

<b>REPORT TO:</b>	<b>Environmental &amp; Development Services Committee</b>	<b>AGENDA ITEM: 12</b>
<b>DATE OF MEETING:</b>	<b>17<sup>th</sup> November 2011</b>	<b>CATEGORY: DELEGATED</b>
<b>REPORT FROM:</b>	<b>Director of Operations</b>	<b>OPEN</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>Peter Barrow (ext 5976)</b>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>Consultation on the proposal to deregulate schedule one of the Licensing Act 2003</b>	<b>REF:</b>
<b>WARD(S) AFFECTED:</b>	<b>All</b>	<b>TERMS OF REFERENCE: EDS17</b>

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## **1. Recommendation**

- 1.1 Members consider and agree responses to the consultation questions as detailed in this report for submission to the Department of Culture Media & Sport.

## **2. Purpose of Report**

- 2.1 To enable a response to be formulated to the government's consultation paper entitled "A consultation proposal to examine the deregulation of schedule one of the Licensing Act 2003". The consultation period closes on the 3<sup>rd</sup> December 2011.

## **3. Background**

- 3.1 In 2005 the Licensing Authority (in the local context – this Council) took over responsibility for issuing and administering licences under the Licensing Act 2003.
- 3.2 The Licensing Act 2003 consolidated nine previous licensing regimes allowing for multiple licensable activities to be controlled under one licence.
- 3.3 These activities were; the sale of alcohol; late night refreshment and 'regulated entertainment'. Schedule One of the Act defines Regulated Entertainment, as:
- The performance of a play
  - An exhibition of a film
  - An indoor sporting event
  - Boxing or wrestling entertainment
  - A performance of live music
  - Any playing of recorded music
  - A performance of dance

Or entertainment of a similar description to live music, recorded, music or dance.

- 3.4 Since its implementation in 2005 the Licensing Act has undergone a number of amendments as well as currently pending changes including those referred to as "Rebalancing the Licensing Act" contained within the Police and Social Responsibility

Act 2011 which, although at the time of writing this report has received Royal Assent, has yet to be given a date for enactment.

#### 4. **Consultation**

4.1 The Department for Culture, Media & Sport (DCMS) has produced a lengthy consultation document detailing the proposed changes. This consultation is available at [www.culture.gov.uk/consultations](http://www.culture.gov.uk/consultations). There is also an Impact Assessment available via the same link.

4.2 The consultation includes a foreword from John Penrose, the Minister for Tourism & Heritage and chapters regarding the various licensable activities. **Appendix 1**

4.3 The consultation makes clear at the outset that the Government intends to retain the licensing requirements, in any instance, 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

4.4 The Government has received countless representations about the difficulties that the 2003 Act has brought to a wide range of cultural, voluntary sector and commercial organisations. New licensing requirements, under the 2003 Act were, for many, a step backwards, bringing costly and bureaucratic processes for low risk, or no risk, events, including:

- Private events where a charge is made to raise money for charity
- School plays and productions
- Punch & Judy performances
- Travelling circuses
- Children's films shown to toddler groups
- Music performances to hospital patients
- Brass bands playing in the local park
- School discos where children are charged a ticket price to support the PTA
- Exhibitions of dancing by pupils at school fetes
- Costumes storytellers
- Folk duo's in pubs
- Pianists in restaurants
- Magician shows
- Performances by street artists
- Performances by a quayside barber shop quartet

4.5 It is now proposed that 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 of a licence.

4.6 It is suggested that 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. It is proposed that all existing conditions on such licences would continue to apply unless the premises decided to apply for variation to remove or amend them – a situation that should prevent the need of wholesale reissue of licences by licensing authorities. Conditions are an integral part of a licence authorisation, so the consultation seeks evidence with regard to any potential transitional issues, to ensure sufficient certainty for both licensee and those monitoring compliance to ensure all parties are aware of what is required of a premise. Taking into account of any such issues, full guidance would be issued to licensing authorities and other interested parties before any changes would be made.

4.7 There are at total of 48 questions within the consultation. Proposed answers have been considered which are at **Appendix 2**.

## **5. Corporate Implications**

5.1 The Council's vision is being delivered through actions grouped into four themes within the corporate plan 2009-2014. The Licensing Act 2003 contributes to Theme 2 – Safe & Secure

## **6. Financial Implications**

6.1 The DCMS have produced an impact assessment which contains further information regarding estimated proposed savings.

6.2 The implications for resources will depend on the extent to which the consultation proposals are acted upon.

6.3 There are potential savings to be made in terms of a number of licences which will not need to administered which do not attract a fee, and therefore in effect currently cost the Authority to administer.

6.4 There may be a number of premises who can choose to surrender their alcohol licences in order to take advantage of these proposed relaxations. This could lead to a loss of income to the Licensing Authority.

## **7. Community Implications**

7.1 Should the proposed changes take effect it will change which places are actually licensed and may in effect take a large number of premises out of the control of the Licensing Authority altogether. Licensing contributes to the Council's strategic objectives for people to feel safe & secure.

## **8. Background Papers**

8.1 Government consultation paper: <http://www.culture.gov.uk/consultations/8408.aspx>

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# Foreword

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At the moment, the law and regulations which require some (but not all) types of entertainment to be licensed are a mess. For example, you will need a licence if you want to put on an opera but not if you want to organise a stock car race. A folk duo performing in the corner of a village pub needs permission, but the big screen broadcast of an England football match to a packed barn-like city centre pub does not. An athletics meeting needs licensing if it is an indoor event, but not if it's held outdoors. A free school concert to parents doesn't need a licence, but would if there is a small charge to raise money for PTA funds or if there are members of the wider public present. A travelling circus generally needs a permit whereas a travelling funfair does not. A carol concert in a Church doesn't need a licence, but does if it is moved to the Church Hall. There are many other examples where types of entertainment are treated differently for no good reason – the distinctions are inconsistent, illogical and capricious.

But they cause other problems too. Whenever we force local community groups to obtain a licence to put on entertainment such as a fundraising disco, an amateur play or a film night, the bureaucratic burden soaks up their energy and time and the application fees cost them money too. Effectively we're imposing a deadweight cost which holds back the work of the voluntary and community sector, and hobbles the big society as well.

Equally importantly, the various musicians' and other performers' unions are extremely concerned that all these obstacles reduce the scope for new talent to get started, because small-scale venues find it harder to stay open with all the extra red tape. There is also evidence that pubs which diversified their offer to include activities other than drinking were better able to survive the recession. Making it easier for them to put on entertainment may therefore provide an important source of new income to struggling businesses such as pubs, restaurants and hotels.

Last but not least, laws which require Government approval for such a large range of public events put a small but significant dent in our community creativity and expression. If there's no good reason for preventing them, our presumption should be that they should be allowed.

So this is a golden opportunity to deregulate, reduce bureaucratic burdens, cut costs, give the big society a boost and give free speech a helping hand as well. Our proposals are, simply, to remove the need for a licence from as many types of entertainment as possible. I urge you to participate in this consultation so that we can restore the balance.

**John Penrose**  
Minister for Tourism and Heritage

## Appendix 2

**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?**

Probably would lead to more performances but possibly only marginally so and difficult to predict how many.

**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).**

One individual local authority is not well placed to comment on the government projection nationally.

**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.**

One of the advantages for the Local Authority would be the removal of the need to issue licences for this kind of premises, as they do not attract a fee and as such the entire cost is borne by the Local Authority. There would also be a slight reduction in the overall number of licences and temporary event notices administered by the local authority; however, there would potentially be an additional burden on the Environmental Health and Health & Safety teams within the Local Authority.

**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**

Whilst there would be a continuation of controls on premises licensed to sell alcohol, this would effectively lead to inconsistency and potential unfairness in that, a licensed premises causing a noise nuisance, could face the loss of their alcohol licence, or a similar enforcement action / imposition of controls (conditions) courtesy of their licence and the licensing objectives, whereas another premises causing the same nuisance would not be able to be dealt with in the same way.

Since the implementation of the Licensing Act 2003, in 2005, Environmental Health officers have been able to consult with applicants and, if necessary object to licence applications in order to ensure appropriate conditions were in place to mitigate any

potential noise nuisance, thus helping to limit or prevent the number of instances of noise complaints.

**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 not possible to predict.

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

There will be an additional burden on Police, Fire Services, Environmental Health and Health & Safety Officials because events will not have been coordinated and responses by the statutory agencies will therefore be reactive rather than proactive and therefore more expensive.

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

Allowing premises to operate without a licence for 'regulated entertainment' will be direct encouragement to operate 'bring your own' alcohol policy. This will not require an alcohol licence, as consumption is not a licensable activity. This will remove any controls previously required of the premise licence holder / designated premises supervisor. It is an incentive to have 'pop up parties' which would be unlicensed in every way, yet would still cause the same concerns and problems as a previously licensed premises but without the controls or audit trails enabling enforcement action to be taken.

**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.**

Inevitably there would be additional burden in responding in a reactive way which may mean officers of agencies being called out or diverted from other duties.

**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?**

Provided there was clear and unambiguous guidance as to what activities were no longer relevant with regard to those licences.

## **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. This limit is much too high. Such events have in our experience the potential to cause public nuisance. They can generate huge income for a few and cause great distress to many. Should the proposed limit progress the LA may not be able to adequately safeguard its residents from public nuisance.

**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.**

A 500 audience limit which applies to temporary event notices may be more appropriate and would give some consistency to the licence/TEN procedures.

**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, in order to aid consistency.

**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.**

(The four licensing objectives are: Prevention of crime and disorder; Prevention of public nuisance, Public safety and; the Protection of Children)

Premises already operating within the licensing regime may continue to exercise the same degree of control voluntarily. The main issue will be ‘pop up clubs’ and parties which will be able to set up and operate and may pose a significant risk to any one or all four of the licensing objectives.

**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.**

There is already a degree of flexibility as to the operating schedules and conditions for all existing licences i.e. each case should be considered on its own merits. The broad principles will apply whether the premises is indoor or outdoor.

**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. If the decision is made to deregulate, this should be up to a certain point – as is the case for late night refreshment i.e. after 11pm. This would help to mitigate the nuisance and disturbance caused from noise and other issues. Perhaps each Local



Authority could determine this cut off point at the time they consider and refresh their Statement of Licensing Policy?

**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.**

Each should be considered on its merits.

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

None suggested

**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?**

Yes, however codes of practices are mainly of value for compliant businesses.

**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?**

Whilst it must be conceded, there is already legislation dealing with these areas, the Licensing Act also places powers in the hands of local residents and those members of the public who are not empowered by any other existing Laws. To deregulate would be to disenfranchise the very people who were considered to be at a disadvantage before the 'rebalancing of the Licensing Act' took place.

**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.**

With no licence restrictions or regulation of these events, there is no way of knowing how long the events would last. Public nuisance complaints are therefore liable to increase.

**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?**

Most Local Authorities do not operate a full nuisance complaints service outside of normal working hours and may, in future, need to do so at considerable cost. There would be less liaison with the Licensing Authority.

## 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?**

Some events that previously required a TEN will now be exempt from the regime. As a consequence of the legal requirement to serve the TEN notices on the Police, this has the effect of providing the Police with the intelligence concerning proposed 'risk' events. It is not always alcohol related events, which can cause problems of disorder and nuisance.

**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.**

Broadly yes, but just because music is unamplified does not mean it cannot cause nuisance. The acoustics of the location and the proximity of residential property impact on this issue.

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

The issues of live, amplified, recorded and acoustic music are not suitably addressed in any detail. The differences are not sufficiently acknowledged.

It is accepted that there are already statutory provisions regarding noise nuisance, but to deregulate live music will remove the potential to add simple, easy to implement conditions which could have a massive impact on the noise nuisance issues (such as keeping windows and doors closed after 10.30pm, the use of noise limiters or using alternative exits after certain times etc)

## 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 response suggested.

**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?**

No response suggested.

**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?**

If these conditions are included, it is because they were felt to be necessary, reasonable, proportionate and appropriate to that licence in order to uphold the licensing objectives.

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

No response suggested.

### **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?**

No response suggested.

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

No response suggested.

### **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 response suggested.

**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?**

No response suggested.

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

No response suggested.

### **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.**

No response suggested.

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

No response suggested.

### **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.**

No. There is no evidence within the consultation to justify why the two should be treated differently.

**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.**

Yes. The issues of Mixed Martial Arts, Cage Fighting resurface occasionally and cause difficulties. There would be benefit in broadening the classification or clarifying the position.

### **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. There should be no deregulation. This would be going back to the situation many areas faced in the early 1990s with illegal raves. The LA need to be aware of such events taking place to ensure suitable controls are in place. Without advanced notification the LA would find it incredibly difficult to agree controls or take enforcement action against organisers.

**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. Each case on its own merits means proper consideration.

**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?**

All instances where the music is not incidental.

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

Perhaps one of the most serious concerns involves the resurgence of the rave culture. Whilst these have all but disappeared over the last few years (possibly due to the licensing requirements and additional powers afforded to the Police) there is very real concern that they will re-emerge. Historically raves would be held in large warehouses or other, usually unsuitable and un-inspected premises. There would be no alcohol sold, but loud music and drug taking were prevalent and people could bring their own alcohol. Typically those running the events were elusive to the point of being untraceable. To allow a change in the legislation which facilitates this sort of event would be a huge retrograde step.

**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.**

No response suggested.

## **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?**

None at present.

**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?**

None at present.

## **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 adoption of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009 has successfully allowed communities and Local Authority members greater powers over the numbers and locations of sex establishments.

The Licensing Act 2003 does play a part in controlling performance of this nature i.e. striptease that is held infrequently.