

**TO: LICENSING AND SAFETY COMMITTEE**  
**12 JANUARY 2012**

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**PROPOSED DEREGULATION OF LICENSING  
OF REGULATED ENTERTAINMENT**  
**Chief Officer: Environment and Public Protection**

**1 INTRODUCTION**

- 1.1 This report is intended to update Members on the response sent by officers in respect of the Government consultation to remove the requirement for a licence for regulated entertainment.

**2 SUPPORTING INFORMATION**

- 2.1 The Department of Culture, Media and Sport recently consulted on a proposal to remove the requirement for a licence for most activities currently defined as regulated entertainment in the Licensing Act 2003: performance of a play, exhibition of film, indoor sporting events, live music, recorded music or performance of dance. The Government only intends to retain licensing requirements for any regulated entertainment with an audience of 5000 or more people, and for boxing and wrestling.
- 2.2 The consultation states: "Before the General Election both coalition parties recognised the need for reform, and in the Coalition Programme for Government, we made a firm commitment to remove red tape affecting live music in small venues. Then, as part of the growth review which was published alongside the Budget this year, we announced an examination of "regulated entertainment", with the aim of removing the licensing regulation that unnecessarily restricts creativity or participation in cultural and sporting events. This consultation is the result of that work".
- 2.3 The response to the consultation sent by officers can be found at Annex A. Officers are concerned that the proposal for entertainment events with no controls would have a hugely detrimental impact on the quality of life of residents living near licensed premises. Members will be aware of representations received in respect of noise from licensed premises which were carefully considered and proportionate conditions imposed accordingly.
- 2.4 As and when more details become known that have implications for the Council, these will be brought to Committee for consideration.

Background Papers

The consultation can be read at [www.culture.gov.uk/consultations/8408.aspx](http://www.culture.gov.uk/consultations/8408.aspx)

Contact for further information

Laura Driscoll  
Licensing Team Leader  
01344 352517  
[laura.driscoll@bracknell-forest.gov.uk](mailto:laura.driscoll@bracknell-forest.gov.uk)

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## Response to DCMS Consultation

**Q1: Do you agree that the proposals outlined in this consultation will lead to more performances, and would benefit community and voluntary organisations? If yes, please can you estimate the amount of extra events that you or your organisation or that you think others would put in?**

It is likely that the proposal will lead to an increase in the number of performances. However without controls the events may not be properly organised and the venues may not be safe or suitable, leading to risk to the safety of persons attending and working at the event and potential liability for the event organisers.

**Q2: If you are replying as an individual, do you think this proposal would help you participate in, or attend, extra community or voluntary performance?**

N/A

**Q3: Do you agree with our estimates of savings to businesses, charitable and voluntary organisations as outlined in the impact assessment? If you do not, please outline the areas of difference and any figures that you think need to be taken into account (see paragraph 57 of the Impact Assessment).**

No. It is misleading to say that the proposal will remove fees for pubs and venues which stage entertainment. Many venues will still require a premises licence to authorise sale of alcohol – which will cost the same whether or not entertainment is authorised. Many community venues which hold entertainment do so using a ‘fee-exempt’ premises licence and only apply for TENs to cover the sales of alcohol. Also many local authorities have areas of public land licensed for entertainment which can be used by community groups.

We also feel the cost to the general public of noise nuisance has been greatly underestimated. Where is the evidence to back the number of expected incidents to be ‘small’? In the last financial year, 86% of complaints received about licensed premises related to noise, and 8 formal warnings were issued to licensed premises in respect of breaches of conditions relating to the public nuisance licensing objective. This is not a ‘small’ issue and we do not feel that those who have taken the time to complain to the Council feel it is a ‘small’ issue. It is also misleading to say that the wellbeing lost will be ‘significantly offset by wellbeing gains from increased opportunities to spectate and perform at entertainment events’ – a complainant who lives in proximity to a premises which plays loud music with no controls and loses sleep as a result is unlikely to agree with this viewpoint.

The impact assessment clearly states that an increase in noise complaints could lead to an increase in alcohol licence reviews. How can an authority review an alcohol licence due to noise nuisance if the entertainment which caused the noise nuisance was not required to be licensed? There will be no ability through the review process to impose appropriate conditions on the licence as the entertainment activity will no longer be licensable. Enforcement would be ineffective as it would only take place after the nuisance had occurred.

**Q4: Do you agree with our estimates of potential savings and costs to local authorities, police and others as outlined in the impact assessment? If you do not, please outline the areas of difference and any figures you think need to be taken into account.**

No. Action will have to be taken through formal legal routes such as injunctions and prosecutions. The cost of reactive enforcement would be considerable and potentially prohibitive.

The effect of this proposal would be that the cost of an event transfers from the organiser to the wider community as the increased costs to the Council would need to be funded by Council tax payers.

**Q5: Would you expect any change in the number of noise complaints as a result of these proposals? If you do, please provide a rationale and evidence, taking into account the continuation of licensing authority controls on alcohol licensed premises and for late night refreshment.**

There would be an increase in noise complaints. The majority of complaints received in relation to licensed premises are due to noise directly associated with entertainment at the premises. Few complaints are received about premises solely licensed for alcohol and/or late night refreshment. Conditions on licences are put in place where there are concerns from local residents or the responsible authorities to minimise any negative impact from the premises and to ensure those using the premises can do so in as safe a manner as possible. Where there are no representations received, conditions are not attached

**Q6: The Impact Assessment for these proposals makes a number of assumptions around the number of extra events, and likely attendance that would arise if the deregulation proposals are implemented. If you disagree with the assumptions, as per paragraphs 79 and 80 of the Impact Assessment, please provide estimates of what you think the correct ranges should be and explain how those figures have been estimated.**

It is impossible to estimate whether attendance at licensed premises will increase as a result of the entertainment they hold no longer being licensable. It is accepted that there may be more events at previously unlicensed premises and it is of concern that there could be events of up to 4999 persons on an area of public land where alcohol is not sold but brought by attendees, and about which the authorities would not receive any prior notice.

**Q7: Can you provide any additional evidence to inform the Impact Assessment, in particular in respect of the impacts that have not been monetised?**

More work is required to compare the current costs of informal resolutions to noise nuisance complaints with the cost of formal actions, and more work is required to measure the potential harms to residents near premises which may be used for unlicensed entertainment.

**Q8: Are there any impacts that have not been identified in the Impact Assessment?**

Potential safety issues if the venue is not suitable, which may only become apparent when the event is held and something goes wrong, and the potential liability of the event organiser. For example, outdoor music events could take place without any consideration of traffic, parking, security or hygiene and sanitary provision.

It is unclear how the Council will continue to be able to carry out the statutory function to promote the licensing objective of prevention of public nuisance if this proposed change is implemented.

**Q9: Would any of the different options explored in this consultation have noticeable implications for costs, burdens and savings set out in the impact assessment? If so, please give figures and details of evidence behind your assumptions.**

This authority feels that the status quo should remain and does not feel that any potential cost savings outweigh the harm this could cause to local residents.

**Q10: Do you agree that premises that continue to hold a licence after the reforms would be able to host entertainment activities that were formerly regulated without the need to go through a Minor or Full Variation process?**

No. Conditions were only imposed where representations from interested parties and responsible authorities were made and properly considered.

**Q11: Do you agree that events for under 5,000 people should be deregulated across all of the activities listed in Schedule One of the Licensing Act 2003?**

No. The figure is too high. The capacity might be a factor in noise nuisance but there is also the type of entertainment to be considered – so a play watched by 5,000 people may cause no nuisance, whereas a pub holding a live music event with just one customer could cause a nuisance. When a complaint is received on a Monday about an unlicensed music event which took place the previous day, how will officers know how many people attended the event to ascertain whether it should have been licensed or not?

**Q12: If you believe there should be a different limit – either under or over 5,000, what do you think the limit should be? Please explain why you feel a different limit should apply and what evidence supports your view.**

As above, capacity limits are not the most important factor to consider. The number of persons attending a licensed activity does not solely determine the potential for it to cause nuisance to nearby residents.

**Q13: Do you think there should be different audience limits for different activities listed in Schedule 1? If so, please could you outline why you think this is the case. Please could you also suggest the limits you feel should apply to the specific activity in question.**

No.

**Q14: Do you believe that premises that would no longer have a licence, due to the entertainment deregulation, would pose a significant risk to any of the 4 original licensing objectives? If so please provide details of the scenario in question.**

Yes, prevention of public nuisance and potentially public safety.

**Q15: Do you think that outdoor events should be treated differently to those held indoors with regard to audience sizes? If so, please could you explain why, and what would this mean in practice.**

Outdoor music events clearly have a greater potential to cause major disturbance to nearby residents.

**Q16: Do you think that events held after a certain time should not be deregulated? If so, please could you explain what time you think would be an appropriate cut-off point, and why this should apply.**

No.

**Q17: Should there be a different cut off time for different types of entertainment and/or for outdoor and indoor events? If so please explain why.**

No.

**Q18: Are there alternative approaches to a licensing regime that could help tackle any potential risks around the timing of events?**

The current regime allows residents and responsible authorities an opportunity to raise and discuss concerns in respect of timings and for a balanced determination to be made in view of all the facts.

**Q19: Do you think that a code of practice would be a good way to mitigate potential risks from noise? If so, what do think such a code should contain and how should it operate?**

It might be a useful guidance but there would be no value if the code was not enforceable.

**Q20: Do you agree that laws covering issues such as noise, public safety, fire safety and disorder, can deal with potential risks at deregulated entertainment events? If not, how can those risks be managed in the absence of a licensing regime?**

No, as these laws are reactive. It is important that controls are agreed and considered before the event starts. The onus must be on the event organiser to have produced adequate safety plans before the event starts to ensure risks are addressed prior to the commencement.

**Q21: How do you think the timing / duration of events might change as a result of these proposals? Please provide reasoning and evidence for any your view.**

There is potential for more unlicensed 'parties' or raves, arranged through social media as is increasingly popular. Events arranged by amateur or rogue operators would be likely.

**Q22: Are there any other aspects that need to be taken into account when considering the deregulation of Schedule 1 in respect of the 4 licensing objectives of the Licensing Act 2003?**

Yes, there would be no obligation on event organisers to consider the environmental impact and safety issues associated with their event and event planning will be detrimentally affected.

It is a grave concern that an inexperienced event organiser could arrange an event for 4999 people in a field without a formal consideration of the event plan, safety measures and how the event may impact on nearby residents.

**Q23: Are there any public protection issues specific to the deregulation of the performance of live music that are not covered in chapter 3 of this consultation? If so, how could they be addressed in a proportionate and targeted way?**

Reactive controls are already in existence. The police do have the power to close noisy pubs but do not do so, because of the likely public disorder that would occur if a pub full of patrons was suddenly forced to close.

Although noise which is a statutory nuisance can be controlled using the Environmental Protection Act 1990, this is essentially a reactive control; that is the Council can only serve an abatement notice normally after the noise nuisance has occurred. The advantage of the present licensing regime is that it requires the applicant to consider noise controls in advance. If a statutory noise nuisance occurred, the Council would then be obliged to serve a notice prohibiting the event continuing, but as it would be likely that public disorder would occur if the event were stopped, the event would proceed. The only action the Council could then take would be to prosecute the persons responsible after the event.

The chapter refers to the use of the Noise Act. Again, this power is not used as in quiet areas the 34 dB (A) level inside the complainant's home is too high. The offence also only occurs after 23:00, which means that residents could be disturbed every night until 23:00 without an offence being committed.

**Q24: Do you think that unamplified music should be fully deregulated with no limits on numbers and time of day/night? If not, please explain why and any evidence of harm.**

No, drums and unamplified music can still be a noise nuisance. There is also a need to consider that persons playing unamplified music may use microphones for singing which is clearly more likely to give rise to a nuisance.

**Q25: Are there any other benefits or problems associated specifically with the proposal to deregulate live music?**

Noise nuisance to nearby residents.

**Q26: Are there any public protection issues specific to the deregulation of the performance of plays that are not covered in chapter 3 of this consultation? If so, how could they be addressed in a proportionate and targeted way?**

No response.

**Q27: Are there any health and safety considerations that are unique to outdoor or site specific theatre that are different to indoor theatre that need to be taken into account?**

Yes. Outdoor events are particularly hazardous and need careful controls as they involve temporary installations and structures that must be properly constructed and maintained.

**Q28: Licensing authorities often include conditions regarding pyrotechnics and similar HAZMAT handling conditions in their licences. Can this type of restriction only be handled through the licensing regime?**

No response.

**Q29: Any there any other benefits or problems associated specifically with the proposal to deregulate theatre?**

No response.

**Q30: Are there any public protection issues specific to the deregulation of the performance of dance that are not covered in chapter 3 of this consultation? If so, how could they be addressed in a proportionate and targeted way?**

No response.

**Q31: Any there any other benefits or problems associated the proposal to deregulate the performance of dance?**

No response.

**Q32: Do you agree with the Government's position that it should only remove film exhibition from the list of regulated activities if an appropriate age classification system remains in place?**

Yes.

**Q33: Do you have any views on how a classification system might work in the absence of a mandatory licence condition?**

An age classification system that was not enforceable would be worthless.

**Q34: If the Government were unable to create the situation outlined in the proposal and above (for example, due to the availability of Parliamentary time) are there any changes to the definition of film that could be helpful to remove unintended consequences, as outlined earlier in this document - such as showing children's DVDs to pre-school nurseries, or to ensure more parity with live broadcasts?**

The authority would not deem that showing a DVD at a nursery would be licensable as it would not be open to the public or with a view to a profit.

**Q35: Are there any other issues that should be considered in relation to deregulating the exhibition of film from licensing requirements?**

No response.

**Q36: Are there any public protection issues specific to the deregulation of the indoor sport that are not covered in chapter 3 of this consultation? If yes, please outline the specific nature of the sport and the risk involved and the extent to which other interventions can address those risks.**

No response.

**Q37: Are there any other issues that should be considered in relation to deregulating the indoor sport from licensing requirements?**

No response.

**Q38: Do you agree with our proposal that boxing and wrestling should continue to be regarded as “regulated entertainment”, requiring a licence from a local licensing authority, as now?**

Yes.

**Q39: Do you think there is a case for deregulating boxing matches or wrestling entertainments that are governed by a recognised sport governing body? If so please list the instances that you suggest should be considered.**

No.

**Q40. Do you think that licensing requirements should be specifically extended to ensure that it covers public performance or exhibition of any other events of a similar nature, such as martial arts and cage fighting? If so, please outline the risks that are associated with these events, and explain why these cannot be dealt with via other interventions.**

No response.

**Q41: Do you think that, using the protections outlined in Chapter 3, recorded music should be deregulated for audiences of fewer than 5,000 people? If not, please state reasons and evidence of harm.**

No, due to concerns in respect of the potential for noise nuisance as outlined previously.

**Q42: If you feel that a different audience limit should apply, please state the limit that you think suitable and the reasons why this limit is the right one.**

No. As above, capacity limits are not the most important factor to consider. The number of persons attending a licensed activity does not solely determine the potential for it to cause nuisance to nearby residents.



**Q43: Are there circumstances where you think recorded music should continue to require a licence? If so, please could you give specific details and the harm that could be caused by removing the requirement?**

Yes. Loud recorded music can cause a noise nuisance. If played at low level then it would constitute incidental background music and this is not licensable.

**Q44: Any there any other benefits or problems associated specifically with the proposal to deregulate recorded music?**

Noise nuisance to nearby residents.

**Q45: Are there any specific instances where Entertainment Facilities need to be regulated by the Licensing Act, as in the current licensing regime? If so, please provide details.**

Yes, facilities for making music can clearly cause a nuisance in some cases.

**Q46: Are there any definitions within Schedule 1 of the Act that are particularly difficult to interpret, or that are otherwise unclear, that you would like to see changed or clarified?**

No response

**Q47: Paragraph 1.5 outlines some of the representations that DCMS has received over problems with the regulated entertainment aspects of the Licensing Act 2003. Are you aware of any other issues that we need to take into account?**

The examples given are poor and misleading and do not justify this proposal coming forward. If individual authorities have been over-zealous or interpreted the Act incorrectly then there are other means to deal with this rather than removal of all controls on regulated entertainment.

Private events where a charge is made to raise money for charity: these are normally covered by a TEN or fee-exempt licence at a community premises.

School plays and productions: these are normally covered by a TEN unless the event takes place in the school hall, which is considered to be a community building and therefore has a fee-exempt licence.

Punch and Judy Performances: these are normally covered by a TEN unless the event takes place in a community building which has a fee-exempt licence.

Travelling Circuses: licensing of such events would depend entirely on the types of activity taking place, but there is potential for a TEN to be submitted.

Children's films shown to toddler groups: we would not see this as licensable.

Music performances to hospital patients: we would not see this as licensable.

Brass Bands in the local park: can be covered by an open areas premises licence, or TEN.

School discos: these are normally covered by a TEN unless the event takes place in the school hall, which is considered to be a community building and therefore has a fee-exempt licence.

Exhibition of dancing by pupils at school fetes: we would not see this as licensable.

Costumed Storytellers: we would not see this as licensable.

Folk Duos: why should folk music not have the potential to cause a nuisance?

Pianists in restaurants: we would not see this as licensable but in any case the restaurant would likely already have a premises licence to sell alcohol.

Magician Shows: we would not see this as licensable.

Performances by street artists: can be covered by the Council's open area premises licence or a TEN.

Performances by a quayside barber shop quartet: can be covered by the Council's open area premises licence or a TEN.

**Q48: Do you agree with our proposal that deregulation of dance should not extend to sex entertainment? Please provide details.**

Yes.