BABERGH DISTRICT COUNCIL

To: Licensing and Appeals Committee	**Report Number: M98**
From: Head of Environment	**Date of meeting: 4 October 2012**

PROPOSED CHANGES TO THE LICENSING ACT 2003 STATUTORY GUIDANCE BY COMMENCEMENT OF THE LIVE MUSIC ACT 2012

1. Purpose of Report

1.1 This report is to advise Members of the recent consultation exercise undertaken by the Department for Culture, Media and Sport ("DCMS"). The very brief 'technical' consultation period on proposed revised statutory guidance concluded on 28 September 2012, which did not enable a report to reach the Committee within the required timeframe.

1.2 The matters are nonetheless important to report to the Licensing and Appeals Committee as the proposed changes impact upon the Licensing Act 2003 functions carried out by the Licensing Authority with effect from 1 October 2012.

2. Recommendations

2.1 That the content of this report and the consultation document attached as Appendix A be noted.

2.2 That Members consider whether they wish to make a late comment on the Government consultation paper. If Members would like to respond, officers have created a draft submission attached to this report as Appendix B for consideration.

The Committee is able to resolve this matter.

3. Financial Implications

3.1 There are no direct financial implications arising from this report.

3.2 The legislative reforms themselves have significant potential to impact upon the Council's resources, particularly in relation to the advisory and compliance services provided by the Licensing Team to communities/local business and reactive actions in respect of review and enforcement.

4. Risk Management

4.1 There are no risk management issues arising directly from this report.

5. Consultations

5.1 The content and recommendations of this report relate to a Government consultation that concluded on 28 September 2012.

6. Equality Analysis

6.1 There are no equality and diversity implications.

7. Shared Service / Partnership Implications

7.1 As referred to at 3.2 of this report.

7.2 Mid Suffolk District Council resolved at its Licensing Committee meeting of 21 September 2012 to respond to the consultation along the same lines as proposed within this report, and has in addition proposed to write to local MPs raising attention to the potential impacts of the delayed/ambiguous guidance.

8. Key Information

8.1 On 8 March 2012 the Live Music Act 2012 received Royal Assent and it will come into force from 1 October 2012, amending the Licensing Act 2003.

8.2 The DCMS is in the process of making revisions to the statutory guidance issued by the secretary of state under section 182 of the Licensing Act 2003. Specifically it is amending chapter 15 relating to 'regulated entertainment' to reflect the changes made by the 2012 Act. The revised version of the guidance is expected to be laid before Parliament on 31 October 2012, which is *after* the 2012 Act comes into force. The DCMS says that the reason the guidance is being laid on this date is to coincide with the changes to the guidance made by the Home Office relating to Early Morning Restriction Orders. The DCMS has sought views from a technical perspective on the proposed amendments following implementation of the Live Music Act 2012. Its stated objective is that the revised guidance is "accurate, helpful and pragmatic".

8.3 Before the revised guidance is laid before Parliament, the DCMS has held a very brief consultation exercise on these revised changes to ask from a 'technical perspective' whether the guidance works in that it is "accurate, helpful and pragmatic". Having examined the proposed guidance from a technical perspective, and being familiar with the Council's previous involvement with this issue, the Licensing Team is concerned that the guidance is silent or non-committal on some key practical issues and scenarios – leaving plenty of unanswered questions and uncertainty for practitioners, communities and businesses. The consultation exercise ran until 28 September 2012 having only opened on 22 August 2012.

8.4 As reported to the Licensing Committee previously, when the 2012 Act comes into force it will remove licensing requirements, and existing licence conditions will fall, for amplified live music held between the hours of 8:00am and 11:00pm – where that entertainment takes place in premises/clubs licensed for the ON sale or supply of alcohol. Also the exemption applies to amplified live music, between the same hours, before audiences of no more than 200 people in workplaces not otherwise licensed under the Act (or licensed only for the provision of late night refreshment). It also applies to unamplified live music between 8:00am and 11:00pm in *any* venue or location.

8.5 The DCMS states that any associated licence conditions related to live music will be suspended whilst exemption entitlement applies. It is anticipated that this will cause confusion for regulators, local communities and businesses alike and difficulty in knowing which conditions are suspended, to what extent, and when. The DCMS also states that it will, however, be possible to impose new or reinstate existing live music conditions following a review of a relevant premises licence or club premises certificate. This raises various practical questions, not least whether a Sub-Committee could still consider conditions relating to live music activity when determining a new licence application or where there is a variation to an existing licence.

8.6 The 2012 Act will also remove licensing requirements for the provision of entertainment facilities, which again may cause some unintended consequences.

8.7 Members will be aware that both Babergh and Mid Suffolk District Councils are vigorously opposed to these changes to the Act, and have already written detailed responses to consultation on total deregulation and the changes brought about by the 2012 Act.

9. Appendices

Title	Location
A: Consultation document from the DCMS on amendments to the Statutory guidance under the Act	Attached
B: Draft consultation response	Attached

10. Background Documents

None

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Appendix A

department for
culture, media
and sport

Regulated Entertainment

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

August 2012

improving
the quality
of life for all

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

Contents

Chapter 1: Introduction

1.1 The Live Music Act 2012 ("the 2012 Act") received Royal Assent on 8 March 2012, and will come into force on 1st October 2012. As a result, we are proposing an amended version of Chapter 15 Regulated Entertainment) of the guidance issued under section 182 of the Licensing Act 2003 ("the 2003 Act") to reflect the changes made by the 2012 Act to the regulation of live music. The revised version of the guidance – attached here in draft - is expected to be laid before Parliament on 31 October 2012 so that other changes that the Home Office is introducing relating to Early Morning Restriction Orders can be incorporated at the same time.

1.2 The purpose of this consultation is not to consider the policies delivered through the Live Music Act. Rather it is to ensure that, from a technical perspective, the guidance works, i.e. it is accurate, helpful and pragmatic. We would therefore welcome comments on this basis.

1.3 When the 2012 Act comes into force, it will remove the licensing requirements for amplified live music between 8am and 11pm before audiences of no more than 200 people on premises authorised to sell alcohol for consumption on the premises; amplified live music between 8am and 11pm before audiences of no more than 200 people in workplaces not otherwise licensed under the 2003 Act (or licensed only for the provision of late night refreshment); and unamplified live music between 8am and 11pm in all venues.

1.4 Where licensable activities (such as the sale of alcohol) continue to take place on premises, any licence conditions related to live music will be suspended. However, it will be possible to impose new or reinstate existing live music conditions following a review of a premises licence or club premises certificate relating to premises authorised to supply alcohol for consumption on the premises.

1.5 The Live Music Act will also remove licensing requirements for the provision of entertainment facilities. In addition, it will widen the current licensing exemption for music which is integral to a performance of morris dancing or dancing of a similar type, so that the exemption applies to live or recorded music, instead of unamplified live music.

1.6 The preparation of this revised guidance has also been informed by consultation with a technical advisory group which included representatives of licensing officers, local authority enforcement officers, trade, police, residents, community groups, and the LGA.

1.7 We would welcome any technical comments on this guidance by 28 September 2012.

Chapter 2: The Proposed new Chapter 15

REGULATED ENTERTAINMENT[1]

15. 1 Subject to the conditions, definitions and the exemptions referred to in Schedule 1, the types of entertainment regulated by the 2003 Act are:

- a performance of a play;
- an exhibition of a film;
- an indoor sporting event;
- a boxing or wrestling entertainment (whether indoor and outdoor);
- a performance of live music (but note the changes brought in by the Live Music Act 2012, see para. 15.7 below);
- 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.

However, these types of entertainment are only regulated where the entertainment takes place in the presence of an audience, and is provided, at least partly, to entertain that audience.

Activities that do not constitute "regulated entertainment"

15. 2 Licensing authorities should consider whether an activity constitutes the provision of regulated entertainment, taking into account the conditions, definitions and exemptions set out in Schedule 1 to the 2003 Act. This Guidance cannot give examples of every eventuality or possible activity. The following activities, for example, are not regulated entertainment:

- 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; or
- the rehearsal of a play or performance of music to which the public are not admitted and no charge is made to make a profit.

Of course, anyone involved in the organisation or provision of entertainment activities – whether or not any such activity is licensable – 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).

[1] This Chapter is the responsibility of the Department for Culture, Media and Sport

ENTERTAINMENT FACILITIES

As a result of changes to the 2003 Act by the 2012 Act, 'entertainment facilities' are no longer licensable. Conditions on a licence that relate solely to entertainment facilities will no longer apply, but note paragraphs 15.13 and 15.14 below.

PRIVATE EVENTS

15. 3 Events that are 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, a party held in a private dwelling for friends featuring live music, where a charge or contribution is made solely to cover the costs of the entertainment would not be 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. 4 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.

PUB GAMES

15. 5 Games commonly played in pubs and social and youth clubs (such as pool, darts, table tennis and billiards) would only be licensable activities if hosted in the presence of a public audience, to entertain, at least in part, that audience. For example, a darts championship competition is often licensable and could be a licensable activity, but a game of darts played for the enjoyment of the participants is not usually licensable.

STAND UP COMEDY

15. 6 Stand-up comedy is not regulated entertainment, and music that is incidental to the main performance would not make it a licensable activity. Licensing Authorities should encourage operators to seek their advice, particularly with regard to their policy on enforcement.

LIVE MUSIC

15. 7 To encourage more performances of live music, the Live Music Act 2012 (the 2012 Act) has amended the 2003 Act by deregulating aspects of the performance of live music so that, in certain circumstances, it is not a licensable activity. However live music remains licensable:

- where a performance of live music – whether amplified or unamplified – takes place other than between 08:00 and 23:00 on any day;
- where a performance of amplified live music takes place other than on relevant licensed premises or at a workplace that is not licensed other than for the provision of late night refreshment;
- 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 supply of alcohol for consumption on the premises;
- 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; and

- 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 certificate as a result of a licence review (see paragraph 15.12 below).

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 continue could lead to enforcement action and a review of the alcohol licence or certificate.

KEY TERMS USED IN THE LIVE MUSIC ACT 2012

15.8 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. A DJ who is merely playing tracks would not be a performance of live music, but 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 be encouraged to 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.

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.

"Audience" – an activity is licensable as regulated entertainment if (a) it falls within one or more of the descriptions of entertainment in paragraph 2 of Schedule 1 to the 2003 Act and (b) takes place in the presence of an audience for whose entertainment (at least in part) it is 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 activities associated with that performance. These activities include setting up before the performance, reasonable breaks (including intervals) between songs and packing up thereafter.

For the purposes of this Chapter, "relevant-licensed premises" refers to premises which are authorised to supply alcohol for consumption on the premises by a premises licence or club premises certificate;

15.9 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 certificate in respect of relevant licensed premises.

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.

LIVE MUSIC - CONDITIONS AND REVIEWS

15. 10 Any existing licence conditions on on-licensed premises which relate to live music remain in place but are suspended between the hours of 23.00 and 08.00 on the same day.

In some instances it will be obvious that a condition relates to live music and will be suspended, for example “during live music all doors and windows must remain closed”. In other instances, it might not be so obvious, for example, a condition stating “during 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 if there was a disco in an adjoining room then the condition would still apply to the room in which the disco was being held.

15.11 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. 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, by 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.

15.12 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 details about reviews under the 2003 Act.

More general licensing 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 remain in place).

APPLYING CONDITIONS TO NON-LICENSABLE ACTIVITIES

15.13 The removal of entertainment facilities from the definition of regulated entertainment raises the question of whether conditions can relate to non-licensable activities. If appropriate for the promotion of the licensing objectives, and there is a link to remaining licensable activities, conditions that relate to non-licensable activities can be added to or altered on that licence or certificate at review. 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. Similarly, it is not uncommon for licence conditions relating to the sale of alcohol to restrict access to outside areas, such as beer gardens, after a certain time.

15.14 So, in relation to the provision of entertainment facilities it might, for example, be possible in certain circumstances to limit the use or volume of a microphone made available for customers to sing, if customers who have purchased alcohol for consumption on the premises have caused a problem by become louder and less aware of potential noise nuisance later in the evening. Another example, where conditions could be considered, might be if public safety concerns arise around raised stages being accessed by customers who have been consuming alcohol and then present a greater risk of accident.

MORE THAN ONE EVENT IN THE SAME PREMISES

15.15 The amendments to the 2003 Act made by the 2012 Act do not prevent more than one performance of amplified live music being held concurrently at relevant licensed premises or a workplace, provided that the audience for each such performance is 200 or less. In some circumstances, there will be a clear distinction between performances, 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 more than 200 people are in the audience for any one performance at any time. If uncertain, it might be easier and more flexible to secure an appropriate authorisation for a larger event.

BEER GARDENS

15.16 Beer gardens are often included on a premises licence. Where a beer garden is not included in plans that are 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, inserted by section 3(4) of the 2012 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 in front of an audience of no more than 200 people.

15.17 However, a licensing authority may, in appropriate circumstances, impose a condition on a licence or certificate that relates to the performance of live music in an unlicensed beer garden using any associated licence or certificate. Provided such a condition is lawfully imposed, it takes effect in accordance with its terms. Note that the suspension of licence conditions relating to live music by the 2003 Act as amended by the 2012 Act is limited (among other things) to the performance of live music on relevant licensed premises, so a beer garden which is not within relevant licensed premises cannot benefit from that suspension.

15.18 Live amplified music that takes place in a beer garden is exempt from licensing requirements, provided that the beer garden is included in the licence 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 or fewer people. Unamplified music that takes place in a beer garden between 08:00 and 23:00 is exempt from licensing requirements, whether or not the beer garden is part of the premises licence.

MORRIS DANCING

15.19 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. 20 In addition to provision introduced into the 2003 Act by the 2012 Act, the performance of live music and playing of recorded music is not regulated entertainment under the 2003 Act to the extent that it is “incidental” to another activity which is not itself regulated entertainment. This would include live music that is not regarded as the provision of regulated entertainment by virtue of the 2012 Act.

15. 21 Whether or not music is “incidental” to another activity will depend on the facts of each case. In considering whether or not music is incidental, one relevant factor will be whether or not, against a background of the other activities already taking place, the addition of music will create the potential to undermine the promotion 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?
- 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. 22 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. 23 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.

Appendix A: How to respond

You can respond to this technical consultation in the following ways:

Online

Responses should be sent to nigel.wakelin@culture.gsi.gov.uk

By post

You can respond by hand. Please send these to:

Nigel Wakelin
Gambling Sector
Department for Culture, Media and Sport
2-4 Cockspur Street
London SW1Y 5DH

Closing date

The closing date for responses is 28th September 2012

After the consultation

The final version of the revised guidance should be laid before Parliament on 31st October.

Freedom of Information

We are required to release information to comply with the Environmental Information Regulations 2004 and Freedom of Information Act 2000. We will not allow any unwarranted breach of confidentiality, nor will we contravene our obligations under the Data Protection Act 1998, but please note that we will not treat any confidentiality disclaimer generated by your IT system in e-mail responses as a request not to release information.

Compliance with the Code of Practice on Consultation

This consultation complies with the Code.

Complaints

If you have any comments or complaints about the consultation process (as opposed to comments on these issues that are part of the consultation) please contact the DCMS Correspondence Team at the above address or e-mail using the form at www.culture.gov.uk/contact_us, heading your communication " Technical consultation on the proposed new Chapter 15 of the Section 182 Guidance issued under the Licensing Act 2003".

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APPENDIX B

COMMENTARY (DRAFT) ON TECHNICAL CONSULTATION OF 'CHAPTER 15: REGULATED ENTERTAINMENT' OF THE GUIDANCE ISSUED UNDER SECTION 182 OF THE LICENSING ACT 2003 (SEPTEMBER 2012) – LC/DP

Introduction

1.1 It is unfortunate that essential guidance is delayed in this manner. Commencement of legislation should not precede statutory guidance, especially given the technicalities involved in this area - which are only being considered/consulted upon now.

1.2 Licensing Authorities, operators and communities need reliable, consistent and unambiguous guidance and less 'pragmatism'. Clear guidance from the outset on common transitional scenarios is vital. The resource impacts of the LMA2012 on rural authorities in particular should not be underestimated. The guidance should endeavour to promote consistency and best practice across district/borough boundaries.

1.6 This guidance should also have been influenced by previous consultation stakeholder responses made in relation to deregulation of regulated entertainment and the Live Music Act Bill.

1.7 We sincerely hope that practitioner technical responses will be taken into account and influence this guidance, as past consultation responses from regulators/practitioners seem to have carried less weight than views expressed by the Live Music Forum. The Minister's comments to Mid Suffolk District Council (attached) dated 09 July 2012 should also be compatible with this guidance – specifically that the LMA provisions should not mean a "free for all".

The Proposed new Chapter 15

REGULATED ENTERTAINMENT

15. 2

These duties are often general/reactive and neither sufficient nor proportionate - as already referenced within the section 182 guidance at paragraph 2.36. The DCMS statement here should therefore be consistent with paragraph 2.36, and also link to guidance on triggering reviews to reactivate conditions/add new conditions for live music. Revising chapter 15 in isolation may cause conflict with other areas of the guidance.

PRIVATE EVENTS

15.3

This section needs expansion to cover more common scenarios, to ensure clarity for Licensing Authorities, operators and communities. For example, how the removal of entertainment facilities (dance floor, sound equipment, disco lights etc) from regulation will affect village/community hall hirings (for profit). Furthermore, how does the exemption affect the regulated entertainment activity of 'entertainment of a ***similar description*** to ***live*** or recorded music or dancing'? This section on private events has actually ***reduced*** [from the April 2012 version] from four paragraphs to now two, when some expansive clarification is likely to assist.

STAND UP COMEDY

15.6

It is unclear what this last statement on enforcement is getting at, and it should be clarified.

LIVE MUSIC

15. 7 (bullet 3)

- an example for clarity may assist – e.g. if a pub or members club were hosting band practice in the presence or an audience whilst not open for alcohol sales (a likely scenario).

An expansion here on who should be the 'responsible person' for monitoring and ensuring compliance with the exemption criteria is vital for clarity – it should be the premises licence holder/club or their representative and not the performer, hirer or anyone else.

KEY TERMS USED IN THE LIVE MUSIC ACT 2012

15.8

Clarification of where this definition of 'live music' comes from will be of benefit.

This guidance should also give some specific examples/scenarios to help support consistency rather than deferring such consideration to the Licensing Authority/Courts.

There is a resource implication for the Licensing Authority seeking additional detail from operators of licensed venues and the Government should give due consideration to this and also to updating of prescribed forms, which are in the main still a prescribed format from 2005. More detailed information relating to the music activity of an alcohol licensed venue is necessary – and whether the venue management intend to rely on any exemption in whole or in part for their operation.

Exemption of outdoor areas, including workplaces, for amplified live music is very likely to lead to complaints and resource impacts on the Local Authority.

It should be clearly stated here that premises not licensed for alcohol via a PL or CPC, and submitting a TEN for alcohol supply, cannot benefit from the live music exemption, and that the premises-user should therefore include any live music as regulated entertainment on the TEN. The situation of premises licences being 'overriden' by temporary event notices for one-off occasions needs consideration and commentary by the DCMS.

LIVE MUSIC - CONDITIONS AND REVIEWS

15.10

The sentence including "suspended between the hours of 23.00 and 08.00" has the timings the wrong way round. The potential problems with sub-division of premises, enforcement and monitoring of the 200 audience limit are self-evident. See also our comments at 15.7 above.

Reference should be made to the potential resource and cost implication for Licensing Authorities in having to 're-run' hearings, that have often been originally instigated by the local community, and ensure that the self-set fee regulations (due later in 2012-13) clearly make allowance for full cost recovery of this ***additional*** burden, including any subsequent appeals.

This guidance should expand on scenarios whereby a review may be appropriate, and acknowledge the likelihood of reinstatements being high in some localities (particularly rural). Clear reference should be made to section 109 of the Police Reform and Social Responsibility Act 2012, which ***reduces*** the evidential burden on Licensing Authorities from 'necessary' to 'appropriate' for promotion of the licensing objectives, and that the same test will apply to reviews related to live music.

A statement on how the new live music provisions impact on the localism and 'empowering of local communities' brought about by the separate Licensing Act 2003 reforms via the Police Reform and Social Responsibility Act 2011 may also be helpful for our communities. The DCMS/Home Office should clearly address this inconsistency, preferably in this guidance, and not leave it to Local Authorities to try and rationalise when explaining these changes to our communities.

Another absolutely critical area, where the guidance should not be silent, is whether a licensing Sub-Committee determination (or a mediated agreement), for a ***new or varied*** premises licence or club premises certificate can, at that determination/issuing stage, still attach conditions relating to live music even if they are inactive for 'exempt' live music activities. Section 177A of the Act refers to review being the (only) process to activate removal of the exemption and conditions, but no reference is made to the validity of imposing 'dormant' live music conditions via section 17 or 34 processes - particularly where there are relevant representations relating to prevention of public nuisance.

By extension of this issue, the Licensing Act 2003 forms should be updated to require additional detail on whether a premises operator/club is intending to rely on exempt music activity and to require some level of detail on that.

Another key transitional area is the scenario whereby a recent review decision has added live music controls – whether specifically or as part of general prevention of nuisance – following complaints/representations. Conditions may have been attached via a review hearing which is now in the appeal process. What happens to (a) the recent review decision (is a FURTHER review necessary to remove the exemption/reactivate conditions in such circumstances?), and (b) the appeal as far as it relates to live music? This is a real transitional scenario and this guidance needs expansion to advise accordingly.

It is also noted that 'mediation' to avoid a hearing to include the statement that section 177 does not apply to the relevant licence or certificate is not viable as it is clear from the review provisions of the Act (section 52(2) for premises or 88(2) for clubs) that a hearing must take place. The resource impact for Licensing Authorities holding a hearing where the licence-holder or club are not contesting disapplication of section 177 is a significant concern.

15.11

This paragraph would benefit from clearer wording and some re-stating of the legislation at section 177A. Please refer to our comments above for this section.

15.12

A clear statement here to the ‘appropriate’ test should be made.

A statement here to the effect that in borderline cases where a condition is disputed over whether it relates solely to live music or not, that the condition should remain in effect for non-exempt activity. Also perhaps a recommendation for licence holders to voluntarily vary their licences to update conditions for the sake of clarity, where they wish to rely on the live music exemption, may be beneficial.

APPLYING CONDITIONS TO NON-LICENSABLE ACTIVITIES

15.13

The potential pit falls, or increased risk of legal challenge, for instigating a review of a licence for a non-licensable activity needs to be better clarified in this guidance. The presence of the live music alone, not directly ‘combined’ with alcohol consumption risks, may need to generate a review (i.e. noise nuisance grounds). The resource impact on Local Authorities needs to be considered.

15.14

The impact of this exemption on dance floors, disco equipment and karaoke equipment – and linked hirings of licensed venues - should be clearer stated.

MORE THAN ONE EVENT IN THE SAME PREMISES

15.15

This also raises the issue of larger venues operating exempt sub-200 audience activities and how they are going to effectively monitor and control capacity to ensure they stay within the exemption criteria. This is also an area that will be difficult to monitor for responsible authorities. It should be stated as the clear responsibility of the premises licence holder or qualifying members club to ensure the exemption is monitored/correctly applied.

This section implies that it is permissible to ‘sub-divide’ an outdoor area licensed – as further referenced below in 15.16.

BEER GARDENS

15.16

This is a very significant issue for rural LAs in particular and is likely to result in a major increase in noise complaints and follow-up actions – including reviews reliant on section 177A (where forming part of licensed premises).

Many outdoor areas of licensed premises in residential areas are proportionately controlled, following community contested applications in relation to prevention of public nuisance, so to have to resort to review to reinstate existing controls, at significant cost to Local Authorities is a major concern. The review mechanism available to local residents and businesses, as well as responsible authorities, means that Local Authorities are not in a position to control the volume of reviews it administers.

Clarification on how these provisions impact on permanent or time-limited premises licences authorising ON sales for **outdoor** areas (i.e. parks, grounds and other open spaces) needs to be given. The proposed DCMS guidance at 15.10 suggesting splitting of a building into separate rooms, controlled and exempt, raises concerns that a large outdoor music event/festival on alcohol licensed grounds could be split into separately defined sub-200 audience areas to avoid licence controls for a significant live music event. This would of course be a likely review situation, although if permissible in law then that could give rise to some difficulty. A statement in this guidance addressing this issue is vital and there may be conflict between the guidance and legislation in this area.

15.17

When this paragraph is talking about 'unlicensed beer gardens' it should be expanded to clarify whether this is meaning unlicensed for ON sales of alcohol, unlicensed for any regulated activity or, if it is already shown on a licence plan, for non-licensable consumption of alcohol.

MORRIS DANCING

15.19

An example of what may constitute a 'similar activity' to morris dancing may be helpful.

Compliance with the Code of Practice on Consultation

Criterion 2 of the code recommends a 12 week minimum consultation period. This consultation is running for less than half of that time and with the intention that it is laid before parliament to take effect 31 October 2012, how much influence are technical responses going to have?