Government Response to the House of Commons Culture, Media and Sport Committee Report on the Licensing Act 2003 Session 2008-2009

Presented to Parliament by the
Secretary of State for Culture, Media and Sport
by Command of Her Majesty
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GOVERNMENT RESPONSE TO THE CULTURE, MEDIA AND SPORT COMMITTEE REPORT ON THE LICENSING ACT 2003

Introduction

The Government welcomes the publication of the report by the House of Commons Culture, Media and Sport Committee on the Licensing Act 2003. The report provides a welcome overview of how the Licensing Act has bedded down three and a half years after it was implemented.

The Government welcomes the Committee's view that the Act has broadly been a success and its recognition of the significant simplification and improvement to the licensing process that the Act has made by bringing together parts of what was previously a highly complicated and bureaucratic system. We were particularly pleased to note the Committee's recognition that the Licensing Act has supported the development of a greater diversity of types of premises on the high street – a central aim of the legislation.

As with all new legislation, the Government is committed to monitoring the effects of the new licensing regime and to making improvements where necessary. Since the Act came into force in November 2005, the Government has worked in partnership with enforcement agencies, local authorities and representatives of stakeholders, both voluntary and commercial, to achieve this. In keeping with the Government's Better Regulation agenda, the Department for Culture, Media and Sport (DCMS) has developed, and is currently implementing, a number of deregulatory measures.

The Committee has picked up on many of the activities we are implementing or plan to undertake in the future to help the Act to work as efficiently and effectively as possible for all, whilst continuing to provide the necessary public protection. The Committee heard evidence from many of our partners and the Committee's report contains several practical and helpful recommendations.

This document sets out the Government's official response to the Committee's examination of the Licensing Act 2003. Due to the wide ranging nature of the Licensing Act 2003, this response has been compiled across several Government Departments together with input from representatives of the enforcement agencies and local authorities. We have carefully considered all of the recommendations made by the Committee. Inevitably, it has not been possible to agree to all of the recommendations, but we are pleased to be able to accept or partially accept the majority of the 26 recommendations made. There are also several recommendations that we feel are not appropriate to introduce at the present time, but which we will continue to monitor for the future.

Response to recommendations

Recommendation 1:

We recommend that the Government should, in conjunction with local authorities, licence applicants and other stakeholders, evaluate the licensing forms with the aim of making them more user friendly and reducing the level of error. The Government should also remind local authorities that licensing applications containing minor factual errors should be amended not rejected. (Paragraph 13)

The Government agrees with the aim of this recommendation and is committed to reducing unnecessary bureaucracy. As part of our commitment to continue delivering administrative savings, DCMS published its third Simplification Plan in December 2008. This includes a series of measures to remove burdens and irritations from the various application processes required under the 2003 Act. These are: to reduce the length and simplify application forms; to make electronic forms a reality and; to create cheaper and more effective advertising requirements. We are in the process of consulting with key stakeholders to scope options on electronic forms and hope to put the proposals out for formal consultation later this year.

The Department has already taken action to make it clear that applications should not be rejected because of minor errors. The then Minister for Licensing wrote to all licensing authorities in August 2005, before the new regime came into force about this point.[1] Further, the statutory guidance issued under section 182 of the 2003 Act was revised in 2007 to include a specific recommendation that forms should not be returned if they contain obvious and minor factual errors that can easily be amended. The Local Authorities Coordinators of Regulatory Services (LACORS) have also issued similar advice to licensing authorities. The Government has no plans to issue any further reminders, as the position is clearly set out in the Guidance. However, we will consider, when revising forms, how to minimise the scope for errors.

Recommendation 2:

We note that the Government has previously considered the issue of fees being charged to not-for-profit and sporting clubs for premises licences, and the conclusions of the Independent Fees Review Panel on this matter. We accept that the cost of alcoholic drinks should not be subsidised by the Government. However it seems to us highly unsatisfactory that such clubs, with modest turnover and laudable aims, should be treated in exactly the same way as commercial operations. This is especially so in the case of sports clubs. We recommend that in the case of not-for-profit clubs only the bar area should be taken into account when assessing the rateable value of the premises for the purposes of determining the appropriate licensing fee. We further recommend that all sports clubs, regardless of whether they are registered CASCs, be placed in a fee band based upon 20% of their rateable value. (Paragraph 26)

The Government recognises the unique nature of sports clubs and not-for profit clubs and we have considered several initiatives to support community groups and grass roots and community sports. However, within the parameters of the Licensing Act 2003, it would be extremely difficult to isolate what is a broad category of premises without including other types of premises that could be eligible such as working men's clubs.

The Committee notes that the Elton Report of the Independent Fees Review Panel's conclusions found no evidence that any amateur sports clubs had closed because of licensing fees and that it did not recommend a discount to sports clubs.[2] Indeed many sports clubs are still selling alcohol to make a profit, an activity which, as the Committee recognises, the Government does not want to subsidise. It is also important to remember that many sports clubs hold functions and events which have the potential to disturb neighbours, particularly as many clubs are situated in largely residential areas. In this regard, there is no reason why clubs should not be subject to the same scrutiny by responsible authorities and interested parties as commercial operations, although the Government would expect that the outcome of that scrutiny would reflect the relative risks of their activities.

In considering this matter, it is important to recognise that the Government cannot introduce cross-subsidy into the Licensing Act fees regime. Therefore, any reduction in fees for one category of premises cannot be funded by increases for others, unless there is clear evidence that some types of premises generate different costs in relation to the operation of the licensing regime. In the absence of any such evidence, any reduction in fees for one category of premises will mean either less income for local authorities or the need to make up the shortfall from local or national taxpayers. The Government has been clear that the costs of the licensing regime should fall on those undertaking licensable activities. The fees regime already includes a multiplier for certain large premises and we will, when looking at the wider fees issues covered in the report of the Independent Fees Panel, consider whether there is any evidence to suggest that fees could be further differentiated in this way. However, it should be noted that the Fees Panel was asked to look at this issue and was unable to identify any such evidence, beyond extending the multiplier to all large on-licensed premises.

1 http://www.culture.gov.uk/images/publications/la_jpletter.pdf

2 *Report of the Independent Fees Review Panel*, Department for Culture, Media and Sport, paragraph 9.12 – http://www.culture.gov.uk/images/publications/feepanelfinalreport.pdf

Recommendation 3:

We welcome the increased opportunities for public involvement in decision making and encourage local authorities and the Government to make every effort to ensure that those opportunities are taken up. It is important that local authorities make it clear that a comment on a licensing application can be in its support as well as an objection, and ensure that all those with an interest in the application, not just local residents, are able to comment on it. (Paragraph 32)

Evidence shows that the public does indeed feel more involved in decision making. A University of Westminster Report published in July 2007 noted that: '*The changes in licensing had had a generally positive effect on community relations in the areas examined, with residents and local councillors alike feeling that they had more of a say in the process of granting and challenging licensing decisions.*'[3]

The Government fully endorses the ability of responsible authorities – such as the police and fire authorities – and interested parties – residents and businesses in the vicinity of the premises – to submit positive comments in support of a licence application. The revised guidance issued in 2007 under section 182 of the 2003 Act made it clear that representations can be made in support of, as well as to object to, applications. This was further amplified in revisions to the Department's guidance to interested parties in December 2007.

The Government feels that the Licensing Act 2003 already provides all those with an interest with the opportunity to comment on applications. There are strict advertising requirements both physically on the premises and in the local press and both responsible authorities and interested parties can make representations against an application. It is also possible for those that feel that they are not able to object to ask local representatives such as councillors to object on their behalf to an application if the objections are based on the licensing objectives. In addition, the current statutory Guidance clarifies that local authorities can make councillors aware of applications in their areas and that it is open to councillors to seek the views of their constituents living in the vicinity of premises making applications.

Recommendation 4:

We are not convinced by the argument that a lack of evidence that the personal licence system is being abused is a reason not to create a national database of personal licence holders. Indeed without one it seems to us unlikely that such evidence could be proffered. We recommend that the Government should consider how to implement a national database – to allow law enforcement agencies and licensing authorities to share information more effectively – and to consider which would be the most appropriate authority to maintain it, as it will be crucial that any database is kept up-to-date. (Paragraph 36)

The Government maintains the position that it cannot commit taxpayer's and feepayer's money to setting up and maintaining a database without a convincing business case. An assessment of the case by external consultants in 2005 failed to find evidence to support such a database. Since then, there has been little additional evidence to support the creation of a database and we do not accept that a database needs to be established to gather such evidence. It should, for example, be possible to calculate the time that each police force or licensing authority spends cross-checking licensees with other authorities and base an estimate of costs on these figures.

We are not, however, ruling out establishing a central register in the future and will continue to monitor the situation. We will also consider suggestions from local authorities and responsible authorities on how better to share information.

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[3] *Expecting 'Great Things'? The Impact of the Licensing Act 2003 on Democratic Involvement, Dispersal and Drinking Cultures* – University of Westminster, July 2007

Recommendation 5:

We welcome the Minister's recognition of the difficulties faced by bereaved families in taking action within the required seven day period following the death of the licensee. We recommend that in such cases the allowable period should be extended from seven to 21 days. (Paragraph 38)

The Government is pleased that the Committee supports this action and shares our concern about the difficulties that bereaved families face following the death of a licensee. We have made a commitment to consider extending the notice period on death, incapacity, insolvency etc. of a licensee and DCMS plans to consult on the matter later this year. The length of the extended period will depend upon the outcome of the consultation but we note the Committee's preference for a 21 day period.

Recommendation 6:

We welcome the Legislative Reform Order, which removes the need for certain volunteer-run premises to designate a specific premises supervisor, but note that there will still be considerable costs and administration involved in obtaining a premises licence for village and community venues. We hope that the Government will consider further ways in which costs and administration can be reduced for such venues. (Paragraph 40)

The Government is pleased that the Committee welcomes the Legislative Reform Order for community premises which is now in its final stages and we expect to come into force on 29th July 2009. In line with cross-Government efforts to cut red tape, village and community premises will benefit from several initiatives in DCMS's Simplification Plan 2008[4] such as making electronic forms a reality, reducing the length and simplifying application forms and making advertising requirements more effective.

The Government is always open to looking at ways to reduce costs and administration as long as the same level of scrutiny and necessary public protection is maintained. We will observe how village and community premises use the alternative process for supervision of alcohol sales and continue to monitor the situation.

Recommendation 7:

We agree that the public should always be involved in decision making and endorse the amendments proposed to the Legislative Reform Order by the Government. (Paragraph 44)

We welcome the Committee's support for the minor variations process and the proposed amendments. The Government laid an amended Order incorporating the suggested changes in Parliament on 26th March 2009 and we are now in the final stages of the legislative process and expect it to come into force on 29th July 2009. We estimate that the new process could save licence and club certificate holders around £1.9 – £2.3 million per year. This will benefit a wide range of large and small businesses including pubs, working men's and political clubs and village and community halls. This measure will not result in any increased costs on businesses or organisations.

Recommendation 8:

We believe that the Government should act to remove this confusion and make it clear that changes to a licence for live music can be made using the minor variations procedure. (Paragraph 46)

4 http://www.culture.gov.uk/images/publications/Simplification_Plan_2008.pdf

The Government accepts the Committee's desire for clarity, but we do not believe that there is confusion in the Order. It is the Government's intention that live music should benefit from the Minor Variations process as long as it has no adverse impact on the licensing objectives and we are working with the Local Government Association (LGA), LACORS and the Musicians Union to achieve this. However, we recognise that this may not always be the case and some live music events may have the potential to have an adverse impact on the licensing objectives. We believe the Guidance will address the Committee's concerns.

Recommendation 9:

We welcome any attempt to simplify the process of making a minor variation to a licence and reduce unnecessary costs. However, we are concerned at the apparent contradictions contained within the Explanatory Note, and the wording of the Order itself, which we believe will severely restrict the ability of licensees to take advantage of this procedure for all but the most minimal of variations. The Government must ensure that the discretion it is granting to licensing authorities is a real discretion, and not a power that, in practice, they are unable to use. (Paragraph 47)

The Government welcomes the Committee's support for the Minor Variations process. However, we do not believe there is any conflict between the explanatory note and the Order itself. As noted above, the Government is working with key stakeholders to increase understanding and uptake of existing exemptions in the Licensing Act 2003 and to encourage the use of the Minor Variations process to add live music as licensed entertainment in those premises already licensed for the sale of alcohol.

Recommendation 10:

Nevertheless we recommend that, in addition to the police, councillors, as elected representatives of the public, should be able to object to a TEN, and that the period for such objections should be three working days to allow both the police and councillors time to consider adequately whether they wish to object. (Paragraph 51)

The Government has no plans to allow councillors to object to temporary event notices. Allowing local councillors to object to temporary event notices would inadvertently affect a huge range of events such as community events, village fetes and charity fundraising events. Temporary event notices are largely used by community groups. The National Confederation of Parent Teacher Associations suggests that up to half the temporary event notices could be given by Parent Teacher Associations. We would not want to increase the bureaucratic burden on these groups.

The aim behind the temporary event system is for a light touch process which is controlled within tight parameters and restrictions. Such a change would significantly increase the burden on licensing authorities and applicants. If there are grave concerns about a temporary event then the police would have reasonable authority to intervene and we believe this is sufficient. From time to time issues are brought to the attention of Ministers concerning the operation of temporary event notices. In almost all instances, there are other means of controlling the problem identified. However, as part of our continuing examination of the temporary event system, we will continue to consider whether any changes are necessary.

Concerning the period for objections, we are considering this as a part of the commitments made in the Department's Simplification Plan 2008[5] and intend to consider a longer period for police to object. The length of the extended period will be subject to further consideration but we note the Committee's preference for a period of three working days.

5 http://www.culture.gov.uk/images/publications/Simplification_Plan_2008.pdf

Recommendation 11:

We believe that the time is right for a modest increase in the number of TENs which can be applied for and a relaxation of the number which can be applied for per person. We are satisfied that, when taken in conjunction with our recommendations above concerning improving the objection process, an increase in the number of TENs per year and the number which an individual can apply for to 15 provides a reasonable balance between meeting the needs of those who use TENs and protecting the public. (Paragraph 55)

As the Committee notes, there are conflicting views with calls for both a reduction in the number of temporary event notices a premises can apply for and for an increase. Should there be compelling evidence that there should be either an increase or a decrease, then there are powers in the Licensing Act 2003 to effect appropriate changes.

We have considered increasing the number of notices per year to 15 following the Independent Fees Review Panel's recommendations. However we believe that the current limits are a good balance between maintaining necessary public protection and keeping the temporary event notice system as a light touch regime. We will nevertheless keep this under review.

We are not convinced that it is appropriate to relax the number of temporary event notices that can be given by each individual from 5 to 15. We are not satisfied that a person without accredited training should be responsible for alcohol sales more than once a month. In circumstances where an individual will need to do this, they can apply for a personal licence and be able to give 50 notices per year. This would require them to undergo training from an accredited organisation and therefore provide greater public protection.

It would also be inappropriate for the Government to consider this recommendation in isolation. The Committee states that this recommendation reflects a balance with recommendation 10, which would alter the objection process to temporary event notices. As the Government is not minded to commit to allowing more people to object to temporary event notices, accepting a relaxation in the number of temporary event notices that can be given on its own would not reflect the balance that the Committee refers to.

We will consider minor changes on timings, but would be reluctant to make changes to a system that is currently working well.

Recommendation 12:

We recommend that the Government should consider implementing a reduction in the cost of applying for a TEN in order to lessen the burden on voluntary, community and not-for-profit groups. (Paragraph 56)

The Government is committed to keeping the cost on all businesses and organisations – not-for-profit, for profit and otherwise – to a minimum, particularly during an economic downturn.

As the Committee noted in a previous recommendation (6), the Government is in the process of passing legislation to help community and voluntary groups. Many community premises do not currently have a licence to supply alcohol, often because the burdens and responsibilities are too great for premises run largely by volunteers. Many therefore currently rely on temporary event notices. The Legislative Reform Order for community premises is now in its final stages and we expect it to come into force on 29th July 2009. This will reduce the burden for committees running community premises, encouraging more to apply for a licence to supply alcohol. We estimate that the overall potential savings under this proposal could be around £200,000 per year. It is not a huge sum of money, but it is the removal of red tape that will make a difference to volunteers on hard working village hall committees. It will also make it easier for such groups to obtain a premises licence to supply alcohol, removing the need for them to rely on temporary event notices. The Government believes that this is a more effective method.

Fees are set to reflect the cost of the process. Reducing the cost of giving a temporary event notice would therefore increase the costs to local authorities and it would then ultimately fall to the taxpayer to fund the shortfall. It is also not immediately obvious that voluntary groups pose significantly less work. Rather than reduce the resources available to licensing authorities to discharge their functions under the Act, the Government believes it is better to look at removing unnecessary administrative burdens and costs from the application process. That is why we are planning to introduce electronic forms which will potentially save organisations giving temporary event notices a considerable amount of cost and effort.

Recommendation 13:

Our assessment is that the major impetus for changes seen in licensed venues appears to have come from consumer choice and market forces. However without the alterations to the licensing regime introduced by the Licensing Act such changes might not have been possible. (Paragraph 59)

We welcome the Committee's support for the Licensing Act which has brought about considerable cost and efficiency savings and continues to support and nurture a vibrant and diverse industry.

Recommendation 14:

We recommend that density of venues in a particular area should always be a consideration taken into account by a licensing authority when considering an application for a premises licence, in order to ensure that the police and other authorities are able to adequately ensure the maintenance of public order, and that the Section 182 guidance should be altered to reflect this. (Paragraph 65)

High density of premises in an area is already being tackled by cumulative impact areas. A cumulative impact area is an area that a local authority has identified in its statement of licensing policy (section 5 of the Licensing Act 2003) where there is a saturation of licensed premises and the cumulative impact of any additional premises could affect the licensing objectives. Prior to November 2005, such areas did not exist.

On 31 March 2008, there were over 110 cumulative impact areas of which 22 per cent were in Greater London and 19 per cent were in other metropolitan districts in England and Wales. 73 licensing authorities had at least one cumulative impact area, including 22 areas which had two or more.

At present, cumulative impact areas are not creatures of statute but appear in the statutory Guidance made under section 182 of the 2003 Act. They have existed since January 2005 and have been endorsed by the courts. In practice, declaration of a cumulative impact area in a licensing policy statement (which is generally done on the basis of local crime statistics) means that while each new application for a premises licence must be considered individually, the licensing authority is entitled to proceed from a presumption that new applications would be refused unless the applicant can show that their premises would not add to the crime and disorder experienced in the area. Effectively, the burden of proof is to an extent reversed.

Licensing is a devolved system and the intention is that decisions should be made by locally elected people following representations made by responsible authorities such as the police and interested parties. Currently, when making their tri-annual licensing policy statements, licensing authorities are required to consider whether to identify cumulative impact areas. Section 5 (3) of The Licensing Act 2003 dictates that they must consult several authorities, including the police when deciding whether to identify a cumulative impact area. The Government does not want to undermine local democracy through national blanket measures that override effective locally initiated measures. We do however undertake to encourage (through partners such as the LGA and LACORS) licensing

authorities to undertake proper consultation with the police on this issue when drafting licensing policy statements.

Furthermore, the Policing and Crime Bill currently before Parliament contains a mechanism that (if implemented) enables licensing authorities to tackle several problem premises in an area. This could be a more targeted and proportionate approach than considering density for all applications all cases.

Recommendation 15:

The development of partnership working is extremely important part of ensuring that the licensing objectives contained in the Licensing Act are achieved. We welcome the efforts made by all involved to develop and maintain successful partnerships and recommend that the Government should continue to promote partnership working as the most effective method to deal with licensing related issues. (Paragraph 74)

The Government welcomes the Committee's recognition of the successful partnership working that has taken place through such schemes as Business Improvement Districts, voluntary town centre management initiatives and the Best Bar None awards scheme. The Home Office has also recently provided £3m to 190 local areas to fund alcohol related partnership activity campaigns.

The Government will continue to promote partnership working. For example: working with the Musicians Union, the Metropolitan Police Service and LACORS on issues over form 696; involving industry in the drafting of the Guidance sections of the proposed mandatory code of practice for alcohol sales should this be implemented; the Purple Flag initiative supporting good town centre management at night; and the Beacon Awards system promoting the night time economy.

Recommendation 16:

We agree that it is not appropriate for issues which should properly be regulated by other legislation to be included as licensing conditions on retailers' premises licences. To devastate a shopkeeper's livelihood by revoking their licence to sell alcohol due to the presence of an out of date food item in their store is in our view completely disproportionate. We recommend that the Section 182 guidance should be amended to make this clear. (Paragraph 79)

This point is already made very strongly and reiterated several times in the statutory Guidance under Section 182 of the Licensing Act 2003. The Government is opposed to the general use of blanket conditions and the Licensing Act 2003 is designed to tailor conditions to individual premises. The Government will be mindful of this in developing proposals for the proposed mandatory code of practice for the responsible retail of alcohol.

Following a recent court case, LACORS have publicised and emphasised that licence conditions must not duplicate other legislation. We will continue to emphasise and promote this.

Recommendation 17:

We accept that the vast majority of people who take advantage of drinks promotions such as happy hours and supermarket price deals drink responsibly. The banning of all such promotions seems to us to be disproportionate. Nevertheless if the evidence we have received is true there is clearly a problem which needs to be addressed. It seems absurd that competition law can actually prevent a trade association from attempting to do so through giving its licensees guidelines as to the kind of responsible promotions that should be encouraged. We recommend

that the Government should address this problem, if necessary through legislation, as soon as possible. (Paragraph 83)

The Government does not believe that the Committee's recommendation is an appropriate method of tackling this problem.

Competition law does not prevent Trade Associations from issuing guidance to their members; instead competition law prevents agreements between firms which lead to a restriction on competition, where those are not outweighed by benefits to consumers. The Office of Fair Trading has produced guidance on this.

As the report recognises, the majority of promotions are enjoyed responsibly. However, there is also clearly a problem that needs to be addressed. The Government is committed to addressing this problem without penalising the majority of people who drink responsibly. The Government has stated its intent to tackle the most irresponsible promotions and practices through powers proposed in the Policing and Crime Bill currently before Parliament.

This proposes a mandatory code of practice which is currently being consulted on. The code is currently divided into three parts. The first part includes a small number of mandatory conditions that would ban the most irresponsible promotions and practices such as 'All you can drink for £10'. The second contains a larger number of locally applied conditions that licensing authorities can apply to two or more problem premises in an area when there is alcohol related nuisance and disorder related to the premises. This could allow local authorities to tackle promotions such as happy hours and supermarket price deals exclusively where these promotions are contributing to alcohol related nuisance and disorder. The third part of the code contains a suite of guidance to help promote good practice amongst premises.

Recommendation 18:

We recommend that the Government should exempt venues with a capacity of 200 persons or fewer from the need to obtain a licence for the performance of live music. We further recommend the reintroduction of the "two-in-a-bar" exemption enabling venues of any size to put on a performance of non-amplified music by one or two musicians without the need for a licence. We believe that these two exemptions would encourage the performance of live music without impacting negatively on any of the four licensing objectives under the Act. (Paragraph 92)

There is no direct link between size of audience or number of performers and potential for noise nuisance or disorder.

DCMS has considered exemptions for small venues, but has not been able to reach agreement on exemptions that will deliver an increase in live music whilst still retaining essential protections for local residents.

However, the new Minor Variations process should allow venues to add live music to their licences quickly and cheaply, as long as the music will not affect the licensing objectives

The Musicians Union and LACORS are jointly chairing a new live music group tasked with explaining the benefits of Minor Variations for live music to licensees and local authorities and encouraging take up of the existing exemption for 'incidental' live music. This new group will also tackle any other issues arising from the Act that affect live music.

DCMS has agreed with the Musicians Union and local authority representatives to give the new Minor Variations process at least a year to bed down before returning to the question of exemptions.

Recommendation 19:

Licensing authorities should resist pressure from “interested parties” to impose unreasonable conditions on events. We believe that Form 696 is indeed unreasonable. Such a form goes well beyond the requirements of the Licensing Act, and has a detrimental effect on the performance of live music. We recommend that Form 696 should be scrapped. (Paragraph 97)

This is not a recommendation specifically for Government as form 696 is a Metropolitan Police Service initiative. We understand that the Metropolitan Police Service currently has no plans to discontinue use of the form which it regards as an important tool to reduce the risk of harm and to contain potential crime and disorder arising from a small number of live music events.

Nevertheless, following concerns expressed by industry, musicians and DCMS, the Metropolitan Police Service has set up a new working group to review the format of Form 696 and to improve targeting. Members of the group include live music providers, DCMS and LACORS. The Group has met once and will meet again shortly to consider a revised version of the form.

Recommendation 20:

We recommend that the Statutory Guidance to the Act should be reviewed and reworded to remove the overt linkage of live music with public disorder. (Paragraph 99)

The Government agrees that there should not be any overt linkage of live music with public disorder, but does not believe that there such a linkage in the Statutory Guidance.

Paragraph 13.70 of the Statutory Guidance urges licensing authorities to take account in statements of licensing policy, as part of implementing local authority cultural strategies, of the need 'to encourage and promote a broad range of entertainment, particularly live music, dancing and theatre, including the performance of a wide range of traditional and historical plays, for the wider cultural benefit of communities'. There is then a general statement that 'A natural concern to prevent disturbance in neighbourhoods should always be carefully balanced with these wider cultural benefits, particularly those for children'.

The Government does not agree this is an 'overt linkage' between live music and public disorder. It is merely a recognition that cultural activities, including live music, may disturb local residents etc. in some circumstances.

Recommendation 21:

We recommend that the Government should consult on amending the Statutory Guidance to provide an exemption from the licensing regime for low risk activities which add to communities' cultural life. (Paragraph 104)

Whilst the Government accepts the sentiment of this recommendation, it cannot use Statutory Guidance to provide for exemptions.

DCMS is however planning to consider possible exemptions in the future, but other priorities are currently taking precedent. Whilst we do not envisage that the specific activities in the Committee's report will be specifically targeted, we will continue to consider the evidence for other ideas. This is largely because in order for anything to be exempted, it must be properly defined.

Recommendation 22:

We recommend that the Government should consult on the possibility of amending Statutory Guidance to exempt some forms of low-risk, small-scale travelling entertainment such as Punch and Judy shows from the requirement to obtain a licence. Where a licence is required we recommend that a portable licence, of the type issued to cruise ships, should be issued by the home authority where the operator is based. In setting the fee level for a portable licence the Government should have regard to the fact that operators have already incurred significant costs in applying for premises licences under the current regime. (Paragraph 114)

The Government shares some of the Committee's concerns about the disproportionate burdens felt by those who provide entertainment in numerous locations, including travelling circuses.

We recognise that there are certain low-risk, small-scale travelling entertainment shows. However, when considering exemptions, we have found that it is hard to define which types of entertainment should/should not be exempt whilst maintaining the balance between light touch bureaucracy and public protection. Entertainment such as Punch and Judy shows, for example, often takes place on local authority land, and the local authority needs to take public protection into account. It is however worth noting that if a show is being put on as a busking show, they are not necessarily classified as 'entertainment' and would therefore not need a licence.

Travelling entertainment should benefit from some of the proposals in DCMS' Simplification Plan 2008[6] such as plans to allow full electronic applications. In addition, it might be possible to include some forms of travelling entertainment under low impact exemptions,which DCMS will consider in the future. However, larger forms of entertainment such as circuses do need to be considered against the licensing objectives and the circus industry itself accepts the need for some kind of licensing requirement. Ministers have therefore committed to looking at proposals for some kind of portable licence for such activities and are currently considering options on how best to achieve this.

Recommendation 23:

We believe that it would be unfortunate if changes in licensing of lap dancing establishments gave the public the impression that such venues offer sex for sale. Such illegal activities are unacceptable and clubs that condone them should feel the full force of the law. (Paragraph 122)

The Government fully agrees with the Committee that any licence holders found to be encouraging or permitting the selling of sex on their premises should face prosecution. Existing laws relating to brothels allow the police to take action against those who keep, manage or assist in the management of brothels as well as criminalising those who permit their premises to be used for such purposes. Reclassifying lap dancing clubs as 'sex encounter venues' under the Local Government (Miscellaneous Provisions) Act 1982 will allow local authorities to impose a wider range of conditions on licences and will therefore provide further assurance that such venues do not offer such services.

However, we do not believe that reclassifying lap dancing clubs as 'sex encounter venues' will give the impression that they offer sex for sale. Instead we believe that the term accurately reflects the nature of the entertainment provided by such venues.

The definition of 'relevant entertainment' introduced by Clause 26 of the Policing and Crime Bill, clearly states that to qualify as a sex encounter venue the entertainment provided must be a live performance or display of nudity which is of such a nature that it can *"reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience"*. This definition does not suggest that these are premises where sex is being sold. Furthermore, the term 'sex encounter' has been used to classify venues such as "peep shows" in London since 1986 and again these are not venues where sex is for sale.

Recommendation 24:

We therefore recommend that the Government should bring forward amendments to the Policing and Crime Bill to establish a new class of venue under Schedule 3 of the Local Government (Miscellaneous Provisions) Act. Legislation should make it mandatory for councils to license such establishments under this statutory regime, and not under the Licensing Act. (Paragraph 123)

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6 http://www.culture.gov.uk/images/publications/Simplification_Plan_2008.pdf

The Committee is right to point out that due to the sale of alcohol and the provision of music, lap dancing clubs pose similar licensing issues to other venues that form part of the night-time economy, such as pubs and nightclubs. However, the provision of adult entertainment to sexually stimulate the audience clearly distinguishes them from such venues and gives rise to issues that are particular to this form of entertainment.

The Policing and Crime Bill seeks to address this issue by introducing a new category of sex establishment, called a 'sex encounter venue', under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. This new category will cover lap dancing clubs and similar venues that provide live performances or live displays of nudity which *"must reasonably be assumed to be provided solely or principally for the purposes of sexual stimulating a member of the audience"*. The provision of such "relevant entertainment" will be regulated by the 1982 Act, allowing local people a greater say, while the provision of alcohol and 'regulated entertainment' will continue to be authorised under the Licensing Act 2003.

The Government does not agree with the Committee that these reforms should be mandatory for local authorities. Many local authorities do not have lap dancing clubs in their area. While we cannot be exact regarding the numbers, we estimate that under half of all local authorities are responsible for regulating lap dancing clubs or similar venues. Therefore, the Government does not believe it is right to impose this legislation irrespective of need. Rather, we believe the correct approach is to give local authorities the flexibility to decide whether these provisions are necessary based on local circumstances and with regard to the views of local people.

Recommendation 25:

We recommend that licences for such venues should be granted for a period of five years, with the safeguard that any interested party or relevant authority should be able to request a review of a licence at any time. (Paragraph 124)

The Government does not agree that lap dancing clubs should be granted licences for a period of five years. Under reforms introduced by the Policing and Crime Bill lap dancing clubs will be required to renew their licence at least annually. The Government believes that this is important to ensure that local communities have the opportunity to comment on the continued operation of such venues in their area.

Reclassifying lap dancing clubs as sex establishments recognises that they offer entertainment which is fundamentally different from other entertainment venues, such as nightclubs and pubs, and that they often raise particular concerns for local communities. For this reason, we believe the ongoing scrutiny provided by the annual renewal process is justified. The renewal process provides local people with the opportunity to make further objections, thereby empowering local people and ensuring that the local authorities can be responsive to their views.

Recommendation 26:

We welcome this assurance, and suggest that existing lap dancing establishments in possession of valid premises' licences should be given a reasonable transition period in which to complete the switch over to the new regime, and that fees for doing so should be limited to cost recovery. (Paragraph 125)

The Government agrees with the Committee that the transitional period for existing venues should be reasonable. The length of the transitional period will be set out in regulations following further engagement with industry, local authorities and other stakeholders.

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