



Technical consultation on the proposed new Chapter 15 of the Section 182 Guidance issued under the Licensing Act 2003

28 September 2012

About UK Music

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.

UK Music exists to represent the UK's commercial music sector in order to help drive economic growth and to promote the benefits of music on British society. The members of UK Music are listed as an annex.

Introduction

1. UK Music welcomes the opportunity to respond to the technical consultation on the proposed new Chapter 15 of the Section 182 Guidance issued under the Licensing Act 2003.
2. The rationale for amending the guidance is a result of the passing into law earlier this year of the Live Music Act, a piece of legislation that amends the Licensing Act 2003 and one which UK Music and its members have campaigned for the introduction of for a number of years.
3. The 2007 BMRB live music survey found that there had been a 5% drop in live music since the coming into force of the last substantive overhaul of licensing law, the Licensing Act 2003.
4. The Live Music Act is therefore a much overdue deregulatory measure for entertainment licensing in England and Wales.

UK Music
British Music House

26 Berners Street
London, W1 3LR

T. 020 7306 4446
F. 020 7306 4449
E. contact@ukmusic.org

www.ukmusic.org

5. UK Music has recently produced a baseline study for the Live Music Act. We commissioned The Market Research Group at the University of Bournemouth to survey 1000 premises to look at the potential impact of the Act.
6. According to the findings of the baseline study, as published in September 2012, the Live Music Act could lead to the number of venues staging live music in their premises for the first time increasing by 17%, and a further 24% of venues increasing their current provision of live music.
7. The challenge now is for government, as well as the supporters of the legislation, to raise awareness of the Act in order to unlock its potential. Our research highlighted that 78% of venues were unaware of the passing of the Act.

Chapter 15 of the Guidance under the Licensing Act 2003

8. It is extremely important for the proposed new Chapter 15 of the Section 182 Guidance issued under the Licensing Act 2003 to work as a complementary document to the primary legislation itself for licensees, licensing authorities, musicians, residents and audiences.
9. A lot of the problems for the licensees, licensing authorities, musicians, residents and audiences concerning applications for live music under the Licensing Act 2003 (in its version before being amended by the Live Music Act 2012) were often caused by contradictory signals or conflicting statements between primary legislation and the issued guidance.
10. For example, the definition of what is or is not considered to be incidental music was particularly confused by the lack of connectivity between the guidance and primary legislation, so much so that certain live music events had to be abandoned due to the legal uncertainty.
11. The Licensing Act 2003 and its statutory guidance should be as consistent as possible and work in tandem. It should not create situations that can only be resolved via the courts or need to rely on case law, particularly due to the resources available to many of those wanting to put on live music events not being sufficient to proceed via a litigious route.
12. On the whole, the revised Chapter 15 which is the subject of this consultation does achieve harmony between primary legislation and the guidance issued by the Secretary of State.
13. In particular, UK Music warmly welcomes the certainty provided for by 15.10 of the revised Chapter which states that conditions imposed on existing licences for live music are automatically suspended between 08.00 and 23.00 following the implementation of the 2012 Act.
14. UK Music does believe that the revised Chapter should be amended further in one particular respect however in order to avoid confusion between primary legislation and the guidance.

15. As currently drafted, revised Chapter 15.14, which concerns the applying of conditions for non-licensable activities, has the potential to produce ambiguity between primary legislation and the guidance.
16. 15.14 in its current form would appear to exist to demonstrate that conditions can be imposed on karaoke type events which, given the nature of the performance, will usually be interpreted as falling within the definition of live music so that such events can be controlled if problems occur.
17. New section 177A to the Licensing Act, as established by the Live Music Act, like its Licensing Act predecessor section 177, makes live music a special case where conditions are concerned.
18. It is quite clear that under the amended Licensing Act, where the exemptions apply, if a condition 'relates to live music' it does not have effect (section 177A(2)). That would obviously apply to the use of a microphone for singing, such as a karaoke contest, between the hours of 8am and 11pm.
19. In establishing 15.14, the Government are trying to ensure that it might still be possible to apply conditions to the provision of entertainment facilities (ie on the microphone itself) in certain circumstances, such as a karaoke event, rather than impose conditions on the performance of live music itself. This is in spite of conditions on a licence that relate solely to entertainment facilities no longer applying as a result of the Live Music Act 2012.
20. The example given in 15.14 does not explicitly state the type of live music event it seeks to demonstrate where such a provision may be required, meaning the guidance is somewhat open to interpretation.
21. In order to avoid a situation whereby 15.14 could be used as a justification to impose conditions that impact on the performance of deregulated live music, UK Music urges the government to simply rephrase the paragraph so that it reads –

“So, in relation to the provision of entertainment facilities it might, for example, be possible to limit the use or volume of a microphone via a public address system made available for customers to sing in a karaoke-like event, if customers who have purchased alcohol for consumption on the premises have caused a problem by becoming louder and less aware of potential noise nuisance later in the evening.”
22. A further component to 15.14 is a second example concerning public safety and raised stages as a means to justify further conditions on entertainment facilities in certain circumstances, rather than impose conditions on the performance of live music itself.
23. Existing health and safety legislation is adequate to deal with this second example contained within 15.14, making this specific example somewhat superfluous for the context of the guidance.

24. Indeed, a combination of health and safety, environmental noise protection and building regulations deal with the perceived problems 15.13 and 15.14 seek to resolve. We feel that in many respects both 15.13 and 15.14 of the guidance are unnecessary.
25. However, given that conditions relating to non-licensable activity can be added to or altered on a licence or certificate at review, a practice of the Act since 2003 (as acknowledged in 15.13) we accept that paragraphs revised along the lines of what we have set out in this submission should be contained within the revised Chapter 15 . Any future wholesale reform of licensing law ought to seriously question the basis on which conditons can be imposed on non-licensable activities.
26. UK Music firmly believes that it is not the government's intention to impose or reintroduce conditions for deregulated live music via the backdoor and acknowledges the clarity now provided for by the amended primary legislation. However, in order to avoid the past experience where the Licensing Act was not fully synchronised with its guidance, we ask that the government amend 15.14 before the final version of the revised Chapter 15 is laid under the Act.

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 – with over 2,000 members, BASCA is the professional association for music writers and exists to support and protect the artistic, professional, commercial and copyright interests of songwriters, lyricists and composers of all genres of music and to celebrate and encourage excellence in British music writing
- The BPI representing over 440 record company members
- 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

- PPL is the music licensing company which, on behalf of 50,000 performers and 6,500 record companies, licences the use of recorded music in the UK
- *PRS for Music* is responsible for the collective licensing of rights in the musical works of 85,000 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

