



SCOTTISH EXECUTIVE

Education Department
Children, Young People and Social Care Group

Children and Families Division
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13 September 2006

Dear Chief Executive

PROTECTION OF CHILDREN AND YOUNG PEOPLE AT WORK

The Children (Protection at Work) (Scotland) Regulations 2006

The Scottish Executive has brought forward regulations (The Children (Protection at Work) (Scotland) Regulations 2006 – SSI 2006/140) which bring legislation in Scotland into line with EU Directive 94/33 on the protection of young people at work. The regulations which came into force on 18 April 2006, limit to 12 hours the number of hours per week that any child below the minimum school leaving age can work during term time. As you will be aware, school leaving age is calculated according to when a child turns 16.

Until 18 April 2006, the governing legislation in Scotland, the Children and Young Persons (Scotland) Act 1937, allowed a young person under the age of 15 to work a maximum of 17 hours a week in term time and for a young person aged at least 15 but below the minimum school leaving age to work 20 hours. Within the new 12 hour per week limit, the daily limits in respect of term-time – 2 hours per school day, 2 hours on a Sunday and 8 hours (over 15 years of age) or 5 hours (under 15) for any other day (i.e. Saturday) – will be retained. Current limits on children's working hours out of term time are not affected.

The regulations reinforce the Executive's policy intention to safeguard the educational opportunities and the health and physical wellbeing of children in employment by limiting the hours they work, while allowing them to continue to enjoy the rewards and experience of work. Retaining the daily limits should ensure flexibility for children in the work they choose to undertake.

The regulations came into force on 18 April 2006 and can be accessed via the Scottish Executive's website at: <http://www.opsi.gov.uk/legislation/scotland/ssi2006/20060140.htm>

Local Byelaws

The new regulations will not require local authorities to update their byelaws, as byelaws do not usually state the number of hours per week that a young person may work. Nor should the regulations create an additional burden for local authority staff issuing new work permits, as the consideration of number of hours to be worked is already part of the standard procedure for the issuing of permits. It is however our expectation that the new limits will apply to all children, including those already in employment and with existing permits and local authorities will therefore wish to consider whether any changes are required.

The Executive has issued a model byelaw, most recently in October 2000, to help local authorities draw up their own byelaws taking account of local needs and circumstances. Although the new regulations do not require changes to byelaws the existing model is nearly 6 years old and we have therefore drawn up a refreshed model byelaw and explanatory notes, attached at Annex A to this letter.

The model byelaws and explanatory notes are substantially similar to the previous versions. Adoption of the model byelaw is not mandatory but in the interests of consistency the format is commended to education authorities as the one to follow, irrespective of any changes to the detail which they may introduce to reflect local circumstances.

The Executive wants to ensure that the right protections are in place for all children and young people. Local authorities should therefore review their byelaws to ensure that they are up to date. If you are content that they are and that no changes are required, could you please confirm this to us in writing to Kathryn Chisholm at the above address or kathryn.chisholm@scotland.gsi.gov.uk. If you consider that changes are required the revised byelaws must be approved by the Scottish Ministers and similarly should be sent to Kathryn.

I appreciate that the Executive has sometimes taken too long to respond to requests for approval in the past and we will undertake to do much better in future and will respond to authorities within 2 months.

Guidance and information

There appears to be a relatively low level of knowledge and understanding about the protections that exist for children and young people at work. There is a need to raise the awareness of all those involved – employers, schools, parents and children. The Executive has therefore prepared the enclosed guide to the law which we will be making widely available. We will send a copy of the guide to all secondary schools, including independent schools and employers organisations. We will also put it on our website www.scotland.gov.uk.

Local authorities also have a role to play. It is, for example, helpful if it is easy to access your byelaw via your website, with any information or guidance and the name of the key contact within the authority alongside it. Local leaflets for schools, parents and children are another useful source of information.

Monitoring and enforcement

Concern was expressed in responses to the consultation on the draft regulations about the need to monitor and enforce compliance with the regulations. Respondees suggested that there is currently very little checking as to whether children and young people who are working have work permits and or whether a child's working pattern conforms to that stated on the application for a permit. Where little is being done there are concerns about the possible impact of this on children and young people.

The Executive agrees that more effective monitoring and enforcement is required but is mindful that such an increase could have some negative repercussions. It could for example lead some young people who considered the limits to be too restrictive to work without a permit; a big increase in the number of permits issued would also place a much bigger burden on the local authority and school staff involved.

It is clear that a more effective way of monitoring is required, but that it needs to be balanced and proportionate so that it avoids driving children and young people who want to work "underground". It is important that the balance is right and the Executive intends to consult in the coming year on what an appropriate balance might be. In the interim, we would welcome views and suggestions from those working within the existing framework on what the key questions and considerations for that consultation should be. These should be sent to Kathryn Chisholm at the address above.

Any enquiries about this letter, the model byelaw or employment of children in general should be directed to Kathryn Chisholm (as above) or 0131-244 0271.

Yours faithfully

Kit Wyeth
Children's Rights Team

MODEL BYELAWS ON THE EMPLOYMENT OF CHILDREN EXPLANATORY NOTES

Introduction

The new model byelaw is not mandatory. Nevertheless, local authorities are encouraged to adopt its format and to make changes to only those prescriptive measures which are necessary to meet local requirements. The following notes are intended as a practical guide, they are not, and should not be taken as, a comprehensive statement of the law.

The model byelaw has been based on the legislative framework contained in section 28 of the Children and Young Persons (Scotland) Act 1937 as amended. The ethos of the system remains as it always has – that children may work, but only to the extent that their health, development and education are not put at risk.

The Legal Framework

Control of children's employment is exercised under the Children and Young Persons (Scotland) Act 1937. Sections 28 and 30 of the Act set out the basic restrictions and empower education authorities to make byelaws containing further conditions. These sections now read:

28-(1) Subject to the provisions of this section and of any byelaws made thereunder, no child shall be employed-

- (a) so long as he is under the age of fourteen years;*
- (aa) to do any work other than light work; or*
- (b) before the close of school hours on any day on which he is under obligation to attend school; or*
- (c) before seven o'clock in the morning or after seven o'clock in the evening on any day; or*
- (d) for more than two hours on any day on which he is under obligation to attend school; or*
- (da) for more than twelve hours in any week in which he is required to attend school; or*
- (e) for more than two hours on any Sunday; or*
- [(f) [repealed]]*
- (g) for more than eight hours or, if he is under the age of fifteen years, for more than five hours in any day-*
 - (i) on which he is not required to attend school, and*

- (ii) *which is not a Sunday; or*
- (h) *for more than thirty-five hours or, if he is under the age of fifteen years, for more than twenty-five hours in any week in which he is not required to attend school; or*
- (i) *for more than four hours in any day without a rest break of one hour; or*
- (j) *at any time in a year unless at that time he has had, or could still have, during a period in the year in which he is not required to attend school, at least two consecutive weeks without employment..*

(2) *An education authority may make byelaws with respect to the employment of children, and any such byelaws may distinguish between children of different ages and sexes and between different localities, trades, occupations and circumstances, and may contain provisions-*

(a) *authorising-*

(i) *the employment on an occasional basis of children aged 13 years (notwithstanding anything in paragraph (a) of the last foregoing subsection) by their parents or guardians in light agricultural or horticultural work;*

(ia) *the employment of children aged thirteen years (notwithstanding anything in paragraph (a) of the last foregoing subsection) in categories of light work specified in the byelaw;*

(ii) *the employment of children (notwithstanding anything in paragraph (b) of the last foregoing subsection) for not more than one hour before the commencement of school hours on any day on which they are under obligation to attend school;*

(b) *prohibiting absolutely the employment of children in any specified occupation;*

(c) *prescribing-*

(i) *the age below which children are not to be employed;*

(ii) *the numbers of hours in each day, or in each week, for which, and the times of day at which, they may be employed;*

(iii) *the intervals to be allowed to them for meals and rest;*

(iv) *the holidays or half-holidays to be allowed to them;*

(v) *any other conditions to be observed in relation to their employment;*

so, however, that no such byelaws shall modify the restrictions contained in the last foregoing subsection save in so far as is expressly permitted by paragraph (a) of this subsection, and any restriction contained in any such byelaws shall have effect in addition to the said restrictions.

(2A) *In this section-*

"light work" means work which, on account of the inherent nature of the tasks which it involves and the particular conditions under which they are performed-

(a) *is not likely to be harmful to the safety, health or development of children; and*

(b) *is not such as to be harmful to their attendance at school or to their participation in work experience in accordance with section 123 of the Education (Scotland) Act 1980, or their capacity to benefit from the instruction received or, as the case may be, the experience gained;*

"week" means any period of seven consecutive days; and

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

(3) *Nothing in this section, or in any byelaw made under this section, shall prevent a child from doing anything-*

(a) *under the authority of a licence granted under this Part of this Act; or*

(b) *in a case where by virtue of section 37(3) of the Children and Young Persons Act 1963 no licence under that section is required for him to do it.*

30-(1) Subject to subsection (2) of this section, no child shall engage or be employed in street trading.

(2) An education authority may make byelaws authorising children who have attained the age of fourteen years to be employed by their parents in street trading to such extent as may be specified in the byelaws, and for regulating street trading under the byelaws by persons who are so authorised to be employed in such trading; and byelaws so made may distinguish between persons of different ages and sexes and between different localities, and may contain provisions-

(a) *forbidding any such person to engage or be employed in street trading unless he holds a licence granted by the authority, and regulating the conditions on which such licences may be granted, suspended, and revoked;*

(b) *[repealed];*

(c) *requiring such persons so engaged or employed to wear badges;*

(d) *regulating in any other respect the conduct of such persons while so engaged or employed.*

(3) Byelaws made under subsection (2) shall contain provisions determining the days and hours during which, and the places at which, such persons may engage or be employed in street trading.

Changes to the legal framework

The Children (Protection at Work) (Scotland) Regulations 2006 introduce the following to the legal framework:

A reduction to 12 in the number of hours per week that a child below the minimum school leaving age (usually 16) can work in any week during term time.

The model byelaw

The model byelaw is framed to contain only those restrictions not contained elsewhere, except where there is an additional reason for their inclusion. In effect this means that the model contains:

a list of permitted jobs for 13 year olds;

a list of prohibited jobs for all children;

permission for children to work before school hours;

permission for 13 year olds to work for their parents in light agricultural and horticultural activity

the procedure for obtaining an employment permit;

permission for children to work in street trading;

None of these provisions is mandatory.

Notes on individual byelaws

Byelaw 1: citation and commencement

This byelaw simply states the title of the byelaws and the date when they come into effect. Byelaws will generally come into effect one month after they have been confirmed by Scottish Ministers, but this may be varied at the request of the authority promoting the byelaws.

Byelaw 2: interpretation and extent

This byelaw defines the various expressions used in the byelaws. The definitions of "public place", "street" and "street trading" are of relevance only if byelaws 17-20 are made. It is for individual authorities to decide whether or not to permit children to take part in street trading

Byelaw 3: prohibited employment

This is a list of employments deemed unsuitable for all children. It was developed following consultation and discussion with the National Child Employment Network. It does not include occupations which are the subject of specific legislative prohibitions, e.g. jobs in public houses and factories or other industrial undertakings.

The list of prohibited employments is illustrative, not mandatory, and education authorities may add or remove activities as they deem appropriate for their respective areas. Where an authority

does decide to depart from the model listing, however, they should accompany the application for confirmation with an explanatory note.

Byelaw 4: permitted employment of children aged 14 or over

Directive 94/33/EC provides that children may only be employed in light work, as described in the definitions in byelaw 2.

Byelaw 5: permitted employment of children aged 13

The Directive permits children aged 13 to work, but only in categories of light work “determined by national legislation”. “National” in this context means domestic, rather than EC legislation and includes byelaws. As with byelaw 3, the list of permissible jobs is illustrative. As before, an explanation of the reasons for adding or removing activities from the list should be submitted with the application for confirmation.

Byelaw 6: employment before school

The 1937 Act prohibits children working at any time before the end of the school day, except where specifically permitted in byelaws. This byelaw permits employment for up to one hour before the commencement of the school day.

Byelaw 7: additional conditions

The condition quoted reflects and consolidates the requirement of most existing byelaws to require children working out of doors to be suitably clothed. Education authorities may include additional conditions in this byelaw to meet specific circumstances.

Byelaws 8-15: notification of employment and employment permits

These byelaws set out the regime whereby an employment permit may be granted or revoked. On the matter of the medical certificate, many existing byelaws contain a requirement for children to have a medical examination before an employment card is issued. Whilst in most cases all that will actually be necessary is a simple statement from the parents to the effect that the child is fit, the power to demand a medical examination will enable the education authority to satisfy itself in cases of doubt.

The permit regime illustrated in the model byelaw is not mandatory. The Executive acknowledges that some authorities may prefer to retain their own tried and tested systems. Where an authority does decide to depart from the model regime, however, they should accompany the application for confirmation with an explanatory note.

Byelaws 16-19: street trading

Section 30 of the 1937 Act enables education authorities to permit children aged at least 14 to be employed in street trading by their parents and in their parents' business. The conditions illustrated in this section of the model byelaws reflect those applied by some authorities in existing byelaws and amendments to the 1937 Act on necessary provisions. Education authorities are under no obligation to permit street trading - but if so the days and hours during which this is permitted, and the places where it is permitted, must be specified.

Byelaw 20: revocation

This byelaw revokes any existing byelaws.

Space should then be left for the seals of the education authority and Scottish Ministers to be affixed.

EMPLOYMENT OF CHILDREN

MODEL BYELAW

_____ **COUNCIL**
_____ **BYELAWS**

Made _____
Coming into force _____

_____ 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 and commencement

1. These Byelaws may be cited as the _____ Council Byelaws on the Employment of Children 20__ and shall come into force on _____ 20__.

Interpretation and extent

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

"the authority" means _____ 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 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)³;

"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;

¹ 1937 c.37

² 1980 c.44

³ 1995 c.36

“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;⁴
- (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;

⁴ 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.

- (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 a 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.

Notification of employment and employment permits

8. 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.

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; 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.

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 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.

15. 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

16. 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) 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.

19. 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

20. The Byelaws with respect to the employment of children [and street trading] made by _____ Council on the _____ day of _____ 19/20__ and confirmed by the Secretary of State on the _____ day of _____ 20__ are hereby revoked.

**THE COMMON SEAL of _____ Council
was affixed to these Byelaws on _____
20__ in the presence of:**

[seal]

**[signature(s)]
[Designation(s) of signatory/ies]**

**These Byelaws are hereby confirmed by Scottish
Ministers on _____ 20__ and shall come
into force on _____ 20__**

**[signature]
A member of the staff of the Scottish Ministers
(a member of the Senior Civil Service)**

**Scottish Executive
Education Department**

[seal]

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 health and safety, 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); and
- (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). In practice, any child in this position would most likely be referred to the children's hearing system rather than the court.

EMPLOYMENT OF CHILDREN FACTSHEET

- ✚ This factsheet provides general information about the law on the employment of children who are under the minimum school leaving age. It tells you what kind of work they may and may not do, how old children must be in order to work, and the number of hours and times of day that they are allowed to work. It also tells you about employment permits for children. It is not a full statement of the law. You should consider taking legal advice on how the law affects your particular circumstances.
- ✚ Children and young people are allowed to work, but only to the extent that their health, development and education are not put at risk, so the law places restrictions on the type and amount of work they can do.
- ✚ The general law on child employment is set out in Acts of Parliament and Regulations which are supported by local byelaws put in place by local authorities. Byelaws aim to reflect the particular needs and circumstances of an area, although in practice, most are broadly similar.
- ✚ The law covers all forms of paid work done by young people below the minimum school leaving age. Work experience organised for educational purposes is treated differently and not covered in this factsheet. There is also separate legislation covering children taking part in public performances and covering particular occupations which is not dealt with in this factsheet.

What Legislation Governs the Employment of Children?

- ✚ The Children and Young Persons (Scotland) Act 1937 (as amended) sets out general rules about the work that children are able to do. Other legislation applies to some jobs and occupations that children may not do.

Minimum School Leaving Age

- ✚ The minimum school leaving age is linked to the point at which a young person turns 16. Those who turn 16 between 1 October and 28 February may leave school on the “winter leaving date” which is the last day of term before Christmas. Those who turn 16 between 1 March and 30 September may leave school on the “summer leaving date” which is the last day of the summer term.

What Type of Work is Permitted?

- ✚ The type of work that a young person is allowed to do depends on their age and to some degree on the specific byelaws of their local authority. However, in most cases the following applies:
 - Children under the age of 13 may not be employed, other than in certain forms of entertainment, sports and modelling.
 - Children aged 13 may only be employed if the local authority makes byelaws permitting them to do so. Where byelaws are made allowing 13 year olds to work, they may only do the types of work listed in the byelaws and classed as “light work”. “Light work” is work that is not likely to be harmful to the

safety, health or development of children or to their attendance at school or participation in work experience.

- ✚ Young people aged 14 or over may also do “light work” fitting the definition given above. Where byelaws are made allowing 13 year olds to work, local authorities should list the types of work which **are** permitted. This is not required for 14 year olds and older, but they must not be employed in any forms of activity which are **prohibited** for children by various other pieces of legislation or by the local byelaws.

What Hours Can Children Work?

- ✚ There are separate limits on the hours a child may work per week during term time and in the school holidays. There are also limits on the number of hours per day. **A rule which applies to all days is that no work should be done by children before 7.00 am or after 7.00 pm.**
- ✚ Limits on working hours are laid down in the Children and Young Persons (Scotland) Act 1937 rather than in byelaws. The Act was amended recently by the Scottish Executive to lower the number of hours per week children are permitted to work in term time. The Regulations amending the act can be viewed at:
<http://www.opsi.gov.uk/legislation/scotland/ssi2006/20060140.htm>

What are the Limits?

School days

- no more than 2 hours per day to be spent doing paid work
- no work to be done before the end of or during school hours – although some byelaws might include a provision for children to work for up to one hour before school.

Sundays

- no more than 2 hours’ paid employment in the day.

Saturdays, Bank Holidays or similar

- no more than 5 hours’ paid employment in the day if you are under 15
- no more than 8 hours’ paid employment in the day if you are 15 or over.

School weeks

- no more than 12 hours’ work in any week (including Saturdays and Sundays or other days off) in which the child is required to attend school.

School holidays

- **When the child does not require to attend school for a full week:**
- no more than 5 hours' paid employment **per day** if you are under 15
- no more than 8 hours' paid employment **per day** if you are 15 or over
- no more than 25 hours' paid employment **per week** if you are under 15
- no more than 35 hours' paid employment **per week** if you are 15 or over

✚ Children under the minimum school leaving age should not work more than 4 hours without a rest break of at least one hour. There must be a period of at least two weeks in any year which is both school and work-free. Local byelaws may impose additional restrictions in some cases. Holiday pay entitlement applies to young people who are above the school leaving age.

Local Authority Byelaws

✚ Byelaws may specify:

- light work permitted for children of 13
- prohibition of specified occupations for all/any age group
- additional restrictions on hourly/weekly limits, rest meals and breaks, holidays and half-holidays
- requirements/regulations on employment permits
- requests for medical examinations in some circumstances
- stipulations about, for example, appropriate clothing
- employment of children for not more than one hour before school
- street trading for children of 14 and over in parents' businesses is allowed

Work Permits

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

- his/her name and address
- the name, address and date of birth of the child
- details of the school at which the child is a registered pupil
- confirmation that an appropriate risk assessment has been carried out by the employer

✚ On approval of an application, the local authority should issue a permit confirming the information sent. The power to approve and issue permits may be delegated by the local authority to schools. The local authority can revoke the permit if they think the child is being illegally employed or if they feel the young person's health, welfare or educational progress could suffer because of the employment.

✚ All the laws and byelaws concerning child employment are intended to protect the health and safety of young workers. Employers need to take particular care to comply

with all applicable Acts and Regulations such as the Health and Safety at Work etc. Act 1974, the Health and Safety (Young Persons) Regulations 1997, and the Management of Health and Safety at Work Regulations 1999. Usually the local authority will be responsible for enforcing the law, but in some cases the Health and Safety Executive may take action against an employer who is putting young workers at risk. Children found to be working illegally are likely to be prevented from continuing in their employment.

Is There a Minimum Wage for Children?

- ✚ There is no minimum wage for children who are in employment but are under the school leaving age.

Where Can I Find Out More?

- ✚ To find out more about national employment legislation, you can visit the Department of Trade and Industry (DTI) website at:

www.dti.gov.uk/employment

- ✚ For information about local byelaws, you should contact your local authority.
- ✚ For information about particular legal issues affecting employment of children in a particular occupation, trade or industry contact the relevant trade or industry association or legal adviser.

List of Contacts to Receive Guidance/Model Byelaw

Business	
CBI Scotland	Scottish Retail Consortium
Scottish Consumer Council	Federation of Scottish Businesses
Scottish Council for Development and Industry	Scottish Chambers of Commerce
Scottish social Enterprise Coalition	Scottish Family Business Association
Scottish Council of Voluntary Organisations	Sector Skills Development Agency
Unions	
STUC (Scottish Trades Union Congress)	EIS (Educational Institute of Scotland)
SSTA (Scottish Secondary Teachers Association)	NAUWT (National Association of Schoolmasters/Union of Women Teachers)
PAT (Professional Association of Teachers)	HAS (Headteachers Association of Scotland)
AHT (Association of Headteachers in Scotland)	
Local Authorities	
CoSLA (Convention of Scottish Local Authorities)	
Local Authority Planning Networks	
Local Authority Economic Development Networks	
ADES (Association of Directors of Education in Scotland)	
Children's Organisations	
Children 1st	Commissioner for Children and Young People in Scotland
Save the Children	Children in Scotland
Aberlour Childcare Trust	Barnardos
NCH Action for Children	Scottish Youth Parliament
YoungScot	