



THE NATIONAL ORGANISATION OF RESIDENTS ASSOCIATIONS

Response to Consultation Paper on the De-regulation of Regulated Entertainment

Introduction

NORA members, representing nearly 2 million residents in the UK, welcome the proposals to de-regulate certain types of regulated entertainment as defined in Schedule One of the Licensing Act 2003. The main concern of residents living near premises promoting indoor and outdoor entertainment is the need to protect their amenity and environment. The 2003 Licensing Act provided some facility for this, but several problems remain. Nevertheless it has been clear to most residents that some entertainments were hampered by the need for licences, so proposals to lighten the burden for these events are accepted.

The main scourges of modern life affecting the enjoyment of residents in their homes are noise pollution, anti-social behaviour, vandalism and unwanted traffic. These problems become intolerable when sleep is prevented or disturbed, but the ability to enjoy peace and quiet on return from work and especially at weekends also merits protection. The watershed of 2300 hours only applies to the problem of sleeping for adults and ignores the needs of children and the sick and the need for family social engagement.

NORA members appreciate that there must be a balance between the needs of the entertainment industry and the ability of people to enjoy their property. The 1990 Environment Protection Act and the 1996 Noise Act provide only limited protection from noise from built premises and none at all from outdoor events, so 'the prevention of public nuisance' licensing objective in the 2003 Licensing Act has proved an effective instrument to protect residents from unwanted noise and nuisance. NORA members are concerned this protection will disappear with the proposals in this Consultation Paper.

Most of the problems of noise, nuisance and anti-social behaviour are associated with licensed premises selling alcoholic refreshment, so the exclusion of these premises from the proposals is welcomed. In order to protect their amenity NORA members seek further exclusions. They comprise entertainments with

- amplified live music and speech
- recorded music except when used as background
- audiences over 499 people
- occur after 2200 hours and before 0800 hours.

Reasons are given in the answers to the 48 questions in the Consultation Paper.

Questions and Answers

Q1: Do you agree that the proposals outlined in this consultation will lead to more performances, and would benefit community and voluntary organisations? If yes, please can you estimate the amount of extra events that you or your organisation or that you think others would put on.

There are already 133,000 premises licensed for regulated entertainment including many without licences to sell alcoholic refreshment, such as schools, church halls and community centres, which make it doubtful that there are many venues still unlicensed for regulated entertainment to benefit from de-regulation. Nor is it known how many of the 120,000 TENs each year take place on un-licensed premises. Accordingly it is anyone's guess how many more, if any, extra performances would take place were the proposed de-regulation to take place. NORA members' concerns are not related to any possible increase in non-alcoholic events, but relate to the fear of 'public nuisance'. Whatever benefit might accrue to community and voluntary organisations might be outweighed by the noise and nuisance caused to the community.

Q2: If you are replying as an individual, do you think this proposal would help you participate in, or attend, extra community or voluntary performance?

Not applicable.

Q3: Do you agree with our estimates of savings to businesses, charitable and voluntary organisations as outlined in the impact assessment? If you do not, please outline the areas of difference and any figures that you think need to be taken into account (see paragraph 57 of the Impact Assessment).

Not applicable.

Q4: Do you agree with our estimates of potential savings and costs to local authorities, police, and others as outlined in the impact assessment? If you do not, please outline the areas of difference and any figures you think need to be taken into account.

No.

The estimates of potential savings and costs derive from a guess that the proposals would lead to a possible 10% rise in complaints about excessive noise from entertainment events. No evidence for this guess is provided. Any rise in the number of such complaints is to be deplored. The cost to residents of the extra problems of noise and nuisance is not assessable in financial terms, since they will involve disturbance, anger, distress, complaints to Environmental Health Departments (EHDs) and the Police and the collection of evidence.

Q5: Would you expect any change in the number of noise complaints as a result of these proposals? If you do, please provide a rationale and evidence, taking into account the continuation of licensing authority controls on alcohol licensed premises and for late night refreshment

Yes.

The main impact on NORA members of the de-regulation proposals will be a consequence of the loss of regulation of events involving amplification both of speech and music especially after 1800 hours when people return home and when crowds of people leave events.

There are three types of venue that would be affected by de-regulation of regulated entertainment. These comprise venues currently un-licensed, venues licensed for entertainment but not for the sale of alcohol and those licensed for the sale of alcohol and entertainment but prepared to suspend the sale of alcohol when an entertainment takes place. The number in each of these three groups is unknown. Relaxation of the TENs regime will have a similar parallel impact, since they may involve any of the three venues.

Without any control on the first group noise and nuisance from amplified music and speech could cause considerable nuisance to nearby residents, particularly from outdoor events could affect a large number of residents. The second and third group are likely to have conditions imposed on their licences where a noise nuisance has already occurred, and residents and others have ensured that their environment is protected by appropriate conditions agreed by the relevant Licensing Authority.

In all these groups total de-regulation is highly likely to cause noise problems, but the number is unknown. Currently complaints related to amplified music and speech comprise a substantial proportion of complaints made to EHDs. NORA members are seeking data from their EHDs, and some results have been reported. In most instances a third of complaints related to amplified sound are blamed on commercial venues. The de-regulation of outdoor events, that take place near residential areas, could allow amplified sound to disturb large numbers of residents.

Furthermore if the premises licence does not include any entertainment facility, it may not have any conditions imposed relating to the prevention of public nuisance caused by noise of entertainment emanating from the premises. Conditions such as the need to close doors and windows when music is played or a limitation of the hours of performance may not apply. Currently an application for an entertainment licence as a Variation does allow residents fearful of problems of noise interfering with their enjoyment of their home to make representations before the entertainment takes place. With de-regulation, residents would have to seek a review, which can take several months to organise, and in the meantime the noise and nuisance would continue.

The protection provided by the Environmental Protection Act and the Noise Act depends on the response of the local EHD in responding to requests for help. Few local departments provide services outside normal working hours, and the legislation leaves the discretion of what constitutes a public nuisance to the local authority, which does not adequately protect

the community. The Noise Society's Guidance on acceptable levels of noise at outdoor events is not mandatory and only offers guidance, The involvement of an EHD depends on reports of repeated nuisance and on the attendance of Environmental Health Officers with the appropriate technical equipment. The numerous unsatisfactory experiences of NORA members when relying on these two Acts in respect of noise management cast serious doubt on the value of these Acts in protecting the community from unwanted noise.

Q6: The Impact Assessment for these proposals makes a number of assumptions around the number of extra events, and likely attendance that would arise, if the deregulation proposals are implemented. If you disagree with the assumptions, as per paragraphs 79 and 80 of the Impact Assessment, please provide estimates of what you think the correct ranges should be and explain how those figures have been estimated.

In addition to concerns about the amplification of sound, there are concerns regarding the number attending events. Events attracting more than fifty people can disturb residents when leaving events, but since events controlled by Temporary Event Notices (TENs) involving up to 500 people rarely cause offence, NORA members consider that events involving more than 500 people should not be de-regulated in order to protect the amenity of residents.

See answers to Q4, Q5 and Q11,

Q7: Can you provide any additional evidence to inform the Impact Assessment, in particular in respect of the impacts that have not been monetised?

The main issue is whether de-regulation will lead to more complaints of noise from premises or from outdoor events. From the answers to previous questions, it is inevitable there will be more complaints, but this depends entirely on whether or not those organising and those performing at musical events have appropriate concerns for the effect of their performance on neighbouring residents and other businesses. To rely on a code of practice is unlikely to be satisfactory. Accordingly to select 10% as the increase in complaints is entirely conjectural with no evidence to support it. Using the data from 2009 as the baseline for complaints is a mistake, since the imposition of adequate measures to prevent public nuisance using the 2003 Licensing Act has led to a considerable limitation of complaints from amplified music, which would have been much greater in their absence. That limitation would disappear with the proposed de-regulation.

Assessing the cost of rising complaints is also deficient in that it ignores the costs to those complaining and the distress, the need to seek help and the problem of organising appropriate measures associated with the complaint not assessable in financial terms.

Q8: Are there any impacts that have not been identified in the Impact Assessment?

NORA wishes to emphasise the difference between the two methods of redress available to residents.

Currently premises with premises licences that are in breach of their licence are subject to review, in which the licensee runs the risk of losing a licence. This puts strong pressure on the licensee to ensure there is no breach. If there is and a review follows but the licensee disagrees with the decision, an appeal to the Magistrates' Court can be registered. In the meantime the noise nuisance will continue, but there will be little or no financial cost to the residents or to the Licensing Authority. The process involves mediation and an inquisitorial and gentlemanly hearing.

On the other hand if the venue has no premises licence, as would follow if the de-regulations listed in the consultation paper were implemented, there is no incentive to respect the environment of neighbouring residents since there is no premises licence at risk. If the route of redress followed involved an enquiry by the Environmental Health Department, followed by a Notice of Breach, and ignoring of the breach leading to a magistrate's court appearance and then an appeal, the financial cost will fall on both the licensee and the Environmental Health Department as described in the Impact Assessment. However the process experienced by residents would mean not only a much longer period of continuing noise nuisance until the process was completed, but also the court appearances would be adversarial and confrontational with a consequent loss of any goodwill that might have existed.

Q9: Would any of the different options explored in this consultation have noticeable implications for costs, burdens and savings set out in the impact assessment? If so, please give figures and details of evidence behind your assumptions.

See answer to Q8.

Q10: Do you agree that premises that continue to hold a licence after the reforms would be able to host entertainment activities that were formerly regulated without the need to go through a Minor or Full Variation process?

No.

See answer to Q5.

Q11: Do you agree that events for under 5,000 people should be deregulated across all of the activities listed in Schedule One of the Licensing Act 2003?

No.

It may be true that one-off events, such as football matches and other sporting events attracting up to 5000 people, cause little public offence, but they may be supervised by police for a variety of reasons. Professional football matches are rarely more frequent than once a fortnight and they usually finish by 1800 hours, athletic events are even less frequent, but concerts can occur nightly for periods up to a week or more and could continue into the early hours. 5000 people attending such an event can cause considerable noise and nuisance even

if alcohol consumption is not involved. Alcohol can be brought to such events by the audience, and sadly this will inevitably lead to noise and nuisance. 5000 people leaving an event especially in the evening or late at night, when ambient noise levels are low, will cause disturbance to residents in the vicinity and on the routes taken to leave the venue.

Q12: If you believe there should be a different limit – either under or over 5,000, what do you think the limit should be? Please explain why you feel a different limit should apply and what evidence supports your view.

In view of the answers to Q6 and Q11, NORA members consider the figure of no more than 500, used for TENS, is appropriate. TENS give rise to little or no problems except when they are abused by unscrupulous licensees. The police can cope with problems encountered with an audience of less than 500, but none could cope with 5000 people causing problems.

Q13: Do you think there should be different audience limits for different activities listed in Schedule One? If so, please could you outline why you think this is the case. Please could you also suggest the limits you feel should apply to the specific activity in question?

No.

Make it simple.

Q14: Do you believe that premises that would no longer have a licence, due to the entertainment deregulation, would pose a significant risk to any of the four original licensing objectives? If so please provide details of the scenario in question.

Yes.

The proposals would allow anyone to organise ‘regulated entertainment’ not involving the sale of alcoholic refreshment to take place anywhere without warning, lasting all day and night and without any control over noise and nuisance until the authorities decide to intervene. Pubs and clubs could organise such events and ignore any conditions on their premises provided they stopped the sale of alcohol when the event started. The audience could always bring its own alcoholic refreshment anyway. All four licensing objectives could be at risk. How often this might happen is anyone’s guess, but the unscrupulous would benefit.

Q15: Do you think that outdoor events should be treated differently to those held indoors with regard to audience sizes? If so, please could you explain why, and what would this mean in practice.

Yes.

Indoor events can be relatively easily controlled by ensuring that doors and windows are closed whenever noise is a nuisance to the community. Outdoor events especially those involving sound amplification can cause disturbance to large numbers of residents some

distance away. If the hours are not defined, the sound levels uncontrolled and the size of the audience unlimited, the distress that loud events, especially those with large audiences, can cause to many people is considerable.

Q16: Do you think that events held after a certain time should not be deregulated? If so, please could you explain what time you think would be an appropriate cut-off point, and why this should apply?

The key problem is ensuring peace and quiet at a time when people want to go to sleep and do not wish to be awakened by noise. Working adults and the elderly usually retire not long after 2200 hours, but small children are put to bed from 1800 hours. The 1996 Noise Act defines the 'night' as from 2300 to 0800 hours, but noise in the street after 2130 can be disturbing for domestic social enjoyment. Why should one section of society inflict its 'public nuisance' on another section of society? A balance of interests must be recognised.

Accordingly NORA members consider that events taking place between the hours of 2200 and 0800 and those comprising an audience of more than 500 should not be de-regulated.

Q17: Should there be a different cut off time for different types of entertainment and/or for outdoor and indoor events? If so please explain why.

No.

Keep it simple.

Q18: Are there alternative approaches to a licensing regime that could help tackle any potential risks around the timing of events?

No, not to our knowledge.

Q19: Do you think that a code of practice would be a good way to mitigate potential risks from noise? If so, what do think such a code should contain and how should it operate?

Codes of practice are followed by the caring, but ignored by the unscrupulous and the selfish. Legal regulations with penalties are essential. NORA members have always expressed the view that noise from premises and noise in the street needs regulation wherever there are residents liable to be disturbed by such noise. The need for licences and the facility for reviews provide opportunities for residents to protect their environment.

Q20: Do you agree that laws covering issues such as noise, public safety, fire safety and disorder, can deal with potential risks at deregulated entertainment events? If not, how can those risks be managed in the absence of a licensing regime?

No.

The reason the 2003 Licensing Act provides some protection for residents is because conditions are imposed on a premises licence in order to limit the noise and nuisance that regulated entertainment can cause, and if they are breached reviews can take place with possible penalties including loss of the licence.

If legislation governing noise and nuisance is to provide adequate protection, then legislation ensuring that local authorities provide a robust service to manage noise and nuisance complaints must be implemented.

Legislation covering public safety and fire safety has been mitigated, and it is too soon to assess the effects. Disorder and crime are always a police matter.

Q21: How do you think the timing / duration of events might change as a result of these proposals? Please provide reasoning and evidence for any your view.

The 2003 Licensing Act paved the way for an expansion of the night-time economy and the proposed de-regulation will make expansion much easier. This will inevitably occur in towns with large student populations who crave late-night, heavily amplified music.

Q22: Are there any other aspects that need to be taken into account when considering the deregulation of Schedule One in respect of the four licensing objectives of the Licensing Act 2003?

No.

Q23: Are there any public protection issues specific to the deregulation of the performance of live music that is not covered in chapter 3 of this consultation? If so, how could they be addressed in a proportionate and targeted way?

There are few problems caused by live music that is unamplified. It is amplified live music that causes the problems and disturbs residents. Amplified bass sounds in particular travel far. Audiences for unamplified live music rarely exceed 500, but the sudden exit of that number of people especially in the late evening and at night can cause unacceptable disturbance to residents.

Q24: Do you think that unamplified music should be fully deregulated with no limits on numbers and time of day/night? If not, please explain why and any evidence of harm.

No.

Although unamplified music and speech rarely causes problems of noise or nuisance or anti-social behaviour, events taking place at night and those attracting large numbers will cause problems for residents when the audience disperses. NORA members seek exclusion from de-regulation of events that occur between the hours of 2200 and 0800 and of events attracting more than 500 people for that reason.

Q25: Any there any other benefits or problems associated specifically with the proposal to deregulate live music?

If by de-regulating live music this would include amplified music, then serious problems of noise and nuisance are bound to result. One of the commonest reasons for complaints to EHDs by residents is noise caused by amplified music from domestic properties and from commercial properties such as bars, clubs and outdoor events. NORA members are not concerned particularly by unamplified live music.

The benefits of de-regulating amplified live music are unclear. By de-regulating it, control over the level of sound and the hours of playing disappears, so that residents have no recourse to protecting their environment from unwanted sound at times they should have peace and quiet in their homes. Other people's music becomes noise and nuisance when it is unwanted and heard by people seeking peace and quiet in their dwellings.

Q26: Are there any public protection issues specific to the deregulation of the performance of plays that are not covered in chapter 3 of this consultation? If so, how could they be addressed in a proportionate and targeted way?

No comment.

Q27: Are there any health and safety considerations that are unique to outdoor or site specific theatre that are different to indoor theatre that need to be taken into account?

Yes.

If amplification of the music or sound is used, then a much larger number of nearby residents is likely to be disturbed by an outdoor event than one taking place indoors.

Q28: Licensing authorities often include conditions regarding pyrotechnics and similar HAZMAT handling conditions in their licences. Can this type of restriction only be handled through the licensing regime?

Pyrotechnics including firework displays are the source of injury both to participants and to the general public. Private displays are currently not regulated, but large public displays merit control in order to protect public safety.

Q29: Any there any other benefits or problems associated specifically with the proposal to deregulate theatre?

No comment.

Q30: Are there any public protection issues specific to the deregulation of the performance of dance that are not covered in chapter 3 of this consultation? If so, how could they be addressed in a proportionate and targeted way?

Yes.

The performance of dance usually requires music. If the music is amplified, then problems for residents can occur. This can only be avoided by limiting de-regulation to unamplified music.

Q31: Any there any other benefits or problems associated the proposal to deregulate the performance of dance?

See answer to Q30.

Q32: Do you agree with the Government's position that it should only remove film exhibition from the list of regulated activities if an appropriate age classification system remains in place?

No comment.

Q33: Do you have any views on how a classification system might work in the absence of a mandatory licence condition?

No comment.

Q34: If the Government were unable to create the situation outlined in the proposal and above (for example, due to the availability of Parliamentary time) are there any changes to the definition of film that could be helpful to remove unintended consequences, as outlined earlier in this document - such as showing children's DVDs to pre-school nurseries, or to ensure more parity with live broadcasts?

No comment.

Q35: Are there any other issues that should be considered in relation to deregulating the exhibition of film from licensing requirements?

No comment.

Q36: Are there any public protection issues specific to the deregulation of the indoor sport that are not covered in chapter 3 of this consultation? If yes, please outline the specific nature of the sport and the risk involved and the extent to which other interventions can address those risks.

No comment.

Q37: Are there any other issues that should be considered in relation to deregulating the indoor sport from licensing requirements?

No comment.

Q38: Do you agree with our proposal that boxing and wrestling should continue to be regarded as “regulated entertainment”, requiring a licence from a local licensing authority, as now?

No comment.

Q39: Do you think there is a case for deregulating boxing matches or wrestling entertainments that are governed by a recognised sport governing body? If so please list the instances that you suggest should be considered.

No comment.

Q40. Do you think that licensing requirements should be specifically extended to ensure that it covers public performance or exhibition of any other events of a similar nature, such as martial arts and cage fighting? If so, please outline the risks that are associated with these events, and explain why these cannot be dealt with via other interventions.

No comment.

Q41: Do you think that, using the protections outlined in Chapter 3, recorded music should be deregulated for audiences of fewer than 5,000 people? If not, please state reasons and evidence of harm.

No.

With an audience of 5,000 any music, whether live or recorded, will need to be amplified. If such events take place near residential accommodation controls need to be imposed on the sound level and the hours of the events in order to protect the environment of residents. Without regulation, the problems of noise nuisance would inevitably arise.

Q42: If you feel that a different audience limit should apply, please state the limit that you think suitable and the reasons why this limit is the right one.

TENs limit the audience to less than 500, and only occasionally do they cause problems from noise and anti-social behaviour especially when they involve the consumption of alcohol. If there are problems with an audience of this size, the police can usually manage the situation. With an audience of 5,000 at an event causing problems and one not known to the authorities, few police forces could manage the situation.

Accordingly we recommend a limit of less than 500 people in the audience.

Q43: Are there circumstances where you think recorded music should continue to require a licence? If so, please could you give specific details and the harm that could be caused by removing the requirement?

Yes.

Recorded music is by definition amplified. It becomes a problem when it is so amplified that it constitutes a nuisance to those not wishing to hear it. The current regulations allow background recorded music at venues without needing a licence, but DJ functions are regulated because of the loudness of the music and should continue to be so. Other peoples' music that is unwanted constitutes noise and nuisance. All recorded music that is not background music should still require regulation, because it can disturb the peace and quiet of neighbouring residents.

Q44: Any there any other benefits or problems associated specifically with the proposal to deregulate recorded music?

Vide supra.

Q45: Are there any specific instances where Entertainment Facilities need to be regulated by the Licensing Act, as in the current licensing regime? If so, please provide details.

It is presumed this applies only to venues where alcohol consumption is not allowed, so that events at pubs, bars and clubs are excluded.

When an outdoor event takes place near to residential accommodation, provided the hours of activity, the level of the sound and the number in the audience are controlled, problems do not usually arise. When premises licences or TENs are granted for outdoor events that continue after 2200 hours or the dB levels of sound are approved high enough to disturb nearby residents, complaints from residents may follow. If the audience is large and alcohol is consumed on site, problems off site can arise and also provoke complaints, especially if police supervision is absent.

Q46: Are there any definitions within Schedule One to the Act that are particularly difficult to interpret, or that are otherwise unclear, that you would like to see changed or clarified?

Q47: Paragraph 1.5 outlines some of the representations that DCMS has received over problems with the regulated entertainment aspects of the Licensing Act 2003. Are you aware of any other issues that we need to take into account?

NORA accepts that some de-regulation is needed, but events involving amplification of music and sound and events taking place after 2200 hours and before 0800 hours must remain regulated entertainment. This would ensure that where public nuisance is likely, those who consider they are at risk will have the opportunity to express their concerns, and if accepted by the Licensing Authority, appropriate conditions on noise levels and times of performances can be imposed.

Residents and businesses must be entitled to protect their environment when it is threatened by the activities of others including entertainers.

Q48: Do you agree with our proposal that deregulation of dance should not extend to sex entertainment? Please provide details.

Yes.

The promotion of entertainment dependent on sexual stimulation merits regulation because of its undesirable effect on children, the associated promotion of prostitution, the offence it causes to a substantial proportion of the public and the unacceptable influence on the environment of the locality in which it takes place.

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