

EXECUTIVE – 7 DECEMBER 2011

REPORT OF DEPUTY CHIEF EXECUTIVE COMMUNITY DIRECTION

RE: CONSULTATION TO DEREGULATE REGULATED ENTERTAINMENT

1. PURPOSE OF REPORT

- 1.1 To seek the support of the Executive for the comments made by officers and members of the Regulatory Committee on the Department for Culture Media & Sport (DCMS) proposal to deregulate Schedule 1 of the Licensing Act 2003 as detailed in Appendix 1 to the report.

2. RECOMMENDATION

- 2.1 Executive supports the comments of officers and Licensing and Regulatory Committee on the consultation proposal to deregulate Schedule 1 of the Licensing Act 2003 as detailed in Appendix 1 to this report and these should be provided to DCLG.

3. BACKGROUND TO THE REPORT

- 3.1 The Licensing Act 2003 brought together nine separate outdated licensing related regimes, and created instead a single Act that controlled alcohol supply and sale, late night refreshment, and "regulated entertainment". In tidying up the old licensing regimes new problems were created for many wishing to host entertainment events.
- 3.2 The regulatory burdens imposed by the Licensing Act 2003 (the Act) were intended to prevent potential adverse impacts on the four licensing objectives: preventing crime and disorder; public safety; preventing public nuisance; and protecting children from harm. However, the Government agrees with a number of stakeholders who believe the requirements of the 2003 Act are unduly restrictive and burdensome for many forms of regulated entertainment and there is some evidence of negative impact in deterring the staging of entertainment events.
- 3.3 The Government is therefore proposing a reform of activities currently classed as "regulated entertainment" in Schedule 1 of the Act. The consultation seeks views on the removal in certain circumstances of the requirement for a licence in England and Wales to host a performance of a play, an exhibition of a film, an indoor sporting event, a performance of live music, any playing of recorded music, or a performance of dance.
- 3.4 The consultation document is attached at Appendix A and responses from the Leicestershire Licensing Forum are attached at Appendix B for information purposes.

Existing Legislation

- 3.5 The Licensing Act 2003 (the Act) came into force in November 2005 in England and Wales. It replaced nine separate licensing regimes in order to streamline the process to regulate the sale and supply of alcohol, the sale of late night refreshments, and the provision of regulated entertainment.
- 3.6 The Licensing Act 2003 devolves responsibility for the administration of the Act to local licensing authorities, which are mainly local authorities. They must carry out their functions with a view to promoting the following licensing objectives:
1. the prevention of crime and disorder;
 2. public safety;

3. the prevention of public nuisance; and
4. the protection of children from harm
- 5.

Subject to some exemptions (such as incidental music), the provision of the following constitutes regulated entertainment if it is put on for the public or for profit:

- a performance of a play;
- an exhibition of a film;
- an indoor sporting event;
- a boxing or wrestling entertainment;
- a performance of live music (or of facilities for making music or dancing);
- any playing of recorded music; and
- a performance of dance

Effect of Proposals

- 3.8 If the proposals go forward the only activities which would continue to be licensed are:-
- Any performance of live music, theatre, dance, recorded music, indoor sport or exhibition of film where the audience is of 5,000 people or more.
 - Boxing and wrestling.
 - Any performance of dance that may be classed as sexual entertainment, but is exempt from separate sexual entertainment venue regulations.
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- 3.9 The main impact of these proposals would relate to the 'Prevention of Public Nuisance' licensing objective from uncontrolled music (live or recorded). As entertainment activities would not require a licence there would be no opportunity for responsible authorities, local residents or Members to make any representations about potential noise nuisance as part of any licence application for alcohol. No conditions could be imposed on a licence in respect of noise.
- 3.10 The sale of alcohol will continue to be licensed as before.

Detail of Existing Legislation

- 3.11 Section 2 of the 2003 Act requires anyone who wishes to carry on a licensable activity to obtain an appropriate authorisation in the form of one licence covering all permissions i.e. a premises licence, a club premises certificate, or a temporary event notice (TEN). Venues are limited to 12 TENs per year (of which a maximum of five can be granted to an individual applicant). Any changes to a licence or club premises certificate, such as the addition of regulated entertainment, must be authorised through the full or minor variation process.
- 3.12 Regulations made under section 17(5) of the Act stipulate that an application for a premises licence or a full variation must be advertised in a local newspaper and outside the premises for a certain period to give local residents and responsible authorities (the police, environmental health, etc.) the opportunity to make representations against, or in favour of, the application to the licensing authority.
- 3.13 The government estimated that the administrative cost of making new applications, full and minor variation as between £385 and £950 plus a fee payable to the licensing authority which can vary typically from between £89 - £635 depending on the rateable value of the premises. If representations are made, section 18 of the Act requires the licensing authority to hold a hearing to consider the evidence and, if necessary, impose conditions on the licence to remove or mitigate any risks to the licensing objectives, refuse authorisation for a specific licensable activity or, in extreme cases, reject the application outright.

- 3.14 In many cases, licence conditions typically include; sound proofing measures when music is being performed, restrictions on capacities, opening hours and restriction on performance times, as well as health and safety measures. The licence holder may incur a cost in meeting some of these conditions; for example, at the top end, a noise limiter can cost around £2,000. The minor variation process is intended only for changes that will not impact adversely on the licensing objectives, such as the addition of low risk entertainment provision. The process is quicker and cheaper than the full variation process, but there is still an estimated administrative cost to applicants of £35 and a flat rate fee of £89. People who wish to hold regulated entertainment on an occasional basis can do so by sending a Temporary Event Notice to the licensing authority at a flat rate fee of £21 and an admin burden estimated at £16 to the applicant.
- 3.15 There is no annual fee or premises licence fee payable for an application or variation for regulated entertainment in educational institutions where the entertainment is for and on behalf of the educational institute, or to authorise regulated entertainment in church halls, village halls, parish halls, community halls or similar buildings.

Problems under consideration

- 3.16 The burdens imposed by the Act were justified by the need to prevent potential adverse impacts on the four licensing objectives: the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm. However, stakeholders in particular from the music industry, but also from wider arts and sports bodies as well as various charitable / third sector organisations, believe the requirements of the 2003 Act are unduly restrictive and burdensome in respect of performance of live music and there is some evidence of negative impact in deterring the staging of entertainment.
- 3.17 The Government considers that deregulating entertainment regulated under the Act would increase opportunities for such entertainment to take place, and is unlikely to have an adverse impact on the promotion of the licensing objectives, as there are already other robust laws in place to safeguard the public and to provide remedy in the event of disturbance. The new arrangements would retain the key protections of the Act in relation to alcohol licensed premises (such as the retention of licence reviews, which allow local residents and businesses a say in local licensing matters) and would dovetail neatly with other protections, rather than “double-regulation” of these low risk events that are at the heart of many local communities.

Reasons for intervention

- 3.18 The Licensing Act 2003 aimed to simplify processes and reduce red tape and bureaucracy. But the regime has led to a variety of entertainment events facing disproportionate and unnecessary regulation, even though they are unlikely to be detrimental to the licensing objectives.
- 3.19 Live music has often been the standout example of how the 2003 Act has inadvertently led to red tape for entertainment organisers, in particular in small venues which wish to put on occasional live music. However, we know from stakeholders that there are many other instances where other forms of entertainment defined in Schedule 1 of the 2003 Act have been adversely affected. Some of these include:
- Private events where a charge is made to raise money for charity
 - School plays and productions
 - Punch and Judy performances
 - Travelling circuses
 - Children's film shown to toddler groups
 - A school disco where children are charged a ticket price to support the PTA
 - An exhibition of dancing by pupils at a school fete

- 3.20 There are also numerous areas of inconsistency when consideration is given to the types of events which can take place without a licence. For example:
- Stock car racing does not need a licence, but indoor athletics does;
 - Any Live or Recorded Music as part of a Religious Meeting or service in a large arena without a licence, a licence would be required for a play in the same venue.
 - A performance of Morris Dancing with live or recorded music accompanying it is exempt from licensing requirements, but not the performance of mime.
 - Other such activities which do not require a licence include country fairs and outdoor sport to crowds of fewer than 10,000 (5,000 for football)
- 3.21 The DCMS consider, using the football example as a bench mark, if events where 5,000 people or fewer are present are removed from the requirements of the Licensing Act, the necessary protection to address noise, crime, disorder, and public safety will continue because there is a range of robust legislation already in place, including Health and Safety at Work, Fire Order, Noise Nuisance, and Environmental Protection. Additionally, a licence will still be required for events at which alcohol is sold, where the risks to the public are higher, ensuring that controls still remain.

4. FINANCIAL IMPLICATIONS [CB]

- 4.1 Any changes to the criteria effecting which premises and events require licences could potentially affect the amount of income currently being received by the Council. After an analysis of the premises currently requiring licences within the Borough if the changes proposed were to be adopted there would be no change in fee income under the current pricing structure. However, potentially about 10% of Temporary Event Notices issued annually would no longer be required. Based on the receipts for 2010/11 this would equate to a loss of £360.

5. LEGAL IMPLICATIONS [MR]

- 5.1 Set out in the report.

6. CORPORATE PLAN IMPLICATIONS [RP]

- 6.1 Objective 3 – Safer and Healthier Borough.

7. CONSULTATION

- 7.1 This report and responses has been considered by Licensing and Regulatory Committee.

It is the officers opinion that this will involve duplication for many organisations as the DCMS have consulted all Local Authorities as well as 115 other National organisations including some of the following:-

- Action with Communities in Rural England
- Arts Council England
- Association of Circus Proprietors of Great Britain
- British Board of Film Classification (BBFC)
- Charity Commission
- Chartered Institute of Environmental Health
- Children's Society
- Health and Safety Executive (HSE)
- Institute of Licensing
- Musicians Union
- National Association of Head Teachers
- National Association of Local Councils
- Sport England

8. RISK IMPLICATIONS

It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

The following significant risks associated with this report / decisions were identified from this assessment.

Risk Description

- 8.1 Impact on environment, customers, social & economic issues from delivering objectives:-

The removal of the licensing requirement will result in the licensing authorities and other responsible authorities (planning, police, environmental health etc) not being given prior notification about events, there have been concerns raised about this leading to increased disorder, crime, nuisance, disturbance.

Mitigating actions

- 8.2 The licensing authority respond to all questions posed in the consultation and include the following options:-

- The DCMS do nothing – keep the existing licensing restrictions in place.
- Increase the number of exemptions under schedule 1 Part 2 of the Act.
- The DCMS iron out inconsistencies in the Licensing Act.
- Give licensing authorities the power to grant exemptions over low risk events such as those listed under 3.19 of this report. As a minimum the licensing authority will be notified and can then inform other responsible authorities that would have an interest in the event.

Owner – Mark Brymer

9. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

- 9.1 If the proposals become law there will be some advantages for rural communities, schools and voluntary organisations.

- 9.2 Village halls account for a significant proportion of premises that require an entertainment licence. The halls are often the hub of cultural life in rural communities, so that the proposal will make it easier and encourage activity in village halls for the benefit of the area. Action with Communities in Rural England (ACRE) considers that the impact of these proposals on rural communities will be beneficial.

- 9.3 In their 2009 inquiry into the Licensing Act 2003, the Culture, Media and Sport Select Committee were particularly concerned about the impact of the Licensing Act on the voluntary sector. The process of applying for regulated entertainment licences is burdensome to many third sector organisations that are staffed by volunteers – besides the upfront £21 cost of the TEN, and related administrative time cost, the process is generally off-putting with the result that many events across the country have not taken place.

9.4 Although there is no licence fee charged, there will be an administrative saving for community buildings and schools that no longer have to go through the process of making new applications, variations, or TENs in respect of regulated entertainment.

10. CORPORATE IMPLICATIONS

By submitting this report, the report author has taken the following into account:

- Community Safety implications - a potential greater impact on resources may arise from increased noise complaints/ASB from exempt entertainment. [Sharon Stacey, ext 5636]
- Planning Implications [Simon Wood, ext 5692] – Nothing to add to the report.

Background papers: DCMS - A Consultation proposal to examine the deregulation of Schedule One of the Licensing Act 2003. Responses to DCMS by 3rd December 2011.

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