

AGENDA

GENERAL LICENSING COMMITTEE MEETING

Date: Thursday, 12 July 2018

Time: 7.00 pm

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

Membership:

Councillors Cameron Beart (Chairman), Bobbin, Tina Booth (Vice-Chairman), Roger Clark, Paul Fleming, June Garrad, Prescott, Ben Stokes, Anita Walker and Tony Winckless.

Quorum = 3

Pages

1. Emergency Evacuation Procedure

The Chairman will advise the meeting of the evacuation procedures to follow in the event of an emergency. This is particularly important for visitors and members of the public who will be unfamiliar with the building and procedures.

The Chairman will inform the meeting whether there is a planned evacuation drill due to take place, what the alarm sounds like (i.e. ringing bells), where the closest emergency exit route is, and where the second closest emergency exit route is, in the event that the closest exit or route is blocked.

The Chairman will inform the meeting that:

(a) in the event of the alarm sounding, everybody must leave the building via the nearest safe available exit and gather at the Assembly points at the far side of the Car Park. Nobody must leave the assembly point until everybody can be accounted for and nobody must return to the building until the Chairman has informed them that it is safe to do so; and

(b) the lifts must not be used in the event of an evacuation.

Any officers present at the meeting will aid with the evacuation.

It is important that the Chairman is informed of any person attending who is disabled or unable to use the stairs, so that suitable arrangements may be made in the event of an emergency.

2. Apologies for Absence and Confirmation of Substitutes
3. Minutes

To approve the Minutes of the Meeting held on 19 April 2018 (Minute nos. 620 – 627) as a correct record, and to accept the minutes of the following Licensing Sub-Committees:

1 May 2018 11.30am (Minute Nos. 641 – 644)
8 May 2018 10am (Minute Nos. 645 – 649)
8 May 2018 11.30am (Minute Nos. 650 – 654)
28 June 2018 10am (to follow)

4. 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.

(c) Where it is possible that a fair-minded and informed observer, having considered the facts would conclude that there was a real possibility that the Member might be predetermined or biased the Member should declare their predetermination or bias and then leave the room while that item is considered.

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 Monitoring Officer, the Head of Legal or from other Solicitors in Legal Services as early as possible, and in advance of the Meeting.

5. Public Session

The Council operates a scheme of public speaking at meetings of the General Licensing Committee. Requests to speak at the meeting must be registered by Democratic Services by 4.30pm on Friday 6 July 2018 and must be related to an item on the Agenda. Each speaker has a maximum of three minutes to speak.

- | | | |
|----|--|--------------|
| 6. | Draft Gambling Policy | 1 - 62 |
| | To consider the draft Gambling Policy. | |
| 7. | Draft Sex Entertainments Policy | 63 - 122 |
| | To consider the draft Sex Entertainments Policy. | |
| 8. | Scrap Metal Dealers Policy | 123 -
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| | To consider the final Scrap Metal Dealers Policy. | |
| 9. | Taxi Tariff -consultation results | 147 -
172 |
| | For decision on the Taxi tariff and review period. | |

Issued on Monday 3 July 2018

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

Chief Executive, Swale Borough Council,
Swale House, East Street, Sittingbourne, Kent, ME10 3HT

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General Licensing Committee Meeting	
Meeting Date	12 th July 2018
Report Title	Draft Statement of Principles for Gambling Act 2005
Cabinet Member	CLlr Mike Cosgrove, Cabinet Member for Regeneration
SMT Lead	Mark Radford
Head of Service	Della Fackrell, Resilience and Licensing Manager
Lead Officer	Christina Hills, Licensing Officer
Key Decision	No
Classification	Open
Recommendations	<ol style="list-style-type: none"> 1. Members to endorse the contents of the report and instruct officers to proceed with the review process 2. Members to instruct officers to undertake an eight week consultation on the proposed revised Statement of Principles for Gambling 2019 – 2022, attached as Appendix I 3. To accept a further report after the conclusion of the consultation period where Members will consider any comments made prior to formally recommending the revised Statement of Licensing Principles for Gambling for adoption by full Council

1 Purpose of Report and Executive Summary

- 1.1 The Gambling Act 2005 requires the Council as licensing authority to prepare and publish a Statement of Principles for Gambling Act 2005 policy. The existing Statement of Principles was published in January 2016 and is due for renewal by January 2019.

- 1.2 This report is to apprise Members of the proposed methodology to be followed in reviewing the Statement of Principles.

- 1.3 A draft Statement of Principles has been prepared and is attached as **Appendix I**

1 Background

- 2.1 Swale Borough Council (the Council) is the Licensing Authority under the provisions of the Gambling Act 2005 (the Act). The Council is required to produce a 'Statement of Licensing Principles for Gambling' to demonstrate how applications received under the Act will be dealt with.
- 2.2 Section 153 of the Act requires that when exercising functions under the Act the Licensing Authority shall aim to permit the use of premises for gambling in so far as the authority thinks it is in accordance with:
- a) any relevant code of practice;
 - b) any relevant guidance issued by the Gambling Commission;
 - c) is consistent with the licensing objectives (subject to a and b above), and;
 - d) the statement published by the authority under s.349 (Statement of Principles for Gambling).
- 2.3 The gambling objectives are:
- i) preventing gambling from being a source of crime and disorder, being associated with crime and disorder or being used to support crime
 - ii) ensuring that gambling is conducted in a fair and open way and
 - iii) protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 2.4 The Gambling Commission 5th edition Guidance recommends a number of changes for local authorities that fall under three broad themes:
- a) increased focus on risk and regulation
 - b) greater attention to local risk; and
 - c) encouraging partnership and collaboration between stakeholders to mitigate risk
- 2.5 In particular the Commission recommends that local authorities create new and unique localised policies and also carry out an assessment of their local environment called a 'Local Area Profile' (LAP) to identify the local risk of gambling-related harm and to inform the Policy. Risk in this context includes potential and actual risk and can take into account possible future and emerging risks.
- 2.6 Completion of a LAP is not compulsory however it is recognises that there are significant benefits for both the Council and operators, in having a better awareness of the local area in relation to gambling-related risks. However, the creation of a LAP is dependent on information and knowledge of the local area and knowledge of the impact gambling may have. Officers intend to carry out an assessment to identify the areas of concern and publish a LAP separate to this Policy document. The reason for this is it will enable the LAP to be kept under

regular review so that if amendments are considered necessary they can be made without the necessity of amending the full Policy.

- 2.7 The Gambling Commission's Licence Conditions and Codes of Practice (LCCP) formalise the need for operators to consider local risks.
- 2.8 Premises licence holders are required to assess the local risks to the licensing objectives posed by the provision of gambling facilities at each of their premises, and have policies, procedures and control measures to mitigate those risks. In undertaking their risk assessments, they must take into account relevant matters identified in the Statement of Principles and any published Local Area Profile.

3 Proposals

- 3.1 A draft Statement of Licensing Principles has been prepared using a model template as recommended by the Gambling Commission. This is shown as **Appendix I**.

4 Available Options

- 4.1 It is a statutory requirement for the Council to have a current Statement of Licensing Principles in place covering the principles for its functions under the Act. The Authority is required to have an up to date policy and therefore should incorporate the 5th edition of the Gambling Commissions Guidance.

5 Consultation Undertaken or Proposed

- 5.1 It is proposed to undertake an eight week consultation which will run from 23 July until 14 September 2018. Methods of consultation will be by advertising on the Council's website and in a local newspaper, by emails, post and social media.
- 5.2 The Guidance states that the list of persons to be consulted is deliberately wide so as to allow licensing authorities to undertake a comprehensive consultation exercise with anyone who may be affected by or otherwise have an interest in the Licensing Authority Statement of Principles.
- 5.3 The Guidance further advises that, whilst licensing authorities will develop their own practices, they may like to consider consultation with faith groups, voluntary and community organisation working with children and young people, organisations working with people who are problem gamblers, medical practices or primary care trusts, and advocacy organisations such as the Citizens Advice Bureau.
- 5.4 Proposed consultees will therefore be:
 - All Councillors
 - Parish Councils

- Kent Police
- Kent Fire and Rescue
- Kent County Council Trading Standards
- Gambling Commission
- Swale BC Planning Department
- Swale BC Environmental Health Department
- HM Revenue and Customs
- Children’s Safeguarding Services
- Relevant trade associations
- Any Premises Licence holders issued by Swale Borough Council
- Any Permit holders issued by Swale Borough Council
- Any Small Lottery Licence issued by Swale Borough Council
- GamCare
- Gamblers Anonymous UK
- NHS Swale CCG
- Samaritans
- Citizen Advice Bureau
- Responsible Gambling Trust

5.5 All incoming responses will be entered onto a grid for consideration. The Resilience and Licensing Manager together with licensing officers will conduct an evaluation of each response and give a recommendation as to whether or not to amend the policy statement. The grid and recommendations will be put before General Licensing Committee prior to formal adoption.

6 Implications

Issue	Implications
Corporate Plan	Making Swale a better place A Council to be proud of
Financial, Resource and Property	Under the Act, the council has the power to recover its costs and set fees and charges at such a level that the process is cost neutral to the Council. There is however a statutory maximum fee that can be set for every licence type under the Act. The financial implications associated with the revision of the Statement of Principles will be financed from the Licensing budget. If at any time in the future the policy was subject to legal challenge, there could be costs associated with this process
Legal and Statutory	Section 349(1) of the Act requires each licensing authority to prepare and publish a Statement of Principles to cover each period of three years. In preparing a Statement of Principles the regulations require

	<p>licensing authorities to publish a notice of intention to publish a statement. The notice must:</p> <ul style="list-style-type: none"> • specify the date on which the statement is to be published • specify the date on which the statement will come into effect • specify the internet address where the statement will be published and the address of the premises at which it may be inspected • be published on the authority's website and in/on one or more of the following places for at least four weeks before it comes into effect: <ul style="list-style-type: none"> • a local newspaper circulating in the area covered by the statement • a public notice board in or near the principal office of the authority • a public notice board on the premises of public libraries in the area covered by the statement
Crime and Disorder	<p>Fulfilling powers and duties under the Gambling Act 2005 is of direct relevance to the Councils duties under Section 17 of the Crime and Disorder 1998 in that the objectives of the Act are:</p> <ul style="list-style-type: none"> • 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
Environmental Sustainability	No implications
Health and Wellbeing	No implications
Risk Management and Health and Safety	It is important that Swale BC has a robust and accountable regulatory regime in relation to gambling in order to ensure fair trading, prevent crime and to protect consumers.
Equality and Diversity	The Council has a legal obligation under section 149 of the Equality Act 2010 to have due regard to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups.
Privacy and Data Protection	Normal data protection and privacy rules will apply.

7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- **Appendix I:** Draft Statement of Principles for Gambling 2019 - 2022

8 Background Papers

Gambling Act 2005

Gambling Commission Guidance to licensing authorities 5th edition September 2015

Gambling Commission's Licence Conditions and Codes of Practice (LCCP)

STATEMENT OF PRINCIPLES FOR GAMBLING

UNDER THE
SECTION 349 OF THE GAMBLING ACT 2005

EFFECTIVE 1 FEBRUARY 2019-31 JANUARY 2022

Swale Borough Council's Statement of Principles for Gambling

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Foreword

Swale Borough Council's Statement of Principles for Gambling

I am pleased to present to you the fourth edition of Swale Borough Council's Statement of Principles for Gambling under the Gambling Act 2005. This edition has been comprehensively revised to reflect clearly the expectations of Swale Borough Council in its role as a Licensing Authority and incorporates changes in legislature and guidance that have been introduced since the previous version of the policy was published.

We are required under the Gambling Act 2005 to produce a new policy on our approach to premises used for gambling every three years.

This policy endeavours to carefully balance the interests of those who provide facilities for gambling and people who live, work in, and visit Swale. Its focus is to aim to permit gambling, as required by section 153 of the Gambling Act 2005, in so far as it is (a) in accordance with the Gambling Commission's Licence Conditions and Codes of Practice; (b) in accordance with the Gambling Commission's Guidance to Licensing Authorities that is in effect at the time the application is considered; (c) reasonably consistent with the licensing objectives and (d) in accordance with this Statement of Principles. The three licensing objectives are:

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

The Cabinet Member for Swale would like to thank the General Licensing Committee and, for their part in, and contribution towards, the formulation of this policy and also for their hard work in presiding over cases that come before Licensing Sub-Committees.



Councillor Cameron Beart
Chair of Licensing Committee

Chapter One

Introduction and Overview

This Policy document includes the Statement of Principles for Gambling of the Swale Borough Council effective from 1 February 2019.

Definitions Used in this Policy

- **‘the Act’** means the Gambling Act 2005
- **‘the Council’** means Swale Borough Council
- **‘the Commission’** means the Gambling Commission established under the Gambling Act of 2005
- **‘the Guidance’** means the guidance issued to Licensing Authorities published by the Gambling Commission, regarding the role and responsibilities of licensing authorities in gambling regulation.
- **‘Licensing Authority’** means the Licensing Department or Licensing Committee operating on behalf of Swale Borough Council.
- **‘Licensing Committee’** refers to the Committee of Swale Borough Council to consider overarching licensing matters
- **‘licensable activities’** means those activities that are required to be licensed by the Council under the Gambling Act 2005
- **‘Licensing Sub Committee’** refers to a Sub Committee of the Licensing Committee to consider licence applications
- **‘relevant representations’** means a representation conforming to the legal requirements of the Gambling Act 2005
- **‘Regulations’** refers to Regulations under the Gambling Act 2005 issued by the Secretary of State
- **‘responsible authority’** means the bodies designated under the Gambling Act 2005 and described in the Introduction to this Statement of Principles
- **‘the Statement’** refers to this Statement of Principles for Gambling

Introduction

1. Under Section 349 of the Gambling Act 2005, the Council is required to publish a Statement of Principles it proposes to apply when exercising its functions under the Act. The form of the Statement of Principles is set out in the Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2007 and further guidance on what should be contained in the Statement of Principles can be found in the Gambling Commission’s Guidance to Licensing Authorities.
2. The Licensing Authority is required by virtue of section 153 of the Gambling Act 2005 to aim to permit gambling in so far as it is (a) in accordance with the Gambling Commission’s Licence Conditions and Codes of Practice; (b) in accordance with the Gambling Commission’s Guidance to Licensing Authorities that is in effect at the time the application is considered; (c)

reasonably consistent with the licensing objectives and (d) in accordance with this Statement of Principles.

3. The Gambling Commission issues Licence Conditions and Codes of Practice for gambling operators. Social Responsibility Codes have the force of a licence condition. The Gambling Commission also issue Ordinary Codes, which set out best industry practice. They are not licence conditions, but operators are expected to follow them unless they have alternative arrangements in place which they can demonstrate are equally as effective.
4. The Licensing Authority, when carrying out inspections of gambling operators, reserves the right to assess compliance with such matters set out in the Gambling Commission's Licence Conditions and Codes of Practice as it sees fit, and will share intelligence with the Gambling Commission about any issues of non-compliance in this respect.
5. The licensing objectives under the Gambling Act 2005 are:
 - Preventing gambling from being a source of crime or disorder, being associated with crime or 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.
6. The Council consulted widely upon this revised Statement of Principles from 23 July 2018 until 14 September 2018. A list of persons consulted on the revised Statement can be found at Appendix One..
7. The Act requires the following to be consulted in the revision of the statement:
 - the Chief Officer of Police;
 - people and bodies representing the interests of persons in gambling businesses in the area;
 - People and bodies who represent the interests of persons who are likely to be affected by the exercise of the authority's functions under the Act.
8. Nothing in this policy overrides the right of any person to make an application, make representations about an application or apply for a review of a licence. Each will be considered on its own merits and in accordance with the statutory requirements of the Act.
9. In reviewing this Statement of Principles, the Council has had regard to the licensing objectives under the Gambling Act 2005, the Guidance to Licensing Authorities issued by the Gambling Commission and to the responses arising from our consultation.

Responsible Authorities

10. The Council is required by regulations to state the principles it will apply in exercising its 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 principles are:

- the need for the body to be responsible for an area covering the whole of the Council's area; and
 - the need for the body to be answerable to democratically elected persons, rather than any particular vested interest group.
11. The Council designates Child Protection Agency to advise on the protection of children from harm under the Gambling Act 2005.
 12. The full list of Responsible Authorities for Swale Borough Council are as follows:

Licensing Co-ordinator, North Division,
Medway Police Station,
Purser Way,
Gillingham,
Kent ME7 1NE
licensing.north.division@kent.pnn.police.uk

Maidstone Group Fire Safety Office,
Maidstone Fire Station,
Loose Road, Maidstone,
ME15 9QB
enquiries@kent.fire-uk.org

Environmental Pollution,
Swale Borough Council,
Swale House,
East Street, Sittingbourne,
Kent, ME10 3HT
pollution@swale.gov.uk

Planning Department,
Swale Borough Council,
Swale House,
East Street, Sittingbourne,
Kent, ME10 3HT
areateam-fav@swale.gov.uk
or areateam-sitt@swale.gov.uk

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

The Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4PB
info@gamblingcommission.gov.uk

HM Revenue and Customs
National Registration Unit
Portcullis House
21 India Street
Glasgow G2 4PZ
nrubetting&gaming@hmrc.gsi.gov.uk

Interested Parties

13. Interested parties are persons who may make representations to applications or apply to the Council for the review of an existing licence. These parties are defined in section 158 of the Act as a person who:
 - (a) lives sufficiently close to the premises to be likely to be affected by the authorised activities,
 - (b) has business interests that might be affected by the authorised activities, or
 - (c) Represents persons who satisfy paragraph (a) or (b).
14. When determining whether a person is an interested party for the purposes of the Act, the Licensing Authority will not apply rigid rules but will treat each case on its merits.
15. In considering whether a person lives sufficiently close to a premises to be considered to be an interested party the following matters will be taken into account:
 - the size of the premises
 - the nature of the premises
 - the distance of the premises from the habitual residence or workplace of the person making the representation
 - the potential impact of the premises (numbers of customers, routes likely to be taken by those visiting the premises)
 - the circumstances of the person and nature of their interests, which may be relevant to the distance from the premises.
16. In determining whether a person or organisation "has business interests" the authority will adopt the widest possible interpretation and include trade associations, trades unions, partnerships, charities, faith groups and medical practices, as appropriate.
17. The Licensing Authority will regard bodies such as trade associations, trade unions, residents' and tenants' associations and professional advisors such as solicitors, barristers and consultants as capable of representing interested parties where they are satisfied that the interested party has asked for representation.
18. In principle, the Licensing Authority will allow any person to represent an interested party but will seek confirmation that the person genuinely represents the interested party. We will generally require evidence that a person/body (e.g. an advocate or relative) 'represents' an interested party. If persons representing interested parties are Councillors, Members of Parliament or Members of the European Parliament, then no specific evidence of being asked to represent an interested person will be required so long as they represent the area likely to be affected.

19. If individuals wish to approach Councillors to ask them to represent their views those Councillors shall not sit on a Licensing Sub-Committee that meets to determine the licence application. If there are any doubts then either interested parties or Councillors should contact the Licensing Service for advice.

Geographical Area Covered by this Statement of Principles

20. A map showing the geographical area covered by this Statement of Principles can be viewed at Appendix Two.

List of Bodies Consulted on this Statement of Principles

British Amusement Catering Trade Association (BACTA)
Association of British Bookmakers
Gamble Aware
The Gambling Commission
List all responsible authorities consulted
Operators of Betting Premises licenced by Swale Borough Council
Operators of Adult Gaming Centres licenced by Swale Borough Council
Operators of Family Entertainment Centres licenced by Swale Borough Council
Operators of Bingo Premises licenced by Swale Borough Council
Holders of Gaming Machine Permits licenced by Swale Borough Council
Holders of Club Gaming Permits licenced by Swale Borough Council
Holders of Club Machine Permits licenced by Swale Borough Council
Swale Borough Council Councillors
Parish Councils
Gamblers Anonymous UK
NHS Swale CCG
Samaritans
Citizen Advice Bureau
Responsible Gambling Trust

Exchange of Information

21. The Council will act in accordance with the provisions of Section 350 of the Act in its exchange of information with the Gambling Commission.
22. Section 29 of the Gambling Act 2005 enables the Gambling Commission to require information from licensing authorities (including the manner in which it is compiled, collated and the form in which it is provided), provided that it:
 - forms part of a register maintained under the Gambling Act 2005;
 - is in the possession of the Licensing Authority in connection with a provision under the Gambling Act 2005.

23. Section 350 of the Gambling Act 2005 allows licensing authorities to exchange information with other persons or bodies for use in the exercise of functions under the Act. These persons or bodies are:
- A constable or Police force
 - An enforcement officer
 - A licensing authority
 - HMRC
 - The First Tier Tribunal
 - The Secretary of State
 - Scottish Ministers
24. Information requests from such parties should be made to the Licensing Authority in writing, setting out clearly what information is required and the reason the information is required. The requirements of the Data Protection Act 1998 will be complied with. Freedom of Information requests can be made by emailing foi@swale.gov.uk or in writing to Freedom of Information, Swale Borough Council, Swale House, East Street, Sittingbourne, Kent ME10 3HT.
25. The Licensing Authority will also have regard to Guidance issued by the Gambling Commission to local authorities as well as any relevant regulations issued by the Secretary of State under the powers provided for in the Act.

Enforcement

26. The primary aim of enforcement is to achieve compliance. Though enforcement may be taken to mean the formal approach, it may also include advice and support to business to achieve compliance.
27. Inspections will be carried out on a risk rated basis. New premises, premises under new management, premises where complaints have been received or intelligence received relevant to the licensing objectives and premises or operators where compliance failings have been identified previously will attract a higher risk rating. Premises located in areas where there have been incidents of crime affecting or relating to gambling premises, or where the premises themselves have been the victims or involved in such crime, shall also attract a higher risk rating.
28. Compliance may be achieved through encouraging a sense of community, improved communication, and proactive work with licensees and businesses. Such proactive work may include project work, giving advice and information, and initiatives that educate, inform and encourage partners and stakeholders to work together efficiently and effectively. The principal objective in taking a holistic approach to managing the gambling industry is to prevent problems from occurring before they begin.
29. However, it is recognised that such aims cannot always be achieved, and that active enforcement of the law may be the only effective means of securing

compliance. To this end the following enforcement options are available to the Licensing Authority:

- verbal or written advice
 - verbal warning
 - written warning
 - mediation between licensees and interested parties
 - licence review
 - simple caution
 - prosecution
30. These actions are not mutually exclusive and it may be that one course of action follows another, depending on the individual circumstances.
31. The Licensing Authority operates a partnership approach to dealing with enforcement matters concerning licensed premises. This may include working with the Police or any of the other responsible authorities under the Act, or working with colleagues from other Council departments or outside agencies.
32. The Licensing Authority needs to be satisfied premises are being run in accordance with the provisions of the Act, the licensing objectives, the Licence Conditions and Codes of Practice issued by the Gambling Commission and any conditions attached to the Premises Licence. To achieve this, the Licensing Authority will inspect premises, meet with licence holders and carry out general monitoring of areas as necessary.
33. Inspection and enforcement under the Act will be based on the principles of risk assessment, a graduated response and the targeting of problem premises. The frequency of inspections will be determined on risk-based criteria with high risk operations receiving more attention than premises carrying lower risk.
34. The Licensing Authority will take appropriate enforcement action against those responsible for unlicensed premises/activity. Action will be carried out in accordance with the Kent and Medway Licensing Compliance and Enforcement Protocol.
35. Before deciding which course of action to take, the Licensing Authority shall consider the following matters:
- the history of the premises
 - the history of the offender
 - the circumstances of the offence
 - whether the offender has a statutory defence to the allegations
 - the impact or potential impact of the breach on the public
 - the quality of the evidence against the offender
 - the likelihood of achieving success in a prosecution
 - the likely punishment that will be incurred if the case goes to Court

- whether the course of action proposed is likely to act as a deterrent
36. The Licensing Authority will operate within the principles of natural justice and take into account the Human Rights Act 1998. This includes, in particular:
- Every person is entitled to the peaceful enjoyment of his possessions – a licence is a possession in law and persons may not be deprived of their possessions except where it is in the public interest;
 - Every person is entitled to a fair hearing.
37. The Licensing Authority is committed to the principles of good regulation as set out in the Regulators Code. This means our inspection and enforcement activities will be carried out in a way that is:
- Proportionate: only intervening when necessary. Remedies will be appropriate to the risk posed, and costs identified and minimised;
 - Accountable: able to justify our decisions, and be subject to public scrutiny;
 - Consistent: implementing rules and standards fairly in a joined-up way;
 - Transparent: acting in open way, and keeping conditions placed on Premises Licences simple and user friendly; and
 - Targeted: focusing on the problems, and aiming to minimise the side effects.

The Council's Functions

38. Councils, when acting as Licensing Authorities are required under the Act to:
- license premises where gambling activities are to take place by issuing Premises Licences
 - issue Provisional Statements
 - regulate members' clubs and miners' welfare institutes who wish to undertake certain gaming activities via issuing Club Gaming Permits and/or Club Machine Permits
 - issue Club Machine Permits to commercial clubs
 - grant permits for the use of certain lower stake gaming machines at unlicensed Family Entertainment Centres
 - receive notifications from alcohol licensed premises (under the Licensing Act 2003) for the use of two or fewer gaming machines
 - issue Licensed Premises Gaming Machine Permits for premises licensed to sell/supply alcohol for consumption on the licensed premises, under the Licensing Act 2003, where there are more than two machines
 - register small society lotteries below the prescribed thresholds
 - issue Prize Gaming Permits
 - receive and endorse Temporary Use Notices
 - receive Occasional Use Notices for betting at tracks
 - provide information to the Gambling Commission regarding details of

- licences, permits and other permissions issued
 - maintain registers of the permits and licences that are issued under these functions.
39. Councils are not involved in licensing online gambling, which is the responsibility of the Gambling Commission.

Duplication with Other Regulatory Regimes

40. The Licensing Authority will seek to avoid duplication with other statutory and regulatory regimes where possible, including planning. The Licensing Authority will not consider planning permission or building regulations approval when making decisions under the Gambling Act. Nor will it regard the granting of a licence, permit or permission as fettering the Council's ability to consider planning applications independently on their planning merits.

Gambling Prevalence and Problem Gambling

41. Gambling behaviour is increasingly a subject of public health and policy interest. The Gambling Commission regularly collect data on gambling both in terms of information about the consumer and about the method and frequency with which they gamble.
42. The Gambling Commission collect participation data through quarterly surveys and problem gambling data from the Health survey for England and monitor underage gambling using their young person's survey.
43. 63% of adults (16+) in Great Britain gamble between 2016-2017, with men (66%) being more likely than woman (59%). The most popular gambling activities were the National Lottery (46%), scratchcards (23%) and other lotteries (15%). Excluding those who only play the National Lottery, just under half of adults (45%) participated in other type of gambling activity; 49% of men and 42% of women. For both men and woman, overall participation was highest amongst the middle age groups and lowest among the youngest and oldest groups. Excluding those who played the National Lottery, gambling participation was highest amongst younger adults (20s – 30s).
44. Problem gambling can have a detrimental effect on personal finances as the attempt to chase losses becomes unmanageable. Problem gamblers often say they feel isolated. There is often a preoccupation with gambling, a lack of interest in maintaining relationships and a lack of motivation to engage in social activities. There is often reluctance amongst gamblers to spend money on items of clothing, household goods or utility bills as this expenditure is often seen as funds for gambling. Problem gambling can be progressive in nature and problem gamblers can end up engaging in criminal activity to fund their gambling habits. This can lead to lifelong consequences with criminal convictions.

Chapter Two

Welcome to the borough of Swale

This section gives a description of Swale Borough Council

General Description

Swale is the bridging point between north and east Kent, named after the narrow channel of tidal water between mainland Kent and the Isle of Sheppey. It is close both to London and mainland Europe and well connected to the national motorway network. It is a Borough of some 140,800 people who primarily live in its three main towns, Sittingbourne, Faversham and Sheerness.

Sittingbourne (population 49,300) is the main town, acting as a population, employment and service centre for the Borough. These functions and the town's present day character have their roots in past travellers and pilgrims and the industries that settled there.

Faversham (population 19,600) is an attractive and historic small market town at the centre of a rich farming hinterland. Faversham and Oare are located at the head of two creeks and surrounded by attractive countryside. The town is best known for its continued links with brewing and food. This and the town's industrial and maritime heritage produce its present day character - an outstanding range of historic buildings, streets and waterways and a town centre with strong independent retail and service sector.

A unique feature within Kent is the Isle of Sheppey, separated from the mainland by the Swale. Its main town is Sheerness (population 12,500). It owes much of its distinctiveness to its role as a traditional seaside town and the past and present industries that established there, particularly the former naval dockyard and the current Port facility. The town centre functions as the main shopping and service centre for the Island's residents and visitors.

Population growth in Swale has, and continues to be, largely fuelled by those who move here, but its indigenous population is ageing and the death rate is higher than both the Kent and the South East average. The expanding urban populations are largely as a result of migration into the area by younger people and families. This younger population brings with it a rising birth rate which partly offsets the older age groups and the impacts of an ageing population, as well as helping to maintain the population of working age. Some 58% of the population are urban based, leaving a significant proportion (42%) living in the rural areas of the Borough.

Ethnic minorities are still a small proportion of the population, although Swale is becoming more ethnically diverse, mostly to those from Black African, Black British, Asian or British Asian backgrounds. Although a very small proportion of the population, Swale also has one of the larger Gypsies and Traveller communities in Kent, both on their own sites and in permanent housing.

There are wide contrasts between neighbourhoods in the Borough, from the most prosperous parts of Faversham and rural areas in the south of the Borough, to some of England's most deprived neighbourhoods in Sheerness, Bluetown,

Queenborough, Rushenden, Leysdown and Warden, Davington, Murston and Milton Regis. This deprivation displays itself particularly in the poorer levels of educational attainments, ability to access jobs and health of these communities.

Chapter Three

Licensing Objectives and Local Area Risk Assessments, Local Area Profiles

44. The Gambling Act 2005 contains three licensing objectives. In this revision of its Statement of Principles, the Licensing Authority seeks to assist applicants by setting out the considerations we will apply when determining applications under the Act.
45. Though licensing authorities are required to 'aim to permit' gambling, there is wide scope for them to impose conditions on Premises Licences or to reject, review or revoke Premises Licences where there is an inherent conflict with the relevant Licence Conditions and Codes of Practice issued by the Gambling Commission, the Guidance to Licensing Authorities issued by the Gambling Commission, the licensing objectives or this Statement of Licensing Policy.
46. Licensing authorities are able to request any information from an operator they may require to make licensing decisions. The Gambling Act 2005 requires a minimum level of information to be provided, but the Gambling Commission state in their Guidance to Licensing Authorities that this does not preclude reasonable requests from licensing authorities for any additional information they may require to satisfy themselves their decisions accord with the licensing objectives and Codes of Practice.

Risk Assessment and Local Area Profiles

47. The Licensing Authority expects applicants to have a good understanding of the area in which they either operate, or intend to operate. 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 the licensing objectives.
48. The Gambling Commission introduced a Social Responsibility Code of Practice requiring operators of premises used for gambling to conduct local area risk assessments and an Ordinary Code stating this should be shared with the licensing authority in certain circumstances in May 2016.
49. The Licensing Authority expects applicants for Premises Licences in its area to submit a risk assessment with their application when applying for a new premises licence, when applying for a variation to a premises licence or when changes in the local environment or the premises warrant a risk assessment to be conducted again.
50. The risk assessment should demonstrate the applicant has considered, as a minimum:
 - any problems in the area relating to gambling establishments such as anti-social behaviour or criminal damage;
 - the location of any nearby sensitive premises, such as hostels and other facilities used by vulnerable persons e.g. drug and alcohol addictions;

- whether there is a prevalence of street drinking in the area, which may increase the risk of vulnerable persons using the premises;
- the type of gambling product or facility offered;
- the layout of the premises;
- the external presentation of the premises;
- the location of nearby transport links and whether these are likely to be used by children or vulnerable persons;
- the customer profile of the premises;
- staffing levels;
- staff training;
- whether there is any indication of problems with young persons attempting to access adult gambling facilities in that type of gambling premises in the area.

51. Applicants should liaise with other gambling operators in the area to identify risks and consult with any relevant responsible authorities as necessary.

52. This policy does not preclude any application being made and every application will be decided on its individual merits, with the opportunity given for the applicant to show how potential concerns can be overcome.

53. The Licensing Authority expects applicants to keep a copy of the local area risk assessment on the licensed premises and to ensure that all staff have seen the risk assessment, have received training in respect of its content, and are able to produce the risk assessment on request by an authorised officer of the Council, the Police or the Gambling Commission.

54. The 5th Edition Guidance suggest that, like operators, licensing authorities complete and map their own assessment of local risks and concerns by developing local area profiles to help shape their statements; although there is no requirement to do this.

55. In simple terms, the objective of a local area profile in this context is to set out what an area is like, what risks this might pose to the licensing objectives, and what the implications of this are for the licensing authority and operators.

56. Licensing authorities can include the local area profiles within their statements. Alternatively they can reference the implications of local area profiles for their regulatory approach in the statement, but maintain the actual profiles separately in order to enable them to be updated without the need to re-consult on amending the full statement of principles. This is the approach that Swale Borough Council wish to take and a local area profile will be published as a separate appendix to this policy.

57. It should be noted that, in assessing local area profiles, Licensing Authorities can take into account the location of:

- Schools, sixth form colleges, youth centres etc., with reference to the potential risk of under-age gambling;

- Hostels or support services for vulnerable people, such as those with addiction issues or who are homeless, given the greater risk of problem gambling among these groups;
- Religious buildings;
- Any known information about issues about problem gambling;
- The surrounding night-time economy, and possible interaction with gambling premises;
- Patterns of crime or anti-social behaviour in the area, and specifically linked to gambling premises;
- The socio-economic makeup of the area;
- The density of different types of gambling premises in certain locations; and
- Specific types of gambling premises in the local area (e.g., seaside resorts may typically have more arcades or FECs)

This Licensing Authority will expect operators to include the above factors, and any local area profiles create by the Council, when carrying out their risk assessments.

Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime

58. The Licensing Authority will consider whether the premises make, or are likely to make, a contribution to the levels of crime and disorder in an area and whether the applicant has demonstrated that they have, 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.
59. The licensing authority will give “due regard” to all possible implications and will always consider all the information available and representations made.
60. Where an area is known for high levels of crime (particularly crime associated with premises used for gambling), the Licensing Authority will consider 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.
61. In accordance with Section 17 of the Crime and Disorder Act 1998 the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent, crime and disorder in its areas. The possible crime and disorder implications are clearly relevant factors in the consideration of all applications and this is re-emphasised by the Gambling Act 2005 itself.
62. The Council places huge importance on the prevention of crime and disorder. A high standard of control is, therefore, expected to be exercised over licensed premises.

63. In terms of disorder, the Guidance to Licensing Authorities published by the Gambling Commission states, “licensing authorities should generally consider disorder as activity that is more serious and disruptive than mere nuisance. Factors to consider in determining whether a disturbance was serious enough to constitute disorder would include whether Police assistance was required and how threatening the behaviour was to those who could hear or see it.
64. There is not a definitive distinction between nuisance and disorder and the licensing authority may seek legal advice before determining what action to take in circumstances in which disorder may be a factor”. The licensing authority will give “due regard” to all possible implications
65. The Licensing Authority will consider whether the layout, lighting, staffing and fitting out of the premises have been designed so as to minimise conflict and opportunities for crime and disorder.
66. The Licensing Authority will consider 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.

Ensuring that gambling is conducted in a fair and open way

67. Though this licensing objective is primarily the responsibility of the Gambling Commission, the Licensing Authority will have a role in respect of the licensing of tracks, where an Operator’s Licence from the Gambling Commission is not required. Matters to be taken into account will include:
- 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 Gambling Commission’s Licence Conditions and Codes of Practice have been complied with.

Protecting children and other vulnerable persons from being harmed or exploited by gambling

68. The Licensing Authority will consider the following when taking this licensing objective into account:
- whether the operator has a specific training programme for staff to ensure 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;

- The Council will require that any gambling establishment must give space to advertisements publicising details of organisations and support groups providing assistance to anyone addicted to gambling
- if the premises is an adult only environment, whether the operator has taken effective measures to implement a proof of age scheme such as Think 21 to ensure 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 activities authorised at the premises, is not aimed or could encourage the use of gambling products at the premises, by children or young people;
- whether the operator can produce a record of underage challenges and action taken to establish age and prevent underage persons from being able to gamble;
- whether the premises are located near to facilities that may encourage their use by vulnerable people, such as hostels for those with mental illness and/or addiction problems.

69. The Licensing Authority expects 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. It is noted that neither the Act nor the Gambling Commission Guidance defines the term 'vulnerable persons'. The Licensing Authority consider the term 'vulnerable persons' to include 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, changes in circumstances such as bereavement, loss of employment or ill health or due to alcohol or drugs.

70. The Council may consult with Kent County Council's Child Protection Agency on any application that may give cause for concern over access for children or vulnerable persons.

Chapter Four

Premises Licences

71. 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.
72. Premise is defined in the Act as 'any place'. Different premises licences cannot apply in respect of a single premise at different times. However, it is possible for a single building to be subject to more than one premises licence, provided that are for different parts of the building and the different parts of the building can be reasonably regarded as being different premises. Whether different parts of a building can be reasonably regarded as different premises will depend on the circumstances of the individual building and how any division is proposed
73. Premises Licences can authorise the provision of facilities on:
- (a) casino premises,
 - (b) bingo premises,
 - (c) betting premises including tracks and premises used by betting intermediaries,
 - (d) adult gaming centre premises, or
 - (e) family entertainment centres.
74. Matters the Licensing Authority may not take into account include:
- the expected demand for gambling premises in the area;
 - planning or building law restrictions;
 - moral or ethical objections to gambling as an activity;
 - dislike of gambling;
 - a general notion that gambling is undesirable.
75. All licences will be subject to mandatory and/or default conditions and conditions imposed by the Licensing Authority. The Licensing Authority may consider that conditions other than the mandatory or default conditions are necessary to ensure the premises are reasonably consistent with the licensing objectives, the Gambling Commission's Codes of Practice and this Statement of Principles.
76. The Licensing Authority will take decisions in accordance with the Gambling Commission's Guidance and Licence Conditions and Codes of Practice and will have regard to the advice which it issues from time to time. The Licensing Authority will monitor the operation of premises and report any potential breach of Operating Licence conditions to the Gambling Commission. Applicants for new Premises Licences or variations to existing ones should be clear that the premises are intended to be used for the primary gambling activity proposed. For example a betting Premises Licence application that has four gaming machines but no betting counter or associated betting facilities shown on the proposed plans would not be

considered as offering the primary gambling activity in accordance with that indicated on the application.

77. The majority of Premises Licences will have mandatory and/or default conditions attached to the licence. The Licensing Authority can attach its own conditions to a Premises Licence if it believes this will promote the licensing objectives. Any conditions attached 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;
- relate to the scale and type of premises; and
- reasonable in all respects.

78. Certain matters are 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
- conditions on fees, winnings, stakes or prizes.

79. Conditions will be attached to individual licences on the basis of their merits. However, there will be a number of measures the Licensing Authority will commonly consider utilising in order to pursue the licensing objectives. These may include measures such as:

- the supervision of entrances;
- separation of gambling from non-gambling areas frequented by children;
- the supervision of gaming machines in premises not specifically for adult gambling and
- appropriate signage for adult only areas.

The Licensing Authority will expect the applicant to propose how the licensing objectives can be met effectively through the use of conditions.

Split Premises

80. The Gambling Commission's Guidance states that a building can, in principle, be divided into more than one premises and be subject to more than one Premises Licence provided they are for different parts of the building, and the different parts of the building can reasonably be regarded as being different premises. An example is given of units within a shopping mall, where each unit is separate self-contained premises contained within one building. It is also possible for licensed premises to be located next to each other.

81. The Gambling Commission state they do 'not consider that areas of a building that are artificially separated, for example by ropes or moveable partitions, can properly be regarded as separate premises'.
82. To agree to accept applications to grant or vary a licence for a building which has been divided, the Licensing Authority will need to be satisfied the premises are genuinely separate premises, and not an artificially created additional part of single premises.
83. In considering whether different areas of a building are genuinely separate premises the Licensing Authority may take into account factors which could include:
- whether there are separate registrations for business rates in place for each premises;
 - whether separate sets of staff work in the individual premises;
 - whether there is a separate cash desk/reception for each of the premises;
 - whether each premises has its own postal address;
 - whether the premises are owned or operated by the same person;
 - whether each of the premises can be accessed from a street or public passageway;
 - whether the premises can only be accessed from any other gambling premises.
84. When considering proposals to divide a building into separate premises, the Licensing Authority will also need to be satisfied that the form of separation between the premises is appropriate.
85. 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.
86. It may be acceptable for staff working in adjacent premises to have access through barriers between premises. The applicant must demonstrate that in providing staff access there are suitable control measures in place that will ensure the safety and security of staff and will prevent the public from using the same access point to enter the other premises.
87. 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 Licensing Authority will have to be satisfied that proposals to divide buildings are compatible with the mandatory conditions relating to access between premises.
88. The Guidance at paragraph 7.22 states "There is no definition of 'direct access' in the Act or Regulations, but licensing authorities may consider 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."

89. It is the Licensing Authority's opinion that any area which separates licensed premises, and from which those premises can be accessed, must be genuinely separate premises which are habitually and actually used by members of the public other than those using the licensed premises.

90. Where the Licensing Authority is satisfied that a building can be divided into separate premises it will expect applicants to ensure that:

- the premises are configured so that children are not invited to participate in, have accidental access to, or closely observe gambling to which they are prohibited from taking part;
- the premises are not configured so children are likely to enter an adult only area to join a parent gambling in that adult only area,
- entrances and exits from parts of a building covered by one or more Premises Licences are separate and identifiable so the separation of different premises is not compromised and people do not 'drift' into a gambling area. In this context it should be possible to access the premises without going through another licensed premises or premises with a permit;
- customers should be able to participate in the activity named on the Premises Licence.

This is not an exhaustive list and the Licensing Authority will consider other aspects based on the merits of the application.

Access to Premises

91. The Gambling Act 2005 (Mandatory and Default Conditions) Regulations set out access provisions for each type of licensed gambling premises. The broad principle is there can be no direct access from one licensed gambling premises to another, except between premises which allow those aged under-18 to enter and with the further exception that licensed betting premises may be accessed via other licensed betting premises.

92. 'Direct access' is not defined, but the Licensing Authority will consider there should be an area such as a street or café to which the public attend for purposes other than gambling for there to be no direct access.

Type of Premises	Access Provisions
Casino	<ul style="list-style-type: none"> • The principal access to the premises must be from a 'street'; • No entrance to a casino must be from premises that are used wholly or mainly by children and/or young persons; • No customer must be able to access a casino directly from any other premises which holds a

	gambling premises licence.
Adult Gaming Centre	<ul style="list-style-type: none"> No customer must be able to access the premises directly from any other licensed gambling premises.
Betting Shop	<ul style="list-style-type: none"> Access must be from a 'street' or from other premises with a betting licence; No direct access is permitted from a betting shop to another premises used for the retail sale of merchandise or services. In effect there cannot be any entrance to a betting shop from a shop of any kind unless that shop is in itself a licensed betting premises.
Track	<ul style="list-style-type: none"> No customer must be able to access the premises directly from a casino or Adult Gaming Centre.
Bingo Premises	<ul style="list-style-type: none"> No customer must be able to access the premises directly from a casino, an Adult Gaming Centre or a betting premises, other than a track.
Family Entertainment Centre	<ul style="list-style-type: none"> No customer must be able to access the premises directly from a casino, an Adult Gaming Centre or a betting premises, other than a track.

Plans

93. The Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007 state that a plan to accompany an application for a Premises Licence must show:

- the extent of the boundary or perimeter of the premises
- where the premises include, or consist of, one or more buildings, the location of any external or internal walls of each such building
- where the premises forms part of a building, the location of any external or internal walls of the building which are included in the premises
- where the premises are a vessel or a part of a vessel, the location of any part of the sides of the vessel, and of any internal walls of the vessel which are included in the premises
- the location of each point of entry to and exit from the premises, including in each case a description of the place from which entry is made or to which exit leads.

94. The Regulations also state that other than in respect of a track, the plan must show 'the location and extent of any part of the premises which will be used to provide facilities for gambling in reliance on the licence'. The Licensing Authority may, however, consider that these minimum requirements are insufficient to satisfy them in respect of the licensing objectives at tracks, Gambling Commission Guidance, Codes of Practice or its own Statement of Licensing Policy. In such cases, the

Licensing Authority may ask for such additional information to be shown on the plan as it deems necessary to enable it to discharge its duties effectively. Information shown on the plan that is not required by Regulations will not form part of the Premises Licence and will only be used by the Licensing Authority to help it make a considered decision on the application.

95. If plans change in any material respect during the lifetime of the licence, the applicant will be in breach of their licence and would either need to make a fresh application under s.159 or to seek an amendment to the licence under s.187 of the Gambling Act 2005. If the changes are substantial, this may, in the opinion of the Licensing Authority, render the premises different to those to which the licence was granted. In such cases, variation of the licence under s.187 would not be possible and an application for a new application would be required under s.159.

General Requirements for All Premises

96. The Licensing Authority expects all applicants for gambling Premises Licences to ensure there is adequate provision for staff to supervise persons using the licensed premises. This is to identify those who have self-excluded, vulnerable persons, under age persons, persons gambling beyond limits they have set for themselves, person who may be involved in crime, persons who may be prone to anti-social behaviour, persons who are drinking alcohol where this is prohibited and persons who are showing signs of distress in respect of their gambling.

97. Applicants must take the structure and layout of the premises into account when considering their own policies and procedures. For example, where it is not possible for counter staff to supervise persons using gambling facilities such as gaming machines, the Licensing Authority would expect applicants to volunteer conditions that floor walkers will be used or that counter staff will be able to view all areas of the premises on CCTV provided to the counter area where it can be clearly seen.

98. Arrangements must be made for how staff will deal with customers who become aggressive and for ejecting patrons who are, for example, self-excluded, vulnerable or under age. This will include staff training and ensuring there are appropriate numbers of staff to deal with problems.

99. Staff should be in a position to monitor entrances and gaming machines and challenges should be initiated at the earliest opportunity.

100. Where access to premises is age restricted, the Licensing Authority expects applicants to have a Think 21 policy in place and to train its staff in recognising acceptable forms of identification. Posters should also be displayed stating that the relevant policy is in place and that users may be challenged.

101. Licence holders should record details of persons who have self-excluded, persons who have been ejected or refused admission, persons who have been barred by the operator, and any instances of crime or disorder that occurs on, or in association with, the licensed premises.

102. Applicants should demonstrate how they will identify self-excluded persons.

Casinos

103. Under Section 166 of the Act the Council may pass a resolution not to issue any casino premises licences. The Council has not passed such a resolution but should it decide to do so in the future, it will update this Policy Statement..

Bingo

104. This policy applies to applications for a Bingo Premises Licence. Bingo has its ordinary and natural meaning and includes any version of the game irrespective of by what name it is described. A holder of a bingo Premises Licence will be able to offer bingo in all its forms.

105. Children and young persons 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.

106. The Licensing Authority expects that where children are permitted in bingo premises, any category B or C machines are located in an area which is separated from the rest of the premises by barriers or in a separate room, where it is made clear that entry is permitted only for those aged 18 or over. Appropriate signage should be provided to this effect and the area should be monitored by staff, either through direct supervision or by monitored CCTV.

107. 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 licences unless the applicant demonstrates how they intend to meet this licensing objective and identify appropriate measures they will take to protect young employees.

108. Where hand held gaming devices are to be used on bingo premises, the Licensing Authority expects applicants to demonstrate how use of these devices will be monitored by staff.

Betting Premises

109. This policy applies to applications for off-course betting premises. This is betting that takes place other than at a track, typically in a betting shop.
110. The Licensing Authority must be satisfied that the primary use of the premises is to operate as betting premises. The applicant will be expected to demonstrate they are offering sufficient facilities for betting or otherwise should not make gaming machines available on the premises.
111. In determining applications for betting premises, the Licensing Authority shall consider the following:
- proof of age schemes
 - CCTV
 - entry control system
 - staff numbers
 - staff training
 - counter layout
 - supervision of entrances/ machine areas
 - machine privacy screens
 - notices/ signage
 - opening hours
 - provision of responsible gambling information

This list is not exhaustive, and is merely indicative of example measures the Licensing Authority will expect applicants to offer to meet the licensing objectives.

112. Betting machines made available at betting premises that accept bets on live events such as horse racing (SSBT's or self-service betting terminals) are not gaming machines and therefore do not count towards the total number of gaming machines that may be permitted at betting premises. However, where a machine is made available to take bets on 'virtual' races (e.g. results/images generated by a computer to resemble a real race or event), that IS a gaming machine and counts towards the maximum permitted number of gaming machines, and is subject to the relevant statutory limits on stakes and prizes.
113. Section 181 of the Gambling Act 2005 permits the Licensing Authority to restrict the number of SSBT's, their nature and the circumstances in which they may be made available by attaching a relevant condition to a Premises Licence for a betting office. When considering whether to do so, the Licensing Authority will consider, among other things, the ability of employees to monitor the use of the machines by children and young persons or by vulnerable people.
114. The Licensing Authority when considering the number, nature and circumstances of self-service betting terminals an operator wants to offer will 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.

115. Where an SSBT includes functionality to be marketed or presented in languages other than English, the Licensing Authority will seek to ensure the operator has considered the ordinary code provision set by the Gambling Commission about making the following information also available in the relevant languages:

- information on how to gamble responsibly and access the help referred to in the Gambling Commission's Licence Conditions and Codes of Practice;
- the player's guide to any game, bet or lottery under the provisions of the Gambling Commission's Licence Conditions and Codes of Practice;
- the summary of the contractual terms on which gambling is offered, which is a condition of the licence holder's Operating Licence issued by the Gambling Commission.

Betting Tracks and Other Sporting Venues

116. 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 Gambling Commission Guidance identifies that operators of track betting premises will not necessarily hold an Operating Licence issued by the Commission. The Licensing Authority will have particular regard to proposals and measures to ensure the environment in which betting takes place is suitable for betting and that betting is conducted in a fair and open way.

117. Examples of tracks include:

- Horse racecourses
- Greyhound tracks
- Point to point horserace meetings
- Football, cricket and rugby grounds
- Athletics stadia
- Golf courses
- Venues hosting darts, bowls or snooker tournaments
- Premises staging boxing matches
- Sections of river hosting fishing competitions
- Motor racing events

118. The offence of permitting a child or young person to enter gambling premises under section 47 of the Act does not apply to tracks. Therefore the Licensing Authority will consider the impact upon the objective of protection of children and vulnerable persons, the need to ensure that entrances to each type of licensed premises within the sporting venue are distinct, and that children are excluded from gambling areas which they are not permitted to enter.

119. The possibility of multiple licences at tracks is noted in Part 20 of the Gambling Commission Guidance. The Licensing Authority 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. Children and young persons are permitted to enter track areas where facilities for betting are provided on days when dog-racing and/or horse racing takes place, but are still prevented from entering areas where gaming machines (other than category D machines) are provided. Children and young persons are not prohibited from playing category D machines on a track.

120. In determining applications for betting at tracks, consideration will be given to appropriate measures/licensing conditions to address the matters listed below:

- proof of age schemes such as Think 21
- CCTV
- entry control system
- supervision of entrances/ machine areas
- physical separation of areas
- notices/ signage
- opening hours
- provision of responsible gambling information
- provision of policies and procedures in relation to social responsibility measures as set out below
- staffing levels
- staff training and records of staff training
- recording of incidents such as underage challenges, customer interactions for problem gambling, self-exclusions and complaints and disputes relating to gambling
- details of action to be taken where an on course bookmaker has breached their Gambling Commission Operating Licence conditions repeatedly, for example where children have been able to gamble.

This list is not exhaustive, and is merely indicative of example measures the Licensing Authority will expect applicants to offer to meet the licensing objectives.

121. Track betting operators must be able to demonstrate their adoption of socially responsible gambling policies and procedures. Such policies and procedures must ensure that track betting activities promote the licensing objectives of ensuring that gambling is conducted in a fair and open way and children and other vulnerable people are not harmed or exploited by gambling.

122. A track Premises Licence does not in itself entitle the holder to provide gaming machines. However, by virtue of section 172(9) of the Act, track owners who hold both a track Premises Licence AND a pool betting Operating Licence issued by the Gambling Commission (this currently only applies to greyhound tracks) may provide up to four Category B2 to D gaming machines on the track.

123. The Licensing Authority will consider the location of gaming machines at tracks, and applicants for track Premises Licences will need to demonstrate that, where the applicant holds or seeks a pool betting Operating Licence and is going to use their full entitlement to gaming machines, these machines are located in areas from which children are excluded. The applicant will be required to provide information as to what measures it will put in place around the gaming machines to ensure that children are excluded.
124. The Licensing Authority will expect applicants to include detailed plans for the race track itself and the area that will be used for temporary “on-course” betting facilities (often known as the “betting ring”), pool betting, and any other proposed gambling facilities. Plans should make clear what is being sought for authorisation under the track betting Premises Licence and what, if any, other areas are to be subject to a separate application for a different type of Premises Licence. Any such plans must also contain the information prescribed by regulations.
125. In respect of staff training, the Licensing Authority would expect staff involved with the provision of gambling facilities at the track to be trained in social responsibility measures including, but not limited to, age verification, problem gambling indicators and action to be taken, self-exclusion, complaints procedures and money laundering indicators and action to be taken. Records of such training should be retained by the track management showing the subjects the staff member was trained in and the date training took place. These should be signed off by the staff member and training should be refreshed at least annually.
126. The Licensing Authority expects track operators to have policies and procedures in place to deal with age verification, self-exclusion, money laundering, complaints and disputes and problem gambling as a minimum and to ensure that all staff involved in the provision of gambling facilities are aware of these policies and procedures and have been trained in their implementation.
127. The Licensing Authority expects track management to ensure appropriate problem gambling information is provided commensurate to the size and layout of the premises. This should be in the form of posters and also leaflets which a customer can take away. Leaflets should be provided in areas where they can be taken away discreetly by the customer.
128. Section 152 of the Act permits tracks to be the subject of multiple Premises Licences.
129. Access between premises licensed for gambling and non-gambling areas will be considered carefully by the Licensing Authority for the following reasons:
- To prevent operators from attempting to circumvent the Act by artificially sub-dividing premises and securing separate Premises Licences for its composite parts;
 - To ensure operators do not circumvent the regulations governing the maximum number of gaming machines that may be provided at specific premises;

- To ensure people who have entered premises to take part in one form of gambling are not exposed to another form of gambling;
- To ensure there is no direct access between gambling premises to which children have access and those which they are prohibited from entering;
- To ensure all gambling premises have publicly accessible entrances;
- To ensure gambling premises are not developed in 'back rooms' of other commercial premises.

Adult Gaming Centres (AGC's)

130. Adult gaming centre (AGC) 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 relevant Operating Licence from the Gambling Commission and must seek a Premises Licence from the Licensing Authority. Gaming machines are a form of gambling attractive to children and AGC's may contain machines of a similar format to the Category D machines on which children are allowed to play. However, persons under the age of 18 are not permitted to enter an AGC.

131. Because gaming machines provides opportunities for solitary play and immediate pay-outs, they are more likely to engender repetitive and excessive play. The Licensing Authority in considering Premises Licences for AGC's 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 that there will be sufficient measures to, for example, ensure that under 18 year olds are not attracted to, or gain access to, the premises.

132. The Licensing Authority will expect applicants to offer their own measures to meet the licensing objectives; however appropriate measures / licence conditions may cover issues such as:

- proof of age schemes
- CCTV
- entry control system
- supervision of entrances/ machine areas
- physical separation of areas
- notices/ signage
- opening hours
- staffing levels
- staff training
- provision of problem gambling information
- self-exclusion schemes

This list is not exhaustive, and is merely indicative of example measures the Licensing Authority will expect applicants to offer to meet the licensing objectives.

Family Entertainment Centres (FEC's)

133. Generally, FEC's must be operated by a person or body having an Operating Licence from the Gambling Commission. Unlicensed Family Entertainment Centres do not require the operator to have a Gambling Commission Operator's Licence or Premises Licence from the Licensing Authority, but do need to have a gaming machine permit as set out in the section on Permits. Unlicensed Family Entertainment Centres may only be used to provide category D gaming machines.

134. Gaming machines are a form of gambling which is attractive to children and licensed FEC's will contain both Category D machines on which they are allowed to play, and category C machines on which they are not. Because gaming machines provide opportunities for solitary play and for immediate payouts, they are more likely to engender repetitive and excessive play. The Licensing Authority, 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 18 year olds do not have access to the adult only gaming machine areas.

135. The Licensing Authority will expect applicants to offer their own measures to meet the licensing objectives however appropriate measures/ licence conditions may cover issues such as:

- CCTV
- supervision of entrances/ machine areas
- physical separation of areas for category C machines
- location of entry
- notices/ signage
- opening hours
- staffing levels
- staff training
- self-exclusion schemes
- provision of problem gambling information
- measures & training for dealing with children on the premises suspected of truanting.

This list is not exhaustive, and is merely indicative of example measures the Licensing Authority will expect applicants to offer to meet the licensing objectives.

136. The Licensing Authority expects applicants to demonstrate adequate separation between the area in which category C gaming machines are made available and areas of the premises to which children may have access. This will include whether physical separation is provided, staff supervision, signage and layout and presentation of the premises as a minimum. Operators should be aware of the risk of children entering adult only areas to speak to a parent who may be gambling in that area for example and have appropriate controls in place to reduce the risk of this.

Door Supervisors

137. The Gambling Commission Guidance advises that licensing authorities may consider whether there is a need for door supervision in terms of the licensing objectives of protection of children and vulnerable persons from being harmed or exploited by gambling, but there can also be a need for supervision to stop premises becoming a source of crime. Door supervisors at casinos or bingo premises are not required to be registered by the Security Industry Authority (SIA) under the Private Security Industry Act 2001. Door supervisors not directly employed by a casino or bingo operator do however have to be SIA registered.
138. For betting offices and other premises, the operator and/or the Licensing Authority may decide that supervision of entrances or machines is appropriate in particular cases. The Licensing Authority will make door supervision a requirement where there is evidence, from the history of trading at the premises or in the area, that the premises cannot be adequately supervised by counter staff or that problem customers cannot be dealt with effectively by counter staff alone and that door supervision is both necessary and proportionate.

Provisional Statements

139. Following the grant of a provisional statement, no further representations from responsible 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.

Reviews

140. Requests for a review of a Premises Licence can be made by interested parties or responsible authorities, including the Licensing Authority. 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 matters listed below:
- any relevant Code of Practice issued by the Gambling Commission;
 - any relevant guidance issued by the Gambling Commission;
 - the licensing objectives;
 - this Statement of Principles.
141. The Licensing Authority may reject an application for review if it thinks the grounds on which the review is sought:

- a) are not relevant to the relevant code of practice or guidance issued by the Gambling Commission, the licensing objectives or the Licensing Authority's statement of principles;
- b) are frivolous;
- c) are vexatious;
- d) 'will certainly not' cause the Licensing Authority to revoke or suspend the licence or to remove, amend or attach conditions on the Premises Licence;
- e) are substantially the same as grounds cited in a previous application relating to the same premises (the Licensing Authority will consider the length of time that has passed since the earlier application in deciding whether this is a reasonable reason to reject the review application);
- f) are substantially the same as representations made at the time the application for the Premises Licence was considered. While the Licensing Authority will consider the length of time that has passed since the representations were made, it will not normally review a licence on the basis of the same arguments considered on the grant of the Premises Licence.

142. General objections to gambling as an activity are not likely to be considered relevant reasons for a review. Other examples of irrelevant considerations include demand for gambling premises, issues relating to planning, public safety and traffic congestion.

143. The Licensing Authority can initiate a review of a particular Premises Licence, or any particular class of Premises Licence, for any reason it believes is appropriate. This includes reviewing a Premises Licence on the grounds that a Premises Licence holder has not provided facilities for gambling at the premises. This is to prevent people from applying for licences in a speculative manner without intending to use them.

144. The Licensing Authority may review any matter connected with the use made of a particular premises if it has reason to believe the Premises Licence conditions are not being observed, or for any other reason which gives it cause to believe a review may be appropriate.

145. A responsible authority or interested party may apply to the Licensing Authority to review a Premises Licence. Such reviews can be made in relation to, amongst other things if there are repeated incidents of crime and disorder associated with the premises or the gambling activity which the premises operator has failed to adequately address, where incidents that have adversely effected one or more licensing objectives have occurred at premises that could have been prevented if advice and guidance from a responsible authority had been heeded, or if the premises due to the activities being undertaken is either attracting children or people likely to be involved in crime and disorder.

146. As a review of a Premises Licence can lead to its revocation, the Licensing Authority will consider whether informal actions to ensure timely or immediate compliance have been exhausted prior to an application being made. The Licensing Authority accepts that an application for review may be appropriate without informal

measures being taken, but will seek to establish that all options have been considered in determining review applications.

Chapter Five

Travelling Fairs and Permits

Travelling Fairs

147. The Act defines a travelling fair as ‘wholly or principally’ providing amusements and they must be on a site that has been used for fairs for no more than 27 days per calendar year. Travelling fairs do not require a permit to provide gaming machines but must comply with legal requirements about the way the machines are operated.
148. It will fall to the Licensing Authority 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.
149. The Licensing Authority will also consider whether the applicant falls within the statutory definition of a travelling fair. The 27 day statutory maximum for the land being used as a fair each calendar year applies to the piece of land on which the fairs are held, regardless of whether it is the same or different travelling fairs occupying the land. The Licensing Authority will keep a record of any travelling fairs that take place in within the borough of Swale, that offer gambling as an ancillary use to the fair. The authority will ensure the 27 day statutory maximum for the land being used is not breached. The Licensing Authority will advise travelling fair operators if requested of the statutory time period remaining for the land they intend to use.

Permits

150. Permits regulate gambling and the use of gaming machines in a premises which do not hold a Premises Licence. They are required when a premises provides gambling facilities but either the stakes are very low or gambling is not the main function of the premises.

The Licensing Authority is responsible for issuing the following permits:

- a) unlicensed family entertainment centre gaming machine permits;
- b) alcohol licensed gaming machine permits;
- c) prize gaming permits;
- d) club gaming permits and club machine permits.

151. The Licensing Authority can only grant or reject an application for a permit and cannot attach conditions. Therefore, the Licensing Authority will consider a number of factors before determining an application for a permit to ensure that the permit holder and the premises are suitable for the proposed gambling activities.

Unlicensed family entertainment centre gaming machine permits

152. This policy applies to those premises that are proposed to be used as Unlicensed Family Entertainment Centres (uFEC's). uFEC's are those that offer only category D machines and a permit allows any number of these machines to be made available at the premises (subject to other considerations such as health and safety and fire regulations). Given that category D machines have no age restrictions, these premises particularly appeal to children and young persons. Therefore, the Licensing Authority will give particular weight to matters relating to child protection issues.
153. The Licensing Authority will grant an application for a permit only if it is satisfied that the premises are used wholly or mainly for making gaming machines available for use, and following consultation with the Police.
154. The Licensing Authority will not grant uFEC permits where the premises are not primarily used for making gaming machines available for use in accordance with section 238 of the Gambling Act 2005. This will preclude granting permits to lobbies in shopping centres or motorway service areas for example.
155. In cases where an existing uFEC permit has been granted to premises not primarily used for making gaming machines available, the Licensing Authority shall generally refuse to renew such permits. Decisions however will be made on a case by case basis.
156. Applicants for uFEC permits are expected to provide a scale plan of the premises with their application showing entrances/exits, location of CCTV cameras, cash desk, and machine locations as well as other features such as a bowling alley for example or play area which may form part of the premises.
157. The Licensing Authority will require applicants to demonstrate as a minimum:
- a full understanding of the maximum stakes and prizes of gambling that is permissible in unlicensed FECs;
 - that problem gambling information will be provided in the premises commensurate with its size and layout;
 - that the applicant has a written policy in place to deal with complaints and disputes which can be given to a customer on request;
 - that the applicant has no relevant convictions (those that are set out in Schedule 7 of the Act);
 - that staff are trained to recognise problem gambling and signpost a customer to problem gambling information;
 - that staff have been trained in how to deal with complaints and disputes in line with the applicant's policy.
158. The Licensing Authority will expect the applicant to show there are policies and procedures in place to protect children and vulnerable people from harm. Harm in this context is not limited to harm from gambling but includes wider child protection

considerations. The efficiency of such policies and procedures will each be considered on their merits. However, they may include:

- measures/training for staff regarding suspected truant school children on the premises;
- measures/training covering how staff will deal with unsupervised very young children being on the premises;
- measures/training covering how staff would deal with children causing perceived problems on or around the premises.

Automatic entitlement to two gaming machines

159. Premises licensed to sell alcohol on the premises under the Licensing Act 2003 are automatically entitled to provide two gaming machines of category C and/or D. The holder of the Premises Licence under the Licensing Act 2003 must notify the Licensing Authority of their intention to make the gaming machines available for use and must pay the prescribed fee.

160. This entitlement only relates to premises with a Licensing Act 2003 Premises Licence that authorises the sale of alcohol for consumption on the premises and which contain a bar at which alcohol is served without the requirement that alcohol is only sold ancillary to the provision of food.

161. Licensees siting gaming machines must comply with the relevant Gambling Commission Code of Practice.

162. Licensees must be aware that gaming machines can only be supplied by a person holding an Operating Licence from the Gambling Commission enabling them to do this. A register of licensed suppliers can be found on the Gambling Commission's website at www.gamblingcommission.gov.uk.

163. In the event that the relevant authorisation under the Licensing Act 2003 is transferred, lapses or is revoked, the automatic entitlement to two gaming machines ceases to have effect and a new notification will need to be served on the Licensing Authority.

164. The Licensing Authority will 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 provision 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);
- the premises are mainly used for gaming; or
- an offence under the Gambling Act has been committed on the

premises.

Permit for three or more gaming machines

165. This policy applies to alcohol licensed premises that propose to have three or more gaming machines. Licensed premises wishing to have three or more gaming machines of category C or D must apply to the Licensing Authority for a permit. This permit will replace the automatic entitlement to two gaming machines rather than be in addition to it and the holder must comply with the relevant Gambling Commission Code of Practice.

166. As gaming machines provide opportunities for solitary play and immediate pay-outs, they are more likely to engender repetitive and excessive play. The Licensing Authority, on considering an application, will consider whether granting a permit would be appropriate on a case by case basis, but will specifically have regard to:

- the need to protect children and vulnerable people from harm or being exploited by gambling;
- measures taken by the applicant to satisfy the Licensing Authority that there are sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machines;
- whether the applicant has an effective policy in place for handling customer complaints or disputes about the gaming machines.

167. The Licensing Authority will expect applicants to offer their own measures to meet the licensing objectives. However, appropriate measures may cover issues such as:

- the adult machines being in the sight of staff who will monitor that the machines are not being used by those under 18 and look for signs of problem gambling, attempts to cheat the machine, or suspected money laundering;
- notices and signage;
- the provision of information leaflets or helpline numbers for organisations who can assist with problem gambling.

168. If the Licensing Authority is not satisfied that appropriate measures have been taken by the applicant to comply with this policy, it may refuse to grant the permit, or it may vary the number or category of gaming machines authorised by the permit.

169. The Licensing Authority may cancel a permit or may vary the number or category (or both) of gaming machines authorised by it if:

- (a) it would not be reasonably consistent with pursuit of the licensing objectives for the permit to continue to have effect,
- (b) gaming has taken place on the premises in purported reliance on the permit but otherwise than in accordance with the permit or a condition of the permit,

- (c) the premises are mainly use or to be used for making gaming machines available, or,
- (d) an offence under the Gambling Act 2005 has been committed on the premises.

170. Before the Licensing Authority cancels or varies a permit it will give the permit holder 21 days' notice of its intention and allow him/her the opportunity to make a representation. If the permit holder requests a hearing the Licensing Authority will arrange a Licensing Sub-Committee hearing to consider the permit holder's representation and any other evidence available before making its determination.

171. When determining an application for an alcohol-licensed premises gaming machine permit, the Licensing Authority will consider each application on its own merits.

Prize Gaming Permits

172. This policy applies to applications for, or renewals of, prize gaming permits. Gaming is prize gaming "if the nature and size of the prize is not determined by the number of people playing or the amount paid for or raised by the gaming". Normally the prizes are determined by the operator before play commences.

173. Prize gaming may take place without a permit in various premises. These are casinos, bingo halls, adult gaming centres, licensed and unlicensed family entertainment centres and travelling fairs.

174. Given that the prize gaming will particularly appeal to children and young persons, the Licensing Authority will give weight to child protection issues.

175. The applicant will be expected to set out the types of gaming that they are intending to offer and will also be expected to demonstrate:

- an understanding of the limits to stakes and prizes set out in regulations;
- that the gaming offered is within the law;
- clear policies that outline the steps to be taken to protect children and vulnerable persons from harm.

176. The Licensing Authority will only grant a permit after consultation with the Police. This will enable the Licensing Authority to determine the suitability of the applicant in terms of any convictions that they may have that would make them unsuitable to operate prize gaming, the suitability of the premises in relation to their location, and issues about disorder.

177. There are conditions in the Act with which the permit holder must comply, though 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.

Club Gaming and Club Machine Permits

178. Members clubs and miners' welfare institutes (but not commercial clubs) may apply for a club gaming permit or a club machine permit. Commercial clubs such as snooker clubs run on a profit basis may apply for a club machine permit. Each type of permit allows the provision of different types of gaming and provision of gamine machines. The current entitlements can be found by visiting the Gambling Commission's website (www.gamblingcommission.gov.uk).

179. A commercial club is defined as a club where membership is required but the club is operated for commercial gain.

180. A non-commercial club is a club where no commercial gain is made. A non-commercial club must meet the following criteria to be considered a members' club:

- it must have at least 25 members;
- it must be established and conducted wholly or mainly for purposes other than gaming (with the exception of bridge or whist);
- it must be permanent in nature;
- it must not be established to make a commercial profit;
- it must be controlled by its members equally.

Examples of these include working men's clubs, branches of the Royal British Legion and clubs with political affiliations.

181. The Licensing Authority 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 Gambling Commission or the Police.

182. There is also a “fast-track” procedure available under the Act for premises that hold a club premises certificate under the Licensing Act 2003. Under the fast-track procedure there is no opportunity for objections to be made by the Gambling Commission or the Police, and the grounds upon which a Licensing Authority can refuse a permit are reduced. The grounds on which an application under this process may be refused are that:

- (a) the club is established primarily for gaming, other than gaming prescribed under schedule 12;
- (b) in addition to the prescribed gaming, the applicant provides facilities for other gaming; or
- (c) a club gaming permit or club machine permit issued to the applicant in the last ten years has been cancelled.

183. There are statutory conditions on club gaming permits that no child may use a category B or C gaming machine on the premises and that the holder complies with any relevant provision of a Gambling Commission Code of Practice about the location and operation of gaming machines.

184. The Licensing Authority will need to satisfy itself that the club meets the requirements of the Gambling Act 2005 to hold a club gaming permit. In order to do this, it may require proof of additional information from the operator such as:

- is the primary activity of the club something other than gaming?
- are the club’s profits retained solely for the benefit of the club’s members?
- are there 25 or more members?
- are the addresses of members of the club genuine domestic addresses and do most members live reasonably locally to the club?
- do members participate in the activities of the club via the internet?
- do guest arrangements link each guest to a member?
- is the 48 hour rule being applying for membership and being granted admission being adhered to?
- are there annual club accounts available for more than one year?
- how is the club advertised and listed in directories and on the internet?
- are children permitted in the club?
- does the club have a constitution and can it provide evidence that the constitution was approved by members of the club?
- is there a list of Committee members and evidence of their election by the club members?

185. When examining the club’s constitution, the Licensing Authority would expect to see evidence of the following:

- Who makes commercial decisions on behalf of the club?
- Are the aims of the club set out in the constitution?

- Are there shareholders or members? Shareholders indicate a business venture rather than a non-profit making club.
- Is the club permanently established? (Clubs cannot be temporary).
- Can people join with a temporary membership? What is the usual duration of membership?
- Are there long term club membership benefits?

186. Aside from bridge and whist clubs, clubs may not be established wholly or mainly for the purposes of gaming. The Licensing Authority may consider such factors as:

- How many nights a week gaming is provided;
- How much revenue is derived from gambling activity versus other activity;
- How the gaming is advertised;
- What stakes and prizes are offered;
- Whether there is evidence of leagues with weekly, monthly or annual winners;
- Whether there is evidence of members who do not participate in gaming;
- Whether there are teaching sessions to promote gaming such as poker;
- Where there is a tie-in with other clubs offering gaming through tournaments and leagues;
- Whether there is sponsorship by gaming organisations;
- Whether participation fees are within limits.

Chapter Six Notices

Temporary Use Notices

187. This policy applies to applications for Temporary Use Notices. Temporary Use Notices allow 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.
188. The Licensing Authority can only grant a Temporary Use Notice to a person or a company holding a relevant Operating Licence.
189. 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.
190. 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 Licensing Authority any cause for concern at previous events in relation to the licensing objectives, the guidance issued by the Gambling Commission, the relevant code of practice or this Statement of Principles.

Occasional Use Notices

191. The Licensing Authority has very little discretion on Occasional Use Notices for betting at tracks aside from ensuring the statutory limit of eight days a calendar year is not exceeded. The Licensing Authority will consider the definition of a “track” and whether the applicant can demonstrate they are responsible for the administration of the “track” or an occupier, and thus permitted to avail themselves of the notice. 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, hotels and other venues. If notices are given for a single track which would permit betting to occur for more than eight days per year, the Licensing Authority is obliged to issue a counter notice preventing such a breach occurring.

Chapter Seven

Small Society Lotteries

192. The Gambling Act 2005 provides that promoting or facilitating a lottery is illegal, unless it falls into one of two categories of permitted lottery, namely:

- licensed lotteries – these are large society lotteries and lotteries run for the benefit of local authorities that are regulated by the Commission and require operating licences
- exempt lotteries – there are four types of exempt lottery that are expressly permitted under Schedule 11 of the Act, including the small society lottery.

Definition of lottery

193. A lottery is any arrangement that satisfies all of the criteria contained within the statutory description of either a simple lottery or a complex lottery, under s.14 of the Gambling Act 2005.

194. An arrangement is a simple lottery if:

- persons are required to pay to participate
- one or more prizes are allocated to one or more members of a class
- the prizes are allocated by a process which relies wholly on chance.

195. An arrangement is a complex lottery if:

- persons are required to pay to participate
- one or more prizes are allocated to one or more members of a class
- the prizes are allocated by a series of processes
- the first of those processes relies wholly on chance.

Definition of society

196. A 'society' is the society, or any separate branch of such a society, on whose behalf a lottery is to be promoted. Section 19 of the Gambling Act 2005 defines a society as such if it is established and conducted:

- for charitable purposes, as defined in s.2 of the Charities Act 2006
- for the purpose of enabling participation in, or of supporting, sport, athletics or a cultural activity
- for any other non-commercial purpose other than that of private gain.

197. It is inherent in this definition that the society must have been established for one of the permitted purposes as set out in s.19 of the Act, and that the proceeds of any lottery must be devoted to those purposes. It is not permissible to establish a society whose sole purpose is to facilitate lotteries.

198. Participation in a lottery is a form of gambling. Lotteries must be conducted in a socially responsible manner and in accordance with the Act.
199. The minimum age for participation in a lottery is sixteen. The holder of a small society lottery registration must take reasonable steps to ensure that all those engaged in the promotion of their lottery understand their responsibilities for preventing underage gambling, returning stakes and not paying prizes to underage customers.

External Lottery Managers

200. External lottery managers (ELMs) are required to hold a lottery operator's licence issued by the Gambling Commission to promote a lottery on behalf of a licensed society.
201. However, individuals or firms can and do provide services to a society or local authority lottery without assuming the role of an ELM. When determining whether a third party is a 'service provider' only, or has assumed the role of an ELM, the degree of management undertaken by both the promoter and the sub-contractor will be crucial factors. Key indicators will include:
- who decides how the lottery scheme will operate
 - who appoints and manages any sub-contractors
 - the banking arrangements for handling the proceeds of the lottery
 - who sells the tickets and pays the prizes
 - who controls promotional aspects of the lottery.
202. Societies employing an unlicensed ELM may be committing an offence and they will need to satisfy themselves that any ELM they employ holds the relevant operator's licence issued by the Commission. The Commission publishes a register of operating licences on its website at www.gamblingcommission.gov.uk.

Lottery Tickets

203. Lotteries may involve the issuing of physical or virtual tickets to participants (a virtual ticket being non-physical, for example in the form of an email or text message). All tickets must state:
- the name of the promoting society
 - the price of the ticket, which must be the same for all tickets (e.g. there can be no option to 'buy two tickets, get one free')
 - the name and address of the member of the society who is designated as having responsibility at the society for promoting small lotteries or, if there is one, the ELM
 - the date of the draw, or information which enables the date to be determined.

204. The requirement to provide this information can be satisfied by providing an opportunity for the participant to retain the message electronically or print it.
205. The society should maintain written records of any unsold and returned tickets for a period of one year from the date of the lottery draw. The Licensing Authority may wish to inspect the records of the lottery for any purpose related to the lottery.

Where tickets may be sold

206. The Licensing Authority expects holders of small society lottery registrations not to sell lottery tickets to a person in any street. For these purposes 'street' includes any bridge, road, lane, footway, subway, square, court, alley or passage (including passages through enclosed premises such as shopping malls) whether a thoroughfare or not. Tickets may, however, be sold in a street from a static structure such as a kiosk or display stand. Tickets may also be sold door to door. Licensees must ensure that they have any necessary local authority permissions, such as a street trading licence, in order to do this.

Prizes

207. Prizes awarded in small society lotteries can be either cash or non-monetary. Prizes declared on returns must not exceed the limits on prizes set out by the Act - in effect that combined with any expenses incurred with the running of the lottery, such as managers' fees, they must not comprise more than 80% of the total proceeds of the lottery. Donated prizes would not be counted as part of this 80% (as no money would be withdrawn from the proceeds to cover their purchase) but are still subject to the limit on a single maximum prize of £25,000 and should be declared on the return following the lottery draw.
208. Alcohol should not be offered as a prize in a lottery without the society first ensuring that no Licensing Act 2003 consent is required for this from the Licensing Authority. If such consent is required, then alcohol shall not be offered as a prize unless such consent has been obtained.

Small society registration

209. The promoting society of a small society lottery must, throughout the period during which the lottery is promoted, be registered with a licensing authority. Parts 4 and 5 of Schedule 11 of the Act set out the requirements on both societies and licensing authorities with respect to the registration of small society lotteries.
210. The Licensing Authority with which a small society lottery is required to register must be in the area where their principal office is located.
211. Applications for small society lottery registrations must be in the form prescribed by the Secretary of State and be accompanied by both the required registration fee and all necessary documents required by the Licensing Authority to assess the application. This information shall include a copy of the society's terms

and conditions and their constitution to establish that they are a non-commercial society.

212. Societies may not circumvent the requirement to hold a Gambling Commission Lottery Operating Licence by obtaining two or more registrations with the same or different Licensing Authorities. As set out previously, the Act states that a society lottery is a large lottery if the arrangements for it are such that its proceeds may exceed £20,000 in a single lottery, or if the aggregate proceeds in a calendar year exceed £250,000.
213. In cases where a society has separate branches with different aims and objectives, it is acceptable for them to hold more than one licence or registration. However, in cases where a society holds more than one registration and the aims and objectives of those societies are the same, this may constitute a breach of the threshold limits for small society lotteries set out in Schedule 11 of the Act.
214. By virtue of Schedule 11 paragraph 31(5) of the Act, societies may not hold an Operating Licence with the Gambling Commission and a local authority registration with the same aims and objectives at the same time. This paragraph also provides for a statutory period of three years during which a large society cannot convert to small society status.
215. Registrations run for an unlimited period, unless the registration is cancelled.

Refusal of registration

216. The Licensing Authority may propose to refuse an application for any of the following reasons:
- An operating licence held by the applicant for registration has been revoked or an application for an operating licence made by the applicant for registration has been refused, within the past five years. The Commission will be able to advise the details of people and organisations that have been refused an operating licence or have had an operating licence revoked in the past five years. Licensing authorities should consult the Commission as part of their consideration process.
 - The society in question cannot be deemed non-commercial.
 - A person who will or may be connected with the promotion of the lottery has been convicted of a relevant offence, listed in Schedule 7 of the Act.
 - Information provided in or with the application for registration is found to be false or misleading.
217. The Licensing Authority may only refuse an application for registration after the society has had the opportunity to make representations. These can be taken at a formal hearing or via correspondence. The Licensing Authority shall inform the society of the reasons why it is minded to refuse registration and provide it with at least an outline of the evidence on which it has reached that preliminary conclusion, in order to enable representations to be made.

Revocation of a small society's registered status

218. The Licensing Authority may revoke the registration of a society if it thinks that they would have had to, or would be entitled to, refuse an application for registration if it were being made at that time. The Licensing Authority will inform the society of the reasons why it is minded to revoke the registration and provide them with the evidence on which it has reached that preliminary conclusion. The society may make representation as to why revocation should not take place, which will be discussed with the Licensing Manager and a decision made on how the representation will be handled.

Administration and returns

219. The Act requires that a minimum proportion of the money raised by the lottery is channelled to the goals of the society that promoted the lottery. If a small society lottery does not comply with these limits it will be in breach of the Act's provisions, and consequently be liable to prosecution.

220. The limits are as follows:

- at least 20% of the lottery proceeds must be applied to the purposes of the society (Schedule 11, paragraph 33)
- no single prize may be worth more than £25,000 (Schedule 11, paragraph 34)
- rollovers between lotteries are only permitted where every lottery affected is also a small society lottery promoted by the same society, and the maximum single prize is £25,000 (Schedule 11, paragraph 35)
- every ticket in the lottery must cost the same and the society must take payment for the ticket fee before entry into the draw is allowed (Schedule 11, paragraph 37).

221. Paragraph 39 of Schedule 11 in the Act sets out the information that the promoting society of a small society lottery must send as returns to the Licensing Authority with which it is registered, following each lottery held. This information allows licensing authorities to assess whether financial limits are being adhered to and to ensure that any money raised is applied for the proper purpose. The following information must be submitted:

- the arrangements for the lottery - specifically the date on which tickets were available for sale or supply, the dates of any draw and the value of prizes, including any donated prizes and any rollover
- the total proceeds of the lottery
- the amounts deducted by the promoters of the lottery in providing prizes, including prizes in accordance with any rollovers
- the amounts deducted by the promoters of the lottery in respect of costs incurred in organising the lottery
- the amount applied to the purpose for which the promoting society is conducted (this must be at least 20% of the proceeds)

- whether any expenses incurred in connection with the lottery were not paid for by deduction from the proceeds, and, if so, the amount of expenses and the sources from which they were paid.

222. Paragraph 39 of Schedule 11 in the Act also requires that returns must:

- be sent to the Licensing Authority no later than three months after the date of the lottery draw, or in the case of ‘instant lotteries’ (scratchcards) within three months of the last date on which tickets were on sale
- be signed (electronic signatures are acceptable if the return is sent electronically) by two members of the society, who must be aged 18 or older, are appointed for the purpose in writing by the society or, if it has one, its governing body, and be accompanied by a copy of their letter or letters of appointment.

223. The Gambling Commission may inspect a society’s returns, although it will not routinely do so. The Licensing Authority is required to retain returns for a minimum period of three years from the date of the lottery draw. They must also make them available for inspection by the general public for a minimum period of 18 months following the date of the lottery draw.

224. Small Society Lottery returns are available for inspection, on request by the general public, from the Licensing Department.

225. The Licensing Authority will monitor the cumulative totals of returns to ensure that societies do not breach the annual monetary limit of £250,000 on ticket sales. The Licensing Authority must notify the Commission if returns reveal that a society’s lotteries have exceeded the values permissible, and such notifications will be copied to the society in question. The Gambling Commission will contact the society to determine if they are going to apply for a lottery operator’s licence, thereby enabling them to run large society lotteries lawfully, and will inform the Licensing Authority of the outcome of its exchanges with the society.

Appendix One Consultation

A public consultation was carried out in respect of this Statement of Principles from date 23 July until 14 September 2018. As well as sending consultation letters and emails directly to all persons affected by gambling, a public notice was displayed at the Council offices at Swale House (East Street, Sittingbourne), Gateway Sheerness (High Street, Sheerness) and Alexandra Centre (Preston Street, Faversham), for the duration of the consultation and an advertisement of the consultation was published in (insert name of local newspaper and date published).

*** responses were received to the consultation.

Summarise the responses here.

The draft Statement of Principles was published on the Council's website for a period of four weeks commencing date and was also made available at the following public libraries for the same period:

This Statement of Principles was considered by the Council's General Licensing Committee on 12th July 2018 and 2nd October 2018 and approved by Full Council on 14 November 2018.

A notice was published on the Council's website and at Swale House (Sittingbourne), Gateway (Sheerness) and Alexandra Centre (Faversham) on *** stating where the Statement of Principles could be inspected www.swale.gov.uk/licensing the date the Statement of Principles would be published, and the date it would take effect.

Appendix Two
Map of the Area Covered by this Statement of
Principles

If you would like the Statement of Principles for Gambling in large print, Braille, audiotape or in another language, please contact the Licensing Team.

Swale Borough Council
Licensing Department
Swale House
East Street
Sittingbourne
Kent ME10 3HT

Phone: 01795 417286
Email: licensing@swale.gov.uk

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General Licensing Committee Meeting	
Meeting Date	12 th July 2018
Report Title	Review of Statement of Licensing Policy for Sex Establishments and Sexual Entertainments Venues
Cabinet Member	Cllr Mike Cosgrove, Cabinet Member for Regeneration
SMT Lead	Mark Radford
Head of Service	Della Fackrell, Resilience & Licensing Manager
Lead Officer	Christina Hills, Licensing Officer
Key Decision	No
Classification	Open
Recommendations	<ol style="list-style-type: none"> 1. That Members approve the draft Sex Establishments policy as attached as Appendix II for formal consultation. 2. That Members delegate authority to the Resilience and Licensing Manager to make any changes to the draft policy if Members require amendments prior to consultation.

1 Purpose of Report and Executive Summary

- 1.1 This report provides Members with information and guidance on a new draft Sex Establishments policy which requires Members comments and approval prior to formal public consultation.

2 Background

- 2.1 The powers the Council has to regulate sex establishments are contained in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. In order to use these powers a local authority has to adopt them through a prescribed process. Swale formally adopted the provisions in January 1983.
- 2.2 Section 27 of the Policing and Crime Act 2009 introduced a new category of sex establishment called “sexual entertainment venues”. In order to implement this change a local authority has to adopt the legislation although it is not mandatory. Swale chose to adopt the provisions on 23 November 2010 and they became effective as of 1 December 2010.

- 2.3 There is one sex establishment in the borough which is High Street, Bluetown, Sheerness which operates as a sex shop.
- 2.4 There are no sexual entertainments venues in the borough and neither have there been any applications received for the same.

3 Proposals

- 3.1 There is no statutory requirement to have a licensing policy for sex establishments and sexual entertainments venues, however it can be considered to be best practice. A modern, effective policy document ensures that the trade and public alike have a document that fully explains the elements of the regulatory process which includes the principles to be applied when considering applications for such premises. It also ensures consistency of approach by officers thus ensuring fairness and transparency for both the trade and public alike. Swale BC therefore initially developed a policy that was approved by Licensing Committee on 23 November 2010. A copy of the policy is attached as **Appendix I.**
- 3.2 Although there is no statutory requirement to undertake a review of the policy statement it is accepted best practice to review it at regular intervals to ensure that policy remains up to date and relevant.
- 3.3 The existing policy has now been reviewed by officers. There have been no changes to legislation to take into account. However the current policy has been somewhat expanded to include more detail in order to bring it into line with policies that have been adopted by the majority of other local authorities within Kent.
- 3.4 The rationale for this is that the policy was formulated working in close conjunction with the other local authorities in Kent via the mechanism of the Kent and Medway Regulatory Licensing Steering Group thus promoting consistency to the benefit of licensees, potential licensees, businesses and residents alike. The other benefit is to minimise the risk of judicial review of individual policies.
- 3.5 As with the existing policy we propose setting no numerical limits for sexual entertainments venues within Swale. Instead each application will be judged on its own merits but taking into account the various criteria laid out in the policy document. In this way each application will be considered as to whether it is suitable given the nature of the particular locality in questions.
- 3.6 As the policy is not a statutory requirement there is no need for it to be formally adopted by Council following consideration by General Licensing Committee.
- 3.7 The draft statement of licensing policy is attached as **Appendix II.**

4 Alternative Options

- 4.1 The Council could choose not to have a Policy of Sex Establishments and Sexual Entertainments Venues, however to do so would be contrary to best practice and may lead to a lack of clarity on the application of the legislation.
- 4.2 The Committee could consider not consulting on the proposed policy; however this would not accord with good governance, giving interested parties an opportunity to consider the proposed policy and make any representations where they consider that changes might be made before adoption.

5 Consultation Undertaken or Proposed

- 5.1 A consultation period of 8 weeks is proposed to run between 16th July 2018 and 7th September 2018. Methods of consultation will be by advertising on the Council's website and in local newspapers and where appropriate by email and post. The results of this will then be presented to the General Licensing Committee prior to formal adoption.
- 5.2. Consultees will be the following:
- Councillors
 - Kent Police
 - Kent Fire and Rescue
 - Kent Trading Standards
 - Child Protection Services
 - Interested Parties (local residents and businesses)
 - Existing licence holder
- 5.3 All incoming responses will be entered onto a grid for consideration. The Resilience and Licensing Manager together with licensing officers will conduct an evaluation of each response and give a recommendation as to whether or not to amend the policy statement. The grid and recommendations will be put before General Licensing Committee on 2 October 2018 for consideration and inclusion of any amendments prior to formal adoption.

6 Implications

Issue	Implications
Corporate Plan	Having an adopted Statement of Licensing Policy for Sex Establishments and Sexual Entertainments Venues satisfies the corporate objective of:

	A Council to be proud of
Financial, Resource and Property	There are no direct financial implications For Swale Council concerning this matter at present. However, if at any time in the future the policy was subject to legal challenge, there could be costs associated with this process.
Legal and Statutory	The relevant legislation in relation to the regulation of sex establishments and sexual entertainment venues is contained within Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended)
Crime and Disorder	The powers allowed within the licensing regime for sex establishments and sexual entertainment venues allow the Council to tackle issues of concern to communities around crime and anti-social behaviour that may sometimes be associated with sex establishments.
Environmental Sustainability	None identified
Health and Wellbeing	Child Protection Services is named within the Policy as a consultee and the possibility of children or other vulnerable persons being harmed or exploited by the provision of sexual entertainment or the operation of sex shops or sex cinemas is referred to in the Policy as one of the specified 8 matters to which the authority will have consideration in deciding whether or not to grant an application.
Risk Management and Health and Safety	Whilst each individual application will be judged on its own merits a policy ensures a transparent and consistent approach to licensing that would reduce the opportunity for challenge through the courts. Challenges to a particular decision are more likely to fail if we can demonstrate that we have adhered to our published policy and there is no justifiable reason to depart from it. Any departure from the policy will be based on material evidence and documents giving clear and compelling reasons for doing so.
Equality and Diversity	None identified
Privacy and Data Protection	Normal data protection and privacy rules will apply

7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I – Statement of Sex Establishments Policy 2011
- Appendix II: Draft Statement of Licensing Policy for Sex Establishments and Sexual Entertainment Venues

8 Background Papers

Local Government (Miscellaneous Provisions) Act 1982
Policing and Crime Act 2009

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SWALE BOROUGH COUNCIL SEX ESTABLISHMENTS POLICY

Statement of Sex Establishments Policy 2011

This Statement of Principles was prepared under Schedule 3 of the Miscellaneous Provisions Act 1982 and Section 27 of the Policing and Crime Act 2009 with regard to the Licensing Act 2003.

Contents

PART ONE: Overview of the Sex Establishments Policy.

- 1.1- Introduction of the Policy
- 1.2- Description of Swale Borough
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- 4.1- Making an application.
- 4.2- Renewal of licence.
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- 4.6- Duration of licence
- 4.7- Licence Conditions

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Appendix 1 - Functions

Appendix 2 - Delegations

Contacts

(Listed of all relevant authorities – agencies)

PART ONE: Overview of the Policy.

1.1. Introduction of the Policy:

Swale Borough Council is the Licensing Authority under the provisions of the Miscellaneous Provisions Act 1982 and responsible for the administration of Sex Shop, Sex Venues Licenses and enforcement. We are not required to publish a Statement of principles but have chosen to do so. This statement will be regularly reviewed. Amendments can be made, but will be consulted upon and then formally adopted by Council.

In exercising its functions under the Miscellaneous Provisions Act 1982 this licensing authority shall **aim to permit** the use of premises as Sex venues in so far as the authority thinks it is;

- in accordance with any relevant code of practice
- in accordance with any relevant guidance issued
- in accordance with this policy statement.

When the Licensing Authority is discharging its functions under the Act, it will present clear reasons for any need to depart from any Guidance, or from this Statement of Sex Establishments Policy. It will consider the circumstances of each application and may make exceptions to its own policy where it is appropriate to do so.

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 necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour associated with the behaviour of some people visiting Sex Establishments.

1.2. Description of Swale Borough:

Swale Borough Council is situated in the County of Kent, which contains 12 district Councils and 1 Unitary Authority. Each authority is represented on the Kent & Medway Regulatory Licensing Steering Group (K&MRLStGp) which identifies issues on which a consistent, countywide approach, is considered essential and formulates a recommended policy that establishes a minimum standard on these identified issues. This Statement of Sex Establishments policy has been in conjunction with the K&MRLStGp.

Swale Borough is the fourth largest district in Kent and covers an area of 364 square kilometres, with a population of 130,300, and 57,000 households (Swales Sustainable Community Strategy 2009-2026). It is a prime location, within 40 miles from London and the channel ports, but set in the Kentish countryside; much of the borough is rural and includes the attractive landscape of the North Downs.

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. Over recent years Faversham's Café Culture has grown and the pedestrianised town centre with ancient Guildhall and quaint shops attracts many tourists each year. Faversham currently has no Sex Establishments.

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. Bluetown has the only licensed Sex Shop within the Borough although several licensed premises on the island do offer adult entertainment.

1.2.3 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 already has some licensed premises that offer adult entertainment.

PART TWO: DEFINITIONS

The Act

This refers to Schedule 3 of the Local Government Miscellaneous Provisions Act 1982 as amended by the Policing and Crime Act 2009

The Policy

This refers to Swale Borough Councils Sex Establishment Licensing Policy.

Relevant Locality

This is the locality where the premises are situated or where the vessel or stall will be used. The locality and area is a matter for the Local authority to decide. This Council has determined that the relevant locality will be determined on a case by case basis for the purpose of decision making.

Character of Relevant Locality

This Council has not defined what type of area will be appropriate and/or acceptable in terms of its character. The Council will consider the character of an area on a case by case basis and will take into account such factors as the uses and users of the area, how the area is perceived, the vision/plan for the area, the views of the planning authority.

The Council

Refers to Swale Borough Council

Display of nudity

This is defined in the Act as exposure of nipples, pubic area, genitals or anus in the case of a woman. In the case of a man, exposure of the pubic area, genitals or anus.

The Licensed Premises

This is the premises, vessel, vehicle or stall which is subject to a sex establishment licence. This premises will be in receipt of all of the necessary consents and permissions to operate. Note: licences are not required for the sale, supply or demonstration of birth control items.

The Organiser

This is any person responsible for the organisation or management of the Relevant Entertainment or the premises.

Permitted Hours

These are the hours of activity and operation that have been authorised under a Sex Establishment Licence.

Sex Article

A sex article is anything for use in connection with or for stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity.

Sex Shop

A sex shop is any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles or other things intended for use in connection with or for stimulating or encouraging sexual activity, or Acts of force or restraint that are associated with Sexual activity.

Sex Cinema

A sex shop is any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, however produced, which are concerned primarily with the portrayal of or primarily deal with or relate to or are intended to stimulate or encourage sexual activity.

Sexual Entertainment Venue

A Sexual Entertainment Venue is a premises where relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer. 'Relevant Entertainment' means any live performance or any live display of nudity of such a nature that, regardless of financial gain, it must reasonably be assumed to be provided solely or primarily for the purpose of sexually stimulating any member of the audience whether by verbal or other means.

the following are not deemed as sexual entertainment venues under the new schedule:

- Any premises that at the time in question:has not provided relevant entertainment on more than 11 occasions within the previous 12 months
- no such occasion has begun within the period of one month beginning with the end of any previous occasion; and
- no such occasion has lasted for more than 24 hours

PART THREE: GENERAL POLICY

3.1 Principles to be applied

The Act lists those people who are excluded from being able to hold a licence

A licence cannot be granted to:

- Anyone under 18 years of age
- Anyone who has held a licence that was revoked in the last 12 months (from the date of revocation)
- Anyone who has been refused a new or renewal of licence within the last 12 months prior to the date of making application
- Anyone not resident in the United Kingdom or who has not been resident for six months prior to making application.
- A company not incorporated in the United Kingdom

On determining an application the Council shall have regard to all relevant considerations, including representations received and comments made by:

- Ward Councillors
- Police
- Fire Authority
- Planning Authority
- Pollution
- Child Protection Services
- Interested Parties (local residents/businesses)
- Any representations made by the applicant.

The grounds on which an application for the grant, renewal or transfer of a licence may be refused are set out in the Act.

The Council may refuse a licence if:

- The applicant is unsuitable to hold a licence because they have been convicted of an offence or for any other reason;
- Were the licence to be granted, renewed or transferred, the business to which it relates would be managed or carried on for the benefit of a person other than the applicant, who would have been refused a licence if they had applied themselves;
- The number of sex establishments or sex establishments of a particular kind in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality;
- The grant or renewal of licence would be inappropriate having regard to:
 - i.the character of the relevant locality;
 - ii.the use to which any premises in the vicinity are put; or
 - iii.the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

The Council has not set a limit on the number of sex establishments or sex establishments of a particular kind that it thinks is appropriate for any Relevant Locality. Each application for the grant, refusal, renewal, transfer or variation of a licence will be determined by the Council on its merits on a case by case basis. This part of the Policy may be subject to change following any future review.

3.2 Character of the Relevant Locality

The Council will not normally grant or renew a licence for a Sex Establishment if the character of the Relevant Locality would make the grant or renewal inappropriate.

When considering whether the grant or renewal of a licence would be inappropriate having regard to the character of the Relevant Locality, the Council will have regard to the following:

- The proximity of residential premises, including any sheltered housing and accommodation of vulnerable people;
- The proximity of educational establishments to the premises;

- The proximity of places of worship to the premises;
- Access routes to and from schools, play areas, nurseries, children's centres or similar premises in proximity to the premises;
- The proximity to shopping centres;
- The proximity to community facilities/halls and public buildings such as swimming pools, leisure centres, public parks, youth centres/clubs (this list is not exhaustive);
- Any adverse impact on crime and disorder and public nuisance in the Relevant Locality which the operation of the sex establishment is likely to generate;
- the nature and concerns of any objections received from residents or establishments in the Relevant Locality;
- any evidence of complaints about noise and/or disturbance caused by the premises;
- any current planning considerations;
- the proximity of other sex establishments;
- whether there is planned regeneration of the area.

3.3 Layout, Character and condition of the Premises

When considering an application for the grant, renewal, variation or transfer of a licence the Council will also take into account the following:

- The type of activity to which the application relates;
- The duration of the proposed licence;
- The days and hours of operation of the activity;
- The layout and condition of the premises;
- The use to which other premises in the vicinity are put;
- The levels of crime and disorder in the area;

Sex establishments should not to be functionally visible to passers by on retail thoroughfares or pedestrian routes. In more sensitive locations applicants should consider whether it would be appropriate to locate such premises at basement level or locate entrances away from retail thoroughfares or busy pedestrian routes.

3.4 Disability Access

Applicants are reminded of their duties under the Disability Discrimination Act 1995 and should provide such facilities so as to enable the admission of disabled people.

3.5 Suitability of the Applicant

The applicant will be required to demonstrate that he is a suitable person to hold a licence. In determining suitability, the Council will normally take into account:

- previous knowledge and experience of the applicant;
- any evidence of the operation of any existing/previous licence held by the applicant, including any licence held in any other local authority area;
- any report about the applicant and management of the premises received from objectors or the Police and any criminal convictions or cautions of the applicant;
- any other relevant reason.

The above factors are not an exhaustive list of considerations but are merely indicative of the types of factors which may be considered in dealing with an application.

All applications for new licences for sex establishments, as described in the Act will be referred to the relevant Sub-Committee of the Council for decision.

3.6 Renewal Applications

Where a licence was in existence before the introduction of this Policy, this Policy will become a consideration when the licence is due for renewal.

When considering a renewal application the Council may take into account the criteria set out in this policy and:

- past demonstrable adverse impact from the activity
- whether appropriate measures have been agreed and put into effect by the applicant to mitigate any adverse impacts.

It should be noted that the Council in applying its decision-making discretion may consider it appropriate to refuse the renewal of the licence even where there has been no change in the character of the relevant locality or in the use to which any premises in the locality are put.

If a renewal application is not opposed, it shall be approved under authority delegated to relevant officer(s). All contested applications for renewal, as described in the Act shall be referred to the relevant Sub-Committee for decision.

3.7 Variation Applications

Where an application is made to vary any terms and conditions of an existing licence, whether on renewal or not, the Council will take into

account the criteria as set out in this policy.

3.8 Enforcement

In accordance with The Policing and Crime Act 2009, we will work together with the police and other relevant authorities. The 'Kent and Medway Enforcement Protocol' was approved in February 2008 and agrees the appropriate responsibilities and procedures for joint working and enforcement between these two agencies.

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, identifying incidents of violent crime, disorder and nuisance in and around licensed premises.

We will need to be satisfied that premises are being run in accordance with the Act and any conditions, which may be attached to the licence. The frequency of inspections will need to be determined on risk-based criteria, with high-risk operations receiving more attention than premises carrying low public safety/nuisance risks.

PART FOUR, THE APPLICATION PROCESS

4.1 Making an Application

An application should be made in writing to: The Licensing Officer, Swale Borough Council, Swale House, East Street, Sittingbourne, Kent, ME10 3HT. Telephone: 01795 417364

Applicants for a licence must complete the application form and submit to the Licensing Office together with:

- five sets of floor plans, drawn to scale and showing all means of entry and exit, any parts used in common with any other building and indicating how the premises lie in relation to the street;
- five sets of plans showing the existing and front elevation of the premises depicting all signage;
- five sets of plans (scale 1:500) showing the sex establishment in relation to other premises within 100 metres;
- five sets of plans (scale 1:50) showing the layout of the sex establishment;
- the correct fee as set by the Council.

As part of the application process, applicants are required to post an A3 notice at the proposed site for 21 days, from the date the application is lodged with the Council, setting out the application details. A specimen notice is available from the Licensing Office. The notice must be posted in a prominent position for the whole of that time and be easily read by passers-by.

Applicants are also required to place a public notice in a local

newspaper giving details of the application. A specimen notice is available from the Licensing Office. The newspaper notice should appear in the publication within 7 days of the application being lodged.

Officers from the Licensing Authority and the Fire Authority may inspect the premises to ensure that required technical standards are met. If works are required to bring the building up to standard, the applicant will be notified. Licences will not be issued until all required works are satisfactorily completed.

As part of the process the Licensing Authority will also consult the Noise Pollution Section of the Council. If there is the possibility of noise nuisance, for example, from amplified music, an inspection may be carried out and noise insulation work recommended.

Comments on applications will also be sought from local Ward Councillors, the Police, the Planning Authority and any other relevant person as deemed appropriate by the Council.

Applicants are warned that any person who, in connection with an application for the grant, renewal or transfer of a licence, makes a statement which s/he knows to be false in any material respect, or which s/he does not believe to be true, is guilty of an offence and liable to summary conviction to a fine not exceeding £20,000.

The Council will not determine an application for the grant of a licence unless the applicant allows an authorised officer a reasonable opportunity to enter the proposed sex establishment to make such examination and enquiries as may be necessary to determine the suitability of the applicant and the premises.

Any licence approved does not constitute any approval under any other Acts. The applicant must ensure that all necessary consents and approvals are obtained prior to operation.

There will be no “grandfather rights” for any existing lap dancing clubs. If they wish to continue trading they will need to apply for a licence under the new regime. A transitional period of 12 months will be given in which clubs should apply for a new licence. However any premises which fails to apply for a new licence within this period, will face closure.

4.2 Renewal of Licence

An application to renew the licence must be made in the appropriate form prior to the expiry of the existing licence.

The Council will not determine an application for the renewal of a licence unless the applicant allows an authorised officer a reasonable opportunity to enter the proposed sex establishment to make such examination and enquiries as may be necessary to determine the suitability of the applicant and the premises.

Where, before the expiry of a licence, an application has been made

for its renewal, it shall remain in force even though the expiry date has passed, until the withdrawal of the application or its determination by the Authority.

4.3 Variation of Licence

The application form, together with relevant plans and the fee should be sent to the Licensing Office. Please note that applications for variation of licence are also subject to the site and newspaper notice requirements.

Variation applications relate only to proposed changes to such matters as the hours and area of the premises covered by the licence. Any changes in licensee must be the subject of a transfer application.

All variation applications for sex establishment licences will be referred to the relevant Sub-Committee for decision. Applicants must not operate any revised or varied arrangements until such an application has been approved and any revised or varied licence has been issued.

4.4 Transfer of Licence

The Council will not determine an application for the transfer of a licence unless the applicant allows an authorised officer a reasonable opportunity to enter the proposed sex establishment to make such examination and enquiries as may be necessary to determine the suitability of the applicant and the premises.

Where, before the date of expiry of a licence, an application has been made to transfer, it shall be deemed in force with any necessary modifications until the withdrawal of the application or its determination, notwithstanding that the expiry date has passed or that the person to whom the licence is to be transferred is carrying on the business of the sex establishment.

If a transfer application is not opposed, it shall be approved under authority delegated to relevant officer(s). All contested applications for transfer, as described in the Act shall be referred to the relevant Sub-Committee for decision.

4.5 Representations on an Application

Any person wishing to object to an application must submit a written representation within the specified 28 day consultation period, setting out the grounds of objection.

The Council will balance the interests of the applicant with those of the local community in reaching a decision on a licence application. Valid representations must be made within 28 days of the application being submitted. Representations made before the application is submitted can be taken into account. The Council also has discretion to consider representations made after the 28 day consultation period although this

will be assessed on a case by case basis.

Unless the person making a representation consents, their name and address shall not be revealed to the applicant.

The general terms of any objection must be provided to the applicant prior to the determination of the application. The report to the relevant Sub-Committee may have full details of the objections, including any actions/undertakings proposed by the applicant to address matters raised.

The Council shall give an opportunity of appearing before and of being heard by the relevant Sub-Committee of the Council:

- a) before refusing to grant a licence, to the applicant;
- b) before refusing to renew a licence, to the holder; and
- c) before refusing to transfer a licence, to the holder and to the person to whom he desires that it shall be transferred.

Additionally, the applicant and any persons who made representations and who wish to attend the hearing will have the opportunity to address the Sub-Committee before the application is determined.

Where the Council refuse to grant, renew or transfer a licence, it shall, if required to do so by the applicant or the holder of the licence, give him a statement in writing of the reasons for its decision within 7 days of his request..

4.6 Duration of Licence

Sex establishment licences will normally expire on an annual basis, but may be issued for a shorter period if deemed appropriate.

4.7 Licence conditions

We will not impose any conditions, unless there is a necessity to impose conditions following a relevant representation at a hearing. We will only impose such conditions as are necessary or are arising out of the consideration of the representations. Conditions will be focused on matters that are within the control of individual licensees and will centre on the premises and the vicinity of those premises.

APPENDIX ONE: FUNCTIONS

Function	Who deals with it
Responsibility for the licensing of Sex Venue Licences, incorporating the following: Sex Shops Sex Cinemas Sexual Entertainment Venues	Licensing Authority
Maintain a register of the licenses issued	Licensing Authority
Enforcement	Licensing Authority

APPENDIX TWO: DELEGATIONS.

To Full Council	To Sub Committee	To an Officer
* Final approval of the policy.	*New Application for a licence (all cases) * Application to vary a licence (all cases) * Application to transfer a licence following receipt of representations. *Application for annual renewal where representations have been made and not withdrawn *Fee setting (other than annual increases)	* Application to transfer a licence where no representations have been received or received and withdrawn * Application for annual renewal where no representations have been received or received and withdrawn * Where appropriate to instruct the Legal Team to prosecute persons for non-compliance.

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
Sittingbourne Police Station
Central Avenue
Sittingbourne
Kent ME10 4NR
Tel: 01795 419298

Licensing Officer
Maidstone Group Fire Safety
Maidstone Fire Station
Loose Road
Maidstone
Kent ME15 9QB

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

Head of Development Control
Planning Services
Swale Borough Council
East Street
Sittingbourne
Kent ME10 3HT
Tel: 01795 417304

Licensing Team
Trading Standards
Kent County Council
1st Floor Invicta House
County Hall
Maidstone
Kent ME14 1XX
Tel: 01622 221012

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

**Crime & Disorder Reduction
Partnership (CDRP)**
Swale Borough Council
East Street
Sittingbourne
Kent ME10 3HT

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Swale Borough Council



Sex Establishment Policy

Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982
Section 27 of the Policing and Crimes Act 2009

Version 1.4
June 2018

Next scheduled review: May 2023

All enquiries relating to this document should be sent to:

Licensing
Swale Borough Council
Swale House
East Street
Sittingbourne
ME10 3HT

Licensing@swale.gov.uk

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Issue & Review Register

Summary of changes	Issue number & date	Approved by

All changes to this document are tracked using a different colour and/or marked with a vertical line at the side of the page.

If amendments have been made, this will be redistributed to all named on the distribution list.

Compiled by:

Date:

Approved by:

Date:

Changes and Corrections

Any changes or corrections required should be notified in writing to:

Licensing
Swale Borough Council
Swale House
East Street
Sittingbourne
ME10 3HT

Or

licensing@swale.gov.uk

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1. Overview

- 1.1 The Local Government (Miscellaneous Provisions) Act 1982 (as amended by Section 27, Policing and Crime Act 2009) provides that a local authority may, by resolution, adopt schedule 3 to that Act.
- 1.2 The Swale Borough Council adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and the amendment under Section 27 of the Policing and Crime Act 2009.
- 1.3 The adoption of schedule 3 as amended will enable the licensing authority, within its area, to discharge its function in relation to the following:
 - sexual entertainment venues (providing relevant entertainment)
 - sex shops
 - sex cinemas
- 1.4 Schedule 7 to the Policing and Crime Act 2009 amends the Licensing Act 2003 to ensure that premises for which a sexual entertainment venue licence is required or held (or for which the requirement has been waived under paragraph 7 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982) do not also require a premises licence, club premises certificate or temporary event notice in order to provide relevant entertainment. This is because such entertainment is expressly excluded from the definition of regulated entertainment found in the Licensing Act 2003. However, if the premises also carries on other licensable activities (e.g. the sale of alcohol or the provision of regulated entertainment) then this is not a provision of relevant entertainment and they will nevertheless continue to require a premises licence, club premises certificate or temporary events notice under the Licensing Act 2003 for those other activities, subject to any exceptions contained in that Act.
- 1.5 In practice this will mean that the vast majority of lap dancing clubs and similar venues will require both a sexual entertainment venue licence for the provision of relevant entertainment and a premises licence or club premises certificate for the sale of alcohol or provision of other types of regulated entertainment not covered by the definition of relevant entertainment.
- 1.6 Live music or the playing of recorded music which is integral to the provision of relevant entertainment, such as lap dancing, for which a sexual entertainment licence is required, is specifically excluded from the definition of regulated entertainment in the Licensing Act 2003. Therefore, a sexual entertainment venue will

not require a premises licence or club premises certificate just because it plays recorded music for a performer to dance nor will providing entertainment facilities for the purposes of the provisions of relevant entertainment be regulated entertainment under the Licensing Act 2003.

- 1.7 If a local authority has not made a resolution to adopt the provisions introduced by section 27, Policing and Crime Act 2009 within one year of the Act coming into force it must, as soon as is reasonably practicable, consult local people about whether they should make such a resolution. The purpose of this duty is to ensure that local authorities consider the views of local people whether, for whatever reason, they have not adopted the provisions. This duty should be seen to be an extension to existing general duties on local authorities to consult and involve local people when exercising their functions.
- 1.8 The Licensing Authority have also taken into consideration the provisions of Section 17 Crime and Disorder Act 1998 that requires responsible authorities to consider crime and disorder (including antisocial behaviour and other behaviour adversely affecting the local environment) and the misuse of drugs, alcohol and other substances in the exercise of all their duties, activities and decision-making. This means that in all policies, strategies and service delivery there is a need to consider the likely impact on crime and disorder.
- 1.9 The Licensing Authority is also aware that, at the time of formulating this policy, there is no evidence of any crime or disorder directly attributable to the operation of such establishments in the Swale area.
- 1.10 This policy helps to promote efficient and effective approaches to regulatory inspection and enforcement which is in compliance with:
 - a) The Regulator's Compliance Code (set out under the Legislative and Regulatory Reform Act 2006) not to impede progress by the regulations we set out and, particularly, to consider the impact of regulations on small businesses; and
 - b) The Provisions of Services Regulations 2009 to ensure requirements are:
 - i) Non-discriminatory
 - ii) justified by an overriding reason relating to the public interest
 - iii) proportionate to that public interest objective
 - iv) clear and unambiguous
 - v) objective
 - vi) made public in advance

vii) transparent and accessible

1.11 The Council sees the licensing process as an integral part of its approach to achieving its strategic and corporate objectives which encompasses the visionary goals of:

1. A place to achieve, prosper and thrive
2. A place that is clean and green
3. A place that has strong healthy and safe communities
4. A place to live and enjoy
5. A place with efficient and effective public services

2. Policy

2.1 The purpose of this policy is to:

- Set out the expectations of the local authority in meeting the requirements of the legislation
- Provide guidance on the process for making an application and the process the Council will follow in considering and determining an application.
- Assist any persons making representations in respect of an application to make properly directed and evidenced representations.

2.2 Notwithstanding this policy, each application will be assessed on its individual merit and granted or refused purely on that merit. Whilst this policy will set out the broad scope of expectations, it should not be seen as restricting or predetermining the outcome of any application or representation in respect of the licensing of any premises.

3. Functions

3.1 Under section 101 of the Local Government Act 1972, local authorities may arrange for the discharge of these responsibilities by a committee or sub-committee of the appropriate authority.

3.2 This authority delegates its functions to those who sit on its Licensing Committee, or a sub-committee appointed for the purpose, with the exception of a renewal of a licence to which no objections are received, which will be delegated to officers as set out in the Council's constitution.

4. Consultations

4.1 The Policing and Crime Act 2009 is not prescriptive about how local authorities should consult with local people in order to comply with this duty. The Council has extensive experience of engaging with local people and will utilise that knowledge to

ensure that any consultation exercise carried out under this duty will be fair and meaningful. The Council will seek to make any relevant information available to local people in order to inform them of the legislation, criteria and outcomes of the consultation.

4.2 For the purpose of this duty 'local people' are defined as anyone who lives or works in the local authority area.

4.3 The council will seek to consult with all those consulted on the Licensing Act 2003 and current sex establishment licence holders. A full list of those consulted is attached at Appendix C.

5. Definitions

5.1 For the purposes of this policy the following definitions will apply:

5.2 Sex Shop

Any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating

- a) sex articles; or
- b) other things intended for use in connection with, or for the purpose of stimulating or encouraging:
 - i) sexual activity; or
 - ii) acts of force or restraint which are associated with sexual activity.

No premises shall be treated as a sex shop by reason only of their use for the exhibition of moving pictures by whatever means produced

5.3 Sex Article

Anything made for use in connection with, or for the purpose of stimulating or encouraging sexual activity; or

- a) acts of force or restraint which are associated with sexual activity; and anything to which sub-paragraph below applies.

This sub-paragraph applies

- a) to any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and
- b) to any recording of vision or sound, which
 - i) is concerned primarily with the portrayal of, or

primarily deals with or relates to, or is intended to stimulate or encourage, sexual activity or acts of force or restraint which are associated with sexual activity; or

- ii) is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.

5.4. Sex Cinema

Any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which

- a) are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage
 - i) sexual activity; or
 - ii) acts of force or restraint which are associated with sexual activity; or
- b) are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions, but does not include a dwelling-house to which the public is not admitted.

No premises shall be treated as a sex cinema by reason only

- a) if they may be used for an exhibition of film (within the meaning of paragraph 15 of Schedule 1 to the Licensing Act 2003) by virtue of an authorisation (within the meaning of Section 136 of that Act), of their use in accordance with that authorisation.
- b) of their use for an exhibition to which section 6 of that Act (certain noncommercial exhibitions) applies given by an exempted organisation within the meaning of section 6(6) of the Cinemas Act 1985.

5.5. Sexual Entertainment Venue:

Any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

Exemptions from being a Sexual Entertainment Venue

The following are not sexual entertainment venues for the purposes of this policy:

- a) sex cinemas and sex shops;
- b) premises at which the provision of relevant entertainment is such that, at the time in question and including any relevant entertainment which is being so provided at that time
 - i) there have not been more than eleven occasions on which relevant entertainment has been so provided which fall (wholly or partly) within the period of 12 months ending with that time;
 - ii) no such occasion has lasted for more than 24 hours; and
 - iii) no such occasion has begun within the period of one month beginning with the end of any previous occasion on which relevant entertainment has been so provided (whether or not that previous occasion falls within the 12 month period mentioned in subparagraph (i));
- c) premises specified or described in an order made by the relevant national authority.

5.6. *Relevant entertainment:*

Any live performance or any live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

Home Office Guidance states relevant entertainment would therefore apply to the following forms of entertainment, as they are commonly understood:

- Lap dancing
- Pole dancing
- Table dancing
- Strip shows
- Peep shows
- Live sex shows

However this list is not exhaustive and local authorities will judge each case on its merits. Decisions will be based on the

content of the entertainment provided and not the name given to it.

5.7 Nudity

Schedule 3 sets out the definition of a 'display of nudity'. In the case of a woman, it means exposure of her nipples, pubic area, genitals or anus and, in the case of a man; it means exposure of his pubic area, genitals or anus.

5.8 Spontaneous Entertainment

Where activities that would otherwise be considered to involve the provision of relevant entertainment take place, but are not provided for the financial gain of the organiser or entertainer, such as a spontaneous display of nudity or a lap dance by a customer or guest, the premises will not be considered a sexual entertainment venue by virtue of those circumstances alone. This is because the relevant entertainment must be provided for the financial gain of the organiser or entertainer. However, it should be noted that an organiser might be considered to have provided the entertainment where he has permitted the activity to take place, whether expressly or impliedly.

5.9 The 'Organiser'

Any person who is responsible for the organisation or management of the relevant entertainment or the premises at which the relevant entertainment is provided. In most circumstances, this will refer to the manager of the premises, but could also refer someone who is responsible for organising the relevant entertainment on behalf of the persons responsible for the management of the premises.

The 'organiser' must be someone who is in a position of responsibility over the provision of the relevant entertainment and should not be interpreted to mean a member of staff who is merely employed to work during the provision of relevant entertainment. It is only necessary for one person to hold a sexual entertainment venue licence for premises, even if there is more than one person who is responsible for the organisation or management of the relevant entertainment or the premises.

6. Planning

- 6.1 The Licensing Authority will not normally undertake action where another, more appropriate, regime exists to resolve matters. Failure to obtain planning permission is not a ground for refusal of the grant of an application under the Local

Government (Miscellaneous Provisions) Act 1982 and such a failure to obtain planning permission will normally be dealt with as part of the normal planning process.

- 6.2 Operators and persons making representations should be aware that in many cases there would be a need to obtain planning permission before a premise may be used for the purposes relevant to this policy. The Licensing Authority will not normally consider planning matters such as 'need' in determining a licence application as this is more appropriately dealt with by Planning legislation.
- 6.3 Applicants are advised to seek independent advice in relation to both planning and licensing prior to making any application under Schedule 3 Local Government (Miscellaneous Provisions) Act 1982

7 *European Convention on Human Rights*

- 7.1 The Local Authority fully supports the European Convention on Human Rights. When determining applications for licences under this policy the Licensing Authority will give consideration to any rights an existing operator may have under Article 1, Protocol 1 of the European Convention on Human Rights (ECHR) which entitles every person to the peaceful enjoyment of their possessions and Article 10 (freedom of expression).
- 7.2 The Secretary of State has certified that the Policing and Crime Act 2009 is covered by Section 19, Human Rights Act 1998 as being in compliance with the ECHR.
- 7.3 Whilst the rights under Article 1 and 10 may be activated the weight to be accorded to these rights in this context is low level. The right of freedom of expression to participate in the activities of sex shops, sex cinemas and sexual entertainment venues is not prohibited but may be controlled by licensing. Similarly the right to possession of an existing licence is proportionally protected subject to a fair balance of the rights of the holder and the public interest.

8. *The Application Process*

- 8.1 Applications for licences for sex shops, sex cinemas and sex entertainment venues must be made on the prescribed form and accompanied by the requisite fee.
- 8.2 A site plan of radius of ¼ of a mile (scale 1:500) clearly outlining the locality in which the proposed sexual entertainment venue will be situated. The plan should clearly

identify the proposed sexual entertainment venue marking the site/premises boundary with a red line and define other types of businesses and residential properties around the site as listed at 12.11.

- 8.3 A plan of the premises (scale 1:100) showing the part(s) of the premises that it is proposed to licence as a sexual entertainment venue. All areas requiring to be licensed should be outlined in red on the plan. If a part of the premises is within a licensed premises under the Licensing Act 2003 which will have a dual purpose then the plan should show the site where facilities for the public are shared such as toilets and bar.
- 8.4 The plan of the premises must show the position of all CCTV cameras and shall be with the approval of Kent Police and in accordance with the CCTV code of practice.
- 8.5 Plans may be considered in other scales with prior agreement with the licensing authority.
- 8.6 The council will not usually determine an application for the grant of a licence, unless, the applicant allows an authorised officer a reasonable opportunity to enter the proposed sex establishment to make such examination and enquiries as may be necessary to determine the suitability of the premises.

9. Notices

- 9.1 Applicants for a sexual establishment licence must give public notice of the application by publishing an advertisement in a local newspaper that is circulated in the local authority area no later than seven days after the date the application is made.
- 9.2 Where the application relates to premises, a notice should also be displayed on or near the premises in a place where it can be conveniently read by members of the public. The notice should be displayed for a period of 21 days beginning with the date the application was made.
- 9.3 All notices should be in the form prescribed by the appropriate authority as detailed in Appendix B and identify the premises or, if the application relates to a vehicle, vessel or stall, specify where it will be used as a sex establishment.
- 9.4 The applicant is required to submit a copy of any application to the Chief Officer of Police for the area within seven days of submitting the original application to the local authority.

The requirement does not apply in the case of electronic applications as it is the duty of the local authority to send a copy to the police.

10. Objections

- 10.1 Any person can object to an application but the objection should be relevant to the grounds set out in paragraph 12, of Schedule 3, Local Government (Miscellaneous Provisions) Act 1982 for refusing a licence. Objections should not be based on moral grounds/values and local authorities cannot consider objections that are not relevant to the grounds set out in paragraph 12. Objectors must give notice of their objection in writing, stating the general terms of the objection.
- 10.2 When considering an application for the grant, renewal or transfer of a licence the Licensing Authority will have regard to any observations submitted to it by the Chief Officer of Police and any objections that they have received from anyone else, (including statutory agencies such as Kent Fire and Rescue Service, UK Border Agency, The Local Safeguarding Childrens Board) within 28 days of the application.
- 10.3 Where the Licensing Authority receives notice of any objection the authority will, before considering the application, give notice in writing of the general terms of the objection to the applicant. However, the appropriate authority will not without the consent of the person making the objection reveal their name or address to the applicant.

11. Hearings

- 11.1 Under paragraph 10(19) of Schedule 3, before refusing an application, renewal or application to transfer a licence all applicants will be given the opportunity to appear before and be heard by the Licensing Committee or Sub-Committee that is responsible for determining the application.
- 11.2 Whilst Schedule 3 does not make explicit provision for objectors to be heard, this Council believes it right to offer an oral hearing to objectors. This does however remain within their discretionary powers. Although a local authority is under a duty to consider any objections made within 28 days of the application, it has discretion to hear later objections provided the applicant is given the opportunity to deal with those objections.
- 11.3 Persons making written objections will also be informed of the date and time of the licensing sub-committee hearing

where they will be invited to address the committee and ask questions relating to the application.

- 11.4 All objectors and applicants are reminded that they can if they wish be legally represented at their own expense at the hearing. Alternatively they may if they wish ask a Councillor to represent them.
- 11.5 In determining an application the Licensing Committee (or Sub-Committee) will consider the applicant's presentation, the Council's authorised officer report, police observations and objections.
- 11.6 All parties may use witnesses and supporting documentation however, copies of documents and details of witnesses must be submitted to the Licensing Committee (or Sub-Committee) for consideration prior to the hearing and in special circumstances with approval of all parties at the hearing.
- 11.7 The Licensing Committee (or Sub-Committee) will consider all the evidence presented to it during the hearing and members may ask questions of officers, applicant and objectors. After the evidence has been presented all parties will be asked to leave to allow for Licensing Committee (or Sub-Committee) to come to a decision on the application.
- 11.8 When a decision is reached the Licensing Committee (or Sub-Committee) will inform the applicant and relevant parties of their decision and the reasons for coming to that particular decision.
- 11.9 The decision of the Licensing Committee (or Sub-Committee) will be confirmed, in writing, to the applicant within seven working days of the meeting at which the application was considered giving reasons for the decision.

12. Refusal of a Licence

- 12.1 Paragraph 12 of Schedule 3 sets out the grounds for refusing an application for the grant, renewal or transfer of a licence. A licence **must not** be granted:
- a) to a person under the age of 18;
 - b) to a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months;
 - c) to a person, other than a body corporate, who is

not resident in an European Economic Area (EEA) State or was not so resident throughout the period of six months immediately preceding the date when the application was made; or

- d) to a body corporate which is not incorporated in an EEA State; or
- e) to a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

12.2 A licence may be refused where:

- a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- b) if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;
- c) the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality;
- d) that the grant or renewal of the licence would be inappropriate, having regard
 - i) to the character of the relevant locality; or
 - ii) to the use to which any premises in the vicinity are put; or
 - iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

12.3 A decision to refuse a licence must be relevant to one or more of the above grounds.

12.4 In making any determination to refuse an application, renewal or transfer the local authority will give consideration to:

a. *Suitability of the applicant*

In determining the suitability or otherwise of an applicant the local authority will consider any previous convictions and in particular those that have been imposed in respect of offences involving violence, dishonesty, drugs, offences of a sexual nature or a breach of the requirements of the legislation covering the type of establishment in respect of which the application is made.

Any other reasonable cause, arising from:

- previous knowledge and experience of the applicant
- any evidence of the operation of any existing/previous licence held by the applicant, including any licence held in any other local authority area
- any report about the applicant and management of the premises received from objectors

b. *Business carried out on behalf of a person who would be refused*

The local authority takes a serious view of any application that seeks to subvert the underlying principles of the Act. Where it is considered that the applicant is effectively operating the business on behalf of a person who would, for whatever reason, be refused or disqualified from the grant of a licence due to the mandatory or discretionary grounds for refusal there will be a presumption towards refusal unless overwhelming reasons are accepted for the contrary decision to be made.

c. *The application exceeds the limit set on the number of the specific type of sex establishments generally or of a specific type in an area*

d. *Appropriateness having regard to character of locality, use of premises in the vicinity or layout, character or condition of premises*

The local authority may refuse applications on grounds related to an assessment of the relevant locality. A licence can be refused if either, at the time the application is determined the number of sex establishments or sex establishments of a particular kind, in the relevant locality is equal to or exceeds the number that the authority considers appropriate for that locality; or that a sex establishment would

be inappropriate having regard to the character of the relevant locality the use to which any premises in the vicinity are put or the layout, character or condition of the premises.

- 12.5 Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 does not define 'relevant locality' further than to say that:
- In relation to premises, it is the locality where they are situated
 - In relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.
- 12.6 Once the Council has determined the relevant locality, it should seek to make an assessment of the 'character' of the relevant locality and how many, if any, sex establishments, or sex establishments of a particular kind, it considers appropriate for that relevant locality. The Council may consider a particular locality is suitable for a sex shop but is not suitable for a sexual entertainment venue or vice versa.
- 12.7 Case law has indicated however that in defining the relevant locality the local authority should not seek to specify wide areas.
- 12.8 Although a ward area could be considered as a relevant locality it is determined that certain wards are substantial in size and would cover a wide area. It could also raise a problem with borders of other wards where there could be a cluster of sex establishments.
- 12.9 The Licensing Authority has determined not to set specific relevant localities in respect of each type of sex establishment, instead judging each application it receives on its own individual merits and the character of the locality at the time of the decision.
- In determining the relevant locality each case will be decided on its merit having consideration to the individual circumstances of the application.
- 12.10 In licensing of sex entertainment venues the Licensing Authority will consider the impact of such premises and their operation on the character of an area. This would include but not be limited to:
- The type of location (residential, commercial, industrial)
 - The likely effects of any increased footfall or vehicular traffic
 - Any advertising or displays of an erotic or pseudo-erotic nature
 - Localities where the cumulative impact of the venue,

taken with other licensed premises or commercial interests, is likely to have an adverse effect on crime and disorder and public nuisance

- Any evidence of complaints about noise and/or disturbance caused by the premises
- The levels of crime and disorder in the area.

12.11 The Local Authority would consider use of other premises in the vicinity which would include but not be limited to:

- Establishments whose patrons are likely to be adversely affected by the operation of the premises
- The proximity of residential premises, including any sheltered housing and accommodation for vulnerable people
- The proximity of educational establishments to the premises
- The proximity of places of worship to the premises
- Access routes to and from schools, play areas, nurseries, children's centres or similar premises in proximity to the premises
- The proximity to shopping centres
- The proximity to community facilities/halls and public buildings such as swimming pools, leisure centres, public parks, youth centres/clubs (this list is not exhaustive)
- The proximity to conservation areas, historic buildings and tourist attractions
- The proximity of other sex establishments

12.12 When considering an application for the grant, renewal, variation or transfer of a licence the Council will also take into account the layout, character or condition of the premises including but not limited to the following

- The type of activity to which the application relates
- The duration of the proposed licence
- The days and hours of operation of the activity.
- Suitability of management systems to take into account the safety of its performers, customers and staff.

12.13 Visibility to passers by on retail thoroughfares or pedestrian routes. In more sensitive locations applicants should consider whether it would be appropriate to locate such premises at basement level or locate entrances away from retail thoroughfares or busy pedestrian routes.

13. Waivers

13.1 The amendments to Schedule 3, Local Government

(Miscellaneous Provisions) Act 1982 allow for the Licensing Authority to waive the need for a sex entertainment venue licence under certain circumstances.

- 13.2 An applicant can apply for a waiver either as part of the application for a licence or separately. The Local Authority can grant a waiver if they consider that to require a licence would be unreasonable or inappropriate. Where a waiver is granted the appropriate authority should inform the applicant that a waiver has been granted. The waiver may last for such a period that the appropriate authority think fit, but can be terminated by the appropriate authority at any time with 28 days notice.
- 13.3 The Licensing Authority will consider applications for such waiving of the need for licences on an individual basis. However, it is felt that unless clear and unambiguous evidence can be produced to support such a waiving of licence, the default position will be that a licence will be required.

14. Conditions

- 14.1 The Local Government (Miscellaneous Provisions) Act 1982 allows the Licensing Authority to attach both standard and specific conditions to a licence. The Licensing Authority has set out standard conditions (APPENDIX A) in respect of each type of licensed premises for which conditions may be taken and provided a pool of conditions. However, this list is not exhaustive and is merely to give an indication of what may be considered necessary for any individual licence.
- 14.2 The standard conditions will be placed on the particular type of establishment and others may be applied only where a perceived necessity exists and in a manner that is both proportionate and reasonable to promote a safe and well managed premises. Each case will be dealt with on its individual merit.
- 14.3 Whilst conditions may be prescribed on any matter it is likely that the following considerations will attract the attachment of conditions:
- Hours of opening and closing
 - Visibility of the interior of the premises
 - Displays of advertisements
 - Any change to the type of premises
 - Minimum distance between audience and performers

- The control of access to changing room facilities
- The control of private viewings

14.4 The authority may specify other conditions specific to individual premises dependant on the type of activity undertaken. Such condition may not be listed in the pool of conditions.

15. *Duration of Licences*

15.1 Licences for sex establishments will be granted for up to one year.

16. *Appeals*

16.1 The Local Government (Miscellaneous Provisions) Act 1982, paragraph 27 permits appeals against the decision of the Council in relation to sexual entertainment venues. Appeals will be heard in the first instance by the Magistrates Court. An appeal must be made within 21 days of the decision of the Licensing Sub-Committee to the Magistrates Court.

16.2 An appeal can be made in the following circumstances:-

- Refusal of an application for grant, renewal or transfer of a licence
- Refusal of an application to vary terms, conditions or restrictions on or subject to which any licence is held
- A grievance relating to any term, condition or restriction on or subject to which a licence is held
- Revocation of a licence

16.3 There is no right of appeal for objectors.

16.4 There is no right of appeal against refusal on the ground that there are sufficient sex establishments in the locality or that to grant would be inappropriate having regard to the character of the locality, use of premises in the vicinity and the layout, character, condition and location of the premises.

16.5 A person wishing to appeal against the council decision is strongly advised to seek assistance from a solicitor.

APPENDIX A**STANDARD TERMS, CONDITIONS &
RESTRICTIONS RELATING TO SEX
ESTABLISHMENTS**

These regulations apply to the licences for sex establishments granted, renewed or transferred by the Council under the provisions of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

Definitions

In these regulations, save where the context otherwise requires, the following expressions shall have the following meanings:-

- i) "Sex Establishments", "Sex Cinema", "Sex Shop", "Sex Article", "Sexual Entertainment Venues" and "relevant entertainment and nudity" shall have the meanings ascribed to them in the Third Schedule of the Local Government (Miscellaneous Provisions) 1982 as amended.
- ii) "Premises" means a building or part of a building and any forecourt, yard or place of storage used in connection with a building or part of building, which is subject of a licence for a sex establishment granted under the Third Schedule.
- iii) "Approval of the Council" or "Consent of the Council" means the approval or consent of the Council in writing.
- iv) "Approved" means approved by the Council in writing.
- v) "The Council" means the Swale Borough Council.
- vi) "Film" shall have the meaning ascribed to it in the Films Act 1985

General

The following terms, conditions and restrictions are applicable to sex establishment licences. In the event of a conflict between these and any special conditions contained in a licence relating to a sex establishment the special condition shall apply.

The grant of a licence for a sex establishment shall not be deemed to convey any approval or consent which may be required under any other enactment by law or regulation other than the Third Schedule to the Local Government (Miscellaneous Provisions) Act 1982 as amended.

APPENDIX B**Sex Shops****Times of Opening****Condition 1**

Except with the previous consent of the Council the premises shall not open to the public before 9.00am and shall not be kept open after 6.00pm

Except with the previous consent of the Council, the sex establishment shall not open on Sundays or any other Bank Holidays or any Public Holidays.

A notice displaying the times when the premises are open or closed shall be displayed on the entrance to the premises in a form and manner approved by the Council.

Conduct and Management of Premises**Condition 2**

Where the Licensee is a body corporate or an unincorporated body, any change of director, company secretary or other person responsible for the management of the body is to be notified in writing to the Council within 14 days of such change and such written details as the Council may require in respect of any new director, secretary or manager, are to be furnished within 14 days of a request in writing from the Council.

Condition 3

The Licensee or some responsible person nominated by him in writing for the purpose of managing a sex establishment in his absence and whom details (including photographs) have been supplied to and approved in writing by the Council, shall be in charge of and upon the premises during the whole time they are open to the public. The name of the person responsible for the management of the sex establishment being either the Licensee or a manager approved by the Council shall be prominently displayed

within the sex establishment throughout the period during which he is responsible for its conduct.

Condition 4

The holder of the licence shall keep exhibited in a suitable place within the shop premises, so that it can be easily seen by premises users, a copy of the licence and any conditions and regulations made and they shall be readily available for inspection by any of the following officers:-

- a) Duly authorised officer of the Swale Borough Council
- b) Police Officer
- c) A Fire Officer

Condition 5

The Licensee shall retain control over all portions of the premises and shall not let, licence or part with possession of any part of the premises.

Condition 6

The Licensee shall maintain good order in the premises at all times and shall ensure that persons entering or leaving the licensed premises conduct themselves in an orderly manner and do not in any way cause annoyance to residents and persons passing by.

Condition 7

No person under the age of 18 shall be permitted entry to the premises or be employed in the business of sex establishments.

Condition 8

The Licensee shall ensure that the public are not admitted to any part or parts of the premises other than those which have been approved by the Council.

Condition 9

The Licensee shall ensure that no part of the premises shall be used by prostitutes (Male or Female) for soliciting or for any immoral purpose.

Condition 10

Neither the Licensee nor any employee or other person shall seek to obtain custom for the sex establishment by means of the personal solicitation outside or in the vicinity of the premises.

Condition 11

The Licensee shall ensure that during the hours the sex establishment is open for business, every employee wears an identifying badge, of a type approved by the Council, indicating his name and that he is an employee.

Condition 12

No refreshment of any kind shall be provided nor any consumed on the licensed premises other than for any bona fide staff in a part of the premises not open to the public.

Use of the Premises

Condition 13

The sex shop shall be conducted primarily for the purpose of the sale of goods for retail and change of use of any portion of the premises from that licensed by the Council, shall not be made until the consent of the Council has been obtained thereto.

Condition 14

No change from a sex cinema or sexual entertainment venue to a sex shop or from a sex shop to a sex cinema or sexual entertainment venue shall be effected without the consent of the Council and neither sex articles nor other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with

sexual activity shall be sold, hired, exchanged, loaned or demonstrated in a sex cinema or sexual entertainment venue.

Goods available in sex establishments

Condition 15

All sex articles and other things displayed for sale, hire, exchange or loan within the sex shop, shall be clearly marked to be shown to the persons who are inside the sex shop the respective charge being charged.

Condition 16

All printed matter for sale, hire, exchange or loan shall be available for inspection prior to purchase, and a notice to this effect is to be prominently displayed within the sex establishment.

Appendix C

Sex Cinemas

Film Categories

Condition 1

The categories U, PG, 12, 15, 18 and restricted 18 have the following effect:

- U—Universal - suitable for all
- PG — Parental Guidance — some scenes may be unsuitable for young children
- 12 — Passed only for persons of 12 years and over
- 15 — Passed only for persons of 15 years and over
- 18 — Passed only for persons of 18 years and over
- Restricted 18 - Passed only for persons of 18 or over who are members (or their guests) of a properly constituted club.

Unclassified Films

Condition 2

The licences must notify the Council in writing no later than twenty-eight days prior to exhibiting any other film that has not been classified as specified in the film categories. Such a film may only be exhibited if the Council's gives written consent prior to the event and must comply in accordance with the terms of any such consent given.

Restricted Films

Condition 3

Films restricted 18 (R18) may be shown at the premises only with the Council's prior written consent and in accordance with the terms of any such consent.

Persons Under 18

Condition 4

No person appearing to be under the age of 18 shall be admitted to any part of the programme and the licensee shall display in a conspicuous position at each entrance to the premises a notice in clear letters in the following terms:

PERSONS UNDER 18 CANNOT BE ADMITTED TO THIS
CINEMA FOR ANY PART OF THE PROGRAMME

Condition 5

No persons under 18 years of age shall be employed in any capacity at the premises in an area operating as sex cinema club.

Advertising

Condition 6

No advertisement displayed at the premises where a film is to be exhibited shall depict any scene or incident from a film that has been classified by the British Board of Film Classification, Board of Film Censors or approved for exhibition by the Licensing Authority.

Condition 7

The licensee shall display in a conspicuous position, to the satisfaction of the Council at each entrance to the premises, during the whole time the public are admitted to the premises and so as to be easily seen and read by the public, a timetable of the films on exhibition.

Condition 8

When the programme includes a film restricted 18, the licensee shall display in a conspicuous position at each entrance to the premises a notice in clear letters in the following terms:

CINEMA CLUB — MEMBERS AND GUESTS
ONLY. PERSONS UNDER 18 CANNOT BE
ADMITTED TO THIS CINEMA FOR ANY PART OF
THE PROGRAMME.

Condition 9

The entrance doors to the premises shall be obscured, screened or arranged so as to effectively prevent the interior of the premises being seen by passers by.

The obscuration, screening or other arrangements shall be to the satisfaction of and approved by the Council.

Restricted 18

Condition 10

A register of all members and all visitors books of their guests shall be available for immediate inspection by authorised officer of the Council during any performance or at any other reasonable time.

Condition 11

Tickets shall in no circumstances be sold to persons other than to members.

Membership

Condition 12

The club rules must be submitted to the Council 14 days before the club commences operation and notice of all rule changes shall be given to the Council within 14 days of the change.

Condition 13

Membership shall be open to persons of both sexes of not less than 18 years of age Condition 14

Applications for membership, including both name and address, shall be in writing, signed by the applicant and if deemed necessary such applicant shall provide satisfactory references and proof of age.

Condition 14

No persons shall be admitted to membership until the expiration of at least 24 hours after such written application has been approved by the management of the club.

Condition 15

New members shall be supplied with a personal copy of the club rules before being admitted to membership and be given a copy of any rule changes within 14 days of the change.

Condition 16

An annual subscription shall be fixed for the club and shall run for 12 months from the date of registration. Membership may be renewed annually at the subscription for the time being in force, but the management may refuse to renew any membership without assigning reason for such refusal.

Condition 17

Members shall be entitled on any day to bring no more than one guest to accompany the member, and the name of the guest shall be entered in the visitors book and counter signed by the member.

Condition 18

Tickets shall be sold only to members on the production of a membership card, and members shall if required sign and acknowledgement for the ticket or tickets issued.

Condition 19

Membership cards shall be personal to the member and carry a photograph of the holder.

Condition 20

Neither membership tickets nor guest tickets shall be transferable.

Condition 21

Guest may be asked for proof of identity, or of age, or of any particulars of any guest shall be produced by any member of guest if demanded by the management.

Condition 22

Members shall undertake to behave in a proper and orderly manner. Any member or guest acting in a manner which is offensive, or a nuisance or annoyance to others may be refused admission or expelled from the premises. A member may also be deprived of membership.

Sale of Sex ArticlesCondition 23

Neither sex articles nor other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated

APPENDIX D

Sexual Entertainment Venue

Times of Opening

Condition 1

The premises shall not open unless

otherwise permitted: [TIMES

WILL BE SPECIFIED FOR

EACH LICENCE]

Conduct and Management of Premises

Condition 2

The name of the person responsible for the management of the sex establishment being either the Licensee or a manager approved by the Council, shall be prominently displayed within the sex establishment throughout the period during which he is responsible for its conduct.

Condition 3

The licensee or the responsible person shall maintain a daily register to be kept on the premises and produced to an authorised officer on request. The register to be completed each day within 30 minutes of the Sex Entertainment Venue opening for business and will record the name and contact details of any person who is to be responsible for managing the Sex Entertainment Venue in the absence of the licensee and details of all staff employed at the premises including performers.

Condition 4

A notice showing the name of the person responsible for the management of the sex entertainment venue on that day to be prominently displayed within the sex establishment throughout the period during which he is responsible for its conduct.

Condition 5

Where the licensee is a body corporate or an unincorporated body any change of director, company secretary or other person responsible for the management of the body is to be notified in writing to the Council within 14 days of such change.

Condition 6

The licensee shall ensure that no part of the building or its boundary is used by prostitutes (male or female) for the purposes of soliciting or any other immoral purposes. Neither the licensee nor any employee or other person shall seek to obtain custom by means of personal solicitation outside or in the vicinity of the premises.

Condition 7

The licensee shall ensure that the public are not admitted to any part or parts of the premises other than those that have been approved by the Council.

APPENDIX E

Pool of Possible Additional Conditions

Age Restriction

Condition A

All members of staff shall seek credible photographic proof of age evidence from any person who appears to be under the age of 25 years and who is seeking access to the premises. Such credible evidence, which shall include a photograph of the customer, will either be a passport, photographic driving licence, or proof of age card.

Security

Condition B

Door supervisors, registered by the Security Industry Authority (SIA) shall be on duty at all times when relevant entertainment is taking place.

Condition C

An adequate number of door supervisors shall be on duty on the premises when relevant entertainment takes place. There shall be at least one door supervisor on each entrance, in each separate part of the premises and on the door to the dressing room.

Condition D

CCTV to be installed to a standard agreed by police to cover all public areas, including all access and egress points in accordance with CCTV Code of Practice. Maintained and serviced on a regular basis and records to be kept. The system to have incorporated recording facility and recordings to be stored for one calendar month. The CCTV system to be fully operational throughout the hours that the premises are open for licensable activity. Access of the recordings to be made available at any reasonable time to police and local authority officers upon request. Staff will be fully trained in the CCTV system and there will be at least one member of staff on duty during trading hours who is able to provide a recording of any incident in a format that can be taken away to be viewed.

Entertainers/Performers

Condition E

Whilst dancers are performing there shall be a minimum distance of one metre between the dancer the seated customers and the dancers at any time except for the placing of money or tokens in a garter or in to the hands of the dancer at the beginning or conclusion of a performance.

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General Licensing Committee Meeting	
Meeting Date	12 th July 2018
Report Title	Scrap Metal Dealers Policy
Cabinet Member	Cllr Mike Cosgrove, Cabinet Member for Regeneration
SMT Lead	Mark Radford
Head of Service	Della Fackrell, Resilience & Licensing Manager
Lead Officer	Christina Hills, Licensing Officer
Key Decision	No
Classification	Open
Recommendations	1. That the Scrap Metal Dealers Policy as set out in Appendix I to this report, be adopted.

1 Purpose of Report and Executive Summary

- 1.1 At the General Licensing Committee meeting of 19th April 2018 a draft policy under the Scrap Metal Dealers Act 2013 was approved for public consultation. This report sets out the feedback received and recommends adoption of the policy.

2 Background

- 2.1 The Scrap Metal Dealers Act 2013 revised the regulatory regime for the scrap metal recycling and vehicle dismantling industries.
- 2.2 The 2013 Act repealed the Scrap Metal Dealers Act 1964 and the Vehicle Crime Act 2001, replacing them with a more robust licensing regime that gives a local authority the powers to refuse the grant of a licence where the applicant is deemed unsuitable; and the powers to revoke a licence should a licence holder become unsuitable.
- 2.3 The 2013 Act aims are to raise the standards across the scrap metal industry and to help achieve this, licensed operators have to keep detailed records of their transactions, and verify the identity of those selling scrap metal to them.
- 2.4 In addition to replacing the Scrap Metal Dealers Act 1964 and the Vehicle and Crime Act 2001, the 2013 Act revised the definition of a 'Scrap Metal Dealer' so as to take into account the modern way in which people collect and deal in scrap metal. The 2013 Act provides for two types of Scrap Metal Dealer licences. A 'Site Licence' and a 'Collector's Licence' both of which last for three years.

2.4.1 Site Licence

A site licence is applicable where the licence holder has a physical site(s) that they use to carry on their business as a scrap metal dealer. This licence allows the licence holder to accept scrap metal from any of the sites listed on the licence and to transport scrap metal to and from the sites listed on the licence.

2.4.2 Collectors Licence

A collector's licence is applicable where the licence holders business consists of collecting scrap metal, for example by going from door to door asking for scrap. This licence allows the licence holder to collect scrap metal from within the boundaries of the local authority within whose boundary a person wishes to operate.

2.5 At its meeting of 7th October 2013 the General Licensing Committee of Swale BC approved a scheme of delegations and a fee structure in order to administer the Councils' responsibilities under the 2013 Act.

2.6 Swale BC currently has 11 scrap metal site licences and 9 scrap metal collectors licences.

3 Proposals

3.1 There is no statutory requirement for a local authority to have a formal Scrap Metal Dealers licensing policy; however, a Council can choose to adopt such a policy. This is for the benefit of business owners as well as reassuring the general public and other public bodies. It also reinforces the Regulators Code when dealing with applications by promoting effective practice, and ensuring proportionate, consistent and targeted regulator activity, whilst also developing a transparent and effective dialogue and understanding between regulators and those we regulate.

4 Alternative Option

4.1 The Council could choose not to introduce a policy on Scrap Metal Dealers, however to do so would be contrary to best practice and may lead to a lack of clarity on the application of the legislation.

5 Consultation Undertaken and Feedback

5.1 An 8 week consultation was undertaken and ran between 7th May 2018 and 2nd July 2018.

5.2 Consultees were the following

- Kent Police

- Kent Fire and Rescue
- Kent Trading Standards
- Environment Agency
- Swale BC Environmental Services
- British Metal Association
- Neighbouring local authorities
- All existing licence holders

5.3 Despite the widespread consultation no comments were received on the draft policy. However this is consistent with other authorities who have adopted a Scrap Metal Policy.

6 Implications

Issue	Implications
Corporate Plan	Making Swale a better place A Council to be proud of
Financial, Resource and Property	There are no direct financial implications for Swale Borough Council concerning this draft Policy as the consultation is being carried out by officers. However, if at any time in the future the policy was subject to legal challenge, there could be costs associated with this process
Legal and Statutory	The 2013 Act introduced a comprehensive licensing regime for all scrap metal dealers. In accordance with the Act the Council must licence all scrap metal dealers. The Council must determine the suitability of applicants to hold licences. The Council also has the powers to impose conditions on licences, revoke licences and take enforcement action against unlicensed operators. Whilst there is no statutory requirement for the Council to have a Scrap Metal Licensing Policy it provides the framework under which Swale BC will exercise its powers and duties under the 2013 Act and ensures that fair and equitable decisions are taken by Swale Borough Council
Crime and Disorder	It is important that Swale BC has a robust and accountable regulatory regime in relation to scrap metal in order to ensure fair trading, prevent crime and to protect consumers
Environmental Sustainability	No implications
Health and	No implications

Wellbeing	
Risk Management and Health and Safety	It is important that Swale BC has a robust and accountable regulatory regime in relation to scrap metal in order to ensure fair trading, prevent crime and to protect consumers
Equality and Diversity	<p>The Council has a legal obligation under section 149 of the Equality Act 2010 to have due regard to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups.</p> <p>When considering scrap metal applications, only issues provided for in the Scrap Metal Act 2013 and provided for in the Scrap Metal Dealers policy for Swale BC will be taken into account. This will ensure a consistent approach is adopted. Under the terms of the policy, every application will be considered on its own merits.</p>
Privacy and Data Protection	Normal data protection and privacy rules will apply. Under the 2013 Act the Council is obliged to provide certain information to the Environment Agency who compile and keep a public register.

7 Appendices

- 7.1 The following documents are to be published with this report and form part of the report:
- Appendix I: Scrap Metal Dealers Policy 2018

8 Background Papers

Scrap Metal Dealers Act 2013 and related Guidance



SWALE BOROUGH COUNCIL
SCRAP METAL DEALERS POLICY

July 2018 – June 2021

This Scrap Metal Dealers Policy was prepared taking into account the Scrap Metal Dealers Act 2013

Section Number	CONTENT
1	Introduction
2	Background
3	Types of Licence
4	Applicant Suitability
6	Application Procedure
7	Supply of Information by Authority
7	Register of Licences
8	Notification of Requirements
8	Verification of Suppliers Identity
8	Payment for Scrap Metal
9	Records to be kept
10	Rights of Entry and Inspection
11	Display of a Licence
11	Variation or Renewal of a Licence
12	Further Information
12	Fee
12	Refusals and Right to make Representations
13	Revocation and Imposing Conditions
13	Appeals
14	Closure of Unlicensed Sites
15	Delegation of functions
15	Appendix A Relevant Offences

SWALE BOROUGH COUNCIL - SCRAP METAL POLICY 2018 - 2021

1. Introduction

1.1. Metal theft over the last few years has had a significant impact upon our communities, businesses and the local authority. Such thefts have seen communications and the train networks disrupted, as well as significant costs to local authorities in relation to stolen drainage gully covers and stolen road signs.

The Scrap Metal Dealers Act 2013 (The Act) was introduced to address these issues, ensuring that the sale, collection, storage and disposal of scrap metal are carried out lawfully.

1.2 The Act identifies the local authority as the principal regulator and gives the Council the authority to regulate these industries by the ability to refuse licences to 'unsuitable' applicants and the power to revoke those licences held by licence holders who become 'unsuitable'.

1.3 This policy outlines the requirements of the Scrap Metal Dealers Act 2013. It also provides guidance to new applicants, existing licence holders and members of the public as to how the council will undertake its role in the administration and enforcement of the Act.

This policy is intended to reinforce the aims of the policy and the Regulators Code by promoting effective practice, ensuring proportionate, consistent and targeted regulator activity, whilst developing a transparent and effective dialogue and understanding between regulators and those we regulate.

1.4 Nevertheless, Swale Borough Council (the licensing authority) may depart from its own policy if individual circumstances warrant such a deviation.

1.5 The Council sees the licensing process as an integral part to its approach to achieving its strategic and corporate objectives which encompasses the visionary goals of:

- A Borough to be proud of
- A Community to be proud of
- A Council to be proud of

1.6 The policy will be reviewed every 3 years, and the following will be consulted

- a) Kent Police
- b) Kent Fire and Rescue
- c) Kent Trading Standards
- d) Environment Agency
- d) Swale Borough Council Environmental Services
- e) Any relevant trade associations
- f) Neighbouring local authorities

1.7 Equalities

The Council is committed to ensuring that it tackles social inclusion and diversity issues across all its services and as an employer. We recognise that individuals may experience unlawful discrimination as a result of personal characteristics protected in law, and that individuals and communities may also experience discrimination and disadvantage on the basis of wider, social, economic and demographic characteristics. We believe that equality for all is a basic human right and actively oppose all forms of unlawful and unfair discrimination. We recognise and value the diversity of society and are striving to promote and reflect that diversity within this Council.

2. Background

2.1.1 The Scrap Metal Dealers Act 2013 came into force on 1 December 2013. It repealed previous legislation and created a new regulatory regime for scrap metal recycling and vehicle dismantling.

2.1.2 The Act defines a “scrap metal dealer” if:

- (a) they wholly or partly buy or sell scrap metal (whether or not sold in the form it was bought); or
- (b) they carry on business as a motor salvage operator (see 2.4)

2.1.3 The selling of scrap metal as surplus materials or as a by-product of manufacturing articles is not to be regarded as ‘carrying on a business’ as a scrap metal dealer.

2.1.4 Motor salvage operation is defined in the Act as a business that consists wholly or mainly of:

- (a) recovering salvageable parts from motor vehicles for re-use or sale and selling the remainder of the vehicle for scrap;
- (b) buying written-off vehicles, repairing and reselling them;
- (c) buying or selling motor vehicles which are to be the subject of any of the activities mentioned in (a) or (b)
- (d) wholly or mainly in activities falling within paragraphs (b) and (c)

2.2 Scrap metal includes:

- (a) Any old, waste or discarded metal or metallic material; and
- (b) Any product, article or assembly which is made from or contains metal and is broken, worn out or regarded by its last holders as having reached the end of its useful life.
- (c) This definition does include platinum and other rare metals now being used in catalytic converters in vehicle exhausts.

2.3 Scrap metal does not include

- (a) Gold;
- (b) Silver;
- (c) Any alloy of which 2% or more by weight is attributable to gold or silver.

3. **Types of Licence**

3.1.1 In order for anyone to carry on a business as a scrap metal dealer, or collector they must have a licence. A licence is valid for three years from the date of issue and permits the holder to operate within the boundaries of Swale Borough. Trading without a licence is a criminal offence.

3.1.2 A person may hold more than one licence issued by different local authorities but may not hold more than one licence issued by any one authority.

3.1.3. Anyone wishing to operate a business as a scrap metal dealer will require either:

- (a) a site licence; or
- (b) a collector's licence

A dealer can only hold one type of licence in any one local authority.

3.2. Site Licences

3.2.1 A site under the Act is defined as 'any premises used in the course of carrying on a business as a scrap metal dealer, (whether or not metal is kept there). This means a dealer will require a licence for an office, even if they do not operate a metal store or yard from those premises. A site licence allows the holder to transport scrap to and from the site from any local authority area.

3.2.2 The site licence must include:

- (a) the name of the licensee;
- (b) the name of the authority;
- (c) all the sites in the authority's area at which the licensee is authorised to carry on business;
- (d) the name of the site manager of each site;
- (e) the date of expiry (which is 3 years from the date of issue)

A site licence must be displayed at each site identified on the licence, in a prominent place accessible to members of the public.

3.3 Collectors licences

The Act defines a 'collector' as a person who –

- (a) carries on business as a scrap metal dealer otherwise than at a site;
- (b) regularly engages, in the course of that business, in collecting waste materials and old, broken, worn out or defaced articles by means of visits from door to door

This licence does not permit the holder to operate a scrap metal site, nor does it allow collection from outside the area of the issuing licensing authority. If a person collects scrap from numerous local authority areas, a collector's licence will be required from each authority he/she collects scrap within.

3.3.1 A collector's licence must include:

- (a) the name of the licensee;
- (b) the name of the authority;
- (c) the date of expiry (which is 3 years from the date of issue)

4. Applicant Suitability

4.1 The Council must determine if an applicant is a suitable person to carry on a business as a scrap metal dealer. 'Applicant' includes sole traders, partners of a partnership and directors, secretary and shadow directors of a company.

4.1.2 In determining a person's suitability the Council will have regard to:-

- (a) Statutory Guidance;
- (b) Its Policy

4.1.3 Notwithstanding the existence of this policy, the Council, when determining a person's suitability for the purposes of the Act, will treat each case on its own individual merits.

4.1.4 In determining suitability the Council will require the applicant to produce a Disclosure and Barring Services records check. Where the applicant has previously lived outside the United Kingdom the Council will not consider the grant of a licence until a relevant check has been completed with the relevant country or countries and details of such check submitted to the Council. A Certificate of Good Conduct will need to be submitted in such cases.

4.1.5 As well as its policy and statutory guidance, the Council, when determining a person's suitability, may have regard to any other information it considers relevant, in particular, but not limited to:

- (a) whether the applicant or site manager has been convicted of any relevant offence;
- (b) whether the applicant or site manager has been the subject of any relevant enforcement action;
- (c) any previous refusal of an application for the issue or renewal of a scrap metal licence (and the reasons for the refusal);
- (d) any previous refusal of an application for a relevant environmental permit or registration (and the reasons for the refusal)
- (e) any previous revocation of a scrap metal licence (and the reasons for the revocation);
- (f) whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the provisions of the Act are complied with;
- (g) any relevant offences or relevant enforcement action listed under the Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013 as shown as Appendix A to this policy.

The Council must also have regard to any guidance on determining suitability which is issued from time to time by the Secretary of State.

4.1.6 When establishing the applicant's suitability, the Council may consult other persons regarding the suitability of an applicant, including, but not limited to:

- (a) any other local authority
- (b) the Environment Agency or any successor organisation
- (c) an officer of a police force
- (d) HM Revenues and Customs
- (e) Kent Trading Standards
- (f) Planning department of Swale Borough Council
- (g) Environmental Response team of Swale Borough Council

4.1.7 While the Act states that the Council must have regard to the relevant offences laid out in Appendix A of this policy, the Council is not limited to taking into account only those offences. As such the Council may consider other offences that, in the Council's opinion, may be relevant in determining an applicant's suitability.

4.1.8 Having regard to the objectives of the Act, the Council has determined it will consider the following offences, or enforcement actions relating to any person relevant to the licence, as being of particular relevance to the suitability of the licence holder:

- (a) written warning relating to scrap metal compliance;
- (b) Waste regulations 2011 – enforcement, compliance and stop notices;
- (c) Permitting regulations notices;
- (d) Planning Breach of Condition/Enforcement notices;
- (e) statutory nuisance abatement notice;
- (f) breach of statutory nuisance abatement notice

4.1.9 Having regard to the objectives of the Act the Council has determined there will be a presumption to refuse an application where the applicant or any other person required to be named or identified in the application has been convicted of any of the relevant offences laid down in the Act or has been the subject of any of the following forms of enforcement action within the period of three years prior to the application:

- (a) closure notice pursuant to the Act;
- (b) closure order pursuant to the Act;
- (c) action for recovery of possession of out of date or discontinued licences

4.1.10 Notwithstanding this policy and the matters that the Council may take into account when determining a person's suitability, each case shall be treated on its own individual merits.

5. Application Procedure

5.1 An application form, available from the Licensing Department must be completed and submitted together with the correct fee and a current Basic Disclosure and Barring Service Criminal Convictions check (DBS). The DBS must be less than 3 months old from the date of issue. Information on convictions held by those having lived outside the United Kingdom will also be required.

5.2. The application form must detail the following:

- (a) full name of the applicant (if an individual), date of birth and usual place of residence;
- (b) name and registered number of the applicant (if a company) and registered office;
- (c) if a partnership – full name of each partner, date of birth and usual place of residence;
- (d) proposed trading name
- (e) telephone number and email address (if an) of applicant;

- (f) address of any site within any other local authority at which it is proposed to carry on business as a scrap metal dealer;
- (g) any relevant environmental permit or registration in relation to the applicant;
- (h) details of any other scrap metal licence issued to the applicant within a period of 3 years ending with the date of the application;
- (i) details of the bank account which is proposed to be used in order to comply with section 12 of the Act;
- (j) details of any relevant conviction or enforcement action taken against the applicant;

5.2.2 For a site licence, the applicant must also provide:

- (a) the address of each site proposed to be identified in the licence (or if renewal, each site identified for which renewal is sought);
- (b) the full name, date of birth and usual place of residence of each individual proposed to be named in the licence as a site manager (other than the applicant);
- (c) the information required under paragraph 12.2.(g) (h) (j) that relate to any individual being proposed as a site manager;

5.2.3 Please note that a collectors licence issued by Swale Borough Council allows a business or individual to operate within the Swale Borough area only, therefore individuals applying for a collectors licence and wishing to collect scrap metal across borough boundaries will be required to obtain a collectors licence from every local authority where they wish to collect and sell.

6. **Supply of Information**

6.1 The Council has a duty to pass on information in relation to an application for, or relating to a scrap metal licence when requested by:

- (a) any other local authority;
- (b) The Environment Agency;
- (c) An officer of a police force;

This does not limit any other power the Council may have to supply that information.

7 **Register of licences**

7.1 The Environment Agency maintains a register of scrap metal licences issued by authorities in England and each entry will record:

- (a) the name of the authority which issued the licence;

- (b) the name of the licensee;
- (c) any trading name of the licensee;
- (d) the address of the site identified in the licence;
- (e) the type of licence; and
- (f) the date on which the licence is due to expire

The register is open for inspection by members of the public

- 7.1.2 The register will be up-dated by the Council after an application (new, renewal, variation, revocation etc) has been processed.

8. Notification of Requirements

- 8.1 An applicant for a scrap metal licence, or for the renewal, or for a variation to a licence, must notify the Council of any changes which materially affect the accuracy of the information which the applicant has provided in connection with the application.
- 8.2 A licensee who ceases in carrying on business as a scrap metal dealer must notify the Council within 28 days from the date they are no longer a scrap metal dealer.
- 8.3 If a licence is issued to a business under a trading name the licensee must notify the Council of any change to that name within 28 days of that change occurring.

9. Verification of Suppliers Identity

- 9.1 A scrap metal dealer must verify the name and address of any person they receive scrap metal from.
- 9.2 When verifying the person's name and address, the scrap metal dealer must do so by way of documents, data or other information obtained from a reliable and independent source.
- 9.3 In the course of collecting door to door, it may not be possible for a mobile collector to verify the name and address of the supplier if the waste materials are old, broken, worn out or defaced articles have been left on the roadside.
- 9.4 However, a mobile collector must record the description of the metal, including its type (or types if mixed), form, condition, weight and any marks identifying previous owners or other distinguishing features and the date and time of its receipt.
- 9.5 If suitable verification is not obtained the scrap metal dealer, or site manager, or person who has been delegated responsibility shall be guilty of an offence.

10 Payment for Scrap Metal

- 10.1 Cash cannot be used by any scrap metal collector. It is an offence to buy scrap metal for cash under Section 12 of the Act and there are no exemptions.

10.2 Payment must only be made by either:

- (a) a cheque (which is not transferrable under Section 81A Bills of Exchange Act 1882); or
- (b) electronic transfer of funds (authorised by a credit, debit card or otherwise

This will mean that the payment will be linked to a readily identifiable account for both the payee and the payer. Payment includes paying in kind with goods and services.

11. Records

11.1 The scrap metal dealer must keep three types of records:

- (a) Receipt of metal
- (b) Disposal of metal
- (c) Supplementary

11.2.1 Receipt of metal

If metal is received in the course of the dealer's business, the following must be recorded:

- (a) Description of the metal, including its type (or, types if mixed), form, condition, weight and any marks identifying previous owners or other distinguishing features
- (b) Date and time of receipt;
- (c) The registration mark of the vehicle it was delivered by;
- (d) Full name and address of the person delivering it, and
- (e) Full name of the person making payment on behalf of the dealer

11.2.2 The dealer must keep a copy of the documents used to verify the delivery person's name and address

11.2.3 If payment is by cheque a copy of the cheque must be retained.

11.2.4 If payment is by electronic transfer a receipt identifying the transfer must be retained, or the details of the transfer.

11.3 Disposal of Metal

Disposal under the Act covers metal:

- (a) Whether or not it is in the same form when it was purchased
- (b) Whether or not it is to another person; or
- (c) Whether or not it is despatched from a site

11.3.1 Disposal records must be recorded, including:

- (a) description of the metal, including its type (types if mixed), form, weight
- (b) date and time of disposal
- (c) if to another person, their full name and address
- (d) if payment is received for the metal (sale or exchange) the price
- (e) other consideration received

11.3.2 If disposal is in the course of business conducted under a collector's licence, the dealer must record:

- (a) date and time of disposal
- (b) if to another person, their name and address

11.4 Supplementary

11.4.1 The information collected during receipt and disposal must be recorded in such a manner that allows the information and the metal to which it relates to be easily identified.

11.4.2 The records of receipt must be marked so as to easily identify the metal to which they relate.

11.4.3 Records must be kept for a period of three years beginning on the day of receipt, or disposal

11.4.4 If suitable records for the receipt or disposal of scrap metal are not kept then the scrap metal dealer, or site manager, or person who has been delegated responsibility by the dealer or site manager for keeping records, shall be guilty of an offence

11.4.5 A dealer or site manager may have a defence if they can prove arrangements had been made to ensure the requirement to keep records was fulfilled, or that they took all reasonable steps to ensure those arrangements were complied with.

12. Right of entry and inspection

12.1 A police officer or an authorised officer of the Council may enter and inspect a licensed site at any reasonable time, with notice to the site manager.

12.2 Entry and inspection without notice may occur, if:

- (a) reasonable attempts to give notice had been given and had failed; or
- (b) entry to the site is reasonably required for the purpose of ascertaining whether the provisions of the Act are being complied with or investigating offences under it, and, in either case, the giving of the notice would defeat that purpose.

- 12.3 Sections 12.1 and 12.2 do not apply to residential premises.
- 12.4 An authorised officer of the Council is not entitled to use force to enter a premises, but may ask a justice of the peace to issue a warrant authorising entry, if they are satisfied there are reasonable grounds for entry to the premises and is reasonably required for the purposes of:
- (a) securing compliance with the provisions of the Act, or
 - (b) ascertaining whether those provisions are being complied with.
- 12.5 'Premises' under this section include:
- (a) licensed site, or
 - (b) premises that are not licensed, but there are reasonable grounds for believing the premises are being used as a scrap metal dealing business.
- 12.6 An authorised officer of the Council may use reasonable force in the exercise of the powers under a warrant obtained under section 12.4.
- 12.7 An authorised officer of the Council may require:
- (a) production of, and inspect, any scrap metal kept at any licensed premises, and
 - (b) require production of, and inspect, any records kept in respect of receipt and disposal of metal, and
 - (c) to take copies of or extracts from any such record
- 12.8 An authorised officer of the Council must produce evidence of their identity and evidence of their authority to exercise these powers, if requested by the owner, occupier, or other person in charge of the premises.

13. Display of a Licence

- 13.1 A copy of a site licence must be displayed at each site identified in the licence. The copy must be displayed in a prominent place, in an area accessible to the public.
- 13.2 A copy of the site licence will be available in every vehicle that collects metal in connection with a site licence.
- 13.3 A copy of the collector's licence must be displayed on any vehicle that is being used in the course of the dealer's business. This must be displayed in a manner which enables it to be easily read by a person outside the vehicle.

14. Variation of a Licence

- 14.1 A variation application can be made to vary the type i.e. a site licence to collector's licence or vice versa, content, details, site manager etc. on a licence.

14.2 A variation application can only be accepted in respect of an existing licence issued by Swale Borough Council.

14.3 A variation application cannot be used to transfer a licence from one person/partnership/company: this would require a new application for a site or collector's licence.

14.4 Any change of trading name must be notified to the Council within 28 days of the change

15. Renewal of a Licence

15.1 A renewal application must be received before the expiry of the current licence. A renewal application may be commenced three months before the expiration of a current licence and no later than two weeks before the licence expires.

16. Further information

16.1 The Council may request (at the time of application or later) any additional information it considers relevant for the purpose of considering an application.

16.2 Failure to provide such information may result in an application being declined.

17. Fee

17.1 An application must be accompanied by the fee set by the Council.

17.2 Any fee set will take into account guidance from the Secretary of State.

18. Refusals and right to make representations

18.1 If the Council proposes to refuse an application or to revoke, or to vary a licence by imposing conditions, a notice must be issued to the licence holder setting out the Council's proposals and the reasons for their decision. The notice shall also state that, within the period specified, the applicant or licensee can either:

- (a) make representations about the proposal; or
- (b) inform the authority that the applicant or licensee wishes to do so.

18.2 The period specified in the notice will not be less than 14 days beginning with the date on which the notice is given to the applicant or licensee.

18.3. Within the period specified in the notice the applicant or licensee must notify the Council whether the applicant or licensee wishes to make representations.

18.4 Should this period expire and the applicant or licensee has not made representations, or informed the Council of their wish to do so, the Council may refuse the application, vary the licence or revoke the licence.

- 18.5 If, within the period specified in the notice, the applicant or licensee informs the Council that they wish to make representations, the Council will allow a reasonable period to make representations and may refuse the application, vary the licence or revoke the licence if they fail to make representations within that period.
- 18.6 Where there is a representation a hearing will be arranged, and the case will be presented to a Licensing Sub-Committee. The applicant or licensee will be invited to attend. The Council will give at least 10 working days' notice of the date and time of the hearing to the applicant or licensee. The notice will include the appeal procedure.

19. Revocation and Imposing Conditions

- 19.1 The Council may revoke a scrap metal licence if it is satisfied the licence holder does not carry on a scrap metal business at any of the sites named on the licence.
- 19.2 The Council may revoke a scrap metal licence if it is satisfied the site manager named on the licence does not act as a site manager at any of the named sites on the licence.
- 19.3 The Council may revoke a scrap metal licence if it is no longer satisfied the licence holder is a suitable person to carry on the business.
- 19.4 If the applicant or any site manager has been convicted of a relevant offence, the Council may include in the licence one or both of the following conditions:
- (a) that the dealer must not receive scrap metal except between 09:00 and 17:00 on any day;
 - (b) that all scrap metal must be kept in the form in which it is received for a specified period, not exceeding 72 hours, beginning with the time when it is received.
- 19.5 A proposed revocation or a variation of a licence will be presented to a Licensing Sub-Committee. The applicant or licensee will be invited to attend. The Council will give at least 10 working days' notice of the date and time of the hearing to the applicant or licensee. The notice will include the appeal procedure.
- 19.6 A revocation or variation only comes into effect when no appeal under the Act is possible, or when such appeal has been determined or withdrawn.

20. Appeals

- 20.1 An applicant may appeal to magistrates' court against a refusal of an application or variation.

- 20.2 The licensee may appeal to the magistrates' court against the inclusion on the licence of a condition under Section 3(8) of the Act, or a revocation or variation of a licence under Section 4 of the Act.
- 20.3 The appeal procedure will be in accordance with current magistrates' court procedures and must be lodged within 21 days of receipt of the decision notice.
- 20.4 On appeal the magistrates' court may confirm, vary or reverse the Council's decision, and give such directions as it considers appropriate having regard to the provisions of the Act.

21. Closure of Unlicensed Sites

- 21.1. If an authorised officer of the Council is satisfied premises are being used by a scrap metal dealer in the course of their business and the premises are unlicensed, they may issue a closure notice.

A copy of the notice must be given to:

- (a) a person who appears to be the site manager, and
- (b) any person who appears to be a director, manager, or other officer of the business.

A copy may also be given to any person who has an interest in the business, a person who occupies part of the premises, or where the close may impede a person's access to that other part of the premises.

- 21.2 After a period of 7 days, the authorised officer may apply to a magistrate's court for a closure order.

The court must be satisfied the premises will continue to be used by a scrap metal dealer, or there is a reasonable likelihood that the premises will be.

A closure order will close the premises immediately, and the premises will remain closed to the public until the Council makes a termination of closure order by certificate. The scrap metal dealer must cease his business immediately. It will require the defendant to pay a sum in the court, which will not be released until the person has complied with the requirements of the order.

Such an order may have a condition relating to the admission of people into the premises, or may include a provision the court considers appropriate.

A copy of the order must be placed on the premises in a prominent position by the Council.

- 21.3 Once the requirements of the order have been complied with and the Council is satisfied the need for the order has ceased, a certificate may be made. This ceases the order and the sum paid into the court is released.

A copy of the certificate must be given to any person the closure order was made against, give a copy to the court and place a copy on the premises.

A copy must be given to anyone who requests one.

- 21.4 Anyone issued with a closure order may complain to a magistrate. The court may discharge the order, if it is satisfied there is no longer a need for a closure order.

The licensing authority may be required by the court to attend and answer the complaint made.

Notice of the hearing must be given to all people issued with the closure order,

- 21.5. An appeal may be made to Crown Court against:

- (a) a closure order;
- (b) a decision not to make a closure order;
- (c) a discharge order; or
- (d) a decision not to make a discharge order

Any appeal must be lodged within 21 days beginning on the day on which the order or decision was made.

Appeal (a) and (b) may be made by any person who was issued with an order. Appeal (c) and (d) may be made by the Licensing Authority.

- 21.6. A person is guilty of an offence, if they allow the premises to be open in contravention of a closure order, without reasonable excuse, or fails to comply with, or contravenes a closure order.

- 21.7 An authorised officer of the Authority may enter the premises at any reasonable time to ensure compliance with the order. They may use reasonable force if necessary.

- 21.8 An authorised officer must produce evidence of their identity or evidence of their authority to exercise the powers under the Act, if requested to do so.

22. Delegation of Functions

- 22.1 Where there are uncontested applications, or where there are no questions about the suitability of the applicant the determination will be dealt with by the Council Licensing Team.

- 22.2. Contested applications where there is relevant information from any of the consultees, or queries regarding an applicant's suitability, revocation of a licence or the imposition of conditions will be presented to the Licensing Sub-Committee.

APPENDIX A – RELEVANT OFFENCES

The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013.

PART 1

Primary Legislation

- (a) An offence under section 1, or 7 of the Control of Pollution (Amendment) Act 1989
- (b) An offence under section 170 or 170B of the Customs and Excise Management Act 1979, where the specific offence concerned relates to scrap metal
- (c) An offence under section 110 of the Environment Act 1995
- (d) An offence under sections 33,34 or 34B of the Environmental Protection Act 1990
- (e) An offence under section 9 of the Food and Environmental Protection Act 1985
- (f) An offence under section 1 of the Fraud Act 2006, where the specific offence concerned relates to scrap metal, or is an environment related offence
- (g) An offence under section 146 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012
- (h) An offence under sections 327, 328 or 330 to 332 of the Proceeds of Crime Act 2002
- (i) Any offence under the Scrap Metal Dealers Act 1964
- (j) Any offence under the Scrap Metal Dealers Act 2013
- (k) An offence under sections 1,8,9,10,11,17,18,22 or 25 of the Theft Act 1968, where the specific offence concerned relates to scrap metal, or is an environment related offence
- (l) Any offence under Part 1 of the Vehicles (Crime) Act 2001
- (m) An offence under sections 85, 202 or 206 of the Water Resources Act 1991

PART 2

Secondary legislation

- (a) An offence under regulation 38 of the Environmental Permitting (England and Wales) Regulations 2007
- (b) An offence under regulation 38 of the Environmental Permitting (England and Wales) Regulations 2010
- (c) Any offence under the Hazardous Waste (England and Wales) Regulations 2005
- (d) Any offence under the Hazardous Waste (Wales) Regulations 2005
- (e) An offence under regulation 17(1) of the Landfill (England and Wales) Regulations 2002
- (f) Any offence under the Pollution Prevention and Control (England and Wales) Regulations 2000
- (g) Any offence under the Producer Responsibility (Packaging Waste) Regulations 2007
- (h) Any offence under the Transfrontier Shipment of Waste Regulations 1994
- (i) Any offence under the Transfrontier Shipment of Waste Regulations 2007
- (j) Any offence under the Waste (Electrical and Electronic Equipment) Regulations 2006
- (k) An offence under regulation 42 of the Waste (England and Wales) Regulations 2011

Offences and Penalties

The following are prescribed by the Act as criminal offences:

- Section 1 – Carrying on business as a scrap metal dealer without a licence (level 5)
- Section 8 – Failure to notify the authority of any changes to details given with the application (level 3)
- Section 10 – Failure to display a site licence or collectors licence (level 3)
- Section 11(6) – Receiving scrap metal without verifying a person’s name and address (level 3)
- Section 11 (7) – Delivering scrap metal to a dealer and giving false details (level 3)
- Section 12 (6) – Buying scrap metal for cash (level 5)
- Section 13 – Failure to keep records regarding receipt of metal (level 5)
- Section 14 – Failure to keep records regarding disposal of metal (level 5)
- Section 15(1) – Failure to keep records which all the information and the scrap metal to be identified by reference to one another (level 5)
- Section 15(2) – Failure to keep a copy of documents used to verify
- Section 15(3) – Failure to keep information and records for three years (level 5)
- Section 16 – Obstruction to right of entry and failure to produce records (level 3)
- Section 17 – Where an offence under this Act is committed by a body corporate and it is proved –
 - (a) To have been committed with the consent or connivance of a director, manager, secretary or other similar officer; or
 - (b) To be attributable to any neglect on the part of any such individual, the individual as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and omissions of a member in connection with that management as if the member were a director of the body corporate.

Levels of Fine:

Level 1 - £200, Level 2 - £500, Level 3 - £1,000, Level 4 - £2,500, Level 5 - £5,000

General Licensing Committee Meeting	
Meeting Date	12 th July 2018
Report Title	Review of the Taxi Tariff
Cabinet Member	Cllr Mike Cosgrove, Cabinet Member for Regeneration
SMT Lead	Mark Radford
Head of Service	Della Fackrell, Resilience & Licensing Manager
Lead Officer	Tom Dunn, Licensing Officer
Key Decision	No
Classification	Open
Recommendations	<ol style="list-style-type: none"> 1. Members to determine the level of increase to the taxi tariff. 2. That Members authorise the Licensing Team to proceed with their chosen option and complete the tariff setting process in the minimum timeframe allowed by legislation. 3. Members to agree a timescale for future taxi tariff reviews

1 Purpose of Report and Executive Summary

- 1.1 The purpose of this report is to provide Members with detailed information and the options available when setting the maximum scale of fares for licensed Hackney Carriages operating within the borough of Swale.

2 Background

- 2.1 Under the Local Government (Miscellaneous Provisions) Act 1976 Section 65, the Council has the power to set the maximum fares charged within its area by Hackney Carriage (taxi) drivers.
- 2.2 Swale Borough Council last amended the Hackney Carriage tariff with effect from 6th October 2013 and is attached at Appendix I. Our current maximum fare across a 2 mile journey is £6.30.
- 2.3 As our current tariff hasn't been reviewed for a period of five years, members may wish to consider setting a regular timescale when the General Licensing Committee will deliberate the tariff. This will give us the opportunity to regularly review our taxi tariff and ensure it is appropriate taking into account current affairs, such as fuel costs and inflation.

- 2.4 Hackney Carriage drivers have the option of charging less than the tariff set and Private Hire drivers are not governed by the tariff, as they can charge their own rates as statute allows.
- 2.5 A public and trade consultation took place between 7th March and 6th April 2018 to ascertain whether the public and drivers thought that taxi fares should change. As a result the licensing team received 8 responses of which 6 were in favour and 2 were against an increase in tariff.
- 2.6 The findings following the consultation were presented to the General Licensing Committee on 19th April 2018, when it was decided that Members would like to see an increase in the tariff and instructed Officers to compile relevant proposals.
- 2.7 On 24th April 2018 we held a meeting with the trade to discuss various topics, one of which was the taxi tariff. The general consensus was to increase the tariff across all three areas, the flag (starting charge), the fall (ongoing charge for distance) and the waiting time.
- 2.8 For information the Office of National Statistics published that the Consumer Price Index including owner occupiers' housing costs (CPIH) 12 month inflation rate for May 2018 was 2.3% which is up from April 2018 when it was 2.2%. Rising fuel prices produced the largest upward contribution¹.
- 2.9 Appendix II shows the CPIH rate of inflation over the past ten years from May 2008 to May 2018. This allows us to compare the rate of inflation over the past five years looking at each May as per the following:
- May 2014 1.5% increase in CPIH
 - May 2015 0.4% increase in CPIH
 - May 2016 0.7% increase in CPIH
 - May 2017 2.7% increase in CPIH
 - May 2018 2.3% increase in CPIH
- If we applied the rate of inflation to our current 2 mile journey at £6.30, this would lead to an increase to £6.76.
- 2.10 On Monday 11th June 2018 the Department for Business, Energy and Industrial Strategy confirmed petrol was 128.6p and diesel was 132.6p per litre. This compared to the equivalent week in 2017 is an increase of 12.9p for petrol and 14.9p for diesel².
- 2.11 Fuel prices constantly fluctuate depending on a number of factors including market forces, global events and new technology. The graph at Appendix III shows the average fuel price per month in the UK since 2013³.

2.12 On 2nd January 2018 a season ticket, anytime ticket, off-peak ticket and super off-peak ticket rose by 3.6% with Southeastern which is the largest increase for five years⁴.

3 Proposals

3.1 After careful consideration and taking into account the comments received from the trade on 24th April 2018. Drivers and operators preference is for a small increase across all elements of the tariff rather than focusing on just the flag or fall. The following three options have been proposed by the Licensing Team:

- Option 1 - To increase the flag to £3.00, change the fall to £0.10 every 83 yards (76 metres) or uncompleted part thereof and amend the waiting time to £0.35 for every 1 minute or uncompleted part thereof. This option is equivalent to £7.00 for a 2 mile journey. This tariff can be seen at Appendix IV.
- Option 2 - To increase the flag to £3.00, change the fall to £0.10 every 87 yards (80 metres) or uncompleted part thereof and amend the waiting time to £0.35 for every 1 minute or uncompleted part thereof. This option is equivalent to £6.80 for a 2 mile journey. This tariff can be seen at Appendix V.
- Option 3 - To increase the flag to £3.00 and change the fall to £0.10 every 92 yards (84 metres) or uncompleted part thereof. This option is equivalent to £6.60 for a 2 mile journey. This tariff can be seen at Appendix VI.

3.2 These options were proposed to provide alternatives ranging from a below, slightly above and a larger increase in comparison to the rate of CPIH inflation over the past five years as seen in 2.9. If either option is adopted, the taxi meter can easily be recalibrated in line with the chosen tariff unlike a metre set at £6.76 for a 2 mile journey.

3.3 When creating the proposals, other authorities based in Kent were taken into account; this was to ensure we are looking to increase the tariff in line with neighbouring Councils. At Appendix VII you can see we currently sit 8th within Kent and 87th country wide for the highest taxi tariff.

3.4 If Option 1 is approved, we would be highest within Kent alongside Dartford and Tunbridge Wells. This would rank us between 9th and 20th nationally where authorities are £7.00 for a 2 mile journey.

3.5 If Option 2 is approved, we would be 3rd highest within Kent behind Dartford and Tunbridge Wells. This would rank us between 22nd and 34th nationally where authorities are £6.80 for a 2 mile journey.

3.6 If Option 3 is approved, we would be joint 4th highest within Kent alongside Medway. This would rank us between 46th and 59th nationally where authorities are £6.60 for a 2 mile journey.

- 3.7 Members to establish how often the taxi tariff will be reviewed. At a recent meeting with the taxi drivers and operators they requested that the tariff is reviewed on an annual basis as had previously been the case. This of course may not result in an increase (or decrease) but would satisfy that the current financial conditions had been reviewed in line with the maximum charge.
- 3.8 Members may decide that either two or more years intervals would be more appropriate. However if a major financial incident occurs, there may be a need to have an exception to the regular reviewing of the taxi tariff if deemed appropriate.

4 Alternative Options

4.1 Members may consider the three options listed in section 3 inadequate and therefore:

- Decide their own proposal when considering a change in the current tariff.
- Ask Licensing Officers to source further proposals.
- Implement the rate of CPIH inflation increase to £6.76 per 2 mile journey.

4.2 Alternatively Members may decide to not set a regular timescale and review the tariff as and when it is deemed appropriate.

5 Consultation Undertaken

5.1 The three options detailed in section 3 of this report were consulted with the trade to ascertain their preferable increase.

5.2 The consultation was conducted through Survey Monkey during the period of 04/06/2018 up to and including 22/06/2018. This was distributed to all our 394 licensed drivers and 40 Private Hire Operators.

5.3 During this period we received 77 responses of which 36 (46.75%) were in favour for Option 1, 22 (28.57%) in favour for Option 2 and 19 (24.68%) in favour of Option 3. Analysis depicting this information and comments received from the trade is attached at Appendix VIII and IX.

6 Implications

Issue	Implications
Corporate Plan	The service is an important regulatory function undertaken to ensure safety of the private hire and hackney carriage vehicles

	used in the Borough and supports the achievement of corporate priorities, including “A council to be proud of”.
Financial, Resource and Property	The cost of consultation will be met from within existing budgets. The cost of re-calibrating individual meters would be met by licensed drivers and operators.
Legal and Statutory	Section 65 of the Local Government (Miscellaneous Provisions) Act 1976 enables a district council to set the maximum fares charged within its area for hackney carriage (taxi) drivers for various distances over which paying passengers are conveyed, as well as any associated charges. In accordance with those legal provisions, proposed taxi fare amendments must be advertised in the local press and made available in the Council Offices for a minimum of 14 days to allow for any objections to be made. If no objections are received, or any that have been made are subsequently withdrawn, the proposed new fares become effective from the day specified in the notice. If any objections are received which are not withdrawn, the new fare will not automatically take effect. To allow time for consideration of the objections, a new date for the fares must be set, which shall be no later than two months after the date of consultation end, as stated in the public notice. During this period, the objections would be considered and if appropriate, the proposed fare tariff modified accordingly. Appendix X is a flowchart showing the above process.
Crime and Disorder	There are obvious links to community safety in ensuring an adequate supply of properly licensed taxis as a safe mode of transport for the public, particularly when other public transport is unavailable.
Environmental Sustainability	None identified
Health and Wellbeing	None identified
Risk Management and Health and Safety	An unreasonable increase in the level of fares could be a source of resentment amongst the travelling public. Equally an unreasonably low increase or no increase could be a source of resentment amongst the trade.
Equality and Diversity	There is a potential negative impact to protected groups including the disabled and vulnerable people who rely on taxis as a principle form of transport.
Privacy and Data	None identified

7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Current Swale Fares Table
- Appendix II: CPIH table of increase for the last ten years¹.
- Appendix III: Fuel Prices since 2013⁴
- Appendix IV: Option 1 - Proposed Fares Table - £7.00
- Appendix V: Option 2 - Proposed Fares Table - £6.80
- Appendix VI: Option 3 - Proposed Fares Table - £6.60
- Appendix VII: Benchmarking with other Kent Authorities
- Appendix VIII: Analysis from Survey Monkey
- Appendix IX: Comments from Survey Monkey
- Appendix X: Flowchart detailing the legal process

8 Background Papers

8.1 Local Government (Miscellaneous Provisions) Act 1976

9 Web Sources

- 9.1 ¹Office of National Statistics:
<https://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/consumerpriceinflation/may2018>
- 9.3 ²Department for Business, Energy and Industrial Strategy:
<https://www.gov.uk/government/statistical-data-sets/oil-and-petroleum-products-weekly-statistics>
- 9.4 ³Petrol Prices: <https://www.petrolprices.com/the-price-of-fuel/>
- 9.5 ⁴Kent Online: <http://www.kentonline.co.uk/kent/news/commuters-hit-by-rail-fare-136427/>



**HACKNEY CARRIAGE
FARES TABLE**

Applicable to journeys within the Swale Borough Council area
from 6th October 2013

Fares for Distance

MILEAGE:

(a) If the distance does not exceed 200 metres for the whole distance £2.80

(b) If the distance exceeds 200 metres – for the first 200 metres £2.80

For each subsequent 88 metres or uncompleted part thereof £0.10

WAITING TIME:

For each period of 1 minute or uncompleted part thereof £0.30

EXTRA CHARGES:

For hiring's begun between 11pm and 6am and for Bank Holidays (including Easter Sunday) and between 6pm and 11pm on 24th December (excluding 11pm 24th December to 6am 27th December and 6pm 31st December to 6am on 1st January).....+50% of above charges

The fares for distance will be DOUBLED between 11pm on 24th December and 6am on 27th December and between 6pm 31st December and 6am on 1st January.

A charge of up to £50 will be applied for the soiling of a vehicle should it be soiled to the extent that it has to be taken out of service to be cleaned.

For additional passengers in excess of 4, or for a specific request to hire a vehicle with more than 4 passenger seats (excluding wheelchair users accompanied by less than 4 other passengers) + 50%

When this Hackney Carriage is hired by distance it is an offence for the proprietor or driver to demand and take a fare greater than that shown on the taximeter. Any discount given to the customer must be discounted from the amount shown on the meter.

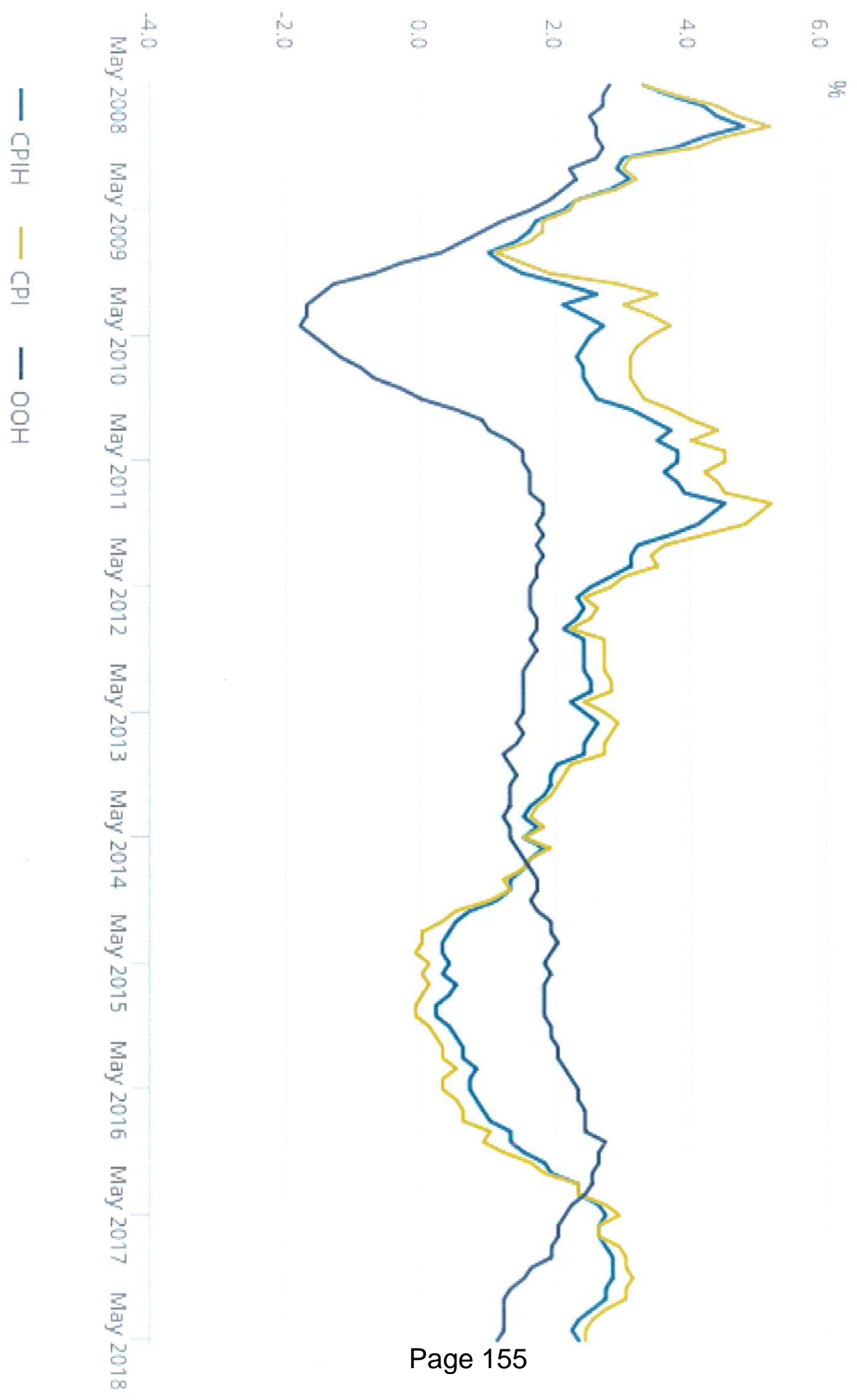
FARES FOR TIME

If the Hackney Carriage is hired by time the fare shall be agreed with the hirer at the commencement of the hiring

COMPLAINTS

If you have any complaints about this vehicle or driver please write to the Head of Service Delivery, Swale Borough Council, Swale House, East Street, Sittingbourne Kent ME10 3HT

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Historical Fuel Price Figures

Average price of petrol (2013 - present)

Pence per litre

Month	2013	2014	2015	2016	2017	2018
January	132.9	130.1	108.2	102.3	115.2	121.7
February	137.5	129.6	108	102	120.1	121.2
March	138.9	129.6	111.7	103	119.2	119.8
April	136.7	129.7	113.8	107.2	118.3	121.5
May	133.8	130	116.2	109.3	116.7	126.3
June	134.4	130.6	116.9	111.6	115.9	
July	135.8	131.3	116.9	111.9	114.7	
August	137.4	129.5	114.7	110.5	116.6	
September	137.3	129	110.7	111.9	119.3	
October	132.1	126.4	108.9	114.9	118.1	
November	130.4	123	107.7	115.6	120.2	
December	130.8	117.1	104.6	115.5	120.8	

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Average price of diesel (2013 - present)

Pence per litre

Month	2013	2014	2015	2016	2017	2018
January	140.5	137.7	115.4	102.8	121.7	124.4
February	144.3	137	114.8	101.1	122.3	123.9
March	145.5	136.7	117.9	103.2	121.2	122.6
April	141.6	136.2	119	106.8	120.1	124.3
May	138.5	136.2	120.5	109.3	118	129.1
June	139.1	136	12.8	111.8	116.8	
July	140.2	135.8	118.5	112.4	115.4	
August	141.7	133.8	112.5	111.6	117.4	
September	142.1	133.2	110.1	113.1	120	
October	139	130.6	110.4	116.5	120.3	
November	137.8	127.5	110	117.6	122.6	
December	138.3	122.7	107.7	118	123.3	

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**HACKNEY CARRIAGE
FARES TABLE**

Applicable to journeys within the Swale Borough Council area
from ___DATE___

Fares for Distance

MILEAGE:

(a) If the distance does not exceed 219 yards (200 metres) for the whole distance £3.00

(b) If the distance exceeds 219 yards (200 metres) – for the first 219 yards £3.00

For each subsequent 83 yards (76 metres) or uncompleted part thereof £0.10

WAITING TIME:

For each period of 1 minute or uncompleted part thereof £0.35

EXTRA CHARGES:

For hiring's begun between 11pm and 6am and for Bank Holidays (including Easter Sunday) and between 6pm and 11pm on 24th December (excluding 11pm 24th December to 6am 27th December and 6pm 31st December to 6am on 1st January).....+50% of above charges

The fares for distance will be DOUBLED between 11pm on 24th December and 6am on 27th December and between 6pm 31st December and 6am on 1st January.

A charge of up to £50 will be applied for the soiling of a vehicle should it be soiled to the extent that it has to be taken out of service to be cleaned.

For additional passengers in excess of 4, or for a specific request to hire a vehicle with more than 4 passenger seats (excluding wheelchair users accompanied by less than 4 other passengers) + 50%

When this Hackney Carriage is hired by distance it is an offence for the proprietor or driver to demand and take a fare greater than that shown on the taximeter. Any discount given to the customer must be discounted from the amount shown on the meter.

FARES FOR TIME

If the Hackney Carriage is hired by time the fare shall be agreed with the hirer at the commencement of the hiring

COMPLAINTS

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**HACKNEY CARRIAGE
FARES TABLE**

Applicable to journeys within the Swale Borough Council area
from ___DATE___

Fares for Distance

MILEAGE:

(a) If the distance does not exceed 219 yards (200 metres) for the whole distance £3.00

(b) If the distance exceeds 219 yards (200 metres) – for the first 219 yards £3.00

For each subsequent 87 yards (80 metres) or uncompleted part thereof £0.10

WAITING TIME:

For each period of 1 minute or uncompleted part thereof £0.35

EXTRA CHARGES:

For hiring's begun between 11pm and 6am and for Bank Holidays (including Easter Sunday) and between 6pm and 11pm on 24th December (excluding 11pm 24th December to 6am 27th December and 6pm 31st December to 6am on 1st January).....+50% of above charges

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**HACKNEY CARRIAGE
FARES TABLE**

Applicable to journeys within the Swale Borough Council area
from ___DATE___

Fares for Distance

MILEAGE:

(a) If the distance does not exceed 219 yards (200 metres) for the whole distance £3.00

(b) If the distance exceeds 219 yards (200 metres) – for the first 219 yards £3.00

For each subsequent 92 yards (84 metres) or uncompleted part thereof £0.10

WAITING TIME:

For each period of 1 minute or uncompleted part thereof £0.30

EXTRA CHARGES:

For hiring's begun between 11pm and 6am and for Bank Holidays (including Easter Sunday) and between 6pm and 11pm on 24th December (excluding 11pm 24th December to 6am 27th December and 6pm 31st December to 6am on 1st January).....+50% of above charges

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COMPLAINTS

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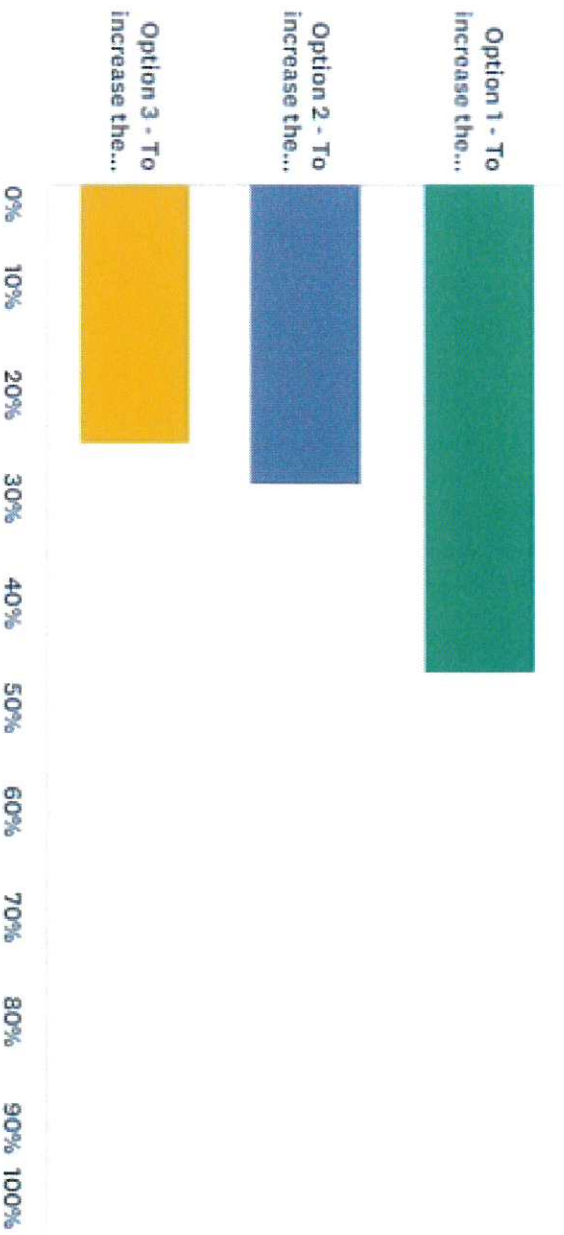
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Taxi Tariffs			
Council	Position in Country Wide League Table	Fare @ 2 miles	Last increase
Dartford	8	£7.00	2015
Tunbridge Wells	15	£7.00	2017
Sevenoaks	31	£6.74	2015
Medway	47	£6.60	2014
Maidstone	53	£6.50	2011
Ashford	60	£6.40	2017
Gravesham	62	£6.40	2012
Swale	87	£6.30	2013
Tonbridge & Malling	88	£6.30	2013
Shepway	106	£6.20	2012
Canterbury	130	£6.00	2008
Dover	134	£6.00	2012
Thanet	322	£5.00	2007

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Q2 The Licensing Team have made three proposals on how the Taxi Tariff could be increase, please select the option that would best suit you.
Our current maximum fare is £6.30 for a 2 mile journey.

Answered: 77 Skipped: 0



ANSWER CHOICES

- Option 1 - To increase the flag to £3.00, change the fall to £0.10 every 83 yards (76 metres) or uncompleted part thereof and amend the waiting time to £0.35 for every 1 minute or uncompleted part thereof. This option is equivalent to £7.00 for a 2 mile journey.
- Option 2 - To increase the flag to £3.00, change the fall to £0.10 every 87 yards (80 metres) or uncompleted part thereof and amend the waiting time to £0.35 for every 1 minute or uncompleted part thereof. This option is equivalent to £6.80 for a 2 mile journey.
- Option 3 - To increase the flag to £3.00 and change the fall to £0.10 every 92 yards (84 metres) or uncompleted part thereof. This option is equivalent to £6.60 for a 2 mile journey.

RESPONSES

- 46.75% 36
- 28.57% 22
- 24.68% 19

TOTAL

77

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Q3 Please provide any further comments or relevant information if applicable.

Answered: 14 Skipped: 63

ANSWER CHOICES		RESPONSES	
Option 1		64.29%	9
Option 2		28.57%	4
Option 3		35.71%	5
#	OPTION 1	DATE	
1	this is the best option in my opinion	6/11/2018 1:58 PM	
2	this is the best option in my opinion	6/11/2018 1:57 PM	
3	Fuel prices are going up, so we need highest increase on taxi fare	6/6/2018 8:46 AM	
4	fares havent risen for a while this makes most we already get told we are to expensive	6/5/2018 8:32 PM	
5	large increase does not help trades reputation	6/5/2018 4:04 PM	
6	i feel there is no point in the incress when most drivers and companies do not charge the full metre price anyway. Yes diesel is going up but customer wages are not so they will just walk more often.	6/5/2018 12:04 PM	
7	To take into account, that is some time since the last increase.	6/5/2018 11:20 AM	
8	I think this is extortionate especially as it affects us not the licensing team or committee li should be our decision!	6/5/2018 11:19 AM	
9	Fuel costs are increasingly become a huge factor	6/5/2018 10:37 AM	
#	OPTION 2	DATE	
1	about right	6/5/2018 4:04 PM	
2	Although option 1 is reasonable increase at 4.76%, I feel at least the increase of option 2 at 7.94% better reflects the additional increase in fuel. I do think everyone should be mindful that customers may find alternative transport such as buses to avoid increased fares	6/5/2018 11:42 AM	
3	I feel it will please both parties.	6/5/2018 11:34 AM	
4	I think this is extortionate especially as it affects us not the licensing team or committee li should be our decision!	6/5/2018 11:19 AM	
#	OPTION 3	DATE	
1	Whilst I feel that this in my opinion is the better of the three options available I also feel that at this moment in time an increase in the fare would do more harm than good mainly due to the work that is causing chaos around the town	6/18/2018 3:09 PM	
2	The least amount. People cannot afford big increases and will use taxis even less.	6/6/2018 3:58 PM	
3	too little	6/5/2018 4:04 PM	
4	Think this is a fairer tariff	6/5/2018 12:22 PM	
5	I think this is extortionate especially as it affects us not the licensing team or committee li should be our decision!	6/5/2018 11:19 AM	

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FLOW CHART FOR SETTING HACKNEY CARRIAGE FARES

