UK MUSIC

Response to DCMS

Regulated Entertainment: A Consultation proposal to examine the deregulation of Schedule One of the Licensing Act 2003

3rd December 2011

1. UK Music supports the intention of the Government to deregulate Schedule One of the Licensing Act 2003 and remove the requirement to notify responsible authorities of a music event (live or recorded) of under 5,000 people.

2. The unintended consequence of the Licensing Act 2003 has been to add a costly layer of bureaucracy to the organisation and management of music events. The Act has actively deterred businesses, charities, hospitals, schools and communities from putting on performances of music either to generate revenue or to add to the cultural output of their environment.

3. We agree wholeheartedly with the Minister that the current legislation lies in contradiction to the aspirations of the Big Society. If Schedule One and the restrictions on entertainment are left in tact then the disincentive won't just create economic harm but it will damage the cultural heart of our nation.

4. As the consultation suggests using football as an example, if events where under 5,000 people are present are removed from the requirements of the Licensing Act, the necessary protection to address noise, crime, disorder, and public safety will continue because there is a range of robust legislation already in place, including Health and Safety at Work, Fire Order, Noise Nuisance, and Environmental Protection.

5. UK Music would go as far to suggest that current provisions of the Licensing Act undermine the authority of the legislation listed above.

6. Additionally, as the consultation repeats over and over, a licence will still be required for events at which alcohol is sold, where the risks to the public are higher, ensuring that controls that are activated by need of the Licensing Act still remain.

7. We thank the Minister for recognising some of the more improbable consequences of the existing provisions in the Licensing Act and for establishing this consultation process. Exempting audiences of less than 5,000 would maximise the benefits to the community and to business without compromising the licensing objectives of the Act.

8. We have only answered questions that are relevant to our sector.

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, we agree that the proposals will lead to more music performances and will benefit the community and voluntary organisations across the UK.

Specifically, this deregulation will benefit communities throughout the UK in a large number of instances, not just where music is involved. The association Action with Communities in Rural England says:

"Removing the need for a licence for entertainment will release a burden from volunteers managing a wide variety of events in rural communities across England. The burden of completing the form for a Premises Licence will be removed and there will be financial savings for groups that have previously needed to apply for a Temporary Event Notice. Volunteers managing rural halls have been struggling with the level of legislation and bureaucracy over the last few years and will find this initiative a move in the right direction. ACRE and RCAN will be encouraging rural communities across England to contribute positively to the consultation"

It is difficult to assess the actual increase in numbers of musical performances the proposals might encourage (live or recorded). We know that the current restrictions are a significant disincentive. Government's own research shows that there has been a 5% decrease in secondary venues providing live music.

(http://www.culture.gov.uk/images/research/researchbriefsurveyoflivemusicdec2007.pdf).

We would therefore expect a widescale increase in performances of music as a result of this change. Removing the "two in a bar" rule should be considered here. The removal of this accepted rule has without a shadow of doubt reduced the performance of live music in small venues across the UK. Numbers of two-in-a-bar musicians were never measured as they played on an assumption of being beyond the reach of any regulation. Since the demise of the 2-in-a-bar rule, the reduction in numbers cannot be measured as there are no numbers to measure against.

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).

Yes we agree.

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.

Yes.

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.

No. There is no logical or evidential correlation between a relaxation on the provisions of the Schedule One of the Licensing Act and an increase in noise related complaints around live or recorded music.

If the venue where the musical performance is taking place no longer needs a licence (as suggested by this thoroughly welcomed deregulatory approach suggested by the Minister), the powers for the authorities to intervene in the event of a noise disorder are covered by Section 80 of the Environmental Protection Act (EPA). Local authorities must take: "all reasonable steps" to investigate and prevent public nuisance, including noise complaints. The EPA applies to both licensed and unlicensed premises and will therefore apply to any of the proposed deregulated events. Excessively noisy premises can be served noise abatement orders under the EPA.

Under the Noise Act 1996, local authorities must take reasonable steps to investigate complaints of noise between 11pm and 7am at licensed premises, and the Anti-Social Behaviour Act 2003 requires local authorities to deal with noise complains at licensed premises at any time of day. The Clean Neighbourhoods & Environment Act 2005 allows local authorities to serve fixed penalty notices as a result of noise from premises.

DCMS is well aware that the issue of noise is a diversion. Firstly, the majority of musical or music performances that will become exempted by this policy proposal are unlikely to cause any noise disturbance to the wider community. Secondly, there is a sloppily accepted

misconception that music by its existence causes disorder. This is what we call the "Footloose" syndrome and we'd ask that the DCMS seriously considers the damage this type of thinking has done to the local economy as a result of unnecessary bureaucracy applied to music performances.

The Live Music Forum (P34 Fig 3 Breakdown of noise complaints by type (in %) April 2005 – March 2006) showed that only 7% of noise related complaints to Bristol Local Authority related to entertainment (live or recorded music) whereas 10% of complaints were made about noise from animals (10%).

Secondly, according to the National Noise Survey 2008 only 3% of those interviewed complained about pubs, clubs or other entertainment venues as a source of noise that was bothering them. Complaints about cars and motorbikes ran between 18-21%. Of those 3% of complaints about pubs, clubs or other entertainment, music is not singled out as the cause of the complaint.

An increase in musical entertainment does not lead per se to an increase in noise related complaints. Small gatherings, with music, at schools, village halls and community centres are very unlikely to create noise pollution. Additionally, residents of a community will probably make up the audience of such an event and be inclined to endorse rather than complain about it.

Gatherings within the 5,000 audience exemption zone would likely be held in specialist venues. Local residents worried about the noise from such events could contact the council and ask them to monitor the event under Section 80 of the EPA.

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 agree with the Government's assumptions that numerous venues would be released from the unintended effects of the Licensing Act. Deregulation would free up thousands of venues across the UK including village and community halls, schools, hospitals, restaurants, cafes, pubs and clubs.

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?

No

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.

No

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, we do. We are, however, concerned that as things stand at the moment, these proposals would not apply retrospectively, and that venues that currently have a condition of their licence would not have it automatically removed. We feel very strongly that, if these proposals are passed, any pre-existing conditions on the licence relating to live music should be made null and void.

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?

We are responding to two listed activities in Schedule One: a performance of live music; any playing of recorded music as well as the inclusion of live or recorded music as an incidental factor in any other listed activities.

Currently, licensable activities can only be carried out under the permission of a licence or a Temporary Event Notice from a local licensing authority. In all cases the changes would only apply to events with an audience of fewer than 5,000 people.

Without the sale of alcohol there is no reason to believe that a performance of live or recorded music, with an audience of less than 5,000 would threaten any of the objectives of the Licensing Act.

Although we are expecting most of the take up from the new exemption to be from smaller venues, should a larger venue wish to host a musical event, with no licence for alcohol, there is no reason and more importantly no evidence to suggest that a musical performance would undermine those objectives.

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.

We think the ceiling of 5,000 is set at a fair level

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.

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.

No we do not. We trust in the existing legislation to prevent public nuisance, to protect public safety, to prevent crime and disorder, and to prevent children from harm. We refer back to our answer to Q5 which lists some of the existing legislation that protects the four objectives in the Licensing Act.

Penalising venues that host music performances with a costly and time consuming bureaucratic procedure when there is absolutely no proof of any threat to those four objectives and no evidence of any harm, is damaging to our economy and the cultural life of our local communities.

There's no evidence that staging live music leads to crime or disorder any more than other kinds of public gathering.

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.

No.

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.

We are extremely sensitive to the arguments surrounding the cut off time for events that will become deregulated under these proposals. We particularly understand the sensitivity shown by ACPO and LACORS to the larger end of the exempt gatherings should they occur in communities with a residential presence.

We refer back to Q5, and the raft of legislation available to the authorities to intervene if disorder or anti-social behaviour is taking place in unlicensed venues.

Under section 2(6) of the Noise Act 1996, "night hours" means the period beginning with 11pm and ending with the following 7am.

We believe therefore, that existing legislation will suffice.

Additionally, from a disorder perspective, the Government has recently delivered the Police Reform and Social Responsibility Act 2011 which provides powers to enforce an early morning alcohol restriction order applicable from midnight to 6am. This has nothing to do with music or gatherings for music events but is a tool to deal with disorder arising from alcohol consumption.

The combination of the Noise Act and the new Police Reform and Social Responsibility Act 2011 provides sufficient legislation to protect the objectives of the Licensing Act when it comes to a cut off point to intervene with night time noise and disorder.

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

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

No. DCMS should act in alignment with the Home Office and DEFRA. Current legislation is already in place to act as protection for the objectives of the Licensing Act where night time noise and disorder are concerned.

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?

Should the outcome of this consultation suggest a code of practice to mitigate any perceived noise risk, UK Music would be more than happy to work with other sectors and organisations to put one in place.

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?

Yes. There is a whole swathe of legislation that covers these issues. And if the Government wishes to add a code of practice to run alongside existing legislation then we believe this is adequate cover.

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.

We don't believe the timing or duration of events will be affected by the proposals. There will just be more events running with greater efficiency, less bureaucracy and most importantly lower costs.

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?

No we believe the document covers all aspects.

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?

No

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.

Yes, unamplified music should be deregulated completely. There is self-regulating environment to unamplified music. Only a limited number of people can audibly enjoy such an event. Anyone who has ever been to an event where there is an unamplified performance of music knows how difficult it is for the musician to gain the attention of even 50 or 60 people in one room. So deregulating this category would be extremely welcomed.

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

The benefits of deregulation could be economically significant. Britain's most successful artists – Adele and the Beatles for example – started their careers in small venues. The local and grassroots music scene really does underpin the economic value of our sector as without it we would have no developing talent base.

As we proved with our Tourism Report (link and details) music events benefit the community and the economy by providing customers for local hotels, B+Bs, restaurants, bars and shops. So this deregulatory step would almost certainly increase business and create economic growth.

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.

Yes, we believe that existing legislative provisions are more than sufficient to deliver the four objectives outlined in the Licensing Act 2003 especially as the this deregulatory approach does not apply to those events that need a licence to sell alcohol. The exemptions being discussed have absolutely no attachment to the principles of the Licensing Act which exists to monitor the sale of alcohol.

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. The 5,000 limit is set at a sensible level.

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?

No. We don't believe there are circumstances where recorded music should continue to require a licence. Common sense should prevail here. There are blurred distinctions between live and recorded music. Some live music events incorporate recorded music as part of the offer. Equally, there is a world of difference between a small community, school or charity event which has a disco and, say, Notting Hill Carnival. The latter would be regulated by a swathe of legislation and police oversight. The former should be encouraged and freed from bureaucracy and the cost that goes with the current red tape. In all these instances, the existing noise legislation, and the new Police Reform Act provide a backdrop of powers should local authorities need to act.

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

We refer our answer to the answer we gave to Q25. Deregulating events with recorded music will encourage events to include music as part of their offering. This in turn will generate both economic and cultural benefit.

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, not under any circumstances should entertainment facilities be regulated by the Act as in the current system.

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?

No

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?

We ask that negative outcomes from the operation of the Licensing Act be taken into consideration in support of deregulation:

- In November 2009 Kettering Borough Council started legal proceedings against an HMV store for allowing Britain's Got Talent finalist Faryl Smith to sing during an album signing at one of its stores. The Council dropped proceedings after HMV agreed to donate the retrospective cost of the licence, £21, to charity.

- An Oxfam Bookshop that tried to host a poetry evening with musical accompaniment was told the event could not take place without a Temporary Event Notice. No alcohol was going be sold.

- The Mousehole Male Voice Choir was told that the quayside singing it had traditionally entertained passing tourists and residents with would require a Temporary Event Notice unless it only performed songs of a religious nature.

- A Northampton school had to scrap its big musical production after the head teacher was told he faced a £20,000 fine and possible imprisonment if the production were to go ahead without a licence.

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