

Report on a consultation launched by the Department for Culture, Media and Sport concerning the proposed deregulation of entertainment, within the framework of the Licensing Act 2003

Licensing Committee

Date: 25 October 2011

Author: **Head of Licensing**

Wards Affected: **All**

Purpose

- To consider government proposals to remove the bulk of controls over regulated entertainment from the scope of the Licensing Act 2003.

Recommendation

Licensing Committee is asked : -

- To consider the proposals and to agree a formal response.

1. Reasons

- 1.1 The Licensing Committee is the lead body in respect of policy matters, for the Licensing Act 2003.

2. Detail

- 2.1 Ever since the introduction of the Licensing Act there has been much criticism of the ambiguity and inconsistency at the heart of it. This consultation is inspired by a desire to get to grips with some of the issues.
- 2.2 The media coverage surrounding these proposals has been coloured by some inaccurate statements which appear within the consultation document itself. Most of the examples of things which are allegedly caught by 'red tape' have in fact always been exempt from the Licensing Act 2003. Pianists playing in restaurants, Punch and Judy shows, magic shows, circuses and buskers are not covered by the legislation. There have been some unfortunate examples of over-zealous intervention in other parts of the country but the remedy for that is to curb any 'jobsworth' mentality where it arises, by updating the statutory guidance to licensing authorities, issued under section 182 of the Act.
- 2.3 Of the 15 examples listed in the introduction, only two are valid and those two only to a limited extent. Private events require a licence if the room is hired from a third party (but not because money is raised for charity) and school plays are licensable if performed to the community in general (but not if performed in front of parents and family).

Further information on the subject of this report can be obtained from Lionel Starling on 01793 466118 or e-mail lstarling@swindon.gov.uk.

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- 2.4 When the Licensing Bill was still being debated, Swindon Borough Council uniquely questioned why some large outdoor events need licences, while others do not. Eventing, flower shows, golf championships and air displays can all take place without any licence, other than for alcohol sales. Rock concerts and classical concerts do require a licence, even when held on a very much smaller scale.
- 2.5 The main thrust of the argument is however that requirements which exist in the Licensing Act to regulate entertainment are duplicated by a plethora of other legislative requirements, making the Licensing Act controls redundant. This ignores the fundamental difference between the two legislative strands, as will be explained below.
- 2.6 What events such as Badminton, the Royal Horticultural Society Shows and Fairford International Air Tattoo have in common is that they are conducted by highly responsible, long established bodies with a solid skills base and multi-disciplinary teams. They are well-funded and have their own elaborate institutional rules.
- 2.7 Rock festivals – even those held on a very modest scale – attract a disturbing proportion of promoters who lack vital skills, have insignificant funds and even in some cases fraudulent intent. Some of those events collapse into anarchy and they can prove attractive to those who wish to supply controlled substances. In risk terms, the two types of event are dramatically different and the simple comparison made in the consultation document does not stand up to scrutiny.
- 2.8 Two events have taken place in Swindon recently at the high risk end. Neither came anywhere near the 5000 threshold for Licensing control advocated by the government proposals. One event was at Liddington and one near Highworth. A third event, a proposed local cultural festival was cancelled following a strong recommendation from the Event Safety Advisory Group that the licence be surrendered. It is not that we have not been particularly unlucky in Swindon. These examples are typical of the picture nationally and they simply illustrate the vital role which the Licensing Act plays.
- 2.9 Whilst in only one of these three cases was the planned event stopped by the absence of a licence, any repeat of the other two in future years will be blocked by their inability to get further licences.

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- 2.10 Promoters who play the system by creating and then closing limited companies in order to evade liability may be able to sidestep legal proceedings, so that residents lose even the comfort of that remedy, after a disastrous event.
- 2.11 The great virtue of the licensing regime is that it is preventative. It can be used to ensure that something likely to cause public nuisance or disorder does not happen. The defect of much of the alternative legislation is that it involves prosecution, after all the damage has been done and people's lives have been disrupted.
- 2.12 The closure powers outlined in the consultation document look fine on paper but they all come with a practical challenge. Dispersing revellers who are already well fuelled with alcohol and perhaps with drugs poses precisely the risks to good order that closure action is intended to address. In reality, it is often safer overall not to halt an event directly.
- 2.13 Licensing can stop an event happening rather than just punishing the miscreants months or years later.
- 2.14 The consultation document makes an incorrect claim that community premises where no authorisation for selling alcohol exists pay application fees and annual fees to the licensing authority. They do not.
- 2.15 Where businesses have a combined alcohol and regulated entertainment licence, the costs and administration are exactly the same as those for businesses which have a licence only for alcohol. Removing regulated entertainment from scope would therefore have no impact whatever on what is described as 'red tape' and there would be no cost saving.
- 2.16 The lack of transparency, sometimes insensitive behaviour and lack of co-ordination displayed by the various music and film related copyright agencies has a substantial detrimental impact on community events, day nurseries and small businesses. Those agencies are not bound by the enforcement protocols common to all local authorities and when expressing discontent about 'licensing', what customers are often actually talking about is the impact of copyright levies, not regulatory licensing under the umbrella of the Licensing Act 2003.
- 2.17 Mum and toddler groups, after-school clubs and start-up businesses suffer disruption and discouragement at the hands of those agencies but are generally entirely unaffected by the Licensing Act. The consultation paper does seem to be going for the wrong target.

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- 2.18 As the consultation document briefly notes, noise legislation and Licensing controls operate in tandem. Unfortunately the nuances are missed. Other enforcement legislation is not duplicated by the Licensing Act but works in concert with it. Service of a noise abatement notice can lead to seizure of equipment and prosecution, leading to fines or even to imprisonment. Equally and more usually, the noise issues can be resolved by the business submitting a minor variation to their premises licence, on the understanding that the matter will not then end up in court. This approach is very efficient and cost effective and is clearly a much more attractive option for businesses.
- 2.19 Switching regulation away from a mechanism which is relatively informal, inclusive and open to negotiation in favour of confrontation in the courts runs sharply counter to the business-friendly ethos which local authorities favour.
- 2.20 The proposed reform would force issues to be taken up through the courts. For the Council and other agencies this would mean a dramatic increase in costs and the dropping of other important business as extra demand is loaded onto limited litigation resources.
- 2.21 For the courts, the increase in prosecutions would place additional burdens on their already overstretched resources.
- 2.22 Licensing is a much cheaper, quicker and more accessible option. Painting it as a duplication misses the point.
- 2.23 In Swindon, the facility to provide live music in leisure businesses is near universal. The number of premises licensed for live music increased dramatically with the introduction of the Licensing Act 2003 because premises applying to sell alcohol ticked the 'live music' box at no additional cost. The suggestion that the Licensing Act has had a detrimental impact on live music is perplexing. Here it has had very much the opposite effect.
- 2.24 We have a very tiny number of pubs in Swindon which are inherently unsuited to hosting live music. These are either small Victorian terraced premises sandwiched between houses and with thin walls separating them from their neighbours or 1970's estate pubs, built of glass and curtain walling, in an era when insulation was considered unimportant but when pubs and houses were clustered close together. Irrespective of the licensing laws, live music cannot take place in those venues because they are fundamentally unsuitable. The obstacle is a physical one, not the result of 'red tape'.

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- 2.25 Proposals being put forward to empower communities would be significantly weakened by the proposed deregulation. One of the great virtues of licensing mechanisms is that communities are able to exercise considerable influence. They have a right to call in licences for review at any time. By contrast, they have no input into formal enforcement routes, such as closure or prosecution.
- 2.26 Proposals to empower communities are not consistent with a plan to scrap the very powers being discussed.
- 2.27 It is a feature of the Licensing Act that it is built around a multi-agency approach. By its nature, it fosters joined up working. The alternative of bringing prosecutions under disparate specialist headings invites silo working, which is plainly undesirable.
- 2.28 In terms of speed of response, licensing determinations are normally completed within six weeks. Allowing for case preparation, cases in the court normally take from six months to a year to resolve, sometimes longer. Where a business is expected to close within that period, that approach provides no remedy at all.
- 2.29 There is much that can be done to improve the Licensing Act. The tortuous standard forms can be greatly simplified. When the Central Library wants to show a film or church group wants to offer a shot of whisky with a Burns Night supper, they should not have to obtain a special permit, as they do now. This proposal is dramatic but it has not been thought through properly and would have many unintended and damaging consequences.
- 2.30 As they stand, the proposals would put a substantial burden on public finances, add to the strain on the courts, disenfranchise local communities and turn back the clock by twenty years on enforcement protocols, partnership working and relations with business community.
- 2.31 A proposed formal response is attached as Appendix One.
- 2.32 A copy of the consultation document is attached as Appendix Two.

Alternative Options

- It is open to the committee to make representations on the consultation or to decline to comment.

Risk Management

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Financial and Procurement Implications

There are no direct financial implications arising from the report. Reform might have implications but it is for government to consider those consequences.

Legal / Human Rights Implications Mechanisms are in place to ensure that all new laws are compliant with the Human Rights Act.

Links to Corporate Plans and Policies (in particular to Swindon 2010 Promises)

The exercise of licensing powers by the licensing authority relates particularly to the commitment to reduce crime and the fear of crime.

Consultees

- The Director of Finance (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted on all reports.
- No external parties have been consulted. It is open to anyone to respond to the consultation document

Background Papers and Appendices

- Appendix One Proposed formal response
- Appendix Two DCMS consultation on the deregulation of entertainment