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From the Welwyn Hatfield Live Music Forum

This is our response to the DCMS consultation to exempt small live music events from the Licensing Act 2003.

We note that some groups known to be critical of the Licensing Act do not appear on the DCMS List of Consultees in Appendix A (e.g. UK Music, Equity, BASCA).

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.

No. It is not necessary for the Licensing Act to duplicate existing legislation. As the consultation document states: *'It was proposed that any problems arising from the exempt live music could be dealt with through penalties available under other legislation.'*

The proposal contains no relief for the many harmless outdoor cultural pursuits such as carol singing, puppetry and mime that have been adversely affected by the Act.

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.

No. If live music is to be licensed at all, the exemption should be increased to premises for not more than 500. This is the number used by some licensing authorities to differentiate between small and major events for licensing purposes. See St Albans District Council website <http://www.stalbans.gov.uk/business/Health-and-safety/events-safety/default.aspx> for an example of this in practice.

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.

No. As per Question 1.

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

No. In premises already licensed for recorded music or DJs after 11:00, live music should be able to take place during those hours. Generally less nuisance and noise is caused by live music events than DJ events - it therefore makes no sense for the licensing requirements for live music to be more restrictive than those for DJ events.

Otherwise, the exemption should be increased to midnight.

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

No. DCMS has not demonstrated that there is any need for an exclusion process. In fact – the LRO’s own Impact Assessment states that the proposed exemption is *‘extremely unlikely to give rise to these concerns and will rarely, if ever, have an adverse impact on the promotion of the licensing objectives’*.

There is already legislation in place to deal with any transgressions should they occur. The proposal to permanently ban music as a result of a transgression is disproportionate and creates more bureaucracy and waste. There is no need to create yet another ‘process’ with its associated procedures, reviews, impact assessments, training courses, revisions to statements of licensing policies and so on...

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.

No. There is no need for an exclusion process.

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.

No. If premises have to apply for a variation to their premises licence in order to host ‘exempt’ live music events then the LRO will be almost pointless and the benefit to live music will be miniscule. It is also a waste of money.

Furthermore, LACORS has expressed concern that some Licensing Authorities have adopted a blanket policy of refusing minor variation applications for live music. Unless premises licence holders (and musicians) are given the right of appeal against minor variation decisions, and LA’s are given clear directives from LACORS to give cultural considerations equal weight in licensing decisions then the licensing regime will continue to be weighted against live music.

On 15 Jan 2010 the LGA announced that: ‘The minor variation process was only introduced on 29th July 2009, and already councils have granted live music applications for premises including hotels, restaurants, bars, clubs. Cafes and outdoor public areas. We believe that the success of the minor variations process shows that the present system is working well and does not need to be amended.’

In fact this LGA announcement had no basis in reality. On 25 Jan 2010, the answer to a Parliamentary Question tabled by Lord Clement-Jones revealed that the LGA knew of only three new live music permissions resulting from the 'minor variation' licensing process.

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

Yes and no. Yes, conditions for live music would be eased if the DCMS ministers clamped down on Licensing Authorities that routinely exceed their powers. Although the current DCMS ministers (Ben Bradshaw and Gerry Sutcliffe) have expressed concern that some LA's are guilty of this, with the obvious implication that such excesses have a detrimental effect on live music, it is bizarre that neither minister is willing to concede that the Act has had any effect on live music.

And no – there are still serious flaws remaining in the Licensing Act that can only be addressed by changing primary legislation.

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. DCMS lost sight of the Government's stated objective long ago. If the Government's stated policy was to provide 'an explosion of live music' then it has failed miserably due to bad legislating. Real jobs have been lost in the UK music industry as a direct result of the Licensing Act, and yet DCMS appear to have avoided analysing these sectors (e.g. manufacturing, retailing and publishing) in any of their reports. Opposition parties have accused DCMS of some pretty blatant manipulation of live music statistics. DCMS's defensive and evasive answers to recent Parliamentary Questions written by Lord Clement-Jones and Lord Colwyn are self-indicting.

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. Musicians who are employed at licensed premises are generally prohibited from making representations at licensing hearings. In failing to address this unfairness, this consultation is in potential conflict with the Human Rights Act 1998:

1. Local authorities are 'public authorities' for the purpose of the Human Rights Act 1998.
2. Under s3 of the HRA public authorities are obliged to interpret ALL legislation so far as possible compatibly with the European Convention rights now incorporated into UK law including Article 10 (freedom of expression) and Article 11 (freedom of assembly).
3. Under s6 of the HRA public authorities must not act in breach of human rights unless primary or secondary legislation obliges them to do so.
4. The performance of live music falls within Article 10 of the European Convention of Human Rights (ECHR).

5. The rights of residents to object to live music fall within Article 8 - respect for private and family life.

6. Rights under Articles 10 and 8 are qualified rights: both are subject to restrictions, subject to a range of conditions, including protecting the freedoms of others. In other words, where these rights are in competition, a fair balance must be struck. But any control on the exercise of Article 10 must be 'necessary to meet a pressing social need' and must be proportionate to the need.

Furthermore, it is highly relevant that LACORS guidelines for Licensing Committee Hearings advise that cultural considerations 'will always be subservient to the Licensing Objectives'. This is in clear conflict with the Human Rights Act.

Evidence given by DCMS to the DCMS Select Committee in 2008 claimed that the Licensing Act carefully balanced the needs of residents with cultural requirements. This evidence was not completely accurate as it failed to take account of LACORS guidelines.

The proposal contains no reference at all to the cultural benefits of live music. Music is only mentioned in connection with noise and crime.

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

Yes, but the proposal preserves disproportionate protection for residents and as such retains the 'removal of protection' for musicians, premises and audiences

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. Musicians who have lost work due to the Licensing Act continue to have no say or right of appeal. Musicians' rights under Articles 10 and 11 of the Human Rights Act are not respected in practice.

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

No. The Impact Assessment contains many errors and false assumptions due in part to its reliance on the DCMS Licensing Statistical Bulletins and the notorious report "Increases In Live

Music Between 2005 and 2009". The integrity of these reports has been questioned in both Houses, by Conservative and Liberal Democrat DCMS shadow ministers.

Page 13 of the LRO consultation contains the statement: *the number of authorisations for live music had risen by 7% during 2007/8 and although this did not reflect the number of live music events staged in practice, it was nevertheless an indicator that live music was thriving.*'

This statement has no basis in fact and is in blatant defiance of recommendations made by the UK Statistics Authority regarding the interpretation of these statistics.

It is highly significant that a government department appears to have misled its own ministers. Hansard records an exchange during DCMS questions on 1st March in which it is clear that the DCMS Secretary of State was not informed of the UK Statistics Authority's instructions regarding the use of live music statistics:

<http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100301/debtext/100301-0002.htm>

Licensing Authorities and Local Government Organisations have been misadvised about the effects of the Licensing Act on the live music industry, and consequently their submissions may be tainted.

Similarly, the LGA have not been entirely truthful with the media and Licensing Authorities:

A press release dated 11 Dec 2009 <http://www.lga.gov.uk/lga/core/page.do?pageId=6467844> claimed that: 'Proposals to allow pubs and bars to put on live music without the need for a licence could lead to a massive increase in noise problems, council leaders warned today, as a survey was published into the possible impacts of planned changes to the 2003 Licensing Act.'

This claim was reported in the Daily Mail and posted by the LGA on various Local Government websites such as The Local Government Executive, Information Portal for the Public Sector, and also the Neighbourhood Watch.

It has since become clear that the LGA survey was not properly conducted, and the results subjected to further 'interpretation' when issued to the press. In fact, the survey was not of 'council leaders' but of random replies to emails sent to licensing officers. Replies were in fact anonymous, so LACORS cannot tell if there were multiple replies on behalf of one council, or in fact whether the respondents were council employees at all. Bona fide research does not use self-selecting samples.

The word 'massive' was not used in the survey – this was an invention of the LGA press release.

Unfortunately this 'information' has been distributed to Licensing Authorities who in turn have advised Licensing Officers of these 'facts'. See East Devon council for an example http://www.eastdevon.gov.uk/google/knowledge_181209_issue_31.pdf

We support calls by Conservative shadow culture team for DCMS to abandon this consultation on the grounds that consultees may have been misled.

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

No. The LRO fails to remove the requirement to licence the provision of entertainment facilities for exempt events.

ENDS

Welwyn Hatfield Live Music Forum
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