

## The Highland Council

10 March 2016

Agenda Item	14
Report No	HC/10/16

### Byelaws on the Employment of Children

#### Report by the Director of Care and Learning

#### Summary

This Report seeks Members' agreement to update the Highland Council's Byelaws on the Employment of Children, to bring them into line with current Scottish Government Guidance.

### 1. Background

- 1.1 The Byelaws apply to children below school leaving age, and regulate the types of occupation in which children may be employed, his/her hours of work, and other conditions of employment. They provide for checks on a child's fitness for employment and for the issue of employment permits. The Byelaws ensure that children are employed only in appropriate tasks that do not interfere with their school attendance. They do not apply to children in their last year of compulsory schooling undertaking work experience. The Byelaws include a list of employment areas that are prohibited for children aged 14 and 15. Children aged 13 are only allowed to be employed in certain specified tasks set out in the Byelaws.
- 1.2 A copy of the new Byelaws is attached at **Appendix A**, together with the associated Guidance Notes (**Appendix B**) and the Application Form for an Employment Permit (**Appendix C**)

### 2. Changes from the Existing Byelaws

- 2.1 The main change between the existing and revised Byelaws is that the new Byelaws do not allow the employment of children aged 10-12. The existing Byelaws allow employment for this age group in very limited circumstances. The change reflects current Scottish Government Guidance. There are a few other minor changes in wording, again to better reflect current advice from the Scottish Government.

### 3. Implications

- 3.1 Resource – there are no resource implications associated with this report.

Legal – the revised Byelaws have been prepared in consultation with the Council's legal services team.

Climate Change/Carbon Clever – there are no implications to highlight.

Risk – there are no risk implications to highlight. The changes, as summarised above, represent relatively minor changes to bring the Byelaws into line with Scottish Government guidance.

Gaelic – there are no implications to highlight.

Rural - there are no implications to highlight.

**Recommendation**

Members are asked to approve the Highland Council's Byelaws on the Employment of Children 2016.

Designation: Director of Care and Learning

Date: 24 February 2016

Author: Brian Porter, Head of Resources  
Ian Jackson, Education Officer

Background Papers: Byelaws on the Employment of Children 2016

Guidance Notes

Application For an Employment Permit

# Byelaws for the Employment of Children 2016

## The Highland Council - Employment Of Children Byelaws

Made: 10th March 2016

The Highland Council, in exercise of the powers conferred on them by Sections 28(2) and 30(2) of the Children and Young Persons (Scotland) Act 1937<sup>1</sup>, hereby make the following Byelaws:

### **Citation and Commencement**

1. These Byelaws may be cited as The Highland Council Byelaws on the Employment of Children 2016 and shall come into force on XX YYYYYY 2016.

### **Interpretation and Extent**

2. In these Byelaws, unless the context otherwise requires:

“the authority” means The Highland Council;

“child” means a person who is not for the purposes of the Education (Scotland) Act 1980<sup>2</sup> over school age.

“employment” includes assistance in any trade or occupation which is carried on for profit, whether or not payment is received for that assistance.

“light work” means all work which, on account of the inherent nature of the tasks which it involves and the particular conditions under which they are performed is not likely to be harmful to the safety, health or development of children and is not such as to be harmful to their attendance at school, their participation in vocational guidance or training programmes or a work experience scheme under Section 123 of the Education (Scotland) Act 1980 or their capacity to benefit from the instruction received.

“parent”, in Byelaw 10 (d), includes any person who has parental responsibilities in relation to a child (within the meaning of Section 1(3) of the Children (Scotland) Act 1995)<sup>3</sup>;

“public place” includes any public park, garden, sea beach or railway station and any ground to which the public for the time being have or are permitted to have access, whether on payment or otherwise;

“street” includes any highway and any public bridge, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not;

1. 1937 c.37

2. 1980 c.44

3. 1995 c.36

“street trading” includes the hawking of newspapers, matches, flowers and other articles, playing, singing or performing for profit, shoe blacking and other like occupations carried on in any street or public place;

“year”, except in expressions of age, means a period of twelve months beginning with 1 January.

3. These byelaws do not apply to children in their last year of compulsory schooling undertaking work experience within the terms of s.123 of the Education (Scotland) Act 1980.<sup>4</sup>

### **Prohibited Employment**

4. No child under the age of 13 may be employed in any capacity.

5. No child of any age may be employed:-

(a) in a cinema, theatre, discotheque, dance hall or night club, except in connection with a performance given entirely by children.<sup>5</sup>

(b) to sell or deliver alcohol;

(c) to deliver milk;

(d) to deliver fuel oils;

(e) in a commercial kitchen;

(f) to collect or sort refuse;

(g) in any work which is more than three metres above ground level or, in the case of internal work, more than three metres above floor level;

(h) in employment involving harmful exposure to physical, biological or chemical agents;

(i) to collect money or to sell or canvass door to door, except under the supervision of an adult;

(j) in work involving exposure to adult material or in situations which are for this reason otherwise unsuitable for children;

(k) in telephone sales;

(l) in any slaughterhouse or in that part of any butcher's shop or other premises connected with the killing of livestock, butchery, or the preparation of carcasses or meat for sale;

4. 1980 c.44

5. This does not prevent children taking part in performances under the provisions of a licence granted in accordance with the Children and Young Persons Act 1963, and associated Regulations.

(m) as an attendant or assistant in a fairground or amusement arcade or in any other premises used for the purpose of public amusement by means of automatic machines, games of chance or skill or similar devices;

(n) in the personal care of residents of any residential care home or nursing home unless under the supervision of a responsible adult.

### **Permitted Employment of Children Aged 14 and Over**

6. A child aged 14 or over may be employed only in light work.

### **Permitted Employment of Children Aged 13**

7. A child aged 13 may not be employed except in light work in the following specified categories:

(a) agricultural or horticultural work;

(b) delivery of newspapers, journals and other printed material, and collecting payment for same, subject to the provisions of byelaw 5 (i);

(c) shop work, including shelf stacking;

(d) hairdressing salons;

(e) office work;

(f) car washing by hand in a private residential setting;

(g) in a café or restaurant;

(h) in riding stables;

(i) domestic work in hotels and other establishments offering accommodation.

### **Employment Before School**

8. Subject to the other provisions of these byelaws, children may be employed for up to one hour before the commencement of school hours on any day on which they are required to attend school.

### **Additional Conditions**

9. No child may be employed in any work out of doors unless wearing suitable clothing and footwear.

### **Notification of Employment and Employment Permits**

10. Within one week of employing a child, the employer must send to the authority written notification stating:

- (a) his own name and address;
- (b) the name, address and date of birth of the child;
- (c) the hours and days on which the child is to be employed, the occupation in which the child is to be employed, details of the task involved and, if different from (a) above, the place of employment;
- (d) a statement of the child's fitness to work, and of approval for the child to be employed, completed by the child's parent;
- (e) details of the school at which the child is a registered pupil; and
- (f) a statement to the effect that an appropriate risk assessment has been carried out by the employer.

11. Where, on receipt of a notification, the education authority is satisfied that:

- (a) the proposed employment is lawful;
- (b) the child's health, welfare or ability to take full advantage of his education would not be jeopardised; and
- (c) the child is fit to undertake the work for which he is to be employed, it will issue the child with an employment permit.

12. Before issuing an employment permit an education authority may require a child to have a medical examination.

13. The employment permit will state:

- (a) the name, address and date of birth of the child;
- (b) the hours and days on which the child is to be employed, the occupation in which the child is to be employed, details of the task involved and the place of employment.

14. A child may be employed only in accordance with the details shown on his employment permit.

15. An education authority may amend a child's permit from time to time on the application of an employer.

16. The education authority may at any time revoke a child's employment permit if it has reasonable grounds to believe:-

- (a) that the child is being unlawfully employed, or
- (b) that his health, welfare or ability to take advantage of his education are suffering or likely to suffer as a result of the employment.

17. A child must produce his employment permit for inspection when required to do so by an authorised officer of the authority or a police officer.

### **Street Trading**

18. No child under the age of 14 may engage in street trading and a child aged 14 or over may not engage in street trading unless:

(a) he is employed to do so by his parents, in connection with their retail business and under their direct supervision; and

(b) he has been granted a licence to do so (“a street trader’s licence”) by the authority and is acting in compliance with the terms of that licence.

19. The authority shall not grant a street trader’s licence to any child if it has reason to believe that the employment of the child in street trading would be prejudicial to his health, welfare or ability to take full advantage of his education or the child’s street trader’s licence has been previously revoked.

20. A street trader’s licence shall prohibit the holder from engaging in street trading on a Sunday and shall:-

(a) be valid for not more than 12 months and shall expire on 31 December;

(b) prohibit the holder from touting or importuning to the annoyance or obstruction of any member of the public in any street or public place;

(c) define the days, and hours, during which, and the places at which the child may engage or be employed in street trading, and

(d) require that the child notify the authority within one week of any change of address.

21. The authority may suspend or revoke a street trader’s licence if it has reason to believe that the holder’s continued employment in street trading would be prejudicial to his health, welfare or ability to take full advantage of his education, or if the holder:-

(a) is found guilty of any offence connected with the street trading;

(b) commits any breach of these Byelaws or the terms of his street trader’s licence;

(c) uses the licence as a means for begging, immorality or any other improper purpose; or

(d) fails to notify the authority within one week of any change of address.

**Revocation**

22. The Byelaws with respect to the employment of children (and street trading) made by The Highland Council on the Twenty-first day of September 1999 and confirmed by the Scottish Ministers on the Fifteenth day of March 2000 are hereby revoked.

**THE COMMON SEAL** of The Highland Council was affixed to these Byelaws on xx March 2016 in the presence of: Stewart Fraser.

Signature(s) Signed.....

Designation(s) of Signatory: Head of Corporate Governance  
[Seal]



## **THE HIGHLAND COUNCIL**

### **PROTECTION OF CHILDREN AT WORK**

### **CHILDREN AND YOUNG PERSONS (SCOTLAND) ACT 1937**

### **EMPLOYMENT OF CHILDREN BYELAWS**

### **GUIDANCE NOTES ON THE EMPLOYMENT OF CHILDREN**

The following notes are issued for the guidance of parents, young people and employers and give only a broad outline of the relevant sections of the Children and Young Persons (Scotland) Act 1937 (as amended 1998) and The Highland Council's byelaws on the employment of children. A full copy of the byelaws may be obtained from the Director of Corporate Governance, Legal Section, Council Headquarters, Glenurquhart Road, Inverness IV3 5NX.

The Employment of Children byelaws regulate the types of occupation in which children under school leaving age may be employed, and other conditions of employment. They provide for checks on a child's fitness for employment and for the issue of employment permits, set out the occupation in which a child may be employed and his/her hours of work. Employers are obliged to notify the Care and Learning Service of their child employees. Additional requirements are imposed on the employment of children in street trading, for which a street trader's licence is required.

These byelaws do not apply to children in their last year of compulsory schooling undertaking work experience within the terms of s.123 of The Education (Scotland) Act 1980.

#### **1. DEFINITIONS A "CHILD" means a person who is not, for the purposes of the Education (Scotland) Act 1980, over school age therefore:-**

A child whose 16th birthday falls between 1 March and 30 September is over school age on 31 May of that school year.

A child whose 16th birthday falls between 1 October and 28 February is over school age after the end of the Christmas term of that school year.

**"EMPLOYMENT" includes assistance in any trade or occupation which is carried on for profit, whether or not payment is received for that assistance.**

**"PARENT" includes any person who has parental responsibilities and rights under the Children (Scotland) Act 1995.**

**"LIGHT WORK" means all work, which on account of the inherent nature of the tasks which it involves and the particular conditions under which they are performed is not likely to be harmful to the safety, health or development of children and is not such as to be harmful to their attendance at school, their**

participation in vocational guidance or training programmes or a work experience under section 123 of the Education (Scotland) Act 1980 or their capacity to benefit from the instruction received.

“STREET TRADING” includes the selling of newspapers and other articles, singing or performing for profit and any like occupations carried on in any street or public place.

## **2. PERMITTED EMPLOYMENT**

Children aged 14 or over may be employed only in light work.

**Children aged 13 may only be employed in light work in certain permissible jobs. These are:**

agricultural or horticultural work;

delivery of newspapers, journals and other printed material, subject to the provisions of byelaw 5 (i) which only permits collection of payment under adult supervision;

shop work, including shelf stacking;

hairdressing salons;

office work;

car washing by hand in a private residential setting;

in a café or restaurant;

in riding stables;

domestic work in hotels and other establishments offering accommodation.

## **3. PROHIBITED EMPLOYMENT**

**It is illegal to employ a child aged under 13 in any circumstances.**

**No child of any age may be employed:**

in a cinema, theatre, discotheque, dance hall or night club (except in connection with a performance given entirely by children under the terms of a licence granted under the Children & Young Persons Act 1963 and the associated regulations).

to sell or deliver alcohol, except in sealed containers;

to deliver milk;

to deliver fuel oils;

in a commercial kitchen;

to collect or sort refuse;

in any work which is more than three metres above ground level or, in the case of internal work, more than three metres above floor level;

in employment involving harmful exposure to physical, biological or chemical agents;

to collect money or to sell or canvass door to door, except under the supervision of an adult;

in work involving exposure to adult material or in situations which are for this reason otherwise unsuitable for children;

in telephone sales;

in any slaughterhouse or in that part of any butcher's shop or other premises connected with the killing of livestock, butchery, or the preparation of carcasses or meat for sale;

as an attendant or assistant in a fairground or amusement arcade or in any other premises used for the purpose of public amusement by means of automatic machines, games of chance or skill or similar devices;

in the personal care of residents of any residential care home or nursing home unless under the supervision of a responsible adult;

in a bar or licensed premises;

in handling any load likely to cause injury to them;

in any industrial undertaking;

in any employment where cleaning machinery would expose the child to risk of injury;

on a merchant ship registered in the UK.

**NB The above is not an exhaustive list and should be read in conjunction with any relevant present or future legislation which may prohibit the employment of children in any additional occupations or specific tasks e.g.:**

the prohibition of employment of persons under 18 in the bar of licensed premises – Licensing (Scotland) Act 1967.

the prohibition of employment of persons under 18 in effecting any betting transaction or in a licensed betting office – Betting, Gaming and Lotteries Act 1963.

children shall not handle any load which is likely to cause injury to them – Manual Handling Operations Regulations 1992.

the prohibition of employment of children in any industrial undertaking – Employment of Women, Children and Young Persons Act 1920.

no young person may clean machinery if to do so would expose him/her to risk of injury – the Offices, Shops and Railway Premises Act 1963.

no child shall be caused or permitted to ride on or drive a vehicle, machine or agricultural implement – Agriculture (Safety, Health and Welfare Provisions) Act 1956.

the prohibition of employment of a person under school age on a ship registered in the UK, except as permitted by Regulations made under the Merchant Shipping Act 1955.

#### **4. WORK OUT OF DOORS**

**No child may be employed in any work out of doors unless wearing suitable clothing and footwear. Also where the employer finds (following Risk Assessment) that personal protective equipment is necessary for safe performance of such duties then such protective equipment must be supplied without cost to the employee concerned.**

#### **5. STREET TRADING**

**No child under 14 years of age may engage in street trading (see Definitions – Section 1 above).**

**A child aged 14 years of age or over may not engage in street trading unless:**

He/she is employed to do so by his parents in connection with their retail business and under their direct supervision.

He/she has been granted a Street Trader's Licence following application to the appropriate Section of the Council. Children who are licensed for street trading are subject to the Employment of Children Byelaws limiting their hours and other conditions of employment.

#### **6. HOURS**

**No child shall be employed before 7.00am or after 7.00pm on any day.**

**A child employed for more than 4 hours on any day must have a rest break of 1 hour.**

A child shall only be employed as follows:

**School day – maximum of 2 hours. These hours may be split as follows:**

Up to 1 hour between 7.00am and the start of the school day

Up to 2 hours between the close of school hours and 7.00pm

**NB If child works before and after school the total time worked on any day must not exceed 2 hours.**

**Sunday – maximum of 2 hours**

**Non-school day (except Sunday)**

aged under 15 years – total of 5 hours between 7.00am and 7.00pm

aged 15 years and over – total of 8 hours between 7.00am and 7.00pm

**School Holidays**

aged under 15 years – maximum of 25 hours per week

aged 15 years and over – maximum of 35 hours per week

**NB Each calendar year a child must have, during the school holidays, at least 2 consecutive weeks without employment.**

## **7. EMPLOYMENT PERMIT**

**The Education Service may refuse to issue a permit until the child has a medical examination and/or provides a suitable medical certificate.**

**A child may only be employed in accordance with the details shown on the employment permit. Such permits are not transferable and a fresh one will be required for each change of employment.**

**Before any alteration of the terms of employment from those shown on the permit, an employer must apply to the Education Service to have the child's employment permit amended. This should be done in writing enclosing the original employment permit.**

**Any such permit is automatically in suspense should he/she not attend school on a normal day or is prevented from attending school due to illness or contact with an infectious disease. It also ceases to have effect if a child is excluded from school for any cause and the employer may no longer employ that child until school attendance resumes.**

**The Education Service may at any time revoke a child's employment permit if it has reasonable grounds to believe that:**

the child is being unlawfully employed;

the child's health, welfare or ability to take advantage of his/her education are suffering or likely to suffer as a result of employment eg due to persistent lateness or unauthorised absence.

**A child must produce his/her employment permit for inspection when required to do so by an authorised officer of the Council or by a police officer.**

## **8. PENALTIES**

**The employer or any other person (other than the employee) convicted of an offence under Section 28 of the Children and Young Persons Act (Scotland) 1937 or the provisions of the byelaws shall be liable to a fine not exceeding level 3 on the Standard Scale, currently £1000.**

**Any child of school age convicted of street trading in contravention of Section 30 of the Children and Young Persons Act (Scotland) 1937 or by the provisions of the byelaws shall be liable to a fine not exceeding level 1 on the Standard Scale, currently £200.** In practice, any child in this position would most likely be referred to the children's hearing system rather than the court.

## **9. COMPLETION OF APPLICATION FORMS AND ISSUING OF PERMITS**

**Application for an employment permit must be made within one week of employing the child. Applications should preferably be made at least 2 weeks in advance especially when it includes employment during the school holidays.**

When sections I – III of the application form are completed the form should be returned as follows:

**Applications made during the school term** – to the child's school which will then complete Section 3 and forward the form to the Care and Learning Service in order that a permit may be issued.

**Applications made during school holidays** – to the appropriate Area Education Office at the addresses listed below. (See Appendix I)

**However, it should be noted that the Education Service will not issue permits for employment during the school term without the school having completed Part III and the authorisation of the appropriate Area Education Manager having been obtained (Part IV).**

## **APPENDIX I**

**North Area Education Office**  
**Oifis Foghlaim Sgìre a' Chinn a Tuath**  
Drummuie  
Golspie  
Sutherland  
KW10 6TA  
Tel: 01408 635347 Fax: 01408 634041

**Mid Area Education Office**  
**Oifis Foghlaim Sgìre a' Mheadhain**  
Council Offices  
High Street  
Dingwall  
IV15 9QN  
Tel: 01349 886532

**South Area Education Office**  
**Oifis Foghlaim Sgìre a' Chinn a Deas**  
Glenurquhart Road  
Inverness  
IV3 5NX  
Tel: 01463 702811 Fax: 01463 711177

**West Area Education Office**  
**Oifis Foghlaim Sgìre an Iar**  
Fingal Centre  
Viewfield Road  
Portree  
Isle of Skye  
IV51 9ET  
Tel: 01478 613697 Fax: 01478 613698

**THE HIGHLAND COUNCIL - CARE AND LEARNING SERVICE**  
**BYELAWS RELATING TO THE EMPLOYMENT OF CHILDREN**

**APPLICATION for Employment Certificate to engage in a permissible part-time job in terms of the  
Education Authority's Byelaws relating to the Employment of Children.**

**PART I TO BE COMPLETED BY EMPLOYER** (read notes on reverse prior to completion)

- 1 Child's Name \_\_\_\_\_
- 2 School Attended \_\_\_\_\_
- 3 Employer's Name \_\_\_\_\_
- 4 Employer's Address \_\_\_\_\_
- \_\_\_\_\_ Telephone No. \_\_\_\_\_
- 5 Type of Job offered (describe briefly what the young person will do)  
 \_\_\_\_\_
- 6 Where will the child be employed \_\_\_\_\_

7	Hours of Employment (state clearly the hours of starting and finishing)							
	Sun.	Mon.	Tue.	Wed.	Thurs.	Fri.	Sat.	Weekly Total in Hours
Morning								
Afternoon								

**Declaration: I hereby certify that I have undertaken a risk assessment for the above tasks and that no such employment will occur before 7am or after 7pm on any day.**

- 8 Employer's Signature \_\_\_\_\_ Date \_\_\_\_\_

**PART II TO BE COMPLETED BY PARENT OR GUARDIAN** (read notes on reverse prior to completion)

- 1 Name of Parent/Guardian \_\_\_\_\_
- 2 Address of Parent/Guardian \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ Telephone No. \_\_\_\_\_
- 3 Child's Date of Birth \_\_\_\_\_
- I have read Part I of this form and agree to my child being employed as described in that section. I am satisfied that my child is fit to undertake the job described in Part I. (Parents in doubt about a child's fitness should consult their family doctor before signing this form).
- 5 Signature of Parent/Guardian \_\_\_\_\_ Date \_\_\_\_\_

**PART III TO BE COMPLETED BY HEADTEACHER**

Note - to be answered by Head Teacher or appropriate member of guidance staff

- 1 Will the proposed job interfere with the child's schooling? YES/NO

If yes, state the reason(s) \_\_\_\_\_

Note - if you are aware of any circumstances about the child or about the application which raise any question of the proposed job being detrimental to the child's health these should be stated so that, if appropriate, the Community Paediatrician or a Medical Practitioner may be consulted.

- 2 (a) Are working hours in accordance with those in Section 6 of Guideline Notes? YES/NO
- (b) For applicants under 14 years, is the proposed work on the permitted list? YES/NO
- (c) For applicants over 14 years, is proposed work "light work" outwith the prohibited list? YES/NO



Signature \_\_\_\_\_ Post \_\_\_\_\_ Date \_\_\_\_\_

**PART IV FOR AREA OFFICE USE ONLY**

- |   |   |                    |
|---|---|--------------------|
| 1 | Does the job conform with the Bye-Laws?             | YES/NO             |
| 2 | Has a medical report been obtained where necessary? | YES/NO             |
| 3 | Date of issue of Certificate of Employment          | or referred to AEM |

**NOTES**

In any question relative to the application of the Byelaws, the wording of the Byelaws themselves will determine the issue.

Copies of the Byelaws and notes for guidance may be obtained by application to the Director of Corporate Governance, Highland Council Headquarters, Glenurquhart Road, Inverness, IV3 5NX.

Copies may also be seen on application to the Head Teacher of and Secondary School or to any Area Education Office.

It is against the law to employ any child under the age of 13.

It is against the law to employ children aged 13, except in those occupations listed in paragraph 7 of the byelaws.

Employment of children of school age is prohibited in or in connection with all occupations listed in paragraph 5 of the Byelaws. There are statutory prohibitions of employment of children in commercial kitchens, tele-sales, or fairgrounds, street trading (without a suitable licence), bars or licensed premises; in employment that involves exposure to adult material, or exposure to harmful physical, biological or chemical agents; , in delivering milk or fuel oils, collecting or sorting refuse, and working at height,. There are also statutory provisions dealing with participation in stage or film performances, working in door to door sales, and work in residential care homes

**Hours**

- 1 On a school day a child may only work for up to 2 hours, of which 1 hour may be between 7 am and the start of the school day and the balance between close of school and 7 pm; if a child works both morning and evening, it must be with the same employer.
- 2 On a non-school day (other than Sunday) a child may work between 7 am and 7 pm. During that period, however, the child may only work for a maximum of 5 hours if under 15 years old or, if over 15 years old, up to 8 hours, both exclusive of meal breaks.
- 3 On Sunday a child may work for not more than 2 hours between 7 am and 7 pm.

**Weekly Limits**

No child shall work more than 12 hours during a week in which they are required to attend school.

During school holidays, the total number of hours which a child may work in a week is restricted to 25 if the child is under 15 years or, if he/she is over 15 years, 35 hours, both exclusive of meal breaks.

**Breaks**

A child may not work for more than 4 hours without having a break of at least 1 hour for rest and refreshment.

**Holidays**

A child must have at least 2 weeks continuous holidays during the school holidays.

**Suspension of Certificate**

The Certificate is automatically held in suspense when the child fails to attend or is prevented from attending school on a normal school day.

**Penalties**

Fines can be imposed up to a maximum of £1,000 for breach of these Byelaws.