

AGENDA ITEM: 8

SUMMARY



Report for:	Licensing Health & Safety Enforcement Committee
Date of meeting:	12 February 2013
PART:	1
If Part II, reason:	

Title of report:	Deregulation of Entertainment Licensing
Contact:	Ross Hill – Licensing Team Leader, Legal Governance
Purpose of report:	To inform the Committee of imminent deregulatory changes to the licensing regime for regulated entertainment
Recommendations	That Committee note the contents of the report.
Corporate objectives:	Dacorum Delivers <ul style="list-style-type: none">This report outlines a deregulation of regulated activities, delivered under the Government's regulatory reform agenda.
Implications:	<u>Financial</u> The change to the definition of regulated entertainment is likely to result in a number of licensed premises reconsidering whether they need to continue to hold a licence, with a loss of revenue from annual fees and future application fees should they surrender their licences. <u>Value for Money</u> Not applicable
Risk Implications	None
Equalities Implications	None
Health And Safety Implications	None

Consultees:	Not applicable
Background papers:	Department of Culture, Media & Sport: Consultation Response on Entertainment Deregulation (January 2013)
Glossary of acronyms and any other abbreviations used in this report:	

1. BACKGROUND

1.1. Under the Licensing Act 2003, Dacorum Borough Council is a licensing authority, with responsibility for the authorisation of various licensable activities through a system of premises licences, club premises certificates and temporary event notices. It is a criminal offence to carry on licensable activities without, or in breach of, an authorisation.

1.2. The Act was brought fully into force in 2005, and consolidated several different licensing regimes into a single regulatory system. Since commencement, numerous changes have been made to the primary and secondary legislation. In particular, significant changes were made by the following statutes:

- **Regulatory Reform (Fire Safety) Order 2005**, removed the previous requirement to obtain a fire certificate, and shifted the onus to the proprietors of commercial premises to take appropriate action to assess and remedy fire hazards;
- **Violent Crime Reduction Act 2006**, introduced drinking banning orders, alcohol disorder zones, designated public place orders, summary reviews of premises licences, and a new offence of persistent underage alcohol sales;
- **Policing and Crime Act 2009**, introduced a new licensing requirement for sexual entertainment venues, allowed the Secretary of State to set further mandatory licence conditions beyond those set in the Act itself, and amended the offences relating to underage alcohol sales;
- **Provision of Services Regulations 2009**, which enacted the EU Services Directive, requiring regulators of service-based activity providers to eliminate barriers to cross-border provision of services, by way of increased electronic information and application mechanisms;
- **Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009**, introducing a new system for making minor, non-contentious changes to licences;
- **Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009**, allowed community-run premises to amend their premises licences to remove the requirement to nominate a designated premises supervisor with a personal licence;
- **Crime and Security Act 2010**, replaced underused provisions in respect of alcohol disorder zones with a new concept of early morning alcohol restriction orders (EMAROs) (never commenced – superseded by the Police Reform and Social Responsibility Act 2011);
- **Legislative Reform (Licensing) (Interim Authority Notices etc) Order 2010**, extended the timeframe for reinstatement of a licence

following the death of a licence holder, and for police objections to TENS;

- **Police Reform and Social Responsibility Act 2011**, designated licensing authorities and health bodies as responsible authorities, removed the vicinity test for making representations and review applications, reduced the evidential burden for taking Committee action, allowed environmental health to object to TENS, allowed late TENS, extended the timeframe for objections to TENS, increased the penalties for underage alcohol sales, amended and introduced the provisions for EMAROs, allowed suspension of licences for non-payment of annual fees, extended the duration of licensing policy statements, and new powers (not yet commenced) for fees to be set locally on a cost recovery basis and for a late night levy to be charged to certain premises;
- **Live Music Act 2012**, removed the licensing requirements for providing facilities for entertainment, and introduced a number of exemptions from the licensing requirement for live music entertainment.

1.3. The Live Music Act 2012, commenced in October 2012, made a number of changes to the definition of regulated entertainment – most notably by deregulating three previous licensable activities (provision of facilities for making music, provision of facilities for dancing, provision of facilities for entertainment similar to music or dancing), and by introducing three exemptions under which live music will not require a licence from the authority:

- Live music on licensed premises is exempt between 08:00 hours and 23:00 hours if, at the time of the performance alcohol is being lawfully supplied and consumed at the premises, and the music is either unamplified or, if amplified, takes place in the presence of no more than 200 persons;
- Live music in unlicensed workplaces is exempt between 08:00 hours and 23:00 hours, if it takes place in the presence of no more than 200 persons;
- Live music in any other location is exempt between 08:00 hours and 23:00 hours if it is unamplified.

2. CONSULTATION

2.1. The Department of Culture, Media & Sport (DCMS) consulted in 2011 on a possible deregulation of most forms of entertainment at premises with a capacity of less than 5,000 persons. 1,350 responses were received between September and December 2011, including 250 from licensing authorities.

2.2. The Government's response to the consultation was published in January 2013, and proposes going forward with the deregulation, albeit on a more limited basis than had initially been proposed. DCMS's response to the consultation, setting out the Government's position and rationale for these changes, is available to view at <http://tinyurl.com/dcms-response>.

3. PROPOSALS

3.1. The specific deregulation proposals are as set out in the following paragraphs. In all cases, to be considered a licensable activity the entertainment must be provided in the presence of an audience, for purposes comprising or including entertaining that audience.

3.2. The proposals will need to be laid by the Government, most likely within a Legislative Reform Order. It is currently expected that the legislative changes will be made to take effect from the 1st April 2013.

Plays

3.3. The Government has recognised the valuable role of performances of plays and other dramatic pieces, and the comparatively low impact of performances on the licensing objectives, and has proposed that licences will only be required in the following situations:

- Plays performed in front of an audience of 500 persons or more; or
- Plays performed between 23:00 hours and 08:00 hours.

Films

3.4. No changes to the regulation of exhibition of films are currently being proposed, and as such films will continue to be licensable as follows:

- All films, other than those whose sole or main purpose is to demonstrate a product, advertise a good/service, inform, educate or instruct; or if the film is or forms part of an exhibit in a museum or art gallery.

Indoor Sporting Events

3.5. The consultation response notes widespread support for deregulation of this activity, and highlights other sports safety legislation which is of direct relevance. Under the proposals, a licence will only be required in the following circumstances:

- An indoor sporting event taking place in the presence of an audience of 1,000 persons or more; or
- An indoor sporting event taking place between 23:00 hours and 08:00 hours.

Boxing and Wrestling

3.6. The Government have noted the higher risk factors associated with these activities, and no deregulation has been proposed. In addition, it is intended to amend the definition of the activity so as to specifically include cage fights and mixed martial arts (MMA) within scope of the licensing regime.

Live and Recorded Music

3.7. The consultation attracted a significant response from the live music industry, which expressed support for further deregulatory measures beyond those implemented as part of the Live Music Act. As a result, it is now proposed that live music will only be licensable in the following circumstances:

- Any live music performed between 23:00 hours and 08:00 hours;

- Amplified live music performed at any time in on-licensed premises or workplaces, before an audience of 500 persons or more;
- Amplified live music performed at any time in other locations.

3.8. The response document also announces an intention to exempt recorded music in on-licensed premises for the first time under this Act. Licences would be required for:

- Any recorded music in on-licensed premises between 23:00 hours and 08:00 hours;
- Recorded music at any time in other locations.

3.9. The Live Music Act enacted provisions which render live music-related conditions imposed on a premises licence or club premises certificate unenforceable in certain circumstances, unless specifically applied upon a review of the licence or certificate sought on the grounds of public nuisance. It is understood that these provisions will remain in place, and would be extended to also apply to recorded music.

Performances of Dance

3.10. The Government has proposed treating Dance in the same manner as Plays, and has proposed that licences will only be required in the following situations:

- Performances of dance in front of an audience of 500 persons or more; or
- Performances of dance between 23:00 hours and 08:00 hours.

3.11. Regulation of sexual entertainment by way of dancing (e.g. pole, lap or table dancing) is now largely regulated under the sex establishment licensing system, and no change to this is proposed.

Exemptions

3.12. It is also proposed to add a number of further total exemptions to the Licensing Act 2003. Under the proposals, no licences will be required in the following circumstances:

- Any regulated entertainment arranged by and held on the premises of local authorities (including county, district, town and parish councils), hospitals, nurseries and schools; between the hours of 08:00 – 23:00;
- Any live/recorded music held on premises owned by local authorities (including county, district, town and parish councils), hospitals, nurseries and schools; with the specific permission of the owning organisation, for an audience of up to 500 people;
- Any live/recorded music held at community premises (church halls, village halls, community centres) for an audience of up to 500 people;
- Plays, indoor sports, live/recorded music, and performances of dance at circuses, between the hours of 08:00 – 23:00.

3.13. These exemptions would be added to those already contained within the Act, which include incidental music, playing of live television or radio broadcasts, entertainment at religious meetings or services or at places of public religious worship, entertainment at non-commercial garden fêtes, morris dancing, and entertainment aboard moving vehicles.

4. FUTURE CHANGES

- 4.1. The changes detailed in this report do not mark the end of the proposed changes to the Licensing Act 2003, with DCMS already announcing that they will launch a new consultation on the deregulation of community exhibitions of films next year.
- 4.2. In addition, the Home Office are reviewing a number of aspects of the Act in respect of the licensing of alcohol sales, as part of the delivery of the Government's Alcohol Strategy. These changes would include a review of the mandatory licence conditions which are applied to all premises licences, a scheme of minimum pricing for alcohol, and a new licensing objective related to public health.
- 4.3. Further reports and briefing notes will be provided to members as and when timetables for implementation of these, and any other, changes are confirmed.

5. UPDATES TO STATEMENT OF LICENSING POLICY

- 5.1. The significant nature of these changes, together with the substantial recent legislative changes set out in paragraph 1.2, mean that significant work is now needed to update the authority's Statement of Licensing Policy. One of the key changes enacted in 2012 was to change the review frequency of this statutory document from three-yearly to five-yearly, meaning that the policy adopted by the Council in February 2011 does not require formal renewal until 2016. However, in order to ensure that the policy correctly reflects the current statutory provisions and powers, it is now intended to carry out a review of this document ahead of schedule. Officers propose to begin preparatory work on revisions to the policy within the next couple of months, with a view to reporting proposed alterations to the Committee later this year. Any changes to the policy will require full public consultation and adoption by the full Council.