

Licensing Committee

**Grand Jury Room, Town Hall
23 November 2011 at 6.00pm**

The Licensing Committee deals with policy issues relating to licensing matters and applications and appeals concerning hackney carriage and private hire vehicles and drivers and other appeals.

Information for Members of the Public

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**COLCHESTER BOROUGH COUNCIL
LICENSING COMMITTEE
23 November 2011 at 6:00pm**

Members

Chairman : Councillor Barrie Cook.
Deputy Chairman : Councillor Nick Cope.
Councillors Mary Blandon, John Bouckley,
Christopher Garnett, Dave Harris, Pauline Hazell, Mike Hogg,
Margaret Kimberley, Michael Lilley, Colin Mudie and
Ann Quarrie.

Substitute Members :

Agenda - Part A
(open to the public including the media)

Members of the public may wish to note that Agenda items 1 to 5 are normally brief.

Pages

1. Welcome and Announcements

(a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Chairman's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched off or to silent;
- location of toilets;
- introduction of members of the meeting.

2. Substitutions

Members may arrange for a substitute councillor to attend a meeting on their behalf, subject to prior notice being given. The attendance of substitute councillors must be recorded.

3. Urgent Items

To announce any items not on the agenda which the Chairman has agreed to consider because they are urgent and to give reasons for the urgency.

4. Have Your Say!

(a) The Chairman to invite members of the public to indicate if they

wish to speak or present a petition at this meeting – either on an item on the agenda or on a general matter not on this agenda. You should indicate your wish to speak at this point if your name has not been noted by Council staff.

(b) The Chairman to invite contributions from members of the public who wish to Have Your Say! on a general matter not on this agenda.

5. Declarations of Interest

The Chairman to invite Councillors to declare individually any personal interests they may have in the items on the agenda.

If the personal interest arises because of a Councillor's membership of or position of control or management on:

- any body to which the Councillor has been appointed or nominated by the Council; or
- another public body

then the interest need only be declared if the Councillor intends to speak on that item.

If a Councillor declares a personal interest they must also consider whether they have a prejudicial interest. If they have a prejudicial interest they must leave the room for that item.

If a Councillor wishes to make representations on an item on which they have a prejudicial interest they may do so if members of the public are allowed to make representations. In such circumstances a Councillor must leave the room immediately once they have finished speaking.

An interest is considered to be prejudicial if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the Councillor's judgement of the public interest.

Councillors should consult paragraph 7 of the Meetings General Procedure Rules for further guidance.

6. Minutes

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To confirm as a correct record the minutes of the meeting held on 5 October 2011.

7. Police Reform and Social Responsibility Act 2011

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See report by the Head of Environmental and Protective Services.

8. Government consultation on deregulation of schedule one to

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the Licensing Act 2003 (Regulated Entertainment).

See report by the Head of Environmental and Protective Services (to follow).

9. Exclusion of the public

In accordance with Section 100A(4) of the Local Government Act 1972 and in accordance with The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (as amended) to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

LICENSING COMMITTEE

5 October 2011

Present:- Councillor Cook (Chairman)
Councillor Garnett

Substitute member:- Councillor Quarrie for Councillor Kimberley

8. Minutes

The minutes of the meeting held on 31 August 2011 were confirmed as a correct record.

The Committee resolved under Section 100A of the Local Government Act 1972 to exclude the public from the meeting for the following items as it involved the likely disclosure of exempt information as defined in paragraph 1 of Schedule 12A to the Local Government Act 1972

9. Hackney Carriage/Private Hire Licensing // Appeal

The Committee considered a report by the Head of Environmental and Protective Services on an appeal against the Protective Service Manager's decision not to grant a hackney carriage/private hire driver's licence because recent convictions placed the applicant outside of the Council's pre-licensing conditions and called into question the applicant's status as a 'fit and proper person'. The Protective Services Manager and the appellant and his representative attended, presented their cases and then withdrew for the Committee to consider the matter and make its determination.

RESOLVED that having regard to the circumstances of the case and the convictions which placed the appellant in breach of the Council's pre-licensing conditions, the Committee determined that the driver was not a 'fit and proper person', under the terms of Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976, (as augmented by Section 47 of the Road Traffic Act 1991 to hold a hackney carriage/private hire driver's licence and determined to dismiss the appeal.



Licensing Committee

Item
7

23 November 2011

| | | | |
|----------------|--|--------|-------------------------|
| Report of | Head of Environmental and Protective Services | Author | Gary O'Shea ☎ 506956 |
| Title | Police Reform and Social Responsibility Act 2011 | | |
| Wards affected | All | | |

This report is to advise members of the provisions of the Police Reform and Social Responsibility Act 2011, which will introduce changes in relation to licensing and enforcement under the Licensing Act 2003.

1. Decision(s) Required

1.1 This report is for information only.

2. Supporting Information

2.1 The Police Reform and Social Responsibility Act (the Act) covers five distinct policy areas: Police accountability and governance; alcohol licensing; the regulation of protests around Parliament Square; misuse of drugs; and the issue of arrest warrants in respect of private prosecutions for universal jurisdiction offences.

2.2 This report is concerned only with part 2 of the Act, which amends and supplements the Licensing Act 2003 with the intention of 'rebalancing' it in favour of local authorities, the police and local communities. This follows the consultation process that the Council previously offered comments on.

2.3 The Act received Royal assent on 15 September 2011. However, it will not come into force until a number of regulations and the commencement order have been published. It is expected that the new provisions will be introduced in two stages; probably in April and October 2012.

3. The Police Reform and Social Responsibility Act 2011 (Part II)

There are a number of key changes under provision of the Act as follows:

3.1 New Responsible Authorities

The Licensing Authority and Primary Care Trusts (PCTs) or local health boards will become responsible authorities. This means that they will be able to make representation in relation to premises licence applications and variations and may, where appropriate apply to review a premises licence.

3.2 Individual Members of Licensing Authorities

Individual members of a licensing authority are no longer considered to be 'interested parties'. This means that Councillors will not be able to make representations unless they fall within the definition of 'other persons' as identified in 3.3 (below) or unless they have been asked to make representation on a resident's behalf.

3.3 Interested Parties

The 'vicinity' test is removed, meaning that a member of the public or a business will not need to show that they live or operate in the vicinity of a subject premises in order to make representation or to call for a review. 'Interested Parties' are replaced as a description in favour of a new description of 'other persons', who instead of being somebody living or operating a business in the vicinity, are defined as follows:

'Persons who live or are involved in a business in the relevant licensing authority's area and who are likely to be affected by it' (the licensable activity).

This will potentially increase the numbers of people who may make representations or call for licence reviews. Currently officers can determine to some extent whether a representation meets the criteria of being 'in the vicinity'. However, under the new test it is likely that only a licensing sub-committee will be able to determine whether someone is 'likely to be affected by the activities or proposed activities. Consequently, the number of applications that must go before a sub-committee could potentially increase.

3.4 'Appropriate' Conditions

The requirement for decisions of a licensing authority to be 'necessary and proportionate' is replaced with a lesser test of 'appropriate'. The effect of this will be a lowering of the threshold for decisions, which ultimately means that licensing authority decisions will be less open to challenge.

3.5 Changes to Temporary Event Notices (TENs)

Under the current system, a TEN can last up to 96 hours with a maximum of 12 notices (or 15 days if reached in less than 12 TENs) per calendar year. They must be submitted a minimum of 10 clear working days in advance of the event. The Police are the only body able to object to a TEN and only then on grounds of crime or disorder. The remaining three objectives (relating to public nuisance, public safety and protection of children) are not relevant. Additionally no conditions can be added to a TEN at any time.

The new Act brings about a number of changes as follows:

- Environmental Control (noise) becomes a responsible authority that is able to object to TENs
- Objections to TENs notifications may be made by the Police or Environmental Control if they believe that it would undermine **any** licensing objective
- Conditions may be added to a TEN where appropriate, provided that those conditions are already included on a premises licence or club premises certificate and that the addition of the condition would not be inconsistent with the carrying on of the licensable activity
- An ability to submit late TENs i.e. between 5 and 9 working days prior to an event
- The maximum time limit is extended to 168 hours (1 week) and whilst 12 remains the total number of permitted TENs per premises per calendar year, the maximum number of days is extended to 21.

These changes are likely to bring in a larger volume of TENs and will potentially increase staff workloads. Equally, with the extended ability to object to notices, there are likely to be more hearings. These will be at short notice, as many notifications are submitted at the limit of the required notice period.

3.6 Persistently Selling Alcohol to Children

It is an offence to sell alcohol to a minor. However, under section 147A Licensing Act 2003 there is a specific offence of persistently selling alcohol to children. This applies if on two separate occasions within a period of three consecutive months alcohol is unlawfully sold to a minor.

The current maximum penalty of £10,000 in respect of the above offence is increased to £20,000.

3.7 Early Morning Restriction Orders

Where it is considered appropriate for the promotion of the licensing objectives, a licensing authority may make an early morning alcohol restriction order (EMRO). An EMRO may apply between midnight and 6am and the notice must specify the days, times and the parts of the authority area to which it applies.

Before making such an order, the authority will be required to advertise it and consider any representations that are made. There will also be a requirement for extensive public consultation prior to implementation of any such order.

3.8 Non payment of Annual Licence Fees

The licensing authority is given the power to suspend Premises Licences in the event that an annual fee remains unpaid following a 'grace period' of 21 days, which commences on the day following the date upon which the annual fee became due. The licence would remain suspended until the fee is paid.

This amendment means that the licensing authority will be able to take positive action to recover debts from annual fees that until now have only been recoverable as a civil debt.

3.9 Licence Fees

Subject to a maximum levy as may be provided under regulations to the Act, the licensing authority is given power to set its own fees in relation to a range of applications.

Currently the fee payable is nationally set by regulations to the Licensing Act 2003 and is widely regarded as being insufficient in recovering the true cost to the authority in processing applications.

The existing licence fees have remained constant since implementation of the Licensing Act in November 2005. The ability to set fees on a local basis will enable the Council to recover the true costs of each application process. Whilst such fees may only be set on a cost recovery basis, the authority is entitled to include the actual costs pertaining to the discharge of each individual function and an appropriate portion of the general costs of the Council.

Any fees set will be required to be advertised.

3.10 Statement of Licensing Policy

The current requirement to review the Statement of Licensing Policy for a local authority every three years is extended to five years.

3.11 Personal Licences: Relevant Offences

Relevant offences are listed in Schedule 4 to the Licensing Act 2003 and, along with relevant foreign offences and recognised training certificate, are the only considerations to be taken into account in determining suitability to hold a personal licence.

The Act extends retrospectively, the table of relevant offences with the addition of four additional offences:

- Failure to co-operate with preliminary breath tests for drink driving
- Attempting to commit any relevant offence
- Conspiracy to commit any relevant offence
- Common law offence of conspiracy to defraud

3.12 Late Night Levy

Following due consideration of the costs of policing, the costs of reducing or preventing alcohol related crime between midnight and 6.00am and the desirability of raising revenue of which a minimum of 70% (less relevant expenses as may be determined in regulations) must be applied to the local policing body; licensing authorities may introduce a late night levy.

A levy may only relate to the entire authority area although it may permit exemptions for certain categories of premises and certain operating times of premises. The levy may apply at any time provided that the time falls only between midnight and 6.00am.

Regulations will determine how an authority should introduce, vary or revoke a late night levy as well as how payments are to be collected, administered and enforced. Failure to pay the levy will become a civil debt, but will lead to suspension of the premises licence under powers highlighted in paragraph 3.8 of this report.

4. Strategic Plan References

4.1 There are no direct links to the strategic plan.

5. Publicity Considerations

5.1 The provisions contained within the Act are broad and far reaching. Potentially every licence holder in the Borough may be affected to some degree. Once the full nature of the provisions and the intention of the Council in relation to some of the provisions (e.g. late night levy, levels of fees etc) is known, this will be conveyed to those most likely to be affected in writing. Supporting information will be uploaded to the Council website.

6. Financial Implications

6.1 There are no financial implications as any advertising, consultation or information letters will be facilitated through existing budgets. However, there may be a future increase in income to allow for true cost recovery in relation to application processing or, should members' determine at a later stage to introduce a late night levy, the costs of policing the night time economy in certain quarters.

7. Equality, Diversity and Human Rights Implications

- 7.1 The changes brought about by the Act underwent a full equality impact assessment by the Government during the consultation stages.
- 7.2 Any of the provisions highlighted in this report as being adoptive will be consulted upon prior to adoption. This process will allow any inadvertent or unintended consequence in relation to equality, diversity or human rights to be considered.
- 7.3 Equally all applications made under the Licensing Act 2003 undergo separate individual consultation whereby each case is considered on its individual merits. Any group or individual that may be affected by the grant or otherwise of a licence will have opportunity to state their case and to have that considered as part of the overall process.

8. Community Safety Implications

- 8.1 The Licensing Act 2003 contains four objectives which are required to be promoted at all times. These objectives are:-
- the prevention of crime and disorder,
 - the prevention of public nuisance,
 - public safety, and
 - the protection of children from harm.

Any concerns raised in relation to any of these objectives must be considered as part of the determination process.

9 Conclusion

- 9.1 The above provisions will not take effect until mid to late 2012, with most provisions almost certainly targeted to take effect following the Olympic Games. Whilst there are no decisions required at this stage it will be necessary, once the regulations have been published, for the Committee to consider further the Council position in relation to fees, the Late Night Levy and Early Morning Restriction Orders.

Background Papers

None



Licensing Committee

Item

8

23 November 2011

| | | | |
|----------------|--|--------|-------------------------|
| Report of | Head of Environmental and Protective Services | Author | Gary O'Shea ☎ 506956 |
| Title | Consultation on Deregulation of Schedule one of the Licensing Act 2003 (Regulated Entertainment) | | |
| Wards affected | All | | |

This report is to advise members of a Government proposal to deregulate schedule one of the Licensing Act 2003 in relation to regulated entertainment and to seek agreement on a response to the consultation.

1. Decision(s) Required

- 1.1 Members are requested to agree the draft consultation response and to permit it to be submitted as the formal response to the consultation by this authority.

2. Supporting Information

- 2.1 The Licensing Act 2003 (the Act) regulates four types of licensable activity. These are:

- The sale of alcohol
- The supply of alcohol for or on behalf of a club
- Regulated entertainment
- The provision of Late Night Refreshment

- 2.2 The Government is seeking views by 3 December 2011 on its proposal to deregulate most of schedule one of the Act, which relates to regulated entertainment.

- 2.3 Regulated entertainment includes, performances of plays, showing of films, boxing and wrestling, indoor sport activities, live music, recorded music, dancing and the provision of facilities for music and dancing.

- 2.4 Under the current system an authorisation is required in respect of any of the activities highlighted in paragraph 2.3, if these are for the public or for a fee and with a view to a profit.

- 2.5 The term "authorisation" relates to a Temporary Event Notice, a Premises Licence or a Club Premises Certificate.

- 2.6 There is currently no minimum audience limit in relation to the requirement for an authorisation, which means that **any** provision of regulated entertainment must be conducted under the appropriate authorisation.

- 2.7 The Government intends to deregulate most of the requirements for a licence in respect of all regulated entertainment, other than boxing and wrestling or any entertainment that involves an audience of 5000 or more persons.

3. The Consultation Document

- 3.1 The consultation consists of the consultation document itself and an impact assessment that run to 40 and 28 pages respectively. These have been e-mailed to each member of the Licensing Committee for reference purposes and a hard copy has also been provided in the Members' Room.
- 3.2 A summary of the main points in the consultation has been attached as appendix A.
- 3.3 A meeting has already taken place between the Chairman of the Licensing Committee and the Licensing and Enforcement Manager, where the main points have been discussed. For purpose of clarity and transparency, a number of agreed comments have been inserted below various relevant points in the consultation summary (summary in bold and comments in normal print)
- 3.4 The proposals have the potential to impact heavily on residents of the Borough and therefore a letter of explanation has been sent to all known residents' associations and all parish and town councils. Comments have been invited with a deadline of 20 November having been given for receipt of replies due to the short timescales involved.
- 3.5 There are 48 consultation questions. Responses are currently being drawn up to these which will incorporate the views agreed with the Chairman of the Licensing Committee and any received from members of the public or representative bodies. A list of the responses will be circulated in advance of the meeting on 23 November. The questions are available for viewing in the consultation document that has been provided.

4. Community Safety Implications

- 4.1 The Licensing Act 2003 contains four objectives which are required to be promoted at all times. The objectives are the prevention of crime and disorder, the prevention of public nuisance, public safety and the protection of children from harm. Any concerns raised in relation to any of these objectives must be considered as part of the determination process.
- 4.2 The degree of unregulated entertainment that will be likely to take place, were it no longer to require authorisation, has the potential to affect a great many local residents. The current ability for the authority to assess applications on their individual merits averts any abuse of licensing laws in that it allows reasoned consideration of applications to allow activities to take place whilst protecting the residents of the Borough from nuisance, disorder and harm.

5 Conclusion

- 5.1 There is much opposition to the mooted changes from most Licensing Authorities, the Institute of Licensing, the Association of Chief police Officers (ACPO) and others. The consequences could be far reaching and could affect the peace and tranquillity of residents if entertainment is allowed to go unchecked. For the reasons highlighted in the summary document, alcohol licensing alone cannot adequately control issues related to entertainment. It is considered essential therefore that the voice of this Borough is added to those others that oppose the broad reform outlined in the consultation document.

Background Papers

None

Appendix A

REGULATED ENTERTAINMENT

Summary of the Government Consultation on Deregulation of Schedule One of the Licensing Act 2003

The government is seeking views on a proposal to remove licensing requirements for most activities that are defined as ‘regulated entertainment’ under Schedule 1 of the Licensing Act 2003.

Regulated Entertainment is a new description which replaced public entertainment and some private entertainment under the provisions of the Licensing Act 2003. ‘Public’ and ‘Private’ were replaced with a new description of ‘regulated’ which is defined as being for the public or a section of the public or for consideration (a fee) and with a view to a profit.

The consultation paper suggests that the new regime (the Licensing act 2003 (the Act)) was overcautious in its approach to regulated entertainment e.g. ‘the removal of the two in a bar rule’.

This would appear to be true in relation to the ‘two in a bar’ rule, whereby up to two musical performers were permitted in any premises that held a Justices Licence (an alcohol licence under the old regime) without need for a Public Entertainment Licence. Many premises have had to add regulated entertainment to their Premises Licence permissions, submit Temporary Event Notices or not hold entertainment at all, as it is no longer lawful to hold most forms of entertainment without an appropriate authorisation.

The foreword to the consultation paper, written by John Penrose Minister for Tourism and Heritage, states that the proposals are:

“a golden opportunity to deregulate, reduce bureaucratic burdens, cut costs, give the big society a boost and give free speech a helping hand too. Our proposals are simply to remove the need for a licence from as many types of entertainment as possible”.

Countless representations were received from a number of sources regarding difficulties that were brought about by the Act. Many cultural, voluntary and some commercial organisations have been restricted e.g. charity events, circuses, brass bands in public parks, restaurant pianists, street artists etc.

Without doubt, there are some changes that would be welcomed in all quarters. Some changes have already taken place e.g. with the simplification of the TENs process under the Police Reform and Social Responsibility Act 2011. However, it has always been a little inconsistent as to what is exempt from a licence requirement and what is not. Voluntary and charity organisations have been particularly affected in that the process is often too time consuming and too cost prohibitive for them.

There will be provision to carry over conditions from existing premises licences to also apply to a TEN under provision of the Police Reform and Social Responsibility Act which received Royal Assent last month and which will come into force at some stage next year. Details on the provisions of these changes will be presented to the Licensing Committee in the near future.

We will know more regarding the ability to impose conditions on TENs once the regulations to the Police Reform Act are published.

Current Situation

The Act defines regulated entertainment as:

Performance of a Play, Exhibition of Films, Indoor Sporting Events, Boxing and Wrestling, Live Music, recorded Music and Performance of Dance.

All or any of the above are not currently deemed to be licensable if they are not for the public and are not for a consideration with a view to a profit. There are some exemptions where a licence is not required under any circumstances. These are listed under schedule one to the Act and include entertainment related to religious services and in places of worship.

Licensable activities including the sale or supply of alcohol, provision of late night refreshments and any regulated entertainment as described above, require the authority of either a premises licence or a temporary event notice (TEN).

The consultation paper suggests that the four licensing objectives (prevention of crime and disorder, prevention of public nuisance, public safety and the protection of children from harm) can be adequately promoted by use of extensive conditions being attached to a premises licence which form a contract between the Licensing Authority and the Licensee.

Proposal

The government intends to examine the need for a licensing regime in each of the above regulated entertainment activities.

Where the consultation identifies that there is no need for regulating a certain activity, it is the intention to totally remove the licensing requirement. Conversely, if a requirement is identified following consultation then it is intended that the licensing requirement shall remain either in full or in part.

Certain dance types and music, recorded or not, can be disturbing if undertaken in a residential area and if performed late at night. The level of sound and the finish time in the hours of darkness needs to be regulated. In a non-residential area (town centre) this may be less important, but should still be a consideration of the licensing authority.

In each case, on an individual basis, the Government intends to identify the precise nature of any potential harm and will seek evidence to identify effective and proportionate solutions. In this regard they are particularly interested to hear views on handling the health and safety protections and noise nuisance prevention, as well as gauging views from a public safety and crime and disorder perspective.

The requirement to obtain a licence for entertainment where the audience number 5000 or more, any size of audience relating to a boxing or wrestling event and any form of dance relating to a sexual entertainment that is not covered by the new Sexual Entertainment Venue (SEV) licensing provisions, is not intended to change.

It is not possible to predict the types and number of any additional activities that may arise if they were not restricted by a licence requirement and, as such, views on this are being sought.

The Government states that the proposal will bring clarity to existing laws.

Effect on the Current Licensing Regime

Effects and benefits are expected to vary from premises type to premises type. There are over 133,000 premises in England and Wales that hold a regulated entertainment provision in some form.

Premises that currently hold a licence that permits ONLY regulated entertainment e.g. some church halls, would (under the proposals) no longer need a licence.

(This on the face of it is a sensible move as many such premises have been unduly restricted by either cost or time limits; however, some premises allow consumption of alcohol which in turn can lead to noise complaints etc. If these premises do not sell alcohol then they will become totally unregulated under the proposals and therefore some degree of licence requirement may be advantageous).

Other premises e.g. alcohol licensed premises, would still require a licence for the sale or supply of alcohol, any late night refreshment and any regulated entertainment that is not deregulated under the proposals. However, they would no longer require a licence (or a TEN) for providing any entertainment that is deregulated.

It is not intended that any conditions would be removed from licences as part of the deregulation and as such these would continue to have effect unless or until they are removed or amended by the licence holder by way of a full or a minor variation.

Unless the law were changed there is a question over whether conditions on licences that were not linked to a licensable activity could be enforced. For example, opening hours of premises is not a licensable activity and therefore it is not possible to take action for breach of a licence condition after the terminal hour of any licensed activity.

This would mean that if a licence permitting alcohol ceased to have effect at e.g. 11.00pm but entertainment that had been deregulated continued after this hour, there would be no ability to enforce under provisions of the Act. Whilst there exists other legislative provisions to achieve compliance or to tackle a variety of concerns, it is often the case that the legal processes involved are more time consuming and onerous than taking action under the Licensing Act 2003.

Also other legislative provisions are often only applicable after the event, and then perhaps after a legal appeal. Therefore the persons suffering a noise abuse during the event may continue to suffer until it can be legally terminated.

There is also a strong likelihood that premises left with conditions that relate to entertainment will simply apply to have them removed. In such cases it is very likely that Councils will have no option but to remove them on the basis that they would not be relevant to a licensable activity.

It is anticipated that the effect will be to remove a total of approximately 13,400 community and non-commercial premises from any liability to obtain or retain a licence.

This in itself would probably not cause any major disruption to promotion of the licensing objectives in the majority of cases. Often these types of premises do not involve the sale or supply of alcohol and the consultation makes much of the relationship between disorder, noise and alcohol consumption. It is true that often the two are closely linked.

The link, however, is stronger in relation to crime and disorder than with noise as there are often complaints particularly from members of the public around noise issues. It is not always an alcohol licensed premises that is the culprit as halls are hired quite regularly for entertainment purposes where often alcohol is consumed (not a licensable activity) by persons bringing their own or where no alcohol is present at all.

This emphasises the reason why such community events should be pre notified to either the police or the local authority, or both, so that details and complaints can be recorded.

The Role of Licensing Controls

Licensing authorities must exercise their functions with a view to promoting the four licensing objectives.

The sale and supply of alcohol is recognised as being the principal component of the Act. In taking stock of the efficacy and proportionality of the licensing regime, the proposal seeks to examine the need for licensing in the context of other legislative protections that are already in place.

The consultation suggests that regulated entertainment itself in general poses little risk to the licensing objectives. It does recognise though that there may be considerations from noise nuisance and public safety in relation to events.

Whilst the consultation suggests that alternative legislation is best used to tackle concerns, it is worth considering that the burden of proof under the Licensing Act uses the civil evidential test (i.e. on the balance of probability), whereas in many other cases the test would be a criminal test (i.e. beyond reasonable doubt) and would therefore be harder to prove, would require lengthy/costly investigation and would, therefore, take longer to achieve.

Action taken under alternative legislation would be open to appeal, and involve an allowance to continue planned events until after the appeal is heard. This means that little or nothing could be done to address concerns in the short term unless the activity remains licensable under the Licensing Act 2003.

Crime and Disorder

The consultation suggests that when problems do occur it is often due to the presence of alcohol sales and consumption. Existing alcohol safeguards provide a powerful incentive to ensure promotion of the licensing objectives, where failure to comply may result in a licence review.

The consultation makes reference to consumption (not a licensable activity) being a contributory factor in relation to problems that may occur. It is common knowledge that consumption may take place in any premises, regardless of whether alcohol is sold at the premises, as customers may in many cases be permitted to take their own alcohol to the event. Such events will be less closely monitored (especially if there is no licence provision at all) as there will be no personal licence holder, no Designated Premises Supervisor (DPS) and, in some cases, no premises licence holder (or conditions) at all.

If Councils are to rely more heavily on the review process this will in many ways defeat the object of the Act whereby it was intended to be a light touch approach to remove such necessity in the majority of cases. In all probability it will create a situation where reviews are used with increasing regularity and this may ultimately result in more premises being put out of business.

Even the suspension of a licence has previously caused businesses to collapse due to the fine margins of profit that some work to.

Under provision of the Police Reform and Social Responsibility Act 2011, Councils have the ability to set their own fees in relation to licensing under the 2003 Act. If the likelihood of reviews is increased this will probably mean that fees are set at a higher level to take account of the additional costs that Councils may incur. This, in a time of economic austerity may cause an increased and unnecessary burden upon businesses.

Under these proposals there would be no requirement for anybody to notify the Licensing Authority or the Police of an event of up to 4999 people if it does not involve the sale of alcohol.

There are very few events (hardly any indoor events) where the attendance is over 4999. This move would likely be extremely unpopular with the public i.e. the people who live and operate businesses near to licensed premises. The public already suffer problems particularly with noise and disorder and any reduction in powers to deal with such issues will not be welcomed in this quarter.

Some small relaxation would probably be welcomed generally. However, there is a danger that this will go too far.

Whilst there would no longer be a requirement for specific permission for activities currently classed as regulated entertainment, the government suggests that there would still be generic controls e.g. a review to apply limits on opening hours or conditions to require plastic glasses, door staff or specific opening times.

As stated above, an increase in the numbers of reviews to apply controls will add to the bureaucracy and will be more onerous on the authorities involved. The right to review already applies in such cases although at present this can be dealt with (sometimes by mediation without the need for a costly hearing) at time of application. Such a possibility would be removed if the entertainment were to be blanket deregulated, as there would be no requirement for any application.

There remains the question, should a review occur, as to how enforceable or relevant any conditions may be that relate to an activity that no longer constitutes a licensable activity.

The belief is that TENs are in the main held in non-commercial premises e.g. schools and community halls where activities are overseen by a committee, and the consultation suggests that because of this the blanket requirement for a licence is disproportionate and unnecessary. Removing licence requirements will mean that the Licensing Authority and Police will not be made aware of an event in advance and the consultation therefore seeks views on whether there would be a likely impact on public safety and crime and disorder considerations.

It is untrue that TENs are used mainly in relation to non-commercial premises. They have increasingly been used as a 'backdoor' system for alcohol licensed premises, such as pubs and clubs, to extend their opening hours - often utilising the full 12 (or 15 day) allowance per calendar year. The ratio of commercial to non-commercial notifications is estimated as somewhere in the region of 50:50.

It is essential that the Licensing Authority and other authorities e.g. the noise control service, but particularly the Police and Fire Service, are aware of events before they happen. There are a large number of events that have potential to cause disruption, not simply in relation to the licensing objectives but with such matters as transport issues, crowd control, risk assessments, medical arrangements, health and safety issues, food registrations, planning consents etc. Whilst the onus is on the organiser to ensure that much of this is in place, it is still something that needs to be accounted for by the relevant authorities.

Even potentially with a TEN (less than 500 people) and certainly with other events of between 500 and 4999 (proposed not to need a licence following the consultation) it is essential that the authorities are able to make provision for any additional work, travel or other arrangements that may be required and that these be conditioned and control measures put in place to ensure public safety.

It is essential that every Police force and authority are notified of forthcoming events as both will know of the history in their area and can therefore anticipate needs ahead of the event.

Public Nuisance (Noise)

The consultation suggests that alcohol licences can be used to address noise issues and that the Police have the power to close premises at short notice as a result of disorder or on grounds of public nuisance and that such 'closure orders' lead automatically to a review of the licence. At review hearings the local authority has the power to impose a range of conditions as considered appropriate. The proposals rely heavily on the fact that failure to comply can carry heavy penalties for offenders.

Concerns are already outlined above in relation to enforceability of conditions and the increased bureaucracy and cost of reviews.

Whatever the outcome of the consultation, all premises would continue to be subject to noise abatement powers under the Environmental Protection Act 1990. Additionally there are powers under the Noise Act 1996 and Police powers under the Criminal Justice and Public Order Act 1994 and the Anti-Social Behaviour Act 2003 (closure of premises to prevent a public nuisance).

Again, as already outlined, such powers rely on the detection of a statutory nuisance and costly/lengthy evidence gathering by an increased number of people. Current licensing powers can deal with such matters much more quickly and effectively.

Both the police and local authorities will need a greater number of trained persons to enable these bodies to react to complaints as swiftly as possible. This will be likely to have far reaching cost implications on the Council.

Public Safety

It is suggested that it is sufficient coverage to ensure protection of the public at an event under provision of disability legislation and the Health and Safety at Work Act etc 1974. Additionally, there are fire safety duties bestowed upon premises by the Regulatory Reform (Fire Safety) Order 2005.

Government expects risk assessments and compliance with legislation to prevent problems at events, particularly as many events such as fun fairs etc already take place outside of the licensing regime. There is no reason why this should not follow for e.g. Circuses, Ballets etc.

It is unlikely that many practitioners, public or authorities will have concern over a deregulation in relation to circuses, ballets etc. This is an area where perhaps the Act has been too onerous. However, the proposal seeks to go way beyond the deregulation of these types of events to incorporate activities in pubs, nightclubs, small/medium sized outdoor events etc. For reasons already identified this would drastically increase complaints relating to 'unlicensed' events that will become increasing difficult to police, particularly if these event organisers are not required to notify the authorities.

Protection of Children

Two main areas of relevance have been identified, namely access by children to unsuitable content and the physical protection of children in relation to participation in indoor sport and other activities.

Most of the areas of concern in relation to unsuitable content have been highlighted as taking place in alcohol licensed premises and it is therefore suggested that children are protected adequately by restrictions that already apply in such premises. Sports activities are usually under the banner of a governing body with other controls in place.

Local Authorities have a duty under the Children Act 1989 to investigate any concerns relating to risk or harm to children.

Employment of children is covered too by the Children and Young Persons Act 1963.

This is one area where, although of extreme importance, there are a number of provisions with serious implications for non-compliance outside of the Licensing Act. It is also an area where most of the concerns that may be raised are closely linked to the sale of alcohol e.g. the purchase of alcohol by a minor.

Some entertainment requires protection of children e.g. age restricted films but these are already covered under other legislation. Stand up comedy is already exempt and does not appear to have caused concern e.g. in relation to children accessing comedy events with adult content.

Size of Events

It is suggested that the Act already recognises the concern over larger events with a threshold of additional charges over 4999 attendees. It is not suggested that alcohol licences alone should be used to control such events.

However, the consultation does propose that events with an audience of fewer than 5000 people are deregulated from the Act.

It has already been suggested by the Association of Chief Police Officers that 500 would be a more appropriate starting point and additional views are sought.

Even 500 seems a high figure as most premises are indoors and would have an attendance of less than 500. Such premises have already been identified as causing concern in a number of scenarios. The figure of 500 may be suitable for deregulation of outdoor events, which are often during the day, in larger open spaces and less likely to cause disruption to residents. It takes only a small number of people however to cause a nuisance and as such an attendance figure in relation to commercial premises would be a potentially dangerous move. In relation to non-commercial, whilst complaints are still raised, the concern is lower and these could be deregulated to some extent. However, perhaps 100 attendees (given that these are often ticketed and targeted to a certain audience) might be more appropriate.

Time of events

It has been argued that particular controls need to be applied to events held after 11.00pm. However, the consultation does not propose applying a cut-off time for deregulation due, in the main, to existing powers under the Noise Act 1996.

As already identified, the Noise Act requires that a statutory nuisance be detected. This is not always possible and it remains that there are many occasions where a statutory nuisance is not evident (therefore no action can be taken) but there is still a public nuisance that can be dealt with 'on the balance of probability' under the Licensing Act. If deregulated, this would no longer be possible and many cases of nuisance would go unchecked.

The concern of government is that most entertainment currently does not go on beyond 11.00pm, but that to impose a cut-off time would effectively make it illegal for an unlicensed performance to run 10 minutes over time.

A cut off time will not be generally necessary if entertainment remains regulated as each application can be considered independently, being granted automatically if there are no representations and receiving a fair hearing if there are.

If any large scale deregulation takes place, whilst this would be a retrograde step it would be appropriate (if not essential) that a cut off time be inserted, perhaps with the ability to apply for a licence to go beyond that time. This is in part due to the statutory nuisance issue, as highlighted above, but also because many people living near to entertainment venues are often required to rise early (certainly in midweek) for work. It would perhaps be more appropriate to set a cut off at say 10.00pm Sunday to Thursday and 11.00pm Friday and Saturday with the ability to apply for later on an individual basis using the licensing system as at present.

A Code of Practice for entertainment venues is being considered as an alternative to licensing. This would have no statutory sanctions but would promote good practice.

Whilst a code of practice could be a positive thing; it is felt that this should go 'hand in hand' with, and not instead of, legislation as there is little point in something that has no statutory sanctions and therefore no teeth. Whilst the major chains and reputable premises may well employ such good practice, it is always the minority of less well run premises that cause the majority of concerns. Even in well run premises, with all good practice provisions in place, issues will still occur and there will be little or no provision available to the licensing authority to deal with them.

Performance of Live Music

There is a coalition agreement to cut red tape to promote more live music. This is intended to be done by supporting the Live Music Bill and also to examine whether the proposed deregulation is ambitious enough.

Music in large venues has been thriving whilst in smaller venues it has been gradually dwindling and has resulted in many pubs closing down.

This is true and there are no concerns over promoting further Live Music events, which is something that is supported by Colchester's Licensing Policy. However, the authority will still need powers to deal with concerns that may be raised over and above the powers that would be left if full deregulation takes place. The alternative will otherwise be that many venues will face reviews, closure orders etc, these being the only options that remain (therefore causing additional burden on both authority and premises) and which currently may be dealt with by less onerous means.

The proposal therefore is to totally deregulate Live Music (amplified and unamplified) in all cases for audiences of fewer than 5000 people.

However in relation to unamplified music the consultation suggests that there is a potential argument that no audience or time limit is necessary due to the self-limiting possibilities from an event's acoustic reach. Views on this are sought.

Unamplified music can include drums, brass instruments, saxophones etc. In small premises and particularly near to residential premises, such instruments can be as loud as amplified music and cause as much of a problem to residents. It is therefore not appropriate to treat unamplified music (or at least certainly some forms of it) any differently to amplified music.

This authority is already able to cite an example of a major noise issue with regard to unamplified music.

The easiest solution would be to retain a licence requirement for all forms of music but to reintroduce the 'two in a bar' rule up to 10.00pm midweek and 11.00pm on Friday and Saturday as highlighted above.

Plays, Dance, Films, Indoor Sports, recorded Music and Entertainment Facilities

The proposal is to totally deregulate all of the above for audiences of fewer than 5000 people.

Primarily the reasons are that other legislation covers any concerns that may arise in relation to these. Also the fact that these go hand in hand with alcohol sales in most cases is a contributing factor to the consultation belief that no further bureaucratic controls are necessary.

Plays, films and indoor sports are probably adequately controlled by other legislation and do not in themselves raise many complaints. However, recorded music and associated entertainment facilities are in the same category as live music. Recorded music is usually amplified and the bass is often a major contributing factor to noise complaints. There is already an exception for music that is incidental to another activity and there seems little reason to alter this provision any further. It is also worth noting that recorded music and dance venues are often the ones that are most associated with public nuisance and disorder complaints.

Boxing and Wrestling

Licensing controls have traditionally been in place to ensure a safe environment for spectators and certain health and safety aspects. The consultation believes that the current safeguards are necessary but would be interested in any views that suggest a partial deregulation if an event is organised by a sport's governing body.

Additionally, any view suggesting that the definition of Boxing and Wrestling should be amended to include such activities as martial arts and cage fighting would be welcome.

There are proportionately very few boxing and wrestling venues. These are regulated usually by strict codes of practice and governing bodies. Given the current nature of the events however, it is appropriate to widen the definition to include other forms of combat sport.

Clearing up Unintended Consequences

Interpretation of some parts of the Licensing Act has at times been difficult, leading to differences in opinion and inconsistency of approach across licensing authorities.

The government seeks to use the consultation to clear up any problematic issues relating to regulated entertainment.

There are many aspects of the Licensing Act that are open to interpretation and that are often viewed differently across local authority areas. Clarification on some areas is only currently possible via stated cases following judicial review. Further guidance on any matters that the Government identifies as being vague or unclear would be welcome.

Adult Entertainment

This is not specified in schedule one, although is recognised to play a part in the current controls process. It is not being deregulated.

The majority of adult entertainment is no longer controlled under the provisions of the Act in any case as it has recently transferred to the Local Government (Miscellaneous Provisions) Act 1982 for all authorities that have adopted this legislation (although the consultation paper makes no mention of the requirement to adopt the legislation and the fact that there may be some authorities where this form of entertainment remains totally within the Licensing Act 2003).

Where the exemption applies, in relation to sexual entertainment for up to 11 occasions per year, it is proposed that a licence will still be required for regulated entertainment.

Conclusion

This authority strongly believes that local authorities and the police need to retain essential control over noise and opening times, where appropriate to do so. However, some licences could be deregulated.

Noise is the most relevant problem with both premises licences and the use of TENs. The law has recently changed to allow Environmental Control (noise team) them to comment on TENs. This has been for good reason and based on previous concern over noise issues. Under these proposals a TEN would not be required and the problems would therefore be exacerbated, possibly even before the new powers come into force.

We agree that there is a lot of room for improvement associated with charity and community entertainment.

How to Respond

Response to the consultation may be made by;

E-mail to: consultation@culture.gsi.gov.uk

By Post to: Nigel Wakelin
Regulated Entertainment Consultation Coordinator
Department for Culture Media and Sport
2-4 Cockspur Street
London
SW1Y 5DH

The closing date for responding is 3 December 2011.

e-mail: licensing.committee@colchester.gov.uk
website: www.colchester.gov.uk