

## Report of the Head of Licensing and Registration

**Report to**    **Licensing Committee**

**Date:**        **5 August 2014**

**Subject:**     **Deregulation of Entertainment**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

### Summary of main issues

1. The Legislative Reform (Entertainment Licensing) Order 2014 brings in further deregulation of entertainment.
2. This report describes those changes in context with previous amendments to the Licensing Act 2003.

### Recommendations

3. Members of Licensing Committee to note the content of the report.

## **1 Purpose of the report**

- 1.1 To advise Licensing Committee of forthcoming changes to regulated entertainment under the Licensing Act 2003 brought about by the Legislative Reform (Entertainment Licensing) Order 2014 (LRO) which was laid before Government in July 2014 and will come into effect in April 2015.

## **2 Background**

- 2.1 In “The Plan for Growth” published alongside the Budget in 2011, the Government announced that it intended to reduce the licensing burden for live music performance and bring forward proposals to reduce licensing burdens imposed on other forms of entertainment regulated by the Licensing Act 2003.
- 2.2 In September 2011, the DCMS issued a policy consultation that sought views on a proposal to remove licensing requirements in England and Wales for “regulated entertainment”. In launching the consultation, the Government took the view that the Licensing Act 2003 had been a missed opportunity to reform the regime for “regulated entertainment”.
- 2.3 The 2011 consultation was predicated on the view that where entertainment activities occur in conjunction with alcohol sale or supply, it is the presence of alcohol that is generally responsible for any increased threat to the licensing objectives.
- 2.4 After due consideration of the consultation responses, the Department announced a set of deregulatory measures to Parliament on 7 January 2013, and published a consultation response document.
- 2.5 In responding to the consultation, local government, police and the emergency services had generally felt that a limit of 5,000 people was not tenable as a means of promoting public safety and the prevention of public nuisance as licensing objectives. The Government listened and agreed that, especially on public safety grounds, an audience number of 500 was a more suitable general upper limit for deregulation of premises providing entertainment.
- 2.6 By setting the limit at 500 people, there was also a read-across to the 499 audience upper limit for an event authorised by a TEN, which has generally been regarded by local authorities and the emergency services as an appropriate audience ceiling figure for the light touch process of authorising temporary activities.

## **Implementation**

- 2.7 The DCMS is implementing the set of deregulatory measures, under the Red Tape Challenge, through changes to legislation in four phases:
  1. The Live Music Act 2012 conditionally deregulated live music in certain venues and circumstances which came into effect on 1<sup>st</sup> October 2012.

2. The Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013 partially deregulated plays, dance and indoor sporting events, and came into force on 27 June 2013.
3. Clause 58 in the Deregulation Bill as introduced to the House of Lords seeks to deregulate the exhibition of film in community premises.
4. The Legislative Reform Order, currently before Government, will amend the Licensing Act 2003 Act to provide exemptions for schools, community premises, local authority premises, and to change the audience limits to 500 to bring live music in line with other deregulation – more detail is provided below.

2.8 As a result of amendments to the Licensing Act 2003 by the Live Music Act 2012 and the Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013, no licence is required for the following activities to the extent that they take place between 08:00-23:00 on any day:

- a performance of a play in the presence of any audience of no more than 500 people;
- an indoor sporting event in the presence of any audience of no more than 1,000 people;
- a performance of dance in the presence of any audience of no more than 500 people; and
- live music, where the live music comprises:
  - a performance of unamplified live music;
  - a performance of live amplified music in a workplace with an audience of no more than 200 people; or
  - a performance of live music on relevant alcohol licensed premises which takes place in the presence of an audience of no more than 200 people, at a time when the premises are open for the purpose of being used for the supply of alcohol for consumption.

2.9 The Legislative Reform (Entertainment Licensing) Order 2014 suggests that the licensing framework established by the 2003 Act imposed unnecessary burdens on some providers of lower risk entertainment. The introduction of a range of targeted exemptions to the licensing regime, contingent on the satisfaction of clear and important conditions, will result in the reduction of these burdens. The burdens include financial cost and administrative inconvenience.

### **3 Main issues**

3.1 The Legislative Reform Order was laid before Government on 8<sup>th</sup> July 2014 and seeks to make a number of changes to the Licensing Act 2003 to deregulate entertainment as follows:

- creating licensing exemptions for local authority premises, schools, hospitals, nurseries and circuses
- relaxing existing controls for the playing of recorded music in certain premises
- raising the audience threshold for performances of live music from 200-500 in appropriate premises
- removing the licensing requirement for Olympic wrestling disciplines

3.2 The Government has released the consultation response which described the reasoning behind each change.

### **Music entertainment in relevant alcohol licensed premises and workplaces**

#### Change

- 3.3 The audience limit for a performance of live amplified music in relevant alcohol licensed premises or in a workplace between 08.00-23.00 on the same day will be raised from 200 to 500.
- 3.4 Any playing of recorded music in relevant alcohol licensed premises will be deregulated (on a conditional basis) when it takes place between 08:00-23:00 on the same day for audiences of up to 500.
- 3.5 Local authorities, health care providers and schools will be exempt from entertainment licensing when making their own defined premises available to third parties for live and recorded music activities between 08:00-23:00 on the same day for audiences of up to 500.
- 3.6 Community premises not licensed to supply alcohol will be exempt from entertainment licensing requirements for live and recorded music between 08:00-23:00 on the same day for audiences of up to 500.

#### Government Response

- 3.7 Where the deregulation of music entertainment takes place in pubs and clubs or other relevant alcohol licensed premises, the Government has ensured that the sanction of a licence review will apply to ensure that any instances of public nuisance or disorder can be tackled.
- 3.8 The coming into force of the Live Music Act 2012 has not negatively impacted the licensing objectives and the Government considers that having an audience limit of not more than 500 people for music entertainment in relevant premises strikes the right balance between those who welcome it, and those who have concerns about noise nuisance.
- 3.9 The Government wishes to encourage small-scale local music performances in community premises that are not licensed for the supply of alcohol – to help promote community interaction and expression and keep community premises viable. The Government considers that such premises that only provide regulated entertainment are low risk in relation to the licensing objectives.

- 3.10 The Government does not agree with responders that the risk to the licensing objectives from any noise associated with music entertainment is such that licensing of music should not be further reformed. The Environmental Protection Act 1990 provides for redress for noise nuisance should incidents occur at workplaces or community premises that are not licensed for the supply of alcohol. Where the premises are licensed for the supply of alcohol, then licensing conditions can be re-imposed by the licensing authority following a review of a premises licence or club premises certificate for that relevant alcohol licensed premises. The Impact Assessment sets out that that the monetised benefits of deregulation will more than offset the “worst case” cost estimate to local authorities in relation to potential noise complaints and service delivery costs, meaning that local authorities will not be subject to new burdens.

### **Cross-activity exemption**

#### Change

- 3.11 The provision of regulated entertainment by or on behalf of local authorities, health care providers, or schools on their own defined premises will be exempt from entertainment licensing between 08.00-23.00 on the same day, with no audience limit.

#### Government Response

- 3.12 The Government believes that local authorities, health care providers and school proprietors can be trusted to be responsible for entertainment that takes place on their own premises. The Government does not agree with a minority of responders that the risk to the licensing objectives from any noise associated with music entertainment is such that licensing should not be reformed. The Environmental Protection Act 1990 provides for redress for noise nuisance should incidents occur.
- 3.13 Details of changes made to the measure, post-consultation, are set out in the Explanatory Document that accompanies the LRO (chapters 3 and 11). These include: a fuller explanation of “on behalf of”; the removal of some bodies from the original definition of ‘local government ’; and a decision not to proceed with an LRO measure for nurseries (early years and day care provision) on the basis that, post-consultation, it is deemed no longer desirable or necessary.
- 3.14 The Government considers that an audience limit is not required for this exemption in terms of the risk to the licensing objectives. The Government considers that local authorities, health care providers and school proprietors should have greater freedom to manage their own affairs with regard to the provision of entertainment. The Government does not start from the position that entertainment provided by such providers always requires regulation and control through licensing.
- 3.15 The Government considers that the exemption will strike the right balance between removing unnecessary licensing burdens that hamper community creativity and protecting the rights of individual citizens.

## **Travelling circuses**

### Change

- 3.16 Travelling circuses will be exempt from entertainment licensing in respect of all descriptions of entertainment, except an exhibition of a film or a boxing or wrestling entertainment, where the entertainment or sport takes place between 08:00-23:00 on the same day, with no audience limit.

### Government Response

- 3.17 The Government agrees with most respondents that an LRO is suitable and workable for the deregulation of certain entertainment activities as part of circus. Post –consultation, we have clarified in the Explanatory Document to the LRO that deregulation will only apply to travelling circuses where relevant entertainment takes place within a moveable structure.

## **Greco-Roman and freestyle wrestling**

### Change

- 3.18 Greco-Roman and freestyle wrestling will be deregulated between 08:00-23:00 for audiences of up to 1000 people.

### Government Response

- 3.19 The Government agrees that an LRO is suitable and workable for the deregulation of Greco-Roman and freestyle Wrestling. Post-consultation, the measure has been amended to include an audience size limit of 1,000 people. The Government considers that Cornish or Cumbrian wrestling entertainments cannot with the same certainty be considered to be lower risk entertainment with respect to the licensing objectives.

## **Incidental film**

### Change

- 3.20 The final amendment provides that an exhibition of film that is incidental to another activity (where that other activity is not itself a description of entertainment set out in paragraph 2 of Schedule 1 to the 2003 Act) is exempt from licensing.
- 3.21 The Government did not provide any further comment on this deregulation.

## **Impact on Leeds City Council**

- 3.22 On face value it would appear that this wholesale deregulation of regulated entertainment previously licensed under the Licensing Act would have a dramatic impact on both the council and business owners in Leeds.

- 3.33 Officers have examined the proposed changes, and can advise that these changes may impact the way in which noise nuisance and nuisance created by unlicensed music is handled but will not increase or decrease current workloads.
- 3.34 For example an alcohol licensed premises that is playing music too loudly and disturbing their neighbours will be dealt with under the Environmental Protection Act in the first instance, with prohibition notices being served and breaches of those notices witnessed. This may result in a review of the premises licence and the removal of the exemption from licensing (so that stricter conditions can be imposed). Although this will change the route of the formal action, it will not change the end result.
- 3.35 Similarly Enforcement Officers from Entertainment Licensing are often dealing with multiple issues with problem premises. An alcohol licensed premises that is allowing a noise nuisance to occur, is likely to also be breaching other conditions, such as operating after hours, allowing disorder outside the premises etc.
- 3.36 However the council's enforcement officer, regardless of the legislation they are operating under, apply a proportionate response to complaints, and the route of informal or formal action will be preceded by a number of communications with the licence holder. In the majority of cases problems are resolved without the need to resort to action.
- 3.36 With regard to the deregulation of entertainment on council owned land, this would affect events previously seen in Leeds such as Party and Opera in the Park.
- 3.37 These events have been organised in the past by the council, on council land and will be exempt from entertainment licensing. However the alcohol sales will still need to be licensed however this could be achieved under the temporary event notice system. The police may wish to lodge an objection under the licensing objectives if they believe allowing a temporary event notice, to be used to sell alcohol at large scale events, will have a negative impact on the licensing objectives.
- 3.38 Events such as Cocoon, which is a musical event with an audience of 10,000, held on council owned land but staged by an external promoter would not be exempt from licensing and would still need to rely on either the council's licence or apply for their own.

## **4.0 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 The Government has consulted widely on this matter, firstly in 2011 and then again in 2013. This Legislative Reform Order forms part of a 4 stage process to deregulate entertainment under the Licensing Act 2003. Leeds City Council responded to the 2011 consultation, but relied on the LGA to respond to the 2013 consultation.

## **4.2 Equality and Diversity / Cohesion and Integration**

4.2.1 There are no implications for equality in the deregulation of entertainment.

## **4.3 Council Policies and City Priorities**

4.3.1 The licensing regime, in general, contributes to our best council objectives of:

- Building a child friendly city – improving outcomes for children and families
- Promoting sustainable and inclusive economic growth – improving the economic wellbeing of local people and businesses
- Ensuring high quality public services – improving quality, efficiency and involving people in shaping their city

## **4.4 Resources and Value for Money**

4.4.1 The impact of the deregulation may be a loss of annual fee income from premises that are solely licensed for regulated entertainment, which is minimal as most premises licensed for entertainment only are exempt from the fee. Those that hold licences for regulated entertainment and alcohol may surrender their full Premises Licence and rely on TENs but then would be limited to the sale of alcohol on just twelve occasions per year (soon to be increased to fifteen). Entertainment Licensing estimates that this is only likely to happen in a small number of cases. In addition many of the premises which this affects are exempt from a licence renewal fee.

## **4.5 Legal Implications, Access to Information and Call In**

4.5.1 This report is advisory on the deregulation of entertainment. As there is no formal action to be taken by the council there are no legal implications or impact on access to information and call in.

## **4.6 Risk Management**

4.6.1 Other than a potential loss of annual fee income, and the change to procedures within the council to utilise other pre-existing legislation when dealing with noise nuisance, there is little risk to the council.

## **5 Conclusions**

5.1 The Government is introducing a number of changes to the Licensing Act 2003 which will effectively deregulate regulated entertainment under the Licensing Act 2003. Nuisance complaints associated with licensed premises will still be handled by Health and Environmental Action Services and Entertainment Licensing, however it may be that where the nuisance is directly related to a de-regulated entertainment the action taken by the Council may be taken under different legislation.



## **6 Recommendations**

6.1 Members of Licensing Committee to note the contents of the report.

### **Background documents<sup>1</sup>**

None

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.