

Licensing Act 2003

Deregulation of Entertainment Consultation Response



Please find below the response from Leeds City Council to the recent consultation on regulated entertainment. This response contains comments from licensing officers, environmental health officers and the Licensing Committee.

Proposal Impacts

Q1: Do you agree that the proposals outlined in this consultation will lead to more performance, 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?

Currently in Leeds there are:

| | |
|---------------|---|
| 2,665 | premises licensed under the Licensing Act 2003 |
| 1,051 (39.7%) | premises licensed for regulated entertainment and alcohol , therefore still requiring a licence should this proposal for deregulating entertainment proceed |
| 969 (36.4%) | premises licensed for alcohol only, mainly off-licences |
| 110 (4%) | premises licensed for regulated entertainment only, mainly community premises |
| 373 (14%) | premises licensed for late night refreshment. |

It is our opinion that the premises that would benefit from deregulation, i.e. alcohol only premises are mainly off licences, pubs in heavily residential areas and restaurants and therefore it would be unlikely to lead to more performances.

It could be accepted that the deregulation could encourage more entertainment within community events, but often such events also involve alcohol sales and so a TEN or premises licence at the same cost would be required in any instance.

Even if the requirement for licensing for live music was lifted, there are other constraints on premises which might discourage them from providing facilities for live music. For example anecdotal evidence infers that the fee the performer demands, the lack of increased bar sales and the concern about noise complaints may also be a deciding factor for premises licence holders.

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).

No we do not agree. The number of premises licensed for entertainment only under a premises licence is small - in fact in Leeds only 110 premises (4.1%) are licensed for entertainment alone. The majority of community halls, parish halls and other such premises already benefit from an exemption from the fees and therefore the number of entertainment only licences that attract a fee that will be reduced is a handful - 8 in Leeds. The premises that will financially benefit from the deregulation of entertainment will be the commercial

premises who operate purely as live music or event premises and it could be suggested that their business viability could be to the detriment of the locality.

In addition the impact on temporary event notices will be small. The majority of temporary event notices include alcohol as well as entertainment. Out of the 1,465 TENs given in the last 12 months only 158 (9.27%) were for entertainment only.

In conclusion the majority of businesses, charitable and voluntary organisations that may benefit from the deregulation of entertainment either already enjoy an exemption from fees under the Licensing Act, or apply for temporary permitted activities that includes alcohol.

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.

We strongly believe that there will be no savings for local authorities, and we can only assume that this will be the same for the police. The current issues with noise will not go away with deregulation, if anything it will worsen. Approximately 30% of the complaints dealt with by the licensing enforcement are related to the nuisance related to live or recorded music (29 out of the last 100 complaints). These relate to premises that are licensed for live music and have controls imposed upon them. Removing regulation will, as detailed below, lead to an increase in nuisance complaints relating to live and recorded music.

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.

We do not agree that noise related incidents would only increase by 5-10%. We would predict a considerable increase in complaints. Presently premises are bound by conditions which are set specific to their premises having consideration for the proximity to residential accommodation. If the conditions are removed the control of nuisance will then be subject to the constraints of the Environmental Protection Act which is reactive rather than a preventative measure and in our experience is not effective in protecting residents from nuisance from occasional performances of live music.

Many licences bear conditions which are restrictive after certain times, i.e. 11pm, for the purpose of protecting residents. We tend to find that residents will tolerate a certain degree of nuisance as they know that the music will cease at a given time. Without this assurance residents will not endure the nuisance not knowing at what time it is going to cease and will complaint to the local authority.

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 estimate of what you think the correct ranges should be and explain how those figures have been estimated.

It is impossible to accurately estimate the effect deregulating entertainment, but we believe the estimate of 5 and 10% is too low. There are a range of scenarios which could lead to a dramatic increase in complaints. Although 40% of premises are able to provide entertainment under their current licence, many chose not to do so. Of the 36% of premises licensed for alcohol only, the majority of these are not suitable venues for music - takeaways, off licences, restaurants etc.

However there are a number of venues not licensed at all at the moment that may consider providing facilities for live or recorded music that have never provided this before - or only on an occasional basis under a TEN.

Musicians like to pay their music loud - the louder the better for some music genres. Being given the ability to perform in new premises where there are no existing controls on the volume of music, with a licensee who is not experienced in handling musicians can only lead to a dramatic increase in nuisance complaints.

Add to this the time and expense of enforcement action (noise nuisance is not something that can be dealt with by letter in an office), a reasonable and proportionate response takes time and resources. In the meantime the people who are being affected by the noise nuisance have to suffer an intrusion into their private lives and this can have a profound affect that cannot be estimated in monetary terms.

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

Average number of hours spent on a noise nuisance - between 2 hours (unsubstantiated) to 100s of hours (formal action, prosecution, review)
Number of complaints relating to licensed premises received by the council per year - 1,520
Numbers of noise nuisance complaints related to licensed premises received by the council in 12 months - 480

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

This has been covered in the response to question 6. However a main impact upon Environmental Health would be the increased reactive rather than proactive action that would need to be taken. This would place a burden on already overstretched public services. Another important consideration is the unquantifiable impact upon the affected person's life by the nuisance.

In addition the process for investigating complaints relating directly to the noise from licensed premises falls to the Licensing Service. From next year the cost of this will be borne by the licence fee payers. Should responsibility for this enforcement action fall entirely to Environmental Health, the cost of enforcement will fall to the council tax payer however authorities are unable to increase the council tax to take this into account.

Q9: Would any of the different options explored in this consultation have noticeable implications for costs, burdens and savings set out in the impact assessment? If so, please give figures and details of evidence behind your assumptions.

Option 1: We do not believe that doing nothing would have any implication.

Option 2: We believe that removing all regulated entertainment, as defined in Schedule 1 would increase the number of noise nuisance complaints received by the council and experienced by the public well in excess of the 5 - 10 % specified in the Impact Assessment at a greater cost to the authority.

We believe that removing the licensing requirement for large scale events would be very unwise, especially in light of recent issues with crowd control and public safety. We know from our experience of outdoor events that the licensing process is an important tool for ensuring that events are safely organised. Leeds hosts the Leeds Festival each year with a capacity of 74,999 which has run for many years with very little issue, however this is because of a detailed event management plan which is scrutinised by a number of agencies in the months prior to the event. This multi-agency approach, led by Licensing, who provides essential input into the various elements, including traffic, waste management, crowd safety, noise mitigation etc.

Licensed entertainment is not solely about the control of noise, but is a means for addressing a host of crucial matters such as public safety and crime and disorder which are essential considerations for such large scale events. As such it would be impossible to predict the costs that would be incurred if there was a major incident at such an event.

Option 3: Retaining regulated entertainment for events of more than 5,000 and for a small number of higher-risk forms of entertainment is sensible. However, as described below, we believe that this level is too high for certain types of entertainment, and would lead to a much higher level of risks as previously described.

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?

We do not fully understand this question.

If the question is do we agree that premises currently licensed only for alcohol would be able to offer entertainment without changing their licence then yes, obviously this is the purpose of deregulating. Our concerns would be that we would have no proactive involvement in the decision to provide live or recorded music. It is our opinion that certain types of low risk entertainment, such as performance of a play, films, indoor sport, boxing and wrestling and some types of dance do not cause concern and can be provided without impact on any of the four licensing objectives. However we do have major concerns about inexperienced management providing higher risk activities such as live music and recorded music without the benefit of advice from Environmental Health or the Police.

However if the question is do we agree that the deregulated entertainment be removed from the licence without the need for a minor variation or variation, we would suggest that a replacement licence could be obtained, with an appropriate charge to cover the cost of the resources required to examine the existing licence, determine which conditions have become redundant, consultation with responsible authorities on the redundancy of those conditions, and the generation of a new licence.

The Role of Licensing Controls

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, we do not agree.

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.

At present, the Licensing Act recognises an event with a 5,000 person audience as a large scale event. It also recognises events of less than 500 (the limit for a TEN) to be lower risk. The Live Music Bill suggests 200 is the lower limit for exemption. We consider that the 200 limit would be a more acceptable threshold for live music and recorded music. However if a limit is to be imposed there must be a clear way of calculating the maximum audience size in a licensed premises - a detail that was not transferred across from the Public Entertainment Licence in 2005. Prior to the Licensing Act the capacity limits for premises were provided by the Fire authority. However this was not transferred across when the legislation was modernised, and there is now no capacity within the Fire Authority to provide this service.

In general the Council does not accept that deregulating live or recorded music is wise. It would be preferable for the Government, rather than deregulate entertainment, to introduce a system where premises can apply for an entitlement to provide entertainment, similar to that which enables them to provide 2 or less gaming machines. This entitlement could be removed if there are irresolvable issues with the management of the premises.

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.

As already suggested, we do not consider that the low risk activities of performance of plays, films (but with a caveat for R18 films – see Q35), indoor sports and some forms of dance need to be licensed.

It is difficult to agree an audience limit for live and recorded music as the nuisance arising from this is not necessarily dependant on venue size, and experience demonstrates that the smallest of venues providing live music can create considerable nuisance as these are usually within residential areas, acoustically weak in the design of the premises with minimal air conditioning thus resulting in windows and doors being left open.

Disorder caused by alcohol excess does have a cumulative effect and can be related to venue size. Therefore providing an exemption for regulated entertainment based on venue size alone would not mitigate the risk of nuisance.

Q14: Do you believe that premises that would no longer have a licence, due to the entertainment deregulation, would pose a significant risk to any of the four original licensing objectives? If so please provide details of the scenario in question.

Yes. We believe that deregulating entertainment would primarily have a significant impact on the objective of public nuisance for the reasons described above, but in addition the absence of a licence, particularly for larger outdoor events would particularly have an impact on all four 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.

Certainly - please refer to Question 9. Outdoor events, with no acoustic attenuation, have the potential to cause nuisance to a much wider area, and tend to be for larger audiences and so bring with them further issues relating to crowd, traffic and waste management, so we do believe that these need to be treated differently. From our experience in Leeds outdoor events require far more preparation, planning and supervision to ensure nuisance is not caused to the surrounding neighbourhood.

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.

Although there is a tendency to assume that noise nuisance after 11pm is the only concern, however we believe that in some cases noise nuisance during the day, especially at weekends, or in residential areas can be as distressing as noise nuisance occurring late at night. As such we believe that live music and recorded music should remain regulated at all times.

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.

As before, the licensable activities that cause the most concern are live music and recorded music. As discussed in the answer to question 16 we believe that these two activities can cause nuisance at any time.

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

The current entertainment licensing regime ensures that the right balance is achieved between the needs of the local residents, patrons and the event or business owner. This proactive approach has been shown to be the most efficient and effective way to resolve any issues that may occur. Removing such a licensing regime would lead to an inefficient and ineffective reactive approach. Using the Environmental Protection Act to reduce or remove risk in terms of the timing of events could be problematic. The legislation can only be used to prevent or remove nuisance rather than restrict or influence the timing of an event

Q19: Do you think that a code of practice would be a good way to mitigate potential risks from noise? If so, what do you think such a code should contain and how should it operate?

We do not believe that a code of practice alone would be enough to mitigate the risk of public nuisance. Even the licensing regime with the risk of prosecution and a prison term is not always enough to get quick results.

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?

We believe that the Licensing Act, in relation to large scale events and live and recorded music provides a unique opportunity to prevent nuisance from happening. The licensing regime provides an opportunity for specialist officers to consider the style of the operation being considered at a premises and to suggest measures that promote the licensing objectives and prevent nuisance in the first instance. All other laws covering the issues described are reactive. In the case of noise nuisance the noise legislation requires an abatement notice to be served and breached before action can be taken. This is reliant on a good out of hours service, something that few authorities can afford to maintain.

Q21: How do you think the timing/duration of events might change as a result of these proposals? Please provide reasoning and evidence for your view.

Premises will be able to provide entertainment at any time of the day or night without consideration for local residents or businesses. Many licences bear conditions which are restrictive after certain times, i.e. 11pm, for the purpose of protecting residents. We tend to find that residents will tolerate a certain degree of nuisance as they know that the music will cease at a given time. Without this assurance residents will not endure nuisance at any time.

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?

Yes – as previously stated, other legislation which might be used instead of the Licensing Act i.e. the Environment Protection Act and Fire Safety Reform Order is reactive as opposed to preventative.

Performance of Live Music

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?

Yes. Our major concern is that the deregulation of live and recorded music in any size premises would lead to more public nuisance, and this public nuisance would take longer to resolve under existing noise legislation.

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.

The council received very few complaints relating to the old "two in a bar" rule. Should an exemption for genuine unamplified music be introduced we do not believe there would be significant concerns. However when drafting this exemption, it is important that the definition for unamplified music is very clear, and not confused with acoustic music - which could be used to describe an amplified acoustic guitar.

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

We believe that the concerns relating to live music have been described in the answers to previous questions throughout this document.

Performance of Plays

Q26: Are there any public protection issues specific to the deregulation of the performance of plays that are not covered in chapter 3 of this consultation? If so, how could they be addressed in a proportionate and targeted way?

No

Q27: Are there any health and safety considerations that are unique to outdoor or site specific theatre that are different to indoor theatre that need to be taken into account?

No

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?

It is for the event organiser to satisfy themselves that any such displays are held in accordance with the manufacturer's safety instructions and relevant legislation. However from experience we know that this is not the best or safest approach and often, through the licensing regime, it has been necessary for health & safety and/or the fire authority to intervene.

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

No

Performance of Dance

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, as any premises of concern that provide facilities for dance are also licensed for alcohol, i.e. night clubs.

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

No

Exhibition of Film

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?

Similar to the control of the performance of hypnotists, the local authority could still classify films upon request subject to this being contained within the LA03.

Q34: If the Government were unable to create the situation outlined in the proposal and above (for example, due to the availability of Parliamentary time) are there any changes to the definition of film that could be helpful to remove unintended consequences, as outlined earlier in this document - such as showing children's DVDs to pre-school nurseries, or to ensure more parity with live broadcasts?

We do not fully understand this question. We presently would not consider these examples to be regulated entertainment.

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

No, however the Act could benefit from clarity with regards to the showing and/or access to Restricted 18 films within licensed premises. A suggestion would be a total exclusion of any R18 films being made available or shown in any premises unless appropriately licensed under the Local Government (Miscellaneous Provisions) Act 1982.

Indoor Sport

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

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

No

Boxing and Wrestling, and Events of a Similar Nature

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?

No

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.

We have minimal experience with these categories of entertainment and therefore do not have the knowledge or experience to comment on this matter.

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.

As above

Recorded Music and Entertainment Facilities

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, for the reasons described in previous answers throughout this document. Specifically please see the answers to questions 5, 6, 8, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22. Please also see the answers to questions under the heading of Performance of Live Music

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.

200. For more information see Q12 and Q41.

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?

Yes, please see Q41.

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

Yes, please see Q41.

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, the provision of 'Entertainment Facilities' do not concern us and this should be removed from the Act. The focus should be on the actual provision of the entertainment.

Unintended consequences

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?

No

Adult Entertainment

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

Yes, sex entertainment is now controlled under the Local Government (Miscellaneous Provisions) Act 1982 unless it falls under the exemption (less than 12 occasions per year). For the purpose of the exemption we would wish to see dance by way of sexual entertainment to remain licensable for the reason of applying relevant conditions to the premises licence in terms of the protection of children from harm.

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