

TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING AND APPEALS COMMITTEE

30 NOVEMBER 2011

Report of the Chief Solicitor

Part 1- Public

Delegated

1 CONSULTATION PAPER ON PROPOSAL TO DEREGULATE SCHEDULE ONE OF THE LICENSING ACT 2003

Summary

This report outlines the proposals to deregulate Schedule 1 of the Licensing Act 2003, contained within the consultation paper published by the Department for Culture, Media and Sport. A draft response to the consultation paper is also attached for the approval of Members.

1.1 Introduction

1.1.1 On 10 September 2011 the Department for Culture, Media and Sport (DCMS) published a consultation paper on proposals to remove licensing requirements in England and Wales for certain activities defined as 'regulated entertainment' in Schedule 1 of the Licensing Act 2003. A copy of the consultation paper is attached at **Annex 1**.

1.1.2 The return date for responses to the consultation paper is 3 December 2011. A copy of our draft response is attached at **Annex 3**.

1.2 Background

1.2.1 The Licensing Act 2003 brought together a number of separate licensing regimes, including the sale and supply of alcohol, late night refreshment and the provision of various forms of entertainment.

1.2.2 Currently, the following forms of entertainment are 'regulated' under the Licensing Act 2003 –

- (a) A performance of live music or the playing of recorded music
- (b) A performance of a play
- (c) An exhibition of a film

(d) An indoor sporting event

(e) A performance of dance

(f) A boxing or wrestling entertainment (indoor and outdoor)

(g) Entertainment of a similar description to that falling within the performance of live music, the playing of recorded music and the performance of dance

In respect of all of the above, the entertainment only becomes licensable where it takes place in the presence of an audience and is provided at least partly to entertain that audience.

1.2.3 The DCMS consultation seeks views on the proposed removal of licensing requirements for the majority of activities currently defined as 'regulated entertainment' in Schedule 1 of the Licensing Act 2003. Specifically, it is proposed to remove the following forms of entertainment from the definition of 'regulated entertainment' – a performance of a play, an exhibition of a film, an indoor sporting event, a performance of live music or the playing of recorded music and a performance of dance. In short, the proposals aim to remove the need for a licence for as many types of entertainment as possible.

1.2.4 It is proposed that the licensing requirement will remain –

(a) where the audience at any performance is 5,000 or more

(b) for boxing and wrestling

(c) for any performance of dance that may be classed as sexual entertainment

1.2.5 The proposals do not affect the existing requirements relating to the sale or supply of alcohol, which will continue to require authority from the Borough Council as Licensing Authority.

1.2.6 Although most forms of entertainment will potentially cease to be licensed the consultation proposes that existing conditions on premises licences will continue to apply unless the premises licence holder decided to apply for a variation to remove or amend them.

1.2.7 The consultation paper includes an impact assessment (attached as **Annex 2**), setting out an estimate of the potential savings for local authorities of between £248,000 and £617,000 net. The total net benefit over a 10 year period is estimated within the assessment as between £32.8m to £43.2m. This is the net result of costs to licensing authorities in enforcing public nuisance and conducting reviews, offset against savings to licensing authorities of not having to process licences exempt from annual fees, savings to businesses and venues that no longer apply for Temporary Event notices, and other licensing charges such as new licences, variations and annual fees.

1.3 Rationale for the proposals

1.3.1 The Government considers that the regulation of entertainment within the Licensing Act 2003 is overly bureaucratic, and places an unnecessary and heavy administrative burden and cost on the cultural/ voluntary sector and businesses. As a consequence, one of the key aims of the proposal is to remove licensing regulation that unnecessarily restricts creativity or participation in cultural events.

1.3.2 The consultation cites many examples of low risk, or no risk, events that require a licence under the present regime, including –

- School plays and productions
- Punch and Judy performances
- Folk duos in pubs
- Travelling circuses
- Children's films shown to toddler groups
- Music performances to hospital patients

1.3.3 The consultation proposal asserts that regulated entertainment itself in general poses little risk to the licensing objectives. It is considered that where problems do occur, it is often because of the presence of alcohol sales and consumption. The retention of licensing controls for the sale/ supply of alcohol are a key element of the Government's thinking behind the deregulation of regulated entertainment, as the consultation states that existing controls for such venues will continue to apply under the proposals. The majority of venues offering regulated entertainment are also currently licensed for the sale or supply of alcohol, so the Government considers that regulated entertainment can for the most part be deregulated without compromising the promotion of the licensing objectives. In support of this, the consultation asserts that existing controls available under other legislation e.g. the Environmental Protection Act 1990 offer adequate protection against any problems that may arise.

1.3.4 Put simply, the consultation is predicated on the fact that the Government thinks there is ample scope to sensibly deregulate most, but not all, of Schedule One to the 2003 Act.

1.4 Key points of response

1.4.1 The proposals are undoubtedly radical, and if enacted will have a significant impact upon the ability of the Borough Council and responsible authorities to regulate the provision of entertainment. I have therefore consulted with my colleagues across the Council, including the Chief Environmental Health Officer and Chief Planning Officer in order to ensure that our response is as comprehensive as possible.

- 1.4.2 There are advantages to the proposals, such as the intention to remove the need for local community groups to obtain a licence for plays or films. It is fair to say that some of the activities currently falling within the definition of 'regulated entertainment' e.g. films/ plays, pose little risk to the promotion of the licensing objectives, and we would not oppose the deregulation of the examples given in paragraph 1.3.2 above. In reality these examples are uncommon, and in some cases we question whether a licence is actually required. We have concerns that a very sweeping view is being taken of the role of licensing controls based upon anecdotal/ exceptional examples of how such controls may be applied in practice by a small number of licensing authorities.
- 1.4.3 More fundamentally, we would disagree strongly with a number of the key principles underpinning the consultation. For example, the sweeping assertion that *'regulated entertainment in general poses little risk to the licensing objectives'* is unsupported by evidence in the consultation paper, and contrary to the experience of many licensing authorities and responsible authorities. The sheer breadth and scale of activities falling within the definition of regulated entertainment makes it very difficult to draw any general conclusions as to the risk posed to the promotion of the licensing objectives, as each activity/ event will bring its own unique attributes that require balanced consideration.
- 1.4.4 Para 3.28 of the consultation proposes that only events with an audience of fewer than 5,000 people are deregulated from the 2003 Act. This figure is not adequately explained within the paper nor within the Impact Assessment, and appears to be based upon (a) the safety certification regime for outdoor sports (where audiences of less than 10,000 do not require a safety certificate save for football where a certificate is required for capacities of more than 4,999) and the existing requirement under the Licensing Act 2003 to pay an additional fee for events where 4,999 people are present (para 3.27). In relation to indoor events, the belief is again that as the vast majority of premises offering regulated entertainment will also sell alcohol, the operation of such premises can be adequately addressed through remaining licensing controls.
- 1.4.5 Again, there appears to be a sweeping belief that the provision of some forms of entertainment to less than 5,000 poses little risk to the licensing objectives. Our experience has been that the audience figure is one of a number of factors that needs to be considered when considering the risk to the promotion of the licensing objectives. Other factors, such as the nature of the activity, the audience demographic, premises specific factors (e.g. noise insulation) etc are of equal importance. In particular, we note that the Association of Chief Police Officers has suggested that an audience limit of 500 may be a more appropriate starting point. The comparison with the football licensing regime in paragraph 14 of the Impact Assessment is not a like for like comparison.
- 1.4.6 In our view, little comfort can be taken from the assertion that existing controls on premises licences will continue to apply unless the licence holder applies to remove or amend them. In reality we can reasonably expect all the major operators to apply to remove those conditions on their licences that relate to deregulated forms of entertainment. Furthermore, no consideration is given in the consultation as to how licensing authorities should deal with such applications.

Where conditions have originally been imposed to prevent public nuisance arising out of entertainment that now ceases to be licensable, how can the authority justify retention of the condition in the face of an application for its removal? No consideration is given to this point in the consultation document, or to how an application for a review based upon a breach of a condition relating to (formerly) regulated entertainment should be dealt with.

1.4.7 The view of the Government is that adequate protections against potential problems are already provided by existing legislation such as the Environmental Protection Act 1990, the Anti-Social Behaviour Act 2003 and the Noise Act 1996. Whilst we would not disagree that the controls within these Acts play an important role in the regulation of public nuisance, the consultation fails to recognise that these powers are generally engaged on a reactive basis. In our experience, specific controls can be applied on a proactive basis through the mechanism of the licensing process. Often, these controls have been agreed on a consensual basis following a process of negotiation between the operator, interested parties and responsible authorities.

1.4.8 A full draft response is attached at Annex 2 for the approval of Members.

1.5 Financial and Value for Money Considerations

1.5.1 None at this stage.

1.6 Legal Implications

1.6.1 None in respect of the consultation paper but there will be significant legal implications should the proposals become law.

1.7 Risk Assessment

1.7.1 No risks at this stage.

1.8 Conclusions and Recommendations

1.8.1 Members are **RECOMMENDED** to

(1) consider the draft response to the consultation paper; and

(2) approve a final draft for submission to the Department for Culture, Media and Sport

Background papers: none

contact: Adrian Stanfield
Chief Solicitor

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	N/A	
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.