 8). As pointed

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\(^{20}\) The CEACR has specified that “[i]t is for the ratifying state to make this determination” (ILO, CEACR General Survey (1981), para 121). Regarding the term ‘insufficiently developed’ education facilities in particular, the CEACR has stated that “[i]n most countries there is a system of compulsory education, but many of these countries are unable to provide facilities for all children in all parts of their territories; or the facilities that do exist may provide education only to some children and for a few years” (Ibid, para 124).

\(^{21}\) ILO, CEACR General Survey, 1981, para 120.

\(^{22}\) Ibid.

\(^{23}\) Ibid.


\(^{25}\) See also ILO CEACR General Survey (2012), para 366.


out by the CEACR, the importance of tripartite consultations in the field of child labour and minimum age should not be ignored, whether or not relevant conventions have been ratified.\textsuperscript{28} Indeed, it has further stated that representatives of employers and workers organisations may not only make valuable contributions, but their active cooperation and advice is essential in order for the national policy requested by Article 1 to be effective in practice.\textsuperscript{29}

12 With regard to the mention of compulsory schooling in Article 2, para 3, the CEACR considers that free, compulsory education is considered to be one of the most effective means to combat child labour.\textsuperscript{30} As such, according to the Experts, “compulsory education should be effectively implemented so as to ensure that all children under the minimum age are attending school and not engaged in economic activities”.\textsuperscript{31} The Experts have noted that in some countries, the age of completion of compulsory education is lower than the minimum age for admission to work or employment and they have remarked that, although this does not constitute a violation of Article 2(3), “if compulsory schooling comes to an end before children are legally entitled to work, there may arise a vacuum which regrettably opens the door for the economic exploitation of children”.\textsuperscript{32} The Committee therefore “strongly encourages member States to consider raising the age of completion of compulsory education to coincide with that of the minimum age for admission to employment or work”.\textsuperscript{33}

13 Finally, Convention No. 138 refers to “employment or work” and the CEACR has thus specified that minimum age should apply to “all persons engaged in economic activity, whether or not there is a contractual employment relationship and whether or not the work is remunerated, including unpaid work and work in the informal economy. This includes workers in family enterprises and farms, domestic workers, agricultural workers and self-employed workers.”\textsuperscript{34} Articles 4 and 5 of the Convention, examined below, allow ratifying states to exclude certain categories of workers or particular sectors from the scope of the Convention. The Convention provides for further exceptions and flexibility however (see Articles 3 and 6). These exceptions and possibilities of exclusion, which were introduced “to make the Convention more readily adaptable to all national circumstances”,\textsuperscript{35} have also contributed in the eyes of some to making the instrument seem complex, as mentioned in the introduction.\textsuperscript{36}

3. Article 3

Article 3

1. The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.


\textsuperscript{29} ILO CEACR General Survey (1981), para 355.

\textsuperscript{30} ILO CEACR General Survey (2012), para 369.

\textsuperscript{31} ILO CEACR General Survey (2012), para 375. See also para 338.

\textsuperscript{32} Ibid. para 371. See Paragraph 4 of Recommendation No. 146.


\textsuperscript{34} ILO CEACR General Survey (2012), para 332.

\textsuperscript{35} ILO CEACR General Survey (1981), para 35.

\textsuperscript{36} See ILO, Report VI(1), Child labour: targeting the intolerable, ILC 86\textsuperscript{th} Session, p. 22. See also, David M. Smolin, ‘Conflict and Ideology in the International Campaign against Child Labour’, Hofstra Labor and Employment Law Journal, 16(2), 1999, pp. 395-396.
2. The types of employment or work to which paragraph 1 of this Article applies shall be determined by national laws or regulations or by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist.

3. Notwithstanding the provisions of paragraph 1 of this Article, national laws or regulations or the competent authority may, after consultation with the organisations of employers and workers concerned, where such exist, authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

Convention No. 138 provides for an exception with regard to “hazardous” work, a term that is not used in the Convention, but is used by the CEACR in relation to it. More specifically, the minimum age for admission to “any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons” is set at “not less than 18 years” (Article 3, para 1). These types of employment or work need to be established by “national laws or regulations” or by “the competent authority”, “after consultation with organisations of employers and workers concerned”, if such exists (Article 2, para. 2). Paragraph 10 of Recommendation No. 146 specifies that in establishing this list, attention should be given to International Labour Standards such as those dealing with “dangerous substances, agents or processes (including ionising radiations), the lifting of heavy weights and underground work”.

Some flexibility is allowed however: authorisations to carry out employment or work from the age of 16 is possible, provided that consultations take place, and on two additional conditions: First, “the health, safety and morals of the young persons concerned” must be “fully protected”. This implies that the work is not considered dangerous anymore because the hazardous elements have been removed. Second, it is required that “the young persons have received adequate specific instruction or vocational training in the relevant branch of activity” (Article 3, para 3). As the CEACR has specified, ratifying states have to “take the necessary measures to ensure that no one under 18 years of age, other than in the exceptional cases allowed by the Convention, shall be authorized to engage in hazardous work, in accordance with Article 3(1)”.

It should be noted that the possibility to exclude limited categories of work or employment (Article 4) does not extend to cases where work is considered hazardous under Article 3.

4. Article 4

1. In so far as necessary, the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, may exclude from the application of this Convention limited...
categories of employment or work in respect of which special and substantial problems of application arise.

2. Each Member which ratifies this Convention shall list in its first report on the application of the Convention submitted under Article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraph 1 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice in respect of the categories excluded and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.

3. Employment or work covered by Article 3 of this Convention shall not be excluded from the application of the Convention in pursuance of this Article.

17 Article 4 introduces flexibility in Convention No. 138 in so far as some ratifying countries may, “after consultation with […] organisations of employers and workers” and “in so far as necessary”, exclude from the application of the Convention, limited categories of employment or work in respect of which special and substantial problems of application arise (Article 4, para 1). The CEACR considers “substantial problems of application” to refer to “legal difficulties” or “difficulties in enforcement”. Frequent exclusions concern work in family enterprises, work carried out in small-scale agriculture, and domestic work.

18 This provision, drafted to allow flexibility, has been modelled on Article 2, paragraphs 2 and 3, of the Holidays with Pay Convention (Revised), 1970 (No. 132). It gave rise to many discussions, with some Governments and the Workers group opposing its inclusion. Consensus was obtained when paragraph 3 was introduced.

19 The possibility of excluding categories of work or employment is framed in rather restrictive language. Indeed, as Creighton puts it, “the exclusions must: (i) be “necessary”; (ii) be “limited”; (iii) relate to "special and substantial problems of application"; (iv) be adopted only following consultation with the relevant organisations of employers and workers; and (v) be listed in the first article 22 report following ratification”. This latter conditions introduces an element of inflexibility according to him. According to both Creighton and Borzaga, this means that after having sent its first report, a state cannot adapt its legislation to economic and social changes. Moreover, the exclusion may not concern employment or work which is “by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons” (Article 3, paragraph 1), and an explanation of the exclusions must be added to the Article 22 first report. These restrictions to the possibility of excluding categories of employment or work were precisely made, however, “[i]n order not to create possibilities of exclusion that were so wide as to defeat the purpose of the Convention”.

5. Article 5

Article 5

1. A Member whose economy and administrative facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially limit the scope of application of this Convention.
2. Each Member which avails itself of the provisions of paragraph 1 of this Article shall specify, in a declaration appended to its ratification, the branches of economic activity or types of undertakings to which it will apply the provisions of the Convention.

3. The provisions of the Convention shall be applicable as a minimum to the following: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.

4. Any Member which has limited the scope of application of this Convention in pursuance of this Article shall indicate in its reports under Article 22 of the Constitution of the International Labour Organisation the general position as regards the employment or work of young persons and children in the branches of activity which are excluded from the scope of application of this Convention and any progress which may have been made towards wider application of the provisions of the Convention; may at any time formally extend the scope of application by a declaration addressed to the Director-General of the International Labour Office.

While Article 4 allows the exclusion of certain categories of employment or work, Article 5 offers a second type of flexibility, allowing the exclusion of branches of activity or types of undertaking from the scope of the convention. Indeed, after consultations with employers and workers organizations, a ratifying state “whose economy and administrative facilities are insufficiently developed”, may, “initially limit the scope of application of this Convention” (Article 5, para 1) by specifying the “branches of economic activity or types of undertakings to which it will apply the provisions of the Convention” (Article 5, para 2). The list of these must be appended to the act of ratification (Article 5, para 2).

However, ratifying States must apply the Convention to certain specific areas that are listed in Article 5, paragraph 3. As the CEACR has noted, several countries have in fact limited the application of the Convention to these categories only.49

As under Article 4, ratifying states availing themselves of this flexibility clause need to provide information in their report under Article 22 of the ILO Constitution on the progress made towards increasing the scope of application of the Convention (Article 4, para 2, and Article 5, para 4(a)).

6. Article 6

Article 6

This Convention does not apply to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons at least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, and is an integral part of:

(a) a course of education or training for which a school or training institution is primarily responsible;
(b) a programme of training mainly or entirely in an undertaking, which programme has been approved by the competent authority; or
(c) a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.

Article 6 provides that the general minimum age prescribed by the Convention “does not apply to work done by children or young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons of at least 14 years of age in undertakings”. To be exempted, such work must meet the conditions listed in this provision. The CEACR is of the opinion that “work in educational institutions and apprenticeships must be regulated by law, and that the law must be applied effectively in practice”.50 Furthermore, the CEACR has stated that “the minimum

49 ILO CEACR General Survey (2012), para 335.
50 ILO CEACR General Survey (2012), para 387.
age for admission to apprenticeship must be applied in all circumstances and sectors, including in the informal economy.”

7. Article 7

Article 7

1. National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is
   (a) not likely to be harmful to their health or development; and
   (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

2. National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling on work which meets the requirements set forth in sub-paragraphs (a) and (b) of paragraph 1 of this Article.

3. The competent authority shall determine the activities in which employment or work may be permitted under paragraphs 1 and 2 of this Article and shall prescribe the number of hours during which and the conditions in which such employment or work may be undertaken.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a Member which has availed itself of the provisions of paragraph 4 of Article 2 may, for as long as it continues to do so, substitute the ages 12 and 14 for the ages 13 and 15 in paragraph 1 and the age 14 for the age 15 in paragraph 2 of this Article.

Article 7 introduces a further flexibility clause, allowing “light work” for persons 13 to 15 years of age. Such work is permitted under two conditions: it must “(a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received” (Article 7, para 1). This includes school attendance and having time to do homework and rest. Under the same conditions, national legislation may “permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling” (Article 7, para 2).

Many countries have availed themselves of the flexibility offered by Article 7, para 1. States that have specified a general minimum age of 15 have generally indicated a minimum age of 13 years for light work, while states that have indicated a higher general minimum age (16 years) have often indicated a higher minimum age for light work (14 years). However, the competent authority has to “determine the activities in which employment or work may be permitted” for children 13–15 years (or 12–14 years) of age, and “prescribe the hours and condition of work of light work” (Article 7, para 3). In this regard he CEACR has referred to Paragraph 13(1) of Recommendation No. 146, which

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51 Ibid.
54 The following has often been specified by ILO members, according to the 2012 General Survey of the CEACR: picking, gathering, or sorting work performed in agricultural undertakings; harvesting; gardening and weeding; providing food and water to animals; light domestic tasks (kitchen assistant, houseboy or childminder, errand running); work in commercial enterprises, such as shelving or pricing; work as a shop assistant, as well as service work, such as dishwashing or serving tables; clerical and cleaning work; the delivery of newspapers or groceries; work in undertakings other than industrial undertakings, such as undertakings engaged in the sale and distribution of goods; administrative services; newspaper production and publication; the operation of hotels, restaurants and other places of public entertainment (see ILO CEACR General Survey (2012), para 395).
55 See, e.g., ILO CEACR General Survey (2012), para 396.
sets out a number of considerations that are to be taken into account when applying Article 7(3).  

Many countries have not adopted the measures required by Article 7, para 3. Since 2008, the Experts have therefore been asking ratifying States to provide specific information concerning light work in their reports.

8. Article 8

Article 8

1. After consultation with the organisations of employers and workers concerned, where such exist, the competent authority may, by permits granted in individual cases, allow exceptions to the prohibition of employment or work provided for in Article 2 of this Convention, for such purposes as participation in artistic performances.

2. Permits so granted shall limit the number of hours during which and prescribe the conditions in which employment or work is allowed.

Article 8 provides that the competent authority, may, after consultation with workers and employers' organisations, grant exceptions to the general prohibition of employment or work, in individual cases, “for such purposes as participation in artistic performances”. It is worth noting that no specific minimum age is mentioned in this regard. Such permits shall specify hours and conditions of employment or work.

It is interesting to note that earlier conventions on minimum age for admission to non-industrial employment (No. 33 and No. 60) "contained far more detailed and restrictive provisions on this subject than Convention No. 138". Indeed, both Conventions stated that permission for artistic work "could only be given 'in the interests of art, science or education', restricted dangerous performances (including employment in circuses, variety shows or cabarets), enjoined strict safeguards and kind treatment for the young persons concerned, and forbade employment after midnight."

9. Article 9

Article 9

1. All necessary measures, including the provision of appropriate penalties, shall be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention.

2. National laws or regulations or the competent authority shall define the persons responsible for compliance with the provisions giving effect to the Convention.

3. National laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer; such registers or documents shall contain

56 These are: “(a) the provision of fair remuneration and its protection, bearing in mind the principle of equal pay for equal work; (b) the strict limitation of the hours spent at work in a day and in a week, and the prohibition of overtime, so as to allow enough time for education and training (including the time needed for homework related thereto), for rest during the day and for leisure activities; (c) the granting, without possibility of exception save in genuine emergency, of a minimum consecutive period of 12 hours' night rest, and of customary weekly rest days; (d) the granting of an annual holiday with pay of at least four weeks and, in any case, not shorter than that granted to adults; (e) coverage by social security schemes, including employment injury, medical care and sickness benefit schemes, whatever the conditions of employment or work may be; (f) the maintenance of satisfactory standards of safety and health and appropriate instruction and supervision.”


59 Ibid.

60 Ibid.
the names and ages or dates of birth, duly certified wherever possible, of persons whom he employs or who work for him and who are less than 18 years of age.

29 The need to take all necessary measures, including “appropriate penalties” “to ensure the effective enforcement” of Convention No. 138 and to “define the persons responsible for compliance” with the provisions giving effect to the Convention is established in Article 9, para. 1 and 2. The CEACR has insisted on the need for States to provide for sufficiently deterrent penalties. As it has remarked, the Convention does not provide details as to the form or amount of the penalties. According to the Experts, “[w]hatever the severity of the penalties laid down, they will only be effective if they are in fact applied, which requires measures whereby they can be brought to the attention of the judicial and administrative authorities, and if there is a will on the part of these authorities to require compliance.”

30 Registers, with the name, ages, date of birth of employees or workers under 18 “shall be kept and made available by the employer” (Article 9, para 3). According to the CEACR, these registers need to be made available to labour inspectors. The CEACR believes that labour inspectorate plays an important role in collecting and disseminating information on child labour violations; as such, the CEACR consistently requests that the reports provided by governments under article 22 of the ILO Constitution contains information on the number of inspections, the number and nature of violations detected relating to child labour, and the penalties applied. It also requests that the labour inspectorate is strengthened, when needed.

[Article 10-18 omitted].

ILO Convention 140
Paid Educational Leave Convention, 1974 (No 140)


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61 The Experts have highlighted that “[w]hile the adoption of national legislation is essential as it establishes a framework within which society determines its responsibilities with regard to young persons, even the best legislation only takes value when it is applied effectively” (ILO CEACR General Survey (2012), para 410).
63 ILO CEACR General Survey (2012), para 414.
64 See also ILO CEACR General Survey (1981), para 326.