



Gwasanaeth Democraidd
Democratic Service
Swyddfa'r Cyngor
CAERNARFON
Gwynedd
LL55 1SH

Cyfarfod / Meeting

PWYLLGOR TRWYDDEDU CANOLOG
CENTRAL LICENSING COMMITTEE

Dyddiad ac Amser / Date and Time

10:00a.m., DYDD LLUN, 4 MAWRTH 2013

10:00a.m., MONDAY, 4 MARCH 2013

Lleoliad / Location

SIAMBR DAFYDD ORWIG,
SWYDDFEYDD Y CYNGOR,
CAERNARFON

Pwynt Cyswllt / Contact Point

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PWYLLGOR TRWYDDEDU CANOLOG

CENTRAL LICENSING COMMITTEE

Aelodaeth/Membership (15)

Plaid Cymru (7)

Y Cynghorwyr/Councillors

Eddie Dogan Huw Edwards

Annwen Hughes Chris Hughes

W. Tudor Owen Ann Williams

Gethin G. Williams

Annibynnol/Independent (4)

Y Cynghorwyr/Councillors

Eryl Jones-Williams Christopher O'Neal

Angela Russell Elfed Williams

Llais Gwynedd (4)

Y Cynghorwyr/Councillors

John Brynmor Hughes Llywarch Bowen Jones

Peter Read Gruffydd Williams

Aelod Ex-officio/Ex-officio Member

Cadeirydd y Cyngor/Chairman of the Council

AGENDA

1. APOLOGIES

To receive any apologies for absence.

2. DECLARATION OF PERSONAL CONNECTION

To receive any declaration of personal interest.

3. URGENT ITEMS

To note any items that are a matter of urgency in the view of the Chairman for consideration.

4. MINUTES

The Chairman shall propose that the minutes of the meeting of this Committee, held on 10 December 2012, be signed as a true record.

(copy herewith – **white** enclosure)

5. LICENSING SUB-COMMITTEE MINUTES

To submit, for information, minutes of the Licensing Sub-committee meetings held on the following dates:-

(a) 29 November 2012

(b) 12 December 2012

(copy herewith – **green** enclosures)

6. LIVE MUSIC ACT 2012

To submit the report of the Head of Regulatory Department

(copy herewith – **gold** paper)

CENTRAL LICENSING COMMITTEE, 10.12.12

Present: Councillor W. Tudor Owen (Chairman)

Councillors: Eddie Dogan, Huw Edwards, Annwen Hughes, Eryl Jones-Williams, Christopher O'Neal, Angela Russell, Ann Williams, Elfed W. Williams, Gruffydd Williams

Also Present: Siôn Huws (Compliance and Language Manager), Gwenan Williams (Licensing Manager) and Gwyn Parry Williams (Member Support and Scrutiny Officer).

Apologies: Councillors John Brynmor Hughes, Peter Read, Gethin G. Williams

Welcome

Councillor Huw Edwards was welcomed to the meeting following his recent surgery.

Regards

Regards were sent to Councillor Peter Read for a speedy recovery.

1. DECLARATION OF PERSONAL INTEREST

No declarations of personal interest had been received from any member present.

2. MINUTES

The Chairman signed the minutes of the previous meeting of this committee held on 17 September 2012, as a true record.

3. MINUTES OF THE CENTRAL LICENSING SUB-COMMITTEES

Submitted - for information, the minutes of meetings of the Central Licensing Sub-committee held on 18, 22 October 2012 and 20 November 2012.

RESOLVED to accept the information.

4. NEW LICENSING POWERS – EARLY MORNING ALCOHOL RESTRICTIONS ORDERS

Submitted – the report of the Head of Regulatory Department on the use and implications of the Early Morning Restrictions Orders (EMROs) to Gwynedd Council as a licensing authority.

The Licensing Manager reported that the power conferred on the Licensing authority to make, vary or revoke an EMRO was outlined in the 2012 Regulations of the Licensing Act 2003 (Early Morning Alcohol Restriction Orders). This power enabled an authority to prohibit the sale of alcohol for a

specific time period between the hours of 00.00 and 06.00 in the whole or part of its area, if it was satisfied that this would be appropriate action for the promotion of the licensing objectives.

It was noted that Early Morning Restrictions Orders were designed to address recurring problems, such as crime and disorder associated with high levels of alcohol consumption at specific times in specific areas; serious public nuisance and other incidents of anti-social behaviour resulting from alcohol which were not directly attributable to specific premises. An EMRO could be applied to the whole or part of the licensing authority's area. An EMRO applied to the supply of alcohol authorised by premises licences, club premises certificates and temporary events notices. An EMRO did not apply to other licensable activities. Attention was drawn to the guidelines produced by the Home Office on these orders.

A decision as to whether or not to apply the EMRO to licensed premises in Gwynedd had to be evidence based. The Council was required to demonstrate that existing powers available under the Licensing Act 2003 (as amended) had been fully utilised in promoting the licensing objectives. Evidence from partners such as the Police, the Community Safety Partnership and other responsible authorities, along with evidence from within the licensing and public protection services of the Council had to be considered. The Home Office in its amended guidance issued under Section 182 of the Licensing Act 2003, made it clear that the licensing authorities were best placed to determine what actions were appropriate for the promotion of the licensing objectives in their area. The potential burden of a determination on premises licence holders should also be considered as well as the benefits in terms of promoting the licensing objectives. Details were provided of other measures which could be used instead of an EMRO.

It was noted that the Council's Licensing Policy specified that relevant information held by responsible authorities, such as the police and environmental health within the Council, could be used to establish the evidence base to develop a Cumulative Impact Policy. Such information would include evidence of increased incidence of crime and disorder and public nuisance associated with a significant concentration of licensed premises within a specific area.

In terms of making an EMRO, if the licensing authority had sufficient evidence to demonstrate that it would be appropriate for promoting the licensing objectives, it could propose making an EMRO. All premises licence holders had to be informed of the details of the proposal in writing.

Solicitors acting on behalf of the trade have already indicated that they would be challenging local licensing authorities proposing to impose such orders. It would be a requirement for the Council as the licensing authority and the Police to provide evidence if challenged that the powers currently available through the Licensing Act 2003 and the Police Reform and Social Responsibility Act 2011 have been fully utilised to address crime and disorder connected to the late night economy and to promote the licensing objectives. The licence review process was a powerful tool which if utilised

to its full potential by the Council and the Police working in partnership could be sufficient to achieve the desired effect, whilst at the same time ensuring that the licensed trade was not over-burdened at such a difficult economic time.

A member referred to the fact that the owners of some licensed businesses that had been established were unaware of the need for a licence and this issue needed to be addressed.

In response, the Licensing Manager informed the committee that it was important that the Council was aware of any person who opened licensable premises to undertake any activities which needed a licence. Should it be found that licensable activities had been undertaken without a licence, the Council should receive the information and then the individuals would be contacted to ensure that they went through the appropriate process.

A member enquired whether the EMROs had been implemented by other councils.

In response, the Licensing Manager informed the committee that she was unaware at the moment of any authority which had adopted these orders.

RESOLVED

a) To accept that there is insufficient evidence at the moment to introduce EMROs as the powers available under the current licensing legislative provisions have not yet been fully utilised to promote the licensing objectives.

b) To submit a report to the next committee on the developments in other councils in this field.

5. NEW LICENSING POWERS – THE LATE NIGHT LEVY

Submitted – the report of the Head of Regulatory Department, providing details of the use and implications of the Late Night Levy, namely the new power conferred on licensing authorities by the provision of Chapter 2 of Part 2 of the Police Reform and Social Responsibility Act 2011.

The Licensing Manager informed the committee that the intention of the new power was to enable the Council as the Licensing Authority to charge a levy on persons who were licensed to sell alcohol late at night in Gwynedd as a means of raising a contribution which could be used towards the cost of policing the late-night economy. Should the Council decide to introduce the levy, it would apply to the whole of Gwynedd and would be payable by the holder of a premises licence or a club premises certificate which authorised the sale or supply of alcohol starting at or after midnight and ending at or before 6am. Premises not wishing to operate within the levy period, so as to avoid paying the levy, had to apply for a free variation to the premises licence, in order to amend the licensing hours before a levy was introduced. It was noted that the Home Office's amended guidance, made under Section 182 of the Licensing Act 2003, recommended that the decision to introduce, vary or end the levy should be made by the full

Council or delegated in a manner deemed appropriate by the Council. However, it was expected that the Council, as the licensing authority, should discuss the need for the levy with the Chief Constable of North Wales Police and the newly elected Police and Crime Commissioner. Informal discussions had already been held with North Wales Police but a formal request to consider the levy had not been received from the Police.

It was the Council's decision to carefully consider whether there was a financial risk in introducing the levy and whether the revenue that could be expected from the levy would justify the costs of introducing the levy. Only 30% of the levy revenue could be retained by the Council. The money had to be used to fund the services provided by the Council to address late-night alcohol related crime and disorder. A minimum of 70% of the levy revenue had to be retained by the Police but the Police had no obligation to use that revenue to police hot-spots of crime and disorder which were attributed to the late-night economy. Consideration should be given to whether or not it was appropriate to introduce the levy in Gwynedd before incurring the costs of the formal consultation process. In deciding whether the levy was a viable option, the Council had to consider whether or not there were sufficient licensed premises to supply alcohol late at night to generate enough revenue. Details were provided of the levy charged annually on each licensed premises within the scope of the levy.

Should the Council decide to introduce the levy, then there had to be a full consultation process targeting those affected by the levy, particularly those licence holders likely to be subject to the levy, the police, residents and other interested parties.

It was noted that solicitors acting on behalf of the licensing trade had already indicated that they would be challenging local licensing authorities proposing to introduce the levy. It would be a requirement for the Council as the licensing authority and North Wales Police to provide evidence if challenged that the powers currently available through the Licensing Act 2003 and the Police Reform and Social Responsibility Act 2011 had been fully utilised to address crime and disorder connected to the late-night economy. The licence review process was a powerful tool which if utilised to its full potential by the Council and the Police working in partnership could be sufficient to achieve the desired effect, whilst at the same time ensuring that the licensed trade was not over-burdened at such a difficult economic time.

RESOLVED

a) To accept that there is a need to fully utilise the existing licensing legislative powers before consideration can be given to imposing the levy in Gwynedd.

b) To submit a report to the next committee on the developments in other councils in this field.

6. REVIEW OF THE STATEMENT OF LICENSING POLICY

Submitted – the report of the Head of Regulatory Department on the Review of the Licensing Policy.

The Licensing Manager reported that the Licensing Act 2003 introduced the requirement for licensing authorities to produce a Statement of Licensing Policy following a full consultation with stakeholders.

It was noted that it was a requirement for the policy to be reviewed every three years to ensure that it continued to be fit for purpose in terms of promoting the objectives of the Licensing Act. The Policy had been introduced to the full Council on 16 December 2010 following a full review and minor changes to its content and it was accepted with a recommendation that minor errors found in the Policy were to be rectified. Due to an oversight the minor errors in the Policy were not corrected at the time and the policy had not been taken back to the members for approval of the corrections.

Due to substantial changes to the Licensing Act that came into force recently with the provisions of the Police Reform and Social Responsibility Act 2011, and the Live Music Act 2012, there would be a requirement to amend the policy in its entirety in 2013.

In response to a question by a member regarding the Live Music Act 2012, the Licensing Manager informed the committee that she could submit details of the act at the next meeting of the committee.

RESOLVED

a) To accept the policy in its existing form until the entire policy is reviewed in 2013.

b) To submit details of the Live Music Act 2012 to the next committee.

The meeting commenced at 10:00am. and concluded at 10.50am.

CENTRAL LICENSING SUB-COMMITTEE, 29.11.12

Present: Councillor Eryl Jones-Williams (Chairman)
Councillors Anwen Hughes and John Brynmor Hughes

Also present: Geraint B. Edwards (Solicitor), Gwenan M. Williams (Licensing Manager), Alwyn Thomas (Licensing Enforcement Officer) and Gwyn Parry Williams (Members' Support and Scrutiny Officer).

1. APPLICATION TO REVIEW A PREMISES LICENCE – CELL B, PARK SQUARE, BLAENAU FFESTINIOG

Others invited to the Meeting:

Applicant: Mr Ian Rogers (Applicant) and Ms Dawn Parry

Representing the Police: Officer Dylan Jones

Representing Cell B, Park Square, Blaenau Ffestiniog: Mr Rhys Roberts (Licence holder) and Mark Williams

Local Member: Councillor Mandy Williams-Davies and Councillor Paul Thomas (Member of an adjoining ward)

Apology: Councillor Llywarch Bowen Jones

Submitted – the report of the Licensing Manager giving details of an application by Mr Ian Rogers, Park Villa, Park Square, Blaenau Ffestiniog to review the premises licence of Cell B, Park Square, Blaenau Ffestiniog because of antisocial behaviour and noise late at night emanating from licensed activities held at the premises. The applicant also referred to incidents where he had witnessed non-compliance with the conditions of the licence, namely –

- a) Customers permitted to leave the premises with alcoholic drinks.
- b) Customers who were obviously inebriated granted access to the premises.
- c) Permitting customers to consume alcohol so that they were sufficiently inebriated to cause harm to themselves and others.

The applicant requested the premises licence be reviewed in relation to the following recommendations –

- i) To remove the right to sell alcohol from the licence.
- ii) To consider the application to order that a new Designated Premises Supervisor (DPS) be appointed in relation to the licence.
- iii) To reduce the permitted opening hours for the premises from 00.00 to 21.00.

It was reported that, following the appropriate consultation period, no observations had been received from Blaenau Ffestiniog Town Council, the Fire and Rescue Service, the Council's Planning Service or the Public Protection Service – Environmental Health. The local member (adjoining ward) and a number of residents objected to the review as there was no evidence that activities at the nearby premises and management of the premises undermined the licensing objectives. Reference was also made to the contribution of the premises' activities to local culture and prosperity of businesses; however, these considerations were not relevant to the objectives of the Licensing Act 2003. The police confirmed that it had received calls from the applicant. Confirmation was also received that the police had issued a penalty notice to two

females following an incident of antisocial behaviour. The police had not received any other calls from residents of Park Square in relation to the premises.

In considering the application, the following procedure was followed:-

- i) The applicant was invited to expand on the application.
- ii) Members of the sub-committee were invited to ask questions of the applicant.
- iii) The licensee, or his representative, was invited to respond to the observations.
- iv) Members of the sub-committee were given an opportunity to ask questions of the licensee.
- v) The applicant and licensee, or his representative, were given an opportunity to summarise their case.

The local member reported that she objected to the review and supported the licensee, since Cell B contributed significantly to the town's social life. She noted that the licensee was willing to collaborate with everyone, and had offered to move the smoking area from the front of the building to the rear, which would perhaps be a means of resolving complaints. As a local member she had not received any complaints about the situation, and she was very keen for both sides to be able to collaborate.

The applicant was of the opinion that moving the smoking area to the rear of the building would still cause problems up the road, and would cause nuisance to the residents there. He noted that the behaviour of some of the people who used the smoking area caused him concern. He referred to drunken customers coming out of the building, inappropriate language, people vomiting and urinating on the street, noise, and the impact of this on his family. He referred to several DVDs he had taken which gave evidence of the different incidents, and he was keen for the sub-committee to view them. He noted that it was not his wish to see the premises being shut down.

The Licensing Enforcement Officer noted that he had given advice to the applicant with regard to submitting the application for a review. He had shown him some of the DVDs and he was of the opinion that it was important that the sub-committee saw the evidence on them. In response, the solicitor advised that it was a matter for the sub-committee to decide whether it needed to see the DVDs or not. He noted, under the relevant act, that the applicant would have to be granted the right to show the DVDs. The applicant confirmed that he had had confirmation from the Information Commissioner's office that he had the right to show the DVDs. The Council's Solicitor stated that further confirmation was required regarding the propriety of showing the evidence, since individuals may possibly be identified in the DVDs, and he was of the opinion that this evidence should not be considered.

In response to the above, the licensee noted the following observations –

- That a meeting had already been held with the various relevant bodies where it had been agreed to collaborate, but unfortunately after the meeting the applicant had put up signs against Cell B without contacting him as the licensee.
- That he was willing to work with the applicant to try and improve the situation.
- If the smoking area was moved to the rear of the building, this would perhaps require planning permission or permission under building regulations.
- Improved lighting could be installed at the front of the building, and more signs.

- That a condition on the licence prevented people from taking drinks out of the building after 19.00.

It was agreed to adjourn the meeting for a while in order to give the applicant and the licensee the opportunity to try and reach a compromise with regard to improving management of the premises.

Following the adjournment, the applicant confirmed that upon reaching a compromise with the licensee, he amended his application for a review, thereby amending the recommendations for changes to the licence as follows –

- a) That the premises provides sufficient signs requesting that customers be quiet.
- b) That the premises, subject to planning/building regulations permission, provide suitable lighting on the site.
- c) That security staff, when they are required to be present, make their best efforts to prevent customers from convening directly outside the main entrance.

The relevant parties left the meeting and the compromise agreed between the applicant and the licensee was discussed by the members of the Sub-committee, who considered all the evidence submitted and specifically addressed the principles of the act, namely –

- Prevention of Crime and Disorder
- Public Safety
- Prevention of Public Nuisance
- Protection of Children from Harm

RESOLVED to approve the application to review as amended:

1. The following conditions were added to the licence –

- a) That the premises provides sufficient signs requesting that customers be quiet.**
 - b) That the premises, subject to planning/building regulations permission, provide suitable lighting on the site.**
 - c) That security staff, when they are required to be present, make their best efforts to prevent customers from convening directly outside the main entrance.**
- 2. a) Suggest that the premises erects and keeps a shelf by the main entrance so that customers can place their drinks there as they go outside, and that use of the shelf is supervised.**
- b) Suggest to the licensee that the smoking area should be relocated to the rear of the building, but this was not imposed as a condition.**

The Solicitor reported that he would aim to send a letter within five working days, informing the applicants of the Sub-committee's decision, and informing them of their right to appeal against the decision within 21 days of receiving that letter.

2. APPLICATION TO VARY A PREMISES LICENCE – LAST INN, CHURCH STREET, BARMOUTH

Others invited to the Meeting:

Representing Last Inn, Church Street, Barmouth: Mr Gregory Courtney (Licence holder), Mrs Debra Courtney and Mr Edward Fenlon

Representing the Police: Mr Ian Williams (Licensing Co-ordinator, North Wales Police)

Representing neighbouring residents: Mr George Burns, Mrs Joy Burns, Mrs Wendy Ponsford, Mrs Ann Smith, Mrs Linda Smith

Local Member: Councillor Gethin G. Williams

Submitted – the report of the Licensing Manager giving details of an application on behalf of Last Inn, Church Street, Barmouth to vary the licence to permit extending the hours permitted for licensable activities on the premises, specifically in respect of live music, recorded music, dance performances and the sale of alcohol. He gave details of the current hours and the proposed hours. With the exception of New Year's Eve, a request was made for an extension to the right to supply alcohol from the end of the hours permitted on 31 December until the start of the hours permitted the following day. He noted that the application was submitted following advice received from the Licensing Enforcement Unit. A letter was also received from the applicant which outlined his reasons for submitting an application for extension of the hours.

It was reported that, following the appropriate consultation period, no observations had been received from Barmouth Town Council or from the Public Protection Service – Environmental Health. The Fire and Rescue Service had no objection to the application. An e-mail had been received from the Council's Licensing Enforcement Unit confirming that the officers had visited the premises because licensable activities were being held outside the hours permitted on the current licence. During the visit it was recorded that customers were present and licensable activities were still taking place at 00:50, contrary to the conditions of the current licence. Observations were also received from the Police, and letters from some of the neighbouring residents, supporting and objecting to the application.

It was further noted that 11 temporary events notices had been received from the licensee in order to hold licensable activities for an extra hour, every Tuesday and Saturday between 6 November and 11 December 2012. No objections had been received to these notices from the relevant authorities.

In considering the application, the following procedure was followed:-

- i. Members of the Sub-committee and the applicant were given an opportunity to ask questions of the Licensing Manager.
- ii. The applicant was invited to expand on the application.
- iii. Consultees were given an opportunity to support their observations.
- iv. The licensee, or his representative, was invited to respond to the observations.
- v. Members of the Sub-committee were given an opportunity to ask questions of the licensee.
- vi. Members of the Sub-committee were given an opportunity to ask questions of the consultees.
- vii. The applicant or his representative were given an opportunity to summarise their case.

The Licensing Enforcement Officer notified the Sub-committee that a complaint had been received that the applicant did not conform to the hours permitted on the current licence. On 29 September 2012 it was noted that customers were present on the premises and licensable activities were still taking place at 00:50, contrary to the conditions of the licence. The situation was discussed at the time with the applicant where it was decided that since they could not

work within the current hours, it would be more appropriate to submit an application to vary the licence.

The consultees were invited to support any observations submitted by letter and Ian Williams, Licensing Co-ordinator, North Wales Police, reported that the Police had no evidence to object to the application. He noted that the only calls received to date during 2012 in relation to the premises were from one of the owners of the premises, on three occasions between the end of October and the beginning of November 2012. Applications for Temporary Events Notices for the premises had also been received, to permit the sale of alcohol and regulated entertainment until 01.00, which was in accordance with the application for variation. To date, the premises had been granted additional hours under these notices on seven occasions, and no complaints had been received.

The licensee noted that the application was submitted in order to correspond with the hours permitted for other similar establishments in the town. He noted that the premises had been established as a public house for years, and that they had been running the business for 25 years without any difficulties. The business had grown over the years and 14 people were employed there. Attempts were made to reduce the level of noise coming from the building, and arrangements were in place to close the windows at 22.30 daily, especially during the summer season. People were not granted access to the premises after the closing time.

The local residents who were present took the opportunity to endorse the observations noted by letter and specifically referred to the following points –

- The residents who lived next door to the premises objected to the application because of the noise emanating from there late at night, which affected their health. On more than one occasion the owner had been asked to try and reduce the noise, but he had ignored the requests and the noise continued. He also referred to lorries parking outside the premises to unload, which also created noise. However, there was no objection to the current hours.
- Another resident lived behind the premises and supported the application. The resident noted that the pub was well managed and they could not hear noise from it.
- Another resident also supported the application as they were not aware of any problems deriving from the premises, and it was a boost to a tourist town like Barmouth.

The local member noted that he supported the application as it complied with the licensing objectives. The premises was well-run, and there was no evidence of antisocial behaviour. The premises was located in a commercial area of the town and near the harbour. The police had no objection to the application. Since other similar establishments were open until later, he was of the opinion that consistency was needed with the application.

The relevant parties left the meeting and the application was discussed by the members of the Sub-committee, who considered all the evidence submitted and specifically addressed the principles of the act, namely –

- Prevention of Crime and Disorder
- Public Safety
- Prevention of Public Nuisance
- Protection of Children from Harm

RESOLVED to approve the variation to the licence of Last Inn, Church Street, Barmouth as follows –

a) Permit live music under paragraph E as follows –

- **Sunday to Thursday – between 11.00 and 00.00**
- **Friday and Saturday – between 11.00 and 01.00**

b) Permit recorded music under paragraph F between 11.00 and 01.00, Monday to Sunday.

- c) Permit dance performances under paragraph G between 11.00 and 01.00, Monday to Sunday.**
- ch) Permit the supply of alcohol under paragraph J between 11.00 and 01.00, Monday to Sunday with the exception of New Year's Eve, where it is permitted to supply alcohol from the end of the hours permitted on 31 December until the start of the hours permitted on the following day.**
- d) Permit the premises to be open to the public under paragraph L between 11.00 and 01.30, Monday to Sunday.**

The Solicitor reported that he would aim to send a letter within five working days, informing the applicants of the Sub-committee's decision, and informing them of their right to appeal against the decision within 21 days of receiving that letter.

3. APPLICATION FOR A PREMISES LICENCE – THE CROWN HOTEL, CHURCH STREET, BARMOUTH

Others invited to the Meeting:

Representing The Crown Hotel, Church Street, Barmouth: Mr Abdul Jalil (Licence holder) and Mr Mohammad Jalil

Representing the Police: Mr Ian Williams (Licensing Co-ordinator, North Wales Police)

Local Member: Councillor Gethin G. Williams

Submitted – the report of the Licensing Manager giving details of an application on behalf of The Crown Hotel, Church Street, Barmouth for a premises licence to permit the sale of alcohol on the premises between 17.00 and 23.00, seven days a week.

The application was consulted upon and one letter of response was received from the owner of a nearby business. Allegations were made in the letter of legal breaches in relation to other sites owned by the owner of the premises. The allegations made were relevant to the licensing objective of preventing crime and disorder. Following receipt of the letter, the UK Border Agency was consulted regarding the allegations made by the objector. An e-mail had been received from the agency and copies were distributed to the members of the sub-committee, which confirmed that the licensee had been issued a warning with regard to the allegations of employing people who did not have the right to reside/work in the UK.

In considering the application, the following procedure was followed:-

- i. The applicant was invited to expand on the application
- ii. Members of the Sub-committee were given an opportunity to ask questions of the applicant
- iii. The licensee, or his representative, was invited to respond to the observations
- iv. Members of the Sub-committee were given an opportunity to ask questions of the licensee
- v. The applicant and licensee, or his representative, were given an opportunity to summarise their case.

In response to the above, the licensee noted that foreign students had been employed by him at the premises in Porthmadog and Cricieth. He noted that he had had a personal licence for about 12 years. He confirmed that he would not employ illegal immigrants from now on.

The local member noted that he had no objection to the application.

The police had no observations on the application.

The objector was not present at the meeting to expand on his letter.

The relevant parties left the meeting and the application was discussed by the members of the Sub-committee, who considered all the evidence submitted and specifically addressed the principles of the act, namely –

- Prevention of Crime and Disorder
- Public Safety
- Prevention of Public Nuisance
- Protection of Children from Harm

RESOLVED to permit a premises licence for The Crown Hotel, Church Street, Barmouth as follows –

- a) The sale of alcohol under paragraph M between 17.00 and 23.00, Monday to Sunday.**
- b) The premises to be open to the public under paragraph O between 17.00 and 23.30, Monday to Sunday.**

The Solicitor reported that he would aim to send a letter within five working days, informing the applicants of the Sub-committee's decision, and informing them of their right to appeal against the decision within 21 days of receiving that letter.

4. URGENT ITEM – TEMPORARY EVENTS NOTICES – STAR KEBAB, 323 HIGH STREET, BANGOR

(The Chairman agreed, under Section 100B (4) (b) of the Local Government Act to include this item as an urgent item because of the need to act promptly.)

Others invited to the Meeting:

Representing Star Kebab, 323 High Street, Bangor: Mr Mhemet Kabadayi (Licence holder) and Mr David Farley (Solicitor)

Representing the Police: Sergeant Bill Coppack (North Wales Police) and Mr Ian Williams (Licensing Co-ordinator, North Wales Police)

Submitted – the report of the Licensing Manager, stating that 15 Temporary Events Notices had been received on 19 November 2012 in relation to Star Kebab, 323 High Street, Bangor. These notices requested the extension of the premises' opening hours for an hour later than what was permitted on the current licence, on 15 occasions, between Wednesday night and Saturday night, starting on 5 December until 29 December 2012. An extension until 03.00 was requested on Wednesdays and Thursdays, and until 03.30 on Fridays and Saturdays.

He referred to the police's observations on the notices to extend the trading hours on 5, 6, 7, 8, 12, 13, 14, 15, 18, 20, 21, 22, 24, 28 and 29 December 2012. The police had submitted an application in November 2011 to review the premises' licence as it did not conform to the licence conditions, and because there had been several incidents of disorder there. At a meeting of the Central Licensing Sub-committee on 12 January 2012, the police's application was approved, and the trading hours for the premises were cut by an hour daily. Additional

conditions were put on the licence regarding employing door supervisors who were registered with the Security Industry Authority from 23.00 until the premises closed on Thursday, Friday and Saturday nights and on the Sunday before any Monday bank holiday. A CCTV condition had also been put on the licence.

Following the Licensing Sub-committee's decision on 12 January 2012, the licensee had appealed against the decision, however, when he appeared before the Caernarfon Magistrates' Court on 28 August 2012 he withdrew the appeal which meant that the Licensing Sub-committee's original decision still stood and would come into effect immediately. During the appeal process, there were further incidents of disorder associated with the premises.

Following the appeal hearing, the premises should have been trading under the new operating hours. On two occasions the police had observed the premises trading outside its permitted hours, and the licensee was reported for undertaking licensable activities without authority, contrary to Section 136 of the Licensing Act 2003. He appeared before the Caernarfon Magistrates' Court on 19 November 2012 where he was discharged conditionally for 12 months and ordered to pay costs. On Friday and Saturday night, 16 and 17 of November 2012, it was noticed that the premises were operating after 23.00 without any door supervisors, contrary to the licence conditions. This showed complete disregard for the conditions set by the Licensing Authority.

The police objected to all of these notices, because granting the extension of hours would undermine the objective of preventing crime and disorder.

Sergeant Bill Coppack referred to the application to review the premises licence that had been considered by the Licensing Sub-committee on 12 January 2012. It was reported to that meeting on 16 offences that had been recorded by the police during 2010/11, which had occurred on, or were associated with the premises. He referred to an assault on 23 September 2011, when one of the customers had broken his nose during trading hours. With regard to this case, he noted that he had been part of the investigation and had realised at the time that officers had difficulties in obtaining CCTV evidence of offences that had occurred on the premises. On 12 January 2012 the sub-committee had been given the opportunity to see a DVD which showed people eating outside the building, leaving rubbish etc. after the closing time, 03.30. Of the 16 offences recorded, 11 were related to incidents of violence, and on each of those occasions the police had requested CCTV evidence, but the licensee had failed to provide this information. As a result, the sub-committee had decided to cut the opening hours by one hour, every night of the week. The sergeant gave details of another incident on 30 December 2011, where a young girl was attacked, but again in this case no CCTV evidence had been recorded. Following the decision of the sub-committee on 12 January 2012, the licensee had appealed against the decision. Whilst awaiting the date of the appeal, he gave details of another incident at 01.10 on 20 April 2012 associated with the premises, where it was noticed that no door supervisors were present. Later on the same night a person was seen urinating in the doorway to the premises. Since the applicant withdrew the appeal, the conditions agreed by the sub-committee on 12 January 2012 had come into force, which included employing a door supervisor. On 16 November 2012 it was noticed that the premises was open at 01.00 but no door supervisor was present. Furthermore on 23 and 24 November 2012 it was noticed that no door supervisor was present on the premises. It was obvious therefore that the licensee did not comply with the current licence conditions. The sergeant noted that the sub-committee at its meeting on 12 January 2012 had made the right decision to reduce the premises' opening hours. The dates requested in the Temporary Events Notices were key dates in the period leading up to Christmas and the New Year, and was a busy period for the police and the other emergency services. He noted that he had discussed the police's objections with the licensee's solicitor last week, when he had been invited to the premises to see the CCTV – he noted that the system worked and recorded in accordance with the conditions of the licence. In relation to keeping a register of all door supervisors employed to work on the premises, it was noticed that the last entry in the register had been on 18 November 2012 between 00.00 and 00.30, and that the entry prior to that had been on 22 September 2012, and previously on 18 August 2012. Since the licence had been amended to include a condition to employ door supervisors, there were periods therefore when the condition had not been complied with. In light of all the incidents referred to above, the sergeant was of

the opinion that approving the Temporary Events Notices and extending the hours was likely to add to the risk of crime and disorder. He added that should these notices be approved, it would be the only premises in Bangor open until 03.30.

In response to some of the above points, the licensee's solicitor noted that the police's observations were correct. He referred to a meeting of the Licensing Sub-committee on 12 January 2012 where all the conditions had been agreed to. He noted that some of the conditions included the premises installing and maintaining a digital CCTV system; employing a SIA-registered door supervisor and maintaining a register of all door supervisors employed to work at the premises. He was of the opinion that the licensee had complied with those conditions. Following a meeting of the sub-committee on 12 January 2012, an appeal had been submitted against the decision, and consequently the licensee was not obliged to execute the conditions of the licence until the appeal had been heard. He confirmed that a door supervisor had been employed on the premises, and that the licensee did not wish to have any trouble there. The conditions included on the current licence were sufficient to deal with any problems that were likely to occur in the premises. He referred to drunken individuals approaching the premises from the city's public houses and causing trouble, which caused concern for the licensee. If this were the premises that was open latest in the city, then it would have monopoly for the extra time. He referred to another similar premises in Bangor which traded until 03.15. The licensee required the additional hour because it was essential to the continuation of his business. Since the appeal had been withdrawn in August 2012, the licensee had tried to operate within the new licensed hours, but this had caused him to lose approximately half his income. At the times when the police had noticed that no door supervisor was present, those times had been quiet, and the licensee had decided to send them home. He noted that he was about six months behind with his rent and that the business was not viable at present. The licensee had been running the business for around 14 years, and at one time he had a licence to open for 24 hours. When he had taken the place over, the licence was in the name of his relative, and remained so for years, but in March 2012, the licence was transferred to his name. Due to this administrative error, the appeal was not heard. Although it had been requested to extend the hours until 03.30 on Friday and Saturday nights, opening until 03.15 would be acceptable by the licensee. It was recognised that this was a busy time of year, and the licensee wished to have this extension to the hours permanently. He was of the opinion that the Temporary Events Notices would be a means of improving the business. He noted that alcohol was not sold on the premises, therefore there were no incidents of drunkenness associated with these premises. The licensee complied with the condition regarding the digital CCTV system, and recorded every part of the premises which were open to the public. He noted that this was a family business which supported between three and six people. He asked the sub-committee to consider approving the notices which would be a means for the licensee to prove himself during the period requested.

In response, Sergeant Bill Coppack noted further that the licensee had not complied with several of the conditions on the licence. Although the premises did not sell alcohol, it had been observed on several occasions that drunken customers were served there.

The relevant parties left the meeting and the application was discussed by the members of the Sub-committee, who considered all the evidence submitted and specifically addressed the principles of the act, namely –

- Prevention of Crime and Disorder
- Public Safety
- Prevention of Public Nuisance
- Protection of Children from Harm

Having considered all the evidence submitted, the members were of the opinion that since the conditions agreed by the sub-committee on 12 January 2012 did not come into force until after the appeal date in August 2012, the licensee should be given a further opportunity to comply with the conditions. It was felt that the police's case was not strong enough.

RESOLVED to approve Temporary Events Notices for Star Kebab, 323 High Street, Bangor to extend the opening hours until 03.00 on Wednesday and Thursday nights, and until 03.15 on Friday and Saturday nights on the dates noted above.

The Solicitor reported that he would aim to send a letter within five working days, informing the applicants of the Sub-committee's decision, and informing them of their right to appeal against the decision within 21 days of receiving that letter.

The meeting commenced at 11.30am and concluded at 5.30pm.

CENTRAL LICENSING SUB-COMMITTEE, 12.12.12

Present: Councillor Eryl Jones-Williams (Chairman)
Councillors Angela Russell and Gruffydd Williams

Also present: Geraint B. Edwards (Solicitor), Gwenan M. Williams (Licensing Manager) and Gwyn Parry Williams (Members' Support and Scrutiny Officer).

1. APPLICATION FOR A PREMISES LICENCE – VAYNOL ARMS, ABERSOCH

The Licensing Manager reported that an application for a premises licence had been received by Vaynol Arms, Abersoch to extend the hours for holding licensable activities such as live music, dance performances, recorded music and the sale of alcohol. A number of objections had been received to the application.

Since the application was submitted, the provisions of the Live Music Act 2012 had come into force which meant abolishing the right to regulate live music as a licensed activity in some circumstances. A discussion was held between the Environmental Health Officer and the applicant's solicitor regarding the effect of the new legislation on what was requested in the application in terms of live music. Under the provisions of the new legislation, live music was not an activity that required a licence provided it took place on licensed premises between 08.00 and 23.00. The applicant agreed to amend the application in respect of live music. The right to hold live music outside the property after 23.00 was no longer requested, in line with what was permitted under the Live Music Act 2012. In light of this, a discussion was held between the applicant and the objectors and they were willing to withdraw their objections. The applicant agreed to the noise conditions regarding regulated entertainment held on the licensed premises.

RESOLVED to accept the report and confirm the steps taken.

2. APPLICATION TO VARY A PREMISES LICENCE – ASDA SUPERMARKET, SAND STREET, PWLLHELI

Others invited to the Meeting:

Representing Asda Supermarket, Sand Street, Pwllheli: Ms Clare Johnson (Solicitor) and Mr Stuart Lee (Supermarket Manager)

Local Member: Councillor Michael Sol Owen

Prior to proceeding to consider the application, the Chairman drew attention to the fact that the local member was present but had not submitted his observations in writing on the application. He noted that the usual procedure was that observations had to be sent to the Licensing Department within a specified period before the local member was entitled to speak. He asked the solicitor if she was willing for the local member to submit his observations orally.

In response, the solicitor notified the committee that she opposed to the local member submitting his observations orally as he had had plenty of time to send them to the Licensing Department within the specified timescale.

Submitted – the report of the Licensing Manager giving details on an application on behalf of Asda Supermarket, Sand Street, Pwllheli to vary the licence to permit extending the hours for

the sale of alcohol, and the hours for opening to the public from 06.00 until 00.00 Monday to Sunday. Permission was also sought to sell late night refreshments between 23.00 and 00.00 on the same days. At present, the premises was permitted to be open between 08.00 and 22.00, Monday to Sunday with the sale of alcohol throughout this period.

It was reported, following the appropriate consultation period, that the Police and the Fire and Rescue Service did not object to the application. No observations had been received from the local member, Pwllheli Town Council, the Local Planning Authority nor the Public Protection Service – Environmental Health. One letter of objection had been received from neighbouring residents.

In considering the application, the following procedure was followed:-

- i. Members of the Sub-committee and the applicant were given an opportunity to ask questions of the Licensing Manager.
- ii. The applicant was invited to expand on the application.
- iii. Consultees were given an opportunity to support their observations.
- iv. The licensee, or his representative, was invited to respond to the observations.
- v. Members of the Sub-committee were given an opportunity to ask questions of the licensee.
- vi. Members of the Sub-committee were given an opportunity to ask questions of the consultees.
- vii. The applicant or his representative was given an opportunity to summarise their case.

In support of the application, the solicitor on behalf of the company noted the following observations –

- That it was requested to extend the hours until 00.00 mainly to be able to sell foods such as hot chicken etc.
- That most of the company's shops opened for the hours requested, and no problems had been encountered with these hours.
- That the company had a measure where it complied with the conditions imposed on any licence.
- That CCTV had been installed on the premises and it worked to such a standard that the police and Local Authority could monitor both inside and outside the premises.
- The police or other bodies had no objection to the application.
- The application would not undermine the licensing objective of preventing crime and disorder.
- That only one letter had been received objecting to the application, and the objectors had not discussed their concerns with the supermarket's manager. She sympathised with the objectors but there was insufficient evidence to prove that the lorries unloaded at 06.00, and that the company's policy was to not unload before 07.00.
- The company had not been prosecuted for selling alcohol to underage children.
- The supermarket was an asset to the community.
- Strong reasons would be needed to refuse the application.

- Should the application be approved, the objectors may request a review.

The objectors were not present at the meeting to reiterate the observations that had been submitted by letter.

The members drew attention to the damage to the barriers on the path which led from the site to the High Street. In response, the solicitor representing the company notified the committee that they did not own the path, but they promised to address the matter.

The relevant parties left the meeting and the application was discussed by the members of the Sub-committee, who considered all the evidence submitted and specifically addressed the principles of the act, namely –

- Prevention of Crime and Disorder
- Public Safety
- Prevention of Public Nuisance
- Protection of Children from Harm

RESOLVED to approve the variation to the licence of Asda Supermarket, Sand Street, Pwllheli, as follows –

a) To permit the sale of late night refreshments under paragraph I between 23.00 and 00.00, Monday to Sunday.

b) To permit the sale of alcohol under paragraph J between 06.00 and 00.00, Monday to Sunday.

c) To permit the premises to be open to the public under paragraph O between 06.00 a 00.00, Monday to Sunday.

The Solicitor reported that he would aim to send a letter within five working days, informing the applicants of the Sub-committee's decision, and informing them of their right to appeal against the decision within 21 days of receiving that letter.

The meeting commenced at 11.45am and concluded at 12.30pm.

COMMITTEE:	CENTRAL LICENSING COMMITTEE
DATE:	4 MARCH 2012
TITLE:	LIVE MUSIC ACT 2012
PURPOSE:	FOR INFORMATION
AUTHOR:	HEAD OF REGULATORY DEPARTMENT

BACKGROUND

The Live Music Act 2012 came into force on 1 October 2012 and consequently amended the Licensing Act 2003 by partly deregulating the performance of live music and deleting the need to license the provision of facilities for entertainment.

The purpose of introducing these changes is to promote the provision of entertainment and live music for small audiences.

Summary of changes

The main changes are as follows:

- Un – amplified live music will not need to be licensed between 8am and 11pm anywhere
- Amplified live music will not require licensing between 8am and 11pm in premises that have been licensed to sell alcohol for an audience of no more than 200 people.
- Amplified live music will not need to be licensed between 8am and 11pm for an audience of no more than 200 people in workplaces.
- The need to licence the provision of facilities for entertainment is abolished.
- The exemption to permit live music will be extended when it is part of a performance of a traditional dance; so that the exemption also includes amplified music and recorded music.

Live music (including amplified and recorded music) continues to be licensed under the following circumstances -

- When live music, be it amplified or not; takes place before 8am or after 11pm.
- When a performance of live amplified music takes place anywhere that is not a licensed premises or workplace but is licensed to sell late night refreshments only.
- When a performance of amplified live music takes place in a licensed premises when the premises is not open for the purpose of supplying alcohol to be consumed on the premises.
- When a performance of amplified live music takes place in a licensed premises or workplace, in the presence of an audience of more than 200 people.
- Where the Licensing Authority deliberately abolishes the impact of deregulating the Live Music Act 2012 by imposing a condition on a premises licence as a result of a review of the premises licence.

Protecting Residents from the negative effects of live music

As noted above, conditions can be imposed in relation to live music even between 8am and 11pm in a licensed premises that is subject to a review due to complaints regarding noise.

Also, if a current premises licence does not permit live music it is possible to add conditions to the licence that would have the same impact if the live music in the premises were to continue to be a regulated activity; even between 8am and 11pm.

The Licensing Authority can also decide that live music in the premises is a licensed activity; and that live music cannot be permitted without permission on the premises licence or through a Temporary Event Notice.

The legislation regarding managing noise nuisance - namely the Environmental Protection Act 1990 continues to be relevant in situations where there is evidence that noise is a statutory nuisance.

The Live Music Act 2012 is not intended to permit licensed premises to create noise nuisance.

Further Deregulation of entertainment

Following the consultation of the Government's Department of Culture, Media and Sport in 2011; the government intends to submit further measures to deregulate entertainment; commencing in April this year.

It is intended to deregulate the following -

- dance and drama performances for audiences of up to 500 people between 8am and 11pm
- Indoor sports for audiences of up to 1,000 people between 8am and 11pm
- Live music in licensed premises and workplaces for audiences of between 200 and 500 people.
- Recorded music to be treated in the same way as live music in licensed premises between 8am and 11pm.
- Performances of films, dramas, indoor sports, live music and recorded music in premises owned by Local Authorities, hospitals, nurseries and schools (with the exception of higher education establishments) with no restriction on audience numbers between 8am and 11pm.
- Exclude the establishments noted above from licensing requirements in relation to live and recorded music for audiences of up to 500 people.
- Exclude community premises such as village and church halls and community centres from the licensing requirements for live and recorded music for audiences of up to 500 people.
- Circuses will be excluded for performances of live and recorded music, drama, dance and indoor sport performances between 8am and 11pm, with no restriction on audience numbers.

15. Regulated entertainment

TYPES OF REGULATED ENTERTAINMENT

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 or outdoor);
- a performance of live music (but note the changes brought in by the Live Music Act 2012 (“the 2012 Act”), see paragraph 15.10 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.

15.2 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”

15.3 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 for a private audience where no charge is made with a view to making a profit (including raising money for charity).

15.4 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).

ENTERTAINMENT FACILITIES

15.5 As a result of changes to the 2003 Act made by the 2012 Act, ‘entertainment facilities’ are no longer licensable. Conditions on a licence that relate solely to entertainment facilities may no longer apply, but note paragraphs 15.18 and 15.19 below.

PRIVATE EVENTS

- 15.6 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 amplified 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.
- 15.7 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

- 15.8 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

- 15.9 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

- 15.10 To encourage more performances of live music, 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 does not take place either 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; or
- 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 paragraphs 15.23-15.24 below).

15.11 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

15.12 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.

15.13 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.

15.14 "Audience" – an activity is licensable as regulated entertainment if it falls within one or more of the descriptions of entertainment in paragraph 2 of Schedule 1 to the 2003 Act and 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. People may be part of an audience even if they are not located in exactly the same place as the performers, provided they are present within the audible range of the performance. So, for example, if a band is performing in a marquee, people dancing outside that marquee may nevertheless be members of the audience. 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. Similarly, security staff and bar workers will not form part of the audience while undertaking their duties, which includes reasonable breaks.

MORRIS DANCING

15.29 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

15.30 In addition to provisions introduced 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 one of the entertainments described in paragraph 2(1) of Schedule 1 to the 2003 Act.

15.31 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 one or more 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?

15.32 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

15.33 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.