

Committee(s):	Date(s):	Item no.
Licensing	10 May 2012	
<b>Subject:</b> A) Live Music Act 2012; and B) Implementation of the Police Reform and Social Responsibility Act 2011.	<b>Public</b>	
<b>Report of:</b> City Remembrancer and Director of Markets & Consumer Protection	<b>For Information</b>	
<p style="text-align: center;"><b><u>Summary</u></b></p> <p>The report is split into two parts.</p> <p><b>Part A</b> provides Members with an overview of the Live Music Act 2012 which received Royal Assent in March. The Act amends s177, Licensing Act 2003 which relates to dancing and live music in certain small premises.</p> <p>The key points under the Act for Members to note are:</p> <ul style="list-style-type: none"> <li>• The removal of the need to licence unamplified live music in all venues, and amplified music before audiences of 200 in premises with an alcohol licence or in workplaces;</li> <li>• the provision of entertainment facilities no longer need to be licensed;</li> <li>• however, the licensing requirement can be reinstated and live music made licensable if a review of the licence is prompted by complaints.</li> </ul> <p>A summary of the changes as a result of the 2012 Act is included at Appendix A.</p> <p>It is likely the Act will come into effect in October 2012.</p> <p><b>Part B</b> describes how the Licensing Service has implemented those aspects of the Police Reform and Social Responsibility Act 2011 which came into force on 25 April 2012.</p> <p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Members are invited to note the contents of this report.</li> </ul>		

## **PART A**

### **Background**

1. In May 2009 the Culture Select Committee recommended that the Government should exempt venues with a capacity of 200 persons or fewer from the need to obtain a licence for the performance of live music. The Committee also recommended the reintroduction of a "two-in-a-bar" exemption for non-amplified music in place before the 2003 Act was brought into effect. This was a disapplication under the previous licensing law of the need for a public entertainment licence in certain situations, such as two performers singing or playing music, at premises where a justices' licence was in force.
2. In its response to the Select Committee report, the previous Government rejected these recommendations. However, in October 2009, Ministers at the time indicated that they were minded to consider an exemption for live music in small venues with a capacity of less than 100 and would launch a public consultation on the issue. That consultation concluded in May but there was delay in publicising the results of it due to the General Election. However, the issue re-emerged in the Coalition Agreement which included a commitment "to cut red tape to encourage the performance of more live music".
3. In the absence of Government legislation, Lib Dem Peer Lord Clement-Jones introduced the Live Music Bill in July 2010. A previous attempt to introduce a similar measure had found success in the Lords prior to the General Election but encountered difficulties in the Commons as the House cleared the decks ahead of dissolution in May 2010. The Bill received qualified Government support and, although amended in Committee, ultimately resulted in the Live Music Act 2012.

### **Amendments to the Licensing Act 2003**

4. The Live Music Act adds a new section 177A to the 2003 Act to deal with live music taking place in premises authorised for the supply of alcohol for consumption on the premises. Its effect is that conditions on a premises licence or club premises certificate relating to live music will no longer apply where unamplified music is being provided, where live amplified music is played to an audience of no more than 200 persons, and the live music takes place between 8am and 11pm on the same day. On a review of the premises licence or club premises certificate however, a condition relating to live music may be reinstated by altering the conditions to include a statement that section 177A does not apply.

Furthermore, at a review a licensing authority may add a condition relating to live music.

5. The provision of live music will not be a licensable activity if it takes place in a workplace not otherwise licensed under the 2003 Act (or only licensed for late night refreshment), provided that the audience size is no more than 200 and it takes place between 8am and 11pm. Unamplified live music will not be licensable provided that it takes place between 8am and 11pm on the same day.
6. The Act also removes all references to entertainment facilities (facilities for making music or dancing) with the effect that the provision of entertainment facilities will no longer be licensable as they do not amount to regulated entertainment.
7. A summary of the changes resulting from the Act is included at Appendix A.

### **Impact on the City of London**

8. The immediate and long term effects of the Live Music Act on the City of London are expected to be minimal. Where there are major public nuisance implications i.e. of performances to audiences of greater than 200 or the playing of live music after 23:00, there is no exemption and the current licensing regime continues.
9. Where a premises plays live music to audiences of less than 200 and it is before 23:00, and by so doing it creates a public nuisance, responsible authorities and 'other persons' can still seek to review a premise licence as is currently the situation.
10. Further, if the premises create a statutory noise nuisance the Corporation's Environmental Health Service will be able to take the necessary action as is currently the situation.

## **PART B**

### **Background**

11. A report was submitted to the Licensing Committee on 16 January 2012 updating members on the key points of the Police Reform and Social Responsibility Act 2011 (the 'Act'). The Act received Royal Assent on 15<sup>th</sup> September 2011.

12. Provisions relating to Late Night Levy, Early Morning Restriction Orders and the introduction of a new regime for setting licensing fees will not commence until later this year or maybe not until 2013.
13. The remaining provisions came into force on 25 April 2012. (This report was however written without the benefit of the amended guidance under s.182 of the Licensing Act 2003 and the introduction of secondary legislation.)

## **Implementation of the Police Reform & Social Responsibility Act 2011**

### *Responsible Authority*

14. As a responsible authority (RA) the City of London Licensing Authority (LA) will be able to make representations on applications, instigate review applications and make representations on applications for review by others.
15. In order to ensure that the LA avoids accusations of a conflict of interest when acting in its capacity as RA, procedures have been amended to ensure that the officer or person making a representation is different to the officer advising committee at any hearing. In practice this will mean that the committee report will be written by the Licensing Manager with any representation coming from one of the Licensing Officers.
16. The Licensing Service, as a guardian of the Licensing Policy, will make a representation or an application for review in circumstances where a business is not operating in accordance with the licensing policy. Although this will only be to ensure the promotion of one, or more, of the licensing objectives. This will need to be included in the review of the Licensing policy.
17. As a RA, the LA is required to advertise an application to persons who live, or are involved in a business, within the City of London. At the time of writing this report this requirement was thought to be met by placing the application on the Corporation's website. Procedures have been amended to ensure statutory timescales are met.

### *Primary Care Trusts (PCTs) as a responsible authority*

18. Although there has been no change to the four licensing objectives to include Health, the PCTs or Local Health Board can make representations on any of the four current objectives. Amendments have been made to licensing procedures to recognise PCTs as a RA. This will also be addressed in the next review of the Licensing Policy.

19. Following the abolition of the PCTs the RA will, in practical terms, be the newly created local authority statutory posts of Director of Health.

*Vicinity and interested parties*

20. The term 'interested parties' no longer exists and has been replaced by the term 'other persons'. In practice this means that any person can make a representation or bring a review. It is not certain as to the effect this will have on the number of representations received, although clearly there is potential for the numbers to increase.
21. Licensing Officers are aware of this potential and will take great care to ensure that representations are not frivolous or vexatious, particularly in circumstances where a number of representations have been received as a result of a campaign by an organisation outside the City of London.

*Necessary vs. appropriate*

22. The word 'appropriate' has replaced the word 'necessary' in relation to many aspects of the Licensing Act 2003. These changes have the effect of lessening the 'evidential burden'. A step is only necessary when no lesser step would suffice. The changes affect both the Licensing Service and the Licensing Committee on applications made after 25 April 2012 (relevant applications).
23. The main effect on the licensing committee is that the steps open to them, when hearing relevant applications, are now to be taken where appropriate. Further, the conditions which are consistent with the operating schedule can now be modified as appropriate.
24. There are many further aspects which affect the licensing service which have been made clear to all staff and amendments made to procedures where necessary. One effect this may have is on the wording of conditions in general. Conditions are generally to be appropriate rather than necessary. This matter can be addressed at greater length in the review of the Licensing policy.

*TENs*

25. TENs can now be accepted up to five days prior to an event and representations can now be received by the Police and the Environmental Health Service. Further, the representation can be on any of the four licensing objectives and not just the Prevention of Crime and Disorder. The necessary changes to procedures and documentation have been made.
26. Members will also note that where a representation has been received on a TEN submitted later than ten days prior to the event in question, a hearing will not be required and the TEN is rejected i.e. a counter notice

will be served by the Licensing Team. Again, the necessary changes have been made to procedures.

*Non payment of fees*

27. The Act makes it a mandatory requirement for the Licensing Authority to issue a suspension notice on a licence holder where the required licence fee is outstanding. The notice has to be issued twenty-one days following the fee becoming due.
28. Following a further period of no less than two days, once the notice has been served, the licence must then be suspended. To allow for the necessary administration procedures to be put in place the Licensing Team has set this period as two complete days i.e. the licence will be suspended on the third working day commencing the day after the notice has been served. Reference to this matter will later have to be considered during the review of the Licensing Policy.
29. In order for the above procedure to operate effectively, the Licensing Team is working closely with the Finance Team in order to ascertain when a fee has not been paid in time. Invoices will now be sent out to licence holders at least three weeks prior to the fee becoming due for payment ('the due date'). The Finance Team will be responsible for notify the Licensing Team that the fee has not been paid fifteen days after the due date. This will give the Licensing Team a further seven days to contact the licence holder and seek to resolve any issues. Failure to secure payment will than result in the suspension procedure being activated.

**Consultees**

30. The Licensing Team, Comptroller and City Solicitor, and Finance Team have been consulted in the preparation of both parts of this report.

**Background Papers:**

- *Live Music Act 2012*
- *Police Reform & Social Responsibility Act 2011*
- *Report to the Licensing Committee on the Police Reform and Social Responsibility Bill, 18 April 2011*

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SUMMARY OF THE CHANGES  
RESULTING FROM THE LIVE MUSIC ACT 2012

<b>Position under Licensing Act 2003</b>	<b>Position under Live Music Act 2012</b>
<p>Under Section 1 and Schedule 1, all live music within premises (with a few exemptions for e.g. Churches/moving vehicles but including open spaces where the purpose is for entertainment of an audience) is deemed 'regulated entertainment' and therefore subject to the potential controls (times of operation, conditions) specified in the licence granted for that premises under the Act.</p> <p>s177 allows for the performance of dance and live music in certain very controlled circumstances (small premises of under 200 capacity for the performance of unamplified live music between 0800 - Midnight) which dis-applies conditions on the licence. However, the premises would still need a licence for sale of alcohol and provision of music entertainment.</p>	<p>A new s177A is inserted in the 2003 Act under which:</p> <ul style="list-style-type: none"><li>• the licensing requirement is removed for unamplified live music taking place between 8am and 11pm in all venues;</li><li>• the licensing requirement is removed for 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;</li><li>• the licensing requirement is removed for 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);</li><li>• the licensing requirement for the provision of entertainment facilities is removed; and</li><li>• the licensing exemption for live music integral to a performance of Morris dancing or dancing of a similar type is widened, so that the exemption applies to live or recorded music instead of unamplified live music.</li></ul> <p>The licensing requirement can be reinstated and live music made licensable if complaints are received prompting a review of the licence</p>