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Chartered
Institute of
Environmental
Health

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Dear Ms Mickleburgh

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

I refer to your Department's consultation paper "Consultation on a proposal to exempt small live music events from the requirements of the Licensing Act 2003", published in January and the Chartered Institute's answers to your questions follow:

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

We are not persuaded that there should be an exemption at all and the paper presents no hard evidence in support of it, indeed the Department's own statistical bulletin suggests that the number of licences granted for live music continues to grow, appearing to contradict the claim that the Act is inhibiting applications. Should an exemption be granted nonetheless, we agree that it should be limited to performances held wholly inside a permanent building.

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

We are not persuaded that there should be an exemption at all but, should it be granted, we would caution that any performance limited to 100 people is not a "small" event. Leaving aside the matter of how it would be confirmed that any numerical limit on audience size was not breached, we know of no evidence correlating audience size with the potential for a performance to cause a nuisance and the limit proposed would appear to be entirely arbitrary.

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

We are not persuaded that there should be an exemption at all but, should it be granted,

we agree that audiences should be accommodated entirely within the building where the performance is taking place. We would caution, nevertheless, that the sort of venue likely to take advantage of the proposed exemption is likely both to be situated more closely to noise-sensitive premises and be less well adapted for noise attenuation than larger venues; while containing both performances (Q1) and audiences within permanent buildings is a sensible precaution, it can be no guarantee of "nuisance-proofing".

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

No. Notwithstanding our replies to the questions above, while we agree that any performances continuing after 11pm should be subject to the scrutiny of a full licence application we cannot envisage a need for any performance to begin as early in the day as 8am. We would suggest 12 noon instead.

Question 5: Do you agree that there should be an exclusion process as set out above?

While, again, we are not persuaded that there should be an exemption at all, should it be granted, we agree that Licensing Authorities should have the power to exclude it summarily in the case of any premises in respect of which it is abused or can be shown to be unsuitable.

Question 6: Do you agree that the exclusion process should be similar to the current review process, with the modifications proposed?

Yes, though we think that it should be sufficient for the Licensing Authority to give a copy of the application to the proprietor; it is, surely, for him/her to place it on his/her own 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?

Yes.

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

No. But for the subsidiary proposal for exclusions we would have agreed this was so but in the light of that, it is clear that Licensing Authorities will have the power to frustrate the broader policy objective of exempting small venues from the process of the 2003 Act. In that case, the argument in the paper that they need only have regard to guidance has no force and it seems to us that the same effect could be achieved through guidance to Licensing Authorities that they should normally accept applications from such venues subject to similar conditions on audience size, containment etc.

To the extent that cost may remain a barrier to applications, in the first place the paper presents no evidence for it and in the second place, providing a concessionary rate does not require an amendment to primary legislation.

Question 9: Do you agree that the effect of the proposal is proportionate to the policy objective?

No. Whereas the policy objective is to facilitate small, live performances, in the first place the paper presents only anecdotal evidence of the need for that while in the second place, any anticipated increase in performances needs to be off-set by the negative effects of increased nuisance and need for enforcement by local authorities. These do not appear to have been taken into account in the Impact Analysis.

Question 10: Do you agree that the proposal, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it?

No. While the paper presents little evidence that live music is not flourishing, it wrongly inflates the public interest by referring to the interests of musicians and of venues which are, in fact, private interests.

Question 11: Do you agree that the proposal does not remove any necessary protection?

No; clearly it removes the protection offered by the scrutiny of a full licence application.

Question 12: Do you agree that the proposal does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise?

No; it removes the right of neighbours affected by a licence application to make representations to that, together with the expectation that the Licensing Authority will, in any event, take their interests into account in making their decision to grant or refuse a licence.

Question 13: Do you agree that the proposal has no constitutional significance?

No; notwithstanding the proposal in this case for an affirmative resolution, the use of Ministerial Orders to amend primary legislation remains of constitutional significance.

Question 14: Do you broadly agree with the estimates, assumptions and conclusions of the Impact Assessment (published as a separate document, and available alongside this consultation on the DCMS website at http://www.culture.gov.uk/reference_library/consultations/6499.aspx)?

No; it is a key assumption behind the proposal that no increase in nuisance will result yet the paper presents no evidence – in particular of any correlation between audience size and propensity to cause a nuisance – in support of that. The paper, moreover, over-estimates the value of the proposal to the public interest (see the answer to Q.10 above) and omits any additional costs to local authorities for nuisance investigation/enforcement.

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

No; in the first place the amendment is headed "...small *venues*" whereas the proposal concerns small *audiences* and is silent on the size of venues; in the second place it is not clear from para 7A(1) that the scope of the change is limited to performances consisting *solely* of live music.

Should the proposal be accepted and exemption granted, we would like to see a provision in the amendment to the effect that the licensing authority should be notified 48-hours in advance of any exempt performance planned to take place within their area so that it might arrange for suitable monitoring if it wished.

Yours sincerely,

A handwritten signature in black ink that reads "Howard Price". The signature is written in a cursive style with a horizontal line underlining the name.

Howard Price
Principal Policy Officer