

### WORKING DRAFT OF GUIDANCE RELATED TO REGULATED ENTERTAINMENT

#### TYPES OF REGULATED ENTERTAINMENT

15.1 Subject to the conditions, definitions and the exemptions referred to in Schedule 1 (see especially paragraphs 15.9-15.11 below), the types of entertainment regulated by the 2003 Act (as amended by the Live Music Act 2012 and the Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013) are:

- a performance of a play;
- an exhibition of a film;
- an indoor sporting event;
- a boxing or wrestling entertainment;
- a contest, exhibition or display which combines boxing or wrestling with one or more martial arts ("combined fighting sports");
- a performance of live music ;
- any playing of recorded music;
- a performance of dance;
- entertainment of a similar description to a performance of live music, any playing of recorded music or a performance of dance.

#### GENERAL CIRCUMSTANCES IN WHICH ENTERTAINMENT ACTIVITIES ARE LICENSABLE

15.2 A more detailed description of some of the above entertainments, and the circumstances in which they are licensable, is given in paragraph 15.10 (for the general overview) and paragraphs 15.29-15.33 (for conditions).

15.3 More generally, to be licensable, one or more of these activities needs to be provided (at least partly) to entertain that audience; has to be held on premises made available (again, at least in part) for the purpose of enabling that activity; and must also take place either:

- in the presence of a public audience, or
- in private, where a charge is made with a view to profit.

#### Audience

15.4 For the purposes of regulated entertainment, the term "audience" refers to any person for whose entertainment (at least in part) any licensable activities are provided. An audience member need not be, or want to be, entertained: what matters is that an audience is present and that the purpose of the licensable activity is (at least in part) intended to entertain any person present. The audience will not include performers, together with any person who contributes technical skills in substantial support of a performer (for example, a sound engineer or stage technician), during any associated activities. This includes setting up before the entertainment, reasonable breaks (including intervals) between activities and packing up thereafter. Similarly, security staff and bar workers will not form part of the audience while undertaking their duties, which include reasonable breaks.

15.5 The amendments made to the 2003 Act by the Live Music Act 2012 ("the 2012 Act") and the Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013 ("the 2013 Order") do not prevent more than one activity (or for a single activity, more than one performance or event) being held concurrently, provided that the audience for each such performance or event does not exceed the threshold at which such a performance or event becomes licensable. In some circumstances, there will be a clear distinction between performances or events; for example, in separate rooms or on separate floors. However, any person involved in organising or holding these activities must ensure that audiences do not grow or migrate so that the audience exceeds the relevant limit for any one performance or event at any time. If uncertain, it might be easier and more flexible to secure an appropriate authorisation.

#### **Private events**

15.6 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). For example, 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. Similarly, any charge made to the organiser of a private event by musicians, other performers, or their agents does not of itself make that entertainment licensable – it would only do so if the guests attending were themselves charged by the organiser for that entertainment with a view to achieving a profit. The fact that this might inadvertently result in the organiser making a profit would be irrelevant, as long as there had not been an intention to make a profit.

15.7 Schedule 1 to the 2003 Act also makes it clear that before entertainment is regarded as being provided for consideration, a charge has to be:

- made by or on behalf of a person concerned with the organisation or management of the entertainment; and
- paid by or on behalf of some or all of the persons for whom the entertainment is provided.

15.8 Of course, anyone involved in the organisation or provision of entertainment activities – whether or not any such activity is licensable under the 2003 Act – must comply with any applicable duties that may be imposed by other legislation (e.g. crime and disorder, fire, health and safety, noise, nuisance and planning). Any such person should take steps to be aware of relevant best practice, and may find responsible authorities a useful source of expert support and advice.

#### **CIRCUMSTANCES IN WHICH ENTERTAINMENT ACTIVITIES ARE NOT LICENSABLE**

15.9 This Guidance cannot give examples of every eventuality or possible entertainment activity. However, the following activities are examples of entertainment which are not licensable:

- education – teaching students to perform music or to dance;
- activities which involve participation as acts of worship in a religious context;
- activities that take place in places of public religious worship;
- the demonstration of a product – for example, a guitar – in a music shop;

- the rehearsal of a play or performance of music for a private audience where no charge is made with a view to making a profit (including raising money for charity);
- games played in pubs, youth clubs etc. (e.g. pool, darts, table tennis and billiards);
- stand-up comedy;
- the provision of entertainment facilities (such as dance floors, which were previously licensable under the 2003 Act before its amendment by the 2012 Act).

15.10 As a result of amendments to the 2003 Act by the 2012 Act and the 2013 Order, no licence is required for the following activities to the extent that they take place between **08:00-23:00** on any day:

- a **performance of a play** in the presence of any audience of no more than 500 people;
- an **indoor sporting event** in the presence of any audience of no more than 1,000 people;
- most **performances of dance** in the presence of any audience of no more than 500 people; and
- **live music**, where the live music comprises:
  - a performance of **unamplified live music**;
  - a performance of **live amplified music in a workplace** with an audience of no more than 200 people; or
  - a **performance of live music on licensed premises**<sup>2</sup> which takes place in the presence of an audience of no more than 200 people, provided that a number of important conditions are satisfied.

So, for example, an indoor sporting event that takes place between 07:00 and 23:30 on a particular day is licensable in respect of activities taking place between 07:00-08:00 and 23:00-23:30. Similarly, where the audience for a performance of dance fluctuates, those activities are licensable if, and for so long as, the number of people in the audience exceeds 500.

15.11 The various effects of the changes made to entertainment licensing under the 2003 Act by the 2012 Act and the 2013 Order are described below. For live music, see paragraphs 15.12 to 15.19 below; and for an explanation of what happens where an existing authorisation imposes conditions on plays, indoor sporting events and dance, see paragraphs 15.29 to 15.33 below.

## **LIVE MUSIC AND THE EFFECT OF THE LIVE MUSIC ACT 2012**

15.12 To encourage more performances of live music, the Live Music Act 2012 amended the 2003 Act by deregulating aspects of the performance of live music so that in certain circumstances live music is not a licensable activity. However, it remains licensable:

- where a performance of live music – whether amplified or unamplified – takes place *before* 08:00 or *after* 23:00 on any day;
- where a performance of amplified live music does not take place either on relevant licensed premises, or at a workplace that is not licensed other than for the provision of late night refreshment;

<sup>1</sup> For an explanation of which performances of dance are fully licensable, see paragraph 15.32-15.33.

<sup>2</sup> The Live Music Act 2012 provides that if premises are licensed under the 2003 Act, they cannot also be treated as a workplace for the purpose of the 2012 Act.

- where a performance of amplified live music takes place at relevant licensed premises at a time when those premises are not open for the purposes of being used for the sale or supply of alcohol for consumption on the premises (see Chapter 3 of this Guidance);
- where a performance of amplified live music takes place at relevant licensed premises, or workplaces, in the presence of an audience of more than 200 people; or
- where a licensing authority intentionally removes the effect of the deregulation provided for by the 2003 Act (as amended by the 2012 Act) when imposing a condition on a premises licence or club premises certificate as a result of a licence review (see paragraphs 15.23-15.24 below).

15.13 In any of the above circumstances, unless the performance of live music is appropriately authorised by a premises licence, club premises certificate or Temporary Event Notice, allowing it to take place could lead to enforcement action and, where relevant, a review of the alcohol licence or certificate.

15.14 Public performance of live unamplified music that takes place between 08:00 and 23:00 on any day no longer requires a licence in any location. An exception to this is where a specific condition related to live music is included following a review of the premises licence or club premises certificate in respect of relevant licensed premises.

15.15 This amendment to the 2003 Act by the 2012 Act means that section 177 of the 2003 Act now only applies to performances of dance.

#### **KEY TERMS USED IN THE LIVE MUSIC ACT 2012**

15.16 Under the 'live music' provisions, 'music' includes vocal or instrumental music or any combination of the two, 'Live music' is a performance of live music in the presence of an audience which it is intended to entertain. 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. So, for example, a drum machine or backing track being used to accompany a vocalist or a band would be part of the performance of amplified live music. The performance of a DJ who is 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 to create new sounds. There will inevitably be a degree of judgement as to whether a performance is live music or not and organisers of events should check with their licensing authority if in doubt. In the event of a dispute about whether a performance is live music or not, it will ultimately be for the courts to decide in the individual circumstances of any case.

15.17 A "workplace" is as defined in regulation 2(1) of the Workplace (Health, Safety and Welfare) Regulations 1992 and 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, as well as the means of entry and exit.

15.18 In addition to what paragraphs 15.4 and 15.5 above say about the way in which the 2003 Act uses the term "audience", people may be part of an audience even if they are not located in exactly the same place as the performers, provided they are present within the audible range of the

performance. So, for example, if a band is performing in a marquee, people dancing outside that marquee may nevertheless be members of the audience.

15.19 For the purposes of this Chapter only, “relevant licensed premises” refers to premises which are authorised to sell or supply alcohol for consumption on the premises by a premises licence or club premises certificate. Premises cannot benefit from the deregulation introduced by the 2012 Act by virtue of holding an authorisation for the sale or supply of alcohol under a Temporary Event Notice.

## LICENCE CONDITIONS AND REVIEWS

15.20 The amendments made to the 2003 Act by the Live Music Act 2012 affect conditions relating to **live music** in licensed premises. Any existing licence conditions on relevant licensed premises (or conditions added on a determination of an application for a premises licence or club premises certificate) which relate to live music remain in place, but are suspended between the hours of 08:00 and 23:00 on the same day where the following conditions are met:

- at the time of the live music, the premises are open for the purposes of being used for the sale or supply of alcohol for consumption on the premises;
- if the live music is amplified, the performance takes place before an audience of no more than 200 people; and
- the live music takes place between 08.00 and 23.00 on the same day.

15.21 The effect of conditions relating to **other activities** that are deregulated between 08:00-23:00 is explained in paragraphs 15:29 to 15.33.

### Live music and conditions

15.22 In some instances, it will be obvious that a condition relates to live music and will be suspended, for example “during performances of live music all doors and windows must remain closed”. In other instances, it might not be so obvious: for example, a condition stating “during performances of Regulated Entertainment all doors and windows must remain closed” would not apply if the only entertainment provided was live music between 08:00 and 23:00 on the same day to an audience of up to 200, but the condition would continue to apply if there was a disco in an adjoining room.

15.23 However, even where the 2003 Act (as amended by the 2012 Act) 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 if there are appropriate grounds to do so. On a review of a premises licence or club premises certificate, section 177A(3) of the 2003 Act permits a licensing authority to lift the suspension and give renewed effect to an existing condition relating to live music. Similarly, under section 177A(4), a licensing authority may add a condition relating to live music as if live music were regulated entertainment, and as if that licence or certificate licensed the live music.

15.24 An application for a review in relation to premises can be made by a licensing authority, any responsible authority or any other person. Applications for review must still be relevant to one or more of the licensing objectives and meet a number of further requirements (see Chapter 11 of this Guidance for more information about reviews under the 2003 Act).

15.25 More general licence conditions (e.g. those relating to overall management of potential noise nuisance) that are not specifically related to the provision of entertainment (e.g. signage asking patrons to leave quietly) will continue to have effect.

#### **Live music: conditions relating to beer gardens**

15.26 Beer gardens are often included as part of a premises licence or club premises certificate. Live amplified music that takes place in a beer garden is exempt from licensing requirements, provided the beer garden is included in the licence or certificate applying to the relevant licensed premises, and the performance takes place between 08:00 and 23:00 on the same day before an audience of 200 people or fewer.

15.27 Where a beer garden does not form part of the relevant licensed premises and so is not included in plans attached to a premises licence or club premises certificate, it is nevertheless very likely that it will be a workplace. Paragraph 12B of Schedule 1 to the 2003 Act says that a performance of live music in a workplace that does not have a licence (except to provide late night refreshment) is not regulated entertainment if it takes place between 08:00 and 23:00 on the same day in front of an audience of no more than 200 people.

15.28 However, a licensing authority may, in appropriate circumstances, impose a licence condition that relates to the performance of live music in an unlicensed beer garden using any associated premises licence or club premises certificate. Provided such a condition is lawfully imposed, it takes effect in accordance with its terms.

#### **Conditions relating to plays, dance and indoor sport**

15.29 As a result of the 2013 Order, a performance of a play or dance, or an indoor sporting event, will no longer require a licence to the extent that certain qualifying conditions<sup>3</sup> are satisfied. Similarly, to the extent that those qualifying conditions are satisfied, any current licence condition that relates to an activity for which a licence is no longer required will (except in the circumstances described in the next paragraph) have no effect.

15.30 Where, however, non-licensable activities take place at the same time as other activities for which a licence is required (e.g. the sale or supply of alcohol for consumption on the premises), conditions included in a licence may nevertheless apply to the non-licensable activities in the circumstances set out in paragraphs 15.37 and 15.38 below (conditions relating to other non-licensable activities).

15.31 A licence holder who wishes to remove such conditions may apply to the licensing authority for a licence variation. In the course of considering such applications, licensing authorities are encouraged to remove such conditions unless there are sufficiently serious specific concerns about the hosting of deregulated entertainment activities in relation to the remaining licensable activities taking place in the premises in question.

15.32 Performances of dance which are "relevant entertainment" within the meaning of the Local Government (Miscellaneous Provisions) Act 1982 ("the 1982 Act") are not affected by the 2013

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<sup>3</sup> See paragraph 15.10.

Order, regardless of the size of the audience or the time of day. "Relevant entertainment" is defined in the 1982 Act as a live performance or live display of nudity that, ignoring financial gain, can be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience.

15.33 In almost all cases where a performance of dance is potentially licensable as both the provision of *relevant* entertainment (under the 1982 Act) and *regulated* entertainment (under the 2003 Act), the 1982 Act disapplies the entertainment licensing regime in the 2003 Act in favour of its stricter regime for the control of sex establishments. However, an authorisation under the 2003 Act will be required where:

- the premises are not licensed as a sex entertainment venue under the 1982 Act, 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.

#### **Conditions relating to combined fighting sports**

15.34 The 2013 Order amended the existing descriptions of regulated entertainment to make clear both that an indoor boxing or wrestling entertainment cannot also be an indoor sporting event, and that any contest, exhibition or display combining boxing or wrestling with one or more martial arts ('combined fighting sports') is – whether indoors or not – a boxing or wrestling entertainment.

15.35 To the extent that a premises licence or club premises certificate purports to authorise a boxing or wrestling entertainment or combined fighting sports as an 'indoor sporting event', the 2013 Order provides that the authorisation will be treated as having authorised those activities as a boxing or wrestling entertainment. Those activities will continue to be subject to any relevant conditions attached to that authorisation.

#### **Conditions relating to other non-licensable activities**

15.36 If appropriate for the promotion of the licensing objectives, and if there is a link to remaining licensable activities, conditions that relate to non-licensable activities can be added to or altered on that premises licence or club premises certificate at review following problems occurring at the premises. This has been a feature of licence conditions since the 2003 Act came into force. A relevant example could be the use of conditions relating to large screen broadcasts of certain sporting events which, combined with alcohol consumption, create a genuine risk to the promotion of the licensing objectives. It is also not uncommon for licence conditions relating to the sale of alcohol to restrict access to outside areas, such as unlicensed beer gardens, after a certain time.

15.37 Similarly, while karaoke no longer needs licensing as the provision of entertainment facilities (and will generally be classed as a performance of live music – see paragraph 15.16 above) it might, for example, be possible on review to limit the use or volume of a microphone made available for customers, if a problem had occurred because of customers purchasing alcohol for consumption on the premises becoming louder and less aware of causing noise nuisance later in the evening. Another example might be a condition restricting access to a dance floor, where the presence of customers who had been consuming alcohol on the premises had led to serious disorder.

## **TEMPORARY EVENT NOTICES**

15.38 The circumstances in which a temporary event notice ("TEN") is required for a performance of live music are described above in paragraph 15.12. In addition, licensing authorities should be aware that, following changes made by the 2013 Order, a TEN is only required for an indoor sporting event or the performance of dance or a play if the activity takes place before 08:00 or after 23:00 on any day. As no more than 499 people can be permitted on authorised premises by a TEN, a TEN cannot authorise the performance of a play or dance, or an indoor sporting event, where such an activity is licensable because the relevant audience limit would inevitably be exceeded (see paragraph 15.10). Other regulated entertainment, or the sale or supply of alcohol, would need to be authorised by a TEN or a premises licence or club premises certificate.

## **MORE THAN ONE ENTERTAINMENT EVENT IN THE SAME PREMISES**

15.39 Where there are different audience limits for different entertainment activities (e.g. 500 for plays or dance, 1,000 for indoor sport) and different activities are occurring at the same premises at the same time, the event organisers must ensure that the audience for each entertainment does not exceed the relevant threshold unless an authorisation is in place for that entertainment. Event organisers will have to consider the possibility of audience migration (see also paragraph 15.5).

## **MORRIS DANCING**

15.40 The amendments to the 2003 Act by the 2012 Act extend the exemption relating to music accompanying morris dancing in paragraph 11 of Schedule 1 to the 2003 Act, so that it applies to the playing of live or recorded music as an integral part of a performance of morris dancing, or similar activity.

## **INCIDENTAL MUSIC**

15.41 In addition to provisions introduced by the 2012 Act, the performance of live music or playing of recorded music is not regulated entertainment under the 2003 Act if it is 'incidental' to another activity "which is not itself a description of entertainment falling within paragraph 2" of Schedule 1 to the 2003 Act.

15.42 As a result of the 2013 Order, the incidental music exemption can apply to an indoor sporting event or a performance of a play or dance for which no licence is required as it takes place between 08:00 and 23:00 on the same day before an audience which does not exceed the relevant limit; such an activity would no longer be a description of entertainment within the meaning of paragraph 2 of Schedule 1 to the 2003 Act. This means that, while a performance of live music or the playing of recorded music cannot be incidental to a boxing or wrestling entertainment, such music may be within the scope of the incidental music exemption for an indoor sporting event or performance of a play or dance for which no licence is required (e.g. because it is an indoor sporting event taking place between 08:00 and 23:00 before an audience which does not exceed 1,000).

15.43 Whether or not music is "incidental" to another activity will depend on the facts of each case. In considering whether or not live or recorded music is incidental, one relevant factor will be whether, against a background of the other activities already taking place, the addition of music will



create the potential to undermine the promotion of one or more of the four licensing objectives of the 2003 Act. Other factors might include some or all of the following:

- Is the music the main, or one of the main, reasons for people attending the premises and being charged?
- Is the music advertised as the main attraction?
- Does the volume of the music disrupt or predominate over other activities, or could it be described as 'background' music?

15.44 Conversely, factors which would not normally be relevant in themselves include:

- The number of musicians, e.g. an orchestra providing incidental music at a large exhibition.
- Whether musicians are paid.
- Whether the performance is pre-arranged.
- Whether a charge is made for admission to the premises.

#### **SPONTANEOUS MUSIC, SINGING AND DANCING**

15.45 The spontaneous performance of music, singing or dancing does not amount to the provision of regulated entertainment and is not a licensable activity because the premises at which these spontaneous activities occur would not have been made available to those taking part for that purpose.

