



Department
for Education



Llywodraeth Cymru
Welsh Government

Consultation

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Safeguarding children: proposed changes to child performance legislation

This consultation sets out proposals to update and simplify the legislation on the involvement of children of compulsory school age in a range of performance activities. The licensing arrangements sit alongside the Ofcom Broadcasting Code and accompanying guidance which includes specific provisions for the protection of children who take part in all television and radio programmes. This is a joint consultation between the Department of Education and the Welsh Government. The intention is that reforms to the child performance legislation should be consistent across England and Wales.

If you are based in Wales, the consultation can be found at:

<http://wales.gov.uk/consultations/education/safeguardingchildren/?lang=en>

<http://wales.gov.uk/consultations/education/safeguardingchildren/?lang=cy>

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Safeguarding children: proposed changes to child performance legislation

A Consultation

To Professional/amateur producers, broadcasting and film companies, modelling agencies, sports associations, local authorities, performance schools, parents and children, chaperones and all other interested parties.

Issued 24 May 2012

Contact Details

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1 Executive summary

1.1 Performing, whether it is on stage, in an arena, film set, or TV studio can be of real benefit to children. Children enjoy these activities, which can offer valuable opportunities to learn new skills, develop talent, and build confidence. Performing should be a positive experience for a child which should complement their education and, wherever feasible, broaden it. We would like to allow children every opportunity to take part in performances, with appropriate arrangements made to ensure their safety and wellbeing.

1.2 As a policy review reported in 2010¹, the regulations covering the licensing of children to take part in performances are complex and outdated. Local authorities have responsibility for administering the arrangements in their area, but the complexity can lead to differences in interpretation and approach. This can result in different opportunities for children dependent on where they live, and is difficult for producers recruiting across areas. We intend to simplify and modernise the legislation, and encourage a consistent approach.

¹ In March 2010, Sarah Thane (CBE, former Chair of the Royal Television Society and former adviser to Ofcom) published an *Exploratory review of the system of regulating child performances*

1.3 The local authority licensing requirements sit alongside the obligations of all broadcasters licenced to operate in the UK to abide by the Ofcom Broadcasting Code. This sets out clear responsibilities for the protection of children involved in radio and TV programmes. Issues about programme content and editorial decisions of broadcasters are matters for Ofcom rather than local authority performance licensing arrangements.

1.4 **Clarifying when a child performance licence is required**

The requirements for licensing children to take part in performances are set out in legislation which dates from the 1960s. The legislation was designed to ensure the wellbeing and safety of child performers. The rules are complex and outdated. Children today can be involved in a wider range of activities that were not conceived of when the legislation was made. As a consequence, it is not always clear which activities require licensing and which do not.

- 1.5 This is particularly the case with some types of television shows. We propose that a licence will continue to be required where a child is placed in an artificial circumstance which has been contrived for dramatic or editorial effect and which presents risks the child would not face during the ordinary course of their life. We consider these circumstances to be more likely to present risks to children's safety or wellbeing. 'Fly on the wall' programmes, factual documentaries or interviews with children where the circumstances have not been particularly contrived for dramatic or editorial effect, would not require licensing. We consider these types of programmes to present less risk to children. Programmes which may be billed or presented as 'observational' or 'factual' but where the experience of the child is contrived for dramatic effect will require licensing. The final decision will rest with the local authority. It should be noted though that the protection of children whenever children appear on television is managed through the Ofcom Broadcasting Code.
- 1.6 Concerns have been raised about the conditions in which some child models have been employed. We intend to maintain the licensing requirement for child models, whether they are employed in the UK or abroad. Where children aged 13 and over take part in professional, paid sport² we believe their potential, development as professionals and their wellbeing should be a matter for the sports governing bodies, who are required to adopt National Standards for Safeguarding and Protecting Children in Sport³

² A sport is defined as recognised by Sport England.

³ As set out by the Child Protection in Sport Unit, jointly funded by Sport England and the NSPCC.

- 1.7 The legislation places restrictions on issuing licences to children under age fourteen unless they are for singing, dancing, acting or taking part in a musical performance⁴. The age specific limitation places undue restrictions on broadcast productions and appears to be an obstacle to children taking part in a range of performances. We intend to remove this age restriction.

We propose to clarify when a local authority licence is required for a child to take part in a performance.

⁴ Section 38 of the 1963 Act

1.8 **Streamlining the requirements for licensing**

Producers have said that the bureaucracy involved in seeking the necessary licences for child performers can deter them from involving children at all. There are restrictions that do not appear to serve any useful purpose for ensuring the safety or wellbeing of children who perform. We want to remove the unnecessary bureaucracy that currently deters amateur productions in particular from involving children.

1.9 The current legislation allows little flexibility in its detailed and complicated requirements. This obliges local authority licensing officers to spend time chasing and checking paperwork. We believe that a new framework is needed so that local authorities can focus on protecting children from real risk, rather than being tied up in the administration of unnecessary bureaucracy. We want them to spend less time on forms and more on inspections and enforcement, and supporting good practice to improve safeguards.

1.10 Local authorities need assurance that producers will put in place effective measures to ensure the safety and wellbeing of children taking part in performance activities. But individual licences should not be necessary when older children are taking part in 'one off' large productions, nor when children are performing with amateur groups. A more efficient approach in these circumstances may be achieved through extending the simplified approval process (known as a 'Body of Persons' approval), and a new registration system for amateur groups. The process should emphasise the responsibility of producers to identify and manage risks, to ensure that they focus on measures to protect child performers at an early stage in their planning.

We propose to:

- streamline the licensing process for children to take part in professional productions;**
- extend the simplified approval process for children who take part in 'one off' events to include children aged 13 and over who are paid; and**
- replace licensing requirements with a simple registration system for companies putting on amateur productions.**

1.11 Chaperones

A chaperone (referred to as a 'matron' in legislation) is an adult appointed to look after child performers, to ensure their safety and wellbeing. All performances that require a local authority licence are also required to appoint a chaperone. The current legislation requires that all chaperones must be approved by the local authority, and that a chaperone must not be responsible for looking after more than twelve children at any one time⁵.

⁵ Regulation 12 of the Children (Performances) Regulations 1968

- 1.12 It is important that child performers have someone to turn to who has responsibility for their wellbeing, and we intend to maintain the requirement for both amateur and professional productions to appoint chaperones. The policy review advisory group suggested that, particularly where children may be of different ages and involved in different activities, it is difficult to look after twelve children at one time. Production companies tell us that in practice a chaperone is rarely required to look after more than ten children.

We are consulting on whether the maximum number of children that a chaperone can be responsible for should be reduced.

- 1.13 Parents are responsible for ensuring the safety and wellbeing of their children, and will want assurance that they are properly looked after when they are involved in performances. Parents may often be involved in the activity themselves, and sometimes act as chaperones to their own and other children. We think it appropriate to maintain a requirement for chaperones in amateur performances. Professional and amateur groups have expressed interest in ensuring that chaperones have the skills and awareness needed to look after children effectively, and the spread of good practice is encouraging. But we do not consider it necessary for the state to determine who can or cannot look after children during amateur performances, where parents themselves are satisfied that their child is happy and thriving.

We propose to remove the requirement for chaperones in the amateur sector to be approved by the local authority. Chaperones in the professional sector will continue to require local authority approval.

1.14 **Education for children taking part in performances**

The legislation sets out that a local authority must not grant a licence for a child to take part in a performance unless they are satisfied that the child's education will not suffer⁶. If arrangements for private tuition are proposed there are detailed requirements about the times of day and days of the week when it should take place. As the 2010 policy review reported, parents, licensing officers and others have expressed concern about the lack of flexibility on timing and the quality of the learning experience when children are tutored out of school.

We propose to maintain a requirement for 15 hours tuition per week, but give flexibility over the timings and days when this can be provided.

⁶ Regulation 10(1) (amended by S.I. 1998/1728)

1.15 We do not propose to legislate for the qualifications required of tutors, or for the curriculum to be followed. We recommend, as a matter of good practice, that tutors should be appropriately qualified to teach, and that contact be made between the tutor and the school to promote the relevance and quality of the tuition to be provided. But these are matters for parents, teachers and producers to determine, not for the state to prescribe.

1.16 **Licenses for children to perform abroad**

The 1933 legislation sets out the process by which a producer must apply for a licence for taking children abroad for performances⁷. They must first present the application to the chief police officer of the area where the child lives, so they can offer any objections, before sending the application to a magistrate's court. Producers and agents, and the small number of magistrates courts that handle licensing applications, tell us that the process is complicated and unnecessarily bureaucratic. There is no requirement for magistrates to seek a view from the local authority where the child resides, nor to alert them when a licence has been granted or refused.

We propose that local authorities should be responsible for licensing children from their area to perform abroad.

⁷ Section 25 of the Children and Young Persons 1933 Act

1.17 **Remove unnecessary bureaucracy and powers**

We intend to make it easier and quicker for a producer to apply for performance licences. Where licences are required, the application should be based on a standard form, adopted consistently by local authorities, and based on a risk assessment. This would simplify the application process, especially where a producer wishes to recruit from different areas. It would help local authorities in the assessment of applications, and speed up the issue of licences where the risks to a child's safety and wellbeing are low, or are well managed. Local authorities should aim to process straightforward applications within ten working days.

1.18 There are a range of powers within the legislation that we do not consider to be appropriate or necessary. For example, the local authority can stipulate how the sums earned from the child's performance may be dealt with. We believe this should be a matter for the child and their parents to decide.

1.19 Local authorities also have a 'power of entry'⁸, which authorises officers to enter premises where they believe a child may be taking part in a performance. This consultation seeks views on whether this is necessary, as a right to inspect premises could be made a condition of the licence.

We propose to remove powers for state interference in matters which should be for parents and production companies to decide.

⁸ Section 28 of the 1933 Act

1.20 **Enforcement and penalties**

The changes we propose to the licensing arrangements will allow local authorities to spend more time on inspection and enforcement. Inspections should be targeted and proportionate to risk, with the emphasis on encouraging and supporting best practice.

1.21 Failure to comply with the requirement to apply for a licence or to comply with its conditions is an offence. Legislation⁹ sets out these and other related offences and the penalties for non-compliance. We are aware that there have been some prosecutions, but we lack evidence on the extent of enforcement actions nationally, including withdrawal of licences following inspection. Through this consultation we are requesting information about enforcement actions. We are also interested in views of how local authorities may best ensure compliance with the requirements.

⁹ Section 40 of the 1963 Act and section 23, 26 and 28 of the 1933 Act

1.22 **Conclusion**

In developing these proposals, we have built on the extensive and thoughtful work of the earlier policy review led by Sarah Thane, and the input from the advisory group, whose members came from a cross section of interests including professional and amateur production companies, broadcasters, and local authorities. There is widespread agreement that the legislation needs updating, clarifying and simplifying, and that this would increase the opportunities for children to take part in performance activities. This is what the Government aims to achieve. The proposals represent a significant shift from the historic approach, and an overall reduction in regulatory burdens.

2 Introduction

- 2.1 The legislation governing the protection of children of compulsory school age¹⁰ who take part in performances dates back to the 1960s. The range of activities and opportunities has expanded considerably since, especially with new media genres and technologies providing more ways in which children can perform. The legislation is out of date now, and unlikely to be suitable for new genres and types of media activity that may develop in the future.

¹⁰ Compulsory school age ceases on the last Friday in June in the school year that the child reaches the age of 16

- 2.2 The regulatory regime applies when children take part in a range of activities, from local community amateur dramatic societies to West End stage shows, prime time television and major film productions. There are questions as to whether the regulations apply to some forms of online media, such as clips made available over the internet. And, as the regulations were designed for the types of activities children were involved in nearly fifty years ago, the views about the age at which children should undertake a range of activities were different to the views that prevail now.
- 2.3 As broadcasters, professional and amateur production companies and local authority licensing officers tell us, there are requirements in the legislation that serve no useful purpose, but impose burdens and costs through the need to comply with them. The red tape involved in licensing children can be particularly burdensome for amateur groups, who may not have the resources needed to cut through it. As a consequence, amateur groups have told us they avoid putting on plays and productions involving children.
- 2.4 Taking part in performances can be fun and exciting. The experience can be of real benefit for learning new skills, developing talent, and building confidence. Children should not be denied access to these experiences because of red tape. Keeping children safe is a priority, but paperwork does not protect them from harm; responsible adults do. It is important that arrangements are made to ensure the physical and psychological wellbeing of children in performances, but these should be proportionate to the level of risk involved. For example, where families are taking part in a community production organised by an experienced amateur group, the level of risk may be relatively low, whereas a film shot on location by a novice production company may present a very different set of issues.
- 2.5 The bureaucracy involved in the current licensing arrangements can serve to obscure common sense, and may lead to an over-reliance on tick boxes over sound judgement. The more prescriptive the licensing rules the greater the risk

that they foster complacency. We intend to shift the focus of the performance licensing system away from bureaucracy, and replace this with a proportionate regulatory framework.

- 2.6 We aim to free local authority licensing officers from unnecessary paperwork and processes, to enable them to focus on managing risks to children through a more targeted approach to inspection and enforcement. They are best placed to use local knowledge and awareness to identify those risks and take enforcement action where needed. They are also well placed to facilitate the sharing of good practice, to ensure the performance activities that children engage in provide positive experiences.
- 2.7 This consultation seeks views on proposals to:
- Clarify when a licence is required for a child to take part in a performance, and that this includes paid modelling;
 - Remove restrictions on the activities that children under 14 can be licensed to take part in;
 - Confirm that responsibility for protecting children aged 13 and over in paid sport rests with the sports' governing bodies;
 - Streamline the requirements for licensing children to take part in performances;
 - Extend the existing simplified approval process for children to take part in 'one-off' events to include where those aged 13 and over are paid to take part;
 - Simplify the process by which amateur groups can apply for approval for children to take part in a performance;
 - Reduce the number of children that one chaperone can look after at any one time;
 - Ensure that children taking part in performances or modelling receive appropriate education whilst doing so;
 - Rationalise the process for licensing children to be taken abroad for performances or modelling;
 - Remove unnecessary bureaucracy, processes and powers;
 - Amend the criminal penalties for failing to comply with the legal requirements that are designed to assure the wellbeing of child performers and models.
- 2.8 These proposals represent significant change to the current arrangements, and primary legislation is needed to give effect to them. We propose a new legal framework that makes it easier to update the requirements for licensing, so we can keep up to date with new developments in technology and forms of media.

3 Background and Context

3.1 Legislation

The 1968 regulations and guidance that govern child performance were established under the Children and Young Persons Act 1963. The aim of the legislation was to ensure arrangements were made to protect the health, safety and wellbeing of children taking part in plays, shows and broadcasting.

3.2 The primary legislation sets out the circumstances in which a licence should be sought by a production company for a child to take part in a performance. The regulations set out the licensing conditions, for instance hours, breaks, times for education to be provided and other specific rules and requirements. It also provides local authorities with a range of powers relating to the administration of the licensing system, for example they can specify how some of the child's earnings from a performance should be saved.

3.3 Other developments since the 1960s have had implications for the framework for protecting child performers. In 1994, the United Kingdom signed up to a European Directive on the Protection of Young People¹¹ In 1998, in order to implement requirements agreed in the European Directive, domestic legislation was introduced requiring a licence to be obtained from the relevant local authority before a child can take part in cultural or artistic activities, whether the child is paid or unpaid. The legislation also sets out that a licence is required for sport or modelling activities where the child is paid.

¹¹Directive 94/33/EC on the protection of young people at work. In relation to children employed in cultural, artistic, sport or advertising activities, the requirements were implemented by the Children (Protection at Work) Regulations 1998 (S.I. 1998/276) which amended pre-existing legislation in the Children and Young Persons Acts 1933 and 1963

3.4 Safeguarding in Sport

Since this legislation was introduced, there have been developments in the governance and management of sport. In 2001, the Child Protection in Sport Unit was launched. This is jointly funded by Sport England and the NSPCC, and has set out Standards for Safeguarding and Protecting Children in Sport which national governing bodies are required to adopt.

3.5 Role of Ofcom

As a result of the Communications Act 2003, the independent broadcast regulator Ofcom was created, with a statutory duty to ensure that children under the age of

eighteen are protected in relation to the content of broadcast media. Ofcom's Broadcasting Code and accompanying guidance includes specific provisions for the protection of children who take part in radio and television programmes.

There are two rules in the Ofcom Broadcasting Code which apply to the participation of those aged under eighteen in all television and radio programmes:

Rule 1.28: "Due care must be taken over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis".

Rule 1.29: "People under eighteen must not be caused unnecessary distress or anxiety by their involvement in programme or by the broadcast of those programmes".

Ofcom have issued detailed guidance to accompany the Broadcasting Code¹² These rules and guidelines are the key source of protection for young people taking part in television and radio programmes of any type.

¹² Ofcom has issued detailed guidance to accompany the Broadcasting Code: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code>

3.6 **Modern activities and views about children**

The range and nature of the activities that children may be involved in have developed considerably since the 1960s. Broadcasting has a more dominant place in our society and culture, and the increased popularity of reality television and talent competitions has changed and challenged our views of what are appropriate activities for children to be involved in. There are also more ways of recording and sharing performances. It is now the norm, rather than the exception, that the general public can record activities and instantly share those recordings with a mass audience over the internet.

- 3.7 Over the last fifty years the views about the age at which children can take part in different activities have changed, along with our understanding of the risks to children's wellbeing. For example, we are more aware of the potential psychological impacts on children arising from their participation in some kinds of activities. The expansion of digital recordings and the internet brings new concerns that material recorded in childhood will have a continued existence long after that child has grown up.

3.8 **System review**

In March 2010, Sarah Thane (CBE, former Chair of the Royal Television Society and former adviser to Ofcom) published an exploratory review of the system which considered what a modern, effective and proportionate set of regulations for this area might look like and made recommendations which the then Government welcomed¹³. The review suggested changes to clarify the types of performances that require licensing; simplify the licensing process; review the need to licence the amateur sector; increase the focus on children's education; and improve the effectiveness of children's chaperones.

¹³ *Exploratory review of the system of regulating child performance*, Report by Sarah Thane, CBE. March 2010

3.9 The Government's proposals build on the findings from the work of Sarah Thane and the advisory group, and set out a modern framework for protecting the safety and wellbeing of child performers which will remove excessive bureaucratic burdens and which will reflect better the ways in which children may perform in the 21st century.

3.10 **UK scope**

The proposals set out in this consultation are for changes to the arrangements in both England and Wales. Scotland and Northern Ireland have similar but separate arrangements to protect child performers.

4 Assessing the impact of changes

4.1 Impact assessments

Regulatory impact assessments are required for proposals to change legislation, to ensure that the impacts and costs of the changes proposed have been properly considered, and that the benefits of making the changes will outweigh the costs of them. This document is accompanied by four draft regulatory impact assessments covering the proposals to:

- i) streamline the licensing requirements;
- ii) simplify the process for amateur groups;
- iii) reduce the maximum number of children to any one chaperone from twelve to ten;
- iv) rationalise the process for licensing children to be taken abroad.

4.2 Overall the proposals represent a reduction in costs and burdens to local authorities. Evidence gathered from this consultation will be used to develop these assessments further. We will also develop an assessment of the impact the changes are likely to have on equality. This assessment will be published after the consultation has closed and the responses have been analysed.

4.3 During the consultation period we plan to hold a small number of workshops to discuss the proposals. These will provide an opportunity to identify evidence about current practice and the implications of the new arrangements that we expect to put in place for the future. If you would be interested in taking part, or even hosting such an event, please send an email to us at CONSULTATIONchildperformance@education.gsi.gov.uk.
If you are based in Wales, email CSD3SafeguardingChildren@wales.gsi.gov.uk.

4.4 The proposals are intended to benefit children - we want them to have opportunities to take part in performances, balanced with arrangements necessary to protect their safety and wellbeing when they do so. We are seeking their views through a separate questionnaire, which is available on the Department for Education and Welsh Government consultation websites. This could be completed by individual children, parents with children, or used by schools or other organisations with groups of children.

5 Scope of licensing requirements

5.1 There is no definition of 'performance' for the purposes of licensing. This has contributed to a lack of understanding of the circumstances when a licence is required. However, greater clarity may be achieved through updating the categories of activity that are in scope, and having clearly defined exemptions to cover activities that should not require licensing. The underpinning principle is that where children are put at risk above the level that they would typically experience in their lives, by being placed in an artificial situation which has been contrived for dramatic or editorial effect, a licence is required. The activities we propose should be exempt from licensing are set out in section 6.

5.2 **Activities requiring a licence**

Subject to the exemptions set out in Section 6 we propose that a licence will continue to be required when a child of compulsory school age is:

- performing to a paying audience (except where the performance has been granted a Body of Persons approval, or the group holds a current amateur performance registration certificate, as proposed in section 8);
- performing in premises licensed for the sale of alcohol (except where the performance has been granted a Body of Persons approval, or the group holds a current amateur performance registration certificate, as proposed in section 8);

- appearing in public broadcast material or material filmed for the purpose of future public broadcast; and that this would extend to -

- appearing in material on the internet where the intention is to profit financially directly through public viewing of it; or

- being placed in an artificial situation which has been contrived for dramatic or editorial effect which presents risks the child would not be in during the ordinary course of their life;
- taking part in paid modelling, including advertising and stills photography for publicity work;
- aged under 13 and taking part in sporting activities for which they are paid.

5.3 When we refer to "payment" this would include commercial or other financial sponsorship and goods as well as wages. Any financial support over and above reimbursement of reasonable expenses may be construed as payment.

5.4 Dress rehearsals and practice that are filmed, broadcast or take place in front of a paying audience would require a licence. Rehearsals that are not filmed for

broadcast and do not take place for a paying audience would not.

- 5.5 There have been concerns in recent years that some types of television programmes involving children, such as reality formats, may present real risk of negative consequences for the children involved. Whilst all broadcast content is covered by the statutory Ofcom Broadcasting Code, which sets out rules to ensure children are suitably protected, we propose that a licence will continue to be required where a child is placed in an artificial circumstance which has been contrived for dramatic or editorial effect.
- 5.6 'Fly on the wall' programmes, factual documentaries or interviews with children where the circumstances have not been manipulated for dramatic or editorial effect, would not generally require licensing. However, there are programmes which may be billed as observational or factual documentaries which are in fact subject to manipulation for dramatic or editorial effect. In these cases licences would be required. Producers should always consult with the relevant local authority, and it will be for the local authority to decide whether the children need to be licensed. Their decision will depend on the nature of the experience for the child during the production, and the extent to which it presents risks to their wellbeing.
- 5.7 Section 37 of the 1963 Act was amended by the Children (Protection at Work) Regulations 1998. The effect of this amendment was to bring children who take part in paid modelling and paid sporting events within the licensing regime.¹⁴ Concerns have been raised about the conditions in which some child models have been employed, especially abroad. Given the ongoing concerns for the risks to their safety and wellbeing, we intend to maintain the licensing requirement for child models.

¹⁴ (section 37(1)(b)).

- 5.8 All recognised sporting bodies are required to adopt the National Standards for Safeguarding and Protecting Children in Sport, set out by the Child Protection in Sport Unit (which is jointly funded by Sport England and the NSPCC). The governing bodies of recognised sports aim to nurture the talent of the sports stars of the future. The safety and wellbeing of children taking part in professional sport is paramount to that aim, alongside guidance, mentoring and careful attention to diet, nutrition, training, physical and psychological development. Competitive sport can be extremely demanding, mentally as well as physically. Children aged 13 and over who are being paid to take part in sport are more likely to be aiming for a career in it. Responsibility for providing the package of support they need to help them achieve their goals and compete at the highest levels should sit with the bodies who have the necessary expertise. Therefore we propose to remove the

requirement for children aged 13 and over to be licensed by the local authority in order to take part in paid sport.

- 5.9 Activities that are not recognised by Sport England or as an Olympic sport may be classed as a performance that needs licensing by the local authority.
- 5.10 Amateur productions are not included in the list of activities that require a licence as we are proposing to replace the current licensing and approvals arrangements with a new amateur performance registration scheme. This proposal is set out in more detail in section 8.

Consultation questions

- 1. Do you agree the activities at paragraph 5.2 should be included in the list of those that require a licence?**
- 2. Do you think there are other activities which should be included in the list of those that require a licence?**
- 3. Do you think any of these activities should be exempt from the licensing requirements? If so, please give your reasons.**

6.1 Exempt activities

We propose that the following activities are exempt from requiring a licence, because in these cases we do not think licensing is either necessary, proportionate or practical, and the requirement could restrict opportunities for children to take part:

- where the performance is arranged by a school or Academy, including those that take place away from the school premises where the child is accompanied by a teacher;
- where participation in the activity poses no greater risks, either during the activity, or when the activity is broadcast, than the risks faced by a child in the ordinary course of their life and the child is not being paid to participate in the activity;
- where it involves the creation of content generated by a child or their parent where there is no plan to upload and share it for profit;
- where the producer holds a Body of Persons approval issued by the local authority for a specific event (to include where a child aged thirteen or over may be paid for participating in that event) (see section 8);
- where a producer holds a current amateur performance registration (see section 8) and the child is not being paid to participate in the performance;
- unplanned performances, for example unpaid auditions, where by the nature of the activity it is not practicable for a licence to be obtained in advance;
- for the first four days a child performs in any six month period if the child is not paid;
- where a child aged 13 or over takes part in a recognised sport (paid or unpaid. (Only where a child under 13 is paid to take part in recognised sport will they require a local authority licence. Participation in an activity not recognised as a sport may otherwise require a performance licence).

6.2 Schools and academies

Schools and teachers are responsible for safeguarding their pupils in activities that are arranged by the school or academy, including those where teachers accompany pupils away from school premises. We do not propose that this should change.

6.3 Observational documentaries

In general, 'observational' programmes, factual programmes and documentaries, and news programmes filming children in the normal course of their lives (that is, not in an artificial situation which is contrived for dramatic or editorial effect) would not result in increased risks to children and should not need to be licensed. The

second exemption in the list above should ensure this. Even where a licence is not required, producers should consider the child's wellbeing and we would expect them to adopt good practice, for example by having a 'time out' area, where the child can be away from scrutiny, or by using a chaperone, even if this is not strictly required by law, for example in factual documentaries and news programmes. All broadcasters are required to comply with the Ofcom Code and Ofcom has the power to impose statutory sanctions on broadcasters.

6.4 **Auditions**

In the case of auditions, participants cannot always be known in advance. Where this is the case, through an open audition process, it would not be possible for producers to seek licences for the unknown participants. This rarely occurs; many auditions involving children do involve a pre-screening of participants or an application process, and in these circumstances we expect that, if the activity otherwise needs licensing, a licence should be sought for the child to take part. We would not normally expect a casting session to require licensing. However we would expect producers to take all reasonable precautions to ensure safety, and dignity, of child participants whether they know who they are in advance or not.

6.5 **Self produced material**

Material and content that a child or parent creates at home, not as a paid performance, and then shares on the internet is a personal activity. It is part of family life and we do not think that this is a matter for state intervention. Parents need to take responsibility for their children's welfare and are best placed, along with teachers and other professionals, to identify any issues and provide children and young people with the support and advice they need to stay safe and free from harm.

6.6 Children and young people often do not understand the potentially harmful consequences of sharing images and other content over the internet, even if it is intended for one person, and do not recognise that uploaded content has a digital footprint that can exist long after the content has been deleted. The Child Exploitation and Online Protection Centre (CEOP) has an award-winning programme 'Think U Know' which reaches hundreds of thousands of children across the country each year with safety messages. Along with Childnet and UKCCIS members they are working to disseminate effective safety messages to children and parents about online sharing activity. Parents are encouraged to use the technical tools and safety advice available on any internet-enabled device or service they may be using.

6.7 **Four day rule**

If a child is not paid (apart from expenses), a licence is not required for up to four

days of performances in any six month period. We have heard concerns that this exemption from licensing is sometimes being used to circumvent the law, by not paying the child for some performances so that they can continue to be used without a licence. We do not, however, have any hard evidence that this is happening, or the extent to which it may be happening.

- 6.8 Broadcast content is covered by the statutory Ofcom Broadcasting Code, regardless of the four day rule. For other types of performance, we are concerned that if we remove this rule or reduce the number of days before a licence is required this would increase licensing applications or could reduce the opportunities for children to take part. We do not plan to remove this exemption, or to reduce the number of days it applies to, as we have not seen evidence to demonstrate this would be of benefit, nor that any theoretical benefit would outweigh the additional costs of such a change.

6.9 **Participation in paid sport**

We want to increase the opportunities for children to take part in sport. Children who have sporting talent may need specialist support to develop that, and to take up appropriate professional opportunities. Arrangements must be made to ensure the safety and wellbeing of children who take part in paid sport, and to develop and support their talent.

- 6.10 The national governing bodies of all sports recognised by Sport England are required to adopt the Standards for Safeguarding and Protecting Children in Sport set out by the Child Protection in Sport Unit. The governing bodies will have expertise about the particular risks involved in their sport, particularly at the professional level. They are best placed to ensure that necessary and appropriate arrangements are made to safeguard children aged 13 and above who are paid to take part in a recognised sport, and that talent is nurtured.

Consultation questions

4. Do you think we should keep the four day rule, reduce the amount of days in the rule, or scrap the rule?

5. If you think the rule should be reduced rather than scrapped, please say how many days you think should be allowed before a licence is required.

6. Do you think responsibility for safeguarding in sport should sit with sports governing bodies, local authorities, or elsewhere? Please give your reasons.

7. How do you think local authorities can ensure a consistent approach across the country to deciding which activities require a licence, and which

should be exempt?

8. Are there other activities or circumstances which should be exempt from licensing?

7 Changes to licensing

7.1 The licence application requires a great deal of detail about the child, the proposed activity, the person who will care for the child during it and, depending

on the circumstances, may also need supporting information from the child's school and GP. There are strict requirements about the age at which children can be licensed to take part in some activities, the number of days they can be involved and the times they can attend. The local authority licensing officer has to ensure that all the requirements are met in order to then issue a licence for the child to take part.

- 7.2 There are some exceptions to the licensing law, designed to ease the requirements for amateur groups, but the industry and local authorities agree that the current legislation is too complicated, and not flexible enough to reflect the ways in which children may perform today. The proposals in this section set out the changes we intend to make to modernise the licence requirements.

7.3 **Application process**

We want to rebalance the licensing system so that local authorities can spend less time on administration and more on making sensible judgements about safeguarding. When a licence application is made, the producer will be required to show they have carried out a realistic risk assessment based on their knowledge of the proposed performing environment, consideration of the role and requirements and the age and vulnerability of the child. This means that applicants will need to focus on important safeguarding issues at the early performance planning stage, rather than having to consider and make changes to their plans after they have put in a licence application.

- 7.4 We propose to set out a standard licence application form in regulations. We will also require that a risk assessment be completed as part of the application process, but we do not intend to prescribe in regulations the exact format of the risk assessment. Risks will vary according to the activity planned and the child involved, so we are proposing a common sense approach where applicants consider what could happen or go wrong, what factors have been considered and how they can minimise or mitigate the risks. Local authorities would then conduct inspections based on the risk assessments submitted as part of the licence application.

- 7.5 We anticipate that local authorities will be able to process licence applications more quickly, with low risk applications being processed routinely. This will free up local authority licensing officers to focus their time examining how producers of medium and high risk productions are proposing to safeguard the children involved, based on the risks they have identified. Inspections and enforcement can then be targeted where they are most needed.

7.6 **Artistic independence**

Broadcasters are bound, under Ofcom's robust Broadcasting Code, to take due

care to protect the interests of any participants aged under eighteen, which covers children participating in all forms of broadcast programming. In line with the Ofcom Code, we propose that the licensing process should include consideration of the post-broadcast/post performance impact on children in all activities. This should be considered in the producers risk assessment, which will be part of the licence application.

- 7.7 Local authorities need to think about what is appropriate for a child to be involved in when they are considering granting a licence. However, freedom of expression and artistic freedom must be properly recognised. Broadcasters have expressed concern that sometimes the local authority view on what material is appropriate unduly compromises their editorial independence. The challenge is to get the balance right between artistic independence and the appropriateness of the performance for the child involved.
- 7.8 The key issue is that it is not, and should not be, the responsibility of the local authority to make a moral or artistic judgement. Their role in licensing is to ensure the safety and wellbeing of children. This is not a distinction that is easily written into legislation; common sense must be exercised. It seems reasonable that local authorities should receive a synopsis or brief description of the production, role or activity. The licence application should include the risk assessment carried out by the producer, including their assessment of the child's suitability to take part in the activity, and potential risks to them following that participation (not just during it).
- 7.9 If a local authority has concerns about the activity proposed, or the resilience of the child to undertake it, they should consider the views of the parent. Parents and guardians are responsible for ensuring that the activities their child is involved in are appropriate. They are best placed to ensure their child's emotional and moral wellbeing is not at risk. If they are fully informed of what is involved and supportive of their child's participation, the presumption should be in favour of licensing. But the decision to issue a licence, or not, is ultimately one for the local authority to make, based on the application and their local knowledge, and their responsibility for the safety of the child.

7.10 **Parental consent**

The consent of a parent or guardian must be provided before a licence can be granted.

7.11 **Child's consent**

A child's participation in any performance activity must always be consensual. The Ofcom guidance recommends regular checks to ensure the child continues to be willing to participate; we suggest this is good practice which producers may wish to adopt for all kinds of performance activity.

7.12 **Medical certificates**

Currently, in the majority of cases¹⁵ a medical examination is required before a licence can be granted. Some parents have told us the cost of obtaining a certificate from the child's GP can be in the region of £150. All of the licensing officers that we have spoken to tell us that they think the requirement for a certificate unnecessary, and the cost can disadvantage children from lower income households. We think we should look to parents to complete a declaration of fitness as part of the licence application. The declaration should take various factors into account, for example if the performance is overseas it should cover whether the child has had the appropriate vaccinations. We intend to replace the medical examination requirement with this declaration, but local authorities would retain the right to request a medical examination if they consider this necessary.

¹⁵ Regulation 8 of the Child (Performances) Regulations 1968

7.13 **Dates of performance**

Licences currently have to state the dates on which the performance will take place. We think there needs to be more flexibility, as particularly with filming, it isn't always possible for broadcasters to give definite time frames. We want to change this requirement so that the licences state the number of days rather than specific dates of licensed performances.

7.14 **Nature of performances over a day**

Regulations currently limit the nature of daily performances a child may take part in. We do not think there is any reason why a child should not take part, say, in modelling in the morning and a ballet performance in the afternoon, as long as overall the limit on working hours in that period is not exceeded.

7.15 **Aligning and simplifying hours rules**

The regulations covering the hours a child can perform and attend are currently split up according to whether the performance is broadcast or recorded, or in the theatre, or elsewhere. We do not think there are any good reasons to have different rules for different types of performance, so propose simpler rules that will be the same for all activities. These include paid modelling for which a licence is required. We propose that the limits on the hours a child can perform and the requirements for breaks and time off should also apply to performances for which a licence is not required.

7.16 We want to continue to differentiate the maximum hours a child can take part in a

day, and the number of breaks they need, according to their age. But within this overall limit, we see no good reason to differentiate between types of activity and the earliest and latest times those aged over five can be involved. In the table below we are suggesting simplified rules for hours of attendance and performance, and the breaks that a child must have, based on their age.

Age of child	Maximum duration of attendance and performance	Latest and earliest hours of attendance	Breaks
11-16	Attend - 9.5 hours Perform - 5 hours	7am to 11pm	When present... 2 breaks in 4 hours (1 for food) 3 breaks in 8 hours (2 for food) When performing... A break each hour
5-10	Attend - 8 hours Perform - 3 hours	7am to 11pm	When present... 2 breaks in 4 hours (1 for food) 3 breaks in 8 hours (2 for food) When performing... A break each 45 minutes
0-4	Attend - 5 hours Perform - 2 hours	8am to 10pm	A break every 30 minutes
All ages	Should not attend less than 12 hours after the end of the last performance or rehearsal; Should not perform for more than 5 consecutive days and should have a 2 day break in each 7 day period; If a child performs on the maximum number of days for eight weeks, then the child must then have two weeks without any kind of work.		

7.17 As now, we propose that local authorities may permit a child to take part in a performance after the last permitted hour. But we intend to increase this flexibility and remove the condition that such performances must always take place out of

doors. To exercise this flexibility and approve performances outside the permitted hour, the local authority would want to be satisfied that there is a good reason why the performance should take place at night, assurance that the child will not be overworked, and that their education will not suffer as a consequence.

- 7.18 In all circumstances, in order to prevent a child from getting over-tired, we propose maximum gaps between days and weeks of performance as set out in the table above. Rehearsals during the period between the first and last performance are included in the requirements for hours of performance, attendance and need for breaks.

Consultation questions

9. Do the hours we have proposed seem reasonable? If you have concerns what do you think should be changed?

10. Do you think that licences should continue to specify dates of performance, or do you think that some flexibility in dates is appropriate?

11. Should the producer be required to conduct a risk assessment as part of the application? If so, what factors should be included?

8 Increasing opportunities for children

- 8.1 Taking part in a performance can benefit children in many ways. They may learn from the experience and develop skills and confidence. Some may discover they

have an exceptional talent, or find they have interest and ability in the support or technical roles. Many will simply find it a fun and exciting adventure. Children should not be denied access to these experiences because of red tape. Keeping children safe is a priority, but paperwork does not protect them from harm; responsible adults do.

8.2 **Extending the Body of Persons approval for paid activities**

There is currently an exemption from the requirement for individual licences for specific events where children are not paid. This is known as a 'Body of Persons' approval. We do not think that individual licences should be required in every circumstance. We propose to extend the current Body of Persons approval to include approval for specific events where children aged thirteen or over are being paid.

8.3 We will continue to have an individual licensing process for children aged thirteen and under who are paid to perform. We believe that there are different levels of risk when younger children are involved, and the licensing arrangements should reflect that.

8.4 We do not intend to prescribe the decision making process a local authority must go through when considering whether a Body of Persons Approval should be granted. The starting point should be a dialogue between a local authority and the production company on how best to ensure that effective but proportionate safeguards are in place to ensure the safety and wellbeing of the children involved.

8.5 An approval would only apply to a single specific event; it would not apply to any other activities arranged by an organisation. For example, if an event was to be held annually, an approval would be required each year. We also propose that the Secretary of State should have no involvement in issuing such approvals.

8.6 **A streamlined registration scheme for amateur groups**

There are different types of amateur groups, from informal community and youth groups to those that own their own theatres, with potential to create a wide variety of opportunities to involve children in performance activities. Some groups will involve families; others may be specifically aimed at young people.

8.7 All organisations involving children in performances have a responsibility to ensure that appropriate safeguards are in place, whether licences are required or not. But the requirement for individual licences places a significant burden on amateur groups, where volunteers have to bear the cost and weight of the administration involved.

- 8.8 We propose to make it easier for amateur groups to put on performances involving children by replacing the current licensing and approval systems with a streamlined registration scheme. This would involve a process where the local authority could assess the organisation's policies and practices and if satisfied could approve or register the organisation for a period of two years. Organisations registered in this way could put on performances involving children without the need to apply for further licences, but would be required to adhere to the conditions of their initial registration.
- 8.9 We propose that the Secretary of State should have no involvement in registering amateur groups under the proposed Amateur Performance Registration scheme.
- 8.10 Where producers are putting on productions in a number of locations they should only need to be registered with their 'home' local authority, but all relevant local authorities where they will be putting on productions should be informed of planned productions involving children in their area, and may liaise with the registering authority to address any concerns. Only the 'home' local authority will be able to revoke a licence.

8.11 **Removing age restrictions**

The 1963 Act states that a licence cannot be granted to children under the age of 14 except where the child is acting, dancing in a ballet and the part can only be taken by a child of that age or where the performance is a musical or consists only of opera and ballet¹⁶. We think these restrictions prevent children from taking part in opportunities and we propose to remove them.

¹⁶ Section 38 of the 1963 Act

- 8.12 Instead, we expect producers to be well informed about the risks to a child's emotional as well as physical wellbeing, and to take account of the age and individual vulnerability of a child when considering involving them in performances. Child experts can play a vital role in advising production companies on supporting the psychological welfare of child performers, and should be engaged where a risk assessment suggests this could be an issue. In considering a licence application, a local authority may want to be satisfied that the production company has suitable plans in place to address such risks.

8.13 **Troupe work**

Troupe work is work which does not require a child to portray a child part, for example, performing in a chorus. There is no restriction on a child over thirteen being licensed for such work if he continues to live at home, or where he normally

lives. But there are some restrictions if he would be required to live away from where he normally lives. The child may only be licensed for a single residential engagement at one time, and a licence for a further residential engagement may not be granted within three months of the last performance under a previous licence for the child to work away from home¹⁷.

¹⁷Regulation 7 of the Children (Performances) Regulations 1999 (as amended)

8.14 We propose to remove all such restrictions in the legislation, as it is a matter for the child and their parent to agree, and for the licensing authority to exercise their judgement in deciding the licence conditions necessary to support the best interests of the child. The authority will want assurance that suitable arrangements are in place to ensure their safety, wellbeing, and appropriate education. If those assurances are met, we would expect a local authority decision would accord with the wishes of the child and his parents.

8.15 **Equality of opportunity**

We want to ensure that the legislation governing children's involvement in performance supports equality of opportunity. We are seeking views through this consultation on whether the proposals set out are likely to benefit or have negative impact on the performance opportunities for any particular groups of children.

Consultation questions

12. Do you think that local authorities should be able to give a single approval for large events where children are paid to take part?

13. Do you agree with the proposal to register amateur organisations rather than licence individual children?

14. Do you agree with the proposal to lift restrictions to licensing children under the age of fourteen?

15. Do you agree with the proposals to lift restrictions on troupe work?

16. Please indicate if you think the proposals would have a positive or negative effect on the following groups of children:

a. boys

b. girls

c. those with a physical or learning disability

d. children from different economic, social, ethnic or religious communities

17. Is there anything you think we should do to improve equality of opportunity for child performers?

9 Chaperones

9.1 **Role and purpose**

Chaperones (referred to as 'matrons' in the legislation) have an important role in looking after child performers. They are required to have care of a child at all times

during a production, "*with a view to securing his health, comfort, kind treatment and moral welfare*"¹⁸. Some ex-child performers have said it is helpful to have a trusted adult outside of the production team, to turn to and confide in. The chaperone is an advocate for the child, and should be able to challenge a producer or a director where necessary. They need to ensure a child is not asked to do what is beyond them physically or emotionally, to ensure the child has sufficient rest, and generally safeguard their wellbeing throughout the performance activity. This role has not changed since the 1960s, but we think it remains as important today as it was then. We may want to update the description, but we do not want to change the fundamental remit.

¹⁸Regulation 12 of the Children (Performances) Regulations 1968 (as amended)

9.2 **Chaperones in amateur productions**

The legislation requires a production company to appoint a chaperone wherever a child of compulsory school age is to take part in a performance activity that requires a licence. Chaperones must be approved by the licensing authority. The approval process varies across different local authorities; some require the chaperone to undertake training in child protection, others will approve a chaperone on the basis of a written application and references.

9.3 We propose that productions involving children should have chaperones but it should not be necessary for the local authority to approve chaperones in the amateur sector. We think that producers in the amateur sector should take responsibility for selecting chaperones and satisfying themselves that they are suitable for the role, with local authorities inspecting as necessary.

9.4 While local authorities would no longer approve or register chaperones for the amateur sector, we would encourage them to share their experience of good practice, in particular on chaperone training. Sarah Thane's review found that the amateur sector expressed interest in promoting training for chaperones. We do not intend to issue central guidance on this matter, but we would encourage the sector to develop and share good practice, including wider use of online training packs.

9.5 **Chaperones in the professional sector**

We propose that local authorities should continue to register and approve chaperones working in the professional sector, but retain the exemption where a parent chaperones their own child only. Although the purpose of the role is the same, chaperones in the professional sector may need to exercise greater challenge to producers and directors, and need the skills to be strong advocates

for the interests of the child, which should override editorial or commercial concerns. The requirement for local authority registration and approval should be a way of ensuring the chaperone has the necessary skills to do this, and could help offset the potential for conflicts of interest in this aspect of the role. We also propose that the licensing authority must send a copy of the licence to the named chaperone, so that they are aware of the conditions under which it was granted.

9.6 Number of children per chaperone

The regulations say that a chaperone must supervise no more than 12 children. The consensus from the entertainment industry during Sarah Thane's review was that this is too many children for one chaperone to care for. We are seeking views on whether we should reduce this ratio to a maximum of 10 children to one chaperone. We understand that it is rare that a chaperone is required to look after the maximum number of children, and therefore would not expect this change to result in significant costs for the industry.

9.7 Chaperones and tutoring

If the chaperone is also a tutor of a child, the legislation sets out that he should not be in charge of more than two other children at the same time. We propose to remove this restriction. This is not because we think the ratio should necessarily be higher. In some circumstances, for example where a student is also preparing to sit 'A' levels, or has additional educational needs, a ratio of one to one may be more appropriate. It is important that a child's education should not suffer as a result of taking part in a performance activity. Ensuring this is a responsibility for parents and production companies, with support as appropriate from schools and local authorities. Decisions should be informed by the needs of the individual child, rather than on a staffing ratio prescribed in legislation.

Consultation questions

18. Do you agree that a chaperone should be required for children taking part in all performance settings? If you disagree, please explain why.

19. Do you think that the proposal that the amateur sector approve their own chaperones provides sufficient safeguards for children?

20. Do you think that the maximum number of children a chaperone can look after at any one time should be reduced?

10 Education

- 10.1 The legislation sets out that a local authority must not grant a licence for a child to take part in a performance or activity unless they are satisfied that the child's education will not suffer.¹⁹
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¹⁹ Section 37(4) of the 1963 Act

10.2 This principle should continue to underpin licensing decisions. Licensing officers will need to take a broad and informed view about the educational priorities for the child. Participation itself can offer valuable learning and skills development. A child who has talent should not be denied the opportunity of a lifetime for less than a serious and significant risk of detriment to their education and future prospects. Decisions should be prejudiced in favour of allowing children to take up opportunities.

10.3 **Absence from school**

The local authority should liaise with the child's school wherever the application indicates the performance will take place during the school term or will require absence. If a child is to miss more than one day of schooling in order to perform, then they need to be provided with suitable alternative tuition.

10.4 The decision to issue a licence rests with the local authority in the area where the child resides. They should consult with the school or Academy and with parents. Parental consent is a requirement.

10.5 **Tutoring child performers**

If arrangements for private tuition are proposed, then the legislation sets out detailed requirements about the times of day and days of the week when it should take place. As the 2010 policy review reported, parents, licensing officers and others have expressed concern about the lack of flexibility on timing and the quality of the learning experience when children are tutored out of school.

10.6 We agree that more flexibility would be helpful in the arrangement of children's education, and propose that the new framework will allow greater flexibility over the timings, while maintaining the requirement of a total of 15 hours tuition per week. We propose for instance earliest start and finish times of 8.30 am and 4.30pm and flexibility for a child to be educated on up to 5 days, and these may include Saturdays or Sundays.

10.7 We do not propose to legislate for the qualifications required of tutors, or for the curriculum to be followed. We recommend, as a matter of good practice, that tutors should be appropriately qualified to teach, and that contact be made between the tutor and the school to promote the relevance and quality of the tuition to be provided. The local authority will want assurance on these points as part of a licence application. But the detailed arrangements are matters for parents, teachers and producers to determine, not for the state to prescribe.

- 10.8 Production companies and tutors should consider and seek to exploit opportunities for the child's participation in a performance to add to and complement their educational experience. This may be an area that local authority networks, working with the industry, would want to develop and include in any good practice guidance they may produce.

Consultation questions

21. Do you agree with the proposal to allow greater flexibility in the hours of tuition?

22. Do you think that tuition should continue to be required (as now) on the second day of absence from school?

11 Working abroad

- 11.1 Producers who make applications for taking children abroad tell us that the process is complicated and bureaucratic; this is echoed by the small number of magistrates' courts that handle the applications. Current practice in the industry and courts means that almost all applications from across the country are handled primarily by one court.

11.2 The process by which the magistrate should consider the application and the powers they have are set out in the legislation from 1963. At that time it was unlikely that there were many children taken abroad for the purposes of a performance and the process reflects that, involving a significant degree of caution and scrutiny. Recent estimates are that 300-500 licences are now issued each year for children performing abroad. There are many more opportunities now for children to work abroad as well as routine opportunities to travel, for example through school. The requirements on applicants and magistrates seem excessive in this context.

11.3 **Local responsibility**

We propose that local authorities should grant licenses for children to perform abroad, rather than magistrates. Local authorities are responsible for other aspects of child performance licensing. This is appropriate as they are able to make direct and local enquiries, for example to take into account the views of the child's school, or other performance licences granted to that child. Currently, magistrates do not have to make any reference to the local authority view of the application or even alert them to the licence that they have issued, or application they have refused.

11.4 Along with removing the function of issuing licenses from magistrates, we propose to remove the requirement that applications be first presented to the chief police officer, and to remove the requirement for consular notification.

Consultation questions

23. Do you agree that local authorities rather than magistrates should be responsible for licensing decisions for children to perform abroad?

24. Do you think that any other agencies should be involved in decisions to licence children to perform abroad?

25. Performances that take place abroad are not subject to inspection, which would not be practical. Are there any other measures you think would improve safeguards for children who take part in performances, including professional modelling, abroad?

12 Reducing bureaucracy

12.1 The government view is that local authorities should remain the point at which licenses are issued. They are best placed to ensure the safeguarding, protection and well being of children in their area. But the system for licensing and approving must be made more effective if it is to ensure that children are not disadvantaged from taking part in opportunities, and so that local authority licensing officers can

focus their attention on ensuring they are properly protected when they do so.

12.2 **Consistent approach to licensing decisions**

Local authorities can refuse to grant a licence if the production company does not let them know of their requirement at least 21 days before it is required. Sarah Thane's review recommended that the application process be streamlined, with a goal of 10 working days turnaround for licence applications. This could be easier to achieve through more consistent use of electronic databases, standard application forms made available online, guidance and frequently asked questions developed by and used across all local authorities, and use of email rather than paper post. In some areas, it may be necessary to make arrangements to cover normal office hours and holidays, as performance activities and licence requests are not limited to term time.

12.3 There is a balance to be struck between quicker turnaround of licences or approvals, and the need for the local authority to have flexibility to require further investigation, where they lack information or need clarification about the risks that may be involved or how they will be managed by the company. We intend to retain the requirement that a company should give notice of their requirement, but propose to reduce it from 21 to 10 working days notice. For straightforward applications, the expectation is that the local authority would reach a decision within that timeframe. In some circumstances a local authority may not have all the information they feel they need to make an approval, or may have identified risks that must be addressed. The onus must be on the applicant to provide sufficient information, and a risk assessment, so that the licensing officer can make an informed decision.

12.4 We believe that this reform of the licensing process would also benefit licence applications for paid modelling where the evidence suggests that the need is for speedier processing of licences.

12.5 We expect all local authorities to publish (on their websites) details of how to apply for a child performance licence and contact details of who to discuss an application with. It should also be clear what the process is within that local authority for making complaints.

12.6 **Place of performance and place of rehearsal**

The current legislation sets out that a child shall not take part in a performance, rehearsal or activity for which a licence is required unless the place where they are to do this has been approved by the local authority. It sets out the aspects of a venue that the local authority might want to be satisfied about, such as toilets, and protection against inclement weather. These are basic requirements that we would expect any producer or organiser to provide, whether the activity requires a

licence or not. A local authority may want to be satisfied that the venue is suitable. But it should not be necessary to legislate for basic needs and common sense and we propose to remove this level of prescription from the regulations.

12.7 **Approval of lodgings**

We propose to remove the current requirement that a local authority must approve a place of lodging when the child is staying away from home. The local authority should be satisfied that a child away from home will be provided with suitable accommodation, and assurance of that should be part of the licence approval process. In the interests of proportionality however, it will not be a requirement for a local authority to inspect or approve all arrangements.

12.8 **Children's earnings**

In most cases child performers do not earn large sums of money, but in some cases their earnings may be substantial. Under current regulations, the local authority stipulates how a proportion of the child's earnings should be saved. We propose to abolish this requirement because this is a matter for the child and their parents to decide and the state should not interfere unnecessarily in family affairs.

12.9 **Streamline record keeping**

The legislation sets out the records that must be kept by the person to whom the licence was granted²⁰. Most of these details do not seem necessary, for example the time of arrival, departure, rest and meal intervals, and lessons, are currently required to be recorded on a daily basis. The licence and any specific conditions that have been agreed by the local authority will set out what the minimum requirements are, and a copy of that will be held by the chaperone. Therefore, we propose to remove these detailed requirements from the legislation. We will retain, however, the requirement to record details of any illness, injury or incident of concern involving the child that may occur at the place of performance.

²⁰ regulation 5 and Schedule 3 to the Children (Performances) Regulations 1968 (S.I.1968/1728) made under section 39(5) of the Children and Young Persons Act 1963.

12.10 **Powers of entry**

Provisions in the 1933 Act allow authorised officers to enter any place where a child is believed to be taking part in, or trained for, a performance. The Government is trying to reduce and rationalise the numbers of powers of entry and

therefore we need to consider whether they are necessary in the context of child performance. We could repeal the powers of entry in the 1933 Act and instead make it a condition of the licence, or Body of Persons Approval or Amateur Performance Registration that the local authority licensing officer can enter the premises where they have reason to be concerned for a child's safety or wellbeing. We are seeking evidence through this consultation whether such a condition would be an effective replacement enforcement mechanism.

- 12.11 The powers of entry law applies to child employment as well. We will be consulting on child employment laws later this year and will take views you have into account once both the performance and employment consultations are complete.

Consultation questions

26. Do you agree that the notice period for a requirement for a licence should be reduced from 21 days to ten?

27. Are there other ways in which you think the process could be made quicker?

28. Do you agree with the proposals to remove local authority role and powers to:

- a) approve place
- b) approve lodgings;
- c) stipulate how a child's earnings should be saved?

29. Do you agree we should streamline the requirements to keep records?

30. Do you think we should replace the power of entry with a condition in the licence or approval? (please consider the likely effect if the power was not available, and the impact on the ability of local authorities to enforce the relevant legislation for keeping children safe).

31. If you have you experience of these powers being used, did you think that was appropriate or necessary?

13 Proportionate penalties

- 13.1 Parents and those engaging children to participate in activities that require a licence are responsible for ensuring one is obtained from the local authority in the area in which the child resides.
- 13.2 The Department for Education is responsible for the policy and legislation, but does not have a role in local inspection or enforcement. Local authorities are best

placed to ensure that companies and agents acting in their area are aware of and comply with the child performance requirements. Where they consider it necessary or appropriate, the local authority (or the police) could initiate criminal proceedings against an individual for failing to comply with the licensing provisions.

13.3 **Inspection and enforcement**

Overall the proposals that we are consulting on are deregulatory. We intend to remove legislation and bureaucracy that is not necessary because it serves no useful purpose, or because there may be a better way of ensuring arrangements are made to protect children from harm. The framework we propose will be simpler and easier to understand and comply with.

- 13.4 We aim to replace excessive paperwork with the flexibility for local authority licensing officers to focus on inspection and enforcement. This will enable them to better target inspections, based on local intelligence and assessment of risk. Enforcement does not need to rely on inspection only; licensing officers might want to consider using feedback questionnaires from performers, chaperones and parents.

13.5 **Fines for non-compliance**

Where a body has not complied with the requirements to seek a licence or approval where the law requires them to do so, or with the conditions within a licence, this is an offence and there are penalties should they be convicted. The penalties are set out in legislation²¹ and range from small fines to prison sentences for up to a maximum of two years.

²¹ Section 40 of the 1963 Act and section 23, 26 and 28 of the 1933 Act

- 13.6 We are considering whether to change the penalties for failing to comply with licensing requirements. Short prison sentences disrupt the lives of those imprisoned, their families and their employment prospects. Through this consultation we are seeking evidence about the use and effectiveness of penalties, and views on whether an increase to the level of fine that could be imposed may be more appropriate and effective as a deterrent.

Consultation questions

32. What do you think are the main reasons behind non-compliance with the licensing requirements?

33. Have you experience or evidence that may help us assess the case for changing the penalties?

14 How to Respond

14.1 Consultation responses can be completed online at www.education.gov.uk/consultations by emailing childperformance.consultation@education.gsi.gov.uk or by downloading a response form which should be completed and sent to:

Child Performance Consultation, Targeted Safeguarding Policy Unit, Department

for Education, Sanctuary Buildings, Level 1, Great Smith Street, London SW1P 3BT.

If responding from Wales the consultation can be found here:

<http://wales.gov.uk/consultations/education/safeguardingchildren/?lang=>

<http://wales.gov.uk/consultations/education/safeguardingchildren/?lang=>

Responses can be sent by email to:

CSD3SafeguardingChildren@wales.gsi.gov.uk, or post to: Elaine Hepple, Support for Learners Division, Department for Education and Skills, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

The deadline for response is 3 August 2012. The consultation period is slightly shorter than the standard 12 weeks. From the policy review that reported in 2010, and the ongoing work with interested parties including workshops during the period, we believe the slightly shorter period will not impede the opportunity for those with an interest to respond.

15 Additional Copies

- 15.1 Additional copies are available electronically and can be downloaded from the Department for Education e-consultation website at:
<http://www.education.gov.uk/consultations>

16 Plans for making results public

- 16.1 The report from this consultation and government response will be published on the Department for Education and Welsh Government websites in autumn 2012.