

Report VII(1)

► **Abrogation of four international labour Conventions and withdrawal of one international labour Convention and three Recommendations**

Seventh item on the agenda



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► Contents

	Page
Introduction	5
Status of the international labour Conventions proposed for abrogation	7
Minimum Age (Agriculture) Convention, 1921 (No. 10)	7
Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33).....	7
Minimum Age (Industry) Convention (Revised), 1937 (No. 59)	8
Minimum Age (Underground Work) Convention, 1965 (No. 123)	8
Questionnaire	8
Status of the international labour Convention and Recommendations proposed for withdrawal	9
Minimum Age (Industry) Convention, 1919 (No. 5)	9
Minimum Age (Non-Industrial Employment) Recommendation, 1932 (No. 41).....	9
Minimum Age (Family Undertakings) Recommendation, 1937 (No. 52)	9
Minimum Age (Underground Work) Recommendation, 1965 (No. 124).....	10
Questionnaire	10

► Introduction

1. At its 350th Session (March 2024), the Governing Body of the International Labour Office decided to place on the agenda of the 116th Session (2028) of the International Labour Conference an item concerning the abrogation of the Minimum Age (Agriculture) Convention, 1921 (No. 10), the Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33), the Minimum Age (Industry) Convention (Revised), 1937 (No. 59), and the Minimum Age (Underground Work) Convention, 1965 (No. 123), and the withdrawal of the Minimum Age (Industry) Convention, 1919 (No. 5), the Minimum Age (Non-Industrial Employment) Recommendation, 1932 (No. 41), the Minimum Age (Family Undertakings) Recommendation, 1937 (No. 52), and the Minimum Age (Underground Work) Recommendation, 1965 (No. 124).¹
2. The Governing Body based its decision on the recommendations formulated by the Standards Review Mechanism Tripartite Working Group (SRM TWG)² at its eighth meeting, which was held from 11 to 15 September 2023.³
3. In accordance with the procedure set out in article 52 of the Standing Orders of the International Labour Conference, acting on a proposal of the Governing Body, the Conference may decide to withdraw a Recommendation or a Convention that is not in force, or to abrogate a Convention that is in force. The Conference has previously considered the abrogation or withdrawal of outdated international labour standards in follow-up to the recommendations of the SRM TWG, as approved by the Governing Body.
4. Should the Conference decide to abrogate Conventions Nos 10, 33, 59 and 123, they would be removed from the ILO's body of standards and, as a result, Members that have ratified and are still bound by the Conventions concerned will no longer be obliged to submit reports under article 22 of the Constitution and they may no longer be subject to representations (article 24) or complaints (article 26) for alleged non-observance. For their part, the ILO supervisory bodies will not be required to examine the implementation of these instruments and the Office will take the necessary steps to ensure that abrogated instruments are no longer reproduced in any collection of international labour standards or referred to in new instruments, codes of conduct or similar documents.⁴

¹ ILO, *Agenda of future sessions of the International Labour Conference*, GB.350/INS/2/1, 2024, para. 53 and Appendix IV; and subparagraph (e)(i) of the related decision, *GB.350/INS/2/1/Decision*.

² The SRM TWG was established by the Governing Body at its 323rd Session (March 2015) to contribute to "the overall objective of the Standards Review Mechanism to ensure that the ILO has a clear, robust and up-to-date body of international labour standards that respond to the changing patterns of the world of work for the purpose of the protection of workers and taking into account the needs of sustainable enterprises." Pursuant to paragraph 9 of its Terms of Reference, the SRM TWG is mandated to "review the international labour standards with a view to making recommendations to the Governing Body on: (a) the status of the standards examined, including up-to-date standards, standards in need of revision, outdated standards, and possible other classifications; (b) the identification of gaps in coverage, including those requiring new standards; (c) practical and time-bound follow-up action, as appropriate." Additional information is available on the [SRM TWG web page](#).

³ ILO, *Report of the eighth meeting of the Standards Review Mechanism Tripartite Working Group*, GB.349/LILS/1, 2023, paras 21–22 and Annex I, para. 10.4.

⁴ More detailed information on the significance, effects and procedure of abrogation can be found in ILO, *Update on the status of ratification of the 1986 and 1997 Instruments for the Amendment of the Constitution of the International Labour Organisation*, GB.325/LILS/INF/1, 2015; and ILO, *The Standards Initiative: Report of the fifth meeting of the Standards Review Mechanism Tripartite Working Group*, GB.337/LILS/1, Appendix, Annex II.

5. Should the Conference decide to withdraw Convention No. 5 and Recommendations Nos 41, 52 and 124, those instruments would be removed from the ILO's body of standards and the Office would take the necessary steps to ensure that the withdrawn international labour standards are no longer reproduced in any collection of international labour standards or referred to for guidance in new instruments, codes of conduct or similar documents.
6. In accordance with article 52(1) of the Standing Orders, when an item on withdrawal or abrogation is placed on the agenda of the Conference, the Office shall communicate to the governments, so as to reach them not less than 18 months before the opening of the session of the Conference at which the item is to be discussed, a short report and questionnaire requesting them to indicate within a period of 12 months their position, and the reasons for their position, on the subject of the proposed withdrawal or abrogation, along with the relevant information. In this respect, the governments are requested to consult the most representative organizations of employers and workers before finalizing their replies. On the basis of the replies received, the Office shall prepare a report containing a final proposal and shall make it available to governments four months before the session of the Conference at which the item is to be discussed.

As the Governing Body has placed this item on the agenda of the 116th Session (2028) of the Conference, governments are requested, after having duly consulted the most representative organizations of employers and workers, to transmit their replies to the questionnaire below so that they reach the Office **no later than 15 September 2027**.

This report containing the questionnaire is available on the [Conference website](#). Governments are encouraged to respond to the questionnaire in electronic format and to submit their replies to the Office of the Legal Adviser (jur@ilo.org) by email.

► Status of the international labour Conventions proposed for abrogation

7. Conventions Nos 10, 33, 59 and 123 have been considered outdated since 1997, following the adoption of the [Minimum Age Convention, 1973 \(No. 138\)](#), which revised the older Conventions. Following the recommendation of the Cartier Working Party, the Governing Body invited, on a priority basis, the Member States that had ratified these Conventions to contemplate ratifying Convention No. 138. At that time, the Governing Body decided that the status of the earlier instruments would be re-examined in due course.⁵
8. The SRM TWG undertook that re-examination in 2023, when its discussion resulted in consensual recommendations confirming the classification of Conventions Nos 10, 33, 59 and 123 as outdated instruments. Stressing the importance of the topic, the SRM TWG noted the evolution in the standards on minimum age since the older instruments were adopted. Convention No. 138, a fundamental Convention, had a broad scope of application and reflected the modern approach to the regulation of minimum age of employment.⁶ Accordingly, the SRM TWG recommended to the Governing Body the abrogation of Conventions Nos 10, 33, 59 and 123, through placing an item on the agenda of the 116th Session (2028) of the Conference.⁷

Minimum Age (Agriculture) Convention, 1921 (No. 10)

9. Convention No. 10 was adopted in 1921. It has been ratified by 55 Member States, 51 of which have automatically denounced it following their ratification of Convention No. 138. It is accordingly currently in force in four Member States.
10. The Convention establishes the minimum age of 14 for children to be employed in the agricultural sector.

Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33)

11. Convention No. 33 was adopted in 1932. It has been ratified by 25 Member States, 23 of which have automatically denounced it following their ratification of Convention No. 138. It is accordingly currently in force in two Member States.
12. All employment not covered by the instruments concerning industry (Convention No. 5), maritime navigation (the Minimum Age (Sea) Convention, 1920 (No. 7)), and agriculture (Convention No. 10), except employment in sea-fishing, is covered by Convention No. 33. The Convention provides that children under the age of 14 years, or over 14 but still required to attend primary school, cannot be employed.

⁵ [GB.270/LILS/WP/PRS/2](#) (Office background paper, November 1997), paras 14–20; [GB.270/LILS/3\(Rev.1\)](#) (report of Working Party, November 1997), paras 66–72; [GB.270/9/2](#) (discussion of LILS Committee, November 1997).

⁶ Nonetheless, it was considered that the development by the Office of non-normative guidance on the application of exemptions for light work and child labour in family undertakings, with a particular emphasis on agricultural work, would be a useful addition.

⁷ For more details, see ILO, [Technical Note 2.2: Instruments concerning minimum age](#), Eighth Meeting of the Standards Review Mechanism Tripartite Working Group, 11–16 September 2023.

Minimum Age (Industry) Convention (Revised), 1937 (No. 59)

13. Convention No. 59 was adopted in 1937. It has been ratified by 36 Member States, 27 of which have automatically denounced it following their ratification of Convention No. 138. It is accordingly currently in force in nine countries.
14. Convention No. 59 applies to industrial undertakings and it is the first minimum age Convention to raise the basic minimum age for admission of children to employment to 15 and allows national law to permit the employment of younger children in family undertakings. This Convention was revised, without being closed to further ratifications, by Convention No. 138.

Minimum Age (Underground Work) Convention, 1965 (No. 123)

15. Convention No. 123 was adopted in 1965. It has been ratified by 41 Member States, 21 of which have automatically denounced it following their ratification of Convention No. 138. It is accordingly currently in force in 20 countries.
16. Convention No. 123 applies to underground work and fixes 16 years as the higher minimum age for admission to employment. This Convention was revised, without being closed to further ratifications, by Convention No. 138.

► Questionnaire

Do you consider that the four above-referenced Conventions should be abrogated?

☐ Yes ☐ No

If you replied “no” to the above question, please indicate which Convention(s) among the above-listed instruments you consider that has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization and the reasons thereof.

Comments

Click or tap here to enter text.

► Status of the international labour Convention and Recommendations proposed for withdrawal

17. Convention No. 5 and Recommendation No. 124 have been considered outdated since 1997, following the adoption of Convention No. 138, which revised it. At that time, the Governing Body invited Member States that had ratified Convention No. 5 to contemplate ratifying Convention No. 138 and decided that the status of these instruments would be re-examined in due course. In undertaking that re-examination in 2023, the SRM TWG reached consensual recommendations confirming the classification of Convention No. 5 and Recommendation No. 124 as outdated instruments and classifying Recommendations Nos 41 and 52 as outdated. Noting the evolution in the standards on minimum age and the broad application and modern approach of Convention No. 138, a fundamental Convention, the SRM TWG recommended to the Governing Body the withdrawal of Convention No. 5 and Recommendations Nos 41, 52 and 124, through placing an item on the agenda of the 116th Session (2028) of the Conference.⁸

Minimum Age (Industry) Convention, 1919 (No. 5)

18. Convention No. 5 was adopted in 1919. It has been ratified by 72 Member States, all of which have automatically denounced it following their ratification of Convention No. 138.
19. Convention No. 5 was the first instrument to fix a minimum age for admission to employment or work. It sets a minimum age of 14 years for employment or work in industrial undertakings. Exceptions are allowed in relation to work in technical schools and in family undertakings, and special provisions applied lower minimum ages in India and Japan.

Minimum Age (Non-Industrial Employment) Recommendation, 1932 (No. 41)

20. Recommendation No. 41 was adopted in 1932 to guide Member States in the application of Convention No. 33, which is proposed for abrogation above, in particular regarding public entertainment, light work, dangerous employment and the prohibition of employment of children by certain persons.

Minimum Age (Family Undertakings) Recommendation, 1937 (No. 52)

21. Recommendation No. 52 was adopted in 1937 and invites Member States to apply their legislation relating to the minimum age of admission to all industrial undertakings, including family undertakings.

⁸ For more details, see ILO, Technical Note 2.2: Instruments concerning minimum age.

Minimum Age (Underground Work) Recommendation, 1965 (No. 124)

22. Recommendation No. 124 was adopted in 1965 and encourages Member States to progressively raise the minimum age for underground work in mines from 16 to 18 years and contains provisions for the protection of persons who wish to work in mines but are too young to be employed in them. In comparison, the Worst Forms of Child Labour Recommendation, 1999 (No. 190), which accompanies the Worst Forms of Child Labour Convention, 1999 (No. 182), provides that consideration should be given to determining underground work as a hazardous type of work prohibited to children under 18 by the Convention.

► Questionnaire

Do you consider that the above-referenced Convention and Recommendations should be withdrawn?

☐ Yes ☐ No

If you replied “no” to the above question, please indicate which instrument(s) among the above-listed Convention and Recommendations you consider that has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization and the reasons thereof.

Comments

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