Customer Services: Education

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To: Heads of all Educational Establishments

Dear Colleague

Protection of children at work: employment of children byelaws

1 The Council on 14 August 2002 made new byelaws for the employment of children at work within Argyll and Bute. These were confirmed by Scottish Ministers on 24 June 2003 and came into force on 29 August 2003. These byelaws revoke the existing Strathclyde Regional Council byelaws insofar as they relate to the area of Argyll and Bute Council. A copy of the new byelaws is attached to this circular. The purpose of the byelaws is to ensure that children who are employed would only work to the extent that their health, development and education are not put at risk. Therefore staff employed in the Protective Services section of Protective and Regulatory services and in Education under the Customer Services Department will be responsible for monitoring the granting of permits and compliance with their terms to ensure that children who work are appropriately protected.

2 The purpose of this circular is to advise head teachers/campus principals of the main provisions of the byelaws and the conditions which now apply to the employment of children.

3 Control of children's employment is exercised under the Children and Young Persons (Scotland) Act 1937, as amended. Section 28 of that act sets out the basic restrictions and allows the Council as an education authority to make byelaws containing further restrictions. In terms of section 28 of the 1937 act as amended, the minimum age at which a child may be employed is 14. Children aged 14 to 16 are only permitted to be employed in light work. Children aged 14 to 16 are **not** permitted to work during the following periods: k-0.001

- for more than 2 hours on any school day;
- for more than 2 hours on any Sunday;
- for more than 4 hours in any day without a rest break of 1 hour;
- in a school week for not more than 12 hours shall be worked; the daily limits in respect of term-time are:
  2 hours per school day;
  2 hours on a Sunday;
  8 hours over 15 years and 5 hours under 15 years on Saturday;
- at any time in the year unless they have had two consecutive weeks without employment during the school holidays;
- if aged under 15 for more than 5 hours on any day which is not a school day or a Sunday and for more than 25 hours in any week not required to attend school;
- if aged 15 and over for more than 8 hours on any day which is not a school day or a Sunday and for more than 35 hours in any week when not required to attend school.

4 The Council have made byelaws allowing 13 year olds to be allowed to work on an occasional basis in categories of light work. These categories are listed in byelaw 5 and include agricultural or horticultural work where employed by the child's parents or carers; delivery of newspapers, journals and other printed material and collection of payment for same (where they are collecting payment they must be under the supervision of an adult); 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. Other key provisions are included in the following.

- Byelaw 3 lists employment which is not permitted for a child **of any age**.
- Byelaw 6 states that children can only be employed for a maximum of 1 hour after 7 o'clock in the morning before the start of the school day on any day in which they are required to attend school.
- Byelaw 7 states that no child may be employed in any work out-of-doors unless wearing suitable clothes and shoes.
- Byelaws 16 to 19 regulate street trading and state that children over 14 are only able to be employed in street trade if they are in the employment of and supervised by their parents. Children over 14 are not permitted to take part in street trading on Sunday and require to obtain a street trader's licence from a local authority.

Penalties

5 If a person is employed in contravention of section 28 of the act or of any of these byelaws, the employer or any other person who is responsible for the act of default shall be liable to a fine up to level 3 of the standard scale. This is currently £1000. A person under compulsory school age who engages in street trading in contravention of section 30 of the act, or of these byelaws, shall be liable to a fine not exceeding level 1 of the standard scale. This is currently £200.

Permits for work

6 A completed application form (see attached) will require to be submitted by the prospective employer to the School Services Support Manager at the address given below or via email: argyllhousereception@argyll-bute.gov.uk. The application form requires details of the employer's name and address, the name and address of the child, the hours and days in which the child is to be employed, the occupation in which the child is to be employed, the tasks involved and place of employment. The employer is also required to provide a statement of the child's fitness to work and of approval by the parents of the child. The definition of "parent" for this purpose includes any person who has parental responsibility in relation to a child in terms of the Children (Scotland) Act 1995.

The employer and parent are required to provide details of the school at which the child is a registered child or young person. The employer must also confirm that an appropriate risk assessment has been carried out and that any actions found to be necessary have been taken. When the council area staff receives the application form, he or she will request the head teacher/campus principal to complete the relevant part of the application form stating that the child's health, welfare or ability to take full advantage of his or her education would, or would not, be jeopardised by the employment. The School Services Support Manager will then process the form accordingly.

There is no requirement for the child to have a medical examination but the education authority can require one to be carried out in specific cases. If there are any concerns with regard to the child's health, the head teacher/campus principal should contact the School Services Support Manager and advise that a medical certificate may be required in that case.

A copy of the permit which will be issued in due course is attached. It details the name, address and date of birth of the child and the specific hours and days on which the child is to be employed, the occupation in which they are to be employed, details of the task and the place of the employment. **A child may only be permitted to work in accordance with the details shown in the permit.**

The education authority may at any time revoke a child's employment permit if it has

reasonable grounds to believe that:

- the child is being unlawfully employed;
- his or her health, welfare or ability to take advantage of his or her education is suffering as a result of the employment;

Where they have been informed that an employment permit has been granted, head teachers/campus principals should advise the School Services Support Manager timeously of any concerns which arise with regard to the child's education and which could be related to their employment. School Support will hold a register of all permits issued which will be available for head teachers/campus principals to inspect as required.

Irrespective of their age, children may only carry out light work. Light work has been defined in the terms of byelaws to mean all work where the inherent nature of the tasks and the particular conditions under which they are performed are not likely to be harmful to safety, health or development, and are 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 instruction received.

Although byelaws stipulate employment which is permitted and employment which is not permitted, many more occupations and specific tasks are prohibited by other legislation, even if they would constitute light work. These include:

- 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.
- The Agriculture (Safety, Health and Welfare Provisions) Act 1956, under which it is an offence to permit a child to ride on, or drive, a vehicle, machine or agricultural implement.
- The Office, Shops and Railways Premises Act 1963, which provides that no young person may clean machinery if it would expose him or her to risk or injury (section 18).
- The Betting, Gaming, Lotteries Act 1953, which prohibits the employment of children or young people under 18 in effecting any betting transaction or in a licensed betting office (section 21).
- The Licensing (Scotland) Act 1976, which prohibits the employment of children in the bar of licensed premises (section 17.72).
- The Merchant Shipping Act 1995, by virtue of which no persons under minimum school leaving age will be employed on a ship registered in the UK except if permitted under the regulations made under the act (section 55).

- The Manual Handling Regulations 1992 which prohibits children from handling any load which is likely to cause injury to them.
- The Children (Performances) Regulations 1968 which 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 perform• Sco7 of the

"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[5];

(b) to sell or deliver alcohol, except in sealed containers;

(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;

(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.

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 the associated regulations.

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

(f) a statement to the effect that an appropriate risk assessment has been carried out by the employer.

9 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;

(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.

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

11 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.

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

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

14 The education authority may at any time revoke a child's employm