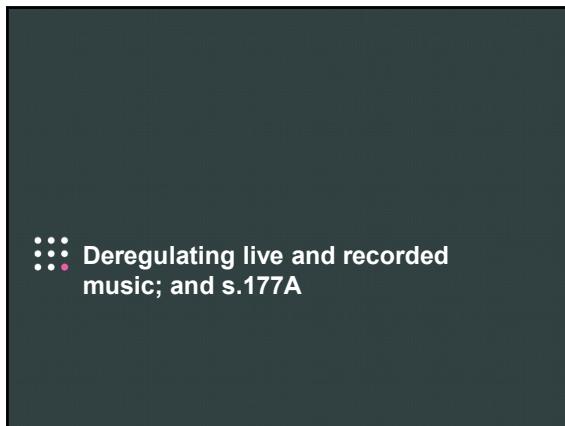


# Overview



- Music:
  - Live Music Act 2012 and s.177A LA03
- Off-sales:
  - Business and Planning Act 2020 and s.172F LA03
- What does “premises” mean?
- Implications



## Deregulating live and recorded music; and s.177A



## Live and Recorded Music



## Licensing Act 2003:

### - “Licensable activities”

### - “Regulated Entertainment”

### - Schedule 1

## Deregulating live & recorded music

- Live Music Act 2012; and 2014 Regs:
  - Amended Schedule 1: live & recorded music NOT Regulated Entertainment in certain circumstances:
    - On licensed premises with on-licence
    - Premises open for on-sales at time
    - 0800-2300;
    - audience <501 if amplified
  - Mechanism: ref to s.177A requirements

## Deregulating live & recorded music

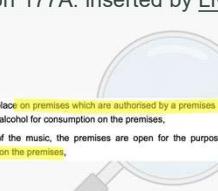


- Section 177A: inserted by Live Music Act 2012:
  - [<sup>E</sup>177A: Licence review for live [<sup>F</sup>2 and recorded] music
  - [<sup>F</sup>2(1) Subsection 2 applies where—
    - (a) music takes place on premises which are authorised by a premises licence or club premises certificate to be used for the supply of alcohol for consumption on the premises;
    - (b) at the time of the music, the premises are open for the purposes of being used for the supply of alcohol for consumption on the premises;
    - (c) if the music is amplified, it takes place in the presence of an audience of no more than 500 persons, and
    - (d) the music takes place between 8am and 11pm on the same day (or, where an order under section 172 has effect in relation to music, during any time specified under that order).
  - (2) Any condition of the premises licence or club premises certificate which relates to live music [<sup>F</sup>4, recorded music or both does not have effect in relation to the music] unless it is within subsection (3) or is added to the licence in accordance with subsection (3).
  - (3) A condition falls within this subsection if, on a review of the premises licence or club premises certificate it is altered so as to include a statement that this section does not apply to it.
  - (4) On a review of a premises licence or club premises certificate a licensing authority may (without prejudice to any other steps available to it under this Act) add a condition relating to [<sup>F</sup>5—music as follows—
    - [<sup>F</sup>6—music to be supplied]
    - [<sup>F</sup>7—music to be recorded]
    - [<sup>F</sup>8—music to be transmitted]
  - [<sup>E</sup>177A(4) This section does not apply to music which, by virtue of a provision other than paragraph 12A or 12C of Schedule 1, is not regarded as the provision of regulated entertainment for the purposes of this Act.]
  - (5) In this section—

## Deregulating live & recorded music



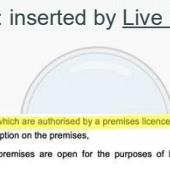
- Section 177A: inserted by Live Music Act 2012:



(a) music takes place **on premises** which are authorised by a premises licence **or** club premises certificate to be used for the supply of alcohol for consumption on the premises.

(b) at the time of the music, the premises are open for the purposes of being used for the supply of alcohol for consumption **on the premises**.

# Deregulating live & recorded music



- Section 177A: inserted by Live Music Act 2012:

(a) music takes place **on premises** which are authorised by a premises licence or club premises certificate to be used for the supply of alcohol for consumption on the premises.

(b) at the time of the music, the premises are open for the purposes of being used for the supply of alcohol for consumption **on the premises**.

## Deregulating live & recorded music

- Section 177A: inserted by Live Music Act 2012:

NB: further effect of 177A itself:

(2) Any condition of the premises licence or club premises certificate which relates to live music<sup>F4</sup>, recorded music or both does not have effect in relation to the music<sup>F5</sup> unless it falls within subsection (3) or is added to the licence in accordance with subsection (4).

(3) A condition falls within this subsection if, on a review of the premises licence or club premises certificate it is altered so as to include a statement that this section does not apply to it.

(4) On a review of a premises licence or club premises certificate a licensing authority may (without prejudice to any other steps available to it under this Act) add a condition relating to F5... music as if—
  - the F5... music were regulated entertainment, and
  - the licence or certificate licensed the F5... music.

## Deregulating live & recorded music

- Section 177A: inserted by Live Music Act 2012:
  - (2) Any condition of the premises licence or club premises certificate which relates to live music<sup>F4</sup>, recorded music or both does not have effect in relation to the music] unless it falls within subsection (3) or is added to the licence in accordance with subsection (4).
  - (3) A condition falls within this subsection if, on a review of the premises licence or club premises certificate it is altered so as to include a statement that this section does not apply to it.
  - (4) On a review of a premises licence or club premises certificate a licensing authority may (without prejudice to any other steps available to it under this Act) add a condition relating to F5... music as if—
    - (a) the F5... music were regulated entertainment, and
    - (b) the licence or certificate licensed the F5... music.



## Deregulating live & recorded music

- So, if “**ON PREMISES**” to which an **ON-LICENCE** applies:
  - Music is **NOT** regulated entertainment, so no need for a licence for it; and
  - Conditions re music disapply; BUT
    - Conditions added after a **REVIEW** remain live; OR
    - A review can provide that conditions not disapply

## Deregulating live & recorded music

- So what does 'on premises' mean here?

## Deregulating live & recorded music

- So what does 'on premises' mean here?

☰ Temporarily permitting off-sales; and  
s.172F

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Temporarily permitting off-sales



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Permitting off-sales



- Business and Planning Act 2020
  - Inserted section 172F into LA03:
  - Temporary automatic right to make **off-sales**
  - Either on-sales only licences (ss.1-3); or
  - On and off-sales licences with restrictive conditions (ss.4-6)
- For latter: conditions 'suspended' up to 2300
- Until 30 September 2022

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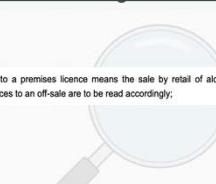
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# Permitting off-sales



- Business and Planning Act 2020

(b) "off-sales" in relation to a premises licence means the sale by retail of alcohol for consumption off the licensed premises; and references to an off-sale are to be read accordingly;

## Permitting off-sales

- Business and Planning Act 2020

These kinds of conditions are suspended up to 2300:

(i) one or more conditions relating to the time when an off-sale may be made that would prevent an off-sale during the relevant period being made at a pre-cut off time when the licensed premises are open for the purposes of selling alcohol for consumption on the premises;

(ii) one or more conditions applicable to pre-cut off times that would prevent an off-sale during the relevant period where the alcohol is sold in an open container;

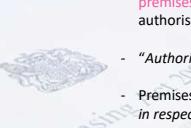
(iii) one or more conditions applicable to pre-cut off times that would prevent an off-sale during the relevant period where it is a sale for delivery.

## Permitting off-sales

- So what does 'off the...premises' mean here?

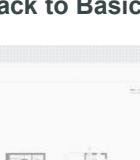


## Back to Basics (1) – The Act

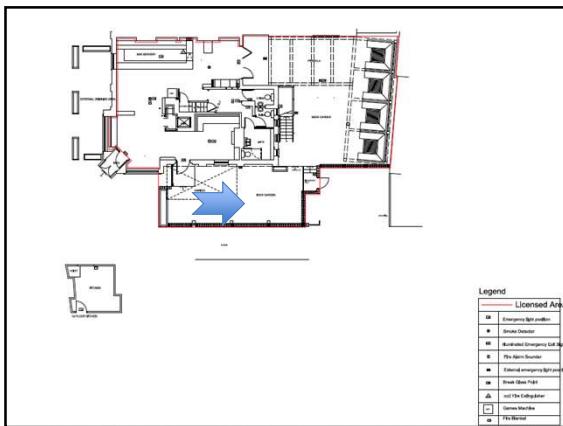
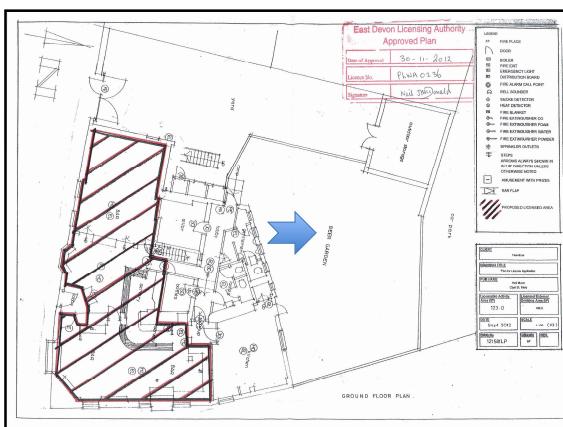
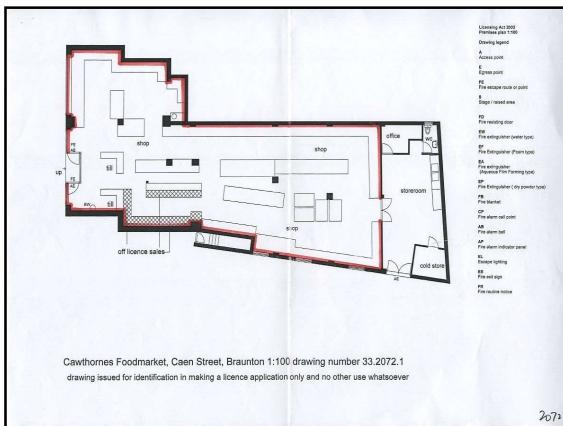


- Offence to carry on licensable activities **from a premises** unless under & in accordance with an authorisation – s.136
- “Authorisation” includes premises licence – s.2(4)
- Premises licence: “*a licence granted under this Part, in respect of any premises, which authorises the premises to be used for... licensable activities*” – s.11
- Premises: “*any place, and includes a vehicle, vessel or moveable structure*”

## Back to Basics (2) – The Regulations

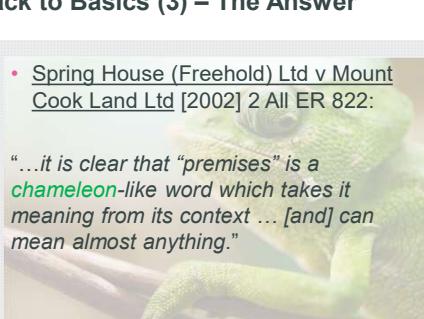


- Applications for premises licence to be accompanied by a **plan** – Reg 23
- **“of the premises to which the application relates”**
- Showing:
  - The extent of the boundary of the building;
  - Any external or internal walls of the building; and
  - **If different**, the **perimeter** of the premises.



## Back to Basics (3) – The Answer

• Definition of “premises” is extremely wide...



Back to Basics (3) – The Answer

- Spring House (Freehold) Ltd v Mount Cook Land Ltd [2002] 2 All ER 822:

*“...it is clear that “premises” is a chameleon-like word which takes it meaning from its context ... [and] can mean almost anything.”*

## Back to Basics (3) – The Answer

- Definition of “premises” is extremely wide
- Need a way of denoting what the premises is, in a particular case;
- Regulations provide that mechanism: **the plan**
- Red Line – not compulsory, but if there, denotes what the premises is
- Doesn't have to be **red**!

## Back to Basics (4) – The Guidance

- S.182 Guidance:
  - **“8.35...In scenarios where drink orders are taken by a member of staff in the garden or outdoor space and the member of staff then collects the drinks from the licensed premises and returns to deliver them to the customer this would be treated as an off-sale...”**
  - **8.36. In such cases it will not be necessary to include the garden or other outdoor space on the plan as part of the area covered by the premises licence...”**
  - **8.37. If the beer garden or other outdoor area is to be used for the consumption of off-sales only, there is no requirement to show it on the plan of the premises...”**

## Back to Basics (4) – The Guidance

- S.182 Guidance:
  - **“16.42...Beer gardens are often included as part of a premises licence... Live amplified music that takes place in a beer garden is exempt from licensing requirements provided the beer garden is included in the licence... [etc]”**

## Implications (1) - music



- Music is deregulated where it takes place on premises with an on-licence
- If beer garden **included** in red line, that includes music in the beer garden; and licence conditions disappled; BUT
- If beer garden **excluded** from the red line, excludes music in the beer garden, which is not deregulated
- NB beer garden in that scenario may be a **workplace** BUT conditions wouldn't be disappled.

## **Beware the “unintended” consequences (1)**



- Application to vary to include beer garden in red line
- Said to be in order to permit an outside bar
- Effect of variation would be to make live & recorded music in outside area unregulated, AND conditions disapproved by s 177A

## Beware the “unintended” consequences (2)



- Application for 'shadow' licence for head lessee's benefit
- Licence had been reviewed in past and conditions re music applied – survive s.177A
- Effect of granting shadow licence would be to make those conditions ineffective

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## Implications (2) – off-sales

- Where a licence permits on-sales ONLY, it now also authorises off-sales;
- Where a licence permits on AND off-sales, any conditions restricting off-sales are displied, up to 2300
- If beer garden included in red line, doesn't arise – no off-sale to beer garden anyway
- If beer garden **excluded** from the red line, conditions regulating time beer garden can be used for consumption are arguably disapplied up to 2300
- NB separate requirement to display a notice relying on s.172F.

