



Chartered
Institute of
Environmental
Health

Regulating entertainment

Response to the consultation by the Department for
Culture, Media and Sport

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The Chartered Institute of Environmental Health

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As a **knowledge centre**, we provide information, evidence and policy advice to local and national government, environmental and public health practitioners, industry and other stakeholders. We publish books and magazines, run educational events and commission research.

As an **awarding body**, we provide qualifications, events, and trainer and candidate support materials on topics relevant to health, wellbeing and safety to develop workplace skills and best practice in volunteers, employees, business managers and business owners.

As a **campaigning organisation**, we work to push environmental health further up the public agenda and to promote improvements in environmental and public health policy.

We are a **registered charity** with over 10,500 members across England, Wales and Northern Ireland.

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Regulating entertainment: a consultation proposal to examine the deregulation of Schedule 1 of the Licensing Act 2003

Introduction

We refer to the Department's consultation paper on the deregulation of Schedule 1 of the Licensing Act 2003, published in September. The Chartered Institute's members in local authorities take the role of 'responsible authorities' under the Act and, so, are intimately involved in the process of applications for entertainment licences; they also, of course, fulfil local authorities' roles as pollution control authorities and are additionally concerned with the consequences of inadequately controlled events. It is with that unique oversight that our comments follow:

Red-tape?

As the consultation paper says, we think the Licensing Act was a success; it articulated clear objectives, it consolidated a number of previously separate processes and, not least, anticipating 'localism' it placed decisions in the hands of democratically elected representatives. In that respect the criticism in the ministerial foreword that entertainment events currently require 'Government approval' is quite wrong; what they in fact require is *community* approval, and we see nothing wrong in that principle yet the proposals in general only undermine it. It is, moreover, important to stress that approval is all an adequately-planned event needs; it does not follow that it will necessarily be restricted in any way. We did not agree that the regime needed 'rebalancing' in respect of alcohol licensing which facet of it quite plainly demonstrates that it provides no inherent 'deadweight cost' or overwhelming 'bureaucratic burden' and we question those claims in respect of entertainment events too; a fee of just £21 for a TEN is hardly 'costly' and data in respect of small music events from the Department in the past seems to contradict it. These kinds of perjorative descriptions only obscure what the licensing process is seriously about.

If anomalies exist, they should, of course, be looked-at, processes simplified as far as possible and fees minimised. To start, however, with the proposition that the opportunity for communities to examine the consequences for them of a wide range of events should be scrapped wholesale, regardless of their site-specific impacts, is misguided, elevating special interests above those of communities.

Noise

It is difficult to know whether the claim that the proposals give 'free speech a helping hand' is intended to be a joke but there is no doubt that too much 'speech', especially when set to music, carries the potential for noise disturbance. The consultation paper acknowledges the potential for noise which many events bring and events involving audiences of up to 4,999 are certainly capable of causing plenty, both during their course and as audiences assemble and disperse. These are big events by any standard; those of 100-200 mentioned in para 62 of the IA are hardly small either and they bear no comparison with 'two in a bar' events of

old yet, having implicitly acknowledged their greater impacts, the paper effectively dismisses them in reliance on the various noise control powers of local authorities to mitigate them.

The statistics

These powers deserve particular comment but in the first place, and notwithstanding the current effect of licensing, it is worth noting that complaints of noise from entertainment venues already run at significant levels. The Impact Assessment (IA) annexed to the consultation tries to play them down; it says 'noise problems from venues are fairly infrequent.' Figures from the last four years of the CIEH's annual surveys of local authority noise enforcement activity, however, show licensed premises as the third *most* frequent sources of complaints, totalling several thousands each year. In fact, they run behind only those concerning single family houses and purpose-built flats and ahead of those concerning, for example, converted flats and even construction sites. Though the IA also notes only 3% of respondents to an opinion poll said it bothered them, that is still a lot of people and no doubt that proportion rises with proximity to entertainment venues.

While the IA's estimate of 50% of incidents reported to us under the 'Commercial/leisure' category of our annual survey are attributable to licensed premises is more or less correct, what is clear from our unpublished data is that they are quite unevenly distributed among local authorities such that grossing up the published figures by population (Table 5 of the IA) is unsatisfactory. Even were a prediction of a 10-15% increase in complaints correct overall, that is likely to be exceeded substantially in some areas, our data showing a difference in the median number of complaints between central London and industrial towns of a factor of 8. Though a proportion of complaints are no doubt attributable to events at venues which will continue to be subject to (alcohol) licensing it is important to understand that entertainment noise in general is a problem and removing any opportunity for controlling it, and in particular controlling it *in advance* of its occurrence, can only result in an increase in that problem and is a move in the wrong direction.

The powers

Turning to the noise powers, insofar as the paper rejects the idea that events continuing after 11:00pm should still require a licence, not only is that inconsistent with the status given to night-time in broader noise policy but it is perverse to place any reliance on the Noise Act (para 3.32) in their respect since that will cease to apply where no licence is required. It will be a dead letter.

The blunt closure powers of the Anti-social Behaviour Act are no substitute because of their restrictive criteria (in particular the need to show the *necessity, cf* convenience, of closure to prevent *public* nuisance), that it is unlikely to be practicable (or popular with the Police) to close a large event summarily, and not least since it requires the presence of trained local authority officers. That barrier applies to the use of statutory nuisance powers too as para 3.32 recognises when says 'it should be noted that most local authorities do not operate a

full nuisance complaints service outside normal working hours.’ which better reflects the situation than the final sentence of para 61 of the IA.

Resources

We have nevertheless looked at local authorities’ out-of-hours provision since the consultation paper was published. Whereas ten years ago, our annual survey recorded 245 English local authorities maintaining out-of-hours noise services, 105 of which were 24/7 services, a poll taken for the purpose of this response revealed those numbers to have declined to 150 authorities and just 27, 24/7 services. Of those 150 authorities, 49 say they expect to have to scale-back those services in the foreseeable future, moreover, it is also clear that many are undertaking duties, for example, to do with food safety or infectious disease control as well, and may not be available to deal with noise complaints when needed anyway.

Conclusion

In conclusion, we would not argue that the licensing regime is perfect or that it is always applied as well as it might be, nor that the range of events currently subject to licensing may not benefit from some revision; that some varieties of event might not be exempted but equally, that some other varieties should be included. Avoiding the enquiry the topic deserves, however, the department's proposals go too far, in particular in respect of the size of events proposed to be taken out of the regime. Contrary to the paper's assertion, it is far from established that the events in question are not a significant source of noise problems (para 86) and presently *un*licensed events are certainly not nuisance-free (para 79).

The clear consequence of enacting the paper's proposals will, in our view, be an increase in complaints which, as local authority resources continue to diminish, will increasingly go unanswered. We urge the Department to think again.
