

Permanent and temporary approvals when a licence for live music is needed

Produced in partnership with Nicola Smith of Squire Patton Boggs

First published on LexisPSL Local Government

Which licence is required?

If the performance of live music is regulated entertainment (considering all of the conditions and exemptions detailed in Practice Note: Assessing whether a licence is required for licensing for live music events) it is a licensable activity and a qualifying club activity under the Licensing Act 2003 (LA 2003).

References:

LA 2003, s 1

A licensable activity, including any performance of live music, may only be carried on under and in accordance with a premises licence (see Practice Note: Licensing of alcohol and entertainment), or under a temporary event notice. See Practice Note: Temporary Event Notices (TENs). Similarly, a qualifying club activity may only be carried on under and in accordance with a club premises certificate.

References:

LA 2003, s 2

Permanent approvals

Premises licences and club premises certificates are issued by the local authority for the area in which the premises where the licensable activity takes place is situated and cover the relevant building/place for the specified licensable activities.

References:

LA 2003, ss 3, 11, 12, 60, 68

A premises licence is held by the person (company or individual) who carries on, or proposes to carry on, a business which involves the use of the premises for the licensable activities (although only qualifying clubs may hold club premises certificates).

References:

LA 2003, ss 15, 16, 21, 61

If the licence authorises the sale of alcohol then there must be an individual named on the premises licence

as designated premises supervisor (DPS). However, if the licence only authorises live music, other regulated entertainment and/or late night refreshment, there will be no DPS.

References:

LA 2003, ss 15, 21

There is no expiry date for premises licences (unless it is a licence which has been limited by time, see further below) but an annual fee is payable for every premises licence and club premises certificate on the anniversary of grant (and since 2012, local authorities have been required to suspend premises licences or club premises certificates if the annual fee is not paid).

References:

LA 2003, ss 5, 55A, 92A

Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, reg 3

However, a premises licence or club premises certificate which authorises live music as a licensable activity will continue in effect unless or until it lapses, is surrendered by the licence holder, or is revoked on review (although if a club ceases to be a 'qualifying club' the club premises certificate will be withdrawn). Therefore, a premises licence or club premises certificate authorising live music is effectively a permanent approval for live music in the specified premises.

References:

LA 2003, ss 26, 80, 27, 28, 81, 51–53C, 87–89, 90

The licence will specify all of the licensable activities (or qualifying club activities) and any conditions subject to which the licence is issued, including the times during which the activities may be carried out.

Temporary approvals

Where there is no permanent approval in force, a temporary event notice (TEN) can be used to authorise live music for an event which will last up to 168 hours (or 7 days) in some circumstances: See Practice Note:

Temporary Event Notices (TENs). The TEN must be given to the licensing authority in the form prescribed in regulations made under the LA 2003, which requires the applicant to describe key aspects of the proposed event, including the general nature of the premises and the event, the licensable activities intended to be carried on at the proposed event and the times.

References:

LA 2003, s 100

Revised Guidance issued under section 182 of the Licensing Act 2003: Home Office, Chapter 7

However, TENs can only be used for smaller scale live music events, because the maximum number of persons allowed on the premises at the same time under a TEN, is 500. TENs are also subject to other limits, including restrictions on the number of TENs per premises and per applicant in any calendar year. Therefore, they would not be suitable to approve live music on a temporary basis if the number of events proposed over the course of a year would exceed, or have exceeded, those permitted limits.

References:

LA 2003, ss 100(5)(d), 107

It is also worth remembering that the LA 2003 requires a minimum of 24 hours between event periods. Therefore, if any live music event will continue for longer than 168 hours (seven consecutive days) it will not be possible to use a TEN to authorise that event.

References:

LA 2003, s 101

If the live music event cannot be covered by a TEN, for example because more than 500 people will be attending, a premises licence limited by time would be another option to authorise a one-off event on a temporary basis. The application process and all other provisions relating to permanent premises licences generally would, however, apply to a premises licence limited by time, including the fee payable.

References:

LA 2003, s 26(1)(b)

Licensing objectives and conditions for live music events

Licensing authorities must carry out their functions under the LA 2003 in accordance with the specified 'licensing objectives' which are: the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm.

References:

LA 2003, s 4

The prevention of public nuisance can be particularly relevant to live music events because of the possibility of noise escape. Public nuisance is not defined in the LA 2003 and retains its broad common law meaning. See further Practice Note: Noise pollution.

Public safety can also be a particularly important consideration to live music events because of the ancillary activities often involved in live music events. For example, such events often include temporary structures such as stages, special effects such as lasers and pyrotechnics and, for large scale events such as music concerts and festivals, large audiences.

The licensing objectives, including the prevention of public nuisance and public safety, must also be considered by all responsible authorities on an initial application when considering the operating schedule submitted by the proposed licence holder. Responsible authorities under the LA 2003 include the authority by which statutory functions are exercisable in relation to minimising or preventing the risk of pollution of the environment or of harm to human health which will require liaison between the licensing, Environmental Health, or Public Protection departments. The enforcing authority for the purposes of health and safety legislation is also a responsible authority.

References:

LA 2003, ss 13(4)(e), 13(4)(c)

Health and Safety at Work etc Act 1974, s 18

The Revised Guidance issued under section 182 of the Licensing Act 2003 (Guidance) includes a number of paragraphs dealing with appropriate conditions relating to noise nuisance. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. There is a specific warning that local authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. The example given in the Guidance is noise limiters, which can be expensive to purchase and install and are likely to be a considerable burden for smaller venues. This reflects the overall permissive nature of the LA 2003 and the encouragement for live music under recent deregulation in the Live Music Act 2012 (LMA 2012) and the Legislative Reform (Entertainment Licensing) Order 2014. See Practice Note: Licensing committees.

References:

Revised Guidance issued under section 182 of the Licensing Act 2003: Home Office, para 2.16–2.18

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

LMA 2012

Appropriate steps to control the levels of noise emanating from premises might include simple measures such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. It also considers more sophisticated measures may be appropriate, such as the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape.

References:

Revised Guidance issued under section 182 of the Licensing Act 2003: Home Office, para 2.16

Where representations have been received to a licence application, any appropriate conditions should normally focus on the most sensitive periods, and that this is why live music remains licensable after 23.00 and before 08.00 daily.

References:

Revised Guidance issued under section 182 of the Licensing Act 2003: Home Office, para 2.18

The Health and Safety Executive provides advice on its website to help control or reduce exposure to music noise for those helping to organise events. The Noise Council also issues a national Code of Practice on the control of noise from outdoor concerts, which is available from the Chartered Institute of Environmental Health. The Code of Practice recommends sound levels to be achieved at noise sensitive premises. For large events it may be appropriate for the event organiser to appoint an acoustic consultant to help plan the event and set and monitor noise levels.

References:

HSE event safety noise website

Code of Practice on the control of noise from outdoor concerts

Consideration should be given to health and safety for licensed premises, which is likely to be relevant when dealing with the licensing of live music events, including physical safety of performers, staff or customers at the relevant premises; which will include for example, the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. The Guidance also includes a list of potentially relevant issues for the purposes of public safety.

References:

Revised Guidance issued under section 182 of the Licensing Act 2003: Home Office, paras 2.6, 2.7

Licensing authorities are not given an exhaustive list of considerations in the Guidance, as appropriate measures will vary between premises and its activities. However, there are guidelines available from a number of bodies in relation to running an event such as a live music event safely, including guidance from the Health and Safety

Executive. See further Practice Note: Guide to health and safety considerations for licensed premises.

References:

LG(RD)A 2015

Revised Guidance issued under section 182 of the Licensing Act 2003: Home Office

Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives. Conditions should also not duplicate other statutory regimes. This was considered *R (on the application of Bristol City Council v Bristol Magistrates Court*.

References:

R (on the application of Bristol City Council) v Bristol Magistrates' Court [2009] EWHC 625 (Admin)

Revised Guidance issued under section 182 of the Licensing Act 2003: Home Office, para 1.16

Responsible authorities should not propose 'blanket' conditions in relation to live music events which duplicate other statutory regimes. A proportionate approach must be taken.

References:

EPA 1990

Health and Safety at Work etc. Act 1974

Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541

Revised Guidance issued under section 182 of the Licensing Act 2003: Home Office

Offences

Under the LA 2003, a person commits an offence:

References:

LA 2003, ss 136(1)(a), 136(1)(b), 136(4)

- if he carries on (or attempts to carry on) a licensable activity on or from any premises otherwise than under or in accordance with a premises licence, temporary event notice, or club premises certificate
- if he knowingly allows a licensable activity to be carried on
- if the offence is proved to have been committed by company, such as a company, and it is also shown to have been committed with the consent, connivance or to be attributable to any neglect by an officer (eg a director or company secretary), they too will be guilty of the offence

References:

LA 2003, s 187

The applicable penalty for this offence is now an unlimited fine and/ or up to six months' imprisonment: See Practice Note Summary of offences under the Licensing Act 2003.

Defences

In any proceedings against a person for an offence of providing live music otherwise than in accordance with an authorisation, a defence of due diligence is available. A defence is made out if the person carrying on the licensable activity did so due to:

References:

LA 2003, s 139(1)

- a mistake, or
- reliance on information given to him, or
- an act or omission by another person or
- to some other cause beyond his control, and
- he took all reasonable precautions and exercised all due diligence to avoid committing the offence
- a person does not commit an offence if his only involvement in the provision of the entertainment is that he performs live music

References:

LA 2003, s 136(2)

Enforcement

There are, of course, enforcement powers available to local authorities under various regimes which may be relevant in relation to a live music event eg powers under the EPA 1990 in relation to noise nuisance; or powers under health and safety legislation and breach of planning regulations.

Licensing authorities and other responsible authorities (including environmental health and health and safety officers) are entitled to enter licensed premises in order to make an assessment. It is an offence under the LA 2003 to intentionally obstruct an authorised person exercising this power.

References:

LA 2003, ss 179, 180

A Police officer may enter and search any premises in respect of which he has reason to believe that an offence under the LA 2003 has been, is being, or is about to be committed. He or she may, if necessary, use reasonable force to do so.

References:

LA 2003, s 180

Inspections are not mandatory and should occur at the discretion of the responsible authorities. Principles of risk assessment and targeted inspection should prevail and resources should be used efficiently and are more effectively concentrated on problem premises.

References:

Revised Guidance issued under section 182 of the Licensing Act 2003: Home Office, para 13.17

The Code of Practice: Powers of Entry—Home Office issued by the Home Office relating to Powers of Entry states that where it is appropriate and practicable to do so, reasonable notice (usually not less than 48 hours) should be provided to the operator of the premises. However, reasonable notice need not be given where the purpose of the entry is the initial safety investigation in the aftermath of an accident, incident or other emergency where there is an urgent need to investigate the circumstances/causes of the accident, incident, or other emergency or to maintain public safety.

References:

Code of Practice: Powers of Entry—Home Office, December 2014, para 8.5

If an offence has been committed under the LA 2003, any person who has committed that offence is liable to prosecution.

References:

LA 2003, ss 186, 186(3), 188

Proceedings may be instituted by a licensing authority (except where the offence is persistently selling alcohol to children) see Practice Note: Children and alcohol offences under the Licensing Act 2003 or the Director of Public Prosecutions. Some offences can also be prosecuted by the local weights and measures authority.

References:

LA 2003, s 186

The time limit for prosecutions is 12 months from the date of the alleged offence.

References:

LA 2003, s 188

There are also enforcement powers under the LA 2003 to close premises in an area experiencing disorder. However, only a Magistrates' Court may make the relevant order and then only on the application of a police officer who is a superintendent (or higher rank).

References:

LA 2003, s 160

Any responsible authority (including Environmental Health) or other party has the power to apply to the licensing authority for a review of the licence or club premises certificate. Any application for a review must be relevant to the promotion of one or more of the licensing objectives. In determining the review application, the authority can take such steps as it considers appropriate, including potentially modifying the conditions of the licence, excluding a licensable activity, suspending the licence for up to 3 months, or revoking the licence. See Practice Note: Licensing of alcohol and entertainment.

References:

LA 2003, ss 51(1), 87, 51(4)(a), 52, 88

However, it is not expected that licensing authorities should act as responsible authorities in applying for reviews on behalf of other persons, such as local residents or community groups as those parties are themselves entitled to apply for a review in their own right if they have grounds to do so.

References:

Revised Guidance issued under section 182 of the Licensing Act 2003: Home Office, para 11.5

If you would like to contribute to LexisPSL
Local Government please contact:

Jamina Ward

LexisNexis

Lexis House

30 Farringdon Street

London

EC4H 4AA

jamina.ward@lexisnexis.co.uk

For details on how to
access more practice
notes like this, visit
www.lexisnexis.co.uk/en-uk/products/lexis-psl.page