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SCOTTISH STATUTORY INSTRUMENTS

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**2014 No. 372**

**The Children (Performances and Activities) (Scotland) Regulations 2014**

**PART 1**

**GENERAL**

**Citation, commencement, extent and application**

**1.**—(1) These Regulations may be cited as the Children (Performances and Activities) (Scotland) Regulations 2014 and come into force on 20th February 2015.

(2) These Regulations extend to Scotland only.

(3) These Regulations apply in relation to—

- (a) the granting of licences in respect of children resident in Scotland by education authorities<sup>(1)</sup> in Scotland to take part in performances or activities within Great Britain, where required by section 37(1) of the 1963 Act;
- (b) the granting of licences in respect of children not resident in Great Britain by education authorities in Scotland to take part in performances or activities within Great Britain, where the applicant for the licence is resident or has a place of business within the area of that education authority, where required by section 37(1) of the 1963 Act;
- (c) performances in Scotland, for which no licence is required by virtue of section 37(3)(a) of the 1963 Act; and
- (d) the granting of licences by justices of the peace in Scotland under section 25 of the 1933 Act to enable children to take part in performances or activities abroad for profit.

**Interpretation**

**2.**—(1) In these Regulations, unless the context otherwise requires—

“the 1933 Act” means the Children and Young Persons Act 1933;

“the 1963 Act” means the Children and Young Persons Act 1963;

“the 1995 Act” means the Children (Scotland) Act 1995<sup>(2)</sup>;

“activity” means participation in a sport, or work as a model, in the circumstances specified in section 37(1)(b) of the 1963 Act;

“applicant” is to be construed in accordance with regulation 4(1)(a);

“chaperone” is to be construed in accordance with regulation 14(1);

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(1) “Education authority” is defined in regulation 2(1). Section 44(2) of the 1963 Act provides that Part II of the 1963 Act is, in its application to Scotland (with the exception of one section), to be construed as if references to a local authority were references to an education authority.

(2) 1995 c.36.

“day” means a period of 24 hours beginning and ending at midnight and, for the purposes of regulation 28(3)(a), any performance taking place after midnight and before the earliest permitted hour as defined in regulation 28(4) is deemed to have taken place before midnight; “education authority” has the meaning given by section 135(1) of the Education (Scotland) Act 1980(3);

“host authority” means the education authority or, in England and Wales, the local authority in whose area a performance or an activity takes place;

“licence”, except in Part 7, means a licence authorising a child to do anything for which, by virtue of section 37(1) of the 1963 Act, a licence is required;

“licence holder” means the person to whom a licence is granted by the licensing authority;

“licensing authority” means the education authority to which an application for a licence requires to be made in accordance with section 37(1) of the 1963 Act;

“parent” includes a guardian appointed under sections 7 or 11(2)(h) of the 1995 Act, a person who has parental rights or parental responsibilities in relation to the child (within the meaning given to those expressions in Part 1 of the 1995 Act) or other person who has for the time being care or control of the child;

“public school” has the meaning given by section 135(1) of the Education (Scotland) Act 1980;

“rehearsal” means any rehearsal for, or preparation for, a performance, being a rehearsal which takes place on the day of performance or during the period beginning with the first and ending with the last performance; and

“week” means a period of 7 days beginning with the day on which the first performance for which the licence is granted takes place or any 7th day following.

(2) Any reference in these Regulations to a numbered regulation or Schedule is a reference to the regulation or Schedule bearing that number in these Regulations and any reference in a regulation to a numbered paragraph or sub-paragraph is a reference to the paragraph or sub-paragraph bearing that number in that regulation.

## PART 2

### DOCUMENTATION REQUIREMENTS FOR ALL LICENCES

#### Application of Part 2

3. This Part applies to licences for a performance or an activity.

#### Application for a licence

4.—(1) A licensing authority must not grant a licence unless it receives an application for a licence, which must—

- (a) be made in writing by the applicant, who is—
  - (i) the person responsible for the production of the performance in which the child is to take part; or
  - (ii) the person responsible for the organisation of, or engaging the child in, the activity;
- (b) be in the form set out in Schedule 1 (form of application for a licence) or in a form to the like effect;

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(3) 1980 c.44. This definition was amended by the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13, paragraph 118(9).

- (c) be accompanied by the documents specified in the form set out in that Schedule; and
- (d) be signed by the applicant, a parent of the child and, if the application relates to a performance or activity for which the child will require to be absent from school, the head teacher at the child's school.

(2) The licensing authority may refuse to grant a licence if the application is not received at least 21 days before the day on which the first performance or activity for which the licence is requested is to take place.

### **Power of licensing authorities to obtain additional information**

5.—(1) The licensing authority may request such further information as it considers necessary to enable it to be satisfied that it should grant a licence as required by section 37(4) of the 1963 Act.

- (2) In particular the licensing authority may—
- (a) request a report from the head teacher at the child's school;
  - (b) request that the child be medically examined in order to ascertain whether the child is fit to take part in the performance or activity for which the licence is requested and that the child's health will not suffer as a result of taking part in that performance or activity; and
  - (c) interview the applicant, the child, the child's parents, any proposed chaperone and any proposed private teacher.

(3) The licensing authority may make such inquiries as it considers necessary to enable it to consider whether a licence should be granted subject to a condition relating to the manner in which sums earned by the child in taking part in any performance or activity should be dealt with.

### **Form of licence**

6.—(1) A licence granted to an applicant by a licensing authority must be in the form set out in Schedule 2 (form of licence) or in a form to the like effect.

- (2) In the case of a licence for a performance, the licence must specify—
- (a) the names, places and nature of the performance;
  - (b) the number of days on which the child may perform; and
  - (c) the period, not exceeding 6 months, in which the performance may take place.

(3) In the case of a licence for an activity, the licence must specify the nature of the activity, the place at which it is to take place and either—

- (a) the date on which it is to take place; or
- (b) the number of days on which the child may participate and the period, not exceeding 6 months, in which the activity may take place.

(4) The licensing authority must send a copy of the licence to the parent who signed the application form.

### **Particulars to be sent to a local authority under section 39(3) of the 1963 Act**

7. Where a performance or an activity is to take place in the area of a host authority other than the licensing authority, the licensing authority must send to that host authority a copy of the application form and the licence.

### **Records to be kept by the licence holder under section 39(5) of the 1963 Act**

8. The licence holder must retain the records specified in Schedule 3 (records to be kept by the licence holder) for 6 months from the date of the last performance (Part 1 of Schedule 3) or activity (Part 2 of Schedule 3) to which the licence relates.

### **Production of licence**

9. The licence holder must on request produce the licence (at all reasonable hours) at the place of performance or rehearsal, or at the place where the activity takes place, to which the licence relates, to an authorised officer of the host authority or a constable.

## **PART 3**

### **RESTRICTION ON THE GRANT OF PERFORMANCE LICENCES**

#### **Number of performing days**

10.—(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 12 months preceding any performance in respect of which a licence is requested, the child will have taken part in other performances on more than 80 days.

(2) In deciding whether or not to grant a licence or the number of days in respect of which it should be granted, the licensing authority must take into account any employment of the child during the 28 days preceding the day of the first performance for which the licence is requested.

## **PART 4**

### **RESTRICTIONS AND CONDITIONS APPLYING TO ALL LICENCES**

#### **Application of Part 4**

11. The restrictions and conditions prescribed in this Part apply to the grant of licences for a performance or an activity.

#### **Education**

12.—(1) The licensing authority must not grant a licence unless it—

- (a) is satisfied that the child's education will not suffer by reason of taking part in the performance or activity for which the licence is requested;
- (b) has approved the arrangements (if any) for the education of the child during the period to which the licence relates; and
- (c) has approved the place where the child is to receive education during that period, subject to such conditions as it considers necessary to ensure that the place is suitable for the child's education.

(2) The licence holder must ensure that any arrangements approved by the licensing authority for the child's education are carried out.

(3) Where, during the period to which the licence relates, a child requires to be absent from school for more than 5 days on which the child would be required to attend school if the child were a pupil

attending a public school, arrangements must be made for the education of the child by a private teacher in accordance with this regulation.

(4) The licensing authority must not approve any arrangements for the education of a child by a private teacher unless it is satisfied that—

- (a) the proposed course of study for the child is satisfactory;
- (b) the proposed course of study will be properly taught by the private teacher;
- (c) the private teacher is a suitable person to teach the child in question;
- (d) the private teacher will not teach more than 5 other children at the same time or, if the other children being taught at the same time have reached a similar standard in the subject to the child in question, 11 other children; and
- (e) the child will, during the period to which the licence relates, receive education for periods which, when aggregated, total not less than 3 hours on each day on which the child would be required to attend school if the child were a pupil attending a public school.

(5) Where the performance to which the licence relates is to be recorded with a view to use in a broadcast or in a film intended for public use, the requirements of paragraph (4)(e) are deemed to be satisfied if the licensing authority is satisfied that the child will receive education—

- (a) for not less than 6 hours a week;
- (b) during each complete period of 4 weeks or, if there is a period of less than 4 weeks, during that period, for periods not less than the aggregate periods of education required by paragraph (4)(e) in respect of the period;
- (c) on days on which the child would be required to attend school if the child were a pupil attending a public school; and
- (d) for not more than 5 hours on any such day.

(6) When calculating any period of education for the purposes of this regulation the following must not be included—

- (a) any period which is outside the hours when the child is permitted to be present at a place of performance or rehearsal under regulations 19 to 21; and
- (b) any period of less than 30 minutes.

### **Earnings**

**13.** The licensing authority may grant a licence subject to a condition that any or all of the sums earned by the child for taking part in a performance or an activity be dealt with in a particular manner by the licence holder.

### **Chaperones**

**14.—(1)** A licensing authority must not grant a licence unless it has approved a person to be a chaperone to—

- (a) have care and control of the child; and
- (b) safeguard, support and promote the wellbeing of the child,

at all times during the period beginning with the first and ending with the last performance or, as the case may be, occasion to which the licence relates except while the child is in the care and control of a parent or teacher.

(2) The maximum number of children a chaperone may have care and control of at any one time is—

- (a) 10; or

- (b) where a person approved to be a chaperone is the private teacher of the child in question, 3.
- (3) The licensing authority must not approve a person to be a chaperone unless it is satisfied that the person—
  - (a) is suitable and competent to—
    - (i) exercise proper care and control of a child of the age and gender of the child; and
    - (ii) safeguard, support and promote the wellbeing of the child; and
  - (b) will not be prevented from carrying out duties towards the child by other duties towards any other children.
- (4) Where a child suffers any injury or illness while in the care and control of the chaperone, the licence holder must ensure that the parent of the child, named in the application form, and the licensing authority and host authority are notified immediately.

### **Accommodation**

- 15.—(1) This regulation applies where a child would be required to live in accommodation other than where that child would usually live by reason of taking part in a performance or an activity.
- (2) A licensing authority must not grant a licence unless it has approved that accommodation as being suitable for that child.
- (3) The licensing authority's approval may be subject to any of the following conditions—
  - (a) that transport will be provided for the child between the accommodation and the place of performance, rehearsal or activity;
  - (b) that suitable arrangements are made for meals for the child; and
  - (c) any other condition to safeguard, support or promote the wellbeing of the child in connection with the accommodation in which the child will live.

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

- 16.—(1) A licensing authority must not grant a licence unless it has approved the place where the child will perform, rehearse or take part in any activity.
- (2) The licensing authority must not approve the place of performance, rehearsal or activity unless it is satisfied that, having regard to the age of the child and the nature, time and duration of the performance, rehearsal or activity—
  - (a) suitable arrangements have been made for—
    - (i) the provision of meals for the child;
    - (ii) the child to dress for the performance, rehearsal or activity;
    - (iii) the child's rest and recreation, when not taking part in a performance, rehearsal or activity;
  - (b) the place has suitable and sufficient toilets and washing facilities; and
  - (c) the child will be adequately protected against inclement weather.
- (3) The licensing authority may give its approval subject to such conditions as it considers necessary for the purposes of this regulation.
- (4) In paragraph (2)(a)(ii), arrangements for a child who has attained the age of 5 to dress for a performance, rehearsal or activity are not suitable unless the child can dress only with children of the same gender.

### **Travel arrangements**

17. A licensing authority must not grant a licence unless it is satisfied that the licence holder will make suitable arrangements (having regard to the child's age) to get the child home or to any other destination after the last performance or rehearsal or the conclusion of any activity on any day.

## **PART 5**

### **CONDITIONS APPLYING TO ALL PERFORMANCES**

#### **Application of Part 5**

18. The conditions prescribed in this Part apply to licences for performances and to performances for which, by reason of section 37(3)(a) of the 1963 Act, a licence is not required.

#### **Children under 5**

19.—(1) This regulation applies to a child who is under the age of 5.

(2) A child must not be present at a place of performance or rehearsal—

- (a) for more than 5 hours a day; and
- (b) before 8 a.m. or after 8 p.m..

(3) A child must not take part in a performance or rehearsal on any day—

- (a) for a continuous period of more than 45 minutes without a rest break of not less than 15 minutes; and
- (b) for a total period of more than 2 hours.

(4) Any time during which a child is present at a place of performance or rehearsal but is not taking part in a performance or rehearsal, must be used for meals, rest and recreation and suitable arrangements must be made to safeguard, support and promote the wellbeing of the child.

#### **Children aged 5 to 8**

20.—(1) This regulation applies to a child who is at least the age of 5 but under the age of 9.

(2) A child must not be present at a place of performance or rehearsal—

- (a) for more than 8 hours a day; and
- (b) before 7 a.m. or after 11 p.m..

(3) A child must not take part in a performance or rehearsal on any day—

- (a) for a continuous period of more than 1 hour without a rest break of not less than 15 minutes; and
- (b) for a total period of more than 3 hours.

(4) A child must not be present at a place of performance or rehearsal for more than 3½ consecutive hours without there being a meal break of not less than 1 hour.

(5) When calculating the number of hours on any day during which a child is present at a place of performance or rehearsal, any periods of education required to comply with the arrangements approved under regulation 12 must be taken into account, even if that education is provided somewhere other than at the place of performance or rehearsal.

### **Children aged 9 or more**

- 21.**—(1) This regulation applies to a child who is at least the age of 9.
- (2) A child must not be present at a place of performance or rehearsal—
- (a) for more than 9½ hours a day; and
  - (b) before 7 a.m. or after 11 p.m..
- (3) A child must not take part in a performance or rehearsal on any day—
- (a) for a continuous period of more than 1 hour without a rest break of not less than 15 minutes; and
  - (b) for a total period of more than 4 hours.
- (4) A child must not be present at a place of performance or rehearsal—
- (a) for more than 3½ consecutive hours without there being a meal break of not less than 1 hour; and
  - (b) for more than 8 consecutive hours without there being 2 meal breaks, the first being not less than 1 hour and the second not less than 30 minutes.
- (5) When calculating the number of hours on any day during which a child is present at a place of performance or rehearsal, any periods of education required to comply with the arrangements approved under regulation 12 must be taken into account, even if that education is provided somewhere other than at the place of performance or rehearsal.

### **Minimum breaks overnight**

**22.** Subject to regulation 28, a child must have an overnight break of a minimum duration of 12 hours between leaving a place of performance or rehearsal and being present at a place of performance or rehearsal the next day.

### **Limitation on daily performances**

**23.** On any day a child may take part only in a performance or rehearsal which is of the same nature and in which the child performs the same part or takes the place of another performer in the same performance.

### **Employment**

**24.** A child taking part in a performance must not be employed in any other form of employment on the day of that performance or the following day.

## **PART 6**

### **RESTRICTIONS AND CONDITIONS APPLYING TO PERFORMANCE LICENCES**

#### **Application of Part 6**

**25.** The restrictions and conditions prescribed in this Part apply to licences for performances.

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

**26.** A child must not take part in performances or rehearsals on more than 6 consecutive days.



### **Break in performances**

**27.**—(1) Subject to paragraph (2), a child who takes part in performances or rehearsals on the maximum number of days permitted under regulation 26 for a period of 8 consecutive weeks, must not take part in any performance or rehearsal or be employed in any other form of employment during the 14 days following the last performance.

(2) The restriction in paragraph (1) does not apply if—

- (a) the performances are circus performances; or
- (b) the number of days specified in the licence on which the child may perform is less than 60.

### **Night-work**

**28.**—(1) Notwithstanding regulations 19 to 21, and subject to the restrictions and conditions in paragraphs (2) and (3), a licensing authority may permit a child to take part in a performance after the latest permitted hour if it is satisfied that a performance must take place after that hour.

(2) The licensing authority must only permit the child to take part in a performance after midnight and before the earliest permitted hour if it is satisfied that is impracticable for the performance to be completed before midnight.

(3) Where the licensing authority permits a child to take part in a performance after the latest permitted hour, the following restrictions and conditions apply—

- (a) 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 under regulations 19 to 21;
- (b) 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; and
- (c) 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 take part in any further performance after the latest permitted hour during the 7 days immediately following those 2 days.

(4) In this regulation “latest permitted hour” and “earliest permitted hour” in relation to a child mean the latest hour and the earliest hour respectively at which that child may be present at the place of performance or rehearsal under regulations 19 to 21.

### **Chaperone discretion**

**29.**—(1) A chaperone may allow a child to take part in a performance for a period not exceeding 30 minutes immediately following the latest permitted hour provided that—

- (a) the total number of hours during which the child takes part in a performance or rehearsal, including that period of 30 minutes, does not exceed the maximum number of hours permitted under regulations 19 to 21;
- (b) the chaperone is satisfied that the wellbeing of the child will not be adversely affected; and
- (c) the chaperone is satisfied that the situation requiring the child to take part in a performance after the latest permitted hour arose in circumstances outside the control of the licence holder.

(2) Where the chaperone allows a child to take part in a performance after the latest permitted hour, the licence holder must ensure that the chaperone notifies the licensing authority no later than the following day and provides the reason for that decision.

(3) A chaperone may allow one of the meal breaks required under regulation 20 or 21 to be reduced where the child is taking part in a performance or rehearsal outdoors, provided that—

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

(4) In this regulation “latest permitted hour” in relation to a child means the latest hour at which that child may be present at the place of performance or rehearsal under regulations 19 to 21.

## PART 7

### LICENCES TO PERFORM AND PARTICIPATE IN ACTIVITIES ABROAD

#### Form of licence to perform and participate to activities abroad

**30.** A licence granted under section 25 of the 1933 Act<sup>(4)</sup> must be in the form set out in Schedule 4 (form of licence to perform or participate in activities abroad).

#### Particulars for transmission to the proper consular officer

**31.** Where a licence under section 25 of the 1933 Act is granted, renewed or varied, the prescribed particulars which the justice of the peace must send to the Scottish Ministers for transmission to the proper consular officer are—

- (a) the name and address of the child;
- (b) the date, place of birth and nationality of the child;
- (c) the name and address of the applicant for the licence;
- (d) the name and address of the parent of the child;
- (e) particulars of the engagement including where and for how long the child is to participate;
- (f) a copy of the contract of employment or other document showing the terms and conditions on which the child is engaged; and
- (g) a copy of the licence.

## PART 8

### REVOCATIONS

#### Revocations

**32.** The following instruments are revoked in so far as they extend to Scotland—

- (a) the Children (Performances) Regulations 1968<sup>(5)</sup>; and
- (b) the Children (Performances) (Miscellaneous Amendment) Regulations 1998<sup>(6)</sup>.

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<sup>(4)</sup> 1933 c.12. Section 25 was amended by the Employment Act 1989 (c.38), section 10(2) and Schedule 3, Part III; the Courts Act 2003 (c.39), Schedule 8, paragraph 73 and by the Children (Protection at Work) Regulations 1998 (S.I. 1998/276).

<sup>(5)</sup> S.I. 1968/1728.

<sup>(6)</sup> S.I. 1998/1678.

St Andrew's House,  
Edinburgh  
17th December 2014

*ANGELA CONSTANCE*  
A member of the Scottish Government