

To: Finance, Resources and Customer Services Policy Board

On: 31 March 2021

Report by: The Director of Children's Services and The Director of Finances and Resources

Heading: Review of the Renfrewshire Council Byelaws on the Employment of Children 2010

1. Summary

1.1 At its meeting on 05 August 2010 the former Education Policy Board approved the current Renfrewshire Council Byelaws on the Employment of Children 2010 ("the Byelaws").

1.2 The Byelaws came into force on the 15 December 2010 upon confirmation by Scottish Ministers.

1.3 The Byelaws require to be reviewed every 10 years. The review was carried out in October 2020 by officers from Children's Services and Legal Services.

1.4 The findings of that review are that the Byelaws require no alteration at this time.

2. **Recommendations**

- 2.1 For the Board to approve the recommendation of the review by deciding that no changes are to be made to the Renfrewshire Council Byelaws on the Employment of Children 2010 at this time.

3. **Background**

- 3.1 On 05 August 2010 the council made the Renfrewshire Council Byelaws on the Employment of Children 2010 (“the Byelaws”). The Byelaws came into force on the 15 December 2010 after being confirmed by Scottish Ministers. It is an offence at present for any person to employ a child in Renfrewshire other than in accordance with those Byelaws.
- 3.2 The provisions governing byelaws relating to the employment of children are primarily contained in the Children and Young Persons (Scotland) Act 1937, as amended (hereinafter referred to as the “Act”). Section 28 of that Act states that, in general, no child shall be employed if under 14 or for the purpose of carrying out any work other than light work or at certain times and/or periods set out in the legislation.
- 3.3 The Council as education authority is empowered to make byelaws by virtue of Section 28(2) of the Act and can authorise the employment of a child in certain categories of work. The Council also has the power to prescribe occupations in which children may not be employed and it may prescribe certain conditions upon which a child may be employed. “Light work” is work which, on account of the nature of the work involved, is not likely to be harmful to the safety, health or development of the child and is not such as to be harmful to the child’s attendance at (or benefits from) school or work experience.
- 3.4 The Act, as amended, limits to 12 hours the number of hours per week that any child below the minimum school leaving age can work during school term time. Within the 12 hours per week limit, the daily limits in respect of school term-time are: two hours per school day; two hours on a Sunday; and eight hours (for children who have reached 15 years of age) or 5 hours (for those under 15) for any other day. Under the Act, a child may not work on any day prior to 7am or after 7pm. A child may not work more than 35 hours (or, if under 15, 25 hours) in any week in which the child is not required to attend school. The Act also provides that a child may not work any more than four hours on any day without

a rest break of one hour. A child must also have at least two consecutive weeks without employment out-with school term time in a year.

- 3.5 If a person is employed in contravention of byelaws made in respect of the employment of children, the employer and any person “whose act or default” has resulted in the employment may be prosecuted and on conviction fined up to £1000.00. It is a defence for an employer to give notice to the prosecutor and prove to the court that the breach of the byelaws was due to the act or default of some other person and that the employer took all effective steps to ensure that the byelaws were complied with.
- 3.6 The current Byelaws set out categories of prohibited employment for children of any age and otherwise provide that a child aged 14 or over may be employed in light work. They also provide that a child aged 13 may be employed in light work but only in certain specified categories. The Byelaws also make provision that a child may be employed for up to one hour before the commencement of school hours on any day they are required to attend school. They require that any child employed out of doors is provided with suitable clothing and footwear and make provision for the procedure for obtaining an employment permit in respect of a child from the Council as education authority.
- 3.7 The Byelaws also make provision on the employment of children in street trading, allowing them to be employed in street trading by a parent in relation to a retail business and under direct supervision, provided that a street trader’s licence is also in place and provided that the Council does not have reason to believe that the employment would be prejudicial to the child’s health, welfare and ability to take full advantage of his education. The Byelaws also contain restrictions and conditions on street trading and provision whereby the employment permit issued may be suspended or revoked.
- 3.8 In terms of Section 202A of the Local Government (Scotland) Act 1973 local authorities are required to review their existing byelaws ten years from the date of them coming into force and thereafter at intervals not exceeding 10 years. Council Officers conducted a review of the byelaws in October 2020. The findings of that review are that no issues have arisen with the operation of the current Byelaws, that the existing content remains appropriate and fit for purpose and that the conditions laid out within the Byelaws regarding the employment of children are satisfactory. Accordingly, the conclusion reached as a result of those findings is that no changes are required to the Byelaws at this time.

- 3.9 Should the recommendations within this report be approved by the Board the Byelaws will remain in force in their current form. The Byelaws would thereafter require to be reviewed again by the 14 December 2030 but may be reviewed at any time before then. The Byelaws may be changed at any time providing the appropriate statutory process is undertaken and the changes confirmed by Scottish Ministers.
- 3.10 The Byelaws are provided as appendix 1 to this Report.
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Implications of the Report

1. **Financial - Nil**
2. **HR & Organisational Development - Nil**
3. **Community/Council Planning – Nil**
4. **Legal –**
The Council has a statutory obligation in terms of section 202A of the Local Government (Scotland) Act 1973 to commence a review of byelaws it enacts within 10 years from the date they came into force. A review of the Renfrewshire Council Byelaws on the Employment of Children 2010 has been undertaken by council officers, the outcome of which is to recommend that the Byelaws remain unchanged at this time. The Finance, Resources and Customer Services Policy Board has a delegated responsibility to review byelaws and accordingly a decision is required by this Board to conclude the review process.
5. **Property/Assets - Nil**
6. **Information Technology - Nil**
7. **Equality & Human Rights**

- (a) The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report because the recommendations of the report are that the byelaws remain as they are. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.

- 8. **Health & Safety** - Nil
- 9. **Procurement** - Nil
- 10. **Risk** - Nil
- 11. **Privacy Impact** - Nil
- 12. **Cosla Policy Position** – not applicable.

List of Background Papers

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THE RENFREWSHIRE COUNCIL

BYELAWS RELATING TO THE EMPLOYMENT OF CHILDREN

Renfrewshire 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 Renfrewshire Council Byelaws on the Employment of Children 2010 and shall come into operation on such date as the Scottish Ministers may fix.

Interpretation and extent

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

"the authority" means Renfrewshire Council;

"child" means a person who is not for the purposes of the Education (Scotland) Act 1980 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;

"looked after child" has the same meaning as in section 17(6) of the Children (Scotland) Act 1995;

"parent", in byelaw 8(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);

"public place" has the same meaning as in section 133 of the Civic Government (Scotland) Act 1982 and 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;

"social work authority" means a local authority for the purposes of the Social Work (Scotland) Act 1968;

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

“street trading” has the same meaning as in section 39(2) of the Civic Government (Scotland) Act 1982 and 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;

(b) in connection with the sale, supply, service or delivery of alcohol except in places where such alcohol is sold exclusively in sealed vessels for consumption off the premises *provided that the requirements of the Licensing (Scotland) Act 2005 are complied with*;

(c) in the delivery and collection from a van or mobile shop in transit;

(d) to deliver fuel oils;

(e) in a commercial kitchen;

(f) in connection with the collection or sorting of refuse of any description;

(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;

(1) 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.

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

Employment before school

6. 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

7. No child may be employed in any work out of doors unless wearing suitable clothes and shoes. The employer shall be obliged to provide the child with suitable clothing and footwear where such clothing and footwear is identified as required in the risk assessment referred to in byelaw 8(f) hereof or any subsequent risk assessment.

Notification of employment and employment permits

8. Within one week of offering employment to 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 and, where the child is Looked After by a Social Work Authority or lodged with or boarded out by an Education Authority or Social Work Authority, with the consent of that Authority insofar as they have parental rights to give such consent;
 - (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.
9. The written notification must be signed by the employer and countersigned by the child and the child's parent and, where the child is Looked After by a Social Work Authority or lodged with or boarded out by an Education Authority or Social Work Authority, with the consent of that Authority, in so far as they have parental rights to grant such consent.
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 within a period of three weeks from the date of receipt of written notification meeting the requirements of byelaws 8 and 9 hereof. Failing such issue or a decision to refuse to issue the permit within that period, the child will be deemed to have been granted the permit applied for.
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, and

(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. The employment permit will be issued to the employer and a copy thereof shall be issued to the child and the child's parent. A copy thereof shall be retained by the authority. No employment shall commence until the employer is in receipt of the employment permit issued by the authority.
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 employment 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.
18. The employer must produce the employment permit for a child for inspection when required to do so by an authorised officer of the authority or a police officer.

Street Trading

19. 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 parent, in connection with their retail business and under their direct supervision; and
 - (b) following the grant of a licence to do so ("a street trader's licence") by a licensing authority and in compliance with the terms of that licence.
20. The authority shall not grant an employment permit relating to street trading 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.

- 21.** An employment permit relating to street trading 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.
- 22.** The authority may suspend or revoke an employment permit relating to street trading 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 street trader's 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

- 23.** The Renfrewshire Council Byelaws Governing the Employment of Children 1999 made by Renfrewshire Council on Fourteenth day of January Two Thousand and confirmed by the Scottish Ministers on Fourteenth day of December Two Thousand are hereby revoked: IN WITNESS WHEREOF