

PART 1 - PUBLIC

Decision Maker: General Purposes & Licensing Committee

Date: 7 April 2010

Decision Type: Non-Urgent Non-Executive Non-Key

Title: **RESPONSE TO DCMS CONSULTATION ON PROPOSALS TO EXEMPT SMALL LIVE MUSIC VENUES FROM LICENSING**

Contact Officer: Paul Lehane, Head of Food Safety, Occupational Safety & Licensing
Tel: 020 8313 4216 E-mail: paul.lehane@bromley.gov.uk

Chief Officer: Nigel Davies - Director of Environmental Services

Ward: All

1. Reason for report

To report on action taken in respect of consultation by the Department of Culture Media and Sport (DCMS) proposing that small live music venues be exempt from the provisions of the Licensing Act 2003.

2. **RECOMMENDATION(S)**

Members are asked to note the response to opposing the proposal to exempt small live music venues from the licensing requirement of the Licensing Act 2003, as indicated in the letter in Appendix 1.

Corporate Policy

1. Policy Status: Existing policy. Statement of Licensing policy 2008 - 2011
 2. BBB Priority: Quality Environment.
-

Financial

1. Cost of proposal: No cost
 2. Ongoing costs: N/A.
 3. Budget head/performance centre: Public Protection
 4. Total current budget for this head: £3.5m
 5. Source of funding: Existing revenue budgets
-

Staff

1. Number of staff (current and additional): 62 (Licensing Service 8)
 2. If from existing staff resources, number of staff hours:
-

Legal

1. Legal Requirement: No statutory requirement or Government guidance.
 2. Call-in: Call-in is not applicable.
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A.
2. Summary of Ward Councillors comments:

3.0 COMMENTARY

- 3.1 The DCMS published a consultation document seeking views on proposals to exempt small live music venues from the requirements of the Licensing Act 2003.
- 3.2 Consultation closed on 26 March 2010 before these proposals could be considered by this Committee. To ensure that Bromley responded in time, officers met with the Chairman and Vice-Chairman, considered the proposals and drafted a response.
- 3.3 This report sets out the background to the proposals and the agreed response (Appendix 1).

4.0 Background

- 4.1 The Licensing Act 2003 replaced and consolidated several different licensing regimes. Live music was licensed under the Public Entertainment Licence (PEL) regime, except for performances of 2 musicians or fewer ('2 in a bar') which were exempt. In many ways, the Act had some positive benefits for live music, such as removing the need to have a separate permission and the requirement for routine annual renewals of licences.
- 4.2 However, there were concerns about the impact of the Act on live music and in 2005, shortly after the Act came into force, the Government set up an independent panel - the Live Music Forum - to monitor and evaluate the impact of the Act on the performance of live music. The Forum was chaired by Feargal Sharkey and included members from key bodies across the music industry and non-commercial sectors, together with local and national government, the Arts Council England and the hospitality trade.
- 4.3 The Forum found that although the Act had a 'broadly neutral' impact on live music, there was some evidence of over zealous enforcement and lack of clarity about the legislation which had on occasion 'brought about an unwelcome and unwarranted impact on very small scale live music events (see http://www.culture.gov.uk/reference_library/publications/3650.aspx) .
- 4.4 Research carried out by MORI for the Forum also found that 29% of smaller establishments that had operated without a public entertainment licence (but used the 2 in a bar exemption to put on live music) did not apply for live music provision when the Act came into force. The Forum recommended, amongst other things, that musical activity attracting less than 100 people should be exempt from the Act
- 4.5 Live music groups and campaigners have continued to express concerns about the impact of the Act on small live music venues. The House of Commons Culture, Media and Sport Committee, in its 6th report of sessions, also found some anecdotal evidence that live music in smaller venues was decreasing and recommended an exemption for venues with a capacity of 200 or fewer from the Act.
- 4.6 As a result the Government has returned again to the subject of exemptions. However, there were serious concerns of local authorities, residents and the police to be taken into consideration and for this reason the Government finally proposed to exempt only events performed for audiences of no more than 100 people and to include a power to revoke an exemption at a specific premises if there are problems arising from the live music events.

| | |
|---------------------------------|----------------------------|
| Non-Applicable Sections: | POLICY IMPLICATIONS |
|---------------------------------|----------------------------|

| | |
|--|---|
| | FINANCIAL IMPLICATIONS LEGAL IMPLICATIONS PERSONNEL IMPLICATIONS |
| Background Documents: (Access via Contact Officer) | DCMS Proposal to exempt small live music events from the Licensing Act 2003 |

020 8313 4216
paul.lehane@bromley.gov.uk

Our Ref: ehts/co/pml

12 March 2010

Shelly Mickleburgh
Licensing Team
Sport and Leisure Directorate
2-4 Cockspur Street
London SW1Y 5DH

Dear Madam

Consultation – Proposals to Exempt Small Live Music Events from the Licensing Act 2003

I am responding to this consultation proposal on behalf of Councillors Tony Owen and Brian Toms who are chairman and vice chairman of the council's General Purposes and Licensing Committee.

- 1.The council supports the aim of encouraging and supporting the provision of live music in a wide range of suitable venues. It does not support the proposals set out in this paper as being the most appropriate way to achieve this whilst maintaining proportionate control of such events to ensure the promotion of the licensing objectives
- 2.The licensing regime introduced by the Licensing Act 2003 started as being relatively simple. The introduction of further changes risks making the scheme more complex and confusing for all concerned.
- 3.Serious problems with noise result from a high level of amplification and inadequate fabric of the event building. Venue and audience size are not the determining factors.
- 4.In Bromley the current scheme of licensed premises and TENs works very well. It is precisely because small venues are required to be licensed that we do not have many complaints about them. In assessing licence applications colleagues in environmental health department assess the premises and where necessary make appropriate representations. Licensing sub-committees can then seek appropriate conditions if they feel they are necessary.
- 5.In our view the prevention of public nuisance and crime and disorder through the licensing process is preferable to reacting to problems afterwards using alternative legislation.
- 6.The possession of a licence and its possible loss acts as an incentive to operate responsibly. This would not necessarily be the case if small live music events were exempt
- 7.The TENs procedure is perfectly adequate for the occasional staging of small live musical events. Premises seeking to operate for more than the permitted number of occasions should surely require to be fully licensed. The scale of operation must raise concerns about the

potential for public nuisance and crime and disorder which are most appropriately considered through the licensing regime.

8. There may be some scope for reviewing the fees for TENs in respect of live music only events
9. The TENs procedure also allows colleagues in environmental health department time to contact event promoters and provide advice and guidance in advance of the event. This ensures that appropriate controls are in place to minimise noise nuisance. The exemption of small live music events would remove this opportunity to make timely supportive interventions
10. We also question the commercial benefits of exempting live music as a discrete item when most events involving the provision of entertainment also involve the sale of alcohol which will still require a licence or TEN.
11. We see little merit in venues already holding a licence, with conditions relating to larger scale events, being able to operate without the benefit of those conditions for smaller events. If the measures are already in place they will ensure the promotion of the licensing objectives for smaller events as well as larger ones. We agree with the general observation that completely inappropriate conditions could be varied in respect of certain type of event / audience size using the minor variations procedure as it currently stands.

Yours sincerely

Paul Lehane

Head of Service Food Safety, Occupational Safety and Licensing

0208 313 4216

Mobile 07956680727

paul.lehane@bromley.gov.uk