

Agenda

Licensing Committee Meeting

Date: Tuesday, 13 February 2024

Time 7.00 pm

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

Membership:

Councillors Derek Carnell (Chair), Roger Clark, Simon Clark, Carole Jackson, Mark Last, Rich Lehmann, Ben J Martin, Lee-Anne Moore, Tara Noe, Tom Nundy, Chris Palmer, Paul Stephen, Angie Valls, Mike Whiting and Tony Winckless (Vice-Chair).

Quorum = 5

Pages

Information about this meeting

*Members of the press and public can listen to this meeting live. Details of how to join the meeting will be added to the website by 12 February 2024.

Recording and Privacy Notice

Swale Borough Council is committed to protecting the security of your personal information. As data controller we process data in accordance with the Data Protection Act 2018 and the UK General Data Protection Regulation.

This meeting may be recorded. The recording will be retained in accordance with the Council's data retention policy and may be published on the Council's website. By entering the chamber and by speaking at a meeting, whether in person or online, you are consenting to being recorded and to the recording being published.

When joining a meeting online, your username will be visible to others in attendance. In joining the meeting you are consenting to us processing your username. You may use a pseudonym as your username but the use of an inappropriate name may lead to removal from the meeting.

If you have any questions about how we look after your personal information or your rights under the legislation, please email dataprotectionofficer@swale.gov.uk.

1. Emergency Evacuation Procedure

Visitors and members of the public who are unfamiliar with the building and procedures are advised that:

- (a) The fire alarm is a continuous loud ringing. In the event that a fire drill is planned during the meeting, the Chair will advise of this.

- (b) Exit routes from the chamber are located on each side of the room, one directly to a fire escape, the other to the stairs opposite the lifts.
- (c) In the event of the alarm sounding, leave the building via the nearest safe exit and gather at the assembly point on the far side of the car park. Do not leave the assembly point or re-enter the building until advised to do so. Do not use the lifts.
- (d) Anyone unable to use the stairs should make themselves known during this agenda item.

2. Apologies for Absence

3. Minutes

To approve the [Minutes](#) of the meeting held on 19 October 2023 (Minute Nos. 373 – 379) as a correct record.

4. Declarations of Interest

Councillors should not act or take decisions in order to gain financial or other material benefits for themselves, their families or friends.

The Chair will ask Members if they have any disclosable pecuniary interests (DPIs) or disclosable non-pecuniary interests (DNPIs) to declare in respect of items on the agenda. Members with a DPI in an item must leave the room for that item and may not participate in the debate or vote.

Aside from disclosable interests, where a fair-minded and informed observer would think there was a real possibility that a Member might be biased or predetermined on an item, the Member should declare this and leave the room while that item is considered.

Members who are in any doubt about interests, bias or predetermination should contact the monitoring officer for advice prior to the meeting.

5.	Swale BC Street Trading Policy 2024 - 2027	5 - 30
6.	Scrap Metal Dealers Licensing Policy 2024 - 2027	31 - 58
7.	Review of Statement of Licensing Policy for Sex Establishments and Sexual Entertainments Venues	59 - 94
8.	Report on the work of the Licensing Team	95 - 106

Issued on Friday, 2 February 2024

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 democraticservices@swale.gov.uk . To find out more about the work of this meeting, please visit www.swale.gov.uk

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

This page is intentionally left blank

Licensing Committee Meeting	
Meeting Date	13 th February 2024
Report Title	Swale BC Street Trading Policy 2024 - 2027
EMT Lead	Emma Wiggins, Director of Regeneration and Neighbourhoods
Head of Service	Charlotte Hudson, Head of Housing and Community Services
Lead Officer	Christina Hills, Licensing Team Leader
Classification	Open
Recommendations	<ol style="list-style-type: none"> 1. To approve the draft Street Trading Policy as set out as Appendix I to this report following an 8-week consultation 2. To recommend to Policy and Resources Committee that the policy be approved and published

1 Purpose of Report and Executive Summary

1.1 At the Licensing Committee meeting of 19th October 2023, a draft Street Trading Policy under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 was approved for public consultation. This report seeks approval from Members to endorse the draft Street Trading Policy so that it can be presented to full Council for formal adoption.

2 Background

2.1 Under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, a local authority may regulate street trading in their area. Swale BC has adopted these provisions for the whole of its area and on 23rd July 2010 designated all streets in the area as 'consent streets'.

2.2 The effect of this designation is that any street trading in any street is prohibited, subject to legal exemptions, without first obtaining a street trading consent from the Council. Swale BC has had a policy in place since 2013. There is no statutory requirement for a local authority to have a formal Street Trading policy; however, a Council can choose to adopt such a policy.

2.3 The adoption of a Policy benefits customers as well as reassuring the general public and other public bodies. It also reinforces effective practices and ensures proportionate, consistent and targeted regulator activity, whilst also developing a transparent and effective dialogue and understanding between regulators and those we regulate.

- 2.4 The current edition of the Swale BC Street Trading Policy was firstly adopted by full Council on 31st March 2021. This was then subject to some amendments which were approved by Licensing Committee on 15th February 2023 <https://services.swale.gov.uk/meetings/documents/s25130/Street%20Trading%20Report.pdf> and adopted by full Council on 5th April 2023. The amended policy is available to view at <https://swale.gov.uk/news-and-your-council/strategies-and-policies/street-trading-policy>
- 2.5 As the policy is subject to renewal at three yearly intervals it is now time for the policy to be reviewed to run for a period from 1st April 2024 – 1st April 2027.

3 Proposals

- 3.1 As the current policy has been subject to scrutiny and amendment and is now working well, there are no proposed changes except for the following:
- New paragraph 7.17 to explain procedure for ‘one-off’ consents
 - Appendix I – ‘documents to provide on application’ where the following has been inserted:
 - Public Liability Insurance to the value of £5,000,000
 - Copy of food hygiene certificate where applicable

It is confirmed that these documents have always been included as requirements on the application form and have always been requested but were not included within the policy.

- 3.2 The draft policy is shown attached as **Appendix I**.

4 Alternative Options Considered and Rejected

- 4.1 Members could choose not to have a Street Trading Policy, 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 An eight-week consultation ran between 1st November 2023 – 29th December 2023. Methods of consultation were by advertising of the Council’s website, in local newspapers and where appropriate by emails and post.

- 5.2 Consultees were:

- Ward, Parish and Town Councillors
- Existing licence holders
- Event organisers for larger events such as Faversham Hop Festival and town Christmas Lights events

- The general public
- Kent Police
- KCC Highways
- Swale Safety Advisory Group (which includes various departments of the Council such as Environmental Health, Planning, Property Services, Economy and Regeneration, Green Spaces teams)

5.3 Despite the wide-ranging nature of the consultation, only one response was received. This is likely to be because the current Street Trading Policy had been subject to review and amendment and is now working well, and to the benefit of all applicants.

5.4 The grid and recommendations is attached as **Appendix II**.

6 Implications

Issue	Implications
Corporate Plan	<p>The service is an important regulatory function undertaken to ensure the safety of the public consumers</p> <p>There are indirect links to:</p> <p>Priority 3:</p> <p>3.4 Ensure that the council plays a proactive role in reducing crime and antisocial behaviour.....</p> <p>3.5 Promote wellbeing and enjoyment of life by signposting and encouraging a wide range of sporting, cultural, leisure and development activities appropriate and accessible to each age group.</p>
Financial, Resource and Property	<p>There are no direct financial implications for Swale Borough Council concerning this draft Policy as the consultation is being carried out by officers. However, if at any time in the future the policy was subject to legal challenge, there could be costs associated with this process.</p>
Legal, Statutory and Procurement	<p>The relevant legislation in relation to street trading is contained within Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).</p>
Crime and Disorder	<p>It is a criminal offence to trade in the street without an appropriate consent. The policy provides a framework for consistent decision-making.</p>
Environment and Climate/Ecological Emergency	<p>No implications</p>

Health and Wellbeing	No implications
Safeguarding of Children, Young People and Vulnerable Adults	Licensing regimes are largely designed to protect public safety. DBS checks for Street Trading Consents are deemed to be necessary in some circumstances but not all to check that applicants are suitable to trade.
Risk Management and Health and Safety	It is important that Swale BC has a robust and accountable regulatory regime in relation to street trading in order to ensure fair trading, prevent crime and to protect consumers
Equality and Diversity	The Council has a legal obligation under section 149 of the Equality Act 2010 to have due regard to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups. When considering street trading consent applications, only issues provided for in Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 and provided for in the Street Trading 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.
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 revision of the current Swale BC Street Trading Policy 2024 – 2027
 - Appendix II: Consultation Evaluation Grid

8 Background Papers

Local Government (Miscellaneous Provisions) Act 1982 – Schedule 4

Swale Borough Council



Street Trading Policy

Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982

Version 1.0

1 April 2024

Next Scheduled Review: 1 April 2027

All enquiries relating to this document should be sent to:

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

licensing@swale.gov.uk

Issue & Review Register

Summary of Changes	Issue Number & Date	Approved by

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

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

Compiled by: Christina Hills

Date:

Approved by:

Date:

Changes and Corrections

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

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

Or
licensing@swale.gov.uk

Street Trading Policy 2024 - 2027

Local Government (Miscellaneous Provisions) Act 1982 Street Trading Local Policy Document

1. Legislation & Policy

- 1.1 Local Authorities have a legal discretion to regulate street trading in their area. Street trading is covered by the Local Government (Miscellaneous Provisions) Act 1982 Schedule 4 – Street Trading, which Swale Borough Council adopted in 1993 and resolved to control within its boundaries.

On 23rd July 2010 the Council formally designated all streets within its boundaries as ‘Consent Streets’.

The effect of this designation is that if you want to sell goods on the street (see para 3.2. for definition), you are street trading (see para 3.1 for definition) and you will need to have the appropriate consent from the Council unless you are legally exempt (see para 3.5).

Trading without the required consent is a criminal offence.

- 1.2 Swale Borough Council adopted this policy on 31st March 2024 to become effective on 1st April 2024.

Every three years the Policy will undergo a full review involving widespread consultation with the existing traders, relevant authorities and the general public, any consultation will be in line with Government guidelines.

2. Purpose & Objectives

- 2.1 Street trading can add variety and vibrancy to the character of this Borough as well as diversity of shopping opportunities. The aim of the Council is to give consent to traders who will help to create a vibrant street scene which complements retail activity, community events and activities.
- 2.2 The purpose of this policy is to provide a framework setting out the Council’s procedures which will be used to inform the various decision making processes to ensure a consistent approach and expectations of those engaged in street trading either from an individual pitch as a mobile trader or as part of a large scale event/festival
- 2.3. This policy aims to give clarity and transparency to potential and existing traders, explaining how the Council will promote its objectives and deliver compliance with imposed conditions.

The Council's key objectives are:

- 2.3.1 To protect the public through the control of street trading within Swale by improving standards of food safety, health and safety and environmental management to enhance the image of the area
- 2.3.2 To ensure that permitted street trading is properly regulated as to where, when and how it takes place.
- 2.3.3 To prevent public nuisance by the use of conditions designed to reduce the risk of nuisance from obstruction, noise, refuse, vermin, fumes and smells.
- 2.3.4 To ensure the suitability of the structures used for the sale of goods.
- 2.3.5 To ensure that traders and the people that they employ are 'fit and proper' in accordance with the Act. This will include a requirement for a basic Disclosure and Barring Service Criminal Records check for those applicants applying for a 6 month or yearly consent are ok.

3. Street Trading Definition and Exemptions

- 3.1 Street Trading is defined under the Act as 'selling, exposing or offering for sale any article (including a living thing) in a street'.
- 3.2 A 'street' is broadly defined to include any road, footway, beach or other area to which the public have access without payment and a service area as defined in s.329 of the Highways Act 1980.
- 3.3. This can include areas adjacent to a street, car parks and privately owned land where the public have access, without payment, as a matter of fact.
- 3.4 Street trading includes the sale of food and beverages. It does not include the provision of services (such as face painting or hair braiding) even if payment is made.
- 3.5 The following activities are **exempt** from the need to obtain a street trading consent under the Act:
 - 3.5.1 Trading by a person acting as a pedlar under the grant of a Pedlar's Certificate granted under the Pedlars Act 1871 and issued by the police – see 3.7 below
 - 3.5.2 Anything done in a market or fair, the right to hold which was acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of an enactment or order. This means markets that have a 'charter' or are permitted by other legislation e.g. The Food Act 1984. All other so called 'markets' will require a Street Trading Consent and for the purposes of this policy will be referred to as 'events' to avoid confusion.

- 3.5.3 Trading in a trunk road picnic area as defined in Section 112 of the Highways Act 1980.
- 3.5.4 Trading carried out as a news vendor selling newspapers or periodicals (only without a stall/receptacle) or one which is not over 1m long or wide or over 2m high.
- 3.5.5 Trading carried out at a petrol filling station.
- 3.5.6 Trading which is carried out at a premises used as a shop or in a street adjoining premises so used and as part of the business of the shop
- 3.5.7 Trading carried out by a 'roundsman' e.g. milk deliveries. However, this does not include ice cream sellers and mobile catering vehicles
- 3.5.8 Use for trading from an object or structure placed on, in or over the highway under Part VIIA of the Highways Act 1980
- 3.5.9 The operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980.
- 3.5.10 Doing anything authorised as a public charitable collection made under section 5 of the Police, Factories, etc (Miscellaneous Provisions) Act 1916 – see 11.4 below
- 3.6 Trading at the following events requires a Street Trading Consent but no fee will be charged:
 - 3.6.1 Street Trading at Fetes and Carnivals – outdoor events for which no entry fee is charged staged mainly for public entertainment and benefiting charitable concerns. It is expected that at least some of the monies raised will be contributed to the beneficiary individual, organisation or charity.
 - 3.6.2 Street Trading at non-commercial or charitable events for which no entry fee is charged organised by not-for-profit organisations and charitable trusts.
- 3.7 As detailed in 3.5 above pedlars acting under a certificate are exempt. However, a pedlars' certificate is not required to sell food, and such sales are not exempt, although some traders do have certificates. If the sale is in a street, then it will be street trading and require the appropriate consent.
- 4. Consideration of an application for a Street Trading Consent - location**
 - 4.1 The Council does not designate pitches and applicants must therefore propose trading which is compatible with the location being applied for. When considering the proposal, the Council will have regard to other trading taking place in the immediate vicinity.

The aim of this policy is not to discourage competition, rather to ensure an appropriate mix of trading so as to avoid over saturation of any given area. Every application will be considered on its own merits.

Consent will not usually be given for any fixed locations where:

- 4.1.1. Road safety would be compromised either from the siting of the trading activity itself, or from customers visiting or leaving the site.
 - 4.1.2. There would be a significant loss of amenity to those in the area caused by additional traffic, or disturbance (e.g. noise, odour or fumes, etc.)
 - 4.1.3. There is already significant provision of similar goods in the immediate vicinity of the site to be used for street trading purposes.
 - 4.1.4. There is a conflict with Traffic Management Orders such as waiting restrictions.
 - 4.1.5. The trading obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger.
 - 4.1.6. The Consent Holder, staff and customers have no appropriate place to park in a safe manner, if required
 - 4.1.7. The pitch would be sited on the A249 or M2 as these locations are prohibited by Highways England. Layby's on any other road will be considered on a case by case basis.
 - 4.1.8. The pitch would be on a council owned carpark
- 4.2 The consent holder must be granted permission for the use of any land adjacent to the highway from the landowner and adjoining landowners where appropriate. The granting of a consent does not imply that landowners permission has been granted;

Consent to trade does not imply the grant of planning permission and applicants are strongly recommended to consult the Planning Department to check if permission is required prior to commencement of trading

5. Application Procedure

- 5.1 Only persons aged eighteen or over may apply for consent. However, a person under eighteen may be employed as an assistant.
- 5.2 New applications for sole traders will be determined following a 28 consecutive day consultation period.
- 5.3 One - Off Consents. The Council will grant one-off consents up to a maximum of 12 times per calendar year. These types of consents include events that are not exempt from street trading requirements under separate legislation.

- 5.3.1 One-off consents can last for up to 4 days.
- 5.3.2 Each individual trader at an event must obtain their own consent. However, event organisers can co-ordinate the applications.
- 5.3.3 Applications for one-off consents must be submitted no later than 7 days before the event.
- 5.4 All applicants for the consents above will be required to provide documents as shown at Appendix I.
- 5.5 Renewal applications - For sole traders
- 5.5.1 Applicants should submit their renewal application at least 8 weeks prior to the expiry of their consent if they wish to continue to trade. The Council will normally send reminders of the expiry of consents three months before expiry. It does however, remain the responsibility of the trader to ensure that an application is submitted in time for the consent to be renewed.
- 5.5.2 At renewal, the Council will only consult if there are any concerns regarding the street trader or if there have been any complaints.
- 5.5.3 Where a renewal application has been made and there have been no justifiable complaints, no enforcement issues and all fees have been paid on time, the consent will normally be renewed.
- 5.5.4 Where a renewal application has been made and there have been complaints or enforcement issues which did not result in revocation then the application may be rejected. The council may choose to consult with such agencies and interested parties it considers relevant in this regard before making a decision.
- 5.5.5 Applicants will need to submit documents as shown in Appendix I.
- 5.5.6 Applicants will be expected to demonstrate how, as far possible, they will ensure that waste and rubbish generated from their customers is disposed of responsibly, not only at the area of trading but in the wider locality. This can be by ensuring an adequate number of waste bins are provided and by signage to ask individuals to consider the environment and behave responsibly.
- 6. Consent Fees**
- 6.1 The Council can charge such fees as it considers reasonable and will recover the cost of administration and compliance.

Payment will be required for the following street trading applications:

- a) An annual consent for a fixed location or non-fixed location (mobile traders)
- b) A six month consent for a fixed location or non-fixed location (mobile traders)
- c) A One-off consent for individual traders where there is no exemption applicable (an event)

The Council's adopted fees, for the above-mentioned applications, are shown in Appendix III of this Policy.

7. How the Council makes its decisions

- 7.1. The Council is bound to act reasonably and consistently with its general obligations (e.g. those under the Human Rights Act and Equalities Act) but has a wide discretion when making a decision to give consent for Street Trading. The Council does not have to rely upon specific statutory grounds in order to refuse an application for Street Trading consent or whether or not to renew that consent.
- 7.2 The Licensing section will assess the proposed location, taking into consideration the concerns raised in Section 4 of this policy. The application will then be consulted with various public serving authorities and Council services. The consultees who will be consulted on all applications are:
 - a) Kent Police
 - b) Kent Fire and Rescue Service
 - c) KCC Highways
 - d) Swale BC Environmental Health
 - e) Swale BC Environmental Response Team
 - f) Swale BC Planning
 - g) Swale BC Property Services
 - h) Swale BC Economy and Community Services
 - i) Swale BC Green Spaces team
 - j) Ward Councillors
 - k) Parish and Town Councils
 - l) KCC Safeguarding Unit

And in some cases:

- m) Other businesses/organisations if it is considered that they are likely to be affected by a successful application

The consultation will run for 28 consecutive days.

- 7.3. A representation will be considered to be relevant if it is made by a person, business or body that is likely to be directly affected by a successful application.
- 7.4 If the Licensing section receives a representation then it will be forwarded to the applicant for their comment. The name and address of the objector will be published unless the Council receive a request for this not to be done for a good reason. The Council will not accept anonymous representations.
- 7.5 Any comments that the applicant may wish to make should be received by the Licensing section within 10 working days of the applicant being notified of the representation.
- 7.6 If the representations cannot be mediated and remain unresolved the application will be referred to the Licensing Sub-Committee. The hearing will normally take place within 20 days from the end of the consultation period.
- 7.7 A Licensing Officer will be responsible for preparing a report for Licensing Sub-Committee, which will be made available to the applicant at least five working days before the date of the meeting. The applicant and the persons making representations will be invited to attend and will be advised in writing of the date, time and place when the application will be heard. Any party can be represented by a lawyer or supported by a representative of their choice.
- 7.8 The Committee may grant the consent as applied for or impose additional restrictions limiting the days and/or times when street trading is permitted. In some circumstances the Committee may restrict the goods which may be sold, the size of the trading pitch or any other relevant detail, depending on the specifics of the application. The Committee could also refuse the application.
- 7.9 If an application for consent is refused following a decision by a Licensing Officer, an applicant can make a written appeal to the Community Safety Manager, who will reconsider the case based on any new evidence given.
- 7.10 If an applicant's appeal is rejected, they will be made aware of the reasons for refusal and advised the only right of appeal against the Council's decision is by way of Judicial Review.
- 7.11 A Judicial Review is where a decision is made by a High Court Judge who will look at all aspects of the application and decide whether or not the Council has acted lawfully
- 7.12 The Council can revoke any street trading consent after it has been given.
- 7.13 In these circumstances, the Council will give notice of any intent to revoke a street trading consent, which will provide a detailed explanation as to why the

consent has been revoked. The Council reserves the right to put any contentious matters before the General Licensing Sub-Committee.

- 7.14 If an application is refused or renewal is refused or consent is revoked, following a decision made by the Licensing Sub-Committee applicants will be advised the only right of appeal against the Council's decision is by way of Judicial Review..
- 7.15 Applicants can also make a formal complaint to the Council at www.swale.gov.uk/compliments-and-complaints
- 7.16 Where a consent is refused the Council may refund the fee, or a part of it as it considers appropriate. Refunds will be considered on a case by case basis.
- 7.17 All of the above relates to applications for 6 monthly or yearly consents. In respect of 'one-off' consents then no consultation will take place and provided the correct documentation is received as detailed at Appendix 1 the consent will normally be granted as these type of consents are intended to be 'light touch' and usually traders are participating in events which will have been through the Safety Advisory Group process.

8. Surrendering a Street Trading Consent

- 8.1 The consent holder may at any time surrender in writing the consent issued to them. Where a consent is surrendered, the Council is under a duty to remit or refund the whole or part of the fee paid for the Consent as they consider appropriate as shown at para 9(5) of the Local Government (Miscellaneous Provisions) Act 1982.

9. Conditions

- 9.1 The Council has adopted standard conditions, as shown in Appendix II, based on the objectives and expectations set out in this policy document as well as the responsibilities of each trader, which will be attached to each Street Trading Consent. Additional conditions may be imposed, or amendments made to the standard conditions, should specific circumstances make this reasonably necessary. Breach of conditions could ultimately lead to enforcement action, which may include, but is not limited to the revocation of a Consent.
- 9.2 The Council may amend the consent conditions at any time. Any substantial amendment to the standard conditions would involve consultation with all affected parties and the responses being presented before the Licensing Committee for formal adoption. Once adopted the amended conditions will be imposed on all existing consent holders immediately thereafter or as decided by Committee.

9.3 Failure to comply with our standard conditions may lead to enforcement action, which may include, but is not limited to consent being revoked by the Council. This may affect any future applications.

10. Enforcement

10.1 A person engaging in street trading without consent, trading from a stationary van, barrow, other vehicle or portable stall without specific permission for that trading or who fails to comply with conditions at time of trading or location, will be guilty of an offence and may be liable to prosecution under paragraph 10 of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.

10.1.1 It is also an offence to make a false statement which you know to be false in any material respect or which you do not believe to be true in connection with an application for consent.

10.1.2 These offences are punishable on conviction with a fine up to £1,000.

10.2 The aim of enforcement within the borough of Swale, is to protect the health and safety and welfare of the public who may be exposed to risks from unauthorised or poorly run street trading. We aim to:

- a) Ensure that all street traders are fit and proper to trade
- b) Promote compliance with the law
- c) Ensure those who fail to abide by the Standard Conditions or relevant legislation (depending on the nature of the business) are held accountable, which may result in prosecution or revocation of their consent
- d) Be proportionate and consistent in our dealings with applicants and consent holders
- e) Be transparent, open and honest

10.3 Decisions regarding enforcement action will be made in accordance with this policy, the Swale BC Enforcement Policy, Licensing Enforcement Policy and on a case-by-case basis. The enforcement function for any breaches in legislation is currently delegated to the Community Safety Manager, supported by Licensing Officers.

10.4 In regard to ice cream traders, a 'Code of Conduct', issued by the Department for Environment Food and Rural Affairs (www.defra.gov.uk) provides guidance to traders and Local Authorities on aspects of the trade such as the sounding of chimes. The Local Authority's Environmental Department may refer to this guidance when investigating allegations of noise nuisance.

10.5 The licensing team will only carry out enforcement on Ice Cream Sellers in the following circumstances:

- a) Trading without a consent

- b) Trading in an area not specified on the Street Trading Consent
 - c) Trading outside of the permitted hours
- 10.6 Enforcement of the following will be carried out by other departments of the Council:
- a) Incorrect disposal of waste
 - b) Health and Safety/ Food Hygiene and Environmental Issues

11. Other Legislative Requirements – This is not intended as an exhaustive list

- 11.1 Any food traders would need to be compliant with food hygiene regulations. All food businesses that prepare, sell, store or cook foods and drinks need to register as a food business with Environmental Health.
- 11.2 Where food is sold the consent holder must comply at all times with ALL current hygiene legislation.
- 11.3 Exposing vehicles for sale on a road is regulated under Section 3 of the Clean Neighbourhoods and Environment Act 2005. Complaints relating to commercial sales, of two or more vehicles within 500 metres of each other should be reported to Swale BC Environmental Response Team.
- 11.4 Persons collecting money under section 5 of the Police, Factories, etc (Miscellaneous Provisions) Act 1916 require a Street Collection Permit from the Council but not a Street Trading Consent.
- 11.5 Some charities employ collectors who canvass the public in order to obtain a direct debit mandate to contribute to the charity (these collectors are sometimes known as ‘chuggers’). This type of collection requires neither a Street Collection Permit nor a Street Trading Consent. However, Swale Borough Council does have an expectation that all proposed collectors of this type will contact the relevant market manager or the licensing team to liaise over the location, days and times that this type of activity will take place, especially to ensure that they do not interfere with any markets or events taking place. It is expected that there will be no tables or structures such as gazebos erected by the collectors. Most important is the expectation that direct debit collectors will behave in a respectful and courteous manner toward members of the public and not harass them in any way.
- 11.6 Promotional stands are not covered under this legislation as no sale takes place. However, there is an expectation that anyone wishing to erect such a stand should, in the first instance contact the relevant market manager or

licensing team to check suitable locations so as not to interfere with any events or markets that may be taking place.

- 11.7 Any sale of alcohol will also require a Temporary Events Notice (TEN) under the Licensing Act 2003. The notice period for giving a standard TEN is statutory and is 10 clear working days between and not including serving the notice and the date of the event. A late TEN requires at least 5 clear working days' notice between and not including serving the notice and the date of the event.
- 11.8 There are limits on the number of standard TEN's and late TEN's that can be applied for within a year.
- 11.9 In respect of a consent issued to an Event Organiser, it is the responsibility of the organiser to ensure that any stall wishing to sell alcohol is aware of the requirement for a TEN.

12. Data Retention

- 12.1 Under the General Data Protection Regulations the Council has set out the period of time that personal information shall be retained.
- 12.2 All personal information provided on an unsuccessful application, will be retained for a period of six months before being destroyed.
- 12.3 All personal information relating to the consent holder, irrespective of its level of sensitivity, will be retained for the period of consent; once the consent has expired or been revoked or the trader notifies the Council they no longer wish to have consent; the information shall be retained for a period of 24 months before being destroyed. DBS checks will not be retained by the Council

Appendix 1 – Documents to provide on application

New Applications and Renewal Applications	One off consents
<p>A completed and signed street trading consent application form. Applications forms are available online at https://www.swale.gov.uk/street-trading-consent by email at licensing@swale.gov.uk or they can be sent by post on request from the licensing team</p>	<p>A completed and signed street trading consent application form. Applications forms are available online at https://www.swale.gov.uk/street-trading-consent by email at licensing@swale.gov.uk or they can be sent by post on request from the licensing team</p>
<p>The application form must be accompanied by the full fee (unless para 3.6 applies and no fee is due). Details of fees are shown at Appendix III</p>	<p>The application form must be accompanied by the full fee (unless para 3.6 applies and no fee is due). Details of fees are shown at Appendix III</p>
<p>Where the proposed street trading activity is from a fixed position, a plan showing the precise trading position and its proximity to other similar retail outlets within a 100 metre radius. The proposed position and orientation of the stall, van, barrow, cart etc. is to be shown on the plan. The plan shall also include any additional vehicles that will be parked on the site</p>	
<p>Ice Cream Vans and Mobile Food Vans are exempt from providing location plans unless the van is stationary. However, details should be given of the proposed route/streets/stopping places where it is intended street trading will take place as well as the proposed trading hours. This may vary from day to day.</p>	
<p>One colour photograph of the stall, van, barrow, cart that will be used for street trading activity. The photograph shall show any proposed awnings fully extended, whether integral or not.</p>	<p>Event organisers do not need to provide photographs of the individual pitches but must provide a numbered site plan of pitches together with a list giving the name of each individual trader</p>
<p>One passport size colour photograph of the applicant. If there are assistants, then they too must supply a photograph of themselves</p>	

If the land is privately owned, written permission from the land owner, this includes Kent County Council Highways.	If the land is privately owned, written permission from the land owner this includes Kent County Council Highways.
<p>Applicants and where applicable their assistants, must submit a Standard Disclosure and Barring Service criminal records check. This can be obtained as shown below:</p> <p>Email: customerservices@dbs.gsi.gov.uk Phone: 03000 200 190 Address: PO Box 165. Liverpool L69 3JD</p> <p>The original certificate must accompany the application form and must be submitted within one month of issue. .</p>	
Public Liability Insurance to the value of £5,000,000	Public Liability Insurance to the value of £5,000,000
Copy of food hygiene certificate where applicable	Copy of food hygiene certificate where applicable
Evidence of the right to work in the UK. Documents that demonstrate this are attached as Appendix IV.	Evidence of the right to work in the UK. Documents that demonstrate this are attached as Appendix IV.

Appendix II: General Consent Conditions

1. When consent is granted the consent holder will be issued with formal written consent which shall be available for inspection by authorised officers of the Council or the Police at any time that trading is taking place.
2. When consent is granted the Consent Holder and any assistants will be issued with a badge, which must be worn at all times while street trading.
3. The consent holder shall ensure their street trading activities subject to consent do not create any obstruction to the flow of pedestrians or other traffic using the street or part of the street to which their consent relates or create any danger to persons using it.
4. The consent holder shall ensure that their street trading activities subject to consent do not cause a nuisance or annoyance, to person(s) or residents using the street or part of the street or running a business within the vicinity of where their consent applies.
5. No signs advertising the trading shall be placed where it can cause an obstruction to vehicles or pedestrians using the street.
6. Where food is sold the consent holder must comply at all times with ALL current hygiene legislation.
7. No street trading will take place within 400 metres of a school.
8. Consent holders must identify their preferred method of waste disposal at the time of making their application, and keep records of their waste management, which must be available, upon request by Swale Borough Council's Licensing or Environmental Department or from the Environment Agency.
9. The consent holder shall not deposit trade refuse or litter of any kind on the street or part of the street to which their consent relates; (Note under the Environmental Protection Act 1990 everyone has a duty of care to dispose of any refuse in a correct manner.)
10. The consent holder shall at the end of each trading day or session, whichever is the shortest, clear around their permitted site.
11. It is recommended that a licence holder has a waste management plan in place, to ensure that:

- a) Suitable waste containers will be made available to customers, where it is appropriate, for any potential waste products generated by the sale of goods.
- b) No waste liquids shall be disposed of into any highway channel, gully or manhole or in any other manner which is likely to cause pollution of any surface water channel.
- c) All refuse generated by the business must be taken to a licensed waste disposal site.

Appendix III: Current Fees and Charges

Annual Consent	£143.00
6 Month Consent	£71.50
One-Off Consent	£10.00

Fees generally increase each 1st April and can be viewed at

<https://swale.gov.uk/news-and-your-council/performance-and-transparency/service-fees-and-charges>

Appendix IV:

Documents which demonstrate entitlement to work in the UK

1. A passport showing the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK.
2. A passport or national identity card showing the holder, or a person named in the passport as the child of the holder, is a national of a European Economic Area country or Switzerland.
3. A Registration Certificate or Document Certifying Permanent Residence issued by the UKVI to a national of a European Economic Area country or Switzerland.
4. A Permanent Residence Card issued by the UKVI to the family member of a national of a European Economic Area country or Switzerland
5. A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the UKVI to the holder indicating that the person named is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.
6. A **current** Immigration Status Document issued by the UKVI to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or previous employer.
7. A birth (short or long) or adoption certificate issued by the UK which includes the name(s) of at least one of the holder's parents or adoptive parents, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
8. A birth (short or long) or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, **together with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.
9. A certificate of registration or naturalisation as a British citizen, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.

This page is intentionally left blank

RESPONDENT	PARAGRAPH	COMMENTS MADE	RESPONSE FROM COUNCIL
Martyn Cassell, Swale BC Head of Environment & Leisure	5. Application Procedure	Could a paragraph be added within the main body of the policy, rather than in the conditions, to state that applicants should ensure that they make all efforts to ensure that any waste generated by the sale of food is disposed of properly, not just in the area of trading but in the wider locality	Agreed. Additional paragraph inserted as point 5.5.6 which states "Applicants will be expected to demonstrate how, as far possible, they will ensure that waste and rubbish generated from their customers is disposed of responsibly, not only at the area of trading but in the wider locality. This can be by ensuring an adequate number of waste bins are provided and by signage to ask individuals to consider the environment and behave responsibly.

This page is intentionally left blank

Licensing Committee Meeting	
Meeting Date	13 th February 2023
Report Title	Scrap Metal Dealers Licensing Policy 2024 - 2027
EMT Lead	Emma Wiggins, Director of Regeneration and Neighbourhoods
Head of Service	Charlotte Hudson, Head of Housing and Community Services
Lead Officer	Johanna Thomas, Licensing Officer
Classification	Open
Recommendations	<ol style="list-style-type: none"> 1. Members to consider the draft policy for consultation and advise on any relevant amendments 2. Members to note the policy consultation process and to instruct officers to proceed with the consultation

1 Purpose of Report and Executive Summary

- 1.1 To present members with a draft revision of the current Swale BC Scrap Metal Dealers Licensing Policy 2024 – 2027 for Members comments prior to consultation.

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 14 Scrap Metal Collectors and 11 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, the policy was reviewed in July 2021 and now needs to be reviewed again.

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 Licensing Committee.

3.7 The draft Scrap Metal Dealers Licensing policy is attached as **Appendix I**. As there have been no changes to the legislation the policy remains unchanged from that previously adopted.

4 Alternative Options

1.1.1 The Council could choose not to have a policy on scrap metal dealers however to do so would be contrary to best practice and may lead to a lack of clarity on the application of the legislation.

4.2 The Committee could consider not consulting on the proposed policy; however this would not accord with good governance, giving interested parties an opportunity to consider the proposed policy and make any representations where they consider that changes might be made before adoption.

5 Consultation Undertaken or Proposed

5.1 A consultation period of 6 weeks is proposed to run between 4th March 2024 and 26th April 2024. Methods of consultation will be by advertising on the Council’s website and in local newspapers and where appropriate by email and post. The results of this will then be presented to the Licensing Committee with a view to being formally adopted.

5.2. Consultees will be the following:

- Ward Councillors
- Parish and Town Councils
- Kent Police
- Kent Fire and Rescue
- Kent Trading Standards
- Child Protection Services
- Interested Parties (local residents and businesses)
- All existing licence holders

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

6 Implications

Issue	Implications
Corporate Plan	<p>The service is an important regulatory function undertaken to ensure the safety of the public consumers</p> <p>There are indirect links to:</p> <p>Priority 3:</p> <p>3.4 Ensure that the council plays a proactive role in reducing crime and antisocial behaviour.....</p>

Financial, Resource and Property	There are no direct financial implications for Swale Borough Council concerning this draft Policy as the consultation is being carried out by officers. However, if at any time in the future the policy was subject to legal challenge, there could be costs associated with this process.
Legal and Statutory	<p>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.</p> <p>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</p>
Crime and Disorder	It is important that Swale BC has a robust and accountable regulatory regime in relation to scrap metal in order to ensure fair trading, prevent crime and to protect consumers
Environmental Sustainability	No implications
Health and Wellbeing	No implications
Safeguarding of Children, Young People and Vulnerable Adults	There are no specific elements of The Scrap Metal Dealers Act 2013 relating to the safeguarding of children and vulnerable adults, licensing regimes in general provide a means of regulating, which links in with safeguarding duties and responsibilities
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

8 Background Papers

Scrap Metal Dealers Act 2013 and related Guidance

This page is intentionally left blank



Scrap Metal Dealers Policy

Scrap Metal Dealers Act 2013

October 2024

Next scheduled review: September 2027

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

This page is intentionally blank

DRAFT

Issue & Review Register

Summary of changes	Issue number & date	Approved by

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

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

Compiled by: Licensing Team, Swale Borough Council

Date:

Approved by: 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

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

SWALE BOROUGH COUNCIL - SCRAP METAL POLICY 2024 - 2027

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 shown within the Corporate Plan [Council - Corporate Plan \(swale.gov.uk\)](https://www.swale.gov.uk/corporate-plan)

- 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 an) of applicant;

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

5.3 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. [Scrap Metal Dealers - Apply and pay \(swale.gov.uk\)](#)

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 - Unlimited

This page is intentionally left blank

Licensing Committee Meeting	
Meeting Date	13 th February 2024
Report Title	Review of Statement of Licensing Policy for Sex Establishments and Sexual Entertainments Venues
EMT Lead	Emma Wiggins, Director of Regeneration and Neighbourhoods
Head of Service	Charlotte Hudson, Head of Housing and Community Services
Lead Officer	Christina Hills, Licensing Team Leader
Classification	Open
Recommendations	<ol style="list-style-type: none"> 1. Members to consider the draft policy for consultation and advise on any relevant amendments 2. Members to note the consultation process as outlined and to instruct officers to proceed with the same

1 Purpose of Report and Executive Summary

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

2 Background

- 2.1 The powers the Council has to regulate sex establishments are contained in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. In order to use these powers a local authority has to adopt them through a prescribed process. Swale formally adopted the provisions in January 1983.
- 2.2 Section 27 of the Policing and Crime Act 2009 introduced a new category of sex establishment called “sexual entertainment venues”. In order to implement this change a local authority has to adopt the legislation although it is not mandatory. Swale chose to adopt the provisions on 23 November 2010, and they became effective as of 1 December 2010.
- 2.3 There are no sex establishment premises, sex shops or sexual entertainments venues 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 2021 and which is due to expire on 30th September 2024.
- 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 Considered and Rejected

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

5 Consultation Undertaken or Proposed

- 5.1 A consultation period of 8 weeks is proposed to run between 4th March 2024 and 26th April 2024. Methods of consultation will be by advertising on the Council's website and in local newspapers and where appropriate by email and post. The results of this will then be presented to the Licensing Committee with a view to being formally adopted.
- 5.2. Consultees will be the following:
- Ward Councillors
 - Parish and Town Councils
 - Kent Police
 - Kent Fire and Rescue
 - Kent Trading Standards
 - KCC Social Services
 - Interested Parties (local residents and businesses)
 - Any existing licence holder
- 5.3 All incoming responses will be entered onto a grid for consideration. The Community Services Manager together with licensing officers will conduct an evaluation of each response and give a recommendation as to whether or not to amend the policy statement. The grid and recommendations will be put before a future General Licensing Committee for consideration and inclusion of any amendments prior to formal adoption.

6 Implications

Issue	Implications
Corporate Plan	Having an adopted Statement of Licensing Policy for Sex Establishments and Sexual Entertainments Venues aligns with objectives in the adopted corporate plan 2020-2023
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	Section 149 of the Equality Act 2010 obliges public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity between the sexes and to foster good relations between the sexes. If SEV licences were granted the Council would be able to attach conditions to licences as appropriate, for example to protect performers from harassment and any threat to their dignity and to address any suggestion that women may be less welcome in premises than men. The fears of women and vulnerable persons using the vicinity of the premises can be addressed in decisions as to the locations of such facilities and by conditions.
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 Entertainments Venues 2024 - 2027

8 Background Papers

Local Government (Miscellaneous Provisions) Act 1982 Schedule 3

This page is intentionally left blank

Swale Borough Council



Sex Establishment Policy

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

1st October 2024 – 30th September 2027

Next scheduled review: September 2027

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

DRAFT

Issue & Review Register

Summary of changes	Issue number & date	Approved by

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

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

Compiled by: Licensing Team, Swale Borough Council

Date:

Approved by: 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

This page is intentionally blank

Contents

1	Policy	1
2	Appendix A – Standard terms and conditions	15
3	Appendix B – Sex shops conditions	16
4	Appendix C – Sex cinema conditions	19
5	Appendix D – Sexual entertainment venue conditions	23
6	Appendix E – Pool of possible additional conditions	24

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 contained within the Council's Corporate Plan [Council - Corporate Plan \(swale.gov.uk\)](#)

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.

5. Definitions

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

5.2 Sex Shop

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

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

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

5.3 Sex Article

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

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

This sub-paragraph applies

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

5.4. Sex Cinema

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

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

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

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

5.5. Sexual Entertainment Venue:

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

Exemptions from being a Sexual Entertainment Venue

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

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

5.6. Relevant entertainment:

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

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

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

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

5.7 Nudity

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

5.8 Spontaneous Entertainment

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

5.9 The 'Organiser'

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

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

6. Planning

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

6.2 Operators and persons making representations should be aware that in many cases there would be a need to obtain planning permission before a premise may be used for the purposes relevant to this policy. The Licensing Authority will not normally consider planning matters such as 'need' in determining a licence application as this is more appropriately dealt with by Planning legislation.

6.3 Applicants are advised to seek independent advice in relation to both planning and

licensing prior to making any application under Schedule 3 Local Government (Miscellaneous Provisions) Act 1982

7. The Application Process

- 7.1 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.
- 7.2 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.
- 7.3 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.
- 7.4 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.
- 7.5 Plans may be considered in other scales with prior agreement with the licensing authority.
- 7.6 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.

8. Notices

- 8.1 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.
- 8.2 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.
- 8.3 All notices should be in the form prescribed by the local authority 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.
- 8.4 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.

9. Objections

- 9.1 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 11. Objectors must give notice of their objection in writing, stating the general terms of the objection.
- 9.2 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.
- 9.3 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.

10. Hearings

- 10.1 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.
- 10.2 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.
- 10.3 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.
- 10.4 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.
- 10.5 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.

- 10.6 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.
- 10.7 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.
- 10.8 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.
- 10.9 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.

11. Refusal of a Licence

- 11.1 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.
- 11.2 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.

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

11.4 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.

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

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

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

11.5 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.

11.6 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.

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

11.8 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.

11.9 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.

11.10 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.

11.11 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

11.12 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.

11.13 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.

12. Waivers

12.1 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.

12.2 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.

- 12.3 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.

13. Conditions

- 13.1 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.
- 13.2 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.
- 13.3 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
- 13.4 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.

14. Duration of Licences

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

15. Appeals

- 15.1 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.

15.2 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

15.3 There is no right of appeal for objectors.

15.4 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.

15.5 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 Premises**Condition 13**

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

Condition 14

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

Goods available in sex establishments**Condition 15**

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

Condition 16

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

Appendix C

Sex Cinemas

Film Categories

Condition 1

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

- 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 14

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

Condition 15

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

Condition 16

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

Condition 17

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

Condition 18

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

Condition 19

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

Condition 20

Neither membership tickets nor guest tickets shall be transferable.

Condition 21

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

Condition 22

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

Sale of Sex ArticlesCondition 23

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

APPENDIX D**Sexual Entertainment Venue****Times of Opening****Condition 1**

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

Conduct and Management of Premises**Condition 2**

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

Condition 3

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

Condition 4

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

Condition 5

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

Condition 6

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

Condition 7

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

APPENDIX E**Pool of Possible Additional Conditions****Age Restriction****Condition A**

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

Security**Condition B**

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

Condition C

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

Condition D

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

Entertainers/Performers**Condition E**

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

This page is intentionally left blank

Licensing Committee Meeting	
Meeting Date	13 th February 2024
Report Title	To provide an annual update on the activities of the licensing team under the Licensing Act 2003, Gambling Act 2005 and taxi legislation together with other general licensing matters for the year 2023
EMT Lead	Emma Wiggins, Director of Regeneration and Neighbourhoods
Head of Service	Charlotte Hudson, Head of Housing and Community Services
Lead Officer	Christina Hills, Licensing Team Leader
Classification	Open
Recommendations	1. That Members note the report. Future reports will be provided on an annual basis.

1 Purpose of Report and Executive Summary

- 1.1 The purpose of this report is to inform Members on the activities and performance of the licensing team during 2023 and to show aims and targets for the forthcoming year.
- 1.2 This is the first time such a report has been produced but it is the intention that future reports of this nature will be produced on an annual basis.

2 Background

- 2.1 The licensing team comprises of a licensing team leader, 2 licensing officers and a licensing admin assistant and sits within CSU under the stewardship of the Community Services Manager.
- 2.2 The team are responsible for discharging a wide range of statutory licensing, registration and enforcement functions in Swale under various pieces of legislation associated with licensing activity, which include:
 - Licences associated with the sale and supply of alcohol, regulated entertainment and late-night refreshment as required by the Licensing Act 2003
 - Licences and permits issued under the Gambling Act 2005 for gambling premises such as betting shops, bingo premises and arcades, as well as gaming machines and small lotteries registration.
 - Licences for taxi drivers, vehicles and operators under various legislation and the Statutory Taxi and Private Hire Vehicle Standards 2020

- A range of miscellaneous licences such as street trading, scrap metal, sex establishments and sexual entertainments venues, pavement licences and street and house to house collection licences.
- 2.3 The team are responsible for the development and review of all associated policies, whether they are a statutory requirement, or developed locally for the benefit of both licensees and the general public as well as to guide officers and Members in their decision making.
 - 2.4 The service manages its own finances which includes invoicing businesses, taking payment, chasing and enforcing non-payment of annual fees for all licensed premises and suspending licences where necessary, although there are very few licences where this happens. It is important to note that some licence fees are set by central government, but where fees can be set locally, they should be cost neutral and be set just to administer and enforce the licensing regime rather than to be used as an income stream for the Council.
 - 2.5 The total amount received in licence fees during 2023 was £144,670 for licensing and gambling and £101,615 for taxis. There will be variances to these amounts year on year as some licences are cyclical and renewed on a three yearly basis rather than annually, in line with relevant legislation.
 - 2.6 The licensing team works in partnership with other council departments, the police, fire and rescue service and trading standards, other government departments, residents and businesses, to promote the licensing objectives, reduce crime and disorder, promote a safe and enjoyable night-time economy, and ensure the safety of the travelling public in the Borough whilst ensuring that it is fulfilling its functions efficiently.
 - 2.7 A substantial amount of time is spent in providing guidance and assistance regarding the various licensing processes as well as investigating complaints.
 - 2.8 Officers occasionally conduct inspections of premises to ensure compliance with authorisations and advise businesses of their responsibilities.
 - 2.9 Since the pandemic the number of pro-active inspections carried out by the team has reduced quite significantly, both as a result of the enforced closure of premises and then by the team being understaffed for a prolonged period of time. Whilst the staffing position has now been rectified, it has taken some time for the additional team member to be trained sufficiently in order to free up time from other officers to enable inspections to be resumed, although where necessary inspections have continued on an intelligence led basis or where thought to be necessary as a result of complaints received from the public. There were 30 such visits conducted during 2023.
 - 2.10 The enforcement/compliance functions also involve investigations into complaints and sometimes alleged unauthorised activity. Formal enforcement action is taken when merited and the team produce reports for Licensing Sub-Committee

hearings in order for Members to consider what further enforcement action may be appropriate.

- 2.11 With regards to complaints about the activities and behaviour of licensees the licensing team received the following during 2023:

Taxi complaints – 46
Licensed premises – 13
Street Trading – 2

In all cases contact is made with both the complainant to gain a better understanding of their concerns and then the licence holder is made aware of the complaint and the allegations discussed with them.

All discussions and emails are recorded, and appropriate enforcement action is taken which can range from verbal or written warnings to the necessity to serve closure notices or review applications (premises licences) or penalty points (taxi drivers and operators).

As Members can imagine some of these cases involve many hours of work.

There will also be other complaints that are received which are not within the direct remit of the licensing team to resolve e.g. crime and disorder or noise issues which are referred to the lead agency i.e. Kent police or the environmental health department so that they can undertake their own investigations.

- 2.12 The licensing team work with minimum delay in processing any applications or production of licences and we believe we offer a friendly and informative service to our customers. This can sometimes be quite challenging, particularly with applicants where English is not their first language, but we always aim to be of as much assistance as we possibly can be.
- 2.13 Whilst there are no local performance indicators, the turnaround times for applications is usually the same day or at the latest the day after. All applications that have statutory timescales which include processing an application on the day of receipt are complied with 100% of the time. Where applications require a consultation period, licences are issued immediately after the expiration of that timeframe unless there are representations made against them which require a hearing
- 2.14 A summary of the numbers of different licences and processes undertaken by the licensing team during 2023 is attached as **Appendix I**.

3 Proposals

- 3.1 During 2024 there are number of policies which will require being presented to Licensing Committee for consideration and updated in a timely manner, after public consultation exercises have been conducted

- 3.2 Also, during the coming year our aim is to increase the number of pro-active inspections that we carry out. The purpose of these inspections is to alert licence holders to any breaches of their licence or offences contrary to the Licensing Act 2003 and to make them aware of best practices. This approach does improve self-regulation and compliance but the potential of a review application or a prosecution of those who fail to comply with the Act, or their licence conditions remains an option.
- 3.3 Recent focus for inspections has been on convenience stores, and will continue to be so, as it is these premises that are generally found to have a higher rate of non-compliance. Both the licensing authority and the Police have already been increasing checks at these types of premises. We have also received some training from Trading Standards around the issue of illegal vapes and will use our inspection process to feed back to them where we have concerns.
- 3.4 The risk of a review of a premises licence continues to be the most effective deterrent to club and premises licence holders.
- 3.5 Taxi driver licences are issued on a 3 yearly cycle with the majority of licences due to be issued during 2024. Whilst this will be reflected in the income received by the Authority, this will impact on the workload of the team as there are now additional checks that we are required to conduct around right to work, checking on the nationwide register of refusals, revocations and suspensions in other local authorities (called the NR3 register) and tax check codes which are in addition to DBS and DVLA checks that are carried out every 6 months against every licensed driver.
- 3.6 Data integrity is a continuous project within the team, and we continue to review and improve the recording and management of application and licence data held on the sections licensing database (Uniform) and document management system. Additional training is being planned so that management reports can be run easily, and complaints will then be able to be recorded on a central system rather than against individual files which is all we can do at present.
- 3.7 We are in the process of reviewing the information published on the Council's website and are working with the Communications team to ensure that it is both up to date and also made more user friendly.

4 Alternative Options Considered and Rejected

- 4.1 To not present Members with an annual report. There is no statutory requirement for an annual report of this nature to be presented to Licensing Committee, but it is felt that by doing so we create a better understanding of the work of the team which can enhance the relationship between Members and officers.

5 Consultation Undertaken or Proposed

- 5.1 This report is for information purposes only.

6 Implications

Issue	Implications
Corporate Plan	Licensing functions support the objective of ‘ensuring the council plays a proactive role in reducing crime and ASB....’
Financial, Resource and Property	<p>There are no direct financial, resource or property implications in presenting an annual report.</p> <p>The licensing team work with internal and external agencies to make the best use of resources and information sharing.</p>
Legal, Statutory and Procurement	<p>When determining applications, the licensing authority must have regard for governing legislation and will be assisted by any guidance issued by the Department for Transport, Home Office, or Gambling Commission.</p> <p>In addition, where there is an associated statement of licensing policy, this will set out the principles the council will use to exercise its functions under that policy, and in making decisions the council will have regard to the same.</p> <p>The Council have produced effective policies in respect of all licensing matters.</p> <p>All licence applications are processed according to statutory requirements and within statutory timescales.</p>
Crime and Disorder	The licensing role of the Council is important in improving the safety, security and welfare of the Borough’s residents, visitors and business community
Environment and Climate/Ecological Emergency	The Council’s Taxi Licensing Policy was approved recognising that the Council has declared a climate change emergency.
Health and Wellbeing	No direct implications.
Safeguarding of Children, Young People and Vulnerable Adults	Licensing regimes are, in part, designed to safeguard children and vulnerable adults. Ensuring that the licensing service is able to undertake its functions effectively is therefore crucial to this.
Risk Management and Health and Safety	<p>It is important that Swale BC has a robust and accountable regulatory regime in relation to its licensing functions in order to ensure fair trading, prevent crime and to protect the public.</p> <p>Licensing regimes are designed to regulate licensable activities in such a way as to support the prevention/reduction of crime and</p>

	disorder through the imposition of permissible conditions and appropriate enforcement.
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>The law requires that this duty to have due regard be demonstrated in decision making processes. Assessing the potential impact on equality of proposed changes to policies, procedures and practices is one of the key ways in which public authorities can demonstrate that they have had due regard to the aims of the equality duty.</p> <p>Licensing Policies and Licensing decisions all have regard to the Council's Equalities duties.</p> <p>This report is for information only and is not requesting or proposing any changes to policy. Therefore, there is no impact on those with protected characteristics as a result of this report.</p>
Privacy and Data Protection	As licence applications involve the processing of personal data, GDPR and Data Protection Act 2018 principles are followed

7 Appendices

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

- Appendix I: Summary of the numbers and different licensing processes during 2023.

8 Background Papers

Licensing Act 2003 (as amended)

Gambling Act 2005

Town Police Clauses Act 1847

Local Government (Miscellaneous Provisions) Act 1976

Local Government (Miscellaneous Provisions) Act 1982

Policing and Crime Act 2009

Scrap Metal Act 2013

Police, Factories etc (Miscellaneous Provisions) Act 1916

House to House Collections Act 1939

Business and Planning Act 2020

DfT Statutory Standards 2020

LICENSING STATISTICS	2023
Total Number of Premises licences	418
Total Number of Club Premises Certificates	21
New premises licences granted during 2023	21
Variation of existing premises licence granted during 2023	6
Minor Variation premises licence granted during 2023	10
Transfer of premises licence	32
DPS variations	94
Change of details	70
Temporary Events Notices (TEN's) - standard	204
TEN's – late	65
Total number of personal licences	2327
Personal licences granted during 2023	92
Street Trading Consents – annual or 6 months consents	21
Street Trading Consents – 'one-off' for events during 2023	116
Pavement Licences	17
Adult Gaming Centres	11
Betting Shops	6
Bingo Premises	2
Licensed Family Entertainment Centres	4
Unlicensed Family Entertainment Centre permits	20
Track Betting	1
Club Gaming Permits	3
Club Machine Permits	40

Gaming Machine Permits	114
Small Society Lottery registrations	72
Scrap Metal Licences – sites	11
Scrap Metal Licences – collectors	15
Street Collections	31
House to House Collections	23
Sex Establishments Licences	0
Taxi Operators Licences	33
Hackney Carriage Licences	170
Private Hire Vehicle Licences	68
Dual Drivers Licences	305
Private Hire Licences	5
Individual Street Knowledge Tests (SKT) conducted	See below
Drivers who passed the SKT	42
Newsletters – licensing	7
Newsletters – taxis	9
Reports to Licensing Committee	4
Licensing Sub-Committees – licensing	2: 1 review application – decision of Members to remove DPS and add conditions 1 review application adjourned subsequently withdrawn as premises licence surrendered
Licensing Sub-Committees – taxis	7: 3 driver licences revoked 2 driver applications refused 1 licence suspended until additional training completed 1 driver licence renewed and penalty points removed
Reports to Full Council	1

SKT STATS 2023

Number of tests and candidates

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
Number of tests sat	7	6	9	10	8	8	10	7	12	8	6	8
Partial test	0	0	0	1	1	1	3	3	0	2	2	2
Telephone partial test	0	0	1	0	0	0	0	7	1	4	4	1
Number of new candidates	2	1	6	5	4	7	7	3	9	7	5	3
Number of returners	5	5	3	6	5	2	6	7	3	3	3	7
No shows	2						2				1	
Total tests taken	7	6	10	11	9	9	13	17	13	14	12	11

2 test dates in July and September (1 full day + 1 half)

Year	Number of tests sat	Number of passes	% pass rate	Number of candidates sitting test for first time
2018	43	15	35%	32
2019	61	16	26%	39
2020	7	1	14%	6

2021	38 tests	12 PASS	29 Candidates
	32% pass rate	26 FAIL	

2022	76 Total Tests	30 PASS	50 Candidates
	39% pass rate	46 FAIL	

2023	131 Total Tests	42 PASS	72 Candidates
	98 Full SKT	89 FAIL	
	15 Partial Tests		
	18 Telephone		
		42 passes/131 total tests =	32% pass rate

Sections of test most frequently failed

	Road Signs	Highway Code	Safeguarding	Area Routes	Swale Policy	Generic Policy	Places	Numeracy
Total fails in each section	50	48	37	34	33	27	19	5
% fails in each section (as a % of total failed tests)	56%	54%	42%	38%	37%	30%	21%	7%

- In 2023 16 candidates did not rebook after taking their first test
- 2 candidates passed twice upgrading from PH to Hackney – therefore **40 of 72 candidates passed the SKT in 2023 = 56%**
- Of the 72 candidates 13 were returners who sat their first test in 2021 or 2022, 9 of the 13 have now passed the SKT
- 59 New candidates in 2023, 31 of the 59 have now passed the SKT. 5 passed first time, 18 second time and 8 passed after 3 or more tests.
- In 2023 there was an 44% increase in the number of candidates sitting the SKT as compared with 2022 and a 85% increase on pre Covid candidate numbers (2019)
- In 2023 Telephone tests were introduced for candidates who fail on less than 3 sections by one question below the pass mark in the section.
- In 2023 Partial resits were introduced for candidates who fail in 1, 2 or 3 sections of the test by more than one question, where they can resit just the sections they previously failed.
- Of the 54 candidates who failed their first attempt of the SKT, 11 were offered a telephone test for their second attempt and 4 were offered partial tests.
- 40 candidates passed the SKT in 2023, 10 more than in 2022 a 33% increase and a 150% increase on 2019

- 29 of the 40 candidates who passed the SKT in 2023 have completed the application process and been issued with a Licence. 7 of those who have not yet completed the application process passed the SKT in the last quarter of the year.
- Of the 40 candidates who passed the SKT in 2023 the below table shows how many took and passed the test in which area

Area Routes	FAV	SHE	SIT
Candidates	12	21	39
Passes	9	14	16

This page is intentionally left blank