

LIVE MUSIC BILL [HL]

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Live Music Bill [HL] as brought from the House of Lords on 25 October 2011. They have been prepared by the Department for Culture, Media and Sport, with the consent of Mr Don Foster, the Member in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Bill seeks to amend the Licensing Act 2003 (“the 2003 Act”) by partially deregulating the performance of live music and removing regulation about the provision of entertainment facilities. Its purpose is to:

- remove the licensing requirement for unamplified live music taking place between 8am and 11pm in all venues, subject to the right of a licensing authority to impose conditions about live music following a review of a premises licence or club premises certificate relating to premises authorised to supply alcohol for consumption on the premises;
- remove the licensing requirement for amplified live music taking place between 8am and 11pm before audiences of no more than 200 persons on premises authorised to supply alcohol for consumption on the premises, subject to the right of a licensing authority to impose conditions about live music following a review of a premises licence or club premises certificate;

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- remove the licensing requirement for amplified live music taking place between 8am and 11pm before audiences of no more than 200 persons in workplaces not otherwise licensed under the 2003 Act (or licensed only for the provision of late night refreshment);
- remove the licensing requirement for the provision of entertainment facilities; and
- widen the licensing exemption for live music 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.

BACKGROUND

4. The 2003 Act makes the following activities “licensable activities”:
 - the sale by retail of alcohol;
 - the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club;
 - the provision of regulated entertainment; and
 - the provision of late night refreshment.

Schedule 1 to the 2003 Act

5. Schedule 1 to the 2003 Act sets out what amounts to the provision of regulated entertainment.

6. Paragraph 1(1) defines provision of regulated entertainment by reference to the descriptions of entertainment contained in paragraph 2 and entertainment facilities falling within paragraph 3. The entertainment is, or entertainment facilities are, licensable to the extent that they are provided for members of the public, members of a club, or (in any other case) for payment and with a view to profit.

7. Paragraph 2 contains a list of descriptions of entertainment which are regulated under the 2003 Act if they take place in the presence of an audience. These include a performance of live music (paragraph 2(1)(e)) and a performance of dance (paragraph 2(1)(g)).

8. Paragraph 3 defines entertainment facilities as meaning facilities for enabling persons to take part in making music or dancing (or entertainment of a similar description) for the purpose of being entertained.

9. Part 2 contains various exemptions where, if the requirements set out are satisfied, entertainment and entertainment facilities are not to be regarded as the provision of regulated entertainment for the purposes of the 2003 Act.

10. Part 3 contains interpretation provisions pertaining to the Schedule, including that “music” includes vocal or instrumental music or any combination of the two.

Section 177 of the 2003 Act

11. Section 177 of the 2003 Act contains provisions about dancing and live music in small premises. It applies in two different situations:

- Firstly, where a premises licence authorises both the supply of alcohol for consumption on the premises and the provision of “music entertainment”¹. Provided that the premises: (1) are used primarily for the supply of alcohol for consumption on the premises; and (2) have a permitted capacity of not more than 200 persons, then conditions imposed by a licensing authority relating to the provision of live music do not have effect at any time when the premises are open for the supply of alcohol and are being used for music entertainment. However any such conditions will have effect if the licensing authority considers that imposition of a condition is necessary on the grounds of either prevention of crime and disorder or public safety; or if they are altered or added as a result of a review of premises licence² and include a statement that section 177 does not apply.
- Secondly, where a premises licence authorises the provision of music entertainment and the premises have a permitted capacity of not more than 200 persons. If such premises are being used between 8am and midnight for the performance of unamplified live music or the provision of facilities for enabling persons to take part in such a performance, and are not being used for the provision of any other description of regulated entertainment, then conditions imposed by the licensing authority relating to music entertainment do not have effect. However any such conditions will have effect if they are altered or added as a result of a review of the premises licence and include a statement that section 177 does not apply.

12. As well as applying to premises licences, section 177 also applies to club premises certificates³, with the modifications set out in subsection (7).

13. If enacted, the Bill would:

- amend section 177, so that that section would apply only to dancing;

¹ Music entertainment is defined in section 177(8) by reference to paragraphs 2(1)(e) or (g) of Schedule 1 (performance of live music and dance respectively).

² Sections 51-53 of the 2003 Act deal with review of premises licences.

³ Club premises certificates are dealt with in Part 4 of the 2003 Act.

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- add a new section 177A dealing with live music; and
- make amendments to Schedule 1.

14. Further detail about the effect of the Bill is contained in the section below headed “Commentary on Clauses”.

15. The Bill does not give rise to any ECHR issues.

TERRITORIAL EXTENT

16. The Bill extends to England and Wales only.

COMMENTARY ON CLAUSES

Clause 1: Licence review for live music entertainment

17. Clause 1 amends section 177 of the 2003 Act, which currently applies to dancing and live music in small premises, so that it applies only to dancing.

18. This Clause also adds a new section 177A to the 2003 Act dealing with live music taking place in premises authorised to be used for the supply of alcohol for consumption on the premises. Its effect is that conditions in a premises licence or club premises certificate relating to live music will not have effect where the requirements set out in section 177A(1)(a) to (c) are satisfied. However, on a review of the premises licence or club premises certificate, a condition relating to live music may be made effective by altering it to include a statement that section 177A does not apply. In addition, at a review a licensing authority may add a condition relating to live music as if the live music were regulated entertainment authorised by the licence or certificate.

19. Section 177A(5) contains a list of the provisions in the 2003 Act under which conditions to which section 177A applies may be included in, or added to, a premises licence or club premises certificate.

Clause 2: Removal of requirement to licence the provision of entertainment facilities

20. Clause 2 removes from Schedule 1 to the 2003 Act all references to entertainment facilities (facilities for making music or dancing). Its effect is that the provision of entertainment facilities will no longer amount to regulated entertainment, and will therefore not be licensable.

Clause 3: Exemptions for live music entertainment

21. Clause 3 amends Part 2 of Schedule 1 to the 2003 Act, which contains exemptions where specified activities are not to be regarded as the provision of regulated entertainment.

22. Subsection (2) extends the exemption relating to music accompanying morris dancing in paragraph 11 of Schedule 1, so that it applies to live or recorded music instead of unamplified live music.

23. Subsection (3) inserts a new paragraph 12A into the Schedule so that live music taking place on premises authorised to supply alcohol for consumption on the premises is exempt from entertainment licensing provided firstly that the requirements of the new section 177A(1)(a) to (c) are satisfied; and secondly that conditions about live music have not been included on a review of the licence or club premises certificate. Where a licensing hours order has been made under section 172 of the 2003 Act to mark an occasion of exceptional international, national or local significance, the time of day to which this exemption applies will be extended to cover the period specified in the order.

24. Subsection (4) inserts a new paragraph 12B into the Schedule exempting live music from a licensing requirement if it takes place in a workplace not otherwise licensed under the 2003 Act (or only licensed for late night refreshment), provided that the requirements of sub-paragraphs (b) and (c) of paragraph 12B are met.

25. Subsection (5) inserts a new paragraph 12C into the Schedule exempting unamplified live music from entertainment licensing provided that it takes place between 8am and 11pm on the same day. Where the music takes place in premises authorised to supply alcohol for consumption on the premises, this exemption is subject to the proviso contained in section 177A allowing a licensing authority to make conditions relating to live music effective on a review of the licence or club premises certificate.

FINANCIAL EFFECTS OF THE BILL

26. The Bill does not impose any calls on the Consolidated Fund or the National Loans Fund.

EFFECTS OF THE BILL ON PUBLIC SERVICE MANPOWER

27. A full Impact Assessment has been produced outlining the effects of the Bill, and copies have been placed in the Libraries of both Houses. The Impact Assessment is also available from the website of the Department for Culture, Media and Sport at www.culture.gov.uk.

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28. The Impact Assessment examines a range of possibilities in relation to public service manpower but notes that a minimal overall effect is expected. A review to assess the overall effect will be undertaken after three years.

SUMMARY OF THE IMPACT ASSESSMENT

29. The Impact Assessment identifies a Net Benefit over a 10 year period of £9.5m. The Net Benefit is based on an estimated annual saving for businesses and event organisers (in relation to the removal of administration and fee burdens) of £1.2m - £1.8m for venues hosting music where 200 people or less are present. In addition, there are likely to be further economic benefits to businesses which will be able to host more ad hoc events, and attract new and more diverse markets in a wider range of locations. Similarly, community organisations will be able to host more events without administrative burdens.

30. Further non-monetised benefits include wellbeing from attendance and participation in more live music performance, particularly in the context of local participatory activity. The Net Benefit includes a reduction to compensate for any potential negative impact due to noise but, as licensing authorities will continue to have a range of range of powerful sanctions available to deter licensed premises from failing to adhere to best practice, the potential for adverse activity is estimated to be small.

31. Impacts on carbon emissions are negligible.

COMMENCEMENT

32. The Bill will come into force on the date specified by the Secretary of State in an order made by statutory instrument.

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