



25th March 2010

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Dear Ms Mickleburgh

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

The Association of Licensed Multiple Retailers (*ALMR*) welcomes the opportunity to comment on the Government's consultation on measures to reduce the regulatory burden on small-scale live music events. As the only national trade body dedicated to representing the pub and bar trade we are well placed to comment on the impact of the proposals on businesses in that sector and their customers.

Overview

By way of background, the *ALMR* is the only national trade body solely dedicated to representing the interests of licensed retail companies – principally pub, bar, club and restaurant operators. Currently we have just under 70 companies in membership, between them owning and/or operating just over 8,000 outlets. Whilst we have a number of national companies within membership, over two-thirds of our membership is derived from small independent companies operating 50 pubs or less under their own branding. Our members are predominantly suburban community or neighbourhood outlets, many of which provide live entertainment.

Pubs and bars provide a vibrant network of small venues for new and upcoming musicians, folk and community groups, as well as open and often free access to small scale live music for customers and their local community. Under the previous licensing regime, many of these outlets would have been able to put on live music events at very low cost, benefitting as they did from the 'two in a bar' rule which allowed them to host small events without the need for a separate public entertainment licence. The *ALMR* raised concerns about this during the passage of the Act and has continued to campaign on the matter – most recently in submissions to the 2008 Culture, Media & Sport Select Committee Inquiry into the Licensing Act - and we very much welcome the suggestion that some form of exemption be re-introduced.

The scrapping of the 'two in a bar' exemption for small-scale live music has undoubtedly led to a reduction in the number of outlets licensed to provide live entertainment. We note the research carried out by the Live Music Forum which suggested that 29% of venues previously benefitting from the exemption were no longer licensed to provide live music. This is supported by evidence from within the *ALMR* membership. The requirement to vary a licence in order to retain the ability to host such events deterred many licensees from obtaining the necessary permissions at the time of transition. References to live music in licence applications are automatically viewed by many residents and councillors as raising automatic concerns about noise and nuisance and therefore

attract objections. An objected proposal can be costly to defend and the outcome is uncertain. The threat of objection is often sufficient to deter an outlet from applying for entertainment facilities or provision to be added to their licence.

In our experience, many local authorities automatically assume that live music will automatically result in a noise nuisance and place extensive and costly pre-emptive conditions on a licence. There is little evidence to support this supposition, but the perception exists despite evidence to the contrary. The Chartered Institute of Environmental Health Annual Survey of Noise Enforcement shows no change in noise complaints as a result of the Licensing Act and also suggests that noise nuisance from licensed premises is less of a problem than may be perceived. In terms of incident numbers, there are 845 per million population for commercial uses as opposed to 4329 per million population for domestic premises. The Live Music Forum report suggested that noise from entertainment venues constituted just 7% of all complaints, with 6 times as many complaints arising from domestic music.

It is also important to look behind the simple numbers of outlets licensed to provide live music and examine whether they are making use of their permissions. In many cases, the imposition of conditions is so costly that it has now become prohibitive for many outlets to host live music events. The *ALMR's Annual Industry Benchmarking Report* highlights the effect this has on operational practice. The report looks at common controllable site costs and asks operators to express these as a percentage of turnover. The results for entertainment show a 19% decline in music and live entertainment costs as a percentage of turnover across most sectors between 2007 and 2009; in the case of community operators they have halved. With live entertainment costs going up in the club and town centre outlets, the only logical explanation is that music and live entertainment is being sacrificed in community and more traditional pubs in order to keep a lid on costs. This is clear statistical evidence that the Act is restricting live music.

There has undoubtedly been a decline in live music within small venues as a direct result of the measures introduced by the Licensing Act 2003 and despite Government efforts to address it. It is therefore right that additional regulatory intervention is explored to encourage small-scale live music provision and to re-introduce an exemption which was enjoyed by many. It would provide a much needed boost for community pubs in particular, as recognised by Rt Hon John Healey in his briefing paper on support for such outlets published 19th March 2010.

We therefore support the proposals put forward by the Government in the consultation paper, but believe that the exemption should be extended to events with an audience of less than 200 people. This is in line with the recommendations of the Culture, Media and Sport Select Committee and also the partial exemption for unamplified live music already included in the Licensing Act 2003.

For ease of reference, we have grouped our detailed comments in response to the specific questions in the consultation paper. This is attached. We should be happy to provide additional information or to expand on any of the points raised above.

Kind regards

Kate Nicholls
Head of Communications

Proposal to Exempt Small Live Music Events from the Licensing Act 2003

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

We are keen to ensure that this exemption benefits genuinely small scale events which will not give rise to noise or public nuisance and the conditions concerning its use replicate, as far as possible, those which applied under the two in a bar rule. We are therefore agree that the exemption should be not be applied to performances which are outdoors or in temporary structures.

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

We are unclear as to how this exemption will be interpreted and applied. We assume that this means that the criteria for exemption is audience size rather than venue capacity, but are unsure as to how this will be determined and certified. We note that current exemptions are based on overall capacity and that the Select Committee recommendation was also capacity based.

In consultations with our members there was much confusion as to what the government's intention was and how the exemption would be applied. This then impacted on their response to the proposals. For example, those who assumed that the reference was to outlet capacity were concerned that the size limit was extremely low. We submit that the confusion may have prompted the reactions identified in paragraph 5.1(b).

Indeed, we note that the government itself appears confused on this matter, referring in paragraph 4.5 to the Select Committee recommendation for an exemption for 200 people as being based on capacity and then referring to the same exemption in paragraph 5.1(b) as being for "audiences of no more than 200". This is unhelpful and must be clarified as a matter of urgency.

For the avoidance of doubt, we have set out below, and support the actual recommendation of Select Committee :

We recommend that the Government should exempt venues with 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.

If the Government presses ahead with an exemption based on size of audience, urgent clarification is required as to how this is to be determined without imposing unnecessary or undue burdens on the business. We also believe that an audience size of 100 may be too restrictive.

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

We agree with this proposal

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

Again, we believe it will cause less confusion if the timings are aligned with the existing partial exemption for unamplified live music already contained within the Licensing Act 2003. This disapples certain conditions between 8am and midnight. We therefore propose that exempt performances should not take place between midnight and 8am.

Question 5 & 6: do you agree that there should be an exclusion process?

We are unclear why an exclusion process is necessary given that Licensing Authorities now have the power to initiate a review of a premises licence in their own right and on their own initiative. An exclusion process may be appropriate for an otherwise unlicensed premises and should be drafted accordingly to apply only to those 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?

Whilst we understand the thinking behind this, it seems unduly bureaucratic to require a formal application to be made. We would suggest that the same effect could be achieved in the majority of cases simply by means of a formal notification to the licensing authority of the intent to make use of the exemption and to disapply the relevant conditions in those circumstances. Again, this would be aligned with the existing provision for unamplified live music performed at certain times. There the conditions remain on the licence and apply to performances which do not meet the criteria for exemption but are applied in all other cases. This would take account of venues with different size rooms, venues which provide live music events later than the hours permitted in the order and those who want to be able to take advantage of the exemption on certain quieter nights – for example, when a local jazz group plays on a Tuesday evening – but who wish to host larger events at the weekend.

In certain specific circumstances a venue may wish to apply to remove a condition altogether, but these applications should be the exception rather than the rule. In these instances, the minor variations route is likely to be most appropriate, but the government must make it clear that this is acceptable.

Question 8: Do you agree that the proposal cannot be achieved by non-legislative means?

We agree that the benefits of this proposal can only be delivered by means of regulatory intervention.

Question 9-12: do you agree that the effect of the proposal is proportionate to the policy objective, strikes a fair balance between public interest and adverse effect, does not remove any necessary protections or prevent anyone from exercising any right or freedom?

We agree that the policy is proportionate, necessary and balanced. It removes unnecessary and undue burdens on industry without removing any protection from the public to object to licensed premises and their operation or to take action to prevent or address public nuisance.

Question 14: Do you agree with the Impact Assessment?

We are in broad agreement with the assumptions made in the Regulatory Impact Assessment.

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

Subject to the comments above about the continuing confusion concerning audience size and capacity, which is perpetuated by the Order and will need clarifying in Guidance, we agree that the Order accurately reflects the proposed change.