TELEGRAPH ARTICLE **By**[**Claire Duffin**](http://www.telegraph.co.uk/journalists/claire-duffin/)

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Obscure rule wrecks boy’s Last Night of Proms dream

Young chorister replaced at last minute after BBC falls foul of law banning under-13s on TV .



Iestyn Davies was brought in at the last minute to replace the young boy in Leonard Bernstein’s Chichester Psalms Photo: HANDOUT

It was supposed to be one of the highlights of the Last Night of the Proms.

A young boy was to sing the solo in Leonard Bernstein’s Chichester Psalms – just as the composer had intended. But at the last minute the BBC found it had fallen foul of an obscure provision in legislation dating back to the Sixties banning children under the age of 13 from performing live on television after 7pm. It meant the young chorister had to be replaced by 33-year-old countertenor Iestyn Davies.

The BBC said that it took the decision reluctantly and called for a change to the “outdated” legislation.

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A spokesman said: “Everyone agrees that this legislation is now completely outdated and the BBC with other broadcasters and members of the wider entertainment industry are working hard to try to get it changed but it is not known if or when that will happen.” The BBC had auditioned boy trebles – male singers with a voice in the soprano range – for the role. Three candidates, all under the age of 13, were selected and the decision on who was to perform on Sept 7 was to be made by Marin Alsop, the first woman to lead the Last Night of the Proms in its 118-year history. The BBC applied to three councils in London for a “children in entertainment licence”, a legal requirement when employing children. Producers must apply to the local education authority where the child lives. The corporation discovered that a section of the Children (Performances) Regulations 1968 banned children under 13 taking part in a broadcast after 7pm. Children can perform after 7pm, but not on television. It is understood councils have previously effectively ignored the provision to allow children to perform on ITV’s Britain’s Got Talent but the three local authorities applied to by the BBC decided to enforce it. The BBC said it could not disclose which councils were involved so as not to risk identifying the children. It announced that Davies was taking the role the day before the event, meaning he only rehearsed with Alsop and the BBC Symphony Orchestra and Chorus on the day of the concert itself. The BBC spokesman added: “Because the Chichester Psalms were going out live this meant that reluctantly we had to change our plans.”

The Government carried out a consultation into proposed changes to the regulations last year following concern over “unnecessary bureaucracy” but was unable to reach a consensus.

The consultation followed a 2010 report for the Department for Education by Sarah Thane, an academic, which concluded: “The legislation is highly complex; is inconsistently interpreted in different places; and is hard to apply to contemporary broadcasting.”

Each year an estimated 45,000 licences are issued to child performers. The majority are for amateur productions.

In 2007, six-year-old Connie Talbot sang Somewhere Over The Rainbow on Britain’s Got Talent. She finished runner-up to Paul Potts. In 2010, four-year old Kayim-Ali Jaffer impersonated Michael Jackson on the ITV programme, becoming the youngest contestant on the show.

A spokesman for Britain’s Got Talent said: “It is up to the child’s local council. Some are flexible and have allowed children to perform on BGT at 10pm. Some are not so flexible and will not allow it.”

It is understood at least one of the boys was part of St Paul’s Cathedral Choir.

The Local Government Association is assessing the legislation. David Simmonds, a councillor in Hillingdon, west London, and chairman of the association’s children’s board, said councils applied it with an “amount of discretion”. He added: “Times have changed a bit since the Sixties when the laws were passed. We try to make sure children are able to make the most of the opportunities their parents support them in, but also that they are given a good opportunity to make the most of their education in particular.”