

BODY OF PERSONS APPROVAL GUIDANCE WALES

Under Section 37(3)(b) of the Children and Young Persons Act 1963 a licence is not required for a performance given under arrangements made by 'a body of person' approved by the local authority where the performance is taking place, or in some exceptional circumstances by Welsh Government or the Secretary of State.

What is a BOPA?

The first thing to be made clear to both organisations who are applying for and local authorities who are issuing body of persons approvals is that a BOPA must not be viewed as a means of 'getting round' the requirement for a performance licence. Applying for and granting a BOPA will reduce the administrative burden for all parties, however the same principles apply in terms of safeguarding the child and ensuring there is proper provision to secure his health and kind treatment. **There must be no reduction in safeguarding arrangements.**

A BOPA, if granted, removes the need to apply for an individual licence for each child; it is granted to the organisation that is responsible for the performance. The approval is granted by the local authority where the performance is taking place; the local authority can grant the approval even if the children taking part do not live within its' boundaries. It is the organisation which is approved not the children i.e. the local authority is confirming that the group or organisation is a 'suitable' or 'approved' group and therefore must be certain that they (the LA) have taken every reasonable precaution to ensure the group is indeed a suitable group.

A BOPA can be granted to an organisation for a single performance or for a series of performances within a specified time providing no payment is made to the child or to anyone else in respect of the child taking part in the performance and the child does not require absence from school. *See Section 7 Absence from school* for further details.

A BOPA is not transferable to another organisation or to individual children taking part in a performance arranged by someone else. A BOPA cannot be issued in respect of an activity.

A BOPA is not a 'group licence' nor is it an exemption under the 4 day rule.

Who can apply?

Any type of organisation can apply for a BOPA i.e. amateur group, professional company, stage or broadcast providing there is no payment made (other than expenses) for the child to take part. However they will be required to meet certain criteria and to demonstrate that they have clear, robust and well embedded safeguarding policies and arrangements in place to protect children. This will inform the local authority decision and it is at its' discretion whether to issue an approval.

Festivals (Dance, Drama, Music, Speech) and 'Competitions'

Since the introduction of the Children (Performances and Activities) (Wales) Regulations 2015 and supporting guidance it is clear that certain performances which were incorrectly ignored previously, fall under the performance licensing system.

A number of festival organisers have argued that due to the 'educational element' inherent within their festivals they should be exempt from licensing. The organisers of a festival are not a school and as such the festival cannot be exempted under section 37(3)(b) of the 1963 Act. Festival organisers should be made aware Welsh Government will confirm they are subject to child performance legislation. (see Keeping Young Performers Safe, Welsh Government Guidance document 192/2015 – see below)

1.5 A performance may not require a licence if it is:

- a) organised by a school – an educational institution that provides primary or secondary education, rather than a dance school or similar; and
- b) the school is responsible for producing the performance, which may involve children from that school or from another.

It should also be noted that nowhere in the performance legislation does it state that 'competitions' are exempt from licensing.

If a performance/event meets any of the criteria specified in section 37(2) of the 1963 Act then it falls under child performance licensing legislation regardless of the name given to the event e.g. festival, competition, gala etc. Please note that 'admission charge or otherwise' does include a payment to enter the event.

In the majority of cases the most appropriate way forward for the organiser of these types of events is to apply to the local authority where the event is taking place for a Body of Persons Approval.

The number of festivals and similar events held across Wales and England each year is considerable and may represent a significant workload for licensing officers. When dealing with such events (many of which may involve several hundred children taking part over a number of days and weeks) it is imperative that local authorities focus on the safeguarding arrangements that the organisers have in place as stated above. The licensing officer should not insist on information being forwarded to the local authority which does not directly inform their decision to issue an approval

In exceptional circumstances Welsh Government or the Secretary of State may issue a BOPA. Advice from respective guidance below:

Welsh Government Advice 1.12 states the following:

- Where an application for a BOPA involves large numbers of children over a significant number of local authority areas, then in certain circumstances the Welsh Ministers may consider the application. In most cases, though, local authorities are better placed to judge the needs and safeguarding arrangements required for the children involved and Welsh Ministers would not expect to receive applications on a regular basis

Department for Education Advice 1.3.7 states the following:

- The Secretary of State has the power to issue a BOPA but will not generally consider applications. This is because local authorities are better placed to assess arrangements made to safeguard children in local activities, to inspect those arrangements and enforce any requirements or conditions intended to protect children.
- The Secretary of State will not consider any applications that do not involve a large number of performances with a large number of children across a significant number of local authority areas.

Organisations should therefore make an application for approval to the local authority where the performance is taking place. An organisation should not apply to Welsh Government or the Secretary of State because they believe the local authority is taking too long to process an application. They should certainly not apply to the Welsh Government or the Secretary of State because the local authority has turned down an application.

How to apply

The first consideration is to determine if a BOPA is the appropriate route to take in the given circumstances.

If the child is being paid or anyone else is receiving payment for the child to take part then a BOPA is **NOT** appropriate and a licence must be applied for. If the performance in question is a type where it is normally expected a child would receive payment the local authority should question the absence of payment and may take the view that a BOPA is not appropriate in the circumstances.

If absence from school is required then again a BOPA will not be appropriate and a licence must be applied for but see *Appendix A*.

If the above criteria are met the organisation should approach the local authority where the performance is taking place to discuss applying for a BOPA and complete the BOPA application, conditions of approval form and Safeguarding Checklist.

The organisation should apply to the local authority in plenty of time in order that they have sufficient time to assess the application and ask for further information should this be required. It is suggested that 21 days in line with regulations would be a reasonable time frame.

As stated earlier it is at the discretion of the local authority whether to issue a Body of Persons approval and the organisation will need to provide evidence of the following:

- Clear, robust and well embedded safeguarding policies and procedures in place
- A designated child protection/safeguarding officer
- A regularly updated (every 12 months) child protection policy together with details of how this is communicated and followed
- Evidence of any child protection/safeguarding training provided
- Procedures for checking the suitability of persons who will have responsibility for children

The local authority will also ask the organisation to agree to certain conditions which will include the following:

- To comply with Regulation 11 and Regulations 15 to 29 of The Children (Performances and Activities) (Wales) Regulations 2015
- To ensure an appropriate number of local authority approved chaperones or other suitably approved persons are engaged to care for the children and ensure they are supervised at all times
- Ensure suitable arrangements for first aid
- Maintain detailed and complete records of children involved in the event including emergency contact details and any medical issues (see below)
- Obtain a signed statement of fitness from the parent of each child (see below)
- An authorised officer of the local authority having unrestricted access to any rehearsal, technical rehearsal or performance at any venue the organisation may use

If the event is large with several different groups participating, the organiser must assure/demonstrate to the local authority that individual groups will maintain a detailed register of the children they will be responsible for during their time at the event. This should include the name, address, age of the child together with emergency contact details and details of any medical issues. The responsible person must ensure this confidential information is held securely throughout the duration of the event and is available at the place of performance for inspection purposes. The parents should also have signed a statement of fitness. If it is requirement that an entrants form is completed in order to take part in the event best practice would be that a statement of fitness is incorporated within this.

It is not a requirement that the organiser must provide the local authority with the names, date of birth, address and school of the children taking part. Such detailed information does not inform the licensing officer's decision to issue an approval. The licensing officer should request the numbers of children taking part, gender split and age range and this should be taken into consideration to ensure satisfactory supervision.

There may be other conditions that a local authority may wish to impose depending on the individual circumstances of the performance.

Note: Department for Education advice 1.3.7 states: Where a performance is taking place under the auspices of a BOPA the legislation does not require that the child be supervised by a chaperone approved by the local authority.

This statement cannot be taken in isolation. The local authority as to be certain the organisation has clear, robust and well embedded policies for safeguarding children and the supervision and care of the children is paramount. When considering whether to issue an approval to a group, the licensing officer must ask the group to explain their procedures for carrying out background and suitability checks on the adults who will be caring for the children. For example; what is the procedure for obtaining a DBS check and how would they deal with any adverse information on a disclosure? Do they obtain independent references? What training do they provide in terms of child protection and child performance legislation? Experience shows they will very often be unable to demonstrate acceptable procedures are in place and as such only the use of local authority approved chaperones will enable the group to be considered for a body of persons approval. It is the firm view of NNCEE that children performing under a BOPA are best supervised by local authority approved chaperones and this should be the default position when possible.

However, it is acknowledged there may be some exceptions. Licensing officers should look at events on an individual basis and refrain from adopting 'a one size fits all' approach. For example due to the nature of the event and what is required from the children taking part Licensing Officers may view alternative arrangements to the 1:12 or lower ratio of local authority chaperones as satisfactory to safeguard all the children involved. By entering into detailed discussion with the organiser regarding the operation and running of the event i.e. signing in and out procedures, holding areas, changing areas if required, the proposed movement of the children between various areas of the venue and their supervision, licensing officers may agree a mix of supervision options consisting of local authority chaperones, DBS checked adults, teachers and a child's own parent. See following examples.

Example

A cathedral holds a number of evening events in which several schools take part. It was appropriate to grant a BOPA and in this case the local authority did not make it a condition that local authority approved chaperones were engaged. The children were supervised by their teachers, however the local authority agreed a ratio of teachers to pupils ensuring sufficient numbers were present and supervision was not being undertaken by parent helpers.

Example

A BOPA was issued to a local authority organisation that ran a choir for children with a variety of different special needs. This choir was due to perform at an event organised by the local authority group. As many of the children had quite specific special needs more supervision was required than the usual 1 chaperone for 12 children. It was agreed that the people best qualified to supervise and provide the specific support these children needed was the support staff from the child's special needs school, who were neither teachers nor chaperones. The support staff who were DBS checked and trained in dealing with these specific needs were to support the local authority music teachers for the choir. The Music staff had undergone safeguarding training and training on the performance regulations as part of the requirement for the granting of the BOPA and were also DBS checked. This arrangement worked well and the children were able to fully participate in the concert.

Example

An organisation was due to hold the finals of their annual dance event. Heats had been held around the country and the winning groups were travelling to the venue for the grand final. High numbers of children were taking part and would be present at the venue for the maximum permitted hours where they would rehearse and then perform at their allotted time.

A face to face meeting was arranged with the organiser at the venue. It was discovered the individual dance groups had a mixture of supervision arrangements in place i.e. the required number of local authority approved chaperones, a mix of chaperones and DBS checked adults, DBS adults and parents. It was agreed with the organisers that a sufficient number of their staff would be approved as chaperones. These chaperones would ensure the individual dance groups and their chaperones were escorted backstage to the

dressing rooms at their allotted time, were escorted to and from the stage and then escorted back to the respective 'holding' area following the performance. This ensured the backstage area was being supervised by local authority approved chaperones throughout the performance. Arrangements for supervision of the children when not backstage or performing were also discussed and agreed. This arrangement worked well and the event ran smoothly.

Example

A local festival organiser approached the local authority to discuss applying for a BOPA for their annual festival. This took place over a number of days with a large number of entrants being children. Apart from the usual groups of children, a number of the children were sole entrants who would be either singing, playing an instrument or reciting a piece of prose. The local authority were advised it was normal practice for these children to sit in the audience with a parent until they were called to perform at their allotted time; the organiser was not aware if they had arrived until they were called. It was agreed with the organiser the parent should act as chaperone for their child, remain with them in the audience and escort them to and from the stage. It was also agreed that a list of child entrants should be maintained for each day and the parent should sign their child in on arrival and out when leaving.

Whenever possible it is considered best practice that the person or persons from the group are interviewed by the licensing officer. This can take place at local authority offices or if it is a local group preferably at the place where they rehearse and perform. This will enable the licensing officer to see at first hand the procedures the group have in place and to carry out an inspection of the place of performance and rehearsal as required by Regulation 17.

Issuing a BOPA

The local authority can issue a BOPA for a single performance or for a series of performances over a given period; this is normally up to one year.

If the approval is given for a period of time it should be a condition that the organisation provides the local authority with details of each performance/rehearsal including the dates, times and location, the names of the chaperones together with the number of children taking part including gender split and age range, at least 21 days in advance of the first performance unless the local authority has agreed a shorter notice period.

If satisfied with the proposed arrangements the local authority should issue an approval to perform in respect of the specified performance.

As stated previously a child does not need to live within the boundaries of the local authority issuing the BOPA. Should they become aware of this the issuing local authority does not need the 'permission' of another authority for their children to be included. It does not matter if a child has performed on 4 days or more in the last 6 months they can still be included in a BOPA.

Example

Amy has had 2 licences issued in the last 3 months and has worked for 2 days on a TV drama and filmed a TV commercial for 1 day. The local theatre group she is a member of are putting on a production for 4 days and have been granted body of person's approval. Amy can perform under the BOPA.

However if a child has performed under a BOPA the number of days will count as performance days.

Example

Jake played 'Oliver' in the production put on by the local group where he is a member. The group were granted a BOPA and Jake performed for 3 days. An enquiry was received from another organisation who wanted to film with Jake for 2 days and as he wasn't been paid and wasn't missing school (filming was at the weekend) they wanted to make use of the 4 day rule exemption. In this instance the days Jake performed under the BOPA must be counted and an exemption cannot be applied, the organisation must apply for a licence.

Licensing officers may question how they can apply the '4 day rule' exemption if they are not notified of the individual children performing under a BOPA. It is not for local authorities to police the '4 day rule' and licensing officers should refer to Page 8 of this guide 'The 'four day rule'. Paragraph 4 of the section states:

It is a legal requirement to apply for a licence when 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. If a producer is relying on the four day rule as a basis for not applying for a licence, they should have reasonable grounds for believing the child has not performed on more than 3 days in the previous 6 months.

Clearly the onus is on the producer to ensure they make reasonable enquires and best practice examples are given within the section. Licensing officers need to ensure their form of exemption is explicit and makes absolutely clear to the producer what enquiries they should make and the likely consequences should they fail to do so.

BOPA decisions

As has already been stated it is at the discretion of the local authority whether to issue a BOPA and they can place any conditions on the approval to ensure the wellbeing of children.

A BOPA can be revoked if the organisation fails to meet the agreed conditions and if the local authority has concerns about the safety and wellbeing of the children involved in the performance.

If a local authority decides not to grant a BOPA it is best practice they write to the organisation stating the reasons for refusal.

APPENDIX A

SECTION 7 ABSENCE FROM SCHOOL

It is important that licensing officers are clear on the different sections of legislation which have a bearing on absence from school to take part in a performance, activity or paid sport. The legislation covering this are:

Children and Young Persons Act 1963 s 37(4) and 37(7) The Education (Pupil Registration) (Wales) Regulations 2010 Reg.7

Section 37(4) of the 1963 Act states that a local authority shall not grant a licence for a child to do anything unless they are satisfied his education will not suffer.

Section 37(7) of the 1963 Act states a licence shall specify the times during which the child may be absent from school for the purposes authorised by the licence and for those times specified the absence shall be deemed to be authorised by a person authorised in that behalf by the managers, governors or proprietor of the school.

Licensing authorities should bear in mind that section 37(4) states that if they are satisfied the child's education will not suffer they shall not refuse to grant a licence. Therefore if the school cannot provide evidence or the local authority is not convinced by their evidence or objections they **must** issue a licence, if they are satisfied with all other aspects of the application.

A letter from the head teacher must accompany the licence application, unless the authority is satisfied that it is not possible or practicable to get such a letter (such as when an application is made during school summer holidays and does not involve time out of school), but not if there could have been time to get a letter if the application had been better planned.

The Education (Pupil Registration) (Wales) Regulations 2010 Reg.7

Regulation 7(2) states: Leave of absence shall not be granted to enable a pupil to undertake employment (whether paid or unpaid) during school hours except—

(a) employment for the purpose of taking part in a performance within the meaning of section 37 of the Children and Young Persons Act 1963(1) under the authority of a licence granted by the local authority under that section;

This is further clarified by Welsh Government advice (Keeping Young Performers Safe Guidance document no: 192/2015 Section 2.9 which states: For local authority maintained schools and special schools not maintained by the local authority, a child may not be absent from school in order to perform or to take part in paid sport or modelling unless a licence has been obtained from the child's local authority. In practice, this means that unless the performance or activity is taking place outside of school hours (for example at a weekend or during school holidays), a child may not rely upon one of the exemptions in section 37(3) in order to perform as the head teacher may only authorise absence for a child to take part in a performance or activity for which a licence has been obtained.

However –

Regulation 7(5) states: This regulation (i.e. Regulation 7 in its entirety) applies only in relation to a maintained school and a special school not maintained by a local education authority.

This means if he/she so chooses, the head teacher of an independent school, academy or free school is able to authorize absence to take part in a performance irrespective of whether a licence has been issued.

The following table sets out the circumstances when absence from school may be permitted under the exemptions in section 37(3).

Type of school	Exemption	Can absence be authorised?
Local authority maintained school	4 day rule	No – a licence will be required
Special school not maintained by the local authority	4 day rule	No- a licence will be required
Independent school, academy or free school	4 day rule	Yes- if the head teacher chooses to do so
Local authority maintained school	BOPA	No – a licence will be required
Special school not maintained by the local authority	BOPA	No – a licence will be required
Independent school, academy or free school	BOPA	Yes- if the head teacher chooses to do so

With thanks to Sandra Rothwell, former NNCEE chair and author of The Guide to Performance licensing England 2014. Amended to reflect Welsh Regulations by Jo Bowman, Cardiff Council

This document is available in Welsh / Mae'r ddogfen hon ar gael yn Gymraeg