

SHETLAND ISLANDS COUNCIL

BYELAWS ON THE EMPLOYMENT OF CHILDREN

Made	<u>7 December 1998</u>
Amended	<u>2 December 2002</u>

Shetland Islands Council, in exercise of the powers conferred on it by sections 28(2) and 30(2) of the Children and Young Persons (Scotland) Act 1937¹, hereby makes the following Byelaws:

Citation

1. These Byelaws may be cited as the Shetland Islands Council Byelaws on the Employment of Children 1998.

Interpretation and Extent

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

“the authority” means Shetland Islands Council;

“child” means a person who is not for the purposes of the Education (Scotland) Act 1980² 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 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)³;

¹ 1937 c.37

² 1980 c.44

³ 1995 c.36

“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;

“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 1st 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;¹
 - (b) to sell or deliver alcohol, except in sealed containers;
 - (c) to deliver milk;
 - (d) to deliver fuel oils;
 - (e) in a commercial kitchen which, for the avoidance of doubt, includes any fish and chip shop;
 - (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;

¹ 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.

- (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;
- (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.
- (o) in any offshore work in the aquaculture industry.

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 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 cafe or restaurant;
- (h) in riding stables;
- (i) domestic work in hotels and other establishments offering accommodation.

6. Deleted 2 December 2002

Employment Before School

7. 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

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 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 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.
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 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 health, welfare or ability to take advantage of his education are suffering or likely to suffer as a result of the employment.
16. 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

17. 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.
18. 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 previously been revoked.
19. 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) set out the permitted hours of work which on school days shall be no more than 2 hours, which hours must be worked outwith normal school hours and on non school days shall be no more than 5 hours, all working hours to be between the hours of 7am and 7pm, and,
 - (d) Set out the permitted place of work which shall not be on or immediately abutting an A class public road; and
 - (e) require that the child notify the authority within one week of any change of address.
20. 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

21. The Byelaws with respect to the employment of children made by the County Council of the County of Zetland on the Nineteenth day of October 1948 and confirmed by the Secretary of State on the Eighth day of November 1948 are hereby revoked in so far as they apply within the area of Shetland Islands Council.

**THE COMMON SEAL of Shetland Islands Council
was affixed to these Byelaws on 7 December 1998
in the presence of: Brian Crawford Hill, their Principal
Solicitor and Proper Officer**

The Byelaws are hereby confirmed by the Secretary of State for Scotland on 4 June 1999 and shall come into force on 14 June 1999 subject to the modifications detailed in The Scottish Office Education and Industry Department's letter of 4 June 1999 to Shetland Islands Council under reference JFW/14/SHE.

Assistant Secretary
The Scottish Office Education and Industry
Department

Amended 2 December 2002

EXPLANATORY NOTE

(This note is not part of the Byelaws)

These Byelaws regulate the types of occupation in which children under school leaving age may be employed (byelaws 3-5), and other conditions of their employment. They provide for checks on a child's fitness for employment (byelaws 10 and 11) and for the issue of employment permits, setting out the occupation in which a child may be employed and his hours of work (byelaws 9-16). Employers are obliged to notify education authorities of their child employees (byelaw 9). Additional requirements are imposed on the employment of children in street trading, for which an education authority licence is required (byelaws 17-20).

These byelaws are not a comprehensive statement of the law relating to the employment of children and should be read in conjunction with other legislation relating to prohibited occupations, hours of work and street trading in particular.

By virtue of section 123 of the Education (Scotland) Act 1980 enactments relating to the prohibition or regulation of the employment of children do not apply to children undertaking work experience within the meaning of the Act. "Enactment" for this purpose includes byelaws having effect under an enactment, so nothing in these Byelaws applies to a child's work experience.

Prohibited and Permitted Employment

Children aged 13 are limited to employment in the occupations listed at byelaw 5. Children aged 14 or over are not limited in this way, but may only undertake light work (byelaw 4). Byelaw 3 lists various occupations which are prohibited for children, even if they would constitute light work. Many more occupations or specific tasks are prohibited by other legislation, including:

the Employment of Women, Children and Young Persons Act 1920, which prohibits the employment of children in any "industrial undertaking", including mines and quarries, manufacturing industry, construction and the transport of passengers or goods by road, rail or inland waterway (section 1(1));

the Agriculture (Safety, Health and Welfare Provisions) Act 1956, under which it is an offence to cause or permit a child to ride on or drive a vehicle, machine or agricultural implement (section 7);

the Offices Shops and Railway Premises Act 1963, which provides that no young person may clean machinery if to do so would expose him to risk of injury (section 18);

the Betting Gaming and Lotteries Act 1963, which prohibits the employment of persons under 18 in effecting any betting transaction or in a licensed betting office (section 2 1);

the Licensing (Scotland) Act 1976, which prohibits the employment of children in the bar of licensed premises (section 72);

the Merchant Shipping Act 1995, by virtue of which no person under minimum school leaving age may be employed on a ship registered in the UK, except as permitted by Regulations made under the Act (section 55); and

the Manual Handling Operations Regulations 1992, which prohibit children from handling any load which is likely to cause injury to them.

It should be noted that this is not an exhaustive list.

The Children (Performances) Regulations 1968 provide that no child taking part in a performance for which a licence is required by section 37 of the Children and Young Persons Act 1963 may be employed in any other occupation on the day or days of that performance or the following day.

Street Trading

Byelaws 17-20 permit the employment of children by their parents in street trading, provided that they have been issued with a licence by the education authority. Children who are licensed for street trading will be subject to the byelaws limiting their hours and other conditions of employment by virtue of being employed.

Street trading is also regulated under section 30 of the Children and Young Persons (Scotland) Act 1937, which provides that no child may engage in street trading unless authorised to do so by local authority byelaws. Such authorisation may only be given for children aged 14 or over who are employed by their parents.

Penalties

Section 31 of the Children and Young Persons (Scotland) Act 1937 provides, inter alia, that -

- (i) if a person is employed in contravention of section 28 of the Act, or of the provisions of any byelaws made thereunder, the employer and any other person (other than the person employed) to whose act or default the contravention is attributable shall be liable on summary conviction to a fine not exceeding level 3 on the Standard Scale (currently £1,000).
- (ii) if a person is employed in contravention of section 28 of the Act, the employer and any person (other than the person employed) to whose act or default the contravention is attributable shall be liable on summary conviction to a fine not exceeding level 3 on the Standard Scale (currently £1,000); a person under compulsory school age who engages in street trading in contravention of the provisions of section 30, or of any byelaw made thereunder, shall be liable on summary conviction to a fine not exceeding level 1 on the Standard Scale (currently £200).