

## Appendix 1

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

Yes

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

Yes, but 'audience' must be defined

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

Yes

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

Yes

But, it is the opinion of this Council that the proposal has potential for nuisance to occur at any time.

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

No

There has been no provision made for representations that are frivolous or vexatious and the Council would have to bear the costs of any hearings in their entirety without any additional funding. Case law suggests other licensing income cannot be used to support these costs and that each area of licensing must be self-funding.

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

Yes

But see above comments on question 5

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

Yes

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

Yes

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

No

The perceived financial and legislative burden is not considered by this council to be a result of the Licensing Act, 64% of our establishments are licensed for the provision of regulated entertainment. Furthermore, experience rather than anecdotal evidence suggests that these small events cause more problems than the larger more well managed events.

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

No

The proposals appear to water down aspects of the Licensing Act 2003 that relate to public safety and public nuisance.

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

No

See question 10 above for comments

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

No

The proposal undermines the protections that currently exist under the Licensing Act 2003

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

Yes

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

No

### Estimated Burden of Proposed Exemption on Licensing Authorities

The cost of each hearing is £1,200 as you have already identified. Page 5 of the consultation document expects the administrative burden on all 378 Licensing Authorities to be “around £224K - £1,211K per year” which is between £600 and £3,200 for each Licensing Authority. If we even hold one hearing, the cost will be 50% more than your lower estimate.

The grounds for representation are not identical to that of premises licences as they do not provide the Licensing Authority the power to reject any applications for an exclusion decision on the grounds that they are frivolous or vexatious or even if they are withdrawn; only that a representation is relevant if it relates to one or more of the licensing objectives. Please see section 18(6)(7) of the Licensing Act 2003. It is expected therefore that the number of hearings required will be greater than 3 - your estimated maximum cost to each Licensing Authority.

The cost of these hearings should not be borne by the Licensing Authority, where no fees are payable. In accordance with case law although they may not make a profit, they cannot use other licensing regimes to subsidise these costs; further the burden should also not fall on the tax-payer to subsidise them.

The cost of investigating any complaints would also have to be taken into consideration.

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

Yes

However the draft order appears silent on a number of issues, these being:

1. The absence of a like provision at Section 18(7) of LA 2003 i.e. the power of a licensing authority to decide whether a representation is “frivolous or vexatious” and that a representation is no longer relevant if it has been withdrawn.
2. No definition of audience.
3. A record of each exclusion decision is required to be kept in the licensing register. If it is not a licensed premise there is no fee for this, who will bear this additional cost.
4. The cost of appeals, again there are no fees for this aspect of the proposal.

## Annex C: Draft Order

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In Schedule 1:

(a) After paragraph 7 insert-

*“Live music in certain small venues”*

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

(2) The conditions are that-

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

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

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

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

(b) After Part 2 add-

### “PART 2A

#### Live music in small venues: exclusion decisions

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

(2) The conditions are that-

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

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

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

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

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

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

(b) require the applicant to give a notice containing details of the application to such persons as may be prescribed within such period as may be prescribed;

(c) require [the applicant][the authority] to advertise the application within such period as may be prescribed, and to invite representations about it to be made to the authority by interested parties, responsible authorities and such other persons as may be prescribed;

(d) prescribe the period during which such representations may be made;

(e) require any notice under sub-paragraph (b) or advertisement under sub-paragraph (c) to specify that period;

(f) require that a record of each premises in respect of which an exclusion decision has effect be included in the relevant licensing authority's register kept under section 8.

(5) In this paragraph-

(a) "interested party" in relation to any premises means-

- (i) a person living in the vicinity of the premises,
- (ii) a body representing persons who live in that vicinity,
- (iii) a person involved in a business in that vicinity,
- (iv) a body representing persons involved in such businesses.

(b) "responsible authority" means-

- (i) any of the authorities referred to in section 13(4)(a) to (e) or (g),  
or
- (ii) a person prescribed for the purposes of this sub-paragraph."

(c) After paragraph 18 add-

*"Live music in certain small venues: "building"*

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

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

In Schedule 5, after paragraph 18 insert-

*"Live music in certain small venues: exclusion decisions"*

18A (1) this paragraph applies where an application for an exclusion decision in respect of premises is decided under paragraph 12A of Schedule 1.

(2) An appeal may be made against that decision by-

- (a) the applicant for the decision,
- (b) a responsible authority within the meaning of paragraph 12A(5)(b),
- (b) if a premises licence has effect in respect of the premises, the holder of that licence;
- (c) if a club premises certificate has effect in respect of the premises, the club which holds that certificate;
- (d) if neither a premises licence nor a club premises certificate has effect in respect of the premises, the owner or occupier of the premises or such other persons as may be prescribed;
- (e) an interested party within the meaning of paragraph 12A(5)(a) who made relevant representations in relation to the application.

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

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

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

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