

Committee: LICENSING

Agenda Item

Date: March 10, 2010

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**Title: GOVERNMENT CONSULTATION ON
PROPOSED AMENDMENTS TO THE
LICENSING ACT 2003**

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Item for decision

Summary

1. This report is to draw members' attention to a Government consultation on proposed changes to relevant offences which could give rise to a refusal of a personal licence and also proposed amendments to the control of regulated entertainment.

Recommendations

2. Members consider whether they wish to respond to the consultation document and if so what the responses should be.

Background Papers

3. The following papers were referred to by the author in the preparation of this report:
 - Government consultation paper for the proposed legislative reform order available on the Department for Culture Media and Sport website.

Impact

4.

Communication/Consultation	This is a public consultation to which anyone can respond.
Community Safety	Insofar as some serious offences escape being relevant offences for the purposes of the legislation the inclusion of those offences may enhance community safety.
Equalities	The Government will be responsible for carrying out an equality impact assessment.
Finance	None.
Health and Safety	As for community safety.

Human Rights	None
Legal implications	None.
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	If the proposed amendments go ahead there may be an increase in the number of hearings the committee is required to hold which officers would need to service and prepare for.

Situation

5. Members will be aware that under the Licensing Act 2003 the licensing regime is divided into two parts, that which provides for premises licences and that which provides for personal licences.
6. Personal licences are granted to individuals and authorise those individuals to supply alcohol or to authorise the supply of alcohol in accordance with the terms of a premises licence. Applicants for personal licences must be over 18 and unless they acquired a licence through grandfather rights during the transitional period, must also possess an approved licensing qualification.
7. When an application is received for a personal licence, if the applicant has unspent convictions within the meaning of the Rehabilitation of Offenders Act 1974 notice of the application must be given to the police. If the police object within the prescribed time of being notified, there has to be a hearing to determine the application. The police objection can only be based upon an assertion that granting the licence would undermine the crime prevention objective.
8. The relevant offences are defined by schedule 4 to the Act. Although this is a lengthy schedule there are two serious omissions which the Government propose rectifying and the Government also propose adding other offences to the schedule subject to the outcome of the consultation.
9. The consultation paper states that the Government has considered three tests in considering whether or not to amend schedule 4. These are:
 - (i): Is the offence relevant to carrying out the duties required of a personal licence holder.
 - (ii): Is there evidence that there has been a problem of this offence not being included in schedule 4.
 - (iii): Is the offence of a serious enough nature to sit comfortably with the existing offences in schedule 4.

10. The first proposed offence to be added to the list is under the Road Traffic Act 1988. Currently there are three such offences listed, namely: causing death by careless driving or driving whilst under the influence of alcohol or drugs. The Government propose adding the offence of failing to provide a breath test when required by a person to do so, commonly known as a roadside test. Would the committee support the inclusion of that offence in schedule 4?
11. At present conspiracy offences are not included in schedule 4. A conspiracy is an agreement by two or more people to commit a criminal act. Conspiracy offences are as serious as the substantive offence and carry the same sentences. It appears to be an anomaly that a conspiracy to commit a relevant offence is not in itself a relevant offence which would give the police the right to object to the grant of a personal licence on the crime prevention objective. Do members support the inclusion of conspiracy offences in schedule 4?
12. Similarly offences of attempting a crime are currently omitted from schedule 4. An attempt is something which is more than preparing to commit the offence with the intention of committing it. It appears to be an anomaly that an attempt to commit a relevant offence is currently excluded. Do members support including attempt offences within schedule 4?
13. The 2003 Act repealed virtually all previous licensing legislation. That legislation in itself contained a number of offences some of which are relevant offences within the provisions of the 2003 Act. The Government does not propose including conspiring or attempting to commit such offences should be included in schedule 4. The Government's view is that none of the offences attract a prison sentence exceeding six months which means that any such convictions are all capable of becoming spent. The Government has therefore decided not to include these in schedule 4. However it is possible that the convictions may be unspent under the Rehabilitation of Offenders Act as where another offence is committed within the rehabilitation period the first offence remains unspent until such time as the second offence becomes spent. Do members agree with the Government proposal that conspiracy and attempt offences relating to offences created by a pre-2003 licensing legislation should not be included in schedule 4? The Government also asks whether we have evidence of unspent convictions for such matters. (I am aware of none).
14. The Government is considering whether an unspent conviction (but not a fixed penalty notice) for drunk and disorderly should be included in schedule 4 as such convictions may indicate an irresponsible attitude towards alcohol. The Government seeks views on this proposal.
15. At present possession (as opposed to supply) of controlled drugs is not a relevant offence. The Government is seeking views as to whether such an offence should be included within schedule 4.
16. The Government also seeks views as to whether persistent sales of tobacco to under 18s and offences under the Food Safety Act should be reflected in the list of relevant offences.

17. The Government has made certain assumptions regarding the costs of its proposals and seeks views on these. However, this authority has no information upon which it could gauge the accuracy (or otherwise) of the Government's assumptions.
18. Although the Government does not propose removing any offences from schedule 4, it is giving consultees the opportunity of putting forward any proposed deletions. Officers do not consider any to be appropriate at this stage.
19. The Government is also consulting on plans to exempt small live music events from the requirements of the Licensing Act 2003. At present any regulated entertainment requires an authorisation by way of a licence or a Temporary Event Notice. The proposal is that there should be a revocable exemption for licensed and unlicensed premises providing live entertainment for 100 people or less. Existing conditions restricting regulated entertainment will continue to apply although premises licence holders and clubs will be able to apply to remove or vary these conditions using the minor variations procedure.
20. The exemption will only apply to performances held wholly inside a permanent building. It is limited to performances of live music and exempt performances may only take place between 8am and 11pm. There will be provision for interested parties and responsible authorities to apply for an exemption at specified premises to be revoked. The procedure for this will be similar to the current review procedure although as the exemption applies to unlicensed premises the procedure will extend to those premises. On an application to revoke, there are only two options open to the licensing authority, either to allow the exemption to continue or to revoke it. The revocation has immediate effect and is not suspended pending an appeal. Where the exemption is revoked it is of course open to the proprietor of the premises to apply for a licence or for a premises licence holder to apply for a variation to include entertainment. Upon such an application if representations are received members can impose conditions.
21. I have sought the views of environmental health on this consultation paper and Mr Cockerell comments as follows: "I am concerned that the impact of exempting these small events carried on inside a building before 11pm and to audiences of less than 100 could result in a breach of one of the licensing objectives, namely the prevention of public nuisance, principally from noise. The majority of the existing premises which are licensed for regulated entertainment including live music are for indoor activities but without the simple requirement to keep windows and doors closed during the performance, they could be causing a public nuisance in much the same way as an outdoor event could, even though they are inside a building. A similar problem could occur during these exempt events and there would be no mechanism to require even such a basic precaution to prevent public nuisance. The premise that smaller audiences equal lower noise levels is not one that accords with our own experience. Live music is mostly amplified and even the most basic equipment in use can easily entertain much lower audiences than the suggested 100 audience threshold. When one considers the size of the majority of premises currently licensed for live music in

Uttlesford an exemption based on an audience of less than 100 would result in a large number of venues becoming exempt from any licensing conditions designed to prevent public nuisance. The proposed limitation of the exemption to live music events held within the period 8am to 11pm presumes that during that time ambient noise levels are such that it would be unlikely that a public nuisance would be caused by live music. In our experience this is not the case, there have been justifiable complaints as the result of live music at licensed premises on weekend afternoons and on weekday evenings. If it is felt that in limited circumstances small live music events would be exempt from the Licensing Act provisions it should be for the potential operator to apply to the licensing authority for an exemption with an opportunity for responsible authorities and interested parties to make representations, rather than the proposal that responsible authorities or interested parties would need to apply to the licensing authority for the venue to be excluded from the exemption following evidence of public nuisance or crime and disorder associated with premises.”

22. At Appendix I I append the list of questions which the Government raises in its consultation paper. Members may wish to respond to the consultation document by answering those questions or may wish to put forward the views of the Principal Environmental Health Officer with or without amendment.

Risk Analysis

23.

Risk	Likelihood	Impact	Mitigating actions
Failure to amend the list of relevant offences to include conspiracies and contempt may lead to unsuitable people being granted personal licences.	1, it is difficult to conceive that sufficient consultees would put forward cogent reasons for the rejection of this proposal such that the Government would not enact it.	3, if unsuitable people were licensed as personal licence holders there is the potential for greater crime and disorder.	Members support the proposal.
Premises are able to provide regulated entertainment for audiences of less than 100 without restriction.	3, the Government has already carried out some consultation with regard to	3, there is a probability that local residents' lives would be disrupted by additional	Members may consider opposing the proposal

	<p>these proposals and indeed has made amendments in the light of responses thereto (in particular reducing the number of the audience for licensed premises from 200 to 100).</p>	<p>noise. Whilst interested parties can apply for a revocation, if the procedure is similar to that for review it is not user friendly for a layman and pressure will undoubtedly be applied to members (who are now interested parties in their own rights) and council departments to seek revocations.</p>	
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- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.

APPENDIX 1: List of Questions

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- **Question 1:** Do you agree that the exemption should be limited to performances held wholly inside a permanent building? Yes/No. If No, please explain why.
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- **Question 2:** Do you agree that the exemption should be limited to performances of live music for not more than 100 people? Yes/No. If No, please explain why.
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- **Question 3:** Do you agree that audiences for exempt performances should be accommodated entirely within the building where the performance is taking place? Yes/No. If No, please explain why.
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- **Question 4:** Do you agree that exempt performances should not take place between 11pm and 8am? Yes/No. If No, please explain why.
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- **Question 5:** Do you agree that there should be an exclusion process as set out above? Yes/No. If No, please explain why.
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- **Question 6:** Do you agree that the exclusion process should be similar to the current review process, with the modifications proposed? Yes/No. If No, please explain why.
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- **Question 7:** Do you agree that licensed premises that qualify for the proposed exemption should have to apply through the Minor Variations process to remove licence conditions that apply to the exempt live music performance? Yes/No. If No, please explain why.
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- **Question 8:** Do you agree that this proposal cannot be achieved by non-legislative means? Yes/No. If No, please explain why
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- **Question 9:** Do you agree that the effect of the proposal is proportionate to the policy objective? Yes/No? If No, please explain why.
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- **Question 10:** Do you agree that the proposal, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it? Yes/No. If No, please explain why.
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- **Question 11:** Do you agree that the proposal does not remove any necessary protection? Yes/No. If No, please explain why.

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- **Question 12:** Do you agree that the proposal does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise? Yes/No. If No, please explain why.
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- **Question 13:** Do you agree that the proposal has no constitutional significance? Yes/No. If No, please explain why.
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- **Question 14:** Do you broadly agree with the estimates, assumptions and conclusions of the Impact Assessment (published as a separate document, and available alongside this consultation on the DCMS website at http://www.culture.gov.uk/reference_library/consultations/6499.aspx)? Yes/ No. If not, please say which estimate you disagree with, and provide any evidence that supports an alternate estimate.
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- **Question 15:** Do you think that this draft Order accurately reflects the proposed change?
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