

Getting it right for young performers: a national consultation on the arrangements for ensuring the wellbeing of children involved in performances

Initial Child Impact Assessment

This child impact assessment has been developed to support officials in the design and development of policies which protect, promote and support children's rights and their wellbeing.

More specifically, the impact assessment will:

- Support Ministers in pursuing the Scottish Government's purpose.
- Support Ministers to satisfy their international obligations including implementation of the United Nations Convention on the Rights of the Child (UNCRC).
- Support Ministers to satisfy their legal responsibilities under:
 - The Equality Act 2010
 - The Children & Young People (Scotland) Act 2014 (not yet commenced)

The assessment should 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

Part 1: Current policy and drivers for change

Current policy

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 (the licensing authority) 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.

Drivers for change

Any change being delivered by the Scottish Government should contribute to achieving our overall purpose. That purpose is to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth. This means ensuring:

National outcome:

Our young people are successful learners, confident individuals, effective contributors and responsible citizens.

National outcome:

Our children have the best start in life and are ready to succeed.

National outcome:

We have improved the life chances for children, young people and families at risk.

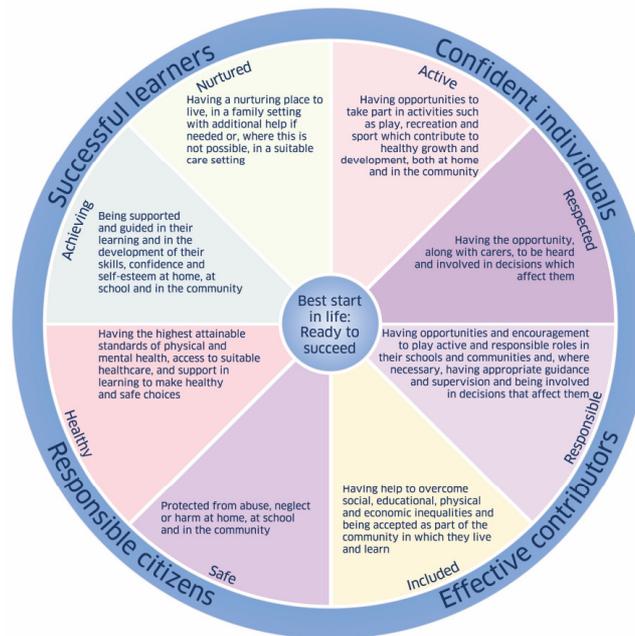
National outcome:

Our public services are high quality, continually improving, efficient and responsive to local people’s needs.

Promoting children's rights and wellbeing

We can only deliver the above national outcomes and, ultimately, the Government's purpose if we are committed to protecting, promoting and supporting the rights and wellbeing of children and young people (all those under 18 years old). We measure wellbeing using eight indicators:

Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible and Included.



This definition of wellbeing builds on the United Nations Convention on the Rights of the child (UNCRC), an international law setting out the rights of each child in Scotland. Further information on the UNCRC can be viewed at <http://www.unicef.org.uk/UNICEFs-Work/Our-mission/UN-Convention/>.

Part 2: Assessment

The following assessment describes the impact our proposals in relation to child performance are likely to have on children's wellbeing based on an analysis of their rights as set out under the UNCRC.

Safe: Every child or young person has the right to be protected from abuse, neglect of harm.

Relevant UNCRC articles in this context are:

- Article 6: Every child has the right to life. Governments must do all they can to ensure that children survive and grow up healthy.

- Article 19: Governments must do all they can to ensure that children are protected from all forms of violence, abuse, neglect and mistreatment by their parents or anyone else who looks after them.
- Article 32: Governments must protect children from work that is dangerous or might harm their health or education.
- Article 36: Governments must protect children from all other forms of exploitation that might harm them.

Throughout the development of our proposals we have sought first and foremost to ensure the safety of those children and young people who are involved in performances. However, in doing so we have been mindful of the need to deliver a system which is not unnecessarily prohibitive or restrictive, either for children or for those organisations hosting performances.

The new arrangements will support improved practice in the appointment of suitably skilled individuals to act as chaperones to young performers. The Scottish Government is proposing that, for the first time, national guidance be developed which sets out the core skills and knowledge that chaperones should display before being approved for the role. That guidance will be used to:

- Support chaperones in developing the skills necessary to take on the role;
- Support licensing authorities in adopting consistent standards when assessing the suitability of prospective chaperones; and
- Support parents and young people to understand what they can expect from a chaperone.

Furthermore, we are suggesting that steps be taken to require Protecting Vulnerable Groups (PVG) scheme membership for all chaperones (except those parents taking on the role in respect of their own child) and we are reducing the statutory limit on the number of children in the care of a chaperone from 12 to 10.

The Government is also suggesting the establishment of consistent practice in the preparation and submission of risk assessments by organisations hosting performances. These will be considered by the licensing authority alongside any application for a license.

Steps have been taken to revise the working hour limits associated with children's participation in performances. In doing so, we have been careful to ensure that appropriate provision is made for regular breaks during periods of performance. We recognise that excessive relaxation of working hour limits could have implications for the safety of children. At the same time, it has been important to address the complex nature of the current limits, providing for a simplified approach which is easier to enforce. We have also been mindful of the need to provide a degree of flexibility in order that children are able to access a wider range of performing opportunities which may not have otherwise been possible.

Healthy: Every child and young person has the right to experience the highest standards of physical and mental health, and supported to make healthy, safe choices.

Relevant UNCRC articles in this context are:

- Article 24: Every child has the right to the best possible health. Governments must provide good quality health care, clean water, nutritious food and a clean environment so that children can stay healthy. Richer countries must help poorer countries achieve this.

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

A key change to the current arrangements relates to the removal of the requirement that details of a medical examination in the last six months be provided as part of the licence application process in respect of those children undertaking the following:

- A performance for film or television.
- Any other broadcast performance which involves a child performing for more than 6 days in a 6 month period.
- Any other performance which requires a child to work the maximum number of licensable days for a period of more than one week.

The working group suggested that such letters were often hard to secure and did not necessarily always reflect the child's current state of health. Furthermore, there is often a charge associated with securing such a report from the child's General Practitioner.

The revised proposals rely on disclosure of relevant medical conditions by the child and/or parent as part of the application process. This information will be supplemented by any relevant information regarding the child's wellbeing to be provided to the licensing authority (upon request) by either the child's head teacher or health visitor (for children below school age). These individuals will be well placed to provide relevant information given their role as the child's "Named Person". This model is consistent with our *Getting it right for every child* approach to children's services, allowing for the proportionate, appropriate and justifiable sharing of information to ensure the health of a young performer.

The revised proposals will also require the submission of a detailed risk assessment alongside any application for a child performance. That assessment will detail any potential risks and mitigating factors designed to ensure the health of the young person whilst they are performing.

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

Active: Having opportunities to take part in a wide range of activities – helping them to build a fulfilling and happy life.

Relevant UNCRC articles in this context are:

- Article 31: Every child has the right to relax, play and join in a wide range of cultural and artistic activities.

We believe that the revised proposals have the potential to increase opportunities for children to participate in the performing arts through:

- Streamlined licensing processes which are likely to be more appealing to members of the creative industries who are considering hosting performances in Scotland.
- Revised working hour limits, allowing children to participate in performances at times which would not currently be permitted, subject to necessary safeguards being in place.

At the same time, we have been careful to ensure that limits have been placed on children's participation in performances. This allows us to ensure that young performers are getting the necessary rest and that they have sufficient spare time to participate in those other cultural and leisure activities which are key to their broader wellbeing.

Nurtured: Having a nurturing and stimulating place to live and grow.

Relevant UNCRC articles in this context are:

- Article 3: The best interests of the child must be a top priority in all actions concerning children.
- Article 5: Governments must respect the rights and responsibilities of parents to guide and advise their child so that, as they grow, they learn to apply their rights properly.

The central focus of the changes being proposed is to better protect, support and safeguard the rights and wellbeing of young people involved in performances. The test to be applied by licensing authorities will continue to be:

“a local authority shall not grant a licence for a child to do anything unless they are satisfied that he is fit to do it, that proper provision has been made to secure his health and kind treatment and that, having regard to such provision (if any) as has been or will be made therefor, his education will not suffer”

When applying this test, licensing authorities will be advised to consider whether the child's involvement in the performance is likely to result in any additional risk to their wellbeing beyond that which they would experience in the ordinary course of their life. In doing so, licensing authorities should take into account any steps by the

organisation hosting the performance to mitigate potential risks.

Very little has changed in terms of the role that parents will play in the licensing system for young performers.

In future, parents will continue to provide detailed information in respect of their child as part of the application process linked to the licensing system. Parents will also continue to be able to take on the role of chaperone in respect of their own child. However, they will be better supported in this role in future, with detailed guidance being provided to them regarding:

- The role and responsibilities of a chaperone.
- Working hour limits and minimum education provision for young performers.
- Relevant processes for raising concerns.
- Information on production processes linked to child performances.

Achieving: Receiving support and guidance in their learning and boosting their skills, confidence and self-esteem.

Relevant UNCRC articles in this context are:

- Article 28: Every child has the right to an education. Primary education must be free. Secondary education must be available to every child. Discipline in schools must respect children's human dignity. Wealthy countries must help poorer countries achieve this.
- Article 29: Education must develop every child's personality, talents and abilities to the full. It must encourage the child's respect for human rights, as well as respect for their parents, their own and other cultures, and the environment.
- Article 31: Every child has the right to relax, play and join in a wide range of cultural and artistic activities.

Research 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 Any steps taken to improve access to performance opportunities for our young people should support improved realisation of these benefits.

At the same time, we have been careful to ensure that the revised arrangements linked to child performance licensing do not result in children being placed at a disadvantage as a result of their absence from school. Through the introduction of

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

statutory thresholds for private tutoring, we intend to ensure that every young person has access to high quality educational support whilst they are participating in performances. Furthermore, we are suggesting that the child's head teacher (or parent in the case of home educated children) have the opportunity to shape a child's course of study whenever they are involved in a performance which impacts on their education arrangements.

Respected: To be given a voice and involved in the decisions that affect their wellbeing.

Relevant UNCRC articles in this context are:

Article 12: Every child has the right to say what they think in all matters affecting them, and to have their views taken seriously.

Article 16: Every child has the right to privacy. The law should protect the child's private, family and home life.

The proposals make a number of targeted changes designed to strengthen the voice of the child in the licensing process. For example, we are suggesting that children be given the opportunity to sign the application form for a licence in their name. Amongst other things, the application form will include details of the individual who will be acting as the child's chaperone for the duration of the licence.

The requirement for a child's signature will of course be subject to the child's maturity and some discretion will be extended to the licensing authority. This will allow them to process applications without a signature in certain instances where, for example, the child's participation in a performance requires an element of surprise.

As is currently the case, it will be open to the licensing authority to request a discussion with the child as part of the application process should that be considered necessary. There is currently no suggestion that children should be offered the opportunity to attend a discussion with the licensing authority as a matter of course although we would welcome views on this possibility.

It will be important to ensure that any information provided as part of the licensing process is dealt with in accordance with the Data Protection Act 1998. Similarly, any decision by a child's Named Person to provide information to a licensing authority will have to be made in accordance with the provisions of the Children & Young People (Scotland) Act 2014 once commenced. These requirements will be set out in the non-statutory guidance to be published alongside the revised secondary legislation relating to the licensing system.

Responsible: Taking an active role within their schools and communities.

Relevant UNCRC articles in this context are:

- Article 13: Every child must be free to say what they think and to seek and receive information of any kind as long as it is within the law.
- Article 14: Every child has the right to think and believe what they want and also to practise their religion, as long as they are not stopping other people from enjoying their rights. Governments must respect the rights of parents to give their children guidance about this right.

There are no plans to make further changes to the primary legislation relating to the licensing system at this time. Accordingly, it will continue to be the case that licences will be required for the following performances:

- Acting or behaving in a contrived manner for dramatic effect.
- Singing, dancing or performing music.
- Expressing fabricated views for dramatic effect.

A child who has simply been asked to express their own opinions is unlikely to be considered to be in a dramatic role and so a licence would not usually be necessary. Similarly, observing and recording a child's normal behaviour would not normally require a licence to be granted.

Whilst the licensing safeguards will not apply in such instances, the non-statutory guidance being produced as part of the review will make clear that parental consent should always be sought by the organisation hosting the production prior to a child's involvement and that all organisations hosting such productions should be mindful of their duty of care towards the child or young person. Where a production is being made for broadcast, the OFCOM Broadcasting Code should be adhered to.

When seeking to satisfy this duty of care, organisations hosting performances should support children to understand how their views are likely to be presented as well as the potential consequences associated with them sharing those views.

Included: Getting help and guidance to overcome social, educational, physical and economic inequalities; accepted as full members of the communities in which they live and learn.

Relevant UNCRC articles in this context are:

- Article 2: The Convention applies to every child whatever their ethnicity, gender, religion, abilities, whatever they think or say, no matter what type of family they come from.
- Article 14: Every child has the right to think and believe what they want and also

to practise their religion, as long as they are not stopping other people from enjoying their rights. Governments must respect the rights of parents to give their children guidance about this right.

- Article 23: A child with a disability has the right to live a full and decent life in conditions that promote dignity, independence and an active role in the community. Governments must do all they can to provide free care and assistance to children with disability.

We are not aware of anything in the proposals which would prohibit children who are of a certain race, gender, ethnicity or religion from being involved in a performance.

By taking steps to remove the need for a letter from the child's GP, we are removing a potential financial barrier which could previously have prevented the granting of a licence to a young person.

It will be necessary to adopt the Scottish Government's principles of inclusive communication when preparing all materials linked to the licensing system. Doing so will help to ensure that all children, their parents and any other persons with an interest in the licensing arrangements have the opportunity to access appropriate information which supports them through the process.

Finally, it will be important for any non-statutory guidance to reflect the need for child performance chaperones to be aware of, and alive to, any particular cultural or other requirements of the children in their care.

Part 3: How can we improve

Based on the above assessment, it is the Scottish Government's view that, if accepted, the proposals will act to further protect, support and safeguard the rights and wellbeing of children and young people and, in particular, those individuals under school leaving age who are involved in performances. This is of course subject to the actions identified in the assessment being delivered as part of the broader implementation of the revised licensing arrangements. We have not identified anything in the proposals which would act to the detriment of those children likely to be affected.

Part 4: Next steps

This assessment will be revisited to take account of any evidence gathered through the recently commenced public consultation "*Getting it right for young performers: A national consultation on the arrangements for ensuring the wellbeing of children involved in performances*". Plans are currently being made to engage children in that process.

**Scottish Government
March 2014**