

ANGUS COUNCIL

POLICY AND RESOURCES COMMITTEE – 15 MARCH 2016

THE EMPLOYMENT OF CHILDREN BYELAWS 1999

REPORT BY SHEONA HUNTER, HEAD OF LEGAL AND DEMOCRATIC SERVICES

**ABSTRACT:**

This report seeks authority to commence the process of reviewing The Employment of Children Byelaws 1999.

**1. RECOMMENDATIONS**

It is recommended that the Committee:-

- (i) consider the proposals set out in this Report; and
- (ii) agree to the review of the existing Byelaws in accordance with the process outlined in paragraph 3.

**2. BACKGROUND**

- 2.1 The Employment of Children Byelaws 1999 (“the existing Byelaws”) came into force on 24 June 1999. S202A of the Local Government (Scotland) Act 1973 (“the 1973 Act”) provides for the review of Byelaws stating *inter alia*

“A local authority shall, not later than 10 years from whichever is the later of the following times:-

- (a) the coming into force of a byelaw which they have the power to revoke or amend;
- (b) the coming into force of this section;

review that byelaw and do so thereafter at intervals of not more than 10 years”.

The Council is now required to review the existing Byelaws in terms of S202A(a) of the 1973 Act. A copy of the existing Byelaws is attached at **Appendix 1**.

- 2.2 Moreover the existing Byelaws are no longer consistent with the primary legislation and have been superseded. The existing Byelaws therefore require to be revoked and consideration given to the making of new Byelaws. For example, the current Byelaws permit children under the age of thirteen to perform light agricultural and horticultural work if supervised by his/her parent or guardian . This is no longer permitted under the primary legislation.

- 2.3 The power to make new Byelaws with respect to the employment of children is contained within the Children and Young Persons (Scotland) Act 1937 (“the 1937 Act”). Such Byelaws may distinguish between children of different ages and sexes and between different localities, trades, occupations and circumstances (s28(2) 1937 Act). Byelaws generally provide that a child may not be employed otherwise than under and in accordance with a permit issued by the education authority. Such Byelaws may prohibit absolutely the employment of children in any specified occupation, and may also prescribe such matters as the age below which children are not to be employed, the number of hours during which they may be employed, the rest periods and holidays to be allowed, and other conditions of employment.

- 2.4 Whilst the making of new Byelaws is not mandatory, nevertheless local authorities have been encouraged to do so following the implementation of The Children (Protection at Work)(Scotland)Regulations 2006. These Regulations brought legislation in Scotland in line with EU Directive 94/33 on the protection of young people at work. The Children and Young People (Scotland) Act 2014 requires public bodies to plan and deliver services which best safeguard, support and promote the wellbeing of children in the area concerned.

### **3. PROPOSALS**

- 3.1 If the Committee agrees to the review of the existing Byelaws, it is recommended that consultation should take place with relevant bodies and organisations including the Children and Learning Service (including the Head of Schools and Learning and the Chief Social Work Officer) Angus Child Protection Committee, Tayside Police, The Office of the Procurator Fiscal, NHS Tayside, the National Network for Child Employment and Entertainment, the Children and Young People's Commissioner and Local Chambers of Commerce. The Consultation review process would seek to identify any requirement for new Byelaws in relation to the employment of children and the content and terms of such Byelaws together with accompanying guidance.
- 3.2 Once this process has been completed, a further report will be submitted to this committee with recommendations as to possible amendments to the Byelaws and outlining the formal process that requires to be carried out to bring any amended Byelaws into force.

### **4. FINANCIAL IMPLICATIONS**

- 4.1 There are no financial implications arising from this Report.

### **5. EQUALITIES IMPLICATIONS**

- 5.1 The issues dealt with in this Report have been the subject of consideration from an equalities perspective as required by legislation. An equalities impact assessment is not required.

### **6. CONSULTATION**

- 6.1 The Chief Executive, Head of Legal and Democratic Services, Head of Corporate Improvement and Finance, Head of Schools and Learning and Chief Social Work Officer have been consulted on the terms of this report.

**REPORT AUTHOR:** Claire Richardson, Solicitor.

**Email :** [LEGDEM@angus.gov.uk](mailto:LEGDEM@angus.gov.uk)

### **LIST OF APPENDICES**

- Appendix 1 The Employment of Children Byelaws 1999

R6/9/14

**ANGUS COUNCIL**

**THE EMPLOYMENT OF CHILDREN BYELAWS 1999**

Made 18 February 1999

Coming into force 1999

Angus Council, in exercise of the powers conferred on it by sections 28(2) and 30(2) of the Children and Young Persons (Scotland) Act 1937, hereby makes the following Byelaws:

**Citation and commencement**

- 1. These Byelaws may be cited as the Angus Council Byelaws on the Employment of Children 1999 and shall come into force on 1999.

**Interpretation and extent**

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

“the authority” means Angus Council;

“child” means a person who is not for the purposes of the Education (Scotland) Act 1980 over school age;

16

“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;

“partner”, in byelaw 9(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);

“year”, except in expressions of age, means a period of twelve months beginning with 1<sup>st</sup> January.

**Prohibited Employment**

- 3. 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;

†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 the associated Regulations.

- (b) to sell or deliver alcohol;
- (c) to deliver fuel oils;
- (d) in a commercial kitchen, except as a waiter or waitress in any hotel, restaurant or café;
- (e) to collect or sort scrap metal, refuse etc except in clearing of litter or tidying up of lands and buildings being undertaken as part of a major sporting or recreational event;
- (f) 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;
- (g) in employment involving harmful exposure to physical, biological or chemical agents;
- (h) to sell or canvass door to door;
- (i) in work involving direct exposure to adult material or in situations which are for this reason otherwise unsuitable for children;
- (j) in telephone sales;
- (k) 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;
- (l) 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;
- (m) in the personal care of residents or any residential care home or nursing home unless under the supervision of a responsible adult;
- (n) in any employment directly connected with gaming or betting;
- (o) in any employment in or about any fish curers premises;
- (p) in driving, feeding or attending to animals in any auction, mart or public place.

#### **Permitted employment of children aged 14 and over**

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

#### **Permitted employment of children aged 13**

5. A child aged 13 may not be employed except in light work in one or more of 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 3(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.

**Permitted employment of children under 13**

6. A child aged 10 or over may be employed on an occasional basis by and under the direct supervision of his/her parent or guardian in light agricultural or horticultural work.

**Employment before school**

7. Subject to the other provisions of these byelaws, children may be employed for up to one hour commencing not earlier than 7.00am before the commencement of school hours on any day on which they are required to attend school.

**Additional conditions**

8. No child may be employed in any work out of doors unless wearing suitable clothes and shoes.

**Notification of employment and employment permits**

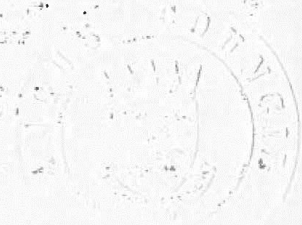
9. Within one week of employing a child, the employer must send to the authority written notification stating:
- (a) his/her own name and address;
  - (b) the name, address and date of birth of the child;
  - (c) the hours and days on which the child is to be employed, the occupation in which the child 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.

10. 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/her education would not be jeopardised; and
    - (c) the child is fit to undertake the work for which he/she is to be employed, it will issue the child with an employment permit.
  11. Before issuing an employment permit an education authority may require a child to have a medical examination.
  12. 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;
  13. A child may be employed only in accordance with the details shown on his/her employment permit.
  14. An education authority may amend a child's employment permit from time to time on the application of an employer.
  15. 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/her health, welfare or ability to take advantage of his/her education are suffering or likely to suffer as a result of the employment.
  16. A child must produce his/her employment permit for inspection when required to do so by an authorised officer of the authority or a police officer.
  17. Any refusal to issue a permit or withdrawal of a permit will be at the discretion of the Director of Education.
-

**Revocation**

- 17. The Byelaws with respect to the employment of children made by the County of Angus on the twenty first day of February nineteen sixty eight and confirmed by the Secretary of State on twenty eighth May nineteen sixty eight are hereby revoked.

**THE COMMON SEAL OF Angus Council  
was affixed to these Byelaws on 18 February  
1999 in the presence of:**



*Frances Dunca* member

*Catherine A Coull*  
**Catherine A Coull**  
**Director of Law and Administration**

*Frances Dunca* member

**These Byelaws are hereby confirmed by the  
Secretary of State for Scotland on 14 June  
1999 and shall come into force on 24 June 1999 subject to the modifications  
1999 detailed in The Scottish Office Education and Industry  
Department's letter of 14 June 1999 to Angus Council under  
reference JFW 14/ANG.**

*[Signature]*  
**Assistant Secretary**  
**The Scottish Office Education and Industry  
Department**

