BABERGH DISTRICT COUNCIL

From: Head of Natural and Built Environment	**Report Number: L94**
To: Licensing and Appeals Committee	**Date of meeting: 10 November 2011**

GOVERNMENT PROPOSALS TO DE-REGULATE ENTERTAINMENT ACTIVITIES FROM THE LICENSING ACT 2003

1. Purpose of Report

1.1 To report information to the Committee regarding the Government's consultation proposals to remove most entertainment activities from requiring licensing under the Licensing Act 2003. The report appends a draft response to the Government for the Licensing and Appeals Committee to review, making any necessary amendments, before recommending a response for submission via Strategy Committee.

1.2 The Government proposals have potential impacts on our communities and the Council's resources.

2. Recommendation

2.1 That the draft response (attached as Appendix A) to the Government's consultation proposals to remove most entertainment activities from requiring licensing under the Licensing Act 2003 be approved as Babergh's response to the consultation, subject to the inclusion of any further comments and/or amendments agreed by the Licensing and Appeals Committee as a result of its deliberations

The Committee is asked to make a recommendation to Strategy Committee on the above matter.

3. Financial Implications

3.1 De-regulation of entertainment licensing will see a reduction in the Council's licensing income, albeit many community and education facilities with premises licences authorising entertainment only are already exempt from licence fees.

3.2 De-regulation will almost certainly lead to increased resource demand and costs for the Council's Environmental Protection and Enforcement Team, as reactive and more general nuisance enforcement referrals would increase. Any transitional arrangements arising from de-regulation would also have a resource and cost impact on the Council's Licensing Team.

4. Risk Management

4.1 Key risks are set out below:

Risk Description	Likelihood	Impact	Mitigation Measures
Reduction or removal of local decision-making and regulation will impact on the wellbeing of our communities and the Council's income, resources and reputation.	Very high	Critical	Respond to the de-regulation proposals in strong terms giving examples and reasoning why extensive de-regulation will negatively impact on our communities and resources. Alerting our communities to the consultation so they have opportunity to respond directly is also necessary.

5. Consultations

5.1 Key officers of Babergh District Council have been consulted on, and contributed to, the draft consultation response attached as Appendix A. The draft response document produced by Babergh is being used as the base template for most Suffolk Licensing Authorities' own individual responses, and the Suffolk Licensing Officers Group (SLOG) has submitted key messages from the document to the Local Government Regulation Group for lobbying purposes (this had to be done by 1 November 2011).

5.2 Babergh District Council has alerted all parish and town councils to the consultation and issued a joint media release with Mid Suffolk District Council to raise general awareness of the proposals, so as to enable our communities to participate in the consultation. The Council's web pages also host links to the consultation documents.

5.3 The Government requires responses to its consultation to be submitted by 3 December 2011.

6. Equality Analysis

6.1 None directly arising from this report.

7. Shared Service / Partnership Implications

7.1 As referred to in paragraph 5.2 above, officers of Babergh District Council and Mid Suffolk District Council have issued a joint media release to alert the public to the consultation and draw attention to the potential impacts of de-regulation. The two Councils remain separate entities so will issue their own separate individual responses following Member review and input.

8. Key Information

8.1 In September 2011 the Department for Culture Media and Sport (DCMS) published its consultation document on proposals to de-regulate most of the entertainment that forms Schedule 1 to the Licensing Act 2003.

8.2 Whilst DCMS had, prior to May 2010, departmental responsibility for all of the Licensing Act 2003 (including alcohol) it is now only responsible for the regulated entertainment aspects of the 2003 Act (i.e. Schedule 1 to the Act). The Home Office assumed control of the alcohol elements of the Licensing Act 2003 when the coalition Government came into power.

8.3 Previous government consultations, in 2008 and 2010, on far more limited proposals to de-regulate some aspects of the entertainment licensing regime were met with significant opposition and were not pursued.

8.4 The DCMS stated view now is that '*regulated entertainment itself in general poses little risk to the licensing objectives'.* This view is clearly contrary to the legislation, case law, guidance issued under section 182 of the Licensing Act 2003 and Babergh's own significant experience of administering and enforcing the function. The licensing objectives are the prevention of public nuisance, public safety, the prevention of crime and disorder and protection of children from harm.

8.5 The consultation proposals, if carried out to the extent indicated in the document, would mean that no licence permissions would be needed for any entertainment event/activities for up to 5000 persons. Activities such as amplified live or recorded music, whether indoors or outdoors, could take place in a whole host of different venues - whether in night time economy areas or residential/rural areas. There would be little or no prior scrutiny or enforceable control measures such as limitations on timings, area or frequency. The local, transparent and inclusive licensing system, which has determined and mediated many contested licence applications since 2005 in a balanced and fair manner to promote the licensing objectives, would be undone at a stroke.

8.6 De-regulation to this extent is very likely to impact negatively on the licensing objectives and be of significant concern to residents and businesses in the vicinity of existing licensed venues or potential entertainment venues, including open spaces. Negative impacts are likely to far outweigh any de-regulation benefits to communities or regulators. Locally considered applications and necessary conditions attached to permissions, which are generally easy to enforce with a criminal sanction (and/or potential licence review) for breach, would likely be removed from existing licences and with it vital protections for our communities.

8.7 Under the proposals local licensing scrutiny, which generally still allows most events and activities to take place, would give way to reactive and resource intensive monitoring and evidencing of statutory nuisances under general Environmental Protection Act 1990 provisions (such as abatement notices) or else 'sledgehammer to crack a nut' closure powers such as those available to the Police under the Anti-Social Behaviour Act 2003. In view of the number of heavily contested licence applications Babergh District Council has dealt with since 2005, including petitioning and resident action groups, we would anticipate de-regulation leading to a surge of complaints of noise and other nuisances and a major impact on Council resources at a time of unprecedented cuts in Local Government funding. Failure to respond to complaints, or setting the threshold for enforcement activity/action higher, could impact negatively on the wellbeing of some sectors of our communities.

8.8 The experience of our own Licensing Authority is that licensing requirements are not deterring entertainment or cultural activities and this is borne out by the successful diversification of many premises, increasing community events/festivals under both the temporary event notice (TEN) system and time-limited premises licences, and feedback from operators that it is easier to obtain an entertainment permission than ever before. It can be other factors, over which the Local Authority has no influence, such as Performing Rights Society (PRS) licensing or fees charged for other aspects that can be a deterrent to some activities taking place.

8.9 Prior to 2005 there were several types of licence required for entertainments – including public entertainment licensing under the Local Government (Miscellaneous Provisions) Act 1982, cinema licensing and stage play licensing. The Licensing Act 2003 consolidated all of these permissions, plus the liquor licensing regime previously administered by the magistrates' court and late night refreshment house licensing, into a single permission allowing authorisation and control of all of these activities under one process. Whilst not perfect and constantly evolving, the licensing system generally works well. Local residents and businesses have a pro-active part to play in most licence applications together with key authorities such as the Police, Environmental Protection, Health and Safety, Fire Service and Trading Standards.

8.10 It is also apparent that the DCMS proposals are at odds with the licensing reforms arising from the Police Reform and Social Responsibility Act 2011, which received Royal Assent on 15 September 2011 and contains measures to empower communities and licensing authorities to a much greater extent than ever before in relation to supply of alcohol permissions under the Licensing Act 2003.

8.11 Officers of the Licensing Authority, including Environmental Protection, have explored the proposals and issues arising from the consultation document in some depth and detail and drafted a robust response attached as Appendix A. Members are asked to review this and to consider the consultation proposals generally.

9. Appendices

Title	Location
A: Draft response to DCMS Consultation – September 2011	Attached
B: DCMS consultation proposal document	www.culture.gov.uk
C: DCMS press release John Penrose MP	Attached

10. Background Documents

10.1 None

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APPENDIX A

(DRAFT)

BABERGH DISTRICT COUNCIL (SOUTH SUFFOLK)
RESPONSE TO DCMS CONSULTATION - SEPTEMBER 2011
Regulated Entertainment: A Consultation proposal to examine the deregulation of Schedule One of the Licensing Act 2003

1. Regulated entertainment activities and their impact on licensing objectives:

1.1 The breadth of potential activities under the banner of 'regulated entertainment' is significant. Whilst it is fair to say that some activities pose little risk to promotion of the licensing objectives, such as some of the more exceptional/anecdotal examples given in the consultation document at para 1.5, others that are far more commonplace can pose significant risk to the prevention of public nuisance objective in particular. The licensing process alerts Local Authorities to other regulatory aspects of an event or activity that may require their further 'joined-up' attention (for example health and safety, planning, building control, smoke-free regulations or food safety). This can also necessitate input from other partners such as the Highways Authority, First Aid Services, Community Safety or Safety Advisory Group. Licensing forms an integral part of the toolkit necessary to both help control venues/events and also manage safe and vibrant night time economies. Licensing is clearly not just a 'red tape' or administrative exercise nor do the licensing objectives only become engaged through supply of alcohol activity.

1.2 Popular regulated entertainment events/activities, whether held indoors or outdoors, include 'club nights', promoted DJs, drum'n'bass performances, battle of the bands, discos and light shows, amplified group performances, festivals, karaoke, open-mic night, and third-party hirings (including events then opened up to anyone to attend via social networking sites). These activities can clearly have a significant impact on promotion of the licensing objectives depending on when, where, frequency, capacity, performer, controls in place etc.

1.3 It seems therefore right and proper that a prior assessment, and recording, of all potential events/activities is made and this generally works well under the existing licensing framework. It is logical that this pro-active and balanced mechanism should continue.

1.4 We strongly do not agree with the sweeping statement in the consultation document in para 3.3 that "*regulated entertainment itself in general poses little risk to the licensing objectives*" and this assertion is contrary to the legislation, our own experience of the 2003 Act, public perception, case law and the current guidance issued under section 182 of the 2003 Act. We have seen many dozens of hearings where local communities have responded in numbers (including petitioning and campaign groups) to oppose applications that include amplified live or recorded music. This is particularly true of applications in residential or noise sensitive locations, for poorly sound attenuated buildings/open spaces, or in areas with higher densities of elderly persons or families with young children. It can be a very emotive subject for local residents and businesses with real potential to impact negatively on people's quality of lives, amenity and the licensing objectives. Our experiences do not therefore sit well with the statement in the DCMS consultation document at 2.21 that the Impact Assessment has found that '*there are expected to be substantial benefits to individual and collective wellbeing due to extra provision of entertainment…*'. We would strongly suggest that wholesale de-regulation will, in not an insignificant number of instances, have an opposite outcome.

> Section 2.33 of the s182 guidance illustrates that "*it is important to remember that the prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.*"
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> 'Public nuisance' under the Licensing Act 2003 '*retains its broad common law meaning'* according to para 2.33 of s182 and case law precedents would indicate it is a question of fact in every case. It is therefore proper that such individual and local level, consideration should continue to be made via a licensing process.

Clearly there would have been many more legal challenges to decisions taken by Licensing Authorities if regulated entertainment activities generally have little or no impact on the licensing objectives.

1.5 The duty to *promote* the licensing objectives placed on Licensing Authorities by section 4 of the 2003 Act indicates a pro-active approach, where its powers are engaged, and not a reactive one. The licensing objective itself – ***prevention*** of public nuisance – indicates anticipating and addressing potential nuisances arising from the activity proposals before they occur.

Section 2.35 of s182 guidance states that "*the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be necessary.*"

1.6 Some types of music event in particular, such as promoted DJ events, can alert the police to increased potential for crime and disorder issues. One of our neighbouring Authorities experienced a gang-related fatal shooting linked to a music event and an entourage/audience attracted to the particular DJ from outside of the local area. Licensing process and controls can assist the Police with getting an early awareness of such activities.

1.7 We are unclear about the DCMS proposals at para 3.11 of the consultation which seems to infer control of non-regulated entertainment activity through an alcohol premises licence, although this could be referring more to general noise and rowdiness from patrons rather than controlling nuisances from amplified music etc? We do not see how this could be achievable or adequate without further detail. It also has no affect for unlicensed premises and could be subject to legal challenge if conditioning a non-licensable element of an operation. The Department needs to further clarify its intention in this respect. Good operators could be penalised for retaining conditions, with the penalties that apply for breach, whilst other licence-holders will undoubtedly seek to remove them.

2. Checks and balances in the existing licensing system:

2.1 Our Licensing Authority has very often, through proportionate use of any necessary licensing controls where its discretion is engaged, successfully found the middle ground between encouraging entertainments and cultural activities and protecting the interests of interested parties and attendees. This process has vital input from Environmental Protection and Health and Safety professionals, including during mediation. Our Authority has very rarely refused to grant a permission for regulated entertainment, and has always instead attempted to strike the right approach between allowance and reasonable controls. We have not been over-zealous in applying regulation, where any doubt exists over whether an event or activity is licensable (for example 'incidental' music or 'educational' film showing). We deploy better regulation principles in our service, and do not unnecessarily hinder operators or cultural activities, and fully recognise their importance.

2.2 Our Authority has had consistent feedback from residents and applicants alike that the system is democratic and fairly applied locally with the right balance between operator and community rights. An example of this was a heavily contested (around 58 resident objectors), and press reported, hearing we had in December 2009. After the decision to grant the licence subject to proportionate and necessary controls, the following quotes were made to a local reporter:

"*I am absolutely delighted. We have got the licence back and we were always trying to be reasonable with residents*." **Applicant**

"*That committee actually demonstrated, for once, my faith in local democracy because there was an interaction and there was an exchange and it was balanced*". **Objector**

2.3 The licensing process, as we have experienced it, encourages communities to engage/negotiate with local licensed operators to break down barriers and seek pro-active solutions, through proportionate use of the licensing system, to address concerns relevant to the licensing objectives - particularly the prevention of public nuisance. The licensing process gives communities a voice. **We would suggest that this is actually 'localism in action' and this, and local democracy, could therefore be undermined by de-regulation of some/all entertainment activities.**

2.4 The current licensing system is transparent for residents and businesses near to an entertainment venue – they can check our public (on-line) register, know what time activities should end, how often they may occur, how they are controlled and also know that they are offered some assurance that should the premises licence change hands the same controls will apply. If new operators subsequently wish to vary their permissions residents will, once again, get the right to input into the process. This transparency also inherently aids compliance and enforcement as operators are aware that local persons know the specific terms and conditions of their licence.

2.5 If residents are experiencing nuisance from de-regulated noisy activities, with no idea when they will end or when they may occur again, there is absolutely no doubt that we will see many more complaints generated by this uncertainty and anxiety. Some operators will undoubtedly put profit before any consideration of local resident's views if there is no overarching control.

3. Enforcement impact concerns:

3.1 It is our clear experience that pro-active, tailored and specific licensing controls, assessed and applied individually on merit and very often the result of direct negotiation between the operator, interested parties and responsible authorities, are far more effective at promoting the licensing objectives than any reactive monitoring and enforcement under Environmental Protection or other legislation. With reference to Environmental Protection Act 1990 provisions, it is not beyond possibility that LAs will face 'appeals' against enforcement action on the grounds that it is the Government's view that regulated entertainment generally has 'no impact' on public nuisance. Monitoring to gain evidence of statutory nuisances will be a major problem for our limited resources in our rural yet sizeable area. Whilst borough or urban councils may have less issues of this nature, our district council is already integrating services with a neighbouring authority of similar size and geography so this concern is amplified.

3.2 We firmly believe that we do not see many licence reviews or a more regular need to use other regulatory tools such as abatement notices under s80 of EPA 1990 due to the current checks and balances in place through the licensing system, not because there wouldn't be any problems if no licence were needed. We have seen several instances where it is only the presence of a licensing process that even gets the operator thinking about risk assessments or potential impact on the licensing objectives or local communities.

3.3 De-regulation will undo a huge amount of carefully considered and democratically applied processes, hearings and specific proportionate conditions, that work and are generally easy to enforce. This has significant potential for harming the communities they were intended to protect. Six years into the LA2003, many entertainment venues have diversified and do have the flexible licences, balanced with adequate controls, they need to stay viable. Some operators, especially in the community and voluntary sectors, have fed back to us that they prefer having clear documented conditions that they in turn can use to help them manage external hirings (which can include specific licensing references within their hiring agreements). It supports them in retaining a degree of overall control of the venue. This can extend to village hall managers requiring conditions of the hirer via the hiring agreement that would otherwise fall (in the absence of PRSR Act reforms) whilst a TEN was in place.

3.4 Reversion to reactive powers in relation to noise control will impact on Council resources, and roll back to 'sledgehammer to crack a nut' methods. If the licensing system is administered consistently and enforced correctly the tools available under the LA2003 offer effective and speedy solutions to specific problems rather than repeated complaints to the Council instigating resource intensive monitoring and evidencing of statutory nuisances. This reactive and more generic approach is all against a background of major Local Authority cuts, which could in practice mean the complaint threshold being much higher before action is even considered and a negative impact on the wellbeing of some sectors of our communities.

3.5 The Police in our area are unlikely to use their powers (under the ASBA2003) to close premises on the basis of noise. They will almost certainly defer any noise-related issues to local EH Department noise professionals. All the tools mentioned in paras 3.12 to 3.15 of the consultation document are reactive and unlikely to be adequate in some cases.

As section 10.18 of s182 Guidance states, "*these general duties* [referring to inspection and enforcement powers that includes EPA1990] *will not always adequately address specific issues that arise on the premises in connection with, for example, certain types of entertainment*".

Further, as 2.35 of s182 states: *"As with all conditions, it will be clear that conditions relating to noise nuisance may not be necessary in certain circumstances where the provisions of the Environmental Protection Act 1990, the Noise Act 1996, or the Clean Neighbourhoods and Environment Act 2005 adequately protect those living in the vicinity of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be necessary".*

3.6 As our Local Authority integrates its licensing function with other services and strategies as far as possible to achieve efficiencies, better regulation and good customer service, de-regulation of entertainment could hinder this approach of dealing holistically with events and premises. Multi-specialism or co-ordinated inspections/advice could lose value if a significant part of an event or premises were no longer controllable. Planning enforcement issues may increase if, for example, there are planning controls in place in respect of amplified music or timings - some operators could mistakenly believe that de-regulation of entertainment from licensing would extend to planning controls.

3.7 Sub-division of premises (indoor or outdoor) is also something that has not been well addressed at all under other areas of the Licensing Act 2003 (and also Gambling Act 2005). Unintended consequences of de-regulation could be the scenario where you have an 'exempt' area set aside for entertainment next to a licensed (TEN) off-sale area. The TEN is assessed and recorded but the other area is totally uncontrolled and not notified despite being the same event.

3.8 Licensing records allow noise complaints to be linked quickly with licensed venues or TENS, and individuals (with contact details) connected with the authorisation, significantly aiding the efficiency of any noise nuisance investigations. Events can be logged in advance and the Council can make allowance for where it may need to deploy its resources – advisory, complaints handling, monitoring, out-of-hours, event inspections (including multi-agency) etc

3.9 Another point to make is that under the TENS process, the Police role is to assess the crime and disorder objective and protection of children from harm (all four objectives once the PRSR Act is implemented). This involves looking at the background of the individual giving the notice, to see whether the involvement of a particular individual at a particular event would raise concerns. If the Police or LA never get sight of a Notice that does not involve alcohol, for example a children's disco, how are the Police to make this important assessment?

4. Community, local democracy and objector rights concerns:

4.1 The current proposals, if implemented along the lines suggested, are very likely to result in increased complaints, confusion and anxiety for communities who are now, for the most part, well versed and familiar with their rights in the licensing system. Their status from being included in the 'partnership' approach to local licensing, as illustrated by 10.3 of s182 guidance (below), will now change to having no say and having to become a 'complainant':

> *"All interests – licensing authorities, licence and certificate holders, authorised persons, the police, other responsible authorities and local residents and businesses – should be working together in partnership to ensure collectively that the licensing objectives are promoted".*

4.2 Overall we have observed that carrying-on of amplified music attracts just as much comment from our residents than proposals for supply of alcohol. Residents expect to have their views heard and know that they can pro-actively influence the licensing process and that this offers them a degree of certainty. Whilst there may be more local resident tolerance and expectation of noisy activities in urban NTE centres, there is less so in some of our more rural towns and villages and therefore blanket de-regulation will harm this local balanced consideration and decision-making.

4.3 The DCMS consultation document has limited reference to potential impacts on our local residents and businesses and the relevant authorities. '*Residents and community representatives'* are mentioned in the list at 2.16 '*Who will be interested in this proposal*' but otherwise the consultation paper shows little balance. **We therefore urge the DCMS to take a step back from the wider de-regulation agenda and from justifying complete de-regulation based on the more unusual anecdotes or limited low/no-risk examples.** The consultation presents too narrow a picture heavily weighted towards the needs and views of performers/artists/operators and based on a general assumption, that we do not support from activity in our own area, that entertainment and cultural activities are being deterred by Licensing Act 2003 requirements.

5. Unnecessary burden on community and voluntary sector arguments:

5.1 The question of fees and potential savings to community and voluntary groups is raised by the consultation. One matter overlooked within the consultation is that community premises and educational establishments licensed for entertainment only are already exempt from paying licence fees (as per Part 5 of The Licensing Act 2003 (Fees) Regulations 2005). This is despite the fact that they can, and do, require inspection and attract enforcement issues (and cost for the Licensing Authority). At the moment these venues and actions are effectively subsidised by other fee paying operators in the licensed sector, when many are popular and commercially viable premises. If licensing controls were removed by default to a reactive and more generic enforcement system the costs to the Environmental Protection Service would dramatically increase - and at a time of major Local Authority cuts. Also closure powers, such as Police closure under ASBA2003 as referred to in the consultation document, would also likely be viewed by community and voluntary groups as disproportionate.

5.2 At Babergh District Council around 12% of all our licensed premises benefit from the current fee exemption. There is no 'process savings' to be had as per 2.26 of the consultation document as many already have in place the permanent licences that they need, and several have diversified to add new entertainment activities. 49% of all our licensed premises, which includes other non-entertainment sectors such as LNR establishments, have live music permissions and almost all pub, club and community venues have a variety of flexible entertainment permissions and adequate

controls via licence conditions. We process an increasing number of TENS for entertainment too with a total of 550 in our area in 2010/11.

5.3 Our Authority has observed that live music and cultural activities are actually thriving in our area, and it appears clear that these activities are not at all deterred by the licensing process. Feedback is that it is now far easier to obtain permissions for entertainment under the LA2003 than it was under the PEL regime. Year on year we are seeing new festivals, new venues, increased TENS and variations to diversify. Many premises in our area have already diversified to allow flexible entertainment activities, and whilst pubs may unfortunately be closing at an unprecedented rate up and down the country it is wrong to attribute this to the assumption that the licensing process is generally hindering diversification. Other feedback we have had from local licensed venue/event operators is that is the smoking-ban and Performing Rights Society (PRS) licensing and their fees that are deterring some music activities and not Licensing Act 2003 processes – PRS fees can be 1% of total income for community venues (so the more popular venues pay more). We have also had feedback from some pub tenants that breweries themselves are charging tenants several hundred pounds to submit a variation or minor variation to extend entertainment activities. The current TENS timeframes do cause the occasional problem, but this being largely addressed already via the 'late TENS' aspects of the PRSR Act 2011 (section 114). Another point of relevance is that holding of a public register for licensing can actually encourage some community and other entertainment events to take place as organisers can readily see which venues offer which facilities.

5.4 Responsible operators expect a licensing process and suitable controls to be volunteered, agreed or imposed – to state what they intend to do and to demonstrate that they have assessed the potential impact on those living and engaged in their normal activities in the local area. They also often appreciate the community engagement and good-practice steps/advice shared by responsible authorities, and this encourages responsible and consistent operation.

5.5 We would comment that the PRSR Bill consultation itself was titled '*Rebalancing the Licensing Act consultation* ***on empowering individuals, families and local communities to shape and determine local licensing'***. The DCMS de-regulation proposals seems to accord far less with these principles, and it is blinkered to assume that it is only alcohol activity that concerns our communities in the context of what the licensing objectives should address. Whilst at 3.7 of the consultation document DCMS makes reference to the Government "*giving local communities additional powers* [via the Police Reform and Social Responsibility Act 2011] *to shape their night-time economies*" it seems contrary that local communities rights to do so for entertainment aspects of the same venues are being diminished by the proposals for wholesale de-regulation.

5.6 The potential penalties for non-compliant operators are stressed in the consultation, and assumptions made that operators will inherently be organised and sensitive if this sanction is removed. This broad assumption is incorrect and needs further careful consideration. The current criminal penalties for licensing offences are high with a £20,000 fine and/or 6 months imprisonment maximum and it is this deterrent, and threat of licence review, that generally underpins good operation.

Whilst the maximum penalty is severe, according to some licensing barristers the Courts on average impose fines in the region of £700/£800 for a section 136 (unlicensed or conditions breach) ofWe have had instances where operators have deliberately carried on unlicensed entertainment events, some over more than one day, causing significant public nuisance and been prepared to do so because the risk of a fine/enforcement action is outweighed by potential profit. One particular example, which we successfully prosecuted, was an unauthorised weekend music festival in a pub car park, with no controls, where the operator had amplified live bands - including one performer shouting obscenities directed at neighbours. The operator was fined £1800 by the Court but probably made double that from the event. Whilst an exceptional example, with protection of children concerns as well as public nuisance, should these activities be de-regulated problems linked to poor or inexperienced operators may rise significantly.

6. <u>Rationalising current regulated entertainment ambiguities:</u>

6.1 A far more logical step forward to address the issues over low-risk activities and inconsistent approach/ interpretation could be for the government to consider further **specific and clearly defined** Schedule 1 exemptions for the low/no-risk activities, perhaps along the lines of some of the examples given in para 1.5, rather than use these narrow examples as evidence that the whole activities themselves should be de-regulated. With some clearer 'good practice' guidance under section 182 of the act to promote clarity and consistent interpretation for Local Authorities on some of the greyer areas.

6.2 We firmly believe that setting any capacity threshold for de-regulation is arbitrary. The potential for noise disturbance from small events is in many ways as great as it is for larger ones. A capacity cut-off point bears no relation to the

noise disturbance possible from the bass and dynamic range of modern sound systems. As we have referred to earlier public nuisance can caused where only a handful of people are affected. The scale of sound of an entire group or orchestra can be recreated by a single musician using the kind of equipment that can be carried in a small vehicle. Due to the significant number of contentious hearings we have seen in relation to amplified music we would see many more complaints if these activities were de-regulated and this would result in many more reactive referrals under EPA.

6.3 The licensing process, although far from perfect, gets the checks and balances about right if applied consistently and proportionately where the LA discretion is engaged. This is necessary to ensure the rights of communities are not being undermined. The licensing process also looks at each set of circumstances on merit – the building/structure (which may not be suitable for some types of activity, the local area including any unusual geography, the normal use of the venue (we have a working farm now turning into a festival venue bringing a host of issues), any noise sensitive locations in the vicinity (for example hospitals, care homes, places of worship etc).

Outdoor live music festivals for far less than 5000 persons at any one time area have significant potential to impact on licensing objectives as we have seen from events given under TENS and limited to 499 persons. The LA2003 offers a 'joined up' licensing process that encourages partnership working and is well supported by experienced and knowledgeable elected members and officers.

6.4 Care needs to be taken as implementation of the PRSR Act 2011 reforms together with, potentially, simultaneous de-regulation of entertainment may have some conflict and significant unintended consequences. An example of this, in addition to the reference we have made at 5.5 of this response, is that the 2011 Act is reducing the test for Licensing Authorities in applying conditions to licences to 'appropriate' rather than 'necessary'. The absence of licensing controls for entertainment will cause some uncertainty with how this should or would work.

RESPONSES TO DCMS CONSULTATION QUESTIONS
(to be cross referenced with our general commentary)

Q1: From experience in our own district, we do not believe that the current licensing system is a general deterrent to entertainment events or diversification. Other non-licensing factors, as we have referred to in 5.3 our commentary, may be more likely contributory factors. Most venues have or obtain licences for what they need with little problem. De-regulation may very well lead to more performances overall but also more problems for communities and regulators. We believe that the current system of fee exempt community and educational facilities, where regulated entertainment is licensed only, already offers community and voluntary organisations significant and sufficient scope for entertainment events, whilst retaining the balance necessary to promote the licensing objectives. The PRSR Act 2011 licensing reforms, especially around TENS, will further reduce the burden on local entertainment operators.

Q2: N/A – we are responding as an organisation (Local Authority).

Q3: We would refer to Q1 and our general commentary, and reiterate the existing fee exemption provisions. If organisers do not wish to pay the fees for occasional TENS they can usually get a full premises licence without paying any licence fees.

Q4: We strongly do not agree as we believe any potential savings via de-regulating will be more than offset by transitional costs, additional enforcement action (for example under EPA1990), and dealing with/recording noise nuisance complaints. In the absence of a licensing register we will also very likely need to expend further time and resource having to track down where activities took place and establish who was involved when we receive complaints, and resource pressures may 'raise the threshold' for action – which is not best serving our communities and may affect some residents wellbeing.

Q5: From our local knowledge and experience, including the volume of contentious hearings, we would definitely expect a significant increase in noise nuisance complaints for the reasons included within our general commentary. We would also expect the de-regulation proposals to be of considerable concern to many sectors of our communities. Volume of extra complaints is obviously difficult to quantify but when we have had over 120 hearings, including petitions and resident action-groups, and many more mediated to avoid hearings from a base of around 400 licensed premises that is a good indicator that deregulation and uncontrolled activities will lead to significantly more complaints.

Q6: We can not reasonably estimate correct ranges at this stage.

Q7: We would refer the DCMS to our general commentary for potential impacts.

Q8: We would refer the DCMS to our general commentary for potential impacts.

Q9: We would refer the DCMS to our general commentary and responses to the questions.

Q10: This is a difficult issue potentially and should be assessed very carefully. Licences may have generic controls to both prevent public nuisance generally or some very specific controls linked to a specific activity. Some conditions also promote more than one objective. Removal of the activity may lead to confusion over enforceability/wording of remaining conditions for licence holders and regulators alike so ultimately a variation or MV may be preferential for the sake of clarity. This would obviously have a major cost and resource implication on licensees and relevant authorities. Licences would need to gone through individually and also some going through full variation process could potentially be subject to further representation and hearings. If given the option, licence holders will undoubtedly vary licences to remove conditions in significant numbers to reduce their potential liability. Depending on any transitional arrangements this could mean a glut of de-regulatory variations for the LA, and responsible authorities, to process.

Role of Licensing Controls

Q11: No.

Q12: Setting a limit is arbitrary. Even small scale events can affect the licensing objectives, and each activity therefore each should be assessed locally and on its individual merits, with a mechanism for local community input. Please refer to our general commentary for expansion/examples on this point. Although we in no way agree with the principle of a threshold, if this is progressed, then it should set far lower than the 5000 proposed.

Q13: As for Q12. Setting limits wholly or by type of activity is arbitrary.

Q14: Yes we strongly believe the licensing objectives, localism principles and local democracy would be undermined by de-regulation due to the reasons and scenarios contained within our response commentary.

Q15: Outdoor events generally carry particular risks and special considerations. Currently the broad brush licensing system in place (and the timescales involved) for premises licensing is not best suited for large scale temporary outdoor events, and there should be a better separate licensing mechanism in place. Again it is our experience of the 2003 Act that some small-scale/indoor events have much the same potential for causing public nuisance, which has been identified by section 2.33 of the statutory guidance, and case-law, to also mean small scale public nuisance affecting only a handful of individuals. Audience size/capacity is therefore something that should be assessed individually on its merits together with the event/activity/site proposals.

Q16: Frequency as well as actual timings is very important to local residents. Blanket-setting of timings is arbitrary but generally more sensitive periods of the day or night are likely to attract more complaints. A noisy activity, such as thumping bass of a rock band or karaoke/disco, has the potential for impacting on the licensing objectives at any time depending where it is taking place, the nature of the local area/building/area to be used, proximity to residents/ noise-sensitive locations, control measures in place (or lack of) etc

Q17: As per previous responses.

Q18: We strongly believe that the current licensing system is already the fairest, most inclusive, balanced and locally determined and accountable method of achieving this. The LA2003 is clearly better, and less onerous, than the several individual licensing regimes that preceded it.

Q19: No. We believe that a blanket code of practice (COP) would not work and is a backward step from the individually considered, pro-active, proportionate, individually tailored and enforceable controls we have via the licensing system. Whilst many operators are responsible, and volunteer some excellent conditions, there are unfortunately other poor or inexperienced operators that would be unlikely to comply with any voluntary and unenforceable code. Controls should be considered and applied locally based on local circumstances and Licensing Authorities now have considerable expertise in balancing this. The scale and scope of potential activities under the banner of 'regulated entertainment' is so wide that any generic or pick-list type COP is going to difficult to develop and unlikely to achieve adequate controls. Standard type conditions under the old PEL system were similarly flawed when compared to the LA2003 process. 10.13 of s182 guidance endorses this approach:

> *"The Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned. This rules out standardized conditions which ignore these individual aspects."*

Q20: No, and nor is this view supported by the statutory licensing guidance (see our general commentary). The current licensing system is mature, and works, with some excellent licences in place to both offer the flexibility and diversity operators need but also

adequately promoting the licensing objectives and protecting the rights of interested parties. Licensing is the most suitable methodology for assessing and managing risk linked to promotion of the licensing objectives and it clearly encourages partnership working.

Q21/Q22: We believe that de-regulation will lead to more uncontrolled events, later into the night or at other sensitive times (or even continuous over days at some festivals), more complaints and the very real risk of some major consequences and incidents in relation to public safety, prevention of public nuisance, protection of children from harm and crime and disorder.

You could have an outdoor event taking place, with no prior notice to relevant authorities, in an area unsuitable or dangerous where there is no sale of alcohol (e.g. people bringing their own), with camping , staging, amplification , parking etc for 4999 people totally uncontrolled and without any time-limit, identifiable or contactable organiser, without risk assessments or any consideration of promotion of licensing objectives. This type of scenario is of major concern.

Performance of live music

Q23: As identified within our comments throughout this response document.

Q24: Unamplified music is less likely to pose a noise nuisance risk when compared to amplified music. The licensing objectives can still be affected by the event generally though – for example outdoor festivals may impact on all four of the licensing objectives.

Q25: As identified in our comments throughout our response. We believe the current licensing system, assessing each on merit including community engagement, is the best mechanism. Our view is based on the evidence of our many heavily contested licensing hearings - several of which have included petitions - in relation to concerns over music events in open spaces and in residential areas.

Plays

Q26: There is already an inherent prohibition in the Act (section 22) on LAs imposing conditions relating to the nature and manner of plays, but this section also explicitly preserves the right to condition relating to public safety. Therefore this assessment should be maintained whether plays are indoors or outdoors. Clearer good practice s182 guidance would assist with approaching this in a consistent and targeted way. Annex D of the s182 guidance offers possible controls measures for theatres in relation to public safety, although some of these may be duplication of other provisions so this needs revising/updating.

Q27: As for Q26.

Q28: Our Licensing Authority will not knowingly duplicate any provision/regulatory control elsewhere as a licence condition. As mentioned in Q26 some better good practice guidance would assist.

Q29: We would refer to our general comments and observations in our response. Plays activity generally attracts little specific comment from interested parties. Some clearer definitions relating to what regulated plays are (especially things like historical recreations) would help achieve greater consistency across Licensing Authorities. The Police may also have a view on preventing crime and disorder for this activity – for example background checks on a licence applicant for a children's performance may occasionally reveal child protection concerns.

Dance

Q30: We would refer to our general comments and observations in our response. Clearer good practice s182 guidance would assist and/or some specific exemptions for low/no-risk activities.

Q31: We would refer to our general comments and observations. Dance activity generally attracts little specific comment from interested parties but amplified music accompanying it does.

Films

Q32/Q33: An equivalent of the mandatory condition on age classification should remain in place. There are already limited exemptions for some parts of films activity under Part 2 of Schedule 1. In reality it seems bizarre that a simultaneous broadcast is exempt but showing the same programme on a DVD is regulated. Cinema and theatres still carry some particular public safety risks as identified in Annex D of s182 guidance so de-regulation will require careful consideration of how to address these matters.

Q34: Is the example given of showing of children's DVD's to pre-school nurseries actually licensable under existing licensing requirements? More than likely to be exempt reliant on 'private' or 'educational' provisions. Clearer good practice guidance will help if this remains a licensable activity or else some better framed exemptions.

Q35: Cinemas were subject to conversion of measures which reproduced the requirements of the now repealed Cinematograph (Safety) Regulations 1955 (S.I 1995/1129). Public safety must still be assessed by the Licensing Authority and Responsible Authorities as part of applications for new cinemas or variations. See 2.30 of s182 guidance. Whilst digital cinema (including mobile) is now more commonplace, venues still using and storing flammable film reels (particularly older cellulose nitrate film) need assessment.

Indoor sports

Q36: Capacity issues/crowd control linked to large or popular indoor sporting events – for example competition finals. This can impact on promotion of the licensing objectives. If this activity is in a licensed venue such as a pub then assessment of the indoor sporting aspects of the licence application help towards the holistic approach to management of operation of the venue.

Q37: Some specific exemptions for certain types of low/no risk indoor sporting activity, or in certain types of venue such as schools or sports centres, could be considered rather than complete deregulation on the assumption the activity would rarely affect the licensing objectives.

Boxing and wrestling

Q38/Q39/Q40: Whilst being aware that boxing/wrestling outdoors is regulated by the LA2003, we would respond along similar lines as for 'indoor sports'. Capacity issues/crowd control linked to boxing or wrestling events can impact on promotion of the licensing objectives. We are starting to see occasional boxing entertainments licensed at one of the nightclub venues in our area and suitable licensing measures need to be assessed and in place, alongside any separate sport governing body regulation. Whilst cage fighting and some contact martial arts could already fall into the definition some additional clarity in Schedule 1 and/or guidance will assist.

Recorded Music and Entertainment Facilities

Q41: No we do not believe that recorded music should be deregulated for audiences of fewer than 5000 for the reasons and evidence given throughout our consultation response.

Q42: No, we believe any audience limit is arbitrary. Please refer to our previous responses. Although we in no way agree with the principle of a threshold, if this is progressed, then it should set far lower than the 5000 proposed.

Q43: As per our previous responses and general comments.

Q44: As per previous responses and comments. We believe the current licensing system, with each proposal assessed individually and on its merits, is the correct way to approach this issue.

Q45: As per previous responses. Karaoke and other amplified entertainment facilities in some premises can have significant potential to impact on the prevention of public nuisance licensing objective.

department for culture, media and sport

Please on the title below to access this document

Regulated Entertainment

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

September 2011

improving the quality of life for all

Government plans to slash red tape and 'pointless bureaucracy' for live music and public entertainment as part of cross-Government 'Red Tape Challenge'

079/11
10 September 2011

John Penrose: 'Deregulation will help new talent emerge and promote economic growth'

The Government today announced plans for a wholesale deregulation of entertainment licensing in the UK. The proposals, part of the Government's 'Red Tape Challenge' is contained in a consultation paper, Regulated Entertainment, which proposes scrapping much of the Licensing Act 2003 requiring people to apply and sometimes pay for licences for many events where there is little or no risk of trouble.

These include activities such as:

- School plays, children's films shown to toddler groups, school discos where tickets are sold to raise funds for the PTA, or exhibitions of dancing by children at school fetes;
- Folk duos in pubs, pianists in restaurants and brass bands playing in public parks on Sunday afternoons; and even
- Punch and Judy shows and performances by street artists.

This announcement does not affect the current rules on the licensing of alcohol supply and sale.

Tourism Minister John Penrose said:

"Current entertainment licensing rules are a mess. Pointless bureaucracy and licence fees imposed on community groups trying to put on simple amateur productions and fund-raising events, sap energy and deaden people's desire to get involved. The Government's Red Tape Challenge, is leading to deregulation across all sectors of the economy – and in this case it will make it easier for new talent to get started and help pubs to diversify into other activities to help weather the present tough economic climate.

"That's why I want to set a match to all this nonsense, and trust sensible people to act sensibly, with regulation retained only where rightly needed to keep audiences and performances safe."

'Regulated Entertainment' looks at all currently licensable activities such as performances of plays, live music and dance; exhibition of films; indoor sports, boxing and wrestling (indoor and outdoor); and public playing of recorded music, and asks the question 'what would happen if this activity were no longer licensable?' Where there is no good reason to continue with the present regime, the presumption will be in favour of abolition.

However, the Government is also clear that there will be no relaxation on the rules controlling gatherings of more than 5,000 people, boxing and wrestling, and things classed as sexual entertainment.

John Penrose continued:

“Before we press ahead, it’s important we get the views of those working in the industry, and to make sure that the principles of public safety, prevention of public nuisance and the protection of children from harm are safeguarded.

“Our starting point is a simple one: if there’s no good reason for any of the rules and restrictions in this important area, our presumption should be to scrap them.”

Notes to Editors

1. The Red Tape Challenge was launched by the Prime Minister on 7 April. It gives the public the chance to have their say on some of the more than 21,000 regulations that affect their everyday lives.

2. The campaign has six cross cutting themes that affect all businesses and are open throughout the whole of the campaign. The six cross cutting themes are:

    a. Employment law;

    b. Pensions;

    c. Company law;

    d. Equalities;

    e. Health and Safety; and

    f. Environment legislation.

3. For each sector theme, there is an experienced ‘sector champion’ who will provide expert knowledge on the issues faced by those on the shop floor. The champion acts as an intermediary between the sector and Government and help to direct the web-based debates and discussions.

4. The Government’s plan for growth document (External PDF, HM Treasury)

5. The Challenge process does not include legislation or regulations falling within the responsibilities of the devolved administrations.

6. Licensing was considered as part of the second Red Tape Challenge theme on hospitality, food and drink

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ADDITIONAL COMMENTS

Feargal Sharkey, Chief Executive, UK Music said:

"We are delighted that Government has adopted such a forward-thinking approach. Enabling live music to flourish has potential to drive social cohesion, entrepreneurialism and economic growth. UK Music warmly welcomes this consultation and all other measures that would remove red tape for the benefit of musicians and creative talent."

Robin Simpson, Chief Executive of Voluntary Arts said:

“In recent years the escalating burden of entertainment licensing and similar regulation has become a major obstacle to amateur arts groups putting on small local events and performances. From a few acoustic musicians playing in a pub, to public workshops and small local festivals, the complexity and cost of regulation originally intended for much larger-scale events has had a detrimental effect on hundreds of thousaands of volunteers who give their time for the benefit of their communities.

“Voluntary Arts therefore welcomes these proposals to reduce the regulatory burden on the tens of thousands of amateur arts group across the country who contribute so much to the Government’s vision of a Big Society.”

Christine Payne, General Secretary of Equity, said:

“We commend these proposals as a visionary solution to a long running problem in the live entertainment sector. Freeing up venues to put on plays, live music, dance performances and film will provide a much needed boost for our communities, it will help to create more opportunities for artists and will enable young performers to get the exposure needed to kickstart their careers”.

David Butler, OBE, chief executive of the National Confederation of Parent Teacher Associations (NCPTA) said:

“NCPTA is delighted by - and fully supports - proposals for the deregulation of entertainment licensing in the UK. These requirements have done much to hinder the work of Parent Teacher Associations (PTAs) which have limited their activities because of the administrative burden imposed. Additionally, the costs of obtaining a licence have reduced the funds raised to benefit education and children. NCPTA has long argued that there is insufficient risk posed by PTA activities – for example, children’s discos, family film nights or teenage band contests – to justify the regulatory regime. The Government is to be congratulated on taking this step which will be significant in allowing PTA activity to flourish.”

Brigid Simmonds OBE, Chairman, Tourism Alliance said:

“The Government deserves real credit for looking at ways of sweeping away some of the red tape that gets in the way of music and other types of entertainment. The whole tourism industry in Britain could be an engine for creating new jobs, so removing restrictions on providing entertainment in pubs, schools, historic houses, arts and other venues would be a great move.

“Venues wanting to put on music or other entertainments often have to apply to their Local Authority for permission – an unnecessary burden for business and council alike. If the Government were to sweep these unnecessary restrictions away, this would be great for the whole tourism industry.

“I hope the Government makes good progress in cutting this red tape. With the Olympics and the Queen’s Diamond Jubilee, next year is hugely important for the whole tourism and hospitality sector.”

Deborah Annetts, Chief Executive of the Incorporated Society of Musicians (ISM) said:

"We welcome the consultation and look forward to these ambitious proposals enabling musicians to perform across England and Wales. This is fantastic news for all who have been campaigning against the costly bureaucratic licensing regime that stifled music and harmed our economy."

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APPENDIX D

Unintended consequences

Q46: As referred to we believe the addition of limited and some better defined schedule 1 exemptions would address most of the negative issues raised by the consultation. Amendments to schedule 1 supported by clearer 'best practice' S182 guidance would aid practitioners and LA consistent interpretation**.**

Q47: As referred to within our general commentary.

Adult entertainment

Q48: Yes, as clearly the licensing objectives may be impacted. In licensed premises benefitting from LA2003 permissions but exempt under SEV law adequate safeguards need to be considered and the LA2003 is the mechanism for this.