

**Manchester City Council
Report for Information**

Report to: Licensing Committee – 19 December 2011

Subject: DCMS Consultation Proposal to examine deregulation of Schedule One of the Licensing Act 2003: Response from Manchester City Council

Report of: Strategic Director of Neighbourhood Services

Summary

To provide the Committee with a copy of the response provided by Manchester City Council in relation to proposals from the Dept of Culture Media and Sport to deregulate Schedule one of the Licensing Act 2003 which relates to regulated entertainment.

Recommendations

That Members note the report.

Wards Affected:

All

Community Strategy Spine	Summary of the contribution to the strategy
Performance of the economy of the region and sub region	Performances of regulated entertainment, including live music and performances of plays, are an integral part of Manchester's cultural and leisure economy. The proposed deregulation of regulated entertainment activities may give rise to an increase in the numbers and size of events provided in the City.
Reaching full potential in education and employment	
Individual and collective self esteem – mutual respect	

Neighbourhoods of Choice	The current regulation of entertainment enables a pro-active approach to be taken in respect of club and premises licensing. The proposal to deregulate entertainment activities reduces the safeguards and protection for local residents.
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Full details are in the body of the report, along with any implications for:

- Equal Opportunities Policy
- Risk Management
- Legal Considerations

Financial Consequences – Revenue

None

Financial Consequences – Capital

None

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Background documents (available for public inspection):

The individual licence applications and associated documentation disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of these documents are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the contact officers above.

Regulated Entertainment: A Consultation proposal to examine the deregulation of Schedule One of the Licensing Act 2003, DCMS (September 2011)
Impact Assessment for the proposal to exempt regulated entertainment from the provisions of the Licensing Act 2003, DCMS (June 2011)

1.0 Introduction

- 1.1 This report provides the Licensing Committee with information on the Council's response to the Government's consultation proposal to examine the deregulation of most activities currently defined as 'regulated entertainment' under the Licensing Act 2003.
- 1.2 The consultation was issued by the Department for Culture, Media and Sport and the closing date for responses was 3 December 2011.

2.0 Background

- 2.1 The Licensing Act 2003 currently defines the following activities as regulated entertainment, requiring them (subject to limited exceptions) to be licensed:
- A performance of a play
 - An exhibition of a film
 - An indoor sporting event
 - A boxing or wrestling entertainment (both indoors and outdoors)
 - A performance of live music
 - Any playing of recorded music, and
 - A performance of dance
- 2.2 Additionally, there is a requirement for the provision for entertainment facilities (i.e. provision of facilities that enable members of the public to make music or dance) to be licensed.
- 2.3 The consultation proposal is to examine the "need" for a licensing regime in respect of these activities and where there is no such "need", the proposal is to deregulate the activity. Subject to certain exemptions that the Government intends to retain the licensing requirements for:
- Any performance of live music, theatre, dance, recorded music, indoor sport or exhibition of film where the audience is 5,000 people or more.
 - Boxing and wrestling.
 - Any performance of dance that may be classed as sexual entertainment, but is exempt from separate sexual entertainment venue regulations.
- 2.4 A copy of the Council's response to the consultation is attached at Appendix 1.

3.0 Contributing to the Community Strategy

(a) Performance of the economy of the region and sub region

Performances of regulated entertainment, including live music and performances of plays, are an integral part of Manchester's cultural and leisure economy. The proposed deregulation of regulated entertainment activities may give rise to an increase in the numbers and size of events provided in the City.

(b) Reaching full potential in education and employment

(c) Individual and collective self esteem – mutual respect

(d) Neighbourhoods of Choice

The current regulation of entertainment enables a pro-active approach to be taken in respect of club and premises licensing. The proposal to deregulate entertainment activities reduces the safeguards and protection for local residents.

4.0 Key Policies and Considerations

Policies

- 4.1 The Council's Statement of Licensing Policy 2011-14 sets out the Council's approach to exercising its licensing function under the Licensing Act 2003.

Legal Considerations

- 4.2 None

5.0 Conclusion

- 5.1 The report provides the Committee with a copy of the Council's response to the consultation and the Committee are asked to note the report.



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2 December 2011

Dear Sir / Madam

Regulated Entertainment - A Consultation proposal to examine the deregulation of Schedule One of the Licensing Act 2003

Response of Manchester City Council

Please find our response to the consultation below. In addition to the set consultation questions, we have provided further suggestions considered relevant but that do not arise from the set questions.

Proposal Impacts: Questions

Q1: Do you agree that the proposals outlined in this consultation will lead to more performances, and would benefit community and voluntary organisations? If yes, please can you estimate the amount of extra events that you or your organisation or that you think others would put on?

Response

The logic that something is more likely to happen because there is no permission required for it relies on the permission actually proving to be a deterrent, rather than an inconvenience. We have no experience or evidence that has indicated the current licensing regime has proved to be a definitive barrier that has actually prevented performances from being arranged. The only exceptions to this are events where notification was only provided to the authority less than 10 working days in advance and so there was no facility for a Temporary Event Notice to be acknowledged. However, this barrier is to be removed with the facility for 'late TEN's' under the Police Reform and Social Responsibility Act 2011. Further, the addition of live music on premises licences has been facilitated and promoted through the minor

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Proposal Impacts: Questions

Response

Q2: If you are replying as an individual, do you think this proposal would help you participate in, or attend, extra community or voluntary performance?

N/A

Q3: Do you agree with our estimates of savings to businesses, charitable and voluntary organisations as outlined in the impact assessment? If you do not, please outline the areas of difference and any figures that you think need to be taken into account (see paragraph 57 of the Impact Assessment).

The savings proposed are based upon simplistic and often optimistic estimates, which do not reflect the actual circumstances. For example in the previous 2 years in Manchester, there have only been 7 applications for new licences or variations in respect of only regulated entertainment. This represents 2.4% of all applications, whereas the Impact Assessment works off an estimate of 10.4%. Whilst it is recognised that there will be variances of application types throughout the country, we consider that the scale of Manchester gives a respectable benchmark for a licensing authority. Additionally, of those 7 licences, 3 would be able to be permitted as Temporary Events next year as a result of the extension of the maximum period from the Police and Social Responsibility Act. Therefore, the identified savings being based upon an 'all or nothing' approach does not necessarily reflect the true position.

Q4: Do you agree with our estimates of potential savings and costs to local authorities, police and others as outlined in the impact assessment? If you do not, please outline the areas of difference and any figures you think need to be taken into account.

The potential savings and estimates are optimistic and based upon an approach that savings on administration will offset additional enforcement costs, and therefore take the overall cost to the authority as a whole. However, the cost and resource burdens will not be so unilateral. For example, the cost and time saving of processing annual fees will be realised by the Finance or Licensing administrative officers. However, the additional burden of dealing with increases in complaints and enforcement action will be upon other departments such as Environmental Health Officers and Legal departments. Therefore, proposed economies, both financial and time-based, are not directly offset against incurred costs.

Q5: Would you expect any change in the number of noise

It is expected there would be a large increase of noise complaints as operators would likely seek to

Proposal Impacts: Questions

complaints as a result of these proposals? If you do, please provide a rationale and evidence, taking into account the continuation of licensing authority controls on alcohol licensed premises and for late night refreshment

Q6: The Impact Assessment for these proposals makes a number of assumptions around the number of extra events, and likely attendance that would arise, if the deregulation proposals are implemented. If you disagree with the assumptions, as per paragraphs 79 and 80 of the Impact Assessment, please provide estimates of what you think the correct ranges should be and explain how those figures have been estimated.

Response

explore new business opportunities. However, a probable lack of experience in the necessary control measures would result in a greater potential for noise disturbance. Additionally, there is likely to be a lack of management control where there is no threat against preventing future events. This has been experienced in a premises that benefits from an exemption for regulated entertainment but regularly hosts promoted nights which involve large numbers attending the premises, often travelling large distances, and bringing large amounts of their own alcohol. Such events typically involve a high level of disturbance during the night due to noise from smokers, as during the early hours the persons disperse causing a public nuisance. As the licensing authority has no powers to control such events in advance, we are reliant on the discretion and conduct of the premises management and event organiser. However, this then presents difficulties when problems arise at the event, as the owners of the premises will typically apportion responsibility (for dealing with problems) to the event organiser. Due to there being no licensing sanctions available to enforce after the event, there is limited possibility for effective resolution and protection for residents from further similar events, as the venue owner is the only person with discretion to control what events are held there. With the proposed deregulation of entertainment, there is an increased likelihood for similar events, as all premises would benefit from the exemption.

It is not considered that deregulation would promote an increase in events and there has been no indication through the minor variation process of an unmet demand. The Impact Assessment refers to the Live Music Survey in 2007 which cites licensing controls as a barrier. However, the survey was evidently conducted when the LA2003 regime was relatively new and so licensees may have been unnecessarily hesitant due to it being relatively new legislation. Even if such unmet demand had existed, the subsequent introduction of the minor variation procedure reduced the administrative burden involved in seeking to incorporate entertainment, and particularly live music, onto a premises licence.

Proposal Impacts: Questions

Response

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

Any increase in noise and disturbance to local residents is likely to cause or exacerbate friction between local residents and licensed premises, which could have a negative impact on local communities including general dissatisfaction with the area they live and complaints made to the local authority, which may not be able to be addressed as effectively as is currently possible.

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

It is interesting that the Government is proposing measures it estimates will result in an increase in public nuisance and disturbance to local people. Although it is proposed that review action can be taken against alcohol licences, the current review system is effective because it contains the ultimate sanction of removing / prohibiting regulated entertainment, and so is an effective deterrent. Additionally, it is not estimated what proportion of issues are prevented as a result of the consideration of applications at the application stage which, following representations and conditions being attached to a licence, prevent problems occurring; thereby upholding the licensing objectives. Should this safeguard be lost, there is a greater potential for problems than currently exists.

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

See previous answers

Q10: Do you agree that premises that continue to hold a licence after the reforms would be able to host entertainment activities that were formerly regulated without the need to go through a Minor or Full Variation process?

This would be a logical approach. However, it creates a 2-tier system with premises not previously licensed for entertainment not being subject to conditions in respect of providing entertainment, as well as the pre-licensed premises remaining subject to such conditions. Therefore, it would create an uneven playing field amongst operators which could cause friction.

The Role of Licensing Controls: Questions

Proposal Impacts: Questions

Q11: Do you agree that events for under 5,000 people should be deregulated across all of the activities listed in Schedule One of the Licensing Act 2003?

Q12: If you believe there should be a different limit – either under or over 5,000, what do you think the limit should be? Please explain why you feel a different limit should apply and what evidence supports your view.

Q13: Do you think there should there be different audience limits for different activities listed in Schedule One? If so, please could you outline why you think this is the case. Please could you also suggest the limits you feel should apply to the specific activity in question.

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

Response

It is not agreed that events for fewer than 5,000 persons should be deregulated. Controls should not be implicitly dependent on the number of attendees, as even an event or premises that attracts a small number can have a major detrimental impact on the local neighbourhood and attract complaints. Consideration needs to be given to the nature of the event, its activities, duration and the locality where it is taking place to identify potential issues. It is for such reasons that we welcomed the Government's approach of including council's Environmental Health Protection Services as a responsible authority for Temporary Event Notices, through the Police Reform and Social Responsibility Act 2011. Arguably, the licensing system facilitates events by enabling a central process of consideration by relevant agencies and authorities, rather than requiring an event organiser having to ensure they address all legal provisions independently.

As stated above, there are multiple considerations relevant to the impact an event can have. Risk is not simply restricted to the size of the audience, although this is obviously a relevant factor.

No, for the reasons set out in Q12.

Yes, it is believed that there would be a significant risk to the licensing objectives. For example, a street party with live music stages could easily attract numbers up to 5,000, and rely on local bars and off licences for alcohol supplied. Such an event would have a massive impact on litter, noise disturbance, blocking of roads, antisocial behaviour and damage to property. The age of people attending the event would not be regulated, which

Proposal Impacts: Questions

Response

Q15: Do you think that outdoor events should be treated differently to those held indoors with regard to audience sizes? If so, please could you explain why, and what would this mean in practice.

means that children could access the event and gain access to alcohol. This would, therefore, impact upon all four licensing objectives and without a licensing system, there is no overarching approach to ensuring all necessary measures are incorporated in the organisation process or any protection for residents and businesses to object to it.

The size of the audience at an event is merely one of many variables to consider before implementing an arbitrary restriction or permission.

Q16: Do you think that events held after a certain time should not be deregulated? If so, please could you explain what time you think would be an appropriate cut-off point, and why this should apply.

No. All events should be considered on a case by case basis. It will all depend on factors such as the location of the event/premises. Is it in the city? Is it in a quiet village? Are residents living close by? What type of premises is holding the event? What measures and controls are in place to avoid break out of noise at a late hour etc...? There are numerous variables to consider when deciding what terminal hour to attach to regulated entertainment.

Q17: Should there be a different cut off time for different types of entertainment and/or for outdoor and indoor events? If so please explain why.

No. As Q16

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

The licensing system is considered as the most efficient and effective so it is not considered that an alternative approach would be appropriate.

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

No. A code of practice would not be enforceable and have no legal standing.

Q20: Do you agree that laws covering issues such as noise,

The licensing system provides a uniform, proactive approach to the prevention of issues. To depart

Proposal Impacts: Questions

public safety, fire safety and disorder, can deal with potential risks at deregulated entertainment events? If not, how can those risks be managed in the absence of a licensing regime?

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

Q22: Are there any other aspects that need to be taken into account when considering the deregulation of Schedule One in respect of the four licensing objectives of the Licensing Act 2003?

Performance of Live Music: Questions

Q23: Are there any public protection issues specific to the deregulation of the performance of live music that are not covered in chapter 3 of this consultation? If so, how could they be addressed in a proportionate and targeted way?

Response

from this would be confusing for operators as there would need to be greater understanding and application of many other legislative requirements, as well as being a greater burden on enforcement agencies due to the extra legal complexity as well as an increased likelihood of retrospective action. Another difficulty with using other legislation to enforce such events is the limited resources of local authorities. It is very difficult for local authorities and police to quantify how many officers would be required for events.

Deregulated events would be likely to last longer and go later into the night. Most commercial operators will want to maximise revenue with such events going on later into the night, which is likely to have a detrimental impact upon the locality. Often licensing hours, including those for regulated entertainment, are restricted by licensing committees when the original proposals attracted relevant representations by residents as a necessary measure to promote the licensing objectives.

The licensing system enables the local authority as well as local residents and businesses to ensure all aspects of the provision of entertainment can be addressed. To disband this approach in order to rely on alternative legislation, which wasn't necessarily designed for the purpose, decreases the available protection and possible safeguards.

The licensing and Temporary Event Notification systems enable authorities to risk assess and allocate resources as necessary. By removing such controls, the scope for problems not only increases in scale but can neither be anticipated nor proactively addressed. Therefore, it becomes increasingly difficult to ensure the availability of the necessary level of response.

Proposal Impacts: Questions

Q24: Do you think that unamplified music should be fully deregulated with no limits on numbers and time of day/night? If not, please explain why and any evidence of harm.

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

Response

No. There is the potential for disturbance from acoustic instruments such as drums or brass instruments which could cause noise nuisance. Alternatively, a gathering of multiple acoustic groups or musicians could create a larger event, and thereby create wider issues that the authority would need to manage. This is why all events need to be assessed on a case by case basis.

It is not considered that the deregulation of live music is the only way of promoting it.

Performance of Plays: Questions

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

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

Q28: Licensing authorities often include conditions regarding pyrotechnics and similar HAZMAT handling conditions in their licences. Can this type of restriction only be handled through the licensing regime?

No particular concerns other than the provision of content not suitable for children, which must be properly administered.

There may be particular considerations in respect of electrical equipment.

Other legislation can address these.

Proposal Impacts: Questions

Response

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

Other than ensuring performances are appropriate for the particular audience, there are no specific concerns in respect of performances of plays. Deregulation may help promote amateur dramatics.

Performance of Dance: Questions

Q30: Are there any public protection issues specific to the deregulation of the performance of dance that are not covered in chapter 3 of this consultation? If so, how could they be addressed in a proportionate and targeted way?

The increasing popularity of performance dance means that such events may attract large audiences and, therefore, may be subject to some of the risks identified for events earlier in this response.

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

None identified.

Exhibition of Film: Questions

Q32: Do you agree with the Government's position that it should only remove film exhibition from the list of regulated activities if an appropriate age classification system remains in place?

Yes

Q33: Do you have any views on how a classification system might work in the absence of a mandatory licence condition?

Regulation could be incorporated through revised provisions for the Video Recording Act 1984 and BBFC rating system and breaches enforced by Trading Standards or an alternative, identified enforcement agency.

Proposal Impacts: Questions

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

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

Response

Exemptions could apply to such exhibitions that are not commercial or ancillary to a commercial activity. Additionally, an exemption could apply for recordings of live broadcasts.

No particular concerns other than the provision of age-restricted content, which must be properly administered.

Indoor Sport: Questions

Q36: Are there any public protection issues specific to the deregulation of the indoor sport that are not covered in chapter 3 of this consultation? If yes, please outline the specific nature of the sport and the risk involved and the extent to which other interventions can address those risks.

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

None identified

None although guidance should be issued for operators and authorities to ensure any relevant issues can be addressed

Boxing and Wrestling, and Events of a Similar Nature: Questions

Q38: Do you agree with our proposal that boxing and wrestling should continue to be regarded as "regulated

Yes, this is agreed

Proposal Impacts: Questions

Response

entertainment”, requiring a licence from a local licensing authority, as now?

Q39: Do you think there is a case for deregulating boxing matches or wrestling entertainments that are governed by a recognised sport governing body? If so please list the instances that you suggest should be considered.

No

Q40. Do you think that licensing requirements should be specifically extended to ensure that it covers public performance or exhibition of any other events of a similar nature, such as martial arts and cage fighting? If so, please outline the risks that are associated with these events, and explain why these cannot be dealt with via other interventions.

Any performance or exhibition that primarily involves physical conflict should be regulated, as demonstrated by the public reaction to the recent children's cage fighting incident. Incidents such as this highlight the need for regulation.

Recorded Music and Entertainment Facilities: Questions

Q41: Do you think that, using the protections outlined in Chapter 3, recorded music should be deregulated for audiences of fewer than 5,000 people? If not, please state reasons and evidence of harm.

We do not believe that events for fewer than 5,000 persons should be deregulated. Controls should not be dependent on the number of attendees, as events or premises that attracts a small number can have a major detrimental impact on the local neighbourhood and cause complaints. Consideration needs to be given to the nature of the event, its activities, duration and the locality where it is taking place to identify potential issues. It is for such reasons that we welcomed the Government's approach of including council's Environmental Health protection services as a responsible authority for Temporary Event Notices, through the Police Reform and Social Responsibility Act 2011. Arguably, the licensing system facilitates events by enabling a central process of consideration by relevant agencies and authorities, rather than requiring an event organiser having to ensure they address all legal provisions independently.

Proposal Impacts: Questions

Q42: If you feel that a different audience limit should apply, please state the limit that you think suitable and the reasons why this limit is the right one.

Response

As previously stated, controls should not be dependent on the number of attendees, as events or premises that attracts a small number can have a major detrimental impact on the local neighbourhood and attract complaints. Consideration needs to be given to the nature of the event, its activities, duration and the locality where it is taking place to identify potential issues. It is for such reasons that we welcomed the Government's approach of including council's Environmental Health protection services as a responsible authority for Temporary Event Notices, through the Police Reform and Social Responsibility Act 2011.

Q43: Are there circumstances where you think recorded music should continue to require a licence? If so, please could you give specific details and the harm that could be caused by removing the requirement?

The provision of recorded music should continue to be licensable. There is evidence that public nuisance can arise from the playing of recorded music. As public nuisance does not necessarily equate to Statutory Nuisance, the protections afforded by the Environmental Protection Act 1990 are not, therefore, automatically triggered. To remove the regulatory protections could, therefore, be to the detriment of local residents and businesses.

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

The licensing system enables the local authority as well as local residents and businesses to address all aspects to the provision of entertainment. Removing this system and relying upon alternative legislation, which wasn't necessarily designed for the purpose decreases the available safeguards.

Q45: Are there any specific instances where Entertainment Facilities need to be regulated by the Licensing Act, as in the current licensing regime? If so, please provide details.

None identified.

Unintended consequences: Questions

Q46: Are there any definitions within Schedule One to the Act that are particularly difficult to interpret, or that are otherwise

Clarification on when the playing of a programme is/is not licensable in respect of paragraph 8. For example, internet broadcasts. The exemption for performances solely at a place of public religious

Proposal Impacts: Questions

Response

unclear, that you would like to see changed or clarified?

worship should be removed, so that the exemption only applies to performances for the purposes of, or incidental to, a religious meeting or service. This avoids the commercial use of such premises for events that can give rise to disturbance.

Q47: Paragraph 1.5 outlines some of the representations that DCMS has received over problems with the regulated entertainment aspects of the Licensing Act 2003. Are you aware of any other issues that we need to take into account?

No

Adult Entertainment: Question

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

Yes, this is agreed.

Further Comments

Manchester City Council is supportive of measures to reduce unnecessary red-tape and regulatory burden, particularly in respect of the cultural and voluntary sectors. However, we believe it is important that the protective element of licensing control remains, particularly for commercial events and operations, to ensure the proper balance between the needs of businesses and the needs of local residents.

Events such as school plays, music performances at hospitals, school discos and exhibitions of dancing at school fetes offer little or no risk to the licensing objectives due to their nature and location.

Rather than total deregulation for events with a capacity of up to 5000 persons, we would consider it appropriate to implement a range of exemptions, for example, exempting non-commercial events taking place at a school or similar building.

Alternatively, the Temporary Event notification form could be simplified, and the local authority given the ability to waive the fee or, perhaps, the requirement for permission for particular types of events. Such an approach would support the localism agenda and permit local authorities to tailor their regulatory approach. Whilst this might

produce inconsistencies between different local authority areas, it would be no more than the variations resulting from their Statements of Licensing Policy.

Yours faithfully

Councillor Nigel Murphy
Executive Member for the Environment

Councillor June Hitchen
Chair of the Licensing Committee