



department for  
**culture, media  
and sport**

**APPENDIX**

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

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Licensing Act 2003

## Proposal To Exempt Small Live Music Events from the Licensing Act 2003: Chapter 5: Detailed Proposals

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### Conditions of exemption

5.1 The Government proposes to exempt from the Act small live music events in licensed and unlicensed premises subject to the following conditions:

**a) The performance takes place wholly inside a building.** There is evidence that live music events held outdoors, in temporary structures such as tents or on boats, vehicles, etc are more likely to generate noise nuisance than indoor events. The Government therefore recommends that the exemption should be restricted to performances that take place wholly inside a permanent building.

**Question 1: Do you agree that the exemption should be limited to performances held wholly inside a permanent building? Yes/No. If No, please explain why.**

**b) The audience does not exceed 100 people and is accommodated entirely inside the building where the performance is taking place.** It was clear from the Government's earlier pre-consultation on exemptions for live music for 200 or fewer people, that licensing authorities, residents and the police had serious concerns about exempting this size of venue. Some LAs, for example, considered that an audience limit of 200 would capture all live music venues in their area. The Government is aware that there are different views on this issue, and that the CMS Committee recommended an exemption for events for audiences of no more than 200, however on balance it considers that restricting the exemption to audiences of no more than 100 is less likely to give rise to issues which may affect the promotion of the licensing objectives.

It also recommends that the audience should be accommodated entirely inside the building where the performance is taking place to prevent a situation whereby, for example, patio doors might be opened to allow people on a pub terrace to see the performance, allowing noise to escape.

**Question 2: Do you agree that the exemption should be limited to performances of live music for not more than 100 people? Yes/No. If No, please explain why.**

**Question 3: Do you agree that audiences for exempt performances should be accommodated entirely within the building where the performance is taking place? Yes/No. If No, please explain why.**

**c) The performance does not take place between 11pm and 8am.** Noise from live music events is much more likely to disturb nearby residents etc. late at night and in the early hours of the morning, particularly (but not exclusively) on weekdays. The Government therefore recommends that exempt performances should not take place between 11pm and 8am.

**Question 4: Do you agree that exempt performances should not take place between 11pm and 8am? Yes/No. If No, please explain why.**

d) **The performance does not take place in a premises which is subject to an 'exclusion' decision** (see paragraph 5.2 below). The Government's proposal includes a revocation process to exclude specific premises from the exemption if problems arise in connection with exempt live music performances.

### **Exclusion/revocation process**

**5.2** In view of the concerns of LAs, the police and residents about the potential impact of an exemption on local residents, etc, the Government proposes to allow residents and local businesses (interested parties) and responsible authorities such as the police to apply to the licensing authority for an exemption at a specific premises to be 'excluded' from the exemption (i.e. revoked). This process will be similar to the current process for reviewing premises licences and club premises certificates, except that:

- it will apply to licensed and unlicensed premises;
- the evidence submitted in support of the application must focus on the impact of the live music event (s) on the promotion of the licensing objectives;
- the licensing authority will be responsible for placing a notice on premises to advertise the application
- licensing authorities will only have two options following a hearing: to allow the exemption to continue; or to exclude (revoke) it;
- an exclusion decision will take effect immediately, even if there is an appeal;
- Exclusions in licensed premises will be noted on the licence or club premises certificate; exclusions in unlicensed premises will be entered in a new section in the Licensing Register.

**Question 5: Do you agree that there should be an exclusion process as set out above? Yes/No. If No, please explain why.**

**Question 6: Do you agree that the exclusion process should be similar to the current review process, with the modifications proposed? Yes/No. If No, please explain why.**

### **Licence conditions relating to the performance of exempted live music**

**5.3** Unlicensed premises that wish to stage live music events that qualify for the exemption will not need to make any kind of application to the licensing authority; the exemption will automatically apply. However, licensed premises that already stage live music and qualify for the exemption may still have conditions attached to their licence in connection with their live music provision. For example, they may be restricted to a certain number of performances per week, or be required to install and maintain sound proofing equipment. These premises will be able to apply to vary their licences to remove relevant conditions through the Minor Variations process, in so far as those conditions are inconsistent with the new exemption. The Government recognises that this will involve a one off cost to licensees, but considers that some level of scrutiny by the licensing authority is necessary to ensure that conditions that relate to other licensable activities at the premises are not removed. It is not always clear why a certain condition has been applied to the licence and licensing authorities will wish to satisfy themselves that necessary conditions relating to other licensable activities remain in place. It may also be the case that a premises with a number of rooms may stage live music events for an audience of no more than 100 in one room and for a bigger audience in another room. In

these circumstances, the licensing authority is likely to consider that the licence conditions relating to live music should still apply, unless they relate specifically to the smaller room. In practice licensees are unlikely to apply to remove a licence condition unless the likely saving outweighs the cost of the application.

**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/No. If No, please explain why.**

## Chapter 6: Legislative Reform Order: Pre-conditions

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### Precondition (a): non-legislative solutions

**6.1** The legal requirements relating to regulated entertainment are set out in the 2003 Act. The proposed changes to the Act cannot be made through secondary legislation (other than legislative reform orders).

**6.2** Although the Secretary of State is empowered to issue Guidance to licensing authorities under section 182 of the 2003 Act, licensing authorities only have to 'have regard to it' and it cannot effect changes to primary legislation or regulations made under the 2003 Act or seek to influence the decisions of prosecuting authorities. In addition, the police (and other RAs) need have no regard to it.

**6.3** The Government is satisfied that this proposal cannot be achieved by means of:

- any voluntary agreements between central government, licensing authorities and the police;
- changes to the statutory Guidance that the Secretary of State issues under section 182 of the 2003 Act; or
- changes to the regulations made by the Secretary of State under their powers in the 2003 Act.

**6.4** The Government is therefore satisfied that this proposal cannot be achieved by non-legislative means.

**Question 8: Do you agree that this proposal cannot be achieved by non-legislative means? Yes/No. If No, please explain why**

### Precondition (b): the effect of the provision is proportionate to the policy objective

**6.5** The policy objective is to remove unnecessary burdens on small live music events. The proposal exemption will deliver this and no more by restricting the exemption to performances of live music for audiences of no more than 100 people. Anecdotal evidence suggests that these venues are unlikely to give rise to problems which may affect the promotion of the licensing objectives and therefore suffer a disproportionate burden from the requirements of the licensing regime.

**Question 9: Do you agree that the effect of the proposal is proportionate to the policy objective? Yes/No. If No, please explain why.**

### Precondition (c): the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it

**6.6** The public interest lies in: ensuring that live music can flourish, to the benefit of the wider community; providing more small venues where musicians, particularly young musicians who need to hone their skills in front of smaller audiences, can perform; and in ensuring that small venues can diversify their offer and generate income by putting on low risk live music. Any person who is adversely affected by an exempt live music performance will be able to apply to the licensing authority to have the exemption reviewed and if necessary, excluded. An

exclusion decision will take effect as soon as it is made (even if there is an appeal), ensuring that residents and others are not exposed to further noise nuisance or other problems. The Government therefore considers that this proposal strikes a fair balance.

**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? Yes/No. If No, please explain why.**

**Precondition (d) the provision does not remove any necessary protection**

**6.7** The requirements of the Act in relation to live music are intended to ensure that local residents, businesses etc are protected from potential noise nuisance, crime and disorder, etc. that may arise from live music events. The restrictions on size of audience/venue, and the timing of events should ensure that these issues do not arise, but if, exceptionally, there are problems at a specific premises, any interested person or responsible authority may apply for an exclusion. Existing sanctions available under other enforcement regimes, such as noise protection orders and the powers available to the police in relation to crime and disorder would continue to apply to the exempt premises. The Government does not therefore consider that this proposal would remove any unnecessary protections.

**Question 11: Do you agree that the proposal does not remove any necessary protection? Yes/No. If No, please explain why**

**Precondition (e) the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise**

**6.8** Residents and responsible authorities currently have the right to call for a review of any premises licence or club premises certificate if there are problems at a specific premises which affect the licensing objectives. They will continue to exercise this right in relation to exempt live music through the exclusion process. The restrictions on the exemption and existing sanctions under other enforcement regime will preserve freedoms from noise nuisance, crime and disorder, etc that any person might reasonably expect to continue to exercise.

**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? Yes/No. If No, please explain why.**

**Precondition (f): constitutional significance**

**6.9** The proposal is considered to have no constitutional significance.

**Question 13: Do you agree that the proposal has no constitutional significance? Yes/No. If No, please explain why.**

A full copy of the DCMS proposals can be found at:  
[www.culture.gov.uk/images/consultations/condoc\\_exemptsmall\\_livemusicerevents.pdf](http://www.culture.gov.uk/images/consultations/condoc_exemptsmall_livemusicerevents.pdf)