

## Summary: Intervention & Options

<b>Department /Agency:</b> DCMS	<b>Title:</b> Impact Assessment of Proposal exempt small live music events from the Licensing Act 2003	
<b>Stage:</b> Pre Consultation	<b>Version:</b>	<b>Date:</b> November 2009
<b>Related Publications:</b>		

Available to view or download at:

<http://www.>

**Contact for enquiries:** Mandy Stevens

**Telephone:** 0207-211-6322

**What is the problem under consideration? Why is government intervention necessary?**

In general, the regulation of live music under the Act is justified by the potential impact of some live music events on the promotion of the licensing objectives. For example, residents living next door to a public house in a residential terrace may be disturbed by loud performances of live music late at night, or by large numbers of people leaving the venue. Some live music events may also give rise to crime and disorder or endanger public safety. However, the Government considers that small live music events for 100 people or fewer are, in practice, extremely unlikely to give rise to these concerns and will rarely, if ever, have an adverse impact on the promotion of the licensing objectives.

**What are the policy objectives and the intended effects?**

We intend to reduce costs for small venues that wish to hold live music events, but are deterred by the licensing requirements and costs; and premises users that currently use Temporary Event Notices to put on live music in small venues on an occasional basis. We also wish to ensure that musicians and the audiences who wish to hear them do not have their opportunities limited unnecessarily by licensing restrictions.

**What policy options have been considered? Please justify any preferred option.**

The Government proposes to introduce a revocable exemption for small live music events performed for 100 people or fewer in licensed and unlicensed premises. It is clear from discussion with licensing authorities that various stakeholder groups are likely to have serious concerns about exemptions for venues of 200 capacity. Some LAs, for example, considered that an audience limit of 200 would capture all live music venues in their area. Restricting the exemption to audiences of no more 100 is less likely to give rise to issues which may affect the promotion of the licensing objectives.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

**Ministerial Sign-off** For SELECT STAGE Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:

..... Date:

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description:</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' There will be an additional burden on licensing authorities in having to administer the relatively small number of applications for 'exclusion' arising from the estimated existing population of small venues.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£		
	<b>Average Annual Cost</b> (excluding one-off)		
	£224K - £1211K		<b>Total Cost (PV)</b> <b>£ 1.9m – 10.1m</b>
Other <b>key non-monetised costs</b> by 'main affected groups' Licensing authorities may have to administer applications for exclusion in relation to an unknown number of venues outside the estimated existing population of small venues.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' The monetised benefit is made up of the reduction in burden borne by those venues currently providing live music to fewer than 100 people.
	<b>One-off</b>	<b>Yrs</b>	
	£		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£785K-£1384K		<b>Total Benefit (PV)</b> <b>£6.5m – 11.5m</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' As described below, there may be substantial benefits to applicants for authorisation for live music who might have been subject to conditions, but we have no means of quantifying this benefit.			

Key Assumptions/Sensitivities/Risks

Price Base Year 2009	Time Period Years 10	<b>Net Benefit Range (NPV)</b> <b>£ -3.5m – 9.6m</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ 3.1m</b>
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What is the geographic coverage of the policy/option?	England & Wales			
On what date will the policy be implemented?	Spring 2010			
Which organisation(s) will enforce the policy?	Licensing Authorities			
What is the total annual cost of enforcement for these organisations?	£224K - £1211K			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	N/A			
What is the value of changes in greenhouse gas emissions?	N/A			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)	
Increase of £	Decrease £	587k	<b>Net Impact</b> £ -587k

Key:

Annual costs and benefits: Constant Prices
(Net) Present Value

## **Evidence Base**

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

- 1) The proposed exemption is for the provision of live music events for 100 or fewer people, with a power to review and revoke exemptions at specific problem premises. This impact assessment will address the administrative burden, and fee burden, currently affecting venues providing such provision that will be reduced or removed by the proposals. However, the main beneficiaries will be those who do not currently provide live music and are therefore not subject to a formal “administrative burden” but are nevertheless restricted by current licensing requirements. This is the key group that the change in the legislation is designed to assist, and will include:
  - a. **Licensed premises such as pubs, bars and restaurants that do not currently provide live music, and are not licensed for live music, but wish to provide live music.** It is difficult to estimate the number of such premises. In particular, very few applications for new licences, or applications for variations of existing licences, are refused (about 3% in each case according to the latest licensing Statistical Bulletin<sup>1</sup>). This follows the evidence of a survey conducted by MORI for the Live Music Forum in 2006<sup>2</sup>, which found that almost all of those smaller establishments that had formerly provided live music under the “two in a bar” exemption, and applied for live music authorisation under the new regime, were granted it. This category is therefore presumed to include, in particular, some of the 29% of smaller venues that the survey found had formerly provided music through the “two in a bar” exemption but did not apply for authorisation under the new regime, but excepting any whose continuing provision is exempt or authorised under Temporary Event Notices (TENs).
  - b. **Venues (or, rather, potential venues) that do not currently provide live music, and are not licensed for live music, but wish to provide live music.** This could include scout huts, cafes, restaurants and record shops. We have no means of estimating how many venues in this category may take advantage of the proposed exemption.
  
- 2) The administrative burden lifted will be that now borne by those venues currently providing live music to fewer than 100 people. (We will not attempt to estimate how many premises will decide to permit a number different from their capacity or size, as we have no information about this). The following cost burdens at these venues will be affected:
  - a. TENs made “for” live music (we will tentatively estimate the number and cost of these TENs).
  - b. Variations to premises licences and club certificates currently being obtained for the purposes of permitting live music. Some of these will be Minor Variations’, although it is difficult to estimate how many as we do not yet have any data on the new Minor Variations procedure.
  - c. Variations that relate to the increased provision of live music on licences already permitting live music. It is likely that a significant proportion of these would be Minor Variations, as this group is made up of relatively small venues that already permit live music. We have no means of estimating how many

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<sup>1</sup> “DCMS Statistical Bulletin: Alcohol, Entertainment and Late Night Refreshment Licensing, England and Wales April 2008- March 2009”.

<sup>2</sup> “Licensing Act 2003: The experience of smaller establishments in applying for live music authorisation” (December 2006) Page 9: “..(less than half of one percent of all establishments) applied for a licence to stage live music but were denied.”

variations belong to this category because we do not hold figures on the number of variations broken down by subject type.

- d. The savings related to the costs of additional conditions that can be imposed following representations received during a variation application, or volunteered alongside a minor variation. We will not attempt to quantify this cost, as there are too many unknown variables. For example, in a small number of cases, conditions have been imposed that limit the number of performances. This will be a substantial cost in some circumstances but in other cases will have no impact at all (because there is no intention to have more than this many events in any case). A more innocent seeming condition is that of having to close doors and windows. This will usually have very little cost. However, in a rare case it may effectively require a venue to fit air conditioning. This cost is also different from the total cost of conditions resulting from live music being on a licence at such venues (a figure which is itself difficult to estimate) because old conditions will still apply (although Guidance will point to the possibility of removing them through the Minor Variation process).

### **The number and cost of TENs made “for” live music at venues with less than 100 capacity**

#### **Number of TENs**

- 3) According to the latest Statistical Bulletin, there were 123,400 TENs in 2008-09. TENs may authorise the full range of licensable activities and we do not collect statistics on how many of them were largely intended for live music alone<sup>3</sup>. The Live Music Survey of 2007<sup>4</sup> indicated that 38% of ‘secondary live music venues’ (venues whose core business is not the staging of live music but which have the potential to stage live music) had a capacity of 100 or fewer. We can assume that no venue relying on TENs to stage live music regards this as its core business. This survey estimated the total population of secondary venues as 149,427. 42% of these had put on live music in the last twelve months, one in ten of those doing so under TENs. The average number of live music events amongst those who had put on live music events was 22. However, the maximum number that can be authorised at a single venue under TENs is 12. Given that some of these may not have gone ahead without provision for alcohol or late night refreshment, will assume 6 - 8 TENs issued ‘for’ live music at these premises.

Size of Venue	Number of Potential ‘Secondary’ Venues	Number with capacity below 100	Number putting on live music	Number using TENs	Average Number of TENs used	Number of TENs
100	149, 427	38% = 56,782	42% = 23,848	10% = 2,385	6-8	14,310-19,080

<sup>3</sup> If, for example, the event is one at a venue without a premises licence that would not go ahead without authorisation for the sale of alcohol, then the organisers would not benefit from the proposed exemption, as they would have to issue a TEN to obtain authorisation for the sale of alcohol. (Furthermore, we know that some of the events recorded by the Live Music Survey were private events. In these cases, the live music would not typically be licensable in itself but the sale of alcohol would). However, we do not have enough information to estimate how many TENs fall into this category).

<sup>4</sup> “A survey of live music in England and Wales in 2007” (BMRB Social Research).

## Burden of Applying for TENs

- 4) The fee for a TEN is £21. The administrative cost of applying for a TEN has been estimated previously as £16<sup>5</sup>

Estimated Number of TENs	Estimated Fee Burden (£21)	Estimated Administrative Burden (£16)
14,310 – 19,080	£300,510 - £400,680	£228,960 - £305,280

## Variations to premises licences and club certificates currently being obtained to permit live music.

- 5) According to Licensing Statistical Bulletins, the number of premises licences and certificates permitting live music has increased in recent years. There was an increase of 3,900 in 2008-2009, following an increase of 6,300 in 2007-2008. This slowing of the increase could reflect economic circumstances affecting the sector generally (which may improve in the future), or it could to some extent reflect the number of live music authorisations reaching saturation point. We will assume that 3,900 is a typical increase going forward. However, some of these authorisations will be the result of applications that include other licensable activities. Premises to which the exemption applies, but which still intend to provide alcohol, late night refreshment or other forms of regulated entertainment will still need to obtain a licence, so they will not benefit from a reduced cost burden to the same degree. We will assume that new licence applications at small premises are those that do not benefit for this reason, and that the variation applications do benefit. There were 11,630 applications to vary licences and certificates in 2007-08 (compared with 12,600 new applications) and 7,820 (compared 10,810 new applications) in 2008-09. This means that, over the last two years, 45% of applications were for variations. We are therefore making three very broad assumptions:
- that the increase in live music authorisations is derived from variation and new applications in the same proportions as the overall proportion over the last two years;
  - that the number of variations thus estimated is a reasonable reflection of the number of additional authorisations that would not need to be applied for under the proposed exemption and;
  - that these estimates can be applied to the relevant population of premises with under 100 capacity as estimated by the 2007 Live Music Survey.

Est. Number of New LM Authorisations	Est. number that are intended specifically 'for' live music (45%)	Percentage of venues under 100 (38%)
3,900	1,755	667

## Costs of variations to premises licences and club certificates currently being obtained to permit live music.

- 6) We will assume that venues with capacity under 100 that make variations are split evenly between Bands A and B, with an average variation fee of £145 (some may be except from Licensing Fees, and some will be in higher fee bands). The Minor Variations Impact Assessment contained estimates that the administrative cost of a full variation is £385-£950. Some of the current applications made for the purpose of authorising live music will be minor variations applications. The fee is £89, and the estimated administrative cost is £35. We will estimate that between 10% and 25% of applications will be minor variations.

<sup>5</sup> "Legislative reform orders: proposals to: (1) Introduce a simplified process for minor variations to premises licences and club premises certificates and (2) Remove the requirement for a designated premises supervisor and personal licence at community premises." (DCMS, August 2008).

		Fee Level		Totals
Fee Burden	Full Variations (500-600)	£145	£72,500-£87,000	
	Minor Variations (67-167)	£89	£5,963 – £14,863	
<b>Total fee savings</b>				<b>£78,463-£101,863</b>
Admin Burden	Full Variations (500-600)	£350-£950	£175,000-£570,000	
	Minor Variations (67-167)	£35	£2,345 - £5,845	
<b>Total Admin Burdens</b>				<b>£177,345-£575,845</b>

Therefore, estimated fee savings from the categories described total £379K - £503K.

Estimated administrative savings total £406K - £881K.

### **Estimated Burden of Proposed Exemption on Licensing Authorities**

#### **Burden at Existing Premises**

- 7) A small proportion of the exempt premises will be subject to an exclusion application and therefore impose costs on the licensing authority, which will have to administer the process, including conducting a hearing. We do not know how many will require a review in this way. We have previously estimated the cost of a review as around £1,200 and will use the Live Music Survey estimated population of 149,427, 38% of which (56,782) have capacities under 100. (Note that this refers only to secondary venues. However, existing small 'primary' venues will generally already have the live music authorisation they require and not cause additional reviews. Assuming that there has been no change in this population since 2007 is also a major assumption). Currently, reviews as a proportion of licences and certificates are relatively rare. There were only 1,125 in 2008-2009 from a total population of 215,000 premises licences and certificates, or just over half of one percent. Public nuisance is likely to be the most common grounds for review motivated by the use of a new authorisation for performance of live music. This may be analogous to the likely situation of venues using a new exemption. Just under half of reviews related to public nuisance (it may have been one of a number of factors), leaving 0.25% of premises possibly being reviewed on noise nuisance grounds in any year. However, premises using the exemption may be more likely to attract concerns over nuisance than premises that have submitted an application for live music authorisation, given that the application will have included an operating schedule detailing the proposed activities and had conditions imposed if necessary. We will assume that between 0.3% and five times that number, 1.5% may be reviewed per year. It seems likely that there will be relatively more exclusions initially, followed by a substantial decline as fewer new venues seek to take advantage of the exemption, but we will assume that this is the average in a ten year period. This means a total of £204K-£1,021K amongst these known venues, of which £15K-£73K (see below) is estimated to relate to the unlicensed venues amongst this population. It must be stressed that these are very tentative estimates.

Venues Affected annually (0.3% -1.5% of 56,782)	Cost of review	Estimated annual burden
170 – 851	£1200	£204K - £1021K

## Burden at existing unlicensed venues, and new unlicensed venues

- 8) Venues that are unlicensed, and those that are outside this estimated population of secondary music venues, will still be potentially subject to exclusion if they seek to take advantage of the exemption. Some of these will be included in the above estimate. Although we might use the same (very tentative) estimate for the proportion that result in reviews, we do not know how many such premises will use the exemption, and it is therefore very difficult to estimate the number of exclusions amongst these groups.

Of the population reported by the Live Music Survey 42% had put on live music. 14% of these had done so without a premises licence with authorisation for live music. Half of the remaining 58% that had not put on live music did not have authorisation to do so. If we assume that these figures apply equally to the population with capacity under 100 (56,782), then the total number without authorisation is 19,806.

	% without authorisation	total
Had put on live music 42% = 23,848	14% = 3,339	
Had not put on live music 58% = 32,934	50% = 16,467	19,806

However, a venue might still have a licence if it does not have authorisation for live music. Those that are unlicensed and not already exempt (and therefore likely to put on new live music events) are likely to come from the two categories of 'restaurants and cafes' (29,309) and 'church halls and community centres' (27,939). We will assume that the restaurants had licences (e.g., for sales of alcohol) and that the cafes, were unlicensed. There were around 3,610 cafes in the population. The Live Music Survey estimated that 38% of its total population had a capacity of 100 or fewer. However, we will assume that this applies to all the cafes.

There were around 14,781 church halls (which are already exempt) in the population of 'church halls and community centres', leaving around 13,158 community centres. Action with Communities in Rural England (ACRE) estimated in 2009 that 75% of rural village halls do not have a licence for regulated entertainment. Although 36% have a licence for alcohol, we will assume that few of these are additional to the group that has a licence for regulated entertainment, and that this proportion also applies to the urban community centres. This implies 3,290 in this category, of which we will assume 38% have a capacity of 100 or fewer, leaving 1,250, and a total of 4,860 potential live music venues in the existing population that do not currently have a licence or an exemption.

However, the proposed exemption may apply to any building, not only those that have may have previously been considered to be potential secondary live music venues. It is possible that completely unexpected small venues might put on live music under the proposed exemption, and thus be subject to exclusion, and we have no means of predicting this with any accuracy. The only limitation we can place on the potential numbers is the common sense view that it is unlikely that any very large number of new venues will emerge in buildings that are generally not designed for live performance and do not sell alcohol. We will therefore tentatively suggest that the total population of venues is about two to three times larger than this estimate:

Est. Pop. of venues derived from Live Music Survey	Assumed total potential users of exemption	Est. annual number subject to exclusion over 10 year period (0.3%-1.5%)	Estimated cost of administering exclusion	Total estimated cost of administering exclusions at unlicensed premises
4,860	9,720 – 14,580	29-219	£1200	£35K-£263K

Of this £35K-£263K estimated cost in relation to unlicensed premises, £15K-£73K are assumed to be included in the existing population as described above, implying total costs annual costs on local authorities of £224K-£1,211K.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes/No	Yes/No
Small Firms Impact Test	Yes/No	Yes/No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes/No	Yes/No
Disability Equality	Yes/No	Yes/No
Gender Equality	Yes/No	Yes/No
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No

## Annexes

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