

Assessing whether a licence is required for licensing for live music events

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The Licensing Act 2003 (LA 2003) governs the sale of alcohol, provision of regulated entertainment and the provision of late night refreshment (hot food and/ or hot drink between the hours of 23.00 and 05.00 daily).

References:

LA 2003, s 1

The playing of live music is, subject to conditions and exceptions below, regulated entertainment for the purposes of LA 2003. If live music is not regulated entertainment, or is exempt under the LA 2003, no licence is normally required.

Exemptions for live music have been introduced and expanded in recent years. In October 2012, the Live Music Act 2012 (LMA 2012) removed the requirement between 08.00 and 23.00 for live unamplified music to be licensed in any location (with no restriction on audience numbers); and for live amplified music in on-licensed premises or workplaces for audiences of up to 200 persons. See further exemptions section below.

References:

LA 2003, Sch 1, para 12ZA

The Legislative Reform (Entertainment Licensing) Order 2014, SI 2014/3253 raised the audience threshold for permitted music performance from 200 to 500 persons in on-licensed premises and workplaces. In addition, it introduced exemptions for various forms of entertainment held by local authorities, schools, nurseries and hospitals on their own premises and at community premises such as church halls, community centres and village halls (see further below).

References:

Legislative Reform (Entertainment Licensing) Order 2014, SI 2014/3253

Licensing Act 2003, Sch 1, para 12ZA

However, where live music is 'regulated entertainment', local authority officers may be required to deal with the licensing of live music events either as the licensing authority, or as a responsible authority under the LA 2003.

Other activities which may take place at live music events

from time to time may require approvals under separate regimes, for example market stalls/street trading, food and drink concessions, fireworks and/or road closures. A local authority Safety Advisory Group may be appropriate as a forum for discussing and advising on public safety at the live music event.

References:

Health and Safety Executive information on Safety Advisory Groups

Live music and regulated entertainment

Live music

'Music' under the LA 2003 includes vocal or instrumental music or any combination of the two. The Revised Guidance issued under section 182 of the Licensing Act 2003 (Guidance) provides that:

References:

LA 2003, Sch 1, para 18

Revised Guidance issued under section 182 of the Licensing Act 2003

LA 2003, s 182

'while a performance of live music can include the playing of some recorded music, 'live' music requires that the performance does not consist entirely of the playing of recorded music without any additional (substantial and continual) creative contribution being made'

The Guidance clarifies that a DJ merely playing tracks would not be classified as live music, but it might if he or she was performing a set which largely consisted of mixing recorded music in a live performance to create new sounds. In the event of a dispute about whether a performance is live music or not, it will be for the licensing authority initially and ultimately, for the courts to decide on the facts. The Guidance is statutory and will be persuasive in determining whether music is 'live'.

Definition of regulated entertainment

- A performance of live music is on the face of it an activity which is licensable as regulated entertainment under the LA 2003. However, it is only regulated if the entertainment is provided:

References:

LA 2003, Sch 1, para 2(1)

- to any extent for members of the public or a section of the public
- exclusively for members of a qualifying club, or for members and their guests, or
- in any case not falling within the paragraphs above, for consideration and with a view to profit
- occurs in any premises or at any place made available for the purpose// purposes which include providing the entertainment including in any vehicle, vessel or moving structure
- *References:*
 - *LA 2003, Sch 1, para 1(3)*
 - *LA 2003, s 188*
 - in the presence of an 'audience' and is provided for the purpose/purposes which include entertaining that audience eg not when musicians are playing live music for their own entertainment or in rehearsal
 - *References:*
 - *LA 2003, Sch 1, para 2(1A)*

For further information on regulated entertainment generally, see Practice Note: Regulated entertainment.

What constitutes public entertainment?

Case law has established that for entertainment to be public, it must be one to which all persons have a right to go, whether or not payment is required. The test of whether premises are open to the public is whether any reputable member of the public, on paying for admission, could attend.

References:

Archer v Willingrice (1802) 170 ER 686

Gardner v Morris (1961) 59 Lgr 187 (not available in Lexis®Library)

However, even if an event is private, the performance of live music will be licensable if it is provided for

References:

LA 2003, Sch 1, para 1(4)

- 'consideration and with a view to profit', and
- the charge is made by or on behalf of a person involved in the organisation or management of the

entertainment, and

- paid by or on behalf of some or all persons for whom the entertainment is provided

Therefore, if a private event, such as a birthday party or a wedding reception with live music is held in a hotel, pub, restaurant or other premises which charges for the management/organisation of the event, the live music performance would be regulated entertainment within the meaning of the LA 2003 (subject, to exceptions below).

The Guidance confirms that events held in private are not licensable unless those attending are charged for the entertainment with a view to making a profit (including raising money for charity). Where a party is held for friends in a private dwelling featuring amplified live music, if a charge or contribution is made solely to cover the costs of the entertainment, the activity is not regulated entertainment.

References

Revised Guidance issued under section 182 of the Licensing Act 2003, para 15.13

Busking is usually not licensable under the LA 2003, partly because it often occurs in a place that is not a premises made available (at least in part) for the purposes of providing entertainment.

References:

Revised Guidance issued under section 182 of the Licensing Act 2003, para 15.63

Exemptions

There are a number of exemptions that local authorities need to consider in determining whether a licence is required. These include:

- *Incidental music*
 - a performance of live music (and/or recorded music) is not regarded as regulated entertainment under the LA 2003 if it is incidental to another activity which is not itself regulated entertainment. The Guidance provides assistance in determining whether music is incidental by way of example. It suggests that relevant factors, depending on the particular circumstances in each case, could be:

References:

LA 2003, Sch 1, para 7

- whether the music is the main/one of the main reasons for people attending the premises and being charged
- whether the music is advertised as the main attraction, and/or
- whether the volume of the music disrupts or predominates over other activities, or could it be

described as ‘background’

The number of musicians, whether those musicians are paid, whether the performance is pre-arranged and whether or not a charge is made for admission to the premises itself are unlikely to be relevant

References:

Revised Guidance issued under section 182 of the Licensing Act 2003, para 15.59–15.61

- *Live unamplified music*

where live music is unamplified and takes place between 08.00 and 23.00 on the same day, it is not regulated entertainment under the LA 2003 and therefore does not require licensing, regardless of audience numbers. This exemption was introduced under the LMA 2012. Therefore, there would already have been premises licences and club premises certificates in force which authorised unamplified live music as regulated entertainment. Those licences may also have had conditions relating to the performance of live music. Since this deregulation, any condition which relates to live music is treated as being of nil effect. However, if a premises licence is reviewed, the licensing authority may ‘re-instate’ the condition and add any other condition as if the music were regulated entertainment. It may be difficult to determine in practice whether a licence condition relates to live music. The Guidance recognises that in some instances, this might not be obvious

References:

LA 2003, Sch 1, para 12C

LA 2003, s 177A(2)

Revised Guidance issued under section 182 of the Licensing Act 2003, para 15.37

‘for example, a condition stating “during performances of regulated entertainment all doors and windows must remain closed” would be suspended insofar as it relates to music between 08.00 and 23.00 on the same day to an audience of up to 500, but the condition would continue to apply if there was regulated entertainment after 23.00.’

The Guidance also clarifies that more general licence conditions (eg those relating to overall management of potential noise nuisance) that are not specifically related to the provision of entertainment (eg signage asking patrons to leave quietly) will continue to have effect

- *Amplified music in licensed venues and workplaces*

Live music is exempt if it is performed on premises which are authorised to be used for the supply of alcohol for consumption on the premises at any time that the premises are open for that purpose, if the audience is no more than 500 persons and it takes place between

08.00 and 23.00 on the same day. However, as set out above in relation to unamplified music, conditions relating to amplified live music can be imposed or ‘re-activated’, on the review of the premises licence or club premises certificate.

References:

Revised Guidance issued under section 182 of the Licensing Act 2003, para 15.38

LA 2003, Sch 1, para 12A

LA 2003, s 177A(1)

Live music in a ‘workplace’ that is not licensed, other than for late night refreshment, is also exempt (again subject to the audience limit of 500 and the specified times of 08.00 to 23.00 being applicable). A workplace for these purposes is as defined in the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004. The Guidance confirms that it is anywhere that is made available to any person as a place of work. It is a very wide term which can include outdoor spaces.

References:

Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 2(1)

LA 2003, Sch 1, para 12B

Revised Guidance issued under section 182 of the Licensing Act 2003, para 15.31

- *Sexual entertainment venues*

the provision of live music (or other entertainment) at premises for which a sexual entertainment venue licence is required (or at premises which are subject to a licence for a sexual entertainment venue) is not regulated entertainment under the LA 2003 to the extent that it is an integral part of the provision of relevant entertainment. In almost all cases where a performance of dance is relevant entertainment under the differing regimes for sexual entertainment and regulated entertainment under LA 2003, the stricter regime for the control of sex establishments in the Local Government (Miscellaneous Provisions) Act 1982 (LG(MP)A 1982) is applied. See Practice Note: Sexual entertainment licensing. However, an authorisation under the LA 2003 will continue to be required where:

References:

LA 2003, Sch 1, para 11A

LG(MP)A 1982, Sch 3

- the premises are not licensed as a sex entertainment venue under the LG(MP)A 1982, and
- relevant entertainment has been provided at those premises on no more than 11 occasions in any 12-month period, with none of those occasions lasting longer than 24 hours or taking place within a month of

any other such occasion

References:

Revised Guidance issued under section 182 of the Licensing Act 2003, paras 15.47, 15.48

- Other exemptions

there are numerous other exemptions applicable to live music, which are detailed below:

- as set out above, the Legislative Reform (Entertainment Licensing) Order 2014, SI 2014/3253 introduced exemptions for various forms of entertainment, including live music, held by local authorities, schools (except Higher Education establishments), nurseries and hospitals on their own premises between 08.00 and 23.00 (with no audience restrictions). Live and recorded music held (by others) with their permission on their premises, was also exempted for audiences up to 500

References:

LA 2003, Sch 1, para 12Z, 12ZA

Legislative Reform (Entertainment Licensing) Order 2014, SI 2014/3253

Revised Guidance issued under section 182 of the Licensing Act 2003, paras 15.16–15.20

- under the Legislative Reform (Entertainment Licensing) Order 2014, SI 2014/3253, community premises such as church halls, community centres and village halls were also exempted from the requirement to be licensed for live (and recorded) music for up to 500 people provided that the entertainment takes place between 08.00 and 23.00 and that the organiser of the entertainment has obtained the prior written consent of the 'relevant person' which, for community premises, will be the management committee, or (if none) a person who has control of the premises, or a person with a relevant property interest in the premises. The 'relevant person' in respect of premises of a hospital, premises where a local authority has a property interest, or premises of a school is also defined under the LA 2003

References:

LA 2003, Sch 1, para 12ZB, 12ZB(7)(a)–12ZB(7)(d)

Revised Guidance issued under section 182 of the Licensing Act 2003, para 15.21

- circuses were also exempted from regulation under the 2014 Order for live music (and other activities) between 08:00 and 23:00 with no audience restrictions

References:

LA 2003, Sch 1, para 12D

- additionally, a live music performance on a vehicle, or part of a vehicle is not regulated entertainment, provided at the time of the performance the vehicle is not permanently or temporarily parked. However, if the vehicle is parked at a particular place, the vehicle will be treated for the purposes of the LA 2003 as if it were a premises situated at that place and would require licensing accordingly (if licensable activities are provided)

References:

LA 2003, s 189

LA 2003, Sch 1, para 12D

- any live music (or other entertainment) which is for the purpose of a religious meeting or service or at a place of public religious worship is not regulated entertainment under LA 2003

References:

LA 2003, Sch 1, para 9

- live music at a garden fete is not regulated entertainment, unless the fete (or similar function/event) is promoted with a view to applying the whole or any part of its proceeds for the purposes of private gain. The provision of a benefit is not considered to be for the purposes of private gain if made in the course of the activities of a non-commercial society ie a society established and conducted for charitable purposes or for enabling participation in (or of supporting) sport, athletics or a cultural activity. Therefore, if a performance of live music takes place at a fund-raising fete for a charity or local sports club, it would not be regulated entertainment, even if the other exemptions for live music did not apply

References:

LA 2003, Sch 1, para 10

GA 2005, Sch 1, paras 10(3), s 19(3)

- live (or recorded) music that forms an integral part of a performance of Morris dancing is not regulated entertainment

References:

LA 2003, Sch 1, para 11

- See Practice Note: Permanent and temporary approvals when a licence for live music is needed.

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