

The voice of the Voluntary Arts

Licensing Act 2003

There's been a lot of concern and confusion about the modernisation of the licensing laws in England and Wales. This briefing aims to demystify the issues, outline the facts and help clarify what organisations need to do to comply with the Act.

What's happening?

The basic facts

- The Licensing Act was passed on 10 July 2003.
- Parliament now needs to approve what's called the **Final Draft Guidance**, and detailed regulations on Forms, Fees and Procedures need to be drawn up.
- Once this has happened there will be a six-month period in which licensing authorities (local councils) will be required to create their **licensing policy statements**.
- At the end of the six months the '**transition period**' will commence (this starting point is referred to as the '**1st appointed day**'). The transition period will last nine months ending with the '**2nd appointed day**'. During this transition period licensing authorities will decide upon all applications which are to be effective from the end of the transition period.
- Licences will be effective after the end of the transition period i.e. on the '**2nd appointed day**'.

When do we need to do something?

No need to panic! You won't be able to apply for the new licenses until councils have created their licensing policy statements – i.e. until the '1st appointed day.' As this date hasn't yet been announced, no-one knows exactly when organisations will have to start implementing the Act. Nor is there a definite date for when full implementation has to have taken place. We do know however that the new system may not in fact take effect until April 2005 or even later. Nevertheless, it is important that you are aware of what is going to happen and how the changes will affect you.

The aims of the act

The overall aim of the new Act is to modernise the existing outdated licensing systems governing public entertainment and the sale and supply of alcohol. The new system is meant to be more streamlined and unified, integrating six existing licensing regimes (alcohol, public entertainment, cinemas, theatres, late night refreshment house and night cafes) into a single Act – thereby eliminating significant amounts of red tape.

This means that under the new system only one single license will be needed to:

- supply alcohol;
- provide 'late night refreshment' (hot food or drink for consumption on or off the premises, sold between 11pm and 5am);



- provide 'regulated entertainment' (such as a performance of live music); or
- any combination of these activities.

Points to note

Some definitions

Regulated entertainment

The main definitions of 'regulated entertainment' contained in the Act are:

- a performance of a play;
- an exhibition of a film;
- an indoor sporting event;
- boxing or wrestling entertainment (indoors or outdoors);
- a performance of live music;
- any playing of recorded music;
- a performance of dance; or
- entertainment of a similar description to live music, recorded music or dance.

Regulated entertainment must take place in the presence of an audience and be provided for the purpose of entertaining that audience.

Entertainment facilities

This means facilities for enabling people to be entertained or to take part in entertainment.

This applies only to:

- making music;
- dancing; or
- entertainment of a similar description.

For example, ***entertainment facilities*** might be a dance floor provided for customers to use, whereas ***entertainment*** might involve a performance of dance provided for an audience.

Regulated

To be 'regulated,' entertainment or entertainment facilities must be provided:

- for the public or a section of the public; or
- exclusively for members of a club and their guests, or

- (if neither of these apply) with a view to profit.

Also, the premises on which the entertainment takes place, or entertainment facilities provided, must have been made specially available for the entertainment to take place.

Exemptions

The following are exempt from the requirement of a license. But remember that you will still need a license if alcohol or late night refreshment is supplied.

- ***Films –***

if the sole or main purpose is to demonstrate any product, advertise goods or services, provide information, education or instruction, or as parts of exhibitions in museums, galleries etc.;

- ***TV and radio broadcasts;***

- ***Vehicles in motion;***

- ***Morris dancing –***

(or a performance of un-amplified live music as an integral part of such dancing);

- ***Incidental music –***

the performance of live music or the playing of recorded music if it is incidental to some other activity which is not itself regulated entertainment;

- ***Live music at small premises –***

where there is a performance of live music (and no other form of regulated entertainment) between 8am and midnight at premises which have a capacity of less than 200 people and are used primarily for the supply of alcohol;

- ***Places of worship;***

- ***Religious meetings or services;***

- ***Church, chapel, village, parish or community halls –***

(or other premises of a similar nature).

These will need a licence for regulated entertainment (unless it comes within one of



the exemptions listed above), but will be exempt from paying the license fee. If, however, the licence also authorises the use of the premises for the supply of alcohol or the provision of late night refreshment, a fee will be required for those activities;

- **Garden fetes –**
(unless for private gain).

Other concessions

- **Private events –**
private events with a view to private profit or to raise funds for charity would be licensable. However, in the case of a charitable event to which the public is not invited, and where there is no obligation for the audience to give any money to charity, then this entertainment would not be considered licensable. The difference is that the motivation to make a profit can lead people to take chances or cut corners about things like public safety or the protection of children in order to maximise the profit involved (for example, greater risks might be taken with regards to the number of people invited, seating arrangements and access to exits in an emergency). Licensing forces people to take a step back and think properly about the safety and well being of performers, the audience and the interests of the local community.
- **Outdoor events –**
under the new Act, any licensable activity taking place on private or public land will require a licence. Local authorities will be encouraged to obtain premises licences to cover public spaces, such as village greens or streets where performances often take place. No additional licence would then need to be obtained by anyone else carrying out licensable activities on such premises covered by such a licence. Note however that the consent of the

local authority holding the licence would be required and permission granted for use of the land. But if there is no pre-existing licence, unless your event falls into an exempt category, a license is required to authorise the provision of regulated entertainment.

- **Un-amplified live music –**
the Licensing Bill has now been amended to provide a significant concession on low-level un-amplified music, like folk guitarists, in small premises. Un-amplified live music performed between 8am and midnight to an audience of under 200 will not be subject to any of the conditions attached to a premises licence or club premises certificate that have been imposed by the local authority. The concession is not confined to public houses and so will benefit small folk clubs and village and community halls alike. This will, however, remain reviewable to protect local residents and control those who might abuse this concession.
- **The ‘two in a bar rule’ –**
The current 'two in a bar' rule will be discontinued. The Government believes that the rule hinders the development of live music as it can restrict the range and type of entertainment that is provided. Currently, as public entertainment licenses can be very expensive in some local authority areas, pubs often only put on acts with one or two entertainers rather than face the full cost of a licence allowing them to put on a bigger programme or a wider range of bands and acts. The Licensing Act aims to ensure that all kinds of live music are on an equal footing – whether one, two, five or ten performers are involved – allowing musicians and other entertainers to flourish. The new licenses will permit the sale of alcohol and the provision of live music for the same cost as a licence solely for alcohol – removing added cost of a separate public entertainment license.



New types of licenses

Under the new Act there will be several types of license:

1. Temporary event notices

Short-term events will benefit from a more informal system which allows 'permitted temporary activities'. These will only require a small fee and a simple notice (a 'temporary event notice') to be sent to both the local licensing authority and the police. They will need 10 working days notice, and can only object on the basis that the event could lead to crime and disorder.

Temporary event notices are intended to be a simple way of allowing people who are not familiar with the law or who do not otherwise need a license to obtain temporary authorisation to hold 'one-off'/short term events that involve the sale of alcohol and/or the provision of regulated entertainment for a restricted time period. They in effect replace the old Occasional Licences and Occasional Permissions.

Note – the catches are:

- personal licence (see definition below) holders can have up to 50 per year;
- everyone else aged 18 or over can only have 5 per year;
- an activity is only licensed for a maximum of 96 hours (with then a break of 24 hours);
- any particular premises can only apply for 12 per year (subject to an overall limit of 15 days);
- there can only be a maximum attendance of 499 people at any one time.

If these catches are exceeded you need a Premises Licence.

2. Premises licence

This is a single license which can permit premises to be used to supply alcohol, to provide regulated

entertainment and to provide refreshment late at night.

3. Club premises certificate

This is a licence granting 'qualifying club' status to specific premises, according to a number of qualifying conditions, including the provision that there are at least 25 members and that alcohol is only supplied by or on behalf of the club.

4. Personal licence

This is a new system of personal licences relating to the supply of alcohol. It is a portable licence granted to an individual enabling the holder to move more freely between premises and sell alcohol (only where a premises licence is in force.) The licence's duration is ten years.

5. Provisional statement

This is an 'interim' statement as regards the provision of a Premises Licence where the premises has not yet been built and provides the investors with some degree of certainty as to the future use of the premises.

Applying for a license

You will need to apply to your local authority for a license. They can advise you on the correct forms, procedures, fee levels and time limits.

1. Premises licenses and club premises certificates

To apply for a premises licence or club premises certificate you will need:

- a completed application form;
- an operating schedule;
- a plan of the premises;
- a form of consent from the person named as 'designated premises supervisor' (if applying to supply alcohol);
- to advertise the application and notify it to specified bodies;
- to pay the fee.



2. Personal licences

Existing Liquor Licensees will need:

- a completed application form;
- a copy of their existing licence;
- photographs;
- no convictions since date of licence relied upon;
- to pay the fee.

Everybody else:

- as above but will also need to complete a Recognised Training Course and obtain a basic Criminal Record check – for more information contact the Criminal Records Bureau (see *contacts at the end*).

3. Temporary event notices

The notice must state:

- what you intend to do (and if selling alcohol, whether for consumption on or off the premises or both);
- for how long and at what time(s);
- the maximum number of people there at the same time;
- and where you intend to do it.

Your temporary event notice is basically to notify the local police and licensing authority of your event – as they can object to it taking place on the basis that the event could lead to crime and disorder. The procedure is as follows:

- send two copies of your notice to your local licensing authority with the correct fee, at least 10 working days before the start of your event;
- also send two copies to your local chief officer of police (again, 10 days before);
- the licensing authority must acknowledge receipt of the notice within one working day (two if not delivered on a working day);
- the licensing authority can give you a ‘counter notice’ to stop the event going ahead, but must do this at least 24 hours before the event.

They will do this if:

- you hold a personal licence, and have already given at least 50 temporary event notices that year;
 - you don’t hold a personal licence, and have already given at least five temporary event notices that year;
 - the event takes place on a premises that has already given at least 12 temporary event notices;
 - the event lasts more than 15 days;
 - the event means the total number of days the premises has held temporary events that year adds up to more than 15 days.
- police can object to the event going ahead if they believe that it will lead to crime or disorder. To do this they must give you and the licensing authority an objection notice, no later than 48 hours after being given a copy of the original temporary event notice;
 - objections must be logged and considered by the licensing authority. It must hold a hearing (unless both you and the police can reach an agreement) at least 24 hours before the event begins. It may then either allow the event to go ahead, or serve a counter-notice (with reasons) that prevents the event from proceeding;
 - however, you do have the right to appeal;
 - if there is more than one licensing authority involved, they must act jointly.

Applying during the ‘transition period’

During the transition period there will be three key types of application which need to be made to licensing authorities:

- **conversion applications –**

These are applications made within the first six months of the transition period whereby there will be a presumption that existing licensed premises will be granted a new ‘Premises Licence’ unless there are any police objections on grounds of crime prevention.



- **variation applications during transition** – these are applications made within the first six months of the transition period where a ‘conversion’ application has already been granted and the applicant wishes to vary a part of his/her current licence permissions. For example, he/she may wish to extend their hours.
- **new applications** – these are applications made by persons who either do not hold a licence at the start of the transition period, or have missed the conversion/variation deadlines for applications during transition, but wish to have a licence effective from the end of the transition period.

Following the end of transition, all licence applications will be ‘new applications’ and subsequent ‘variations’.

Operating schedules

An ‘operating schedule’ is required as part of a premises licence/club premises certificate application. Whilst the precise detail of each will be slightly different the key details on the ‘operating schedule’ will be:

- the relevant licensable activities;
- the times they are to take place;
- other times when the public will be present at the premises;
- who the designated premises supervisor is;
- if supplying alcohol, whether for consumption on or off the premises, or both.

Fees

The fee for a premises licence will be no different whether an applicant simply applies for an authorisation for use of premises to supply alcohol or also decides to apply at the same time for authorisations to provide regulated entertainment. Any difference in fee levels, which

will be set centrally to avoid inconsistencies, is likely (although no final decisions have been taken yet) to relate to the rateable value of the premises. This will mean that the use of larger venues is likely to attract a higher fee than smaller ones.

The estimated one-off fee for applying for a premises licence is expected to be between £100 and £500 with an annual charge of between £50 and £150 to cover any subsequent inspections and enforcement.

The fee for a temporary event notice will be around £20.

However, fees are still to be finalised.

Closing times/hours of operation

There has been much hype about 24 hour pubs as a result of the Licensing Act. This is because it will lead to flexible, rather than uniform, closing times and allow for the possibility of premises to remain open for up to 24 hours. However, the actual hours of operation will vary from venue to venue depending on the operator’s wishes and the consideration of the views of people affected, for example, local residents and businesses.

Alongside their application for a premises licence, applicants will be required to submit an operating schedule to the licensing authority, which will include the proposed hours of operation.

The sticky bit!

The consequences of NOT having a license

It is an offence to carry on any licensable activity without a premises licence, temporary event notice or club premises certificate. The penalty could be up to six months imprisonment, a fine of up to £20,000, or both. This has been set purposefully high to ensure that the correct licensing procedures are followed and to prevent public safety being put at risk. However, these are



the maximum penalties and, as with all offences, the courts would decide on the appropriate punishment depending on the facts of the case.

It will not be seen as an offence if your only involvement in the entertainment was that you:

- performed live music or played recorded music;
- performed a dance;
- provided entertainment similar to performing live music, dance or playing recorded music;
- performed in a play;
- participated in boxing or wrestling entertainment; or
- or participated as a sportsman in an indoor sporting event.

The Act also allows the defence of 'due diligence' where there will not be a charge if it 'was due to a mistake, or to reliance on information given to him, or to an act or omission by another person, or to some other cause beyond his control, and he took all reasonable precautions and exercised all due diligence to avoid committing an offence'. Accordingly, an organiser should check that any venue has proper permission to stage regulated entertainment, but if he is misled, he is fully protected by the Act.

The Live Music Forum – help at hand

The Live Music Forum is a new body created to promote the performance of live music and make sure the new system introduced by the Licensing Act delivers real benefits for grass root musicians by creating more live music venues. The Forum will work with all those involved in live music to ensure they make the most of the opportunities offered by the Act, and will monitor and evaluate the Act's impact on live music provision. It is made up of members of the music industry, Arts Council England, local authorities, small venue owners and Government.

Licensing in Scotland and Ireland

The Licensing Act 2003 only applies to England and Wales. Below you will find information about the licensing laws in Scotland, Northern Ireland and the Republic of Ireland. However, it is worth bearing in mind that the changes in England and Wales **will** affect musicians (paid and unpaid) who cross the border to perform.

Scotland

The current situation in Scotland will remain the same and no changes have been announced as yet. To find out about licensing and how to apply, contact your local authority.

Northern Ireland

Under the Local Government (Miscellaneous Provisions) NI Order 1985 – Licensing of Places of Entertainment – (and subsequent orders) an entertainment licence is required for the following:

- a theatrical performance;
- dancing, singing and music or any other similar entertainment;
- a circus;
- any entertainment which consists of or includes any public contest, match, exhibition or display or boxing, wrestling or similar sport, billiards, pool, snooker or similar game or darts;
- billiards, pool, snooker or similar game or darts, not being a public contest or match etc, but being the main purpose of the premises.

The licensing requirements generally apply to public or private property whether indoor or outdoor.

Anybody planning an event should approach their district council to enquire about whether an entertainment license is required.



Republic of Ireland

Very basically, any event with an audience of over 5,000 people requires an event license from the local authority. For more information on the Licensing Bill in RoI, contact the Association of Irish Festival Events – **T: 00353 (0) 90 964 3779**, email: info@aoifeonline.com or visit the website: www.aoifeonline.com

Further information

The DCMS website has answers to most queries about the Licensing Act at: www.culture.gov.uk/alcohol_and_entertainment/licensing_act_2003/default.htm

The Act and Explanatory Notes can be viewed via Her Majesty's Stationary Officer website: www.legislation.hmsso.gov.uk/acts/acts2003/20030017.htm

The Regulatory Impact Assessment is part of the Licensing Bill, available via the DCMS website: www.culture.gov.uk/global/publications/archive_2003/licensing_bill.htm

Statutory Guidance has not been approved by Parliament as yet but will also shortly be available from the HMSO/DCMS website.

Criminal Records Bureau – www.crb.org.uk/
tel CRB Information Line on **0870 9090811**

The Institute of Licensing –
www.instituteoflicensing.org

Local Authorities Co-ordinators of Regulatory Services – www.lacors.gov.uk

Local Government Association –
www.lga.gov.uk

National Association of Local Government Arts Officers – www.nalgao.org

Institute of Alcohol Studies –
www.ias.org.uk/reform_2003bill.html

Musicians Union – www.musiciansunion.org.uk

Music For London – www.musicforlondon.co.uk/Live_Music_Licensing.htm

Disclaimer

This Briefing is by no means a definitive statement on the Licensing Act and VAN cannot be held responsible for any errors or misinformation. If you have any further queries, contact the Department for Culture Media & Sport, 2-4 Cockspur Street, London SW1Y 5DH.
T: 020 7211 6200 or
email: enquiries@culture.gov.uk

Disclaimer: We have taken reasonable precautions to ensure that the information contained in this Briefing is accurate. However, the document is not intended to be legally comprehensive. We recommend you take legal advice before taking action on any of the matters covered herein.



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