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# Child Licensing Update

May 2019

# The law

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**Primary legislation** - The Children and Young Persons Act 1963

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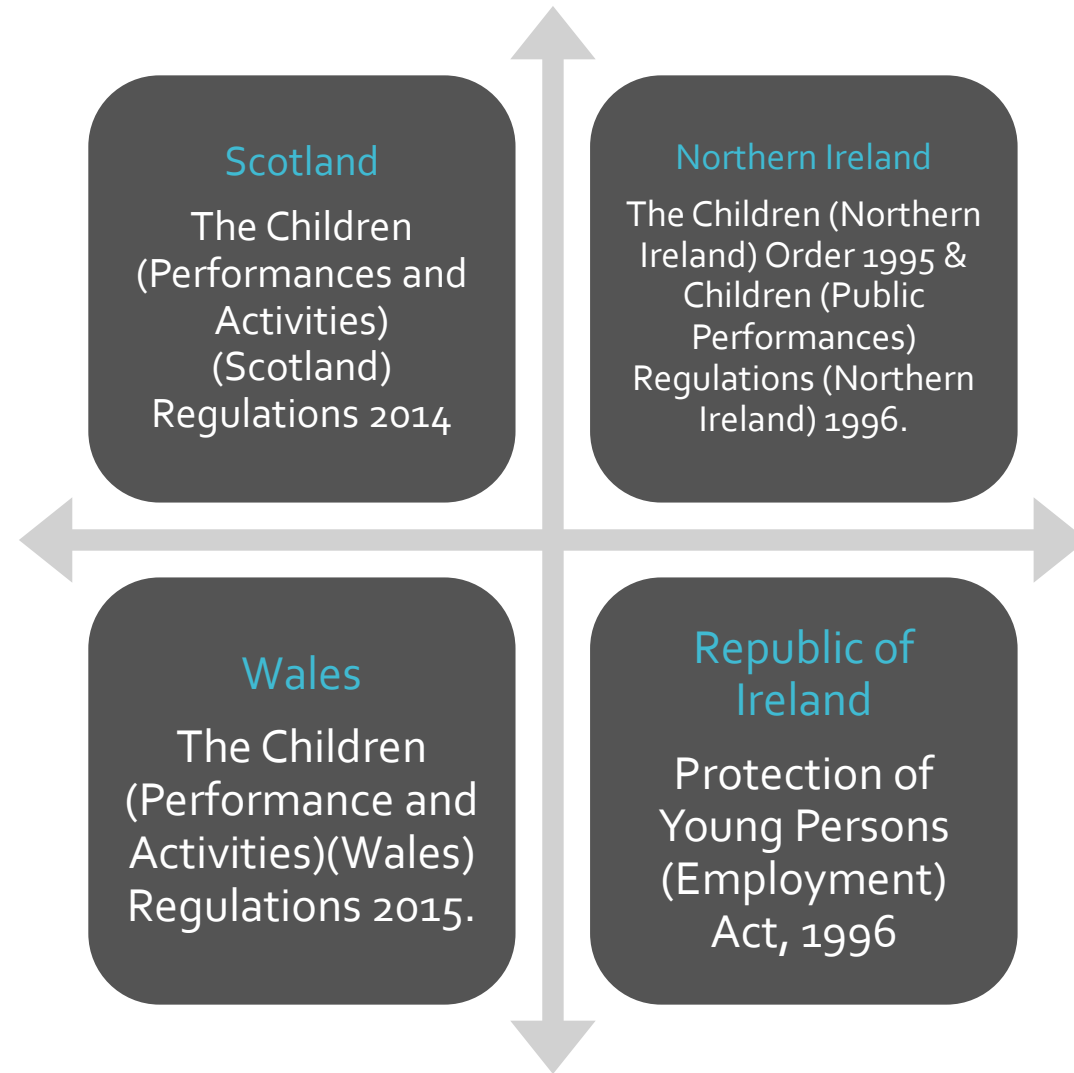
**Secondary legislation** – The Children (Performance and Activities)(England) Regulations 2014.

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These apply only to England



# What's the law outside of England?



# Why now?

- 2014 Regulations do not actually change that much.
- Criteria which trigger licensing requirements remain the same as within the 1963 Act.
- Spotlight has gone back onto child licensing within Local Authorities (LAs).
- Climate of increased focus on safeguarding within LAs
- End result – more performances now on their radar including educational and amateur performance.

# So what are the triggers?

- Under s.37 of the 1963 Act **any one** of the following triggers the need for child performance licences.
  - ✓ Any performance in connection with which a charge is made (whether for admission or otherwise)
  - ✓ Any performance in licensed premises
  - ✓ Any performance for broadcast
  - ✓ Any performance when the child is paid

# Why aren't our festival performances exempt?

- Amateur performance is not exempt. The legislation applies if any of the triggering criteria are present.
- Our performances are educational BUT they are not arranged by the primary or secondary school so we fall outside of the narrow educational exemption.
- Getting any changes to primary legislation is a very hard and very slow process!

## Exemptions?

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**4 day rule** – individual licences are not required for children who have **not performed on more than 3 days** in the **last 6 months**.

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**Performances given under arrangements made by a school** - only applies to performances arranged by secondary or primary school.

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**Body of Persons Approval (BOPA)** – individual licences are not required because the performance is being arranged by an organisation which has been approved by the LA in whose area the performance will take place.

## BOPA - the essentials

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Removes the need to apply for individual licences for each and every child.

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Reduces the administrative burden of applying for individual licences.

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LA approves the organisation as being a suitable organisation to put on the performance.

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Organisation must demonstrate clear, robust safeguarding procedures in place.

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Provide the LA with certain information as part of the application for the BOPA.

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LAs have discretion regarding the information they can request as part of the application.



## BOPA – the problems

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Inconsistency in approach across the LA areas.

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BOPA application requirements can be vastly different from one area to the next.

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Heavy administrative burden on festivals to provide the information to support the application

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GDPR considerations

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Use of licensed chaperones

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Term-time absence from school

# Absence from school and BOPAs

Interaction with The Education (Pupil Registration) Regulations 2006 causes additional problems.

Headteachers from free, independent and academy schools can authorise absence from school so these children can be included under a BOPA.

Headteachers from LA maintained schools **cannot** authorise absence from school unless an individual licence has been obtained.

NNCEE advice to LAs is to include them on the BOPA if performance is school-related.



“I have not been approached by my LA about this, should I keep my head down or should I contact them?”

- The law as it stands applies to our festival performances even though they are amateur and educational in nature.
- Inconsistency in approach means that a proactive contact could take you on a journey of discovery!
- Risks of going ahead without complying with the law are:
  - visit from the LA licensing officer during the festival – shutdown
  - penalties under the legislation – fine/imprisonment
  - reputational issues due to non-compliance with legislation.



## What can I do to prepare for child licensing?

- Think about how you could collect the information needed for a BOPA application – review your systems.
- Make sure that your safeguarding procedures on the ground are sound and reviewed regularly.
- Allow enough time to complete a BOPA application. It can take longer than you anticipate!
- Try to develop a positive working relationship with your licensing officer. Help them to understand what you do and how you do it.
- Contact your local MP and ask for their support. This helps to push the issue up the political agenda.



## What is the Federation doing?

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Working under the umbrella of the Music Education Council to present a united voice on issue.

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Ongoing dialogue with the Department for Education (DfE).

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Working constructively with the NNCEE on the practical problems faced by festivals.

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Currently waiting for the DfE's decision on whether to issue additional guidance on the information required for a BOPA.

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Pushing for change to the primary legislation - isn't going to happen in the short-term.

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Finding ways to make the current legislation more workable for members in the short-term.