



department for
**culture, media
and sport**

Proposal to clarify the definition of “entertainment facilities”

Licensing Act 2003

January 2010

improving
the quality
of life for all

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

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Chapter 1: Proposal to clarify the definition of ‘entertainment facilities’

Summary of proposals

1.1 The consultation document seeks your views on a proposal to:

- exclude the provision of musical instruments from the definition of entertainment facilities in the Licensing Act 2003 (the Act) schedule 1, section 3 (see extracts from the Act at Annex B); and
- clarify that entertainment facilities are not separately licensable if they are used solely for the provision of incidental music (as described by schedule 1 section 7).

1.2 The proposal would encourage the use of the existing exemption for incidental music. Performances of live music which meet the conditions in paragraph 1(2) and (3) of Schedule 1 to the 2003 Act would remain licensable if they:

- are for purposes that include the purpose of entertaining an audience and take place in the presence of an audience;
- do not benefit from the exemption for music that is incidental to other activities; and
- do not fall within any other exemption in Schedule 1.

1.3 The proposal would also ensure that the provision of musical instruments (such as a piano made available to members of the public to entertain themselves) is excluded from the definition of regulated entertainment. For clarity, this exemption will extend to items provided to enable a musical instrument to be played without amplification. This is intended to clarify that ancillary items such as music stands are also excluded from the definition of entertainment facilities.

The licensing objectives

1.4 The burdens imposed by the Act are justified by the need to prevent potential adverse impacts on the promotion of the four licensing objectives: the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm. The Government believes that the requirements of the Act in relation to entertainment facilities can be clarified and amended, as described below, without any adverse impact on the licensing objectives.

The current situation

1.5 The definition of regulated entertainment contains two elements: the provision of ‘entertainment’ and the provision of ‘entertainment facilities’. The separate ‘entertainment

facilities’ element is intended to address situations where people take part in entertainment that may not be provided solely for the purpose of entertaining an audience, but which may nevertheless present risks to the promotion of the licensing objectives. Examples may include the use of a dance floor, or some karaoke performances. As part of this, the provision of musical instruments (such as ‘pub pianos’) can be licensable (separate from a performance of live music) if they are to be used by customers to entertain themselves.

Proposal to clarify the exemption for incidental music

- 1.6** The Act provides for an exemption for performances of live music to the extent that they are incidental to some other activity which is not itself “entertainment” or “the provision of entertainment facilities”. However, a broad interpretation of “entertainment facilities” can capture the provision of facilities even if they are intended to be, and are used solely for the provision of exempt incidental music. Such an interpretation limits the usefulness of that exemption, especially for venues that do not have a premises licence, or do not have authorisation for regulated entertainment on their licence, if they are providing the facilities necessary for the performance (such as the provision of a piano in an unlicensed cafe). In such a case, it would mean that they have to make an application to vary the terms of their licence (to add authorisation for entertainment facilities) or make a new application for a premises licence in order to provide exempt incidental music. The Government considers that this was not the intention of Parliament when it introduced the exemption for incidental performances of live music.
- 1.7** Discussions with musicians’ representatives, the licensed trade, and local authority officers have revealed that the broad interpretation described above is not uncommon. We therefore feel that the issue requires clarification and propose to amend the Licensing Act 2003 by statutory instrument made under paragraph 4 of Schedule 1 to state that entertainment facilities are not licensable if they are to be used solely for the provision of exempt incidental music.

Question 1: Do you agree that the Licensing Act 2003 should be amended to state that entertainment facilities are not licensable if they are to be used solely for the provision of exempt incidental music? Yes/ No

Please provide reasons for your answer, giving as much detail as possible.

Proposal to exclude the provision of musical instruments from the definition of entertainment facilities

- 1.8** To further clarify the law with regard to the provision of pianos and other instruments, the Government proposes to change the ‘descriptions of entertainment’ (at Schedule 1, paragraph 3(2)) by statutory instrument to exclude the provision of musical instruments. Performances of live music and the provision of facilities other than musical instruments will remain licensable. This will remove any doubt about whether a licence is required when musical instruments are made available by themselves. For clarity, this exemption will extend to items provided to enable a musical instrument to be played without amplification. This is intended to clarify that ancillary items such as music stands are also excluded from the definition of music facilities. The provision of other facilities, such as amplification, will remain licensable, as their provision may present risks to the licensing objectives. (For example, of public nuisance due to noise, or public safety in the case of a stage).

Question 2: Do you agree that the Licensing Act 2003 should be amended so that the provision of musical instruments and ancillary items is excluded from the definition of entertainment facilities? Yes/ No

Please provide reasons for your answer, giving as much detail as possible.

The benefits of the proposal

1.9 The proposed clarification will benefit, in particular premises such as pubs, cafes, restaurants and community venues that do not have authorisation for regulated entertainment, but who wish to provide incidental live music to their customers. It will, therefore, also benefit musicians who wish to perform and members of the public who wish to hear them. The exclusion of musical instruments from the definition of entertainment facilities may also benefit members of the public who wish to entertain themselves (for example, using a piano in a pub). There will be a small economic benefit in terms of reduced burdens, but we have not attempted to quantify this.

Implementation of the proposals

1.10 Subject to the outcome of this consultation, we propose to introduce the clarification by means of an affirmative statutory instrument as noted above. The draft instrument will be laid in Parliament and debated in both Houses. If Parliament approves the measure, the Minister can then bring the instrument into force.

Chapter 2: How to Respond

- 2.1** Anyone can respond to this consultation. The list of consultees at Annex A indicates those organisations that we will contact to suggest that they may wish to respond. The closing date for making responses to this consultation is 26 February 2009. If you would like to respond to this consultation, please email your response to licensingconsultation@culture.gov.uk

If you prefer, you may submit a hard copy by post to:

Shelley Mickleburgh
Licensing Team
Sport and Leisure Directorate
2-4, Cockspur Street
London SW1Y 5DH

- 2.2** If you have any queries about this consultation, or require additional copies, please contact the Licensing Team at the above address or by telephone on 020 7211 6322 or 020 7211 6380.
- 2.3** However, if you have any questions or complaints about the process of consultation on this paper, please contact the DCMS enquiries team at enquiries@culture.gov.uk or by post to Department for Culture, Media and Sport, 2-4 Cockspur Street, London SW1Y 5DH.

Disclosure

- 2.4** Normal practice will be for responses to this consultation document to be disclosed, and for respondents to be identified. The Minister is also obliged to disclose any representations that are requested by, or made to, the relevant Parliamentary Scrutiny Committees. This is a safeguard against attempts to bring improper influence to bear on the Minister. We envisage that, in the normal course of events, this provision will be used rarely and only in exceptional circumstances. You should note that:
- If you request that your representation is not disclosed, the Minister will not be able to disclose the contents of your representation without your express consent and, if the representation concerns a third party, their consent too. Alternatively, the Minister may disclose the content of your representation but only in such a way as to anonymize it.
 - In all cases where your representation concerns information on a third party, the Minister is not obliged to pass it on to Parliament if he considers that

disclosure could adversely affect the interests of that third party and he is unable to obtain the consent of the third party.

- 2.5** Please identify any information that you or any other person involved do not wish to be disclosed. You should note that many facsimile and e-mail messages carry, as a matter of course, a statement that the contents are for the eyes only of the intended recipient. In the context of this consultation such appended statements will not be construed as being requests for non-inclusion in the post consultation review unless accompanied by an additional specific request for confidentiality.

Confidentiality and Freedom of Information

- 2.6** It is possible that requests for information contained in consultation responses may be made in accordance with access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you do not want your response to be disclosed in response to such requests for information, you should identify the information you wish to be withheld and explain why confidentiality is necessary. Your request will only be acceded to if it is appropriate in all the circumstances. *An automatic confidentiality disclaimer generated by your IT system will not of itself be regarded as binding on the Department.*

Chapter 3: Draft Statutory Instrument

Question 3: Do you think this draft statutory instrument accurately reflects the proposals in Chapter 1? Yes/ No

If no, please provide reasons.

STATUTORY INSTRUMENTS

2010 No. 0000

LICENCES AND LICENSING

The Licensing Act 2003 (Provision of Entertainment Facilities) Order 2010

<i>Made</i>	- - - -	<i>2010</i>
<i>Laid before Parliament</i>		<i>2010</i>
<i>Coming into force</i>	- -	<i>2010</i>

The Secretary of State makes the following Order in exercise of the powers conferred by paragraph 4 of Schedule 1 to the Licensing Act 2003⁽¹⁾:

Citation and commencement

1. This Order may be cited as the Licensing Act 2003 (Provision of Entertainment Facilities) Order 2010 and comes into force on [date] 2010.

Amendment of Schedule 1 to the Licensing Act 2003

2. After paragraph 18 of Schedule 1 to the Licensing Act 2003, add—

“Entertainment facilities

19 The following are not be regarded as the provision of entertainment facilities within the meaning of this Schedule—

(a) the provision of a musical instrument, or anything to be used to enable a musical instrument to be played without amplification;

⁽¹⁾ 2003 c. 17.

(b) the provision of facilities solely for the purpose of a performance of live music of the kind described in paragraph 7 of this Schedule.”.

Gerry Sutcliffe

Parliamentary Under Secretary of State
Department for Culture, Media and Sport

Date

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies the definition of “entertainment facilities” in Schedule 1 to the Licensing Act 2003.

Paragraph 3 of that Schedule defines “entertainment facilities” for the purposes of the definition of “regulated entertainment”, the provision of which is a licensable activity under the 2003 Act.

A new paragraph is added to Part 3 of the Schedule (Interpretation) with effect that the provision of a musical instrument, or anything to be used to enable a musical instrument to be played without amplification does not amount to the provision of entertainment facilities, and is therefore not of itself a licensable activity under the 2003 Act.

In addition, the new paragraph provides that the provision of any facilities solely for the purpose of a performance of incidental music (i.e. music of the kind described in paragraph 7 of the Schedule) does not amount to the provision of entertainment facilities and is therefore, similarly, not itself licensable under the Act.

An impact assessment has been prepared in relation to this Order and is available alongside it on the opsi website (www.opsi.gov.uk).

Chapter 4: Draft changes to the Statutory Guidance

Question 4: Does this draft Guidance provide sufficient advice to assist licensing authorities in their administration of the Licensing Act? Yes/ No

Guidance issued under s.182 of the Licensing Act 2003

This chapter contains amendments to the Statutory Guidance to reflect the changes proposed in this consultation document. Only the sections of the Guidance that we propose to amend are set out here. The full Guidance (last amended in July 2009) is available on the DCMS website at http://www.culture.gov.uk/reference_library/publications/6287.aspx

Insertions are indicated by italics, deletions by strikethrough

Paragraph 3.8 TO BE **amended** TO READ AS FOLLOWS: “Regulated entertainment 3.8 Schedule 1 to the 2003 Act (Annex A), sets out what activities are regarded as the provision of regulated entertainment (entertainment and entertainment facilities) and those which are not and are therefore exempt from the regulated entertainment aspects of the licensing regime (including *the provision of musical instruments and incidental music*: see 3.11-3.12 and 3.20-3.23 below).”

Paragraph 3.10 to be **expanded** to read as follows: “ENTERTAINMENT FACILITIES 3.10 Subject to the conditions, definitions and the exemptions in schedule 1, entertainment facilities means facilities for enabling persons to take part in entertainment consisting of:

- making music (*other than incidental music*);
- dancing;
- entertainment of a similar description to making music or for dancing.

However, the provision of musical instruments, or anything to be used to enable a musical instrument to be played without amplification, is not to be regarded as the provision of entertainment facilities.”

Paragraph 3.11 to be **shortened by deletion** of the third bullet: “3.11 These facilities must be provided for the use of and to entertain customers. Entertainment facilities include, for example:

- a karaoke machine provided for the use of and entertainment of customers in a public house;
- a dance floor provided for use by the public in a nightclub;
- ~~musical instruments made available for use by the public to entertain others at licensed premises~~

Paragraph 3.12 to be **expanded** as follows: “3.12 In carrying out their functions, licensing authorities will need to consider whether an activity constitutes the provision of regulated entertainment. The following activities, for example, are not regulated entertainment:

- education – teaching students to perform music or to dance;
- activities which involve participation as acts of worship in a religious context;
- the demonstration of a product – for example, a guitar – in a music shop;
- the rehearsal of a play or rehearsal of a performance of music to which the public are not admitted;
- *the provision of musical instruments and music stands for customers; or*
- *the provision of facilities solely for the purpose of enabling a performance of incidental live music (see para. 3.20)*

Paragraph 3.14 to be **expanded** as follows: “3.14 There are a number of other entertainments, which are not themselves licensable activities, for which live or recorded music may be incidental to the main attraction or performance and therefore not licensable (see below). For example, stand-up comedy is not a licensable activity and musical accompaniment incidental to the main performance, *or the provision of facilities to enable such accompaniment*, would not itself be a licensable activity.

Paragraph 3.20 to be **expanded** as follows: “INCIDENTAL MUSIC 3.20 The incidental performance of live music and incidental playing of recorded music ~~is may not be~~ regarded as the provision of regulated entertainment under the 2003 Act in certain circumstances. This is where they are incidental to another activity which is not itself ~~entertainment or the provision of entertainment facilities~~ *regulated entertainment*. This exemption does not extend to the provision of other forms of regulated entertainment. *The provision of facilities solely to enable a performance of incidental music is also exempt from the definition of regulated entertainment.*

Chapter 5: List of Questions

Question 1: Do you agree that the Licensing Act 2003 should be amended to state that entertainment facilities are not licensable if they are to be used solely for the provision of exempt incidental music? Yes/ No

Please provide reasons for your answer, giving as much detail as possible.

Question 2: Do you agree that the Licensing Act 2003 should be amended so that the provision of musical instruments and ancillary items is excluded from the definition of entertainment facilities? Yes/ No

Please provide reasons for your answer, giving as much detail as possible.

Question 3: Do you think this draft statutory instrument accurately reflects the proposals in Chapter 1? Yes/ No

If no, please provide reasons.

Question 4: Does this draft Guidance provide sufficient advice to assist licensing authorities in their administration of the Licensing Act? Yes/ No

Annex A: List of Consultees

Anyone can respond to this consultation. This list of consultees indicates those organisations that we will contact to suggest that they may wish to respond.

Action with Communities in Rural England
Alcohol Concern
Arts Council in England
Arts Council of Wales
Association of Chief Police Officers
Association of Circus Proprietors of Great Britain
Association of Convenience Stores
Association of Directors of Social Services
Association of Inland Navigation Authorities
Association of Licensed Multiple Retailers
Association of Show and Agricultural Organisations
Noctis
BII
British Beer & Pub Association
British Board of Film Classification
British Holiday and Home Parks Association
British Hospitality and Restaurant Association
British Marine Federation
British Retail Consortium
Business in Sport and Leisure
Campaign for Real Ale
Central Council for Physical Recreation
Charity Commission
Chartered Institute of Environmental Health
Chief Fire Officers' Association
Children's Society
Chinese Takeaway Association UK
Cinema Exhibitors Association
Circus Arts Forum
Civic Trust

Commission for Rural Communities
Committee of Registered Clubs Associations
Community Matters
(DEFRA) Rural Communities Buildings Network
English Folk Dance and Song Society
English Heritage
Enterprise Directorate, Department for Business, Enterprise and Regulatory Reform
Federation of Licensed Victuallers
Federation of Private Residents' Association
Federation of Small Businesses
Fire and Rescue Authorities in England
Fire and Rescue Services in Wales
Greater London Authority
Guild of Bangladeshi Restaurateurs
Guild of Master Victuallers
Historic Houses Association
Incorporated Society of Musicians
Independent Street Arts Network
Insolvency Service
Institute of Licensing
Interfaith Network
Justices Clerk Society
Licensing Act Active Residents Network
Licensing Authorities in England and Wales
Local Authorities Co-ordinators of Regulatory Services
Local Government Association
London Councils
Magistrates Association
Maritime and Coastguard Agency
Musicians' Union
National Association of Kebab Shops
National Association of Local Councils
National Campaign for the Arts
National Farmers' Retail & Markets Association
National Federation of Fish Friers
National Federation of Retail Newsagents
National Neighbourhood Watch Association
National Operatic and Dramatic Association

National Organisation of Residents Associations

National Village Halls Forum

One Voice Wales

Open all Hours

Passenger Boat Association

Patersons Licensing Acts

Police Federation

Police Superintendents' Association

Rural Shops Alliance

Society of Local Council Clerks

Society of London Theatre and Theatrical Management Association

Tourism for All

Trading Standards Institute

United Kingdom Film Council

United Kingdom Warehousing Association

Voluntary Arts Network

Welsh Assembly

Welsh Council for Voluntary Action

Welsh Local Government Association

Welsh Music Foundation

Wine Spirits Trade Association

Respondents are invited to contact us with the names of any other stakeholders groups not on this list who they feel might be able to contribute.

Annex B: Selected extracts from the Licensing Act 2003

The full Licensing Act 2003 is available online at:
http://www.opsi.gov.uk/acts/acts2003/ukpga_20030017_en_1

“SCHEDULE 1 PROVISION OF REGULATED ENTERTAINMENT PART 1 GENERAL DEFINITIONS

The provision of regulated entertainment

- 1 (1) For the purposes of this Act the “provision of regulated entertainment” means the provision of—
- (a) entertainment of a description falling within paragraph 2, or
 - (b) entertainment facilities falling within paragraph 3, where the conditions in sub-paragraphs (2) and (3) are satisfied.
- (2) The first condition is that the entertainment is, or entertainment facilities are, provided—
- (a) to any extent for members of the public or a section of the public,
 - (b) exclusively for members of a club which is a qualifying club in relation to the provision of regulated entertainment, or for members of such a club and their guests, or
 - (c) in any case not falling within paragraph (a) or (b), for consideration and with a view to profit.
- (3) The second condition is that the premises on which the entertainment is, or entertainment facilities are, provided are made available for the purpose, or for purposes which include the purpose, of enabling the entertainment concerned (whether of a description falling within paragraph 2(1) or paragraph 3(2)) to take place.
- To the extent that the provision of entertainment facilities consists of making premises available, the premises are to be regarded for the purposes of this sub-paragraph as premises “on which” entertainment facilities are provided.
- (4) For the purposes of sub-paragraph (2)(c), entertainment is, or entertainment facilities are, to be regarded as provided for consideration only if any charge—
- a) is made by or on behalf of—
 - (i) any person concerned in the organisation or management of that entertainment, or
 - (ii) any person concerned in the organisation or management of those facilities who is also concerned in the organisation or management of the entertainment within paragraph 3(2) in which those facilities enable persons to take part, and
 - (b) is paid by or on behalf of some or all of the persons for whom that entertainment is, or those facilities are, provided.
- (5) In sub-paragraph (4), “charge” includes any charge for the provision of goods or services.
- (6) For the purposes of sub-paragraph (4)(a), where the entertainment consists of the performance of live music or the playing of recorded music, a person performing or playing the music is not concerned in the organisation or management of the entertainment by reason only that he does one or more of the following—
- (a) chooses the music to be performed or played,

Proposal to clarify the definition of "entertainment facilities"

- (b) determines the manner in which he performs or plays it,
 - (c) provides any facilities for the purposes of his performance or playing of the music.
- (7) This paragraph is subject to Part 2 of this Schedule (exemptions).

Entertainment

2 (1) The descriptions of entertainment are—

- (a) a performance of a play,
- (b) an exhibition of a film,
- (c) an indoor sporting event,
- (d) a boxing or wrestling entertainment,
- (e) a performance of live music,
- (f) any playing of recorded music,
- (g) a performance of dance,
- (h) entertainment of a similar description to that falling within paragraph (e), (f) or (g),

where the entertainment takes place in the presence of an audience and is provided for the purpose, or for purposes which include the purpose, of entertaining that audience.

(2) Any reference in sub-paragraph (1) to an audience includes a reference to spectators.

(3) This paragraph is subject to Part 3 of this Schedule (interpretation).

Entertainment facilities

3 (1) In this Schedule, "entertainment facilities" means facilities for enabling persons to take part in entertainment of a description falling within sub-paragraph (2) for the purpose, or for purposes which include the purpose, of being entertained.

(2) The descriptions of entertainment are—

- (a) making music,
- (b) dancing,
- (c) entertainment of a similar description to that falling within paragraph (a) or (b).

(3) This paragraph is subject to Part 3 of this Schedule (interpretation).

Power to amend Schedule

4 The Secretary of State may by order amend this Schedule for the purpose of modifying—

- (a) the descriptions of entertainment specified in paragraph 2, or
- (b) the descriptions of entertainment specified in paragraph 3, and for this purpose "modify" includes adding, varying or removing any description."

PART 2 Exemptions (*Extract*)***"Music incidental to certain other activities***

7 The provision of entertainment consisting of the performance of live music or the playing of recorded music is not to be regarded as the provision of regulated entertainment for the purposes of this Act to the extent that it is incidental to some other activity which is not itself—

- (a) a description of entertainment falling within paragraph 2, or
- (b) the provision of entertainment facilities"

Annex C: BRE Code of Practice on Consultations

The consultation is being conducted in line with the BRE Code of Practice on Written Consultation. The consultation criteria are listed below. More information can be found at:

<http://www.berr.gov.uk/files/file47158.pdf>

The Consultation Criteria

1) When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

2) Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

3) Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4) Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

5) The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

6) Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7) Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you have any questions or complaints about the process of consultation on this paper, please contact Tony Dyer, Consultation Co-ordinator, Strategy Division, Department for Culture, Media and Sport, 2-4 Cockspur Street, London, SW1Y 5DH tony.dyer@culture.gsi.gov.uk