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# **Draft Gambling Policy Statement**

**Swale Borough Council**  
**01/06/2006**

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### **1. The Licensing Objectives**

In exercising most of their functions under the Gambling Act 2005, licensing authorities must have regard to the licensing objectives as set out in section 1 of the Act. The licensing objectives are:

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

### **2. Introduction**

Swale Borough Council is situated in the County of Kent, which contains 12 District Councils and 1 Unitary Authority in total. Each is represented on the Kent & Medway Regulatory Licensing Steering Group (K&MRLStGp) whose role includes the identification of issues on which a consistent countywide approach is considered essential and the formulation of recommended policy that establishes a minimum standard on these identified issues.

This policy has been formulated by the K&MRLStGp.

The Borough covers an area of 364 square kilometres, and with a population of 125,000 people it is the fourth largest District in Kent. Much of the area is rural and includes the attractive landscape of the North Downs. The common thread to the Borough's three main towns is their connection with the waters of the North Kent coast, particularly the Swale channel. However, each has developed and maintained its own special identity and character.

We believe that there is considerable potential to increase the role of tourism in Swale, given the historic town of Faversham and the Borough's attractive countryside, long coastline and coastal waters. A further potential area for growth is also for 'business' tourism. However, a barrier to developing the tourist economy as a whole is a lack of good quality accommodation.

Faversham prospered as a market town and has continued its links with agriculture up to the present day with brewing and food processing/distribution comprising the town's main industries. Within Faversham we are keen to bring further activity and a café culture with colour and vitality into the town centre, particularly those that retain residents and visitors in the town throughout both the day-time and in the evening. Creating such an environment will not be at the expense of diversity and distinctiveness nor should it be allowed to create anti-social behaviour. The Crime & Disorder Reduction Partnership (CDRP) will continue to support strategies that allow for the growth of an economy to reinforce Faversham's unique position within Swale, whilst seeking to protect the quality of life of residents and visitors.

Within Faversham there are 3 bookmakers and several licensed premises with gaming machines.

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The Island's coast became a popular destination for visitors from London in the post-war period, with caravans and chalets an important feature of the landscape. Whilst many of the parks already have facilities, these are provided only for use by the park residents. Through this policy we will encourage park operators to make these available to the wider local community.

Sheerness, the biggest town on the Isle of Sheppey, owes its origins to the naval dockyard which has since been converted to a deep water commercial port. However, there remain many listed buildings that could form the nucleus of a major tourism business. Major new industries such as steel making and pharmaceuticals have become established at Blue Town and Queenborough. In Sheerness there are a number of other services and facilities present in the town centre that help support the retail uses, and act as attractions for residents and visitors. These include health facilities, cultural facilities, leisure centre, pubs, nightclubs and restaurants.

The CDRP will seek to ensure the healthy and safe development of the Islands late night economy for tourists and residents, as well as ensuring the quality of life of residents living within the vicinity of licensed premises is maintained.

Sittingbourne prospered as a market town, but has since focused on industries such as brick making and paper manufacture. We support the objective of consolidating and expanding Sittingbourne's position as a retail, business, cultural and civic centre for multi-purpose visits. Central Avenue, Roman Square, and the Avenue of Remembrance, are the focus for the towns civic, administration, leisure, and cultural functions.

Within Sittingbourne and Sheerness there are 7 bookmakers, 2 bingo halls one dog racing track and several licensed premises with gaming machines.

Within the rural context, through this policy, we seek to encourage the use of licensed premises to provide improved or new services/facilities for the rural communities. Additionally, we will support proposals that will help maximise the use of existing public and private community services and facilities, including those that would make them available for wider public use. The village pub is seen as the hub of the local community. The CDRP will seek to protect the quality of lives residents living in the vicinity of licensed premises within rural areas.

Through this Policy we aim for:

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

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Licensing authorities are required by the Gambling Act 2005 to publish a statement of the principles that they proposed to apply when exercising their functions. This statement must be published at least every three years. The statement can also be reviewed from "time to time" and the amended parts re-consulted upon. The statement must then be re-published.

Swale Borough Council consulted widely on this policy statement before finalising and publishing. A list of the persons we consulted is provided below. It should be noted that unsolicited comments were received from other persons but we have not listed all of these.

The Gambling Act requires that the following parties be consulted by Licensing Authorities:

- The Chief Officer of Police
- One or more persons who appear to the authority represent the interests of persons carrying on gambling businesses in the authority's area
- One or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under the Gambling Act 2005

The list of persons consulted when preparing this Policy statement is deliberately wide. The List of persons this authority consulted:

- The police
- Kent Fire and Rescue
- Customs and Excise
- Social Services
- Shepherd Neame, Enterprise Inns and Local LVA'S trade associations
- Gamblers Anonymous
- Association of British Bookmakers
- Swale Primary Care Trust
- Swale Borough Councils Planning and Environmental Health Departments

Our consultation took place between 1<sup>st</sup> June and 31<sup>st</sup> August 2006 and we followed the Revised Code of Practice (which came into effect in April 2004) and the Cabinet Office Guidance on consultations by the public sector. These documents are available via:

<http://www.cabinetoffice.gov.uk/regulation/consultation-guidance/>

In determining its policy the licensing authority must have regard to the Guidance and will give appropriate weight to the views of those it has consulted.

The full list of comments made and the consideration by the Council is available by request to: *The Licensing Department, Swale Borough Council, East Street, Sittingbourne, Kent, ME10 3HT* or via the Council's website at: [www.swale.gov.uk](http://www.swale.gov.uk)

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The policy was approved at a meeting of the Full Council on 22<sup>nd</sup> November 2006 and was published via our website on 1<sup>st</sup> December. Copies have been placed in the public libraries of the area as well as being available in the principle Council Offices.

Should you have any comments as regards this policy statement please send them via e-mail or letter to the following contact:

Name: Samantha Potts

Address: Swale Borough Council, Swale House, East Street, Sittingbourne, Kent, ME10 3HT

E-mail: [licensing@swale.gov.uk](mailto:licensing@swale.gov.uk)

It should be noted that this policy statement will not override the right of any person to make an application, make representations about an application, or apply for a review of a licence, as each will be considered on its own merits and according to the statutory requirements of the Gambling Act 2005.

### 3. Declaration

In producing the final licensing policy statement, this licensing authority declares that it has had regard to the licensing objectives of the Gambling Act 2005, the guidance issued by the Gambling Commission, and any responses from those consulted on the policy statement.

**No Casinos resolution** – This licensing authority has not passed a 'no casino' resolution under Section 166 of the Gambling Act 2005, but is aware that it has the power to do so. Should this licensing authority decide in the future to pass such a resolution, it will update this policy statement with details of that resolution<sup>1</sup>.

### 5. Functions

Function	Who deals with it
Be responsible for the licensing of premises where gambling activities are to take place by issuing <i>Premises Licences</i>	Licensing Authority
Issue <i>Provisional Statements</i>	Licensing Authority
Regulate <i>members' clubs</i> and <i>miners' welfare institutes</i> who wish to undertake certain gaming activities via issuing Club Gaming Permits and/or Club Machine Permits	Licensing Authority
Issue <i>Club Machine Permits to Commercial Clubs</i>	Licensing Authority

<sup>1</sup> In addition, the Gambling Commission's draft Guidance for local authorities states that licensing policy statements should include details about how the authority has taken or will take a decision to pass (or not to pass) a casino resolution." (6.30) LACORS will be communicating to the Commission that it believes this additional information on how the authority will decide whether or not to take a decision is unnecessary and not appropriate for a policy statement.

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Grant permits for the use of certain lower stake gaming machines at <i>unlicensed Family Entertainment Centres</i>	Licensing Authority
Receive notifications from alcohol licensed premises (under the Licensing Act 2003) of the use of two or fewer gaming machines	Licensing Authority
Grant <i>Licensed Premises Gaming Machine Permits</i> for premises licensed to sell/supply alcohol for consumption on the licensed premises, under the Licensing Act 2003, where more than two machines are required	Licensing Authority
Register <i>small society lotteries</i> below prescribed thresholds	Licensing Authority
Issue <i>Prize Gaming Permits</i>	Licensing Authority
Receive and Endorse <i>Temporary Use Notices</i>	Licensing Authority
Receive <i>Occasional Use Notices</i>	Licensing Authority
Provide information to the Gambling Commission regarding details of licences issued (see section above on 'information exchange')	Licensing Authority
Maintain registers of the permits and licences that are issued under these functions	Licensing Authority

Please Note:

The Gambling Commission functions are listed on page 26.

The Licensing Authority is not responsible for remote gambling.

It is also worth noting that concerns about manufacture, supply or repair of gaming machines will not be dealt with by the licensing authority but will be notified to the Gambling Commission.



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**6. Responsible Authorities**

In exercising this licensing authority's powers under Section 157(h) of the Act to designate, in writing, a body which is competent to advise the authority about the protection of children from harm, the following principles have been applied:

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

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

Kent Social Services Brenchley House County Hall Maidstone Kent ME14 1RF	Children's Services Medway Council Civic Centre Strood Rochester ME2 4AU
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The contact details of all the Responsible Bodies under the Gambling Act 2005 are available via the Council's website at: [www.swale.gov.uk](http://www.swale.gov.uk)

**7. Interested parties**

Interested parties can make representations about licence applications, or apply for a review of an existing licence. These parties are defined in the Gambling Act 2005 as follows:

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

- a) lives sufficiently close to the premises to be likely to be affected by the authorised activities,
- b) has business interests that might be affected by the authorised activities,
- or
- c) represents persons who satisfy paragraph (a) or (b)"

The licensing authority is required by regulations to state the principles it will apply in exercising its powers under the Act Gambling Act 2005 to determine whether a person is an interested party. The principles are:

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

- the size of the premises
- the nature of the premises

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- the distance of the premises from the location of the person making the representation
- the potential impact of the premises (number of customers, routes likely to be taken by those visiting the establishment); and
- the nature of the complainant. This is not the personal characteristics of the complainant but the interests of the complainant, which may be relevant to the distance from the premises. For example, it could be reasonable for an authority to conclude that "sufficiently close to be likely to be affected" could have a different meaning for (a) a private resident (b) a residential school for children with truanting problems and (c) residential hostel for vulnerable adults.
- the 'catchment' area of the premises (i.e. how far people travel to visit); and
- whether the person making the representation has business interests in that catchment area, that might be affected.

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

Guidance also states that moral objections to gambling are not a valid reason to reject applications for premises licences. This is because such objections do not relate to the licensing objectives (Guidance to Licensing Authorities Para 5.25).

The Gambling Commission has also recommended that the licensing authority state that interested parties include trade associations and trade unions, and residents and tenants' associations. This authority will not however generally view these bodies as interested parties unless they have a member who can be classed as one under the terms of the Gambling Act 2005 i.e. lives sufficiently close to the premises to be likely to be affected by the authorised activities.

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

### **8. Exchange of Information**

Licensing authorities are required to include in their policy statement the principles to be applied by the authority in exercising the functions under sections 29 and 30 of the Act with respect to the exchange of information between it and the Gambling Commission, and the functions under section 350 of the Act with the respect to the exchange of information between it and the other persons listed in Schedule 6 to the Act.

The principle that this licensing authority applies is that it will act in accordance with the provisions of the Gambling Act 2005 in its exchange of information which includes the provision that the Data Protection Act 1998

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will not be contravened. The licensing authority will also have regard to any Guidance issued by the Gambling Commission to Local Authorities on this matter when it is published, as well as any relevant regulations issued by the Secretary of State under the powers provided in the Gambling Act 2005.

### **9. Enforcement**

The Kent & Medway Licensing Steering Group has formulated an Enforcement Protocol which each Licensing Authority and Responsible Authority has agreed. The purpose of this protocol is to facilitate co-operation and co-ordination between enforcement agencies in pursuance of both the Gambling Act 2005 and the Licensing Act 2003. It will underpin the mutual operational support required to tackle licensing issues.

As per the Gambling Commission's draft Guidance for local authorities this licensing authority will endeavour to avoid duplication with other regulatory regimes so far as possible.

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

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

This licensing authority's principles are that:

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

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

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The main enforcement and compliance role for this licensing authority in terms of the Gambling Act 2005 will be to ensure compliance with the Premises Licences and other permissions which is authorises.

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

## Appendix 1

The Gambling Commission's draft Guidance for licensing authorities states the following. The paragraphs below endeavour to meet this request:

*"The licensing authority should set out in its statement what factors it may take into account when considering applications for premises licences, permits and other permission and matters that it will consider when determining whether to review a licence. The licensing authority will take into account considerations such as the proximity of gambling premises to schools and vulnerable adult centres, or to residential areas where there may be a high concentration of families with children, should be detailed (where they are relevant). Any such policy must, however, come with the qualification that each case will be decided on its merits, so if an applicant can show how they might overcome licensing objective concerns, that will have to be taken into account. " (6.29)*

### **1. Permits**

#### **(i) Unlicensed Family Entertainment Centre gaming machine permits (Statement of Principles on Permits - Schedule 10 paragraph 7)**

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

The Gambling Act 2005 states that a licensing authority may prepare a statement of principles that they propose to consider in determining the suitability of an applicant for a permit and in preparing this statement, and/or considering applications, it need not (but may) have regard to the licensing objectives and shall have regard to any relevant guidance issued by the Commission under section 25.

It should be noted that a licensing authority cannot attach conditions to this type of permit and that the "statement of principles" only applies to initial applications and not to renewals (paragraph 18(4)).

For initial applications, the Licensing Authority does not have to have regard to the licensing objectives but does need to have regard to any Gambling Commission guidance.

The Gambling Commission's draft Guidance for local authorities states: "In their three year licensing policy statement, licensing authorities may include a statement of principles that they propose to apply when exercising their functions in considering applications for permits...., licensing authorities will want to give weight to child protection issues. Further guidance on the information that should be obtained from the applicant and others will be provided in the next version of this guidance." (24.6)

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The draft Guidance also states: "An application for a permit may be granted only if the licensing authority is satisfied that the premises will be used as an unlicensed FEC, and if the chief officer of police has been consulted on the application. Relevant considerations to take into account would be the applicant's suitability..., such as any convictions that they may have that would make them unsuitable to operate a family entertainment centre..; and the suitability of the premises in relation to their location and issues about disorder." (24.7)

This licensing authority has not currently adopted a policy. Should it decide to do so it will be available from the licensing department. Potential applicants and other interested persons are advised to check with the licensing department as to whether a policy has been adopted.

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

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

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

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

If a premises wishes to have more than 2 machines, then it needs to apply for a permit and the licensing authority must consider that application based upon the licensing objectives, any guidance issued by the Gambling Commission issued under Section 25 of the Gambling Act 2005, and "*such matters as they think relevant.*" This licensing authority considers that "such matters" will be decided on a case by case basis but that if any general themes arise it will endeavour to provide examples of such in this licensing policy statement by way of a revision.

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

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

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

The Gambling Act 2005 states that a Licensing Authority may “prepare a statement of principles that they propose to apply in exercising their functions under this Schedule” which “may, in particular, specify matters that the licensing authority propose to consider in determining the suitability of the applicant for a permit”.

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

This licensing authority has not prepared a statement of principles. Should it decide to do so, it will include details in a revised version of the policy statement.

In making its decision on an application for this permit the licensing authority does not need to have regard to the licensing objectives but must have regard to any Gambling Commission guidance.

It should be noted that there are conditions in the Gambling Act 2005 that the permit holder must comply with, but that the licensing authority cannot attach conditions. The conditions in the Act are:

- the limits on participation fees, as set out in regulations, must be complied with;
- all chances to participate in the gaming must be allocated on the premises on which the gaming is taking place and on one day; the game must be played and completed on the day the chances are allocated; and the result of the game must be made public in the premises on the day that it is played;

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- the prize for which the game is played must not exceed the amount set out in regulations (if a money prize), or the prescribed value (if non-monetary prize); and
- participation in the gaming must not entitle the player to take part in any other gambling.

### **(iv) Club Gaming and Club Machines Permits**

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

Draft Gambling Commission Guidance for local authorities states: "Members clubs must have at least 25 members and be established and conducted "wholly or mainly" for purposes other than gaming, unless the gaming is permitted by separate regulations. It is anticipated that this will cover bridge and whist clubs, which will replicate the position under the Gaming Act 1968. A members' club must be permanent in nature, not established to make commercial profit, and controlled by its members equally. Examples include working men's clubs, branches of Royal British Legion and clubs with political affiliations." (25.3)

The draft Guidance also makes it clear that "Before granting the permit the authority will need to satisfy itself that the premises meet the requirements of a members' club and may grant the permit if the majority of members are over 18."(25.14)

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

- (a) the applicant does not fulfil the requirements for a members' or commercial club or miners' welfare institute and therefore is not entitled to receive the type of permit for which it has applied;
- (b) the applicant's premises are used wholly or mainly by children and/or young persons;
- (c) an offence under the Act or a breach of a permit has been committed by the applicant while providing gaming facilities;
- (d) a permit held by the applicant has been cancelled in the previous ten years; or
- (e) an objection has been lodged by the Commission or the police (Gambling Commission's draft Guidance for Local Authorities 25.18)

It should be noted that there is a 'fast-track' procedure available for premises that hold a Club Premises Certificate under the Licensing Act 2003. As the Gambling Commission's draft Guidance for local authorities states: "Under the fast-track procedure there is no opportunity for objections to be made by the



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Commission or the police, and the ground upon which an authority can refuse a permit are reduced” and “The grounds on which an application under the process may be refused are:

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

## **2. Premises Licences**

### **(i) Decision making - general:**

Premises Licences will be subject to the permissions/restrictions set-out in the Gambling Act 2005 and Regulations, as well as specific mandatory and default conditions which will be detailed in regulations issued by the Secretary of State. Licensing authorities are able to exclude default conditions and also attach others, where it is believed to be appropriate.

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

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

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

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

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

This licensing authority is in agreement with these statements by the Gambling Commission.

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

- any condition on the premises licence which makes it impossible to comply with an operating licence condition
- conditions relating to gaming machine categories, numbers, or method of operation;

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- conditions which provide that membership of a club or body be required (the Gambling Act 2005 specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated and
- conditions in relation to stakes, fees, winning or prizes

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

### **(ii) "premises":**

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

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

- the third licensing objective seeks to protect children from being harmed by gambling. In practice that means not only preventing them from taking part in gambling, but also that they are not permitted to be in close proximity to gambling. Therefore premises should be configured so that children are not invited to participate in, have accidental access to, or closely observe gambling; and
- entrances and exits from parts of a building covered by one or more licences should be separate and identifiable so that the separation of different premises is not compromised and that people do not 'drift' into a gambling area."

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

### **(iii) Location:**

This licensing authority notes the Gambling Commission's draft Guidance for local authorities which states that: "Licensing authorities will need to consider

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the location of premises without the context of this<sup>2</sup> licensing objective. If an application for a licence or permit is received in relation to premises that are in an area noted for particular problems with organised crime, for example, licensing authorities should think about what (if any) controls might be appropriate to prevent those premises becoming a source of crime. These might include conditions being put on the licence, such as a requirement for door supervisors”

The Commission also states in its draft Guidance: “For example, a licensing policy statement might set out that the authority will consider very carefully whether applications for premises licence in respect of certain gambling premises located very close to a school, or a centre for gambling addicts should be granted in light of the third licensing objective. Any such policy must, however, come with the qualification that each case will be decided on its merits, and will depend to a large extent on the type of gambling that it is proposed will be offered on the premises. If an applicant for a premises licence can show how licensing objective concerns can be overcome, that will have to be taken into account.” This licensing authority will adhere to this advice.

### **(iv) Planning:**

Planning and licensing are different regulatory systems and will be dealt with separately. As the Gambling Commission’s draft Guidance states: “When dealing with a premises licence application for finished buildings, the licensing authority should not take into account whether those buildings have or comply with the necessary planning or building consents. Those matters should be dealt with under relevant planning control and building regulation powers, and not form part of the consideration for the premises licence. Section 210 of the 2005 Act prevents licensing authorities taking into account the likelihood of the proposal by the applicant obtaining planning or building consent when considering a premises licence application. Equally the grant of a gambling premises licence does not prejudice or prevent any action that may be appropriate under the law relating to planning or building.”

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

### **(v) Duplication**

As stated in the section above on Enforcement, as per the Gambling Commission’s draft Guidance for local authorities this licensing authority will endeavour to avoid duplication with other regulatory regimes so far as possible.

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<sup>2</sup> Preventing gambling being a source of crime or disorder, being associated with crime or disorder or being used to support crime.

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### **(vi) Door Supervisors**

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

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

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

### **(vii) Licensing objectives**

This licensing authority has considered the Gambling Commission's draft Guidance to local authorities and some comments are provided with regard to the licensing objectives.

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

The Gambling Commission in its draft Guidance for local authorities has noted that "disorder is intended to mean activity that is more serious and disruptive than mere nuisance. Factors to consider in determining whether a disturbance was serious enough to constitute disorder would include whether police assistance was required and how threatening the behaviour was to those who could see or hear it." This authority agrees with this statement.

#### Ensuring that gambling is conducted in a fair and open way:

This licensing authority has noted that the Gambling Commission in its draft Guidance for local authorities has noted that "Generally the Commission would not expect licensing authorities to become concerned with ensuring that gambling is conducted in a fair and open way as this will be a matter for either the management of the gambling business, and therefore subject to the operating licence, or will be in relation to the suitability and actions of an individual and therefore subject to the personal licence." This licensing authority also notes, however, that the Gambling Commission also states "in relating to the licensing tracks the licensing authorities' role will be different from other premises in that track operators will not necessarily have an operating licence. In those circumstances the premises licence may need to contain conditions to ensure that the environment in which betting takes place is suitable." This licensing authority understands that there may be further guidance from the Gambling Commission on this issue which it will have regard to, when available.

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

This licensing authority has noted the draft Gambling Commission Guidance which states that "The objective talks of protecting children from being "harmed or exploited by gambling", but in practice that often means preventing them from taking part in or being in close proximity to gambling..."

This authority has also noted that the Gambling Commission Guidance states "Licensing authorities will need to consider whether specific measures will be needed to protect children on particular categories of premises. This may include requirements such as supervision of entrances; segregation of gambling from areas frequented by children and supervision of gaming machines in non-adult gambling specific premises. These considerations will be particularly relevant on tracks (where children will be permitted in the betting areas on race-days) and in the regional casino, where children will be permitted in non-gambling areas."

As regards the term "vulnerable persons" it is noted that the Gambling Commission is not seeking to offer a definition but states that "it will for regulatory purposes assume that this group includes people who gamble more than they want to; people who gamble beyond their means; and people who may not be able to make informed or balanced decisions about gambling due to a mental impairment, alcohol or drugs." This licensing authority will consider the objective on a case-by-case basis. Should a practical definition prove possible in future then this policy statement will be updated with it, by way of a revision.

This licensing authority will pay particular attention to any Codes of Practice, which the Gambling Commission issues as regards this licensing objective in relation to specific premises such as casinos. It is understood that a Code for casinos must:

- specify steps that the premises licence-holder must take to ensure that children and young persons (that is those under the age of 18) do not enter casino premises, or in the case of the regional casino do not enter the gambling area;
- amongst those specified steps, ensure that each entrance to the casino or gambling area is supervised by at least one person ("the supervisor") who is responsible for compliance with the code of practice; and
- require that, unless the supervisor is certain that a person seeking admittance is an adult, evidence of age must be required of all those seeking to enter the casino or gambling area."

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### **(viii) Reviews:**

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

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

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

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

### **(ix) Provisional Statements**

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

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

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important part of this, and inspection will allow the authority to check that the layout complies with the operator's proposals and the legal requirements." (in relation to Provisional Licences)

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

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

This authority has noted the Gambling Commission's draft Guidance that "A licensing authority must not have regard to whether or not a proposal by the applicant is likely to be permitted in accordance with planning or building law."

### **(x) Adult Gaming Centres:**

This licensing authority particularly notes the Gambling Commission's draft Guidance which states: "No-one under the age of 18 is permitted to enter an AGC. Licensing authorities will wish to have particular regard to the location of an entry to AGCs to minimise the opportunities for children to gain access. This may be of particular importance in areas where young people may be unsupervised and an AGC is in a complex, such as a shopping centre or airport."

### **(xi) (Licensed) Family Entertainment Centres:**

This licensing authority will, as per the Gambling Commission's draft guidance refer to the Commission's website to see any conditions that apply to operator licences covering the way in which the area containing the category C machines should be delineated. This licensing authority will also make itself aware of any mandatory or default conditions on these premises licences, when they have been published.



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### **(xii) Tracks:**

This licensing authority is aware that the Gambling Commission may provide specific guidance as regards tracks. We have taken note of the following draft Guidance from the Gambling Commission:

- "Only one premises licence may be issued for any particular premises at any time....There is one exception to this rule, namely a track (i.e. a horse race course, dog track or other premises where races or sporting events take place), which may be subject to more than one premises licence, provided each licence relates to a specified area of the track... The Act set out that there will be a main (betting premises) licence for the track, and in addition subsidiary premises licences for other gambling activities may be issued. The normal limitations in terms of access by children and young persons will apply, although in relation to a premises licence in respect of a track, children and young persons will be permitted to enter track areas where facilities for betting are provided on days when dog-racing and/or horse racing takes place. This is subject to the rule that children and young persons may not enter any areas where gaming machines (other than category D machines) are provided...In principle there is no reason why all types of gambling should not co-exist upon a track, but authorities will want to think about how a third licensing objective is delivered by the co-location of premises. As with the granting of multiple licence in a single building, licensing authorities will need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter."
- "Premises licences in relation to tracks are unusual in that, because the track operator does not need to have an operating licence (although may have one), the premises licence will need to contain requirements on the premises licence holder about his responsibilities in relation to the proper conduct of betting. The conduct of the betting on tracks will be regulated primarily through the operating licences that the persons offering betting on the track will need to hold (whether a general betting operating licence, or a pool betting operating licence). But the track operator will have a role to play in ensuring, for example, that the betting areas are properly administered, and licensing authorities will have an important role in regulating tracks, because of the particular rules surrounding on-course betting, and the sub-division of the track into different areas."
- "Special rules apply to applicants for a premises licence in relation to a track. Most importantly, as noted above, the applicant need not hold an operating licence. That is because, unless the occupier of the track wishes to offer pool betting (or general betting) facilities himself (for which he will need a licence), the betting that is provided upon the track will not be provided by him, but will be provided by other operators who come on-course. Since those people will require the necessary operating licences, the Act allows the track operator to obtain a premises licence without also having to hold an operating licence. This track premises licences (sic) then authorises anyone upon the premises with an operating licence to offer betting facilities."

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- "the secondary aspect to this rule is that each individual operator who comes onto the track on race days does not need to hold a premises licence. Instead, he will be covered by the umbrella of the premises licence held by the track operator."
- It is understood from the Gambling Commission's draft Guidance that it plans to issue guidance on where gaming machines may be located on tracks and any special considerations that should apply in relation, for example, to supervision of the machines and preventing children from playing them. This licensing authority will take note of this guidance. This licensing authority will also, as per the Gambling Commission's draft Guidance, consider the location of gaming machines at tracks Children as young persons are not prohibited from playing category D gaming machines on a track. We also note that the Commission has stated: "applications for track premises licences will need to demonstrate that, where the applicant holds a pool betting operating licence and is going to use his entitlement to four gaming machines, these machines are located in areas from which children are excluded."

Licensing authorities have a power under the Gambling Act 2005, to restrict the number of betting machines, their nature and the circumstances in which they are made available, by attaching a licence condition to a betting premises licence. The Gambling Commission's draft Guidance will be noted in that it states: "In relation to betting premises away from tracks, the Commission is proposing that licensing authorities should take into account the size of the premises and the ability of staff to monitor the use of the machines by vulnerable people when determining the number of machines permitted. Similar considerations apply in relation to tracks, where the potential space for such machines may be considerable, bringing with it significant problems in relation to the proliferation of such machines, the ability of track staff to supervise them if they are scattered around the track and the ability of the track operator to comply with the law and prevent children betting on the machine. Licensing authorities will want to consider restricting the number and location of betting machines, in the light of the circumstances of each application for a track betting premises licence."

This licensing authority also notes that, as per the Gambling Commission's draft Guidance:

- The Commission will issue further guidance about how such premises should be delineated, both to make it clear to the public that they are entering a "betting office" and to keep out children and young persons.
- "As the betting premises licence for a track could authorise the entire premises to be used for providing betting facilities, this could mean that no separate betting premises licence would be necessary for the self-contained premises. The effect of this approach would be that the track operator was responsible for premises licence issues relating to the self-contained premises, rather than accountability resting with the betting operator providing facilities within it."

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- "If the self-contained premises were the subject of a separate premises licence, that licence would have its own, directly imposed conditions. It would also allow the premises to use up to four gaming machines (in categories B2 to D), as described in Part 19.
- "In the Commission's view, it would be preferable for all self-contained premises operated by off-course betting operators on track to be the subject of separate premises licences. This would ensure that there was clarity between the respective responsibilities of the track operator and the off-course betting operator running a self-contained unit on the premises"
- "Section 151 of the Act requires applicants for premises licences to submit plans for the premises. To ensure that licensing authorities gain a proper understanding of what they are being asked to license they should, in their licensing policies, set out the information that they will require, which should include detailed plans for the racetrack itself and the area that will be used for temporary "on-course" betting facilities (often known as the "betting ring") and in the case of dog tracks and horse racecourses fixed and mobile pool betting facilities operated by the Tote or track operator, as well as any other proposed gambling facilities.
- "...licensing authorities should attach a condition to track premises licences requiring the track operator to ensure that the rules are prominently displayed in or near the betting areas, or that other measures are taken to ensure that they are made available to the public. For example, the rules could be printed in the race-card or made available in leaflet form from the track office."
- "The Commission will offer further guidance on this and similar issues..."

### **(xiii) Casinos**

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

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

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**Credit:** This licensing authority has noted that the Gambling Commission has stated in its Draft Guidance for Local Authorities that "section 177 does not prevent the licensee from permitting the installation of cash dispensers (ATMs) on the premises. Such machines may accept credit cards (and debit cards) and the arrangement is subject to a requirement that the licensee has no other commercial connection in relation to gambling (aside from the agreement to site the machines) with the service-provider and does not profit from the arrangement, not make any payment in connection with the machines. Guidance on the further conditions that may apply in relation to such machines will be included in the next version of this guidance"

### **(xiv) Bingo**

This licensing authority notes that the Gambling Commission's draft Guidance states:

- "Licensing authorities will be able to find information about the restrictions that apply in the codes of practice that will be published on the Commission's website"
- "Further guidance will be issued in due course about the particular issues that licensing authorities should take into account in relation to the suitability and layout of bingo premises"

Once this information is available, this licensing authority will consider its application to premises licences for bingo premises.

### **(xv) Temporary Use Notices**

There are a number of statutory limits as regards Temporary Use Notices. It is noted that it falls to the licensing authority to decide what constitutes a 'set of premises' where Temporary Use Notices are received relating to the same building / site (see Gambling Commission's draft Guidance for Local Authorities).

### **(xvi) Occasional Use Notices:**

The licensing authority has very little discretion as regards these notices aside from ensuring that the statutory limit of 8 days in a calendar year is not exceeded. The licensing authority will though need to consider the definition of a 'track' and whether the applicant is permitted to avail him/herself of the notice.

### **(xvii) Travelling Fairs:**

It will fall to this licensing authority to decide whether, where category D machines and / or equal chance prize gaming without a permit is to be made available for use at travelling fairs, the statutory requirement that the facilities for gambling amount to no more than an ancillary amusement at the fair is met.

The licensing authority will also consider whether the applicant falls within the statutory definition of a travelling fair.

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It has been noted that the 27-day statutory maximum for the land being used as a fair, is per calendar year, and that it applies to the piece of land on which the fairs are held, regardless of whether it is the same or different travelling fairs occupying the land. This licensing authority will work with its neighbouring authorities to ensure that land which crosses our boundaries is monitored so that the statutory limits are not exceeded.

### **(xviii) Betting premises**

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

**Credit** - It has also been noted that the Draft Gambling Commission Guidance states: "section 177 does not prevent the licensee from permitting the installation of cash dispensers (ATMs) on the premises. Such machines may accept credit cards (and debit cards) and the arrangement is subject to a requirement that the licensee has no other commercial connection in relation to gambling (aside from the agreement to site the machines) with the service-provider and does not profit from the arrangement, not make any payment in connection with the machines." It is also understood that the Gambling Commission will be placing restrictions and requirements on Operating Licences for betting premises as regards credit and this licensing authority will consider the guidance when it is available.

### **Information exchange**

1. It should be noted that there are sections of the Gambling Commission's draft Guidance for local authorities which relate to Information Exchange but these are only draft Guidance and cannot be adhered to as such.

The sections are:

- "As applicants for premises licences (except occupiers of tracks who do not propose to offer gambling themselves) will have to hold an operating licence from the Commission before the premises licence can be issued, licensing authorities will not need to investigate the suitability of the applicant. If during the course of considering a premises licence application, or at any other time, the licensing authority receives information that causes it to question the suitability of the applicant to hold an

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operating licence, these concerns should be brought to the attention of the Commission without delay" (5.7)"

- "Regulatory issues raising from the prevention of disorder are likely to focus almost exclusively on premises licensing, rather than on operating licences. (Though if there are persistent or serious disorder problems that an operator could or should do more to prevent, the licensing authority should bring this to the attention of the Commission so that it can consider the continuing suitability of the operator to hold an operating licence.)" (5.9)
- "If it comes to the attention of licensing authorities that Alcohol-licensed premises or clubs or institutes are playing bingo during the course of a week which involves significant stakes and prizes and makes it possible that the £2,000 in seven days is being exceeded, authorities should inform the Commission." (18.11)

### Gambling Commission Functions

Function	Who deals with it
Issue and renewal of <i>Operating Licences</i>	Gambling Commission
Review <i>Operating Licences</i>	Gambling Commission
Issue <i>Personal Licences</i>	Gambling Commission
Issue <i>Codes of Practice</i>	Gambling Commission
Issue <i>Guidance to Licensing Authorities</i>	Gambling Commission
Licence remote gambling through <i>Operating Licences</i>	Gambling Commission
Issue licences in relation to the <i>manufacture, supply, installation, adaptation, maintenance or repair of gaming machines</i>	Gambling Commission
Deal with appeals against Commission decisions	Gambling Appeals Tribunal

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Appendix 3

**Responsible Authorities Contact details:**

**Licensing Authority: Swale Borough Council, Swale House, East Street, Sittingbourne, Kent, ME10 3HT. Tel: 01795 417850**

**Gambling Commission: Berkshire House, 168/173 High Holborn, London, WC1V 7AA. Tel: 0207 306 6200**

**Licensing Police Officer: Faversham Police Station, Church Road, Faversham, Kent. Tel: 01795 433005**

**Kent Fire & Rescue Service: 2 St Michaels Road, Sittingbourne, Kent. Tel: 01795 435313**

**Local Planning Authority: Swale Borough Council, address as above.**

**Environmental protection/ H&S: Swale Borough Council, address as above.**

**Child protection Service: Brenchley House, County Hall, Maidstone, Kent, ME14 1RF.**

**HM Revenue & Customs: 1<sup>st</sup> Floor, Invicta House, County Hall, Maidstone, Kent, ME14 1XX**

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**Appendix 4**

**Agreed delegations**

**Delegations will be listed once the regulations have been issued by the Secretary of State.**