
THE LIVE MUSIC ACT 2012

ITEM FOR INFORMATION

Purpose of the Report

1. To inform Members of the enactment of the Live Music Act 2012.

Background

2. The Licensing Act 2003 (the 2003 Act) which was implemented in 2005 replaced a host of licensing regimes including the licensing of the sale or supply of liquor, the licensing of Public Entertainment, the licensing of cinemas and theatres and the licensing of the provision of late night refreshment. The 2003 Act makes these 'licensable activities' as follows:
 - The sale by retail of alcohol;
 - The supply of alcohol by or on behalf of a club to, or to the order of, a member of the club;
 - The provision of regulated entertainment; and
 - The provision of late night refreshment
3. The 2003 Act, in Schedule 1 describes "regulated entertainment" as:
 - (a) the 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 paragraphs (e), (f) or (g).
4. The 2003 Act also details that the provision of facilities for making music, dancing or for entertainment similar to making music or dancing is also caught by the term "regulated entertainment".
5. In every case the 2003 Act required that regulated entertainment must take place in the presence of an audience (either members of the public or in the case of qualifying clubs, for members and their guests) and is provided for the purpose of entertaining that audience and/or "for consideration and with a view to making a profit."
6. The 2003 Act also provided for various exemptions from regulated entertainment including films for advertising, information or education, music that is incidental to other activities,

use of television or radio, entertainment during religious services or at places of public religious worship, entertainment at garden fetes or in moving vehicles and performances of Morris Dancing.

7. In addition Section 177 of the 2003 Act contained restrictions on the placing of conditions in small premises providing music and dancing as follows:
 - Where a premises licence, or club premises certificate, authorises the sale or supply of alcohol for consumption on the premises and the provision of live music and dancing, and the premises are used primarily for the consumption of alcohol on the premises and have an occupancy limit of up to 200, then when the premises are open for alcohol consumption and are being used for the provision of live music and dancing only those conditions relating to the provision of live music or dancing and in respect of the licensing objectives of public safety or the prevention of crime and disorder will have effect (in addition to those contained in the operating schedule). Any other conditions relating to the provision of the live music and dancing imposed for the prevention of public nuisance or the protection of children from harm will not apply unless they are altered or added as a result of a review of the licence.
 - Secondly, where a licence, or club premises certificate, authorises the provision of music entertainment and the premises have a permitted occupancy of not more than 200 persons and the premises are being used between 8am and midnight for the performance of unamplified live music or the provision of facilities for enabling persons to take part in such a performance, and are not being used for the provision of any other description of regulated entertainment, then all conditions imposed relating to music entertainment do not have effect unless they are altered or added following a review of the licence.

Information and Analysis

8. The Live Music Act 2012 (the 2012 Act), which came into effect on 01 October 2012, has amended section 177 of the 2003 Act, so that the section now applies only to dancing.
9. The 2012 Act amended the 2003 Act further by partially deregulating the performance of live music and removing regulation in respect of the provision of entertainment facilities as follows:
 - unamplified live music taking place between 8am and 11pm in all venues is no longer a licensable activity subject to the right of a licensing authority to impose conditions about live music following a review of a premise licence or club premises certificate in respect of premises authorised to supply alcohol for consumption on the premises;
 - amplified live music taking place between 8am and 11pm before audiences of no more than 200 persons on premises authorised to supply alcohol for consumption on the premises is no longer a licensable activity, subject to the right of a licensing authority to impose conditions about live music following a review of a premise licence or club premises certificate;
 - amplified live music taking place between 8am and 11pm before audiences of no more than 200 persons in workplaces not otherwise licensed under the 2003 Act (or licensed only for the provision of late night refreshment) is no longer a licensable activity. Members should note that beer gardens have been defined as “workplaces”.

- the provision of entertainment facilities is no longer a licensable activity and the licensing exemption for live music integral to a performance of Morris dancing or dancing of a similar type, has been extended so that the exemption applies to live or recorded music instead of unamplified live music.
10. The effect of these changes to the 2003 Act means that any existing licence conditions which relate to live music on premises licensed for the sale or supply of alcohol for consumption on the premises remain in place but will be suspended between the hours of 08.00 and 23.00 if the audience is below 200 persons. Examples of such conditions include the keeping doors and windows closed during the performance of live music or requiring a noise limiting device to control the volume of amplified live music.
 11. However, even where the 2003 Act (as amended) has deregulated aspects of the performance of live music, it remains possible to apply for a review of a premises licence or club premises certificate on the grounds of one or more of the 4 licensing objectives. On a review the 2003 Act permits a licensing authority to remove the suspension and give renewed effect to an existing condition relating to live music. Similarly a licensing authority may add a condition relating to live music as if live music was regulated entertainment, and as if that licence or certificate licensed the live music.
 12. Members are aware that an application for a review in relation to premises may be made by a licensing authority, any responsible authority or any other person on the grounds of one or more of the 4 licensing objectives (i.e. including prevention of public nuisance).
 13. Those licence conditions that are not specifically related to the provision of live entertainment such as the requirement for the prominent display of signage requesting customers to leave quietly **will** remain in effect.
 14. The Home Office Guidance issued under Section 182 of the Licensing Act 2003 is to be amended to reflect these changes.
 15. These changes have been introduced to encourage more performances of live music following extensive lobbying by musicians and their representative bodies.

Recommendations

16. Members are invited to note the contents of this report

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Background Papers

The Licensing Act 2003
The Live Music Act 2012

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