

## CONSULTATION ON THE DEREGULATION OF SCHEDULE ONE OF THE LICENSING ACT 2003

### SUMMARY

- 1.1 The Department for Culture Media and Sport (DCMS) have issued a consultation document on deregulation of Schedule One of the Licensing Act 2003 which covers regulated entertainment.
- 1.2 Chief Officer Group is aware of the consultation document and has requested that the Council formally responds through the Policy Co-Ordination Group.

### RECOMMENDATION

- 2.1 To consider the information contained in this report regarding the request for views on the consultation document 'A Consultation proposal to examine the deregulation of Schedule One of the Licensing Act 2003' from the Department for Culture Media and Sport.
- 2.2 To agree a response to Chief Officer Group on behalf of the General Licensing Committee to the consultation questions by either:
  - Agreeing all of the responses at this meeting, or
  - Appointed a small representative working group to draft responses on behalf of the Committee, or
  - Authorising the Chair of Licensing to respond to Chief Officer Group on behalf of the Committee.

### REASONS FOR RECOMMENDATION

- 3.1 Chief Officer Group requested that the Council responds to this consultation through the Policy Co-Ordination Group.

### SUPPORTING INFORMATION

- 4.1 The Licensing Act 2003 brought together nine separate outdated licensing related regimes, and created instead a single Act that controlled alcohol supply and sale, late night refreshment, and "regulated entertainment". In tidying up the old licensing

regimes new problems were created for many wishing to host entertainment events.

- 4.2 The Government is therefore proposing a reform of activities currently classed as "regulated entertainment" in Schedule One of the 2003 Act. The consultation seeks views on the removal in certain circumstances of the requirement for a licence in England and Wales to host a performance of a play, an exhibition of a film, an indoor sporting event, a performance of live music, any playing of recorded music, or a performance of dance. A copy of the consultation document is available at appendix 3.
- 4.3 The Licensing Act 2003 classifies the following activities as "regulated entertainment", and therefore licensable:
- a performance of a play
  - an exhibition of a film,
  - an indoor sporting event,
  - a boxing or wrestling entertainment (both indoors and outdoors),
  - a performance of live music,
  - any playing of recorded music, and
  - a performance of a play
- 4.4 In addition, there is a licence requirement relating to the provision for entertainment facilities (which generally means the provision of facilities which enable members of the public to make music or dance).
- 4.5 Licensable activities can only be carried out under the permission of a licence or a Temporary Event Notice (TEN) from a local licensing authority. Licences (or TENs) are required for any of the activities above (subject to limited exemptions set out in part 2 of Schedule 1) whether they are free events to which the general public is admitted, or public or private events where a charge is made with the intention of making a profit - even when raising money for charity.
- 4.6 Applications for licences to host regulated entertainment can often occur as part of an application for an alcohol licence, particularly in venues such as pubs, clubs, and hotels, but there are also many venues that are primarily "entertainment venues" that operate a bar, such as theatres, which still require alcohol licence permissions to do so.
- 4.7 The starting point for this consultation is to examine the need for a licensing regime for each of the activities classed as "regulated entertainment". Where there is no such need, the proposal will be to remove the licensing requirement, subject to the views and evidence generated through this consultation.
- 4.8 Where there is a genuine need to licence a type of entertainment, the proposal will be that the licensing requirement would remain, either in full, or in part if more appropriate.
- 4.9 Although there are a number of questions in the consultation that relate to deregulation principles, the Department for Culture Media and Sport are keen to make it clear that the Government intends to retain the licensing requirements for:
- Any performance of live music, theatre, dance, recorded music, indoor sport or

exhibition of film where the audience is of 5,000 people or more.

- Boxing and wrestling.
- Any performance of dance that may be classed as sexual entertainment, but is exempt from separate sexual entertainment venue regulations.

4.10 The closing date for responses to the Department for Culture Media and Sport is 3 December, 2011. Chief Officer Group is aware of the consultation and has requested that the Council formally responds through the Policy Co-Ordination Group. Therefore, once General Licensing Committee have agreed a response, this will be forwarded to Chief Officer Group to pursue through Policy Co-Ordination Group.

4.11 In an effort to assist Committee in this process, officers have set out their initial comments where appropriate at Appendix 2.

#### OTHER OPTIONS CONSIDERED

5.1 Not applicable.

**This report has been approved by the following officers:**

<b>Legal officer</b> <b>Financial officer</b> <b>Human Resources officer</b> <b>Service Director(s)</b> <b>Other(s)</b>	
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<b>For more information contact:</b> <b>Background papers:</b> <b>List of appendices:</b>	Michael Kay 01332 641940 e-mail michael.kay@derby.gov.uk None Appendix 1 – Implications Appendix 2 – Draft Response to Consultation Questions Appendix 3 – A Consultation proposal to examine the deregulation of Schedule One of the Licensing Act 2003
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<b>IMPLICATIONS</b>
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**Financial**

- 1.1 None directly arising.

**Legal**

- 2.1 As set out in the report and appendices.

**Personnel**

- 3.1 None directly arising.

**Equalities Impact**

- 4.1 None directly arising.

**Health and Safety**

- 5.1 None directly arising.

**Carbon commitment**

- 6.1 None directly arising.

**Value for money**

- 7.1 None directly arising.

**Corporate objectives and priorities for change**

- 8.1 The proposal supports the corporate priorities to ensure the people in Derby will enjoy **good quality services that meet local needs** and **being safe and feeling safe**.



## Draft Responses to Consultation Questions

Consultation Questions	Draft Response
<b>Proposal Impacts: Questions</b>	
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 but we are not able to estimate how many extra events this would generate.
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).	Yes, they appear to be a fair estimate.

<p>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.</p>	<p>Yes, they appear to be a fair estimate.</p>
<p>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.</p>	<p>Yes, we believe the number of noise complaints would rise. The lack of a licence would remove the opportunity for interested parties to make representations and so they would make a complaint.</p>
<p>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.</p>	<p>Not applicable.</p>

Q7: Can you provide any additional evidence to inform the Impact Assessment, in particular in respect of the impacts that have not been monetised?	We would not want to provide any further evidence.
Q8: Are there any impacts that have not been identified in the Impact Assessment?	We do not wish to identify any further impacts.
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.	Not applicable.
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, this would appear to be an appropriate suggestion.
The Role of Licensing Controls: Questions	
Q11: Do you agree that events for under 5,000 people should be deregulated across all of the activities listed in Schedule One of the Licensing Act 2003?	No, we believe that a figure of 5000 is too high.



<p>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.</p>	<p>We believe that a figure of 500 is more appropriate as the ability to exercise proper controls reactively becomes more difficult above this level. The discussions and negotiations that take place between an applicant and a responsible authority can be an extremely effective proactive tool to avoid issues happening in the first instance, rather than having to rely solely on action during or immediately after an event.</p>
<p>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.</p>	<p>We do not support this proposal. We believe it would create administrative burdens for all parties involved in the licensing process. It would complicate the procedure and have the potential to cause confusion and contraventions.</p>
<p>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.</p>	<p>On the basis of the current proposals set out, yes. For example, a 4999 capacity event involving live and/or recorded music where attendees are encouraged to bring their own alcohol. We believe that this would pose a significant risk to all four of the current licensing objectives.</p>
<p>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.</p>	<p>No.</p>

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 do not believe that events held after a certain time should not be deregulated. However, if this was subsequently introduced, we believe that an appropriate cut-off point would be 11.00 pm.
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.	We do not support this proposal. We believe it would create administrative burdens for all parties involved in the licensing process. It would complicate the procedure and have the potential to cause confusion and contraventions.
Q18: Are there alternative approaches to a licensing regime that could help tackle any potential risks around the timing of events?	We would not want to offer any alternatives.
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?	No. As stated in the consultation document at Paragraph 3.37, this would have no statutory sanctions and would therefore be useless.
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, in theory, the existing laws covering these issues should indeed be able to deal with potential risks at any event, not just the 'deregulated entertainment events'. Remember that the Licensing Act was never intended to replace these pieces of 'primary legislation'. The reality is that the Licensing Act has been used by both applicants, responsible authorities and interested parties to 'agree' operating conditions proactively.

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 believe that this would ultimately depend on the outcome of the consultation. For example, if an appropriate cut-off point was introduced, we believe that the majority of events would cease before this point was reached. This happened with businesses selling hot food when the licensing act came into force; the majority of them close before 11.00 pm.
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.
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.	No, we do not believe that unamplified music should be fully deregulated with no limits on numbers and time of day/night. The comments made in the consultation document about this appear to rely on the fact that the 'unamplified' aspect of this type of activity will be the limiting factor in avoiding problems. This is not necessarily the case.
Q25: Any there any other benefits or	No.

problems associated specifically with the proposal to deregulate live music?	
Performance of Plays: Questions	
Q26: Are there any public protection issues specific to the deregulation of the performance of plays that are not covered in chapter 3 of this consultation? If so, how could they be addressed in a proportionate and targeted way?	No.
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?	No, any restrictions to these types of activities could also be controlled through existing health & safety and/or trading standards processes.
Q29: Are there any other benefits or problems associated specifically with the proposal to deregulate theatre?	No.

Performance of Dance: Questions	
Q30: Are there any public protection issues specific to the deregulation of the performance of dance that are not covered in chapter 3 of this consultation? If so, how could they be addressed in a proportionate and targeted way?	No.
Q31: Any there any other benefits or problems associated the proposal to deregulate the performance of dance?	No.
Exhibition of Film: Questions	
Q32: Do you agree with the Government's position that it should only remove film exhibition from the list of regulated activities if an appropriate age classification system remains in place?	This would seem to be appropriate.
Q33: Do you have any views on how a classification system might work in the absence of a mandatory licence condition?	No.
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?	
Q35: Are there any other issues that should be considered in relation to deregulating the exhibition of film from licensing requirements?	No.
Indoor Sport: Questions	
Q36: Are there any public protection issues specific to the deregulation of the indoor sport that are not covered in chapter 3 of this consultation? If yes, please outline the specific nature of the sport and the risk involved and the extent to which other interventions can address those risks.	No.
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: Questions	
Q38: Do you agree with our proposal that	Yes.

boxing and wrestling should continue to be regarded as “regulated entertainment”, requiring a licence from a local licensing authority, as now?	
Q39: Do you think there is a case for deregulating boxing matches or wrestling entertainments that are governed by a recognised sport governing body? If so please list the instances that you suggest should be considered.	No.
Q40. Do you think that licensing requirements should be specifically extended to ensure that it covers public performance or exhibition of any other events of a similar nature, such as martial arts and cage fighting? If so, please outline the risks that are associated with these events, and explain why these cannot be dealt with via other interventions.	Yes. This type of activity is no different from boxing and wrestling and should therefore be treated in exactly the same way.
Recorded Music and Entertainment Facilities: Questions	
Q41: Do you think that, using the protections outlined in Chapter 3, recorded music should be deregulated for audiences of fewer than 5,000 people? If not, please state reasons and evidence of harm.	No, not for fewer than 5,000 people. Please the comments made at Q11 & Q12.

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.	Please see Q11 & Q12.
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?	We believe that this type of regulated entertainment should continue to require a licence because of the responses we have made.
Q44: Any there any other benefits or problems associated specifically with the proposal to deregulate recorded music?	No.
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.
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	No.



see changed or clarified?	
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: Question	
Q48: Do you agree with our proposal that deregulation of dance should not extend to sex entertainment? Please provide details.	Yes.