



By Email licensingconsultation@culture.gsi.gov.uk

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protection uk

Consultation on Proposal to exempt small live music events from the Licensing Act 2003

Environmental Protection UK Response

About Environmental Protection UK

Environmental Protection UK brings together organisations from across the public, private and voluntary sectors to promote a balanced and innovative approach to understanding and solving environmental problems, through policy development and education. We are a registered charity with 110 years experience of environmental campaigning, public information provision, producing educational resources and policy formulation. Our members include regulators and practitioners from local authorities, consultants, developers, academics and industry. We have 10 regional divisions across the UK. As such we are able to draw on a wide range of expertise and views.

Summary View

We do not believe that a blanket exemption of live music events for 100 or less people is a practical way forward either to increase the range of venues available for performance or to reduce the regulatory burden. The licensing process provides an opportunity to ensure that potential noise and nuisance impacts from events are properly considered. In particular, with the type of premises that this proposal is aimed at (cafes, shops, scout huts) organisers are likely to be inexperienced and therefore prone to unintentionally causing noise/nuisance problems. If the licensing fee is felt to be a barrier to the availability of more venues for live music and the intention is to encourage performance, small events could be subject to a lower fee. Also, the type of premises likely to host these events is unlikely to have existing sound attenuation in place. Further, there is no evidence that live music performance is in decline.

Question 1: Do you agree that the exemption should be limited to performances held wholly inside a permanent building?

No

No firm evidence is presented to support the case for an exemption. The Department's statistical bulletin suggests that the number of licences granted for live music continues to grow, contradicting the claim that the Act is inhibiting applications.

However, if an exemption were to be granted it must be limited to performances held wholly inside a permanent building to minimise the risk of any impact

Question 2: Do you agree that the exemption should be limited to performances of live music for not more than 100 people?

We do not support an exemption.

There is no correlation between audience size with the potential for a performance to cause a nuisance (buskers being a case in point – who may have no audience at all).

We also question how, if there is no procedure in place, audience size would be managed.

Question 3: Do you agree that audiences for exempt performances should be accommodated entirely within the building where the performance is taking place?

We do not support an exemption.

However, should it be granted, contrary to the view of specialists in noise and nuisance management, audience must be accommodated entirely within the building where the performance is taking place to minimise risk of impact on neighbours.

We believe that the type of venue this proposal is aimed at – cafes, shops, scout huts - are likely both to be situated close to noise-sensitive premises and be less well adapted for noise attenuation than larger premises. Containing both performers and audiences in permanent buildings is no guarantee of "nuisance-proofing".

Question 4: Do you agree that exempt performances should not take place between 11pm and 8am?

We do not support an exemption.

However, should it be granted allowing performance from 8am, given the nature and location of premises likely to be used, would run a high risk of disturbance/annoyance to neighbours and we surmise that the demand for breakfast music is small. Therefore we would recommend, should this exemption be granted, that 11pm – 12midday would be more reasonable.

Question 5: Do you agree that there should be an exclusion process as set out above?

We do not support an exemption.

Should it be granted, we agree that Licensing Authorities should have the power to exclude any premises from exemption where it is abused or can be shown to be unsuitable.

Question 6: Do you agree that the exclusion process should be similar to the current review process, with the modifications proposed?

Yes, and it should be sufficient for the Licensing Authority to give a copy of the application to the proprietor; to place in their premises.

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?

No.

The same effect could be achieved through guidance to Licensing Authorities that they should normally accept applications from small venues subject to similar conditions on audience size, containment etc.

We see no evidence to support the case that cost may remain a barrier to applications. A concessionary rate for smaller venues would not require an amendment to primary legislation and is therefore an option if cost is inhibiting live music.

Question 9: Do you agree that the effect of the proposal is proportionate to the policy objective?

No.

The policy objective is to allow small live performances and only anecdotal evidence of a need is presented. The impact of an increase in unmanaged performance would need to be balanced against the effect of increased impact on neighbours/nuisance and enforcement by local authorities. These have not been taken into account in the Impact Analysis.

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?

No

Little evidence is presented that live music is at risk. Enabling live performance is in the interest of the musician, the venue (private interest) and the audience who enjoy that music – this has to be balanced against the interest of the wider public who might find that performance disturbing/intrusive and we do not believe this proposal achieves that balance.

Question 11: Do you agree that the proposal does not remove any necessary protection?

No.

It removes the protection afforded by a licence application.

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?

No.

It removes the right of neighbours affected by a licence application to make representations, together with the expectation that the Licensing Authority will consider their interests when account making any decision to grant or refuse a licence.

Question 13: Do you agree that the proposal has no constitutional significance?

No. The use of Ministerial Orders to amend primary legislation remains of constitutional significance.

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)? Yes/ No. If not, please say which estimate you disagree with, and provide any evidence that supports an alternate estimate.

No.

The proposal assumes no increase in nuisance but presents no evidence. It over-estimates the value of the proposal to the public interest as it fails to include any additional cost to local authorities for nuisance investigation/enforcement or to the public of potential disturbance and instigation of an investigation.

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

No.

The amendment is headed "...small *venues*" - however the proposal relates to small audiences. Also, it is not clear from para 7A(1) that the scope of the change is limited to performances consisting solely of live music.

If you require any further information please contact:

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