

SECTION 4

BODY OF PERSONS APPROVAL

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

What is a BOPA?

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

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

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

A BOPA is not transferable to another organisation or to individual children taking part in a performance arranged by someone else. A BOPA cannot be issued in respect of an activity. A BOPA is not a "group licence" nor is it an exemption under the 4 day rule.

Who can apply?

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

In exceptional circumstances the Secretary of State may issue a BOPA. Department for Education Advice 1.3.7 states the following:

The Secretary of State has the power to issue a BOPA but will not generally consider applications. This is because local authorities are better placed to assess arrangements made to safeguard children in local activities, to inspect those arrangements and enforce any requirements or conditions intended to protect children.

The Secretary of State will not consider any applications that do not involve a large number of performances with a large number of children across a significant number of local authority areas.

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

How to apply

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

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

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

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

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

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

Clear, robust and well embedded safeguarding policies and procedures in place

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

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

- To comply with Regulation 11 and Regulations 15 to 29 of The Children (Performances and Activities) (England) Regulations 2014
- To ensure an appropriate number of local authority approved chaperones are engaged to care for the children and ensure they are supervised at all times (see note below)

- Ensure suitable arrangements for first aid
- Maintain detailed and complete records of children involved in the group including emergency contact details and any medical issues
- Provide the names, date of birth, address and school of the children taking part
- Obtain a signed statement of fitness from the parent of each child
- An authorised officer of the local authority having unrestricted access to any rehearsal, technical rehearsal or performance at any venue the organisation may use

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

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

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

It is acknowledged there may be some exceptions and the arrangements a group have in place to supervise and care for the children can be deemed acceptable.

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

A Guide to Child Performance Licensing (in England) –National Network for Children in Employment and Entertainment. May 2016.