



Consultation on a proposal to use a Legislative Reform Order to make changes to entertainment licensing

17th December 2013

About UK Music

1. UK Music is the umbrella body representing the collective interests of the UK's commercial music industry, from songwriters and composers to artists and musicians, studio producers, music managers, music publishers, major and independent record labels, music licensing companies and the live music sector.
2. UK Music exists to represent the UK's commercial music sector, to drive economic growth and to promote the benefits of music to British society. The members of UK Music are listed in an annex.

Entertainment deregulation

3. UK Music welcomes the opportunity to provide evidence as part of the consultation being carried out under the Legislative and Regulatory Reform Act 2006 to amend the Licensing Act 2003 by means of a Legislative Reform Order (LRO).
4. We welcome Government plans, as announced in January 2013, to bring forward changes to entertainment licensing. UK Music provided a response to the consultation which informed this policy announcement.¹
5. Music is a great driver for economic growth. In the UK we are uniquely placed to benefit. Our nation is one of three net exporters of music content in the world. This week UK Music published research which demonstrates our industry is worth £3.5 billion to the UK in GVA.² Music boosts the UK's tourism industry to the tune of £2.2 billion a year.³ The proposals contained within this consultation will help increase these figures once the Legislative Reform Order is implemented.
6. UK Music and its members have long campaigned for the deregulation of music from local authority entertainment licensing. The passing of the Live Music Act in 2012 was a

¹ http://www.ukmusic.org/assets/general/Response_to_DCMS_Consultation_Licensing_Act_.pdf

² <http://www.ukmusic.org/research/economic-research/>

³ <http://www.ukmusic.org/assets/general/LOWRESFORHOMEPRINTING.pdf>

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significant moment. We worked closely with the sponsors of the Bill, Lord Clement-Jones and Don Foster MP, the DCMS and other supportive Parliamentarians during all stages of the legislations passage through Parliament. UK Music carried out research to coincide with the Act coming into force that demonstrates the potential of these deregulatory measures.⁴ 17% of venues surveyed that previously did not offer live music said they would now consider it as a result of the new law. A further 24% who did previously offer live music said they would increase their provision.

7. Over the past year, the Musicians' Union and UK Music hosted a number of live music roundtables throughout England and Wales to promote the benefits of deregulation and improve understanding of what is happening on the ground. The result of these roundtables is collected in the "Rocktober Report"⁵ published to coincide with the first anniversary of the Live Music Act. In summary, the new Act is working well. There is no evidence that it has led to an increase in complaints. The licence review mechanism to disapply exemptions has been an efficient solution in the tiny number of cases where there has been complaints concerning music.
8. Measures such as the Live Music Act are a good start, yet further deregulation is needed to support the opportunities presented to musicians and venues. The focus of our specific remarks to the questions posed by this consultation concern plans to deregulate live and recorded music, yet UK Music is happy to put it on record that we support the proposed deregulation package as a whole.

Specific Questions

Q1 Do you have any comments on how this LRO deregulatory measure will work for local authorities?

9. Applications for live music under the Licensing Act 2003 (in its version before being amended by the Live Music Act 2012) were sometimes problematic for local authorities due to contradictory signals or conflicting statements between primary legislation and the issued guidance. For example, what was considered as an incidental performance of live music was interpreted differently by local authorities.
10. Deregulation along the lines the Government is proposing⁶ as part of this Legislative Reform Order (LRO) will be of great benefit to local authorities as it enables less ambiguity for those handling the administration of licensing. It will also enable local authorities greater capacity to encourage and facilitate the performance and enjoyment of music. Venues should be encouraged to work with local organisations and groups when hosting events which benefit from this deregulation. The specific deregulation for local authority premises is welcome.

⁴ <http://www.ukmusic.org/news/uk-music-reveals-huge-potential-of-live-music-act>

⁵ http://www.ukmusic.org/assets/general/UKMUSIC_-_The_Rocktober_Report.pdf

⁶ (i) to increase the size of an audience that does not require permission for a performance of amplified live music taking place between 08:00 and 23:00 in a licensed premise or workplace from 200 to 500 people.

(ii) to exempt the playing of recorded music from requiring permission between 08:00 and 23:00 in a licensed premise where an audience does not exceed 500 people.

(iii) to exempt live and recorded music activities held in a school, hospital, community or local authority premise from entertainment licensing between 08:00 and 23:00 where an audience does not exceed 500 people.

(iv) to exempt entertainment activities held by, or on behalf of, local authorities, schools, hospitals on their own premises, as well as nursery provision on non-domestic premises, from entertainment licensing between 08:00 and 23:00 with no audience limits.

11. The Licensing Act, by virtue of the Live Music Act, now has a functioning licence review mechanism. This means that those who potentially abuse the music exemptions can have conditions imposed on them and the benefits of a deregulatory approach overturned. This is an important tool for local authorities as part of any deregulation and it is crucial that the measure subject to the LRO has maintained this. There is evidence that the Live Music Act review mechanism is working. For example, the Victoria Cross in Poole had its live music exemptions suspended as of a result of a review in September 2013, pending a possible appeal.⁷
12. In addition to the powers under the Licensing Act, there are also other measures which enable local authorities to intervene where there are concerns, such as the Environment Protection Act, Control of Pollution Act, Clean Neighbourhoods and Environment Act, as well as a host of anti-social behaviour and health and safety legislation. This suite of powers underlines why the deregulatory approach of the LRO is entirely appropriate and does not leave communities exposed to problems.
13. As an aside, UK Music is concerned by the direction of Camden London Borough Council, with respect to the performance of busking. The decision to impose a Borough wide licensing regime is extremely disproportionate to the scale of complaints received and is against the deregulatory spirit central government is now trying to promote to local authorities towards music. We are also concerned by the impact this decision may have on those performing under the Live Music Act's blanket unamplified exemption in the Borough. The decision by Camden is regrettable, particularly considering the significance of the area as a place for music and entertainment.

Q2 Do you have any comments on how this LRO deregulatory measure will work for hospitals?

14. Music can have an important part to play in the rehabilitation of health. When people are ill or injured music can be a greater healer in the recovery process. Conditions such as autism, dementia, mental health and neuro-disability can be treated with music therapy. This is a psychological therapy which uses the unique qualities of music as a means of interaction. It is appropriate for the LRO to deregulate in hospitals to greater increase the provision of such therapies.

Q3 Do you have any comments on how this LRO deregulatory measure will work for schools?

15. UK Music supports the National Plan for Music Education and the development of music hubs to ensure every child sings regularly and learns an instrument. We are concerned by a recent report from Ofsted which says they have not been successful enough in improving music education for all children in schools.⁸ It is vital that a good rounded musical education is experienced by all those going through the education system. The LRO deregulatory measures will encourage more schools to perform live music.

⁷ <http://www.bournemouthecho.co.uk/news/10647926>. Nightmare noise leads to new controls at Poole pub/

⁸ <http://www.ofsted.gov.uk/news/ofsted-challenges-music-hubs-improve-music-education-for-all>

Q4 Do you have any comments on how this LRO deregulatory measure will work for any person offering early years and day care provision?

16. With reference to paragraphs 14 and 15 above. Music is a great way for young people to communicate and there are therapies that exist to encourage education and development in early years children. The LRO will be of benefit to any persons offering early years and day care provision.

Q5 Do you agree that all local authorities and every hospital, school and nursery provider specified above, regardless of size, resources and capability should be included in these exemptions? If not, which bodies would you exclude from these exemptions and why?

17. Yes.

Q6 Are you aware of any local authority body, hospital, school, (including children's residential provision) or nursery provider that, in terms of the licensing objectives, ought to be included in these cross-activity exemptions and currently would not be?

18. No.

Q7 Do you have any comments on how this LRO deregulatory measure will work for live music, taking into account experience since the Live Music Act 2012 came into force?

19. Research conducted by UK Music in 2012 prior to the Live Music Act coming into force highlighted that 78% of venues were unaware of the passing of the Act.⁹ The challenge over the initial year of the Act has been to raise awareness in order to unlock the Act's potential.
20. UK Music and Musicians Union have conducted a series of Live Music Roundtables across England and Wales in order to find out what impact the new Act is having. Involving a number of stakeholders, the roundtables have been focused on regional centres such as Liverpool, Birmingham, London, Bristol, Cardiff and Manchester. The details of the roundtables are catalogued in the "Rocktober Report".¹⁰
21. Overwhelmingly the response to deregulation at the roundtables has been positive. There has been no increase in the number of noise related complaints. Some areas are confident that they are using the new Act well.

⁹ <http://www.ukmusic.org/news/uk-music-reveals-huge-potential-of-live-music-act>

¹⁰ http://www.ukmusic.org/assets/general/UKMUSIC_-_The_Rocktober_Report.pdf

22. There are several reasons why further deregulation is necessary on top of the provisions created by the Live Music Act. Firstly, the deregulation concerns audience sizes not capacity. If a venue has a capacity of 250 yet is never likely to exceed an audience of 200 they are still likely to have to take out an entertainment licence as the venue could be perceived to potentially allow for live music events outside the scope of the Live Music Act. An increase of the threshold to 500 decreases any ambiguity between audience sizes and capacity in the venues they intend to deregulate.
23. Secondly, most performances of plays and dance, which now enjoy a 500 audience threshold exemption, incorporate either recorded or live music. Music, where there is a threshold of 200 for live and 0 for recorded, need to be brought into line with this further deregulation which has taken place since the Live Music Act.
24. Thirdly, the pub and bar circuit remains the breeding ground for musicians in England and Wales to hone their craft. The music success stories of tomorrow, who will maintain our pivotal global position as an industry, need all the opportunities they can get now. The number of venues available to them and the larger the audiences the better the opportunities for aspiring musicians.
25. Fourthly, the LRO will mean many more performances of music can be taken out of the Temporary Event Notice process, which can be particularly onerous to organisers of small scale, amateur and community events.
26. Fifth and finally, although the LRO will not be a magic bullet for halting the closing down of venues, the Government is right that their proposed measures for music will help pubs, hotels etc. diversify their businesses and enable them to access new markets. *PRS for Music* found that, on average, music venues take £306 more in wet sales on a day when they stage live music.

Q8 Do you have any comments on how this LRO deregulatory measure will work for recorded music in on-licensed premises?

27. Proposals to exempt recorded music in on-licensed premises where there is an audience of 500 is welcome.
28. There has always been an inherent ambiguity in the Licensing Act in that the broadcasting of sport has been exempt from requiring an entertainment licence yet not for music. UK Music is confident that there are more incidents of anti-social behaviour in pubs in connection to the showing of a football match as opposed to squabbles over what is playing on a juke box.
29. Music's status has been improved by the Live Music Act but the playing of recorded music in on-licensed venues is still essentially a licensable activity.
30. There is evidence of an increase in record clubs, similar to book clubs, meeting across England and Wales whereby music fans meet to listen and discuss classic albums, yet such activities would require permission from local authorities if they take place in on-licensed premises.¹¹ The LRO would change this. Similarly, activities such as karaoke will benefit from an exemption that treats recorded music in the same way as live music

¹¹ <http://www.bbc.co.uk/news/magazine-12209143>

in on-licensed premises giving different interpretations as to the live/recorded nature of this activity.

31. As mentioned in paragraph 23 above, there is also now a disparity in that plays and dance can be performed without a licence for audiences of 500, whereas music, which is often an integral part of the performance of plays and dance does not benefit from such an exemption. The LRO is necessary to bring this into line.
32. UK Music believes as a general principle that music, whether it's recorded or live, should not be a regulated activity under the Licensing Act. This said, we accept this is not the position of the Government and are content with the LRO making a distinction between live and recorded in connection to the performance and playing of music in that it is more generous in scope towards live music.
33. UK Music urges the Government when communicating this policy to local authorities and on-licensed premises to remind them of the importance of applying for a licence when playing and performing copyright protected work, whether this music is recorded or live. The LRO does not change the law in this respect but it is possible that if a policy which seeks to deregulate music from a licensing system is not communicated properly there will be confusion. In order for musicians, performers, composers, songwriters and rights holders to make a living out of their work their rights should be respected. Collecting societies PPL and *PRS for Music* provide licences which ensure creators receive royalties for their work and these will still be required once the LRO has come into law for the performance and playing of music.

Q9 Do you have any views on whether, or not, there should a LRO deregulatory measure for live and recorded music on nursery premises?

34. UK Music agrees there should be a deregulatory measure for live and recorded music on nursery premises. The benefits of which are outlined in paragraph 16.

Q10 Do you have any comments on how this LRO deregulatory measure will work for live and recorded music on local authority, hospital, school, or community premises?

35. We support the deregulatory measure in this regard for the reasons set out in paragraphs 9 through to 15.

Q11 Do you have any comments on how this LRO deregulatory measure will work for circuses?

36. We support the LRO deregulatory measure with regard to circuses.

Q12 Do you have any comments on how this LRO deregulatory measure will work for Greco-Roman and freestyle Wrestling?

37. We support the LRO deregulatory measure with regard to Greco-Roman and freestyle Wrestling.

Q13 On non-legislative solutions, do you agree with our assessment in this regard?

38. We agree with the Department that there is no non-legislative solution which would achieve the aim of what the LRO seeks to achieve. Further deregulation is needed to support the opportunities presented to musicians and venues. Legislation remains the hurdle, making an LRO an entirely sensible process to implement the Government's desired policy. Guidance exists to support the licensing regime, yet numeric and definitional constraints, which are essentially what an LRO would seek to address, are unambiguously the subject of the law. We believe the LRO is the correct solution to implement the Government's policy.

Q14 On proportionality, do you agree with our assessment in this regard?

39. We agree with the department on proportionality and support the Impact Assessment which accompanies this policy of the expected costs and benefits and impact of this policy.

Q15 On fair balance, do you agree with our assessment in this regard?

40. UK Music agrees with the department's assessment on fair balance. The LRO enables the Coalition to fulfil commitments from its programme for Government. When the Licensing Bill concluded its passage through Parliament over 10 years ago, music in small venues was left in an unsatisfactory situation which has been borne out over the experience of the last 10 years where there has been a decline in the performance of music in licensed premises.
41. Whilst it is hard to evidence the full impact of a deregulatory measure there are signs from the first six months of the operation of the Live Music Act that we have turned a corner and that there has been a decrease of 0.5% of venues seeking a licence for live music.¹² This figure can grow as a result of the LRO and greater communication of the benefits of deregulation.

¹² <https://www.gov.uk/government/publications/entertainment-licensing-2013>

42. For the reasons we outline in paragraph 11 and 12 we are certain that local authorities, the police and residents have the necessary powers at their disposal to deal with any problems that arise out of the performance and playing of music.

Q16 On necessary protection, do you agree with our assessment in this regard?

43. UK Music agrees with department on necessary protection and reiterates comment in paragraph 11 and 12 of this response.

Q17 On rights and freedoms, do you agree with our assessment in this regard?

44. UK Music agrees with the department in its assessment of rights and freedoms and the LRO. We point out that UK musician's rights of freedom of expression and creativity are protected by domestic and European Human Rights legislation.

Q18 On constitutional significance, do you agree with our assessment in this regard?

45. UK Music agrees with the department that these measures are not constitutionally significant.

Q19 Do you agree that the Affirmative Parliamentary procedure should apply to the scrutiny of these proposals?

46. UK Music agrees with the use of the Affirmative Parliamentary procedure for the scrutiny of these proposals. We would like to highlight that the Live Music Bill's passage through Parliament was uncontentious and given that it was brought forward in both Houses as a Private Members Bill it would not have been possible for it to have progressed into law if it was considered more contentious. The LRO of course goes further than the Act

Q20 Do you have views on the expected benefits as set out in the accompanying Impact Assessment?

47. UK Music supports the Impact Assessment in terms of the expected benefits of this legislation. We firmly believe that the LRO will be of positive benefit to musicians, performers, creators and society as a whole. We urge the Government to proceed quickly in bringing forward the LRO and look forward to Parliament approving the measure at the earliest opportunity in 2014 so that its benefits can be felt by all.

Annex

UK Music's membership comprises of:-

- AIM – Association of Independent Music - representing over 850 small and medium sized independent music companies
- BASCA - British Academy of Songwriters, Composers and Authors – with over 2,000 members, BASCA is the professional association for music writers and exists to support and protect the artistic, professional, commercial and copyright interests of songwriters, lyricists and composers of all genres of music and to celebrate and encourage excellence in British music writing
- BPI - the trade body of the recorded music industry representing 3 major record labels and over 300 independent record labels.
- MMF - Music Managers Forum - representing 425 managers throughout the music Industry
- MPG - Music Producers Guild - representing and promoting the interests of all those involved in the production of recorded music – including producers, engineers, mixers, re-mixers, programmers and mastering engineers
- MPA - Music Publishers Association - with 260 major and independent music publishers in membership, representing close to 4,000 catalogues across all genres of music
- Musicians' Union representing 30,000 musicians
- PPL is the music licensing company which, on behalf of over 75,000 members (65,000 performer members and 10,000 recording right holder members), licences the use of recorded music in the UK
- *PRS for Music* is responsible for the collective licensing of rights in the musical works of 100,000 composers, songwriters and publishers and an international repertoire of 10 million songs
- UK Live Music Group, representing the main trade associations and representative bodies of the live music sector