

5. Live Music Consultation

Executive Portfolio Holder: Ric Pallister - Deputy Leader of the Council; Health, Housing, Inclusion and Revenues & Benefits

Head of Service: Laurence Willis, Assistant Director - Environment

Lead Officer: Anita Legg, Licensing Officer, Licensing Service

Contact Details: anita.legg@southsomerset.gov.uk or (01935) 462137

Purpose of the Report

To advise the Licensing Committee that the Government has submitted a proposal to exempt small live music events from the Licensing Act 2003.

Recommendation

That the Licensing Committee consider and approve the answers given by the Licensing Service to the questions posed by the Government concerning the consultation.

Background

The Live Music Forum have recommended to the government that small live music events are exempt from the requirements of the Licensing Act 2003 for audiences of not more than 100 people whether or not the premises are licensed; the reason for this recommendation is that it is viewed that the current regime places an administrative and financial burden on the live music industry.

The Department for Culture Media & Sport (DCMS) has produced a consultation document seeking local authorities views in regard to this proposal to arrive no later than 26 March 2010 either by e-mail to licensingconsultation@culture.gov.uk or by post to Shelley Mickleburgh, Department for Culture, Media and Sport, Licensing Team, Sport and Leisure Directorate, 2-4 Cockspur Street, London SW1Y 5DH. This consultation document contains 15 questions and the draft order seeking to amend the Licensing Act 2003, which can be found as the appendix to this document.

Current Legislation

The activities regulated by the Licensing Act 2003 (The Act) include 'the provision of regulated entertainment', which is defined in Schedule 1 of the Act as 'entertainment' or 'entertainment facilities' provided either for the public; exclusively for members of a club which is a 'qualifying club' under the Act; or for consideration and with a view to profit.

Under Schedule 1(2)(1)(e) 'Entertainment' includes a 'performance of live music' 'where it takes place in the presence of an audience and is provided for the purpose, or for purposes which includes the purpose, of entertaining that audience'.

Section 2 of the Act requires anyone who wishes to carry on a licensable activity to obtain an appropriate authorisation in the form of a premises licence, a club premises certificate or a temporary event notice. Any changes to a licence or club premises certificate, for example, to add live music provision, must be authorised through the full or minor variation process.

Perceived Financial Effect of the Licensing Act 2003 on Live Music Venues

The consultation document refers to the cost of complying with conditions of a licence, however, whilst licensing authorities can impose conditions on a licence application, they can only impose ones that are necessary and proportionate; it may be in some cases therefore that a noise limiter condition is imposed, but that is because enough evidence was produced to satisfy this requirement.

If it is thought that fees for premises licences and/or club premises certificates deter live music from taking place, a temporary event notice (TEN) can be used at a cost of £21 as such a notice can be used for up to 499 persons.

There is no premises licence fee payable for premises that are educational institutions or community buildings if the application is for regulated entertainment only; however the applicant would still have to pay for copying the application forms to the Responsible Authorities and for a newspaper advertisement, which can cost more than the licence fee itself. The new European Services Directive¹ will alleviate the photocopying costs if the application is made on-line as once the Licensing Authority receive the electronic application/notice, it bears the responsibility for ensuring an electronic copy is sent to the Responsible Authorities. There are no fee exemptions for TEN's.

Proposal

That the performance of live music be exempted from the Licensing Act 2003 where:

- It is held in a building which is not a) temporary b) a structure without a roof, or walls that forms an enclosed space or c) a vehicle, vessel or moveable structure
- Where the audience does not exceed 100 persons
- The performance does not take place between 11pm and 8am
- The performance does not take place in premises which is subject to an 'exclusion' decision

Premises which are subject to an exclusion decision are those where the Licensing Authority have received a representation concerning the licensing objectives from events that have used the exemption. Under these circumstances the Licensing Authority would be required to hold a hearing and may then decide to exclude the premises from any further use of the exemption.

It is the opinion of the Licensing Service that the proposal has potential for nuisance to occur. Even with an 11pm finish time it could affect the more vulnerable persons in society such as the elderly and children who are expected to retire before 11pm; further it could affect those who have a shift pattern of working.

Whilst it is the intention of the government that by limiting the performances to those taking place in a 'building,' this could still lead to performances taking place in a 'building' that is not solid in construction such as a modern farm building and these buildings could be situated in close proximity to local residents.

It is also possible that several 'acts' will perform during the event, if not included as part of the audience; therefore the figure of 100 persons could be greatly exceeded; further there may be other persons which the organiser of the event doesn't class as members of an audience such as stage hands and helpers. Another problem that may occur

¹ 2006/123 EC Of The European Parliament And Of The Council

without a definition of 'audience' is that a venue could claim that some of the patrons are not part of the audience and therefore how would a licensing or police officer check that the 'audience' is no more than 100 persons?

Observations

Currently we do not receive many complaints concerning live music events held in buildings; however where we do receive complaints, the premises in question are mainly situated in residential areas and a mechanism exists whereby the licence can be reviewed. Should the proposal be successful, a similar mechanism will exist to exclude premises from the exemption; however it doesn't appear that licensing authorities have been given the same power to dismiss applications for exclusion by Interested Parties if deemed legally frivolous or vexatious; therefore a hearing will be required if the representation is relevant to one or more of the licensing objectives, which could result in more hearings taking place.

Currently the Licensing Authority and the Police are notified of live music events taking place either by an application for a licence, certificate or TEN. It is possible for the Police to object to an event taking place; however if events falling within the scope of the exemption are not subject to notification, the local communities would be unaware that these events would be taking place; currently the Licensing Service send a summary of events taking place to local bodies.

Should a noise nuisance occur, the Environmental Protection Team do have powers under primary legislation such as the Environmental Protection Act 1990 to deal with this type of nuisance once it has occurred, and can issue noise abatement orders if necessary.

Another area for concern is that other activities take place at exempted live music events that are still licensable such as the Sale of Alcohol and the playing of Recorded Music.

Financial Implications

The Department of Culture, Media and Sport have estimated that it will cost Licensing Authorities between £600 and £3,200 per year should a hearing be necessary to ascertain whether or not premises should be excluded from using the proposed exemption.

Having obtained estimated costs from the relevant parts of this council for administration, use of the council chambers or other meeting room, licensing, legal, and councillor expenses, the estimated cost of each hearing would be £1,100. Further there is the cost of any appeals to be taken into consideration.

If the proposal does amend the Licensing Act 2003, it is possible that the Council may incur additional costs as the number of noise complaints could increase.

It is likely that should the proposal be successful there will be a fall of about 30 temporary event notices submitted each year, which would result in a fall of income for the Licensing Service of approximately £630, which could be absorbed within the budget.

Implications for Corporate Priorities

To ensure safe, sustainable and cohesive communities

Other Implications

None

Background Papers: *Licensing Act 2003
Proposal to exempt small live music events from the Licensing Act 2003. Published by the Department of Culture Media and Sport. This can be found at:
http://www.culture.gov.uk/reference_library/consultations/6499.aspx*
