

14. Statements of licensing policy

Introduction

The Licensing Act 2003

14.1 This chapter provides guidance on the development and preparation of local statements of licensing policy for publication by licensing authorities, the general principles that it is recommended should underpin them, and core content to which licensing authorities are free to add.

General

14.2 Section 5 of the 2003 Act requires a licensing authority to prepare and publish a statement of its licensing policy at least every five years. Such a policy must be published before the authority carries out any function in respect of individual applications and notices made under the terms of the 2003 Act. During the five-year period, the policy must be kept under review and the licensing authority may make any revisions to it as it considers appropriate, for instance in the light of feedback from the local community on whether the licensing objectives are being met. If the licensing authority determines and publishes its policy in this way, a new five-year period commences on the date it is published. Previously, licensing authorities were required to determine their licensing policies for each three-year period. Licensing policies published in respect of the three-year period that began on 7 January 2011 are to be treated as though they apply to a period of five years beginning at that date.

14.3 Where revisions to the section 182 Guidance are made by the Secretary of State, it will be for the licensing authority to determine whether revisions to its own licensing policy statement are appropriate.

Consultation on policies

14.4 Before determining its policy, the licensing authority must consult the persons listed in section 5(3) of the 2003 Act. These are:

- the chief officer of police for the area;
- the fire and rescue authority for the area;
- each local authority's Director of Public Health in England (DPH)¹⁴ or Local Health Board in Wales for an area any part of which is in the licensing authority's area,
- persons/bodies representative of local premises licence holders;
- persons/bodies representative of local club premises certificate holders;
- persons/bodies representative of local personal licence holders; and
- persons/bodies representative of businesses and residents in its area.

14.5 The views of all these persons or bodies should be given appropriate weight when the policy is determined. It is recognised that in some areas, it may be difficult to identify persons or bodies that represent all parts of industry affected by the provisions of the

¹⁴ This change was made as a result of the commencement of measures in the Health and Social Care Act 2012 which amended the 2003 Act and further provision in the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012.

2003 Act, but licensing authorities must make reasonable efforts to do so. Licensing authorities should note that the terms of the 2003 Act do not prevent them consulting other bodies or persons.

- 14.6 Subject to the statutory requirements, it is for each licensing authority to determine the extent of the consultation it should undertake, and whether any particular person or body is representative of the groups described in the 2003 Act. While it is clearly good practice to consult widely, this may not always be necessary or appropriate (for example, where a licensing authority has recently carried out a comprehensive consultation in relation to a revision to its policy made within five years of a full revision to it). As such, it may decide on a simple consultation with those persons listed.
- 14.7 However, licensing authorities should consider very carefully whether a full consultation is appropriate as a limited consultation may not allow all persons sufficient opportunity to comment on and influence local policy (for example, where an earlier consultation was limited to a particular part of the policy, such as a proposal to introduce a cumulative impact policy).
- 14.8 Fee levels are intended to provide full cost recovery of all licensing functions including the preparation and publication of a statement of licensing policy, but this will be based on the statutory requirements. Where licensing authorities exceed these requirements, they will have to absorb those costs themselves.

Fundamental principles

- 14.9 All statements of policy should begin by stating the four licensing objectives, which the licensing policy should promote. In determining its policy, a licensing authority must have regard to this Guidance and give appropriate weight to the views of consultees.
- 14.10 While statements of policy may set out a general approach to making licensing decisions, they must not ignore or be inconsistent with provisions in the 2003 Act. For example, a statement of policy must not undermine the right of any person to apply under the terms of the 2003 Act for a variety of permissions and to have any such application considered on its individual merits.
- 14.11 Similarly, no statement of policy should override the right of any person to make representations on an application or to seek a review of a licence or certificate where provision has been made for them to do so in the 2003 Act.
- 14.12 Statements of policies should make clear that:
- licensing is about regulating licensable activities on licensed premises, by qualifying clubs and at temporary events within the terms of the 2003 Act; and
 - conditions attached to various authorisations will be focused on matters which are within the control of individual licence holders and others with relevant authorisations, i.e. the premises and its vicinity.
- 14.13 A statement of policy should also make clear that licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned. Nonetheless, it is a key aspect of such control and licensing law will always be part of a holistic approach to the management of the evening and night-time

economy in town and city centres.

Licence conditions

- 14.14 Statements of licensing policy should reflect the general principles regarding licence conditions set out in Chapter 1 of this guidance.
- 14.15 Statements of licensing policy should include a firm commitment to avoid attaching conditions that duplicate other regulatory regimes as far as possible. Chapter 10 provides further detail on this issue.

Enforcement

- 14.16 The Government recommends that licensing authorities should establish and set out joint enforcement protocols with the local police and the other authorities and describe them in their statement of policy. This will clarify the division of responsibilities for licence holders and applicants, and assists enforcement and other authorities to deploy resources more efficiently.
- 14.17 In particular, these protocols should also provide for the targeting of agreed problem and high-risk premises which require greater attention, while providing a lighter touch for low risk premises or those that are well run. In some local authority areas, the limited validity of public entertainment, theatre, cinema, night café and late night refreshment house licences has in the past led to a culture of annual inspections regardless of whether the assessed risks make such inspections necessary. The 2003 Act does not require inspections to take place save at the discretion of those charged with this role. Principles of risk assessment and targeted inspection (in line with the Regulators' Code) should prevail and, for example, inspections should not be undertaken routinely but when and if they are judged necessary. This should ensure that resources are used efficiently and for example, are more effectively concentrated on problem premises. Licensing authorities should also remind operators of licensed premises that it is incumbent on them to provide appropriate training for their staff to ensure the promotion the licensing objectives.

Entertainment provision

- 14.18 Statements of licensing policy should set out the extent to which the licensing authority intends to facilitate a broad range of entertainment provision for enjoyment by a wide cross-section of the public. Statements of licensing policy should address what balance is to be struck between promoting the provision of entertainment and addressing concerns relevant to the licensing objectives. Licensing authorities should be conscious that licensing policy may inadvertently deter live music by imposing indirect costs of a disproportionate nature, for example a blanket policy that any pub providing live music entertainment must have door supervisors.

The need for licensed premises

- 14.19 There can be confusion about the difference between the “need” for premises and the “cumulative impact” of premises on the licensing objectives, for example, on crime and disorder. “Need” concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of

licensing policy.

The cumulative impact of a concentration of licensed premises

What is cumulative impact?

- 14.20 The concept of “Cumulative impact” has been described within this guidance and used by licensing authorities within their statements of licensing policy since the commencement of the 2003 Act. ‘Cumulative impact assessments’ were introduced in the 2003 Act by the Policing and Crime Act 2017, with effect from 6 April 2018. Cumulative impact is the potential impact on the promotion of the licensing objectives of a number of licensed premises concentrated in one area.
- 14.21 In some areas where the number, type or density of licensed premises, such as those selling alcohol or providing late night refreshment, is high or exceptional, serious problems of nuisance and disorder may arise outside or some distance from those premises. Such problems generally occur as a result of large numbers of drinkers being concentrated in an area, for example when leaving premises at peak times or when queuing at fast food outlets or for public transport.
- 14.22 Queuing in itself may lead to conflict, disorder and anti-social behaviour. Moreover, large concentrations of people may also attract criminal activities such as drug dealing, pick pocketing and street robbery. Local services such as public transport, public lavatory provision and street cleaning may not be able to meet the demand posed by such concentrations of drinkers leading to issues such as street fouling, littering, traffic and public nuisance caused by concentrations of people who cannot be effectively dispersed quickly.
- 14.23 Variable licensing hours may facilitate a more gradual dispersal of customers from premises. However, in some cases, the impact on surrounding areas of the behaviour of the customers of all premises taken together will be greater than the impact of customers of individual premises. These conditions are more likely to arise in town and city centres, but may also arise in other urban centres and the suburbs, for example on smaller high streets with high concentrations of licensed premises.

Cumulative impact assessments

- 14.24 A cumulative impact assessment (CIA) may be published by a licensing authority to help it to limit the number or types of licence applications granted in areas where there is evidence to show that the number or density of licensed premises in the area is having a cumulative impact and leading to problems which are undermining the licensing objectives. CIAs relate to applications for new premises licences and club premises certificates and applications to vary existing premises licences and club premises certificates in a specified area.
- 14.25 Section 5A of the 2003 Act sets out what a licensing authority needs to do in order to publish a CIA and review it, including the requirement to consult with the persons listed in section 5(3) of the 2003 Act. The 2003 Act does not stipulate how the CIA should be used once published, because the requirements for determining applications for new licences or variations are the same in areas with a CIA as they are elsewhere, as set out in sections 18, 35, 72 and 85 of the Act. However, any CIA published by a licensing authority must be summarised in its statement of licensing policy. Under section 5(6D) a

licensing authority must also have regard to any CIA it has published when determining or revising its statement of licensing policy.

- 14.26 The CIA must include a statement saying that the licensing authority considers that the number of premises licences and/or club premises certificates in one or more parts of the area described is such that it is likely that granting further licences would be inconsistent with the authority's duty to promote the licensing objectives. As part of the publication a licensing authority must set out the evidential basis for its opinion.
- 14.27 CIAs may relate to premises licensed to carry on any licensable activity, including the sale of alcohol for consumption on or off the premises, and the provision of late night refreshment. This includes late night refreshment providers which are not licensed to sell alcohol. A CIA may relate to all premises licences and club premises certificates in the area described in the assessment or parts thereof, or only to premises of a particular kind described in the assessment. For example, it may be appropriate for the licensing authority to only include off-licences or nightclubs within the scope of its assessment. The licensing authority must make clear, when publishing its CIA, which premises types it applies to. CIAs do not apply to TENs; however it is open to the police and environmental health authority (as relevant persons) to refer to evidence published within a CIA when objecting to a TEN.
- 14.28 While the evidence underpinning the publication of a CIA should generally be suitable as the basis for a decision to refuse an application or impose conditions, it does not change the fundamental way that decisions are made under the 2003 Act. Each decision in an area subject to a CIA therefore still needs to be made on a case-by-case basis and with a view to what is appropriate for the promotion of the licensing objectives. Importantly, the publication of a CIA would not remove a licensing authority's discretion to grant applications for new licences or applications to vary existing licences, where the authority considers this to be appropriate in the light of the individual circumstances of the case.

Evidence of cumulative impact

- 14.29 As noted above, there must be an evidential basis for the decision to publish a CIA. Local Community Safety Partnerships and responsible authorities, such as the police and the environmental health authority, may hold relevant information which would inform licensing authorities when establishing the evidence base for publishing a CIA. Evidence of cumulative impact on the promotion of the licensing objectives needs to relate to the relevant problems identified in the specific area to be covered by the CIA. Information which licensing authorities may be able to draw on includes:
- local crime and disorder statistics, including statistics on specific types of crime and crime hotspots;
 - statistics on local anti-social behaviour offences;
 - health-related statistics such as alcohol-related emergency attendances and hospital admissions;
 - environmental health complaints, particularly in relation to litter and noise;
 - complaints recorded by the local authority, which may include complaints raised by local residents or residents' associations;
 - residents' questionnaires;
 - evidence from local and parish councillors; and
 - evidence obtained through local consultation.

- 14.30 The licensing authority may consider this evidence, alongside its own evidence of the impact of licensable activities within its area, and consider in particular the times at which licensable activities are carried on. Information which may inform consideration of these issues includes:
- trends in licence applications, particularly trends in applications by types of premises and terminal hours;
 - changes in terminal hours of premises;
 - premises' capacities at different times of night and the expected concentrations of drinkers who will be expected to be leaving premises at different times.
- 14.31 Where existing information is insufficient or not readily available, but the licensing authority believes there are problems in its area resulting from the cumulative impact of licensed premises, it can consider conducting or commissioning a specific study to assess the position. This may involve conducting observations of the night-time economy to assess the extent of incidents relating to the promotion of the licensing objectives, such as incidences of criminal activity and anti-social behaviour, examples of public nuisance, specific issues such as underage drinking and the key times and locations at which these problems are occurring.
- 14.32 In order to identify the areas in which problems are occurring, information about specific incidents can be mapped and, where possible, a time analysis undertaken to identify the key areas and times at which there are specific issues.
- 14.33 After considering the available evidence and consulting those individuals and organisations listed in section 5(3) of the 2003 Act and any others, a licensing authority may be satisfied that it is appropriate to publish a CIA. The CIA should also be considered alongside local planning policy and other factors which may assist in mitigating the cumulative impact of licensed premises, as set out in paragraph 14.46.

Steps to publishing a cumulative impact assessment

- 14.34 The steps to be followed in considering whether to publish a CIA are summarised below.
- Identify concern about crime and disorder; public safety; public nuisance or protection of children from harm in a particular location.
 - Consider whether there is good evidence that crime and disorder or nuisance are occurring, or whether there are activities which pose a threat to public safety or the protection of children from harm.
 - If there is evidence that such problems are occurring, identify whether these problems are being caused by the customers of licensed premises, or that cumulative impact is imminent.
 - Identify the boundaries of the area where problems are occurring (this can involve mapping where the problems occur and identifying specific streets or localities where such problems arise).
 - Consult those specified in section 5(3) of the 2003 Act. As with consultations in respect of the licensing policy statement as a whole, it is for each licensing authority to determine the extent of the consultation it should undertake in respect of a CIA (subject to the statutory requirements).
 - For the purposes of the consultation provide the persons specified in section 5(3) with the following information:
 - the reasons why it is considering publishing a CIA;

- a general indication of the part or parts of its area which it is considering describing in the assessment;
- whether it considers that the assessment will relate to all premises licence and club premises certificate applications and variation applications, or only to those of a particular kind described.
- Subject to the outcome of the consultation, include and publish details of the CIA, including the evidence in support of the assessment and the particular kinds of premises the assessment relates to. Licensing authorities are not restricted to using general terms such as on-trade, off-trade and late night refreshment providers, and can apply their own descriptions such as vertical-drinking bars and night clubs if appropriate.
- Summarise the licensing authority's opinion in light of the evidence of cumulative impact (or any revision to an existing opinion) in the licensing policy statement and explain within the policy statement how the authority has had regard to any CIAs it has published under section 5A. The summary within the licensing policy statement should include, but is not limited to: the nature of the problems identified and the evidence for such problems; the geographical extent of the area covered by the assessment; the types of premises described in the assessment; and the types of applications for which it would likely be inconsistent with the licensing authority's duty to promote the licensing objectives to grant.

Reviewing the CIA

- 14.35 After publishing a CIA the licensing authority must, within three years, consider whether it remains of the opinion set out in the assessment. In order to decide whether it remains of this opinion it must again consult the persons listed in section 5(3). If having consulted with the statutory list of persons the licensing authority decides that it is no longer of the opinion set out in the CIA, it must publish a statement to that effect. The statement must make clear that any reference to the CIA in its licensing policy statement no longer applies. The licensing authority should remove any reference to the CIA within its licensing policy statement at the earliest opportunity.
- 14.36 If having consulted the licensing authority decides that it remains of the opinion set out in the assessment, it must revise the CIA to include a statement to that effect and set out the evidence as to why it remains of that opinion. It will be important for any evidence included in the revised CIA to be robust and relevant to the current problems described. This is likely to involve the collation of fresh or updated evidence of the kind described in the above section on evidence of cumulative impact. The licensing authority must also at this stage publish any other material change to the assessment. For example if the types of premises or area described in the assessment have changed due to a shift in the nature of the problems being experienced or where there is evidence of the emergence of a new type of problem.
- 14.37 In each case the three year period for reviewing a CIA begins with the original date of the publication of the CIA or the date that a CIA was last revised. Where a licensing policy statement as a whole is due for review, under the five year review period under section 5(4), and this occurs before the end of the three year CIA review period, licensing authorities may wish to use this as an opportunity to carry out a review of the evidence in support of the CIA. However, licensing authorities are free to carry out consultations and reviews of their CIAs (and/or licensing policy statements) at more regular intervals if they consider this to be appropriate.

14.38 As Cumulative Impact Policies were not part of the 2003 Act, there are no transitional provisions that apply to CIPs that were in place before 6 April 2018. However, any existing CIPs should be reviewed at the earliest practical opportunity to ensure they comply with the legislation. It is recommended that the review should take place within three years of the commencement of the legislation on CIAs or when the licensing policy statement is next due for review, whichever is sooner. This will ensure that any CIPs in place before the commencement of the provisions on CIAs adhere to the principles in the legislation (in particular concerning relevant evidence and consultation).

Effect of cumulative impact assessments

14.39 When publishing a CIA a licensing authority is required to set out evidence of problems that are being caused or exacerbated by the cumulative impact of licensed premises in the area described. The evidence is used to justify the statement in the CIA that it is likely that granting further premises licences and/or club premises certificates in that area (limited to a kind described in the assessment), would be inconsistent with the authority's duty to promote the licensing objectives.

14.40 In publishing a CIA a licensing authority is setting down a strong statement of intent about its approach to considering applications for the grant or variation of premises licences or club premises certificates in the area described. Having published a CIA a licensing authority must have regard to the assessment when determining or revising its statement of licensing policy. It is therefore expected that, in respect of each relevant application in the area concerned, the licensing authority will be considering whether it is appropriate to make a representation to its committee as a responsible authority in its own right. The CIA does not, however, change the fundamental way that licensing decisions are made. It is therefore open to the licensing authority to grant an application where it considers it is appropriate and where the applicant can demonstrate in the operating schedule that they would not be adding to the cumulative impact. Applications in areas covered by a CIA should therefore give consideration to potential cumulative impact issues when setting out the steps that will be taken to promote the licensing objectives. Where relevant representations are received and a licensing authority decides to grant an application it will need to provide the applicant, the chief officer of police and all parties who made relevant representations with reasons for granting the application and this should include any reasons for departing from their own policy.

14.41 The CIA must also stress that it does not relieve responsible authorities (or any other persons) of the need to make relevant representations where they consider it appropriate to do so for the promotion of the licensing objectives. Anyone making a representation may base it on the evidence published in the CIA, or the fact that a CIA has been published. It remains incumbent on all responsible authorities and other persons to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing. As with all licensing applications under the 2003 Act, if there are no representations, the licensing authority must grant the application in terms that are consistent with the operating schedule submitted.

14.42 The absence of a CIA does not prevent any responsible authority or other person making representations on an application for the grant or variation of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives, However, in each case it would be incumbent on the person

making the representation to provide relevant evidence of cumulative impact.

- 14.43 As noted above, CIAs may apply to the impact of a concentration of any licensed premises, including those licensed for the sale of alcohol on or off the premises, and premises licensed to provide late night refreshment. When establishing its evidence base for publishing a CIA, licensing authorities should be considering the contribution to cumulative impact made by different types of premises within its area, in order to determine the appropriateness of including different types of licensed premises within the CIA.

Limitations on special policies relating to cumulative impact

- 14.44 A CIA should never be absolute. Statements of licensing policy should always allow for the circumstances of each application to be considered properly and for applications that are unlikely to add to the cumulative impact on the licensing objectives to be granted. After receiving relevant representations in relation to a new application for or a variation of a licence or certificate, the licensing authority must consider whether it would be justified in departing from its CIA in the light of the individual circumstances of the case. The impact can be expected to be different for premises with different styles and characteristics. For example, while a large nightclub or high capacity public house might add to problems of cumulative impact, a small restaurant or a theatre may not. If the licensing authority decides that an application should be refused, it will still need to show that the grant of the application would undermine the promotion of one or more of the licensing objectives and that appropriate conditions would be ineffective in preventing the problems involved.
- 14.45 CIAs should never be used as a ground for revoking an existing licence or certificate when representations are received about problems with those premises. Where the licensing authority has concerns about the effect of activities at existing premises between midnight and 6am on the promotion of the licensing objectives in a specific area, it may introduce an Early Morning Alcohol Restriction Order (EMRO) if there is sufficient evidence to do so (see chapter 17). The “cumulative impact” on the promotion of the licensing objectives of a concentration of licensed premises should only give rise to a relevant representation when an application for the grant or variation of a licence or certificate is being considered.
- 14.46 CIAs must not impose quotas based on either the number of premises or the capacity of those premises. This is because quotas that indirectly have the effect of predetermining the outcome of any application would have no regard to the individual characteristics of the premises concerned.

Other mechanisms for controlling cumulative impact

- 14.47 Once away from the licensed premises, a minority of consumers will behave badly. To enable the general public to appreciate the breadth of the strategy for addressing these problems, statements of policy should also indicate the other mechanisms both within and outside the licensing regime that are available for addressing such issues. For example:
- planning control;

- positive measures to create a safe and clean town centre environment in partnership with local businesses, transport operators and other departments of the local authority, including best practise schemes such as Best Bar None, Pubwatch or BIDs;
- Community Protection Notices;
- the provision of CCTV surveillance in town centres, taxi ranks, provision of public conveniences open late at night, street cleaning and litter patrols;
- powers of local authorities to designate parts of the local authority area as places where alcohol may not be consumed publicly;
- the confiscation of alcohol from adults and children in designated areas;
- police enforcement of the general law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices;
- prosecution for the offence of selling alcohol to a person who is drunk (or allowing such a sale);
- Raising a contribution to policing the late night economy through the Late Night Levy.
- Early Morning Alcohol Restriction Orders (see Chapter 17).

14.48 As part of its licensing policy statement, the licensing authority may also wish to consider the use of alternative approaches such as fixed closing times, staggered closing times and zoning. Such policy restrictions would need to be evidence-based and would be subject to the merits of each case in accordance with what is appropriate for the promotion of the licensing objectives. The licensing authority would be expected to justify the use of such measures as an appropriate means of managing problems in its area.

Public Spaces Protection Order

14.49 The Designated Public Place Order (DPPO) has been replaced by the Public Spaces Protection Order (PSPO) in the Anti-social Behaviour Crime and Policing Act 2014¹⁵. PSPOs can be used to restrict the drinking of alcohol in a public space where this has or is likely to have a detrimental effect on the quality of life on those in the locality, be persistent or continuing in nature, and unreasonable. Before making a PSPO, a council must consult the local police. DPPOs will continue to be valid for a period of three years following commencement of the PSPO in October 2014. Once that three year period expires, they will be treated as a PSPO and enforceable as such. Where a local authority occupies or manages premises, or where premises are managed on its behalf, and it licenses that place for alcohol sales, the PSPO will not apply when the licence is being used for alcohol sales (or 30 minutes after), but the place will be subject to the PSPO at all other times¹⁶. This allows local authorities to promote community events while still using a PSPO to tackle the problems of anti-social drinking.

14.50 It should be noted that when one part of a local authority seeks a premises licence of this kind from the licensing authority, the licensing committee and its officers must consider the matter from an entirely neutral standpoint. If relevant representations are made, for example, by local residents or the police, they must be considered fairly by the committee. Anyone making a representation that is genuinely aggrieved by a positive decision in favour of a local authority application by the licensing authority

¹⁵ For full guidance on the PSPO please see the statutory guidance on the 2014 Act: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final_2_.pdf

¹⁶ Licensed premises in general are exempt from the effect of a PSPO.

would be entitled to appeal to the magistrates' court and thereby receive an independent review of any decision.

Licensing hours

- 14.51 With regard to licensing hours, the Government acknowledges that different licensing approaches may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make such decisions based on their local knowledge and in consultation with other responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.
- 14.52 Statements of licensing policy should set out the licensing authority's approach regarding licensed opening hours and the strategy it considers appropriate for the promotion of the licensing objectives in its area. The statement of licensing policy should emphasise the consideration which will be given to the individual merits of an application. The Government recognises that licensed premises make an important contribution to our local communities, and has given councils a range of tools to effectively manage the different pressures that licensed premises can bring. In determining appropriate strategies around licensed opening hours, licensing authorities cannot seek to restrict the activities of licensed premises where it is not appropriate for the promotion of the licensing objectives to do so.

Children

- 14.53 It is an offence under the 2003 Act to:
- permit children under the age of 16 who are not accompanied by an adult to be present on premises being used exclusively or primarily for supply of alcohol for consumption on those premises under the authorisation of a premises licence, club premises certificate or where that activity is carried on under the authority of a TEN; and
 - to permit the presence of children under 16 who are not accompanied by an adult between midnight and 5am at other premises supplying alcohol for consumption on the premises under the authority of any premises licence, club premises certificate or TEN.
- 14.54 Outside of these hours, the offence does not prevent the admission of unaccompanied children under 16 to the wide variety of premises where the consumption of alcohol is not the exclusive or primary activity. This does not mean that children should automatically be admitted to such premises and the following paragraphs are therefore of great importance notwithstanding the offences under the 2003 Act. The expression 'exclusively or primarily' should be given its ordinary and natural meaning in the context of the particular circumstances.
- 14.55 Where it is not clear that the business is predominately for the sale and consumption of alcohol, operators and enforcement agencies should seek to clarify the position before enforcement action is taken. Mixed businesses may be more difficult to classify and in such cases operators and enforcement agencies should consult where appropriate

about their respective interpretations of the activities taking place on the premises before any moves are taken which might lead to prosecution.

- 14.56 The 2003 Act does not automatically permit unaccompanied children under the age of 18 to have free access to premises where the consumption of alcohol is not the exclusive or primary activity or to the same premises even if they are accompanied, or to premises where the consumption of alcohol is not involved. Subject only to the provisions of the 2003 Act and any licence or certificate conditions, admission will always be at the discretion of those managing the premises. The 2003 Act includes no presumption of giving children access but equally, no presumption of preventing their access to licensed premises. Each application and the circumstances of individual premises must be considered on their own merits.
- 14.57 A statement of licensing policy should not seek to limit the access of children to any premises unless it is appropriate for the prevention of physical, moral or psychological harm to them (please see Chapter 2). It may not be possible for licensing policy statements to anticipate every issue of concern that could arise in respect of children in relation to individual premises and therefore the individual merits of each application should be considered in each case.
- 14.58 A statement of licensing policy should make clear the range of alternatives which may be considered for limiting the access of children where that is appropriate for the prevention of harm to children. Conditions which may be relevant in this respect are outlined in paragraph 2.27.
- 14.59 Statements of policy should also make clear that conditions requiring the admission of children to any premises cannot be attached to licences or certificates. Where no licensing restriction is appropriate, this should remain a matter for the discretion of the individual licence holder, club or premises user.
- 14.60 Venue operators seeking premises licences and club premises certificates should consider including such prohibitions and restrictions in their operating schedules particularly where their own risk assessments have determined that the presence of children is undesirable or inappropriate.

Responsible authority and children

- 14.61 A statement of licensing policy should indicate which body the licensing authority judges to be competent to act as the responsible authority in relation to the protection of children from harm. This may be the local authority social services department, the Local Safeguarding Children Board or other competent body as agreed locally. It would be practical and useful for statements of licensing policy to include descriptions of the responsible authorities in any area and appropriate contact details.

Children and cinemas

- 14.62 The statement of policy should make clear that in the case of premises giving film exhibitions¹⁷, the licensing authority will expect licence holders or clubs to include in their operating schedules arrangements for restricting children from viewing age-restricted films classified according to the recommendations of the British Board of Film

¹⁷ See paragraphs 15.22-15.24 in relation to the licensing exemption for an exhibition of a film on community premises.

Classification or the licensing authority itself (see paragraphs 10.59 to 10.60).

Integrating strategies

- 14.63 It is recommended that statements of licensing policy should provide clear indications of how the licensing authority will secure the proper integration of its licensing policy with local crime prevention, planning, transport, tourism, equality schemes, cultural strategies and any other plans introduced for the management of town centres and the night-time economy. Many of these strategies are not directly related to the promotion of the licensing objectives, but, indirectly, impact upon them. Co-ordination and integration of such policies, strategies and initiatives are therefore important.

Planning and building control

- 14.64 The statement of licensing policy should indicate that planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa. However, as set out in chapter 9, licensing committees and officers should consider discussions with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs.
- 14.65 There are circumstances when, as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law. Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee.

Promotion of equality

- 14.66 A statement of licensing policy should recognise that the Equality Act 2010 places a legal obligation on public authorities to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; to advance equality of opportunity; and to foster good relations, between persons with different protected characteristics. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- 14.67 Public authorities are required to publish information at least annually to demonstrate their compliance with the Equality Duty. The statement of licensing policy should refer to this legislation, and explain how the Equality Duty has been complied with. Further guidance is available from Government Equalities Office and the Equality and Human Rights Commission.

Administration, exercise and delegation of functions

- 14.68 The 2003 Act provides that the functions of the licensing authority (including its determinations) are to be taken or carried out by its licensing committee (except those relating to the making of a statement of licensing policy or where another of its committees has the matter referred to it). The licensing committee may delegate these functions to sub-committees consisting of three members of the committee, or in

appropriate cases to officials supporting the licensing authority. Where licensing functions are not automatically transferred to licensing committees, the functions must be carried out by the licensing authority as a whole and not by its executive. Statements of licensing policy should indicate how the licensing authority intends to approach its various functions. Many of the decisions and functions will be purely administrative in nature and statements of licensing policy should underline the principle of delegation in the interests of speed, efficiency and cost-effectiveness.

- 14.69 The 2003 Act does not prevent the development by a licensing authority of collective working practices with other parts of the local authority or other licensing authorities for work of a purely administrative nature, e.g. mail-outs. In addition, such administrative tasks may be contracted out to private businesses. But any matters regarding licensing decisions must be carried out by the licensing committee, its sub-committees or officers.
- 14.70 Where, under the provisions of the 2003 Act, there are no relevant representations on an application for the grant of a premises licence or club premises certificate or police objection to an application for a personal licence or to an activity taking place under the authority of a temporary event notice, these matters should be dealt with by officers in order to speed matters through the system. Licensing committees should receive regular reports on decisions made by officers so that they maintain an overview of the general situation. Although essentially a matter for licensing authorities to determine themselves, it is recommended that delegation should be approached in the following way: