

REPORT TO: LICENSING COMMITTEE – 26 FEBRUARY 2010

REPORT BY: LICENSING MANAGER

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**Department for Culture, Media and Sport - Legislative Reform Order:
Proposal to exempt small live music events from the Licensing Act
2003.**

1.0 Purpose of report

The purpose of this report is to notify the Committee of a consultation document issued by the Department for Culture, Media and Sport ("DCMS") relating to a proposal to exempt small live music events for audiences of not more than 100 people from the requirements of the Licensing Act 2003.

2.0 Recommendation

RECOMMENDED that the Committee note the contents of the report, together with the views of the Head of Environment and Public Protection Service and consider what, if any, formal response should be made.

3.0 Background Information

- 3.1 The Government have prepared a consultation document which seeks views on a proposal to exempt small live music events for audiences of not more than 100 people from the requirements of the Licensing Act 2003 ("the Act") relating to the licensing of live music as regulated entertainment under the Act.
- 3.2 Broadly speaking, the Government consider that the regulation of live music under the Act is justified by the potential impact of some live music events on the promotion of the licensing objectives. For example, residents living next door to a public house in a residential terrace, may be disturbed by loud performances of live music late at night, or by large numbers of people leaving the venue. Some live music events may also give rise to crime and disorder or endanger public safety.
- 3.3 However, the Government considers that small live music events for 100 people or fewer are, in practice, extremely unlikely to give rise to these concerns and will rarely, if ever, have an adverse impact on the promotion of the licensing objectives.
- 3.4 An important caveat associated with this proposal is that the exemption will only apply to those performances of live music which are held wholly inside a permanent building.

- 3.5 In recognition of the concerns raised in previous years to this proposal by local authorities, the police and residents about the potential impact of an exemption the Government also proposes to allow residents and local businesses (interested parties) and responsible authorities such as the police to apply to the licensing authority for an exemption at a specific premises to be "excluded" from the exemption (i.e. revoked).

This process would be similar to the review process for premises licences and club premises certificates.

The closing date for comments is 26 March 2010.

The full consultation document and associated Impact Assessment are attached as Appendix A and B.

5.0 Comments by the Head of Public Protection on the proposals

- 5.1 The Pollution Control Manager, on behalf of the Head of Environment & Public Protection Service, has made comments on the proposals for consideration by members which are attached as Appendix C.

6.0 Appendices

Appendix A – Copy of the Consultation Document issued by DCMS;

Appendix B – Copy of the Impact Assessment; and

Appendix C – Comments submitted for consideration by the Head of Environment & Public Protection Service.


Licensing Manager

There are no background papers associated with this report.



department for
**culture, media
and sport**

Proposal to exempt small live music events from the Licensing Act 2003

Licensing Act 2003

improving
the quality
of life for all

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

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Chapter 1: Introduction

Summary

The consultation document seeks your views on a proposal to exempt small live music events for audiences of not more than 100 people from the requirements of the Licensing Act 2003 (the Act) relating to the licensing of live music as regulated entertainment under the Act. It also seeks views on the Legislative Reform Order that will deliver the proposal (Annex C), and the Impact Assessment (published as a separate document and available with this consultation document at

http://www.culture.gov.uk/reference_library/consultations/6499.aspx.

The Legislative Burden

- 1.1** The activities regulated by the Licensing Act 2003 include ‘the provision of regulated entertainment’, defined in Schedule 1 of the Act as ‘entertainment’ or ‘entertainment facilities’ provided either for the public; exclusively for members of a club which is a ‘qualifying club’ under the Act; or for consideration and with a view to profit. ‘Entertainment’ includes a ‘performance of live music’ (Schedule 1(2)(1)(e) ‘where it takes place in the presence of an audience and is provided for the purpose, or for purposes which includes the purpose, of entertaining that audience’.
- 1.2** Section 2 of the Act requires anyone who wishes to carry on a licensable activity to obtain an appropriate authorisation in the form of a premises licence, a club premises certificate or a temporary event notice. Any changes to a licence or club premises certificate, for example, to add live music provision, must be authorised through the full or minor variation process.
- 1.3** Section 17(5) of the Act stipulates that an application for a premises licence or a full variation must be advertised in a local newspaper and outside the premises for a certain period to give local residents and responsible authorities (the police, environmental health, etc) the opportunity to make representations against, or in favour of, the application to the licensing authority. The minimum administrative cost of making these applications is £385 plus a fee payable to the licensing authority which can vary typically from between £100 - £635 depending on the rateable value of the premises. If representations are made, section 18 of the Act requires the licensing authority to hold a hearing to consider the evidence and, if necessary, impose conditions on the licence to remove or mitigate any risks to the licensing objectives, refuse authorisation for a specific licensable activity or, in extreme cases, reject the application outright. In the case of live music, licence conditions might include, for example: closing doors and windows when music is being performed: the installation of sound-proofing measures such as rubber seals around doorways: noise limiters on amplification equipment; and restrictions on what time and how frequently live music events may be held on the

premises. The licence holder may incur a cost in meeting some of these conditions; for example, at the top end, a noise limiter can cost around £3000. The minor variation process is intended only for changes that will not impact adversely on the licensing objectives, such as the addition of low risk, live music provision. The process is quicker and cheaper than the full variation process, but there is still a minimum, administrative cost to applicants of £50-£100 and a flat rate fee of £89. People who wish to hold live music events on an occasional basis can do so by sending a Temporary Event Notice to the licensing authority at a flat rate fee of £21.

- 1.4** In general, the regulation of live music under the Act is justified by the potential impact of some live music event on the promotion of the licensing objectives¹. For example, residents living next door to a public house in a residential terrace, may be disturbed by loud performances of live music late at night, or by large numbers of people leaving the venue. Some live music events may also give rise to crime and disorder or endanger public safety. However, the Government considers that small live music events for 100 people or fewer are, in practice, extremely unlikely to give rise to these concerns and will rarely, if ever, have an adverse impact on the promotion of the licensing objectives

The Government's proposal

- 1.5** The Government proposes to introduce a revocable exemption for small live music events performed for 100 people or fewer in licensed and unlicensed premises from the requirements of the Licensing Act 2003 relating to the licensing of live music as regulated entertainment.

Administrative savings and other benefits

- 1.6** We think that this measure will primarily benefit many small venues that wish to hold live music events, but are deterred by the licensing requirements and costs. It will also benefit musicians who may find more opportunities to perform. However, we have not estimated the administrative savings for these categories as they are not currently subject to an administrative burden. People and organisations that currently use Temporary Event Notices to put on live music on an occasional basis; and licensed venues that put on small live music events for no more than 100 people are subject to a burden that the proposal will lift. We have tentatively estimated that this administrative saving could be around £406K - £881k per year. This does not take into account some costs of putting on live music that are difficult to quantify, such as the cost of new conditions applied when new applications or variations are granted. We also estimate that there will be fee savings of around £379K - £503K. There will also be a small additional cost to and burden on licensing authorities in administering the process for excluding specific premises from the exemption. However, we anticipate that this is likely to happen in only a very small number of cases, perhaps 0.3% - 1.5% per year (averaged over ten year period). Costs on licensing authorities would therefore be minimal, around £224K- £1,211K per year across all 378 authorities. A small number of licensed premises with licence conditions relating to the exempt live music that involve ongoing costs (for example a restriction on the number of live music events per week) may wish to apply to the licensing authority to remove these conditions from the licence. However, we can assume a net saving to these premises as they will not apply if

¹ The prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm.

the cost of a Minor Variation is likely to be greater than the cost saving from removing the condition. Estimated cost savings are set out in full in the Impact Assessment (published as a separate document and available with this consultation document at http://www.culture.gov.uk/reference_library/consultations/6499.aspx and comment is welcome (see question 14).

Who will be affected by the proposals?

1.7 The proposals will affect:

- Licensed premises such as clubs and pubs, unlicensed premises such as cafes, restaurants, scout huts, record shops, etc. and individuals that wish to stage small, live music events;
- Musicians – particularly those starting out in the business - who will benefit from the greater availability of venues;
- Licensing authorities, who will have to administer the new process.
- Responsible authorities, who will need to be aware of the new process and their right to call for the revocation of an exemption;
- The wider public and communities who will benefit from the increased opportunity to hear live music, but will also need to be aware of how they can take action if an exempt live music event leads to problems at a premises near them.

Implementing the proposals

1.8 We propose to introduce these exemptions by means of a Legislative Reform Order (LRO) under section 1 of the Legislative and Regulatory Reform Act 2006 (LRRRA). See Chapter 3 for more details of the LRO process. Your views are invited on the Order which is set out at Annex C.

Chapter 2: How to Respond

- 2.1** The closing date for making responses to this consultation is 26th March 2010 2009. If you would like to respond to this consultation, please email your response to licensingconsultation@culture.gov.uk

If you prefer, you may submit a hard copy by post to:

Shelley Mickleburgh
Licensing Team
Sport and Leisure Directorate
2-4, Cockspur Street
London SW1Y 5DH

- 2.2** If you have any queries about this consultation, or require additional copies, please contact the Licensing Team at the above address or by telephone on 020 7211 6322 or 020 7211 6380.
- 2.3** However, if you have any questions or complaints about the process of consultation on this paper, please contact the DCMS enquiries team at enquiries@culture.gov.uk or by post to Department for Culture, Media and Sport, 2-4 Cockspur Street, London SW1Y 5DH.

Disclosure

- 2.4** Normal practice will be for responses to this consultation document to be disclosed, and for respondents to be identified. While the LRA provides for non-disclosure of representations, the Minister will include the names of all respondents in the list submitted to Parliament alongside the draft LROs. The Minister is also obliged to disclose any representations that are requested by, or made to, the relevant Parliamentary Scrutiny Committees. This is a safeguard against attempts to bring improper influence to bear on the Minister. We envisage that, in the normal course of events, this provision will be used rarely and only in exceptional circumstances. You should note that:
- If you request that your representation is not disclosed, the Minister will not be able to disclose the contents of your representation without your express consent and, if the representation concerns a third party, their consent too. Alternatively, the Minister may disclose the content of your representation but only in such a way as to anonymize it.

- In all cases where your representation concerns information on a third party, the Minister is not obliged to pass it on to Parliament if he considers that disclosure could adversely affect the interests of that third party and he is unable to obtain the consent of the third party.

2.5 Please identify any information that you or any other person involved do not wish to be disclosed. You should note that many facsimile and e-mail messages carry, as a matter of course, a statement that the contents are for the eyes only of the intended recipient. In the context of this consultation such appended statements will not be construed as being requests for non-inclusion in the post consultation review unless accompanied by an additional specific request for confidentiality.

Confidentiality and Freedom of Information

2.6 It is possible that requests for information contained in consultation responses may be made in accordance with access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you do not want your response to be disclosed in response to such requests for information, you should identify the information you wish to be withheld and explain why confidentiality is necessary. Your request will only be acceded to if it is appropriate in all the circumstances. *An automatic confidentiality disclaimer generated by your IT system will not of itself be regarded as binding on the Department.*

Chapter 3: Legislative Reform Orders: process

Legislative Reform Orders

3.1 The Government proposes to introduce these simplification measures by means of a Legislative Reform Order under section 1 of the Legislative and Regulatory Reform Act 2006. The proposed text for amendments to be made by the draft Order is at Annex C. This consultation is being conducted in accordance with the provisions of section 13 of the LRRRA and the terms of the Government's Code of Practice on Written Consultations. Views are invited on all aspects of the consultation paper, including the specific questions set out in this document and summarised in Chapter 7. All responses should be received by 26th March 2010.

Legislative Reform Order-making powers

- 3.2** The LRRRA confers powers on a Minister of the Crown, with the approval of Parliament, to make legislative reform orders for purposes which include (under section 1) the removal or reduction of burdens falling directly or indirectly on any person from any legislation.
- 3.3** Section 1(3) of the LRRRA defines a burden as a financial cost; an administrative inconvenience; an obstacle to efficiency, productivity or profitability; or a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.
- 3.4** An order may not impose, abolish or vary any tax nor may it create a new criminal offence or increase the penalty for an existing offence so that it is punishable above certain limits. This proposal will not do so.
- 3.5** The 2006 Act specifies, under Section 3, that an Order must satisfy six preconditions. These are whether the Order has a non-legislative solution; is proportional to the policy objective; strikes a fair balance; does not remove necessary protections; does not prevent the exercise of rights and freedoms; and is not of constitutional significance. These are discussed in Chapter 6.
- 3.6** It should be noted that even where the preconditions of Section 3 of the LRRRA are met, an LRO cannot:
- deliver 'highly controversial' proposals;
 - remove burdens which fall solely on Ministers or Government departments, except where the burden affects the Minister or Government department in the exercise of regulatory functions;
 - confer or transfer any function of legislating on anyone other than a Minister; persons that have statutory functions conferred on or transferred to them by an enactment; a body or office which has been created by the LRO itself;
 - impose, abolish or vary taxation;

- create a new criminal offence or increase the penalty for an existing offence so that it is punishable above certain limits;
- provide authorisation for forcible entry, search or seizure, or compel the giving of evidence;
- amend or repeal any provision of Part 1 of the LRRRA;
- amend or repeal any provision of the Human Rights Act 1998;
- remove burdens arising solely from common law.

Devolution

3.7 The LRRRA imposes certain restriction regarding LROs and the devolution agreements:

- Scotland – A Minister cannot make an LRO under Part 1 of the LRRRA which would be within the legislative competence of the Scottish Parliament. This does not affect the powers to make consequential, supplementary, incidental or transitional provisions.
- Northern Ireland – A Minister cannot make an LRO under Part 1 of the LRRRA that amends or repeals any Northern Ireland legislation, unless it is to make consequential, supplementary, incidental or transitional provisions.
- Wales – The agreement of the Welsh Ministers is required for any provision in an LRO which confers a function upon the Welsh Ministers, modifies or removes a function of the Welsh Ministers, or restates a provision conferring a function upon the Welsh Ministers. The agreement of the National Assembly for Wales is required for any provision in an LRO which is within the legislative competence of the Assembly.

3.8 The Minister can recommend one of three alternative procedures for Parliamentary scrutiny dependent on the size and importance of the LRO. The negative resolution is the least onerous and therefore may be suitable for LROs delivering small regulatory reform. The super-affirmative procedures is the most onerous involving the most in-depth Parliamentary scrutiny. Although the Minister can make the recommendation, Parliamentary Scrutiny Committees have the final say about which procedure will apply.

- Negative Resolution Procedure – This allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if neither House of Parliament has resolved during that period that the LRO should not be made and the Committee has not vetoed the proposal.
- Affirmative Resolution Procedure – This allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if it is approved by a resolution of each House of Parliament.
- Super-Affirmative Resolution Procedure – This is a two stage procedure during which there is opportunity for the draft LRO to be revised by the Minister:
 - Parliament is given 60 days of initial scrutiny, when the Parliamentary Committees may report on the draft LRO, or either House may make a resolution with regard to the draft LRO.
 - After the expiry of the 60 day period (during which evidence may be sought from stakeholders and the Minister or officials by the Committees of each House), recommendations on the LRO are made by the Committees, and the

Minister must lay a revised or unrevised LRO for further scrutiny (15 days for unrevised, 25 days for revised). After this second scrutiny period, the Minister may then make an LRO in the terms of the draft, but only if it is approved by a resolution of each House of Parliament and has not been vetoed by either or both Committees.

- 3.9** Under each procedure, the Parliamentary Scrutiny Committees have the power to recommend that the Minister not make the LRO. If one of the Parliamentary Committees makes such a recommendation, a Minister may only proceed with it if the recommendation is overturned by a resolution of the relevant House.
- 3.10** The Department for Culture, Media and Sport believes that the **affirmative resolution process** should apply to this LRO on the grounds that it amends the Act, and expands the scope of activities that are excluded from the ambit of the Act.
- 3.11** This consultation document contains a series of questions to which responses are invited. A list of all questions can be found at Chapter 7.
- 3.12** Comments are also invited on the draft LRO at Annex C and the Impact Assessment (published as a separate document and available with this consultation document at http://www.culture.gov.uk/reference_library/consultations/6499.aspx)
- 3.13** The consultation document follows the format recommended by the BRE for all such proposals. The criteria applicable to all UK consultations under the BRE Code of Practice on Consultation are at Annex D.
- 3.14** Under Section 3(2) of the LRRRA, the Minister of the Crown must be satisfied that certain preconditions have been met before presenting to Parliament a proposal to make a legislative reform order. For this reason, we would particularly welcome your views on whether and how the proposal in this consultation meets the following preconditions:
- (a) the policy objective intended to be secured by the order could not be satisfactorily secured by non-legislative means;
 - (b) the effect of the provision is proportionate to the policy objective;
 - (c) the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it;
 - (d) the provision does not remove any necessary protection;
 - (e) the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise; and
 - (f) the provision is not of constitutional significance.
- 3.15** These preconditions are addressed in Chapter 6.

Chapter 4: Background

Impact of the Act on live music

4.1 The Licensing Act 2003 replaced and consolidated several different licensing regimes. Live music was licensed under the Public Entertainment Licence (PEL) regime, except for performances of 2 musicians or fewer ('2 in a bar') which were exempt. In many ways, the Act had some positive benefits for live music, such as removing the need to have a separate permission and the requirement for routine annual renewals of licences. However, there were concerns about the impact of the Act on live music and in 2005, shortly after the Act came into force, the Government set up an independent Panel - the Live Music Forum - to monitor and evaluate the impact of the Act on the performance of live music. The Forum was chaired by Feargal Sharkey and included members from key bodies across the music industry and non-commercial sectors, together with local and national government, the Arts Council England and the hospitality trade. The Forum found that although the Act had a 'broadly neutral' impact on live music, there was some evidence of over zealous enforcement and lack of clarity about the legislation which had on occasion 'brought about an unwelcome and unwarranted impact on very small scale live music events (see http://www.culture.gov.uk/reference_library/publications/3650.aspx) . Research carried out by MORI for the Forum also found that 29% of smaller establishments that had operated without a public entertainment licence, but used the 2 in a bar exemption to put on live music, did not apply for live music provision when the Act came into force. The Forum recommended, amongst other things, that musical activity attracting less than 100 people should be exempt from the Act.

Pre-consultation on exemptions

4.2 In 2008, the Government had early discussions with stakeholders on proposals to exempt live music performances for 100 people or fewer in unlicensed premises and 200 people or fewer in licensed premises. Both exemptions were to be restricted to performances inside a building between the hours of 11pm and 11 am and would not be revocable. It was proposed that any problems arising from the exempt live music could be dealt with through penalties available under other legislation, such as on the spot fines for noise under environmental health legislation.

4.3 These proposals were well received by the Musician's Union and other live music representatives, but were strongly opposed by licensing authorities and the police on the grounds that:

- there was no statistical evidence that the Act was restricting live music. The Local Authority Coordinators of Regulatory Services (LACORs) believed that very few

applications for live music provision were refused. The Government's Licensing Statistics Bulletin 2008 showed that the number of authorisations for live music had

- risen by 7% during 2007/8 and although this did not reflect the number of live music events staged in practice, it was nevertheless an indicator that live music was thriving.
- the proposed exemptions would remove essential rights and protections from local residents and businesses, exposing them to an increased risk of noise nuisance, crime and disorder, etc. Licensing authorities' powers under the Act to impose licence conditions such as closing doors and windows, sound insulation, etc. helped to prevent these problems occurring.
- penalties available under other legislation were largely reactive and other enforcement agencies were not resourced to deal with the problems that were likely to arise if these events were exempted from the Act.

4.4 In view of these very serious objections, the Government decided to defer consideration of live music exemptions for one year and to pursue other measures to assist live music including the new Minor Variations process which would allow applicants to add low risk, live music provision more cheaply and quickly than the full variation procedure. The Musicians Union, LACORs, the BBPA and DCMS formed a working party to consider ways of promoting and encouraging take up of the Minor Variations process and the existing exemption for incidental live music. It was agreed that these measures should be given time to bed down – and their impact on live music assessed – before returning to the issue of exemptions.

Recent developments

4.5 The Minor Variations process came into force in August 2009 and there is early evidence to suggest that it is increasingly being used to add or vary low risk live music provision. The Live Music Working Party has met several times and will be publishing a new leaflet on incidental live music and other material encouraging the use of Minor Variations to add/vary live music provision in December. However, live music groups and campaigners have continued to express concerns about the impact of the Act on small live music venues. The House of Commons Culture, Media and Sport Committee, in its 6th report of sessions, also found some anecdotal evidence that live music in smaller venues was decreasing and recommended an exemption for venues with a capacity of 200 or fewer from the Act.

4.6 The Government takes these concerns seriously and, with this in mind, has returned again to the subject of exemptions. However, it also takes seriously the concerns of local authorities, residents and the police and for this reason has amended its earlier proposal as described in the following chapter to exempt only events performed for audiences of no more than 100 people and to include a power to revoke an exemption at a specific premises if there are problems arising from the live music events.

Chapter 5: Detailed Proposals

Conditions of exemption

5.1 The Government proposes to exempt from the Act small live music events in licensed and unlicensed premises subject to the following conditions:

a) The performance takes place wholly inside a building. There is evidence that live music events held outdoors, in temporary structures such as tents or on boats, vehicles, etc are more likely to generate noise nuisance than indoor events. The Government therefore recommends that the exemption should be restricted to performances that take place wholly inside a permanent building.

Question 1: Do you agree that the exemption should be limited to performances held wholly inside a permanent building? Yes/No. If No, please explain why.

b) The audience does not exceed 100 people and is accommodated entirely inside the building where the performance is taking place. It was clear from the Government's earlier pre-consultation on exemptions for live music for 200 or fewer people, that licensing authorities, residents and the police had serious concerns about exempting this size of venue. Some LAs, for example, considered that an audience limit of 200 would capture all live music venues in their area. The Government is aware that there are different views on this issue, and that the CMS Committee recommended an exemption for events for audiences of no more than 200, however on balance it considers that restricting the exemption to audiences of no more 100 is less likely to give rise to issues which may affect the promotion of the licensing objectives.

It also recommends that the audience should be accommodated entirely inside the building where the performance is taking place to prevent a situation whereby, for example, patio doors might be opened to allow people on a pub terrace to see the performance, allowing noise to escape.

Question 2: Do you agree that the exemption should be limited to performances of live music for not more than 100 people? Yes/No. If No, please explain why.

Question 3: Do you agree that audiences for exempt performances should be accommodated entirely within the building where the performance is taking place? Yes/No. If No, please explain why.

c) **The performance does not take place between 11pm and 8am.** Noise from live music events is much more likely to disturb nearby residents etc. late at night and in the early hours of the morning, particularly (but not exclusively) on weekdays. The Government therefore recommends that exempt performances should not take place between 11pm and 8am.

Question 4: Do you agree that exempt performances should not take place between 11pm and 8am? Yes/No. If No, please explain why.

d) **The performance does not take place in a premises which is subject to an 'exclusion' decision** (see paragraph 5.2 below). The Government's proposal includes a revocation process to exclude specific premises from the exemption if problems arise in connection with exempt live music performances.

Exclusion/revocation process

5.2 In view of the concerns of LAs, the police and residents about the potential impact of an exemption on local residents, etc, the Government proposes to allow residents and local businesses (interested parties) and responsible authorities such as the police to apply to the licensing authority for an exemption at a specific premises to be 'excluded' from the exemption (i.e. revoked). This process will be similar to the current process for reviewing premises licences and club premises certificates, except that:

- it will apply to licensed and unlicensed premises;
- the evidence submitted in support of the application must focus on the impact of the live music event (s) on the promotion of the licensing objectives;
- the licensing authority will be responsible for placing a notice on premises to advertise the application
- licensing authorities will only have two options following a hearing: to allow the exemption to continue; or to exclude (revoke) it;
- an exclusion decision will take effect immediately, even if there is an appeal;
- Exclusions in licensed premises will be noted on the licence or club premises certificate; exclusions in unlicensed premises will be entered in a new section in the Licensing Register.

Question 5: Do you agree that there should be an exclusion process as set out above? Yes/No. If No, please explain why.

Question 6: Do you agree that the exclusion process should be similar to the current review process, with the modifications proposed? Yes/No. If No, please explain why.

Licence conditions relating to the performance of exempted live music

- 5.3** Unlicensed premises that wish to stage live music events that qualify for the exemption will not need to make any kind of application to the licensing authority; the exemption will automatically apply. However, licensed premises that already stage live music and qualify for the exemption may still have conditions attached to their licence in connection with their live music provision. For example, they may be restricted to a certain number of performances per week, or be required to install and maintain sound proofing equipment. These premises will be able to apply to vary their licences to remove relevant conditions through the Minor Variations process, in so far as those conditions are inconsistent with the new exemption. The Government recognises that this will involve a one off cost to licensees, but considers that some level of scrutiny by the licensing authority is necessary to ensure that conditions that relate to other licensable activities at the premises are not removed. It is not always clear why a certain condition has been applied to the licence and licensing authorities will wish to satisfy themselves that necessary conditions relating to other licensable activities remain in place. It may also be the case that a premises with a number of rooms may stage live music events for an audience of no more than 100 in one room and for a bigger audience in another room. In these circumstances, the licensing authority is likely to consider that the licence conditions relating to live music should still apply, unless they relate specifically to the smaller room. In practice licensees are unlikely to apply to remove a licence condition unless the likely saving outweighs the cost of the application.

Question 7: Do you agree that licensed premises that qualify for the proposed exemption should have to apply through the Minor Variations process to remove licence conditions that apply to the exempt live music performance? Yes/No. If No, please explain why.

Chapter 6: Legislative Reform Order: Pre-conditions

Precondition (a): non-legislative solutions

- 6.1** The legal requirements relating to regulated entertainment are set out in the 2003 Act. The proposed changes to the Act cannot be made through secondary legislation (other than legislative reform orders).
- 6.2** Although the Secretary of State is empowered to issue Guidance to licensing authorities under section 182 of the 2003 Act, licensing authorities only have to 'have regard to it' and it cannot effect changes to primary legislation or regulations made under the 2003 Act or seek to influence the decisions of prosecuting authorities. In addition, the police (and other RAs) need have no regard to it.
- 6.3** The Government is satisfied that this proposal cannot be achieved by means of:
- any voluntary agreements between central government, licensing authorities and the police;
 - changes to the statutory Guidance that the Secretary of State issues under section 182 of the 2003 Act; or
 - changes to the regulations made by the Secretary of State under their powers in the 2003 Act.
- 6.4** The Government is therefore satisfied that this proposal cannot be achieved by non-legislative means.

Question 8: Do you agree that this proposal cannot be achieved by non-legislative means? Yes/No. If No, please explain why

Precondition (b): the effect of the provision is proportionate to the policy objective

- 6.5** The policy objective is to remove unnecessary burdens on small live music events. The proposal exemption will deliver this and no more by restricting the exemption to performances of live music for audiences of no more than 100 people. Anecdotal evidence suggests that these venues are unlikely to give rise to problems which may affect the promotion of the licensing objectives and therefore suffer a disproportionate burden from the requirements of the licensing regime.

Question 9: Do you agree that the effect of the proposal is proportionate to the policy objective? Yes/No. If No, please explain why.

Precondition (c): the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it

6.6 The public interest lies in: ensuring that live music can flourish, to the benefit of the wider community; providing more small venues where musicians, particularly young musicians who need to hone their skills in front of smaller audiences, can perform; and in ensuring that small venues can diversify their offer and generate income by putting on low risk live music. Any person who is adversely affected by an exempt live music performance will be able to apply to the licensing authority to have the exemption reviewed and if necessary, excluded. An exclusion decision will take effect as soon as it is made (even if there is an appeal), ensuring that residents and others are not exposed to further noise nuisance or other problems. The Government therefore considers that this proposal strikes a fair balance.

Question 10: Do you agree that the proposal, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it? Yes/No. If No, please explain why.

Precondition (d) the provision does not remove any necessary protection

6.7 The requirements of the Act in relation to live music are intended to ensure that local residents, businesses etc are protected from potential noise nuisance, crime and disorder, etc. that may arise from live music events. The restrictions on size of audience/venue, and the timing of events should ensure that these issues do not arise, but if, exceptionally, there are problems at a specific premises, any interested person or responsible authority may apply for an exclusion. Existing sanctions available under other enforcement regimes, such as noise protection orders and the powers available to the police in relation to crime and disorder would continue to apply to the exempt premises. The Government does not therefore consider that this proposal would remove any unnecessary protections.

Question 11: Do you agree that the proposal does not remove any necessary protection? Yes/No. If No, please explain why

Precondition (e) the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise

6.8 Residents and responsible authorities currently have the right to call for a review of any premises licence or club premises certificate if there are problems at a specific premises which affect the licensing objectives. They will continue to exercise this right in relation to exempt live music through the exclusion process. The restrictions on the exemption and existing sanctions under other enforcement regime will preserve

freedoms from noise nuisance, crime and disorder, etc that any person might reasonably expect to continue to exercise.

Question 12: Do you agree that the proposal does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise? Yes/No. If No, please explain why.

Precondition (f): constitutional significance

6.9 The proposal is considered to have no constitutional significance.

Question 13: Do you agree that the proposal has no constitutional significance? Yes/No. If No, please explain why.

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Chapter 7: List of Questions

Question 1: Do you agree that the exemption should be limited to performances held wholly inside a permanent building? Yes/No. If No, please explain why.

Question 2: Do you agree that the exemption should be limited to performances of live music for not more than 100 people? Yes/No. If No, please explain why.

Question 3: Do you agree that audiences for exempt performances should be accommodated entirely within the building where the performance is taking place? Yes/No. If No, please explain why.

Question 4: Do you agree that exempt performances should not take place between 11pm and 8am? Yes/No. If No, please explain why.

Question 5: Do you agree that there should be an exclusion process as set out above? Yes/No. If No, please explain why.

Question 6: Do you agree that the exclusion process should be similar to the current review process, with the modifications proposed? Yes/No. If No, please explain why.

Question 7: Do you agree that licensed premises that qualify for the proposed exemption should have to apply through the Minor Variations process to remove licence conditions that apply to the exempt live music performance? Yes/No. If No, please explain why.

Question 8: Do you agree that this proposal cannot be achieved by non-legislative means? Yes/No. If No, please explain why.

Question 9: Do you agree that the effect of the proposal is proportionate to the policy objective? Yes/No? If No, please explain why.

Question 10: Do you agree that the proposal, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it? Yes/No. If No, please explain why.

Question 11: Do you agree that the proposal does not remove any necessary protection? Yes/No. If No, please explain why.

Question 12: Do you agree that the proposal does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise? Yes/No. If No, please explain why.

Question 13: Do you agree that the proposal has no constitutional significance? Yes/No. If No, please explain why.

Question 14: Do you broadly agree with the estimates, assumptions and conclusions of the Impact Assessment (published as a separate document, and available alongside this consultation on the DCMS website at http://www.culture.gov.uk/reference_library/consultations/6499.aspx)? Yes/ No. If not, please say which estimate you disagree with, and provide any evidence that supports an alternate estimate.

Question 15: Do you think that this draft Order accurately reflects the proposed change?

Annex A: List of Consultees

Respondents are invited to contact us with the names of any other stakeholders groups not on this list who they feel might be able to contribute.

Action in Rural Sussex
Action with Communities in Rural England
Alcohol Concern
Arts Council in England
Arts Council of Wales
Association of Chief Police Officers
Association of Circus Proprietors of Great Britain
Association of Convenience Stores
Association of Directors of Social Services
Association of Inland Navigation Authorities
Association of Licensed Multiple Retailers
Association of Show and Agricultural Organisations
Bar Entertainment and Dance Association
BII
British Beer & Pub Association
British Board of Film Classification
British Holiday and Home Parks Association
British Hospitality and Restaurant Association
British Marine Federation
British Retail Consortium
Business in Sport and Leisure
Campaign for Real Ale
Central Council for Physical Recreation
Charity Commission
Chartered Institute of Environmental Health
Chief Fire Officers' Association
Children's Society

Chinese Takeaway Association UK
Cinema Exhibitors Association
Circus Arts Forum
Civic Trust
Commission for Rural Communities
Committee of Registered Clubs Associations
Community Matters
(DEFRA) Rural Communities Buildings Network
English Heritage
Enterprise Directorate, Department for Business, Enterprise and Regulatory Reform
Federation of Licensed Victuallers
Federation of Licensed Victuallers (Wales)
Federation of Private Residents' Association
Federation of Small Businesses
Federation of Wholesale Distributors
Fire and Rescue Authorities in England
Fire and Rescue Services in Wales
Greater London Authority
Guild of Bangladeshi Restaurateurs
Guild of Master Victuallers
Historic Houses Association
Independent Street Arts Network
Insolvency Service
Institute of Licensing
Interfaith Network
Justices Clerk Society
Licensing Act Active Residents Network
Licensing Authorities in England and Wales
Local Authorities Co-ordinators of Regulatory Services
Local Government Association
London Councils
Magistrates Association
Maritime and Coastguard Agency
Musicians Union
National Association of Kebab Shops
National Association of Local Councils
National Campaign for the Arts
National Farmers' Retail & Markets Association

National Federation of Fish Friers
National Federation of Retail Newsagents
National Neighbourhood Watch Association
National Operatic and Dramatic Association
National Organisation of Residents Associations
National Village Halls Forum
One Voice Wales
Open all Hours
Passenger Boat Association
Patersons Licensing Acts
Police Federation
Police Superintendents' Association
Rural Shops Alliance
Society of Local Council Clerks
Society of London Theatre and Theatrical Management Association
Tourism for All
Trading Standards Institute
United Kingdom Film Council
United Kingdom Warehousing Association
Voluntary Arts Network
Welsh Assembly
Welsh Council for Voluntary Action
Welsh Local Government Association
Welsh Music Foundation
Wine Spirits Trade Association

Annex B: Impact Assessment Question

Question 14: Do you broadly agree with the estimates, assumptions and conclusions of the Impact Assessment (published as a separate document, and available alongside this consultation on the DCMS website at

http://www.culture.gov.uk/reference_library/consultations/6499.aspx)? Yes/ No.

If not, please say which estimate you disagree with, and provide any evidence that supports an alternate estimate.

Annex C: Draft Order

Question 15: Do you think that this draft Order accurately reflects the proposed change?

In Schedule 1: **(a)** After paragraph 7 insert-

“Live music in certain small venues

7A (1) The provision of entertainment consisting of a performance of live music is not to be regarded as the provision of regulated entertainment for the purposes of this Act if the conditions in sub-paragraph (2) are satisfied in respect of the performance.

(2) The conditions are that-

(a) the performance takes place wholly inside a building;

(b) the performance takes place in the presence of an audience of not more than 100 persons, all of whom are accommodated wholly inside the building where the performance takes place;

(c) no part of the performance takes place between 11pm and 8am;

(d) the performance does not take place on premises in respect of which an exclusion decision under Part 2A of this Schedule has effect.”

(b) After Part 2 add-

“PART 2A

Live music in small venues: exclusion decisions

12A (1) The relevant licensing authority in relation to any premises must make an exclusion decision in respect of those premises, if the conditions in sub-paragraph (2) are satisfied.

(2) The conditions are that-

(a) an interested party or responsible authority has applied to the authority in accordance with this Part for an exclusion decision to be made in respect of the premises;

(b) the authority has held a hearing to consider the application; and

(c) the licensing authority are satisfied that the making of such a decision is necessary for the promotion of the licensing objectives.

(3) An exclusion decision made pursuant to sub-paragraph (1) has effect as soon as it is made.

(4) The Secretary of State may, by regulations under this paragraph-

(a) prescribe the form and manner in which an application under sub-paragraph (2)(a) is to be made, and the information and documents (if any) that must accompany it;

- (b) require the applicant to give a notice containing details of the application to such persons as may be prescribed within such period as may be prescribed;
- (c) require [the applicant][the authority] to advertise the application within such period as may be prescribed, and to invite representations about it to be made to the authority by interested parties, responsible authorities and such other persons as may be prescribed;
- (d) prescribe the period during which such representations may be made;
- (e) require any notice under sub-paragraph (b) or advertisement under sub-paragraph (c) to specify that period;
- (f) require that a record of each premises in respect of which an exclusion decision has effect be included in the relevant licensing authority's register kept under section 8.

(5) In this paragraph-

- (a) "interested party" in relation to any premises means-
 - (i) a person living in the vicinity of the premises,
 - (ii) a body representing persons who live in that vicinity,
 - (iii) a person involved in a business in that vicinity,
 - (iv) a body representing persons involved in such businesses.
- (b) "responsible authority" means-
 - (i) any of the authorities referred to in section 13(4)(a) to (e) or (g), or
 - (ii) a person prescribed for the purposes of this sub-paragraph."

(c) After paragraph 18 add-

"Live music in certain small venues: "building"

18A In paragraph 7A, a "building" does not include-

- (a) a temporary structure,
- (b) a structure without a roof, or without walls that form an enclosed space,
- (c) a vehicle, vessel or movable structure."

In Schedule 5, after paragraph 18 insert-

"Live music in certain small venues: exclusion decisions"

- 18A (1) This paragraph applies where an application for an exclusion decision in respect of premises is decided under paragraph 12A of Schedule 1.
- (2) An appeal may be made against that decision by-
- (a) the applicant for the decision,
 - (b) a responsible authority within the meaning of paragraph 12A(5)(b),
 - (b) if a premises licence has effect in respect of the premises, the holder of that licence;
 - (c) if a club premises certificate has effect in respect of the premises, the club which holds that certificate;
 - (d) if neither a premises licence nor a club premises certificate has effect in respect of the premises, the owner or occupier of the premises or such other persons as may be prescribed;

(e) an interested party within the meaning of paragraph 12A(5)(a) who made relevant representations in relation to the application.

(3) In sub-paragraph (2) “relevant representations” means representations which are relevant to one or more of the licensing objectives.

(4) An appeal under this paragraph must be made to the magistrates’ court for the petty sessions area (or any such area) in which the premises concerned are situated.

(5) An appeal under this paragraph must be commenced by a notice of appeal given by the appellant to the justices’ chief executive for the magistrates’ court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

(6) On an appeal under sub-paragraph (2)(a), (b) or (e) the premises licence holder, club premises certificate holder, owner, occupier or other prescribed person (as the case may be) is to be the respondent in addition to the licensing authority.”

Annex D: BRE Code of Practice on Consultations

The consultation is being conducted in line with the BRE Code of Practice on Written Consultation. The consultation criteria are listed below. More information can be found at:

<http://www.berr.gov.uk/files/file47158.pdf>

The Consultation Criteria

1) When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

2) Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

3) Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4) Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

5) The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

6) Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7) Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you have any questions or complaints about the process of consultation on this paper, please contact Tony Dyer, Consultation Co-ordinator, Strategy Division, Department for Culture, Media and Sport, 2-4 Cockspur Street, London, SW1Y 5DH tony.dyer@culture.gsi.gov.uk

Annex E: Legislative Reform Orders – Parliamentary Consideration

Introduction

1. This proposed exemption will require changes to primary legislation in order to give effect to it. The Minister could achieve these changes by making a Legislative Reform Order (LRO) under the Legislative and Regulatory Reform Act 2006 (LRRRA). LROs are subject to preliminary consultation and to rigorous Parliamentary scrutiny by Committees in each House of Parliament. On that basis, the Minister invites comments on this proposal as a measure that might be carried forward by a LRO.

Legislative Reform Proposals

2. The starting point for LRO proposals is thorough and effective consultation with interested parties, as reflected by this consultation and previous discussion with stakeholders. In undertaking this consultation, the Minister is expected to seek out actively the views of those concerned, including those who may be adversely affected, and then to demonstrate to the Scrutiny Committees that he or she has addressed those concerns.

3. Following the consultation exercise, when the Minister lays proposals before Parliament under the section 14 Legislative and Regulatory Reform Act 2006, he or she must lay before Parliament an Explanatory Document which must:

i) explain under which power or powers in the LRRRA the provisions contained in the order are being made;

ii) introduce and give reasons for the provisions in the Order;

iii) explain why the Minister considers that:

- there is no non-legislative solutions which will satisfactorily remedy the difficulty which the provisions of the LRO are intended to address;
- the effect of the provisions are proportionate to the policy objective;
- the provisions made in the order strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- the provisions do not remove any necessary protection;
- the provisions do not prevent anyone from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise;
- the provisions in the proposal are not constitutionally significant; and
- where the proposals will restate an enactment, it makes the law more accessible or more easily understood.

iv) include, so far as appropriate, an assessment of the extent to which the provision made by the order would remove or reduce any burden or burdens;

v) identify and give reasons for any functions of legislating conferred by the order and the procedural requirements attaching to the exercise of those functions; and

vi) give details of any consultation undertaken, any representations received as a result of the consultation and the changes (if any) made as a result of those representations.

4. On the day the Minister lays the proposals and explanatory document, the period for Parliamentary consideration begins. This lasts 40 days under negative and affirmative resolution procedure and 60 days under super-affirmative resolution procedure. If you want a copy of the proposals and the Minister's explanatory document laid before Parliament, you will be able to get them either from the Government department concerned or by visiting the BRE's website at:

<http://www.berr.gov.uk/whatwedo/bre/>

Parliamentary Scrutiny

5. Both Houses of Parliament scrutinise legislative reform proposals and draft LROs. This is done by the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords.

6. Standing Orders for the Regulatory Reform Committee in the Commons stipulate that the Committee considers whether proposals:

(a) appear to make an inappropriate use of delegated legislation;

(b) serve the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);

(c) serve the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);

(d) secure a policy objective which could not be satisfactorily secured by non-legislative means;

(e) have an effect which is proportionate to the policy objective;

(f) strike a fair balance between the public interest and the interests of any person adversely affected by it;

(g) do not remove any necessary protection;

(h) do not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;

(i) are not of constitutional significance;

(j) make the law more accessible or more easily understood (in the case of provisions restating enactments);

(k) have been the subject of, and takes appropriate account of, adequate consultation;

(l) give rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No 151 (Statutory Instruments (Joint Committee)) as are

Legislative Reform Order: Proposal to exempt small live music events from the Licensing Act 2003

relevant, such as defective drafting or failure of the department to provide information where it was required for elucidation;

(m) appear to be incompatible with any obligation resulting from membership of the European Union;

7. The Committee in the House of Lords will consider each proposal in terms of similar criteria, although these are not laid down in Standing Orders.

8. Each Committee might take oral or written evidence to help it decide these matters, and each Committee would then be expected to report.

9. Copies of Committee Reports, as Parliamentary papers, can be obtained through HMSO. They are also made available on the Parliament website at:

Regulatory Reform Committee (in the Commons):

http://www.parliament.uk/parliamentary_committees/regulatory_reform_committee.cfm

Delegated Powers and Regulatory Reform Committee (in the Lords):

http://www.parliament.uk/parliamentary_committees/dpr.cfm

10. Under negative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an LRO, after which the Minister can make the order if neither House of Parliament has resolved during that period that the order should not be made or to veto the LRO.

11. Under affirmative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an LRO, after which the Minister can make the order if it is not vetoed by either or both of the Committees and it is approved by a resolution of each House of Parliament.

12. Under super-affirmative procedure each of the Scrutiny Committees is given 60 days to scrutinise the LRO. If, after the 60 day period, the Minister wishes to make the order with no changes, he may do so only after he has laid a statement in Parliament giving details of any representations made and the LRO is approved by a resolution of each House of Parliament. If the Minister wishes to make changes to the draft LRO he must lay the revised LRO and as well as a statement giving details of any representations made during the scrutiny period and of the proposed revisions to the order, before Parliament. The Minister may only make the order if it is approved by a resolution of each House of Parliament and has not been vetoed by either or both relevant Committees.

How to Make Your Views Known

13. Responding to this consultation document is your first and main opportunity to make your views known to the relevant department as part of the consultation process. You should send your views to the address set out in the consultation document. When the Minister lays proposals before Parliament you are welcome to put your views before either or both of the Scrutiny Committees.

14. In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence.

15. Your submission should be as concise as possible, and should focus on one or more of the criteria listed in paragraph 6 above.

16. The Scrutiny Committees appointed to scrutinise Legislative Reform Orders can be contacted at:

Delegated Powers and
Regulatory Reform Committee
House of Lords
London
SW1A 0PW
Tel: 0207 219 3103
Fax: 0207 219 2571
DPDC@parliament.uk

Regulatory Reform Committee
House of Commons
7 Millbank
London
SW1P 3JA
Tel: 020 7219 2830/2833/2837
Fax: 020 7219 2509
regrefcom@parliament.uk

Non-disclosure of responses

17. Section 14(3) of the LRRRA provides what should happen when someone responding to the consultation exercise on a proposed LRO requests that their response should not be disclosed.

18. The name of the person who has made representations will always be disclosed to Parliament. If you ask for your representation not to be disclosed, the Minister should not disclose the content of that representation without your express consent and, if the representation relates to a third party, their consent too. Alternatively, the Minister may disclose the content of the representation in such a way as to preserve your anonymity and that of any third party involved.

Information about Third Parties

19. If you give information about a third party which the Minister believes may be damaging to the interests of that third party, the Minister does not have to pass on such information to Parliament if he does not believe it is true or he is unable to obtain the consent of the third party to disclosure. This applies whether or not you ask for your representation not to be disclosed.

20. The Scrutiny Committees may, however, be given access on request to all representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of legislative reform orders.

Better Regulation Executive
Department for Business, Innovation and Skills

Summary: Intervention & Options

| | | |
|------------------------------------|---|----------------------------|
| Department /Agency: DCMS | Title: Impact Assessment of Proposal exempt small live music events from the Licensing Act 2003 | |
| Stage: Pre Consultation | Version: | Date: November 2009 |
| Related Publications: | | |

Available to view or download at:

<http://www.>

Contact for enquiries: Mandy Stevens

Telephone: 0207-211-6322

What is the problem under consideration? Why is government intervention necessary?

In general, the regulation of live music under the Act is justified by the potential impact of some live music events on the promotion of the licensing objectives. For example, residents living next door to a public house in a residential terrace may be disturbed by loud performances of live music late at night, or by large numbers of people leaving the venue. Some live music events may also give rise to crime and disorder or endanger public safety. However, the Government considers that small live music events for 100 people or fewer are, in practice, extremely unlikely to give rise to these concerns and will rarely, if ever, have an adverse impact on the promotion of the licensing objectives.

What are the policy objectives and the intended effects?

We intend to reduce costs for small venues that wish to hold live music events, but are deterred by the licensing requirements and costs; and premises users that currently use Temporary Event Notices to put on live music in small venues on an occasional basis. We also wish to ensure that musicians and the audiences who wish to hear them do not have their opportunities limited unnecessarily by licensing restrictions.

What policy options have been considered? Please justify any preferred option.

The Government proposes to introduce a revocable exemption for small live music events performed for 100 people or fewer in licensed and unlicensed premises. It is clear from discussion with licensing authorities that various stakeholder groups are likely to have serious concerns about exemptions for venues of 200 capacity. Some LAs, for example, considered that an audience limit of 200 would capture all live music venues in their area. Restricting the exemption to audiences of no more 100 is less likely to give rise to issues which may affect the promotion of the licensing objectives.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

..... Date:

Summary: Analysis & Evidence

| | |
|-----------------------|---------------------|
| Policy Option: | Description: |
|-----------------------|---------------------|

| | | | |
|--|---|------------|---|
| COSTS | ANNUAL COSTS | | Description and scale of key monetised costs by 'main affected groups' There will be an additional burden on licensing authorities in having to administer the relatively small number of applications for 'exclusion' arising from the estimated existing population of small venues. |
| | One-off (Transition) | Yrs | |
| | £ | | |
| | Average Annual Cost (excluding one-off) | | |
| | £224K - £1211K | | Total Cost (PV) £ 1.9m – 10.1m |
| Other key non-monetised costs by 'main affected groups' Licensing authorities may have to administer applications for exclusion in relation to an unknown number of venues outside the estimated existing population of small venues. | | | |

| | | | |
|---|--|------------|---|
| BENEFITS | ANNUAL BENEFITS | | Description and scale of key monetised benefits by 'main affected groups' The monetised benefit is made up of the reduction in burden borne by those venues currently providing live music to fewer than 100 people. |
| | One-off | Yrs | |
| | £ | | |
| | Average Annual Benefit (excluding one-off) | | |
| | £785K-£1384K | | Total Benefit (PV) £6.5m – 11.5m |
| Other key non-monetised benefits by 'main affected groups' As described below, there may be substantial benefits to applicants for authorisation for live music who might have been subject to conditions, but we have no means of quantifying this benefit. | | | |

Key Assumptions/Sensitivities/Risks

| | | | |
|-------------------------|-------------------------|---|---|
| Price Base Year 2009 | Time Period Years 10 | Net Benefit Range (NPV) £ -3.5m – 9.6m | NET BENEFIT (NPV Best estimate) £ 3.1m |
|-------------------------|-------------------------|---|---|

| | | | | |
|---|-----------------------|--------|--------|-------|
| What is the geographic coverage of the policy/option? | England & Wales | | | |
| On what date will the policy be implemented? | Spring 2010 | | | |
| Which organisation(s) will enforce the policy? | Licensing Authorities | | | |
| What is the total annual cost of enforcement for these organisations? | £224K - £1211K | | | |
| Does enforcement comply with Hampton principles? | Yes | | | |
| Will implementation go beyond minimum EU requirements? | No | | | |
| What is the value of the proposed offsetting measure per year? | N/A | | | |
| What is the value of changes in greenhouse gas emissions? | N/A | | | |
| Will the proposal have a significant impact on competition? | No | | | |
| Annual cost (£-£) per organisation (excluding one-off) | Micro | Small | Medium | Large |
| Are any of these organisations exempt? | Yes/No | Yes/No | N/A | N/A |

| | | | |
|---|------------|-----------------------|---------------------------|
| Impact on Admin Burdens Baseline (2005 Prices) | | (Increase - Decrease) | |
| Increase of £ | Decrease £ | 587k | Net Impact £ -587k |

Key:

Annual costs and benefits: Constant Prices
(Net) Present Value

Evidence Base

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

- 1) The proposed exemption is for the provision of live music events for 100 or fewer people, with a power to review and revoke exemptions at specific problem premises. This impact assessment will address the administrative burden, and fee burden, currently affecting venues providing such provision that will be reduced or removed by the proposals. However, the main beneficiaries will be those who do not currently provide live music and are therefore not subject to a formal “administrative burden” but are nevertheless restricted by current licensing requirements. This is the key group that the change in the legislation is designed to assist, and will include:
 - a. **Licensed premises such as pubs, bars and restaurants that do not currently provide live music, and are not licensed for live music, but wish to provide live music.** It is difficult to estimate the number of such premises. In particular, very few applications for new licences, or applications for variations of existing licences, are refused (about 3% in each case according to the latest licensing Statistical Bulletin¹). This follows the evidence of a survey conducted by MORI for the Live Music Forum in 2006², which found that almost all of those smaller establishments that had formerly provided live music under the “two in a bar” exemption, and applied for live music authorisation under the new regime, were granted it. This category is therefore presumed to include, in particular, some of the 29% of smaller venues that the survey found had formerly provided music through the “two in a bar” exemption but did not apply for authorisation under the new regime, but excepting any whose continuing provision is exempt or authorised under Temporary Event Notices (TENs).
 - b. **Venues (or, rather, potential venues) that do not currently provide live music, and are not licensed for live music, but wish to provide live music.** This could include scout huts, cafes, restaurants and record shops. We have no means of estimating how many venues in this category may take advantage of the proposed exemption.

- 2) The administrative burden lifted will be that now borne by those venues currently providing live music to fewer than 100 people. (We will not attempt to estimate how many premises will decide to permit a number different from their capacity or size, as we have no information about this). The following cost burdens at these venues will be affected:
 - a. TENs made “for” live music (we will tentatively estimate the number and cost of these TENs).
 - b. Variations to premises licences and club certificates currently being obtained for the purposes of permitting live music. Some of these will be Minor Variations’, although it is difficult to estimate how many as we do not yet have any data on the new Minor Variations procedure.
 - c. Variations that relate to the increased provision of live music on licences already permitting live music. It is likely that a significant proportion of these would be Minor Variations, as this group is made up of relatively small venues that already permit live music. We have no means of estimating how many

¹ “DCMS Statistical Bulletin: Alcohol, Entertainment and Late Night Refreshment Licensing, England and Wales April 2008- March 2009”.

² “Licensing Act 2003: The experience of smaller establishments in applying for live music authorisation” (December 2006) Page 9: “..(less than half of one percent of all establishments) applied for a licence to stage live music but were denied.”

variations belong to this category because we do not hold figures on the number of variations broken down by subject type.

- d. The savings related to the costs of additional conditions that can be imposed following representations received during a variation application, or volunteered alongside a minor variation. We will not attempt to quantify this cost, as there are too many unknown variables. For example, in a small number of cases, conditions have been imposed that limit the number of performances. This will be a substantial cost in some circumstances but in other cases will have no impact at all (because there is no intention to have more than this many events in any case). A more innocent seeming condition is that of having to close doors and windows. This will usually have very little cost. However, in a rare case it may effectively require a venue to fit air conditioning. This cost is also different from the total cost of conditions resulting from live music being on a licence at such venues (a figure which is itself difficult to estimate) because old conditions will still apply (although Guidance will point to the possibility of removing them through the Minor Variation process).

The number and cost of TENs made “for” live music at venues with less than 100 capacity

Number of TENs

- 3) According to the latest Statistical Bulletin, there were 123,400 TENs in 2008-09. TENs may authorise the full range of licensable activities and we do not collect statistics on how many of them were largely intended for live music alone³. The Live Music Survey of 2007⁴ indicated that 38% of ‘secondary live music venues’ (venues whose core business is not the staging of live music but which have the potential to stage live music) had a capacity of 100 or fewer. We can assume that no venue relying on TENs to stage live music regards this as its core business. This survey estimated the total population of secondary venues as 149,427. 42% of these had put on live music in the last twelve months, one in ten of those doing so under TENs. The average number of live music events amongst those who had put on live music events was 22. However, the maximum number that can be authorised at a single venue under TENs is 12. Given that some of these may not have gone ahead without provision for alcohol or late night refreshment, will assume 6 - 8 TENs issued ‘for’ live music at these premises.

| Size of Venue | Number of Potential ‘Secondary’ Venues | Number with capacity below 100 | Number putting on live music | Number using TENs | Average Number of TENs used | Number of TENs |
|---------------|--|--------------------------------|------------------------------|-------------------|-----------------------------|----------------|
| 100 | 149, 427 | 38% = 56,782 | 42% = 23,848 | 10% = 2,385 | 6-8 | 14,310-19,080 |

³ If, for example, the event is one at a venue without a premises licence that would not go ahead without authorisation for the sale of alcohol, then the organisers would not benefit from the proposed exemption, as they would have to issue a TEN to obtain authorisation for the sale of alcohol. (Furthermore, we know that some of the events recorded by the Live Music Survey were private events. In these cases, the live music would not typically be licensable in itself but the sale of alcohol would). However, we do not have enough information to estimate how many TENs fall into this category).

⁴ “A survey of live music in England and Wales in 2007” (BMRB Social Research).

Burden of Applying for TENs

- 4) The fee for a TEN is £21. The administrative cost of applying for a TEN has been estimated previously as £16⁵

| Estimated Number of TENs | Estimated Fee Burden (£21) | Estimated Administrative Burden (£16) |
|--------------------------|----------------------------|---------------------------------------|
| 14,310 – 19,080 | £300,510 - £400,680 | £228,960 - £305,280 |

Variations to premises licences and club certificates currently being obtained to permit live music.

- 5) According to Licensing Statistical Bulletins, the number of premises licences and certificates permitting live music has increased in recent years. There was an increase of 3,900 in 2008-2009, following an increase of 6,300 in 2007-2008. This slowing of the increase could reflect economic circumstances affecting the sector generally (which may improve in the future), or it could to some extent reflect the number of live music authorisations reaching saturation point. We will assume that 3,900 is a typical increase going forward. However, some of these authorisations will be the result of applications that include other licensable activities. Premises to which the exemption applies, but which still intend to provide alcohol, late night refreshment or other forms of regulated entertainment will still need to obtain a licence, so they will not benefit from a reduced cost burden to the same degree. We will assume that new licence applications at small premises are those that do not benefit for this reason, and that the variation applications do benefit. There were 11,630 applications to vary licences and certificates in 2007-08 (compared with 12,600 new applications) and 7,820 (compared 10,810 new applications) in 2008-09. This means that, over the last two years, 45% of applications were for variations. We are therefore making three very broad assumptions:
- that the increase in live music authorisations is derived from variation and new applications in the same proportions as the overall proportion over the last two years;
 - that the number of variations thus estimated is a reasonable reflection of the number of additional authorisations that would not need to be applied for under the proposed exemption and;
 - that these estimates can be applied to the relevant population of premises with under 100 capacity as estimated by the 2007 Live Music Survey.

| Est. Number of New LM Authorisations | Est. number that are intended specifically 'for' live music (45%) | Percentage of venues under 100 (38%) |
|--------------------------------------|---|--------------------------------------|
| 3,900 | 1,755 | 667 |

Costs of variations to premises licences and club certificates currently being obtained to permit live music.

- 6) We will assume that venues with capacity under 100 that make variations are split evenly between Bands A and B, with an average variation fee of £145 (some may be except from Licensing Fees, and some will be in higher fee bands). The Minor Variations Impact Assessment contained estimates that the administrative cost of a full variation is £385-£950. Some of the current applications made for the purpose of authorising live music will be minor variations applications. The fee is £89, and the estimated administrative cost is £35. We will estimate that between 10% and 25% of applications will be minor variations.

⁵ "Legislative reform orders: proposals to: (1) Introduce a simplified process for minor variations to premises licences and club premises certificates and (2) Remove the requirement for a designated premises supervisor and personal licence at community premises." (DCMS, August 2008).

| | | Fee Level | | Totals |
|----------------------------|---------------------------|-----------|-------------------|--------------------------|
| Fee Burden | Full Variations (500-600) | £145 | £72,500-£87,000 | |
| | Minor Variations (67-167) | £89 | £5,963 – £14,863 | |
| Total fee savings | | | | £78,463-£101,863 |
| Admin Burden | Full Variations (500-600) | £350-£950 | £175,000-£570,000 | |
| | Minor Variations (67-167) | £35 | £2,345 - £5,845 | |
| Total Admin Burdens | | | | £177,345-£575,845 |

Therefore, estimated fee savings from the categories described total £379K - £503K.

Estimated administrative savings total £406K - £881K.

Estimated Burden of Proposed Exemption on Licensing Authorities

Burden at Existing Premises

- 7) A small proportion of the exempt premises will be subject to an exclusion application and therefore impose costs on the licensing authority, which will have to administer the process, including conducting a hearing. We do not know how many will require a review in this way. We have previously estimated the cost of a review as around £1,200 and will use the Live Music Survey estimated population of 149,427, 38% of which (56,782) have capacities under 100. (Note that this refers only to secondary venues. However, existing small 'primary' venues will generally already have the live music authorisation they require and not cause additional reviews. Assuming that there has been no change in this population since 2007 is also a major assumption). Currently, reviews as a proportion of licences and certificates are relatively rare. There were only 1,125 in 2008-2009 from a total population of 215,000 premises licences and certificates, or just over half of one percent. Public nuisance is likely to be the most common grounds for review motivated by the use of a new authorisation for performance of live music. This may be analogous to the likely situation of venues using a new exemption. Just under half of reviews related to public nuisance (it may have been one of a number of factors), leaving 0.25% of premises possibly being reviewed on noise nuisance grounds in any year. However, premises using the exemption may be more likely to attract concerns over nuisance than premises that have submitted an application for live music authorisation, given that the application will have included an operating schedule detailing the proposed activities and had conditions imposed if necessary. We will assume that between 0.3% and five times that number, 1.5% may be reviewed per year. It seems likely that there will be relatively more exclusions initially, followed by a substantial decline as fewer new venues seek to take advantage of the exemption, but we will assume that this is the average in a ten year period. This means a total of £204K-£1,021K amongst these known venues, of which £15K-£73K (see below) is estimated to relate to the unlicensed venues amongst this population. It must be stressed that these are very tentative estimates.

| Venues Affected annually (0.3% -1.5% of 56,782) | Cost of review | Estimated annual burden |
|---|----------------|-------------------------|
| 170 – 851 | £1200 | £204K - £1021K |

Burden at existing unlicensed venues, and new unlicensed venues

- 8) Venues that are unlicensed, and those that are outside this estimated population of secondary music venues, will still be potentially subject to exclusion if they seek to take advantage of the exemption. Some of these will be included in the above estimate. Although we might use the same (very tentative) estimate for the proportion that result in reviews, we do not know how many such premises will use the exemption, and it is therefore very difficult to estimate the number of exclusions amongst these groups.

Of the population reported by the Live Music Survey 42% had put on live music. 14% of these had done so without a premises licence with authorisation for live music. Half of the remaining 58% that had not put on live music did not have authorisation to do so. If we assume that these figures apply equally to the population with capacity under 100 (56,782), then the total number without authorisation is 19,806.

| | % without authorisation | total |
|--|-------------------------|--------|
| Had put on live music 42% = 23,848 | 14% = 3,339 | |
| Had not put on live music 58% = 32,934 | 50% = 16,467 | 19,806 |

However, a venue might still have a licence if it does not have authorisation for live music. Those that are unlicensed and not already exempt (and therefore likely to put on new live music events) are likely to come from the two categories of 'restaurants and cafes' (29,309) and 'church halls and community centres' (27,939). We will assume that the restaurants had licences (e.g., for sales of alcohol) and that the cafes, were unlicensed. There were around 3,610 cafes in the population. The Live Music Survey estimated that 38% of its total population had a capacity of 100 or fewer. However, we will assume that this applies to all the cafes.

There were around 14,781 church halls (which are already exempt) in the population of 'church halls and community centres', leaving around 13,158 community centres. Action with Communities in Rural England (ACRE) estimated in 2009 that 75% of rural village halls do not have a licence for regulated entertainment. Although 36% have a licence for alcohol, we will assume that few of these are additional to the group that has a licence for regulated entertainment, and that this proportion also applies to the urban community centres. This implies 3,290 in this category, of which we will assume 38% have a capacity of 100 or fewer, leaving 1,250, and a total of 4,860 potential live music venues in the existing population that do not currently have a licence or an exemption.

However, the proposed exemption may apply to any building, not only those that have may have previously been considered to be potential secondary live music venues. It is possible that completely unexpected small venues might put on live music under the proposed exemption, and thus be subject to exclusion, and we have no means of predicting this with any accuracy. The only limitation we can place on the potential numbers is the common sense view that it is unlikely that any very large number of new venues will emerge in buildings that are generally not designed for live performance and do not sell alcohol. We will therefore tentatively suggest that the total population of venues is about two to three times larger than this estimate:

| Est. Pop. of venues derived from Live Music Survey | Assumed total potential users of exemption | Est. annual number subject to exclusion over 10 year period (0.3%-1.5%) | Estimated cost of administering exclusion | Total estimated cost of administering exclusions at unlicensed premises |
|--|--|---|---|---|
| 4,860 | 9,720 – 14,580 | 29-219 | £1200 | £35K-£263K |

Of this £35K-£263K estimated cost in relation to unlicensed premises, £15K-£73K are assumed to be included in the existing population as described above, implying total costs annual costs on local authorities of £224K-£1,211K.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

| Type of testing undertaken | <i>Results in Evidence Base?</i> | <i>Results annexed?</i> |
|----------------------------|----------------------------------|-------------------------|
| Competition Assessment | Yes/No | Yes/No |
| Small Firms Impact Test | Yes/No | Yes/No |
| Legal Aid | Yes/No | Yes/No |
| Sustainable Development | Yes/No | Yes/No |
| Carbon Assessment | Yes/No | Yes/No |
| Other Environment | Yes/No | Yes/No |
| Health Impact Assessment | Yes/No | Yes/No |
| Race Equality | Yes/No | Yes/No |
| Disability Equality | Yes/No | Yes/No |
| Gender Equality | Yes/No | Yes/No |
| Human Rights | Yes/No | Yes/No |
| Rural Proofing | Yes/No | Yes/No |

Annexes

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**Formal Response from Environment & Public Protection Service,
Pollution Control Team**

Officer Responsible: Richard Lee, Pollution Control Manager

**PROPOSAL TO EXEMPT SMALL LIVE MUSIC EVENTS FOR AUDIENCES OF
NOT MORE THAN 100 PEOPLE FROM THE REQUIREMENTS OF THE
LICENSING ACT 2003**

Conditions of Exemption – Consultation Response

The Government proposes to exempt from the Act small live music events in licensed and unlicensed premises subject to the following conditions:

a) The performance takes place wholly inside a building. There is evidence that live music events held outdoors, in temporary structures such as tents or on boats, vehicles, etc are more likely to generate noise nuisance than indoor events. The Government therefore recommends that the exemption should be restricted to performances that take place wholly inside permanent building.

Question 1: Do you agree that the exemption should be limited to performances held wholly inside a permanent building?

Response from Pollution Control E&PPS: YES.

b) The audience does not exceed 100 people and is accommodated entirely inside the building where the performance is taking place. It was clear from the Government's earlier pre-consultation on exemptions for live music for 200 or fewer people, that licensing authorities, residents and the police had serious concerns about exempting this size of venue. Some LAs, for example, considered that an audience limit of 200 would capture all live music venues in their area. The Government is aware that there are different views on this issue, and that the CMS Committee recommended an exemption for events for audiences of no more than 200, however on balance it considers that restricting the exemption to audiences of no more 100 is less likely to give rise to issues which may affect the promotion of the licensing objectives.

It also recommends that the audience should be accommodated entirely inside the building where the performance is taking place to prevent a situation whereby, for example, patio doors might be opened to allow people on a pub terrace to see the performance, allowing noise to escape.

Question 2: Do you agree that the exemption should be limited to performances of live music for not more than 100 people?

Response from Pollution Control E&PPS: NO.

An assessment of acceptability should not be driven by the capacity of the venue and therefore **the audience number is an irrelevance**. More appropriately we've adopted a robust risk based appraisal of the potential for public nuisance to form an

opinion on suitability. Factors considered within these assessments are likely to include, amongst others: the proposed hours and type of entertainment, the acoustic capabilities of the building to prevent music breakout, the nature of the locality within which the premises is located, the ability of the responsible person to prevent public nuisance and probably most importantly whether the premises is attached to residential accommodation.

Question 3: Do you agree that audiences for exempt performances should be accommodated entirely within the building where the performance is taking place?

Response from Pollution Control E&PPS: YES.

If this is not the case, breakout of music through apertures to external audiences will increase the potential for public nuisance.

c) The performance does not take place between 11pm and 8am. Noise from live music events is much more likely to disturb nearby residents etc. late at night and in the early hours of the morning, particularly (but not exclusively) on weekdays. The Government therefore recommends that exempt performances should not take place between 11pm and 8am.

Question 4: Do you agree that exempt performances should not take place between 11pm and 8am?

Response from Pollution Control E&PPS: YES (See Notes Below).

Although **we firmly believe that the proposal is unnecessary and should not be accepted** if exempted entertainment were to be permitted we would expect it to terminate at 11pm (although an earlier curfew would be preferred). 11pm is often considered to be the hour when the nighttime period begins and therefore when most people are likely to be sleeping or considering sleep. The proposed curfew suggests that prior to 11pm individuals are less likely to suffer from intrusive music and its disturbing characteristics and in turn should perhaps endure a higher level of noise. We do not agree with this. The impact upon younger adults and children who generally retire to bed earlier than 11pm is also likely to be more intense and less acceptable.

The performance does not take place in a premises which is subject to an 'exclusion' decision. The Government's proposal includes a revocation process to exclude specific premises from the exemption if problems arise in connection with exempt live music performances.

Exclusion / revocation process

In view of the concerns of LAs, the police and residents about the potential impact of an exemption on local residents, etc, the Government proposes to allow residents and local businesses (interested parties) and responsible authorities such as the police to apply to the licensing authority for an exemption at a specific premises to be 'excluded' from the exemption (i.e. revoked). This process will be similar to the

current process for reviewing premises licences and club premises certificates, except that:

- it will apply to licensed and unlicensed premises;
- the evidence submitted in support of the application must focus on the impact of the live music event (s) on the promotion of the licensing objectives;
- the licensing authority will be responsible for placing a notice on premises to advertise the application;
- licensing authorities will only have two options following a hearing: to allow the exemption to continue; or to exclude (revoke) it;
- an exclusion decision will take effect immediately, even if there is an appeal;
- exclusions in licensed premises will be noted on the licence or club premises certificate;
- exclusions in unlicensed premises will be entered in a new section in the Licensing Register.

Question 5: Do you agree that there should be an exclusion process as set out above?

Response from Pollution Control E&PPS: NO.

Although this procedure will allow responsible authorities to exclude premises, the right of exemption is likely to further increase our regulatory liabilities.

The requirement of an **evidence based approach and rights of appeal** requires investigation and resource.

Despite our duty to investigate complaints there are few obvious benefits in pursuing an exclusion where 'disturbance' rather than 'nuisance' exists.

If nuisance is not proven then there may be few reasonable grounds for exclusion.

Our duty to serve an abatement notice upon proving the existence of nuisance rather than seeking exclusion will take precedence and therefore be the primary enforcement route.

Following service of an abatement notice our ability to exclude and/or resolve through application and condition may be considered by some to be a necessity prior to the implementation of criminal proceedings.

Question 6: Do you agree that the exclusion process should be similar to the current review process, with the modifications proposed?

Response from Pollution Control E&PPS: NO. For the reason stated above.

Licence conditions relating to the performance of exempted live music

Unlicensed premises that wish to stage live music events that qualify for the exemption will not need to make any kind of application to the licensing authority; the exemption will automatically apply. However, licensed premises that already stage live music and qualify for the exemption may still have conditions attached to their licence in connection with their live music provision. For example, they may be restricted to a certain number of performances per week, or be required to install and maintain sound proofing equipment. These premises will be able to apply to vary their licences to remove relevant conditions through the Minor Variations process, in so far as those conditions are inconsistent with the new exemption. The Government recognises that this will involve a one off cost to licensees, but considers that some level of scrutiny by the licensing authority is necessary to ensure that conditions that relate to other licensable activities at the premises are not removed. It is not always clear why a certain condition has been applied to the licence and licensing authorities will wish to satisfy themselves that necessary conditions relating to other licensable activities remain in place. It may also be the case that a premises with a number of rooms may stage live music events for an audience of no more than 100 in one room and for a bigger audience in another room. In these circumstances, the licensing authority is likely to consider that the licence conditions relating to live music should still apply, unless they relate specifically to the smaller room. In practice licensees are unlikely to apply to remove a licence condition unless the likely saving outweighs the cost of the application.

Question 7: Do you agree that licensed premises that qualify for the proposed exemption should have to apply through the Minor Variations process to remove licence conditions that apply to the exempt live music performance?

Response from Pollution Control E&PPS: YES.

The Minor Variation process will provide the ability to consider other conditions imposed to prevent public nuisance.

Legislative Reform Order: Pre-conditions

Precondition (a): non-legislative solutions

The legal requirements relating to regulated entertainment are set out in the 2003 Act. The proposed changes to the Act cannot be made through secondary legislation (other than legislative reform orders).

Although the Secretary of State is empowered to issue Guidance to licensing authorities under section 182 of the 2003 Act, licensing authorities only have to 'have regard to it' and it cannot effect changes to primary legislation or regulations made under the 2003 Act or seek to influence the decisions of prosecuting authorities. In addition, the police (and other RAs) need have no regard to it.

- The Government is satisfied that this proposal cannot be achieved by means of:

- any voluntary agreements between central government, licensing authorities and the police;
- changes to the statutory Guidance that the Secretary of State issues under section 182 of the 2003 Act; or
- changes to the regulations made by the Secretary of State under their powers in the 2003 Act.

The Government is therefore satisfied that this proposal cannot be achieved by non-legislative means.

Question 8: Do you agree that this proposal cannot be achieved by non-legislative means?

Response from Pollution Control E&PPS: YES.

Precondition (b): the effect of the provision is proportionate to the policy objective

The policy objective is to remove unnecessary burdens on small live music events. The proposed exemption will deliver this and no more by restricting the exemption to performances of live music for audiences of no more than 100 people. Anecdotal evidence suggests that these venues are unlikely to give rise to problems which may affect the promotion of the licensing objectives and therefore suffer a disproportionate burden from the requirements of the licensing regime.

Question 9: Do you agree that the effect of the proposal is proportionate to the policy objective?

Response from Pollution Control E&PPS: NO.

One of the licensing objectives is the **prevention** of public nuisance. Within Portsmouth there is no evidence anecdotal or otherwise to suggest small venues are **less** likely to cause nuisance.

There is however evidence that a disproportionate number of small venues are located in areas of high population, attached or in very close proximity to residential accommodation. These small premises have been the cause of the vast majority of statutory nuisances proven from licensable activities and been subject to more enforcement proceedings than any other type of entertainment premises.

Precondition (c): the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it

The public interest lies in: ensuring that live music can flourish, to the benefit of the wider community; providing more small venues where musicians, particularly young musicians who need to hone their skills in front of smaller audiences, can perform;

and in ensuring that small venues can diversify their offer and generate income by putting on low risk live music. Any person who is adversely affected by an exempt live music performance will be able to apply to the licensing authority to have the exemption reviewed and if necessary, excluded. An exclusion decision will take effect as soon as it is made (even if there is an appeal), ensuring that residents and others are not exposed to further noise nuisance or other problems. The Government therefore considers that this proposal strikes a fair balance.

Question 10: Do you agree that the proposal, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it?

Response from Pollution Control E&PPS: NO.

Whilst not objecting to the principal of supporting live music, the potential negative impact of these proposals on residents must be the main consideration. Our communication with complainants suggests that they are interested in reduced bureaucracy and duplication of enforcement, the simplification of enforcement and complaint resolution. Is it not in everyone's interest to have a licensing regime that delivers these irrespective of the entertainment type and venue size?

Our adopted procedure of applying appropriate, comprehensible, necessary and enforceable conditions through pre-discussion under an umbrella of unambiguous guidance already provides freedom to all premises, irrespective of size, to provide and manage whatever entertainment they wish whilst still maintaining our ability to initiate effective enforcement when nuisance is created.

The criterion for exemption remains flawed and if implemented will adversely affect the public. Assessments of complaint history demonstrate that there is no correlation between the size of venue and the likelihood of disturbance. Therefore there is no discrimination against smaller venues.

Our statistics suggest that the majority of actionable nuisance from licensed premises is created by recorded music despite these same premises benefiting from consent to provide live music.

The type of musical entertainment does not necessarily influence the likelihood of disturbance to neighbours. The necessity for an exemption for live music is therefore unnecessary or at least no more necessary than for any other regulated entertainment.

The above narrative mentions **low risk music** but provides no explanation of what form this assessment takes. It suggests that small venues, which allow performances from young musicians in front of smaller audiences, present a low risk. The reality may be that less experienced, less well prepared, more enthusiastic young performers (and supporters) may deserve a higher than low risk rating. A more appropriate method of assessing risk includes the means of and capabilities of the amplification used and the style of music performed.

The narrative also mentions **nuisance** which is enforceable through a different legislative regime against which there is also an appeal process. Any recurrence of statutory nuisance is subject to criminal proceedings. This process whilst preventing recurrence is however highly unlikely to prohibit regulated entertainment of any type merely requiring those responsible for providing it to reduce impact to reasonable levels. The proposed process of review following nuisance, exclusion and then appeal running concurrently with our statutory obligations is an unnecessary duplication and is considered inappropriate as a result.

Precondition (d) the provision does not remove any necessary protection

The requirements of the Act in relation to live music are intended to ensure that local residents, businesses etc are protected from potential noise nuisance, crime and disorder, etc. that may arise from live music events. The restrictions on size of audience/venue, and the timing of events should ensure that these issues do not arise, but if, exceptionally, there are problems at a specific premises, any interested person or responsible authority may apply for an exclusion. Existing sanctions available under other enforcement regimes, such as noise protection orders and the powers available to the police in relation to crime and disorder would continue to apply to the exempt premises. The Government does not therefore consider that this proposal would remove any unnecessary protections.

Question 11: Do you agree that the proposal does not remove any necessary protection?

Response from Pollution Control E&PPS: NO.

The greatest benefit of the Act is its ability, through the application process to discuss the desires of the applicant and assess the potential for nuisance. Through a process of mediation, education and negotiation we are able to devise and agree a series of conditions to **prevent** the occurrence of public nuisance. Should agreement not be reached we have the ability for a third party i.e. the Licensing Committee to arbitrate. In the vast majority of cases these periods of discussion successfully ensure that the public are protected and nuisance does not occur, thus saving significant amounts of scarce enforcement resource. Removing this ability by providing an exemption removes our capability to meet the licensing objective and prevent public nuisance by allowing it occur prior to intervention.

Precondition (e) the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise

Residents and responsible authorities currently have the right to call for a review of any premises licence or club premises certificate if there are problems at a specific premises which affect the licensing objectives. They will continue to exercise this right in relation to exempt live music through the exclusion process. The restrictions on the exemption and existing sanctions under other enforcement regime will preserve freedoms from noise nuisance, crime and disorder, etc that any person might reasonably expect to continue to exercise.

Question 12: Do you agree that the proposal does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise?

Response from Pollution Control E&PPS: NO.

The current regime provides the opportunity for an individual to oppose the grant of a licence for live entertainment prior to it taking place. This right will be removed for smaller venues.

Precondition (f): constitutional significance

Pollution Control E&PPS have not commented on the remaining 3 questions

Question 13: Do you agree that the proposal has no constitutional significance?

Question 14: Do you broadly agree with the estimates, assumptions and conclusions of the Impact Assessment (published as a separate document, and available alongside this consultation on the DCMS website at http://www.culture.gov.uk/reference_library/consultations/6499.aspx)?

Question 15: Do you think that this draft Order accurately reflects the proposed change?