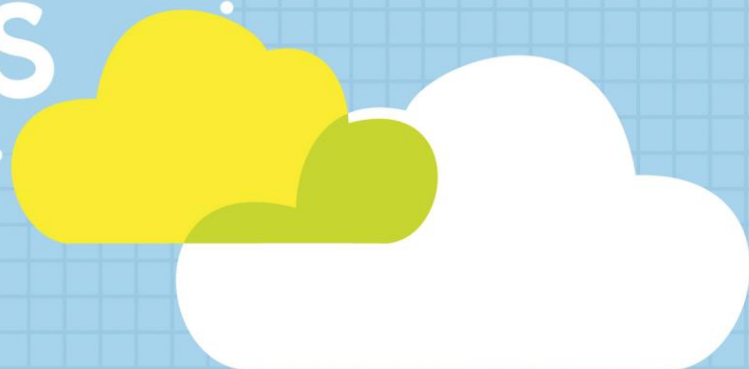
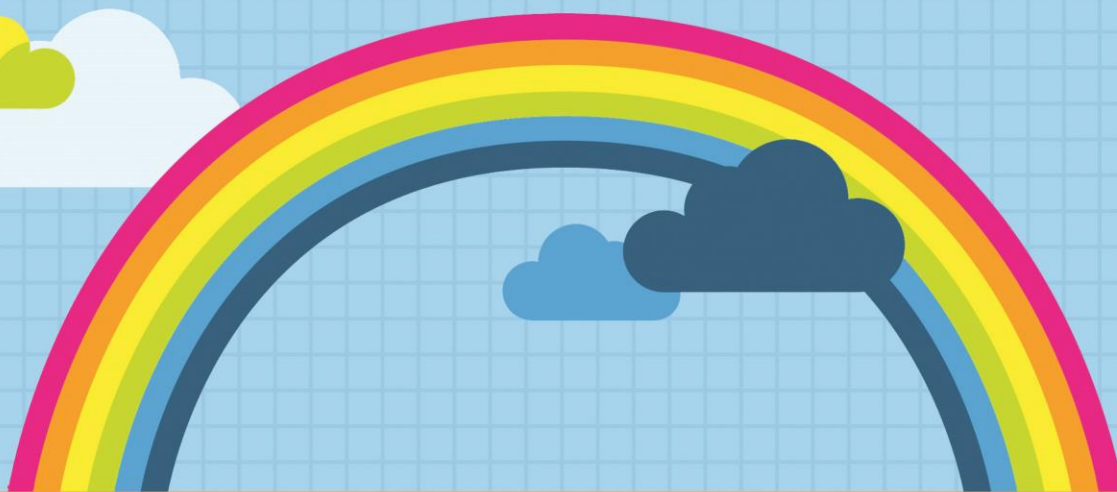


Getting it right  
**FOR YOUNG  
PERFORMERS**



Guidance on the revised arrangements  
for ensuring the wellbeing of children  
involved in performances and licensed  
activities



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# GETTING IT RIGHT FOR YOUNG PERFORMERS

## 1. Introduction

### Who is this advice for?

1.1 This guidance is to assist local authorities and those individuals or bodies who are required to organise performances or licensed sporting or modelling activities (other activities) involving children and young people. The guidance provides background and information with reference to the licensing system which provides for the protection and wellbeing of young performers and participants in activities. In particular, the guidance is for:

- local authorities (**licensing authorities**)
- those responsible for arranging professional or amateur performances or engaging a child or young person in a licensed activity (**licence holders**)
- **chaperones** – who safeguard children and young people involved in performances and other activities.
- **private tutors**
- **schools**

### Promoting children's rights & wellbeing

1.2. The Scottish Government is committed to making Scotland the best place in the world to grow up. That means placing the rights and wellbeing of our children at the centre of everything that we do. Our understanding of children's wellbeing builds on the rights set out in the United Nations Convention on the Rights of the Child (UNCRC), an international treaty which sets out the guarantees that each and every child must have if they are to enjoy a healthy and happy life<sup>1</sup>.

1.3. While the UNCRC describes the guarantees that every child can expect, the term 'wellbeing' describes the positive outcomes that children are likely to experience as a result of those guarantees being delivered. The Children and Young People (Scotland) Act 2014 requires public bodies to plan and deliver services which best safeguard, support and promote the wellbeing of children in the area concerned. It is in this context that the licensing arrangements for young performers should be implemented.

### Purpose of the licensing system

1.4. It is undeniable that the opportunity to perform, whether on stage or screen, or to take part in sporting or modelling activities (other activities) can benefit significantly the wellbeing of children and young people. It is, therefore, considered that participation in performances or other activities can help children to be healthier, more active and included, respected, responsible individuals who are better placed

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<sup>1</sup> UN General Assembly (1989), UN Convention on the Rights of the Child.

to achieve, both now and in the future. It is for this reason that we are keen to open up as many opportunities as possible for our young people to participate in the arts or licensable activities.

1.5. However, there is potential for children involved in performances and other activities to be exposed to risks to their immediate safety and longer term wellbeing as a direct consequence of their participation. The Children (Performances and Activities)(Scotland) Regulations 2014 (the 2014 Regulations), which came into force on 20 February 2015, therefore, set out the modernised arrangements for the safeguarding of children involved in all performances and licensed activities.

## **Current legislation**

1.6. The relevant primary legislation is Part II of the Children & Young Persons Act 1963 (1963 Act) which provides for the current licensing system for child performances and other activities. Also, section 25 of the Children and Young Persons Act 1933 (1933 Act) makes provision for licences to perform or take part in activities abroad.

1.7. The relevant secondary legislation is the Children (Performances and Activities) (Scotland) Regulations 2014 (2014 Regulations) which came into force on 20 February 2015. Unless otherwise stated, all legal references cited in this guidance relate to the 2014 Regulations. The 2014 Regulations revoked and replace the Children (Performances) Regulations 1968, as they applied to Scotland.

1.8. Also relevant is section 94 of the Children and Young People (Scotland) Act 2014, which was commenced on 1 August 2014, which repeals previous restrictions on the types of performances in which children under 14 could participate.<sup>2</sup>

1.9. This guidance, which supersedes all advice issued previously in relation to child performances and other activities, is non-statutory and, therefore, is not a substitute for reference to the above stated Acts and Regulations. The guidance should also be read alongside other sector-led examples of best practice. It is important to note that the guidance should not be taken as providing an authoritative interpretation of the Acts or regulations as that, ultimately, is a matter for the courts.

## **Role of Ofcom**

1.10. Television and radio broadcasters have an independent statutory regulator Ofcom. Broadcasters are required to comply with rules set out in the Ofcom Broadcasting Code. This includes rules to protect children who participate in programmes. The rules apply irrespective of whether a licence is required for their participation. Ofcom has also published extensive guidance for broadcasters about the application of these rules and details of precedent cases. Links to the Ofcom Broadcasting Code and accompanying guidance are provided below. Any broadcaster with queries about the application of the rules or guidance should contact Ofcom by emailing: [OfcomStandardsTeam@ofcom.org.uk](mailto:OfcomStandardsTeam@ofcom.org.uk).

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<sup>2</sup> Section 94 of the Children and Young People (Scotland) Act 2014 repealed section 38 of the Children & Young Persons Act in so far as this extended to Scotland.

## **Relevant publications and guidance**

Ofcom Broadcasting Code -

<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>

Section from Ofcom on protecting the under 18s -

<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/protecting-under-18s/>

Guidance from Ofcom on protecting the under 18s -

<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section1.pdf>

## 2. Obtaining a licence

2.1. The licensing system applies to all children and young people under school leaving age. In Scotland, children can leave school on 31 May if their 16<sup>th</sup> birthday falls between 1 March and 30 September of that year. Those who turn 16 between 1 October and the last day of February can leave at the start of the Christmas holidays of that particular school year.

2.2. Although the licensing system does not provide for children who are over the school leaving age but who are under 18 years, those responsible for organising performances and other activities should be mindful that these young people continue to have rights under the UNCRC. Similarly, under provisions in the Children and Young People (Scotland) Act 2014, a Named Person will continue to support their wellbeing until they are 18 years.

### When is a licence required?

2.3. Subject to the exceptions listed in paragraph 2.5 below, under section 37 of the 1963 Act, a licence must be obtained before a child or young person can take part in the following performances and activities within Scotland, England or Wales:

- All performances for which a charge is made, whether for admission or otherwise
- All performances held in licensed premises, for example in a hotel, pub or theatre
- All performances which are broadcast live, for example a television or radio broadcast or internet screening
- All performances recorded (by whatever means) with a view to its use in a broadcast or such service or in a film intended for public exhibition.<sup>3</sup> For example, a live stage performance recorded for a cinema screening, a feature film, a video or sound recording of a performance on a website (Note that this does not extend to user generated content, for example, where a young person or a family record themselves and share it on a website or social media)
- Modelling or sporting activities where payment, other than for expenses, is made to the child or someone else in respect of the child's participation

2.4. It should be noted that:

- A performance licence may be required whether or not the child is paid
- Amateur groups, musical performances, student productions or films are not exempt from the requirements
- Licensing requirements apply only to children under the limit of compulsory school age (as discussed at paragraph 2.1 above)

### Performances which do not require a licence

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<sup>3</sup> This may include the recording of performances for use on internet sites.

2.5. However, in accordance with section 37(3) of the 1963 Act, a licence is not required in respect of the following:

- Auditions
- School productions (where 'school' is as defined in section 135(1) of the Education (Scotland) Act 1980)
- Performances for which Body of Persons Approval has been granted (see section 11).
- Performances that are exempted under section 37(3)(a) of the 1963 Act where:
  - no payment is being made to the child (other than to cover their expenses);
  - the child is not required to be absent from school; and
  - the child has not taken part in a licensable performance on more than 3 other days in the last 6 months. Once a child has performed on more than 4 days in a 6 month period then a licence is required for any further performances (known as the "4 day rule"). **The 4 day rule applies to performances only and does not provide for paid modelling or sporting activities.**

2.6. Although a licence is not required for performances that are exempted under section 37(3)(a) of the 1963 Act, those will still be subject to the conditions which apply to all performances set out in Part 5 of the 2014 Regulations. These are discussed further in Section 7 below.

2.7. It should be noted that it is a legal requirement to seek a licence where one is required and any person who causes or procures any child to do anything in contravention of the licensing requirement commits an offence and may be subject to a fine, imprisonment or both. (sections 37(1) and 40 of the 1963 Act).

## Who applies for a licence?

2.8. The person (**the applicant**) responsible for applying in writing for the license will be:

- a person responsible for arranging a professional or amateur performance; or
- someone engaging a child or young person in a licensed activity. (Regulation 4)

2.9. If a licence is granted by the licensing authority, the applicant will become the **licence holder** and will be responsible for ensuring its conditions are met. The licence holder should have responsibilities for arranging, organising and overseeing the performance or activity involving the child and for ensuring the protection or wellbeing of the child during the performance or activity.

## How to apply for a licence



2.10. The application for a licence should be made in writing and forwarded to the relevant licensing authority at least 21 days before the day on which the first performance or activity for which the licence is requested is due to take place. (regulation 4(1)) A licensing authority may refuse to grant a licence where this timescale has not been met. (Regulation 4(2))

2.11. Where the child to which the application relates is resident in Great Britain (Scotland, England or Wales) and the performance is to take place in Great Britain, an application must be submitted to the child's home licensing authority (local authority). (Section 37(1) of the 1963 Act)

2.12. Where a child is not resident in Great Britain, the application must be made to the licensing authority (local authority) in whose area the applicant, or one of the applicants for the licence, lives or has their place of business. (Section 37(1) of the 1963 Act) This includes all performances that take place in Scotland, England or Wales

2.13. The legislation does not specify where the application should be made if the applicant has no residence or place of business in Scotland. However, there is still a licence requirement. Best practice would suggest that, in these circumstances, the application would be made to the licensing authority in which the first performance or the activity is due to take place. (see sector led best practice).

2.14. Section 10 below describes how to apply for a licence to perform or take part in an activity abroad.

## **Application Form**

2.15. Applications for a licence should be made in writing to the relevant licensing authority using the standard form set out in Schedule 1 to the 2014 regulations. However, a similar form to the standard application form may also be used. (Regulation 4(1)(b))

2.16. The application form requires both the applicant and the parent or guardian of the child, to provide specified information (Schedule 1). Parents or guardians are expected to make reasonable endeavours to complete this section of the guidance. Whilst they may not have complete details, what information that they have must be fully disclosed. Applicants should inform the relevant licensing authority where any information is unavailable and the reasons why this information is not available. This should not, however, prevent a licensing authority from processing the application where good reasons are available as to the lack of that information.

2.17. In line with article 12 of the UNCRC, the child's parent or guardian should discuss the application with the child and listen to his or her views about this. The application form allows for the child or young person to sign the form, indicating their approval. Whilst the child's signature is not mandatory, it should be sought as a matter of best practice unless:

- The child is not sufficiently mature to understand what is being asked of them.
- The inclusion of a signature would compromise the performance in question. For example, where a performance requires an element of surprise on the part of the young person, it should not be required that the child signs the application form.

2.18. Where the child will be required to be absent from school in consequence of his or her participation in the performance or activity, the application should also be signed by the child's head teacher. (regulation 4(1)(d))

2.19. To allow the licence authority to have sufficient information in considering the request for a licence, the application must be accompanied by the documents listed in Schedule 1 to the 2014 Regulations including:

- A copy of the child's birth certificate or other satisfactory evidence of the child's age
- A completed risk assessment detailing any potential risks arising from the child's participation in the performance or activity and information on the steps which will be taken to mitigate those risks. **A suggested model for a risk assessment has been published alongside this guidance**
- A copy of the contract, draft contract or other documents containing particulars of the agreement regulating the child's appearance in the performances or regulating the activity for which the licence is requested

2.20. The application also requires information to be provided about the performance or activity and the arrangements for the education, chaperoning and accommodation of the child, as required, for the duration of the performance or activity (Schedule 1).

2.21. It should be noted that broadcasters regulated by Ofcom are required to maintain editorial control over their programming. That means that they must be independent of government or external influence, either official or commercial. This is why a licensing authority considering licence applications will not normally be given programme scripts. Information about Ofcom's rules on the protection of children who participate in television and radio programmes can be found in paragraph 1.10 above.

2.22. The application form must be signed by both the applicant and the parent or guardian of the child. (regulation 4(1)(d))

### **3. Consideration of a licensing request**

3.1. Applications should be submitted to the relevant licensing authority at least 21 days before the day on which the first performance or activity is due to take place. The licensing authority may refuse to grant a licence where the application is not received within this prescribed time scale. (Regulation 4(2) of the 2014 Regulations).

3.2. Although adoption of best practice by applicants and licensing authorities should help to speed up the application process, applicants should allow reasonable and realistic timescales for licensing authorities to assess applications and to satisfy themselves that appropriate arrangements to protect the safety and wellbeing of the child are in place, ahead of any business or operational considerations.

3.3. In keeping with section 37(4) of the 1963 Act, the Licensing Authority may only grant a licence in respect of a performance or activity where they are satisfied that:

- the child is fit to participate;
- proper provision has been made to secure his or her “health” and “kind treatment”; and
- the child’s education will not suffer as a consequence of the participation in the performance or activity.

3.4. When applying this test, licensing authorities should consider whether the child’s involvement in the performance or activity is likely to result in any additional risk to his or her wellbeing beyond that which they could expect to experience in the ordinary course of their daily life. This consideration should take account of the nature of the performance in relation to the individual child’s age, gender and needs. In doing so, licensing authorities should take into account any steps proposed by the organisation arranging the performance to mitigate potential risks.

#### **Power of Licensing Authority to obtain Additional Information**

3.5. Whilst it may be the case that the information included in the licence application, and associated risk assessment, is sufficient to allow the licensing authority to make a decision, as a matter of course the licensing authority should approach the child’s Named Person to request information regarding the child’s wellbeing which is relevant in the context of the licensing request.

3.6. In keeping with Part 4 of the Children and Young People (Scotland) Act 2014 (2014 Act), the information provided by the Named Person in this regard should be proportionate and targeted. It should be noted that, whilst the 2014 Act creates a duty to share information, it does so within a set of clear principles and boundaries, including those already set by the Data Protection Act 1998. Further information on the DPA can be found at: <https://ico.org.uk/for-organisations/guide-to-data-protection/>. Guidance on Part 4 of the 2014 Act will be published in due course.

3.7. The licensing authority has the power to request such further information as it considers necessary to enable it to be satisfied that it should grant a licence. In particular, it may request information from the following individuals: (regulation 5)

- The applicant
- The child
- The child's parent or guardian
- The child's head teacher
- The child's GP. This may occur where the child's parent or guardian has notified the licensing authority that the child has a medical condition which could impact on their ability to participate in the performance. Of course, this will not always be necessary
- The proposed chaperone
- The proposed private teacher

3.8. However, the licensing authority should seek only such additional information as required to enable it to determine the application in the best interests of the child. As stated in paragraph 2.21, broadcasters regulated by Ofcom are required to maintain editorial control over their programming and must be independent of government or external influence, either official or commercial.

3.9. Where the licensing authority requires to interview the child for which the application relates, the authority's established procedures for safeguarding and promoting the wellbeing of the child should be followed.

## **4. Licence**

4.1. The licence granted to the applicant by the licensing authority must take the form set out in Schedule 2 to the 2014 Regulations or a form which is similar to the prescribed form. It must state clearly the purpose of, and any conditions applying to the granting of, the licence. (Regulation 6)

4.2. The licensing authority is required to send a copy of the licence to the parent or guardian who signed the application form. (regulation 6(4)). In line with Article 12 of the UNCRC, and taking account of the age and maturity of the child, the licensing authority should also forward a copy of the licence to the child as appropriate.

4.3 Since the chaperone has responsibilities to safeguard, support and promote the wellbeing of the child at all times during the period for which the licence relates, the licence holder should ensure that the chaperone is informed of the terms of the licence, including any particular condition applied in the child's best interests. Similarly, the licence holder should also ensure that any private teacher is also made aware of the terms of the licence as appropriate.

4.4. Where the performance or activity is due to take place in the area of a host authority<sup>4</sup> other than the licensing authority, the latter should ensure that a copy of the application form and the licence are forwarded to the relevant host authority. (regulation 7)

### **Records to be kept by the Licence Holder**

4.5. It is important that information regarding a child's participation in the performance or activity is recorded and retained for a period of time in order that a licensing authority is able to monitor compliance with the conditions linked to a licence (regulation 8). Licence holders should ensure that information set out in Schedule 3 to the 2014 Regulations is retained for at least six months from the date on which a licence ceases to have effect.

### **Where an application is refused**

4.6. If a licensing authority refuses to grant a licence it must provide the reason(s) for this decision, in writing (see section 39(6) of the 1963 Act). The applicant or, as the case may be, licence holder may appeal to the sheriff against the refusal, revocation or variation, and against any condition under which a licence is granted or an approval is given (where the condition is not one that the local authority are required, under the legislation, to impose).

### **Enforcement**

4.7. It is the responsibility of the licensing authority to enforce the conditions linked to a child performance or activity licence. In order to ensure that the terms of the

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<sup>4</sup> Host authority – the education authority or, in England and Wales, the local authority in whose area a performance or activity takes place.

licence are being met, the licensing authority may carry out inspections of the premises where:

- rehearsals during the performance period are taking place
- performances or activities are taking place
- the child is receiving education
- the child is being accommodated overnight

4.8. Licensing authorities have powers to amend or revoke existing licences, including those issued by local authorities in England or Wales, where the performance or activity to which the licence relates takes place in their area (see section 39(2) of the 1963 Act).

4.9. If inspection by a licensing authority of a broadcast production raises concerns, licensing authorities may also contact Ofcom, the broadcasting regulator, to notify it of these issues by emailing: [OfcomStandardsTeam@ofcom.org.uk](mailto:OfcomStandardsTeam@ofcom.org.uk).

4.10. Broadcasters are required to comply with Ofcom's rules on the protection of children who participate in programmes. (See paragraph 1.10 above)

## **5. General requirements**

5.1. The 2014 Regulations set out detailed requirements that must be met when a child takes part in a performance or activity under a licence, or where a child is performing without the need for a licence because of the exemption under section 37(3)(a) of the 1963 Act. These requirements can be broken down into the following four categories :

- Restrictions on the grant of performance licences (Part 3)
- Restrictions and Conditions applying to all licences for performances or activities (Part 4)
- Conditions applying to all performances (i.e. all licensed performances and all performances exempted under section 37(3)(a) of the 1963 Act) (Part 5)
- Restrictions and conditions applying to performance licences only (Part 6)

## **6. Restrictions on the Grant of Performance Licences**

### **Number of Performing Days**

6.1. Other than in exceptional circumstances, a licensing authority must not grant a licence in respect of a performance by a child if, during the preceding 12 months, the child will have taken part in other performances on more than 80 days. This total includes any performances delivered under the “four day rule”. (regulation 10(1))

6.2. In determining an application in this respect, the licensing authority must also take into account any employment of the child in the 28 days preceding the date of the first performance for which the licence is requested. (regulation 10(2))



## **7. Restrictions and Conditions Applying to All Licences**

7.1. Part 4 of the 2014 Regulations provides for the specific restrictions and conditions that apply to all licences for performances and activities.

### **Education**

7.2. In determining the application for a licence in the best interests of the child, the licensing authority must consider the impact which the child's participation in a performance or activity may have on the child's education. The licensing authority must not grant the licence unless:

- It is satisfied that the child's education will not suffer in consequence;
- Has approved arrangements for the education of the child throughout the period to which the application relates; and
- Has approved the place in which the child will receive education during this period. (regulation 12(1))

### **Approval of the education to be provided**

7.3. Many children will be able to continue to attend school during the period for which the licence relates or continue with their agreed home schooling studies.

7.4. Where the child is required to be absent from school as a consequence of his or her participation in the performance or activity, details of the proposed alternative course of study for the period for which the licence is requested should be included in the application form. Best practice would suggest that the proposed alternative course of study should be agreed with the head teacher at the child's school. Where the child is home educated, the course of study should be agreed with the parent or guardian.

7.5. In approving the course of study, the licensing authority should consider how the child's participation in a performance or activity could help to promote the four capacities of Curriculum for Excellence. Where it appears that the child's involvement in a performance or activity could represent an opportunity for learning, it will be for the teacher/parent or guardian and the licensing authority to confirm and record this, as appropriate.

### **Approval of the Place of Education**

7.6. The licensing authority is also required to approve the place where the child is to receive education during the period for which the licence relates. (regulation 12(1)(c))

7.7. Information regarding the place of education should be included in the licence application form and often this will be sufficient to allow the licensing authority to approve the proposed arrangements. However, there may be occasions where the

licensing authority will either wish to visit the place of education or to seek advice from the local authority in which the performance or activity is to take place about the suitability of the proposed place of education /classroom. To ensure that the arrangements meet the needs of the individual child in question, the licensing authority may place a condition on any approval provided in this respect.

## **Absences of more than 5 days**

7.8. Where a child is required to be absent for more than 5 school days in total during the period for which the licence relates, arrangements must be made for the child to be taught by a private teacher. The licensing authority must approve the proposed course of study for the child and be satisfied that this will be taught properly by the private teacher. (regulations 12(3) and 12(4)(a) and (b))

## **Approval of Private Teachers**

7.9. The licensing authority must be satisfied that the private teacher is a suitable person to teach the child (regulation 12(4)(c)) and has the necessary qualifications and skills for the role before approving the education arrangements for a child. In doing so, the licensing authority may consider any previous experience that the private teacher has of working with children of the age and maturity of the child in question. Details of the teacher's registration with relevant professional bodies will also be relevant in this context. We would expect all private teachers to be members of the Protecting Vulnerable Groups scheme.

7.10. The licensing authority should also ensure that the private teacher will teach no more than 5 other children, in addition to the child for which the application relates, at any one time unless the other children are of a similar educational standard as the child in question. In these circumstances, the number may be increased to 11 other children. (Regulation 12(4)(d))

## **Minimum hours of education to be provided**

7.11. Where arrangements are made for the education of the child by a private teacher, the child must receive education for periods that, when aggregated over the period of the licence, amount to a minimum of 3 hours per day that the child would be required to attend school if that child were a child attending a public school (i.e. one maintained by the education authority issuing the licence)<sup>5</sup> (regulation 12(4)(e)).

7.12 Where the performance to which the licence relates is a broadcast or film performance, regulation 12(5) provides that this requirement will be met if the child receives education:

- for not less than 6 hours a week; and
- during each complete period of 4 weeks (or if there is a period of less than 4 weeks, then during that period) for periods of time not less than

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<sup>5</sup> This is regardless of what type of school that particular child normally attends.

the aggregate periods required by regulation 12(4)(e) (i.e. not less than 3 hours on each day); and

- on days on which the child would be required to attend school if he or she were attending a school maintained by the local authority (i.e. usual school days); and
- for not more than 5 hours on any such day.

7.13. Examples of how the hours of education might be aggregated are as follows:

- **Child A** is aged between 5 and 8. Child A must not be present at a place of performance or rehearsal for more than 8 hours per day. In calculating the number of hours during which Child A can be present, any periods of approved education must be taken into account, even when provided somewhere other than the place of performance. For example, if Child A undertakes the maximum of 5 hours schooling per day he can be present at the place of performance for a further 3 hours on the day (i.e. 8 hours minus 5 hours).
- Over a four week period, **Child A** misses 20 school days and must undertake at least 60 hours of schooling (i.e 20 days x 3 hours per day). Child A undertakes a maximum of 25 hours of schooling in week one (i.e. not more than 5 hours in any one day); 15 hours in week two; 10 in week three and 10 in week four, giving a total of 60 hours.
- **Child B** is aged 9. Child B must not be present at a place of performance or rehearsal for more than 9.5 hours per day. In calculating the number of hours during which Child B can be present, any periods of approved education must be taken into account, even when provided somewhere other than the place of performance. For example, if Child B undertakes the maximum of 5 hours schooling per day, he can be present at the place of performance for a further 4.5 hours per day (i.e. 9.5 hours minus 5 hours).
- Over a four week period **Child B** misses 10 days of school and must undertake at least 30 hours of schooling (i.e. 10 days x 3 hours). Child B undertakes a minimum of 6 hours of schooling in week one (of not more than 5 hours in any one day); 6 hours in week two; 6 in week three and 12 in week four, giving a total of 30 hours.

## Earnings

7.14. The licensing authority may place a condition in respect of any earnings the child receives in relation to his or her participation in a performance or activity. (regulation 13)

## The Role of the chaperone

7.15. It is a requirement that all children participating in a licensable performance or activity be supported by a chaperone. That individual is tasked with the care and control of the child as well as safeguarding, supporting and promoting his or her wellbeing at all times during the period beginning with the first and ending with the

last performance or for the duration of the activity – except where a child is in the care and control of a parent or guardian or teacher. (regulation 14)

## Who can act as a chaperone?

7.16. Anyone can apply to become a chaperone so long as they have the necessary skills and knowledge for the role. Parents or guardians may act as a chaperone in respect of their own child. However, where this is the case, they may not act as a chaperone to any other child at the same time. Where the parent or guardian intends to act as the child's chaperone, this should be noted on the application form.

7.17. With the exception of the child's parent or guardian, all chaperones must be approved at the point at which a licence is being sought in respect of a child or young person. A licensing authority may only approve a chaperone where they are satisfied that the person is suitable and competent to:

- Exercise proper care and control of a child of the age and gender of the child in question;
- Safeguard, support and promote the wellbeing of the child; and
- Will not be prevented from carrying out duties towards the child by other activities or duties towards other children. (regulation 14(3))

7.18. With the exception of parents or guardians, we would expect all chaperones to be members of the Protecting Vulnerable Groups (PVG) Scheme. Organisations and businesses which employ chaperones would be expected to countersign and process their employee's application for scheme membership.

7.19. Self-employed chaperones would be expected to have joined the PVG Scheme. Those with current membership of the Scheme will have been issued with a Scheme Membership Statement. A licensing authority can, with the subject's permission, request disclosure of a Scheme Membership Statement when assessing the person for the role of chaperone. That will allow the licensing authority to have the most up-to-date information about the person's PVG Scheme status.

7.20. Further guidance on the PVG Scheme is available on the Disclosure Scotland website at: <http://www.disclosurescotland.co.uk/disclosureinformation/guidance.htm>.

7.21. A checklist to support licensing authorities in establishing the suitability of an individual to be approved as a chaperone has been included at **Annex 1**.

## Chaperone registration

7.22. With the exception of parents or guardians, where individuals act regularly as chaperones, it is important that basic information regarding their suitability can be shared between licensing authorities, helping to streamline the approval process.

7.23. Accordingly, individual licensing authorities may wish to retain and publish an administrative register of those individuals whom they have approved to act as a

chaperone in accordance with the 2014 Regulations. An individual should only be included on a register with their permission. Chaperones should not remain on the register for more than 3 years without review. Inclusion on the register will indicate that the individual has the necessary skills and knowledge and is considered to be competent and suitable to act as a chaperone. An individual should only appear on one licensing authority register at any given time and should be removed where information comes to light which indicates that they are no longer suitable. It is considered that this approach should help to streamline the approval process for chaperones.

7.24. Licensing authorities should take any necessary steps required to ensure that the chaperones listed on any local register remain suitable to work with children.

### **Limits on the number of children in the care of a chaperone**

7.25. With the exception of parents or guardians, an individual may, at any one time, act as a chaperone for up to 10 children involved in a performance or activity. However, only 3 children can be in the care of a chaperone at any one time where the chaperone is also the private teacher of the child in question. (regulation 14(2)(a) and (b))

7.26. It should be stressed that these are the *maximum* numbers of children for which a chaperone may, at any one time, have responsibilities. When approving the arrangements for the chaperone, the licensing authority is required to consider the best interests of the individual child in question, including his or her age, maturity and wellbeing relevant to circumstances of the performance or activity. There may be occasions where chaperones should have fewer children in their care at any one time, for example to enable them to meet the particular needs of very young children or those with disabilities.

### **Chaperones: Applying the Common Core of Skills, Knowledge and Understanding & Values for the Children’s Workforce (Common Core)**

7.27. All chaperones should understand and apply Scotland’s Common Core of skills and values for the “Children’s Workforce” in Scotland. The skills, knowledge and understanding are described as “essential characteristics” and are set out in two contexts: (i) relationships with children, young people and families and (ii) relationships between workers.

7.28. Stemming from the *Getting it Right for Every Child* approach, the skills knowledge and understanding in the Common Core also cross-refer to the guiding principles of the UNCRC. The Common core can be viewed at:

<http://www.scotland.gov.uk/Publications/2012/06/5565>

### **Chaperones: sharing information**

7.29. Where the chaperone has identified an issue of some concern, he or she should share this information in order that the matter can be resolved.

7.30. Where the concern is of a minor nature and can be resolved quickly and easily, the chaperone should raise the matter with the licence holder. Issues around the appropriateness of the lighting on set or the routing of electrical cables may fall into this bracket. If the matter is not resolved satisfactorily, information should be shared with the relevant licensing authority (the local authority in which the child resides normally).

7.31. Where the chaperone is concerned that the conditions associated with a child's performance licence are not being met (working hour limits etc.), the matter should be raised with the production company. Again, if the matter is not resolved satisfactorily, information should be shared with the relevant licensing authority.

7.32. Where the chaperone identifies an issue which results in concern about a child or young person's broader wellbeing, information may need to be shared with the child's Named Person in line with best practice under *Getting it right for every child* (GIRFEC). Further information on GIRFEC can be accessed at the attached link: <http://www.gov.scot/Topics/People/Young-People/gettingitright>.

7.33. Where there is concern that a child is at significant risk of immediate harm, concerns should be reported immediately in line with the National Guidance for Child Protection in Scotland (<http://www.scotland.gov.uk/Publications/2014/05/3052/0>).

### **Where the child suffers injury or illness whilst in chaperone's care**

7.34. Where a child suffers an apparent injury or illness, or otherwise appears to suffer in terms of his or her wellbeing, while in the care and control of the chaperone, the licence holder must ensure that the parent or guardian of the child named on the application form and both the licensing and host authorities are notified of this immediately. (regulation 14(4))

### **Identifying and responding to wellbeing concerns**

7.35. All licence holders should develop robust procedures for identifying and responding to concerns about a child's/children's wellbeing. Those procedures should be known by all individuals working on a production and should build on best practice as defined through *Getting it right for every child* - Scotland's unique approach to safeguarding, supporting and promoting children's wellbeing. The procedures should recognise the central role of the chaperone in identifying and responding to wellbeing concerns.

7.36. Each licence holder should have a nominated individual who is tasked with the dissemination and implementation of the procedures.

### **Overnight accommodation**

7.37. It is the responsibility of the licence holder to ensure that appropriate arrangements are in place for the safe and suitable accommodation of a child who is

required to stay away from home as a result of his or her participation in a performance or activity.

7.38. The licensing authority must approve the arrangements for accommodating the child as set out in the application for the performance licence. However, there may be occasions where the licensing authority will either wish to visit the proposed accommodation or to seek advice from the local authority in which the performance or activity is to take place about its suitability.

7.39. A licensing authority must not grant a licence unless it is satisfied that the accommodation can meet the needs of the individual child in question, including, for example, that it is clean and comfortable and can provide a suitable degree of privacy. The accommodation should also enable the child to have continuous access to his or her chaperone. (regulation 15)

7.40. The licensing authority's approval of the accommodation may be subject to conditions relating to the arrangements for transporting the child from the accommodation to the place of the performance, rehearsal or activity; the child's meals and any other condition to safeguard, support and promote the wellbeing of the child in relation to the proposed accommodation (regulation 15(3))

### **Place of performance, rehearsal or activity**

7.41. The licensing authority must not grant a licence unless it has also approved any place in which the child will perform, rehearse or take part in any activity (regulation 16). In order to do so, the licensing authority must be satisfied that the proposed venue can accommodate the individual needs of the child in question and that suitable arrangements have been made for:

- The provision of meals for the child;
- The child to toilet and to wash and dress for the performance, rehearsal or activity, taking account of his or her age and gender; and
- The child's rest and recreation, when not taking part in a performance, rehearsal or activity.

7.42. Information about the place of the performance, rehearsal or activity should be provided in the application for the licence. However, there may be occasions where the licensing authority will either wish to visit the proposed place or to seek advice from the local authority in which the performance or activity is to take place about its suitability.

### **Travel arrangements**

7.43. It is the responsibility of the licence holder to ensure that suitable arrangements are in place for the safe travel of the child to and from the place of performance, rehearsal or activity. The arrangements should be described in the application for the licence. The licensing authority must not grant a licence unless it is satisfied with the proposed travel arrangements, taking into account the child's age and maturity. Children should not be allowed to travel unsupervised. Instead, they

should be accompanied by a parent or guardian, chaperone or other suitable individual. (Regulation 17 of the 2014 Regulations)

7.44. Where a journey time is significant and/or there is a need for frequent return journeys, licensing authorities should consider overnight accommodation as an alternative. In reaching a decision, licensing authorities should take account of the child's views on this matter.



## 8. Conditions Applying to all Performances

### Working hour limits

8.1. Part 5 of the 2014 Regulations provides for the conditions applying to all performances, including those which, in accordance with section 37(3)(a) of the 1963 Act, a licence is not required. It is important to note that, whilst these conditions relate to all performances, they do not apply to other activities. The conditions include a single set of working hour limits for children within the following age groups:

- Under 5 years.
- Aged 5 to 8 years.
- Aged 9 or above.

8.2. More detailed information about the associated conditions applying to each age grouping, is attached at **Annex 2**.

8.3. It should be noted that the working hour limits represent the maximum durations in relation to performance and attendance times for children and young people and the minimum durations of breaks. It is not intended that these working hours should be the default working pattern for all children. In line with Getting it Right for Every Child, in determining an application for a licence, licensing authorities are again required to consider the needs of individual children, including their age, maturity and wellbeing.

8.4. Any time spent in education, as required by regulation 12, will count towards the maximum permitted working hours in any one day.

### Minimum breaks overnight

8.5. Whilst 12 hours is the minimum required overnight break for all children (regulation 22), it is generally expected that most children should normally have an overnight break of no less than 14 hours duration. Licensing authorities will want to consider factors such as the time that may be required for the child to travel to and from the place of the performance or rehearsal and their home or temporary accommodation and will wish to consider any conditions that may be required to ensure that the child has an appropriate overnight break.

### Breaks during Performances

8.6. In line with Article 31 of the UNCRC, the child has a right to rest and leisure, and to engage in play. In view of this, where a child is on a break, he or she must not take part in:

- Education
- Rehearsals
- Preparations for the performance (hair and make-up etc.)

- Any other form of employment

8.7. Part 5 of the 2014 Regulations sets out the minimum breaks that every child and young person should have. It should be noted that children and young people may need more or longer breaks, depending on the activity, the child and other relevant circumstances.

### **Limitations on Daily Performances**

8.8. On any one day, a child may take part in more than one performance or rehearsal, providing these are of the same nature and in which the child performs the same part or takes the place of another performer in the same performance. This restriction will ensure that children are not required to participate in a number of distinct and separate performances within a single 24 hour period. (regulation 23) However, all such performances should take place within the permitted overall daily working hours limit provided for in regulations 19 to 21 of the 2014 Regulations.

### **Employment**

8.9. A child taking part in either a licensed or unlicensed performance must not be employed in any other employment on the day of the performance or the following day. (regulation 24)

## **9. Restrictions and Conditions Applying to Performance Licences**

9.1. Part 6 of the 2014 Regulations provides for the additional restrictions and conditions which apply to licences for performances only.

### **Maximum number of days in a week on which a child may take part in performances or rehearsals**

9.2. A child must not take part in performances or rehearsals on more than 6 consecutive days. This will allow a child to take part in a production which has a 6 day run or to participate in a dress rehearsal prior to a 5 day run. However, licensing authorities should consider this to be the maximum number of consecutive days in which a child may participate in a performance. (regulation 26) The licensing authority should consider the needs of the individual child when determining the application in this respect.

9.3. There are a number of factors that a licensing authority may wish to consider when approving the number of consecutive days in which a child will be involved in a performance, including the following:

- The nature of the production, for example whether it is a broadcasting or stage performance.
- Whether the days in a week in which the child is required to participate would involve the child being at the place of the performance for many hours in a day, or for short periods only.

### **Break in Performances**

9.4. Where a child is required to take part in a performance or rehearsal (other than a circus performance) on 6 consecutive days for a period of 8 consecutive weeks, that child must not take part in any performance or rehearsal or be employed in any other form of employment during the 14 days following the date of the last performance. Again, this is to further safeguard the wellbeing of the child in question – allowing them appropriate time to rest and enjoy time with friends and family following the 8 week production. It should be noted, however, that this restriction does not apply if the number of days on which the child may perform, as specified in the licence, is less than 60 days. (regulation 27)

### **Night Work**

9.5. The licensing authority may permit the child to participate in a performance after the latest permitted hour at which the child may be present at the place of performance or rehearsal provided it is satisfied that the performance must take place after that hour, for example, to allow the child to take part in a curtain call at the end of the performance. (regulation 28)

9.6. The child may only take part in a performance after midnight where the licensing authority is satisfied that it would be impracticable for the performance to be completed before midnight. However, regulation 28 provides for a number of restrictions and conditions which aim to safeguard any child who is required to work after the latest permitted hour as follows:

- The number of hours during which the child takes part in a performance after the latest permitted hour must be included when calculating the maximum number of hours during which the child may take part in a performance or rehearsal on any one day
- The child must not take part in any other performance or rehearsal until at least 16 hours have elapsed since the end of the child's part in the performance
- Where the child takes part in a performance after the latest permitted hour on 2 successive days, the licensing authority must not permit the child to participate in any further performance after the latest permitted hour during the 7 days immediately following those 2 days

9.7. The decision to authorise an extension to the working hour limits, set out at Part 5 of the 2014 Regulations, should be based on the licensing authority's assessment of the best interests and wellbeing of the individual child. It is important to note that such extensions should not be granted as a matter of course. (regulation 28(1))

## **Chaperone Discretion**

9.8. To provide for unexpected circumstances outside the licence holder's control, the chaperone may allow the child to take part in a performance for a period not exceeding 30 minutes immediately following the latest permitted hour at which the child may be present at the place of performance or rehearsal as set out in Part 5 of the 2014 Regulations (regulation 29(1)). However, there are a number of conditions placed on the chaperone's agreement in this respect, as follows:

- The total number of hours during which the child takes part in the performance or rehearsal, including that period of 30 minutes, should not exceed the maximum number of hours during which the child is permitted to be present at a place of performance or rehearsal
- The chaperone must be satisfied that the child's participation in the additional 30 minute period does not adversely affect the child's wellbeing
- The chaperone must also be satisfied that the requirement for the child to participate in the permitted additional 30 minute period is due to circumstances outside the licence holder's control

9.9. Where the chaperone agrees to the child's participation in the performance after the latest permitted hour, the **licence holder must ensure that the chaperone**

**notifies the licensing authority of the reasons for this decision no later than the following day.** (regulation 29(2))

9.10. The licensing authority would only be expected to intervene where there is concern that the use of the chaperone's discretion is being misused or misapplied.

9.11. Where the child is required to participate in a performance or rehearsal that is outdoors, the chaperone also has discretion to allow **one** of the child's prescribed meal breaks to be reduced, provided that:

- The duration of the meal break is not less than 30 minutes; and
- The maximum number of hours during which the child may take part in a performance or rehearsal (under regulations 20 or 21) is not exceeded. (regulation 29(3))

## **10. Licences to Perform and Participate in Activities Abroad**

10.1. Part 7 of the 2014 Regulations makes provision in relation to licences to perform and take part in activities abroad. A licence granted under section 25 of the 1933 Act must be in the form set out at Schedule 4 to the 2014 Regulations. (regulation 30)

10.2. Where a licence under section 25 of the 1933 Act is granted, renewed or varied, the Justice of the Peace must send the following information to the Scottish Ministers for transmission to the relevant consular officer:

- The name and address of the child;
- The date, place of birth and nationality of the child;
- The name and address of the applicant for the licence;
- The name and address of the parent or guardian of the child;
- Particulars of the engagement including where and for how long the child is to participate;
- A copy of the contract of employment or other document showing the terms and conditions on which the child is engaged; and
- A copy of the licence. (regulation 31)

# **11. Body of Persons Approval**

## **What is a Body of Persons Approval**

11.1. Section 37(3)(b) of the Children & Young Persons Act 1963 allows for a Body of Persons approval to be granted to an organisation, removing the need for individual child performance licences to be obtained for a performance. Approval can be granted in respect of a single performance or for a series of performances taking place over a period of time. Scottish Ministers recommend that period does not exceed 24 months.

11.2. Approval cannot be granted in respect of any performances for which a child is being paid (other than for expenses).

11.3. The conditions which apply in respect of a child performance licence (working hour limits, chaperones, educations etc.) do not apply where a Body of Persons Approval has been granted. (See paragraph 11.11)

## **Who can apply for a Body of Persons Approval**

11.4. Body of Persons approvals may be granted in respect of amateur productions including, for example, productions hosted by organisations such as youth organisations or dramatic societies.

11.5. Approval may also be granted in respect of other organisations arranging unpaid performances involving children who would otherwise require a licence.

## **Who can grant a Body of Persons Approval**

11.6. Approval can be granted either by the local authority in which a performance is going to take place or by Scottish Ministers. Where a performance is being staged in either a single local authority or a small number of authorities, approval should be sought at local authority level. Only where a performance is taking place in a large number of local authority areas should approval be sought from Scottish Ministers.

## **How to apply for a Body of Persons Approval**

11.7. When applying for a Body of Persons Approval, the applicant (those responsible for arranging the performances) should provide the following information to either the relevant local authority or to Scottish Ministers:

- Details of the organisation including name, address, contact details, information regarding its role and activities and responsibilities of individuals within the organisation
- The numbers and age range(s) of the children involved in the productions

- Confirmation that no payment (other than to cover expenses) is being made to any of the individuals taking part in the performance
- Details of productions and rehearsals where available. Where details regarding particular productions are not available, information regarding the general nature of the productions should be provided
- Details of the arrangements for appointing suitably skilled individuals to take on the role of chaperone. Whilst the child performance licensing conditions linked to chaperones do not apply in respect of Body of Persons Approvals, we would advise that production companies adopt those requirements as a matter of best practice and that local authorities apply the requirements when considering the suitability of the chaperone arrangements being proposed by an organisation seeking Body of Persons Approval
- Details of arrangements for the safe travel of children to and from the place(s) of performance
- Details of the organisation's child protection policies and training for relevant staff
- Name of the lead child protection officer within the organisation with responsibility for the productions in question
- Where a child requires to be absent from school in order to perform, confirmation that the absence has been approved by their Head teacher

## **Granting a Body of Persons approval**

11.8. When deciding whether to grant a Body of Persons Approval, a local authority/Scottish Ministers will wish to consider:

- Whether any children are being paid. Body of Persons Approval should not be granted in respect of paid performances by young people
- The robustness of relevant child protection arrangements, chaperone arrangements, travel arrangements
- The numbers of children involved in the performance(s). Where larger groups of children are involved in performances, it may be preferable for a Body of Persons Approval to be granted as opposed to granting a significant number of individual child performance licences.
- The age(s) of the children involved and timings of rehearsals/performances
- The duration of the performance(s). Where performances take place over a limited period of time and, as a result, are unlikely to impact significantly on the children's day-to-day lives, Body of Persons approval may be deemed suitable



- Details of any planned absences from school as a result of a child's involvement in a performance. Body of Persons Approval cannot authorise removal from school. However, a child can be authorised by the head teacher to be absent from school in order to participate in a performance
- Whether the local authority/Scottish Ministers have an existing relationship with the organisation in question which suggests they are suitable to be approved
- Whether the performance is taking place abroad. Body of Persons Approval cannot be granted for such performances

11.9. As a general rule, we would suggest that Body of Persons Approval only be granted where the local authority/Scottish Ministers are satisfied that a child/children's involvement in a performance(s) is not going to have a prolonged impact on their day-to-day lives.

11.10. Where a child's daily routine, education or access to play and recreation opportunities are likely to be impacted over a prolonged period, a child performance licence should be sought.

### **Conditions associated with a Body of Persons Approval**

11.11. A local authority/Scottish Ministers may choose to apply conditions as part of any Body of Persons Approval which is granted. These might include:

- Working hour limits
- Limits on the number of days children can be involved in performances
- Conditions linked to chaperones, including maximum numbers of children per chaperone
- Conditions linked to travel
- Conditions linked to the full implementation of child protection procedures
- Conditions linked to the reporting of injuries and illness sustained during a child's participation in a performance

# ANNEX 1

## CHAPERONES – CHECK LIST

1. When considering an application from a chaperone to be registered on a licensing authority’s local administrative register of those individuals whom they have approved to act as chaperones, authorities might find the attached check list of essential and desirable criteria, and the key responsibilities for chaperones, helpful.

<b>Essential Criteria</b>	
Demonstrable experience of working with children and young people, including previous experience of acting as a chaperone to children and young people.	
2 character references	
Photo ID	
Current membership of Protection of Vulnerable Groups scheme	
Doctor’s confirmation that they are fit and well – as required	
Details of any previous and / or current listing on another licensing authority’s administrative chaperone register	
Face to face interview	
<b>Desirable Criteria</b>	
Awareness of the UNCRC and the rights of the Child	
Knowledge of the Common Core of Skills, Knowledge and Understanding & Values for the Children’s Workforce	
Awareness of <i>Getting it Right for Every Child</i>	
Awareness of the concept of Wellbeing and how to promote the wellbeing of children of varying ages.	

## **Key responsibilities of the chaperone**

2. The chaperone's role is to safeguard, support and promote the wellbeing of the child during his or her performance or activity. The chaperone is the key person to whom a child should turn for support and all children should be made aware of this. In order to meet the requirements of the role, the chaperone must:

- Be fully aware of the conditions which form part of the licence(s) granted in respect of the child/children they are supporting
- Ensure that all necessary working hour limits are adhered to regardless of production pressures
- Support and supervise the child at all times during the performance or activity unless the child is in the care of their parent or guardian, teacher or private tutor
- Where the child is required to live away from home and is not accompanied by their parent or guardian, supervise and support the child at all times. Ensure the child has access to appropriate food, rest, recreation (including space for recreation) and appropriate toilet facilities throughout the performance or activity
- Use appropriate language and actions in the presence of a child and ensure the same from other children and adults in the vicinity of the child
- Listen to the views of the child and advocate for the child, as required
- Where relevant, be aware of and agree to any arrangements made for the child to travel to and from the place of performance or activity
- Respond to any concerns regarding the child's wellbeing by sharing information with relevant individuals in an appropriate, proportionate and timely manner

3. The chaperone should also be aware of the following issues which may give cause for concern in relation to the individual children in their care:

- Features of the production that may cause emotional distress to the child, such as scenes involving violence, injury /death, abuse and bad language
- Fire procedures
- Safe standing areas on set
- Movement/placement of scenery, machinery and other hardware (electrical cables etc.)
- Movement of vehicles
- Adequacy and appropriateness of lighting
- Smoke effects and pyrotechnics
- Use of animals
- Inclement weather
- Natural features of outdoor sets which may pose potential risk

## ANNEX 2 - CONDITIONS APPLYING TO ALL PERFORMANCES (PART 5 OF THE REGULATIONS)

Child Performance Working Hour Limits			
Age of Child	Maximum duration of attendance and performance per day	Latest and earliest hours of attendance	Breaks
0-4	Attend 5 hours  Perform 2 hours	08:00 – 20:00 but can be extended by half an hour in exceptional circumstances and with agreement of the chaperone. Any additional extension must be agreed with the licensing authority.	A break of at least 15 minutes after every 45 minutes performing or rehearsing.
5-8	Attend 8 hours.  Perform 3 hours.	07:00 – 23:00 but can be extended by half an hour in exceptional circumstances and with the agreement of the chaperone. Any additional extension must be agreed with the licensing authority.	A break of at least 15 minutes after every hour of performing or rehearsing. A food break of not less than 1 hour if present for more than 3½ consecutive hours.
9 – school leaving age	Attend 9 ½ hours.  Perform 4 hours.	07:00 – 23:00 but can be extended by half an hour in exceptional circumstances and with the agreement of the chaperone. Any additional extension must be agreed with the licensing authority.	A break of at least 15 minutes after every hour of performing or rehearsing. A food break of not less than 1 hour if present for more than 3½ consecutive hours. A further meal break of at least 30 minutes if present for more than 8 consecutive hours.
There must be a <b>minimum</b> 12 hour period between a child leaving a place of performance or rehearsal on one day and returning the next. Where the child has participated in a performance after the latest permitted hour, the child must not take part in any other performance or rehearsal until at least 16 hours have elapsed since the end of the performance. (See Regulations 22 and 28 respectively for more detailed information on this.)			

Suitable arrangements must be made to protect, promote and support the wellbeing of the child whenever they are not performing or rehearsing. This should include access to food, play opportunities etc.