

# AGENDA

## LICENSING ACT 2003 COMMITTEE MEETING

Date: Thursday, 3 December 2015

Time: 7.00 pm

Venue: Council Chamber, Swale House, East Street, Sittingbourne, Kent, ME10 3HT

Membership:

Councillors Bobbin, Monique Bonney, Tina Booth, Lloyd Bowen, Roger Clark, Adrian Crowther, Paul Fleming, June Garrad, Lesley Ingham (Chairman), Prescott (Vice-Chairman), Ben Stokes, Anita Walker, Ghlin Whelan, Mike Whiting and Ted Wilcox.

Quorum = 3

---

	Pages
1. Apologies for Absence and Confirmation of Substitutes	
2. Minutes	
To approve the Minutes of the Meeting held on 22 July 2015 (Minute Nos. 120 - 123) as a correct record and to accept the Minutes of the following Licensing Sub-Committees:	
11 August 2015 (Minute Nos. 144 – 146)	
30 September 2015 (Minute Nos. 246 – 248)	
9 October 2015 (Minute Nos. 261 – 263)	
20 October 2015 (Minute Nos. 285 – 287)	
20 November 2015 (Minute Nos. to-follow)	
3. Declarations of Interest	
Councillors should not act or take decisions in order to gain financial or other material benefits for themselves or their spouse, civil partner or person with whom they are living with as a spouse or civil partner. They must declare and resolve any interests and relationships.	
The Chairman will ask Members if they have any interests to declare in respect of items on this agenda, under the following headings:	
(a) Disclosable Pecuniary Interests (DPI) under the Localism Act 2011. The nature as well as the existence of any such interest must be declared. After declaring a DPI, the Member must leave the meeting and not take part in the discussion or vote. This applies even if there is provision for public speaking.	
(b) Disclosable Non Pecuniary (DNPI) under the Code of Conduct adopted by the Council in May 2012. The nature as well as the existence of any such interest must be declared. After declaring a DNPI interest, the Member may stay, speak and vote on the matter.	

**Advice to Members:** If any Councillor has any doubt about the existence or nature of any DPI or DNPI which he/she may have in any item on this agenda, he/she should seek advice from the Director of Corporate Services as Monitoring Officer, the Head of Legal or from other Solicitors in Legal Services as early as possible, and in advance of the Meeting.

#### **PART A REPORTS FOR RECOMMENDATION TO COUNCIL**

4. Revised Statement of Licensing Policy 1 - 36
- To consider the revised Statement of Licensing Policy and details of the consultation response.
5. Statement of principles under Gambling Act 2005: consultation response and final review policy 37 - 80
- To consider the revised Statement of Gambling Policy and details of the consultation response.

#### **PART B REPORT FOR THE LICENSING ACT 2003 COMMITTEE TO DECIDE**

6. De-regulation of Late Night Refreshments 81 - 84
- To consider the implications for Swale Borough Council as the Licensing Authority following the De-regulation of Late Night Refreshments under the Licensing Act 2003.

**Issued on Tuesday, 24 November 2015**

The reports included in Part I of this agenda can be made available in **alternative formats**. For further information about this service, or to arrange for special facilities to be provided at the meeting, **please contact DEMOCRATIC SERVICES on 01795 417330**. To find out more about the work of this Committee, please visit [www.swale.gov.uk](http://www.swale.gov.uk)

Corporate Services Director, Swale Borough Council,  
Swale House, East Street, Sittingbourne, Kent, ME10 3HT

Licensing Act 2003 Committee	<b>Agenda Item:</b>
------------------------------	---------------------

<b>Meeting Date</b>	3 <sup>rd</sup> December 2015
<b>Report Title</b>	Revised Statement of Licensing Policy
<b>Portfolio Holder</b>	Cllr Ken Pugh
<b>SMT Lead</b>	Mark Radford
<b>Head of Service</b>	
<b>Lead Officer</b>	Angela Seward
<b>Key Decision</b>	<b>No</b>
<b>Classification</b>	<b>Open</b>
<b>Forward Plan</b>	<b>Reference number:</b> Not Applicable

<b>Recommendations</b>	<p>The Committee is asked ,following the recent consultation to:</p> <ol style="list-style-type: none"> <li>1. Approve the revised ‘Statement of Licensing Policy’ attached as appendix 1</li> <li>2. Recommend to Council that it approves the revised ‘Statement of Licensing Policy’ under the Licensing Act 2003.</li> </ol>
------------------------	--

## **Purpose of Report and Executive Summary**

- 1.1 This report presents the revised Statement of Licensing Policy and details the consultation response.

## **2 Background**

- 2.1 Swale Borough Council, as a Licensing Authority must produce a Statement of Principles (Policy) to identify how applications under the Licensing Act 2003 will be considered. The Policy lasts for a period of five years, the five year periods are specified by the Secretary of State, therefore we must consult on and re-publish our Licensing Policy by January 1<sup>st</sup> 2016
- 2.2 When the Policy was reviewed, prior to the consultation exercise approved by the Committee on 22 July 2015, some additions were made, these were necessary to reflect changes in the legislation and the revised governmental guidance issued in March 2015. Other than that the review of the Statement of Licensing Policy was very much a ‘care and maintenance’ review and the Committee were aware of this when it agreed the consultation document. The level of response to the consultation below must be seen in this context.

### **3 Proposal**

3.1 The revised Statement of Licensing Policy is attached as Appendix I. Members of The Licensing Committee must decide whether the Policy is fit to be published for a period not exceeding 5 years from 1<sup>st</sup> January 2016 in line with the statutory framework for Licensing and if so to recommend approval to Council.

It is recommended that the Committee, following the recent consultation:

1. Approve the revised 'Statement of Licensing Policy' attached as appendix 1
2. Recommend to Council that it approves the revised 'Statement of Licensing Policy' under the Licensing Act 2003.

### **4 Alternative Options**

4.1 The Policy must be reviewed in line with the statutory requirements under the Licensing Act 2003.

### **5 Consultation Undertaken or Proposed**

5.1 Consultation was carried out for a formal period from 3<sup>rd</sup> August to 5<sup>th</sup> November 2015.

5.2 The following authorities/persons were consulted.

- The Chief of Police for the area
- The Police Licensing Officer for Kent & Medway
- The Fire Authority for the area
- Sittingbourne and Faversham LVA
- The British Institute of Innkeeping
- The British Beer and Pub Association
- Kent Magistrates Services
- Local Businesses with a relevant interest (Shepherd Neame/Enterprise Inns)
- The Councils Planning and Environmental Departments
- All Swale Borough Councillors

In addition a public notice was placed in the local newspaper on 5<sup>th</sup> August 2015 for one consecutive week.

5.3 No responses were received, therefore no alterations have been made to the Policy as agreed by the Committee as the consultation document.

### **6 Implications**

Issue	Implications
Corporate Plan	<p><b>A borough to be proud of:</b> the statement seeks to strike the right balance between promoting and encouraging live and recorded music, dancing, theatre and other forms of entertainment for the wider cultural benefit of communities generally but not to cause a disturbance.</p> <p><b>A community to be proud of:</b> by promoting the four licensing objectives in this way the authority is enriching and enhancing the community whilst maintaining its regulatory and enforcement role.</p> <p><b>A council to be proud of:</b> the statement will support good decision making processes</p>
Financial, Resource and Property	<p>The SBC Graphics Department will produce the Policy in the corporate style from when finally approved in December 2016. To reduce costs, the Policy will be published on our website, and on request, hard copies can be provided to customers.</p> <p>By carrying out consultation in line with the requirements of the Act, resources and financial cost will be reduced this time.</p>
Legal and Statutory	The Licensing Authority must formally review its adopted Statement of Licensing Policy every five years, as required under Section 5 of the Licensing Act 2003.
Crime and Disorder	None – apart from those mentioned in the policy.
Risk Management and Health and Safety	None.
Equality and Diversity	The Policy is fair and balanced in the needs of all members of the community and users of the licensing service. It has been designed to avoid disadvantage or discrimination.
Sustainability	None.

## 7 Appendices

- 7.1 The following documents are to be published with this report and form part of the report
- Appendix I: Revised Statement of Licensing Policy

## 8 Background Papers

- 8.1 None

This page is intentionally left blank

**SWALE BOROUGH COUNCIL  
STATEMENT OF LICENSING POLICY**

**17 December 2016 until 16 December 2020**

**Licensing Act 2003**

**ALL applications will be considered on their merits, as well as against the relevant  
policy and statutory framework**

## DRAFT STATEMENT OF LICENSING POLICY –JUNE 2015

---

Item	Page
Introduction	2
Section 1 – Consultation	5
Section 2 – Background	6
Section 3 – Licensing Authority general policy considerations	8
Section 4 – Responsible Authorities and other persons	11
Section 5 – Exchange of information	13
Section 6 – Human Rights and Equal Opportunities	13
Section 7 – Compliance and enforcement	13
Section 8 – New premises licences	14
Section 9 – Variations to licences	15
Section 10 – Variations to specify a new designated premises supervisor	15
Section 11 – Transfer of premises licences	16
Section 12 – Provisional statement for premises	16
Section 13 – Club premises certificates	17
Section 14 – Review of a premises licence or club premises certificate	17
Section 15 – Application to vary premises licence at community premises to remove the mandatory requirement for a DPS	18
Section 16 – Hearings	19
Section 17 – Licence conditions	20
Section 18 – Personal licences	23
Section 19 – Temporary event notices	24
Section 20 – Other relevant matters	25
Section 21 – Information	26
Appendix A –Swale Overview	27
Appendix B – Contact details of Local Licensing Authority Department	28
Appendix C –Responsible Authorities	29
Appendix D –References to guides of best practice	30
Appendix E –Useful Contacts	31
Appendix F – Recommended delegation of functions	32



## STATEMENT OF LICENSING POLICY

### INTRODUCTION

Every Licensing authority is required to produce a statement of licensing policy and to keep the statement under review. Swale Borough Council (the Council) is the Licensing Authority for the Swale area under the provisions of the Licensing Act 2003 (the Act). This is the Statement of Licensing Policy as determined by the Council in respect of its licensing functions under the Licensing Act 2003. This document sets out the position and view of the Licensing Authority in respect of matters in connection with the discharge of its licensing function including the administration of licensing applications, compliance with licensing conditions and enforcement when necessary.

This Statement of Licensing Policy commences on 17 December 2015 and continues for a five year period. During the five year period the Policy will be kept under review and the authority will make such revisions to it at such times as it considers appropriate. Further licensing statements will be published every five years thereafter or earlier as necessary. All references to the 'Guidance' refer to the latest version of the Home Office Guidance to Licensing Authorities issued under section 182 of the Licensing Act 2003.

The 2003 Act requires the Council to carry out its various licensing functions with a view to promoting the following four licensing objectives:

- **the prevention of crime and disorder;**
- **public safety;**
- **the prevention of public nuisance;**
- **the protection of children from harm.**

The aims of this Statement of Licensing Policy, in line with the four licensing objectives, are to:

- help build a fair and prosperous society that properly balances the rights of people and their communities with the needs of business.
- minimise any nuisance or disturbance to the public through the licensing process; integrate its aims and objectives with other initiatives, policies and
- promote strategies that will:

(1) reduce crime and disorder through the necessary protection of local residents whose lives can be blighted by the disturbance and anti-social behaviour associated with the behaviour of some people visiting places of entertainment;

(2) encourage tourism by supporting a wider choice about where, when and how to spend leisure time;

(3) encourage an early evening and night time economy which is viable, sustainable and socially responsible;

(4) reduce alcohol misuse through, amongst other things, the encouragement of more family-friendly premises where younger children can be free to go with the family

(5) encourage employment and the regeneration of areas that need investment and employment opportunities that a thriving night time investment can bring.

(6) encourage the self-sufficiency of local communities;

(7) reduce the burden of unnecessary regulation on business by applying better and more balanced rules to give businesses greater freedom and flexibility to meet their customers' expectations

## DRAFT STATEMENT OF LICENSING POLICY –JUNE 2015

---

(8) encourage and promote live music, dancing and theatre for the wider cultural benefit of communities generally.

The Council will endeavour to work with other Local Authorities to ensure that a consistent approach is taken in licensing matters, whilst respecting the differing needs of individual communities throughout the local authority area.

In the preparation of this policy the Licensing Authority will have given proper regard to the local strategies on crime prevention, planning, transport, culture, tourism and economic development to ensure proper coordination and integration of the aims and actions of these policies.

The Licensing Act is part of a wider Government strategy to tackle crime, disorder and antisocial behaviour and reduce alcohol harm. The Licensing Authority will continue to develop strategies with the police, and the other enforcement agencies, as appropriate, for the management of the night-time economy. Of critical importance to this is the enforcement of the law relating to the sales of alcohol to drunk and underage people and drunkenness or disorder on, or in the immediate vicinity of licensed premises. This policy covers a wide variety of premises and activities carried on within them. For this reason, this policy cannot detail all the factors that influence the achievement of the licensing objectives nor can this policy detail all the control measures that may be appropriate. **However, there will be zero tolerance of dealing in or using controlled drugs** (as defined by the Misuse of Drugs Act 1971) on licensed premises.

## 1 CONSULTATION

1.1 The Statement of Licensing Policy will be kept under review and where any significant amendments are considered necessary these will only be made after consultation has taken place in accordance with Section 5 of the Act. Amendments required due to a change in legislation that do not impact on the aims and objectives of the Policy or the promotion of the Licencing Objectives will be made with the approval of the Licensing Manager in order for the policy to remain legislatively current.

1.2 Proper weight, in accordance with the Guidance, has been given to the views of all those consulted. Those consulted in the preparation of this Policy included:

- the Chief Officer of Police for Kent
- the fire and rescue authority for Kent
- the Director of Public Health for all areas within Swale Borough
- persons/bodies representative of local premises licence holders
- persons/bodies representative of club premises certificate holders
- persons/bodies representative of local personal licence holders; and
- persons/bodies representative of businesses and residents in the Swale area

1.3 In accordance with the guidance the following persons have also been consulted on this revised statement:

- Kent Police Licensing Team
- the Superintendent of Police for Swale Borough Council area
- all Council members
- all parish councils
- all bordering local authorities
- all other responsible authorities under the Licensing Act 2003
- British Beer & Pub Association
- Shepherd Neame Ltd

## THE POLICY

### 2 BACKGROUND

2.1 When administering licensing matters the Council as the Licensing Authority will promote the four Licensing Objectives set out in section 4 of Part 2 of the Licensing Act 2003. The four licensing objectives are the:

- *Prevention of Crime and Disorder*
- *Prevention of Public Nuisance*
- *Public Safety*
- *Protection of Children from Harm*

The Licensing Authority gives equal weight to each of these objectives.

2.2 The 2003 Act requires Licensing Authorities to publish a 'Statement of Licensing Policy' (the Policy) that sets out the approach the Licensing Authority will take when administering applications and other processes under the Licensing Act 2003 to ensure the promotion of the licensing objectives.

2.3 This Statement of Licensing Policy has been prepared in accordance with the provisions of the 2003 Act having regard to the amended guidance issued under section 182 of the Act the Police Reform and Social Responsibility Act 2012 and the Live Music Act 2012.

2.4 Swale Borough Council is the Licensing Authority pursuant to the Licensing Act 2003 (the Act) and is responsible for considering a range of licence applications and variations to licences for a number of activities detailed below. The purpose of licensing is to regulate the carrying on of licensable activities on licensed premises, at qualifying clubs and under temporary event notices, (TENS). The activities as defined by the Act are:

- Sale by retail of alcohol
- Supply of alcohol (club)
- The provision of regulated entertainment which includes:
  - the performance of a play
  - an exhibition of a film
  - an indoor sporting event
  - boxing or wrestling entertainment
  - a performance of live music
  - playing of recorded music
  - performance of dance
- entertainment of a similar description to the above 3. (where they take place in the presence of an audience for the purpose of entertaining them)
- Provision of late night refreshment

2.5 It should be noted that following the introduction of the Live Music Act 2012, a licence is not required to stage a performance of live music, or the playing of recorded music if:

- it takes place between 8AM and 11PM; and
- it takes place at an alcohol on-licensed premises; and
- the audience is no more than 500 people

## DRAFT STATEMENT OF LICENSING POLICY –JUNE 2015

---

You also don't need a licence:

- to put on unamplified live music at any place between the same hours; or
- to put on amplified live music at a workplace between the same hours and provided the audience is no more than 500 people.

2.6 The types of premises likely to be included within the licensing regime include:

- Pubs and night clubs
- Off licences (includes supermarkets/shops selling alcohol)
- Restaurants serving alcohol
- Restaurants serving hot food and drink after 11pm
- Private members clubs/social clubs
- Hotels/guest houses selling alcohol
- Cinemas/theatres
- Community premises and village halls
- Providers of temporary events involving licensable activities

and any other premises at which licensable activities are to be provided.

2.7 The Policy will apply across a range of applications which include the following:

- New Premises Licences and Club Premises Certificates
- Variations to Premises Licences and Club Premises Certificates
- Provisional Statements for proposed premises yet to be built
- Transfer of Premises Licences
- Disapplication of mandatory condition in respect of alcohol sales at village halls and community premises
- Variations of licences to change the Designated Premises Supervisor
- Reviews of Premises Licences and Club Premises Certificates
- Personal Licences
- Temporary Events Notices

2.8 The Licensing Authority also regulates other activities at licensed premises which include sexual entertainment events and gambling and these are covered in other policies adopted by the Council.

## 3 LICENSING AUTHORITY GENERAL POLICY CONSIDERATIONS

3.1 The Licensing Authority encourages the development of premises which are not alcohol-led and which are aimed at different sectors of the population, including all ages and genders. Premises that promote the arts, a food offer, or other cultural activities are particularly encouraged.

3.2 Where premises such as pubs are alcohol-based, they are encouraged to consider diversifying their provisions so as to encourage a mixed customer-base and wider attractions, including community uses, soft refreshments, snacks and live entertainment. Diversification is important in the promotion of the licensing objectives as well as ensuring a sustainable economic future for premises and the regeneration of areas requiring investment and employment opportunities.

3.3 The Licensing Authority recognises the need to promote and encourage live and recorded music, dancing, theatre and other forms of entertainment for the wider cultural benefit of communities generally but not to cause a nuisance. The necessary protection of local residents and the potential for limited disturbance and anti-social behaviour in neighbourhoods will be carefully balanced with the wider benefits.

3.4 The Licensing Authority, Environmental Services, Kent Police and Kent and Medway Fire and Rescue welcome pre-application discussions and will offer advice and guidance upon request and where appropriate. The Licensing Authority expects that applicants will have in advance researched and understood the relevant law in relation to their application and their particular business plans as well as this Policy. Applicants are encouraged to consult with each of the authorities before submitting an application. It is not for licensing officers to determine the business needs and capabilities of an applicant but advice can be offered in relation to the licensing objectives. In addition guidance notes are available on the licensing pages of Council's website –

[www.swale.gov.uk](http://www.swale.gov.uk)

3.5 Licensing officers will also provide advice to other parties on the licensing process where needed in relation to objecting to or supporting applications that may affect them. However, SBC cannot provide legal advice to applicants or other parties.

### ***Supermarkets and other 'off' licensed premises selling alcohol***

3.6 The Licensing Authority will generally consider licensing shops, stores and supermarkets to sell alcohol for consumption off the premises throughout their opening times. However where there are reasons for restricting or amending hours, for example, where premises become the focus of disorder and disturbance, such restrictions or amendments will be considered where relevant representations have been made.

3.7 All 'off' licensed premises must comply with the Licensing Act 2003 Mandatory Conditions Order in relation to age related sales. The Licensing Authority also expects such premises to consider any appropriate and proportionate additional measures to prevent and deter proxy sales on behalf of under 18's.

3.8 Licensees should also carefully consider alcohol sales to customers who have or appear to have alcohol related health issues, and whether those customers already appear under the influence of alcohol when attempting to make purchases.

3.9 The Licensing Authority expects adequate checks to be made and all reasonable steps taken to ensure alcohol delivered by way of online shopping services (as provided by

most large supermarket chains) is not delivered to minors to prevent a risk of underage consumption.

3.10 Where self-pay till points are made available in stores selling alcohol, provision must be considered for alcohol sales to be identified and approved prior to completion of the purchase.

### ***Designated Premises Supervisor (DPS) at alcohol licensed premises***

3.11 Whilst this role has a limited definition under the Licensing Act 2003, it is expected that this person nominated on a licence will normally have overall responsibility for the day to day management and control of the licensed premises and in particular be responsible for the safe receipt, storage and sale of alcohol.

3.12 The Licensing Authority would normally expect the DPS to be onsite at the licensed premises for the majority of time when alcohol is being sold subject to working hours legislation and absence for sickness and holidays. The Licensing Authority expects the DPS to provide training to staff in relation to alcohol sales and to authorise the employees the DPS considers competent to sell alcohol on their behalf in writing.

3.13 The Licensing Authority expects that a DPS should usually have responsibility for only one licensed premises at a time to ensure good management of the premises and the licensable activities. Where the same person is a nominated DPS on more than one premises licence and representations are made, the Licensing Authority will wish to satisfy itself that the premises in question can properly be managed by that person whilst responsibly promoting the licensing objectives.

### ***Film Exhibitions***

3.14 The licensing authority expects 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 Classification or the licensing authority itself.

### ***Live Music***

3.15. It is acknowledged the implementation of the Live Music Act in 2012 has resulted in a lighter touch regulation of live music up to 11pm on alcohol licensed premises, and this is seen as a positive approach for premises wishing to provide live music but a retrograde step for nearby residents and enforcement services. However, the Licensing Authority does not see this as an opportunity for licensees to provide live music events that cause nuisance and disturbance to local residents or businesses.

3.16 The Licensing Authority expects that where unregulated live music is proposed at licensed premises, all due care, attention and consideration is taken to prevent disturbance. The Council will consider using its powers under the Environmental Protection Act 1990 to prevent and control public nuisance caused by poorly managed live music at licensed premises.

### ***Deregulated Entertainment***

3.17 Where the further deregulation of schedule 1 of the Licensing Act has reduced the regulatory controls on some regulated entertainment activities, the Licensing Authority will expect licensees to ensure that no nuisance or disturbance is caused to local residents and



## DRAFT STATEMENT OF LICENSING POLICY –JUNE 2015

---

businesses when providing the deregulated activities. The Licensing Authority will consider using alternative powers as per para 3.16.

### ***Late Night Levy (LNL)***

3.18 Whilst it is acknowledged that the provisions for implementing a late night levy arise from the Police Reform and Social Responsibility Act 2011, any levy will potentially have a direct impact on all licensed premises within the Borough. **The Licensing Authority has considered the options around the imposition of a LNL and has no plans at the time of drafting this policy to consider an imposition of the levy.** Should evidence arise to support implementing a levy the statutory consultation process will be followed and the authority will use its discretion very carefully in relation to design and impact of a levy.

3.19 In advance of any decision to implement a LNL, the authority will enter into discussions with the Police with a view to agreeing the allocation of the Police share of the levy to support the policing of the night time economy within this Borough.

### ***Early Morning Alcohol Restriction Order (EMARO)***

3.20 The Licensing Authority has considered the options around the imposition of an Early Morning Alcohol Restriction Order and has no plans at the time of developing this policy to consider such an Order. Should evidence arise to support implementing an EMARO, the statutory consultation process will be followed and the matter referred to the Full Council for determination.

### ***Licensing and planning permission***

3.21. The use of a licensed premises or place may be subject to planning controls. There are several key differences between licensing and planning control, although there is an element of overlap between the departments. Nuisance and crime and disorder are shared concerns of planning and licensing and a combination of planning and licensing powers are required to tackle these problems.

3.22 Planning is a separate regulatory regime outside the scope of the Licensing Act 2003. Licensing is concerned with detailed issues concerning the operation and management of premises, while planning's concerns relate to the character of the building and the area the building is in.

3.23 The Licensing Authority recognises that there is no legal basis for refusing a licence application in the absence of any planning permission for the business to which the licence application relates. However, all applicants should be in possession of the necessary planning authorisation for their activities or planning enforcement may be considered.

3.24 The Council's planning department is a responsible authority under the Act and can make representations on applications. However it can only make representation relating to the licensing objectives

### ***Need for licensed premises and Cumulative Impact***

3.25. 'Need' concerns the commercial demand for particular licensed premises such as a pub, club or hotel. This is a 'market forces' matter and is not of concern to the Licensing Authority. 'Cumulative Impact' means the potential impact on the promotion of the licensing objectives by a significant or excessive number of licensed premises concentrated in one locality. This is a matter for consideration by the Licensing Authority.



3.26 The Licensing Authority acknowledges that a concentration of some types of licensed premises in a locality can result in increased footfall, congregation of the public in the streets and potential for increased crime and disorder, litter and anti-social behaviour, as well as noise nuisance to local residents. This would be a result of the presence of the number of premises and not attributable to individual businesses. The 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

3.27 **The Licensing Authority, having regard to the evidence available, considers that currently there is no particular part of the Borough where there is a negative cumulative impact of licensed premises on any of the licensing objectives.** If residents or a Responsible Authority (in particular the Police) provide relevant evidence through a representation in the future that supports the imposition of a Policy that restricts the number of new and/or later opening premises, this will be considered and consulted on.

3.28 The absence of an existing cumulative impact or saturation policy does not, however, prevent any responsible authority or other person making representations on a new application for the grant 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. The Licensing Authority will also take into account the effect on resources, including police resources, to cope with any influx of visitors to an area, particularly late at night.

#### **4 RESPONSIBLE AUTHORITIES AND OTHER PERSONS**

4.1 Responsible authorities are public bodies that are statutory consultees that must be notified of applications by the applicant. The full list and contact details can be found at Appendix C and are contained on the Swale Borough Council web-site at Responsible Authorities.

4.2 When dealing with applications and variations for licences and reviews of premises licences, the Licensing Authority is obliged to consider representations from two categories of persons, referred to as 'Responsible Authorities' and 'Other Persons'. This allows for a broad range of persons to comment both for and against applications for premises licences and club premises certificates and for reviews.

4.3 The Licensing Authority may only consider representations that are relevant to the promotion of the licensing objectives. We only have discretion on whether to grant applications for new premises licences or variations to existing premises licences, to impose conditions on granting licences if representations relevant to the licensing objectives are made by "interested parties" (local residents and businesses) or by "responsible authorities" within prescribed time limits, Otherwise the application will automatically be granted.

4.4 The Licensing Authority will take care to ensure that concerns raised by Responsible Authorities in relation to their own legislative functions are not taken into account if they are not relevant to the application for a premises licence under the Act, or the promotion of the licensing objectives. It would expect those authorities to use their powers and duties within their statutory roles to control such matters. Any representation made by a Responsible Authority that relates to the promotion of the licensing objectives will be accepted.

4.5 The Licensing Authority must give the appropriate weight to representations made by the Police on crime and disorder matters. The Police are the Licensing Authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. The Licensing Authority will accept all reasonable and proportionate

## DRAFT STATEMENT OF LICENSING POLICY –JUNE 2015

---

representations made by the Police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives.

4.6 Where an 'Other Person or Persons' request to be represented when seeking to make a representation, the Licensing Authority will require written evidence from the person/s being represented that they have authorised a third party to speak or write on their behalf.

4.7 Representations must be relevant before they can be considered. This means they must be:

- Made by a responsible authority or an interested party
- Has some evidential link to the premises in question
- Addresses one or more of the licensing objectives

4.8 The Licensing Authority will examine closely all representations to ensure that they are not frivolous, repetitive or vexatious. Matters that this authority will look at are likely to include:

- whether there is a history of making representations that are not relevant or which have been previously considered vexatious or frivolous and are intended to cause aggravation or annoyance
- whether the representation raises a 'relevant' issue
- whether the representation raises issues specifically to do with the premises and/or the licensable activities that are the subject of the application
- whether the repetitious representation is one made an unreasonably short time after, and identical or substantially similar to:
  - a ground for review specified in an earlier application for review, for the same premises, which has already been determined, or
  - representations considered by the licensing authority when the premises licence was first granted; or
  - representatives which would have been made when the application for the premises licence was first made and which were excluded by the prior issue of a provisional statement.

4.9 The above considerations are not exhaustive, and the Licensing Authority will have regard to anything a person making a representation, or persons representing them, say about his or her status to make representations. Nothing in this Statement should be taken to undermine the right of any person to make a representation on an application or to seek a review of a licence where provision to do so exists.

4.10 Public Health, Kent County Council, is now included on the list of Responsible Authorities. It is acknowledged that they may be useful in providing evidence of alcohol related crime and disorder or public nuisance etc. that are directly linked to premises or a cluster of premises. It may also be able to provide relevant information on alcohol related admissions that relate to specific licensed premises.

### ***The Licensing Authority as a Responsible Authority***

4.11 The Licensing Authority has carefully considered its role as a Responsible Authority under the Act. It will achieve a separation of responsibilities through procedures and approved delegations within the authority to ensure procedural fairness and eliminate

conflicts of interest. A separation is achieved by allocating distinct functions (i.e. those of Licensing Authority and Responsible Authority) to different officers within the licensing team.

4.12 The Licensing Authority does not expect to act as a Responsible Authority on behalf of third parties but accepts that there may be rare circumstances where this approach may be required. An example may be where matters arise at premises of which the licensing authority is aware of the negative impact on the promotion of the licensing objectives and residents, and other third parties have failed to take action by either requesting a review or making representation.

### **5 EXCHANGE OF INFORMATION**

5.1 The Licensing Authority will act in accordance with the provisions of the Licensing Act 2003 and the Data Protection Act 1998 in its exchange of information. Where a protocol is established to set out the mechanism for exchange of information with other regulatory bodies, any such protocol will be made publicly available.

### **6 HUMAN RIGHTS AND EQUAL OPPORTUNITIES**

6.1 The Human Rights Act 1998 makes it unlawful for a local authority to act in a way which is incompatible with the European Convention on Human Rights. In making decisions and determining appropriate action the Licensing Authority will have due regard to the Convention and will interpret the LA2003 in a manner consistent with the Human Rights Act 1998.

6.2 The Licensing Authority will consider the effect upon people's human rights and adopt a principle of proportionality and the need to balance the rights of the individual with the rights of the community as a whole. Action taken by the Council which affects another's rights must be no more onerous than is necessary in a democratic society.

6.3 The Equality Act 2010 prohibits direct and indirect discrimination on the basis of any of nine protected characteristics, whether in delivering services or in relation to employment. The Licensing Authority will have regard to its obligations under the Equality Act 2010 when interpreting and exercising its powers and responsibilities under the Licensing Act 2003.

### **7 COMPLIANCE AND ENFORCEMENT**

7.1 It is essential that licensed premises operate in accordance with the Act and promote the licensing objectives. Part of the Licensing Authority's role is to monitor premises and take appropriate action to ensure that the licensing objectives are promoted.

7.2 There are a range of offences detailed under Part 7 of the Licensing Act 2003. The Licensing Authority will liaise with the Responsible Authorities to determine enforcement of specific offences on a case by case basis. Offences related to sales of alcohol to minors will be enforced by the Police or Trading Standards Authority unless they form part of a range of offences identified by the Licensing Authority.

7.3 The Licensing Authority will work together with the police in promoting the licensing objectives. The Kent and Medway Enforcement Protocol was approved in February 2008 and agrees the appropriate responsibilities and procedures for joint working and enforcement between the two agencies.

## DRAFT STATEMENT OF LICENSING POLICY –JUNE 2015

---

7.4 The Council is committed to the principles of good enforcement by carrying out these regulatory functions in a fair, open and consistent manner. Inspections, enforcement, and where appropriate, surveillance under the Act will be based on the principles of risk assessment, which includes the targeting of high risk premises which require greater attention, whilst operating a lighter touch in respect of low risk and well managed premises. The risk-based approach is based on Home Office Guidance, the activities authorised and premises compliance history.

7.5 The Licensing Authority needs to be satisfied that premises are being run in accordance with the Act and any licensing conditions, which may be attached to the premises licence. Frequency of inspections will be determined on risk based criteria.

### ***Annual fees and suspension of licences for non-payment***

7.6 The Licensing Authority is required under section 55A of the Licensing Act to suspend premises licenses where the annual fee has not been paid. The Licensing Authority will invoice each licensee when the annual fee is due setting out the fee that is due and the consequences for non-payment. Where the fee has not been paid or there has been no claim of administrative error by the end of 21 days of the due date, the Licensing Authority will serve the required 2 working day notice to suspend the licence.

7.7 Where a licence is suspended this means that no licensable activities will be authorised to be provided at the premises until the suspension is lifted on receipt of payment of the overdue fee. Officers will conduct enforcement visits to premises where a licence has been suspended and will take the appropriate action in accordance with the Council's enforcement policy.

7.8 If an operator does not wish to carry on the activities that require the premises licence or certificate anymore it is important the licence or certificate is surrendered to prevent maintenance fees being accrued.

## **CONSIDERATION OF APPLICATIONS**

### **8 NEW PREMISES LICENCES**

8.1 In making decisions about applications for licences the Licensing Authority will have regard to:

- the Licensing Act 2003
- the Statutory Guidance issued under section 182 of the Licensing Act 2003,
- this Statement of Licensing Policy made under section 5 of the Licensing Act 2003

Any decisions made that depart from guidance or policy only do so for reasons set out in the decision.

8.2 Where elements of applications are unclear or unspecific, particularly in relation to operating schedules and trading hours, the Licensing Authority will expect the applicants to provide additional information for clarity on a request from the licensing team.

8.3 Licensing officers will routinely check that the Public Notices at the premises and the Public Notices in newspapers are displayed in accordance with the regulations as part of the validation process.

8.4 Licensing officers will also notify ward councillors to whose ward the application relates.

8.5 Where there are no representations about an application the licence will be automatically granted after 28 days under the terms and conditions applied for. Licensing officers will interpret the detail of the operating schedule and convert that into consistent enforceable licence conditions.

8.6 Where relevant representations are received the application will be referred to the Licensing Sub-committee for determination at hearing, unless all parties agree that a hearing is not necessary. Where applications result in the need for a hearing the process at section 16 of this policy will apply.

### **9 VARIATIONS TO LICENCES**

9.1 From time to time licensees may wish to change the nature of the business vary the trading hours or the licensable activities on offer. These can range from minor changes having little or no impact such as minor changes to the premises plan to more significant changes that will affect the promotion of the licensing objectives. These could include for example; the provision of additional activities, increasing capacities or longer and later trading hours. However where a variation is so substantial that it significantly changes the nature of the business and layout of the premises it is likely that a new premises licence application will be required rather than a variation.

9.2 An application for a variation must be advertised in accordance with regulations and the Council will expect applications to be advertised to residents and businesses in the vicinity.

9.3 The relevant parts of this Statement of Policy to be applied to significant variation applications is the same as for new premises licence applications at section 8 above.

9.3 Where applications are made for minor variations officers will consider whether there are any impacts on any of the Licensing Objectives. Where the variation proposed creates a significant impact on any of the Licensing Objectives the application will be rejected and the applicant advised to seek a standard variation.

9.4 Where there is minor impact or no impact on the four licensing objectives Officers will consult with the relevant (if any) responsible authorities.

### **10 VARIATIONS TO SPECIFY A NEW DESIGNATED PREMISES SUPERVISOR (DPS)**

10.1 The Licensing Authority expects that usually the nominated DPS on a licence will be involved in and supervising the day to day operation of licensed premises that sell alcohol. Where the person nominated as DPS ceases to undertake that role the Licensing Authority would expect the licensee to replace that person as soon as is reasonably practicable to maintain adequate control of the premises.

10.2 Where a DPS notifies the Licensing Authority that he or she has resigned, the licensing officers will enter into immediate discussion with the licensee in relation to the

## **DRAFT STATEMENT OF LICENSING POLICY –JUNE 2015**

---

mandatory conditions concerning the sale of alcohol, and provide appropriate advice to prevent unauthorised alcohol sales.

10.3 All applications to specify a new DPS must be made by the licence holder or by a person/body authorised in writing to act on the licensee's behalf.

10.4 Where there are no representations the default position is to grant the variation.

10.5 The Licensing Authority will give the appropriate weight to relevant representations received from the Police about a proposed DPS. Applications that receive relevant representations will be referred for a hearing at which point the Sub Committee may approve or reject the application if it considers it appropriate for the promotion of the crime prevention objective to do so.

### **11 TRANSFERS OF PREMISES LICENCES**

11.1 Before a licence transfer can be administered, the Licensing Authority usually expects consent to have been obtained from the previous premises licence holder. If this is not possible the applicant will be expected to demonstrate that he or she has taken all reasonable steps to secure consent to transfer the licence.

11.2 It is acknowledged that in some cases licensees leave premises and do not provide any forwarding contact details, or there has been a death or incapacity of the licence holder. In such cases where a licensee cannot reasonably be contacted to give approval, a licence will be transferred in accordance with the requirements of the Act.

11.3 Where a relevant Police objection to the transfer is received the application will be determined through the hearings process unless it is agreed by the applicant and Police as unnecessary.

### **12 PROVISIONAL STATEMENTS FOR PREMISES**

12.1 A provisional statement is an application made by someone with an interest in premises, which is or is about to be constructed for use for one of the licensable activities or which is or is about to be extended or altered for that purpose or may be applied for, by a person interested in a premises. This option allows potential applicants to obtain advance notice whether a premises licence is likely to be granted on completion of its construction or conversion.

12.2 The process for considering an application for a provisional statement is the same as that for a premises licence application, including a schedule of works. The applicant is obliged to give notice of the application in the same way as applying for a premises licence. Responsible authorities and other parties may make representations and there are rights of appeal.

12.3 The holder of a provisional statement may apply for a premises licence once the premises are constructed, altered or acquired. The Licensing Authority will be constrained in the matters it can consider when determining the premises licence application, and in terms of representations about premises licence applications that follow the grant of a provisional statement, where the application is for a licence in the same form as the provisional statement and the work described in the schedule of works has been satisfactorily completed.



12.4 Representations are excluded where the relevant person could have made the same or substantially the same representations about the provisional statement application but failed to do so without reasonable excuse and there has been no material change in circumstances of the premises or area in the vicinity of the premises since the provisional statement.

### **13 CLUB PREMISES CERTIFICATES**

13.1 The Licensing Authority acknowledges the importance and history of members clubs and the privileged position held by clubs historically in relation to alcohol licensing.

13.2 Members clubs are able to obtain a club premises certificate to authorise licensable activities for their members and their guests. There is no requirement for any members to hold a personal licence under the Licensing Act 2003, and there is no requirement to specify a designated premises supervisor. It is acknowledged that alcohol is supplied by and for the members through their membership of the club.

13.3 In order to apply for a club premises certificate the Licensing Authority must be satisfied that the club is a qualifying club and satisfies the legal conditions set out in the Act. Applicants for a club premises certificate will be required to complete a club declaration form setting out how the club will meet the conditions and definitions stated in the Act. Licensing officers will have delegated authority to make additional enquiries where appropriate in order to satisfy that a proposed club meets the criteria laid out in the Act.

13.4 The fundamental principles for premises licence applications set out at section 15 of this Policy will apply to applications for club premises certificates subject to exemptions in respect of the DPS and the requirement for evidence of the club's status.

13.5 Any qualifying club wishing to offer licensable activities at events to which non members will attend will be required to authorise such activities by way of a Temporary Event Notice or by ensuring compliance with the club rules to allow the public to enjoy the clubs facilities and activities without jeopardising the validity of the club premises certificate.

13.6 The Licensing Authority expects 'public' events on club premises to be authorised by a Temporary Event Notice. It is expected that club committee members will seek advice from the Licensing Authority prior to providing such activities for non-members to prevent any unauthorised activities.

13.7 Where the Licensing Authority identifies that a club no longer meets the conditions set out in section 62 of the Licensing Act 2003 or where the Licensing Authority obtains evidence to demonstrate that a club no longer acts in good faith as a qualifying club, it will give the club a notice withdrawing the club premises certificate.

13.8 Suspension of Club Premises Certificates may also occur under section 92A of the LA2003, through failure to pay annual fee. Once granted an annual must be paid each year. Failure to pay the fee with the specified time will result in the Council suspending the licence until such time as the fee is received.

### **14 REVIEW OF A PREMISES LICENCE OR CLUB PREMISES CERTIFICATE**

14.1 The Licensing Authority acknowledges that at any stage following the grant of a premises licence matters can arise at premises that raise concern as to the continued promotion of the licensing objectives at licensed premises.

## DRAFT STATEMENT OF LICENSING POLICY –JUNE 2015

---

14.2 The Act allows a licence to be reviewed where such matters arise. It is expected that most reviews will be applied for by Responsible Authorities.

14.3 Although this Licensing Authority is also a Responsible Authority and may bring about a review application, it is not expected that it will act as a Responsible Authority on behalf of other parties (for example, local residents, local councillors or community groups).

14.4 Such parties can make relevant representations to the Licensing Authority in their own right, and it is reasonable for the Licensing Authority to expect them to make representations themselves where they are reasonably able to do so. However, if these parties have failed to take action and the Licensing Authority is aware of relevant grounds to make a representation, it may consider acting in its capacity as Responsible Authority.

14.5 The Licensing Authority will determine whether a review application is relevant and the validity of a review application will be determined by a licensing officer. This will be on the basis of whether the request for the review is:

- relevant to one or more of the licensing objectives and
- not frivolous, vexatious or repetitious.

14.6 In every review case an evidential basis for the allegations made will need to be submitted to the Council as the Licensing Authority.

14.7 The Licensing Authority would expect grounds for a review to be evidence based but will consider each application on its merits.

14.8 Where a review application is accepted the Licensing Authority will encourage the parties to enter into mediation during the consultation period to help resolve or narrow issues arising. The Council would be happy to assist in these meetings as appropriate.

14.9 All reviews, save where agreed by all parties as unnecessary, will lead to a hearing before a sub-committee. This may be a full hearing or a condensed hearing to consider the outcome of mediation. However other parties who have made representation but not been involved in mediation will be permitted to voice their representations at the hearing in accordance with the Hearings Regulations. The Policy applied to hearings can be found in section 16.

14.10 The authority considers that where reviews are raised as a result of serious crime and disorder causing that licensing objective to be undermined, then it is likely that the a revocation of the licence will be considered.

### **15 APPLICATION TO VARY PREMISES LICENCE AT COMMUNITY PREMISES TO REMOVE THE MANDATORY REQUIREMENT FOR A DPS**

15.1 The Licensing Authority acknowledges the value that local community premises bring to their localities and that most are operated and managed by volunteers. The mandatory requirement for a nominated DPS to be in place at alcohol licensed community premises can be burdensome and difficult for an individual to manage at such premises.

15.2 The Act allows management committees at community premises to take over the responsibility of the alcohol sales by applying to the Licensing Authority to remove the requirement to have a nominated DPS at the premises to authorise sales of alcohol. The



## DRAFT STATEMENT OF LICENSING POLICY –JUNE 2015

---

Licensing Authority will, subject to strong evidence that a community premises is well managed by an experienced committee, support applications to remove the mandatory condition requiring all alcohol sales to be authorised by a personal licence holder.

15.3 Before considering an application the Licensing Authority will satisfy itself that a premises meets the definition of a community premises. Enquiries will be made as to the regular use of the premises and whether it is in the main 'community' based. Where there is a regular 'commercial' or 'non-community based' use or a membership requirement to use the premises it is unlikely that such a premises would meet the definition of a community premises and permission to remove the requirement for a DPS is likely to be refused.

15.4 In general it is expected that premises that form part of a church hall or chapel hall or are a village, parish or community hall or other similar building would in most cases meet the definition of a community premises, although each will be considered on its individual merits and the evidence provided or obtained.

15.5 The licensing officers will consider, on a case by case basis, all applications to remove the mandatory condition and will ask such questions or seek the necessary evidence to confirm the suitability of the management committee to collectively authorise the supply of alcohol the premises.

15.6 Committees that make an application will be expected to have members who are aware of the law relating to the sale of alcohol, contain steps within their operating schedule to prevent offences relating to alcohol sales and also to include appropriate rules in hiring agreements where the premises is hired out to the public for events that will involve the sale of alcohol.

### **16 HEARINGS**

16.1 Any application that has resulted in the submission of relevant representation from any party will be referred to the Licensing Sub-Committee for a hearing and determination in accordance with the Licensing Act 2003 and the Licensing Act 2003 (Hearings) Regulations 2005.

16.2 A sub-committee will consist of three suitably trained members of the Licensing Committee. The sub-committee will be advised on the law by a member of the Council's Legal Services Team. That legal team member will not be involved in the application process to prevent a conflict of interest by ensuring a clear separation of roles.

16.3 This Statement of Policy will play a key role in achieving consistency in decision making.

16.4 Where representations are made only by Responsible Authorities, the Licensing Authority would expect applicants and Responsible Authorities to enter into negotiation or mediation prior to a hearing in an attempt to resolve or narrow issues before attending the licensing hearing and to achieve an outcome satisfactory to all parties.

16.5 Parties will be advised of the hearing date and procedure in advance and in accordance with the statutory process. At all hearings the sub-committee will have regard to the Guidance issued under section 182 of the Act. This authority may use its discretion where there are strong and defensible reasons for departing from the Guidance and where it considers it right to do so. In any such case this authority will clearly express and explain its reasons for doing so.

## DRAFT STATEMENT OF LICENSING POLICY –JUNE 2015

---

16.6 The Licensing Authority must give the appropriate amount of weight to representations made by the Police on crime and disorder matters. It will give appropriate weight to all representations made by all parties based on the content and relevance to the promotion of all licensing objectives.

16.7 All decision notices will be in writing and will include clearly stated reasons to explain a decision on an application.

### 17 LICENCE CONDITIONS

17.1 A key concept in the Licensing Act is that conditions that are attached to licences or certificates are tailored to suit the individual style and characteristics of the premises and its activities and the impact of those activities. Those conditions must be appropriate and proportionate in order to promote the licensing objectives at that premises.

17.2 All licences that authorise the sale of alcohol will be subject to the mandatory conditions set out in the Act and Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010 as amended (and any subsequent Mandatory Conditions that are introduced).

17.3 Applicants will be expected to include appropriate steps to promote the licensing objectives within their operating schedule which will be converted to conditions on a premises licence or club premises certificate. Those steps will be expected to be proportionate, achievable, enforceable and relevant to the business in question and will ensure the promotion of each of the four licensing objectives.

17.4 Where applications receive valid representations and are subject to a hearing, the sub-committee will consider the evidence provided within representations, the detail of the application, the nature of the premises and business and only where appropriate and proportionate will attach conditions to a licence to secure the promotion of the licensing objectives in light of the evidence provided.

17.5 Decisions on individual licence conditions will be made on a case by case basis, and where there are concerns over the effective promotion of the licensing objectives, the applicant will be given the opportunity to offer suggestions on how the objectives can be met. This authority will work closely with all parties and the applicant in establishing workable, enforceable and reasonable conditions for new and variation applications.

17.6 In all cases the Licensing Authority will have regard to the Guidance when considering the implementation of licence conditions.

17.7 In all cases conditions will aim to promote the licensing objectives, be unambiguous and enforceable, appropriate to the activities and the business, achievable and applicable to the premises and the areas around the premises which is within the licensee's control.

17.8 The Licensing Authority recognises the need to avoid, so far as possible, duplication with other regulatory systems including Health and Safety at Work, Fire Safety, Food Hygiene and Nuisance Control. However these regulations may not cover the unique circumstances of some activities and entertainment. In these circumstances, the council may therefore, where necessary, attach conditions to premises licenses for the promotion of the licensing objectives.

### ***Conditions to promote the Prevention of Crime and Disorder.***

17.9 Under the Act the Licensing Authority has a duty to promote the licensing objectives, and, a further duty under the Crime and Disorder Act 1998 to do all it reasonably can to prevent crime and disorder in the borough.

17.10 The applicant will be expected to detail in their operating schedule how they will prevent crime and disorder on and close to the premises. Such detail should reflect the licensable activities on offer, location and character of the area, the nature of the premises use and the range of customers likely to use the premises.

These may include, but are not limited to, the following:

- prevention of disorderly conduct and anti-social behaviour
- prevention of underage drinking
- prevention of sales of alcohol to intoxicated customers
- prevention of drunkenness both on and in the vicinity of the premises
- prevention of drug use and drug dealing
- restriction to responsible drinks promotions
- use of safety glass
- inclusion of a wind-down time following alcohol sales period
- adequate seating to discourage “vertical drinking”
- the offer of food and snacks or other entertainment or occupation to discourage persistent drinking

17.11 In busier premises the Licensing Authority would usually expect to see a short (e.g.30 mins) ‘wind down’ or ‘drinking up’ period allowed for after the cessation time of entertainment and alcohol sales as this is effective in assisting in a reduction in noise and exuberance of customers before leaving the premises.

17.12 Applicants will be expected to seek advice from the Police and the Licensing Authority will give appropriate weight to requests by the Police for premises to be protected by SIA registered door staff subject to the provision of relevant evidence. Where the Licensing Authority determines after consultation with the Police that a premises is one that warrants additional security and monitoring it would expect applicants to include the provision of SIA approved door staff at the premises at appropriate times. Relevant premises are usually those used mainly for drinking alcohol and have later opening hours.

17.13 Where appropriate, applicants for licences in the town centre areas providing mainly alcohol, music and dancing would be expected to consider inclusion of a provision of safety glasses to prevent a risk of injury on the rare occasion that a glass may be used as a weapon.

17.14 The use of CCTV should be considered where appropriate or on the advice and recommendations of the Police and to a quality and standard approved by the Police for evidential purposes. Licensees will be expected to fully comply with the requirements of the Information Commissioners Office and the Data Protection Act 1998 in respect of any surveillance equipment installed at a premises.

17.15 In any application resulting in hearing the sub-committee will consider each application on its individual merits and determine the imposition of conditions that are appropriate to the promotion of the licensing objectives.

### ***Conditions to promote Public Safety.***

17.6 The applicant will be expected to show how the physical safety of persons attending the premises will be protected and to offer any appropriate steps in the operating schedule to promote this.

17.17 Such steps will not replace the statutory obligation on the applicant to comply with all relevant legislation under the Health and Safety at Work etc. Act 1973 or under the Regulatory Reform (Fire Safety) Order 2004.

17.18 Applicants will be expected to have carried out the necessary risk assessments to ensure safe occupancy levels for the premises. Where a representation from the Fire Authority suggests that for the promotion of the Public Safety objective a maximum occupancy should be applied, the Licensing Authority will consider adding such a limit as a licence condition.

17.19 Where appropriate an operating schedule should specify occupancy limits for the following types of licensed premises:

- (i) High Volume Vertical Drinking e.g. premises that provide mainly stand up drinking facilities with limited seating/table space and the primary activity is the sale of alcohol
- (ii) Nightclubs
- (iii) Cinemas
- (iv) Theatres
- (v) Other premises where regulated entertainment is likely to attract a large number of people.
- (vi) Where conditions of occupancy have arisen due to representations received.

### ***Conditions to promote the Prevention of Public Nuisance.***

17.20 The applicant will be expected to detail any appropriate and proportionate steps to prevent nuisance and disturbance arising from the licensable activities at the premises and from the customers using the premises.

17.21 The applicant will be expected to demonstrate that they have considered the following and included steps to prevent public nuisance:

- (i) Proximity of local residents to the premises
- (ii) Licensable activities proposed and customer base
- (iii) Hours and nature of operation
- (iv) Risk and Prevention of noise leakage from the premises from equipment, customers and machinery
- (v) Prevention of noise from customers leaving the premises and customer pick up points outside premises and from the Car Park.
- (vi) Availability of public transport to and from the premises
- (vii) Delivery and collection times and locations.
- (viii) Impact of external security or general lighting on residents.
- (ix) History of management of and complaints about the premises.
- (x) Applicant's previous success in preventing Public Nuisance.
- (xi) Outcomes of discussions with the relevant Responsible Authorities.
- (xii) Impact of location, noise and contamination from outside smoking areas on neighbours and other customers
- (xiii) Collection of litter arising from the premises

17.22 Steps to prevent public nuisance may include a range of options including noise limiting devices, sound insulation, wind down periods, acoustic lobbies, management of smoking areas etc.

17.23 Steps will differ depending on the individual premises and activities and it is for the applicant to ensure that reasonable, effective and appropriate steps are included within the operating schedule.

### ***Conditions to promote The Protection of Children from Harm***

17.24 Applicants will be expected to detail any appropriate and proportionate steps to protect children at the premises from any harm. The Licensing Authority recognises the right of licensees (serving alcohol) to allow accompanied children into their premises. The Licensing Authority would not seek to restrict access by children (above that specified in the Act) unless it is necessary for the prevention of physical, moral or psychological harm.

17.25 Steps to protect children from harm must be carefully considered for inclusion where:

- (i) There is entertainment or services of an adult nature provided.
- (ii) There have been previous convictions for under age sales of alcohol.
- (iii) There has been a known association with drug taking or dealing.
- (iv) There is a significant element of gambling on the premises.
- (v) There is a presumption that children under 18 should not be permitted entry such as to nightclubs (apart from when specific events are held for under 18's).
- (vi) Outcomes of discussions with relevant Responsible Authorities suggest such steps are applicable.

17.26 Nothing in the Licensing Act prevents licensees from excluding children from a licensed premises and no condition can be added to require the admission of children.

17.27 Where there are no matters that give rise to concern in respect of children at premises the Licensing Authority would expect to see the relevant box on an application form completed to specify NONE.

## **18 PERSONAL LICENCES**

18.1 Any person who wishes to act as a DPS at licensed premises must be in possession of a personal licence issued under the Licensing Act 2003. Any other person may also apply for a personal licence subject to meeting the necessary criteria. The Licensing Authority acknowledges the default grant position for applicants who meet the statutory criteria under the Licensing Act 2003.

18.2 The Police will only be consulted where the applicant declares a previous conviction for a relevant offence. A relevant conviction is one that is listed in Schedule 4 of the Licensing Act 2003.

18.3 Where a representation is received from the Police the Licensing Authority must hold a hearing unless the Police and the authority agree that it is unnecessary. The application must be rejected if it is considered appropriate for the promotion of the crime prevention objective and granted in any other case.

18.4 The Police must give a notice of objection to the Licensing Authority within the statutory 14 day consultation period. The Licensing Authority accepts that there is no

## DRAFT STATEMENT OF LICENSING POLICY –JUNE 2015

---

discretion to accept a late notification from the Police even if the objection provided evidence that to grant the licence would undermine the crime prevention objective.

18.5 The Licensing Authority requires all personal licence holders to advise if there is a change of their name or address in accordance with the Act. All licence holders are advised of this requirement when a licence is granted. Any changes will be updated and an amended licence will be issued within 20 working days of a notification of change.

18.6 The Licensing Authority anticipates that the Magistrates and Crown Courts will take appropriate action in relation to a personal licence where licence holders are convicted of relevant offences in those courts after the grant of a personal licence and notify the Licensing Authority of any action taken in respect of a personal licence.

18.7 The Licensing Authority requires personal licence holders to undertake their duty to disclose any convictions for a relevant offence after a personal licence has been granted. The Licensing Authority and/or the Police will take appropriate formal action against the licence holder where subsequent relevant convictions are not declared under that duty.

### 19 TEMPORARY EVENT NOTICES

19.1 The Licensing Act 2003 makes provision for the authorisation of a person (known as a premises user) to provide licensable activities on a temporary basis at unlicensed premises, or to add activities and/or extend the hours of existing activities at a licensed premises. The activities are authorised by the serving of a Temporary Event Notice (TEN) on the Licensing Authority, subject to the notice meeting the proper criteria as detailed under the Act.

19.2 Comprehensive planning of events is essential and where there are likely to be impacts on neighbouring residents or businesses as a result of the activities to be authorised by a TEN, the Licensing Authority expects the premises user to have considered any potential impacts and how they may be mitigated.

19.3 The Licensing Authority welcomes requests for advice from applicants who wish to provide temporary events to ensure they understand the law relating to such events and to reduce the likelihood of objections being made.

19.4 There are two types of TEN, Standard or Late. Both are subject to a numerical limit on the number of each type of TEN that can be served by personal licence holders and non-personal licence holders in a calendar year. There is also a numerical limitation on the number of TENs that may be served in respect of individual premises or place.

19.5 **Standard TEN.** A standard TEN must be served at least 10 working days (Monday to Friday excluding Bank Holidays) before the event commences. The 10 working days excludes the day of service and the day on which the event starts. Copies of the TEN must be served on the Licensing Authority, The Environmental Health (EH) Department, and the Police. The fee is payable only to the Licensing Authority. **Applicants are encouraged to serve TENs at least 28 days before the proposed events to allow greater time for an event to be planned.**

19.6 Where numerical limits are exceeded the Licensing Authority will serve a counter notice and the proposed licensable activities will not be authorised.

19.7 Where objections are received from the Police and/or EH and not withdrawn, the notice will be referred for a hearing before the Licensing Sub-Committee. The Sub-Committee may approve the TEN as applied for, add appropriate conditions (if the TEN



## DRAFT STATEMENT OF LICENSING POLICY –JUNE 2015

---

takes place on a premises with an existing premises licence) or reject a TEN by serving a counter notice.

19.8 **Late TEN.** A late TEN may be served between 9 and 5 working days before a proposed event commences. The same limitations apply to the day the notice was served and the day of the event. Where numerical limits are exceeded a counter notice will be served and the proposed licensable activities will not be authorised.

19.9 If the late TEN is served with fewer than 5 working days' notice it is deemed invalid and would be rejected. The proposed activities would not be authorised. The Licensing Authority has no discretion to accept TENs outside the permitted statutory deadlines.

19.10 Where valid representations are received from the Police or Environmental Health in respect of a late TEN, the TEN will be rejected and proposed activities will be unauthorised. A refund of the fee will not be made.

19.11 The Licensing Authority will take the appropriate action where there is evidence that licensable activities have been provided without the authorisation of a TEN.

19.12 It should be noted that if a TEN has been processed and is no longer required the fee will not be refunded as the Licensing Authority has already carried out its obligations.

### 20 OTHER RELEVANT MATTERS

#### *Adult entertainment*

20.1 The Licensing Authority has adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 and premises offering regular entertainment of a sexual nature must be licensed as a sex establishment under those provisions.

20.2 The Licensing Authority acknowledges that exemptions under the above legislation do allow sexual entertainment to be provided at premises licensed under the Licensing Act 2003, as long as it is provided on no more than 11 occasions within 12 months and with at least 1 month between each occasion. Those infrequent events will be regulated by the licence granted under the Licensing Act 2003 where that licence authorises performances of dance and where the original application specified that such adult entertainment was proposed to be provided.

#### *Gaming machines in licensed premises - Automatic entitlement*

20.3 There is provision in the Gambling Act 2005 (GA2005) for premises licensed to sell alcohol for consumption on the premises to automatically have two gaming machines of category C and/or D. The premises licence holder merely needs to notify this Licensing Authority and pay the prescribed fee.

20.4 This authority can remove the automatic authorisation in respect of any particular premises if:

- provision of the machines is not reasonably consistent with the pursuit of the licensing objectives (under the GA2005);
- gaming has taken place on the premises that breaches a condition of section 282 of the GA2005 (for example, the gaming machines have been made available in a way that does not comply with requirements on the location and operation of gaming machines);

## DRAFT STATEMENT OF LICENSING POLICY –JUNE 2015

---

- the premises are mainly used for gaming; or
- an offence under the GA2005 has been committed on the premises.

### ***Gaming Machine Permit***

20.4 If a premises wishes to have more than two machines of categories C and/or D, then it needs to apply for a permit and this authority will consider that application based upon the licensing objectives, any guidance issued by the Gambling Commission under section 25 of the Act, and such matters as officers consider relevant.

20.5 In determining such matters, consideration will be given to all the objectives but particularly the need to protect children from harm and to the need to protect vulnerable persons from harm or being exploited by gambling. The applicant will be required to satisfy the authority that there will be sufficient measures to ensure that minors do not have access to the adult only gaming machines.

20.6 Measures to satisfy the authority relate to restricting access to age restricted machines and adult machines being in sight of the bar, or in sight of staff who will monitor that the machines are not being used by minors. Notices and signage should also be displayed to this effect. Applicants may consider the provision of information leaflets and helpline numbers for organisations such as GamCare to demonstrate their responsibility in the protection of vulnerable persons and compliance with Codes of Practice issued by the Gambling Commission.

### ***Gambling in alcohol 'On' licensed premises***

20.7 Exempt gaming is equal chance gaming that is generally permissible in any club or alcohol licensed premises. Equal chance gaming includes games such as backgammon, mah-jong, rummy, kalooki, dominoes, cribbage, bingo and poker. Such gaming should be ancillary to the purposes of the premises.

20.8 This exemption is automatically available to all clubs or alcohol licensed premises, but is subject to statutory stakes and prize limits determined by the Secretary of State. Licensees are encouraged to seek advice from the Gambling Commission at [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk) or this Licensing Authority before providing any forms of gambling at alcohol licensed premises. Such arrangements should also be compliant with current smoke-free legislation.

### ***Smoking outside premises***

20.9 Licensees should consider appropriate arrangements for customers who wish to smoke outside the premises in an effort to ensure that any unlicensed pavement area are not also used as an allocated smoking area. This is to prevent nuisance and potential health harms to any non-smokers who may use the area.

## **21 INFORMATION**

21.1 In order to ensure that applicants and persons who make representations have the necessary information to be able to do so, information is available on the Swale Borough Council website [www.swale.gov.uk](http://www.swale.gov.uk) or by contacting the licensing team by email: [licensing@swale.gov.uk](mailto:licensing@swale.gov.uk) or by telephone on 01795 417534 or 471567



# DRAFT STATEMENT OF LICENSING POLICY –JUNE 2015

## APPENDIX A

The Borough of Swale is the fourth-largest of the 12 districts which make up the county of Kent. Swale has a prime location on the county's north coast between Medway, Maidstone and Canterbury, around 45 miles from London. It includes the towns of Sittingbourne, Faversham and Sheerness, as well as an extensive rural hinterland which takes in the whole of the Isle of Sheppey and part of the Kent Downs Area of Outstanding Natural Beauty. The borough covers an area of 140 square miles, roughly one-tenth of Kent, and is home to 139,200 residents.

Latest population data\* is as follows:

\*2013 Mid-Year ward estimates ex ONS (via KCC):

Faversham town: 19,400

Faversham area: 33,200

Sittingbourne town: 48,700

Sittingbourne area: 64,000

Sheppey area: 42,000

Sheerness town: 12,300

Minster : 14,800 – 2011 Census

The age breakdown is as follows:

Age Range	Number * based on mid year 2013 estimates	%
Under 16	27887	21.42
16:19	8507	6.54
20:29	16179	12.43
30:59	45734	35.13
60:74	22342	17.16
75 and over	9524	7.32

## DRAFT STATEMENT OF LICENSING POLICY –JUNE 2015

---

### Appendix B

Contact details of Local Authority Licensing Department as at June 2015

Angela Seaward Licensing Department, Swale Borough Council East Street Sittingbourne Kent ME10 3HT  Phone: 01795 417534 Email: <a href="mailto:angelaseaward@swale.gov.uk">angelaseaward@swale.gov.uk</a>	Claire Thornby Licensing Department, Swale Borough Council East Street Sittingbourne Kent ME10 3HT  Phone: 01795417364 Email: <a href="mailto:clarethornby@swale.gov.uk">clarethornby@swale.gov.uk</a>
--	---

## DRAFT STATEMENT OF LICENSING POLICY –JUNE 2015

---

### Appendix C

<b>A copy of the application and plan will need to be submitted to each of the following Authorities</b>	
<p>Licensing Department, Swale Borough Council, Swale House, East Street, Sittingbourne, Kent, ME10 3HT <a href="mailto:licensing@swale.gov.uk">licensing@swale.gov.uk</a></p>	<p>Planning Department, Swale Borough Council, Swale House, East Street, Sittingbourne, Kent, ME10 3HT <a href="mailto:areateam-fav@swale.gov.uk">areateam-fav@swale.gov.uk</a> or <a href="mailto:areateam-sitt@swale.gov.uk">areateam-sitt@swale.gov.uk</a></p>
<p>Environmental Pollution, Swale Borough Council, Swale House, East Street, Sittingbourne, Kent, ME10 3HT <a href="mailto:pollution@swale.gov.uk">pollution@swale.gov.uk</a></p>	<p>Licensing Co-ordinator, North Division, Medway Police Station, Purser Way, Gillingham, Kent ME7 1NE <a href="mailto:licensing.north.division@kent.pnn.police.uk">licensing.north.division@kent.pnn.police.uk</a></p>
<p>Maidstone Group Fire Safety Office, Maidstone Fire Station, Loose Road, Maidstone, ME15 9QB <a href="mailto:enquiries@kent.fire-uk.org">enquiries@kent.fire-uk.org</a></p>	<p>Child Protection Agency, Brenchley House, County Hall, Maidstone, Kent, ME14 1RF</p>
<p>Kent County Council, Trading Standards, 1st Floor, Invicta House, County Hall, Maidstone, ME14 1XX  <a href="mailto:trading.standardseast@kent.gov.uk">trading.standardseast@kent.gov.uk</a></p>	<p>Public Health, Kent County Council, Room 3.45, Sessions House, County Road, Maidstone Kent ME14 1XQ  <a href="mailto:Gillian.montgomery@kent.gov.uk">Gillian.montgomery@kent.gov.uk</a></p>

## Appendix D

### References to guides of best practice

Revised guidance issued under section 182 of Licensing Act 2003

[www.gov.uk/government/publications/explanatory-memorandum-revised-guidanceissued-under-s-182-of-licensing-act-2003](http://www.gov.uk/government/publications/explanatory-memorandum-revised-guidanceissued-under-s-182-of-licensing-act-2003)

Good Practice Guide on the Control of Noise from Pubs and Clubs, produced by Institute of Acoustics

[www.ioa.org.uk](http://www.ioa.org.uk)

Good Practice Guide: Licensing published jointly by the Justices' Clerks' Society and the Magistrates' Association (April 1999)

[www.magistrates-association.org.uk](http://www.magistrates-association.org.uk)

Code Of Practice And Guidance Notes On Noise Control For Concerts And Outdoor Events

[www.cieh.org/policy/noise\\_council\\_environmental\\_noise.html](http://www.cieh.org/policy/noise_council_environmental_noise.html)

Swale Borough Council Event Planning

[www.swale.gov.uk/guide-for-event-organisers/](http://www.swale.gov.uk/guide-for-event-organisers/)

The National Alcohol Harm Reduction Strategy Toolkit

[www.alcoholconcern.org.uk](http://www.alcoholconcern.org.uk)

The Point of Sale Promotions published by BBPA

[www.beerandpub.com](http://www.beerandpub.com)

Public Places Charter

[www.ash.org.uk](http://www.ash.org.uk)

National Pubwatch

[www.nationalpubwatch.org.uk](http://www.nationalpubwatch.org.uk)

## DRAFT STATEMENT OF LICENSING POLICY –JUNE 2015

---

### Appendix E

#### Contact details and useful addresses (e.g. Chamber of Trade, BBPA, BII, SIA etc.)

Swale Chamber of Commerce <b>Do we have any local chamber</b>	Disclosure and Barring Service (DBS) Customer services PO Box 165 Liverpool L69 3JD Information line: 0870 90 90 811 Website: <a href="https://www.gov.uk/disclosurebarring-service">https://www.gov.uk/disclosurebarring-service</a>
British Beer & Pub Association Ground Floor Brewers' Hall Aldermanbury Square London EC2V 7HR Tel: 020 7627 9191 Fax: 020 7627 9123 <a href="mailto:contact@beerandpub.com">contact@beerandpub.com</a> Press Office: 020 7627 9199	British Institute of Inn keeping (BII) Wessex House 80 Park Street Camberley Surrey. GU15 3PT Tel: 01276 684 449 Fax: 01276 23045 <a href="http://www.bii.org">www.bii.org</a> Email: <a href="mailto:reception@bii.org">reception@bii.org</a>
SIA PO Box 49768 London. WC1 V6WY Website: <a href="http://www.the-sia.org.uk">www.the-sia.org.uk</a> Tel: 0844 892 1025 Fax: 0844 892 0975	

## DRAFT STATEMENT OF LICENSING POLICY –JUNE 2015

---

### Appendix F - Recommended delegation of functions as per S182 of the guidance

<b>Matter to be dealt with</b>	<b>Full Committee</b>	<b>Sub Committee</b>	<b>Officers</b>
Application for personal licence		If a police objection	If no objection made
Application for a personal licence with unspent convictions		All cases	
Application for premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application for provisional statement		If a relevant representation made	If no relevant representation made
Application to vary designated premises supervisor		If a police objection	If no objection made
Request to be removed as a designated premises supervisor			All cases
Application for transfer of premises licence		If a police objection	If no objection made
Application for interim authorities		If a police objection	If no objection made
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious etc.			All cases
Decision to object when Local Authority is a consultee and not the relevant authority considering the application		All cases	
Determination of an objection to a temporary event notice		All cases	
Determination of application to vary premises licence at community premises to include alternative licence condition		If a police objection	All other cases
Decision whether to consult other responsible authorities on minor variation application			All cases
Determination of a minor variation			All cases

Licensing Act 2003 Committee	<b>Agenda Item:</b>
------------------------------	---------------------

<b>Meeting Date</b>	3 <sup>rd</sup> December 2015
<b>Report Title</b>	Statement of principles under Gambling Act 2005: Consultation response and final review policy.
<b>Portfolio Holder</b>	Cllr Ken Pugh
<b>SMT Lead</b>	Mark Radford
<b>Head of Service</b>	
<b>Lead Officers</b>	Angela Seaward
<b>Key Decision</b>	<b>No</b>
<b>Classification</b>	<b>Open</b>
<b>Forward Plan</b>	<b>Reference number:</b> Not Applicable

<b>Recommendations</b>	<p>The Committee is asked following the consultation exercise to:</p> <ol style="list-style-type: none"> <li>1. Approve the revised Statement of Principles under the Gambling Act 2005 (Gambling Policy) attached as appendix 1 as a temporary measure with a view to incorporating the new Gambling Commission guidance and conducting a full review of the policy at the earliest opportunity. A fresh consultation will be undertaken at that time and it is anticipated that this will be done within the next 12 months.</li>   <li>2. Recommend Council approve the revised Statement of Principles under the Gambling Act 2005 (Gambling Policy) attached as appendix 1 as a temporary measure with a view to incorporating the new Gambling Commission guidance and conducting a full review of the policy at the earliest opportunity. A fresh consultation will be undertaken at that time and it is anticipated that this will be done within the next 12 months.</li> </ol>
------------------------	--

## **Purpose of Report and Executive Summary**

1.1 Swale Borough Council is the Licensing Authority under the Gambling Act 2005 (the Act) for the Borough of Swale. One of the requirements of the Act is that the Licensing Authority has in place a Statement of Gambling Policy (the policy), which must be reviewed every three years. This Review is the appropriate time to make any changes to the Policy considered to be appropriate in light of the previous 3 years experience of administering the provisions of the Act.

1.2 The policy must be published by January 2016. At its meeting on 22 July 2015 the Committee agreed a consultation on the Revised Statement of Principles under the Gambling Act 2005 (Gambling Policy). The report at that time explained that the consultation reflected current Gambling Commission Guidance but that new guidance was anticipated in the autumn.

1.3 The Gambling Commission has only recently published its new guidance document in September 2015, waiting for this guidance to be published would not have allowed enough time to incorporate it in the document and consult and agree on the final policy prior to the January 2016 deadline.

1.4 In order to ensure that the Licensing Authority maintains a lawful policy, it is recommended that the Committee agree the policy that has been out to consultation as set out in the report and Appendix 1 but that this be considered as a temporary measure with a view to incorporating the new guidance and conducting a full review of the policy at the earliest opportunity. A fresh consultation will be undertaken at that time and it is anticipated that this will be done within the next 12 months.

## **2 Background**

2.1 The Committee agreed on 22 July 2015 to consult on a Statement of principles under Gambling Act 2005:

2.2 This statement for consultation reflected that it was initially formulated in line with the Kent and Medway Regulatory Steering Group framework and generally it still reflects the Kent wide model. This resulted in the need for only minor changes this time. Any changes made were mainly for clarity

2.3 However in September 2015 new guidance was issued by the Gambling Commission.

2.4 For the reasons set out in the Executive Summary it has not been possible to analyse fully and incorporate the new guidance and hence the recommendations advising the Committee to accept the consultation statement as a temporary measure and to recommend this approach to Council.

## **3 Proposal**

3.1 There are no representations on the consultation statement approved by the Committee in July 2015 for the Licensing Committee to consider despite widespread consultation with the Chief of Police for the area, the Police Licensing Officer for Kent & Medway, the Fire Authority for the area, The Gambling Commission, Gamcare and other Gambling Services, Kent Child Protection Services, West Kent Primary Care Trust, Kent Magistrates Services, Local Businesses with a relevant interest and all stake holder. The Councils Planning and Environmental Departments and all Swale Borough Councillors, no comments were received.



The most likely reason for there being no responses is that the policy is extremely robust and covers all sections of the Act and the then current guidance, it has also only had minor amendments made. The changes to the Statement of Principles (Gambling Policy) only relate to the demographic information.

3.2 The approach taken and principles applied to the draft policy were as follows:

- Ensuring compliance with legislation
- Improving referencing
- Supporting applicants by including 'Criteria' and 'Considerations'.
- Incorporating best practice from leading authorities.

3.2 The Committee is asked following the consultation exercise to:

1. Approve the revised Statement of Principles under the Gambling Act 2005 (Gambling Policy) attached as appendix 1 as a temporary measure with a view to incorporating the new Gambling Commission guidance and conducting a full review of the policy at the earliest opportunity. A fresh consultation will be undertaken at that time and it is anticipated that this will be done within the next 12 months. following consultation

2. Recommendation to Full Council to approve the revised Statement of Principles under the Gambling Act 2005 (Gambling Policy) attached as appendix 1 as a temporary measure with a view to incorporating the new Gambling Commission guidance and conducting a full review of the policy at the earliest opportunity. A fresh consultation will be undertaken at that time and it is anticipated that this will be done within the next 12 months.

## **4 Alternative Options**

4.1 The authority has to have in place a current lawful policy which has been consulted on and the suggested way forward is the only viable alternative to achieve this aim whilst allowing time to properly consider any substantial changes arising from the recently published

## **5 Consultation Undertaken**

5.1 Consultation was carried out with interested parties, as detailed in section 3.1 for a formal period of 8 weeks satisfying the requirements under Section 349 of the Gambling Act 2003.

## **6 Implications**

Issue	Implications
Corporate Plan	<p><b>A borough to be proud of:</b> the statement seeks to strike the right balance when promoting the gambling objectives.</p> <p><b>A community to be proud of:</b> by promoting the three gambling objectives in this way the authority is providing the community with a clear statement within its regulatory and enforcement role.</p> <p><b>A council to be proud of:</b> the statement will support good decision making processes</p>
Financial, Resource and Property	There will be a cost from Graphic Design to produce the final Statement of Principles under the Gambling Act 2005.
Legal and Statutory	The Licensing Authority must formally review its adopted Statement of Principles every three years, as required under Section 349 of the Gambling Act 2005. The report details how it is intended to incorporate ultimately the revised guidance from the Gambling Commission.
Crime and Disorder	None – apart from those mentioned in the report and policy.
Risk Management and Health and Safety	None.
Equality and Diversity	The Policy is fair and balanced in the needs of all members of the community and users of the licensing service. It has been designed to avoid disadvantage or discrimination
Sustainability	None.

## 7 Appendices

- 7.1 The following documents are published with this report and form part of the report
- Appendix I: Final Statement of Principles under the Gambling Act 2005

## 8 Background Papers

- 8.1 None



**SWALE BOROUGH COUNCIL**  
**GAMBLING POLICY**  
Statement of Gambling Policy 2016-2019

This Statement of Principles was prepared under Section 349 of the Gambling Act 2005 with regard to Guidance issued by the Gambling Commission. Please note that this Statement is to be regarded as an interim Statement required to meet the Council's statutory obligations. The Council is aware that the Gambling Commission will be publishing shortly revised guidance and when this is available the Council will undertake a full review of the Statement to ensure that it complies with any revised guidance issued.

## **Contents**

### **PART ONE: Overview of the Gambling Policy.**

- 1.1- Introduction of the Policy and Gambling Objectives
- 1.2- Description of Swale Borough
  - 1.2.1 Faversham
  - 1.2.2 Sheerness
  - 1.2.3. Leysdown
  - 1.2.4 Sittingbourne
- 1.3- Declaration
- 1.4- No Casino Resolution

### **PART TWO: Functions.**

- 2.1- Functions
- 2.2- Exchange of Information
- 2.3- Duplication with other regulatory regimes
- 2.4- Responsible Authorities
- 2.5- Interested Parties
- 2.6- Enforcement

### **PART THREE: The Policy.**

- 3.1- Policy Approach supporting each of the Gambling Objectives

### **PART FOUR: Premises.**

- 4.1- Premises Licence
- 4.2- Definition of 'Premises'
- 4.3- Primary gambling activity
- 4.4- Building Divided into more than one premises
- 4.5- Separation of premises within a single building.
- 4.6- Access to premises
- 4.7- Location
- 4.8- Door Supervisors
- 4.9- Planning

### **PART FIVE: Appendices.**

#### Appendix 1 -The Gambling Policies

- 1.1- Preventing gambling from being a source of crime and disorder. .
- 1.2- Ensuring that gambling is conducted in a fair and open way.
- 1.3- Protecting children and other vulnerable persons.

#### Appendix 2 - Premises Licence

- 2.1 Adult Gaming Centres
- 2.2 Family Entertainment Centre
- 2.3 Tracks
- 2.4 Casinos

- 2.5 Bingo
- 2.6 Betting

### Appendix 3 – Permits

- 3.1- Unlicensed Family Entertainment Centre
- 3.2- (Alcohol Licensed) premises Gaming Machine Permit
- 3.3- Prize Gaming Permit
- 3.4- Club Gaming & Club Machine Permit

### Appendix 4 - Occasional Notices & Travelling fairs

### Appendix 5 - Application and Reviews

- 5.1- Decision Making
- 5.2- Conditions
- 5.3- Provisional Statement
- 5.4- Duplication
- 5.5- Reviews

### Appendix 6 - Functions (Licensing Authority & Gambling Commission)

### Appendix 7 - Agreed Delegations

### **Contacts**

(Listed of all relevant authorities)

## **Gambling Policy Vision Statement:**

*“Transform Swale economic, social and environmental prospects, so that it is one of the best places in Britain, in which to live, work, learn and invest”*

### **PART ONE: Overview of the Gambling Policy.**

#### **1.1. Introduction of the Policy and Gambling Objectives:**

Swale Borough Council is the Licensing Authority under the provisions of the Gambling Act 2005 (the Act), and responsible for the administration of Premise Licenses, Permits and enforcement. We are required to publish a Statement of principles that we shall apply when exercising our functions under the Act. This statement must be published every three years, though it is under constant review. Amendments can be made, but will be consulted upon and then formally adopted by Council.

In exercising its functions under the Gambling Act 2005 and in accordance with section 153 of the Act this licensing authority shall **aim to permit** the use of premises for gambling in so far as the authority think it is;

- in accordance with any relevant code of practice,
- in accordance with any relevant guidance issued by the Gambling Commission,
- reasonably consistent with the licensing objectives , and
- in accordance with this gambling policy statement.

When the Licensing Authority is discharging its functions under the Act, it will present clear reasons for any need to depart from the Guidance issued by the Gambling Commission (May 2009), or from this Statement of Gambling Policy. It will consider the circumstances of each application and may make exceptions to its own policy where it is appropriate to do so, in order to promote the Gambling objectives.

Through this policy the Licensing Authority aims to:

- introduction of better and more proportionate regulation to give business greater freedom and flexibility to meet their customers' expectations;
- The encouragement of more family friendly premises where younger children can be free to go with the family;
- The necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour associated with the behaviour of some people visiting gambling premises.

## The Gambling Objectives:

In exercising most of their functions under the Act, the licensing authority must have regard to the Gambling objectives as set out in Section 1 of the Act. The Gambling objectives are:

- Preventing gambling from being a source of crime and disorder, being associated with crime and disorder or being used to support crime.
- Ensuring that gambling is conducted in a fair and open way.
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

### 1.2. Description of Swale Borough:

The Borough of Swale is the fourth-largest of the 12 districts which make up the county of Kent. Swale has a prime location on the county's north coast between Medway, Maidstone and Canterbury, around 45 miles from London. It includes the towns of Sittingbourne, Faversham and Sheerness, as well as an extensive rural hinterland which takes in the whole of the Isle of Sheppey and part of the Kent Downs Area of Outstanding Natural Beauty. The borough covers an area of 140 square miles, roughly one-tenth of Kent, and is home to 139,200 residents.

Latest population data* is as follows:
*2013 Mid-Year ward estimates ex ONS (via KCC):
Faversham town: 19,400
Faversham area: 33,200
Sittingbourne town: 48,700
Sittingbourne area: 64,000
Sheppey area: 42,000
Sheerness town: 12,300
Minster : 14,800 – 2011 Census

The age breakdown is as follows:

Age Range	Number * based on mid-year 2013 estimates	%
Under 16	27887	21.42
16:19	8507	6.54
20:29	16179	12.43
30:59	45734	35.13
60:74	22342	17.16
75 and over	9524	7.32

It is a diverse Borough containing three distinct towns, connected by their relationship with the waters of the North Kent coast, particularly the Swale channel. Each town has developed and maintained its own special identity and character.

#### **1.2.1 Faversham Town:**

Faversham is an important historic market town, with brewing and food processing comprising the town's main industries. To enhance the town's social, economic and environmental structure, the Gambling Policy will promote diversity and provide opportunities for new employment; but not directly or indirectly encourage anti-social behaviour within the town. Faversham has various licensed gambling facilities.

#### **1.2.2 Sheerness Town:**

Sheerness provides goods and services primarily for the resident population of the Isle of Sheppey, only specific services, such as the town's supermarket attracts shoppers from further afield. Sheerness is the biggest town on the Isle of Sheppey, owing much of its heritage to the naval dockyard, which has since been converted to a deep water commercial port.

To make the town more attractive to visitors, so far as is consistent with its duties under the Act the Council will support proposals that will stimulate the evening economy but they should be aimed more at the holiday market and leisure entertainment facilities. Sheerness has various licensed gambling facilities which support this aim.

#### **1.2.3 Leysdown-on-Sea (Island Coast):**

Special attention is drawn to Leysdown-on-Sea, as it has particular importance within Swale under the Gambling Act, due to its high concentration of gambling establishments along The Promenade. The Promenade consists mainly of amusement arcades (both Family and Adult Gaming Centres), Leysdown became a popular destination for visitors from London in the post-war period and continues to thrive today; it also benefits from Holiday Parks which are an important feature of the landscape.

#### **1.2.4 Sittingbourne Town:**

Sittingbourne prospered as a market town, but has since focused on manufacturing. New proposals to regenerate Sittingbourne, may lead to considerable growth in employment, as plans include increases in retail and entertainment, to minimise the need for people to travel elsewhere.

Sittingbourne benefits several different types of licensed gambling premises.



### **1.3. Declaration:**

In producing the Statement of Gambling Policy , the Licensing Authority declares that it has had regard to the Gambling objectives under the Gambling Act 2005, the guidance issued by the Gambling Commission 4<sup>th</sup> Edition , and any representation from those consulted on the this policy.

**(Please note that a full review of the policy will be undertaken when the 5<sup>th</sup> Edition of the guidance is published)**

### **1.4. No Casino's Resolution:**

This Licensing Authority has not passed a 'no casino' resolution under Section 166 of the Gambling Act 2005, but is aware that it has the power to do so. Should this licensing authority decide in the future to pass such a resolution, it will update this policy statement with details of that resolution

## **PART TWO: Functions.**

### **2.1. Functions:**

The Council as a Licensing Authority have the discretion on whether to grant or refuse application under the Act , and to impose conditions on granting licenses if representations relevant to the Gambling Objectives are made by 'Interested Parties' or by 'Responsible Authorities' within the prescribed time.

Should the Licensing Authority refuse an application, it shall give a full explanation for its reasons, and applicants have the right to appeal.

A list of the Licensing Authority's functions and the Gambling Commission functions are listed at the end of the policy. Please note that the Licensing Authority is not responsible for remote gambling and that any concerns about manufacture, supply or repair of gaming machines will not be dealt with by the Licensing Authority but must be reported to the Gambling Commission.

### **2.2. Exchange of Information:**

Licensing Authorities are required to include in their policy statement the principles to be applied by the authority in exercising the functions under Section 29 an 30 of the Act with respect to the exchange of information between it and the Gambling Commission, and that functions under section 350 of the Act with respect to the exchange of information between it and other persons.

The principle that this licensing authority applies is that it will act in accordance with the provisions of the Act in its exchange of information which includes the provisions that the Data Protection Act 1998 will not be contravened. The licensing authority will also have regard to any Guidance issued by the Gambling Commission to Local Authorities on this matter when it is published, as well as any relevant regulations issued by the secretary of State under the powers provided in the Act.

### **2.3. Duplication with other regulatory regimes:**

The council will seek to avoid any duplication with other statutory and regulatory systems where possible, including planning. The licensing authority will not consider whether an application for a premises licence, permit or other permission is for a premise that has been or is likely to be awarded planning permission or building regulations approval, in its own consideration of it. Nor will it regard that granting of a licence, permit or permission as fettering the council's ability to consider planning applications independently on their planning merits.

### **2.4. Responsible Authorities:**

In exercising this licensing authority's powers under Section 157(h) of the Act to designate, in writing, a body which is competent to advise the authority

about the protection of children from harm, the following principles have been applied:

- The need for the body to be responsible for an area covering the whole of the licensing authorities area;
- The need for the body to be answerable to democratically elected persons, rather than any particular vested interest group etc

In accordance with the Gambling Commission's Guidance this authority designates the following for this purpose:

- Child Protection Agency, Brenchley House, County Hall, Maidstone, Kent ME14 1RF

## **2.5. Interested Parties:**

Interested parties can make representation about licence applications, or apply for a review of an existing licence. These parties are defined in the Act as follows:

“For the purposes of this Part, a person is an interested party in relation to an application for or in respect of a premises licence if, in the opinion of the licensing authority which issues the licence or to which the applications is made, the person:

- Lives sufficiently close to the premises to be likely to be affected by the authorised activities;
- Has business interests that might be affected by the authorised activities; or
- Represents persons who satisfy paragraph (a) or (b)”

The licensing authority is required by regulations to state the principles it will apply in exercising its powers under the Act to determine whether a person is an interested party.

### **The principles are:**

Each case will be decided upon its merits. This authority will not apply a rigid rule to its decision-making. It will however consider the following as per the Gambling Commission's Guidance to local authorities:

- The size of the premises
- The nature of the premises
- The distance of the premises from the location of the person making the representation
- The potential impact of the premises (number of customers, routes likely to be taken by those visiting the establishment); and
- The circumstances of the complainant. This is not the personal characteristics of the complainant but the interests of the complainant, which may be relevant to the distance from the premises. For example, it could be reasonable for an authority to conclude that 'sufficiently

close to be likely affected' could have a different meaning for (a) a private resident or (b) a residential school for children with truanting problems and (c) residential hostel for vulnerable adults.

- The 'catchment' area of the premises (i.e. how far people travel to visit); and
- Whether the person making the representation has business interests in that catchment area that might be affected.

The Gambling Commission has emphasised to licensed authorities, that 'demand' cannot be a factor in decisions.

Guidance also states that moral objections to gambling are not valid reason to reject applications for premises licences. This is because such objections do not relate to the licensing objectives.

The Gambling Commission has also recommended that the licensing authority state that interested parties include trade associations and trade unions, and resident and tenants' associations. This authority will not however generally view these bodies as interested parties unless they have a member who can be classed as one under the terms of the Act. I.e. lives sufficiently close to the premises to be likely to be affected by the authorised activities.

Interested parties can be represented by other persons such as Councillors, MP's etc. Care should be taken when approaching Councillors that they are not part of the Licensing Committee dealing with the licence as this may result in a conflict of interest. If there are any doubts then please contact the Licensing Department.

## **2.6. Enforcement:**

The Kent & Medway Licensing Steering Group has formulated an Enforcement Protocol which each Licensing Authority and Responsible Authority has agreed. The purpose of this protocol is to facilitate co-operation and co-ordination between enforcement agencies in pursuance of both the Act and the Licensing Act 2003. It will underpin the mutual operational support required to tackle licensing issues.

In accordance with the Gambling Commission Guidance for local authorities this licensing authority will endeavour to avoid duplication with other regulatory regimes so far as possible.

This licensing authority will also, as recommended by the Gambling Commission's Guidance for Local Authorities, adopt a risk-based inspection programme.

Licensing Authorities are required by regulation under the Gambling Act 2005 to state the principles to be applied by the authority in exercising the functions under Part 15 of the Act with respect to the inspection of premises; and the powers under section 346 of the Act to institute criminal proceedings in respect of the offences specified.

**This licensing authority's principles are that:**

It will be guided by the Gambling Commission's Guidance for local authorities and it will endeavour to be:

- Proportionate: regulators should only intervene when necessary: remedies should be appropriate to the risk posed, and costs identified and minimised;
- Accountable: regulators must be able to justify decisions, and be subject to public scrutiny;
- Consistent: rules and standards must be joined up and implemented fairly;
- Transparent: regulators should be open, and keep regulations simple and user friendly; and
- Targeted: regulation should be focused on the problem, and minimise side effects.

The authority recognises that certain bookmakers have a number of premises within its area. In order to ensure that any compliance issues are recognised and resolved at the earliest stage, operators are requested to give the authority a single named point of contact, who should be a senior individual, and whom the authority will contact first should any compliance queries or issues arise.

The main enforcement and compliance role for this licensing authority in terms of the Act will be to ensure compliance with the Premises Licences and other permissions which it authorises.

The Gambling Commission will be the enforcement body for the Operator and Personal Licences.

## **PART THREE: THE POLICY**

### **3.1 Policy approach**

As mentioned above the Gambling Act contains three licensing objectives which underpin the functions of the licensing authority. These objectives are set out in section 1.1 above.

In reviewing this Statement of Principles it was considered that the council should adopt a 'best practice' approach from leading authorities, and to set out the criteria and considerations that applicants should have in mind when preparing an application under the Gambling Act 2005. The policies have been developed with reference to the licensing objectives and in consultation with responsible authorities.

Section 153 of the Act states that in exercising its functions under the Act the licensing authority shall aim to permit gambling in so far as it thinks it is: in accordance with the commission's codes and guidance to local authority's statement of principles. The authority intends to assist applicants, responsible authorities and interested parties by detailing the criteria that it will consider as being reasonably consistent with each of the objectives when considering application.

## **PART FOUR: The Premises.**

### **4.1. Premises Licence.**

Any person or business that wishes to offer gambling for which an operating licence from the Gambling Commission is required, and which is premises based, must apply to the Licensing Authority for a premises licence.

Premises licences can authorise the provision of facilities on:

- Casino premises,
- Bingo premises,
- Betting premises (including tracks and premises used by betting intermediaries,
- Adult gaming centre, or
- Family entertainment centre premises

For each premises type the Act makes it clear that the primary activity should be that described in the premises licence type. It is the council's opinion that all gambling premises, whether subject to application or currently licensed, must operate primarily in the use of the licence type applied for or issued.

A premises licence issued by the Licensing Authority will be subject to mandatory and/or default conditions and may be subject to conditions imposed by the council. The council may consider that conditions, other than the mandatory or default conditions are necessary to ensure that the premises are reasonably consistent with the licensing objectives, the commission's code of practice and/or local authority guidance, and this statement of principles.

### **4.2. Definition of 'Premises'.**

'Premises' is defined in the Act as "any place". It is for the licensing authority to decide whether different parts of a building can be properly regarded as being separate premises and as the Gambling Commission states in its Guidance for local authorities, it "will always be a question of fact in the circumstances." The Gambling Commission does not however consider that areas of a building that are artificially or temporarily separate can be properly regarded as different premises.

This licensing authority takes particular note of the Gambling Commission's Guidance for local authorities which states that in considering applications for multiple licences for a building or those for a specific part of the building to be licensed, licensing authorities "should be aware that:

- The third licensing objective seeks to protect children from being harmed by gambling. In practice that means not only preventing them from taking part in gambling, but also that they are not permitted to be in close proximity to gambling. Therefore premises should be configured so that children are not invited to participate in, have accidental access to, or closely observe gambling; and

- entrances and exits from parts of a building covered by one or more licences should be separate and identifiable so that the separation of different premises is not compromised and that people do not 'drift' into a gambling area."

This licensing authority will also take note of the Gambling Commission's Guidance to local authorities that: "Licensing authorities should pay particular attention to applications where access to the licensed premises is through other premises (which themselves may be licensed or unlicensed). Clearly, there will be specific issues that authorities should consider before granting such applications, for example, whether children can gain access; compatibility of the two establishments; and ability to comply with the requirements of the Act. But, in addition an overriding consideration should be whether, taken as a whole, the co-location of the licensed premises with other facilities has the effect of creating an arrangement that otherwise would, or should, be prohibited under the Act."

### **4.3 Primary gambling activity.**

The primary activity of each premises licence type is specified on the premises licence when it is issued. Section 150 of the Act authorises the provision of gambling facilities for the following types of premises licences:

- Casino premises,
- Bingo premises,
- Betting premises (including tracks and premises used by betting intermediaries,
- Adult gaming centre, or
- Family entertainment centre premises

In betting premises the primary activity will be betting, with gaming machines as an ancillary offer on the premises. The commission has provided information relating to the primary gambling activity in both the Local Authority Guidance and Supplement 4 of the Licence Conditions and Codes of Practice which was published in January 2009. This supplement sets out the requirements on the operator to ensure that their premises operate within the terms of the Act and the relevant conditions. It should be noted that the Act does not permit a premises to be licensed for more than one gambling activity.

The council will take decisions in accordance with the Commission's view on primary gambling activity and will expect applicants to operate premises in line with the commissions Guidance and conditions on their operators licence. The council will monitor the operation of premises and report any potential breach of operating licence conditions to the commission. Applications for new premises licences, or to vary existing licence, will be expected to be clear that the premises are intended to be used for the primary gambling activity proposed. For example a betting counter or associated betting facilities shown on the proposed plans, will not be considered as offering the primary gambling activity in accordance with that indicated on the application.



#### **4.4. Building divided into more than one premises.**

Part 7 of the Commissions Guidance states that a building can, in principle, be divided into more than one premises, and subject to more than one premises licence provided they are for different parts of the building, and the different parts of the building can be reasonable regarded as being different premises. An example is given of the units within shopping malls, where each unit is a separate self contained premises that is contained within one building. It is also possible for licensed premises to be located next to each other.

Whether different parts of the building can be reasonable regarded as different premises will depend on the circumstances of the individual building and how any division is proposed. To agree to accept applications to grant or vary a licence for a building which has been divided, the council will need to be satisfied that the different premises are genuinely separate premises, and not an artificially created part of what is readily identifiable as a single premise.

In considering whether different areas of a building are genuinely separate premises the council will take into account factors which will include: whether there are separate registrations for business rates in place for the premises, whether the premises are owned or operated by the same person, and whether the premises are operated independently of each other.

#### **4.5. Separation of premises within a single building.**

When considering proposals to divide a building into genuinely separate premises the council will also need to be satisfied that the form of separation between the premises is appropriate.

The separation between one premises and another must be clearly defined. Any barrier used to separate one premises from another must be permanent and constructed so the public cannot go from one premises to another. The council would not, for example, be likely to consider that separation of areas of a building by ropes, or by low level, or moveable partitions to be appropriate.

It may be acceptable for staff working in adjacent premises to have access through barriers between premises to enable them across one premises from the other. The applicant must demonstrate that in providing this staff access there are suitable control measures in place that will ensure the safety and security of staff and that will effectively prevent the public from using the same access point to enter the other premises.

#### **4.6. Access to premises.**

The Gambling Act 2005 (Mandatory and Default Conditions) Regulations 2007 restrict access to different types of licensed gambling premises. In considering proposals to divide a building into different premises the council will have to be satisfied that proposals to divide buildings are compatible with the mandatory conditions which relate to access between premises.

The relevant provisions of the regulations relating to access are set out in the Commission's Guidance. In a number of types of licensed premises provisions on access that prevent customers from being able to enter the premises directly from other licensed premises.

The Commission Guidance states "There is no definition of 'direct access' in the Act or regulations. However, it could be said that there should be an area separating the premises concerned (for example a street or café), which the public go to for purposes other than gambling, for there to be shown to be no direct access".

#### **4.7. Location.**

This licensing authority notes the Gambling Commission's Guidance for local authorities which states that: "Licensing authorities will need to consider the location of premises without the context of this licensing objective. If an application for a licence or permit is received in relation to premises that are in an area noted for particular problems with organised crime, for example, licensing authorities should think about what (if any) controls might be appropriate to prevent those premises becoming a source of crime. These might include conditions being put on the licence, such as a requirement for door supervisors"

#### **4.8. Door Supervisors.**

The Gambling Commission advises in its Guidance for local authorities that licensing authorities may require persons operating premises in which gambling takes place to take measures such as the supervision of entrances; segregation of gambling from non-gambling areas frequented by children (assuming such non-gambling areas are compatible with requirements of the Act); and the supervision of gaming machines in non-adult gambling specific premises in order to pursue the licensing objectives.

Any person employed to fulfil a condition on a premises licence that requires door supervision should hold a relevant licence issued by the Security Industry Authority (SIA).

It is to be noted that door supervisors at licensed casino or bingo premises are exempt from the requirements of the Private Security Industry Act 2001. Where an authority imposes door supervision requirements on such licences, the personnel will not need licensing under the 2001 Act.

The authority will make a door supervision requirement for betting offices, only if there is clear evidence from the history of trading at the premises that the premises cannot be adequately supervised from the counter and that door supervision is both necessary and proportionate.

#### **4.9. Planning.**

Planning and licensing are different regulatory systems and will be dealt with separately. As the Gambling Commission's Guidance states: "When dealing

with a premises licence application for finished buildings, the licensing authority should not take into account whether those buildings have or comply with the necessary planning or building consents. Those matters should be dealt with under relevant planning control and building regulation powers, and not form part of the consideration for the premises licence. Section 210 of the Act prevents licensing authorities taking into account the likelihood of the proposal by the applicant obtaining planning or building consent when considering a premises licence application. Equally the grant of a gambling premises licence does not prejudice or prevent any action that may be appropriate under the law relating to planning or building.”

This authority will though listen to, and consider carefully, any concerns about conditions which are not able to be met by licensees due to planning restrictions should such a situation arise.

## **APPENDIX ONE: THE GAMBLING POLICIES.**

This licensing authority has considered the Gambling Commission's Guidance to local authorities and in reviewing its first Statement of Principles it was considered that the council should attempt to assist the applicants by setting out the criteria and considerations that they should have in mind when preparing an application under this Act.

Section 153 of the Act states that in exercising its functions under the Act the licensing authority shall aim to permit gambling. The authority intends to assist applicants, responsible authorities and interested parties by detailing the criteria that it will consider as being reasonable consistent with each of the objectives when considering applications.

### **1.1: To preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime.**

To prevent crime and disorder the Licensing Authority will apply the following criteria and take into account the following considerations, where relevant, in determining applications and reviews:

#### **Criteria:**

- Whether the premises make or will make a contribution to the levels of crime and disorder and whether the applicant has demonstrated that he has, or intends to, implement sufficient controls to prevent the premises being a source of, and/or associated with crime or disorder, or being used to support crime, if the application is granted.

#### **Considerations:**

- Where an area is known for high levels of crime the council will consider carefully whether gambling premises are suitable to be located there, and whether additional conditions may be necessary, such as the provision of CCTV, minimum levels of staffing and licensed door supervisors.
- Whether there is a history of crime and disorder associated with the premises or its use by those involved in crime to associate or dispose of the proceeds of crime.
- Whilst issues of nuisance are not specifically in the gambling objections, the council may consider, when making decisions on the applications for premises licences, whether extreme instances of public nuisance and persistent public nuisance may constitute disorder and criminal offences.
- Whether the layout, lighting and fitting out of the premises have been designed so as to minimise conflict and opportunities for crime and disorder.
- Whether sufficient management measures are proposed or are in place to prevent the premises being a source of, or associated with crime or disorder, or used to support crime either as a place of association or to avoid apprehension.

## **Reasons for Policy:**

Applicants for premises licenses will have to hold an operators licence from the Commission (except occupiers of tracks who do not propose to offer gambling themselves). Generally, the licensing authority will not (unless evidence to the contrary comes to light) have to ascertain if the applicant is suitable to hold a premises licence. The licensing authority will have to be satisfied that the premises will not adversely affect the licensing objectives and is compliant with the Commissions Guidance, codes or practice and this Statement of Principles.

The Council will expect the applicant to have a good understanding of the local area in which they either operate, or intend to operate, a gambling premises. The applicant will have to provide evidence that they meet the criteria set out in this policy and demonstrate that in operating the premises they will promote this objective. Operators need to be aware of how the operation of their premises may impact on this objective. The council will expect the applicants to provide details as to their crime prevention measures and any risk assessments that they have carried out. The operator must meet the Commission's requirements to obtain and hold an operators licence, whilst the Licensing Authority's concerns are focused on the premises and how the operation of the premises will affect the licensing objectives.

### **1.2: To ensure that gambling is conducted in a fair and open way.**

To ensure that gambling is conducted in a fair and open way, the Licensing Authority will apply the following criteria and take into account the following considerations, where relevant, in determining applications and reviews:

#### **Criteria:**

- Whether the premises will operate with such measures that will ensure that the gambling activity is conducted in a fair and open way.

#### **Considerations:**

- Whether the layout, lighting and fitting out of the premises have been designed so as to ensure gambling is conducted in a fair and open way.
- Whether sufficient management measures are proposed or are in place to ensure that gambling is conducted in a fair and open way.
- Whether the management and operation of the premises is open and transparent.
- Whether the operators of the premises have been or will be fully cooperative with enforcement agencies.
- Whether the Commissions Codes of Practice have been complied with.

### **Reason for Policy:**

The Gambling Commission is the authority primarily concerned with ensuring that each operator conducts gambling activities in a fair and open way, as this will be subject to their operating licence. The Licensing Authority will consider each application on its own merits and will look closely at applications where there is no requirement to hold an operators licence. Track owners do not necessarily require an operators licence and any application made by such an unlicensed operator will be scrutinised to ensure that this objective is met. In these circumstances, the applicant would be expected to address how they intend to ensure that gambling will be conducted fairly and openly.

### **1.3: To protect children and other vulnerable persons from being harmed or exploited by gambling.**

To prevent children or vulnerable persons from being harmed or exploited, the Licensing Authority will apply the following criteria and take into account the following considerations, where relevant, in determining applications and reviews:

### **Criteria:**

- Whether there are appropriate measures in place to protect children and other vulnerable persons from being harmed or exploited by gambling;

### **Considerations:**

- Has the operator a specific training programme for staff to ensure that they are able to identify children and vulnerable people and take appropriate action to promote this objective, to exclude them from the premises or parts of the premises.
- If the premises are an adult only environment has the operator taken effective measures to implement an appropriate proof of age scheme to ensure that no one under the age of 18 is admitted to the premises or restricted areas.
- Whether the layout, lighting and fitting out of the premises have been designed so as to not attract children and other vulnerable persons who might be harmed or exploited by gambling.
- Whether sufficient management measures are proposed or are in place to protect children and other vulnerable persons from being harmed or exploited by gambling.
- Whether any promotional material associated with the premises could encourage the use of the premises by children or young people.

### **Reason for Policy:**

The Licensing Authority will expect applicants to consider the measures necessary to promote the licensing objective of protecting children and other vulnerable persons from being harmed or exploited by gambling. The location of the premises may be a significant factor if for example the premises are

located near a school, hostel or other sensitive premises. The applicant will have to demonstrate that there are suitable control measures to promote this objective.

Persons under 18 cannot be admitted to many types of gambling premises. The council will only consider applications for new gambling premises that are in close proximity to schools or main routes to schools after very careful consideration of the potential for exposing children to gambling. The Licensing Authority will consider measures to protect children on particular premises such as supervision of entrances; segregation of gambling from areas frequented by children and supervision of gaming machines in non-adult gambling specific premises.

***Definition of a vulnerable person***

*Although there is no definition under the Act, the Commission states “it will for regulatory purposes assume that this group includes people who gamble more than they want to; people who gamble beyond their means; and people who may not be able to make informed or balanced decisions about gambling due to a mental impairment, alcohol or drugs.”*

## **APPENDIX TWO: PREMISES LICENCE**

### **2.1. Adult Gaming Centres (AGC).**

Adult Gaming Centres premises licences allow the holder of the licence to make gaming machines available for use on the premises. Persons operating an AGC must hold a gaming machines general operating licence from the Commission and must seek a premises licence from the Licensing Authority.

See 'Gaming Machines by Premises Type' in the glossary for the entitlement of machines. Gaming machines are a form of gambling which is attractive to children and AGC's will contain machines of a similar format to the Category D machines on which children are allowed to play. However, no-one under the age of 18 is permitted to enter an AGC and applicants must be aware of and entry to AGC's to minimise the opportunities for children to gain access.

The council will expect applicants to offer their own measures to meet the licensing objectives; however appropriate measures/ licence conditions may cover issues mentioned below.

- Proof of age scheme
- CCTV
- Entry control system
- Supervision of entrances/ machine areas
- Physical separation of areas
- Location of entry
- Notices/ signage
- Specific opening hours
- Self-barring schemes (individuals bar themselves from premises)
- Provision of information leaflets/ helpline numbers for organisation such as Gamcare.

### **2.2. Family Entertainment Centres (FEC).**

FEC must be operated by a person or body having an operating licence from the Gambling Commission (not to be confused with Unlicensed Family Entertainment Centres). FEC will contain both category D machines on which they are allowed to play, and category C machines on which they are not. The council in considering applications for FEC premises licences will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority, for example, that there will be sufficient measures to ensure that under 18s do not have access to the adult only gaming machines areas.

The council will expect applicants to offer their own measures to meet the licensing objectives; however appropriate measures/ licence conditions may cover issues mentioned below.

- CCTV
- Supervision of entrances/ machine areas
- Physical separation of areas for category C machines



- Location of entry
- Notices/ signage
- Specific opening hours
- Self-barring schemes (individuals bar themselves from premises)
- Provision of information leaflets/ helpline numbers for organisation such as Gamcare.
- Measures & training for dealing with children on the premises suspected of truanting

The council will have regard the Gambling Commissions Guidance on any conditions that apply to operating licences covering the way in which the area containing Category C machines should be delineated but may require further measures on physical separation and controls on entry. The council must apply the mandatory conditions but will consider whether to exclude any of the default conditions that may specified by regulation from the Secretary of State.

### **2.3. Tracks.**

Under Section 353 of the Act, 'tracks' include premises where a race or other sporting event takes place or is intended to take place. These may be subject to one, or more than one premises licence, provided each licence relates to a specified area of the 'Track'. The commission Guidance identifies that operators of track betting premises will not necessarily hold an operators licence issued by the Commission and the Licensing Authority will have particular regard to the Gambling objectives.

The possibility of multiple licences at tracks is noted in the Commissions Guidance. The council will expect the applicant for a premises licence to demonstrate suitable measures to ensure that children do not have access to adult-only gaming facilities. It is noted that children and young persons will be permitted to enter track areas where facilities for betting are provided on days when dog-racing and/or horse racing takes place, but that they are still prevented from entering areas where gaming machines (other than category D machines) are provided.

In determining whether the application meets the criteria of the policies set out under Appendix two, consideration will be given to appropriate measures/ licensing conditions to address the matters listed below: *Please note that this list is not exhaustive, and only indicates examples of measures. The council will expect applicants to offer their own measures to meet the licensing objectives.*

- Proof of age scheme
- CCTV
- Entry control system
- Supervision of entrances/ machine areas
- Physical separation of areas
- Location of entry
- Notices/ signage
- Specific opening hours

- Self-barring schemes (individuals bar themselves from premises)
- Provision of information leaflets/ helpline numbers for organisation such as Gamcare

But the track operator will have a role to play in ensuring, for example, that the betting areas are properly administered, and licensing authorities will have an important role in regulating tracks, because of the particular rules surrounding on-course betting, and the sub-division of the track into different areas.”

“Special rules apply to applicants for a premises licence in relation to a track. Most importantly, as noted above, the applicant need not hold an operating licence. That is because, unless the occupier of the track wishes to offer pool betting (or general betting) facilities himself (for which he will need a licence), the betting that is provided upon the track will not be provided by him, but will be provided by other operators who come on-course. Since those people will require the necessary operating licences, the Act allows the track operator to obtain a premises licence without also having to hold an operating licence. This track premises licences (sic) then authorises anyone upon the premises with an operating licence to offer betting facilities.”

“the secondary aspect to this rule is that each individual operator who comes onto the track on race days does not need to hold a premises licence. Instead, he will be covered by the umbrella of the premises licence held by the track operator.”

Licensing authorities have a power under the Act, to restrict the number of betting machines, their nature and the circumstances in which they are made available, by attaching a licence condition to a betting premises licence. The Gambling Commission’s Guidance will be noted in that it states: “In relation to betting premises away from tracks, the Commission is proposing that licensing authorities should take into account the size of the premises and the ability of staff to monitor the use of the machines by vulnerable people when determining the number of machines permitted. Similar considerations apply in relation to tracks, where the potential space for such machines may be considerable, bringing with it significant problems in relation to the proliferation of such machines, the ability of track staff to supervise them if they are scattered around the track and the ability of the track operator to comply with the law and prevent children betting on the machine. Licensing authorities will want to consider restricting the number and location of betting machines, in the light of the circumstances of each application for a track betting premises licence.”

This licensing authority also notes that, as per the Gambling Commission’s Guidance: The Commission will issue further guidance about how such premises should be delineated, both to make it clear to the public that they are entering a “betting office” and to keep out children and young persons.

“As the betting premises licence for a track could authorise the entire premises to be used for providing betting facilities, this could mean that no separate betting premises licence would be necessary for the self-contained premises. The effect of this approach would be that the track operator was responsible for premises licence issues relating to the self-contained

premises, rather than accountability resting with the betting operator providing facilities within it.”

“If the self-contained premises were the subject of a separate premises licence, that licence would have its own, directly imposed conditions. It would also allow the premises to use up to four gaming machines (in categories B2 to D)

“In the Commission’s view, it would be preferable for all self-contained premises operated by off-course betting operators on track to be the subject of separate premises licences. This would ensure that there was clarity between the respective responsibilities of the track operator and the off-course betting operator running a self-contained unit on the premises”

“Section 151 of the Act requires applicants for premises licences to submit plans for the premises. To ensure that licensing authorities gain a proper understanding of what they are being asked to license they should, in their licensing policies, set out the information that they will require, which should include detailed plans for the racetrack itself and the area that will be used for temporary “on-course” betting facilities (often known as the “betting ring”) and in the case of dog tracks and horse racecourses fixed and mobile pool betting facilities operated by the Tote or track operator, as well as any other proposed gambling facilities.”

## **2.4. Casinos.**

**Casinos and competitive bidding** – This licensing authority is aware that where a licensing authority area is enabled to grant a Premises Licence for a new style casino (i.e. the Secretary of State has made such regulations under Section 175 of the Gambling Act 2005) there are likely to be a number of operators which will want to run the casino. In such situations the local authority will run a ‘competition’ under Schedule 9 of the Act. This licensing authority will run such a competition in line with any regulations issued under the Act by the Secretary of State.

**Betting machines** – This licensing authority is aware that, as explained in the Gambling Commission’s Guidance for local authorities states: “Section 181 contains an express power for licensing authorities to restrict the number of betting machines, their nature and the circumstances in which they are made available by attaching a licence condition to a betting premises licence or to a casino premises licence (where betting is permitted in the casino). When considering whether to impose a condition to restrict the number of betting machines in particular premises, the licensing authority, amongst other things, should take into account the size of the premises, the number of counter positions available for person-to-person transactions, and the ability of staff to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable persons.”

**Credit:** This licensing authority has noted that the Gambling Commission has stated in its Guidance for Local Authorities that “section 177 does not prevent the licensee from permitting the installation of cash dispensers (ATMs) on the premises. Such machines may accept credit cards (and debit cards) and the

arrangement is subject to a requirement that the licensee has no other commercial connection in relation to gambling (aside from the agreement to site the machines) with the service-provider and does not profit from the arrangement, not make any payment in connection with the machines.

## **2.5. Bingo.**

Bingo has its ordinary and natural meaning and includes any version of the game irrespective of what name it is described. A holder of a bingo premises licence will be able to offer in all its forms.

Children and young people are permitted in bingo premises, but may not participate in the bingo. If any category B or C machines are made available for use, these must be separated from areas where children and young people are allowed. In addition, young persons aged 16 and 17 may be employed in bingo premises provided their duties are not connected with the gaming or gaming machines. The licensing authority will not grant licenses unless the applicant demonstrates how they intend to meet this licensing objective and identify appropriate measures they will take to protect young employees.

## **2.6. Betting premises.**

The Licensing authority must be satisfied that the primary use of the premises is to operate as a betting premise. The applicant will be expected to demonstrate that they can offer sufficient facilities for betting and, unless it does so, should not be making gaming machines available on the premises.

In determining whether the application meets the criteria of the policies set out under Appendix two, consideration will be given to appropriate measures/ licensing conditions to address the matters listed below: *Please note that this list is not exhaustive, and only indicates examples of measures. The council will expect applicants to offer their own measures to meet the licensing objectives.*

- Proof of age scheme
- CCTV
- Entry control system
- Supervision of entrances/ machine areas
- Physical separation of areas
- Location of entry
- Notices/ signage
- Specific opening hours
- Self-barring schemes (individuals bar themselves from premises)
- Provision of information leaflets/ helpline numbers for organisation such as Gamcare

The Council takes note of the Gambling Commission suggestion that licensing authorities will want to consider restricting the number and location of betting machines in respects of applications for betting premises licences. The council when considering the number/ nature/ circumstances of betting

machines an operator wants to offer will follow the Gambling Commissions Guidance and take into account size of the premises, the number of counter positions available for person-to-person transactions, and the ability of staff to monitor the use of the machines.

**ATMs within a Betting Premise:**

The Guidance issued by the Gambling Commission does not prevent the licensee from permitting the installation of cash dispensers on the premises, provided there is no commercial connection between both parties, and either makes any profit from the arrangement.

## **APPENDIX THREE: PERMITS**

### **3.1. Unlicensed Family Entertainment Centre – Gaming machine permit. (Statement of Principles on permits- Schedule 10 Paragraph 7)**

Where a premise does not hold a Premises Licence but wishes to provide gaming machines, a person may apply to the licensing authority for this permit.

The Act states that a licensing authority may prepare a statement of principles that they propose to consider in determining the suitability of an applicant for a permit and in preparing this statement, and/or considering applications, it need not (but may) have regard to the licensing objectives and shall have regard to any relevant guidance issued by the Commission.

It should be noted that a licensing authority cannot attach conditions to this type of permit and that the “statement of principles” only applies to initial applications and not to renewals.

For initial applications, the Licensing Authority should have regard to the licensing objectives and any Gambling Commission guidance.

The Gambling Commission’s Guidance for local authority’s states: “In their three year licensing policy statement, licensing authorities may include a statement of principles that they propose to apply when exercising their functions in considering applications for permits, licensing authorities will want to give weight to child protection issues.

Guidance also states: “An application for a permit may be granted only if the licensing authority is satisfied that the premises will be used as an unlicensed FEC, and if the chief officer of police has been consulted on the application. Relevant considerations to take into account would be the applicant’s suitability, such as any convictions that they may have that would make them unsuitable to operate a family entertainment centre; and the suitability of the premises in relation to their location and issues about disorder.”

With regard to renewals of these permits, a licensing authority may refuse an application for renewal of a permit only on the grounds that an authorised local authority officer has been refused access to the premises without reasonable excuse, or that renewal would not be reasonably consistent with the licensing objectives.

### **3.2. Alcohol Licensed premises gaming machine permits – (Schedule 13 Para 4(1))**

There is provision in the Act for premises licensed to sell alcohol for consumption on the premises, to automatically have 2 gaming machines, of categories C and/or D. The premises merely need to notify the licensing authority. The licensing authority can remove the automatic authorisation in respect of any particular premises if:

- provision of the machines is not reasonably consistent with the pursuit of the licensing objectives;

- gaming has taken place on the premises that breaches a condition of section 282 of the Gambling Act (i.e. that written notice has been provided to the licensing authority, that a fee has been provided and that any relevant code of practice issued by the Gambling Commission about the location and operation of the machine has been complied with 26.3 not the example in the Guidance)
- the premises are mainly used for gaming; or
- an offence under the Gambling Act has been committed on the premises

If a premises wishes to have more than 2 machines, then it needs to apply for a permit and the licensing authority must consider that application based upon the licensing objectives.

It should be noted that the licensing authority can decide to grant the application with a smaller number of machines and/or a different category of machines than that applied for. Conditions (other than these) cannot be attached.

It should also be noted that the holder of a permit must comply with any Code of Practice issued by the Gambling Commission about the location and operation of the machine.

### **3.3. Prize Gaming Permits – (Statement of Principles on Permits - Schedule 14 Para 8 (3))**

The Act states that a Licensing Authority may “prepare a statement of principles that they propose to apply in exercising their functions under this Schedule” which “may, in particular, specify matters that the licensing authority proposes to consider in determining the suitability of the applicant for a permit”.

The Gambling Commission Guidance states: “In their three year licensing policy statement, licensing authorities should include a statement of principles that they propose to apply when exercising their functions in considering applications for permits. In particular, they may want to set out the matters that they will take into account in determining the suitability of the applicant. Given that the premises will particularly appeal to children and young persons, in considering what to take into account in the application process and what information to request for the applicant, licensing authorities will want to give weight to child protection issues.

In making its decision on an application for this permit the licensing authority should have regard to the licensing objectives and to any Gambling Commission guidance.

It should be noted that there are conditions in the Act that the permit holder must comply with, but that the licensing authority cannot attach conditions. The conditions in the Act are:

- the limits on participation fees, as set out in regulations, must be complied with;

- all chances to participate in the gaming must be allocated on the premises on which the gaming is taking place and on one day; the game must be played and completed on the day the chances are allocated; and the result of the game must be made public in the premises on the day that it is played;
- the prize for which the game is played must not exceed the amount set out in regulations (if a money prize), or the prescribed value (if non-monetary prize); and
- participation in the gaming must not entitle the player to take part in any other gambling.

### **3.4. Club Gaming and Club Machines Permits**

Members Clubs and Miners' welfare institutes (but not Commercial Clubs) may apply for a Club Gaming Permit or a Club Gaming machines permit. The Club Gaming Permit will enable the premises to provide gaming machines (3 machines of categories B, C or D), equal chance gaming and games of chance. A Club machine permit will enable the premises to provide gaming machines (3 machines of categories B, C or D).

Gambling Commission Guidance for local authorities states: "Members clubs must have at least 25 members and be established and conducted "wholly or mainly" for purposes other than gaming, unless the gaming is permitted by separate regulations. The Secretary of State has made such regulations and these cover bridge and whist clubs. A members' club must be permanent in nature, not established to make commercial profit, and controlled by its members equally. Examples include working men's clubs, branches of Royal British Legion and clubs with political affiliations."

The Guidance also makes it clear that "Before granting the permit the authority will need to satisfy itself that the premises meet the requirements of a members' club and may grant the permit if the majority of members are over 18.

This Licensing Authority is aware that: "Licensing authorities may only refuse an application on the grounds that:

- (a) the applicant does not fulfil the requirements for a members' or commercial club or miners' welfare institute and therefore is not entitled to receive the type of permit for which it has applied;
- (b) the applicant's premises are used wholly or mainly by children and/or young persons;
- (c) an offence under the Act or a breach of a permit has been committed by the applicant while providing gaming facilities;
- (d) a permit held by the applicant has been cancelled in the previous ten years; or
- (e) an objection has been lodged by the Commission or the police.



## **APPENDIX FOUR: NOTICES & TRAVELLING FAIRS**

### **Temporary Use Notice (TUN).**

Temporary Use Notice allows the use of premises for gambling where there is no premises licence but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling. Premises that might be suitable for gambling would include hotels, conference centres and sporting venues. The licensing authority can only grant a Temporary Use Notice to a person or a company holding a relevant operating licence.

Currently, Temporary Use Notices can only be used to permit the provision of facilities for equal chance gaming, where the gaming is intended to produce a single overall winner.

The Licensing Authority, in considering applications for Temporary Use Notices, will consider whether gambling should take place, or should only take place with modifications to the TUN. In doing so, the licensing authority will consider:

- the suitability of the premises;
- the location of the premises, paying particular attention to its proximity to any schools, hostels or other sensitive premises;
- The CCTV coverage within the premises;
- The ability of the premises to provide sufficient staff and/ or licensed door supervisors for the notice period;
- Whether the premises or the holder of the operating licence have given the council any cause for concern at previous events in relation to the licensing objectives, the guidance issued by the Commission, the relevant code of practice or this Statement of Principles.

### **Occasional Use Notices:**

The council has very little discretion in regards to Occasional Use Notices, to accept bets at 'Tracks', aside from ensuring that the statutory limit of 8 days in a calendar year is not exceeded. The council will, however, consider the definition of a 'track' and whether the applicant will need to demonstrate that they are in fact responsible for the administration of the 'track' or is an occupier, and therefore permitted to avail themselves of the notice.

It should be noted that the definition of 'track' in the Act is wider than dog tracks or horse racecourses and includes places where races or other sporting events take place, this could include major halls, hostels and other venues. If notices are given for a single track which would permit betting to occur for more than 8 days per year, the council has an obligation to issue a counter notice preventing such a breach occurring.

### **Travelling Fairs:**

The Act defines a travelling fair as 'wholly or principally' providing amusements and they must be on site that has been used for fairs for no more than 27 days per calendar year (regardless of whether it is the same or

different travelling fairs occupying the land). The licensing authority will also consider whether the applicant falls within the statutory definition of a travelling fair.

Travelling fairs do not require a permit to provide gaming machines but must comply with legal requirements about the way the machines are operated. It will fall to the council to decide whether, where category D machines and/or equal chance prize gaming without a permit is to be made available for use at travelling fairs, the statutory requirement that the facilities for gambling amount to no more than an ancillary amusement at the fair is met.

The licensing Authority will keep a record of any travelling fairs that take place within the Borough that offer gambling as an ancillary use to the fair. The authority will ensure that the 27 say statutory maximum for the land being used is not breached. The Authority will advise travelling fair operators if requested of the statutory time period remaining for the land they intend to use.

## **APPENDIX FIVE: APPLICATION & REVIEW.**

### **5.1. Decision making – general.**

Premises Licences will be subject to the permissions/restrictions set-out in the Act and Regulations, as well as specific mandatory and default conditions which may be detailed in regulations issued by the Secretary of State. Licensing authorities are able to exclude default conditions and also attach others, where it is believed to be appropriate.

This licensing authority is aware that in making decisions about premises licences it should aim to permit the use of premises for gambling in so far as it thinks it:

- in accordance with any relevant code of practice issued by the Gambling Commission
- in accordance with any relevant guidance issued by the Gambling Commission
- reasonably consistent with the licensing objectives and
- in accordance with the authority's statement of licensing policy

As regards licence conditions, the Gambling Commission Guidance for local authorities states that "Conditions imposed by the licensing authority must be proportionate to the circumstances which they are seeking to address. In particular, licensing authorities should ensure that the premises licence conditions:

- Are relevant to the need to make the proposed building suitable as gambling facility
- Are directly related to the premises and the type of licence applied for;
- Are fairly and reasonably related to the scale and type of premises: and
- Are reasonable in all other respects.

The Commission also adds that "The licensing authority should take decisions on individual conditions on a case by case basis, although this will be against the background of any general policy set out in this guidance or their own licensing policy statement."

There are also conditions which the licensing authority cannot attach to premises licences which are:

- any condition on the premises licence which makes it impossible to comply with an operating licence condition
- conditions relating to gaming machine categories, numbers, or method of operation;
- conditions which provide that membership of a club or body be required (the Gambling Act 2005 specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated and
- conditions in relation to stakes, fees, winning or prizes

The Gambling Commission has also emphasised to local authorities, that 'demand' cannot be a factor in decisions.

## **5.2. Conditions**

The majority of premises licence will have mandatory and/or default conditions attached to the licence. These conditions are detailed in the Gambling Act 2005 (Mandatory and Default Conditions) Regulations 2007.

The licensing authority can attach conditions to any licence if it believes that the imposition of conditions will ensure that the premise promotes the licensing objectives. Any conditions attached to a licence will be:

- Relevant to the need to make the proposed building suitable as a gambling facility;
- Directly related to the premises and the type of licence applied for;
- Related to the scale and type of premises; and
- Reasonable in all respects

Certain matters set out in the Act may not be the subject of conditions. These are:

- Conditions which make it impossible to comply with an operating licence.
- Conditions as to gaming machines that contradict the provisions in the Act.
- Conditions making activities, premises or parts of them operate as a membership club, and
- Conditions on fees, winnings, stakes or prizes.

The council will expect the applicant to proposed how the licensing objectives can be met effectively though the use of conditions. The licensing authority will ensure that where category C or above machines are on offer in premises to which children are admitted:

- all such machines are located in an area of the premises which is separate from the remainder of the premises by a physical barrier which is effective to prevent any views of machines in category C or above and any access to them other than through a designated entrance;
- only adults are admitted to the area where these machines are located;
- access to the area where the machines are located is supervised;
- the area where these machines are located is arranged so that it can be observed by the staff or the licence holder; and
- at the entrance to and inside any such areas there are prominently displayed notices indicating that access to the areas is prohibited to persons under 18.

### 5.3. Provisional Statements.

This licensing authority notes the Guidance for the Gambling Commission which states:

- “An applicant cannot obtain a full premises licence until the premises in which it is proposed to offer the gambling are constructed. The intention behind part 8 of the Act is the reference to “the premises” is to premises in which gambling may now take place. Thus a licence to use premises for gambling should only be issued in relation to premises that are ready to be used for gambling. This is why the Act allows an operator to apply for a provisional statement if the building is not yet complete, needs alteration, or he does not yet have a right to occupy it”
- “It is a question of fact and degree whether premises are finished to a degree that they can be considered for a premises licence. For example, the fact that a wall needed painting would not stop a full assessment of the premises as gambling premises, and in such circumstances it would probably be wrong to insist that the applicant applied for a provisional statement rather than a premises licence.”
- “Once an operator has completed a building, the licensing authority will be able to consider a premises licence application for it.”
- “Requiring the building to be complete ensures that the authority can inspect it fully, as can other responsible authorities with inspection rights under Part 15 of the Act. Inspection will allow authorities to check that gambling facilities comply with all necessary legal requirements. For example, Category C and D machines in a licensed family entertainment centre must be situated so that people under 18 do not have access to the category C machines. The physical location of the machines will be an important part of this, and inspection will allow the authority to check that the layout complies with the operator’s proposals and the legal requirements.” (in relation to Provisional Licences)

In terms of representations about premises licence applications, following the grant of a provisional statement, the Gambling Commission’s Guidance states:

“If a provisional statement has been granted, the licensing authority is constrained in the matters it can consider when an application for a premises licence is made subsequently in relation to the same premises. No further representations from relevant authorities or interested parties can be taken into account unless they concern matters which could not have been addressed at the provisional statement stage, or they reflect a change in the applicant’s circumstances.” In addition, the authority may refuse the premises licence (or grant it on terms different to those attached to the provisional statement) only by reference to matters:

- (a) which could not have been raised by objectors at the provisional licence stage; or
- (b) which in the authority’s opinion reflect a change in the operator’s circumstances.
- (c) where the premises has not been constructed

The licensing authority must not have regard to whether or not a proposal by the applicant is likely to be permitted in accordance with planning or building law.”

#### **5.4. Duplication.**

As stated in the section above on Enforcement, this licensing authority will endeavour to avoid duplication with other regulatory regimes so far as possible.

#### **5.5. Reviews.**

Interested parties or responsible authorities can make requests for a review of a premises licence; however, it is for the licensing authority to decide whether the review is to be carried-out. This will be on the basis of whether the request for the review is relevant to the following matters:

- it is in accordance with any relevant code of practice issued by the Gambling Commission
- it is in accordance with any relevant guidance issued by the Gambling Commission
- it is reasonably consistent with the licensing objectives and
- it is in accordance with the authority’s statement of licensing policy

as well as consideration as to whether the request is frivolous, vexatious, or will certainly not cause this authority to wish alter/revoke/suspend the licence or whether it is substantially the same as previous representations or requests for review.

The licensing authority can also initiate a review of a licence on the basis of any reason that it thinks is appropriate.

## APPENDIX SIX: Functions.

<b>Function</b>	<b>Who deals with it</b>
Issue and renewal of Operating Licences	Gambling Commission
Review Operating Licences	Gambling Commission
Issue Personal Licences	Gambling Commission
Issue Codes of Practice	Gambling Commission
Issue Guidance to Licensing Authorities	Gambling Commission
Licence remote gambling through Operating Licences	Gambling Commission
Issue licences in relation to the manufacture, supply, installation, adaptation, maintenance or repair of gaming machines.	Gambling Commission
Deal with appeals against Commission decisions	Gambling Appeals Tribunal
Responsible for the licensing of premises where gambling activities are to take place, by issuing Premises Licences	Licensing Authority
Issue Provisional Statements	Licensing Authority
Regulate Members Clubs and miners welfare institutes who wish to undertake certain gaming activities via issuing Club Gaming Permits and or Club Machine Permits	Licensing Authority
Issue Club Machine Permits to Commercial Clubs	Licensing Authority
Grant permits for the use of certain lower stake gaming machines at Unlicensed Family Entertainment Centres	Licensing Authority
Receive notifications from alcohol licensed premises (under the licensing Act 2003) of the use of two or fewer gaming machines	Licensing Authority
Grant Licensed Premises Gaming Machine Permits for premises licensed to sell/supply alcohol for consumption on the licensed premises, under the Licensing Act 2003, where more than two machines are required	Licensing Authority
Register small society lotteries below prescribed threshold	Licensing Authority
Issue Prize Gaming Permits	Licensing Authority
Receive and Endorse Temporary Use Notices	Licensing Authority
Receive Occasional Use Notices	Licensing Authority
Provide information to the Gambling Commission regarding details of licenses issued (see 2.2: Information Exchange)	Licensing Authority
Maintain registers of the permits and licenses that are issued under these functions	Licensing Authority

## APPENDIX SEVEN: AGREED DELEGATIONS.

To Full Council	To Sub Committee	To an Officer
<ul style="list-style-type: none"> <li>* Final approval of the three year policy.</li> <li>* Policy not to permit casinos.</li> </ul>	<ul style="list-style-type: none"> <li>* Application for a premises licence where representations have been made and not withdrawn</li> <li>* Application to vary a premises licence where representations have been made and not withdrawn</li> <li>* Application to transfer a licence following representations for the Commission or responsible authority</li> <li>* Application for a provisional statement where representations have been made and not withdrawn.</li> <li>* Review of a premises licence.</li> <li>* Application for club gaming machine permits or club machine permits where made and not withdrawn</li> <li>* Cancellation of a club gaming machine permit or club machine permit.</li> <li>* Application for more than 4 gaming machine permits in a licensed premises.</li> <li>* The giving of a counter notice for a temporary use notice</li> <li>* Fee setting (other than annual increases)</li> </ul>	<ul style="list-style-type: none"> <li>* Application for a premises licence where no representations have been received or received and withdrawn</li> <li>* Application to vary a premises licence where no representations have been received. or received and withdrawn</li> <li>* Application to transfer a licence where no representations have been received or received and withdrawn</li> <li>* Application for a provisional statement where no representations have been received. or received and withdrawn</li> <li>* Application for club gaming machine permits where no representations have been received or received and withdrawn.</li> <li>* Application for up to 4 gaming machine permits in a licensed premises.</li> <li>* Cancellation of gaming machine permits in relation to a licensed premises.</li> <li>* Consideration of a Temporary Use Notice.(other than the giving of a counter notice)</li> <li>* Registration of small lotteries/charities.</li> <li>* Where appropriate to instruct the Borough Solicitor to prosecute persons for non-compliance.</li> </ul>



## CONTACTS

Information on the various aspects of the licensing process and policy can be obtained from the following bodies:

Licensing Officer  
**Licensing Department**  
Swale Borough Council  
East Street  
Sittingbourne  
Kent ME10 3HT  
Tel: 01795 417634

Police Licensing Officer  
**North Division**  
**Medway Police Station**  
Purser Way  
Gillingham  
Kent ME7 1NE  
Tel: 01634 792733

**Maidstone Group Fire Safety**  
Maidstone Fire Station  
Loose Road  
Maidstone  
Kent ME15 9QB  
Tel: 01622 774126

**Environmental Pollution Team**  
Swale Borough Council  
East Street  
Sittingbourne  
Kent ME10 3HT  
Tel: 01795 417320

**Planning Services**  
Swale Borough Council  
East Street  
Sittingbourne  
Kent ME10 3HT  
Tel: 01795 417304

HM Revenue & Customs National  
Registration Unit  
Portcullis House  
21 India Street  
Glasgow G2 4PZ

**Child Protection Agency**  
Social Services Directorate  
Kent County Council  
Brenchley House  
123-135 Week Street  
Maidstone, Kent

**Gambling Commission**  
Victoria Square House  
Victoria Square  
Birmingham B2 4BP  
Tel: 0121 230 6666

This page is intentionally left blank

Licensing Act 2003 Committee	<b>Agenda Item:</b>
------------------------------	---------------------

<b>Meeting Date</b>	3 <sup>rd</sup> December 2015
<b>Report Title</b>	Deregulation of Late Night Refreshments
<b>Portfolio Holder</b>	Cllr Ken Pugh
<b>SMT Lead</b>	Mark Radford
<b>Head of Service</b>	
<b>Lead Officer</b>	Angela Seaward
<b>Key Decision</b>	No
<b>Classification</b>	Open
<b>Forward Plan</b>	Reference number: N/A

<b>Recommendations</b>	1. To note the change in legislation and that at present there is no evidence to suggest that a geographical area be designated.
------------------------	--

## 1 Purpose of Report and Executive Summary

- 1.1 The Deregulation of Late Night Refreshments under the Licensing Act 2003 (the Act) was passed on 1<sup>st</sup> October 2015 and came into force for local authorities to apply on 5<sup>th</sup> November 2015. The report sets out the implication of this for Swale Borough Council as the Licensing Authority.

## 2 Background

- 2.1 Schedule 2 to the 2003 Act provides a definition of what constitutes the provision of late night refreshment. It involves only the supply of 'hot food and hot drink' between the hours of 11pm and 5am. Food or drink is considered to be 'hot' if, before it is supplied, it has been heated on the premises or elsewhere for the purpose of enabling it to be consumed at a temperature above the ambient air temperature and at the time of supply it is above that temperature; or after it is supplied, may be heated on the premises for the purpose of enabling it to be consumed at a temperature above the ambient air temperature.
- 2.2 The provision of late night refreshment is regulated primarily because it is often linked to alcohol-fuelled crime and disorder in the night-time economy, such as at fast-food takeaways where late-night drinkers congregate. However, these safeguards may not be needed everywhere or for every type of late night refreshment business. For example, some late-night cafés serving hot drinks after 11pm may be located nowhere near pubs and nightclubs or areas associated

with alcohol-related crime and disorder. Licensing authorities now have powers to exempt premises, in certain circumstances, from the requirement to have a licence to provide late night refreshment. Decisions to exempt supplies of late night refreshment are best made with local knowledge. The powers therefore allow licensing authorities to choose to apply an exemption specifically where it is thought it will be helpful to businesses and where there are no problems with antisocial behaviour or disorder associated with the night time economy. As well as freeing up the businesses in question from unnecessary costs, this can also provide greater flexibility for licensing authorities to target their resources more effectively.

3.2 When choosing to designate particular categories of premises as exempt, a licensing authority can only exempt types of premises set out in the regulations. These are:

- Motorway service areas;
- petrol stations;
- local authority premises (except domestic premises) unless there is an event taking place at which more than 500 people are present;
- schools (except domestic premises) unless there is an event taking place at which more than 500 people are present;
- hospitals (except domestic premises);
- community premises (church, chapel, village, parish or community hall or other similar building) unless there is an event taking place at which more than 500 people are present;
- licensed premises authorised to sell by retail alcohol for consumption on the premises between the hours of 11pm and 5am.

3.3 The licensing authority may use more than one type of exemption at the same time, for example by changing the times across the licensing authority area during which licensing requirements will apply and also exempting premises by type across the whole licensing authority area. However, it cannot use different forms of exemption in conjunction with one another – for example, it would not be permitted to change the times in one geographic area only.

3.4 Existing late night refreshment licences for premises that become exempt from regulation will remain extant unless the holder chooses to surrender it to the licensing authority, but there will be no requirement on the licence holder to pay annual renewal fees and any conditions on the licence will cease to apply for as long as the exemption is in place. In cases where an exemption in relation to late night refreshment provision is applied, other licensing is unaffected.

### 3 Proposal/Key features of the Act

- 3.1 The deregulation process relates to the designation of a 'geographical area' where there is no evidence of significant crime and disorder issues. In discussion with the Police it appears that at the present moment there is no evidence to support the deregulation of premises based on crime and disorder considerations.

The proposal at this stage is to merely note the change in the legislation and to keep the situation under review with the Police.

### 4 Alternative Options

- 4.1 None. This has been designated a Statutory Function of the Local Authority

### 5 Implications

Issue	Implications
Corporate Plan	<p><b>A borough to be proud of:</b> the statement seeks to strike the right balance between promoting and encouraging live and recorded music, dancing, theatre and other forms of entertainment for the wider cultural benefit of communities generally but not to cause a disturbance.</p> <p><b>A community to be proud of:</b> by promoting the four licensing objectives in this way the authority is enriching and enhancing the community whilst maintaining its regulatory and enforcement role.</p> <p><b>A council to be proud of:</b> the statement will support good decision making processes</p>
Financial, Resource and Property	There will be a financial loss in the order of £4425.00 to the authority from annual fees and applications if premises were deregulated.
Legal and Statutory	The Licensing Authority must adopt a statutory function of the Licensing Act 2003
Crime and Disorder	The deregulation could have an impact on crime and disorder as the authority could no longer control or regulate late night functions on certain premises
Risk Management and Health and Safety	None.
Equality and Diversity	A fair approach will be delivered when looking at any geographic areas to deregulate

Sustainability	None.
----------------	-------