

Exploratory review of the system of regulating child performances

Report by Sarah Thane, CBE

March 2010

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26 February 2010

Dear Secretaries of State

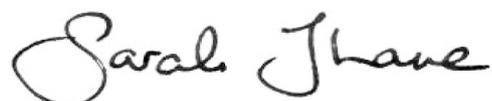
On the 14 December 2009, you invited me to undertake an exploratory review of the system of regulating child performance. In particular, you asked me to examine the scope for consensus among the various stakeholders for what a modern, effective and proportionate set of arrangements for the regulation of child performance should look like.

Attached is my report on the outcome of this review. I am very grateful to those organisations and individuals who gave their time at short notice to share their thoughts, ideas and experiences and many of them followed up on detailed points to aid my thinking.

I have found striking levels of consensus around what needs to be changed in the current flawed system but inevitably there are some differences of view on the nature and scope of what replaces it. I do not believe these are insurmountable.

I hope my findings and recommendations address the main issues which have been raised. The stakeholders appear eager to me to assist in the fine tuning and I urge you to find a way to implement them as soon as practicably possible – especially those that can be quickly introduced without primary legislation.

Yours,

A handwritten signature in black ink that reads "Sarah Thane". The signature is written in a cursive, flowing style.

Sarah Thane, CBE

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Section 1

Introduction

- 1 This note sets out the findings and recommendations from my exploratory review of the system of regulating child performance. The terms of reference for the review are given at Appendix 1.
- 2 I am grateful to those organisations and individuals who gave their time at short notice to share their thoughts, ideas and experiences. In the time available, I have not been able to address all the detailed issues raised by people in relation to these arrangements. With a system that has been in place for over 40 years, not surprisingly it is at best in need of modernisation and simplification and in some aspects an anachronism in today's world. I will ensure that all points and evidence given to me during the course of this review are passed on for consideration.
- 3 In developing this report, I have taken as my starting point the desire – expressed to me by everyone I have spoken to – to allow children the opportunity to perform. They must be free to express their talents and enthusiasm in a wide variety of ways, without the heavy hand of the state interfering where it is not needed. But equally we need to ensure that protections are applied so they are able to do this safely, and that what they are doing is beneficial to them, their dignity is protected, and that their education does not suffer.
- 4 To deliver this I have drawn on the available evidence on benefits and risks. However, as most stakeholders have told me, there is little in the way of hard, empirical research on the impact on children of participating in different forms of 'performance', particularly evidence of harm. I believe however that this is not the only test we should use when deciding what level of regulation is needed. There is both research and anecdotal evidence that society expects children to be protected from situations where their physical and emotional well being could be put at risk. This is not about wrapping our children in cotton wool, or responding in a knee jerk way to the moral outrage of a few. These safeguards need to be balanced, appropriate and proportionate.

“Some children have a passion for football, some for the violin and some for acting. However, those children that want to act find themselves unable to do so because of inconsistent licensing practices throughout the country.” **A parent**

Section 2

Executive Summary

5 The main recommendations arising from this exploratory review are:

- **The system of licensing child performance needs urgent and radical overhaul and re-balancing.** A number of specific changes are proposed in Section 6 including the rules around working hours, medicals, and a small number of local authorities acting as centres of expertise. (see paras 81-93)
- **A system of inspection and enforcement by local authorities needs to be developed** that is targeted and proportionate to risk, that operates to agreed criteria and encourages best practice among employers. (see para 94)
- **Continued licensing of children engaged in some amateur and youth productions appears disproportionate. I urge consideration to be given to the removal of licensing requirements from this sector.** (see paras 95-96)
- **The provision of good quality education should be an important part of the licence requirements.** (see paras 97-99)
- **The chaperone role should have greater ‘professional’ status** to recognise their crucial, independent function in safeguarding the children under their control. This should include nationally agreed criteria developed for the role and national training requirements. (see paras 100-103)
- The Government must **include a definition of performance in future legislation.** The definition of performance needs particular care and to be arrived at after consultation with all the interested parties. (see paras 104-108)
- The Government should **remove the prohibition on under 14s** taking part in performance beyond the specified exemptions as soon as practicable. It should be substituted by a range of protections appropriate to the broad age range and the particular attributes and vulnerabilities of the individual child (see para 109)
- **All employers of child performers should regularly benchmark their child performance procedures and protections against industry best practice.** (see paras 110-120)

- The **Government and key stakeholders should work together to promote a shared understanding** of the issues, requirements and benefits in relation to engaging children in performances. (see paras 121-122)
- 6 Many of the findings and recommendations set out in this report build on the work done last year by officials and stakeholders to review the regulations. This report, however, takes this work a stage further by looking at the regulatory system as a whole.
 - 7 I hope that the government can accept these recommendations in full, as together they are intended to form a new framework for licensing child performance. The objective is to combine maximum and equal opportunity for children, with assurance for the public about their well-being, through a system that places responsibility on those best placed to deliver.
 - 8 If accepted, there will be much detailed work for officials flowing from these proposals and enacting some of them will be more straightforward than others, for example those which require changes to primary legislation. However I would urge that the impetus around this issue be maintained.
 - 9 During the course of my discussions with stakeholders, a number of issues were raised which were outside the direct scope of this review, or not explored in any detail. These are listed in Section 7.
 - 10 Finally, my aspiration is that the changes proposed in this report – to create more streamlined, proportionate and risk-based licensing arrangements – will be deliverable within existing resources through efficiencies in the processing of applications and other savings or re-prioritisation. The full set of recommendations can be found on pages 26-37.

Section 3

Background and context

- 11 The legislation governing children taking part in broadcast performances is now over 40 years old. The Children and Young Persons Act 1963¹, and the 1968 Regulations made under it, require a licence to be obtained from the local authority for a child to participate in a public performance. This regulatory regime applies across a huge range of performance activities, from local dramatics and talent shows to major West End stage productions, to popular television programmes and films.
- 12 There are a number of difficulties with the 1968 regulations, and also the primary legislation on which they depend. The legislation is highly complex; is inconsistently interpreted in different places; and is hard to apply to contemporary broadcasting. Concerns have also been raised that the regulations are often misapplied, or sometimes not applied at all.
- 13 Increasing technological convergence also means that there is a need to consider these issues in a way that takes fully into account the fact that the boundaries between different forms of communication are blurring – those between television and the internet especially. Unless a modern framework is developed which consciously looks ahead there is a serious risk of it being rapidly overtaken by technological change.
- 14 Last year, officials from the Department for Children, Schools and Families undertook a review to examine the 1968 regulations with the aim of updating them. The results were discussed informally last summer with interested parties. There was considerable agreement around the need to update many of the aspects of the regulations. However, as these discussions progressed it became clear that a number of stakeholders had serious concerns about elements of the primary legislation, and that simply updating the existing regulations would probably not create the kind of approach needed. And a key issue emerged in relation to the meaning of ‘performance’ in the primary legislation given the changing nature of certain television programming, notably types of factual entertainment, and, particularly in the context of the current legal restrictions on the participation of children aged under 14.

1 http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1963/cukpga_19630037_en_1

15 This is why I was asked to conduct this review.

The current licensing system

- 16 At present, when an amateur or professional producer wishes to engage a child in a performance to which the licensing regulations apply, they must first seek a licence from the local authority where the child lives. The company must apply to the local authority at least twenty-one days before the first performance (or else the local authority may refuse the application) and provide details of the performance. The parents of the child must also complete and submit the second part of the application form. This gives their consent, and in many cases a letter from a doctor certifying that a medical examination has been carried out must also be supplied. Permission may also be required from a head teacher for the child to be absent from school.
- 17 If the local authority is content that the child is fit to perform, that proper provision has been made to secure '*his health and kind treatment*' and that his education will not suffer, then a licence will be issued with various conditions relating to hours, educational provision and the presence of a chaperone (an individual whose role is to safeguard the child's interests).
- 18 An important exception to the licensing law is where a child (or someone on behalf of the child) is not paid (other than for expenses); in such circumstances a licence is not required for up to 4 days of performance in any six month period. In addition there are exemptions for performances put on by a school or approved Body of Persons (as long as no payment is made to the child for their participation beyond expenses). At present, local authorities grant Body of Persons approvals to amateur production companies/societies, although numbers and practice vary considerably from local authority to local authority.
- 19 These are two specific aspects of the 1963 legislation which I have also given particular consideration to:
- the definition of what is 'a performance' in relation to broadcast performances and therefore what requires a licence under the licensing system. The concept of 'performance' in section 37 of the 1963 Act does not have a special definition in the 1963 Act and so it takes its ordinary meaning. That meaning is clearly not restricted to acting, singing and dancing; and

- the restrictions on children under the age of 14. Primary legislation states that where a licence is required – ie where the child is ‘performing’ – one cannot be granted to children under 14 except where the child is acting or dancing in a ballet, and the part can only be taken by a child of that age, or the child is taking part in a musical².

20 Each year an estimated over 45,000³ licences are issued to child performers – with some local authorities issuing almost 3,000 and some less than 100. I understand the majority are for amateur productions.

Other regulatory controls on children performing

- 21 Ofcom’s regulatory framework includes specific provisions for the protection of children who participate in television and radio programming through their Broadcasting Code (rules 1.28 and 1.29). The Ofcom Code sets standards for the content of television programmes and the protection of viewers from inappropriate material in the content of programmes. The rules balance the right for under 18s to participate in programmes with the requirement that broadcasters take steps to ensure the protection of their physical and emotional well-being and their dignity. These rules are supported by guidance developed by Ofcom which covers the involvement of people under eighteen in programmes and requires that due care should be taken at the pre-production, production and post-production stages. The guidance was informed by research. Ofcom does not intervene prior to transmission but has a range of sanctions it can impose on broadcasters for breaches of its Codes.
- 22 The BBC has additional and specific guidelines relating to children in programmes. Their management structure includes a lead person on child protection in each major department. The BBC Executive is held to account by the BBC Trust and in certain aspects of content, by Ofcom. Other broadcasters have similar internal guidelines and management arrangements.
- 23 I also make reference in this report to other forms of child protection which do now and may in future impinge on child performance, such as Criminal Records Bureau (CRB) and Health and Safety checks and Independent Safeguarding Authority (ISA) requirements.

2 That is the nature of the part in the performance is wholly or mainly musical and either the nature of the performance is also wholly or mainly musical or the performance consists only of opera or ballet (section 38 of the Children and Young Persons Act 1963 (c37)).

3 Source: Stagecoach (2007)

Section 4

Approach

Methodology

- 24 In order to identify the key issues and areas on which a consensus could be developed, I invited all the key interest groups to a series of stakeholder meetings, and had access to notes of a range of meetings held previously with DCSF officials. The main groupings were:
- local authority representatives;
 - children's organisations and charities;
 - broadcasters;
 - producers (film and TV);
 - professional theatre organisations;
 - amateur theatre organisations; and
 - parents, actors, teachers, chaperones and agents.
- 25 I also met Ofcom and the British Psychological Society (BPS), and spoke to a number of experts on an individual basis including Professor Tanya Byron, Sir Roger Singleton and Professor David Buckingham. The full list of organisations and individuals I consulted is given at Appendix 2.
- 26 Following these meetings, I commissioned individuals and organisations to produce additional papers on some of the issues discussed. This included papers from the BPS and others on the skills and attributes of chaperones, the skills required for child experts providing advice in this area, the scope of '*performance*' and think pieces on what role any central body might provide, especially in relation to licensing. I am also very grateful to Ian Hart and Terry Drury at the National Network for Children in Employment and Entertainment (NNCEE) for the information they supplied to help me understand how the current arrangements work from a local authority perspective.
- 27 Though I spoke to parents and agents, in the time available I have not gathered directly the views of children and young people. With the vast array of performance

opportunities available to children today – from amateur productions through professional theatre and film to the huge range of factual and entertainment television programming – it was not possible to get a representative cross section. But this is something that I recommend the Government considers doing in the future – so we understand better what they perceive as the benefits, opportunities and the risks.

- 28 At the same time, I assessed the information and evidence available on this complex issue. This included research reports, the relevant legislation, the Ofcom Code and guidance and the detailed policies and protocols which many of broadcast and production companies have put in place and which supplement the legal minimum requirements. I have a working and personal knowledge of many productions involving children, in theatre, film and television and radio and I supplemented this by viewing some of the programmes which have prompted debate and reading Ofcom findings where relevant.

Guiding principles

- 29 In approaching this review I have adopted the following principles:

- That our children are deserving of the best we can give them in terms of their chances to learn and excel in what they do well.
- That the opportunities for children to perform, subject to proper protection, should be maintained or increased in future.
- That the approach to new licensing arrangements should have regard to the different types and levels of performance in which children participate, and be informed by proper consideration of the risks and benefits of these.
- That the approach to the protection of child performers should recognise the different aptitudes, experience, resilience and vulnerabilities of individual children.
- That freedom of expression, including editorial and artistic freedom and editorial independence, must be properly recognised.
- That any new regulations should have regard to the principles of better regulation and be:
 - Proportionate
 - Accountable
 - Consistent
 - Targeted
 - Transparent

- That primary and secondary legislation should be amended and relied on where appropriate but equally that self-regulatory codes, protocols and guidance have an important place in the delivery of an effective, modern and future-proofed system.

Section 5

Key findings

Benefits and risks

- 30 Everyone I spoke to felt strongly that performing can be good for children and has the potential to develop a wide range of skills and talents. It can improve their self confidence and self worth, their focus and discipline, and it gives them an opportunity to express publicly the things that are important to them. Society benefits too, both in terms of the entertainment value of children (whether it be children performing in a theatrical/dramatic context in film, TV or stage or in factual programmes which give an insight and understanding of different lives and contexts), some stakeholders felt the educational worth of performance to the child should be better acknowledged than it is.
- 31 Many of the risks to children are obvious – the risks of fatigue through long hours of performance; the risks to their formal education; the risks to their physical safety (e.g., on sets or stages where there may be dangerous props). But I also heard and read research evidence of concerns about the risk of exploitation, particularly in connection with some forms of entertainment which are primarily, if not exclusively, for an adult audience. And there are other emotional welfare considerations particularly in relation to adult-oriented material where there may be short and longer term concerns about the experience of the child, including the fact that audio-visual content can have a life beyond broadcast or cinematic release. In all these situations it is regrettably the case that not all parents are equipped to act in the best interests of their child.
- 32 Hard evidence on harm is problematic to source in this field – though anecdotal evidence is plentiful. It is important to distinguish between distaste for certain types of production, and expert assessment that children – or certain children – may be adversely affected in the short, medium or longer-term. This is particularly the case in relation to what is commonly referred to as ‘reality TV’ which deeply polarises opinion. There are also concerns about putting children in ‘unnatural’ situations which expose them to aggressive behaviour/bullying, offensive language, excessive pressure (with ‘gladiator’ style audiences judging their performance), or make capital out of their vulnerability.

- 33 However, simply because these concerns and risks exist, should we assume these experiences are necessarily harmful? There is a considerable body of expert opinion that taking risks and responding to them is an important part of a child's development and can build resilience. But significant individual differences exist (as I discuss below) and while certain types of risk may be appropriate for teenagers, this will not be the case for much younger children.
- 34 The other obvious point is that children are not homogenous. The same experience might be beneficial to one child, but potentially damaging to another, depending on the stage in their life they have reached and their individual vulnerability or resilience.

Consensus on the need to update and modernise the licensing arrangements

- 35 It was absolutely clear from talking to stakeholders across the board that we currently have a system which is antiquated and no longer fit for purpose in today's or tomorrow's world.
- 36 There are a number of reasons for this including:
- the **mass proliferation since the 1960s of different forms of media and broadcast opportunities**. The licensing system in practice is better suited to theatrical performance, though it was intended to embrace TV and radio. In the 1960s we had three TV channels – now we have five public broadcasting channels and hundreds of satellite and cable providers and radio stations – and many different types of production. The internet offers many diverse ways of accessing broadcast programmes and specific online content and opportunities for user generated content.
 - the **changes in the broader regulatory framework** that broadcasters and theatre organisations are subject to. In particular the introduction of the Health and Safety at Work etc Act 1974 and the new safeguarding requirements including Criminal Records Bureau (CRB) checks and the Independent Safeguarding Authority (ISA) Register. Taken together with the licensing arrangements, this all amounts to a significant burden, especially on the amateur sector.

- the **establishment of Ofcom in 2003 and its Broadcasting Code (from 2005)** which, flowing from the Communications Act 2003, for the first time included provisions relating to the protection of children under 18 including their physical and emotional welfare and dignity when participating in programme making. In addition, many broadcasters now also have their own protocols and guidance which in-house and independent producers are required to follow in order to safeguard children.
- changes **in the way TV and other media is produced** – new production techniques, the external commissioning of programme making, and many one-off and short-term productions.
- the **absence of any up-to-date guidance associated with the licensing arrangements** – guidelines have not been updated since they were first issued in 1968, and this has led to extremely wide variances in interpretation.

37 All the stakeholders I spoke to accepted the need for some form of protection for children via a licensing system but there was unanimous support for an overhauling of the existing arrangements. The main concerns – which echo many of the points which were raised in last summer’s review – were:

- **lack of clarity.** There is limited understanding of the law, the role of the licensing arrangements, the powers and duties of the licensing officers and indeed the roles and responsibilities of everyone engaged in the process (including parents, teachers, producers, as well as the local authorities). All agreed it was important to clarify in future what should legitimately fall to be licensed and equally what should not.
- **complexity and bureaucracy.** The current rules are difficult to understand and apply in today’s settings. The licensing process is bureaucratic. There are no standard forms, and there is mixed use of modern technology (email forms, online applications).
- the **‘postcode lottery’.** The licensing arrangements are administered in an inconsistent and haphazard manner by local authorities. This is not the fault of the local authority officers carrying out the role – for the reasons described in this report. The result is wide variations in the interpretation of the law, the time it takes to process a licence and the enforcement arrangements. Indeed I was told that some that production companies purposely did not recruit children from certain local authorities as their licensing arrangements were so inadequate. Different approaches were leading to inequalities in opportunities for children in adjacent local authorities to perform.

- **patchy resourcing** of the licensing arrangements by local authorities because this is not a priority for them and because there are significant differences in volumes of licence applications received across the country. Some local areas have a relatively heavy flow of traffic – because they have a TV studio or a large number of professional theatres on their patch – and are resourced accordingly. In these areas there is usually a small team of officers and staff who are able to build up a level of expertise. Others have significantly fewer applications and the licensing arrangements are resourced on a part time basis (some with staff who work on a term time only basis).
- the **hours** a child can perform. The current restrictions on earliest and latest hours of attendance and maximum duration of attendance/performance have caused many problems for children and producers in film/TV and theatre, and for parents. For example, the restrictions on the earliest and latest time children can be present in a theatre can mean children are left waiting outside in the morning and may have to miss the curtain call in the evening. The rationale for these restrictions is right – to protect the child from fatigue. But there needs to be much greater flexibility. And there is no longer any valid justification for having different restrictions on hours/times children can perform for theatre and TV. It can lead to some perverse outcomes – having to pre-record the children’s elements of the ‘live’ Royal Variety Show because the show was being filmed for broadcast – though the children could legitimately sit in the audience. The proposals for a new ‘hours’ framework developed by officials last summer were widely supported.
- **lack of flexibility.** The current system has little flexibility to take account of the specific circumstances of each production or the needs of the child. This is true of the education and tutoring requirements as well as performance.
- **use of the unpaid 4 day exemption** to circumvent the law i.e., by not paying children for some performances so that they could continue to be used lawfully.
- the **medical requirements.** The current regulations require a medical examination before a licence can be issued for a number of performance opportunities. There was unanimous support that this should be changed because it was not delivering the safeguards it was originally designed for, and was costly for the parents.

38 A number of stakeholders told us that small theatres and amateur companies were struggling to comply and instead opting to avoid plays with children in the cast, a loss for both future generations of actors and for audiences.

Chaperones

- 39 There was universal agreement that chaperones – referred to in the regulations as ‘Matrons’ – have a pivotal role to play in supporting all aspects of the licensing arrangements, and provide direct protection for the children performing. Indeed one person’s view was that “The licence doesn’t protect the child – chaperones do”.
- 40 The purpose of the chaperone role is to ensure that at all times there is a suitable person responsible for the child’s welfare, and that it is clear at any time who that person is. Chaperones must be licensed by the local authority as a suitable person to exercise care and control over the particular child/children in their charge. There are no minimum criteria for securing this licence – though the majority of local authorities use a combination of CRB enhanced level disclosure; references of previous experience of dealing with children; an interview; and the requirement to attend training. There are also different categories of chaperones: parents, family and friends, and ‘employed’ or ‘professional’ chaperones.
- 41 Many chaperones do an excellent job, but I was told anecdotally of poor practice. Parents/guardians should have comfort that the person looking after their child has the appropriate skills and attributes. However, despite this crucial role:
- **the role requirements have not been updated since it was first established in the 1960s.** Unlike other similar supervisory roles – child minders, nursery nurses – there are no formal standards for the role and no nationally agreed training. Indeed, some have drawn a comparison with teachers who are required to complete comprehensive initial and continued professional development programmes and be registered with the DCSF. Chaperones, arguably, have a role which gives them more intimate access and responsibilities for children, but with no minimum skill requirements.
 - **there is no standard training** – some local authorities have developed their own packages, and some production companies have their own in-house chaperone training/recruitment arrangements.
 - **oversight by the local authority of the chaperones under licence to them is limited, or non-existent.** The number of chaperones under licence at any point to a local authority has increased considerably in recent years. For example in one large local authority there were 890 chaperones registered between 1992 and 2002, now they have over 1,300.

- **different chaperone roles require different skills and attributes** – the requirements need to be sensitive to this. In some situations such as local amateur productions, it seems sensible and appropriate to allow parents to act as chaperones. However, in many professional settings parent chaperones were considered to be unsuitable for a number of reasons including the requirements of the role (understanding production techniques). There is also a risk they will become distracted – more interested in what is going on in the production than supervising the children under their control. Many professional companies do not employ parents as chaperones of their own children.
- **the inherent conflict of interest in the role.** The chaperone’s role is to protect the interest of the children under their supervision, but they are employed and paid by the production company. This creates a potential conflict of interest as the chaperone may, for example, be put under undue pressure to allow children to perform beyond the licensing conditions in order to meet production deadlines.

Children’s Education

- 42 A key concern expressed by parents, licensing officers and others is the potential impact on the child’s education of performing. The primary legislation sets out that a local authority must not grant a licence unless they are satisfied that the child’s education must not suffer. The supporting regulations include a number of provisions including specifying the amount of private tuition a child should receive if the local authority has granted the licence, subject to the condition that alternative education is provided. I heard a number of concerns about the adequacy of the current arrangements and the quality of the learning experience that the children receive when they are tutored out of school. Concerns included:
- the hours that children are required undergo private tuition when absent from their normal school are too restrictive. They do not, for example, take account of fitness of the child to undertake study on top of the performance activity they have done on that day.
 - sometimes there is very limited connection between the private tuition they receive with the curriculum that they are following at school.
 - the quality of tutors is variable as there is no requirement that tutors should have recent experience or be qualified teachers.

- the scope to build a learning experience from the performance is rarely capitalised by producers and tutors – for example by arranging a master drama class using one of the adult actors or teaching the children about something relevant to the production.
- 43 However, I also heard anecdotally that the experience of performing (particularly long term performances) can have a significant positive impact on the child’s general education when they return to school, in terms of their ability to concentrate and exercise self-discipline.
- 44 Head teachers and teachers are put in a difficult position when asked to authorise absences for children wishing to engage in a performance. An absence to attend an audition or to perform is a discretionary absence in relation to school attendance targets. And there are also concerns about absences at key points in the curriculum or at exam or testing time. In addition, I heard that some head teachers and teachers do not understand the entertainment industry, nor do they necessarily appreciate the potential benefits to the child from performing, and many do not have the information they need to make informed decisions.

Valid Consent

- 45 Whilst there was universal acceptance of the benefits of the majority of performance opportunities for children, there are concerns that some opportunities cross the line of what it is a suitable experience for a child. There are also doubts that many parents/guardians and children fully understand the wider implications of what they are getting involved in. For example, many may feel they understand television and film because they have grown up watching large amounts but that does not equate to an understanding of the production process, its pressures and the aftermath of transmission.
- 46 I have seen very good examples of the information given to parents, and their children, of what participation in the production involves. One producer described this as the “empowerment” of contributors – knowing their rights, what is expected and not expected, so they can give meaningful pre-and ongoing consent.
- 47 Children are unable to consider and manage the risks associated with any performance opportunity in the same way that an adult can. They, and their parents and guardians, need to be supported and guided to help them to decide whether the opportunity is going to be beneficial or expose them in a way that may lead to emotional or other issues. Consent must therefore be valid consent – with a clear appreciation and understanding of the facts, implications, and future consequences of an action.

- 48 In this area, decisions on consent are often blinkered by the potential thrill of the opportunity. I was struck by what one stakeholder – Professor Tanya Byron – said about the process of getting consent from children for activities which will involve them appearing on television. Her view was, if at all possible, the fact that the activity will be broadcast should be the last thing the child is told!
- 49 The British Psychological Society told me that gaining valid (informed, freely given, renewed) consent and assent should be considered potentially achievable with children of any age, but should not replace parental consent. Valid parental consent should also be sought for children of all ages up to 16 years. But we also found evidence that there can be coercion from some parents (and other sources) which may compromise the child’s interest. For children of all ages, consent should be an on going process during the production. And for infants (from 0-18 months) there should be constant monitoring for signs of distress. For younger children consent might be recorded on camera or by audio means.
- 50 There is much of relevance to producers working with under 16s contained in the sections on child development in Professor Tanya Byron’s Report of Children and the Internet⁴.
- 51 An increasing amount of TV footage is repeated either on television or through other media such as the internet. Consent given by a young child (for example for something which included a scene showing a young male child dressing in girls clothing) may be a source of humiliation when they are older.
- 52 I also heard that there were useful parallels with ethical issues around using children in research. Here, as with some challenging types of production, there is an important balance to be struck between safeguards for children participating and the academic freedom needed to explore an issue. Significant consideration has been given by the academic community to ensure that detailed ethical codes are in place and adopted particularly in relation to how to ensure children give valid consent.

Use of child experts

- 53 Child experts are increasingly used by production companies to help assess the risks to children of participating in programmes, and the benefits. They are also employed during the production process to monitor and advise on the experience of the child and identify any emotional or other psychological difficulties the child may be experiencing. This includes intervening if they see signs of stress or distress.

4 Safer Children in a Digital World: the report of the Byron Review (DCSF 2009).

- 54 Many production companies engage reputable child experts with the skills and knowledge to assess production scenarios and have good clinical or research experience of child or adolescence psychology/psychiatry. I met some of these and they have the skills and the determination to act in the best interests of the child. However, I also heard anecdotally of some production companies ‘forum shopping’ for child experts who would give them the green light to what they wanted to do with children – including sourcing them from overseas.
- 55 The British Psychological Society has set up a Media Ethics Advisory Group to provide advice to broadcasters and their regulators, and to programme makers on ethics matters.

The Definition of Performance – non-fiction programmes

- 56 Understanding of the meaning of the term ‘*performance*’ as used in the 1963 Act – and therefore what activities require a licence – is causing difficulties. The term is not defined in the 1963 Act. It is clear that in the past broadcasters and producers have taken the view that because a child is not singing, dancing or speaking lines that they are not performing. And the absence of any central guidance, short of that issued in 1968⁵ before the advent of new genres of television that exist today, means an unhelpful level of ambiguity has developed for both broadcasters/producers and for the local authority licensing officers.
- 57 My discussions have confirmed that there is an emerging body of agreement that the legal interpretation of ‘performance’ goes beyond acting, singing and dancing and would cover participation in a contrived or constructed environment or experience. This would mean that a number of non-fiction broadcast performances should legitimately come within the scope of performance activities that require a licence for children participating. This interpretation has significant implications when considered alongside the age restrictions in the 1963 Act, which I discuss below.
- 58 Reaching agreement on what should be caught by the definition and what should be excluded is not straightforward and needs careful consideration. Views were understandably divided. Many argued that all children deserve equal protections, and if there were identifiable physical or emotional risks (or implications for their education) then the performance should be licensed. Most felt that the criteria should not be determined by the narrow ‘genre’ of the programme or the production but it should be the nature of the participation of the individual child

5 The 1968 guidance on the meaning of ‘*take part in a performance*’ includes that ‘*if a child is directed in anyway, this might convert the activity into a performance*’.

which triggers the need for a licence (and the consequential protections). Others have suggested the criteria should include: if the child is given direction from the Director/Producer (eg ‘to walk along the path looking unhappy’); the use of props to provide substance to the programme; and/or a constructed scenario (eg to create or facilitate distress). And everyone felt the system needed greater clarity and transparency.

- 59 A number of specific suggestions were put to me about the circumstances that should trigger the need for a child participating to be licensed – thus come within any future definition. For example, representations from some broadcasters have suggested that for broadcast programming, licences should only be required for children under 16 who are participating in programmes the principal purpose of which is entertainment. And that licences should not be needed for those taking part in news and current affairs, documentary, factual or educational programmes.
- 60 Research by Sherbert for Ofcom⁶ into the views of children and parents on children participating in non-fiction programmes revealed that the treatment and representation of children in non-fiction programmes was not a spontaneous concern. However, when prompted about this issue, most expected that children who take part should have their emotional and physical well-being protected. They expressed a high level of concern about the risk of the child participants being bullied after the programme was shown. Protection of a child’s dignity was also considered to be important. Also there were sometimes divergent views between parents and children about what children would like to appear in, with the latter often more cautious.
- 61 All non-fiction programmes are covered by the provisions of the Ofcom Broadcasting Code and its supporting guidance that relate to protecting people under 18. The guidance⁷ covers the safeguards that should be put in place for all phases of programme making – pre-production, production and post production. The Sherbert research resulted in the Ofcom guidance being updated to include a range of additional measures to protect children in all stages of production which are particularly relevant to non-fiction programmes, eg understanding child and parents’ motivations for participating, and where appropriate seeking the advice during production from an appropriately qualified professional, such as a child counsellor or psychologist.

6 Children in Programmes – An independent research report for Ofcom by Sherbert Research, December 2007.

7 Ofcom Broadcasting Code : Guidance Notes Section One: Protecting the under 18s (Dec 2009) http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/section1_2009.pdf

The under 14 restriction

- 62 The 1963 Act states that where a licence is required – ie where the child is ‘performing’ – one cannot be granted to children under 14 except where the child is acting, dancing in a ballet, and the part can only be taken by a child of that age, or the child is taking part in a musical⁸. There was unanimous agreement that this blanket age restriction is arbitrary and should be replaced with protections which reflect both broad age bandings of children (pre-school, primary school and secondary school) and the individual vulnerability of the child.

Editorial Independence

- 63 Broadcasters have expressed to me legitimate concerns about the principle of ‘editorial independence’, in particular any action in relation to the licensing arrangements which might interfere with this fundamental right, and constitute prior restraint.
- 64 The main issue relates to the information needed by local authorities to make a judgement on whether to grant a licence, and the basis on which one is granted (or not). Concerns were strongly expressed from broadcasting and some production stakeholders that it was not, and should not be, the responsibility of the licensing officer to make a moral judgement about whether or not to grant a licence on the basis of the content of a programme or production. They also felt that it is the responsibility of the parent or guardian to ensure the emotional or moral well-being of the child. And that this sits alongside the separate legal duty of broadcasters to take due care to protect the interests of any participants under 18 under Ofcom’s Broadcasting Code – see below – which covers children participating in all forms of broadcast programming.

Other broadcasting child protection requirements

- 65 For many broadcasters, given the existence of the Ofcom Code and guidance and Ofcom’s ability to sanction broadcasters for breaches of the Code, the licensing requirements represent the bare minimum in safeguards. The Ofcom Code and guidance sets out a much broader range of safeguards/expectations which need to be applied.
- 66 In addition, I saw evidence of some very detailed and comprehensive child protection policies produced by a range of broadcasters and production companies

8 That is the nature of the part in the performance is wholly or mainly musical and either the nature of the performance is wholly or mainly musical or the performance consists of opera or ballet.

covering all three key stages of the production process as set out in Ofcom's guidance.

Licensed and unlicensed children

- 67 The existence of the '4 day exemption' means that in some amateur and professional productions there can be a combination of licensed and unlicensed children. This leads to the nonsensical situation where children who are licensed will be looked after by a chaperone and have clear requirements on the hours etc they can work, yet for the unlicensed children there are no such requirements.
- 68 As one stakeholder commented this gives the impression "If you are licensed you are worth looking after. If you are not licensed, we are not so concerned what happens to you." (However, as evidenced above, there are other protections for unlicensed Under 18s in broadcasting.)

Inspection

- 69 The practice of inspecting or enforcing the licensing arrangement by local authorities is patchy. This is due to a combination of lack of resources on the part of the local authority departments responsible for issuing the licence, and the absence of any national guidance on inspections and criteria for enforcement (e.g., what would constitute a failed inspection and what are the sanctions other than prosecution). In addition, although production companies often operate in a number of different local authority areas, there are no mechanisms for sharing information on inspections. So, for example, if a production company was found to be in breach in one local authority area, the next local authority area in which they operated would be unlikely to have any knowledge of this.
- 70 Section 40 of Children & Young Persons Act 1963 provides the penalties for non-compliance, which is geared to level 3 offences (£1,000) – and there is the sanction to remove the licence (and for further licences to the same production to be granted with caution). However, the ambiguity and lack of guidance that surrounds the whole process could make any enforcement action a risky process for the local authority. Indeed, I was not made aware of any recent prosecutions, or withdrawal of licences, following inspection.

Body of Persons exemption

- 71 There are exemptions to the licensing requirements for performances put on by a school or approved Body of Persons (as long as no payment is made to the child for their participation beyond expenses). At present, local authorities are able to grant Body of Persons approvals to amateur productions. However there are no national

criteria or guidance to enable a judgement to be made about granting a Body of Persons approval. This means the practice varies across the country.

- 72 Additionally the Secretary of State issues these to certain ‘national bodies’. However, local authorities told me they are often are unaware that these have been issued and this can cause difficulties if the authority becomes aware of a performance and challenges the employment of the children within it.

Costs

- 73 There was a strong plea from all stakeholders that any changes to the licensing arrangements and associated administration should be cost-neutral, otherwise there was a risk that any additional costs would act as a barrier to children being offered performance opportunities. Expenditure by producers for child protection measures is much better invested in meeting the individual child’s needs rather than spent on the administrative system for issuing licences.

The internet and other new media

- 74 Rapid technological change and new communication and social networking media are transforming the way content is transmitted. The Digital Britain report⁹ found that in one day

‘20 hours of new content were posted on YouTube every minute, 494 exabytes of information were transferred seamlessly across the globe, over 2.6 billion mobile minutes were exchanged across Europe, and millions of enquiries were made using a Google algorithm.’

- 75 There is now a wide range of social networks and video clip sharing websites, allowing us to share experiences and swap and create content, including for children ‘me and my movie’ which is part of CBBC online. And the digital revolution has also led to a huge expansion in the creation and availability of professional content via the web.
- 76 Online content involving under 16s that is produced professionally by similar methods for broadcast television should be licensed. However, the stakeholders I met felt strongly that user generated content should not be within the scope of licensing arrangements. On many sites such content is moderated as its is being uploaded and that is where any risk factors around children should be addressed.

9 Digital Britain – June 2009 (DCMS/BIS)

- 77 Stakeholders recognised the inherent difficulties in controlling the transmission and editing of much content containing children ‘performing’ via the internet and other media eg mobile phones.

Future proofing

- 78 Fashion and tastes change over time and we expect our broadcasters to generate new and exciting forms of content. Although the so called ‘reality TV’ has been in existence since the late 1940s when ‘*Candid Camera*’ was first aired, its popularity exploded globally in the 2000s. It is impossible to predict how programming will develop in the future. Stakeholders therefore felt the future proofing any future system was crucial.

Section 6

Detailed Recommendations/ areas for change

79 A holistic approach is needed in the reform of the child performance regulations in order to deliver the benefits and manage the risks effectively. But there cannot be a one size fits all solution, given very different types of professional and amateur production. My recommendations are highly inter-related but for ease of reading I have grouped them under the following 9 headings:

- licensing rules and systems.
- enforcement.
- amateur and youth productions.
- education.
- chaperones.
- definition of performance.
- under 14s.
- building on best practice.
- raising awareness.

80 While the whole revised system must interlock; that does not mean that early progress is not possible in a number of areas.

Licensing rules and system

Recommendation:

The system of licensing child performance needs urgent and radical overhaul, and re-balancing:

- to facilitate children's wide participation in different kinds of performance, wherever they happen to live;
- to protect their physical and emotional well-being and their dignity;
- to ensure that their general education does not suffer but benefits from their particular experiences; and
- to meet the needs of producers/employers in a targeted and proportionate manner.

- 81 I have considered very carefully how to ensure that a revised licensing system delivers consistency across local authorities and a far speedier process. A licence is a permit, subject to certain conditions. There should be a presumption in favour of licensing child performance.
- 82 It is important that the future design of this licence/permit puts the onus on the employer/producer to deliver the care due to each child, relative to the kind of production/programme that is involved. From the perspective of the local authority, inspection and enforcement should play a greater part.
- 83 Through a re-balancing of the system, the licence should incentivise employers/producers to think through the needs of the child(ren) and be prepared to evidence that to the local authority when required. I therefore see very few occasions when a local authority would refuse a licence based on the nature of the production, rather than on the proposed participation by the child. I elaborate below on some key changes that should be made to the nature of the licences.

Consideration should be given to open 'timebound' licences from local authorities for professional child performers.

- 84 These should, for example, be subject to annual renewal, and there should be a notification system for each production undertaken by the child in question. Such licences should ensure that the care obligations on the employer/producer are no less than those applying to one-off productions. This approach would remove a significant administrative and cost burden on the local authorities and employers, and on the parents of the children too.

The requirement for a medical certificate from a child's doctor should be removed.

- 85 This should be replaced with a medical questionnaire supplied by the parent and an undertaking that they will inform the employer and the local authority of any material change in the health of their child.

The inflexible rules around working hours do not meet the needs of modern production nor the child's interests and should be replaced.

- 86 There need to be fewer rules and more guidance. There must be the ability to aggregate or accrue working hours while respecting that children need proper rest periods, taking account of travel times to the location for performers and parents (see also recommendations on education).

The local authority should remain the point where licences are issued. It is very important to all stakeholders to reform the licensing system as soon as possible. The complexities and potential risks of putting in place alternative delivery arrangements – such as a central co-ordinating unit – should not be underestimated.

- 87 I was minded to recommend a new central co-ordinating unit to process licence applications up to the final stage of issue at local authority level. Such a unit would comprise child protection and production expertise. There was widespread support 'in principle' for such an approach, primarily as a way to ensure consistency in licensing and a depth of understanding of varying production needs.
- 88 However many stakeholders identified practical difficulties and risks in centralisation of the licensing function. These included scoping the role of any unit, gauging the volumes of business, and the risk of adding an extra layer of bureaucracy which could potentially slow down (rather than speed up) the process especially in discharging those functions that are best done with local knowledge (eg liaison with the school, inspection). Finally, finding a way to fund it without imposing undue burdens on employers or local authorities would also be a major challenge.
- 89 Below I suggest some other ways in which many of the desired characteristics of an improved licensing system can be delivered without organisational change to the delivery mechanisms. These should be read in conjunction with recommendations on informed consent, chaperones, and education.
- 90 Issuing of licences should remain with local authorities. However this can only work effectively if the following issues are addressed:

- the application process is streamlined e.g., more use is made of electronic databases, online forms, processes and guidance, frequently asked questions, standard application forms, with a goal of 10 working days turnaround;
- there are arrangements for office hours and holiday cover, so that applications can be made and discussed promptly; and
- that proper training is given to those processing and approving licence applications.

I recommend that a small number of local authorities become recognised and properly resourced as ‘centres of expertise’ in licensing.

- 91 These authorities would act as repositories of good practice and offer advice to licence applicants, parents and crucially local authority staff. They would employ or have access to those with production experience as well as child protection expertise. They could have a lead role in delivering training on the licencing arrangements for staff in other local authorities and possibly chaperones’ training (see below). They could build up a bank of knowledge on precedent, and on good practice in child protection procedures in various settings (stage/TV/film). In recommending the establishment of these ‘centres of expertise’ I am not underestimating what has been already achieved in this regard by the NNCEE – indeed it would build on the good work they have started – but I envisage something on a more formal and properly resourced footing. Further analysis will be needed of the possible role and responsibilities, but I hope that these ‘centres of expertise’ might be resourced from some of the potential savings derived from the reduced licensing burden on other authorities.

The design and content of licences should change in nature, not only stating the legal requirements but seeking relevant undertakings from the employer/producer.

- 92 A local authority is entitled to know something about the nature of the production in which the individual child is taking part – but the focus should be on what the child has been asked to do and the level of risk involved. However getting the balance right between the editorial independence of the broadcaster and the artistic freedom of the producer, and the legitimate concern about the well-being of the child can be a challenge. It is not unreasonable for a local authority to want a brief description/synopsis of the production but it would be inappropriate to ask for scripts, especially when some formats are not scripted fully or at all.
- 93 Licences should require the employer/producer to sign that they have undertaken a risk assessment, that if the production requires it the child will be or has been

screened for their suitability to take part and expert advice from child experts has been sought. In general the approach should be to bind the employer/producer, through a range of undertakings, to appropriate protection measures and then the local authority would conduct inspections (see below) to ensure that licence conditions are being met.

Enforcement

Recommendation:

A system inspection and enforcement by local authorities needs to be developed that is targeted and proportionate to risk, that operates to agreed criteria and encourages best practice among employers.

- 94 The role of inspections needs to be given greater emphasis in achieving the overall child protection goals. Inspections should be targeted – for example by inspecting productions by newer, less experienced companies – and proportionate to risk. Enforcement need not rely on inspection only but consideration should be given to the use of feedback questionnaires from performers, parents and chaperones. Prosecution is a nuclear option and there should be a graduated approach to sanctions against employers who fall short of their licence obligations or fail inspections. The new system should draw on the work of Professor Richard Macrory in relation to enforcement and sanctions¹⁰.

Amateur and youth productions

Recommendation:

The continued licensing of children engaged in some amateur and youth productions appears disproportionate. I urge consideration to be given to the removal of licensing requirements from this sector.

- 95 The combination of CRB checks, future ISA registration, health and safety requirements (and sometimes Temporary Event Notices) which were described to me during the review appear to provide a range of protection at this level of performance. Continued licensing, on top of these, poses a real threat to the continued participation of children in amateur performance where volunteers have to bear the cost and weight of all the administration. There should instead be guidance for amateur groups about best practice, and the use of chaperones and a very basic level of training for the latter, even when parents take on that role. Such

¹⁰ Report by the Cabinet Office, Regulatory Justice – Making Sanctions Effective, November 2006.

guidance could be developed within the sector, and for the training use of a simple online or DVD format, or an information pack.

- 96 There are different types of amateur groups, some owning their own theatres. Further consideration needs to be given to what would be covered by an amateur exemption in discussion with the representative bodies, including how this might fit alongside the existing Body of Persons exemption (if this were made easier etc). In the interim issuing central criteria for Body of Persons and making it a presumption that all amateur groups who meet these criteria will be allowed Body of Persons approval may assist.

Education

Recommendation:

The provision of good quality education should be an important part of the licence requirements.

- 97 There should be much greater clarity around aggregating (within reason) the hours of education provision to protect the child from fatigue as well as giving producers some flexibility. The ability to do this is not properly understood. Tutors should be qualified teachers with knowledge of the current curriculum, and should liaise with the school over the needs of the individual child. This is especially important for children performing in long running shoots and stage productions.

Guidance should be prepared for schools on children participating in public performances.

- 98 The guidance should cover the licensing process, the importance of liaising with private tutors to ensure that there is continuity if the child needs tuition out of school, and the authorisation of absences. This would help reduce inequalities of opportunity for children to perform which some parents and producers told me were due to decisions by schools.
- 99 **Producers and tutors should also consider the scope for the child to benefit from a specific learning experience relevant to the production.**

Chaperones

Recommendation:

The chaperone role should have greater 'professional' status to recognise their crucial, independent function in safeguarding the children under their control.

Nationally agreed criteria should be developed for the requirements of the chaperone role.

- 100 This should include the skills for the job (Appendix 3 sets out initial consideration of what this might include), the different requirements for different levels of chaperones – the ‘voluntary’ chaperone vs the ‘professional’ chaperone. It should be possible for those who initially start in volunteering positions to progress to professional positions if they wish, with appropriate training. It might even include a probationary period. For all licensed chaperones, these criteria should at the very least include a CRB check as at present and the forthcoming ISA registration as this is progressively phased in from July 2010. In addition the requirements for the ratio of children to chaperones should be reduced – though with flexibility in interpretation to take account of the different numbers of boys and girls and the environment in which the performance is taking place.

A national training programme/materials is developed.

- 101 There should be a basic training programme for ‘volunteer’ or ‘probationary’ chaperones which would be arranged by the local authority and be available at the point of their first approval. For amateur organisations, this should include ‘train the trainers’ so that an amateur organisation can train its volunteer chaperones at a time and place that suits them. For professional chaperones who work in film, TV and professional theatres, consideration should be given to the requirement for additional training, possibly even to nationally recognised and assessed standards (though the idea of accreditation is not something that received universal support). This training should cover the requirements of major theatre productions, sets on TV or film, and ‘on locations’. As this is training for a career, it is reasonable for the individual to pay for this training. Appendix 3 sets out some proposals for modules to be covered in the basic and/or professional training. And it would make sense for this training to be phased in over a period of say five years, so that by the end of the five year period only those who have achieved the approved standard (or are working towards it within a time-limited period) could be permitted in professional productions where children are involved.

Consideration should be given to a national register for ‘professional’ chaperones.

- 102 Local authorities should be able to monitor and license the largely ‘voluntary’ chaperone who operates purely locally within the amateur sector. However, some stakeholders have suggested that a national register is needed. If this idea of a national register is considered viable, it might also include ‘safeguards’ for the chaperones themselves to enable them to discharge their responsibility to challenge

the behaviours or practices of production companies, without risk to their own professional position. What these safeguards might be, and how these safeguards would operate would need further work. Some stakeholders have suggested that the only way to keep the role impartial is for it to be funded through a levy. But I recognise the significant logistical difficulties of operating such an arrangement, given the vast array of different performances which need chaperones, even if the principle was to win favour.

- 103 **Parent chaperones** should not generally be used in professional settings where the child is licensed – though some situations may make this the most sensible choice eg where the filming is in a child’s house or with a single family. Parent chaperones have an important role in amateur productions. They should receive a standard information pack or DVD.

Definition of Performance

Recommendation:

Government must include a definition of performance in future legislation.

- 104 **Performance urgently needs to be defined in the legislation and be capable of future amendment without undue delay.** There is jeopardy in having no specific definition and this has contributed to divergent licensing practices and disagreement over what is licensable.
- 105 This needs to be reviewed by reference to the fundamental purposes of licensing, ensuring the ‘*health and kind treatment*’ of the child. Society would always aspire to that, no matter what kind of activity a child is undertaking. That has never meant that every activity must be licensed.
- 106 Licensing (and the attached conditions) imposes costs on the employer/producer as well as the issuing authority. A proportionate approach is required and one which recognises different types of theatrical, film and broadcast production, including how strenuous and demanding the work is for the child.
- 107 The definition should be capable of review and amendment by the Secretary of State as a means of future-proofing. The challenge is defining what constitutes performance in a way that does not capture many television formats for which licensing would be inappropriate, disproportionate and potentially close down opportunities for children.
- 108 **The definition of performance needs care and to be arrived at after consultation with all the interested parties.** It is as important to establish what

is not licensable as what is. Too wide a definition carries the risk of including types of factual programming which the great majority of stakeholders felt should be excluded eg. news, current affairs and documentary. The characteristics of what the production entails and what the child will be doing are material. The principal purpose of the production may also be relevant i.e., entertainment, even if it is non-fiction. It is vital that an extension of licensable productions, which all those I have consulted have accepted in principle, does not result in a diminution of good opportunities for children to perform.

Under 14s

Recommendation:

The government should remove the prohibition on Under 14s taking part in performance beyond the specified exemptions as soon as practicable.

- 109 This age specific limitation on child performance is arbitrary and, in conjunction with the definition of performance, places undue restrictions especially on broadcast productions. It is better substituted by a range of protections appropriate to the broad age range and the particular attributes and vulnerabilities of the individual child (see section on best practice).

Building on best practice

Recommendation:

All employers of child performers should regularly benchmark their child performance procedures and protections against industry best practice.

- 110 I have been impressed by the quality and commitment of the people working within child performance that I have met and heard from during this review. However, not everyone who employs children in this context has the same level of knowledge and experience. Equally there are pressures in any production environment – film, theatre and broadcasting – when the immediate needs of the production can cause focus on the child’s needs to slip.
- 111 My recommendations on the re-balancing of the licensing and system should be matched with a commitment from all employers/producers to adopting best practice in the selection and subsequent protection of their child performers. For example, broadcasters and producers are constantly innovating to find new ways of engaging
- 11 The 1963 Act states that where a licence is required – ie where the child is ‘performing’ – one cannot be granted to children under 14 except where the child is acting or dancing in a ballet, and the part can only be taken by a child of that age, or the child is taking part in a musical.

- audiences. For some time now this has led them to involve the public – adults, families and children – to a far greater extent in programmes which are neither pure entertainment nor purely factual.
- 112 From all the feedback and information I have gathered, I believe that a few refinements can reinforce the levels of protection for children and give even greater assurance to parents and the public.
- 113 Ofcom’s excellent guidance addresses the phases of pre-production, production and post-production. However, I think it should be more explicitly reflected in broadcasters’ own guidelines (and perhaps also in the Ofcom guidance) that where productions involve children, their needs should be discussed at the start of the commissioning process. This would mean that before it is commissioned or “green lit” there should be an accompanying risk assessment of the production in relation to the roles of the children involved and full budgetary provision for expert advice, chaperones, tutors etc. The needs of children should never be an afterthought.
- 114 My understanding is that this is already “best practice” in the industry but I believe it should be the universally accepted approach. While I have used the example of a broadcasting commissioning process above, the same principles should apply to theatre and feature films, especially if the subject-matter of the production is very adult or challenging.
- 115 Once any production is commissioned, the screening of individual children for their suitability to take part begins. Screening and consent are two sides of the same coin, leading to the selection or casting of individual children who are physically and emotionally equipped for the particular performance. Child experts come in many shapes and sizes, with varying professional qualifications and different experience of production. Corners should never be cut in obtaining the best qualified help to screen children and their families and reference to professional groups like the Media Ethics Advisory Group of the BPS is highly recommended.
- 116 Securing valid consent should be a prerequisite to any engagement of children. Information given in relation to consent should be clear, unambiguous and matched to a child’s level of understanding. An information pack for parents and their child should be supplied before they sign anything in the way of a consent or release form. This should include information on implications such as loss of privacy and dignity (which the BPS advised me is experienced differently by children at different ages) and possibly with high profile productions, some advice about likely press intrusion.
- 117 It should be clear that children are able to withdraw consent at any time. As a matter of good and ethical practice, wherever possible children should be able to

view and review material showing them and be able to do this if the material is repeated when they are older. Though I recognised there are clear difficulties with doing this if the material is disseminated through online routes.

- 118 The emphasis of most of this review is quite naturally on those giving or producing the performance. However we should not forget the audience. Feature films in cinema and on DVD have an overt certification, theatrical productions sometimes include warnings in their pre-publicity and at the venue, and broadcasters equally use announcements prior to the start of programmes to warn of violent content, swearing etc.
- 119 Transparency about the nature of a programme’s content helps an audience decide whether they want to watch it at all and ensures that those that do are not “ambushed” by content that may offend them. Stakeholders told us that this is an area where more could be done in relation to children’s involvement. Not entirely ‘tongue in cheek’, we shared the irony that programmes tell us that “no animal was harmed in the making of this programme”, but that the child equivalent was not apparent. Ofcom has on occasion upheld complaints against broadcasters who could have done more upfront to reduce offence. This is desirable and achievable and without, necessarily, spoiling the conceit of some formats.
- 120 Some theatrical companies were criticised for their lax approach to employment contracts for children, many productions being well advanced before a contract is signed. Many of these producers place significant requirements on the parent and child (in terms of what they can and cannot do during rehearsals and the production run), but are rather more silent on what they undertake to deliver. While some of this is implicit in the licences they obtain, they should consider what more they can do to make more explicit their obligations and duty of care to the child.

Raising awareness

Recommendation:

The Government and key stakeholders should work together to promote a shared understanding of the issues, requirements and benefits in relation to engaging children in performances.

121 There needs to be a much greater shared understanding of the goals of the licensing system, of its requirements, the respective and responsibilities, and the wider context in which it operates. National guidance must be a key part any awareness raising programme and should be developed in consultation with stakeholders as the new arrangements described in this report are put in place. This includes guidance to:

- licensing officers on the new licensing rules and system;
- production companies, broadcasters, theatres companies and others involved in engaging children in performances;
- parents and children – so they understand the law, what they should expect from production companies and also the risks and benefits; and
- schools and teachers – so they can make informed decisions about allowing a child to be absent from school.

122 And this should be widely distributed and promulgated.

Section 7

Other issues raised

123 During the course of my discussions with stakeholders a number of issues were raised which were outside the direct scope of this review, or not explored in any detail. I would like to bring these to the Government's attention, specifically:

- **Child talent and casting agencies/the casting process.** I received a number of representations that there should be controls on these agencies to ensure they are adopting policies and practices which safeguard children on their books and promote their best interests. Currently anyone can set themselves up as an agent (simply by setting up a website), and encourage children (sometimes via drama teachers in schools) to send them their personal details and photos without any requirement even to be CRB checked. There is no system for parents or schools to check the credentials of the cold call approaches they receive. I also heard that many of these companies charge both to source auditions and to be put on their database. Although there are some very responsible agencies, the practice of some raises concerns about the potential safety of children in this respect, and their risk of exploitation (including the levels of commission they charge).
- **Using children in other theatrical roles.** Existing equally antiquated employment restrictions on children include provisions which prohibit them from taking on other non-acting roles in a theatre, even as a volunteer. This needs to be looked at as it means for example children in a drama club cannot take on any of the backstage or front of stage roles such as helping with the make-up, or lighting.
- The **Internet** and content generated by children, particularly unscripted content which might cause embarrassment or bullying at a later point in their lives, especially as in most situations the children concerned will not own the copyright. This is clearly a complex area and it is encouraging to see that the government is already taking action on online child safety through the UK Council for Child Internet Safety (UKCCIS), including providing advice and guidance for children in how to use interactive services safely.

- **Independent representation.** Equity is the main body that represents professional performers. However their constitution currently covers only children aged 14 and over. I heard from parents, agents and former child performers who felt there was a need for a national representative body for all child performers to help negotiate improved terms and conditions. I heard that frequently children are performing in long-term productions without a contract that gives them any rights – and the parent and the child becomes beholden to the production company and puts all other aspects of their life on hold during that period!
- **Children from overseas.** The legal position and responsibilities in relation to overseas children who perform in this county are unclear.
- **Modelling.** Currently covered by the licensing arrangements, but I heard representations that the regulations are widely ignored. As assignments are usually short, it is very difficult (with the level of resource currently devoted to the licensing arrangements) to enforce.
- **Sport.** The licensing arrangements also cover sport for profit – though what this means in practice is very unclear.

Section 8

Conclusions

- 124 Conducting this exploratory review in such a short timescale has been possible because of the very positive engagement of many interested parties. The frustrations caused by the current system provided an obvious incentive to find a better way for all concerned.
- 125 I hope that all of them, and others whom I was unable to meet but who work in this sphere, will find that their aspirations and concerns have been properly taken on board.
- 126 Naturally I hope that the Secretaries of State for Children, Schools and Families and Culture, Media and Sport can accept the overall thrust and the specific recommendations in the review. Taken together they can form the basis of a much improved 21st century framework for regulating child performance. Child performers and all those involved in developing their talents and protecting their best interests deserve no less.
- 127 Finally I would like to thank Ed Balls and Ben Bradshaw for giving me this opportunity to do something very positive for children, and a number of officials who have willingly supplied information and advice. In particular, my grateful thanks go to Beth Simpson of the DCSF whose project management and many other skills have made this task so much easier.

Appendix 1

Exploratory review of the system of regulating child performance: Terms of Reference

Introduction

The 1968 regulations and guidance that govern child performance were established under the Children and Young Persons Act 1963. Their aim was certainly not to stop children from taking part in plays, shows and broadcasting but to ensure that their health, safety and well-being were protected when they did so.

As a general principle, performing is good for children because it offers them opportunities to develop their skills and talents; to have these recognised and praised, and to develop more self-confidence as a result. Performing can often be great fun. As a result, the chance to be on television or in a film is something most children and young people aspire to, both for the experience itself and for the opportunities they know this is likely to bring them, now and into the future.

Child performance is good for our society too and gives great pleasure to many people far beyond children's families and friends.

But for children these exciting opportunities can also be accompanied by risks, for example, of exhaustion, of over-exposure and invasion of privacy which they may subsequently regret, and of unreasonable pressure to succeed. There may also be a risk of harm. And we must ensure that these opportunities to perform are balanced with the need to ensure a child's education does not suffer.

Today, the 1960s regulatory regime applies when children take part in an incredibly wide range of performance activities, from local drama society productions and talent shows, to prime time television programmes and blockbuster films.

Essentially, whether the rules impact on a child's participation and whether a child is allowed to take part at all depends firstly on whether what they will be doing is a public 'performance', and secondly on their age.

At present an organisation wishing to include a child in a performance to which the licensing regulations apply, has to obtain a licence in advance from the local authority of

the area in which the child is resident. There is variation in how local authorities interpret and apply aspects of the legislation and also in the knowledge and understanding of them on the part of those responsible for putting on performances of all kinds.

The legislation also predates the creation of Ofcom as the broadcasting regulator as a result of the Communications Act 2003, with its statutory duty to ensure that people under eighteen are protected in relation to broadcast media. This duty is implemented through detailed rules in the Broadcasting Code and accompanying guidance that makes clear how broadcasters are to ensure children's physical and emotional welfare is protected.

Furthermore, over the last fifty years understanding of the risks to children and how best to manage them has also developed considerably, and views about the ages at which children can and should undertake different activities appear to have changed too.

Questions have therefore arisen about how far the 1960's approach is still fit for purpose today. These have been prompted in part by concerns about children's participation in some recent 'factual television' programmes and by queries about how the framework applies to these broadcasts, if it does at all. There are also broader questions about the appropriateness of this regime, since it was developed before the exponential development in mass communications and at a time when broadcasting's place in our culture, our economy and our society was less significant than it is today.

An Exploratory Review

In Government DCSF has lead responsibility for the regulation of child performance.

Earlier this year DCSF Ministers asked officials to examine the regulations with the aim of updating and streamlining them in a way that created a good fit with the world children live in today and the wide range of performance activities that are now available, while providing appropriate safeguards.

Work was undertaken to do this and the results were discussed informally over the summer with interested parties, including children's organisations, broadcasters and film makers, and local authorities.

It became clear from these discussions that simply updating the existing framework will probably not create the kind of approach that we believe we now need: that is, one that protects children effectively and proportionately from the risk of harm, enables them to make the most of the many different kinds of exciting performance opportunities now available, and reflects and respects the right to freedom of expression and editorial independence.

There are a number of difficulties with the 1968 regulations, and also the primary legislation on which they depend. For example, the legislation is highly complex; is interpreted very differently in different places; and is hard to apply to contemporary broadcasting. Concerns have also been raised that the regulations are often misapplied, or sometimes not applied at all. Some have also asserted that the current regulations don't reflect current thinking about the nature of the biggest risks to children, or children's greater maturity today compared to fifty years ago.

Questions have also been raised about whether there is sufficient information and guidance currently available to parents who are considering agreeing to their children taking part in performance activities, or indeed to all of those putting on performances, and of parents.

Increasing technological convergence also means that there is a need to consider these issues in a way that takes fully into account the fact that the boundaries between different forms of communication are blurring – those between television and the internet especially. Unless a modern framework is developed which consciously looks ahead there is a serious risk of it being rapidly overtaken by technological change.

Ministers have therefore decided to commission a piece of work to explore these options in greater detail, through a short exploratory review, with a view to deciding what a modern, effective and proportionate set of arrangements for the regulation of child performance should look like.

They are delighted to announce that they have appointed Sarah Thane, CBE, to lead it. Sarah is a former chair of the Royal Television Society, a former adviser to Ofcom on regulation and content, and a member of the governing board of Teachers TV, therefore brings considerable, relevant experience and expertise to the task.

The review will engage and work with all those with an interest in this area, including organisations representing children and parents, children's charities, broadcasters, producers, theatre organisations, representatives of local arts and drama organisations, and local authorities, among others.

DCSF will work in partnership with DCMS and will liaise with the devolved administrations on this exploratory review. The review will conclude by the end of February 2010.

Appendix 2

Organisations and people consulted during the exploratory review

Local Authority

The National Network for Children in Employment and Entertainment
The Local Government Association
The Association of Directors of Children's Services

Children's organisations/charities

NSPCC
Kidscape
11 Million

Broadcasters

BBC
Channel 4
ITV
Five
The Satellite and Broadcasters Group
Sky
Disney
Nickelodeon

Producers/Film makers

PACT
The Production Guild
The UK Film Council
The Harry Potter Franchise
Talkback TV
RDF
Outline Productions

Appendix 3

Chaperones

Set out below are some suggestions for the skills and training requirement based on contributions submitted to the review by the BPS, PACT and NNCEE.

Skills and attributes

All chaperones must:

- have the ability to connect with children from a range of backgrounds and build a comfortable, friendly and trust based relationship with them;
- build mutual respect with the children – they must like children and the children must like them;
- be sensitive to a child’s non verbal signals and body language;
- have the ability to empathise – children will from time to time get upset as a result of the experience, or bring ‘outside problems’ to their attention;
- have the ability to express views firmly and negotiate situations to protect the children’s interests.

Above all they should understand what is required of them as chaperones (ie to supervise and protect the children), have knowledge of the licensing conditions eg the hours children can work and be able to keep accurate and useful records.

For professional chaperones, experience and understanding of production techniques is required. But also competence and assertiveness to be able to negotiate and or stand up to the child’s behalf with the producer/production company.

Training

Many local authorities already provide training for new applicants. But this is not standardised and at a level suitable for working in amateur and semi-professional contexts.

The key elements of this ‘basic’ training should include (but not be limited to):

- **the law** – what are the legal requirements (hours, age differences, accommodation requirements (eg dressing rooms) etc) of the licensing system.
- **the role of the chaperone** and what is expected of the chaperone. This should include their powers to insist that a child has a break when needed. But also the areas where a judgement is needed eg in relation to the ratios of children to chaperones which is not a science because of the need to take account of variable such as the gender and age of the children to be supervised, the physical considerations of the performance area.
- **child protection** – including the signs to look out for when a child is distressed/fatigued, and referral procedures within and beyond the production company on issues of well-being. And in the rare situations where abuse is suspected – how to act, whom to inform. This should include an understanding of DCSF guidelines around safeguarding eg Working Together to Safeguard Children.
- **first aid** – a basic understand so that they can react to any immediate problems, and know when and whom to contact as appropriate.

This basic training could be delivered through local authority managed training sessions, or through the provision of manuals, DVDs or on-line training packages.

Professional chaperones who work in film, TV and professional theatres would require additional training. This should in addition cover:

- the production techniques and requirements of major theatre productions, sets on TV or film, and ‘on locations’.
- key aspects of child development eg attachment, cognitive abilities (especially in related to competence to assent/consent), conformity (sensitivity to overt and covert pressure), emotional vulnerability (sensitive topics such as body-image) anxiety and fatigue effects, and non-verbal communication.
- individual difference in children’s temperament, attachment styles, extraversion – introversion, background and living circumstances, and other aspects that may affect reactions to participation.
- the Every Child Matters ‘Common Core Skills and Knowledge for the Children’s Workforce’ six areas: effective communication and engagement with children, young people and families; child and young person development; safeguarding and promoting the welfare of the child, supporting transitions; multi-agency working; sharing information.
- Ofcom guidance on under-eighteens in broadcasting.

- ethical principles eg respect for autonomy and dignity of individuals, integrity and social responsibility.

A formal qualification/training programme should be developed, which is externally assessed. Those wishing to be employed as professional chaperones should pay for the appropriate training.

Appendix 4

Glossary

The 1963 Act	The Children and Young Persons Act 1963
BPS	British Psychological Society
CRB	Criminal Records Bureau
DCSF	Department for Children, Schools and Families
DCMS	Department for Culture, Media and Sport
ISA	Independent Safeguarding Authority
NNCEE	The National Network for Children in Employment and Entertainment

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