



# Regulated Entertainment & Late Night Refreshment

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## Regulated Entertainment & Late Night Refreshment

The Licensing Act 2003 ("the Act") brings together six licensing regimes. Under the new system, the concept of a separate public entertainment licence therefore disappears, meaning that only a single authorisation will be needed to supply alcohol, provide regulated entertainment, such as a performance of live music, or provide late night refreshment or any combination of these activities.

Accordingly, under the Act, an authorisation will be required in order for alcohol to be supplied at a public house but the applicant will be free to apply simultaneously for the authorisation to cover the provision of regulated entertainment, such as music or dancing whenever desired. Generally, the authorisation in these circumstances will be a premises licence.

What is regulated entertainment under the Licensing Act 2003?

The provision of regulated entertainment covers the provision of entertainment or of entertainment facilities. The descriptions of entertainment in the Licensing Act are:

- the performance of a play
- an exhibition of a film
- an indoor sporting event
- boxing or wrestling entertainment
- 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

Furthermore, to be "regulated entertainment" the entertainment must take place in the presence of an audience and be provided for the purpose of, or for purposes which include, entertaining that audience.

Entertainment facilities are facilities for enabling people to take part in entertainment for the purpose of being entertained or for purposes, which include the purpose, of being entertained. This applies only to:

- making music
- dancing
- entertainment of a similar description to making music or dancing

"Entertainment facilities" are, for example, a dance floor provided for customers to use, whereas "entertainment" might involve a performance of dance provided for an audience.

In order for the provision of entertainment or entertainment facilities to be regulated, two conditions must be satisfied.

- The first of these is that the entertainment or entertainment facilities must be provided:
  - (a) to any extent for the public or a section of the public or
  - (b) exclusively for members and their guests of a club which is a qualifying club in relation to the provision of regulated entertainment or
  - (c) where (a) and (b) do not apply, for consideration and with a view to profit
- The second is that the premises on which the entertainment takes place, or entertainment facilities provided, are made available for the entertainment to take place

## How do I obtain a licence to provide entertainment?

Unless temporary entertainment is being provided (see information on permitted temporary activities) or the entertainment or location is exempt under the Licensing Act, it will be necessary to apply for a premises licence or club premises certificate from the relevant licensing authority. Information on which is available separately.

## Are there any other requirements in order to put on regulated entertainment?

A premises licence authorises the use of a particular premises for the relevant licensable activities. This does not, for example, affect other planning or health and safety etc. requirements, and applicants should speak to the relevant authorities about how to comply with other legislation.

Similarly, any permission(s) you may need from bodies responsible for copyright licensing (such as the Performing Right Society, the Mechanical-Copyright Protection Society or Phonographic Performance Ltd), or from a copyright owner under copyright legislation, are unaffected. Applicants should therefore consult the relevant bodies direct.

The Musicians' Union has produced the 'Live Music Kit', a step-by-step guide for venues thinking about putting on live music for the first time. The Live Music Kit is available to print or download from the Musicians' Union website.

## How much does a premises licence or club premises certificate cost?

Further details about fee levels are available from your local council

## Will I be subjected to a raft of unnecessary and expensive conditions on my premises licence?

Where no relevant representations are made by any responsible authority or interested party, the licensing authority must grant the licence subject only to conditions that are consistent with the operating schedule in the application and any mandatory conditions in the Licensing Act itself.

If relevant representations are made, the licensing authority must consider these at a hearing (unless all the relevant parties agree that a hearing is unnecessary). It may then only impose such conditions as are necessary to promote the licensing objectives. The licensing authority may not impose any non-

mandatory conditions, unless its discretion has been engaged, following the receipt of relevant representations.

In doing so it must have regard to the revised Guidance to Licensing Authorities and Police issued by the Secretary of State on 22 June 2006 under section 182 of the Licensing Act, and its own licensing policy statement. The Guidance makes it clear that any conditions attached to licences should be tailored to the particular premises and that only those necessary for promoting the licensing objectives would be lawful.

The Guidance stresses that conditions should not duplicate the requirements of existing health and safety law or noise nuisance legislation, or any other legislation.

## Are there any exemptions from the requirement of a premises licence when providing entertainment?

Yes. But note that if alcohol is to be supplied, or late night refreshment provided, a licence will be required for those activities. The main exemptions for the provision of entertainment and entertainment facilities from the requirement for a licence under the Licensing Act are as follows:

- for the purposes of or purposes incidental to religious services or meetings or at places of public religious worship
- morris dancing or any dancing of a similar nature, or a performance of unamplified 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
- garden fetes – or functions or events of a similar nature if not being promoted or held for purposes of private gain
- film exhibitions for the purposes of advertisement, information, education, etc. – if the sole or main purpose of the exhibition of a film is (a) to demonstrate any product; (b) advertise any goods or services, or (c) provide information, education or instruction

- film exhibitions: museums and art galleries – where an entertainment consisting of the exhibition of a film, is, or forms part of, an exhibit put on show for any purposes of a museum or art gallery
- use of television or radio receivers – where entertainment consists of the simultaneous reception and playing of a programme included in a programme service within the meaning of the Broadcasting Act 1990 (however, showing pre-recorded entertainment would require a licence)
- vehicles in motion – i.e. where the provision of entertainment or entertainment facilities take place (a) on premises consisting of or forming part of a vehicle, and (b) at a time when the vehicle is not permanently or temporarily parked

## Are church halls, chapel halls, or similar buildings also exempt from the requirement for a licence?

Church halls, chapel halls or other premises of a similar nature will require a licence for the provision of regulated entertainment (unless they come within one of the exemptions listed above) but there will be an exemption from having to pay the fee associated with that provision. 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.

## Does a village hall require a licence for regulated entertainment?

A licence will be required for the provision of public entertainment at such premises. However, as with church halls, there will be an exemption from the payment of fees in relation to the provision of regulated entertainment at village halls, parish or community halls or other premises of a similar nature. 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.

## Is a licence required to stage entertainment in a scout/guide hall?

If regulated entertainment is provided for the public in a scout hall or similar premises, or if a charge is made to a private audience with a view to profit, including for a charity, then the provision of regulated entertainment at such premises would require a premises licence or temporary event notice. If the public is not invited and a charge is made to a private audience (like family and friends) just to cover costs – and not to make a profit - then this will not be the provision of regulated entertainment and a licence will not be required. Similarly, if anyone invited to a private performance was not charged for attending the event but was free to make a voluntary donation to a charity at their own choice, no licence will be necessary. However, if the performance is to any extent open to the public (whether the public are charged or not) a licence will be required.

## What's the difference? Why is a licence needed for a private performance if profit is intended but not otherwise – surely the effect on the licensing objectives is the same?

The difference is that the profit motive 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. 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.

## Why has the "two in a bar" rule been abolished?

The 'two in a bar' rule has been discontinued. This was a disapplication under the previous licensing law of the need for a public entertainment licence in certain situations, such as two performers singing or playing music, at a premises where a justices' licence was in force.

The Government believed this rule encouraged public houses to put on only one or two entertainers all night, or face the full cost of a public entertainment licence. This was extremely limiting and acted as a

disincentive to a more diverse music provision. The Licensing Act aims to remove this disincentive and provide for all kinds of live music to be on equal footing whether one, two, five or ten performers are involved.

## What about small-scale music events?

Venues will need an authorisation for the staging of these events. However, section 177 of the Licensing Act provides that where:

- a premises licence or club premises certificate authorises the supply of alcohol for consumption on the premises and the provision of "music entertainment" (dance or live amplified or unamplified music)
- the relevant premises are used primarily for the consumption of alcohol on the premises
- and the premises have a capacity limit of 200

then any licensing authority imposed conditions relating to the provision of the music entertainment will be suspended. This is subject to the exception of where the conditions were imposed as being necessary for public safety or the prevention of crime and disorder.

In addition, where:

- a premises licence or club premises certificate authorises the provision of music entertainment, which consists of the performance of unamplified, live music; and
- the premises have a capacity limit of 200

then during the hours of 8am and midnight if the premises are being used for the provision of that music entertainment but, no other regulated entertainment, any licensing authority imposed conditions on the licence which relate to the provision of the music entertainment will be suspended.

These suspensions can be removed in relation to any condition of a premises licence or club premises certificate following a review of the licence or certificate when further conditions may also be added to the licence or certificate.

These provisions will apply to any premises so long as the criteria set out in section 177 of the Act are fulfilled.

## Is a licence required if customers of a pub suddenly start singing?

No. Any spontaneous singing, for example of "Happy Birthday", will not be licensable.

## Do I require a licence to show broadcast TV in my pub?

Live broadcast entertainment is exempt from the licensing regime. However, if you wish to show recorded entertainment on your TV (using, for example, video or DVD) an authorisation will be required.

## Are jukeboxes licensable? What about Disc Jockeys?

The playing of recorded music that is incidental to other activities that are not themselves the provision of regulated entertainment are exempt. A jukebox in a pub will not necessarily have to be authorised unless, for instance, a dance floor is also provided or it is not incidental. A Disc Jockey playing to a public audience would amount to regulated entertainment and would therefore need to be authorised by the premises licence, club premises certificate or temporary event notice as the case may be. For the meaning of regulated entertainment see paragraphs 1 and 2 to Schedule 1 of the 2003 Act.

### Do pub games require a licence?

Games commonly played in pubs like pool or darts would not necessarily need to be authorised under the licence as they are not generally played for the entertainment of spectators. However if, for example, a darts exhibition match or championship were staged for spectators, that would be regulated entertainment.

For qualifying clubs, if either the public are admitted or the entertainment is provided for members and their guests in relation to the provision of regulated entertainment, an authorisation would be required. An authorisation would similarly be required in respect of the provision of regulated entertainment for a private audience if a charge is made and with a view to profit.

### Does entertainment in a school require a licence?

Schools and sixth form colleges will require a licence to stage regulated entertainment to which the public is invited or where a fee is charged and with a view to profit. However, they are exempt from the fees associated with the authorisation of regulated entertainment where the entertainment is provided by and at the school or college and for the purposes of the school or college. If the public was not invited and a charge made to a private audience (like family and friends) just to cover costs – and not to make a profit - then a licence would not be required. A school could also consider using temporary event notices on up to 12 occasions each year subject to an overall limit of 15 days in a calendar year, but numbers would have to be restricted to 499 and comply with the other requirements in Part 5 of the Licensing Act.

### Does music tuition, either in private or in schools, require a licence?

No. Music tuition will not require a licence as the music (and the premises) is not being provided for the entertainment of an audience, but for the purpose of educating those present.

## Do I need a licence to demonstrate musical instruments in my store?

No – this is another myth. If a customer or sales assistant wishes to demonstrate or try out an instrument in a shop then no licence would be required. If a store holds an event at which musicians play instruments, for the purpose of entertaining customers, then a licence would be required.

## Do rehearsals need a licence?

No, unless the rehearsal is provided for the entertainment of the public, or the members and their guests of a qualifying club in relation to the provision of regulated entertainment or for consideration and with a view to profit.

## Does a charity event providing entertainment require a licence?

If regulated entertainment is being provided at a charitable event to which the public is invited, a premises licence or temporary event notice would be required. Private events, where the invited guests are charged, either with a view to private profit or to raise funds for charity, are licensable as such a charge could, for example, lead to greater risks being taken with regard to safety issues. For example, the number of people invited, seating arrangements and access to exits in an emergency.

However, entertainment provided at a private charitable event where the public is not invited (other than where the entertainment is provided exclusively for the members and their guests of a qualifying club) and where no charge is made (other than solely to cover costs) or there is no requirement for the guests to give any money to charity, would not be licensable.

## What if I make a small profit by mistake at a private event?

"With a view to profit" means that you intend or have intended to make a profit. If you make a charge simply to cover costs and accidentally make a small profit owing to miscalculation, you need not worry. What matters is your intention at the outset.

## Does a circus require a licence to provide entertainment?

If a circus or pleasure fair provides regulated entertainment as defined in the Licensing Act (or there are to be supplies of alcohol or provision of late night refreshment) an authorisation (e.g. a premises licence or a temporary event notice) will be required to cover the licensable activity.

## Do Punch and Judy shows require a licence?

The Licensing Act has not significantly changed the definition of "play" used in the Theatres Act 1968. Punch and Judy shows were previously licensable under the 1968 Act and continue to be licensable under the Licensing Act when performed publicly, or for members and their guests of a qualifying club in relation to the provision of regulated entertainment, or to a private audience for consideration and with a view to profit by the organiser.

However, if a children's party was staged for friends and the Punch and Judy entertainment was provided by the host (the child's parents) for their guests for free (as it would be normally at a party), then no licence would be required. Anyone wishing to stage a Punch and Judy show for the general public must ensure that the site is covered by a premises licence or temporary event notice.

We are encouraging local authorities to consider seeking premises licences from their licensing authority for public spaces within the community in their own name. This could include village greens, market squares and seaside promenades, for example, on which many cultural and traditional events take place. No additional licence would then need to be obtained by puppeteers or anyone else carrying out

licensable activities covered by such a licence, although the consent of the local authority holding the licence would usually be required and permission given to use the land.

## I am holding an outdoor event providing regulated entertainment. Do I require a licence and how do I apply for one?

As stated above, local authorities will be encouraged to obtain premises licences to cover public spaces, such as village greens or indeed a number of streets, on which many performances 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, although the consent of the local authority holding the licence would be required and permission given to use the land. But if there is no pre-existing licence, or the premises licence does not cover the activity you wish to put on, and unless your event falls into an exempt category, a premises licence or club premises certificate or temporary event notice would be required to authorise the provision of regulated entertainment.

## Do carol singers require a licence?

Most carol singing is either spontaneous, incidental to other activities or part of a religious service and is usually not, therefore, licensable. However, some carol concerts may fall into the definition of regulated entertainment - for example, a concert with an audience. If in doubt, organisers should contact their licensing authority.

If a carol service is organised, advertised and provided for an audience there would seem to be little doubt that this would be licensable. However, a group of carol singers (players) outside a shop could be construed as incidental to the activity of people going about shopping and therefore exempt from the requirement for a licence. It would make no difference whether or not they were seeking voluntary contributions to charity from passers by. This is different from a scenario where a shopping centre or individual business has organised a carol performance for an audience in a shopping mall which would require a licence or temporary event notice.

Under the 2003 Act, there is no distinction between the singing of religious or secular carols unless the carols were performed as part of a religious service or in a place of public religious worship, which would not then require a licence.

It should be remembered, of course, that it is for licensing authorities to interpret the Act and to determine whether or not specific events need a licence.

## Do Re-enactment Societies require a licence?

This would depend on the precise nature of the specific activity being carried out. If the re-enactments are dramatic pieces in which what is done by the persons performing (whether by way of speech, singing or action) involves them playing a role in the presence of an audience for the purposes of entertaining that audience then they would come within the definition of a "play" under the Licensing Act. If they are then performed for the public or for a charge and with a view to profit, or for the members and their guests of a qualifying club, a licence would be required unless an exemption applied.

If the re-enactment was staged purely for the enjoyment of those taking part and not for the purpose of entertaining an audience, no licence would be required. It is the same for masquerades and other forms of role playing (depending on the nature of the masquerade, there may also be a performance of a dance). The existence or otherwise of a script will not affect whether what is done falls within the definition of a "play" under the Act.

## Is a licence required for entertainment in private homes and gardens?

Any performances of live music that take place in private homes and gardens for private parties and weddings will not be licensable unless the host takes the unusual step of charging his guests to attend and with a view to making a profit.

The Act does nothing to affect what people are entitled to do in their own homes unless the public is admitted or guests charged and with a view to profit rather than to simply cover costs.

## What if I book a band for a wedding?

Please see above. A licence would only be required for a private wedding party if the host took the unusual step of charging his guests to attend and with a view to making a profit.

What are the consequences of not obtaining a licence to cover regulated entertainment?

A person guilty of the offence of carrying on, attempting to carry on or knowingly allowing to be carried on an unauthorised licensable activity is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £20,000 or to both. The maximum penalty is high because such an action could involve putting public safety at serious risk. However, a person does not commit such an offence if his only involvement in the provision of the entertainment was that he:

- performed live music or plays recorded music
- performed a dance
- provided entertainment of a similar description to those above
- performed in a play
- participated in boxing or wrestling entertainment; and
- participates as a sportsman in an indoor sporting event

There is also the defence of "due diligence" as provided by section 139 of the Licensing Act, against this offence which a person charged with it may invoke if the act "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"

## Late Night Refreshment

Under the Licensing Act 2003 ("the Act"), the supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment can all be carried on under one authorisation.

### Regulated entertainment

For the purposes of the Act, the provision of late night refreshment means the supply of hot food or hot drink to the public, for consumption on or off the premises, between 11pm and 5am or the supply of hot food or hot drink to any persons between those hours on or from premises to which the public has access.

Food or drink is "hot" for the purposes of the Act if it is heated on the premises or elsewhere before it is supplied for the purpose of enabling it to be consumed at above ambient air temperature, or if it may be heated on the premises for this purpose after it is supplied.

The Act provides for a number of supplies to be exempt supplies which will not constitute the provision of late night refreshment. Examples are the provision of hot drink by vending machines in certain circumstances; where the hot food or hot drink is supplied free of charge; or where it is supplied by a registered charity.

Including late night take-aways and fast-food outlets in the Act extends the licensing regime which previously operated in most of London to all of England and Wales. The Government felt this was necessary to protect local residents because premises which serve late night refreshment can be used by customers who may have been drinking at other premises earlier in the evening, thereby creating the potential for disorder on and near the premises. Also, because large numbers of customers may gather at places serving late night refreshments, there is a potential for nuisance and disturbance for local residents. The regulation of late night refreshment tackles these issues and allows residents and other interested parties and responsible authorities to make representations about applications for new and variations to existing licences, and to seek reviews of licences where they are concerned that the *licensing objectives* will be or have been affected.

It is also anticipated that the provisions will help drive up standards within the late night hospitality sector and encourage greater diversification of the evening economy.

Are there any instances where the provision of hot food and hot drink would not require an authorisation under the Act for the provision of late night refreshment?

The following miscellaneous supplies of hot food or hot drink are exempt:

- Hot drink consisting of, or containing alcohol (although an authorisation under the Act will be required for the supply of alcohol)
- Hot drink distributed by means of a vending machine where the payment for the hot drink is inserted into the machine by a member of the public, and the hot drink is supplied directly by the machine to the member of the public
- Hot food or hot drink supplied free of charge, where there is also no charge for admission to any premises, or for some other item to obtain the hot food or hot drink
- Hot food or hot drink supplied by a registered charity or by a person authorised by a registered charity (i.e. a charity which is registered under section 3 of the Charities Act 1993 or a charity which, by virtue of subsection (5) of that section is not required to be registered)
- Hot food or hot drink supplied on a vehicle, which is not permanently or temporarily parked at the time.

Supplies of hot food or hot drink are also exempt where the supply is on or from premises to which, at the time of the supply, only persons of the following descriptions will be admitted and supplied with hot food or hot drink:

- Guests (and their guests) of hotels or similar premises – that is guest houses, lodging houses, hostels, caravan or camping sites or other premises supplying accommodation as their main purpose
- Members of recognised clubs and their guests (see below)
- Employees of a particular employer and their guests – for example, where refreshment is made available to employees whose shift patterns require them to be present at the workplace between 11pm and 5am
- Persons engaged in a particular trade or who are members of a particular profession or follow a particular vocation, and their guests.

Supplies of hot food or hot drink on or from premises licensed under certain other Acts – for example, those used as "near beer" premises in London, where certain descriptions of non-alcoholic beverages are sold, are also exempt.

## Are clubs in the possession of a club premises certificate covered by the provisions for late night refreshment?

No. Club premises certificates do not need to authorise the provision of late night refreshment by the club to members of the club, and their guests. This is because the supply of hot food or hot drink to members and guests of recognised clubs are exempt in the circumstances described above. To qualify as a recognised club, a club must satisfy the following conditions:

- Nobody can be admitted as a member, or to any of the privileges of membership without an interval of at least two days between their nomination or application for membership and their admission
- A person who is admitted as a member other than by prior nomination or application must wait at least two days between their becoming members and their enjoying the privileges of membership

- The club is established and conducted in good faith as a club

All qualifying clubs will be recognised clubs.

For more information, please see the relevant pages on [qualifying clubs](#).

## Is a staff canteen covered by the provision for late night refreshment?

No. Refreshment made available to employees of a particular employer between 11pm and 5am are exempt from the need to obtain an authorisation for late night refreshment in the circumstances described above.

## I am the owner of a late night take away shop outside London. I've never needed a licence before, will I need one now?

Yes. The Act regulates licensing laws across England and Wales, which means that late night take-aways and cafes outside London now need an authorisation to serve hot food or drink to the public on or from the premises between 11pm and 5am.

## Will a supermarket be covered by the provision for late night refreshment?

Yes, if a supermarket is heating food or drink for consumption, whether on or off the premises between 11pm and 5am or provides facilities to enable the food or drink to be heated a late night refreshment licence is required. However, if a supermarket is selling only cold food and drink and not providing facilities to enable the food or drink to be heated on the premises, then a licence authorising the provision of late night refreshment is not required.

## Will a vending machine be covered by the provision for late night refreshment?

Vending machines supplying hot drinks are exempt so long as the payment for the drink is inserted into the machine by a member of the public and the hot drink is supplied to a member of the public directly by the machine

This briefing note is intended solely as an overview of the law. It was last updated on 23 April 2007. No responsibility can be accepted for the completeness or accuracy of this briefing note and professional advice should be taken in relation to any specific problems.

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