

Partial Business and Regulatory Impact Assessment

To be read in conjunction with the Scottish Government consultation paper,
*“Getting it right for young performers: A national consultation on the
arrangements for ensuring the wellbeing of children involved in
performances”*

Title of Proposal

Revised licensing arrangements for ensuring the wellbeing of children involved in performances.

Purpose and intended effect

Background

Primary legislation focussing on the protection of children involved in performances was last reviewed in the early 1960s. The Children and Young Persons Act 1963 (“the 1963 Act”) places restrictions on the types of performances that children under school leaving age can participate in. It does this by prescribing those performances for which a child requires a licence to be granted. Licences are granted by the local authority in which the child normally resides and certain conditions apply to all licensable activities, including limits on working hours and the provision of suitable support for young performers.

The range and nature of performance opportunities available to children and young people has increased significantly since the current licensing arrangements were put in place. New genres of programmes and emerging media technologies have undoubtedly influenced the shape of our creative industries. Furthermore, our approach to protecting, promoting and supporting the wellbeing of our children has been strengthened considerably in recent times.

Scottish Ministers have been approached on several occasions in recent years by a number of individuals and organisations highlighting the challenges now being faced by both organisations hosting performances and by children and young people who want to perform, as a result of a licensing regime which is no longer considered fit for purpose.

The Scottish Government is proposing that a number of improvements be made to the current licensing process. We have been careful to ensure that all of the changes can be delivered through either revised secondary legislation or non-statutory guidance. There are currently no further plans to amend the relevant primary legislation in this area.

Objective

Ministers wish to introduce a revised set of licensing arrangements which will continue to deliver the necessary safeguards for young performers whilst also improving opportunities, both for children and for the creative industries, in Scotland.

Rationale for Government intervention

Delivery of such a licensing system is likely to support Ministers in achieving the following national outcomes:

- We live in a Scotland that is the most attractive place for doing business in Europe.
- We realise our full economic potential with more and better employment opportunities for our people.
- Our young people are successful learners, confident individuals, effective contributors and responsible citizens.
- Our children have the best start in life and are ready to succeed.
- We have improved the life chances for children, young people and families at risk.
- Our public services are high quality, continually improving, efficient and responsive to local people's needs.

The proposals have been developed to take account of the Government's overarching "Getting it right for every child" approach to supporting children, with increased focus being placed on the promotion of their wellbeing. Linked to this, the changes will support more effective implementation of the United Nations Convention on the Rights of the Child in Scotland. A separate child impact assessment has been prepared which details these benefits in more detail.

Whilst some of the proposals could be delivered solely through administrative changes within local authorities, we are not convinced that such a model would meet the needs of stakeholders who have called the adoption of a consistent approach to licensing across local authorities. It must also be remembered that some of the proposals set out in the consultation require legislative change which can only be delivered by Scottish Ministers.

Consultation

Within Government

The review of the current licensing system has been led by officials within the Scottish Government's Children & Families Directorate. Colleagues within the Scottish Government's Creative Industries team have been engaged in the process and are fully sighted on the proposals which form the basis of the public consultation. Similarly, colleagues with responsibility for the implementation of *Getting it Right for Every Child* have had detailed involvement in the preparation of the proposals.

Discussions have also taken place with Disclosure Scotland officials regarding the

interface between the revised licensing arrangements and the Protecting Vulnerable Groups scheme. Finally, colleagues in the Scottish Government's Legal Directorate have supported the development of the consultation paper and will continue to work closely with Ministers and others to identify the best mechanisms for delivering the changes being suggested.

Public Consultation

This partial BRIA will be published alongside the Scottish Government consultation document, "*Getting it Right for Young Performers: A national consultation on the arrangements for ensuring the wellbeing of children involved in performances*". The assessment will be revised in light of any emerging evidence obtained through that consultation process.

Business

The Scottish Government has taken forward a range of informal engagement activity to inform the development of the proposals set out in the consultation paper. Through our National Child Performance Working Group we engaged with key bodies, including:

- **The Producer's Alliance for Cinema and Television:** The trade association representing the commercial interests of UK independent television, film, digital, children's and animation media companies.
- **BBC:** The British public service broadcasting statutory corporation.
- **Scottish Youth Theatre:** a national third sector organisation giving young people in Scotland the opportunity to explore and to reach their creative potential through a quality theatre arts experience.
- **Strange Town:** An Edinburgh based youth theatre and casting agency.
- **Glasgow City Council:** Due to the size and nature of the area it serves, Glasgow City Council deals with a significant portion of Scotland's child performance applications.
- **Ofcom:** The independent regulator and competition authority for the UK communications industries.

The recommendations of that working group were submitted to Scottish Ministers in February of this year and form the basis of the Scottish Government's consultation proposals. In addition, Scottish Government officials have held separate discussions with bodies including:

- **Thames TV:** One of the UK's largest independent television producers.
- **Darrall Macqueen:** An independent production company specialising in children's and pre-school entertainment.

Options

Option 1: Do Nothing

There are existing arrangements for ensuring the wellbeing of children involved in performances which would continue to operate should Ministers choose not pursue the proposals set out in the consultation paper.

Benefits associated with option 1: Retaining the existing arrangements would allow local authorities to continue operating their current systems and processes linked to licensing. Implementation of revised arrangements will require some investment on the part of licensing authorities, including in relation to the publication of information materials and the training of staff.

Costs associated with option 1: Representatives from the creative industries have highlighted that failure to revise the arrangements will result in Scotland being placed at a competitive disadvantage to those other parts of the UK where certain aspects of the licensing system have been revised in order to improve opportunities for young people and the creative industries.

Option 2: Implement the proposals set out in “Getting it Right for Young Performers: A national consultation on the arrangements for ensuring the wellbeing of children involved in performances”.

Scottish Ministers could pursue the implementation of those proposals set out in the above consultation document, building on the work of the National Child Performance Working Group.

Benefits associated with option 2: The revised arrangements will result in certain disadvantageous aspects of the current arrangements being revised (e.g. through revised working hour limits and an improved application process), making the licensing system more appealing to those members of the creative industries wishing to deliver a production in Scotland. There is no way of measuring the potential positive impact that the change will have on financial investment by the creative industries in Scotland although it would be reasonable to suggest that any such benefit is likely to be nominal. Of more value is the potential for increased opportunities for Scottish children and young people to participate in performances which may perhaps not otherwise have been possible. It is generally recognised that involvement in the creative arts can have a positive impact on broader wellbeing. Scottish Government research on the impact of cultural engagement and sports participation on health and satisfaction with life in Scotland suggests that those individuals who have participated in a creative or cultural activity are 38% more likely to report good health compared to those had not participated in any such activity in the last 12 months.¹ Other research focussing specifically on children suggests that participation in structured arts activities improves both academic attainment for secondary school students and literary skills for pre-school and primary school aged children. Furthermore, involvement in such activity strengthens both the cognitive abilities and transferrable skills of young people.²

¹ <http://www.scotland.gov.uk/Publications/2013/08/9956>

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/88447/CASE-systematic-review-July10.pdf

The introduction of a more streamlined application process for child performance licences and improved appointment processes for chaperones of child performers could reasonably be expected to deliver efficiency savings for local authorities and organisations hosting performances although, again, this benefit is likely to be nominal.

Costs associated with Option 2: Implementing the revised arrangements would require local authorities to revise their current systems and processes linked to the licensing system. This could require some investment on the part of licensing authorities, including in relation to the publication of information materials and the training of staff.

Scottish Firms Impact Test

As stated above, detailed engagement has already taken place with a number of representatives from the private, public and third sectors with an interest in this issue. This engagement will continue throughout the public consultation, allowing us to better understand and assess the impacts of the proposals on organisations operating in Scotland.

Competition Assessment

The new arrangements will require that all individuals taking on the role of child performance chaperone become members of the Protecting Vulnerable Groups scheme. This has the potential to limit the range of individuals who could take on the role of chaperone. However, this safeguard is key to ensuring the wellbeing of children involved in performances and so its effects cannot be mitigated. That being said, steps have been set out in the consultation paper which are designed to minimise the financial costs associated with chaperones confirming their membership of the scheme.

Beyond this change, we do not anticipate the proposals having a detrimental impact on competition. However, this conclusion will be revisited following completion of the public consultation.

Test run of business forms

The proposals will require the introduction of a simplified application form to be completed by organisations hosting performances. That form will be developed following consultation with the members of the National Child Performance Working Group and will be tested with relevant bodies including local authorities and bodies hosting performance involving children.

Legal Aid Impact Test

We do not anticipate the revised arrangements having a significant impact on the legal aid fund.

Enforcement, sanctions and monitoring

The new arrangements will be enforced and monitored by local authorities as is the case with existing licensing system. Sanctions for non-compliance are not affected by the proposals.

Implementation and delivery plan

Subject to the outputs of the public consultation on the proposals, it is our intention to implement revised licensing arrangements by the end of the current calendar year. Details of a post-implementation review have yet to be agreed.

Summary and recommendation

In summary, the revised licensing arrangements for child performers are likely to offer moderate benefits to both the creative industries and to local authorities who will be implementing and enforcing the arrangements. These benefits will be delivered through:

- A simplified application process to be followed by organisations hosting performances;
- More flexible working hour limits for young performers, making Scotland a more competitive option for organisations involved in the hosting of performances;
- A more straightforward licensing system for local authorities to operate and enforce, underpinned for the first time by non-statutory guidance.

It is not possible to quantify these benefits in financial terms at this point.

The changes will have some limited costs attached to them. These will fall primarily to local authorities and will relate primarily to the revision of internal resources and the production of updated information materials. The costs are not anticipated to be significant.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

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**Cabinet Secretary for Education & Lifelong Learning
March 2014**

Contact

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