

Appendix 1

Reducing the harm of shisha and the need for better regulation: Local Government policy paper

XXXXXX 2024

Foreword

Shisha smoking is a legal activity enjoyed by people in the UK, and involves smoking a heated, specially prepared tobacco through a pipe. Its popularity has increased in recent years, and it is now seen as a mainstream activity, albeit it is more closely linked with Middle Eastern, North African, and South Asian communities.

The UK shisha industry is considerable and diverse, with many facets covering a wide range of services such as shisha delivery, click-and-collect shisha, electronic shisha and shisha for smoking in a wide variety of settings – cafes, restaurants, licensable entertainment venues and family orientated venues. The sole purpose of the industry is to provide smoking services and materials for its customers.

There is no available national strategy, policy or guidance for businesses or regulators alike on this increasing shisha economy. Councils are concerned about the health impacts shisha smoking can have. They are also finding that such businesses can have a significant impact on local communities and have been known to breach existing legislation and contribute to anti-social behaviour in local areas.

Shisha smoking is a complex issue about which our learning continues, but the mounting evidence for greater regulation and guidance can no longer be ignored. Current legislation does not provide councils with the tools they require to regulate shisha premises, and challenges associated with badly run premises can negatively impact local communities. There is also evidence of the disproportionate harm these venues can have on minority and deprived communities who already suffer from health inequalities. Action is now needed to address this.

This paper sets out the various health and community issues caused by shisha smoking, including case studies from councils across England. It proposes steps that central government can take to strengthen and reform national legislation through introducing a shisha licensing regime either through the Local Government Miscellaneous Provisions Act 1982 or the Licensing Act 2003.

Although tobacco generally is not licensed, there are not smoking lounges for other types of tobacco, and we believe it is reasonable to licence shisha because it is a venue specifically designed for consumption of a high risk product which can impact on health which merits close oversight. It does not seem right that a venue requires a licence to serve a hot drink after 11pm but does not require one for smoking shisha. Moreover, licensing shisha would send a stronger health message in itself.

Local authorities have been attempting to manage and regulate shisha premises within existing powers, but these are not sufficient. A cohesive, national approach to shisha

smoking would save on resources for local and central government, make businesses aware of their responsibilities, as well as helping our communities to make better informed choices about smoking shisha.

This paper has been supported by councils up and down the country, and we are particularly grateful to Birmingham City Council, Ealing London Borough Council, Newham London Borough Council, Brent London Borough Council and Luton Borough Council who have inputted into this paper alongside the LGA and firmly support calls for better regulation of shisha premises.

Cllr Heather Kidd, Chair, LGA Safer and Stronger Communities Board

Cllr David Fothergill, Chair, LGA Community Wellbeing Board

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1. Executive summary

This local government policy paper is solely concentrating on those aspects of the shisha industry that cause adverse health, safety and environmental impacts on local communities. These are impacts which councils and partners are unable to resolve through current legislative or other means available to them.

Why is shisha smoking a problem?

First and foremost, shisha smoking is harmful to health but the risks associated with shisha are not widely known or publicised. Whilst there is limited research on the impact of shisha smoking, [emerging evidence suggests](#) it has a range of adverse health impacts, including heart and circulatory diseases, cancers, nicotine addiction, carbon monoxide poisoning, bacterial infections and high blood pressure. Despite this, shisha is seen as a 'safe' alternative to cigarette smoking and continually falls outside of tobacco control harm reduction strategies and campaigns. This means there is a lack of trusted health information available for shisha smokers.

In addition to the health impacts of the activity itself, councils report that, in some instances, shisha bars negatively affect the local community, for example noise nuisance from amplified music or late-night disturbance. Regulatory officers report frequent breaches of planning regulations, as well as fire risk and anti-social behaviour, leading to enforcement issues for councils, fire authorities and police services. There are also concerns about illicit tobacco (non-duty paid) being found at shisha premises.

What are councils doing?

Councils have statutory duties to safeguard communities from harms. With responsibility for public health having transferred to councils on 1 April 2013, councils have greater scope to take account of health in our service provision and decision making.

However, there is no sole legislative provision or specific regulator which covers shisha activities. Councils enforce good management of shisha bars as best they can through the range of different legislative provisions, for instance environmental health and fire safety inspections, enforcement action on shisha premises in breach of smoke free regulations or planning permission, and serving community protection notices for anti-social behaviour. These measures often require a multi-agency approach which relies on resources being available from each regulatory authority to react and coordinate a response. This can mean that such preventative work is limited. Moreover, clarity of ownership and management of a business is not often forthcoming, which frustrates procedures to remedy issues.

Why is the current regulatory framework insufficient?

There are several pieces of legislation relevant to shisha smoking, but these currently fail to provide councils with the necessary tools to deal with shisha premises. These issues are detailed later in the report, but cover applications of the Health Act, Tobacco and Related Products Regulations, Health and Safety at Work, and Trading Standards. Shisha falls through the gaps in each of these areas, either because penalties and prosecutions are not acting as enough of a deterrent, or because regulations which apply to cigarettes and hand-rolling tobacco are not equally applied to shisha, despite the parallel risks of shisha smoking.

There are particularly concerning loopholes, for example, around the lack of application of flavoured tobacco legislation to shisha, which makes it seem more appealing and less dangerous. Labelling regulations, including health warnings which are now mandatory on

cigarette packaging, are also aimed at retail rather than shisha served in cafes, where pipes, mouthpieces and menus do not warn consumers of shisha's serious health impacts.

What is needed from central government?

We have two asks of government. Firstly, we believe that shisha should be brought within the scope of the UK Tobacco Control Strategy. This would be a crucial addition to the strategy owing to the serious health consequences and community impacts of shisha detailed in this paper. It is welcome that [‘The Khan Review: Making smoking obsolete’](#) makes some reference to shisha. However, a greater focus on the harms caused by shisha in the UK Tobacco Control Strategy would demonstrate government's commitment to protecting public health and promoting responsible management of shisha premises. Moreover, there has been welcome action taken by Government recently to deliver a smokefree 2030, including legislating to raise the age of sale one year every year from 2027 onwards, doubling the funding for local authority Stop Smoking Services from 2024, increasing funding for awareness raising campaigns and for enforcement on illicit tobacco and e-cigarettes. The lack of specific provisions on shisha are a notable omission, and it is important that Government considers shisha within this work, as well as commissions additional research on the health risks of shisha. This will also help to ensure that the health impacts of shisha are more widely understood by society.

Secondly, we believe that the government should introduce a licensing regime to better regulate shisha premises. This could be achieved by amending the Local Government (Miscellaneous Provisions) Act 1982 or the Licensing Act 2003. This would give councils the powers to grant or refuse licences for new shisha premises, to add conditions to licences to improve safety or mitigate potential community impacts (such as noise nuisance), and the power to revoke or suspend licences in the event of non-compliance.

Although tobacco generally is not licensed, we believe it is reasonable to licence shisha premises because it is a venue specifically designed for consumption of a risky product which merits close oversight.

2. Health impacts of shisha

What is shisha?

Smoking shisha (or hookah) involves burning wood, coal or charcoal to heat tobacco (or flavoured tobacco, ‘maassel’). This produces smoke, which bubbles through a bowl of water or other liquid, into a tube or pipe, and is inhaled through a mouthpiece.

How prevalent is shisha smoking?

Shisha smoking is a popular activity in Middle Eastern, North African and South Asian communities. It is [increasingly common in England](#), especially in young people from all ethnic minority backgrounds.

Shisha is offered commercially at a number of ‘shisha premises’ across the country, often smoked in dedicated shisha lounges or bars, or in restaurants after a meal. These premises are increasingly visible, with smoking often taking place outside premises on the street, sometimes late into the night. We recognise that some communities go to shisha premises because they are social spaces, often free from the presence of alcohol. Whilst we are deeply concerned about the health impacts of smoking, we do not want to ban these premises, but rather see them better regulated.

In recent years there has been a sharp increase in the number of people shisha smoking and in the number of shisha bars. Between 2007-2012, [shisha smoking rose by 210 per cent](#) and there was a [510 per cent increase](#) in shisha cafes between 2010-2018. Studies from different parts of London [show 40 per cent of secondary aged children have smoked shisha](#), more than [twice the number who have tried cigarettes](#) (19 per cent).

Health impacts

There is a misconception that because shisha smoke is inhaled through a waterpipe, it is 'safer' than traditional cigarette smoking. This is not the case, and evidence shows shisha is not a safe alternative to cigarette smoking. Shisha smokers are at risk of the same kind of diseases caused by cigarette smoking, including cancer, heart disease and respiratory disease, as well as adverse effects during pregnancy. Some users do not see the activity as smoking at all and therefore make no correlation with any tobacco smoking harm reduction messages available, or as most messages surrounding smoking are related to cigarettes then the connection is not made.

These harmful impacts are recognised by organisations such as [NHS England](#), [Action on Smoking and Health \(ASH\)](#), and the [British Heart Foundation](#). The Khan review also raised concerns about the harmful impact of shisha and recommended that additional data and research is collected to inform future interventions.

Direct health impacts

There is limited research on the health impacts of shisha, however studies that have been completed highlight significant health impacts. [A 2022 study showed there is emerging evidence of various detrimental health effects](#) after smoking shisha. With regard to the cardiovascular system, there is a significant acute rise in cardiovascular markers, such as heart rate and blood pressure. The long-term effects on the cardiovascular system are yet to be established. Shisha smoking has also been significantly associated with lung cancer and various other forms of cancer have also been documented but require further research.

A [2016 NHS analysis of several studies](#) suggests that, during a 1-hour session on a waterpipe, a person can take in:

- the same amount of tar as if they had smoked 25 cigarettes
- the same amount of carbon monoxide as if they had smoked 11 cigarettes
- the same amount of nicotine as if they had smoked 2 cigarettes.

[According to the American Lung Association](#), at least 82 toxic chemicals have been found in shisha/ hookah smoke. Like cigarette smoking, these toxins put smokers at risk of heart and circulatory diseases, cancers, nicotine addiction, and other health issues.

Shisha smoking is also [associated with cardiovascular diseases](#), hyperglycaemia as well as low antioxidant capacity and vitamin C level.

Heart disease and circulatory issues

A [study conducted in London in 2013](#) revealed that shisha smoking is acutely stressful to the cardiovascular system and that passing smoke through water is not 'purifying'.

The risk of carbon monoxide poisoning from shisha can be even greater than from cigarette smoking, due to the constant heating of tobacco (or herbal products) using charcoal. [One study at a UK basement party](#) found blood carboxyhaemoglobin levels ranging from 7.3-25.0 per cent in attendees after waterpipe smoking. High levels of carboxyhaemoglobin (carbon

monoxide) reduce the capacity of the blood to carry oxygen. The normal range for non-smokers is 0-2 per cent, or 8- 9 per cent in those who smoke up to 2 packets of cigarettes per day. The overall atmospheric carbon monoxide level at the same event was 440ppm. Anything above 100ppm is considered dangerous to human health.

Cancers and lung disease

[A 2022 study found that](#) the amount of aldehyde compounds, carbon monoxide, and tar found in one shisha smoking session is 4–30 times more than in a single session of cigarette smoking and exposes users to dangerous carcinogens along with other toxic substances. Shisha smoking is known to cause oxidative stress, have a genotoxic effect, cause carbon monoxide poisoning, and the presence of heavy metals in smoke, causes carcinogenesis. There is evidence of shisha smoking being a risk factor for lung, oral, oesophageal, stomach, bladder, colorectal, and nasopharyngeal cancer. This is supported by another study which suggests [the risk of lung cancer](#) in shisha smokers is thought to be 4.58 times more likely, and oral cancer 4.17 times more likely than in non-smokers.

[According to a 2016 study](#), shisha smokers are 3.18 times more likely to suffer chronic obstructive pulmonary disease and 2.37 times more likely to suffer bronchitis.

Bacteria and hygiene issues

Overall, more than 40 bacterial genera were [found in a 2018 study](#) of three investigated shishas. In particular, there were high levels of gut and soil microbiota, indicating the poor hygienic conditions in which the shisha was prepared. Other bacteria found on the shisha pipes, shafts and mouthpieces are known to cause lung infections, septicaemia and skin infections, or viruses such as Hepatitis C, and are particularly dangerous for immunocompromised individuals.

Effect on pregnancy and infertility

Smoking shisha [during pregnancy is associated](#) with low-birth-weight babies and increased pulmonary problems for the new-born. There are reported harmful impacts of second-hand smoke on the mother and the foetus.

Indirect health impacts

Despite misconceptions, second-hand smoke can still be caused by shisha. Substances like carbon monoxide are produced in equal levels whether shisha is tobacco-based or not.

Air quality in homes

[In a 2016 study of 33 homes in Dubai](#), shisha smoking led to higher levels of air pollution than cigarette smoking – 4.8 and 3.6 times higher in smoking and adjacent rooms compared with cigarette smoke; 7.3 and 3.9 times higher than non-smoking households.

Second-hand smoke at work

Also in 2016, [researchers at New York University and Langone Medical Center](#) tested employees at four of the city's shisha bars after their shifts. Staff showed raised levels of toxins and markers of inflammation normally associated with pulmonary and cardiac disorders. Some of the results were typical of heavy cigarette smoking. The highest amount of carbon monoxide exhaled, by two employees, was more than 90 parts per million, a level characteristic of heavy tobacco smokers.

Future Tobacco Control Strategies

The government has proposed further tobacco and vaping regulation in support of the smokefree 2030 ambition for England. In October 2023, the Government published the Command Paper "[Stopping the start: our new plan to create a smokefree generation](#)". This Command Paper set out plans to bring forward legislation to make it an offence to sell tobacco products to anyone born on or after 1 January 2009. In effect, this would mean that the age of sale of tobacco products will increase by one year each year, so that children turning 14 years old or younger this year will never be legally sold tobacco, phasing out tobacco over time and preventing future generations from ever taking up smoking.

Following publication of the Command Paper, the government launched a formal consultation on 12 October 2023 (which closed on 6 December 2023), "Creating a smokefree generation and tackling youth vaping", to gather the strongest possible evidence on how best to implement these proposals. The consultation asked for views on three areas:

- Creating a smokefree generation: the consultation gathered views on the smokefree generation policy and its scope to inform future legislation.
- Tackling youth vaping: the consultation gathered views on several options to ensure we take the most appropriate action to tackle youth vaping while ensuring vapes continue to be available for current adult smokers to help them quit.
- Enforcement: the consultation asked about introducing new powers for local authorities to issue on-the-spot fines—fixed penalty notices—to enforce age of sale legislation of tobacco products and vapes.

The consultation responses are currently being analysed by DHSC and are anticipated to be released before the end of January 2024.

The DHSC Command Paper stated: "We propose that products in scope of the new legislation will mirror the existing age of sale legislation which would mean that all tobacco products, cigarette papers, waterpipe tobacco (such as shisha) and herbal smoking products would be subject to the new law." However, no specific questions on shisha were included within the consultation.

Shisha smoking is not readily associated with tobacco control strategies nationally. We believe that the government should take into account the inclusion of shisha in its initiatives aimed at creating a smokefree generation due to its detrimental health impacts.

Addressing shisha use requires a more nuanced strategy given the communal and leisurely nature of shisha activities in comparison with cigarette smoking. Considerations about community safety, understanding and addressing inequalities and collaborating with local communities to resolve arising issues are essential components of any future plan related to shisha use.

We would also like Government to commission additional research on the health risks of shisha. This will help to ensure that the health impacts of shisha are more widely understood by society. It is vital that information regarding the health implications of smoking shisha is published in a variety of languages, as well as within any future legislative changes regarding tobacco control policy.

3. Community impacts of shisha

Amenity impacts

In addition to its direct health impacts, shisha smoking and shisha premises can contribute to a number of amenity and quality of life issues, in turn impacting on the health and wellbeing of our communities. Key issues include:

- illegal indoor smoking;
- outdoor smoking in structures that are unlawful or dangerous;
- dangerous equipment (with the risk of carbon monoxide poisoning);
- dangerous swinging of charcoal burners;
- enclosures, tables and chairs/seating or equipment such as charcoal burners blocking the highway;
- excessive noise and smell, particularly late at night when residents are wanting to rest or sleep;
- second-hand smoke affecting passers by, staff working at shisha premises, neighbouring premises or homes above/ near shisha premises;
- the unauthorised change of use of premises
- the visibility and promotion of shisha, which may influence children and young people.

Fire safety is a significant concern with regard to shisha premises, and in recent years there has been some serious fires associated with shisha premises. Moreover, inspections and enforcement against premises can sometimes reveal numerous hazards— including a lack of smoke and carbon monoxide detectors, obstructions caused by shisha pipes and seating, and unsafe indoor/ partially covered premises. In addition to this, an [estimated 12,288 tonnes of carbon dioxide are emitted from shisha bars](#) each year, contributing to poor air quality, particularly in already polluted urban centres.

Noise pollution is also significant problem in cities where shisha premises are increasing in number, such as London, Manchester and Birmingham. There were [597 noise complaints](#) registered against shisha bars between 2010-2018. Excessive noise can have serious impacts on the health of the residents, impact wellbeing and reduce quality of life.

Case study one: Fire safety enforcement challenges in Westminster

Westminster City Council was initially called out to a shisha café one weekend to investigate an incident in November 2019. There had been complaints of a carbon monoxide alarm going off in a flat above the café.

The council believes that charcoal burning in shisha pipes was the cause of the carbon monoxide. Following the incident, the fire brigade issued a fire safety notice to the café to make improvements. This should have stopped the premises trading as a shisha café.

In May 2021, the council carried out further inspections and found that the café was trading late at night with shisha being smoked indoors, against the fire safety notice and smoke free legislation (amongst other things). A month later, another visit found over half a dozen customers smoking shisha in a substantially enclosed tented area. The council found other issues including:

- A poorly installed ventilation system
- No health warning displayed on shisha equipment
- Health and safety concerns such as the layout of the kitchen and lighting

- The new operator had no experience running a shisha café or similar customer premises (he was, until recently, a mechanic)

The premises is still trading as a shisha café and is immune from change of use planning consent for the use of shisha as it has been in place for 5 years. It has still not been possible to ascertain who owns which parts of the building to enforce against breaches of the Health Act and other regulations.

Case study two: Breaches of smoke free legislation in Newham

The premises first came to the attention of Newham in 2011, when a visit was made by officers and a shelter (more than 50 per cent indoors) was under construction. Advice was given to the owner about the requirements of smoke-free legislation. Despite this advice, the structure was completed and the business operated illegally throughout early 2012. The owner was prosecuted.

The premises changed hands in October 2012 and continued to operate illegally. The new owner was prosecuted in September 2013 under the same offences. Despite stating his willingness to work with the council to ensure compliance, he continued to operate illegally throughout 2013 and 2014.

In October 2014, Newham carried out works under planning legislation to physically remove the smoking shelter at the rear of the premises; despite this, the council received further reports of smoking at the premises in 2015 and 2016. With the assistance of the police and a locksmith, another inspection was carried out. This revealed that the owner had rebuilt the smoking shelter to the same dimensions and specification as the shelter demolished by the council.

This continuous, resource-intensive process demonstrates the limitations of enforcement under both smoke free and planning legislation. Fines are so low that they are no deterrent to shisha operators, who absorb them as a business cost.

Crime and disorder

Since January 2014, all herbal smoking products such as those used for shisha smoking are liable for excise duty. Previously only tobacco products were liable.

An All Party Parliamentary Group (APPG) on Smoking and Health held an inquiry into the illicit trade in tobacco products in 2013, recognising that a significant proportion of shisha in the UK appears to be illicit: imported illegally, with no duties paid. It is estimated that in the UK, illicit tobacco [costs the taxpayer £2 billion a year](#) and has links with low-level and large-scale organised crime.

Aside from illicit shisha, there have been some incidences of violence and exploitation linked to poorly run or illegal shisha premises. This is by no means indicative of those shisha premises operating lawfully but, like any venue breaching regulations in one way, the lack of local authority powers to deal with unsafe, problematic venues means a comorbidity of issues are more likely to arise.

Case study three: Illicit shisha in Leicester

The Public Safety Team (PST) at Leicester City Council has noted regular non-compliance over the last decade within this growing business sector within Leicester. This reflects a national trend of shisha cafes becoming more mainstream. In Leicester, formal action has resulted in ten prosecutions since 2008, with fines imposed by Magistrates generally having increased over the years to £3450, as well as £1500 in costs.

Operation Falcon 2019

During February and April 2019, the Public Safety Team visited shisha cafes in Leicester as part of a joint project called 'Operation Falcon' with Her Majesty's Revenue and Customs (HMRC) Officers and Leicestershire Police. The national HMRC Officers were visiting to ensure that the shisha tobacco being sold had UK duty paid. The local HMRC Officers were examining whether fraud was taking place in the businesses. The police were present to prevent any breaches of the peace.

Shisha tobacco was being sold without UK Duty paid in nine of the thirteen premises. As a result, the HMRC officers seized approximately 170kg, equating to approximately £21,250 pounds of duty not being paid.

Case study four: Illicit shisha in Oxfordshire

In August 2019 Oxfordshire County Council Trading Standards undertook a project with partners in Environmental Health, Licensing and HMRC to visit shisha bars and cafes in Oxford. During the project, eight visits were conducted, and seven premises were found to be selling shisha; all were non-compliant in some form. One premises closed and one decided to stop selling shisha. However, in February 2020, revisits were conducted to all five premises which continued to operate. Once again, all premises were in some form of non-compliance and three in serious non-compliance (specifically, selling illicit shisha and allowing smoking in enclosed areas).

4. Regulating shisha premises

Enforcement

Existing legislation is not currently strong enough to effectively tackle issues with poorly managed shisha premises. To properly tackle the growing public health issue of shisha smoking, and ensure premises are run in a safe, fair, compliant way, action is required from central government to reform and strengthen several pieces of legislation. These are summarised in the below.

Legislation	Application to Shisha	Issues	Proposals
Smoking			
Health Act 2006	Bans smoking indoors and in enclosed and substantially enclosed spaces, includes shisha.	This level of penalty is not acting as a deterrent because premises continue to trade despite prosecutions. Fixed Penalty Notices (FPN) are only issued to customers (although Westminster City Council does not do this). Achieving a prosecution can be difficult. For example, it can be challenging to find the correct individual to prosecute, which is not always as simple as identifying who the owner is.	Significantly increase the level of fines and enable FPNs to be issued to businesses, not just individuals.

The Tobacco and Related Products Regulations 2016	Bans flavoured tobacco.	These regulations only apply to cigarettes and hand rolling tobacco. They do not apply to shisha, which is regularly sold as flavoured in shisha bars, on websites and on menus – both tobacco and non-tobacco.	Close the loopholes in legislation by applying the ban to shisha.
The Tobacco Products and Nicotine Inhaling Products (Amendment) (EU Exit) Regulations 2020			
Health and Safety			
Health and Safety at Work Act 1974	Even when shisha premises meet the requirements of the Health	Councils can require operators to carry out risk assessments, but operators do not have to record it.	Require risk assessments to be available for inspection by relevant authorities.
The Management of Health and Safety at Work Regulations 1999	Act, structures must still have adequate ventilation to prevent smoke building up. The Management of Health and Safety at Work Regulations (1999) require assessment of risk, and arrangements to minimise the risk to employees and the (for example when cleaning and using charcoal).	It is difficult to take further enforcement action (especially for businesses with fewer than 5 employees) and this would involve a process of notices, not immediate closure.	Reduce number of notices issued before closure of premises due to breach of Act.
Trading Standards			
The Tobacco and Related Regulations 2016	Health warnings and labelling must be provided for tobacco products.	Legislation is aimed at retail sales of cigarettes in packets and is more challenging to enforce for shisha (for example, when there is table service). Labels are rarely given on pipes, mouthpieces, menus or on venue websites. Not all shisha contains tobacco, and this is difficult to prove one way or another from an enforcement officer perspective.	Extend labelling legislation to shisha – both tobacco and non-tobacco – on shisha pipes and to menus (physical and online) for all shisha premises.
Children's & Young Persons (Protection from Tobacco) Act 1991	If tobacco is being sold, a sign warning customers that tobacco should not be sold to under 18s must be displayed at the point of sale.	This is not always consistently applied in shisha premises.	Shisha bars should be required to have this warning sign visible from every table.

Even if all of the amendments suggested above are made to existing legislative frameworks, many councils with significant numbers of shisha premises do not believe that will be sufficient. We are therefore calling for a licensing regime to be established to better regulate shisha premises. The aims of a licensing regime for shisha would be:

- to reduce its detrimental impact on local communities such as anti-social behaviour and public nuisance
- to raise hygiene standards, safety standards and improve the management of the premises
- to ensure safeguarding policies to restrict admission of under-18s and implement no drugs or offensive weapons policies
- to impose sanctions for non-compliance that are not frustrated by the company changing name, which regularly allows adverse situations to continue
- to create a level playing field between shisha premises to ensure compliance with regulatory regimes
- to provide clarity on ownership and management of shisha businesses, providing accountability and assisting compliance with regulatory regimes such as fire safety and tobacco control.

Proposal for a shisha licensing scheme

The size, nature and business offer of a majority of shisha premises across the country are akin to other well-known business models such as nightclubs, restaurants and cafes. In many instances, the only difference between such models is the sale of alcohol, which requires a business to apply for a premises licence under the Licensing Act 2003. Many shisha premises do not sell alcohol and therefore do not require a licence under the Act; however, a few premises do offer late-night refreshment and therefore require a premises licence. Consequently, shisha premises operate late into the night as restaurants, pubs and bars do, but unlike them are not licensable in their own right. This means that unless they also have another licence (such as for late night refreshment or alcohol) their impact on noise, nuisance, crime and anti-social behaviour is not taken into account in the same way as impacts from other venues, either individually or through cumulative impact assessments (CIAs).

There are two key options for licensing shisha premises: amending the Local Government Miscellaneous Provisions Act 1982 or amending the Licensing Act 2003. Each of these options have their merits and there are different views within the sector around the best approach to regulation. However, it should be noted that some councils do not believe a licensing regime is appropriate. For example, Manchester City Council is concerned that establishing a licensing regime for any form of tobacco may somehow legitimise the activity and their preference is to adopt a zero-tolerance approach and pursue smoke-free public places.

Local Government Miscellaneous Provisions Act 1982

The [LGA has long called for the Local Government Miscellaneous Provisions Act 1982 to be amended and updated](#) to provide sufficient flexibility to enable councils to adopt licensing regimes to deal with specific issues in their area, such as sunbed use or in this case, shisha. A more agile system of localised licensing would allow developments to be incorporated without using parliamentary time.

The benefit of an amendment to the Local Government (Miscellaneous Provisions) Act 1982 is that it would create a licensing regime to control shisha premises on an adoptive basis.

This will provide flexibility for councils to set local controls to deal with the issues they face, and councils would not have to establish a regime if they did not have shisha premises in their local area. A similar approach was used when it became apparent there was a need to regulate Sexual Entertainment Venues (SEV's) and one of the key factors in the success of SEV regulation has been the ability to properly reflect the local issues affecting local citizens within the policies and conditions.

The Act would also make provision for all councils who adopt the legislation to develop a 'shisha policy', with enforceable licence conditions that address the needs and concerns of the local area. The shisha policy could specify requirements of the shisha licence holder/operator, for example that they:

- have experience to run the type of establishment in question
- understand the general conditions
- propose a management structure which delivers compliance with the operating conditions e.g. through managerial competence, presence, a credible management structure, enforcement of rules internally, a viable business plan and policies
- can be relied upon to protect the public
- can show a track record of management of compliant premises or will employ individuals who have such a track record.
- are compliant with other regulatory and taxation schemes.

A further, crucial, benefit is that fees can be set at cost recovery which will ensure councils who choose to establish a shisha licensing regime would not incur a deficit by regulating these premises. This is a significant benefit and unlike some other regimes, for example, fees under the Licensing Act for alcohol and entertainment licences are prescribed in the legislation and have not been updated since 2005.

Licensing Act 2003

An alternative legislative vehicle is the Licensing Act 2003. This would ensure the provision of shisha had a similar level of scrutiny and public consultation that is already given to other activities which can have a negative impact on our health, such as the consumption of alcohol. It would also allow responsible authorities and local residents to make representations and share their views on new applications, if they had concerns about the impact of a shisha premises on the licensing objectives.

Moreover, if a premises had breached the licensing objectives, the Licensing Act would give councils the power to review the whole premises' licence. This would incentivise the premises licence holder to run their business well.

As the Licensing Act already regulates other hospitality businesses, including shisha within the Act could facilitate a more joined- up and comprehensive approach.

If the Government were to proceed with the recommendations in the Khan Review to establish a wider tobacco licensing regime and incorporate shisha within this, an amendment to the Licensing Act 2003 may be the best legislative vehicle. The Licensing Act licences the sale of alcohol from on and off-sale premises and could therefore offer a useful framework to build on.

Whether through the Local Government Miscellaneous Provisions Act or the Licensing Act, a licensing regime would enable councils to add conditions which would reflect the local situation and could be tailored to meet the nuances of the specific issues to be addressed. Examples of possible conditions include:

- Ensuring the appropriate planning permission is in place; including ensuring that a plan of the premises, showing the layout, fire exits etc is provided.
- Full details must be provided of all directors (or individuals) involved in the management of the business, including basic disclosure certificates; evidence they are registered to pay business rates, or detail how this requirement will be fulfilled.
- Applicant must provide an operating schedule detailing how the business will be managed including staffing/security/risk assessments etc.
- The licensed premises shall not be open or used for the purposes for which the licence is granted except between the hours prescribed within the licence or those hours of operation determined by the licensing authority.
- The licensee or a responsible person over 18 years of age nominated by them in writing for the purpose of managing the premises in their absence shall be in charge of and upon the premises during the whole time they are open to the public.
- The licensee shall keep and maintain at the licensed premises a written record of the names, addresses, and copies of photographic proof of age documents of all persons employed or performers permitted to operate within the licensed premises whether upon a full or part time basis and shall, upon request by an authorised officer of the council or police officer, make such records available for inspection to them.
- Officers of the council, police, and other authorised agencies who are furnished with authorities (which will be produced on request) shall be admitted immediately to all parts of the premises at all reasonable times and at any time the premises are open for business.
- Where the licensee is a body corporate or an unincorporated body any change of director, company secretary or other person responsible for the management of the body is to be notified to the licensing authority.
- A requirement to maintain invoices and produce them when asked by officers.
- Prohibit decanting the product into tubs and throwing away the packaging which displays health warnings and information on the duty paid.

Ultimately, further regulation of shisha premises will increase safety and enhance council's powers to enforce against non-compliant premises. Smoking shisha has serious health implications, and it is right that businesses that are solely designed to sell risky products to our communities are properly regulated, as has been the case with alcohol for many decades. Moreover, shisha smoking has a disproportionate impact on the health of minority communities, and further action is needed to prevent health inequalities deepening. Whether through the Local Government Miscellaneous Provisions Act or through the Licensing Act, it is crucial that Government listens to the concerns of councils and takes action to address the negative health and community implications that shisha premises can have.

Annex 1: Equality impact assessment

The **Public Sector Equality Duty** (Section 149 of the Equality Act) requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between different people carrying out their activities.

The Equality Duty supports good decision making – it encourages public bodies to be more efficient and effective by understanding how different people will be affected by their activities, so that their policies and services are appropriate and accessible to all and meet different people’s needs.

Name or Brief Description of Proposal	Reducing the harm of shisha and the need for better regulation: Local government policy paper
Summary of Impact and Issues	
<p>Shisha smoking is a legal activity enjoyed by people in the UK and is closely linked with Middle Eastern, North African, and South Asian communities.</p> <p>Councils are concerned about the health impacts shisha smoking can have. They are also finding that shisha premises can have a significant impact on local communities and some premises have been known to breach existing legislation and contribute to anti-social behaviour in local areas. Many councils do not believe existing regulatory tools enable them to respond to these challenges.</p> <p>This paper argues for shisha to be included in existing tobacco control strategies and for a shisha licensing regime to be created. We believe it is reasonable to licence shisha premises because it is a venue specifically designed for consumption of a risky product which merits close oversight, in a similar way to alcohol. We are also suggesting shisha should be included within existing tobacco control strategies, rather than creating anything distinct for shisha. Therefore, a broad principle of equity is being proposed. Additionally, by placing greater decision-making powers with local authorities, they would be bound in how they operate the regime by their duty to comply with the public sector equality duty (PSED), which additionally offers a potential means of challenge to any authority felt to be implementing the policy in a non-equitable manner.</p>	
Potential Positive Impacts	
<p>We are aware of the harmful health impacts shisha smoking can have, which disproportionately affect minority communities who already suffer from health inequalities. Improved regulation will better safeguard communities and send a stronger health message about the risks of shisha to our communities.</p>	

Potential Impact

Impact Assessment	Details of Impact	Possible Solutions & Mitigating Actions
Age	Some councils have expressed concern that children and young people are visiting shisha premises. This can have negative health impacts due to exposure to second hand smoke.	A licensing regime would place greater obligations on premises to protect children and young people from harm. If they do not, the council would be able to revoke the businesses licence.
Disability	Disabled people with some health conditions may be negatively impacted by direct or indirect exposure to shisha products.	Including shisha within wider tobacco control measures would raise awareness of the risks of shisha. There is a misconception that it is harmless.
Gender Reassignment	No adverse impact	
Care Experienced	No adverse impact	
Marriage and Civil Partnership	No adverse impact	
Pregnancy and Maternity	Smoking shisha during pregnancy is associated with low-birth-weight babies and increased pulmonary problems for the new-born. There are reported harmful impacts of second-hand smoke on the mother and the foetus.	Including shisha within wider tobacco control measures would raise awareness of the risks of shisha, which is needed as there is a misconception that it is a harmless activity.
Ethnicity	Shisha smoking is closely linked with Middle Eastern, North African, and South Asian communities.	We are aware that shisha smoking is enjoyed by some communities as a leisure activity and calls for better regulation of shisha could be seen as unfairly targeting certain communities who may socialise in shisha bars instead of premises serving alcohol, for example. However, given the growing evidence base which indicates the health risks

Impact Assessment	Details of Impact	Possible Solutions & Mitigating Actions
		<p>shisha can have, we think action is required.</p> <p>Moreover, we believe it is reasonable to licence shisha premises because it is a venue specifically designed for consumption of a risky product which merits close oversight, in a similar way to other products such as alcohol. Councils would always seek to ensure any licensing regime was implemented in a proportionate manner. If regulated under the Licensing Act 2003, shisha would be subject to the same safeguards as the regulatory regime for the sale alcohol, which means licensing decisions would be made by a licensing committee and applicants and residents could make representations on the application. Councils would also be able to use their licensing policy to be sensitive to local circumstances and communities when applying the regulatory regime, and think about some of the positive impacts of shisha premises, such as regenerating the high street.</p>
Religion or Belief	Shisha smoking is closely linked with Middle Eastern, North African, and South Asian communities, and as a result is often associated (although not exclusively) with Muslim communities.	We are aware that shisha smoking is enjoyed by some communities as a leisure activity and calls for better regulation of shisha could be seen as unfairly targeting certain communities, who may socialise in shisha bars instead of premises serving alcohol, for example. However, given the growing

Impact Assessment	Details of Impact	Possible Solutions & Mitigating Actions
		<p>evidence base which indicates the health risks shisha can have, we think action is required. Moreover, we believe it is reasonable to licence shisha premises because it is a venue specifically designed for consumption of a risky product which merits close oversight, in a similar way to other products such as alcohol. Councils would always seek to ensure any licensing regime was implemented in a proportionate manner. If regulated under the Licensing Act 2003, shisha would be subject to the same safeguards as the regulatory regime for the sale alcohol, which means licensing decisions would be made by a licensing committee and applicants and residents could make representations on the application. Councils would also be able to use the licensing policy to be sensitive to local circumstances and communities when applying the regulatory regime, and think about some of the positive impacts of shisha premises, such as regenerating the high street.</p>
Sex	No adverse impact	
Sexual Orientation	No adverse impact	
Community Safety	Some shisha premises have been associated with anti-social behaviour, as well as breaches with fire safety and health legislation and wider issues such as noise nuisance.	Implementing a licensing regime would have a positive impact on mitigating some of these issues. Councils could revoke or suspend licences for non-compliance with

Impact Assessment	Details of Impact	Possible Solutions & Mitigating Actions
		legislation or add conditions to licences which would mitigate issues such as noise pollution. Councils would always seek to ensure conditions were proportionate, necessary and evidence based, and licence holders and applicants would have the opportunity to participate in the licensing process.
Poverty	No adverse impacts	
Health & Wellbeing	There is limited research on the health impacts of shisha, however studies that have been completed highlight significant health impacts such as increasing the risk of heart disease, lung disease and some cancers.	Incorporating shisha into tobacco control strategies would send a stronger health message to communities and raise awareness of the risks of shisha products. This would benefit certain minority communities who are disproportionately affected by the negative health impacts caused by shisha.
Other Significant Impacts	N/A	