



2nd September 2016

House of Lords – Select Committee on the Licensing Act 2003

About UK Music

1. UK Music is the umbrella body representing the collective interests of the UK's commercial music industry, from songwriters and composers to artists and musicians, studio producers, music managers, music publishers, major and independent record labels, music licensing companies and the live music sector.
2. UK Music exists to represent the UK's commercial music sector, to drive economic growth and promote the benefits of music to British society. The members of UK Music are listed in an annex.

General

3. UK Music welcomes the House of Lords decision to conduct post-legislative scrutiny of the Licensing Act 2003. We would like to provide general remarks as well as responding to specific questions where we are best placed to provide contributions based on our knowledge and experience.
4. The UK music industry contributed £4.1 billion in GVA in 2014 to the economy, growing by 5%. The sector is responsible for total export revenues of £2.1 billion and employs over 117,000 people.¹
5. Live music is a key ingredient to what makes the UK music industry the success that it is. It contributes almost £1 billion in GVA and employs over 25,000 people.² A total of 27.7 million people enjoyed live music events in 2015.³
6. The sector has experienced year on year growth and has a profound impact on other parts of the economy. Music tourists to festivals and concerts generated £3.7 billion in spend in 2015.⁴ Across the nations and regions of the UK, areas such as the East of England, North West, Scotland, South West and South East

¹ http://www.ukmusic.org/assets/general/Measuring_Music_2015.pdf

² http://www.ukmusic.org/assets/general/Measuring_Music_2015.pdf

³ <http://www.ukmusic.org/research/music-tourism-wish-you-were-here-2016/>

⁴ <http://www.ukmusic.org/research/music-tourism-wish-you-were-here-2016/>

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all contribute hundreds of millions in music tourist spend. Three quarters of a million people came to the UK for gigs and events in 2015.

Music and the Licensing Act 2003

7. The legislative framework has a profound impact on the music industry's ability to both nurture talent and grow economic value. For example, strong copyright law is required to give incentives to invest in music creativity.
8. For live music, the Licensing Act 2003 is a significant piece of legislation in England and Wales. The Act regulates the performance of live music in public, with licences necessary for moderate and large scale events and concerts. Exemptions from the Act for smaller events have more recently been introduced under the Live Music Act 2012 and the Legislative Reform (Entertainment Licensing) Order 2014. These exemptions can still be reviewed by licensing authorities which may result in them being disapplied.
9. Unlike other activities regulated by the 2003 Act, public entertainment licensing (PEL) had already been transferred from magistrates to local authorities since the Local Government (Miscellaneous Provisions) Act 1982. A significant change for music as a result of the 2003 Act concerned the abolition of the "two in a bar rule".
10. The "two in a bar rule" allowed for two musicians in a bar to perform without the need for a licence. Whilst this rule was seen as restrictive towards the performance of live music, its abolition under the 2003 Act meant it was replaced by a "none in a bar rule" whereby all performances of live music required applications for licences.
11. In order to respond to concerns that the 2003 Act would have a detrimental impact on live music provision, a number of remedies were attempted. It was not until the Live Music Act 2012 and the subsequent Legislative Reform (Entertainment Licensing) Order 2014 that meaningful solutions to address problems for the performance of live music associated with the 2003 Act were put in place however.
12. Example of attempted remedies include:-
 - (i) Schedule 1 of the 2003 Act originally included a broad incidental music exemption. This lacked definition and was left open to interpretation by each local licensing authority. The statutory guidance under section 182 of the Act was also unhelpful in interpreting this exemption.
 - (ii) The original Section 177 of the 2003 Act attempted to create an exemption for small scale live music yet it was badly drafted, making it unclear what it was trying to achieve. There is no evidence of the provision ever being successfully used to exempt live music.

- (iii) Temporary Event Notices which provide permission for regulated entertainment under the 2003 Act yet these are for a limited period of time and audience and have a regulatory and financial cost burden attached to them.
 - (iv) In 2009 the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order introduced a “fast track” solution to amend premises licences but this did not decrease regulatory burdens and could only be used by those already in possession of a licence.
13. Furthermore, the Live Music Forum which was established to monitor the impact of the 2003 Act on music reported in 2007 that the promised increase in live music had not happened and that evidence of incorrect or zealous interpretation of the Act from local authorities existed.⁵ The 2007 BMRB live music survey revealed that there had been a 5% decrease in the provision of live music since the 2003 Act came into force.
14. The deregulation of live music from the 2003 Act between 2012 to 2015, which UK Music campaigned for⁶, was therefore a welcome breakthrough to support the provision of music through the legislative framework.
15. Whilst the recent legislative changes mean that the Act has a greater opportunity of fulfilling its original objectives regarding the provision of entertainment our default position remains that music should not be regarded as a licensable activity under the Act.
16. UK Music has consistently argued that other legislation exists, such as the Environment Protection Act, Health and Safety at Work Act and the Fire Safety Order 2005, to provide the protections that the existing licensing objectives seek to address.⁷
17. Whilst music remains a licensable activity we argue for the introduction of a new positive licensing objective to bring balance to the way regulated entertainment is treated under the Act and by licensing authorities in discharging their functions.

Licensing objectives

18.

Question 1

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http://webarchive.nationalarchives.gov.uk/20121204113822/http://www.culture.gov.uk/images/publications/lmf_forewordexcsummary.pdf

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http://www.ukmusic.org/assets/general/UK_Music_LRO_Entertainment_Deregulation_Submission_2013.pdf http://www.ukmusic.org/assets/general/licensing_guidance_technical_consultation_ukmusic.pdf

⁷ http://www.ukmusic.org/assets/general/Response_to_DCMS_Consultation_Licensing_Act_.pdf

Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

Whilst the existing four licensing objectives assist in mitigating the potential for anti-social behaviour and criminality, UK Music are concerned that they create a culture within licensing authorities that views and treats entertainment regulated by the Act negatively.

Operating music venues within London have shrunk by 35% in the past eight years.⁸ Restrictive licensing laws is often cited as a contributing factor in venue closures. Licensing authorities rely on the existing objectives when assessing complaints and applications. Without a positive objective when responding to applications or complaints related to entertainment provisions, licensing authorities are not encouraged to acknowledge the benefits of music to economic, cultural and social wellbeing within local communities.

UK Music recognises the importance of ensuring public safety, protecting children from harm and the prevention of crime and disorder and public nuisance yet believes consideration should be given to an additional licensing objective relating to “the promotion of cultural activity and inclusion”. We set out further details on this in our response to the next question.

When considering whether health and wellbeing should be an additional objective, UK Music emphasises the positive impact that music has on the public generally. Examples of research into this includes work undertaken by the “Music and Wellbeing” research unit within the University of Sheffield.⁹ The work of charities such as Nordoff Robbins relating to music therapy also demonstrates the positive impact music can have.¹⁰ Health and wellbeing as a licensing objective should not be used to restrict music provision further.

19.

Question 2

Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

⁸ <https://www.theguardian.com/uk-news/2015/oct/20/save-londons-live-music-venues-city-wide-campaign-launched>

⁹ <http://musicwellbeing.group.shef.ac.uk/>

¹⁰ <https://www.nordoff-robbins.org.uk/>

We seek a balanced and proportionate approach from licensing authorities when dealing with applications and complaints relating to live music. Licensing authorities should be encouraged to understand the impact of their decisions on local culture and the businesses that enable these activities to be enjoyed. There is a need for an additional licensing objective relating to “the promotion of cultural activity and inclusion” in order to support this.

The Licensing Act’s existing objectives specifically made regulation of live music a public order issue associated with nuisance, crime and disorder, public safety and protection from harm. That failure to have a licence for music could potentially lead to criminal sanctions and penalties (such as large fines and terms of imprisonment) reinforces a perception within licensing authorities that entertainment is something that should be controlled under the Act, rather than enabled.

The lack of an objective to promote licensable activities has a knock on effect on licensing authorities’ decisions, often resulting in onerous conditions being imposed on licensed premises. Research conducted by the Music Venue Trust, reported by the Mayor of London’s Music Venue Taskforce¹¹, demonstrated that one London venue has over 70 separate conditions on its licence. Another has its capacity set at the same level as before the smoking ban, despite the risk of fire now being reduced. We have also been made aware that conditions related to music are still featuring on some small venues licences despite the fact they should be benefiting from the Live Music Act and other recent entertainment exemptions.

UK Music has long advocated the introduction of an “agent of change” principle into UK law. Such a measure would address planning disputes between music venues and developers by placing responsibility for managing the impact of a change on those instigating it. This principle could equally apply to licensing authorities when discharging their functions. One residential noise complaint is often all that is required to generate a review of a premises licence. Consideration of the circumstances of the complainant and whether they have recently moved into the area is not generally a factor taken into account. This leaves existing businesses at the mercy of a minority individuals whose actions could result in restrictions on the enjoyment of licensable activities.

A licensing objective for “the promotion of cultural activity and inclusion” would encourage licensing authorities to consider the impact of an application or complaint on cultural activities such as music and their propensity to stimulate public inclusion through accessibility, attendance and participation.

The balance between rights and responsibilities

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¹¹ https://www.london.gov.uk/sites/default/files/londons_grassroots_music_venues_-_rescue_plan_-_october_2015.pdf

Question 3

Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

The Live Music Act and subsequent entertainment deregulations are examples of modest exemptions from the Licensing Act which have gone some of the way to relaxing the most prohibitive and worrying aspects for live music caused by the 2003 Act. Whilst we would strongly support further exemptions, particularly on timing and audience sizes, our priority now is to achieve a positive licensing objective relating to cultural activities.

Prior to the commencement of the Live Music Act, UK Music conducted a survey to assess the appetite and awareness amongst licensed premises of the 2012 Act. The survey revealed that 17% of venues would stage live music for the first time due to the Act, with a further 24% of venues increasing their provision.¹² The research indicated that 78% of venues were unaware of the Act before it came into force on 1st October 2012.

Monitoring the impact of the 2012 Act is a challenge. Previously the best way to assess the scale of live music was to consider whether a premises licence contained provision. Given that the Live Music Act and further deregulation render permission unnecessary in certain circumstances it is harder to assess how many premises are benefiting from the exemptions and how many events are taking place.

In order to address this, UK Music held a series of roundtables across England and Wales with local venues, musicians and audiences to assess the Act's impact. On the anniversary of the Act's first year in force UK Music published the Rocktober Report.¹³ The report revealed that the new Act is working well and that there has not been an increase in complaints as a result of it. Furthermore, we understand that the licensing review mechanism which can be used to disapply entertainment exemptions is seen to be working well.

Despite the difficulties in assessing the impact of the Live Music Act there are signs that its exemptions could be making a real difference. The Government's most recent entertainment licensing statistics indicate overall premises licence applications have increased by 1.3%. During the first full year of operation of the Act there had been a

¹² <http://www.ukmusic.org/assets/general/UKMUSIC-LMBS-DOC3-PRINT.pdf>

¹³ <http://livemusicexchange.org/wp-content/uploads/UKMUSIC-The-Rocktober-Report.pdf>

1.5% decrease in applicants seeking the need to apply for the provision of live music.¹⁴ The same period saw a 5.9% decrease in the number of club premises certificates seeking permission for live music.¹⁵ These statistics cover licences in force on 31st March 2014. We urge the Government to release updated statistics to coincide with this inquiry. This should cover the first full year in operation of the entertainment deregulation exemptions that commenced in April 2015 and would provide an opportunity for further analysis of this policy measure.

One issue that has arisen and is linked to the 2012 Act concerns small grassroots venues whose primary business is putting on live music. It is suggested that these venues are facing increased competition from pubs and clubs which are now putting on live music as a result of Act. That venues dedicated to music should feel a negative impact from the Act is an unintended consequence but should not diminish the important achievement of deregulating live music from the Licensing Act given its overall objective of increasing music provision and participation.

Grassroots small music venues are vital to the music industry ecosystem. The Government has rightly acted, such as on planning law, to alleviate some of the challenges they face. That they still could be suffering as a result of the licensing system despite deregulations to the law that are intended to assist them provides further evidence of the need for a new licensing objective relating to the “the promotion of cultural activity and inclusion”.

Licensing and local strategy

21.

Question 6

Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

There is a direct correlation between the operation of the planning and licensing systems which causes problems for music venues. This can be resolved by a more integrated approach through the full adoption of the “agent of change” principle into law.

A venue’s licence is put at risk if a resident of a new development makes a noise complaint to a licensing authority. New licence conditions may be attached with expensive adjustments for the venue, such as soundproofing, being required. The introduction of “agent of change” will mean the burden of responsibility for dealing with the implications of a new development reside with those that have a direct interest in the new development, as opposed to the existing businesses that may be affected by it.

¹⁴ <https://www.gov.uk/government/publications/entertainment-licensing-2014/entertainment-licensing-statistics-2014>

¹⁵ <https://www.gov.uk/government/statistics/entertainment-licensing-2014>

Recognising that music venues are in particular vulnerable to change of use rules, the Government introduced a new “noise impacts” consideration when offices are turned into residential accommodation as part of permitted development planning rights in early 2016.¹⁶ This only addresses one set of circumstances however. A full “agent of change” principle would allow all planning decisions to be made on the basis of pre-empting implications that may arise through the licensing system once a new development is complete.

Licensing procedure

22.

Question 9

The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

As already stated, our position is to deregulate live music from the 2003 Act entirely. Failing this, a positive licensing objective concerning the promotion of cultural activity should be introduced. This would foster greater understanding amongst licensing authorities about regulated entertainment, its benefits and aid in reducing the complexity of licensing processes and procedures.

International comparisons

23.

Question 14

Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

In 2015 global music industry body the IFPI and Music Canada produced a report, *The Mastering of a Music City*, which analysed how cities across the world can take steps to develop their music economies.¹⁷ The report details restrictive and confusing licensing laws that restrict the viability of music venues and performance in Australia, Canada and Germany. At a national level the UK would appear relatively unique in that there exists a Live Music Act for England and Wales which seeks to eliminate the regulatory

¹⁶ <http://www.ukmusic.org/news/planningamendment>

¹⁷ <http://www.ifpi.org/downloads/The-Mastering-of-a-Music-City.pdf>

and financial burdens of licensing from the performance of live music. However, it is notable that the State of New South Wales in Australia eliminated live music venue licences in 2009.

New South Wales's action was complemented by the introduction of local council music action plans and the establishment of a live music office to support the development of local government live music policies. We are aware of similar offices operating in cities such as San Francisco in the USA.¹⁸ In European cities like Amsterdam and Berlin we are seeing the creation of night ambassadors, often dubbed "Night Mayors", which also have a role in enhancing the relationship between entertainment and the legal framework that supports it.¹⁹ The new Mayor of London, Sadiq Khan, intends to introduce a "night czar" for the capital also.²⁰ We would urge other cities in England and Wales to consider such an approach too.

Annex

UK Music's membership comprises of:-

- AIM – Association of Independent Music - representing over 850 small and medium sized independent music companies.
- BASCA - British Academy of Songwriters, Composers and Authors – BASCA is the membership association for music writers and exists to support and protect the professional interests of songwriters, lyricists and composers of all genres of music and to celebrate and encourage excellence in British music writing
- BPI - the trade body of the recorded music industry representing 3 major record labels and over 300 independent record labels.
- FAC – The Featured Artists Coalition – the voice of the featured artists.
- MMF - Music Managers Forum - representing 425 managers throughout the music industry.
- MPG - Music Producers Guild - representing and promoting the interests of all those involved in the production of recorded music – including producers, engineers, mixers, re-mixers, programmers and mastering engineers.
- MPA - Music Publishers Association - with 260 major and independent music publishers in membership, representing close to 4,000 catalogues across all genres of music.
- Musicians' Union representing 30,000 musicians.

¹⁸ <http://sfgov.org/entertainment/>

¹⁹ <https://www.theguardian.com/cities/2016/mar/21/night-mayor-amsterdam-holland-mirik-milan-night-time-commission>

²⁰ <http://www.bbc.co.uk/news/uk-england-london-36332868>

- PPL is the music licensing company which works on behalf of over 90,000 record companies and performers to license recorded music played in public (at pubs, nightclubs, restaurants, shops, offices and many other business types) and broadcast (TV and radio) in the UK.
- PRS for Music is responsible for the collective licensing of rights in the musical works of 114,000 composers, songwriters and publishers and an international repertoire of 10 million songs.
- UK Live Music Group, representing the main trade associations and representative bodies of the live music sector

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