

APPENDIX A

**Children in Employment and
Entertainment
Prosecution Policy**

May 2019

1. Aim

- To set out the prosecution policy of Lincolnshire County Council as the Enforcing Authority for breaches of the law in respect of children in employment and entertainment.
- To make clear the areas of responsibility for those engaging children in entertainment or employment.
- To ensure that safeguarding is at the centre of our approach to enforcement.

NOTE: This policy should be read in conjunction with the Council's Guidance for Licence Holders and Chaperones and the Lincolnshire County Council Guide to Child Employment. There is also a "Child Employment - A Guide for Young People". All relevant applications for permits and licences in respect of participation in entertainment and employment by young people can be found on the Council's website

2. The Law

2.1 Who is a child for the purposes of participation in entertainment?

Legally this refers to any child from birth until they cease to be of compulsory school age. This will be the last Friday in June of their 16th Year. Where a child attains the age of 16 between the 1st September and the 31st August that child is deemed to remain of compulsory school age until the last Friday in June.

2.2 Children Participating in Entertainment:

The law in this area is contained in the **Children and Young Persons Act 1963** which provides at section 37 that (1) "*subject to the provisions of this section, a child shall not –*

- (a) Take part in a performance to which subsection (2) of this section applies, or*
- (b) Otherwise take part in a sport, or work as a model, where payment in respect of his doing so, other than for defraying expenses, is made to him or another person,*

Except under the authority of a licence granted by the local authority in whose area he resides or, if he does not reside in Great Britain, by the local authority in whose

area the applicant or one of the applicants for the licence resides or has his place of business.

(2) This subsection applies to:

(a) any performance in connection with which a charge is made (whether for admission or otherwise);

(b) any performance in premises which by virtue of an authorisation (within the meaning of section 136 of the Licensing Act 2003) may be used to serve alcohol.

(c) any broadcasting performance

(d) any performance not falling within paragraph (c) above but included in a programme service (within the meaning of the Broadcasting Act 1990)

(e) any performance recorded (by whatever means) with a view to its use in a broadcast or such service or in a film intended for public exhibition.

A child shall be treated for the purposes of this section as taking part in a performance if he takes the place of a performer in any rehearsal or in any preparation for the recording of the performance".

(3) a licence under this section shall not be required for any child to take part in a performance to which subsection (2) of this section applies if no payment in respect of his taking part in the performance, other than for defraying expenses, is made to him or another person and –

(a) in the six months preceding the performance he has not taken part in other performances to which subsection (2) of this section applies for more than 3 days; or

(b) the performance is given under arrangements made by a school (within the meaning of the Education Act 1996 or made by a body of persons approved for the purpose by the Secretary of State or by the local authority in whose area the performance takes place.

The Act then makes provision for further regulations in respect of children in entertainment to be made under this act. The most recent regulations in this area containing substantive rules around children in entertainment is **The Children**

Performance and Activities (England) Regulations 2014 which sets out the manner in which a licence can be applied for and the form of that licence together with the general requirements applicable to all licenses in terms of the requirements for education, earnings, a chaperone, accommodation, and travel arrangements.

In particular, the regulations provided for the records, that must be kept by the licence holder under section 39(5) of the Children and Young Persons Act 1963 which are in relation to such matters as the date, times of arrival and departure to rehearsals and performances and record of intervals taken etc. to ensure that the licence holder is complying with the general requirements of the licence under the Regulations and must be retained for 6 months

2.3 Offences

Under section 40 of the 1963 Act *"If any person – (1)*

- (a) causes or procures any child, or being his parent or guardian, allows him to do anything in contravention of section 37 of this Act or*
- (b) fails to observe any condition subject to which a licence under that section is granted, or any condition prescribed under subsection (3) of that section; or*
- (c) knowingly or recklessly makes any false statement in or in connection with an application for a licence under that section:*

he shall be liable on summary conviction to a fine not exceeding level 3 (currently £1000) on the standard scale or imprisonment for a term not exceeding three months or both.

(2) If any person fails to keep or produce any record which he is required to keep or produce under section 39 of this Act, he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) The court by which the holder or one of the holders of a licence under section 37 of this Act is convicted of an offence under this section may revoke the licence.

(4) In any proceedings for an offence under this section alleged to have been committed by causing, procuring or allowing a child to take part in a performance without a licence under section 37 of this Act, it shall be a defence to prove that the

accused believed that the condition specified in paragraph (a) of subsection (3) of that section was satisfied and he had reasonable for that belief.

2.4 Children in Employment

Children of compulsory school age may only work if they are over 13 years of age and have a work permit issued by the Local Authority and can only work full time once they have officially left school.

The main restrictions on the employment of children are set out in section 18 of the Children and Young Persons Act 1933 but the provisions made under the act are subject to those changes made by local byelaws. Lincolnshire has adopted the standard byelaw in this area which provides as follows:-

2.4.1 Areas of work that are prohibited employment for ALL children

- in cinemas, theatres, discotheques, dance halls, or night clubs except to the extent that they are engaged in entertainment which only involves children or under a performance licence.
- to sell or deliver alcohol except in sealed containers
- to deliver milk or fuel oil.
- in a commercial kitchen
- collecting or sorting refuse
- in any work which is three metres above ground or floor level.
- employment involving harmful exposure to physical, biological or chemical agents
- to collect money or sell or canvass door-to-door unless supervised by an adult.
- in work involving exposure to adult material or in situations which are for this reason otherwise unsuitable for children.
- in telephone sales
- in any slaughter house or any part of a butchers shop or other premises connected with the killing of livestock, butchery, or in the preparation of carcasses or meat for sale.

- as an attendant or assistant in a fairground or amusement arcade or in any other premises used for the purpose of public amusement by means of automatic machines, games of chance or skill or similar devices.
- in the personal care of residents of any residential care home or nursing home unless under the supervision of a responsible adult.

Note These restrictions are in addition to separate legislation which relates to the employment of children in factories, workshops, mines or quarries or to give effect to international conventions.

2.4.2 Street Trading

No child under the age of 14 shall engage in street trading and no child over the age of 14 may engage in street trading unless they are employed to do so by a parent in connection with the parent's retail business and they are under their parents direct supervision and the child has been granted a street trading licence by this authority.

2.4.3 Children aged 13 must **not** be employed unless it is in light work in one of the categories below:

- agricultural or horticultural work on an occasional basis and under the direct supervision of a parent.
- delivering and/or collecting payment for delivery of newspapers, journals and other printed material.
- shop work including shelf stacking
- hairdressing salons
- office work
- car washing by hand in a private residential setting
- in a café or restaurant
- in a riding stable
- domestic work in hotels and other establishments offering accommodation.

2.4.4 Children 14 and over may only be engaged in light work. This is work which is not likely to be harmful to the safety, health or development of children and will not impact negatively on their attendance at school, their participation in work

experience or their capacity to benefit from the instruction received, or as the case may be, the experience gained.

2.4.5 Other requirements:

- when working outdoors children must be provided with suitable clothing and footwear
- an employer must obtain the relevant working permit for a child by providing the information required within one week of employing the child.

2.4.6 Working Hours for Children

	13 – 14 Years	15 – 16 Years
School days	2hr (to a maximum of 12 hours in a school week)	2hrs(to a maximum of 12 hours in a school week)
Saturdays	5hrs	8hrs
Sunday	2hrs	2hrs
School holidays	Maximum 25 hours a week	Maximum 35 hours a week

- children may only work out of school hours
- this can include 1 hour before school
- children must not work before 7am or after 7 pm
- children must have a rest break for 1 hour for every 4 hours worked
- additionally children must have 2 consecutive weeks off during school holidays

3.0 Offences

Section 21 of the Children and Young Persons Act 1933 provides that:

1. *"If a person is employed in contravention of any of the forgoing provision of this part of this Act (provisions on the employment of children), or of the provisions of any by-law or regulation made thereunder, the employer and any person (other than the person employed) to whose act or default the*

contravention is attributable shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale".

2. *"A child, who engages in street trading in contravention of the provision of the foregoing section or of any byelaw made thereunder, shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale".*

3.1 The Code for Crown Prosecutors

This authority recognises that the basis of any sensible prosecution policy is that it follows the principles set down in the Code for Crown Prosecutors. In doing so, the authority will follow the format of applying both the evidential test and then the public interest test to each case that is investigated by this authority and subsequently considered for a criminal prosecution.

Evidential Test Each case must first pass this test. It requires there to be sufficient cogent and admissible evidence upon which the prosecuting authority can rely which makes a finding of guilt more likely than not. Only if this test is passed can the second test be applied.

Public Interest Test This test asks the question as to whether it is in the public interest to pursue a case against the defendants in all the circumstances of the case. In considering this test such issues as the likelihood of a nominal penalty, the age and health of the defendant, their antecedent history including the case work already done by the local authority to address the issue or where there is a clear issue and any formal warnings and other factors personal to these defendants are taken into account.

3.2 The Decision to Prosecute:

The decision to prosecute in relation to the offences referred to in this policy rests solely with the local authority. This means that the decision to prosecute and the cost of that subsequent prosecution and the responsibility for the decision to prosecute rest with this authority. This also means that only those cases which meet the criteria for prosecution set by the authority will be pursued by way of a prosecution. Each case must of course be judged on its individual merits but clearly there are particular factors which may impact the decision to prosecute.

3.3 Specific Prosecution Policy Guidance

1. **Safeguarding** – is the paramount consideration when considering whether to prosecute in respect of breaches of the law in relation to children partaking in entertainment and employment. Clearly where these activities potentially place children and young people in hazardous situations in terms of the hours, location or lack of supervision under which they are working or being involved in entertainment or where the child or young person is exposed to a potential for such physical or moral harm, this will always be an important aspect of any decision to prosecute.
2. **Impact on Education:** Another important consideration will be the impact the employment/entertainment activity is having on their education not just in terms of attendance but also where the child is tired or failing to complete homework or take part in educational activities because of work commitments.
3. **Proper use of resources** – The policy of this authority is to ensure that the funding available for the prosecution of persons in respect of the breaking of the law concerning child employment and children in entertainment is targeted at those cases which are the ones where the interests of the child are paramount.
4. **Level of Seriousness of the breach**– In the case of a minor breaching of the rules where no real harm has been done and the defendants have worked with the authority to put right the situation, then it may be the case that a warning rather than a prosecution would be appropriate.

3.4 Specific Evidential Issues

Whilst there is no requirement to prove that the defendant knowingly breached the law, other than in the case of false statements, the level of knowledge around their legal responsibility, the age of the child/young person and any attempt to cover up the offence will have a clear impact on the seriousness of the case. Where it can be evidenced that the defendant was aware of the illegality of their actions, the case is likely to be viewed more seriously by the court and therefore any evidence of knowledge should be included in the case.

Clearly any evidence of aggravating features of the case such as hours worked over those permitted by law, working outside of permitted hours or without supervision should also be evidenced.

3.5 Specific Public Interest Issues:

This is a non-exhaustive list of factors that may point towards prosecution.

- **Previous convictions/cautions/warnings** – if the defendant has prior knowledge of their legal responsibility and despite previous convictions, caution or formal warning, continues to offend, this will sway the public interest in favour of prosecution.
- **Serious safeguarding issues** – where the breach has placed the child/young person at risk of moral or physical harm or left them vulnerable to being in a position of moral or physical harm, then this will also predispose the public interest towards prosecution.
- **Impact on education** – where the employment or entertainment activity has caused unauthorised absence from school or persistent lateness then prosecution would again be in the public interest.