



**Belfast
City Council**

Belfast City Council response to the Entertainment Licensing Review consultation from the Department of the Environment.

Having considered the Entertainment Licensing Review consultation document Belfast City Council would wish to submit the following comments and recommendations for consideration.

Belfast City Council is fully supportive of the need to review the Order and offers constructive comments on the proposed changes to help shape the Legislation. We would also offer the support of our officers to assist the Department with operational and political issues to ensure well-balanced, effective and appropriate legislation is developed.

This is a draft response to the consultation following consideration by the Licensing Committee and sets out the views of the Council on the issues raised. Such response is subject to ratification by the Council on the 1st July 2015.

Recommendation 1

When considering a licence application, councils should give due consideration to preventing, or minimising, any crime and disorder issues associated with the entertainment.

The Local Government (Miscellaneous Provisions) (NI) 1985 Order ('the 1985 Order') already permits the PSNI to object on any grounds, therefore we believe that any views submitted by them can be dealt with at Committee, providing the crime and disorder is intrinsically linked to the provision of entertainment. Belfast City Council ('the Council') understands that the industry have concerns that if the specific objective of crime and disorder is included in the legislation the PSNI may attempt to expand the definition to cover other issues not relating to entertainment. The Courts have in the past been critical of the Council where it has imposed conditions that are not directly related to the purpose and extent of the 1985 Order.

Recommendation 2

The new licensing regime should apply to the Crown.

The Council would welcome this proposal as the Crown organise many large scale events not presently covered by the legislation. There is no logic, from a safety and public amenity point of view, why these events are not covered as the same principles apply. Additionally, even though the Crown is currently exempt, the Council has acted in an advisory role several times at Stormont and other large events. We believe, through that interaction, there is willingness for Crown properties to be covered by Entertainment Licensing. Should the Department intend to move on this recommendation the Council would welcome clear guidance confirming which Crown premises will fall under the scope of the legislation.

Recommendation 3

The dual licensing system for indoor and outdoor entertainment should be replaced by one system covering both.

The Council would welcome this proposal. When the existing entertainment licensing legislation was drafted it was mainly for indoor premises. The outdoor provision at that time was designed principally for large outdoor musical events i.e. pop concerts. With the introduction of the smoking ban there has been a trend for licensed premises to have beer gardens/smoking areas which are increasingly being used for entertainment. The requirement for two separate licences has a substantial financial and administrative impact which is unnecessary.

Recommendation 4

Applicants should be required to submit a plan of the premises or place which has the area(s) where entertainment will be provided clearly marked on the plan.

The Council would welcome this provision as it would clearly define both to the Licensee and to patrons using the premises; (i) the areas used for entertainment and, (ii) the maximum occupancy capacity of these areas. It will ensure that the Licensee is fully aware of the licensed areas. We have encountered issues in the past with Licensee's providing entertainment in areas that were not covered by their Entertainments Licence resulting in the need to initiate enforcement action.

Recommendation 5

The entertainment licensing regime should apply to outdoor entertainment only when it is on private land.

The Council would advise that this provision is amended to include outdoor entertainment on public land if access to it is controlled or restricted, either on a temporary or longer term basis, for the purposes of that entertainment.

Recommendation 6

The legislation should specify that any place, other than:

- a. premises used only as a private dwelling house (including the garden and yard of the dwelling); and
 - b. an education establishment while it is being used as such
- should require a licence for the provision of regulated entertainment.

The Council would advise that entertainment provided in places used wholly or mainly for religious purposes should be included in the above exemptions.

It is also suggested the definition of private dwelling house should be amended to read 'a public dwelling house whilst being used as such', to ensure that a loophole is not introduced for a house with large grounds to hold events that should require an Entertainments Licence, such as National Trust properties, etc.

Recommendation 7

The legislation should make it clear that "place" includes a temporary structure such as a marquee.

The Council would welcome the provision that the single licence covers all places. Marquees in the past have given rise to problems as fire safety requirements are the same in marquees as for indoor premises whilst the noise reduction measures are the same as for outdoor events. This has caused us concern in the past and we believe that this will resolve the issue.

The Department should also provide a definition of place and consider if this should apply to vessels, whether permanently moored or not, vehicles or any other category of place.

Recommendation 8

Places which hire equipment to play pool, billiards, snooker or similar games should be excluded from the new entertainment licensing regime.

The Council would welcome this provision as the risk associated with this type of entertainment is exceptionally low and therefore we feel that licensing it for entertainment is unnecessary.

Recommendation 9

Matches, public contests, exhibitions, or displays of darts, pool, snooker, billiards or similar games where the audience capacity is 200 or more should require an entertainment licence.

The Council would welcome this provision as most matches of darts, pool, snooker, billiards or similar games attract small numbers and present a very low risk. The Council would agree that these should be exempt from Entertainments Licensing. However, when matches, public contests, exhibitions, or displays are performed for an audience containing 200 people or more we believe that this should fall within the scope of Entertainment Licensing and should be retained.

Or, conversely

The Council does not agree with this provision as it is difficult to see how displays of darts or snooker are any safer than say a theatrical performance. It is also our view that a capacity of 200 is much too high a limit and if there is to be one it should be reduced to 50 and this exemption should apply to a wider set of activities with similar risk profiles.

Recommendation 10

An entertainment licence should be required where regulated entertainment will occur in a place licensed under the Cinemas (Northern Ireland) Order 1991.

The Council would welcome this provision, as there is an anomaly under the 1985 Order that where a premise has a Cinema Licence entertainment can be provided without the requirement for an Entertainments Licence. This should be removed on the grounds that an application for a Cinema Licence does not require the applicant to advertise in newspapers and there is no mechanism to deal with objections. Therefore it is possible for a cinema to provide entertainment without having to meet the criteria regarding objections. Additionally, the Council would not be in a position to impose any terms, conditions or restrictions regarding the provision of entertainment.

Recommendation 11

An entertainment licence should be required whether or not there is an admission charge.

Removing the charge criterion would remove the ambiguity resulting from how a 'charge' is made as historically a question existed as to whether purchasing raffle tickets, for example, could be considered a charge. However caution is urged because this recommendation will mean that certain activities that are currently exempt from licensing such as where dancing and music are provided free of charge will require to be regulated.

Recommendation 12

Regulated entertainment includes the following:

- a theatrical performance (including a display of hypnotism, and a performance by a comedian);
- dancing, singing or music, or any entertainment of a like kind;
- a circus;
- any entertainment which consists of, or includes, any public contest, match, exhibition or display of boxing, wrestling, judo, karate or any similar sport; and
- any match, public contest, exhibition or display of darts, pool, snooker, billiards or similar game where the audience capacity is 200 or more people.

The Council would welcome this provision.

Recommendation 13

The Department should be able to amend the list of regulated entertainment through subordinate legislation.

The Council would welcome this provision as the entertainment market tends to be dynamic with new forms of entertainment regularly being introduced. Being able to amend the legislation quickly will be beneficial to both Licensees and the Council alike.

Recommendation 14

One council should be responsible for carrying out all the standard tent checks for a travelling circus.

When a travelling circus locates to a district council area, that council will be responsible only for carrying out site-specific checks prior to issuing the licence.

The Council would welcome this provision as currently a circus has to apply for a separate licence for every venue that it uses. This is extremely onerous and has caused problems as circuses have often been provided in council areas without obtaining an entertainment licence in the past. One council carrying out all the checks in relation to the circus apart from those which are site specific would bring circuses more into line with modern day legislation.

Recommendation 15

A normal entertainment licence should be valid until surrendered by the licence holder or revoked by the council.

If this is considered too great a change, a normal licence should be valid for at least 5 years.

The Council would welcome this provision, because the vast majority, i.e. 90-95% of all licences are granted by the Council each year without an issue. Annual applications are exceptionally costly and, in our mind, unnecessary. We believe that 5 year licences should be introduced immediately and, if successful, the Department should review this with a move to permanent licences then being considered. However, that is predicated upon the Council being provided with sufficiently robust powers to vary and revoke if deemed necessary. The Council is concerned that this recommendation refers to revoking a licence but the circumstances in which a council could do so are not set out in the consultation document. This issue was raised by the Council officers who participated in the working group. It is essential to ensure that councils retain adequate powers of supervision, which includes the power to revoke a licence where the circumstances warrant it.

The Council notes that there are recommendations further on in the consultation document which refers to the power to vary a licence and the extant power to suspend or revoke a licence. However, the Council would suggest that the grounds upon which a council can revoke or suspend a licence are reviewed so as to ensure they compliment the proposed changes outlined in this consultation, and cover for example serious misconduct of the part of the licensee.

Additionally provision will have to be made to ensure relevant fees can be levied on an annual basis to ensure the administration of the licensing regime is cost neutral.

Or, conversely

The Council would welcome this provision, because the vast majority, i.e. 90-95% of all licences are granted by the Council each year without an issue.

Annual applications are exceptionally costly and, in our mind, unnecessary. We believe that an Entertainments Licence should not be time bound and should exist until surrendered or revoked. However, that is predicated upon a council being provided with sufficiently robust powers to vary and revoke if deemed necessary. The Council is concerned that this recommendation refers to revoking a licence but the circumstances in which a council could do so are not set out in the consultation document. This issue was raised by the Council officers who participated in the working group. It is essential to ensure that councils retain adequate powers of supervision, which includes the power to revoke a licence where the circumstances warrant it.

Additionally provision will have to be made to ensure relevant fees can be levied on an annual basis to ensure the administration of the licensing regime is cost neutral.

Recommendation 16

The current provision for an occasional licence for entertainment on 14 specified days or 14 unspecified days in a year should be retained.

The Council would agree that a 14 day occasional licence should be retained but experience has shown that there is no demand for an occasional licence for 14 specified days. We believe that there should simply be a 14 day occasional licence.

Recommendation 17

Licence holders (other than an occasional or temporary licence) should be required to agree any modifications or changes to the premises with the council before any work starts.

The Council agree that this should be retained as it is already provided for within the 1985 Order. The requirement must also apply to occasional licences.

Recommendation 18

Provision for a temporary licence should be introduced which would apply to one event in a 12 month period from the date the licence is granted. The licence should be restricted to events of no more than 3 consecutive days where:

- the expected audience is no more than 499 people; and
- the hours of entertainment are from 9:00 to 23:00 only.

An application may be submitted up until 21 days prior to the event, but the council should have discretion to accept a late application if it considers it reasonable to do so.

The council would have to make a determination by, at the latest, 24 hours before the entertainment is scheduled to begin.

A person should not be permitted to apply for a temporary licence for an event where the council has already refused to grant a normal or occasional licence for the same event.

The Council would welcome this provision in principle as experience has shown that on occasions when there are festivals or events taking place those who may never utilise an entertainment licence require one for a short term event. Under the 1985 Order there is no mechanism to allow for this. This amendment would allow those people to apply for one off licences and we believe that this is a sensible proposal. However, the rationale for restricting such events to finishing at 23:00 has not been provided. The Council is keen to promote the night time economy and provide as much variety for citizens and tourists alike. In the absence of any such rationale the Council sees no objective justification for this restriction.

If the Department intends to retain this restriction the Council would ask that a clear rationale is provided for doing so.

Recommendation 19

Where regulated entertainment is provided at a place which has an alcohol licence, the entertainment licence should be valid only until the last permitted time for consumption of alcohol on the premises.

This change should be made at the earliest available opportunity.

The Council would welcome this provision to ensure that there is no potential to breach liquor licence legislation.

Or, conversely

The Council would disagree with this recommendation in that whilst it may afford the PSNI some comfort that licensee's will not have the opportunity to breach liquor licensing legislation it does not permit any flexibility for a Licensee, with good and justifiable intentions, to provide entertainment beyond the hours of their liquor licence. As stated above, the Council is keen to promote tourism, the night time economy and generally providing as wide a variety of entertainment possible for citizens and tourists alike. There is clearly a demand for entertainment past 1.30am which is evidenced by the

increasing number of licensed premises which have recently sought an extension of their entertainment licence to 2am, as well as the numerous city centre venues which currently hold a 3am licence.

It appears that this is an attempt to deal with PSNI concerns in relation to premises selling alcohol past the latest permitted hour. The Council would respectfully suggest that it is for the PSNI to enforce liquor licensing through their own licensing regime and resources and not through the prism of entertainment licensing and the resources of local district councils.

In addition, the Council notes that no rationale has been provided as to why this recommendation be implemented at the earliest available opportunity and would welcome clarification on the basis for this recommendation.

If the Department is minded to align the hours of entertainment and liquor licensing, the Council notes that the recommendation does not address the provision in the 1985 Order which states that a Licensee will not be guilty of providing entertainment after their permitted hours if they are licensed to sell alcohol past that time. The Council would therefore request that the Department remove that anomaly so that where the Council has restricted hours for the provision of entertainment that those hours apply regardless of the latest hour in respect of which liquor is sold.

Recommendation 20

On the insolvency of a licence holder, the licence may be reinstated to another person and remain in force for a discrete period of time. The legislation should clarify the accountability for any breach of an entertainment licence that has been transferred to an administrator or other insolvency office-holder.

The Council would welcome this provision which will provide full legal authority over a premise when administrators are required to take control of it.

Recommendation 21

The requirement for applicants to advertise in local newspapers should be removed and replaced by a combination of:

- applicants displaying a notice for 21 days at the place where the entertainment will be provided; and
- councils making details of all applications received available on their websites.

The Council would welcome this provision. Experience and evidence, both in

this Council and in others, has shown that the display of advertisements in newspapers is in the vast majority of cases unnecessary as there are few people who object as a result of it. This is exceptionally costly to the applicant and it is our view that the proposal to place the notice on the premise and on the council website would alert many more people to the application.

Recommendation 22

On receipt of an application for a temporary licence, councils must consult with PSNI and NIFRS.

The Council agree with this provision but would welcome clear guidance from the Department as to how and when temporary licences would be applied for and how these should be administered.

Recommendation 23

Councils should be required to keep a register of all entertainment licences and make this available for inspection by the public. Councils should be encouraged to make the licensing register available on their websites.

The Council would welcome this provision. It is a positive step forward in terms of alerting members of the public and anyone interested to what, when and where entertainment is licensed. It may also prove useful in terms of tourism and promoting the night time economy.

Recommendation 24

Councils should have the power to vary a licence at any time. Licence holders, the PSNI and the NIFRS must be notified of the council's intended variation, and must be given the opportunity to be heard by the council.

The Council would welcome this provision, in that if longer duration or permanent licences are introduced a council should be able to require a review of the licence at any time. Such a review could either be on an individual basis as a result of representations being received or collectively, when circumstances dictate, to enable a council to amend the terms and conditions of all licences.

The Council would suggest that the more appropriate wording is that Councils should have the power to review – rather than vary – a licence at any time.

It is essential that any provision should also include a reference to a power to

revoke a licence. If we are moving to permanent licences, a council must have stronger powers to vary and revoke if deemed necessary. It is essential to ensure that councils retain adequate powers of supervision in the absence of an annual renewal.

The Council would also refer to its answer to recommendation 15 in response to this recommendation. It appears the Department is suggesting that the extant power to suspend or revoke a licence contained within the 1985 Order will be retained. However, the Council would suggest that the grounds upon which a council can revoke or suspend a licence are reviewed so as to ensure they compliment the proposed changes outlined in this consultation, and cover for example serious misconduct of the part of the licensee.

Recommendation 25

Licence holders should be required to notify the council of any material change affecting the licence holder, or the entertainment specified in the licence.

The Council would welcome this provision however this notification must not in any way detract from the Council's ability to request an application for the transfer of the licence where it sees fit.

Recommendation 26

Interested parties must be able to make representations about a licence in effect, at any time throughout the duration of the licence.

Licence holders must be notified of the details of the representation and given the opportunity to be heard by the council.

The Council would welcome this provision, in that, if longer or permanent licences are introduced there needs to be a mechanism whereby people who want to make representation in relation to an Entertainments Licence can do so. Presently representations/objections are considered at the annual renewal stage.

If this proposal is introduced the Council believes it is important that clear guidance is developed by the Department as to what does and does not constitute a representation and how and when it may be received. This is firstly to ensure that people who wish to make representation have adequate opportunity to do so and the representation, if found valid, is remedied and secondly to ensure that representations may not be made which are repetitious, malicious or vexatious.

It may be prudent to draw on experiences from the rest of the United Kingdom with regard to the definition of interested parties, as they already have longer duration licences in place.

Recommendation 27

The current provision allowing councils to make provisional grant of a licence for premises which are to be, or are in the process of being, constructed should be retained.

The Council would agree that this provision should be retained.

Recommendation 28

On the death of a licence holder, the licence should be deemed to have been granted to an executor and remain in force for a period of 3 months.

The council should have the discretion to extend this period if the estate has not been settled.

The Council would welcome this provision.

Recommendation 29

Councils should be required to have a scheme of delegation for decisions in relation to entertainment licences.

The Council would welcome this provision.

Recommendation 30

A system of fixed penalties for breaches of the licensing system should be introduced.

The Council would welcome this recommendation. A system of fixed penalties can ensure that there is an appropriate graduated approach towards enforcement against those who have been guilty of more minor offences.

We understand that both the industry and other councils would support this method.

Pursuant to the 1985 Order, if a licensee is prosecuted any subsequent application they make must be brought before the council for the subsequent 5 year period. This should be amended so as to include situations whereby licensees have paid a fixed penalty fine.

Recommendation 31

Authorised officers of the council should have a power of entry to places where there is reasonable cause to suspect that unlicensed entertainment is being provided.

The Council would welcome this provision as it has had difficulties in the past when dealing with unlicensed premises. These powers should however be available in any circumstances in which the Council believes an offence has been created. No rationale has been provided for excluding circumstances where the council believes there has been a breach of a term or condition of an entertainment licence.

Providing entertainment in breach of a condition of licence can have equally as serious consequences as providing entertainment without a licence. The potential danger caused by the provision of entertainment is dependent on how an event is run, and it is dangerous to presume that just because someone has a licence they are less likely to engage in life threatening behaviour such as overcrowding. All of the action the Council has taken to prevent a serious threat to public safety in the provision of entertainment in the last decade has been in respect of licensed premises, not unlicensed events.

If the Department intends to restrict this essential enforcement tool to unlicensed events the Council would welcome an explanation as to the rationale for doing so.

Recommendation 32

It should be an offence to refuse entry to an authorised officer of the council.

The Council would welcome this provision and again request that it is extended to any circumstances in which the Council believes an offence has been created.

If the Department intends to restrict this to unlicensed events the Council would welcome an explanation as to the rationale for doing so.

Recommendation 33

Councils should also be able to obtain a warrant authorising forced entry to a place where it is suspected that unlicensed entertainment is being provided.

The Council would welcome this recommendation but believes this power should be available in any circumstances in which a council believes an offence has taken place and not restricted to unlicensed entertainment.

As per above, if the Department intends to restrict this power to unlicensed events the Council would welcome an explanation as to the rationale for doing so.

Recommendation 34

Authorised officers of the council should have the power to examine and take copies of records relating to the maintenance of safety at places providing entertainments.

The Council would welcome this recommendation but believes this power should be available in any circumstances in which a council believes an offence has taken place and not restricted to unlicensed entertainment.

As per above, if the Department intends to restrict this power to unlicensed events the Council would welcome an explanation as to the rationale for doing so.

Under The Sunday Trading Act (NI) 2001 the Council has powers of entry and seizure and the Council would suggest the Department consider incorporating similar powers into this legislation.

Recommendation 35

Model terms, conditions and restrictions for entertainment licences should be provided by the Department.

Tailored model, terms, conditions and restrictions should be produced for circuses, charity boxing matches and acts of hypnotism.

The Council would welcome this provision but suggests that tailored model terms should not just be restricted to the events suggested.

Recommendation 36

Councils should be able to include such terms and conditions as the council considers necessary or expedient to secure reasonable safety at the entertainment and the terms and conditions may be such as to involve alterations or additions to the venue.

The Council would welcome this provision and are fully supportive of any amendments to ensure that the Council have wide ranging powers to ensure fire safety matters are adequately addressed in licensed premises without in any way being contrary to the Fire Services (NI) Order 2006.

Any new terms and conditions introduced should have regard to existing

technical regulations such as the Building Regulations, Codes of Practice, British Standards, etc.

FEES

The Council is of the view that fees for Entertainments Licensing should be set locally by the relevant district council such that they may recover the full cost of administering the licensing function. For longer term licences there also needs to be provision to levy fees on an annual basis to ensure the administration of the licensing regime is cost neutral.

Or, conversely

The Council is of the view that fees should be set by the Department to ensure that there is a consistent charging mechanism for licensees across N.Ireland but at a level that they may recover the full cost of administering the licensing function. For longer term licences there also needs to be provision to levy fees on an annual basis to ensure the administration of the licensing regime is cost neutral.

Additional comments

Belfast City Council believes that consideration should be given to entertainment performances and exhibitions involving animals. This has raised disquiet in relation to animal welfare in the past and the Department should look to introduce more stringent control over such acts.

In the past Belfast City Council has received complaints regarding the content of performances of entertainment e.g. in relation to the content being offensive or likely to be deemed as incitement to violence. It would be prudent for the Department to provide wider powers within the legislation to control the content of material used in performances which require an Entertainments Licence.

Belfast City Council is concerned that the Department has chosen not to introduce measures to require licensees to become personal licence holders and would recommend that the Department revisit this as a means to provide assurance that those who are responsible for operating licensed venues are competent and adequately trained to undertake their duties.