



AGENDA

EXTRAORDINARY GENERAL LICENSING COMMITTEE MEETING

Date: Thursday, 9 September 2021

Time: 7.00 pm

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

Membership:

Councillors Cameron Beart, Derek Carnell (Chairman), Roger Clark, Tim Gibson, Peter Macdonald, Lee McCall, Eddie Thomas, Vacant, Mike Whiting and Tony Winckless (Vice-Chairman)

Quorum = 3

Pages

Information for the Public

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Link to meeting:

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

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

The Chairman will inform the meeting that:

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

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

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

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

2. Apologies for Absence and Confirmation of Substitutes

3. 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 Interests (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.

4. Public Session

The Council operates a scheme of public speaking at meetings of the General Licensing Committee. Requests to speak at the meeting must be registered with Democratic Services by 4.30pm on Friday 3 September 2021 and must be related to an item on the agenda. Each speaker has a maximum of three minutes to speak.

Part B Reports for the General Licensing Committee to decide

- | | | |
|----|---------------------------|---------|
| 5. | Sex Establishments Policy | 5 - 42 |
| 6. | Scrap Metal Policy | 43 - 70 |

Issued on Tuesday 31 August 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 this Committee please visit www.swale.gov.uk

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

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General Licensing Committee Meeting	
Meeting Date	9 th September 2021
Report Title	Review of Statement of Licensing Policy for Sex Establishments and Sexual Entertainments Venues
Cabinet Member	Cllr Richard Palmer, Cabinet Member for Community
SMT Lead	Charlotte Hudson, Head of Housing, Economy and Community Services
Head of Service	Charlotte Hudson, Head of Housing, Economy and Community Services
Lead Officer	Christina Hills, Licensing Officer
Key Decision	No
Classification	Open
Recommendations	<ol style="list-style-type: none"> 1. Members to note the comments made in the evaluation grid attached as Appendix II to this report. 2. That the draft Sex Establishments Policy as set out in Appendix I to this report be adopted to run for a period of 1st October 2021 – 30th September 2024.

1 Purpose of Report and Executive Summary

- 1.1 At the General Licensing Committee of 1st July 2021, a draft Sex Establishments Policy under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and Section 27 of the Policing and Crime Act 2009 was approved for public consultation. This report sets out the feedback received and recommends adoption of the policy.

2 Background

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

2.3 There are no sex establishments or sexual entertainment venues currently in the borough.

3 Proposals

3.1 There is no statutory requirement to have a licensing policy for sex establishments and sexual entertainments venues, however it can be considered to be best practice. A modern, effective policy document ensures that the trade and public alike have a document that fully explains the elements of the regulatory process which includes the principles to be applied when considering applications for such premises. It also ensures consistency of approach by officers thus ensuring fairness and transparency for both the trade and public alike. Swale BC therefore initially developed a policy that was approved by Licensing Committee on 23 November 2010.

3.2 Although there is no statutory requirement to undertake a review of the policy statement it is accepted best practice to review it at regular intervals to ensure that policy remains up to date and relevant. Swale has regularly reviewed the policy, with the current edition being adopted in 2018 and which is due to expire on 1st October 2021.

3.3 The existing policy has now been reviewed by officers. There have been no changes to legislation to take into account. The current policy is in keeping with policies that have been adopted by the majority of other local authorities within Kent.

3.4 The rationale for this is that the policy was formulated working in close conjunction with the other local authorities in Kent via the mechanism of the Kent and Medway Regulatory Licensing Steering Group thus promoting consistency to the benefit of licensees, potential licensees, businesses and residents alike. The other benefit is to minimise the risk of judicial review of individual policies.

3.5 As with the existing policy we propose setting no numerical limits for sexual entertainments venues within Swale. Instead each application will be judged on its own merits but taking into account the various criteria laid out in the policy document. In this way each application will be considered as to whether it is suitable given the nature of the particular locality in question.

3.6 As the policy is not a statutory requirement there is no need for it to be formally adopted by Council following consideration by General Licensing Committee.

3.7 The draft statement of licensing policy is attached as **Appendix I**.

4 Alternative Options

- 4.1 The Council could choose not to have a Policy of Sex Establishments and Sexual Entertainments Venues, however, to do so would be contrary to best practice and may lead to a lack of clarity on the application of the legislation.

5 Consultation Undertaken or Proposed

- 5.1 A six week consultation ran from 5th July 2021 until 13th August 2021. Methods of consultation and consultees were agreed by members at the 1st July 2021 meeting of the General Licensing Committee.
- 5.2 Incoming responses were entered onto a grid for consideration. The grid is attached as **Appendix II**.
- 5.3 During the consultation period a total of two (2) responses were received. One response was a comment rather than a request for change. The other response recommended a change to the draft policy for Members to consider.

6 Implications

Issue	Implications
Corporate Plan	Having an adopted Statement of Licensing Policy for Sex Establishments and Sexual Entertainments Venues satisfies the corporate objective of: A Council to be proud of
Financial, Resource and Property	There are no direct financial implications For Swale Council concerning this matter at present. However, if at any time in the future the policy was subject to legal challenge, there could be costs associated with this process.
Legal, Statutory and Procurement	The relevant legislation in relation to the regulation of sex establishments and sexual entertainment venues is contained within Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended)
Crime and Disorder	The powers allowed within the licensing regime for sex establishments and sexual entertainment venues allow the Council to tackle issues of concern to communities around crime and anti-social behaviour that may sometimes be associated with sex establishments.
Environment and Climate/Ecological Emergency	None identified

Health and Wellbeing	Child Protection Services is named within the Policy as a consultee and the possibility of children or other vulnerable persons being harmed or exploited by the provision of sexual entertainment or the operation of sex shops or sex cinemas is referred to in the Policy as one of the specified matters to which the authority will have consideration in deciding whether or not to grant an application.
Safeguarding of Children, Young People and Vulnerable Adults	Child Protection Services is named within the Policy as a consultee and the possibility of children or other vulnerable persons being harmed or exploited by the provision of sexual entertainment or the operation of sex shops or sex cinemas is referred to in the Policy as one of the specified matters to which the authority will have consideration in deciding whether or not to grant an application.
Risk Management and Health and Safety	Whilst each individual application will be judged on its own merits a policy ensures a transparent and consistent approach to licensing that would reduce the opportunity for challenge through the courts. Challenges to a particular decision are more likely to fail if we can demonstrate that we have adhered to our published policy and there is no justifiable reason to depart from it. Any departure from the policy will be based on material evidence and documents giving clear and compelling reasons for doing so.
Equality and Diversity	None identified
Privacy and Data Protection	Normal data protection and privacy rules will apply

7 Appendices

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

- Appendix I: Draft Statement of Licensing Policy for Sex Establishments and Sexual Entertainment Venues
- Appendix II: Consultation response grid

8 Background Papers

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

Swale Borough Council



Sex Establishments and Sexual Entertainment Venues Policy

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

Version 1.2
September 2021

Next scheduled review: October 2024

All enquiries relating to this document should be sent to:

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

Licensing@swale.gov.uk

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Issue & Review Register

Summary of changes	Issue number & date	Approved by
Issued Policy	V1.0 October 2018	General Licensing Committee
Draft Policy	V1.1 June 2021	Presented to General Licensing Committee 1 st July 2021
Draft Policy	V1.2 September 2021	Presented to General Licensing Committee 9 th September 2021

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: Christina Hills, Licensing Officer

Date: September 2021

Approved by: General Licensing Committee

Date:

Changes and Corrections

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

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

Or

licensing@swale.gov.uk

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1. Overview

- 1.1 The Local Government (Miscellaneous Provisions) Act 1982 (as amended by Section 27, Policing and Crime Act 2009) provides that a local authority may, by resolution, adopt schedule 3 to that Act.
- 1.2 The Swale Borough Council adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and the amendment under Section 27 of the Policing and Crime Act 2009.
- 1.3 The adoption of schedule 3 as amended will enable the licensing authority, within its area, to discharge its function in relation to the following:
 - a) sexual entertainment venues (providing relevant entertainment)
 - b) sex shops
 - c) sex cinemas
- 1.4 Schedule 7 to the Policing and Crime Act 2009 amends the Licensing Act 2003 to ensure that premises for which a sexual entertainment venue licence is required or held (or for which the requirement has been waived under paragraph 7 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982) do not also require a premises licence, club premises certificate or temporary event notice in order to provide relevant entertainment. This is because such entertainment is expressly excluded from the definition of regulated entertainment found in the Licensing Act 2003. However, if the premises also carries on other licensable activities (e.g. the sale of alcohol or the provision of regulated entertainment) then this is not a provision of relevant entertainment and they will nevertheless continue to require a premises licence, club premises certificate or temporary events notice under the Licensing Act 2003 for those other activities, subject to any exceptions contained in that Act.
- 1.5 In practice this will mean that the vast majority of lap dancing clubs and similar venues will require both a sexual entertainment venue licence for the provision of relevant entertainment and a premises licence or club premises certificate for the sale of alcohol or provision of other types of regulated entertainment not covered by the definition of relevant entertainment.
- 1.6 Live music or the playing of recorded music which is integral to the provision of relevant entertainment, such as lap dancing, for which a sexual entertainment licence is required, is specifically excluded from the definition of regulated entertainment in the Licensing Act 2003. Therefore, a sexual entertainment venue will not require a premises licence or club premises certificate just because it plays recorded music for a performer to dance nor will providing entertainment facilities for the purposes of the provisions of relevant entertainment be regulated entertainment under the Licensing Act 2003.
- 1.7 If a local authority has not made a resolution to adopt the provisions introduced by section 27, Policing and Crime Act 2009 within one year of the Act coming into force it must, as soon as is reasonably practicable, consult local people about whether they should make such a resolution. The purpose of this duty is

to ensure that local authorities consider the views of local people whether, for whatever reason, they have not adopted the provisions. This duty should be seen to be an extension to existing general duties on local authorities to consult and involve local people when exercising their functions.

- 1.8 The Licensing Authority have also taken into consideration the provisions of Section 17 Crime and Disorder Act 1998 that requires responsible authorities to consider crime and disorder (including antisocial behaviour and other behaviour adversely affecting the local environment) and the misuse of drugs, alcohol and other substances in the exercise of all their duties, activities and decision-making. This means that in all policies, strategies and service delivery there is a need to consider the likely impact on crime and disorder.
- 1.9 The Licensing Authority is also aware that, at the time of formulating this policy, there is no evidence of any crime or disorder directly attributable to the operation of such establishments in the Swale area.
- 1.10 This policy helps to promote efficient and effective approaches to regulatory inspection and enforcement which is in compliance with:
- a) The Regulator's Compliance Code (set out under the Legislative and Regulatory Reform Act 2006) not to impede progress by the regulations we set out and, particularly, to consider the impact of regulations on small businesses; and
 - b) The Provisions of Services Regulations 2009 to ensure requirements are:
 - i) Non-discriminatory
 - ii) justified by an overriding reason relating to the public interest
 - iii) proportionate to that public interest objective
 - iv) clear and unambiguous
 - v) objective
 - vi) made public in advance
 - vii) transparent and accessible
- 1.11 The Council sees the licensing process as an integral part of its approach to achieving its strategic and corporate objectives which encompasses the visionary goals of:
- a) A place to achieve, prosper and thrive
 - b) A place that is clean and green
 - c) A place that has strong healthy and safe communities
 - d) A place to live and enjoy
 - e) A place with efficient and effective public services

2. Policy

2.1 The purpose of this policy is to:

- a) Set out the expectations of the local authority in meeting the requirements of the legislation

- b) Provide guidance on the process for making an application and the process the Council will follow in considering and determining an application.
- c) Assist any persons making representations in respect of an application to make properly directed and evidenced representations.

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

3. Functions

- 3.1 Under section 101 of the Local Government Act 1972, local authorities may arrange for the discharge of these responsibilities by a committee or sub-committee of the appropriate authority.
- 3.2 This authority delegates its functions to those who sit on its Licensing Committee, or a sub-committee appointed for the purpose, with the exception of a renewal of a licence to which no objections are received, which will be delegated to officers as set out in the Council's constitution.

4. Consultations

- 4.1 The Policing and Crime Act 2009 is not prescriptive about how local authorities should consult with local people in order to comply with this duty. The Council has extensive experience of engaging with local people and will utilise that knowledge to ensure that any consultation exercise carried out under this duty will be fair and meaningful. The Council will seek to make any relevant information available to local people in order to inform them of the legislation, criteria and outcomes of the consultation.
- 4.2 For the purpose of this duty 'local people' are defined as anyone who lives or works in the local authority area.
- 4.3 The council will seek to consult with all those consulted on the Licensing Act 2003 and current sex establishment licence holders. A full list of those consulted is attached at Appendix C.

5. Definitions

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

5.2 Sex Shop

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

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

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

5.3 Sex Article

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

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

This sub-paragraph applies

- i) to any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and
- ii) to any recording of vision or sound, which
 - a) is concerned primarily with the portrayal of, or primarily deals with or relates to, or is intended to stimulate or encourage, sexual activity or acts of force or restraint which are associated with sexual activity; or
 - b) is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.

5.4. Sex Cinema

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

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

- c) No premises shall be treated as a sex cinema by reason only:
 - i) if they may be used for an exhibition of film (within the meaning of paragraph 15 of Schedule 1 to the Licensing Act 2003) by virtue of an authorisation (within the meaning of Section 136 of that Act), of their use in accordance with that authorisation.
 - ii) of their use for an exhibition to which section 6 of that Act (certain noncommercial exhibitions) applies given by an exempted organisation within the meaning of section 6(6) of the Cinemas Act 1985.

5.5. Sexual Entertainment Venue:

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

Exemptions from being a Sexual Entertainment Venue

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

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

5.6. Relevant entertainment:

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

Home Office Guidance states relevant entertainment would therefore apply to

the following forms of entertainment, as they are commonly understood:

- a) Lap dancing
- b) Pole dancing
- c) Table dancing
- d) Strip shows
- e) Peep shows
- f) Live sex shows

However this list is not exhaustive and local authorities will judge each case on its merits. Decisions will be based on the content of the entertainment provided and not the name given to it.

5.7 Nudity

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

5.8 Spontaneous Entertainment

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

5.9 The 'Organiser'

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

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

6. **Planning**

6.1 The Licensing Authority will not normally undertake action where another, more
V1.2

appropriate, regime exists to resolve matters. Failure to obtain planning permission is not a ground for refusal of the grant of an application under the Local Government (Miscellaneous Provisions) Act 1982 and such a failure to obtain planning permission will normally be dealt with as part of the normal planning process.

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

7 *European Convention on Human Rights*

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

8. *The Application Process*

- 8.1 Applications for licences for sex shops, sex cinemas and sex entertainment venues must be made on the prescribed form and accompanied by the requisite fee.
- 8.2 A site plan of radius of $\frac{1}{4}$ of a mile (scale 1:500) clearly outlining the locality in which the proposed sexual entertainment venue will be situated. The plan should clearly identify the proposed sexual entertainment venue marking the site/premises boundary with a red line and define other types of businesses and residential properties around the site as listed at 12.11.
- 8.3 A plan of the premises (scale 1:100) showing the part(s) of the premises that it

is proposed to licence as a sexual entertainment venue. All areas requiring to be licensed should be outlined in red on the plan. If a part of the premises is within a licensed premises under the Licensing Act 2003 which will have a dual purpose then the plan should show the site where facilities for the public are shared such as toilets and bar.

- 8.4 The plan of the premises must show the position of all CCTV cameras and shall be with the approval of Kent Police and in accordance with the CCTV code of practice.
- 8.5 Plans may be considered in other scales with prior agreement with the licensing authority.
- 8.6 The council will not usually determine an application for the grant of a licence, unless, the applicant allows an authorised officer a reasonable opportunity to enter the proposed sex establishment to make such examination and enquiries as may be necessary to determine the suitability of the premises.

9. Notices

- 9.1 Applicants for a sexual establishment licence must give public notice of the application by publishing an advertisement in a local newspaper that is circulated in the local authority area no later than seven days after the date the application is made.
- 9.2 Where the application relates to premises, a notice should also be displayed on or near the premises in a place where it can be conveniently read by members of the public. The notice should be displayed for a period of 21 days beginning with the date the application was made.
- 9.3 All notices should be in the form prescribed by the appropriate authority as detailed in Appendix B and identify the premises or, if the application relates to a vehicle, vessel or stall, specify where it will be used as a sex establishment.
- 9.4 The applicant is required to submit a copy of any application to the Chief Officer of Police for the area within seven days of submitting the original application to the local authority. The requirement does not apply in the case of electronic applications as it is the duty of the local authority to send a copy to the police.

10. Objections

- 10.1 Any person can object to an application but the objection should be relevant to the grounds set out in paragraph 12, of Schedule 3, Local Government (Miscellaneous Provisions) Act 1982 for refusing a licence. Objections should not be based on moral grounds/values and local authorities cannot consider objections that are not relevant to the grounds set out in paragraph 12. Objectors must give notice of their objection in writing, stating the general terms of the objection.
- 10.2 When considering an application for the grant, renewal or transfer of a licence the Licensing Authority will have regard to any observations submitted to it by

the Chief Officer of Police and any objections that they have received from anyone else, (including statutory agencies such as Kent Fire and Rescue Service, UK Border Agency, The Local Safeguarding Childrens Board) within 28 days of the application.

- 10.3 Where the Licensing Authority receives notice of any objection the authority will, before considering the application, give notice in writing of the general terms of the objection to the applicant. However, the appropriate authority will not without the consent of the person making the objection reveal their name or address to the applicant.

11. Hearings

- 11.1 Under paragraph 10(19) of Schedule 3, before refusing an application, renewal or application to transfer a licence all applicants will be given the opportunity to appear before and be heard by the Licensing Committee or Sub-Committee that is responsible for determining the application.
- 11.2 Whilst Schedule 3 does not make explicit provision for objectors to be heard, this Council believes it right to offer an oral hearing to objectors. This does however remain within their discretionary powers. Although a local authority is under a duty to consider any objections made within 28 days of the application, it has discretion to hear later objections provided the applicant is given the opportunity to deal with those objections.
- 11.3 Persons making written objections will also be informed of the date and time of the licensing sub-committee hearing where they will be invited to address the committee and ask questions relating to the application.
- 11.4 All objectors and applicants are reminded that they can if they wish be legally represented at their own expense at the hearing. Alternatively they may if they wish ask a Councillor to represent them.
- 11.5 In determining an application the Licensing Committee (or Sub-Committee) will consider the applicant's presentation, the Council's authorised officer report, police observations and objections.
- 11.6 All parties may use witnesses and supporting documentation however, copies of documents and details of witnesses must be submitted to the Licensing Committee (or Sub-Committee) for consideration prior to the hearing and in special circumstances with approval of all parties at the hearing.
- 11.7 The Licensing Committee (or Sub-Committee) will consider all the evidence presented to it during the hearing and members may ask questions of officers, applicant and objectors. After the evidence has been presented all parties will be asked to leave to allow for Licensing Committee (or Sub-Committee) to come to a decision on the application.
- 11.8 When a decision is reached the Licensing Committee (or Sub-Committee) will inform the applicant and relevant parties of their decision and the reasons for coming to that particular decision.

11.9 The decision of the Licensing Committee (or Sub-Committee) will be confirmed, in writing, to the applicant within seven working days of the meeting at which the application was considered giving reasons for the decision.

12. Refusal of a Licence

12.1 Paragraph 12 of Schedule 3 sets out the grounds for refusing an application for the grant, renewal or transfer of a licence. A licence **must not** be granted:

- a) to a person under the age of 18;
- b) to a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months;
- c) to a person, other than a body corporate, who is not resident in an European Economic Area (EEA) State or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
- d) to a body corporate which is not incorporated in an EEA State; or
- e) to a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

12.2 A licence may be refused where:

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

- ii) to the use to which any premises in the vicinity are put; or
- iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

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

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

a) Suitability of the applicant

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

Any other reasonable cause, arising from:

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

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

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

- i) The application exceeds the limit set on the number of the specific type of sex establishments generally or of a specific type in an area
- ii) Appropriateness having regard to character of locality, use of premises in the vicinity or layout, character or condition of premises

The local authority may refuse applications on grounds related to an

assessment of the relevant locality. A licence can be refused if either, at the time the application is determined the number of sex establishments or sex establishments of a particular kind, in the relevant locality is equal to or exceeds the number that the authority considers appropriate for that locality; or that a sex establishment would be inappropriate having regard to the character of the relevant locality the use to which any premises in the vicinity are put or the layout, character or condition of the premises.

12.5 Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 does not define 'relevant locality' further than to say that:

- a) In relation to premises, it is the locality where they are situated
- b) In relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.

12.6 Once the Council has determined the relevant locality, it should seek to make an assessment of the 'character' of the relevant locality and how many, if any, sex establishments, or sex establishments of a particular kind, it considers appropriate for that relevant locality. The Council may consider a particular locality is suitable for a sex shop but is not suitable for a sexual entertainment venue or vice versa.

12.7 Case law has indicated however that in defining the relevant locality the local authority should not seek to specify wide areas.

12.8 Although a ward area could be considered as a relevant locality it is determined that certain wards are substantial in size and would cover a wide area. It could also raise a problem with borders of other wards where there could be a cluster of sex establishments.

12.9 The Licensing Authority has determined not to set specific relevant localities in respect of each type of sex establishment, instead judging each application it receives on its own individual merits and the character of the locality at the time of the decision.

In determining the relevant locality each case will be decided on its merit having consideration to the individual circumstances of the application.

12.10 In licensing of sex entertainment venues the Licensing Authority will consider the impact of such premises and their operation on the character of an area. This would include but not be limited to:

- a) The type of location (residential, commercial, industrial)
- b) The likely effects of any increased footfall or vehicular traffic
- c) Any advertising or displays of an erotic or pseudo-erotic nature
- d) Localities where the cumulative impact of the venue, taken with other licensed premises or commercial interests, is likely to have an adverse effect on crime and disorder and public nuisance
- e) Any evidence of complaints about noise and/or disturbance caused by the

- premises
- f) The levels of crime and disorder in the area.
- 12.11 The Local Authority would consider use of other premises in the vicinity which would include but not be limited to:
- a) Establishments whose patrons are likely to be adversely affected by the operation of the premises
 - b) The proximity of residential premises, including any sheltered housing and accommodation for vulnerable people
 - c) The proximity of educational establishments to the premises
 - d) The proximity of places of worship to the premises
 - e) Access routes to and from schools, play areas, nurseries, children's centres or similar premises in proximity to the premises
 - f) The proximity to shopping centres
 - g) The proximity to community facilities/halls and public buildings such as swimming pools, leisure centres, public parks, youth centres/clubs (this list is not exhaustive)
 - h) The proximity to conservation areas, historic buildings and tourist attractions
 - i) The proximity of other sex establishments
- 12.12 When considering an application for the grant, renewal, variation or transfer of a licence the Council will also take into account the layout, character or condition of the premises including but not limited to the following
- a) The type of activity to which the application relates
 - b) The duration of the proposed licence
 - c) The days and hours of operation of the activity.
 - d) Suitability of management systems to take into account the safety of its performers, customers and staff.
- 12.13 Visibility to passers by on retail thoroughfares or pedestrian routes. In more sensitive locations applicants should consider whether it would be appropriate to locate such premises at basement level or locate entrances away from retail thoroughfares or busy pedestrian routes.

13. *Waivers*

- 13.1 The amendments to Schedule 3, Local Government (Miscellaneous Provisions) Act 1982 allow for the Licensing Authority to waive the need for a sex entertainment venue licence under certain circumstances.
- 13.2 An applicant can apply for a waiver either as part of the application for a licence or separately. The Local Authority can grant a waiver if they consider that to require a licence would be unreasonable or inappropriate. Where a waiver is granted the appropriate authority should inform the applicant that a waiver has been granted. The waiver may last for such a period that the appropriate authority think fit, but can be terminated by the appropriate authority at any time with 28 days notice.

- 13.3 The Licensing Authority will consider applications for such waiving of the need for licences on an individual basis. However, it is felt that unless clear and unambiguous evidence can be produced to support such a waiving of licence, the default position will be that a licence will be required.

14. Conditions

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

15. Duration of Licences

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

16. Appeals

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

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

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

16.3 There is no right of appeal for objectors.

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

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

APPENDIX A

STANDARD TERMS, CONDITIONS & RESTRICTIONS RELATING TO SEX ESTABLISHMENTS

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

Definitions

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

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

General

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

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

APPENDIX B

Sex Shops

Times of Opening

Condition 1

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

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

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

Conduct and Management of Premises

Condition 2

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

Condition 3

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

Condition 4

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

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

Condition 5

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

Condition 6

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

Condition 7

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

Condition 8

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

Condition 9

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

Condition 10

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

Condition 11

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

Condition 12

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

Use of the PremisesCondition 13

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

Condition 14

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

Goods available in sex establishments**Condition 15**

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

Condition 16

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

Appendix C

Sex Cinemas

Film Categories

Condition 1

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

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

Unclassified Films

Condition 2

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

Restricted Films

Condition 3

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

Persons Under 18

Condition 4

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

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

Condition 5

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

Advertising

Condition 6

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

Condition 7

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

Condition 8

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

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

Condition 9

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

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

Restricted 18

Condition 10

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

Condition 11

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

Membership

Condition 12

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

Condition 13

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

Condition 14

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

Condition 15

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

Condition 16

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

Condition 17

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

Condition 18

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

Condition 19

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

Condition 20

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

Condition 21

Neither membership tickets nor guest tickets shall be transferable.

Condition 22

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

Condition 23

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

Sale of Sex Articles**Condition 24**

Neither sex articles nor other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity shall be sold, hired, exchanged, loaned or demonstrated in a sex cinema.

APPENDIX D

Sexual Entertainment Venue

Times of Opening

Condition 1

The premises shall not open unless otherwise permitted: [TIMES WILL BE SPECIFIED FOR EACH LICENCE]

Conduct and Management of Premises

Condition 2

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

Condition 3

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

Condition 4

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

Condition 5

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

Condition 6

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

Condition 7

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

APPENDIX E

Pool of Possible Additional Conditions

Age Restriction

Condition A

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

Security

Condition B

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

Condition C

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

Condition D

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

Entertainers/Performers

Condition E

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

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SEX ESTABLISHMENT POLICY 2021 - 2024 – RESPONSE GRID

Respondent	Paragraph	Comment made	Response from Council
Respondent 1	Whole Policy	At the Queenborough Town Council meeting held on Monday 2nd August, Councillors' considered the above consultation and I would like to advise that they have no further comments to make on the consultation and support the policy of Swale Borough Council.	The comment is noted and requires no change to the policy.
Respondent 2	Whole Policy	A most detailed, specific & comprehensive draft, however although mentioned re 18 years or olds only a few times could not these notifications be mentioned more often & earlier in the draft & that high viz stickers are clearly displayed on all entrances & in the instances where they may be glass panels that allow a look in scenario that these panels are made obscure.	It is felt that there is sufficient mention of the requirement for over 18's to obtain access to sex establishments as follows: Sex Shops Condition 7 Sex Cinemas Condition 3 Condition 4 Condition 5 Condition 8 Condition 9

			<p>Sex Establishments No specific condition as these are premises licensed under the Licensing Act 2003 and will have conditions imposed under that legislation relating to persons being allowed to attend this type of entertainment being 18 years and over</p> <p>Condition 9 relating to Sex Cinemas states:</p> <p>The entrance doors to the premises shall be obscured or arranged so as to effectively prevent the interior of the premises being seen by passers by. The obscuration, screening or other arrangements shall be to the satisfaction of and approved by the Council.</p> <p>It is proposed that this requirement is now included as an additional condition for sex shops and will become Condition 8.</p>
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General Licensing Committee Meeting	
Meeting Date	9th September 2021
Report Title	Review of Scrap Metal Dealers Licensing Policy
Cabinet Member	Cllr Richard Palmer, Cabinet Member for Community
SMT Lead	Charlotte Hudson, Head of Housing, Economy and Community Services
Head of Service	Charlotte Hudson, Head of Housing, Economy and Community Services
Lead Officer	Christina Hills, Licensing Officer
Key Decision	No
Classification	Open
Recommendations	<ol style="list-style-type: none"> 1. Members to note the comments made in the evaluation grid attached as Appendix II to this report. 2. That the draft Scrap Metal Dealers policy as set out in Appendix I to this report be adopted to run for a period of 1st October 2021 – 30th September 2024.

1 Purpose of Report and Executive Summary

- 1.1 At the General Licensing Committee of 1st July 2021, a draft Scrap Metal Dealers Policy under the Scrap Metal Act 2013 was approved for public consultation. This report sets out the feedback received and recommends adoption of the policy.

2 Background

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

metal. The 2013 Act provides for two types of Scrap Metal Dealer licences. A 'Site Licence' and a 'Collector's Licence' both of which last for three years.

2.4.1 **Site Licence**

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

2.4.2 **Collectors Licence**

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

2.5 There are currently 15 Scrap Metal Collectors and 13 Scrap Metal Sites within the borough.

3 Proposals

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

3.2 Although there is no statutory requirement to undertake a review of the policy statement it is accepted best practice to review it at regular intervals to ensure that policy remains up to date and relevant. It is generally recognised that a period of 3 years is reasonable before a policy should be reviewed. Swale first adopted a policy on 12th July 2018 and hence why the policy has been reviewed with a view to a new edition of the policy being adopted

3.3 As the policy is not a statutory requirement there is no need for it to be formally adopted by Council following consideration by General Licensing Committee.

3.4 The draft Scrap Metal Dealers Licensing policy is attached as **Appendix I**.

4 Alternative Options

4.1 The Council could choose not to have a Scrap Metal Dealers policy; however, this would not accord with good governance of giving interested parties an opportunity

to consider the proposed policy and make any representations for changes before adoption.

5 Consultation Undertaken or Proposed

- 5.1 A six week consultation ran from 5th July 2021 until 13th August 2021. Methods of consultation and consultees were agreed by Members at the 1st July 2021 meeting of the General Licensing Committee.
- 5.2 Incoming responses were entered onto a grid for consideration. The grid is attached as **Appendix II**.
- 5.3 During the consultation period a total of two (2) responses were received. One response was a comment rather than a request for change. The other response was considered but the suggestion made is not permissible by the relevant legislation except where the licensee or site manager is convicted of a relevant offence.

6 Implications

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

Environment and Climate/Ecological Emergency	None identified
Health and Wellbeing	No implications
Safeguarding of Children, Young People and Vulnerable Adults	No implications
Risk Management and Health and Safety	It is important that Swale BC has a robust and accountable regulatory regime in relation to scrap metal in order to ensure fair trading, prevent crime and to protect consumers
Equality and Diversity	<p>The Council has a legal obligation under section 149 of the Equality Act 2010 to have due regard to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups.</p> <p>When considering scrap metal applications, only issues provided for in the Scrap Metal Act 2013 and provided for in the Scrap Metal Dealers policy for Swale BC will be taken into account. This will ensure a consistent approach is adopted. Under the terms of the policy, every application will be considered on its own merits.</p>
Privacy and Data Protection	Normal data protection and privacy rules will apply. Under the 2013 Act the Council is obliged to provide certain information to the Environment Agency who compile and keep a public register

7 Appendices

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

- Appendix I: Draft Scrap Metal Dealers Licensing Policy
- Appendix II: Consultation response grid

8 Background Papers

Scrap Metal Dealers Act 2013 and related Guidance.

Swale Borough Council



Scrap Metal Dealers Policy

Scrap Metal Dealers Act 2013

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September 2021

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Issue & Review Register

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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: Christina Hills, Licensing Officer

Date: July 2021

Approved by: General Licensing Committee

Date:

Changes and Corrections

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

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SWALE BOROUGH COUNCIL - SCRAP METAL POLICY 2021 - 2024

1. Introduction

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

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

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

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

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

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

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

- a) A Borough to be proud of
- b) A Community to be proud of
- c) A Council to be proud of

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

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

1.7 Equalities

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

2. Background

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

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

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

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

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

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

2.5 Scrap metal includes:

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

2.6 Scrap metal does not include

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

3. **Types of Licence**

3.1 Overview

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

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

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

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

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

3.2. Site Licences

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

3.2.2 The site licence must include:

- (a) the name of the licensee;

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

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

3.3 Collectors licences

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

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

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

3.3.2 A collector's licence must include:

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

4. Applicant Suitability

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

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

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

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

4.4 In determining suitability the Council will require the applicant to produce a Disclosure and Barring Services records check. Where the applicant has previously

lived outside the United Kingdom the Council will not consider the grant of a licence until a relevant check has been completed with the relevant country or countries and details of such check submitted to the Council. A Certificate of Good Conduct will need to be submitted in such cases.

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

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

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

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

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

- 4.7 While the Act states that the Council must have regard to the relevant offences laid out in Appendix A of this policy, the Council is not limited to taking into account only those offences. As such the Council may consider other offences that, in the Council's opinion, may be relevant in determining an applicant's suitability.
- 4.8 Having regard to the objectives of the Act, the Council has determined it will consider the following offences, or enforcement actions relating to any person relevant to the licence, as being of particular relevance to the suitability of the licence holder:
- (a) written warning relating to scrap metal compliance;
 - (b) Waste regulations 2011 – enforcement, compliance and stop notices;
 - (c) Permitting regulations notices;
 - (d) Planning Breach of Condition/Enforcement notices;
 - (e) statutory nuisance abatement notice;
 - (f) breach of statutory nuisance abatement notice
- 4.9 Having regard to the objectives of the Act the Council has determined there will be a presumption to refuse an application where the applicant or any other person required to be named or identified in the application has been convicted of any of the relevant offences laid down in the Act or has been the subject of any of the following forms of enforcement action within the period of three years prior to the application:
- (a) closure notice pursuant to the Act;
 - (b) closure order pursuant to the Act;
 - (c) action for recovery of possession of out of date or discontinued licences
- 4.10 Notwithstanding this policy and the matters that the Council may take into account when determining a person's suitability, each case shall be treated on its own individual merits.

5. Application Procedure

- 5.1 An application form, available from the Licensing Department must be completed and submitted together with the correct fee and a current Basic Disclosure and Barring Service Criminal Convictions check (DBS). The DBS must be less than 3 months old from the date of issue. Information on convictions held by those having lived outside the United Kingdom will also be required.
- 5.2. The application form must detail the following:
- (a) full name of the applicant (if an individual), date of birth and usual place of residence;
 - (b) name and registered number of the applicant (if a company) and registered office;
 - (c) if a partnership – full name of each partner, date of birth and usual place of residence;
 - (d) proposed trading name

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

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

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

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

6. **Supply of Information**

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

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

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

7 **Register of licences**

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

- (a) the name of the authority which issued the licence;
- (b) the name of the licensee;
- (c) any trading name of the licensee;
- (d) the address of the site identified in the licence;
- (e) the type of licence; and

- (f) the date on which the licence is due to expire

The register is open for inspection by members of the public

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

8. Notification of Requirements

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

9. Verification of Suppliers Identity

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

10 Payment for Scrap Metal

- 10.1 Cash cannot be used by any scrap metal collector. It is an offence to buy scrap metal for cash under Section 12 of the Act and there are no exemptions.
- 10.2 Payment must only be made by either:
 - (a) a cheque (which is not transferrable under Section 81A Bills of Exchange Act 1882); or

- (b) electronic transfer of funds (authorised by a credit, debit card or otherwise)

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

11. Records

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

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

11.2 Receipt of metal

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

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

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

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

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

11.6 Disposal of Metal

Disposal under the Act covers metal:

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

11.7 Disposal records must be recorded, including:

- (a) description of the metal, including its type (types if mixed), form, weight
- (b) date and time of disposal

- (c) if to another person, their full name and address
- (d) if payment is received for the metal (sale or exchange) the price
- (e) other consideration received

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

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

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

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

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

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

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

12. Right of entry and inspection

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

12.2 Entry and inspection without notice may occur, if:

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

12.3 Sections 12.1 and 12.2 do not apply to residential premises.

12.4 An authorised officer of the Council is not entitled to use force to enter a premises, but may ask a justice of the peace to issue a warrant authorising entry, if they are satisfied there are reasonable grounds for entry to the premises and is reasonably required for the purposes of:

- (a) securing compliance with the provisions of the Act, or
- (b) ascertaining whether those provisions are being complied with.

12.5 'Premises' under this section include:

- (a) licensed site, or
- (b) premises that are not licensed, but there are reasonable grounds for believing the premises are being used as a scrap metal dealing business.

12.6 An authorised officer of the Council may use reasonable force in the exercise of the powers under a warrant obtained under section 12.4.

12.7 An authorised officer of the Council may require:

- (a) production of, and inspect, any scrap metal kept at any licensed premises, and
- (b) require production of, and inspect, any records kept in respect of receipt and disposal of metal, and
- (c) to take copies of or extracts from any such record

12.8 An authorised officer of the Council must produce evidence of their identity and evidence of their authority to exercise these powers, if requested by the owner, occupier, or other person in charge of the premises.

13. Display of a Licence

13.1 A copy of a site licence must be displayed at each site identified in the licence. The copy must be displayed in a prominent place, in an area accessible to the public.

13.2 A copy of the site licence will be available in every vehicle that collects metal in connection with a site licence.

13.3 A copy of the collector's licence must be displayed on any vehicle that is being used in the course of the dealer's business. This must be displayed in a manner which enables it to be easily read by a person outside the vehicle.

14. Variation of a Licence

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

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

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

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

15. Renewal of a Licence

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

16. Further information

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

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

17. Fee

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

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

18. Refusals and right to make representations

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

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

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

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

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

18.5 If, within the period specified in the notice, the applicant or licensee informs the Council that they wish to make representations, the Council will allow a reasonable period to make representations and may refuse the application, vary the licence or revoke the licence if they fail to make representations within that period.

18.6 Where there is a representation a hearing will be arranged, and the case will be presented to a Licensing Sub-Committee. The applicant or licensee will be invited to attend. The Council will give at least 10 working days' notice of the date and time of the hearing to the applicant or licensee. The notice will include the appeal procedure.

19. Revocation and Imposing Conditions

19.1 The Council may revoke a scrap metal licence if it is satisfied the licence holder does not carry on a scrap metal business at any of the sites named on the licence.

19.2 The Council may revoke a scrap metal licence if it is satisfied the site manager named on the licence does not act as a site manager at any of the named sites on the licence.

19.3 The Council may revoke a scrap metal licence if it is no longer satisfied the licence holder is a suitable person to carry on the business.

19.4 If the applicant or any site manager has been convicted of a relevant offence, the Council may include in the licence one or both of the following conditions:

- (a) that the dealer must not receive scrap metal except between 09:00 and 17:00 on any day;
- (b) that all scrap metal must be kept in the form in which it is received for a specified period, not exceeding 72 hours, beginning with the time when it is received.

19.5 A proposed revocation or a variation of a licence will be presented to a Licensing Sub-Committee. The applicant or licensee will be invited to attend. The Council will give at least 10 working days' notice of the date and time of the hearing to the applicant or licensee. The notice will include the appeal procedure.

19.6 A revocation or variation only comes into effect when no appeal under the Act is possible, or when such appeal has been determined or withdrawn.

20. Appeals

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

20.2 The licensee may appeal to the magistrates' court against the inclusion on the licence of a condition under Section 3(8) of the Act, or a revocation or variation of a licence under Section 4 of the Act.

20.3 The appeal procedure will be in accordance with current magistrates' court procedures and must be lodged within 21 days of receipt of the decision notice.

20.4 On appeal the magistrates' court may confirm, vary or reverse the Council's decision, and give such directions as it considers appropriate having regard to the provisions of the Act.

21. Closure of Unlicensed Sites

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

A copy of the notice must be given to:

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

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

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

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

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

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

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

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

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

A copy must be given to anyone who requests one.

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

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

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

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

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

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

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

- 21.6. A person is guilty of an offence, if they allow the premises to be open in contravention of a closure order, without reasonable excuse, or fails to comply with, or contravenes a closure order.
- 21.7 An authorised officer of the Authority may enter the premises at any reasonable time to ensure compliance with the order. They may use reasonable force if necessary.
- 21.8 An authorised officer must produce evidence of their identity or evidence of their authority to exercise the powers under the Act, if requested to do so.

22. Delegation of Functions

- 22.1 Where there are uncontested applications, or where there are no questions about the suitability of the applicant the determination will be dealt with by the Council Licensing Team.
- 22.2. Contested applications where there is relevant information from any of the consultees, or queries regarding an applicant's suitability, revocation of a licence or the imposition of conditions will be presented to the Licensing Sub-Committee.

APPENDIX A – RELEVANT OFFENCES

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

PART 1

Primary Legislation

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

PART 2

Secondary legislation

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

Offences and Penalties

The following are prescribed by the Act as criminal offences:

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

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

Levels of Fine:

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

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SCRAP METAL DEALERS POLICY 2021 - 2024 – RESPONSE GRID

Respondent	Paragraph	Comment made	Response from Council
Respondent 1	Whole Policy	At the Queenborough Town Council meeting held on Monday 2nd August, Councillors' considered the above consultation and I would like to advise that they have no further comments to make on the consultation and support the policy of Swale Borough Council.	The comment is noted but requires no change to the policy.
Respondent 2	Whole Policy	Just a suggestion in particular when it comes to the entry exit of vehicles into the scrap merchants [yard] e.g. St. Michael's Road Sittingbourne, the issue being queuing vehicles on the public highway awaiting entrance into the yard creating road safety issues. A possible change in opening and closing times avoiding the morning and late afternoon rush hours and footfall times.	<p>The comment is noted. However, the only time that a local authority can impose conditions relating to permitted hours of opening is if the applicant or any site manager has been convicted of a relevant offence when the Council may include the condition:</p> <ul style="list-style-type: none"> • That the dealer must not receive scrap metal except between 09:00 and 17:00 on any day <p>No change to the policy proposed</p>

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