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English Folk Law: A Brief Introduction to Pub Licensing

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Abstract: The impact of government policy on live music in Britain is only recently being explored in academic work (e.g. Cloonan 2011). This article provides a brief introduction to the Licensing Act 2003, and the Live Music Act 2012, discussing their impact on the ability of venues to host live music and dance, with particular reference to the folk arts. It concludes that whilst the Live Music Act has opened up performance opportunities, fully licensed venues are still likely to remain preferable for performers.

Although the regulation of live music has been a hotly disputed topic in parliament for the past fifteen years, the academic study of live music policy and its impact is a recent development (Cloonan 2011, 405). Licensing laws are of particular interest in discussion of folk activities across the British Isles for two reasons. Firstly, since at least the second English folk revival of the mid-twentieth century, the public house has functioned as the primary venue for gatherings of folk enthusiasts and practitioners. MacKinnon (1993) went so far as to hypothesise that the low rate of church attendance amongst his sample of those attending folk events might be attributed to the comparable social function of the pub. Since debate has particularly focused on the rights of such small venues to host live music, the potential impact of policy change on folk practices is significant. Secondly, folk scenes typically comprise a panoply of music and dance activities, with varying degrees of emphasis on presentation and participation, and multiple ensemble types and sizes. Gigs, instrumental sessions, sing-arounds, and various forms of dance operate under the 'folk' banner, with many 'folkies' participating regularly in more than one of these activities. This makes the folk scene a particularly complicated thing for which to legislate, and the perpetuation of certain folk activities – at least ostensibly - highly vulnerable to changes in legislation. This article will provide a brief overview of licensing policy changes effecting England (the location of my postgraduate fieldwork) and Wales since the turn of the millennium, recognising that this period has seen an intense resurgence of interest in folk and traditional music across the United Kingdom (Winter and Keegan-Phipps 2013).

From 1964 to 2005, premises licensed to sell alcohol to be consumed on-site were required to apply for a separate Public Entertainment Licence (PEL) to legally host live music. Being passed prior to the development of powerful modern amplification, an exemption to the bill, known as the “two-in-a-bar” rule, allowed groups of no more than two to perform without the venue requiring a PEL, on the assumption that the performance was unlikely to be loud enough to disturb local residents, or to entertain a large (and potentially disorderly) audience. The PEL was not popular with publicans, who were unhappy with the added expense, nor with musicians, whose activities were limited by the regulation. Particularly stringent observance of the two-in-a-bar rule meant that an audience singing along with a performer were in breach (House of Lords 2017, 128), as were events involving successive performers (Ward 2011, 2-3). It was therefore illegal for venues without a PEL to host participatory folk activities intended to operate in this way, such as a session or sing-around (see MacKinnon 1993 for description of these events).

The *Licensing Act 2003* [<http://www.legislation.gov.uk/ukpga/2003/17/schedule/1>] (LA 2003), implemented in November 2005, was introduced to simplify the licensing procedure, and to ensure the satisfaction of four policy objectives: 1) the prevention of crime and disorder; 2) public

safety; 3) prevention of public nuisance; and 4) protection of children from harm (Part 2, Section 4). Venues could now apply to their local council for a single license permitting specified conditions, including non-standard hours of operation, and the hosting of different forms of live entertainment. Endorsed by Labour MP Kim Howells, parliament predicted that the act would result in a 'live music boom' (Cloonan 2011, 408).

Though ostensibly cheaper and simpler, the bill was negatively received by many with a vested interest in live music for several reasons. Firstly, as renowned folk performer Eliza Carthy passionately protested in the Guardian newspaper [<https://www.theguardian.com/music/2003/jan/28/artsfeatures.popandrock>] in January 2003 (Cumming 2003), where previously the two-in-a-bar rule had at least allowed music to be performed anywhere by soloists or duos, the LA 2003 limited all public performance exclusively to premises that were licensed for the performance of regulated musical entertainment. This posed a particular threat to itinerant and outdoor folk activities, with only the various forms of Morris dancing, as the result of rigorous lobbying, receiving exemption from regulation in licensed venues (Ward 2011, 5-6).

Secondly, the application process now carried additional risk, especially for small venues located near residential housing: The licensing application was not just sent to the relevant local authorities, but was also required to be advertised – with conditions listed – on the venue frontage, and in a relevant local publication. As the bill disallowed interested parties from representing in favour of the venue at any resultant hearings (Cloonan 2011, 408), proprietors feared that their entire application could be halted by a local resident who anticipated that live music in the venue would result in undesired noise. Although instances of such pre-emptive blocking are seemingly rare, this could result in problematic compromises, such as the venue having to commit to soundproofing the venue at their own expense (DCMS 2014, 4).

Thirdly, the initial draft of the Licensing Act was not clearly written, resulting in confusion among both venues and local authorities as to what it permitted. For example, under the new bill 'incidental' music – a problematically ambiguous term – was exempted from regulation (Ward 2011, 5). A folk session that was not advertised in advance by the venue could effectively be argued to be incidental, but it was ultimately down to local authorities to interpret such terminology, which some did more leniently than others (Cloonan 2011, 408). Such being the case, it seems unlikely that venues would be willing to risk a potentially costly violation. Temporary Event Notices, allowing venues to apply to host up to twelve regulated events per year - at low cost - were introduced to provide greater flexibility and security for venues not licensed to host regulated entertainment, but they did little to mitigate the LA 2003 operating against the interests of spontaneous music-making, and therefore many forms of folk activity.

Numerous representative bodies, such as the Musicians Union and the Music Venue Trust, have consistently campaigned against the regulation of live music (House of Lords 2017, 132). They enthusiastically received the Live Music Act 2012 [<http://www.legislation.gov.uk/ukpga/2012/2/enacted>] (LMA 2012), which deregulated live music in workplaces and licensed premises between the hours of 8am and 11pm for an audience of 200. A reform to the act, implemented in 2015, extended this audience limit to 500, and deregulated recorded music played in the same conditions (Legislative Reform (Entertainment Licensing) Order 2014). Much as the Labour government had hoped with the LA 2003, the LMA 2012 was intended to stimulate a renewed enthusiasm for the provision of live music performance in England through the removal of barriers that might previously have prevented proprietors from considering hosting it. In a bid to garner interest, the representative bodies heavily promoted findings that the 'wet' sales of a small venue might be increased by £100,000 a year with the provision of live music (e.g. PRS n.d.).

Whilst the deregulation introduced by the Live Music Act has provided additional opportunity for the staging of musical performance (and dance) in different environments, its impact on music-making in licensed venues seems prone to overstatement. Reports have consistently concluded that it is too early to establish the impact of the Act on the small venues it

was introduced to benefit (e.g. DCMS 2014), but it is not clear how this could be effectively measured: Music industry revenue figures do not take into account the extent of activity in small venues, and the annual *Taking Part* survey of the Department for Culture, Media and Sport (DCMS) is not detailed enough to illustrate where live music is being made or attended, nor what form this might be taking. Industry research, such as the *Rocktober Report*, found that proprietors were in many cases oblivious to the new legislation, though those whose licence did not currently permit the performance of live music demonstrated enthusiasm once informed of the possible impact on wet sales (UK Music 2013, 2).

Suggestions that the Act might result in proprietors choosing not to renew or extend their licence to host live music (e.g. DCMS 2016, 12) are questionable. For all of its shortcomings, the LA 2003 – implemented seven years prior to the LMA 2012 – resulted in licences permitting the provision of live music on terms agreed by the venue and the local authority (including beyond 11pm), in most cases for little or no additional cost to the venue. The price of a licence is determined by the value of the premises, with permission to host live music adding no additional cost to the application process (providing sound-proofing alterations to the venue are not required). Existing licences can be extended to permit the provision of live music for a price that is only a little higher than the annual licence renewal fee, which (though varying by region, and the value of the premises) is typically a few hundred pounds; a small sum given the revenue potential of hosting live music - as suggested by the UK Music report (2013) - and much less than many venues pay annually to the PRS (cf. Music Venue Trust 2015). A more troubling concern is that venues without a licence explicitly permitting the provision of live music are more vulnerable to (ever forthcoming) noise complaints, as they have not gone through the rigorous review process that invites locals to share their reservations in advance of the licence being granted. This may result in reduced defence against such complaints, and higher chance of a potentially crippling fine.

My fieldwork in the city of Sheffield, South Yorkshire, suggests that venues that are specifically licensed to host live music, and are situated out of earshot of local residents, remain preferable for performers of folk music and dance. A popular instrumental session, meeting at a licensed venue on the edge of the city centre, and often running beyond 1am, relocated for a short time to a more central venue, in the hope of attracting more student participants. The realisation that the new venue would not allow the session to run beyond 11pm, and that the bar staff would insist upon them ceasing playing in good time for the curfew, resulted in a sharp return to the previous premises. The attainment of a licence suggests a venue's respectful commitment to supporting live music that often goes much further, be this in reserving space regular session participants; providing free food or drink to musicians; turning off recorded music during a dance display; or just ensuring a good quality of interaction between staff and musicians. Participants of regular folk clubs and sessions will be more inclined to continue attending a venue that seems to be genuinely supportive of their activity. The proprietors of such venues will almost certainly want to apply to be able to host live music outside of the conditions stipulated by the LMA 2012.

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