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**RESEARCH INTO LOCAL
AUTHORITY RESPONSES TO
CHANGING CONDITIONS FOR
PUBLIC ENTERTAINMENT
LICENCES ON BEHALF OF THE
SCOTTISH ARTISTS UNION**



Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

Final report

*Lorraine Simpson, Director, The Lines Between
for the Scottish Artists Union, October 2012*

The Scottish Artists Union would like to thank Lorraine Simpson for the research and recommendations contained in this report and all the members and interviewees who contributed their experiences, information and content.

Introduction

The Public Entertainment Licence issue rang alarm bells for the Scottish Artists Union very early in 2012, when it became apparent that worrying changes in the law were creeping up on the creative community at large. Having recognized the importance of focusing on the needs of practitioners, the Union's Executive decided to harness the rising tide of concerns and so commissioned this report. Researcher Lorraine Simpson was contracted to follow up from our initial Freedom of Information Request to all the Scottish local authorities and her work has resulted in this comprehensive and informative document.

It would appear that the outcome of the new law has not yet been as disruptive as was feared. However, there is no room for complacency; local authorities have the power to alter the parameters of their interpretation, and we should continue to monitor them. The glimmers of hope offered in the current situation, where it would seem that Artists and Makers will not be adversely affected by the alterations in the legislation, should not be taken for granted.

The Scottish Artist Union intend to maintain pressure on local authorities and will be considering ways of acting on the recommendations and suggestions contained in this report, with a view to improving working conditions to our members and the wider Creative Community.

Rowena Comrie
SAU President

Chapter One: Introduction

- 1.1 In July 2012 the Scottish Artists Union (SAU) commissioned research to identify the current and likely future intentions of local authorities in Scotland with regards to the implementation of changes to Public Entertainment Licences (PELs).
- 1.2 This report sets out the findings from the research and contains recommendations for future actions to support the SAU to accurately monitor progress.

Background to the research

- 1.3 On April 1st this year changes made to the Criminal Justice and Licensing (Scotland) Act 2010¹ came into effect. A minor amendment to the wording now makes it possible for local authorities to require Public Entertainment Licences for the use of premises as a place of public entertainment. This represents a shift from the previous legislation in which PELs were only deemed necessary if a fee was being charged for entry and the event met certain criteria.
- 1.4 The box below illustrates the change to the Act:

Section 41

Public entertainment licences:

(1) A licence, to be known as a “public entertainment licence”, shall be required for the use of premises as a place of public entertainment.

(2) In this section, “place of public entertainment” means any place where, ~~on payment of money or money’s worth~~, members of the public are admitted or may use any facilities for the purposes of entertainment or recreation

- 1.5 Legislation is a national issue but in practice licensing policies are set at the local level, as they are implemented at the discretion of local authorities. Councils have the power to make resolutions which (i) interpret licensing laws (ii) determine how they are to be applied and (iii) exempt certain categories of events from requiring PELs. In this way there is scope to ensure that licensing rules reflect the needs of local areas.
- 1.6 In the run up to 1st April concerns were raised that the change to the law might adversely impact upon Scotland’s art sector, by requiring artists to obtain a PEL if they wanted to host an exhibition, event or performance.
- 1.7 There were fears that this process was likely to be bureaucratic, time consuming and expensive; thus resulting in a reduction of the number of public art events in Scotland. In particular, there were fears about the impact of the legislation on:
 - Scotland’s major international arts festivals;
 - grassroots & community based arts activity;
 - entry level professionals; and
 - students.

¹<http://www.legislation.gov.uk/asp/2010/13/section/176/enacted>

1.8 The concerns are illustrated in a comment that was made during the research study:

"At times like this (financial recession) the arts should be given every encouragement and opportunity to inspire and encourage vibrant culture. It is blinkered if not stupid to penalise and squash artists ability to operate and keep the nation's soul alive"

1.9 The arts community in Scotland rallied formal and informal networks to protest against the changes. Several high profile demonstrations took place, which urged local authorities to protect the sector by exempting artists' events from the PEL requirement. These protests attracted front-page coverage in Scotland's national newspapers.

1.10 The Scottish Government responded to the campaign against Public Entertainment Licence changes by signalling that they desired for the arts to be protected from adverse impacts. Whilst acknowledging that discretion lay with local licensing authorities to determine what types of events they license, the Minister for Culture Fiona Hyslop also noted that:

"there is nothing in the law to prevent an authority from exempting all or certain categories of free to enter events, or particular types of cultural events from the requirement to have a public entertainment licence²".

1.11 The Justice Secretary Kenny MacAskill also sent a letter to every licensing convenor in Scotland which said:

"we would encourage you to take account of the contribution of the artistic community when progressing any changes that are being made."

The research brief

1.12 On 21st January 2012 the Scottish Artists Union sent the following Freedom of Information request to each of the 32 local authorities in Scotland:

Changes in legislation for Public Entertainment Licences

I am writing on behalf of the Scottish Artists Union to make a Freedom Of Information Request with regard to the implications of the above changes in Scottish Government legislation.

Specifically we wish to know what recorded discussions have been had within your council in relation to this legislation, what plans are being considered by the council or what decisions have been made to change your Public Entertainment Licences.

We are interested in all aspects of this change in legislation but in particular how any proposed or actual changes being considered by the council will effect artists exhibitions, artists temporary public events/artworks, open studio schemes and other artists initiatives including student activities.

²<http://discoverfineacting.wordpress.com/2012/03/12/hyslop-macaskill-and-salmond-responses-to-pel-campaign/>

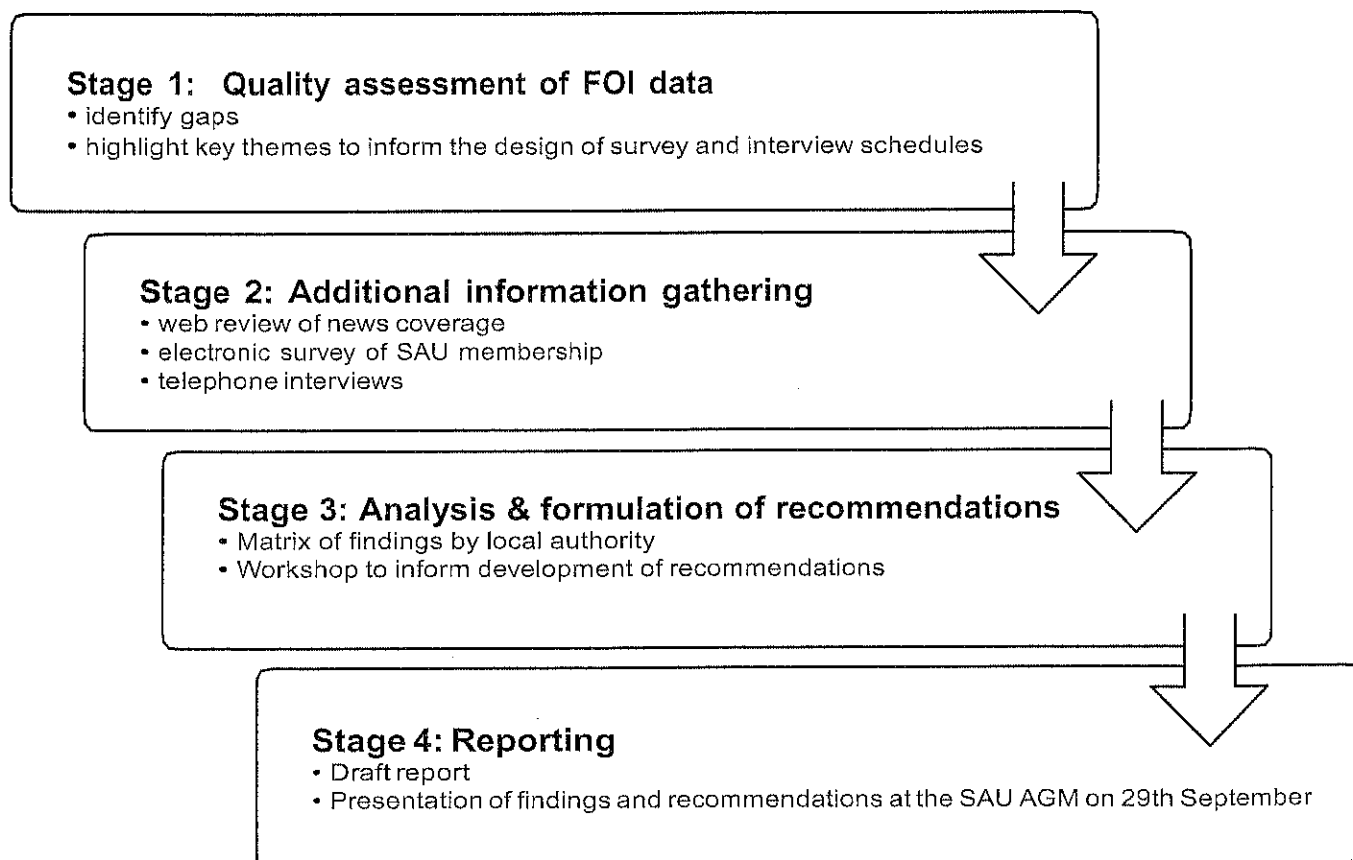
1.13 After receiving 27 FOI returns, the SAU commissioned research to examine, summarise and group local authority responses to the changes in Public Entertainment Licences. In addition the SAU sought:

- for the information be presented in a succinct report to provide a clear understanding to members about the current and likely future intentions of all 32 Local Authorities; and
- recommendations for future actions to accurately monitor all 32 Local Authorities progress in this area.

1.14 It was also agreed that the research would explore the implementation of PEL changes and assess the impact of changes on artists' professional activities so far.

Methods

1.15 The diagram below summarises the methods used in the research study.



1.16 Copies of the research tools used in this study are provided at Appendix Three.

Report structure

1.17 The remainder of this document contains

- details of the proposed and actual PEL changes made by local authorities;
- findings re: the impact of changes to PEL conditions on SAU members; and
- a set of practical recommendations for the SAU.

³The SAU did not receive responses from the following local authorities: City of Edinburgh, Midlothian, Stirling, West Dunbartonshire or West Lothian.

Chapter Two: Research findings

- 2.1 The first part of this chapter covers local authority responses to Public Entertainment Licence changes. The second section focuses on the impact of changes on the arts sector, evidenced by the qualitative data gathered through the survey and telephone interviews.
- 2.2 For ease of review the findings by local authority are presented in a stand-alone matrix document at Appendix One. A summary of statistics from the electronic survey is provided at Appendix Two.

Response by local authority area

- 2.3 The findings in this section are based on (i) a review of the responses to SAU's Freedom of Information request (ii) a review of local authority websites (iii) telephone interviews with representatives from the licensing departments of each local authority in Scotland and (iv) relevant responses to the electronic survey.

Formal resolutions

- 2.4 Almost one third of all local authorities in Scotland have not yet reached a formal resolution on how they will apply the PEL changes. We highlight that this includes Glasgow, a key area in which artists regularly perform, present or exhibit their work. These local authorities are currently maintaining the status quo – no licence requirement for art exhibitions - until a decision is reached. The eight areas which have not yet arrived at a resolution are:

- East Ayrshire
- East Dunbartonshire
- East Renfrewshire
- Fife
- Glasgow City Council
- Inverclyde
- Perth and Kinross
- West Dunbartonshire

- 2.5 A more detailed summary of the intentions of these local authorities as identified during the research is provided in the matrix at Appendix One.
- 2.6 The qualitative evidence gathered during the survey highlights the confusion felt by people living in areas that have not yet reached a resolution. Quotes which illustrate the experiences of survey participants include:

“Not sure what the latest stage is. There was a temporary stop to the licence but don't know what the long term view of my local authority is”.

“As far as I was aware, Glasgow decided to defer their decision until later as the GI festival was about to take place and it was in everyone's best interest to shelve it - however, I can't find out anywhere about when they are making their decision”.

“I live on the border of three local authorities - I only know the position of one of these”

PEL requirements for free art events

- 2.7 The vast majority of local authorities do not require a PEL if the artist is hosting a **free** event.
- 2.8 There are only three local authority areas that may require artists to apply for a PEL if they are hosting a free event. These areas are Falkirk (events there will be considered on a case by case

basis); Stirling (their ruling is that any event that is not for charity is "commercial" and therefore requires a PEL, however they urge artists to contact the licensing department and explain their case); and Shetland (the consensus is that this is a "technicality" and the local authority strongly encourages art exhibitions. In most cases events in Shetland are held in venues that already have a PEL).

2.9 During telephone interviews with licensing departments we identified significant uncertainty about whether or not artists' events qualified for a PEL. In many cases the researcher was the first person to have asked the question of the department and was often required to give a detailed description of the types of art events they were referring to. They were then told that it was probable that these events would not require a licence, but that this needed to be checked with the legal department. The department representative then followed up with a telephone call to confirm that free artists events such as those described did not require a PEL.

PEL requirements for events with an entry charge

2.10 As was the case before the PEL changes were made, some local authorities require venues to have a PEL if an event being hosted there involves a charge for entry.

2.11 We highlight that many artists use venues that already have a Public Entertainment Licence. In these cases, even if an artist is charging a fee for entry they do not have to apply for a licence.

2.12 The following local authorities explicitly stated that they would not require a PEL for an art event which charged an entry fee:

- Angus
- Dumfries & Galloway
- Dundee
- Fife
- Inverclyde
- Moray
- North Lanarkshire
- Orkney
- Perth & Kinross
- Renfrewshire
- South Lanarkshire
- West Dunbartonshire

2.13 These local authorities explicitly stated that they do require a PEL for events with entry fees, including art exhibitions /performances/events:

- Aberdeenshire
- Clackmannanshire
- East Lothian
- Highland
- Midlothian
- Stirling
- Scottish Borders

2.14 During interviews with licensing representatives in areas that require a PEL for events with entry fees we asked for details about the application process. The news was not encouraging – these areas follow a standard procedure which is time consuming and expensive. Temporary licences (the type that most artists will require) often involve a 6 weeks application process that entails a period of public consultation, and a licence fee in the hundreds of pounds.

2.15 One survey participant articulated a strong objection to the requirement of a licence for paid events, explaining that:

"I feel the community structure is undermined by this being in place. The fact that authorities are generally not pursuing licences for FREE events does not mean they could not slowly one by one slip into making it part of accepted practice [via paid events]. [This is a] slippery slope to gaining power over sharing our lives, stymie the building of strong communities and will definitely inhibit volunteerism and community arts projects and programmes".

Other information gathered

2.16 The overriding impression formed during interviews was that licensing departments are still in the bedding-in phase of their changes and that many areas have not yet established clear practices with regards to the arts.

2.17 Staff in licensing departments came across as courteous and helpful. Most gave the impression that they wished to make things as easy as possible for artists within the bounds of the law.

2.18 Contrary to some of the fears expressed before changes to PELs came into effect, there was no indication that any local authorities sought to make money from art events – more that blanket rules had been created, but not yet been tested.

2.19 It is evident that there is a lack of awareness about different types of art events. Many staff wanted to know what an exhibition entailed, and were not familiar with terms such as "open-studio event" and "pop-up event".

2.20 In one area we were told of a simple way for artists to circumvent the need to apply for a PEL – rather than labelling an event as an "exhibition" (which was on the list of events which required a PEL) it could be described as a "show of work" – which was not on the list.

Profile of survey participants

There were over 200 responses, with input from all 32 local authorities in Scotland. Responses from Edinburgh and Glasgow accounted for more than three-quarters of the data.

The majority of responses came from people working in the area of visual arts and applied arts and crafts, most of whom were well established in their careers.

Over half depended upon their income from their artistic work, with many others deriving at least a part of their income from their art.

Approximately three-quarters of respondents show their work over four times per year and almost 90% of exhibitions are free to the public.

Almost one-quarter of the respondents said that performance activity had decreased to some extent over the past year. This is balanced by over 30% saying their activity increased in the same period.

Less than one-in-twenty of the respondents had applied for a public entertainment licence in the past. A higher number, about a quarter of the sample, went on to say that the most common type of activity that they sought licences for were (1) open studio, followed by (2) public art events and (3) exhibitions.

2.21 The remainder of this chapter addresses each of the key themes that emerged from the telephone interviews and electronic survey.

Lack of awareness about changes to PELs

- 2.22 The survey revealed a clear lack of awareness about changes to PELs. Almost half (46%) of participants were not aware that changes to PEL conditions came into effect earlier this year.
- 2.23 It is also worth highlighting that this lack of awareness may have contributed to the lower than expected survey response rate (we had anticipated responses from at least 300 people ; in fact, 202 responses were returned). The survey was titled "SAU Topic Survey: PEL changes" and in retrospect it is possible that some people did not take part in the survey simply because they did not know about PEL changes and therefore thought the survey did not apply to them.
- 2.24 There may therefore be a self-selection bias in the responses, and it is possible that the percentage of artists who know about PEL changes is even lower than the figure identified above.

Confusion

- 2.25 The respondents who were aware of changes to PELs were confused about (i) what the changes were and (ii) who and what kinds of events they applied to.
- 2.26 Similarly the feedback indicates that local authorities are being cautious, with local councilors sending out positive messages in conversation, but being reluctant to document their positions or send written confirmation. Several participants described confusion within local authorities, with elected officials having a different position to local licensing boards.

Regional breakdown

- 2.27 The dataset was too small to offer any meaningful analysis by local authority. However, cross tabulation revealed far greater awareness and engagement on PEL issues in Edinburgh and Glasgow than other areas.

Impact to date

- 2.28 Most people have not experienced, as yet, any negative consequences arising from the changes to PELs. Only 5% of respondents said that the PEL changes had had an impact on them thus far, with one explaining that

"some events had to be cancelled".

- 2.29 None of the participants said it had become less difficult to arrange public performances since the changes and the majority said things were about the same.

- 2.30 A person who had applied for a PEL commented:

"Filling in the form was difficult, as the questions were not well suited to the activity. We became aware of the requirement because we were informed by XXX, who worked hard to make the application process as painless as possible, but getting the correct building plans etc together was almost impossible".

- 2.31 The majority said they expected things to become more difficult in the future as a result of the PEL changes, especially with regards to cost and restrictions that limit spontaneity. One said:

"A lot of the events I put on are not in traditional venues. This will make doing events much harder as the venue I am involved in might not understand the law and think it is going cost them etc."

⁴This estimation was based on the average 30% response rate for electronic surveys. The survey was distributed to approximately 900 SAU members and was also posted on relevant social media sites and distribution channels - the sample size is therefore unknown.

It will also make the production of small-scale events too expensive for audience & performers. Therefore there will be less choice for everyone”.

- 2.32 Despite the fact that there been little impact so far, the survey and interviews revealed that there is a strong sense of people waiting for the anticipated negative consequences from these changes. One person explained that:

“...It will have an obvious impact financially, e.g. the cost of exhibiting is already prohibitive for individuals, and this is one more cost which may have to be passed onto artists by private galleries. If this only a Scottish initiative - not U.K. or Europe wide - it might discourage artists from outside the country”.

- 2.33 The PEL changes have added to an economic context that is serving to demoralise the arts community. Many feel the legislation shows how little their contribution is understood and/or valued by local authorities. There were several comments on the destructiveness of the uncertainty over this issue and many were unhappy with the inconsistencies and delays at local and national levels. A respondent noted that:

“It is likely to stifle spontaneous exhibitions and performances. Legislators seem to be unaware of how much the existence of a flourishing and enterprising art scene can contribute to the wealth as well as the health and inspiration of a community.”

- 2.34 One oft repeated fear was the impact of the changes on students and the grassroots art scene, illustrated by the quote below:

“Grassroots art will find it much more difficult to operate, which will have a knock on effect to the amount of talent that comes through. It will be harder to connect to audiences & make new things happen. It will affect the income of artists and be prohibitive to putting on new experimental arts”.

- 2.35 Other comments included:

“It is particularly damaging to emerging artists and new venues and the smaller venues reaching out to new audiences or isolated or rural communities unless you have a proactive council”.

“The extra costs will have to be passed on, making free events chargeable to cover extra costs”.

“Any event I take part in organising will most likely have to happen underground”.

“I exhibit sometimes in pop-up venues. Applying for a licence could ruin the spontaneity of the pop-up show.”

The impact of public protests

- 2.36 Artists felt anxiety earlier in the year, but at the same time a feeling was described of a community which “flexed its muscles”, by coming together to make effective protests.

- 2.37 Over half of the respondents had taken part in some form of protest concerning PELs. This figure was higher (almost three-quarters) in Glasgow and Edinburgh. The most common form of protest was taking part in a petition. Protesting via social media was the next most common. Some had written to protest to their Local Authority or had attended a demonstration.

- 2.38 Specific examples given by survey participants included:

"I have written to my MSP and had e-mail correspondence with her".

"Attended the general meeting about the issue with other arts professionals and attended the council hearing"

"I e-mailed our MSP who contacted our council's chief executive on my behalf and forwarded her reply".

How the SAU can support its members

2.39 During the research several suggestions were made on ways in which the SAU might support its members to address the changes. These views are grouped and summarised below:

1. Submit a question to the Scottish Parliament that clearly explains the uncertainty and distress caused to date. Ask the Scottish Government for further support in guiding local authorities which have not yet formed a resolution.
2. Run a "test case" in an area that requires PELs for art events and arrange for press coverage.
3. Develop a series of case studies to teach artists about the process of applying for a PEL.
4. Produce some tools and resources to educate councillors and licencing department staff that explain the terminology associated with art events.
5. Track each local authority's position and submit an FOI request after the first year to identify how many artists applied for PELs.
6. "Name and shame" local authorities that have made adverse decisions without consulting their local arts community.
7. Map all the arts activity happening in key areas to illustrate the argument that if applied properly, local authorities would not have the staff resources available to process the applications.
8. Communication with SAU members, for example (i) develop an FAQ on PELs and put it on the website (ii) provide regular updates via email about what is happening (iii) set up meetings to discuss progress (iv) provide updates through Twitter and Facebook (v) provide clear guidelines to assist artists with navigating the laws and (vi) highlight instances where the licence has been avoided by lateral thinking.
9. "Let sleeping dogs lie" – accept the fact that local authorities are currently turning a blind eye to the legislation but may enforce it if pushed on the issue.
10. Organise a Scotland-wide protest event using art, asking all galleries to participate. Examples included an anti-PEL weekend in which events are staged without applying for a licence. The profits could go towards opposing PELs and/or supporting small Social Enterprise galleries.

Chapter Three: conclusions and recommendations

Conclusions

“An’ forward, tho’ I canna see, I guess an’ fear!” (Robert Burns)

- 3.1 The research has produced a sizable body of information about the views of a range of artists living and working in Scotland. The participants are, in the main, established practitioners who earn their living from artistic activity. They perform regularly and mainly offer free events to the public. These are voices that should be heard.
- 3.2 In addition this research has provided useful evidence about the value individual artists and the sector as a whole place on public events.
- 3.3 A significant number of the respondents were not aware of the changes to Public Entertainment Licences. Whilst this figure showed some inconsistency across the country, it is clear that more needs to be done across the country to inform artists of these developments. Many report not knowing how to find out about the changes.
- 3.4 There are very real fears that the potential negative impacts of these changes on a range of important issues have not been sufficiently recognised and are yet on the horizon. There are concerns about the impact on individual artists, the impact on local communities and on the art community in general, as well as the financial and cultural impact at the national level.
- 3.5 Despite the uncertainty, the research has also identified a feeling that there is a window of opportunity at present due to the delay in clarifying the position on this matter, at local and national levels. There is therefore scope to influence these changes before they take hold.

Recommendations

- 3.6 The following recommendations are made, based on the findings from this research study:

Communication

1. The SAU may wish to consider developing a communication strategy and action plan based around three elements:
 - (i) communication with members - providing information on changes within local authorities, details about application processes and regular updates about any other PEL developments;
 - (ii) communication with local authorities - for example the production of learning material for local authority licensing departments which explains the terminology used by the sector; and
 - (iii) communication with wider stakeholders – for example sharing the findings of this research with wider stakeholders such as cultural organisations and the Scottish Government will help make the case for clarity and evidence the impact of the PEL changes so far.

Monitoring

2. The SAU could consider the adoption of an intelligence-led approach to inform future action. This could include monitoring work at national and local levels to identify:
 - (i) decisions reached in areas that have not currently made a resolution; and
 - (ii) the impact of PEL changes in the longer term.

Influencing

3. There is scope for the SAU to develop an influencing strategy that reflects the window of opportunity identified through the research. More specifically, there is potential to:

(i) influence local authority areas that have not yet reached a decision; and

(ii) influence local authority areas that have reached a resolution but in practice do not have procedures in place.

Resources

4. The SAU might also consider mobilising some of the additional resources identified in the research, for example by:

(i) acting upon some of the suggestions put forward by members, as identified in Chapter Two;

(ii) appointing local PEL champions to monitor developments, identify case studies and lead action at the local level; and

(iii) working in partnership with other unions/cultural organisations.