

Institute of Licensing
2021
25th National Training Conference

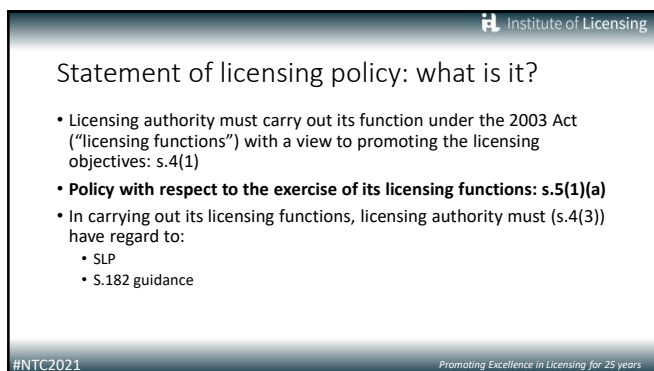
Cumulative Impact Assessments post COVID-19

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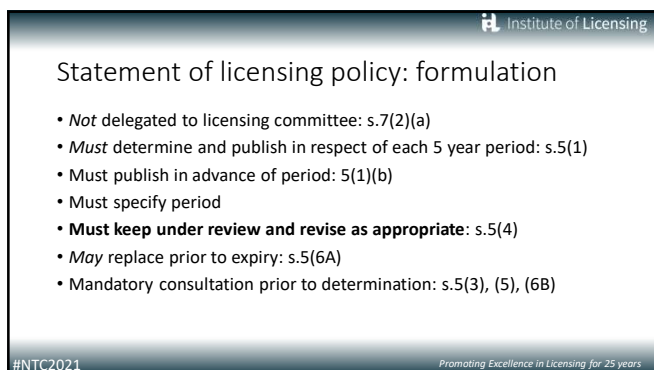
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Statement of licensing policy: what is it?

- Licensing authority must carry out its function under the 2003 Act ("licensing functions") with a view to promoting the licensing objectives: s.4(1)
- Policy with respect to the exercise of its licensing functions: s.5(1)(a)**
- In carrying out its licensing functions, licensing authority must (s.4(3)) have regard to:
 - SLP
 - S.182 guidance

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Statement of licensing policy: formulation

- Not delegated to licensing committee: s.7(2)(a)
- Must determine and publish in respect of each 5 year period: s.5(1)
- Must publish in advance of period: 5(1)(b)
- Must specify period
- Must keep under review and revise as appropriate: s.5(4)**
- May replace prior to expiry: s.5(6A)
- Mandatory consultation prior to determination: s.5(3), (5), (6B)

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Cumulative impact assessment: what is it?

- Introduced by the Policing and Crime Act 2017 w.e.f. 6/4/18
- A document stating that the licensing authority considers that the number of relevant authorisations in respect of premises in one or more parts of its area described in the assessment is such that it is likely that it would be inconsistent with the authority's duty under s.4(1) to grant any further relevant authorisations in respect of those premises in that part or those parts: s.5A(1)


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Cumulative impact assessment: formulation

- Delegated to licensing committee: s.7(1)
- *May* publish: s.5A(1)
- Must set out evidence for LA's opinion: s.5A(2)
- Must review before the end of 3 year anniversary of publication and either withdraw or revise & publish: s.5A(7), (9)-(12)
- Mandatory consultation prior to publication or subsequent revision: s.5A(5), (6), (8)


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SLP & CIA: interrelation

- In determining SLP, licensing authority must have regard to any CIAs: s.5(6D)
- "have regard to" ≠ must adopt
- SLP must summarise any published CIAs and explain how licensing authority has discharged duty to have regard to them: s.5(6E)
- SLP = full Council, 5 years
- CIA = Licensing Committee, 3 years


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SLP & CIA: timetable

- SLP1-3 **2005, 2008, 2011**
- 24/5/12 Amendment to 5 year cycle, transitional provisions s.5(8)
- SLP4 **2016**
- 6/4/18 S.5A comes into force
- 24/4/18 S.182 guidance – “any existing SLPs should be reviewed at the earliest practical opportunity ... by 6/4/21 or when next SLP due for review”
- SLP5+CIA1 **2021**


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SLP & CIA: Kit Malthouse MP 1/10/20

*... you could consider if it would be appropriate to undertake the statutory consultation on the basis that you propose to **roll forward** your existing SLP in its current form and consider any representations that you receive in response. As you know, SLPs last for a maximum of five years but you are required to keep your SLP under review during that period, and to make revisions if appropriate before that period has expired. You may, therefore, want to consider committing to a further review when it is feasible to do so after the pandemic has passed. You could also consider if a similar approach would be appropriate in respect of CIAs...*


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Principles of good regulation

- S.21 Legislative and Regulatory Reform Act 2006 – any person exercising a regulatory function must have regard to the principles of good regulation
- Regulatory activities should be carried out in a way which is **transparent**, accountable, **proportionate** and consistent
- Regulatory activities should be targeted only at cases in which action is needed.


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Regulators' Code 2014

- S.22(2) LRA 2006 – any person exercising a regulatory function must have regard to [Regulators' Code](#) when determining any general policy or principles by reference to which the person exercises the function
- 1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
- 5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
- 6. Regulators should ensure that their approach to their regulatory activities is transparent
 - ... being available at a single point on the regulator's website that is clearly signposted, and it should be kept up to date


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Transparency (an off-topic rant)

- Put the SLP on the website
- Put it in the Licensing section of the website (or at least link to it from there)
- Give it prominence and clearly link *from any relevant page*.
- Take old policies off the Licensing section
- Date the policy on its face and say when it was adopted
- PDF not Word, name authority in file name; html?
- Actual not draft; current not under consultation
- Check Google search results
- CIAs should be separate from but summarised in SLP


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Reasons for SLP & CIA review

- Coronavirus regulations & guidance – businesses and individuals
- H&S law & guidance
- Business and Planning Act 2020 – off sales provisions
- Outside spaces (associated with licensed premises and otherwise)
- Evidential basis for CIA
- Economic impact of pandemic on hospitality sector
- Local economic recovery plans
- Deliveries
- Effect on alcohol-related harm
- Remote hearings, electronic communications & WFH
- Uncertainty


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Uncertainty

- Acknowledge it and provide mechanisms for coping with it e.g. Luton, Swale, Tunbridge Wells
- Roll over for short period e.g. Camarthenshire, Cotswold, Manchester
- Recognise the need for flexibility (e.g. Anglesey, RBKC, Surrey Heath) and even creativity (e.g. Cotswold)


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Coronavirus regulations and H&S guidance

- No public health objective e.g. Bury
- Policy public health objective e.g. Haringey
- "There shall be strict adherence to COVID-19 regulations and guidance in an around venues"
- Regulators' Code: *Regulators should have mechanisms to work collaboratively to assist those regulated by more than one regulator.* Risk assessments e.g. Ceredigion, Cotswold, Coventry Fareham, Gosport
- Public nuisance & crime


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Outdoors

- Pavement licences and off sales provisions and the balance between business recovery and nuisance: e.g. RBKC, North Hertfordshire
- Liaison where the highways authority is a separate authority e.g. North Hertfordshire


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Timing of SLP review

- Roll over as per Kit Malthouse suggestion e.g. Birmingham, Darlington, Manchester, Oxford, Stockport, Sunderland, Tameside, Vale of Glamorgan
- Short policy e.g. Chichester


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CIA's & COVID-19

- Treat effects of COVID as removal of evidential basis for CIAs e.g. Birmingham, Herefordshire, Kingston upon Thames, Nottingham, Oxford, Sunderland, Trafford
- Explicitly treat COVID as temporary, keep CIAs in place and review in due course e.g. Croydon, North Tyneside
- Delay review e.g. Windsor
- Treat economic effects of COVID as justification altering CIA policy e.g. Westminster
- Proceed with expansion of CIAs e.g. Cambridge, Walsall


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SLP & CIA: interrelation – Westminster

CIA: The Licensing Authority is required to undertake a review of the Cumulative Impact Assessment every three years. However, due to the impact of the COVID-19 the Licensing Authority will likely undertake a review of this Cumulative Impact Assessment earlier than the statutory three year period.


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SLP & CIA: interrelation – Westminster

- SLP - 7/1/16 to 6/1/21
- October 2020 – CIA produced
- October 2020 to November 2020 – CIA and draft SLP consulted upon in parallel
- November 2020 – LC resolve to publish CIA on 1 December 2020 – sought to extend restrictions and expand area
- December 2020 – full Council decides not to implement extended restrictions or expanded area


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SLP & CIA: interrelation – Westminster

SLP: The unprecedented situation of COVID-19 has meant that the Licensing Authority decided not to implement greater restrictions to other premises uses other than that already contained in the policy at the time. It also decided not to expand the West End Cumulative Impact Zone to encompass Zones 1 and 2 as detailed within the Cumulative Impact Assessment. However, as the city begins to recover from the pandemic during the life of this policy the Licensing Authority may review its policy approach and could, if footfall moves toward pre-March 2020 levels look to implement greater restrictions as a result of the findings from either the 2020 Cumulative Impact Assessment or a revised version.

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Cumulative Impact Assessments post COVID-19

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