

ANNEX 3

DRAFT RESPONSE TO DCMS CONSULTATION

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?

We do not consider that the existing licensing system deters the provision of entertainment within our Borough. If anything, the system introduced under the Licensing Act 2003 has resulted in an increase of entertainment provision, with many more premises now offering entertainment than previously under the old public entertainment licensing regime.

As paragraph 8 of the Impact Assessment acknowledges, the provision of regulated entertainment (without the sale/ supply of alcohol) by community and educational facilities is already fee exempt under the Licensing Act 2003 (Fees) Regulations 2005, so there would be no direct financial benefit to these organisations. It would be quite simple to extend this exemption from fees to an exemption from the requirement to obtain a licence within the Act itself, without undermining the need to regulate events at commercial premises.

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?

Not applicable

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).

Please also see our answer to question 1 above in relation to fees for regulated entertainment on community and educational facilities.

Many premises already have licences in place, which allow a wide range of licensable activities.

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. We consider that any savings that may be delivered through deregulation will be matched, if not exceeded, by increases in transitional costs and additional enforcement action under other statutory powers e.g. Environmental Protection Act 1990. Paragraph 37 of the Impact Assessment recognises that there is potential for additional cost, yet suggests in paragraph 65 that the increase in additional complaints will be small. The assumptions underlying the estimate in paragraph 65 are in our view questionable, for the reasons set out in our response to Q5 below.

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. The removal of licensing controls for entertainment will undoubtedly lead to an increase in noise complaints, as some operators will feel less constrained in their approach towards the management of noise within their premises. Paragraph 61 of the Impact Assessment accepts that the proposal may increase the prevalence of noise complaints which local authorities will have to deal with.

We do not agree that the continuation of licensing authority control on alcohol licensed premises and for late night refreshment will provide a sufficient safeguard to justify the deregulation of entertainment under the Licensing Act 2003. 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 an activity that now ceases to be licensable, it is unclear how an authority can 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. Rather, it is simply assumed in paragraph 66 of the Impact Assessment that where there is an increase in 'nuisance noise incidents' in premises with an alcohol licence, a licensing authority could, if necessary, deal with the complaint through the addition of conditions relating to noise on the alcohol licence through review. This is an over-simplistic interpretation of the operation of the Licensing Act 2003.

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.

We cannot reasonably provide an estimate at this stage

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

No

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

We consider that there will be a increase in legal challenges to decisions of licensing authorities if, as suggested in the Impact Assessment, conditions are imposed on licences to control noise from the provision of entertainment which is no longer licensable.

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.

Option 1 – we believe that the current legislative framework works adequately.

Option 2 – we believe that the removal of regulated entertainment would lead to an increase in the number of noise complaints received by the Council, in excess of the 5-10% specified in the Impact Assessment. Additionally, we would see a drop in income, which we do not consider would be matched by a corresponding drop in administrative costs.

We do not agree that best practice guidelines will have any impact upon the proposed costs savings.

Option 3 – we believe that there is little to distinguish the implications of this proposal from Option 2. As we have said elsewhere in our response, there are a number of factors that need to be considered when assessing the risk posed by an event. The limits proposed in option 3 are arbitrary, and would have similar implications to those in Option 2.

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?

It will be very difficult for licensing authorities and responsible authorities to enforce licences, and indeed for licence holders & local residents to know which conditions are in force. The consultation document fails to deal with this issue in sufficient depth, and leaves considerable uncertainty in a key area.

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. 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, location of exits, risks to the health and safety of those attending) etc are of equal importance. For example, it is conceivable that the provision of regulated entertainment to less than 200 in poorly insulated premises with poor management controls can pose a greater risk to the promotion of the licensing objectives than one of more than 1,000 in well managed premises.

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.

The imposition of an audience limit is arbitrary. We do not consider that the regulation of entertainment should be approached by reference to an audience limit, for the reasons set out in our answer to Q11.

Q13: Do you think there should there 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.

Please see answer to Q12.

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. It is possible, for example, that premises that provide live music to an audience of up to 4,999 at an outdoor event could be free from

regulation if they did not sell alcohol i.e. they allow customers to bring their own.

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 events pose particular risks to the promotion of the licensing objectives. The size of the audience is one factor, but we repeat the concerns expressed in our answer to Q12, namely that the imposition of an audience limit is arbitrary. One of the principal issues arising from outdoor events will be the transmission of sound from live/ recorded music, and this should be an important consideration in any distinction between indoor and outdoor events. Other factors, such as exit routes, public safety also need to be carefully considered.

Fundamentally, all events should be assessed in accordance with the licensing objectives (which the consultation does not propose to remove or amend).

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.

As with audience limits, the setting of time limits is arbitrary. In addition to the time of day, other factors such as the nature of the locality, the proximity to residents, the control measures in operation at the premises etc are of relevance.

If entertainment is to be deregulated as proposed, then we consider that a cut off time is essential. We would favour cut off times of after 11.00pm, and before 6.00am. Local residents should be given a greater say over activities likely to cause nuisance at a time when they are likely to have a greater detrimental impact on their amenity.

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.

Please see answers above.

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

We consider that the current system offers the most effective way of assessing and minimising the 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. Any Code is likely to be voluntary, and unenforceable. As with any voluntary code, not all premises will seek to comply with its provisions, and it will undoubtedly be the poorly managed premises that will fail to meet the Code. With no power of enforcement, any such Code will be 'toothless'.

In our view, the introduction of a Code of Practice in place of the current licensing controls will be a backward step. Controls should be tailored to the size, style, characteristics and activities taking place on the premises (as they presently are under the Licensing Act), and should not be left to a voluntary, general Code of Practice.

In some cases, it is the possibility of a review of their licence which compels licence holders to comply with its terms.

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.

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.

It is a matter of speculation as to whether the timing/ duration of events may change.

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?

Please see our previous answers

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?

None that we are aware of

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.

We agree that unamplified music poses less risk to the promotion of the licensing objectives than amplified music, although this will largely depend upon the specific act in question. It will be dangerous to deregulate unamplified music without limitation, as the activity in question cannot be looked at in isolation from other related factors. To this end we do not support the deregulation of live music without limits on numbers and times of day/ night.

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

None

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?

No

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?

None that we are aware of

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?

We do not knowingly duplicate any matter dealt with in other regulations as a licence condition. It is perfectly sensible to seek to regulate such matters, so if the consultation proposes to remove this power it is essential that alternative powers of regulation exist.

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

The provision of plays rarely attracts any adverse representation from responsible authorities or interested parties.

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?

None that we can think of

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

The provision of dance in itself rarely attracts any adverse representation from responsible authorities or interested parties. It is the provision of the accompanying music that usually raises concern. In this regard please see our responses to previous questions.

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?

Yes

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

No

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?

We do not consider that this should be addressed by attempting to redefine the definition of a film. In the case of a pre-school nursery, we are not aware of any licensing authority requiring a licence for the showing of a DVD to the children in attendance. If this is an issue, this could be addressed through specific exemptions, or clearer guidance to licensing authorities.

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

No

Indoor Sport: Questions

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.

Capacity/ crowd control issues can arise in relation to large indoor sporting events.

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

Much will depend on the nature of the indoor sporting event in question. Certain low risk events in schools or sports centres could be exempted without full scale deregulation.

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

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.

Yes

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.

There is little to distinguish martial arts and cage fighting from boxing and wrestling, so we do not see why these should be treated any differently.

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.

No. Please see answer to Q11.

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.

Please see answer to Q12.

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?

This will depend upon a variety of considerations, as we have stated in our previous responses. The provision of recorded music at different premises to different audiences can give rise to different considerations. The current licensing regime is flexible enough to respond to such a wide range of material considerations.

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

Please see our responses to the questions relating to live 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 and other amplified entertainment facilities have significant potential to cause public nuisance, so we consider that these need to be regulated.

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?

We consider that the most appropriate way to address the examples given in the consultation paper would be to specifically exempt such activities from Schedule One. In reality the examples given in paragraph 1.5 of the consultation paper 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.

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?

No

Adult Entertainment: Question

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

Yes - the sexual entertainment licensing provisions introduced by the Policing and Crime Act 2009 allow an exemption for premises offering this form of entertainment on no more than 12 occasions per year. We therefore agree that the Licensing Act 2003 should continue to regulate such performances.