

Chapter 9: Everything else

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Licensing Act 2003

New provisions about the performance of live music are contained in Licensing Act 2003. This Act takes full effect from 1 November 2005. The law applies to England and Wales, not to Scotland. Most of the provisions about music and entertainment are contained in Schedule 1 of an Act primarily concerned about selling alcohol.

There has been a considerable amount of misinformation, particularly in the press and from certain musicians' groups, that this Act outlaws live music. It does not. Most of the music in which an organist is involved needs no licence. Where a licence is required, the process is simplified.

Under the Act, three types of activity need a licence:

- provision of music and other licensed entertainment;
- sale of alcohol; and
- sale of hot food or hot drink between 11pm and 5am.

The first two replace a raft of over 50 previous licensing laws (particularly Licensing Act 1964), while the third activity is a new addition. A single licence can cover any combination of the above, so a restaurant can apply for a single licence to sell late night refreshments, serve alcohol and play music. Licensed

entertainment includes both live music and recorded music, in addition to plays, films, indoor sport, boxing and dancing. The licence is issued by the local authority.

For music, a licence is only needed when there is an audience. No licence is needed for a private rehearsal. Even when there is an audience, there are many exceptions where a licence is not required. These include:

- church services, which are specifically exempt;
- secular concerts in church premises (see below);
- church garden fetes where profits are applied to church or charitable purposes;
- carol singing in the street or anywhere else, unless pre-arranged;
- ringing church bells;
- Morris dancing (which is given a specific exemption), folk dancing, wassailing and similar activities;
- private parties and anything in a private home, provided no charge is made to guests;
- performances in schools which are limited to pupils and parents and for which any charge made is only to cover costs and not make a surplus;
- on moving vehicles (such as a sing-song on a coach);
- spontaneous performance (such as when the rugby club start singing in the pub, or when guests sing Happy Birthday in a restaurant);
- incidental entertainment, such as juke boxes, televisions in pubs and jingles in amusement machines;
- rehearsal studios and broadcasting studios;
- testing or demonstrating an instrument in a music shop;
- performances by stand-up comics, story-tellers, magicians, clowns and children's entertainers, unless they include music.

"Church services" includes the ritual of any faith.

As originally drafted, the Licensing Act would have required a licence for secular concerts in church premises, which previously only applied to churches in London. The original argument was to ensure fairness between churches competing for custom with licensed concert halls. This requirement was dropped in the face of considerable protest that churches do not compete with concert halls.

A licence for entertainment usually is required in these circumstances:

- performing music which is neither part of a church service nor in church premises;
- singing carols in a railway station, shopping centre or elsewhere by

arrangement;

- parties for which attendees are charged admission;
- performances in schools which are to be attended by people other than pupils and parents;
- performances in schools where a charge is made which is more than merely covering costs (even if just raising funds for the school);
- performances in church halls, village halls and the suchlike (though the licensing process is simpler);
- entertainment in sports clubs;
- a dress rehearsal to which members of the public are admitted;
- a disc jockey performing in a pub.

Where a licence is required, there are broadly three sets of circumstances determining the licensing arrangements:

- permanent premises (such as pubs, restaurants and sports halls);
- private clubs; and
- temporary event notice.

Permanent premises need a premises licence, and a named individual with a personal licence. Private clubs need a club premises certificate, which is less onerous, and do not need anyone with a personal licence.

Conditions may be attached to these licences, such as the hours for which music may be performed.

For pubs the old "two in a bar" rule is abolished. This rule said that up to two musicians (eg singer and pianist) could perform without a licence. Under the new rules, a pub now needs a licence for a single musician, but once it has that licence it can engage the Royal Philharmonic Orchestra.

A temporary event notice (TEN) applies to such events as festivals, fetes (if they need a licence) and conferences if they provide music, alcohol or late-night refreshments.

The event must:

- not exceed 96 hours (four days) duration;
- be limited to no more than 500 people present;
- not start within 24 hours of a previous licensed event finishing.

There is a limit of 12 events or 15 days' worth of TEN events for any one venue.

The person seeking the notice must:

- be at least 18 years old;

- not hold more than five licensed events a year (50 if the person holds a personal licence);
- not be associated with someone so as to circumvent the previous provision (such as getting your wife to apply for a TEN for a sixth event);
- apply at least ten days before the event (though the council may specify a longer period); and
- notify the police.

The council must acknowledge the application within one working day. Only the police may raise an objection to TEN, which they must do within 48 hours (two calendar days). The police may only object on grounds of crime and disorder, and may not use the licensing process to enforce the law in areas for which they have other powers. The council decides whether to uphold the police objection.

Many organists are unlikely ever to be involved in a licensing issue as church services and carol singing round the streets are specifically exempt. However it can be an issue if performing elsewhere.

An organist who is invited to sing carols in a supermarket or shopping centre should check that a premises licence or TEN is held. If there is no licence or TEN, the premises holder is more likely to be prosecuted than the musicians.

Carol singing

There are three legal issues and several practical issues in arranging carol singing. The three legal issues are:

- whether a licence is required;
- nuisance; and
- collecting money.

A licence under Licensing Act 2003 is not required for carol singing in the street or anywhere else unless it is by arrangement. So if carol singers simply turn up at a pub unannounced and sing carols, no licence is required. If they arrange with a publican in advance, a licence is required, though the pub premises licence will probably be sufficient. A special licence could be required to sing in a supermarket or shopping area by arrangement.

If a choir visits a school, hospital, old people's home or similar premises, no licence is required if:

- the singing is part of a religious service; or
- only residents and their relatives are present, and they do not pay to be present.

Nuisance is two different offences:

- the civil offence of private nuisance; and
- the criminal offence of public nuisance.

Both are common law offences. This means that there is no Act of Parliament outlawing them. They became offences because judges outlawed them in specific cases, and judges in subsequent cases are obliged to follow those precedents.

A nuisance is "an inconvenience materially interfering with the ordinary comfort physically of human existence, not merely according to elegant or dainty modes of living, but according to plain and sober, simple notions among the English people" (Walter v Selfe [1851]).

A private nuisance is a tort of wrongful disturbance or interference with a person's use or enjoyment of land. It is not a criminal offence, which means that the aggrieved person must bring proceedings himself and cannot use the police. Private nuisance may be remedied by damages or an injunction to stop the nuisance.

Public nuisance is a common law criminal offence of causing substantial annoyance to the subjects of the Crown by exposing to danger, or in other ways affecting injuriously, their lives, health, property or morals.

In practice, annoying one household is a private nuisance, while annoying a neighbourhood is a public nuisance.

The law expects people to tolerate a reasonable amount of noise depending on the location.

There is no nuisance just because someone does not think much of your singing or is an old misery. It is necessary to show that you are unreasonably preventing them from enjoying their property. In practice, this would have to be extreme for carol singing, such as staying for a long time in the same place and using amplified music.

You should note that there is no law against singing or playing instruments on pavements, traffic islands or even in the middle of the road, unless you obstruct the road to other road users, which is an offence under Highways Act 1980 s137. A resident cannot complain that you are obstructing a road unless you are stopping the free flow of pedestrians or vehicles. You can be guilty of obstruction if you attract a sufficiently large crowd that you block the highway, even though the singers themselves are not blocking the highway. The inconvenience must be to other road users, not to nearby residents. Someone blocking the highway may be arrested under Police and Criminal Evidence Act 1984 s25.

Using amplified instruments can cause problems as this is more likely to be construed as a nuisance than acoustic instruments. There is a practical problem in obtaining electricity. The permission of whoever pays the electricity bill must be obtained, as abstracting electricity without permission is a specific criminal offence under Theft Act 1968 s13. Many street lights have 13-amp power points in their base. Permission is needed from the local council to access these.

Collecting money

If you wish to collect money while carol-singing, you need a collecting licence under House to House Collections Act 1939. A licence may only be issued to collect money for a charitable purpose. (There are plans to amend this law.)

The licence is issued by a senior police officer. Although the law is quite clear, it seems that it is widely ignored with impunity. There have been instances of police stations unable to find the forms or even in knowing what you are talking about, so be patient and allow plenty of time.

The House to House Collections Regulations 1947 state that collectors must:

- be at least 16 years old;
- wear a badge identifying the person as a collector;
- carry a certificate signed by the collector and an officer of the charity.

If the carol singing is to raise funds for the church, it would seem that the certificate should be signed by the minister as the charity officer. All churches are charities.

Street collections which do not involve going from house to house, such as carol singing with collecting boxes in one place must comply with local authority regulations issued under Police, Factories &c (Miscellaneous Provisions) Act 1916. Contact your town hall for advice. It is doubtful they will be that bothered. Indeed you may find difficulty in finding anyone who knows what you are talking about.

If you attempt to collect money other than as allowed, you could be prosecuted for non-compliance with the relevant Act. There is a very remote chance of prosecution for begging under Vagrancy Act 1824 s3, but this Act is designed to avoid annoying the general public on the highway. There is no known case of carol singers being prosecuted. The court once held that striking workers seeking assistance from the public were not begging.

Practical issues

In addition to the legal issues, there are several practical issues to consider in planning carol singing:

- deciding the date, time and starting place;
- deciding the general route; and
- deciding where to end up.

There is no obligation to inform the police of your intended carol singing, though this is advisable if many people are involved. The police may tell you that your route is also that of a protest march, or that one of the roads will be closed that day.

The answer to the last question is usually a pub or someone's house for some refreshment.

You also need to provide words of carols. Even though everyone "knows" the carols, most people would struggle to sing two verses of even the most well-known carols. Also there are significantly different versions for carols such as We Three Kings and As With Gladness.

You may also wish to consider providing music for any instruments.

Arrange illumination, either by providing torches or lanterns, or by stopping at street lights. It is more effective to stop by a street lamp and sing carols together than it is for small groups to attempt to sing carols in front gardens.

Concerts in church

There is no law against holding concerts in church, even when tickets are sold with a view to making a profit.

Such a concert is outside the scope of certain exemptions for church services, which in particular means that:

- you must comply with the Licensing Act 2003;
- you must comply with fire regulations; and
- you may need a performing rights licence.

These implications are explained in other parts of this book.

For the Church of England, there is a specific canon F16 which requires that:

- "the words, music, and pictures are such as befit the House of God, are consonant with sound doctrine, and make for the edifying of the people";
- the minister must follow any general direction from the bishop;
- the minister is satisfied that regulatory requirements have been met and any necessary licences obtained.

The first of these three conditions asks more questions than it answers. In practice, a performance of purely secular music, such as a Beethoven symphony, rarely causes a problem. A Protestant church may object to a performance of a requiem mass or a work such as Elgar's Dream of Gerontius or any prayer to a saint, on the basis that the Catholic doctrine of these works does not conform to their Protestant views. In practice such issues are simply addressed by checking in advance with the minister.

It is also advisable to check with the minister if there is any objection to:

- siting of equipment, such as microphones on the altar;
- moving furniture;
- serving refreshments;
- serving alcohol;
- selling programmes;

- running a raffle;
- Sunday performances.

Organ maintenance

A pipe organ needs to be tuned and maintained at least once a year. It is common practice to keep a notebook by the organ in which faults are recorded. These typically include notes that do not sound, pipes going out of tune, and moving parts which do not operate properly. The organ tuner goes through the book, and notes that he has fixed the problem or records what needs to be done to do so (if the problem is serious). Some notes about electrical work are given in chapter 8.

Some organists may be able to do some of the more routine themselves. Depending on your practical skills, this could include knowing where to replace fuses, tuning reed stops, removing ciphering pipes, reconnecting ducting, tuning pipes which have become significantly out of tune by something dropping on the sliders, and replacing labels.

Periodically, the organ needs a thorough clean, combined with inspection for such matters as water damage, wood rot, wood warp and animal infestation. Typically this is about every 30 years, but is less for organs in open spaces, dusty organs and those used frequently. For more enclosed and less used organs, a longer period may be acceptable.

You should always remember that an electrical blower needs maintenance, such as regular oiling and checking its bearings. Most pipe organs can benefit from a humidifier (sometimes called a rehumidifier). Wood can split or warp depending on temperature or humidity. There are many modern materials which avoid this problem. Relative humidity below 50% can cause problems for wood.

Excellent advice on looking after and replacing organs is contained in the booklet *Sounds Good* by John Norman and Jim Berrow (Church House Publishing).

Anything more than tuning or routine maintenance may require a faculty in the Church of England. A faculty applies to consecrated buildings, their contents and surrounding land and churchyards. A faculty is a licence or dispensation authorising works of alteration, including repairs, renovations, removals and additions to the fabric or contents of a church. A faculty permits work but does not require it. This is a church-based requirement and is in addition to any requirements under planning law. A faculty is granted by the Chancellor of the diocese. Faculties do not apply to cathedrals and some other places which are covered by the Care of Cathedrals Measure.

Faculty applications must be published, and contested applications are heard by a special consistory court, as may happen when opinion in a parish is divided. There have been contested cases over plans to replace a pipe organ with an electronic organ in re St Mary's Lancaster [1980] and re St Martin's Ashton-upon-Mersey [1981]. The organ is often the most expensive single item in the church. It is the responsibility of the minister and churchwardens to ensure that necessary faculties are obtained.

A faculty is needed for significant work to the organ, such as:

- installation of new organ or removal of old organ;
- replacement, removal or addition of pipes;
- relocation of the console;
- changes to the organ case; or
- replacement of the organ action.

If considering such work, you should first contact the Diocesan Advisory Committee (DAC) for your diocese. They will usually appoint an individual as specialist adviser on organs, often the cathedral organist or precentor. Discussing the matter with the adviser from the beginning will provide you with excellent advice as well as smoothing the passage for granting a faculty for whatever is agreed.

If your church is being re-ordered, such as having the furniture and fixtures moved, try to ensure that:

- the organ console is in the right place for the organist to hear a balanced sound;
- the console is no more than 12 metres (40 feet) from the pipes (unless using an electronic action, the console will need to be about 3 metres (10 feet) from the pipes);
- there are clear sight lines from the organ console to the choir and all parts of the church where a service may be led;
- acoustics are considered, such as not drowning the church with carpet.

On the issue of church carpets, Exeter Diocesan Advisory Committee gives this excellent advice: Extensive or heavy carpeting can have a very dampening acoustic effect, hampering speech, singing and other music, as well as sound reinforcement for all of these. An unsympathetic, 'dead' acoustic will discourage congregational singing, by making people self-conscious about their efforts. Carpets, curtains and upholstered chairs absorb sound, unlike wooden floors, panelling or plastered walls, all of which reflect it. Have you consulted your organist or choir as to their concerns about carpet?

At a practical level, any building or maintenance work in the church may require protection for the organ from dust and water. It is possible that the blower housing may contain asbestos which needs specialist handling or removal.

Electronic organs

An electronic organ is as good as a pipe organ in the sense that Spam is as good as steak. The financial arguments for electronic organs are questionable.

Since 1990, the development of digital sound technology has considerably improved the quality of electronic organs to the point where some sound as good as recordings of pipe organs. However, the difference between pipe organs and electronic organs is that, at best, you are hearing a recording of an organ. This is like using a synthesiser for a flute, trumpet, guitar or other instrument.

The sound is rarely as good as a pipe organ, as it is not moving as much air. Much of the problem with modern electronic organs is not in the sound production but in its amplification. Rarely is an organ given enough power. This is not needed just to produce deafeningly loud sounds, but to give quality to quieter sounds. You need powerful amplification to get quality, particularly on low notes.

A more significant aspect is cost, as few churches consider the capital cost of the instrument. In a deanery, you will probably find several pipe organs over 100 years old but no electronic organs more than 25 years old. According to surveys published in the magazine *Organ Builder*, the average life of an electronic organ when replaced is 15 years (but many organs are then used again). The capital cost of buying four new organs every century is often overlooked.

Also repairs, when needed, can be more substantial. Amplifiers and loudspeakers can rarely be properly mended when they start to play up, and need replacing completely. When an electronic organ fails, it quickly becomes unplayable. A pipe organ remains playable with no loss of quality of sound even when it has developed faults. Unlike pipe organs, electronic organ parts cannot be easily fabricated. The best manufacturers guarantee to keep electronic parts available even for ten years.

It should also be remembered that electronic organs are much less attractive to the best church musicians.

If offered a piano or electronic organ, only accept if you really have a need for the item. Otherwise politely decline. A church is not a dumping ground for unwanted furniture. If an item has been donated to the church, it becomes church property which means the church may dispose of it when it wishes. If the donor is still a church member, it is diplomatic to discuss the disposal with the donor, who may like to suggest another donor or even take the item back. But a church should not keep junk just to avoid offending a donor. In the Church of England, a faculty may be needed to remove an item even if no faculty was obtained to put it in.

Sound levels

In November 2001, the European Union agreed a directive on sound levels in the workplace. Under the rules of the European Union this would become law five years later in November 2006 (two years earlier for factories). Its proposal is a limit of 85 decibels without earplugs and 87 decibels with them over an eight-hour day. The sound level is measured over a week. There is a move to lower the level to 83 decibels. The previous rules set a limit of 90 decibels. Earplugs reduce sound by about 15 decibels but can distort the sound unless of a special type used by brass players and organ tuners.

Sound is a form of energy measured in decibels, where 120 decibels represents one watt of energy per square metre. Each 10 decibels increase means that the sound level has increased tenfold. Conversely each 10 decibels decrease means that the sound level had reduced to one tenth. So 100 decibels represents one hundredth of one watt per square metre. The figure of 0 decibels (10^{-12} watts/sq m) is the threshold of hearing, while 120 or 130 decibels is regarded as the threshold of pain, above which the ear can suffer damage. Prolonged exposure to sound as low as 75 decibels can also cause damage.

The following are examples of typical sound levels:

Decibels	Activity
130	Artillery at close range
	Bagpipes or trumpet at max volume
	Firecrackers
120	Amplified rock music
	Standing near a jet on take-off
115	Chain saw
110	Loud orchestral music heard in audience
100	Electric saw
	Orchestra playing fortissimo
90	Bus or truck engine
	Noisy pub
80	Car engine
	City traffic noise
70	Busy street
	Loud telephone bell or radio
	Helicopter overhead
60	Business office
	Normal conversation
	Quiet street
55	Cough
	Horn playing mezzo forte
50	Restaurant
	Private office
40	Quiet room at home
	Humming of a fridge
30	Quiet bedroom
20	Empty recording studio
	Soft whisper
10	Empty soundproof room
0	Absolute silence

Musicians have asked for music to be exempt. Many works would therefore become unplayable, including the European Union's own anthem from the last movement of Beethoven's ninth symphony. In March 2002, musicians won.

Loud sounds, particularly trumpets and percussion, aggravate a condition known as tinnitus which gives a ringing in the ear. Some estimates are that one person in ten suffers from the condition.

Loud sound can damage the ear drum. Pete Townshend, guitarist in The Who, suffered. It has been estimated that 10% of Americans have suffered hearing loss. Once hearing has been lost, there are surgical techniques and hearing aids which can mitigate the effects but not cure them. The ear does not get used to loud sounds; those who think their ears have toughened up have suffered hearing loss.

Data Protection Act

Data held on living people is protected by Data Protection Act 1984 as amended by Data Protection Act 1998, effective from 1 March 2000.

The main provisions of the Act are that to hold personal data on living people:

- you must register with the Data Protection Registrar;
- data must be obtained fairly and lawfully;
- the data protection principles must be followed; and
- the person must have access to the file on them for payment of a fee of £10.

Under the 1998 Act, data now includes non-computerised data, such as a card index system. The data need not be particularly sensitive, so details of qualifications and telephone numbers can be within the scope of the Act.

The following (among others) do not come within the scope of the Acts:

- an attendance register;
- a payroll;
- normal correspondence;
- references;
- examinations;
- journalistic material.

Data on the realisation of the objects of a charity are registrable. This includes records for fund-raising or providing pastoral care.

It is unlikely that an organist will want to keep any protected data under the Act, but if he does, he must be registered either himself or through the church. Conversely, an organist cannot have secret files held on him, except in limited

circumstances. A choir will normally be registered through the church and not separately.

Miscellaneous practical points

Every organist should:

- prepare so thoroughly that nothing can go wrong; and
- know what to do when things do go wrong.

These notes deal with some practical points of everyday organ playing.

An organist should know when and how to play over the hymns. Normally, the organist plays the first one or two lines unless it is an unfamiliar tune when playing the whole verse is justified. The organist should start the play-over with the first notes sung by the congregation, and not "lead in" from the last line. The congregation must not be in any doubt as to when to start singing.

There can be a problem in knowing when the hymn announcement has finished, as some minister simply announce a hymn number while others may wish to speak about the hymn. If in any doubt, the organist should count to four after what appears to be the end of the announcement before starting to play. (Four seconds is the time that a pause becomes recognised as silence.) If a hymn announcement continues after the organist has started playing, the organist must continue playing to avoid disrupting the worship.

An organist should be able to cover the action by filling in during gaps such as when the offertory hymn finishes before the collection is brought up, or during short periods of moving round the church. The organist should not normally play when the action is itself part of the worship, such as lighting a Pascal candle or processing to and from reading the gospel. If in doubt, the organist should check with the minister.

Covering the action either means playing a short piece in the same key, such as from *Covering the Action* (published by Kevin Mayhew) or by improvising. Organists have a long tradition of working suitable popular themes into such improvisations. This is fine, provided it does not distract from the dignity of worship.

A service may be disrupted so that it cannot continue, such as by drunks at midnight Communion, or by hecklers or protesters. As soon as the organist realises that the service has been stopped, he should immediately play the organ loudly until told to stop by a minister or appropriate officer. A hymn which the congregation can join is ideal. The churchwardens or similar officers can then deal with the trouble while denying the troublemakers the oxygen of publicity.

There is provision for objecting in a wedding to the marriage when the minister asks if there is any just cause or impediment against the marriage. Despite popular fiction, there has been no known successful challenge in over 200 years. However there is a procedure in that the minister, the couple and two witnesses must withdraw for the minister to decide whether the service may

proceed. The organist should play quietly during this. It does not particularly matter what you play as no-one will be listening.

A visiting organist should arrive in plenty of time to familiarise himself with the organ and what is required of him in the service. The visiting organist needs a list of all items where organ music is required, exactly where these occur, and whether the item is announced. This includes knowing when to provide a note for a minister to lead responses, intercessions or litany. The visiting organist should also check in advance whether the console is locked and, if so, where the key is.

Music before the service should last about 5 to 15 minutes, after any bells have finished pealing. This may require liaison with bellringers, or even adjudication by the minister. In the Church of England, the minister has authority over bells under canon F8. The purpose of this music is to set the tone for worship. This should be a matter of church policy.

Organ music should not be interrupted. It is good practice for there to be clear sightlines between the organist and minister, so the latter can nod when he is ready to speak, such as to start the service or to say bidding words at Communion. Similarly a churchwarden should not speak over music before the service to give out a notice, but should first ask the organist to pause the music. The organist should bring the piece to a quick conclusion, which is always possible within four bars. If someone does talk over the music, bring the music to a conclusion rather than stop mid-phrase, and tell the person how to behave in future. The final voluntary should not be interrupted.

Public address systems should not normally be used during music. It may be necessary to leave microphones and amplifiers switched on for those using hearing aids, but otherwise amplification disturbs the quality of music. Ministers should have their microphones turned off or turned down during hymns.

Recorded music should always be resisted. Worship means expressing the "worthship" of God. It is the offering of the people to God, and not a spectator sport. Those who want recorded music should be invited to replace sermons with recorded addresses, and flower arrangements with photographs. Indeed why bother to have a service at all, when you can simply play a video in an empty building?

What we have not covered

Although this book aims to be as comprehensive as possible, it is inevitable that some issues will arise which have not been addressed.

It is always a good idea to have some kind of professional support. Get to know other organists. Attend meetings organised by bodies such as the Guild of Church Musicians, Royal College of Organists, Royal School of Church Music and Incorporated Society of Musicians. The Royal College of Organists, Incorporated Society of Musicians and Royal School of Church Musicians.

The cathedral organist is almost always supportive of the work done by church organists. His position at the top of the pile depends on the loyal service from many parish organ grinders to make up that pile.

The authors of this book are always interested in learning of novel problems and may be able to assist.

Above all, remember that all cathedral and church organists are working for the glory of God. We organists have a sacred trust to assist our Christian brothers in the worship of God. He is a loving Father who supports the work of all his children. Ultimately the church organist has access to the greatest adviser of all.