

Committee: Licensing and Environmental Health
Committee

Agenda Item

5

Date: 12 October 2011

Title: Consultation on a proposal for deregulation of
Schedule One of the Licensing Act 2003

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Item for decision

Summary

1. The Department for Culture, Media and Sport has instigated a consultation on a proposal to remove licensing requirements in England and Wales for most activities currently defined as “regulated entertainment” in Schedule One to the Licensing Act 2003.

Recommendations

1. The Committee is requested to consider the consultation proposal as summarised below and make a decision as to whether it wishes to formally respond. In the Annex below some draft answers have been given to the questions posed in the consultation document that relate to Environmental Health issues which the Committee may wish to endorse.

Financial Implications

None. There are no costs associated with the recommendations.

Background Papers

2. The following papers were referred to by the author in the preparation of this report and are available for inspection from the DCMS website:
Regulated Entertainment - A Consultation proposal to examine the deregulation of Schedule One of the Licensing Act 2003. September 2011

http://www.culture.gov.uk/images/consultations/consultation_deregulation-scheduleone_2011_vs2.pdf

Impact Assessment for the proposal to exempt regulated entertainment from the provisions of the Licensing Act 2003

http://www.culture.gov.uk/images/consultations/IA_deregulation-scheduleone_2011.pdf

Impact

3.

Communication/Consultation	
Community Safety	Potential effect on the communities health and well being from noise and health and safety
Equalities	None
Health and Safety	Safety of the public attending events that no longer require to be licensed
Human Rights/Legal Implications	None
Sustainability	None
Ward-specific impacts	
Workforce/Workplace	None

Situation

The Licensing Act 2003 brought together nine separate licensing related regimes covering alcohol supply and sale, late night refreshment, and “regulated entertainment”. In doing so the Act modernised many out-dated laws that had been left behind by changes in technology and modern lifestyle.

The Licensing Act 2003 classifies the following activities as “regulated entertainment”, and therefore licensable:

- a performance of a play,
- an exhibition of a film,
- an indoor sporting event,
- a boxing or wrestling entertainment (both indoors and outdoors),
- a performance of live music,
- any playing of recorded music, and
- a performance of dance

In addition a licence is required for the provision for entertainment facilities (which generally means the provision of facilities which enable members of the public to make music or dance).

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Licensable activities can only be carried out under the permission of a licence or a Temporary Event Notice (TEN) from a local licensing authority. Licences (or TENs) are required for any of the activities above (subject to limited exemptions set out in part 2 of Schedule 1) whether they are free events to which the general public is admitted, or public or private events where a charge is made with the intention of making a profit - even when raising money for charity.

Licences to host regulated entertainment often occur as part of an application for an alcohol licence, particularly in venues such as pubs, clubs, and hotels, but there are also many venues that are primarily “entertainment venues” that operate a bar, such as theatres, which still require alcohol licence permissions to do so.

The DCMS proposal

The DCMS proposes to examine the need for a licensing regime for each of the activities classed as “regulated entertainment”. Where there is no such need, they propose to remove the licensing requirement, subject to the views and evidence generated through the consultation.

Where there is a genuine need to licence a type of entertainment, then the consultation proposes that the licensing requirement would remain, either in full, or in part if more appropriate. In such cases the consultation seeks to identify the precise nature of the potential harm, and seek evidence to identify effective and proportionate solutions.

Chapter 3 of the consultation addresses the generic issues that are relevant to more than one type of regulated entertainment. For example, the DCMS is interested to hear views on the handling of health and safety protections and noise nuisance prevention, as well as views from a public safety and crime and disorder perspective. The consultation poses a number of questions related to these aspects, and asks a final question where any further comments can be added on any issues of note.

What’s not affected

The consultation does make clear that the Government intends to retain the licensing requirements for:

- 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.

Effect of the proposal on the current licensing regime

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Currently there are over 133,000 premises in the UK (330 in UDC) which have some form of regulated entertainment provision granted on their licence. The benefits of removing licensing requirements will vary, depending on individual circumstances.

Premises that currently hold a licence **only** for the activities that were formerly classed as regulated entertainment (for example, some church halls) would no longer need a licence. In these cases all licensing requirements would cease, and fees and licence conditions would end when a licence is surrendered. *Venues would be able to host activities formerly classed as regulated entertainment without the need for any licence.*

Premises that continue to hold a licence after the reforms (for example, for alcohol, late night refreshment, or remaining forms of regulated entertainment) would be able to host entertainment activities that were formerly regulated without the need to go through a Minor or Full Variation process. DCMS propose that all existing conditions on such licences would continue to apply unless the premises decided to apply for a variation to remove or amend them - a situation that should prevent the need for a wholesale reissue of licences by licensing authorities

There are also at least 900 areas listed on the DCMS licensed public land register which are licensed by local authorities solely for regulated entertainment purposes - such as town centres, promenades, high streets, parks, gardens and recreation grounds. Licensing authorities would also no longer have to process and oversee over 12,500 licences per annum for which they do not receive a fee, such as village halls and for certain performances held in schools. Together this is at least 13,400 community and non-commercial premises per annum that would no longer be subject to a licensing regime.

Concerns of Environmental Health

The principal concern for EH is the removal of the licensing requirement for a whole range of premises including village halls, schools and open spaces. These could now hold regulated entertainment (if there is no sale of alcohol) without the need for a licence.

Indeed the view of the DCMS is that *'under our proposals, there would be no requirement to even notify the licensing authority or the police of an event of up to 4999 people that did not involve the sale of alcohol'*. As an example the application for a music festival at Great Chesterford last year which did not involve the sale of alcohol, would therefore have been covered by this exemption with a resultant three day music festival event for up to 4999 people for which we would have had no prior knowledge. In addition the proposal to exempt public land from licensing could have implications for areas such as The Common in Saffron Walden and other such areas.

Noise

Noise is the principal concern and Local authorities would be reliant on existing noise nuisance and abatement powers in the Environmental Protection Act 1990. These powers require local authorities to take reasonable steps to investigate a complaint about a potential nuisance and to serve an abatement notice when they are satisfied that a nuisance exists or is likely to occur or recur. Additionally, there is also the

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 Noise Act 1996 which allows the local authority to take action (issuing a warning notice, or fixed penalty notice, or seizing equipment) in respect of licensed premises where noise between 11pm and 7am exceeds permitted levels. However as the proposal acknowledges *'it should be noted that most Local Authorities do not operate a full nuisance complaints service outside normal working hours'* as is the case at UDC. Such a service would be resource intensive and costly to provide.

Additionally the DCMS is not proposing any time related cut off for entertainment which is to be deregulated from the 2003 Act.

Health and safety

The DCMS propose to remove from licensing requirements relating to health and safety and instead rely on the broader controls available through the Health and Safety at Work Act 1974 together with disability legislation. The legislation provides protection in relation to the safety of the public at an event as it places a duty of care on an employer or person in control to take reasonable steps to protect the public from risks to their health and safety. In addition, the Regulatory Reform (Fire Safety) Order 2005 imposes fire safety duties in respect of most non-domestic premises.

The DCMS suggests that potential problems at events should be prevented through the use of risk assessments and compliance with other duties imposed by this legislation, rather than the additional layer of bureaucracy imposed by requirements of the Licensing Act. In practice however our experience is that specific conditions on licences relating to health and safety ensures a minimum standard of provision for items such as electrical safety, temporary structures and stewarding that must be met and provides a level playing field for all event organisers to meet.

The DCMS make the point that many types of existing mass entertainment activity already take place successfully outside the licensing regime such as fun fairs, country shows, political rallies and demonstrations, religious events, stock car racing, or outdoor sports without a licence. They suggest that there is no directly justifiable reason why events such as ballet, classical concerts or circuses should be considered any more of a risk to public safety than these activities. However this second list should also include events such as festivals, pop concerts and disco's that are sometimes held in the open but also sometimes in confined spaces.

Other proposals concern the deregulation of plays, dance, film, indoor sport and wrestling/boxing but these are of little or no concern to EH.

Risk Analysis

4.

Risk	Likelihood	Impact	Mitigating actions
Increase in unregulated events causing	3	2	Make representation to oppose the

nuisance and /or risks to health and safety.			proposals
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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.

Annex A: Summary list of questions

Proposal Impacts: Questions

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 on? **Yes, difficult to quantify but perhaps in the region of 100 - 200 per year**

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?

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).

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, unquantifiable costs may be incurred due to additional enforcement measures necessary to deal with an expected rise in noise nuisance complaints. The estimates given in our opinion are greatly understated.**

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 **Yes, numerous small venues such as village halls where no alcohol is sold, that are often in close location to residential properties will be able to holds any number of events to anytime of night. Open air sites for events such as festivals where no alcohol is sold, would be able to be used for multiple events for up to 5000 people without even notifying the LA.**

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

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what you think the correct ranges should be and explain how those figures have been estimated.

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

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

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.

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? **Yes**

The Role of Licensing Controls: Questions

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**

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. **No figure should be set. Noise controls and health and safety requirements should apply irrespective of the audience size.**

Q13: Do you think there should be different audience limits for different activities listed in Schedule One? 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 four original licensing objectives? If so please provide details of the scenario in question. **Yes, these premises will be outside of any licensing controls regarding noise and health and safety unless contraventions or incidents occur that attract the attention of the regulatory authorities ie. after complaints, incidents or accidents have occurred.**

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. **Yes. Far greater potential for noise nuisance especially in rural area.**

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. **Yes. Events can cause nuisance at any time of day but particularly so at night as ambient background noise levels reduce.**

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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, each should be individually decided according to likelihood of nuisance arising.**

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

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? **No, a COP is unlikely to be adhered to by persons wishing to flout regulatory controls and will lead to inconsistency and enforcement complications.**

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, regrettably due to a lack of resources in most LA's pro-active monitoring of unregulated events will be scarce if not absent. This means as previously said that controls regarding noise and health and safety will not be investigated or acted on unless contraventions or incidents occur that attract the attention of the regulatory authorities ie. after complaints, incidents and or accidents have occurred. A statutory nuisance is not an offence until an abatement notice has been served and action for statutory nuisance can only be retrospective. Noise Act requires out of hours resources we do not have. We do not agree with the assertion in para.3.16 that all village hall committees will exercise necessary control.**

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. **Many more late night and weekend events.**

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

Performance of Live Music: Questions

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? **Health and safety controls should still apply in premises not covered by alcohol sale licences.**

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. **Only if held indoors. While noise maybe less of a factor there is still the potential for nuisance to occur and the health and safety risks may still be present.**

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

Performance of Plays: Questions

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?

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?

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?

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

Performance of Dance: Questions

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?

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

Exhibition of Film: Questions

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? [Only if held indoors.](#)

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

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?

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

Indoor Sport: Questions

Boxing and Wrestling, and Events of a Similar Nature: Questions

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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?

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.

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.

Recorded Music and Entertainment Facilities: Questions

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. [Not if amplified or outdoors which are likely to cause nuisance.](#)

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.

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 if outdoors due to likelihood of noise nuisance.](#)

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

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. [Karaoke which can cause noise complaints.](#)

Unintended consequences: Questions

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

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?

Adult Entertainment: Question

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