



AGENDA

LICENSING ACT 2003 COMMITTEE MEETING

Date: Thursday, 11 March 2021
Time: 7.00 pm
Venue: Virtual Meeting Via Skype*

Membership:

Councillors Cameron Beart, Derek Carnell (Chairman), Roger Clark, Richard Darby, Simon Fowle, Carole Jackson, Peter Macdonald, Lee McCall, Hannah Perkin, Ken Rowles, Paul Stephen, Tim Valentine, Mike Whiting and Tony Winckless (Vice-Chairman) + one vacancy.

Quorum = 5

Pages

Information for the Public

*Members of the press and public can listen to this meeting live. Details of how to join the meeting will be added to the website after 4pm on Wednesday 10 March 2021.

Privacy Statement

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

To approve the [Minutes](#) of the Meeting held on 3 December 2015 (Minute

Nos. 369 – 372) and the [Minutes](#) of the Extraordinary Meeting held on 21 January 2021 (Minute Nos. 412 – 414) as corrects records and to accept the [Minutes](#) of the following Licensing Sub-Committees:

14 April 2016 (Minute Nos. 642 – 645)
10 May 2016 (Minute Nos. 656 – 659)
25 May 2016 (Minute Nos. 686 – 689)
27 July 2016 (Minute Nos. 805 – 808)
16 August 2016 (Minute Nos. 825 – 828)
31 October 2016 (Minute Nos. 970 – 973)
23 March 2017 (Minute Nos. 1266 – 1270)
20 April 2017 (Minute Nos. 1290 – 1294)
8 May 2017 (Minute Nos. 1307 – 1312)
1 August 2017 (Minute Nos. 154 – 157)
8 August 2017 (Minute Nos. 160 – 161)
23 August 2017 (Minute Nos. 171 – 174)
28 November 2017 (Minute Nos. 354 – 358)
30 November 2017 (Minute Nos. 372 – 375)
1 May 2018 (Minute Nos. 641 – 644)
28 June 2018 (Minute Nos. 85 – 88)
25 July 2018 (Minute Nos. 150 – 153)
25 February 2019 (Minute Nos. 514 – 518)
14 June 2019 (Minute Nos. 52 – 56)
1 July 2019 (Minute Nos. 104 – 107)
15 July 2019 (Minute Nos. 129 – 132)
30 September 2019 (Minute Nos. 258 – 261)
9 October 2019 (Minute Nos. 184 – 186)

3. Declarations of Interest

Councillors should not act or take decisions in order to gain financial or other material benefits for themselves or their spouse, civil partner or person with whom they are living with as a spouse or civil partner. They must declare and resolve any interests and relationships.

The Chairman will ask Members if they have any interests to declare in respect of items on this agenda, under the following headings:

(a) Disclosable Pecuniary Interests (DPI) under the Localism Act 2011. The nature as well as the existence of any such interest must be declared. After declaring a DPI, the Member must leave the meeting and not take part in the discussion or vote. This applies even if there is provision for public speaking.

(b) Disclosable Non Pecuniary (DNPI) under the Code of Conduct adopted by the Council in May 2012. The nature as well as the existence of any such interest must be declared. After declaring a DNPI interest, the Member may stay, speak and vote on the matter.

(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

meeting 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.

Part A Report for Recommendation to Council

4. Statement of Licensing Policy

5 - 44

Issued on Monday, 1 March 2021

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 the Licensing Act 2003 Committee, please visit www.swale.gov.uk

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

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Licensing Act 2003 Committee	
Meeting Date	11 th March 2021
Report Title	Draft Statement of Licensing Policy 2021 - 2026
Cabinet Member	Cllr Richard Palmer, Cabinet Member for Community
SMT Lead	Nick Vickers, Chief Financial Officer
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. Members to note that there were no responses to the public consultation on the draft Statement of Licensing Policy under the Licensing Act 2003 2. Members to endorse the revised Statement of Licensing Policy under the Licensing Act 2003 so that it can be referred to Council on 31st March 2021 with a recommendation for adoption.

1 Purpose of Report and Executive Summary

- 1.1 To feedback to Members regarding the public consultation on the review of the Swale Borough Council Statement of Licensing Policy 2021 – 2026. Members are asked to endorse the policy to be put before the Council for formal adoption on 31st March 2021.

2 Background

- 2.1 Section 5 of the Licensing Act 2003 requires licensing authorities to prepare and publish a statement of its licensing policy every five years. The current Statement of Licensing Policy was approved by Full Council on 16 December 2015. It consequently expired on 16 December 2020.
- 2.2 A new policy will need to be adopted for the period 1st April 2021 to 31st March 2026, unless it becomes necessary to make further revisions beforehand following changes to legislation, statutory guidance or local circumstances, for example.
- 2.3 A review of the existing Statement of Licensing Policy has been undertaken and was presented to the Licensing Act 2003 Committee on 21st January 2021 and is now brought back to this Committee for endorsement before being formally adopted by full Council on 31st March 2021.

3 Proposals

- 3.1 A draft Statement of Licensing Policy was drawn up as shown at **Appendix I** based on a review of our existing policy statement and taking into account the Statutory Guidance issued under Section 182 of the 2003 Act.
- 3.2 The changes made to the Statement of Licensing Policy were of a minor or administrative nature to reflect changes of wording in the statutory guidance or for the sake of greater clarity/accuracy.

4 Alternative Options

- 4.1 The Licensing Act 2003 requires that a local authority must have an adopted policy before discharging its functions under the Act. The 2003 Act also specifies that consultation must be undertaken before the Statement of Licensing policy is adopted and published.

5 Consultation Undertaken

- 5.1 The 2003 Act requires a consultation process prior to determining the Statement of Licensing Policy. This consultation commenced on 25th January 2021 and ran for four weeks until 19th February 2021.
- 5.2 Consultees and consultation mechanisms were as previously outlined to the Committee.
- 5.3 Despite the wide ranging consultation no responses were received. This may be because of the minor nature of the changes and that no consultee had anything they wished to comment on or propose changes.

6 Implications

Issue	Implications
Corporate Plan	Having an adopted Statement of Licensing Policy under the Licensing Act 2003 satisfies the corporate objectives of: A borough to be proud of: the statement seeks to strike the right balance between promoting and encouraging live and recorded music, dancing, theatre and other forms of entertainment for the wider cultural benefit of communities generally but not to cause a disturbance. A community to be proud of: by promoting the four licensing objectives in this way the authority is enriching and enhancing the

	<p>community whilst maintaining its regulatory and enforcement role.</p> <p>A council to be proud of: the statement will support good decision making processes</p>
Financial, Resource and Property	The cost of consultation and publishing an updated policy will be met from within existing budgets. The Statement of Licensing Policy under the Licensing Act 2003 will not place any new financial resource implications on the Council
Legal and Statutory	Section 5 of the Licensing Act 2003 (as amended) requires a licensing authority to prepare and publish a statement of its policy every five years. During the five-year period, the policy must be kept under review
Crime and Disorder	<p>Fulfilling powers and duties under the Licensing Act 2003 is of direct relevance to the Council's obligations under Section 17 of the Crime and Disorder Act 1998 in that the objectives of the Licensing Act 2003 are:</p> <ul style="list-style-type: none"> a) The prevention of crime and disorder; b) The protection of public safety; c) The prevention of public nuisance; and d) The protection of children from harm
Environmental Sustainability	No implications
Health and Wellbeing	No implications
Risk Management and Health and Safety	The publication of a Statement of Licensing Policy under the Licensing Act 2003 is a statutory requirement and failure to do so by the expiration of the current policy as required may lead to negative publicity and criticism from central government. Close adherence to the mandatory guidance in terms of policy development and consultation will minimise the risk of judicial review at a later date. This risk is further minimised by working in close co-operation with the other licensing authorities within Kent
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. There are no implications within the policy that would discriminate against individuals or persons of different groups
Privacy and Data Protection	Normal data protection and privacy rules will apply. Under the 2003 Act the Council is obliged to provide certain information and to 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: Draft Statement of Licensing Policy 2021 - 2026

8 Background Papers

None

Swale Borough Council



Statement of Licensing Policy under the Licensing Act 2003

Version: 1.0

Dated: 1st April 2021

Next scheduled review: 31st March 2026

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

Issue & Review Register

Summary of changes	Issue number & date	Approved by
See Licensing Act 2003 committee report dated 21 January 2021	V0.1	Licensing Act 2003 Committee

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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STATEMENT OF LICENSING POLICY

INTRODUCTION

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

This Statement of Licensing Policy commences on 1st April 2021 and continues for a five year period. During the five year period the Policy will be kept under review and the authority will make such revisions to it at such times as it considers appropriate. Further licensing statements will be published every five years thereafter or earlier as necessary. All references to the 'Guidance' refer to the latest version of the Home Office Guidance to Licensing Authorities issued under section 182 of the Licensing Act 2003.

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

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

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

- help build a fair and prosperous society that properly balances the rights of people and their communities with the needs of business.
- minimise any nuisance or disturbance to the public through the licensing process; integrate its aims and objectives with other initiatives, policies and
- promote strategies that will:
 - (1) reduce crime and disorder
 - (2) encourage tourism
 - (3) encourage an early evening and night time economy which is viable, sustainable and socially responsible;
 - (4) reduce alcohol misuse
 - (5) encourage employment
 - (6) encourage the self-sufficiency of local communities;
 - (7) reduce the burden of unnecessary regulation on business
 - (8) encourage and promote live music, dancing and theatre for the wider cultural benefit of communities generally.

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

In the preparation of this policy the Licensing Authority will have given proper regard to the local strategies on crime prevention, planning, transport, culture, tourism and economic

development to ensure proper coordination and integration of the aims and actions of these policies.

The Licensing Act is part of a wider Government strategy to tackle crime, disorder and antisocial behaviour and reduce alcohol harm. The Licensing Authority will continue to develop strategies with the police, and the other enforcement agencies, as appropriate, for the management of the night-time economy. Of critical importance to this is the enforcement of the law relating to the sales of alcohol to drunk and underage people and drunkenness or disorder on, or in the immediate vicinity of licensed premises.

This policy covers a wide variety of premises and activities carried on within them. For this reason, this policy cannot detail all the factors that influence the achievement of the licensing objectives nor can this policy detail all the control measures that may be appropriate. However, there will be zero tolerance of dealing in or using controlled drugs (as defined by the Misuse of Drugs Act 1971) on licensed premises.

Covid-19

The impact of Covid-19 has been unprecedented across many areas of work, with licensed premises specifically impacted by a long period of Central Government led lockdown. As a Licensing Authority, we have had to respond to the pandemic and have implemented changes such as virtual licensing hearings, implementing short term changes to procedures to enable social distancing and considering the policy implications for Swale Borough Council. At the time of reviewing this policy the country is in a third 'lockdown' and there may be more lockdowns to come. We are committed to supporting local licensed premises to operate within whatever regulations are imposed by Central Government at any one time. Licensed premises/holders will be required to comply fully with any new regulations or requirements placed upon them at a national level. We encourage all licensed premises to talk to the Licensing Authority, Police, and other relevant Responsible Authorities at the earliest opportunity if they are uncertain regarding any compliance with any condition or they wish to seek a temporary and/or informal relaxation of conditions. We recognise that policy frameworks change, new or emerging issues arise at both a local and national level which may need to be taken into account when applying this Licensing Policy. We will make new applicants and existing licence holders aware of any changes so that they can ensure they meet any future challenges.

1 CONSULTATION

- 1.1 The Statement of Licensing Policy will be kept under review and where any significant amendments are considered necessary these will only be made after consultation has taken place in accordance with Section 5 of the Act. Amendments required due to a change in legislation that do not impact on the aims and objectives of the Policy or the promotion of the Licencing Objectives will be made with the approval of the Licensing Manager in order for the policy to remain legislatively current.
- 1.2 Proper weight, in accordance with the Guidance, has been given to the views of all those consulted. Those consulted in the preparation of this Policy included:
 - the Chief Officer of Police for Kent

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

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

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

2 THE POLICY - BACKGROUND

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

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

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

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

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

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

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

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

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

You also don't need a licence:

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

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

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

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

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

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

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

3 LICENSING AUTHORITY GENERAL POLICY CONSIDERATIONS

- 3.1 The Licensing Authority encourages the development of premises which are not alcohol-led, and which are aimed at different sectors of the population, including all ages and genders. Premises that promote the arts, a food offer, or other cultural activities are particularly encouraged.
- 3.2 Where premises such as pubs are alcohol-based, they are encouraged to consider diversifying their provisions so as to encourage a mixed customer-base and wider attractions, including community uses, soft refreshments, snacks and live entertainment. Diversification is important in the promotion of the licensing objectives as well as ensuring a sustainable economic future for premises and the regeneration of areas requiring investment and employment opportunities.
- 3.3 The Licensing Authority recognises the need to promote and encourage live and recorded music, dancing, theatre and other forms of entertainment for the wider cultural benefit of communities generally but not to cause a nuisance. The necessary protection of local residents and the potential for limited disturbance and anti-social behaviour in neighbourhoods will be carefully balanced with the wider benefits.
- 3.4 The Licensing Authority, Environmental Services, Kent Police and Kent and Medway Fire and Rescue welcome pre-application discussions and will offer advice and guidance upon request and where appropriate. The Licensing Authority expects that applicants will have in advance researched and understood the relevant law in relation to their application and their business plans as well as this Policy. Applicants are encouraged to consult with each of the authorities before applying. It is not for licensing officers to determine the business needs and capabilities of an applicant, but advice can be offered in relation to the licensing objectives. In addition, guidance notes are available on the licensing pages of Council's website – www.swale.gov.uk
- 3.5 Licensing officers will also provide advice to other parties on the licensing process where needed in relation to objecting to or supporting applications that may affect them. However, SBC cannot provide legal advice to applicants or other parties.
- 3.6 Supermarkets and other "off" licensed premises selling alcohol
- 3.6.1 The Licensing Authority will generally consider licensing shops, stores and supermarkets to sell alcohol for consumption off the premises throughout their opening times. However, where there are reasons for restricting or amending hours, for example, where premises become the focus of disorder and disturbance, such restrictions or amendments will be considered where relevant representations have been made.
- 3.6.2 All 'off' licensed premises must comply with the Licensing Act 2003 Mandatory Conditions Order in relation to age related sales. The Licensing Authority also expects such premises to consider any appropriate and proportionate additional measures to prevent and deter proxy sales on behalf of under 18's.
- 3.6.3 Licensees should also carefully consider alcohol sales to customers who have or appear to have alcohol related health issues, and whether those customers already appear under the influence of alcohol when attempting to make purchases.
- 3.6.4 The Licensing Authority expects adequate checks to be made and all reasonable steps taken to ensure alcohol delivered by way of online shopping services is not

delivered to minors to prevent a risk of underage consumption. Therefore, the authority requests as part of an application that the Operating Schedule should include the procedures the applicant is intending to operate to ensure the following:

- The person they are selling alcohol to is over the age of 18
- That alcohol is only delivered to a person over the age of 18
- That a clear document trail of the order process from order, despatch from the licensed premises and delivery to the customer is maintained (with times and signatures) and available for inspection by an authorised officer
- The time that alcohol is sold on the website/over the phone and the time the alcohol is delivered is within the hours stated on the licence for the sale of alcohol

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

3.7 Designated Premises Supervisor (DPS) at alcohol licensed premises

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

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

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

3.8 Film Exhibitions

3.8.1 The licensing authority expects licence holders or clubs to include in their operating schedules arrangements for restricting children from viewing age restricted films classified according to the recommendations of the British Board of Film Classification or the licensing authority itself.

3.9 Live Music

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

3.9.2 The Licensing Authority expects that where unregulated live music is proposed at licensed premises, all due care, attention and consideration is taken to prevent

disturbance. The Council will consider using its powers under the Environmental Protection Act 1990 to prevent and control public nuisance caused by poorly managed live music at licensed premises.

3.10 Deregulated Entertainment

3.10.1 Where the further deregulation of schedule 1 of the Licensing Act has reduced the regulatory controls on some regulated entertainment activities, the Licensing Authority will expect licensees to ensure that no nuisance or disturbance is caused to local residents and businesses when providing the deregulated activities. The Licensing Authority will consider using alternative powers as per para 3.9.2

3.11 Late Night Levy (LNL)

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

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

3.12 Early Morning Alcohol Restriction Order

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

3.13 Licensing and planning permission

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

3.14 Need for licensed premises and Cumulative Impact

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

3.14.2 The Licensing Authority acknowledges that a concentration of some types of licensed premises in a locality can result in increased footfall, congregation of the public in the streets and potential for increased crime and disorder, litter and anti-social behaviour,

as well as noise nuisance to local residents. This would be a result of the presence of the number of premises and not attributable to individual businesses. The licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation

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

3.14.4 The absence of an existing cumulative impact or saturation policy does not, however, prevent any responsible authority or other person making representations on a new application for the grant of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives. The Licensing Authority will also take into account the effect on resources, including police resources, to cope with any influx of visitors to an area, particularly late at night.

4 RESPONSIBLE AUTHORITIES AND OTHER PERSONS

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

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

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

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

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

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

- 4.6 Where an 'Other Person or Persons' request to be represented when seeking to make a representation, the Licensing Authority will require written evidence from the person/s being represented that they have authorised a third party to speak or write on their behalf.
- 4.7 The Licensing Authority will examine closely all representations to ensure that they are not frivolous, repetitive or vexatious. Matters that this authority will look at are likely to include:
- whether there is a history of making representations that are not relevant or which have been previously considered vexatious or frivolous and are intended to cause aggravation or annoyance
 - whether the representation raises a 'relevant' issue
 - whether the representation raises issues specifically to do with the premises and/or the licensable activities that are the subject of the application
 - whether the repetitive representation is one made an unreasonably short time after, and identical or substantially similar to:
 - a ground for review specified in an earlier application for review, for the same premises, which has already been determined, or
 - representations considered by the licensing authority when the premises licence was first granted; or
 - representatives which would have been made when the application for the premises licence was first made and which were excluded by the prior issue of a provisional statement.
- 4.8 The above considerations are not exhaustive, and the Licensing Authority will have regard to anything a person making a representation, or persons representing them, say about his or her status to make representations. Nothing in this Statement should be taken to undermine the right of any person to make a representation on an application or to seek a review of a licence where provision to do so exists.
- 4.9 Public Health, Kent County Council, is now included on the list of Responsible Authorities. It is acknowledged that they may be useful in providing evidence of alcohol related crime and disorder or public nuisance etc. that are directly linked to premises or a cluster of premises. It may also be able to provide relevant information on alcohol related admissions that relate to specific licensed premises.
- 4.10 The Licensing Authority as a Responsible Authority
- 4.10.1 The Licensing Authority has carefully considered its role as a Responsible Authority under the Act. It will achieve a separation of responsibilities through procedures and approved delegations within the authority to ensure procedural fairness and eliminate conflicts of interest. A separation is achieved by allocating distinct functions (i.e. those of Licensing Authority and Responsible Authority) to different officers within the licensing team.
- 4.10.2 The Licensing Authority does not expect to act as a Responsible Authority on behalf of third parties but accepts that there may be rare circumstances where this approach may be required. An example may be where matters arise at premises of which the licensing authority is aware of the negative impact on the promotion of the

licensing objectives and residents, and other third parties have failed to take action by either requesting a review or making representation.

5 EXCHANGE OF INFORMATION

- 5.1 The Licensing Authority will act in accordance with the provisions of the Licensing Act 2003 the General Data Protection Regulation (GDPR) the Data Protection Act 2018 in its exchange of information. Where a protocol is established to set out the mechanism for exchange of information with other regulatory bodies, any such protocol will be made publicly available.

6 HUMAN RIGHTS AND EQUAL OPPORTUNITIES

- 6.1 The Human Rights Act 1998 makes it unlawful for a local authority to act in a way which is incompatible with the European Convention on Human Rights. In making decisions and determining appropriate action the Licensing Authority will have due regard to the Convention and will interpret the LA2003 in a manner consistent with the Human Rights Act 1998.
- 6.2 The Licensing Authority will consider the effect upon people's human rights and adopt a principle of proportionality and the need to balance the rights of the individual with the rights of the community as a whole. Action taken by the Council which affects another's rights must be no more onerous than is necessary in a democratic society.
- 6.3 The Equality Act 2010 prohibits direct and indirect discrimination on the basis of any of nine protected characteristics, whether in delivering services or in relation to employment. The Licensing Authority will have regard to its obligations under the Equality Act 2010 when interpreting and exercising its powers and responsibilities under the Licensing Act 2003.
- 6.4 Equality Duty supports good decision making – it encourages public bodies to understand how different people will be affected by their activities, so that their policies and services are appropriate and accessible to all and meet people's needs. By understanding the effect of their activities on different people, and how inclusive public services can support and open up people's opportunities, public bodies can be more efficient and effective. The Equality Duty therefore helps public bodies to deliver the Government's overall objectives for public services.
- 6.5 Immigration Act 2016 and Modern Slavery Act 2015.
The Licensing Authority has responsibilities that relate to the prevention of immigration crime, specifically the prevention of illegal working in licensed premises. Licences must not be issued to people who are illegally present in the UK, who are not permitted to work, or who are permitted to work but are subject to a condition that prohibits them from doing work related to the carrying out of a licensable activity.

These provisions apply to licensed premises for alcohol and late night refreshment, (but not entertainment only premises) and personal licences. Other types of authorisation under the Licensing Act 2003 (Club premises certificates and temporary events notices) (TEN's) are not covered. This is due to there being little evidence of immigration abuse in respect of premises authorised under a club premises certificate and it would have been disproportionate to apply the requirements to a TEN.

7 COMPLIANCE AND ENFORCEMENT

- 7.1 It is essential that licensed premises operate in accordance with the Act and promote the licensing objectives. Part of the Licensing Authority's role is to monitor premises and take appropriate action to ensure that the licensing objectives are promoted.
- 7.2 There are a range of offences detailed under Part 7 of the Licensing Act 2003. The Licensing Authority will liaise with the Responsible Authorities to determine enforcement of specific offences on a case by case basis. Offences related to sales of alcohol to minors will be enforced by the Police or Trading Standards Authority unless they form part of a range of offences identified by the Licensing Authority.
- 7.3 The Licensing Authority will work together with the police in promoting the licensing objectives. The Kent and Medway Enforcement Protocol was approved in February 2008 and agrees the appropriate responsibilities and procedures for joint working and enforcement between the two agencies.
- 7.4 The Council is committed to the principles of good enforcement by carrying out these regulatory functions in a fair, open and consistent manner. Inspections, enforcement, and where appropriate, surveillance under the Act will be based on the principles of risk assessment, which includes the targeting of high risk premises which require greater attention, whilst operating a lighter touch in respect of low risk and well managed premises. The risk-based approach is based on Home Office Guidance, the activities authorised and premises compliance history.
- 7.5 The Licensing Authority needs to be satisfied that premises are being run in accordance with the Act and any licensing conditions, which may be attached to the premises licence. Frequency of inspections will be determined on risk-based criteria.
- 7.6 Annual fees and suspension of licences for non-payment
- 7.6.1 The Licensing Authority is required under section 55A of the Licensing Act to suspend premises licenses where the annual fee has not been paid. The Licensing Authority will invoice each licensee when the annual fee is due setting out the fee that is due and the consequences for non-payment. Where the fee has not been paid or there has been no claim of administrative error by the end of 21 days of the due date, the Licensing Authority will serve the required 2 working day notice to suspend the licence.
- 7.6.2 Where a licence is suspended this means that no licensable activities will be authorised to be provided at the premises until the suspension is lifted on receipt of payment of the overdue fee. Officers will conduct enforcement visits to premises where a licence has been suspended and will take the appropriate action in accordance with the Council's enforcement policy.
- 7.6.3 If an operator does not wish to carry on the activities that require the premises licence or certificate anymore it is important the licence or certificate is surrendered to prevent maintenance fees being accrued.

CONSIDERATION OF APPLICATIONS

8 NEW PREMISES LICENCES

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

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

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

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

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

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

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

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

9 VARIATIONS TO LICENCES

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

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

- 9.3 The relevant parts of this Statement of Policy to be applied to significant variation applications is the same as for new premises licence applications at section 8 above.
- 9.3 Where applications are made for minor variations officers will consider whether there are any impacts on any of the Licensing Objectives. Where the variation proposed creates a significant impact on any of the Licensing Objectives the application will be rejected, and the applicant advised to seek a standard variation.
- 9.4 Where there is minor impact or no impact on the four licensing objectives Officers will consult with the relevant (if any) responsible authorities.

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

- 10.1 The Licensing Authority expects that usually the nominated DPS on a licence will be involved in and supervising the day to day operation of licensed premises that sell alcohol. Where the person nominated as DPS ceases to undertake that role the Licensing Authority would expect the licensee to replace that person as soon as is reasonably practicable to maintain adequate control of the premises.
- 10.2 Where a DPS notifies the Licensing Authority that he or she has resigned, the licensing officers will enter into immediate discussion with the licensee in relation to the mandatory conditions concerning the sale of alcohol, and provide appropriate advice to prevent unauthorised alcohol sales.
- 10.3 All applications to specify a new DPS must be made by the licence holder or by a person/body authorised in writing to act on the licensee's behalf.
- 10.4 Where there are no representations the default position is to grant the variation.
- 10.5 The Licensing Authority will give the appropriate weight to relevant representations received from the Police about a proposed DPS. Applications that receive relevant representations will be referred for a hearing at which point the Sub Committee may approve or reject the application if it considers it appropriate for the promotion of the crime prevention objective to do so.

11 TRANSFERS OF PREMISES LICENCES

- 11.1 Before a licence transfer can be administered, the Licensing Authority usually expects consent to have been obtained from the previous premises licence holder. If this is not possible the applicant will be expected to demonstrate that he or she has taken all reasonable steps to secure consent to transfer the licence.
- 11.2 It is acknowledged that in some cases licensees leave premises and do not provide any forwarding contact details, or there has been a death or incapacity of the licence holder. In such cases where a licensee cannot reasonably be contacted to give approval, a licence will be transferred in accordance with the requirements of the Act.
- 11.3 Where a relevant Police objection to the transfer is received the application will be determined through the hearings process unless it is agreed by the applicant and Police as unnecessary.

12 PROVISIONAL STATEMENTS FOR PREMISES

- 12.1 A provisional statement is an application made by someone with an interest in premises, which is or is about to be constructed for use for one of the licensable activities or which is or is about to be extended or altered for that purpose or may be applied for, by a person interested in a premises. This option allows potential applicants to obtain advance notice whether a premises licence is likely to be granted on completion of its construction or conversion.
- 12.2 The process for considering an application for a provisional statement is the same as that for a premises licence application, including a schedule of works. The applicant is obliged to give notice of the application in the same way as applying for a premises licence. Responsible authorities and other parties may make representations and there are rights of appeal.
- 12.3 The holder of a provisional statement may apply for a premises licence once the premises are constructed, altered or acquired. The Licensing Authority will be constrained in the matters it can consider when determining the premises licence application, and in terms of representations about premises licence applications that follow the grant of a provisional statement, where the application is for a licence in the same form as the provisional statement and the work described in the schedule of works has been satisfactorily completed.
- 12.4 Representations are excluded where the relevant person could have made the same or substantially the same representations about the provisional statement application but failed to do so without reasonable excuse and there has been no material change in circumstances of the premises or area in the vicinity of the premises since the provisional statement.

13 CLUB PREMISES CERTIFICATES

- 13.1 The Licensing Authority acknowledges the importance and history of members clubs and the privileged position held by clubs historically in relation to alcohol licensing.
- 13.2 Members clubs are able to obtain a club premises certificate to authorise licensable activities for their members and their guests. There is no requirement for any members to hold a personal licence under the Licensing Act 2003, and there is no requirement to specify a designated premises supervisor. It is acknowledged that alcohol is supplied by and for the members through their membership of the club.
- 13.3 In order to apply for a club premises certificate the Licensing Authority must be satisfied that the club is a qualifying club and satisfies the legal conditions set out in the Act. Applicants for a club premises certificate will be required to complete a club declaration form setting out how the club will meet the conditions and definitions stated in the Act. Licensing officers will have delegated authority to make additional enquiries where appropriate in order to satisfy that a proposed club meets the criteria laid out in the Act.
- 13.4 The fundamental principles for premises licence applications set out at section 15 of this Policy will apply to applications for club premises certificates subject to exemptions in respect of the DPS and the requirement for evidence of the club's status.

- 13.5 Any qualifying club wishing to offer licensable activities at events to which non-members will attend will be required to authorise such activities by way of a Temporary Event Notice or by ensuring compliance with the club rules to allow the public to enjoy the clubs facilities and activities without jeopardising the validity of the club premises certificate.
- 13.6 The Licensing Authority expects 'public' events on club premises to be authorised by a Temporary Event Notice. It is expected that club committee members will seek advice from the Licensing Authority prior to providing such activities for non-members to prevent any unauthorised activities.
- 13.7 Where the Licensing Authority identifies that a club no longer meets the conditions set out in section 62 of the Licensing Act 2003 or where the Licensing Authority obtains evidence to demonstrate that a club no longer acts in good faith as a qualifying club, it will give the club a notice withdrawing the club premises certificate.
- 13.8 Suspension of Club Premises Certificates may also occur under section 92A of the LA2003, through failure to pay annual fee. Once granted an annual must be paid each year. Failure to pay the fee with the specified time will result in the Council suspending the licence until such time as the fee is received.

14 REVIEW OF A PREMISES LICENCE OR CLUB PREMISES CERTIFICATE

- 14.1 The Licensing Authority acknowledges that at any stage following the grant of a premises licence matters can arise at premises that raise concern as to the continued promotion of the licensing objectives at licensed premises.
- 14.2 The Act allows a licence to be reviewed where such matters arise. It is expected that most reviews will be applied for by Responsible Authorities.
- 14.3 Although this Licensing Authority is also a Responsible Authority and may bring about a review application, it is not expected that it will act as a Responsible Authority on behalf of other parties (for example, local residents, local councillors or community groups).
- 14.4 Such parties can make relevant representations to the Licensing Authority in their own right, and it is reasonable for the Licensing Authority to expect them to make representations themselves where they are reasonably able to do so. However, if these parties have failed to take action and the Licensing Authority is aware of relevant grounds to make a representation, it may consider acting in its capacity as Responsible Authority.
- 14.5 The Licensing Authority will determine whether a review application is relevant and the validity of a review application will be determined by a licensing officer. This will be on the basis of whether the request for the review is:
- relevant to one or more off the licensing objectives and
 - not frivolous, vexatious or repetitious.
- 14.6 In every review case an evidential basis for the allegations made will need to be submitted to the Council as the Licensing Authority.
- 14.7 The Licensing Authority would expect grounds for a review to be evidence based but will consider each application on its merits.

- 14.8 Where a review application is accepted the Licensing Authority will encourage the parties to enter into mediation during the consultation period to help resolve or narrow issues arising. The Council would be happy to assist in these meetings as appropriate.
- 14.9 All reviews, save where agreed by all parties as unnecessary, will lead to a hearing before a sub-committee. This may be a full hearing or a condensed hearing to consider the outcome of mediation. However other parties who have made representation but not been involved in mediation will be permitted to voice their representations at the hearing in accordance with the Hearings Regulations. The Policy applied to hearings can be found in section 16.
- 14.10 The authority considers that where reviews are raised as a result of serious crime and disorder causing that licensing objective to be undermined, then it is likely that that a revocation of the licence will be considered.

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

- 15.1 The Licensing Authority acknowledges the value that local community premises bring to their localities and that most are operated and managed by volunteers. The mandatory requirement for a nominated DPS to be in place at alcohol licensed community premises can be burdensome and difficult for an individual to manage at such premises.
- 15.2 The Act allows management committees at community premises to take over the responsibility of the alcohol sales by applying to the Licensing Authority to remove the requirement to have a nominated DPS at the premises to authorise sales of alcohol. The Licensing Authority will, subject to strong evidence that a community premises is well managed by an experienced committee, support applications to remove the mandatory condition requiring all alcohol sales to be authorised by a personal licence holder.
- 15.3 Before considering an application the Licensing Authority will satisfy itself that a premises meets the definition of a community premises. Enquiries will be made as to Where there is a regular 'commercial' or 'non-community based' use or a membership requirement to use the premises it is unlikely that such a premises would meet the definition of a community premises and permission to remove the requirement for a DPS is likely to be refused.
- 15.4 In general it is expected that premises that form part of a church hall or chapel hall or are a village, parish or community hall or other similar building would in most cases meet the definition of a community premises, although each will be considered on its individual merits and the evidence provided or obtained.
- 15.5 The licensing officers will consider, on a case by case basis, all applications to remove the mandatory condition and will ask such questions or seek the necessary evidence to confirm the suitability of the management committee to collectively authorise the supply of alcohol the premises.
- 15.6 Committees that make an application will be expected to have members who are aware of the law relating to the sale of alcohol, contain steps within their operating schedule to prevent offences relating to alcohol sales and also to include appropriate

rules in hiring agreements where the premises is hired out to the public for events that will involve the sale of alcohol.

16 HEARINGS

- 16.1 Any application that has resulted in the submission of relevant representation from any party will be referred to the Licensing Sub-Committee for a hearing and determination in accordance with the Licensing Act 2003 and the Licensing Act 2003 (Hearings) Regulations 2005.
- 16.2 A sub-committee will consist of three suitably trained members of the Licensing Committee. The sub-committee will be advised on the law by a member of the Council's Legal Services Team. That legal team member will not be involved in the application process to prevent a conflict of interest by ensuring a clear separation of roles.
- 16.3 This Statement of Policy will play a key role in achieving consistency in decision making.
- 16.4 Where representations are made only by Responsible Authorities, the Licensing Authority would expect applicants and Responsible Authorities to enter into negotiation or mediation prior to a hearing in an attempt to resolve or narrow issues before attending the licensing hearing and to achieve an outcome satisfactory to all parties.
- 16.5 Parties will be advised of the hearing date and procedure in advance and in accordance with the statutory process. At all hearings the sub-committee will have regard to the Guidance issued under section 182 of the Act. This authority may use its discretion where there are strong and defensible reasons for departing from the Guidance and where it considers it right to do so. In any such case this authority will clearly express and explain its reasons for doing so.
- 16.6 The Licensing Authority must give the appropriate amount of weight to representations made by the Police on crime and disorder matters. It will give appropriate weight to all representations made by all parties based on the content and relevance to the promotion of all licensing objectives.
- 16.7 All decision notices will be in writing and will include clearly stated reasons to explain a decision on an application.

17 LICENCE CONDITIONS

- 17.1 A key concept in the Licensing Act is that conditions that are attached to licences or certificates are tailored to suit the individual style and characteristics of the premises and its activities and the impact of those activities. Those conditions must be appropriate and proportionate in order to promote the licensing objectives at that premises.
- 17.2 All licences that authorise the sale of alcohol will be subject to the mandatory conditions set out in the Act and Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010 as amended (and any subsequent Mandatory Conditions that are introduced).
- 17.3 Applicants will be expected to include appropriate steps to promote the licensing objectives within their operating schedule which will be converted to conditions on a

premises licence or club premises certificate. Those steps will be expected to be proportionate, achievable, enforceable and relevant to the business in question and will ensure the promotion of each of the four licensing objectives.

- 17.4 Where applications receive valid representations and are subject to a hearing, the sub-committee will consider the evidence provided within representations, the detail of the application, the nature of the premises and business and only where appropriate and proportionate will attach conditions to a licence to secure the promotion of the licensing objectives in light of the evidence provided.
- 17.5 Decisions on individual licence conditions will be made on a case by case basis, and where there are concerns over the effective promotion of the licensing objectives, the applicant will be given the opportunity to offer suggestions on how the objectives can be met. This authority will work closely with all parties and the applicant in establishing workable, enforceable and reasonable conditions for new and variation applications.
- 17.6 In all cases the Licensing Authority will have regard to the Guidance when considering the implementation of licence conditions.
- 17.7 In all cases conditions will aim to promote the licensing objectives, be unambiguous and enforceable, appropriate to the activities and the business, achievable and applicable to the premises and the areas around the premises which is within the licensee's control.
- 17.8 The Licensing Authority recognises the need to avoid, so far as possible, duplication with other regulatory systems including Health and Safety at Work, Fire Safety, Food Hygiene and Nuisance Control. However, these regulations may not cover the unique circumstances of some activities and entertainment. In these circumstances, the council may therefore, where necessary, attach conditions to premises licenses for the promotion of the licensing objectives.

Conditions to promote the Prevention of Crime and Disorder.

- 17.9 Under the Act the Licensing Authority has a duty to promote the licensing objectives, and, a further duty under the Crime and Disorder Act 1998 to do all it reasonably can to prevent crime and disorder in the borough.
- 17.10 Wholesale of alcohol. Since 1 April 2017, businesses which sell alcohol (for example, retailers of alcohol and trade buyers) need to ensure that the UK wholesales they buy from have been approved by HMRC under the Alcohol Wholesaler Registration Scheme (AWRS). They will need to check their wholesalers Unique registration Number (URN) against the HMRC online database. This is an ongoing obligation and if a business is found to have bought alcohol from an unapproved wholesaler, they may be liable to a penalty or could even face a criminal prosecution and their alcohol stock seized. Any trader who buys alcohol from a wholesaler for onward sale to the general public (known as a 'trade buyer') does not need to register unless they sell alcohol to other businesses.
- 17.11 Examples of trade buyers would be pubs, clubs, restaurants, cafes, retailers and hotels. However, they will need to check that the wholesaler they purchase alcohol from is registered with HMRC.

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

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

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

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

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

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

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

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

Conditions to promote Public Safety

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

- 17.19 Such steps will not replace the statutory obligation on the applicant to comply with all relevant legislation under the Health and Safety at Work etc. Act 1973 or under the Regulatory Reform (Fire Safety) Order 2004.
- 17.20 Applicants will be expected to have carried out the necessary risk assessments to ensure safe occupancy levels for the premises. Where a representation from the Fire Authority suggests that for the promotion of the Public Safety objective a maximum occupancy should be applied, the Licensing Authority will consider adding such a limit as a licence condition.
- 17.21 Where appropriate an operating schedule should specify occupancy limits for the following types of licensed premises:
- a) High Volume Vertical Drinking e.g. premises that provide mainly stand up drinking facilities with limited seating/table space and the primary activity is the sale of alcohol
 - b) Nightclubs
 - c) Cinemas
 - d) Theatres
 - e) Other premises where regulated entertainment is likely to attract a large number of people.
 - f) Where conditions of occupancy have arisen due to representations received.

Conditions to promote the Prevention of Public Nuisance

- 17.22 The applicant will be expected to detail any appropriate and proportionate steps to prevent nuisance and disturbance arising from the licensable activities at the premises and from the customers using the premises.
- 17.23 The applicant will be expected to demonstrate that they have considered the following and included steps to prevent public nuisance:
- a) Proximity of local residents to the premises
 - b) Licensable activities proposed and customer base
 - c) Hours and nature of operation
 - d) Risk and Prevention of noise leakage from the premises from equipment, customers and machinery
 - e) Prevention of noise from customers leaving the premises and customer pick up points outside premises and from the Car Park.
 - f) Availability of public transport to and from the premises
 - g) Delivery and collection times and locations.
 - h) Impact of external security or general lighting on residents.
 - i) History of management of and complaints about the premises.
 - j) Applicant's previous success in preventing Public Nuisance.
 - k) Outcomes of discussions with the relevant Responsible Authorities.
 - l) Impact of location, noise and contamination from outside smoking areas on neighbours and other customers
 - m) Collection of litter arising from the premises
- 17.24 Steps to prevent public nuisance may include a range of options including noise limiting devices, sound insulation, wind down periods, acoustic lobbies, management of smoking areas etc.

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

Conditions to promote The Protection of Children from Harm

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

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

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

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

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

18 PERSONAL LICENCES

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

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

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

18.4 The Police must give a notice of objection to the Licensing Authority within the statutory 14-day consultation period. The Licensing Authority accepts that there is no discretion to accept a late notification from the Police even if the objection provided evidence that to grant the licence would undermine the crime prevention objective.

- 18.5 The Licensing Authority requires all personal licence holders to advise if there is a change of their name or address in accordance with the Act. All licence holders are advised of this requirement when a licence is granted. Any changes will be updated and an amended licence will be issued within 20 working days of a notification of change.
- 18.6 The Licensing Authority anticipates that the Magistrates and Crown Courts will take appropriate action in relation to a personal licence where licence holders are convicted of relevant offences in those courts after the grant of a personal licence and notify the Licensing Authority of any action taken in respect of a personal licence.
- 18.7 The Licensing Authority requires personal licence holders to undertake their duty to disclose any convictions for a relevant offence after a personal licence has been granted. The Licensing Authority and/or the Police will take appropriate formal action against the licence holder where subsequent relevant convictions are not declared under that duty.

19 TEMPORARY EVENT NOTICES

- 19.1 The Licensing Act 2003 makes provision for the authorisation of a person (known as a premises user) to provide licensable activities on a temporary basis at unlicensed premises, or to add activities and/or extend the hours of existing activities at a licensed premises. The activities are authorised by the serving of a Temporary Event Notice (TEN) on the Licensing Authority, subject to the notice meeting the proper criteria as detailed under the Act.
- 19.2 Comprehensive planning of events is essential and where there are likely to be impacts on neighbouring residents or businesses as a result of the activities to be authorised by a TEN, the Licensing Authority expects the premises user to have considered any potential impacts and how they may be mitigated.
- 19.3 The Licensing Authority welcomes requests for advice from applicants who wish to provide temporary events to ensure they understand the law relating to such events and to reduce the likelihood of objections being made.
- 19.4 There are two types of TEN, Standard or Late. Both are subject to a numerical limit on the number of each type of TEN that can be served by personal licence holders and non-personal licence holders in a calendar year. There is also a numerical limitation on the number of TENs that may be served in respect of individual premises or place.
- 19.5 Standard TEN. A standard TEN must be served at least 10 working days (Monday to Friday excluding Bank Holidays) before the event commences. The 10 working days excludes the day of service and the day on which the event starts. Copies of the TEN must be served on the Licensing Authority, The Environmental Health (EH) Department, and the Police. The fee is payable only to the Licensing Authority. Applicants are encouraged to serve TENs at least 28 days before the proposed events to allow greater time for an event to be planned.
- 19.6 Where numerical limits are exceeded the Licensing Authority will serve a counter notice and the proposed licensable activities will not be authorised.
- 19.7 Where objections are received from the Police and/or EH and not withdrawn, the notice will be referred for a hearing before the Licensing Sub-Committee. The Sub-Committee may approve the TEN as applied for, add appropriate conditions (if the

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

- 19.8 Late TEN. A late TEN may be served between 9 and 5 working days before a proposed event commences. The same limitations apply to the day the notice was served and the day of the event. Where numerical limits are exceeded a counter notice will be served and the proposed licensable activities will not be authorised.
- 19.9 If the late TEN is served with fewer than 5 working days' notice it is deemed invalid and would be rejected. The proposed activities would not be authorised. The Licensing Authority has no discretion to accept TENs outside the permitted statutory deadlines.
- 19.10 Where valid representations are received from the Police or Environmental Health in respect of a late TEN, the TEN will be rejected and proposed activities will be unauthorised. A refund of the fee will not be made.
- 19.11 The Licensing Authority will take the appropriate action where there is evidence that licensable activities have been provided without the authorisation of a TEN.
- 19.12 It should be noted that if a TEN has been processed and is no longer required the fee will not be refunded as the Licensing Authority has already carried out its obligations.

20 OTHER RELEVANT MATTERS

Adult entertainment

- 20.1 The Licensing Authority has adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 and premises offering regular entertainment of a sexual nature must be licensed as a sex establishment under those provisions.
- 20.2 The Licensing Authority acknowledges that exemptions under the above legislation do allow sexual entertainment to be provided at premises licensed under the Licensing Act 2003, as long as it is provided on no more than 11 occasions within 12 months and with at least 1 month between each occasion. Those infrequent events will be regulated by the licence granted under the Licensing Act 2003 where that licence authorises performances of dance and where the original application specified that such adult entertainment was proposed to be provided.

Gaming machines in licensed premises - Automatic entitlement

- 20.3 There is provision in the Gambling Act 2005 (GA2005) for premises licensed to sell alcohol for consumption on the premises to automatically have two gaming machines of category C and/or D. The premises licence holder merely needs to notify this Licensing Authority and pay the prescribed fee.
- 20.4 This authority can remove the automatic authorisation in respect of any premises if:
- provision of the machines is not reasonably consistent with the pursuit of the licensing objectives (under the GA2005);
 - gaming has taken place on the premises that breaches a condition of section 282 of the GA2005 (for example, the gaming machines have been made available in a way that does not comply with requirements on the location and operation of gaming machines);

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

Gaming Machine Permit

- 20.5 If a premises wishes to have more than two machines of categories C and/or D, then it needs to apply for a permit and this authority will consider that application based upon the licensing objectives, any guidance issued by the Gambling Commission under section 25 of the Act, and such matters as officers consider relevant.
- 20.6 In determining such matters, consideration will be given to all the objectives but particularly the need to protect children from harm and to the need to protect vulnerable persons from harm or being exploited by gambling. The applicant will be required to satisfy the authority that there will be sufficient measures to ensure that minors do not have access to the adult only gaming machines.
- 20.7 Measures to satisfy the authority relate to restricting access to age restricted machines and adult machines being in sight of the bar, or in sight of staff who will monitor that the machines are not being used by minors. Notices and signage should also be displayed to this effect. Applicants may consider the provision of information leaflets and helpline numbers for organisations such as GamCare to demonstrate their responsibility in the protection of vulnerable persons and compliance with Codes of Practice issued by the Gambling Commission.

Gambling in alcohol 'On' licensed premises

- 20.8 Exempt gaming is equal chance gaming that is generally permissible in any club or alcohol licensed premises. Equal chance gaming includes games such as backgammon, mah-jong, rummy, kalooki, dominoes, cribbage, bingo and poker. Such gaming should be ancillary to the purposes of the premises.
- 20.9 This exemption is automatically available to all clubs or alcohol licensed premises but is subject to statutory stakes and prize limits determined by the Secretary of State. Licensees are encouraged to seek advice from the Gambling Commission at www.gamblingcommission.gov.uk or this Licensing Authority before providing any forms of gambling at alcohol licensed premises. Such arrangements should also be compliant with current smoke-free legislation.

Smoking outside premises

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

21 INFORMATION

- 21.1 In order to ensure that applicants and persons who make representations have the necessary information to be able to do so, information is available on the Swale Borough Council website www.swale.gov.uk or by contacting the licensing team by email: licensing@swale.gov.uk or by telephone on 01795 417286

APPENDIX A

Swale is a local government district with borough status in Kent, England and is bounded by Medway to the west, Canterbury to the east, Ashford to the south and Maidstone to the south west.

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 a Borough of some 140,800 people who primarily live in its three main towns, Sittingbourne, Faversham and Sheerness

Swale has strong communication links. It is close both to London and mainland Europe and well connected to the national motorway network. The M2 runs east-west across the Borough, providing access to destinations between the Channel Ports and London. Via the A249 there is alternative access along the M20. London is accessible in a little over an hour by high speed rail services. As a coastal Borough, the Port of Sheerness gives access, via its deep water berths, to the largest ships in the world; its imports distributed to all corners of the UK. Swale is also within easy reach of other major Kent centres - Canterbury, Ashford, Maidstone and the Medway Towns.

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. It is a product of its location on the London-Dover road and at the head of an inlet of the Swale, Milton Creek.

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.

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 a strong independent retail and service sector.

Outside the towns, from Hartlip in the west to Dunkirk in the east, Sheldwich in the south to Shellness in the north, are the Borough's extensive rural areas. There is a great diversity of settlements and landscapes, many of great charm and character. Larger villages along the main transport routes like Newington, Teynham and Boughton have a range of local facilities and services. Away from the main routes are smaller, more isolated settlements and hamlets like Conyer, Warden and Throwley Forstal.

Over the last 20 years most of the villages and towns in Swale have experienced growth, with growth in the towns the most rapid. Over the last 60 years population growth has been amongst the most rapid in Kent. Now, Swale has the third largest district population in Kent and built development has similarly physically grown - in the last 10 years more employment floorspace has been built than anywhere else in the county and Swale has the fourth highest level of dwelling completions over the 10 years to 2014.

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Appendix B

Contact details of Local Authority Licensing Department as at June 2015

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

Phone: 01795 417286

Email: licensing@swale.gov.uk

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Appendix C

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

Appendix D

References to guides of best practice

Revised guidance issued under section 182 of Licensing Act 2003

www.gov.uk/government/publications/explanatory-memorandum-revised-guidanceissued-under-s-182-of-licensing-act-2003

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

www.ioa.org.uk

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

www.magistrates-association.org.uk

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

www.cieh.org/policy/noise_council_environmental_noise.html

Swale Borough Council Event Planning

www.swale.gov.uk/guide-for-event-organisers/

The National Alcohol Harm Reduction Strategy Toolkit

www.alcoholconcern.org.uk

The Point of Sale Promotions published by BBPA

www.beerandpub.com

Public Places Charter

www.ash.org.uk

National Pubwatch

www.nationalpubwatch.org.uk

Appendix E

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

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

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

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

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