

Live Music Forum
FINDINGS & RECOMMENDATIONS



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Foreword

BY **FEARGAL SHARKEY**
CHAIRMAN OF THE
LIVE MUSIC FORUM



“Licensing crackdown threatens live music”¹

“Pub licence could kill off live music”²

“No more impromptu gigs, open-mike nights or even singalongs”³

“It’s fun and spontaneous – so it must be banned”⁴

These headlines graphically illustrate the concern and anxiety which for some surrounded the introduction of the Licensing Act 2003. It was against this background that the Live Music Forum began its work to monitor and evaluate the impact of the Act on the performance of live music.

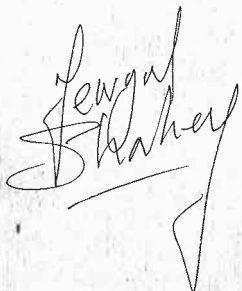
Older than the written word, for millennia live music has provided a means to convey the hopes, desires and aspirations of one generation to the next. For many it underlines our very sense of self and sits at the heart of our national identity. It is the foundation of our music industry and has an audience unrivalled in its passion and enthusiasm.

This was reflected by the quite extraordinary level of support and cooperation the Forum has received. Artists, musicians, performers, venue owners, promoters, the media, local authorities and national government all gave their time openly and freely.

Evaluating the Licensing Act has presented Forum members with many challenges – rumour, innuendo, fact, fiction, concern and reality all had to be unpicked and examined in detail. We have assembled a considerable body of evidence which is reflected in this report. Forum members, undaunted by the task we faced, responded with commitment and determination, often at great personal expense.

During our time the Live Music Forum has, I feel, achieved many things. I hope that Forum members will be able to take some considerable pride in their accomplishments.

My personal thanks to all of you who have supported the Forum throughout the course of our work, and especially to those members of DCMS staff who I have had the great pleasure of working with.



1. The Daily Telegraph (London), December 24, 2003
2. Western Morning News (Plymouth), February 1, 2003
3. The Guardian (London), January 28, 2003
4. The Independent (London) June 18, 2003

1. EXECUTIVE SUMMARY & SUMMARY OF RECOMMENDATIONS

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48 WICKER, SHEFFIELD

SHEFFIELD S1 4JU :0114 276 02

FRIDAY 27TH APRIL 07

LEICESTER

MUSIC CAFE

NEW PARK ST LEICESTER 0116 262 2929

BY ARRANGEMENT WITH PRIMARY TALENT INTERNATIONAL LTD

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48 WICKER

Club
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PLUG LIVE ///

JUNE ///

- THU 7TH * NAVSEED SIXXIE - SUPPORT
- SAT 9TH * STEELAR WHILE DICKO (LIVE) SLIMERS (DJ SET)
- TUE 12TH * PRINCEYON DANCE SCHOOL (OFF) BEAUTIFUL BALLOON
- SAT 16TH * THE WHIP / THE SPINES / SNO
- THU 21ST * I WAO A CUB SCOUT - DARTZ
- SAT 23RD * LETTERS & COLORS / THE STRANGERS WHITE CIRCUS FEVER
- SAT 30TH * PADDY ORANGE / SHAMELESS CELLAR KISS

JULY ///

- THU 3RD * OCEAN COLOR SCENE - SUPPORT

THE IMPACT OF THE LICENSING ACT 2003

- 1.1 The Live Music Forum was established following a commitment given by Government Ministers to undertake independent monitoring and evaluation of the impact of the Licensing Act 2003 on the performance of live music.
- 1.2 The Act would see the introduction of a new system of licensing for live music, abolishing the old Public Entertainment Licence and removing the ‘two-in-a-bar’ rule (under previous regulations, premises licensed to sell alcohol could have up to two musicians performing each evening without the requirement of a formal licence). It also merged nine different licensing schemes into a new single Premises Licence and placed licensing functions with local authorities.
- 1.3 Like many forms of change, the Licensing Act was greeted in some areas with a great deal of uncertainty and concern. The removal of the ‘two-in-a-bar’ rule in particular provided a focus for many emotional and heated debates.
- 1.4 For some that debate still continues and we hope that the contents of this report will help allay that uncertainty and concern.
- 1.5 For the last few years members of the Live Music Forum have been extensively and actively engaged in a wide ranging process of evidence gathering. We have met and worked with external trade organisations, local authorities, particularly licensing officers, concert promoters, festival organisers, booking agents, venue owners, musicians, performers and many others who had an interest in the introduction of the Act. Working in conjunction with the Department for Culture, Media and Sport (DCMS) we have had oversight of two separate pieces of national research, one of which, specifically at Forum members’ request, was to focus on smaller venues and licensed premises to better understand their experiences throughout the implementation of the Act. On a number of occasions Forum members have also undertaken their own independent research, all of which was made available to the wider Forum. We have also been able to call upon a very wide range of experience and expertise in helping us to reach and evaluate our conclusions.
- 1.6 All of this was designed to ensure that as many people and organisations as possible had an opportunity to have an input into the process.



- 1.7 What we have learned – and it is something we would like to stress – is that the vast majority of local authorities have acted in a professional and appropriate manner when dealing with applications for live music. Indeed local authorities, and especially their representatives on the Forum, have been particularly helpful and supportive of the Forum throughout the course of our work.
- 1.8 To address an issue which has been frequently brought to our attention, we have found nothing to substantiate the view that any one particular type or style of live music, or indeed any particular style of venue, has been more affected than any other by this new legislation.
- 1.9 Based on all the evidence we have before us, it is the overall conclusion of the Live Music Forum that the Licensing Act 2003 has had a broadly neutral impact on the provision of live music.
- 1.10 However, it is also true to say that the Licensing Act has not led to the promised increase in live music. On a number of occasions Government Ministers publicly stated that the Licensing Act would result in a “vast increase” or an “explosion” of live music. Members of the Live Music Forum remain unconvinced by these comments. The promotion of live music is not one of the objectives of the Licensing Act and we view with some scepticism any belief that the Act will in itself lead to a growth in live music.
- 1.11 It would also be true to say that many of the benefits the Government believed the new legislation would bring to live music have been delivered – the removal of the extra cost for a Public Entertainment Licence, the removal of the annual renewal process and the introduction of standardised fees, have all been cited as positives by the industry, and the flexibility provided by the new system of Temporary Event Notices (TENs)⁵ would appear to be widely supported by applicants and is something that the Forum would argue should be maintained (see paragraph 3.17).
- 1.12 There are however some issues we have uncovered which we feel are serious enough to warrant further discussion and action. We would ask Ministers to consider them very carefully.

5. A Temporary Event Notice is a notification that can be given to a licensing authority in order to authorise relatively small-scale (up to 499 people), occasional, short-term (up to 96 hours) events involving licensable activities. They are subject to certain restrictions. For more information see: http://www.culture.gov.uk/what_we_do/Alcohol_entertainment/

- 1.13 The Forum has questioned the need for the licensing of live music at all given that, as we will show later, there is little if indeed any inherent harm in the performance of live music – quite the reverse. However, that said, we do recognise the need for the proper control of public events, whatever their content. When looking at how and if live music events should be licensed, the key consideration for the Forum was that controls should be proportionate to the scale and nature of the event.
- 1.14 The Act, for example, does provide an exemption from licensing for ‘incidental music’. The Forum believes that this is quite a wide-ranging exemption and should be applied liberally in its interpretation according to the principles contained in the Hampton Review.⁶ This recognises that a key element of enforcement activity should be to “allow or even encourage, economic progress and only to intervene when there is a clear case for protection”.
- 1.15 The Forum has however uncovered clear evidence that in some areas there has been an over zealous or incorrect interpretation of the legislation. This, coupled with a lack of clarity in certain parts of the Act, in particular the lack of a proper definition of ‘incidental music’, has on occasion brought about an unwelcome and unwarranted impact, particularly on very small scale live music events. On that basis, this report does recommend changes to the legislation, primarily that a definition of ‘incidental music’ is provided on the face of the Act, and that unamplified live music is exempt from licensing. We also consider that the actions of a small number of local authorities, whose response to this legislation, in relation to live music, we believe has been unnecessary, unreasonable and disproportionate, should further be investigated by the House of Commons Select Committee for Culture, Media and Sport.

6. http://www.hm-treasury.gov.uk/budget/budget_05/other_documents/bud_bud05_hampton.cfm

PROMOTION OF LIVE MUSIC

- 1.16 The Forum was also invited by Ministers to make recommendations on what efforts could be made to help ensure that live music, particularly at a grass roots level, would continue to thrive, prosper and develop.
- 1.17 To help inform this process, the Forum has undertaken an extensive consultation process with the industry and the general public. We specifically invited a wide and diverse range of different groups and individuals to meet with Forum members and share their ideas and suggestions. These included concert promoters, booking agents, festival organisers, local authority arts officers, artists, managers, record companies, music publishers, and support organisations such as the African-Caribbean Music Circuit, Asian Music Circuit, Association of British Orchestras, Folk Arts England, Jazz Services and others from a wide range of genres.
- 1.18 Forum members also carried out their own internal research with venue operators and promoters to help identify any key barriers to live music provision. In addition, and as part of the 'Great Live Music Debate', with BBC Radio 1, we engaged directly with young artists, musicians, performers and audience members alike.
- 1.19 The response was overwhelming. Ideas were many and varied but one clear message came across, that the greatest need was for the provision of opportunity and access for young performers, artists and musicians, and support for those who wish to develop skills in other areas of the industry.
- 1.20 On that basis we have endeavoured to focus our response on where we believe intervention would have the most widespread, long-term and beneficial effect.
- 1.21 Rehearsal is obviously a vital and integral part of the career development of young musicians and is essential for the growth of bands. There are many excellent commercially run rehearsal spaces across the UK, but there is a lack of suitable affordable facilities for those just starting out. Too often young musicians have no choice but to rehearse in a garage or spare room as there are no appropriate spaces in their areas; or if facilities do exist, they can be too expensive to use.
- 1.22 As our pilot project in Wrexham has clearly indicated (see paragraphs 4.4 – 4.12), there would appear to be a great deal of demand and support for this most basic form of infrastructure. Between May and August 2006, a total of 723 young people used the Wrexham facility, 75% of whom were below the age of 18. A similar project based in Stockton-on-Tees and also supported by the local authority has already seen 972 individuals using the rehearsal facilities during the first three months of operation.

- 1.23 This report makes several recommendations which we believe will ensure that the rehearsal space project is expanded and built upon, especially in areas where there is a lack of provision and great social need.
- 1.24 Venues pose many challenges for young artists and promoters. Access would appear to be the primary concern, while the venues themselves face increasing pressure from other commercial activities around them and what we believe to be an unintended impact from planning legislation, which may also affect the creative and cultural industries overall.
- 1.25 We make a number of recommendations on what action we believe needs to be taken to alleviate these pressures, including the establishment of a Live Music Network in conjunction with the National Union of Students.
- 1.26 Opportunities for skills and training featured highly in responses to our consultation and, as highlighted by research recently released by Creative & Cultural Skills – the Sector Skills Council covering the music sector – live performance faces shortages of up to 10,000 people by the year 2017. This research also indicates that the industry will grow by 25% during the same period. We believe that Government should take appropriate action to address shortages in offstage and technical skills for live music and the performing arts. In this context, the Forum fully supports plans for the National Skills Academy, and notes that the industry is seeking to raise capital and in-kind support from members for its development.



LIVE MUSIC FORUM'S RECOMMENDATIONS

IMPACT OF THE LICENSING ACT

(i) As part of the Section 182 Guidance review currently under way, and any follow-up work, the opportunity is taken to help clarify for local authorities the exact nature and extent of the relationship between the Licensing Act and the Regulatory Reform Order and the requirement not to impose licensing conditions where the latter applies.

(ii) The Guidance issued to licensing authorities and police under Section 182 of the Licensing Act 2003, and any guidance issued to Interested Parties, is amended with immediate effect to make clear that any representations made in respect of an application for live music must be substantiated and must be evidentially based.

(iii) Greater effort is given to ensuring that all Interested Parties are aware that they can speak in favour of an application for live music and how that might be done.

(iv) A mechanism is created to allow a representation in favour of an application for live music to be framed in a way that it can be justified by a member of the general public. By way of example, reference and a link to this report should be made in any guidance issued by DCMS for Interested Parties with specific reference to the sections examining the licensing objectives. Similarly, reference should be made to The Civic Trust's report *Nightvision, Town Centres for All*⁷, which examines good practice in managing and developing evening and night time economies with a stated aim of ensuring "town centres for all".

(v) As a matter of some urgency a definition of 'Incidental Music' should be placed on the face of the Act. We would recommend that Part 2 – Exemptions, Paragraph 7 of Schedule 1 to the Act, where it relates to live music, is deleted and replaced with:

7. <http://www.civictrust.org.uk/evening/index.shtml>

“The provision of entertainment consisting of the performance of live music is ‘incidental’ for the purposes of the Act when either it is not the primary reason for attending an event or venue, or the musical activity attracts less than 100 people.”

(vi) Section 177, where it relates to the provision of live music, should be deleted from the Act and Schedule 1 Part 2 – Exemptions, should have a new Paragraph 7(a) inserted which should read:

“The provision of entertainment consisting of the performance of unamplified live music is not to be regarded as the provision of regulated entertainment for the purposes of this Act.”

(vii) That as part of DCMS’s ‘simplification plan’, Ministers should review the current variation system with the express goal of providing a simplified, fast-track licensing process which greatly reduces the burden placed on applications for live music especially for smaller premises.

(viii) Ministers should take whatever action necessary to ensure that both the letter of the law and the spirit of the Section 182 Guidance is adhered to.

(ix) Ministers should robustly censure the small minority of those licensing authorities which, knowingly or otherwise, have developed repeated patterns of heavy handed, negative decision-making which are contrary to both the letter of the law and the spirit of the Section 182 Guidance.

(x) The House of Commons Select Committee for Culture, Media and Sport should consider whether they wish to look at those licensing authorities which, knowingly or otherwise, have developed repeated patterns of heavy handed, negative decision-making and those local authorities which appear to be operating under Licensing Act Policy Statements which contradict both the letter of law and the subsequent 2005 High Court ruling (see paragraph 3.98).

(xi) Ministers should put in place a system, in conjunction with the industries and local government, which allows for the periodical review of decision-making patterns within a sample of licensing authorities, to ensure that there can be no repeat of this form of unnecessary and unreasonable cumulative impact.

(xii) Ministers should give further consideration as to how best to ensure that all relevant Government Departments and other agencies are fully participating in key policy objectives, and that all internal and external communications and guidance share any common priorities.

(xiii) We also recommend that monitoring of the Licensing Act Review process should continue so that a fuller assessment can be made in the future of any possible impacts. Ministers may wish to use the opportunity provided by the 2007 repeat live music baseline study as an initial step in beginning this process.

PROMOTION OF LIVE MUSIC

(xiv) Government should continue to work proactively with local authorities, regional development agencies and other commercial and non-commercial partners, to ensure every opportunity to develop affordable and well resourced rehearsal spaces is explored. As part of this initiative the Treasury's Unclaimed Asset Scheme should ensure that, where there is local demand coupled with lack of opportunity or great social need, the range of facilities which receive funding through the scheme should include provision for rehearsal and/or performance spaces to enable support for young local artists, musicians and performers.

(xv) DCMS should publicise more widely the results of the joint Department for Education and Skills (DfES)/DCMS Space for Sport and Arts initiative and ways in which individuals and community groups may be able to benefit, and should also work to ensure that the recommendations of the Space for Sport and Arts evaluation report are taken forward and implemented.

(xvi) DfES and DCMS should work together to ensure wherever possible that the Building Schools for the Future programme will at all stages of development ensure that the needs of live music are taken fully into consideration and that every opportunity is taken to ensure that the programme provides a direct benefit and asset to young local artists, musicians and performers.

(xvii) A scoping study should be undertaken as soon as possible, funded by the DCMS, to examine the feasibility, cost and sustainability of creating a web-based database of venues, based perhaps on data in the Performing Arts Yearbook, but also encompassing less traditional venues such as schools and churches. This study could also address to what extent existing databases could be built on.

(xviii) The Government should work with the industry and the National Union of Students (NUS) to provide whatever assistance, help and financial support necessary to establish the Live Music Network.

(xix) The Government should keep a watching brief to ensure future developments that might result in the loss of key, medium-sized venues do not impact adversely on future opportunities for musicians, performers and audiences alike (see paragraphs 4.30-4.31).



(xx) The Government should continue to support the Small Business Rate Relief Scheme (SBRRS) and look at any potential for adapting or tailoring support specifically for small live music venues. The Forum believes that in any extension or adaptation of the SBRRS or the introduction of a similar fiscal incentive, the position of small venues should be given serious consideration in recognition of the value of live music, and to ensure that we have a sustainable live music economy.

(xxi) The Government should take forward the findings of the DCMS 2006 study into the feasibility of measuring the economic impact of live music on local communities by undertaking a full-scale study of this issue. We believe this is vital to inform further evidence-based policy making.

(xxii) As part of Government's ongoing review of planning legislation, primary recognition should be given to the value of live music as a cultural and community asset.

(xxiii) In any future revisions or amendments of land-use planning statute, the Government should introduce the concept that the 'agent of change' should be responsible for any necessary remedial action to tackle noise-related issues.

(xxiv) The Government should remind local planning authorities of their responsibilities under Planning Policy Guidance Note 24 in relation to applications for planning permission to locate new residential dwellings near to extant sources of noise, drawing their attention particularly to the problems that might be caused in this context for live music venues if they fail to act in accordance with the statutory guidance.

(xxv) As part of Government's ongoing review of planning legislation, consideration should be given to developing a new Planning Use Class, for example 'Entertainment' or 'Creative Industries', within which would reside live music and associated activities such as rehearsal spaces.

(xxvi) This initiative should also be considered as part of the broader Creative Economy Programme, as we believe that a new Planning Use Class classification would greatly assist local authorities in developing future Unitary Development Plans and local employment strategies which support the cultural and creative industries.

(xxvii) The Government should take appropriate action to address shortages in offstage and technical skills for live music and the performing arts. In this context, the Forum fully supports plans for the National Skills Academy, and notes that the industry is seeking to raise capital and in-kind support from its members for its development.

(xxviii) The Forum welcomes the Creative Economy Programme's focus on improving skills, and asks that it references the work done by the Live Music Forum.