



LICENSING AND REGISTRATION COMMITTEE

DATE:	Wednesday, 24 July 2024
TIME:	6.30 pm
VENUE:	Committee Room, Town Hall, Station Road, Clacton-on-Sea, CO15 1SE

MEMBERSHIP:

Councillor J Henderson (Chairman)
Councillor Wiggins (Vice-Chairman)
Councillor Bray
Councillor Casey
Councillor Codling

Councillor A Cossens
Councillor Davidson
Councillor Skeels Jnr.
Councillor Smith
Councillor Thompson

Most Council meetings are open to the public and press. The space for the public and press will be made available on a first come first served basis. Agendas are available to view five working days prior to the meeting date and the Council aims to publish Minutes within five working days of the meeting. Meeting papers can be provided, on request, in large print, in Braille, or on disc, tape, or in other languages.

This meeting will be filmed by the Council for live and/or subsequent broadcast on the Council's website. The whole of the meeting will be filmed, except where there are confidential or exempt items, and the footage will be on the website for up to 24 months (the Council retains one full year of recordings and the relevant proportion of the current Municipal Year). The Council will seek to avoid/minimise footage of members of the public in attendance at, or participating in, the meeting. In addition, the Council is obliged by law to allow members of the public to take photographs, film, audio record and report on the proceedings at public meetings. The Council will only seek to prevent this should it be undertaken in a disruptive or otherwise inappropriate manner.

If you have any queries regarding webcasting or the recording of meetings by the public, please contact Bethany Jones Email: democraticservices@tendringdc.gov.uk or Telephone on 01255 686587

DATE OF PUBLICATION: Tuesday, 16 July 2024

AGENDA

1 Apologies for Absence and Substitutions

The Committee is asked to note any apologies for absence and substitutions received from Members.

2 Minutes of the Last Meeting (Pages 7 - 10)

To confirm and sign as a correct record, the minutes of the meeting of the Committee, held on Monday, 25 March 2024.

3 Declarations of Interest

Councillors are invited to declare any Disclosable Pecuniary Interests, Other Registerable Interests of Non-Registerable Interests, and the nature of it, in relation to any item on the agenda.

4 Questions on Notice pursuant to Council Procedure Rule 38

Subject to providing two working days' notice, a Member of the Committee may ask the Chairman of the Committee a question on any matter in relation to which the Council has powers or duties which affect the Tendring District **and** which falls within the terms of reference of the Committee.

5 Miscellaneous Licensing Sub-Committee (Pages 11 - 12)

The Committee will formally receive and note, for its information only, the minutes of the meeting of the Miscellaneous Licensing Sub-Committee held on Monday, 11 March 2024.

6 Report of the Assistant Director (Governance) - A.1 - Various Licensing Provisions - Applications approved under delegated powers (Pages 13 - 16)

To provide the Committee with data on the number of licences, certificates and permits authorised by the Council in quarter 1 2024/25. The majority of these have been authorised by Officers in accordance with approved schemes of delegation.

7 Report of the Assistant Director (Governance) - A.2 - Licensing Act 2003 - Regulated Entertainment - Exhibitions of Film - Film Classification Policy (Pages 17 - 28)

To consider the responses received from the public consultation that has taken place and for the Licensing Authority to deal with the classification of otherwise unclassified films, appeals by distributors against the British Board of Film Classification (BBFC) decisions as to the classification of a film or to reclassify films.

8 Report of the Assistant Director (Governance) - A.3 - Licensing Enforcement and Inspection Policy 2024-2028 (Pages 29 - 44)

To seek the Committee's approval for a revised draft Licensing Enforcement and Inspection Policy, to be circulated to key stakeholders for consultation purposes for the outcome of the consultation to be reported back to this Committee for consideration together with a proposed policy for 2024-2028.

**9 Report of the Assistant Director (Governance) - A.4 - Sex Establishment Policy
(Pages 45 - 66)**

For the Committee to consider a draft of the Council's Sex Establishment Policy, to authorise consultation on the draft policy and for the outcome of the consultation to be reported back to this Committee for consideration together with a policy document for the period of 2024-2028.

**10 Report of the Assistant Director (Governance) - A.5 - Gambling Act 2005 Policy
(Pages 67 - 104)**

To seek the Committee's approval for a revised draft Statement of Gambling Policy to be circulated to key stakeholders for consultation purposes, for the outcome of the consultation to be reported back to this Committee for consideration together with the proposed policy for 2025-2028.

**11 Report of the Assistant Director (Governance) - A.6 - Pavement Licensing Policy
(Pages 105 - 120)**

To explain the changes to the temporary pavement licensing regime under the Business & Planning Act 2020 and the impact of the changes to this regime made by the Levelling-Up and Regeneration Act 2023. Seeking the Committee's approval for a draft Pavement Licensing Policy, to be circulated to key stakeholders for consultation purposes for the outcome of the consultation to be reported back to this Committee for consideration together with a proposed policy.

12 Date of the Next Meeting of the Committee

To enable the Committee to discuss fixing the date of its next meeting.

13 Exclusion of Press & Public

The Committee is asked to consider passing the following resolution:-

"that under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting during consideration of Agenda Item 14 on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A, as amended of the Act."

14 Exempt Minutes - Miscellaneous Licensing Sub-Committee (Pages 121 - 124)

The Committee will formally receive and note, for its information only, the exempt minutes of the meeting of the Miscellaneous Licensing Sub-Committee held on Monday, 11 March 2024.

Date of the Next Scheduled Meeting

The next scheduled meeting of the Licensing and Registration Committee is to be held in the at Time Not Specified on Date Not Specified.

Information for Visitors

FIRE EVACUATION PROCEDURE

There is no alarm test scheduled for this meeting. In the event of an alarm sounding, please calmly make your way out of any of the fire exits in the hall and follow the exit signs out of the building.

Please heed the instructions given by any member of staff and they will assist you in leaving the building and direct you to the assembly point.

Please do not re-enter the building until you are advised it is safe to do so by the relevant member of staff.

Your calmness and assistance is greatly appreciated.

This page is intentionally left blank

**MINUTES OF THE MEETING OF THE LICENSING AND REGISTRATION
COMMITTEE,
HELD ON MONDAY, 25TH MARCH, 2024 AT 6.30 PM
IN THE COMMITTEE ROOM - TOWN HALL, STATION ROAD, CLACTON-ON-SEA,
CO15 1SE**

Present:	Councillors J Henderson (Chairman), Wiggins (Vice-Chairman), Bray, Casey, Codling, A Cossens, Davidson, Skeels Jnr. and Smith
In Attendance:	Keith Simmons (Head of Democratic Services and Elections & Deputy Monitoring Officer), Michael Cook (Licensing Manager), Madeline Adger (Leadership Support Manager) and Keith Durran (Committee Services Officer)

At the start of the meeting the Chairman of the Committee welcomed two new members, Councillors Bray and Skeels, and thanks were also received for the departing Members of the Committee (Councillors Kotz and Land) for their time serving on the Committee.

38. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

An apology for absence was received from Councillor Thompson (no substitution).

39. MINUTES OF THE LAST MEETING

It was moved by Councillor Davidson, seconded by Councillor Smith and:-

RESOLVED that the minutes of the last meeting of the Committee, held on Wednesday, 31 January 2024, be approved as a correct record and signed by the Chairman.

40. DECLARATIONS OF INTEREST

Councillor Wiggins declared for the public record for transparency that she held a Personal Licence through the Council.

Councillor Smith also declared for the public record for transparency that he was a London Taxi driver but that he had no ties in that capacity to the District of Tendring.

Both Councillors remained during the entire meeting.

41. QUESTIONS ON NOTICE PURSUANT TO COUNCIL PROCEDURE RULE 38

On this occasion no Councillor had submitted a notice of a question.

42. MISCELLANEOUS LICENSING SUB-COMMITTEE

It was moved by Councillor Skeels, seconded by Councillor A Cossens and:-

RESOLVED that the Committee formally received and noted, for its information only, the Minutes of the meeting of the Miscellaneous Licensing Sub-Committee held on Monday, 5 February 2024.

43. PREMISES/PERSONAL LICENCES SUB-COMMITTEE

It was moved by Councillor A Cossens, seconded by Councillor Smith and:-

RESOLVED that the Committee formally received and noted, for its information only, the Minutes of the meetings of the Premises/Personal Licences Sub-Committee meetings held on Monday, 29 January 2024 and Monday, 11 March 2024.

44. REPORT OF THE ASSISTANT DIRECTOR (GOVERNANCE) - A.1 - LICENSING ENFORCEMENT SCHEDULE OF ROUTINE LICENSING INSPECTIONS FOR 2023

The Committee was updated on the Schedule of routine licensing Inspections carried out in 2023/24 (to date) and the Committee was invited to consider the arrangements for routine inspections of licences, permits, consents etc within the scope of the Committee's work for 2024/25.

The report outlined that Tendring District Council was a Licensing Authority by virtue of separate legislative provisions relevant to the individuals licensing framework. As set out in those separate provisions, the Council would determine its approach to ensuring that those who were licensed comply with the requirements of the licence, permit, notice, consent etc, concerned. Where the Licensing Authority takes enforcement action to ensure compliance with conditions etc. then it does so in accordance with the relevant legal framework and it would have due regard to the Licensing Service Enforcement policy and the Council's overall Enforcement Policy.

QUESTIONS	
Has the Licencing Teams budget been cut?	The budget for the team is primarily staffing costs, of which there has been no reductions, there has been an increase in wages due to the Council wide uplifts.
So an increase in the wage budget for the team is not indicative of an increase in hours, but simply reflective of the pay rise.	Yes

After a brief discussion, it was moved by Councillor Bray, seconded by Councillor Wiggins and **RESOLVED** unanimously that the Committee:

- (a) notes the detail provided of routine licensing inspections carried out in 2023/24 as set out in this report;
- (b) endorses the schedule of routine inspections for 2024/25 as reflecting the need and frequency for routine inspections with a view to achieving compliance with licensing requirements within the remit of this Committee
- (c) notes that Officers will then make arrangements, within the available resource, to implement the endorsed routine inspection arrangements in 2024/25 and report on progress to this Committee in time for it to inform consideration of a revised schedule for 2025/26.

45. REPORT OF THE ASSISTANT DIRECTOR (GOVERNANCE) - A.2 - FILM CLASSIFICATION POLICY

Members heard how the Council was the licensing authority under the Licensing Act 2003 and exhibitions of film was one of the types of regulated activity requiring an authorisation from the Council under that Act. Most exhibitions of film have a classification to indicate the age restrictions that should apply to the exhibition of the individual film. In the UK the classification body was generally the British Board of Film Classification (the BBFC). However, not all films have a classification. For this Council, there was currently no formal policy or procedure to deal with the classification of previously unclassified films as well as to deal with circumstances where there were appeals by distributors against the BBFC decisions or to reclassify films. This report considered a proposed Film Classification Policy to be adopted. As a policy matter, in due course, any decision to adopt the policy would be a matter for the Council's Cabinet (following a recommendation from this Committee).

The Members of the Committee had no questions for the Officers on this occasion.

After a short discussion it was moved by Councillor Casey, seconded by Councillor Wiggins and unanimously **RESOLVED** to approve, for an eight-week public consultation the draft policy for Film Classification (as attached to this report at Appendix A) and for the outcome of that consultation to be submitted to a future meeting of this Committee.

46. DATE OF THE NEXT MEETING OF THE COMMITTEE

The Committee noted its intention to hold its next meeting in early July 2024.

[Note : Subsequent to the meeting this date was agreed as Monday 8 July 2024 (commencing at 6.30pm)]

47. EXCLUSION OF PRESS & PUBLIC

It was moved by Councillor Davidson, seconded by Councillor Smith and:-

RESOLVED that, under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting during the consideration of Agenda Items 14 and 15 on the grounds that they involved the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A, as amended, of the Act.

48. EXEMPT MINUTES - MISCELLANEOUS LICENSING SUB-COMMITTEE

It was moved by Councillor Davidson, seconded by Councillor Smith and:-

RESOLVED that the exempt minutes of the meeting of the Miscellaneous Licensing Sub-Committee held on Monday, 5 February 2024 be formally received and noted.

49. EXEMPT MINUTES - PREMISES/PERSONAL LICENCES SUB-COMMITTEE

It was moved by Councillor Davison, seconded by Councillor Smith and:-

RESOLVED that the exempt minutes of the meetings of the Premises and Personal Licences Sub-Committee held on Monday, 29 January 2024 and Monday, 11 March 2024 be formally received and noted.

The meeting was declared closed at 6.44 pm

Chairman

Public Document Pack Agenda Item 5

Miscellaneous Licensing Sub-Committee

11 March 2024

**MINUTES OF THE MEETING OF THE MISCELLANEOUS LICENSING SUB-COMMITTEE,
HELD ON MONDAY, 11TH MARCH, 2024 AT 10.30 AM
IN THE CONNAUGHT ROOM - TOWN HALL, STATION ROAD, CLACTON-ON-SEA,
CO15 1SE**

Present:	Councillors J Henderson (Chairman), Smith (Vice-Chairman), Codling, A Cossens and Davidson
In Attendance:	Linda Trembath (Head of Legal Services & Deputy Monitoring Officer), Bethany Jones (Committee Services Officer) and Emma King (Licensing Officer)

31. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

No apologies for absence were submitted on this occasion and therefore there were no substitutions.

32. MINUTES OF THE LAST MEETING

It was moved by Councillor A Cossens, seconded by Councillor Davidson and:-

RESOLVED that the minutes of the last meeting of the Sub-Committee, held on Monday, 5 February 2024 be approved as a correct record and be signed by the Chairman.

33. DECLARATIONS OF INTEREST

Councillor Smith (Vice-Chairman) declared for the public record that he was a London Taxi driver of 34 years' experience but that he had no ties in that capacity to the District of Tendring.

34. EXCLUSION OF PRESS AND PUBLIC

It was moved by Councillor Davidson, seconded by Councillor A Cossens, and:-

RESOLVED that under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting during consideration of Agenda Items 5 and 6 on the grounds that they involved the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A, as amended, of the Act.

35. EXEMPT MINUTES

It was moved by Councillor Davidson, seconded by Councillor A Cossens and:-

RESOLVED that the Exempt Minutes of the last meeting of the Sub-Committee, held on Monday, 5 February 2024, be approved as a correct record and be signed by the Chairman.

36. **REPORT OF THE ASSISTANT DIRECTOR (GOVERNANCE & LEGAL) - B.1 -
REVIEW OF A HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE AND
HACKNEY CARRIAGE VEHICLE LICENCE**

RESOLVED that the Sub-Committee were in support of the 14 enforcement penalty points already imposed on the individuals Hackney Carriage/Private Hire Driver's Licence and that a 7-day suspension would be imposed, including the day of this Sub-Committee meeting.

The meeting was declared closed at 11.22 am

Chairman

Agenda Item 6

LICENSING AND REGISTRATION COMMITTEE

24 JULY 2024

REPORT OF THE ASSISTANT DIRECTOR - GOVERNANCE

A1. VARIOUS LICENSING PROVISIONS - APPLICATIONS APPROVED UNDER DELEGATED POWERS

(Report prepared by Michael Cook)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

This report seeks to provide the Committee with data on the number of licences, certificates and permits authorised by the Council in quarter 1 2024/25. The majority of these have been authorised by Officers in accordance with approved schemes of delegation. Data is provided to Committee on the most recent complete quarters (April to June, July to September, October to December and January to March) together with previous quarters so as to aid comparison between quarters and years.

EXECUTIVE SUMMARY

The details of the licences, certificates and permits granted are set out under the separate headings below:

(i) Premises Licences/Club Premises Certificates

The total of Premises Licences / Club Premises Certificates that have been approved under Delegated Powers during the period 31 August 2022 to 31 January 2023. For comparison, the following also shows the numbers approved for the periods shown:

Type of Licence	Number of Licences as at			
	July to Sept 2023 (Q2 2023/24)	Oct to Dec 2023 (Q3 2023/24)	Jan to March 2024 (Q4 2023/24)	April to June 2024 (Q1 2024/25)
Premises Licences/Club Premises Certificates - Approved	16	10	21	15

(ii) Personal Licences under the Licensing Act 2003

The total of Personal Licences approved under Delegated Powers since 7 February 2005, the 'First Appointed Day' on the dates shown were.

Type of Licence	Number of Licences as at			
	July to Sept 2023 (Q2 2023/24)	Oct to Dec 2023 (Q3 2023/24)	Jan to March 2024 (Q4 2023/24)	April to June 2024 (Q1 2024/25)
Personal Licences	2409	2436	2456	2479

(iii) **Gambling Licences/Permits**

Below is a table showing the number of gambling licences and permits that were licensed with this Authority on the dates shown.

Type of Licence	Number of Licences as at			
	July to Sept 2023 (Q2 2023/24)	Oct to Dec 2023 (Q3 2023/24)	Jan to March 2024 (Q4 2023/24)	April to June 2024 (Q1 2024/25)
Adult Gaming Centres	17	17	17	17
Betting Premises	11	11	11	11
Bingo Premises	15	15	15	15
Family Entertainment Centres	0	0	0	0
Unlicensed Family Entertainment Centres	27	27	26	26
Prize Gaming Permits	1	1	1	1
Club Gaming & Club Machine Permits	22	22	21	21
Licensed Premises Gaming Machine Permits	21	21	21	20
Licensed Premises Machine Notifications	116	122	120	119
Small Society Lottery Permits	114	122	118	117

(iv) **Hackney Carriage/Private Hire Licence**

Below is a table showing the number of drivers, vehicles and operators that were licensed with this Authority on the dates shown.

Type of Licence	Number of Licences as at			
	July to Sept 2023 (Q2 2023/24)	Oct to Dec 2023 (Q3 2023/24)	Jan to March 2024 (Q4 2023/24)	April to June 2024 (Q1 2024/25)
Hackney Carriage Driver	285	287	290	289
Private Hire Driver	6	6	7	8
Hackney Carriage Vehicle	200	202	208	202
Private Hire Vehicle	28	29	30	28
Private Hire Operator	20	19	19	19
Temporary Insurance Vehicles	1	2	0	1

Although the numbers of driver applications processed is broadly the same now has been the case over the last year, there has been a drop in the number of existing licenced drivers renewing (and a comparative increase in new individuals becoming licensed).

RECOMMENDATION

That the Committee notes the information set out in this report.

APPENDIX

None

REPORT CONTACT OFFICER(S)

Include here the Name, Job Title and Email/Telephone details of the person(s) who wrote the report and who can answer questions on the content.

Name	Michael Cook
Job Title	Licensing Manager
Email/Telephone	licensingsection@tendingdc.gov.uk 01255 686565

This page is intentionally left blank

LICENSING AND REGISTRATION COMMITTEE

24 JULY 2024

REPORT OF THE ASSISTANT DIRECTOR - GOVERNANCE

A2. LICENSING ACT 2003 – REGULATED ENTERTAINMENT – EXHIBITIONS OF FILM - FILM CLASSIFICATION POLICY

(report prepared by Michael Cook & Keith Simmons)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

For the Committee to consider the responses received from the public consultation that has taken place and for the Licensing Authority to deal with the classification of otherwise unclassified films, appeals by distributors against the British Board of Film Classification (BBFC) decisions as to the classification of a film or to reclassify films. This report sets out the proposed Film Classification Policy to be adopted.

EXECUTIVE SUMMARY

This Council is the Licensing Authority under the provisions of the Licensing Act 2003 (the Act). A function of the Licensing Authority under the Act is to receive, consider and determine applications for Premises Licences or Club Premises Certificates. The Act regulates various activities (known as licensable activities or in the case of a private club operating pursuant to a Club Premises Certificate, qualifying club activities). Those activities include the provision of regulated entertainment.

The Act seeks to promote 4 licensing objectives. These are:

- Prevention of crime and disorder
- Prevention of public nuisance
- Public safety
- Protection of children from harm

Schedule 1 of the Licensing Act 2003 sets out what activities are regarded as the provision of regulated entertainment. The description of entertainment activities licensable under the Act include the exhibition of film. To be licensable, an activity needs to be provided for the purpose (at least partly) of entertaining an audience; has to be held on premises made available for the purpose of enabling that activity; and must also either:

- Take place in the presence of a public audience, or
- Where that activity takes place in private, be the subject of a charge made with a view to profit.

All premises licences that permit regulated entertainment in the form of the exhibition of films have a mandatory condition attached to it relating to the admission of children to that premises. Children under the Licensing Act 2003 are defined as anyone under the age of 18. The mandatory condition is a requirement under Section 20 of the Licensing Act 2003.

The mandatory condition reads as follows:

“Admission of children to the premises must be restricted in accordance with the film classification recommended by the British Board of Film Classification or recommended by this licensing authority as appropriate.”

When considering any film which has been put forward for a classification, the Licensing Authority will consider it in terms of how the exhibition of this film will impact on the licensing objectives, namely the protection of children from harm. This will apply to any films that have been put forward for a classification that will permit children to watch it. There are seven BBFC classification tiers (U, PG, 12, 12A, 15, 18 & R18) relating to what age a child may be permitted to watch the film on their own or whether there should be any parental or adult supervision.

The Licensing Authority defers to the British Board of Film Classification (BBFC) as the standard classification body for films. However, the Licensing Authority is ultimately able to set film classifications relating to the exhibition of films within the District of Tendring and has the power to classify films away from those adopted by the BBFC. Having said that, it would be unreasonable to disregard any classification applied by the BBFC for a particular film. In addition, when classifying any film, it has been the Licensing Authority’s approval to have regard to the BBFC Guidelines and one element of the proposals in this report is to formally confirm this approach.

There are specific factors that may influence a classification decision such as:

- Discrimination
- Drugs
- Imitable behaviour
- Language
- Nudity
- Sex
- Threat
- Violence

The Licensing and Registration Committee at its meeting of 25 March 2024 agreed to undertake an 8 week public consultation on the draft policy for Film Classification for this District.

RECOMMENDATION(S)

It is recommended that the Committee received and considers the outcome of the public consultation on a draft Film Classification and then determine whether to recommend the policy attached to this report as Appendix A to Cabinet for adoption.

REASON(S) FOR THE RECOMMENDATION(S)

It is recommended that the Council use 'The British Board of Film Classification Guidelines' as a reference point for its considerations concerning the access of children to the film(s). In particular, the 'General Classifications Considerations' section of this Guidance may be helpful. This is captured in the Film Classification Policy for the Council as set out in Appendix A.

ALTERNATIVE OPTIONS CONSIDERED

The public exhibition of films upon licensed premises must either be classified by the British Board of Film Classification or be authorised by the Licensing Authority under the powers of the Licensing Act 2003.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The policy set out at Appendix A is intended to support the following themes from the Council's Corporate Plan 2024-28:

- Pride in our area and services to residents

LEGAL REQUIREMENTS (including legislation & constitutional powers)

In exercising the express powers of the Council as Licensing Authority under the Licensing Act 2003 it must do so with a view to promoting the licensing objectives defined in section 4 of the Act, as follows:

- The prevention of crime and disorder;
- Public Safety;
- The prevention of public nuisance;
- The protection of children from harm.

Section 20 of the Licensing Act 2003 concerns films classification and mandatory conditions. It reads:

“Mandatory condition: exhibition of films

(1)Where a premises licence authorises the exhibition of films, the licence must include a condition requiring the admission of children to the exhibition of any film to be restricted in accordance with this section.

(2)Where the film classification body is specified in the licence, unless subsection (3)(b) applies, admission of children must be restricted in accordance with any recommendation made by that body.

(3)Where—

(a)the film classification body is not specified in the licence, or

(b)the relevant licensing authority has notified the holder of the licence that this subsection

applies to the film in question,
admission of children must be restricted in accordance with any recommendation made by that licensing authority.

(4) In this section—

- “children” means persons aged under 18; and
- “film classification body” means the person or persons designated as the authority under section 4 of the Video Recordings Act 1984 (c.39) (authority to determine suitability of video works for classification).”

FINANCE AND OTHER RESOURCE IMPLICATIONS

There are no immediate resource implications for the Council or others. The adoption of a film classification policy seeks to provide the framework for the Licensing Authority to consider film classification matters and thereby assist it, and others, when such matters present themselves.

USE OF RESOURCES AND VALUE FOR MONEY

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	The policy referenced in this report does not directly impact a financial sustainability.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	The adoption of a film classification policy seeks to support good governance in respect of matters where film classification are relevant.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	The policy referenced in this report does not directly impact an economic, efficiency and effectiveness considerations.

MILESTONES AND DELIVERY

This report sets out elsewhere the development timeline for the policy and the consultation undertaken, subject to the decision of the Committee, Cabinet will then consider adoption of the proposed policy.

ASSOCIATED RISKS AND MITIGATION

The principal risks this policy seeks to address to those around supporting good decision making in respect of film classification matters.

OUTCOME OF CONSULTATION AND ENGAGEMENT

The draft film classification policy submitted to the Committee at its meeting of 25 March 2024 was subject to public consultation and scrutiny for a period of 8 weeks from 1 April 2024 to 26 May 2024.

The consultation included the Electric Palace, Harwich; and Picturedrome Clacton Century,

Responsible Authorities, a selection of premises licence holders and the policy was also made available to view, download and comment on through the Council's website.

Only Electric Palace have responded that the consultation "was extremely helpful and looked as expected. We are grateful for you sharing this with us". No other views were received.

EQUALITIES

In preparing this report, due consideration has been given to the Council's statutory Equality Duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, as set out in Section 149(1) of the Equality Act 2010.

The Licensing Authority will have due regard to the public sector equality duty under the Equality Act 2010. Under this duty, the Authority (in the exercise of its functions) must have due regard to the need to:

- eliminate any form of unlawful discrimination (including direct or indirect discrimination, harassment, victimisation, and any other conduct prohibited under the Act);
- advance equality of opportunity between people who share a relevant characteristic and people who do not;
- foster good relations between people who share a protected characteristic and people who do not.

SOCIAL VALUE CONSIDERATIONS

There are no direct social value considerations arising from this report.

IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030

There are no environmental implications arising directly from the content of this report.

OTHER RELEVANT IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder	The Council has a duty under Section 17 of the Crime and Disorder Act 1998 to do all that it reasonably can to prevent crime and disorder in its area.
Health Inequalities	There are no direct implications arising from the proposals set out in this report.
Area or Ward affected	All

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The Licensing Authority's current process requires all classification requests to be submitted with suggested age classifications from the film maker.

The processing officer will follow the guidelines set out by the BBFC. The officer's aim is to always protect children and vulnerable adults from potentially harmful or unsuitable content.

Members of the Premises / Personal Sub Committee watch the films and confirm the Authority's classification having considered the officer's recommendations.

There is currently no formal policy or procedure for the Licensing Authority to deal with the classification of unclassified films and with the adoption of the new policy, this will enable both the applicant and the Licensing Authority to process these requests.

The Licensing and Registration Committee at its meeting of 25 March 2024 agreed to undertake an 8 week public consultation on the draft policy for Film Classification.

PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.

Licensing and Registration Committee of 25 March 2024 (minute 45 refers)

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

None

APPENDICES

Appendix A – Proposed Film Classification Policy

REPORT CONTACT OFFICER(S)

Include here the Name, Job Title and Email/Telephone details of the person(s) who wrote the report and who can answer questions on the content.

Name	Michael Cook Keith Simmons
Job Title	Licensing Manager Head of Democratic Services and Elections
Email/Telephone	licensingsection@tendringdc.gov.uk 01255 686565

Tendring District Council



FILM CLASSIFICATION POLICY

Tendring District Council: www.tendringdc.gov.uk

POLICY FOR DETERMINING FILM CLASSIFICATION

1. INTRODUCTION

- 1.1 Section 20 of the Licensing Act 2003 (the Act) provides that where a Premises Licence or Club Premises Certificate authorises the exhibition of a film(s), the licence must include a condition requiring the admission of children to films to be restricted in accordance with recommendations given either by a body designated under section 4 of the Video Recordings Act 1984 specified in the licence, currently only the British Board of Film Classification (BBFC), or by the Licensing Authority itself.
- 1.2 The public exhibition of films on licensed premises must therefore either be classified by the BBFC or authorised by the Licensing Authority under the powers of the Licensing Act 2003.
- 1.3 The purpose of this Policy is to set out the formal procedure for Tendring District Council (the Licensing Authority) to determine within its area, the classification of previously unclassified films, to amend classifications and deal with appeals by distributors against the BBFC's decisions or requests to reclassify films.
- 1.4 Section 26 of the Counter Terrorism and Security Act 2015 places a duty on Tendring District Council to have 'due regard to the need to prevent people from being drawn into terrorism'.
- 1.5 Where a premises seeks or intends to exhibit film(s), the venue must be covered by a Premises Licence, Club Premises Certificate or Temporary Event Notice under the Licensing Act 2003, apart from the limited exemptions detailed at Section 8 of this policy. In the case of a Temporary Event Notice, the Licensing Act 2003 mandatory condition relating to films does not apply, but applicants may still request the assistance of the Council in determining the classification of a film(s)
- 1.6 The Act defines children as 'any person under the age of 18' and the exhibition of film as 'the exhibition of moving pictures'.

2. BACKGROUND

- 2.1 The Licensing Authority may be requested to authorise the showing of an unclassified film(s) within the Tendring District Council district. Typically this will be for:
 - A film festival covering a specific period of time
 - A one off screening of a film(s)
 - A trailer for a film
- 2.2 The Licensing Authority may also be requested to authorise a film that has already been classified by the BBFC when:
 - A distributor of a film wishes to appeal against the decision of the BBFC and request that the Licensing Authority re-classifies/authorises the film for local screening with recommendations on age restrictions) or;
 - An independent party may request that the Licensing Authority reclassifies/authorises the film for local screening (with recommendations on age restrictions).

3. PROCEDURE FOR SUBMISSION OF FILM(S)

- 3.1 Applications for authorisation of film(s) shall be referred to the Licensing Manager and will be determined by the Miscellaneous Licensing Sub Committee.
- 3.2 Applications should be submitted to the Licensing Authority, for the attention of the Licensing Manager, at least 2 months before the proposed screening.

- 3.3 An application for authorisation needs to be in a form that can be viewed, read and understood, should state detailed reasons for the request and include the following information:
- The date(s), time(s) and proposed venue for the exhibition of the film(s)
 - The name of the film maker;
 - A brief synopsis of the film(s);
 - Any recommendation that may have been made by the film maker regarding an age limit for the intended audience for exhibition of the film;
 - Any existing classification issues by an existing classification body, whether within or outside the UK.
 - If the film has previously been classified by another Licensing Authority, details of the classification awarded by that authority, together with the date and venue at which it was shown.
 - Information identifying the material within the film considered by the exhibitor to be likely to have a bearing on the age limit for the audience for exhibition of the film;
 - The language spoken in the film and whether there are subtitles in English
 - Details of how any age restrictions will be enforced;
- 3.4 All requests shall be accompanied by the film(s), where possible in USB format to avoid delays, the cost to be borne by the applicant. Other formats are available and can be discussed and agreed with the Licensing Authority.
- 3.5 If the film contains dialogue that is in a language other than English, an interpreter, approved by the Licensing Authority may be required for the classification, the cost to be borne by the applicant.
- 3.6 Applicants must ensure all material subject of the application complies with the current interpretation of the Obscene Publications Act 1959, the Copyright Design and Patents Act 1988, the Counter Terrorism and Security Act 2015 or any other relevant legislation and has not been created through the commission of a criminal offence.

4. PROCESS

- 4.1 Requests will be dealt with as expeditiously as possible as it is appreciated that films are generally only shown in cinemas for a relatively short period.
- 4.2 A Licensing Officer will view the film and prepare a brief report outlining any areas of concern or note in accordance with the BBFC guidelines, and the Licensing Committee will view the film and assess it against the BBFC guidelines and Government Guidance.
- 4.3 The Chair will have the final decision on the classification to be applied to the film. In the absence of the Chair, the decision will be made by the Vice Chair.
- 4.4 A notice of determination will be issued.
- 4.5 The Licensing Authority will formally advise the applicant and the licence holder of any recommendation(s) restricting the admission of children to the film(s).
- 4.6 Where the Licensing Authority has determined to refuse the authorisation of a film, reasons for the decision shall be given.
- 4.7 A fee will be payable on application.

5. CLASSIFICATION

- 5.1 The BBFC classifies films in accordance with published guidelines that are based on extensive research into public opinion and professional advice, generally reflecting public sensibilities and expectations as they change over time.

- 5.2 The Licensing Authority considers the classification system used by the BBFC to be nationally understood and accepted and will use this system together with any future amendments that may apply, as a reference point for determining its recommendation(s) on the restriction of access of children to the film(s). The Licensing Authority, however, is not obliged to follow these guidelines.
- 5.3 Where a licensed premises within the Tendring District Council district seeks to exhibit a film(s) that has not been classified by the BBFC, then it will be the responsibility of the Licensing Authority to authorise that film(s).
- 5.4 The Licensing Authority recognises the principle within the Human Rights Act 1998 that adults should be free to choose their own entertainment. However, material should not be in breach of the criminal law, including material judged to be obscene under the current interpretation of the Obscene Publications Act 1959, or is in breach of the Copyright Design and Patents Act 1988, or the Counter Terrorism and Security Act 2015; or has been created through the commission of a criminal offence.
- 5.5 The Licensing Authority shall concern itself primarily with the protection of children from harm and will not use its powers to censor films unless there is a clear cause to believe that this is required to promote the licensing objectives.

6. PROTECTION OF CHILDREN FROM HARM

- 6.1 The protection of children from harm is a licensing objective under the Act. Section 182 Government Guidance to Licensing Authorities under the Act states: It includes the protection of children from moral, psychological, and physical harm. This includes not only protection children from the harms associated directly with alcohol consumption but also wider harms such as exposure to strong language and sexual expletives, for example, in the context of exposure to certain films or adult entertainment. Licensing Authorities must also consider the need to protect children from sexual exploitation when undertaking licensing functions.
- 6.2 In line with the Government Guidance, where a film(s) is recommended by the Licensing Authority as falling into an age restrictive category, no person under the age specified shall be admitted.
- 6.3 Where a film(s) is recommended by the Licensing Authority as falling into a category requiring any person under a specified age to be accompanied by an adult, no person under the age specified shall be admitted unless accompanied by an adult.
- 6.4 In these circumstances, the licence holder will be required to display in a conspicuous position, a notice clearly stating the relevant age restrictions and requirements or non-admittance. E.g.: Persons under the age of (insert appropriate age) cannot be admitted to any part of the programme Persons under the age of (insert appropriate age) can only be admitted to the programme if accompanied by an adult.

7. AUTHORISATION

- 7.1 Any authorisation(s) for the exhibition of film issued by the Licensing Authority will only apply when the film is exhibited within the area covered by Tendring District Council and does not affect the authorisations of any other Authority.
- 7.2 Once authorised by the Licensing Authority a film(s) will be authorised for a particular showing or festival only and subject to the recommendations imposed by the Licensing Authority.
- 7.3 The issue of any authorisation by the Licensing Authority is strictly limited to the determination of film classification and it will be assumed that all relevant third-party consents and licences in respect of

any and all copyright confidential information and all other intellectual property rights have been obtained.

- 7.4 Where the Licensing Authority has authorised unclassified material to be shown, it will require an undertaking from the applicant of that they are satisfied, after making proper enquiry, that no material to be exhibited contravenes the current interpretation of the Obscene Publications Act 1959, the Copyright Design and Patents Act 1988, Counter Terrorism and Security Act 2015 or any other relevant legislation and has not been created through the commission of a criminal offence.
- 7.5 The Licensing Authority shall also not be liable for any material that has been created through the commission of a criminal offence. It is the responsibility of the applicant to ensure that no film or trailer contravenes the law.
- 7.6 Each application will be considered on its individual merits. There is no right of appeal to the classification imposed by the Licensing Authority, save by way of Judicial Review of the decision.
- 7.7 All authorisations issued under a Premises Licence or Club Premises Certificate will be subject to the mandatory conditions contained in the Act relating to the exhibition of film.

8. EXEMPTIONS

- 8.1 The provision of the exhibition of film is exempt from regulation by The Act if either:
- It consists of or forms part of an exhibit put on show for any purposes of a museum or art gallery, or:
 - Its sole or main purpose is to:
 - demonstrate any product,
 - advertise any goods or services, or
 - provide information, education or instruction.
 - the film is shown on a 'not-for-profit' basis in a community premises between the hours of 08.00 and 23.00 provided that the audience does not exceed 500.

9. CONTACT DETAILS

All applications should be sent for the attention of:
The Licensing Manager
Licensing Section
Tendring District Council
Town Hall
Clacton on Sea
Essex CO15 1SE

LICENSING AND REGISTRATION COMMITTEE

24 JULY 2024

REPORT OF THE ASSISTANT DIRECTOR - GOVERNANCE

A3. LICENSING ENFORCEMENT AND INSPECTION POLICY 2024-2028
(report prepared by Michael Cook & Keith Simmons)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To seek the Committee's approval for a revised draft Licensing Enforcement and Inspection Policy, to be circulated to key stakeholders for consultation purposes for the outcome of the consultation to be reported back to this Committee for consideration together with a proposed policy for 2024-2028.

EXECUTIVE SUMMARY

It is best practice that the Authority keeps its policy on Enforcement processes under review to ensure that it is kept up to date with the most current information and guidance is made available to applicants taking into consideration the legislation and resources available. This is then available to applicants, licensees, those seeking to address issues with licensees, the Authority's partner agencies and the public.

RECOMMENDATION(S)

a) That, subject to any matters the Committee may wish to raise, that the draft revised Licensing Enforcement and Inspection Policy as set out in Appendix A to this report be approved for the purposes of the consultation in b) below.

b) That the draft revised Licensing Enforcement and Inspection Policy be circulated to the Licensing Authority's key stakeholders for consultation purposes and that any representations received be considered at a future meeting of the Committee.

REASON(S) FOR THE RECOMMENDATION(S)

The recommendations seek to provide a process through which the current Licensing Enforcement and Inspection Policy can be updated to take into account changes since the last policy was adopted and of the views of partner agencies.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The draft revised Licensing Enforcement and Inspection Policy schedule set out at Appendix A is intended to support the following themes from the Council's Corporate Plan 2024-28:

- Pride in our area and services to residents
- Working with Partners to improve quality of life
- Promoting our Heritage offer, attracting visitors and encouraging them to stay longer
- Financial sustainability and openness

LEGAL REQUIREMENTS (including legislation & constitutional powers)

Decisions in relation to a licence holder following matters coming to light will be determined in relation to the specific licensing legislations. They are likely to also amount, amongst other things, to consideration of civil rights and obligations under the Human Rights Act 1998. This policy assists in ensuring that these rights are fully considered. Those considerations will, to the extent that they apply will also be given to those raising matters with the Authority in connection with a licensee. A reasonable and proportionate policy will ensure that the Authority considers and take action against infringements of legislation in a robust, consistent, transparent and proportionate manner which will assist in ensuring that they are defensible in a Court of Law.

The express powers of the Council in relation to inspection for licencing permits, consents and licences are set out in the various separate licensing statutes and include the following:

Licence Type	Powers to Inspect
Street Collections	Section 5 of the Police, Factories, & c. (Miscellaneous Provisions) Act 1916 provides for Councils to adopt Regulations concerning Street Collections. Section 6 of the Tendring District Council Regulations requires Street Collectors to produce written authority to a duty officer. The regulation also sets out a range of requirements on collectors and a breach of requirements is an offence under regulation 18.
House to House Collections	There are no express powers in the House to house Collections Act 1939. There are though powers in that Act that are exercisable by a Police Constable.
Private Hire and Hackney Carriage Vehicles	Section 73(1) of Part II to the Local Government (Miscellaneous Provisions) Act 1976 – It is an (6)(3) Vehicles Licences offence to wilfully obstruct a duly authorised Council Officer or Police Officer acting in pursuance of the licensing requirements in the 1976 Act or otherwise assist them or provide information reasonably required. Section 50(1) – proprietors of licensed vehicles shall present for inspection their vehicle upon a notice from the Council (up to three times a year). Section 50(4) – the insurance documents for the licensed vehicle shall be produced upon request of a duly appointed Council Officer. Section 68 – Duly authorised Council Officers or Police Officers may inspect a licensed vehicle at all reasonable times and suspend the vehicle licence if the vehicle is not fit for use.

Private Hire Operators	Section 73(1) of Part II to the Local Government (Miscellaneous Provisions) Act 1976 – It is an offence to wilfully obstruct a duly authorised Council Officer or Police Officer acting in pursuance of the licensing requirements in the 1976 Act or otherwise assist them or provide information reasonably required. Section 56(2) – operators shall produce records of bookings on request to a duly authorised Council Officer or Police Officer. Section 56(4) – operators shall produce their licence on request to a duly authorised Council Officer or Police Officer.
Private Hire and Hackney Carriage (Drivers Licence concluding a Dual Licence)	Section 73(1) of Part II to the Local Government (Miscellaneous Provisions) Act 1976 – It is an offence to wilfully obstruct a duly authorised Council Officer or Police Officer acting in pursuance of the licensing requirements in the 1976 Act or otherwise assist them or provide information reasonably required. Section 51(3) – licensed drivers shall produce their licence badge upon request within five days.
Sex shops/Sexual Entertainment Venues	Paragraph 25 of Schedule 3 to Part II of the Local Government (Miscellaneous Provisions) Act 1982 – A duly authorised Council Officer or Police Officer may enter and inspect a licensed premises. It is an offence (without reasonable excuse) to obstruct such an inspection.
Street Trading Consent	There are no express powers in Schedule 4 to Part III of the Local Government (Miscellaneous Provisions) Act 1982
Scrap Metal Site Licence	Section 16(1) of the Scrap Metal Dealers Act 2013 – Police and Council Officer may enter and inspect on notice to the site manager. Section 16(9) - The officers may inspect scrap metal and records of the licensees including of payments. Section 16(13) – obstruction of an inspecting officer is an offence.
Temporary Event Notice (TENS) under Licensing Act 2003	An authorised Council Officer may enter the premises to which a temporary event notice relates. Where an authorised Council Officer has reason to believe that premises are being/to be used for a licensable activity, he may enter the premises to check authorisation.
Personal Licences under Licensing Act 2003	An authorised Council Officer may require the holder of the personal licence to produce that licence for examination.
Premises Licences under Licensing Act 2003	An authorised Council Officer has the power to require production of a Premises Licence from the Licensee (or nominee). Where an authorised Council Officer has reason to believe that premises are being/to be used for a licensable activity, he may enter the premises to check authorisation.
Club Premises Certificates under Licensing Act 2003	An authorised Council Officer has the power to require production of a Club Premises Certificate from the nominee of the Club. Where an authorised Council Officer has reason to believe that premises are being/to be used for a licensable activity, he may enter the premises to check authorisation.
Club Permits under Gambling Act 2005	An authorised officer may undertake activities for the purpose of assessing compliance with the Act. They may enter premises: (a) to discover whether facilities for gambling other

	<p>than private and non-commercial gaming or betting are being provided, are about to be provided or have been provided on the premises,</p> <p>(b) to determine whether an operating licence or premises licence is held in respect of the provision of facilities for gambling on the premises, and</p> <p>(c) to determine whether facilities are being, will be or have been provided in accordance with the terms and conditions of an operating licence or premises licence.</p>
Gaming Machine Permits under Gambling Act 2005	See above
Premises Licences under Gambling Act 2005	See above
Gaming Notifications under Gambling Act 2005	See above
Boats and Boatman	There are no express powers in Section 94 of the Public Health Acts, Amendment Act 1907.

In exercising the express powers of the Council as Licensing Authority under the Licensing Act 2003 it must do so with a view to promoting the licensing objectives defined in that Act, as follows:

- The prevention of crime and disorder;
- Public Safety;
- The prevention of public nuisance;
- The protection of children from harm.

In respect of the express powers under the Gambling Act 2005, the Licensing Authority must carry out those functions with a view to aiming to permit the use of premises for gambling in so far as the authority think it is, inter alia, reasonably consistent with the licensing objectives defined in that Act, as follows:

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

FINANCE AND OTHER RESOURCE IMPLICATIONS

Whilst statutory licensing powers do not always permit charging for functions relating to some enforcement, the revised draft Policy would not adversely affect the budgets. The approach to enforcement action may include a staged approach to dealing with matters in order to achieve compliance.

The implementation of a concise and staged approach to compliance and enforcement matters will assist Officers when engaged in any enforcement process. This will lead to more robust and defensible decisions in relation to action concerning breaches of the legislation, conditions and unlicensed traders. This may reduce the risk of costs should a decision be appealed and the appeal is successful. In adopting a compliance and enforcement policy, the courts will understand the rationale and reason behind Officers' actions.

USE OF RESOURCES AND VALUE FOR MONEY	
A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	The revision of the policy does not, of itself, directly impact on 'financial' sustainability. Ensuring that, when permitted, enforcement costs are part of the costs recovered through fees in licensing is an important factor likewise enforcement means that compliance by licensees is seen as the appropriate given the licence fees they paid.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	The policy directly seeks to support consistently good decision making.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	The implementation of the policy will be reviewed to ensure it can be delivered in a way that supports economic, efficient and effective delivery of services.
MILESTONES AND DELIVERY	
The review of the Licensing Enforcement and Inspection Policy this financial year is itself a key milestone in ensuring licensing policies remain up to date.	
ASSOCIATED RISKS AND MITIGATION	
The principal risks this policy seeks to address to those around supporting good decision making.	
OUTCOME OF CONSULTATION AND ENGAGEMENT	
As part of the proposed review, the Committee would be invited to considered all representations received during a consultation with stakeholders on a revised Licensing Enforcement and Inspection Policy.	
EQUALITIES	
<p>In preparing this report, due consideration has been given to the Council's statutory Equality Duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, as set out in Section 149(1) of the Equality Act 2010.</p> <p>The Licensing Authority will have due regard to the public sector equality duty under the Equality Act 2010. Under this duty, the Authority (in the exercise of its functions) must have due regard to the need to:</p> <ul style="list-style-type: none"> • eliminate any form of unlawful discrimination (including direct or indirect discrimination, harassment, victimisation, and any other conduct prohibited under the Act); • advance equality of opportunity between people who share a relevant characteristic and people who do not; • foster good relations between people who share a protected characteristic and people who do not. <p>The Council has had due regard with reference to the Human Rights Act 1998 in ensuring no right is compromised by the way in which the Council make enforcement decisions and that</p>	

enforcement is considered with proportionately, balancing the public need with the need of the individual or organisation concerned.

SOCIAL VALUE CONSIDERATIONS

There are no direct social value considerations in respect of this policy.

IMPLICATIONS FOR THE COUNCIL’S AIM TO BE NET ZERO BY 2030

There are no environmental implications arising directly from the content of this report.

OTHER RELEVANT IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder	The Council has a duty under Section 17 of the Crime and Disorder Act 1998 to do all that it reasonably can to prevent crime and disorder in its area.
Health Inequalities	There are no direct implications arising from the proposals set out in this report.
Area or Ward affected	All

PART 3 – SUPPORTING INFORMATION

BACKGROUND

Tendring District Council as the Licensing Authority has responsibility for licensing and registering a range of functions in the interests of public safety and protection. As such, it has a legal duty to uphold the requirements of various legislation in which we are governed.

It is best practice to be transparent and concise in how the Licensing Authority achieves compliance and enforcement. It is important the Authority revises its policy on its approach to compliance and enforcement matters to reflect change over time, changes in resources and to reflect changes in legislation in order to maintain public confidence, continue to achieve public safety and prevent offences being committed under the various Acts.

An Enforcement Policy enables clarity on the position of licence holders, what is expected of them, steps the Licensing Authority would expect them to take to rectify an issue and steps we make take to resolve an issue in relation to non-compliance and offences under various Acts.

The Policy will also act as guidance to members of the Miscellaneous Licensing Sub-Committee when making decisions on the status of a licence. The guidance will outline actions that are reasonable and proportionate to ensure decisions are fair, in the public interest and proportionate and that any decision taken will be defensible.

Compliance and enforcement is important to maintain integrity and confidence in the various licensing regimes, and to prevent anyone obtaining an unfair advantage through unlicensed

activities and to ensure the security and safety of the public.

Some functions in which we have a duty to ensure requirements, regulations and various licensing objectives are upheld include:

- a) hackney carriage and private hire drivers and vehicles and private hire operators;
- b) alcohol, entertainment and late night refreshment;
- c) charity collections;
- d) sex establishments;
- e) gambling premises, permits and lottery registrations;
- f) scrap metal dealers and collectors.

This Licensing Enforcement and Inspection Policy seeks to cover all relevant licensing functions and all related topics.

The revised policy will replace the previous Licensing Enforcement and Inspection Policy to ensure consistency and fairness in the way in which we regulate licensing functions.

PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.

The Authority's Licensing Enforcement and Inspection Policy was last revised by the Licensing and Registration Committee of 6 August 2019 (minute 41 refers)

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

None

APPENDICES

Appendix A – Proposed Licensing Enforcement and Inspection Policy

REPORT CONTACT OFFICER(S)

Include here the Name, Job Title and Email/Telephone details of the person(s) who wrote the report and who can answer questions on the content.

Name	Michael Cook Keith Simmons
Job Title	Licensing Manager Head of Democratic Services and Elections
Email/Telephone	licensingsection@tendringdc.gov.uk 01255 686565

This page is intentionally left blank

Tendring District Council



LICENSING ENFORCEMENT AND INSPECTION POLICY

Adopted by Full Council as Policy on **XXXX**

Review date by **XXXX**

Introduction

A purpose of licensing is the protection of the public. In order to achieve this, legislation requires licences, permits or registrations to be obtained. These are normally subject to certain conditions.

The effectiveness of legislation and licence conditions in protecting the public depends crucially on persons complying with such legislation and conditions.

The purpose of this policy is to set out what licensees and others can expect from principles and policies which deal with any enforcement and inspection undertaken by the Licensing Section. A review of this policy will take place every five years.

In order to achieve compliance, the Licensing Committee and its Officer will assist licensees to meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who break the law or act irresponsibly.

This policy document is provided for the guidance of Members, Officers, consumers and members of the public.

In making decisions about enforcement action the Council is not solely acting on behalf of an individual complainant but is exercising a wider responsibility to further its primary aim of securing a safe environment for the public consumers and others who may be affected by the actions, inactions or omissions of licensees.

Areas of Licensing included in the Policy

The areas of licensing which are covered by this policy are as follows:

Fundraising

House to House Collections

Street Collections

Licensing Act 2003

Licences under Licensing Act 2003 for supply of alcohol, regulated entertainment and late night refreshment.

Vehicles

Taxis and Private Hire Vehicles

Taxis and Private Hire Drivers

Private Hire Operators

Other Licensing

Boats and Boatmen

Street Trading

Sex Establishment

Gambling Act 2005

Issue premises licences for gambling activities, consider notices for temporary use of premises for gambling, grant permits for gaming and gaming machines in clubs, regulate gaming and gaming machines in alcohol licensed premises, grant permits to family entertainment centres, grant permits for prize gaming, consider occasional use notices for betting tracks and register small society lotteries.

Investigations

Inspections and investigations will be carried out in a professional and consistent manner as set out below.

Authorisations

Only Officers authorised by the Council will be responsible for undertaking investigations. Officers will only be authorised to deal with such investigations who have the knowledge to undertake such duties. Officers are issued with a personal identity card, which will be carried with them at all times and will be shown upon request.

Covert Surveillance

During an investigation into suspected non-compliance with legislation, the Council may need to undertake directed covert surveillance from time to time. This may include using remote sound or video monitoring equipment but is most likely to involve personal observation.

Targeting

Enforcement activities are targeted towards circumstances which carry high risks or where there is or could be a considerable impact as a result of the non-compliance with the licensing conditions or the general law. Enforcement activities may be targeted towards individuals who are primarily responsible for an activity, who have the greatest responsibility to ensure compliance with the law or who have been the subject of previous enforcement action. From time to time, the Council will engage in enforcement initiatives which are directed towards issues where there is a need to draw attention to the existence of legislation and its enforcement.

The Council aims to undertake a programme of inspection and enforcement on all of its licensing functions.

Each licensing function is assessed against risk and this will be taken into account in establishing the nature and the frequency of any inspection or enforcement activity. The following factors will be taken into account when determining the level of risk associated to the particular licensing function:

- The nature of the licensing function
- The history of the licensing function
- The nature and extent of complaints received by the Council
- Information received from other agencies/departments
- Safety and public protection issues

Any inspection of a licensing function undertaken by the Council which results in the exposure of issues which reveal non-compliance with a licence or its conditions will be recorded. Appropriate action will be taken in relation to any particular issue and the licensee will be given an appropriate opportunity and time to address the issue. The licensee will be re-inspected in order to ascertain that the issue has been addressed.

Levels of Enforcement

Where informal methods have been unsuccessful, or a serious breach of a licensing condition/objective or regulation is likely to occur which may endanger the safety of the public, formal enforcement will be taken to ensure compliance with the licence. Each case will be considered on its merits. An emphasis of the Council will be the prevention of offences and further alleged offences wherever possible.

Licensees, businesses or persons generally are expected to comply with the law. The term 'enforcement' covers a wide variety of activities, including:

- Warnings
- Formal Cautions
- Hearings and Reviews
- Prosecutions

Minor breaches of licensing requirements will normally give rise to a verbal and/or written warning. More serious breaches or a continual pattern of minor breaches may involve formal cautions, hearings or reviews and even prosecutions.

In the case of the Hackney Carriage and Private Hire this may involve using the enforcement penalty points system which could lead to suspension or revocation of a licence following action by a Licensing hearing.

In the case of the Licensing Act 2003 this may involve suspension or revocation of a licence following action by the Police or a Licensing hearing.

There are a number of enforcement options and consideration will be given to when we would take action and why we need to take action and the nature of that action. Account will be taken of breaches of legislation and where a person or company has ignored advice or guidance.

Warning

If there has been a minor incident where the law has been broken, it may be decided that the most appropriate course of action is to issue the offender with a verbal and/or written warning. Account will be taken of any previous warnings when we are considering taking formal action.

A written warning will:

- clearly state the nature of the problem and may suggest either specific remedies or a standard which is to be achieved;
- state the actions which may be followed if matters do not improve;
- designate a named officer as a point of contact;

- clearly distinguish between legal requirements and desirable standards;
- indicate any follow up action which may be taken, eg a revisit in 14 days;
- offer to work with the person(s) responsible in finding a solution, if appropriate;
- point the way to specialist advice or additional information, if appropriate;
- be firm, businesslike, unambiguous, polite and helpful.

Formal Cautions

In certain situations, the Council may consider it appropriate to issue a formal caution instead of deciding to prosecute. A formal caution should still be treated as a serious matter and will be recorded.

The issue of a formal caution may influence any future decision to prosecute and may be referred to in any future court proceedings.

Formal cautions may be used to deal with less serious offences quickly. It is unlikely that a formal caution would be given in circumstances where the offender has a history of failing to change their behaviour. When a formal caution is given, the person involved must admit the offence and accept the caution.

Hearings and Reviews

In some circumstances where licence holders have for example:

- been convicted of a relevant offence;
- refused to comply with a condition of the licence;
- behaved in a way which may render that person as unsuitable to hold a licence;
- behaved in a way which is likely to have put the public at risk; or
- appear to breach the Licensing Objectives of the Licensing Act 2003 the licence holder may be reported to the Licensing Committee to review the licence. The Committee may consider that the immediate revocation, suspension or variation of a licence may be the most appropriate course of action.

Where offenders are reported to a Committee for consideration of formal action the Council will:

- give sufficient notice of the date the matter is to be considered;
- give notice to the licence holder of the allegations against them;
- give notice to the Relevant Authorities and Interested Parties;
- provide the opportunity for the licence holder to be represented;
- provide the licence holder with the opportunity to present his/her case and provide supporting evidence;
- ensure the matter is determined in an impartial manner in accordance with the rules of natural justice;
- provide a written notice of the decision with reasons.

Prosecution

The Council will not take prosecution action until the evidence has been assessed. A prosecution will be considered when:

- it will draw attention to the need to follow the law, responsible people would expect prosecution to be appropriate, or where a conviction may deter others from offending;
- the public may have been put in danger or safety may have been compromised;
- the offence is serious;
- there is a history of failure to comply with licensing conditions;
- the evidence is sufficiently strong that the case is likely to result in a conviction;
- a prosecution would be in the public interest.

In general, the more serious the offence, the more likely it is that a prosecution will be considered necessary. The following are examples of factors which may indicate a prosecution is appropriate.

- The overall seriousness of the offence and harm caused.
- The perpetrator has encouraged others to commit offences.
- The offence was pre-meditated.
- The offender showed disregard for the law.
- The offender stood to gain from the offence.
- The victim, if any, was vulnerable, suffered damage or felt threatened by the offence.
- There is significant harm to any person or relevant issue.
- The offence had a discriminatory element, for example, on the basis of race or religion.
- The offender has previous convictions or cautions that relate to similar offences or instances.
- There is likelihood that further offences may be committed.

Human Rights Act

The Provisions of the Human Rights Act 8.1.1 Of particular importance to the Council's enforcement policy, Article 6 (the right to a fair trial) Article 8 (the right to respect for private and family life) and Protocol 1, Article 1 (Protection of property) will be considered and applied in each case. In all cases, the Council will be objective in ensuring that decisions are not influenced in any way by gender, ethnic origin, religious or political beliefs of the alleged offender.

The Council will only act in accordance with the law. The Council will act as is necessary to secure public safety, prevent crime and disorder, to protect health and well-being, and to protect the rights of others.

Other Action

Each case will be decided on its merits and an informed decision made which is proportionate to the alleged offence and consistent with other similar cases. When an officer witnesses a breach in licensing legislation, he/she is required to make a decision on what correct action should be taken. This could result in a verbal/written warning, formal caution or prosecution. A prosecution will have to be in the public interest. Enforcement activities will be targeted towards situations which carry higher risks to the public.

The Council can sometimes have a shared responsibility for enforcement with another enforcement agency. If this is the case, the other agency will be consulted in order to consider whether the matter should be referred to that authority.

Where the Council take the lead in deciding what enforcement action, if any, is appropriate, it will have regard to this Policy, and any other policy as adopted by the Council as a whole.

In particular the Council will take into account the following factors:

- a) the risk or harm to the public and others;
- b) whether the matter is in the public interest;
- c) the seriousness of the complaint;
- d) any explanation of the offender;
- e) whether the matter is a recurrence;
- f) whether there has been previous contravention of the legislation and/or licence conditions;
- g) the willingness of the alleged offender to prevent a recurrence of the problem;
- h) the availability of witnesses;
- i) the reliability of witnesses;
- j) the sufficiency of the evidence.

All available evidence will be evaluated before a decision on what course of action to take is chosen. This can involve the Council's legal advisers.

A joint approach with other agencies will be used when it is deemed necessary because of the nature of the particular issue and to increase the overall impact of the matter, i.e. joint letter (or campaign) organised by the licensing authority and police or other relevant authorities.

Licensing Authority
Tendring District Council
Town Hall
Clacton on Sea
Essex CO15 1SE

Email: licensingsection@tendringdc.gov.uk

This page is intentionally left blank

LICENSING AND REGISTRATION COMMITTEE

24 JULY 2024

REPORT OF THE ASSISTANT DIRECTOR - GOVERNANCE

A4. SEX ESTABLISHMENT POLICY

(report prepared by Michael Cook & Keith Simmons)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

The purpose of this report is for the Committee to consider a draft of the Council's Sex Establishment Policy, to authorise consultation on the draft policy and for the outcome of the consultation to be reported back to this Committee for consideration together with a policy document for the period of 2024-2028.

EXECUTIVE SUMMARY

It is best practice that the Authority keeps its Policy on Sex Establishments under review to ensure that it is kept up to date with the most current information and guidance, legislation and resources available. This is then available to applicants, licensees, those seeking to address issues with regards to sex establishments, the Authority's partner agencies and the public.

RECOMMENDATION(S)

a) That subject to any matters the Committee may wish to raise, the draft Sex Establishment Policy as set out in Appendix A to this report be approved for the purposes of the consultation in b) below.

b) That the draft Sex Establishment Policy be circulated to the Licensing Authority's key stakeholders for consultation purposes and that any representations received be considered at a future meeting of the Committee.

REASON(S) FOR THE RECOMMENDATION(S)

The recommendations seek to provide a process together with a sex establishment policy can be adopted and to take account of the views of partner agencies.

ALTERNATIVE OPTIONS CONSIDERED

There is no legal requirement to adopt the legislation or have a policy in place. However having adopted the legislation, a Policy sets out how the Council will regulate the types of establishments in its area and the manner in which such premises are run.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The draft policy set out at Appendix A is intended to support the following theme from the Council's Corporate Plan 2024-28:

- Working with Partners to improve quality of life

LEGAL REQUIREMENTS (including legislation & constitutional powers)

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

Having a policy which is clearly detailed and compliant with the legislation, fit for purpose and clear to applicants could assist in implementing rules while preventing a legal challenge by way of appeal or judicial review, with associated costs in defending the same.

FINANCE AND OTHER RESOURCE IMPLICATIONS

There will be a minor cost associated with carrying out the consultation and publish statutory notices which can be accommodated from existing budgets.

USE OF RESOURCES AND VALUE FOR MONEY

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	The policy does not, in itself, directly impact on financial sustainability.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	The policy directly seeks to support consistency good decision making.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	The implementation of the policy will be reviewed to ensure it can be delivered in a way that supports economic, efficient and effective delivery of services.

MILESTONES AND DELIVERY

The adoption of the Sex Establishment Policy this financial year is itself a key milestone in ensuring Licensing Policies remain up to date.

ASSOCIATED RISKS AND MITIGATION

The principal risks this policy seeks to address to those around supporting good decision making.

OUTCOME OF CONSULTATION AND ENGAGEMENT

As part of the proposed review, the Committee would be invited to considered all representations received during a consultation with stakeholders on a revised Licensing Enforcement Policy and to recommend the proposed new Policy to Council.

EQUALITIES

In preparing this report, due consideration has been given to the Council's statutory Equality Duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, as set out in Section 149(1) of the Equality Act 2010.

The Licensing Authority will have due regard to the public sector equality duty under the Equality Act 2010. Under this duty, the Authority (in the exercise of its functions) must have due regard to the need to:

- eliminate any form of unlawful discrimination (including direct or indirect discrimination, harassment, victimisation, and any other conduct prohibited under the Act);
- advance equality of opportunity between people who share a relevant characteristic and people who do not;
- foster good relations between people who share a protected characteristic and people who do not.

SOCIAL VALUE CONSIDERATIONS

There are no direct social value considerations arising in respect of this policy.

IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030

There are no environmental implications arising directly from the content of this report.

OTHER RELEVANT IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder	The Council has a duty under Section 17 of the Crime and Disorder Act 1998 to do all that it reasonably can to prevent crime and disorder in its area.
Health Inequalities	There are no direct implications arising from the proposals set out in this report.
Area or Ward affected	All

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The current policy on licensing Sex Establishments was published in 2018.

This Council currently has one licensed sex shop within Clacton-on-Sea. There are no Sexual Entertainment Venues currently operating within the District.

Since November 2005, the Licensing Act 2003 has required a wide range of regulated entertainment to be licensed by the Council acting as the Licensing Authority.

Members will be familiar with the restrictions in the 2003 Act which means that any representation against a premises licence can only be based on the four licensing objectives. Whilst licences can be subject to review procedure they otherwise continue in force for the life of the business.

Sex Shops and Sex Cinemas are licensed under the Local Government (Miscellaneous Provisions) Act 1982. This regime gives licensing authority a wider discretion in determining whether to grant or refuse licences, a power to set a limit on the number of premises that may be suitable for a particular location, greater flexibility of applying licence conditions and the ability to accept representations for a wider scope of the community. Sex Shop licences are only valid for one year at a time.

Schedule 3 of the 1982 Act through Section 27 of the Policing and Crime Act 2009 to extend the definition of Sex Establishments from sex shops and sex cinemas to include sexual entertainment venues. Lap dancing venues and similar premises could be licenced under the more flexible 1982 Act provisions rather than solely under the Licensing Act 2003 (for alcohol sales etc).

The policy has been developed taking full account of the requirements of the legislation and guidance so as to minimise the prospect of future judicial review.

The policy provides each application will be judged on its own merits but taking into account the various criteria laid out within 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.

PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.

None

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

None

APPENDICES

Appendix A – Proposed Sex Establishment Policy

REPORT CONTACT OFFICER(S)

Include here the Name, Job Title and Email/Telephone details of the person(s) who wrote the report and who can answer questions on the content.

Name	Michael Cook Keith Simmons
Job Title	Licensing Manager Head of Democratic Services and Elections
Email/Telephone	licensingsection@tendringdc.gov.uk 01255 686565

Tendring District Council



SEX ESTABLISHMENT POLICY

TENDRING DISTRICT COUNCIL

Statement of Licensing Policy for Sex Establishments (including Sex Shops, Sexual Entertainment Venues and Sex Cinemas)

This policy sets out the Council's approach to regulating sex establishments and the procedures it will adopt in relation to applications for sex establishment licences. The policy is intended as a guide to applicants, licence holders, objectors and members of the licensing committee and provides information on what the Council expects to see in relation to an application.

The advice and guidance contained in the appendices attached to the policy are intended only to assist applicants and other parties and should not be interpreted as legal advice. All parties are advised to seek their own legal advice if they are unsure of any of the requirements of the legislation in so far as they relate to the licensing of sexual entertainment venues. It should be noted that the Council, as Licensing Authority, is required to implement the licensing regime in accordance with the law.

Tendring District Council
Licensing Authority
Town Hall
Station Road
Clacton on Sea
Essex CO15 1SE

Email: licensingsection@tendringdc.gov.uk

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982
as amended by the Policing and Crime Act 2009**

SEX ESTABLISHMENTS POLICY

1. Introduction

This policy provides Tendring District Council's approach to the regulation of sex establishments as set out in the 1982 Act and gives guidance to the Licensing Authority when considering and making decisions on applications.

Each application will be determined on its individual merits and this policy should not be regarded or interpreted as an indication that any requirement of the relevant law may be overridden.

The Council may depart from this policy if, in the interests of the promotion of the objectives, the individual circumstances of any case merit such a decision. Full reasons will be given for departing from the policy.

The Local Government (Miscellaneous Provisions) Act 1982 as amended, (The Act) introduced a licensing regime to control Sex Establishments. Tendring District Council has adopted Schedule 3 of the Act. This means that the Council can control and regulate the operation of certain kinds of Sex Establishment within its District. No Sex Establishment can operate unless it has obtained a licence from the Council. Any such licence will contain conditions that will restrict how that premises may trade.

The Policing and Crime Act 2009 amended the Miscellaneous Provisions Act, in so far as it related to the licensing of sex establishments, by adding the new category of "sexual entertainment venue".

In carrying out our licensing functions, Tendring District Council will have regard to the following:

- The Local Government (Miscellaneous Provisions) Act 1982
- Any supporting regulations
- Guidance issued by Central Government
- This statement of licensing policy Tendring District Council must also fulfil its obligations under S.17 of the Crime and Disorder Act 1998, to do all that can be reasonably done to prevent crime and disorder in Tendring.

The Policy should be read in conjunction with, and without prejudice to, other existing national, including the Human Rights Act 1998, the Equality Act 2010, The Provision of Services Regulations 2009, and the Regulators' Code 2014 (as set out under the Legislative and Regulatory Reform Act 2006).

The Equality Act 2010 places a legal obligation on public authorities to have due regard to the need to eliminate unlawful discrimination, harassment and victimization; to advance equality of opportunity and to foster good relations between persons with different protected characteristics.

In carrying out our licensing functions we will have regard to equality and will expect an applicant to meet their statutory obligations in this area and not unlawfully discriminate refuse service on grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation or display discriminatory signs.

2. Definition of 'Sex Establishment'

A 'sex establishment' is defined under the Act as a 'sex shop', a 'sex cinema' or a 'sexual entertainment venue'.

Sexual Entertainment Venue

A Sexual entertainment venue is defined as:

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

In deciding whether entertainment is "relevant entertainment" We will judge each case on its' individual merits, however we would expect that the following forms of entertainment as they are commonly understood will be "relevant entertainment":

- Lap dancing
- Pole dancing
- Table dancing
- Strip shows
- Peep shows
- Live sex shows
- Topless Bars
- Premises where private entertainment booths are present

This list is not exhaustive and as the understanding of the exact nature of these descriptions may vary, should be treated as indicative only. Ultimately, decisions as to whether entertainment is "relevant entertainment" will depend on the content of the entertainment and not the name it is given.

Sex shops and sex cinemas

Sex Establishment Licences are required for "sex cinemas" and "sex shops".

A "Sex shop" is defined as any premises, vehicle, vessel or stall that is used for a business which consists to a "significant degree" of selling, hiring, exchanging, lending, displaying or demonstrating:

sex articles; or
other things intended for use in connection with, or for the purpose of
stimulating or encouraging:

- i) sexual activity
- ii) acts of force or restraint which are associated with sexual activity

The phrase "sex articles" is defined in the 1982 Act, but the phrase "a significant degree" is not. When considering whether or not a business is selling a significant degree of sex articles and needs a licence, we will consider:

- the ratio of sex articles to other aspects of the business
- the absolute quantity of sales
- the character of the remainder of the business
- the nature of the displays in the business
- turnover
- other factors which appear to be materially relevant

A “sex cinema” is defined as any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage:

- i) sexual activity,
- ii) acts of force or restraint which are associated with sexual activity; or are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions

3. Current Premises

The District currently has one licensed sex shop and no sex cinemas or sexual entertainment venues.

4. Location of Premises

The Council has a discretion to refuse to grant or renew licences for sex establishments on the grounds that the licence would be inappropriate having regard to the character of the locality or the use of premises in the vicinity. Without prejudice to other elements of the policy, and whilst treating each new application on its own merits, the Council's policy is ordinarily to refuse licences on these grounds for premises that are in close proximity to;

- (a) residential accommodation;
- (b) schools, nurseries and other premises used by children and vulnerable persons;
- (c) parks or other recreational areas used by children and other vulnerable persons;
- (d) religious centres and places of religious worship;
- (e) youth, community and leisure centres;
- (f) access routes to and from premises listed above;
- (g) historic buildings or visitor attractions;
- (h) an area designated either as an area under regeneration, or due to be regenerated.

In addition, we will consider public safety issues when determining whether an area is appropriate; for example, areas that attract a high percentage of female, elderly or young users may be considered to be inappropriate.

The Council, in considering whether the discretionary grounds for refusal apply and whether the licence should be refused on such grounds, will take into account the following, where it is relevant to do so:

- (a) the type of activity, the duration of the licence and the proposed hours of operation;
- (b) the layout and condition of the premises;
- (c) any cumulative and adverse impact of existing sexually related licensable activities in the same locality as the proposed premises;
- (d) crime and disorder issues;
- (e) any evidence relating to actual or likely noise or disturbance caused by the premises;
- (f) the character of the locality;
- (g) the use of other premises in the vicinity.

5. Fitness of the Applicant

The Council, in considering whether the applicant or applicants are fit and proper to hold a licence will take into account the following, where it is relevant to do so:

- (a) the operation of existing or previous licences held by the applicant, including their track record of compliance;
- (b) their experience and knowledge of the type of sex establishment they are applying to run;
- (c) their ability to comply with the licensing requirements and minimise the impact of the business on local residents and businesses;
- (d) any reports concerning the applicant received from the Police or any other source;
- (e) the honesty of the applicant(s);
- (f) whether the applicant(s) intend to operate the premises or employ other people to do so;
- (g) whether the management proposed will deliver compliance with operating conditions through managerial competence; presence; a credible management structure including individuals experienced in running premises of this nature; enforcement of rules internally through training, monitoring and the publication of rates for performers and customers; a viable business plan;
- (h) whether management can be relied upon to act in the best interests of the performers;
- (i) whether there is a written welfare policy for performers and how this is to be enforced;
- (j) what system is in place to ensure that performers are adults and entitled to live and work in the UK;
- (k) whether management can be relied upon to protect the public by, for example, transparent charging and freedom from solicitation.

6. Applications

An application for the grant, renewal, transfer or variation of a licence must be made in writing using the prescribed forms by the Council.

An application can be served on the Council as follows:

- By post – Licensing Team, Tendring District Council, Town Hall, Station Road, Clacton on Sea, Essex CO15 1SE;
- By Email – licensingsection@tendringdc.gov.uk

The Council encourages applicants to serve their applications and other notices electronically. In line with the Provision of Service Regulations 2009, where an application for the grant, renewal or transfer of a licence is submitted electronically, the Council will send a copy of the application to the Chief Officer of Police once received. In all other cases, it will still be the responsibility of the applicant to serve a copy to the Police.

The Council expects that any premises for which a licence is required should have either planning consent or lawful use under planning legislation for the intended use and hours of operation. The Council will not treat licensing applications as a re-run of a planning application however, and it will not seek to impose licensing conditions which duplicate conditions that have been imposed on a planning consent.

7. Fees

The licence fees for all sex establishments including sexual entertainment venues have been reviewed and set at a level that is reasonable and proportionate to the effective cost of processing the application and making compliance checks throughout the period of the licence.

The application process involves paying a non-returnable application fee. The fees will be reviewed by the Council and the current schedule of fees is available on the Tendring District Council website. No further fees will be applied by the Council in the event that objections are received to an application and a hearing is required to determine the application.

The authority must be aware of case law, of which the Court of Appeal case of R (Hemming (t/a Simply Pleasure Ltd) and others) v Westminster City Council [2013] EWCA Civ 591; [2013] WLR (D) 203 is especially relevant.

8. Advice and Guidance

The Council will seek to liaise with applicants and, wherever possible and necessary, mediate between applicants and objectors in order to achieve a satisfactory outcome for all stakeholders. Applicants are advised to discuss their proposals with the Council and any interested parties prior to an application being made.

9. Grant, renewal, or transfer of licence

The Council may grant to any applicant and renew a licence for the use of any premises as a 'sex establishment' on such terms and conditions as specified by the Council which are shown in the Appendix of this policy document.

A licence once granted will usually remain in force for 12 months but can be issued for a shorter period if deemed appropriate. In order to continue operating as a sex establishment the licence holder must make a renewal application to the Council at least 28 days prior to the expiry of the existing licence.

An application to transfer a licence to any other person may be made.

Where an application for renewal or transfer of a licence is made at least 28 days before the expiry of the existing licence, the licence shall remain in force until such time as the application has been determined.

10. Objections

Anyone wishing to object to an application must do so in writing within 28 days of the application being made to the Council's Licensing Authority.

A person making a representation must state their full name and address and their grounds for objecting to the application and indicate whether or not they consent to have their name and address revealed to the applicant. The Council will not consider objections that are frivolous, vexatious or relate to moral grounds. Moral objections cannot be made under the terms of the Act.

Where written objections are made the Council will provide copies to the applicant.

11. Determining Applications

In determining an application relating to a Sex Establishment licence it may be necessary for the application to be heard by the Miscellaneous Licensing Sub-Committee of the Council who will assess the application on its merits having regard to the content of this policy, the relevant legislation and any relevant guidance that may be issued from time to time.

When determining applications, the Council will take account of any written objections, comments or observations made by the Chief Officer of Police and any objections made by other persons or interested parties such as statutory agencies or authorities.

When considering applications, the Council will have regard to: (a) the Local Government (Miscellaneous Provisions) Act 1982 (b) the Human Rights Act 1998 (c) the Provision of Services Regulations 2009 (d) Section 19 of the Crime and Disorder Act 1998 (e) the Equality Act 2010 (f) any supporting or accompanying regulations; (g) this Statement of Licensing Policy.

12. Conditions

No condition will be imposed by the Council that cannot be shown to be necessary, reasonable and proportionate to the application that has been submitted.

In the event that conditions are attached to the grant of a licence they will be adapted to the operating circumstances and requirements of the individual premises and may also take into account any objections, comments or observations received, particularly where they have been received from the Chief Officer of Police.

The Council will attach those conditions shown in the Appendix which are relevant to the activities granted to the sex establishment licence applied for. These conditions are not exhaustive however and further conditions may be attached on the advice of a responsible authority such as the Police for example, or may be attached by the Council's Miscellaneous Licensing Committee as they believe necessary, reasonable and proportionate at any licensing hearing that the Council has had to convene to consider relevant objections to an application submitted for a sex establishment licence.

13. Hearing Procedure

Where the Council is required to determine an application by reference to the Miscellaneous Licensing Committee, the applicant and objectors will be advised of the date, time and venue of the hearing.

In preparation for the hearing, all parties will receive a copy of the report prior to the hearing. The report will contain a summary of the application, representations and any other relevant information.

At the hearing, parties will have the opportunity to address the Committee and, if permitted by the Chairman of the Committee, ask questions of parties that they feel are relevant to the determination process.

APPENDIX A

Standard Conditions applicable to Licences for Sex Establishments

Notes

(i) Except where the context demands otherwise the singular includes the plural and the masculine includes the feminine.

(ii) Nothing in these conditions shall be construed as interfering with
(i) the discretion of the licensee or his representative regarding the admission of any person or

(ii) the need to strictly comply with all relevant statutory requirements.

(iii) These conditions are divided as follows:

Part 1 General

Part 2 Conditions which apply to all premises

Part 3 Conditions which apply to sex shops

Part 4 Conditions which apply to sex cinemas

Part 5 Conditions which apply to sexual entertainment venues

(iv) In these rules all references to the British Standard (BS) shall be deemed to refer to the current standard.

(v) A premises licence may also be required for the operation of a sex cinema.

Part 1 General

1. In the event of a conflict between these conditions and any special conditions contained in a licence relating to a sex establishment the special conditions shall prevail.

2. 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 enactment, by law, order or regulation other than the Third Schedule of the Local Government (Miscellaneous Provisions) Act 1982.

Part 2 Conditions which apply to all premises

Exhibition of Licence

1. The copy of the licence and these Regulations which are required to be exhibited in accordance with paragraph 14(1) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 shall be reproductions to the same scale as those issued by the Council. The copy of the licence required to be displayed as aforesaid shall be suitably framed and exhibited in a position that it can easily be seen by all persons using the premises. The copy of these Regulations shall be retained in a clean and legible condition.

Responsibility of Licensee

2. The licensee shall take all reasonable precautions for the safety of the public and employees and, except with the consent of the Council, shall retain control over all areas of the premises.

3. The premises shall not be used for regulated entertainment, exhibition or display of any kind unless the Council's consent has been first obtained and any necessary licence granted.

Conduct and Management of the Premises

4. The licensee, or a responsible person over 18 years of age and nominated by him in writing for the purpose of managing the sex establishment in his absence, shall be in charge of and upon the premises during the whole time it is open to the public. Such written nomination shall be continuously available for inspection by an officer authorised in writing by the Council. The person in charge shall not be engaged on any duties which will prevent him from exercising general supervision and he shall be assisted as necessary by suitable adult persons to ensure adequate supervision. The person in charge shall be conversant with these rules, a copy of which shall be held on the premises.

5. The licensee, or the responsible person approved under Regulation 4, shall maintain a daily register to be kept on the premises in which he shall record the name and address of any person who is to be responsible for managing the sex establishment in his absence and the names and addresses of those employed in the sex establishment. The register to be completed each day of the sex establishment opening for business and is to be available for inspection by the Police and by authorised officers of the Council.

6. The Licensee shall ensure that, during the hours the sex establishment is open for business, every employee is easily identified as an employee.

7. A notice showing the name of the person responsible for the management of a sex establishment shall be prominently displayed within the sex establishment throughout the period during which he is responsible for its conduct.

8. 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 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.

9. The licensee shall ensure that no part of the premises is used by prostitutes (male or female) for the purposes of soliciting or any other immoral purpose.

10. 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.

11. 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.

12. No person under the age of 18 shall be admitted to the premises or employed in the business of the sex establishment.

External Appearance

13. No display, advertisement, word, letter, model, sign, light, placard, board, notice, device, representation, drawing, writing or any other matter or thing (whether illuminated or not) shall be exhibited so as to be visible from outside the premises except;

(i) Any notice of a size and in a form approved by the Council which is required to be displayed so as to be visible from outside the premises by law, or by any condition of a licence granted by the Council.

(ii) Such display, advertisement, word, letter, model, sign, light, placard, board, notice, device, representation, drawing, writing, or any matter or thing as shall have been approved by the Council.

14. The entrances, windows and openings to the premises shall be of a material or covered with a material which will render the interior of the premises invisible to passers-by.

State, Condition and layout of the premises

15. The premises shall be maintained in good repair and condition.

16. The number, size and position of the doors or openings provided for the purposes of the ingress and egress of the public shall be to the satisfaction of the Council and shall comply with the following requirements :-

(i) All such doors or openings approved by the Council shall be clearly indicated on the inside by the word "exit".

(ii) Doors and opening other than exits which lead to parts of the premises to which the public are not permitted to have access shall have notices placed over them marked "private".

(iii) No access shall be permitted through the premises to any other premises adjoining or adjacent except in the case of emergency.

17. The external doors to the premises shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order. The external door shall only be opened at such times as person(s) require access and egress to the interior of the premises.

18. The licensee shall make provision in the means of access both to and within the premises for the needs of members of the public visiting the premises who are disabled.

19. Alterations or additions either internal or external and whether permanent or temporary to the structure, lighting or layout of the premises shall not be made except with the prior approval of the Council.

20. All parts of the premises shall be kept in a clean and wholesome condition to the satisfaction of the Council.

Maintenance of the means of Escape

21. The means of escape provided for all persons on the premises shall be maintained unobstructed, immediately available and clearly identifiable in accordance with the approved arrangements.

22. All fire resisting and smoke stop doors shall be maintained, self closing and shall not be secured open.

Fire Appliances

23.The premises shall be provided with fire appliances suitable to the fire risks on the premises, and such fire appliances shall be maintained in proper working order and shall be available for instant use.

24.The licensee shall comply with any fire precautions and safety measures that may be required of him by the Fire Authority.

25.Portable fire appliances shall be examined at least once a year and periodically tested in accordance with the current British Standard by a competent person and the date of such test shall be clearly marked on the appropriate extinguishers or on stout tabs securely attached to them. Extinguishers which incorporate an anti-freeze agent shall be examined and recharged in compliance with the manufacturer's instructions.

Lighting

26.The licensee or any other person concerned in the conduct or management of the licensed sex establishment shall, in the absence of adequate daylight, ensure that adequate lighting is maintained to the satisfaction of the Council in all parts of the premises to which the public and staff have access and is in operation continuously during the whole time the premises are open to the public.

27.The normal lighting levels and the lighting to 'EXIT' notices shall be maintained at all times and shall not in any circumstances be extinguished or dimmed while the public are on the premises provided that, so long as there is sufficient daylight in any part of the premises, artificial light need not be used in any part.

Electrical Installations

28.The electrical installation for the premises shall be maintained in a safe working condition, as prescribed in the current edition of the Regulations for electrical installations issued by the Institute of Electrical Engineers.

29.Unless the Council decides otherwise an inspection certificate, as prescribed in the current edition of the Regulations for electrical installations issued by the Institute of Electrical Engineers, for the electrical installation associated with the premises shall be submitted to the Council at least once every five years or such other time specified on the certificate. The certificate shall be signed by a qualified engineer.

Change of Use

30.No change of use of any portion of the premises from that approved by the Council shall be made until the consent of the Council and the Police has been obtained.

31.The Licensing Authority and Essex Police must be informed should the licensee seek to change the use of the establishment to another form of sex establishment.

Sale of goods

32.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 displayed, sold, hired, exchanged, loaned or demonstrated in a sex cinema or a sexual entertainment venue.

Admission of Authorised Officers

33. Officers of the Council, Police, and other authorised agencies who are furnished with authorities which they will produce on request, shall be admitted immediately at all reasonable times and at any time the premises are open for business to all parts of the premises.

Part 3 Conditions which apply to Sex Shops

1. It is permitted to play music or words either via national or local radio stations or any pre-recorded means, but no material whatsoever of an adult theme or nature can be played or broadcast, whether by means of sound or moving picture.

Goods available in Sex Establishments

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

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

4. No film or video film shall be exhibited, sold or supplied unless it has been passed by the British Board of Film Censors, and bears a certificate to that effect, or approved by the Council and is a reproduction authorised by the owner of the copyright of the film or video film so certified.

Part 4 Conditions which apply to Sex Cinemas

Exhibition of Films

1. 'Film exhibition' means film exhibitions as defined in the Cinemas Act 1985, i.e. any exhibition of moving pictures which is produced otherwise than by the simultaneous reception and exhibition of (a) television programmes, broadcast by the British Broadcasting Corporation or the Independent Broadcasting Authority or (b) programmes included in a cable programme service which is or does not require to be licensed under Section 4 of the Cable and Broadcasting Act 1984.

2. No film shall be exhibited at the premises unless: (a) it is a current news reel; or (b) it has been passed by the British Board of Film Classification as a U, PG, 12, 15, 18, or RESTRICTED (18) film (c) it has been passed by the Council as a U, PG, 12, 15, 18, or RESTRICTED (18) film.

Restricted (18) films

3. Films in the RESTRICTED (18) category 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" Notice

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 the 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.

Advertisements

5. No advertisement displayed at the premises of a film to be exhibited at the premises shall depict as a scene or incident in the film any scene or incident which is not included in the film as certified by the British Board of Film Censors or the British Board of Film Classification or approved for exhibition by the licensing authority, as the case may be.

6. Where the licensing authority has given notice in writing to the licensee of the premises objecting to an advertisement on the ground that, if displayed, it would offend against good taste or decency or be likely to encourage or incite crime or lead to disorder or be offensive to public feeling, that advertisement shall not be displayed at the premises without the prior consent in writing of the licensing authority. Objection to exhibition of film

7. Where the licensing authority has given notice in writing to the licensee of the premises prohibiting the exhibition of a film on the ground that it contains material which, if exhibited, would offend against good taste or decency or would be likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling, that film shall not be exhibited in the premises except with the prior consent in writing of the licensing authority.

Sale of Sex Article

8. 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 displayed, sold, hired, exchanged, loaned or demonstrated in a 'sex cinema'

Part 5 Conditions which apply to Sexual Entertainment Venues Performances of Relevant Entertainment

1. The performance of relevant entertainment within the premises shall not be visible from any area outside of the premises at any time. Age Restrictions

2. A prominent clear notice shall be displayed at each entrance to the premises advising customers that no person under 18 will be admitted and they may be asked to produce evidence of their age.

3. Members of staff at the premises shall seek "credible photographic proof of 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 carrying a "PASS" logo. Club Rules

4. The premises must provide a copy of its Club Rules to the Council and to Essex Police for consideration and approval.

5. All performers and staff shall be aware of the Club Rules.

6. All dancers, staff and door supervisors shall read a copy of the rules relating to operating relevant entertainment. They shall sign and date a copy which shall be retained by the premises as part of their due diligence.

Management Operation Manual

7. A management operation manual detailing all aspects of procedure when the premises are operating relevant entertainment shall be produced and approved by the Council. This document shall be reviewed annually and the manual as reviewed shall be submitted for approval of the Council together with the application for renewal of the licence.

Performers

8. Performers shall be aged not less than 18 years and the "Challenge 25" scheme will be used to manage this.

9. All performers shall be aware of the management operation manual.

10. A log book shall be maintained on the premises detailing the names and start and finish times of individual performers involved in all forms of adult entertainment.

11. At all times during the performance, performers shall have direct access to a dressing room without passing through, or in close proximity to, the audience.

12. On leaving the premises performers, who wish to be, shall be escorted by staff member to their vehicle or other safe location. Performances

13. Whilst dancers are performing in any public area there shall be a minimum distance of one metre maintained between the dancer and the seated customers. Prominent, clear notices shall be displayed at each table stating this requirement.

14. There shall be no physical contact between customers and the dancers except for the placing of money or tokens in a garter or into the hands of the dancer at the beginning or conclusion of a performance. A "touch and go" policy will operate i.e. any person/customer touching dancers will be ejected from the premises and barred from those premises.

15. No performances shall include any sex act with any other performer, persons in the audience or with the use of any object.

16. No audience participation shall be permitted.

17. Signs displaying the rules on the performance of relevant entertainment will be displayed throughout the premises and be clearly visible to patrons. This will include any private individual booth area.

18. In the event of the relevant entertainment being performed for private viewing, the patron shall be informed of the duration and price of the relevant entertainment, and the details shall be specified in a clearly visible notice in each area designated for private relevant entertainment. Each such area shall be capable of being continually monitored by a member of staff.

19. No performer or member of staff shall sit on, straddle, stroke, fondle or make any form of sexual contact with a customer at any time.

Door Supervisors

20. One SIA registered door supervisor per 75 customers shall be on duty on the premises whilst relevant entertainment takes place plus 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.

21. The door supervisors shall be on duty at the premises at all times when the premises provide relevant entertainment.

Closed Circuit Television (CCTV)

22. A high quality CCTV system shall be installed to cover all entrances and exits to the premises and areas where relevant entertainment will take place, with the exception of the performers' changing area. This system must be installed and fully operational before the premises opens for the licensable activity applied for. All cameras shall continually record whilst the premises are open to the public and video recording shall be kept available for a minimum of 31 consecutive days with date and time stamping.

23. At the time of installation or upgrading of any CCTV system it shall comply with the current and relevant Police guidelines for Standard Minimum closed circuit television requirements. To obtain a clear head and shoulders image of every person entering the premises on the CCTV System, persons entering the premises should be asked to remove headwear, unless worn as part of religious observance.

24. A member of staff who is fully trained in the use of the system shall be on duty at all times when the premises are open until the premises are clear of customers, cleared of staff and closed. 26. Within 24 hours of a request made by Essex Police or the Licensing Authority, the premises will provide the CCTV footage requested.

Layout of premises

25. The approved activities shall take place only in the areas designated by the Licensing Authority.

26. All dance booths are to be equipped with a panic alarm for safety.

27. Arrangements shall be put in place to restrict access to the dressing room at all times when the relevant entertainment is taking place, and until such time as all performers have vacated it. The performers' dressing rooms will be off-limits to all non-employees.

28. The layout within the areas used by customers shall not undergo substantial change without the prior written consent of the Licensing Authority. Sale of goods

29. 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 displayed, sold, hired, exchanged, loaned or demonstrated in a 'Sexual Entertainment Venue'.

Door Policy

30. No entry to be permitted to any customer who is considered by the management or door staff to be incapable of controlled or acceptable behaviour, especially those who may be showing sign of having been intoxicated through alcohol or drugs.

31. The rules for the venue will be explained to all customers before entry is permitted.

32. One member of door staff will be present at the entrance to the venue at all times during opening hours.

33. Door staff will carry two-way radios at all times.

34. Dress code will be smart at all times; no sportswear will be permitted.

Operation of the Venue

35. A copy of the house customer rules will be on display at the entrance to the venue and in the bar area.

36. Waitresses/Waiters and bar staff must remain fully clothed at all times.

Customer and Performer Conduct

There should be published rules on customer conduct and performer conduct and the rules should contain as a minimum the following requirements, and the licensee shall ensure that the rules are enforced.

37. Any customer who is offensive either by language or action towards the performer will be ejected from the venue. They will also be barred from entry on any future occasion.

38. Strictly no photographing or videoing of performances or performers before, during or after the performance will be allowed. All customers' mobile phones will be switched off whilst on the premises. Anyone found breaching this condition will be ejected from the venue and barred from entry on any future occasion.

39. Any customer found in possession of drugs, attempting to consume drugs or selling drugs will be detained by the security staff and the Police will be called. They will also be barred from entry on any future occasion.

40. Throwing of money at performers will not be permitted before, during or after the performance, nor will the giving of any other gift. Anyone breaching this condition will be ejected from the venue and barred from entry on any future occasion.

41. Customers will not be allowed to pass on personal details such as business cards or telephone numbers to performers before, during or after a performance.

42. Payment must be made to the performer only and strictly in advance of the performance taking place.

Performer Conduct

43. No performer will be allowed to carry or use any sex toy, sex aid or other paraphernalia.

44. No performer will be allowed to wear bondage or sadomasochist clothing or paraphernalia. No accessories such as sex toys or aids are to be carried or used by the performers.

45. No handing out of cards, telephone numbers or personal contact information to customers or any other persons by performers.

46. Performers must not encourage customers to touch them in any way before, during or after a performance.

47.Performers found in possession, using or attempting to sell drugs or under the influence of drugs before, during or after a performance will be immediately dismissed and the Police notified.

48.Performers will instruct all customers to keep their hands by their sides at all times during a private dance.

49.Any approach by a customer to make personal contact with a performer must be immediately reported to the management or security.

50.Performers will not be permitted to enter any part of the venue other than the private dance area and dressing room areas while fully nude.

LICENSING AND REGISTRATION COMMITTEE

24 JULY 2024

REPORT OF THE ASSISTANT DIRECTOR - GOVERNANCE

A5. GAMBLING ACT 2005 POLICY

(report prepared by Michael Cook & Keith Simmons)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To seek the Committee's approval for a revised draft Statement of Gambling Policy to be circulated to key stakeholders for consultation purposes, for the outcome of the consultation to be reported back to this Committee for consideration together with a proposed policy for 2025-2028.

EXECUTIVE SUMMARY

The Council is required to review and renew its Statement of Gambling Policy every three years in accordance with the Gambling Act 2005. The review and renewal of the policy is subject to public consultation and must be adopted by Full Council on recommendation from the Licensing and Registration Committee and Cabinet.

The Review was last undertaken 3 years ago and no significant issues have arose through use of the Policy since this time. The proposed changes are considered minor however, internal consultation will be undertaken with the Council's Corporate Enforcement Group through this process.

The Government introduced a gambling white paper in April 2023. Once the review is concluded it is likely that there will be changes to the Gambling Commissions guidance issued to Local Authorities, which is likely to have an impact on the Councils Gambling Policy.

The conclusion of the review may full during the consultation or determination of the Councils Policy review which may present an unintended clash.

The Council is unable to extend the existing Gambling Act policy until the national review has concluded and must review its existing policy within the Statutory period.

It is therefore proposed to undertake a light touch review in 2024 to ensure that the Authority meets its obligations to publish to its revised policy by 31 January 2025.

RECOMMENDATION(S)

a) That subject to any matters the Committee may wish to raise, the draft Gambling Policy as set out in Appendix A to this report be approved for the purposes of the consultation in b) below.

b) That the draft Gambling Policy be circulated to the Licensing Authority's key stakeholders for consultation purposes and that any representations received be considered at a future meeting of the committee.

REASON(S) FOR THE RECOMMENDATION(S)

The Council's reviewed and revised Gambling Policy must be adopted, published and in place by the 31 January 2025. Failure to comply or meet with this deadline would mean that the Council could not lawfully accept or process Gambling Act 2005 applications after that date which would have a significant negative impact on the Council being able to recover its reasonable costs in relation to operating its licensing service for this function.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The draft schedule set out at Appendix A is intended to support the following themes from the Council's Corporate Plan 2024-28:

- Pride in our area and services to residents
- Working with Partners to improve quality of life
- Promoting our Heritage offer, attracting visitors and encouraging them to stay longer
- Financial sustainability and openness

The Betting and Gaming industry in our District provides significant direct and indirect employment, skills and training for local people and particularly in our family friendly and family orientated seaside resort areas of Clacton, Dovercourt and Walton on the Naze, it also provides welcome leisure attractions for visitors to our District.

LEGAL REQUIREMENTS (including legislation & constitutional powers)

The Council is required to review its Statement of Gambling Policy every three years in accordance with Section 349 of the Gambling Act 2005 and to widely consult on that review with responsible authorities and other interested parties. The Council has to have its Gambling Policy agreed, published and in place by January 2025. Failure to meet this deadline would mean that the Council would be ultra vires in respect of gambling applications submitted after that date.

FINANCE AND OTHER RESOURCE IMPLICATIONS

The cost of administration in terms of production, consultation and publication of the Council's Statement of Gambling Policy is met within current service budget and gambling licence and permit fee income.

USE OF RESOURCES AND VALUE FOR MONEY

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	The policy does not, in itself, directly impact on financial sustainability.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	The policy directly seeks to support consistency good decision making.

C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	The implementation of the policy will be reviewed to ensure it can be delivered in a way that supports economic, efficient and effective delivery of services.
--	--

MILESTONES AND DELIVERY

The adoption of the Statement of Gambling Act 2005 Policy this financial year is itself a key milestone in ensuring Licensing Policies remain up to date.

ASSOCIATED RISKS AND MITIGATION

The Council's reviewed and revised Gambling Policy must be adopted, published and in place by the 31 January 2025. Failure to comply or meet with this deadline would mean that the Council could not lawfully accept or process Gambling Act 2005 applications after that date which would have a significant negative impact on the Council being able to recover its reasonable costs in relation to operating its licensing service for this function.

Such a scenario could see the Council open to complaint and judicial challenge through the Courts, particularly from applicants who may suffer loss of income and reputation as a result of the Council being unable to process applications submitted under the Gambling Act 2005.

CONSULTATION AND ENGAGEMENT

It is recommended that public consultation be over a minimum of a four-week period. The consultation itself will encompass and engage a diverse range of consultees such as faith groups, local schools, Children's Safeguarding Service, voluntary groups, premises licence holders, business representatives, betting and gaming representatives and organisations that work with problem gamblers like Gamblers Anonymous to seek a wide variety of comment and views on the draft policy. The policy will also be available to view, download and comment on through the Council's web site.

EQUALITIES

In preparing this report, due consideration has been given to the Council's statutory Equality Duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, as set out in Section 149(1) of the Equality Act 2010.

The Licensing Authority will have due regard to the public sector equality duty under the Equality Act 2010. Under this duty, the Authority (in the exercise of its functions) must have due regard to the need to:

- eliminate any form of unlawful discrimination (including direct or indirect discrimination, harassment, victimisation, and any other conduct prohibited under the Act);
- advance equality of opportunity between people who share a relevant characteristic and people who do not;
- foster good relations between people who share a protected characteristic and people who do not.

SOCIAL VALUE CONSIDERATIONS

There are no direct social value considerations arising in respect of this policy.

IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030

There are no environmental implications arising directly from the content of this report.

OTHER RELEVANT IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder	The Council has a duty under Section 17 of the Crime and Disorder Act 1998 to do all that it reasonably can to prevent crime and disorder in its area.
Health Inequalities	There are no direct implications arising from the proposals set out in this report.
Area or Ward affected	All

PART 3 – SUPPORTING INFORMATION**BACKGROUND**

Section 349 of the Gambling Act 2005 prescribes that:-

- (1) A licensing authority shall before each successive period of three years—
 - (a) prepare a statement of the principles that they propose to apply in exercising their functions under this Act during that period, and
 - (b) publish the statement.
- (2) A licensing authority shall—
 - (a) review their statement under this section from time to time,
 - (b) if they think it necessary in the light of a review, revise the statement, and
 - (c) publish any revision before giving it effect.
- (3) In preparing a statement or revision under this section a licensing authority shall consult—
 - (a) either—
 - (i) in England and Wales, the chief officer of police for the authority's area, or
 - (ii) in Scotland, the chief constable of the police force maintained for the police area comprising that area,
 - (b) one or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authority's area, and
 - (c) one or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under this Act.

The Gambling Act 2005 places a statutory responsibility on all Local Authorities to be responsible for the issuing of various permissions, permits and notices relating to the use of premises for gambling activities:-

- a) Consideration of applications for premises licences for:
 - Casinos
 - Bingo premises
 - Betting premises and Race tracks
 - Adult gaming centres
 - Family entertainment centres
- b) Consideration of applications for permits for:
 - Gaming machines in alcohol-licensed premises, such as pubs
 - Gaming machines for members clubs
 - Gaming in members clubs
 - Unlicensed family entertainments centres (category D machines only – i.e. those that have the lowest level of stakes and prizes)
 - Prize gaming
- c) Temporary use notices
- d) Occasional use notices
- e) Provisional Statements
- f) Registration of small society lotteries

Each Authority is legally required to formulate its own Gambling Licensing Policy Statement which must be reviewed and re-published every three years.

The policy must be based on the three licensing objectives, which are;

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

This proposed draft and review of the policy will be the sixth that has taken place since the first policy was adopted in 2006.

The framework of this policy was originally initiated and designed by the Essex Licensing Officers Forum so that applicants and existing businesses in the betting and gaming industry that have outlets across Essex would have a template to recognise and work with across a wide range of different Local Authorities in Essex. It also ensured a framework of generic best practice amongst all Essex Authorities and ensured that any necessary regulatory requirements did not unnecessarily burden businesses who have applications to make for licensed outlets across Essex such as chain of betting shops for example.

This has also enabled the development of a robust and practical policy through partnership for how the Gambling Act 2005 will be administered and compliance is managed for applicants and licence and permit holders alike.

The policy framework has then been augmented by local requirements and local strategy since 2006 to reflect the Authority's own area as influenced by public consultation and Tendring District Council's Licensing Committee Members.

PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.

None

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

None

APPENDICES

Appendix A – Draft Gambling Policy

REPORT CONTACT OFFICER(S)

Include here the Name, Job Title and Email/Telephone details of the person(s) who wrote the report and who can answer questions on the content.

Name	Michael Cook Keith Simmons
Job Title	Licensing Manager Head of Democratic Services and Elections
Email/Telephone	licensingsection@tendringdc.gov.uk 01255 686565

Tendring District Council



GAMBLING LICENSING POLICY STATEMENT

2025–2028

Adopted XXXX

Tendring District Council: www.tendringdc.gov.uk

FOREWORD

Welcome to the latest review of the Council's Licensing Policy for Gambling. The policy sets out how the Council will regulate gambling activities within the District.

Whilst for the majority of the general public gambling is an enjoyable and often social experience, it is for some individuals a largely hidden addiction which taken to excess has an adverse impact on their finances, health, wellbeing and relationships.

The wellbeing of our residents is a key priority for the Council and the Gambling Policy has a role to play in supporting this priority through its control of gambling premises.

We hope that the new revised policy is clear and easily understood and will be of significant use to the Council, its partners and operators when considering gambling matters.

Chairman, Licensing and Registration Committee

**TENDRING DISTRICT COUNCIL
GAMBLING LICENSING POLICY STATEMENT**

Section	Contents	Page No*
PART A		
1.0	Introduction	
2.0	The Licensing Objectives	
3.0	Description of the District	
4.0	Responsibilities under the Act	
5.0	Statement of Licensing Policy	
6.0	Consultation	
7.0	Approval of Policy	
8.0	Declaration	
9.0	Responsible Authorities	
10.0	Interested Parties	
11.0	Exchange of Information	
12.0	Public Register	
13.0	Compliance and Enforcement	
PART B - PREMISES LICENCES		
14.0	Delegation of Powers	
15.0	General Principles	
18.0	Provisional Statements	
19.0	Representations and Reviews	
20.0	Adult Gaming Centres	
21.0	(Licensed) Family Entertainment Centres	
22.0	Casinos	
23.0	Bingo Premises	
24.0	Betting Premises	
25.0	Tracks	
26.0	Travelling Fairs	
PART C - PERMITS/TEMPORARY OR OCCASIONAL USE NOTICES/REGISTRATIONS		
27.0	General	
28.0	Unlicensed Family Entertainment Centre Gaming Permits	
29.0	(Alcohol) Licensed Premises Gaming Machine Permits	
30.0	Prize Gaming Permits	
31.0	Club Gaming and Club Machine Permits	
32.0	Temporary Use Notices	
33.0	Occasional Use Notices	
34.0	Small Society Lotteries	
36.0	Useful Contacts from Gambling Commission Website	
ANNEX DOCUMENTS		
	Annex A – Responsible Authorities	
	Annex B – Definitions	
	Annex C – Summary of Machine Provisions by Premises	
	Annex D – Table of Delegations of Licensing Functions	

PART A

1.0 INTRODUCTION

1.1 This Statement of Licensing Policy sets out the principles that Tendring District Council, as the Licensing Authority under the Act (referred to in this document as ‘the Act’), proposes to apply in discharging its functions to license premises for gambling under the Act as well as:-

- designating the body responsible for advising the Authority on the protection of children from harm;
- determining whether or not a person is an “Interested Party”;
- exchanging information with the Gambling Commission and others; and
- inspecting premises and instituting proceedings for offences under the Act.

2.0 THE LICENSING OBJECTIVES

2.1 In exercising most of its functions under the Act, Licensing Authorities must have regard to the Licensing Objectives as set out in Section 1 of the Act. The Licensing Objectives are:-

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

3.0 **DESCRIPTION OF THE DISTRICT**

3.1 The Tendring District Council is situated in the County of Essex, which comprises twelve District and Borough Councils and two Unitary Authorities.



4.0 **RESPONSIBILITIES UNDER THE ACT**

4.1 When the Gambling Act 2005 (the Act) came into force in late 2007, it brought in a new, comprehensive system for gambling regulation in Great Britain. For the first time, the vast majority of commercial gambling was brought together in a single regulatory framework. The Act established a dedicated regulator, at a national level, in the form of the Gambling Commission (the Commission). But it also recognised the potential local impact and importance of regulating gambling as a result of which it created many local regulators, whose job it is to manage gambling locally, and in line with local circumstances. Those local regulators are the 368 licensing authorities of England, Wales and Scotland and in doing this the Act established a strong element of local decision-making and accountability in gambling regulation.

4.2 The Act gives local regulators discretion to manage local gambling provision, including discretion as to the level of fees set to cover the cost of administering the local system of regulation within limits set by The Department for Digital Culture Media and Sport (DCMS) in England and Wales. It also sets out some boundaries to that discretion, consistent with the recognition of gambling as a mainstream leisure activity.

4.3 The Act also provides scope for the Commission to act to set an overall direction at national level, while leaving licensing authorities in the lead locally, with appropriate support from the Commission. This Guidance, to which licensing authorities must have regard, is an important part of those arrangements

4.4 The Gambling Commission is responsible for issuing Operating and Personal Licences to persons and organisations who:-

- operate a casino;
- provide facilities for playing bingo or for pool betting;

- provide betting or act as intermediaries for betting;
- make gaming machines available for use in Adult Gaming Centres and Family Entertainment Centres;
- manufacture, supply, install, adapt, maintain or repair gaming machines;
- manufacture, supply, install or adapt gambling machine software; or
- promote a lottery.

4.5 The Licensing Authority is responsible for licensing premises in which gambling takes place and covers. All types of gambling, other than spread betting and the National Lottery. It is also responsible for issuing permits for premises with gaming machines and for receiving notices from operators wishing to use unlicensed premises for gambling on a temporary basis. It is also responsible for the registration of certain types of exempt Small Society Lotteries.

4.6 The Licensing Authority cannot become involved in the moral issues of gambling and must aim to permit the use of premises for gambling in so far as they think it is:-

- in accordance with any relevant Code of Practice under Section 24 of the Act;
- in accordance with any relevant Guidance issued by the Gambling Commission under Section 25;
- reasonably consistent with the Licensing Objectives (subject to the above paragraphs, and
- in accordance with the Licensing Authority's Statement of Licensing Policy.

Before the Licensing Authority can consider an application for a Premises Licence, an Operating and Personal Licence, or both, must have been obtained from the Gambling Commission.

5.0 STATEMENT OF LICENSING POLICY

5.1 The Licensing Authority is required by the Act to publish a Statement of Licensing Policy which contains the principles it proposes to apply when exercising its functions under the Act.

5.2 In this document this is referred to as 'the Policy'. This Policy must be reviewed and published every three years. The Policy must also be reviewed from 'time to time' and any proposed amendments and/or additions must be subject to fresh consultation. The 'new' Policy must then be published.

5.3 This Policy takes effect on **XXXX 2025** and replaces the Policy previously in force.

6.0 CONSULTATION

6.1 In producing this Policy, the Licensing Authority consulted widely before finalising and publishing it. In addition to the statutory consultees (listed below), the Council chose to consult with additional local groups and individuals.

6.2 The Act requires that the following parties are consulted by the Licensing Authority:-

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

6.3 The other groups and people consulted were:-

- Organisations, including faith groups and voluntary organisations working with people who have gambling addictions, medical practices or primary care trusts and the Citizens' Advice Bureau;
- Other tiers of local government;
- Businesses who are, or will be, holders of Premises Licences;
- Responsible Authorities under the Act.

6.4 The Licensing Authority's consultation took place between **XXXX 2024 and XXXX 2024**.

7.0 APPROVAL OF POLICY

7.1 This Policy was approved at a meeting of the full Council on **XXXX 2024** and was published via its website on **XXXX 2024**. Copies are available on request.

7.2 It should be noted that this Policy does not override the right of any person to make an application, to make representations about an application, or to apply for a review of a licence, as each case will be considered on its own merit and according to the requirements of the Act.

8.0 DECLARATION

- 8.1** In this Policy the Licensing Authority declares that it has had regard to the Licensing Objectives, formal Guidance issued to Licensing Authorities and any responses from those consulted during the consultation process.
- 8.2** The Council recognises its diverse responsibilities under equality legislation and will monitor the impact of these statutory duties through its various corporate schemes such as the Race Equality Scheme and the Disability Equality Scheme.
- 8.3** Appendices have been attached to this Statement providing further information and guidance that is intended only to assist readers and should not be interpreted as legal advice or as constituent of the Licensing Authority's policy. Readers of this document are strongly advised to seek their own legal advice if they are unsure of the requirements of the Act, or the guidance or regulations issued under the Act.

9.0 RESPONSIBLE AUTHORITIES

- 9.1** A full list of the Responsible Authorities designated under the Act and their contact details are given in Annex 'A'. It should be noted that under the Act, the Licensing Authority is designated as a Responsible Authority.
- 9.2** The Licensing Authority is required to designate, in writing, a body that is competent to advise it about the protection of children from harm. In making this designation the following principles have been applied:-
- the competency of the body to advise the Licensing Authority;
 - the need for the body to be responsible for an area covering the whole of the Licensing Authority's area; and
 - the need for the body to be answerable to democratically elected persons rather than any particular interest group etc.
- 9.3** In accordance with the Gambling Commission's Guidance to Local Authorities, the Licensing Authority designates the Essex County Council Children's Safeguarding Service for this purpose.

10.0 INTERESTED PARTIES

- 10.1** Interested Parties can make representations about licensing applications or apply for a review of an existing licence. An Interested Party is defined in the Act as follows:-

'... a person is an interested party in relation to a premises licence or in relation to an application for or in respect of a premises if, in the opinion of the Licensing Authority which issues the licence or to which the application is made, the person:-

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

- 10.2** Interested Parties can be persons who are democratically elected, such as District and Parish Councillors and Members of Parliament. No specific evidence of being asked to represent an interested person will be required as long as the Councillor/MP represents the Ward likely to be affected. Likewise, Parish Councils likely to be affected will be considered to be Interested Parties.
- 10.3** District Councillors who are members of the Licensing and Regulations Committee will not qualify to act in this way.
- 10.4** Other than persons mentioned in 10.2 and 10.3, the Licensing Authority will generally require some form of confirmation that a person is authorised to represent an interested party.
- 10.5** The Licensing Authority considers that the Trade Associations, Trade Unions and Residents' and Tenants' Associations qualify as "Interested Parties" where they can demonstrate that they represent persons in (a) or (b) above.
- 10.6** In determining if a person lives or has business interests sufficiently close to the premises that they are likely to be affected by the authorised activities, the Licensing Authority will consider the following factors:-
- The size of the premises;
 - The nature of the premises;
 - The distance of the premises from the location of the person making the representation;
 - The potential impact of the premises (e.g. number of customers, routes likely to be taken by those visiting the establishment);
 - The circumstances of the complaint. This does not mean the personal characteristics of the complainant but the interest of the complainant, which may be relevant to the distance from the premises;
 - The catchment area of the premises (i.e. how far people travel to visit); and
 - Whether the person making the representation has business interests in that catchment area that might be affected.

The Licensing Authority will decide if a representation made in respect of an application is valid based on the following factors:

- It is not frivolous or vexatious.
- It raises issues that relate to Guidance issued by the Gambling Commission.
- It raises issues that relate to this policy.
- It relates to the Licensing Objectives.

11.0 EXCHANGE OF INFORMATION

- 11.1** In its exchange of information with parties listed in Schedule 6 of the Act, the Licensing Authority will have regard to:-
- the provisions of the Act, which include the provision that the Data Protection Act 1998 and the General Data Protection Regulations 2016 will not be contravened;
 - the guidance issued by the Gambling Commission;
 - Relevant Legislation and Regulations

- 11.2** In accordance with Section 350 of the Gambling Act 2005, the Licensing Authority may exchange information with the following statutory bodies or individuals:
- A constable or police force
 - An enforcement officer
 - A licensing authority
 - Her Majesty's Revenue and Customs
 - The Gambling Appeal Tribunal
 - The Secretary of State
 - Scottish ministers
 - Any other person or body designated by the Secretary of State in accordance with the Act
- 11.3** The Licensing Authority may also exchange information provided by applicants with law enforcement agencies for purposes connected with the prevention and detection of crime, but we will only share any personal details for this purpose if required to do so by law.
- 12.0** **PUBLIC REGISTER**
- 12.1** The Licensing Authority is required to keep a public register and share information in it with the Gambling Commission and others. Regulations will prescribe what information should be kept in the register. Copies of the register may be obtained on payment of a fee.
- 13.0** **COMPLIANCE AND ENFORCEMENT**
- 13.1** In exercising its functions with regard to the inspection of premises and to instituting criminal proceedings in respect of offences specified, the Licensing Authority will follow best practice. This requires that actions should be:
- Proportionate – Intervention will only be when necessary. Remedies should be appropriate to the risk posed and costs identified and minimised.
 - Accountable – The Authority must be able to justify decisions and be subject to public scrutiny.
 - Consistent – Rules and standards must be joined up and implemented fairly.
 - Transparent – Enforcement should be open and regulations kept simple and user friendly.
 - Targeted – Enforcement should be focused on the problems and minimise side effects.
- 13.2** The Licensing Authority will endeavour to avoid duplication with other regulatory regimes, so far as is possible, and adopt a risk based inspection programme.
- 13.3** The main enforcement and compliance role of the Licensing Authority in terms of the Act, will be to ensure compliance with the Premises Licence and other permissions which it authorises. The Gambling Commission will be the enforcement body for Operating and Personal Licences. It is also worth noting that concerns about the manufacturer, supply or repair of gaming machines will not be dealt with by the Licensing Authority but will be notified to the Gambling Commission.
- 13.4** The Licensing Authority will keep itself informed of developments as regard to the Department for Business, Energy & Industrial Strategy in its consideration of the regulatory functions of Local Authorities, and will have regard to best practice.

- 13.5** Where appropriate, complaints will be investigated in accordance with the stepped approach outlined in the Regulatory Services Enforcement Policy. In the first instance we encourage complaints to be raised directly with the licensee or business concerned.
- 13.6** As part of its ongoing inspection regime, The Licensing Authority may carry out test purchasing to ascertain if a licensee has robust policies in place to prevent underage gambling. Licence holders will always be advised of the outcome of the test. The Licensing Authority expects to be advised of results where operators carry out their own test purchasing. Should the results show a failure then the Licensing Authority will, in the first instance, work with the operator to review and improve their policies and procedures.
- 13.7** Where there is a Primary Authority Scheme in place, the Licensing Authority will seek guidance from the Primary Authority before taking any enforcement action on matters covered by that scheme. At the time of the publication of this policy there were four Primary Authority arrangements with host local authorities:
- Coral – London Borough of Newham
 - Ladbrokes – Milton Keynes
 - Paddy Power – Reading
 - William Hill – City of Westminster

14.0 DELEGATION OF POWERS

- 14.1** The Licensing Authority has agreed a scheme of delegation for discharging its functions under the Act and this can be found in Annex 'D'.

PART B PREMISES LICENCES

15.0 GENERAL PRINCIPLES

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

15.2 In accordance with section 150 of the Act, premises licences can authorise the provision of facilities on:

- Casino premises
- Bingo premises
- Betting premises, including tracks and premises used by betting intermediaries
- Adult Gaming Centre premises (for category B3, B4, C and D machines)
- Family entertainment centre premises (for category C and D machines) (it is worthy of note that separate to this category, the Licensing Authority may issue a family entertainment centre gaming machine permit, which authorises the use of category D machines only).

15.3 Each case will be decided on its individual merits, and will depend upon the type of gambling that is proposed. Also taken into account will be how the applicant proposes that the Licensing Objective concerns can be overcome.

15.4 Licensing Authorities are required by the Act, in making decisions about Premises Licences, to permit the use of premises for gambling so far as it thinks fit:-

- in accordance with any relevant Code of Practice under Section 24 of the Act;
- in accordance with any relevant guidance issued by the Gambling Commission under Section 25;
- to be reasonably consistent with the Licensing Objectives; and
- in accordance with the Licensing Authority's Statement of Licensing..

15.5 Definition of Premises

In the Act 'premises' is defined as including 'any place'. It is for the Licensing Authority (having due regard to the gambling Commission Guidance) to determine on the merits of each application whether different parts of a building can be regarded properly as separate premises.

The Licensing Authority will pay particular attention to applications where access to the licensed premises is through other premises (which themselves may be licenced or unlicensed).

15.6 Demand

Demand is a commercial consideration and is not an issue for the Licensing Authority.

15.7 Location

Location will only be a material consideration in the context of the Licensing Objectives.

- 15.8** The Act is clear that demand issues (e.g. the likely demand or need for gambling facilities in area) cannot be considered with regard to the location of premises but that considerations in terms of the licensing objectives can. The Licensing Authority expects the licence holder to carry out a risk assessment that should be reviewed if there is a significant change in local circumstances. The Licensing Authority will pay particular attention to the objectives of the protection of children and vulnerable persons from being harmed or exploited by gambling, as well as issues of crime and disorder.
- 15.9** In order for location to be considered, the Licensing Authority will need to be satisfied that there is sufficient evidence that the particular location of the premises would be harmful to the licensing objectives. From 06 April 2016, it is a requirement of the Gambling Commission's Licence Conditions and Codes of Practice (LCCP) under Section 10; that licensees assess the local risks to the licensing objectives posed by the provision of gambling facilities at their premises and have policies, procedures and control measures to mitigate those risks. In making risk assessments, licences must take into account relevant matters identified in this policy.
- 15.10** The LCCP also states that licences must review and update (as necessary) their local risk assessments:
- a) to take account of significant changes in local circumstance, including those identified in this policy
 - b) when there are significant changes at a licensee's premises that may affect their mitigation of local risks
 - c) when applying for a variation of a premises licence
 - d) in any case, undertake a local risk assessment when applying for a new premises licence
- 15.11** The Licensing Authority expects the local risk assessment to consider as a minimum:
- whether the premises is in an area of deprivation
 - whether the premises is in area subject to high levels of crime and disorder
 - the ethnic profile of residents in the area and how game rules, self-exclusion material are communicated to these groups
 - the demographics of the area in relation to vulnerable groups
 - the location of services for children such as schools, playgrounds, toy shops, leisure centres and other areas where children will gather
- 15.12** In every case the local risk assessment should show how vulnerable people, including people with gambling dependencies, are protected
- 15.13** Other matters that the assessment may include:
- The training of staff in brief intervention when customers show signs of excessive gambling, the ability of staff to offer brief intervention and how the manning of the premises affects this
 - Details as to the location and coverage of working CCTV cameras and how the system will be monitored
 - The layout of the premises so that staff have an unobstructed view of persons using the premises
 - The number of staff that will be available on the premises at any one time. If at any time that number is one, confirm the supervisory and monitoring arrangements when that person is absent from the licensed area or distracted from supervising the premises an observing those persons using the premises
 - Arrangements for monitoring and dealing with under age persons and vulnerable persons, which may include dedicated and trained personnel, leaflets, posters, self-exclusion schemes, window displays and advertisements not to entice passers-by etc.
 - Where the application is for a betting premises licence, other than in respect of a track, the location and extent of any part of the premises which will be used to provide betting machines

- The provision of signage and documents relating to games rules, gambling care providers and other relevant information being provided in both English and the other prominent first language for that locality.

The Licensing Authority expects all licensed premises to make their local area risk assessment available on site for inspection on the request of an authorised officer.

15.14 Such information may be used to inform the decision the council makes about whether to grant a licence with special conditions or to refuse an application.

15.15 This policy does not preclude any application being made and each application will be decided on its merits, with the onus being upon the applicant to show how the concerns can be overcome.

15.16 Licensing Objectives

Premises Licences granted must be reasonably consistent with the Licensing Objectives. With regard to these Objectives, the following will be considered:-

- **Preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime –**
The Licensing Authority is aware that there is a distinction between disorder and nuisance and that the prevention of nuisance is not a Licensing Objective under the Act.

Whilst the Licensing Authority is aware that the Gambling Commission will be taking a leading role in preventing gambling from being a source of crime, it will pay attention to the proposed location of gambling premises in terms of this Licensing Objective.

Where an area has known high levels of organised crime, this Authority will consider carefully whether gambling premises are suitable to be located there and the need for conditions, such as the provision of Door Supervisors.

- **Ensuring that gambling is conducted in a fair and open way –**
The Gambling Commission does not generally expect Licensing Authorities to be concerned with ensuring that gambling is conducted in a fair and open way. The Licensing Authority notes that in relation to the licensing of tracks, its role will be different from other premises in that track operators will not necessarily have an Operating Licence. In those circumstances, the Premises Licence may need to contain conditions to ensure that the environment in which betting takes place is suitable.
- **Protecting children and other vulnerable persons from being harmed or exploited by gambling –**
In practice, the Objective of protecting children from being harmed or exploited by gambling often means preventing them from taking part in, or being in close proximity to, gambling.

There is no definition of the term 'vulnerable person' in the Act, but this could include people who are gambling beyond their means and people who may not be able to make informed or balanced decisions about gambling due to a mental impairment, alcohol or drugs.

15.17 Conditions

The Authority is aware that the mandatory and default conditions imposed by the Gambling Commission will normally be sufficient to regulate gambling premises. In exceptional cases where there are specific risks or problems associated with a particular locality, specific premises or class of premises the Authority may consider attaching individual conditions related to the Licensing Objectives.

Any conditions attached to Licences will be proportionate and will be:-

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

In addition, the Licensing Authority will examine how applicants propose to address the Licensing Objectives. In considering applications, the Licensing Authority will particularly take into account the following, if deemed appropriate:-

- Proof of age schemes
- CCTV
- Door Supervisors
- Supervision of entrances/machine areas;
- Physical separation of areas;
- Location of entry;
- Notices and signage;
- Specific opening hours; and
- With particular regard to vulnerable persons, measures such as the use of self-barring schemes, provision of information, leaflets, helpline numbers for organisations such as Gamcare.

15.18 Decisions upon individual conditions will be made on a case-by-case basis. Consideration will be given to using control measures, should there be a perceived need, such as the use of door supervisors, supervision of adult gaming machines, appropriate signage for adult only areas, etc. Applicants will also be expected to offer their own suggestions as to the way in which the Licensing Objectives can be effectively met.

15.19 It is noted that there are conditions which the Licensing Authority cannot attach to Premises Licences. These are:-

- any conditions on the Premises Licence which make it impossible to comply with an Operating Licence condition;
- conditions relating to gaming machine categories, numbers, or method of operation;
- conditions which provide that membership of a club or body be required (the Act specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated);
- conditions in relation to stakes, fees, and the winning of prizes.

15.20 Door Supervisors

The Licensing Authority may consider whether there is a need for door supervisors in terms of the Licensing Objectives of protecting of children and vulnerable persons from being harmed or exploited by gambling and also in terms of preventing premises becoming a source of crime. As the Act has amended the Security Industry Act 2001, door supervisors at casinos or bingo premises need not be licensed by the Security Industry Authority.

16.0 Credit

Credit facilities are prohibited from being provided in casinos and bingo licensed premises. Cash machines (ATM's) may be installed in such premises but the Licensing Authority may apply conditions as to where they are sited.

17.0 Betting Machines [See Annex B for definition]

In relation to Casinos, Betting Premises and Tracks, the Licensing Authority can restrict the number of betting machines, their nature and the circumstances in which they are made available by attaching a licence condition to a Betting Premises Licence or to a Casino Premises Licence (*where betting is permitted in the Casino*).

17.1 When considering whether to impose a condition to restrict the number of betting machines in particular premises, the Licensing Authority, among other things, shall take into account:-

- the size of the premises;
- the number of counter positions available for person to person transactions; and
- the ability of staff to monitor the use of the machines by children and young persons or by vulnerable persons.

17.2 In deciding whether to impose conditions to limit the number of betting machines, each application will be considered on its own merit and account will be taken of codes of practice or guidance issued under the Act.

18.0 PROVISIONAL STATEMENTS

18.1 It is noted that the guidance from the Gambling Commission states that 'It is a question of fact and degree whether the premises are finished to an extent that they can be considered for a Premises Licence rather than a Provision Statement. The Licensing Authority will consider such applications on this basis but will not take into account other permissions that may be required such as Planning Consent'.

19.0 REPRESENTATIONS AND REVIEWS

19.1 Representations and Applications for a Review of a Premises Licence may be made by Responsible Authorities and Interested Parties.

19.2 The Licensing Authority can make a representation or apply for a review of the Premises Licence on the basis of any reason that it thinks is appropriate. For the purpose of exercising its discretion in these matters, the Authority has designated the Council's Head of Legal Services as being the proper person to act on its behalf.

19.3 The Licensing Authority will decide if a representation or application for a review is to be carried out on the basis of whether or not the request is:

- Frivolous or vexatious.
- Based on grounds that will certainly not cause the Authority to wish to revoke/suspend a licence or remove, amend or attach conditions on the licence.
- Substantially the same as previous representations or requests for a review.
- In accordance with any relevant codes of practice issued by the Gambling Commission.
- In accordance with any relevant guidance issued by the Gambling Commission.
- Reasonably consistent with the Licensing Objectives.

19.4 There is no appeal against the Authority's determination of the relevance of an application for review.

20.0 ADULT GAMING CENTRES [See Annex B for definition]

20.1 *An Adult Gaming Centre is defined in Annex 'B'. Entry to these premises is age restricted.*

20.2 The Licensing Authority will take account of any conditions applied to an Operating Licence in respect of such premises.

21.0 (LICENSED) FAMILY ENTERTAINMENT CENTRES [See Annex B for definition]

21.1 A Licensed Family Entertainment Centre is defined in Annex 'B'. Entry to these premises is not generally age restricted although entry to certain areas may be restricted, dependent on the category of machines available for use.

21.2 The Licensing Authority will take account of any conditions applied to an Operating Licence in respect of such premises.

22.0 CASINOS [See Annex B for definition]

22.1 The Licensing Authority has not passed a resolution under section 166 of the Act not to issue casino premises licences. Any future decision to pass or not to pass a casino resolution will only be taken after a full consultation process has been undertaken within the area.

22.2 Casinos and Competitive Bidding

The Licensing Authority is aware that where a Licensing Authority's area is enabled to grant a Premises Licence for a new style casino, there are likely to be a number of operators which will want to run a casino. In such situations the Council will run a competition in line with Regulations and Codes of Practice issued under the Act by the Secretary of State. It should be noted that at the time this Statement of Licensing Policy was adopted this area had not been so enabled.

23.0 BINGO PREMISES [See Annex B for definition]

23.1 Entry to these premises is not generally age restricted although entry to certain areas may be restricted, dependent on the category of machines available for use.

23.2 The Licensing Authority will take account of any conditions applied to an Operating Licence in respect of such premises.

24.0 BETTING PREMISES [See Annex B for definition]

24.1 The Licensing Authority will take account of any conditions applied to an Operating Licence in respect of such premises.

24.2 B2 & B3 Machines

In respect to nationally expressed concerns that exist in relation to the potentially adverse impact of B2 (often called Fixed Odds Betting Terminals or FOBT's) and B3 machines may have on vulnerable groups of adults, the Licensing Authority will give due consideration to the need to apply conditions to betting shop premises licences including, but not limited to, setting out minimum staffing levels; in order to ensure sufficient staff are on the premises to enable staff to comprehensively promote responsible gambling, adequately protect players (particularly in relation to players who are deemed to be vulnerable and to prevent those under 18 years of age accessing gambling facilities).

243 The Licensing Authority expects B2 & B3 machines to be positioned in such a way that they can be appropriately monitored by staff, particularly where those staff are positioned at a counter away from the machines. In general the Licensing Authority is of the view that 'privacy screens' will hamper this and will expect the local area risk assessment to take this into account where applicants intend to construct such screens. Attention should be paid to the Gambling Commission's Social Responsibility Codes in this regard, especially 9.11.1. Where an existing licensee adds 'privacy screens' a variation application will be required.

25.0 TRACKS [See Annex B for definition]

25.1 Entry to these premises is generally age restricted. On race days, specific areas within the Track may be age restricted dependent on the licensable activities taking place.

26.0 TRAVELLING FAIRS

26.1 The Licensing Authority will determine whether the statutory requirement that the facilities for gambling amount to no more than an ancillary amusement at a travelling fair is met, where Category D machines and/or equal chance prize gaming without a permit are to be made available for use.

PART C
PERMITS/TEMPORARY OR OCCASIONAL USE NOTICES/REGISTRATIONS

27.0 GENERAL

27.1 The Act introduced a range of permits for gambling which are granted by Licensing Authorities. Permits are required when premises provide a gambling facility but either the stakes and prizes are very low or gambling is not the main function of the premises. The permits regulate gambling and the use of gaming machines in a specific premises. With the exception of limiting machine numbers on Licensed Premises Gaming Machine Permits, the Licensing Authority may only grant or reject an application for a permit. No conditions may be added.

**28.0 UNLICENSED FAMILY ENTERTAINMENT CENTRE
GAMING MACHINE PERMITS**

28.1 Where a premises does not hold a Premises Licence but wishes to provide Gaming machines, it may apply to the Licensing Authority for a Permit. It should be noted that the applicant must show that the premises will be wholly or mainly used for making gaming machines available for use.

28.2 The Licensing Authority requires the applicant to submit a scale plan of the premises showing the areas which the permit will cover, together with any other areas under the control of the licensee. Generally, this will be at a scale of 1:100 but other scales may be submitted with prior agreement from the Licensing Authority.

28.3 The Licensing Authority will expect the applicant to show that there are written policies and procedures in place to protect children from harm. Harm in this context is not limited to harm from gambling but includes wider child protection considerations. The suitability of such policies and procedures will be considered on their merits, however, they may include:-

- A basic DBS Criminal Records Check for the applicant and the person having the day-to-day control of the premises.
- How the applicant proposes to ensure that children will be protected from harm whilst on the premises.
- Training covering how staff would deal with:-
 - unsupervised, very young children being on the premises,
 - children causing perceived problems on/around the premises, and
 - suspected truant children
 - safeguarding training
 - proof of age scheme

29.0 (ALCOHOL) LICENSED PREMISES GAMING MACHINE PERMITS

29.1 There is provision in the Act for premises licensed to sell alcohol for consumption on the premises to automatically have two gaming machines, of Categories C and/or D. The Premises Licence holder needs to notify the Licensing Authority at least two months prior to the date of expiry of the current permit.

29.2 Gaming machines can only be located on licensed premises that have a bar for serving customers.

29.3 Premises restricted to selling alcohol only with food, will not be able to apply for a Permit.

29.4 Where an application for more than two gaming machines is received, the Licensing Authority will specifically have regard to protect children and vulnerable persons

from harm or being exploited by gambling and will expect the applicant to satisfy the Authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only machines. Measures will cover such issues as:-

- Adult machines being in sight of the bar;
- Adult machines being in sight of staff who will monitor that the machines are not being used by those under 18;
- Appropriate notices and signage; and
- As regards the protection of vulnerable persons, the Licensing Authority will consider measures such as the use of self-barring schemes, provision of information, leaflets/help line numbers for organisations such as Gamcare.
- Relevant codes of practice issued by the Gambling Commission

The Licensing Authority can decide to grant an application with a smaller number of machines and/or a different category of machines than that applied for but conditions other than these cannot be attached.

30.0 PRIZE GAMING PERMITS

30.1 The Licensing Authority will expect the applicant to show that there are written policies and procedures in place to protect children from harm. Harm in this context is not limited to harm from gambling but includes wider child protection considerations. The suitability of such policies and procedures will be considered on their merits, however, they may include:-

- A basic DBS Criminal Records check for the applicant and the person having the day-to-day control of the premises.
- How the applicant proposes to ensure that children will be protected from harm whilst on the premises.
- Training covering how staff would deal with:-
 - ❑ unsupervised, very young children being on the premises,
 - ❑ children causing perceived problems on/around the premises, and
 - ❑ suspected truant children
 - ❑ safeguarding training
 - ❑ proof of age scheme

In making its decision on an application for a Permit, the Licensing Authority does not need to have regard to the Licensing Objectives but must have regard to any Gambling Commission guidance.

31.0 CLUB GAMING AND CLUB MACHINE PERMITS

31.1 Members' Clubs and Miners' Welfare Institutes may apply for a Club Gaming Permit and/or a Club Gaming Machine Permit, but are restricted by category and number of machines and to equal chance gaming and games of chance.

31.2 Commercial clubs may apply for a club machine permit, subject to restrictions.

31.3 The gambling provided under the authority of a club gaming permit must also meet the following conditions:

- a. in respect of gaming machines
 - no child or young person may use a category B or C machine on the premises
 - that the holder must comply with any relevant provision of a code of practice about the location and operation of gaming machines
- b. the public, children and young persons must be excluded from any area of the premises where the gaming is taking place.

31.4 Section 273 of the Act sets out the conditions that will apply to the club machine permit, including that in respect of gaming machines no child or young person uses a category B or C machine on the premises and that the holder complies with any relevant provision of a code of practice about the location and operation of gaming machines.

32.0 TEMPORARY USE NOTICES (TUN) [See Annex B for definition]

32.1 A TUN may only be granted to a person or company holding an Operating Licence relevant to the temporary use of the premises. Regulations will be issued by the Secretary of State prescribing the activities to be covered. At present a Temporary Use Notice can only be issued for equal chance gaming.

32.2 For the purposes of a TUN, a set of premises is the subject of a TUN if any part of the premises is the subject of the Notice. This prevents one large premises from having a TUN in effect for more than 21 days per year by giving a Notice in respect of different parts.

32.3 The definition of a "set of premises" will be a question of fact in the particular circumstances of each Notice that is given. In considering whether a place falls within the definition of "a set of premises", the Licensing Authority will consider, amongst other things, the ownership/occupation and control of the premises.

32.4 The Licensing Authority will object to Notices where it appears that their effect would be to permit regular gambling in a place that could be described as one set of premises.

33.0 OCCASIONAL USE NOTICES [See Annex B for definition]

33.1 Occasional Use Notices (OUN) apply only to Tracks, which are described as being premises on any part of which a race or other sporting events take place, or is intended to take place. Tracks need not be a permanent fixture.

33.2 OUN's are intended to permit licensed betting operators who have the appropriate permission of the Gambling Commission to use tracks for short periods for conducting betting. The OUN dispenses with the need for a Betting Premises Licence for the track.

33.3 The Licensing Authority has very little discretion as regards these Notices, aside from ensuring that a statutory limit of 8 days in a calendar year is not exceeded.

33.4 The Licensing Authority will, however, consider the definition of a track and whether the applicant is permitted to avail him/herself of the Notice.

33.5 The person designated to receive the OUN's and to assess its validity is the Head of Customer and Commercial Services. (A copy to be served on local Chief of Police).

34.0 SMALL SOCIETY LOTTERIES [See Annex B for definition]

34.1 A lottery is unlawful unless it is run in accordance with an Operating Licence issued by the Gambling Commission, or it is exempt. This advice covers only those categories of lottery that are exempt. For more information on the licensing requirements for lotteries, see the Gambling Commission's website.

The Act defines 4 categories of lottery that are exempt from needing an operating licence:-

- Incidental non-commercial lottery
- Private lottery
- Customer lottery
- Small society lottery

34.2 External Lottery Managers require Operators' Licences issued by the Gambling Commission. For more information, see the Gambling Commission's website.

35.0 FEES

Non-statutory fees are reviewed by the Licensing authority on an annual basis in accordance with the Gambling (Premises Licence Fees) (England and Wales) Regulations 2007. Details of the current fees can be obtained by viewing the Council's website. www.tendringdc.gov.uk

36.0 USEFUL CONTACTS

The Gambling Commission maintains a list of useful contacts on organisations involved in gambling and their contact details can be found on the Commission's website www.gamblingcommission.gov.uk Some of these organisations provide codes of practice on their particular interest area.

ANNEX 'A'

RESPONSIBLE AUTHORITIES

ORGANISATION	CONTACT AND ADDRESS
Tendring District Council [Licensing Section]	The Licensing Team Town Hall Station Road Clacton on Sea Essex CO15 1SE Email: licensingsection@tendringdc.gov.uk
Essex Police	The Licensing Department [Alcohol] Essex Police Braintree CM7 3DJ
Essex County Fire and Rescue Service	Fire Station Colchester Cowdrey Avenue Colchester Essex CO1 1XT
Essex County Council Children's Safeguarding Service	Local Authority Designated Officer FAO. Licensing Quality Assurance and Safeguarding Service Family Operations Essex County Council 70 Duke Street Chelmsford Essex CM1 1JP
Trading Standards [Essex]	The Business Support Team Essex Trading Standards Essex County Council CG 32 County Hall Chelmsford Essex CM1 1QH
Tendring District Council - [Planning]	Planning Support Team Leader Planning Services Town Hall Station Road Clacton on Sea Essex CO15 1SE

Tendring District Council – [Environmental Health]	Environmental Health 88-90 Pier Avenue Clacton on Sea Essex CO15 1TN
The Gambling Commission	The Gambling Commission Victoria Square House Victoria Square Birmingham B2 4BP
HM Revenue & Customs	Excise Processing Teams BX9 1GL Email: nrubetting&gaming@hmrc.gsi.gov.uk

Any further enquiries or assistance can be obtained from the Licensing Authority on the contact details given above. Addresses were correct at the time of publishing but are subject to change without notice. Any change made will not form part of a review of the Council’s Statement of Licensing.

ANNEX 'B'
DEFINITIONS

Adult Gaming Centre	Premises in respect of which an Adult Gaming Centre Premises Licence has effect.
Authorised Local Authority Officer	A Licensing Authority Officer who is an authorised person for a purpose relating to premises in that Authority's area.
Betting Machines	A machine designed or adapted for use to bet on future real events [not a gaming machine].
Bingo	A game of equal chance.
Casino	An arrangement whereby people are given an opportunity to participate in one or more casino games.
Casino Resolution	Resolution not to issue Casino Premises Licences.
Child	Individual who is less than 16 years old.
Club Gaming	Equal chance gaming and games of chance in members' clubs and miners' welfare institutes (but not commercial clubs).
Club Gaming Machine Permit	Permit to enable the premises to provide gaming machines [3 machines of Categories B,C or D.
Code of Practice	Any relevant code of practice under Section 24 of the Act
Conditions	<p>Conditions to be attached to licences by way of:-</p> <ul style="list-style-type: none"> <input type="checkbox"/> Automatic provision <input type="checkbox"/> Regulations provided by Secretary of State <input type="checkbox"/> Conditions provided by Gambling Commission <input type="checkbox"/> Conditions provided by Licensing Authority <p>Conditions may be general in nature [either attached to all licences or all licences of a particular nature] or may be specific to a particular licence.</p>
Default Conditions	Conditions that will apply unless the Licensing Authority decides to exclude them. This may apply to all Premises Licences, to a class of Premises Licence or Licences for specified circumstances.
Delegated Powers	Decisions delegated either to a Licensing Committee, Sub-Committee or Licensing Officers.
Disorder	No set interpretation. However, likely to be connected to the way gambling is being conducted. In the case of Gambling Premises' Licences, disorder is intended to mean activity that is more serious and disruptive than mere nuisance.
Equal Chance Gaming	Games that do not involve playing or staking against a bank and where the chances are equally favourable to all participants.

Exempt Lotteries	<p>Lotteries specified in the Gambling Act as permitted to be run without a licence from the Gambling Commission. There are four types:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Small Society Lottery [required to register with Licensing Authorities. <input type="checkbox"/> Incidental Non Commercial Lotteries. <input type="checkbox"/> Private Lotteries. <input type="checkbox"/> Customer Lotteries. 																																							
External Lottery Manager	<p>An individual, firm or company appointed by the Small Lottery Society to manage a lottery on their behalf. They are consultants who generally take their fees from the expenses of the lottery.</p>																																							
Gaming	<p>Prize Gaming if the nature and size of the prize is not determined by the number of people playing or the amount paid for or raised by the gaming. The prizes will be determined by the operator before the play commences.</p>																																							
Gaming Machine	<p>Machine covering all types of gambling activity, including betting on virtual events.</p> <p><u>Categories</u></p> <table border="1" data-bbox="632 994 1442 2089"> <thead> <tr> <th>Category</th> <th>Maximum Stake</th> <th>Maximum Prize</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>Unlimited</td> <td>Unlimited</td> </tr> <tr> <td>B1</td> <td>£5</td> <td>£10,000*</td> </tr> <tr> <td>B2</td> <td>£2</td> <td>£500</td> </tr> <tr> <td>B3A</td> <td>£2</td> <td>£500</td> </tr> <tr> <td>B3</td> <td>£2</td> <td>£500</td> </tr> <tr> <td>B4</td> <td>£2</td> <td>£400</td> </tr> <tr> <td>C</td> <td>£1</td> <td>£100</td> </tr> <tr> <td>D Non Money Prizes</td> <td>30p</td> <td>£8</td> </tr> <tr> <td>D Prize (Crane/Grab machine only)</td> <td>£1</td> <td>£50</td> </tr> <tr> <td>D Money Prize</td> <td>10p</td> <td>£5</td> </tr> <tr> <td>D Combined Money and Non Money Prize</td> <td>10p</td> <td>£8 (of which no more than £5 may be money prize)</td> </tr> <tr> <td>D Combined Money and Non Money Prize (Coin Pusher/Penny Fall machines only)</td> <td>20p</td> <td>£20 (of which no more than £10 may be money prize)</td> </tr> </tbody> </table>	Category	Maximum Stake	Maximum Prize	A	Unlimited	Unlimited	B1	£5	£10,000*	B2	£2	£500	B3A	£2	£500	B3	£2	£500	B4	£2	£400	C	£1	£100	D Non Money Prizes	30p	£8	D Prize (Crane/Grab machine only)	£1	£50	D Money Prize	10p	£5	D Combined Money and Non Money Prize	10p	£8 (of which no more than £5 may be money prize)	D Combined Money and Non Money Prize (Coin Pusher/Penny Fall machines only)	20p	£20 (of which no more than £10 may be money prize)
Category	Maximum Stake	Maximum Prize																																						
A	Unlimited	Unlimited																																						
B1	£5	£10,000*																																						
B2	£2	£500																																						
B3A	£2	£500																																						
B3	£2	£500																																						
B4	£2	£400																																						
C	£1	£100																																						
D Non Money Prizes	30p	£8																																						
D Prize (Crane/Grab machine only)	£1	£50																																						
D Money Prize	10p	£5																																						
D Combined Money and Non Money Prize	10p	£8 (of which no more than £5 may be money prize)																																						
D Combined Money and Non Money Prize (Coin Pusher/Penny Fall machines only)	20p	£20 (of which no more than £10 may be money prize)																																						

	*With option of maximum £20,000 linked progressive Jackpot on premises basis only
Guidance to Licensing Authorities	Guidance issued by the Gambling Commission.
Human Rights Act 1998 Articles: 1,6,8 and 10	Article 1: Protocol 1 The right to peaceful enjoyment of possessions. Article 6: The right to a fair hearing. Article 8: The right of respect for private and family life. Article 10: The right to freedom of expression.
Incidental Non Commercial Lottery	A lottery promoted wholly for purposes other than private game, and which are incidental to non-commercial events [commonly charity fundraising events, lottery held at a school fete or at a social event such as a dinner dance]
Exchange of Information	Exchanging of information with other regulatory bodies under the Gambling Act.
Interested Party	A person who:- <input type="checkbox"/> Lives sufficiently close to the premises to be likely affected by the authorised activities. <input type="checkbox"/> Has business interests that might be affected by the authorised activities. <input type="checkbox"/> Represents persons in either of the above groups.
Licensed Family Entertainment Centre	Premises offering Category C gaming machines that are restricted to adults and offering Category D machines to children and young persons in segregated areas.
Licensed Lottery	A large Society Lottery or a Local Authority Lottery. They require registration with the Gambling Commission.
Licensing Authority	Tending District Council acting under Section 2 of the Act.
Licensing Objectives	1. Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime. 2. Ensuring that gambling is conducted in a fair and Open way. 3. Protecting children and other vulnerable persons From being harmed or exploited by gambling.
Lottery	An arrangement which satisfies the statutory description of either a simple lottery or a complex lottery in Section 14 of the Act.
Lottery Tickets	Tickets that must:- <input type="checkbox"/> Identify the promoting society; <input type="checkbox"/> State the price of the ticket, which must be the same for all tickets; <input type="checkbox"/> State the name and address of the member of the Society who is designated as having responsibility for the Society for the promotion of the lottery or, if there is one, the External Lottery Manager, and

	<ul style="list-style-type: none"> ❑ State the date of the draw, or enable the date of the draw to be determined.
Mandatory Conditions	Specified conditions provided by regulations under Section 176 of the Act to be attached to Premises Licences.
Members' Club	<p>A club that must:-</p> <ul style="list-style-type: none"> ❑ Have at least 25 members; ❑ Be established and conducted 'wholly or mainly' for purposes other than gaming; ❑ Be permanent in nature; ❑ Not be established to make commercial profit; ❑ Be controlled by its members equally.
Occasional Use Notice	Betting may be permitted on a 'track' without the need for a full Premises Licence.
Off Course Betting	Betting that takes place other than at a track, i.e. at a licensed betting shop.
Off Course Betting - Tracks	Betting that takes place in a self-contained betting premises with the track premises providing facilities for off course betting, i.e. on other events, not just those taking place on the track. Normally operates only on race days.
On Course Betting - Tracks	Betting that takes place on a track while races are taking place.
Operating Licence	Licence to permit individuals and companies to provide facilities for certain types of gambling. It may authorise remote or non remote gambling.
Permits	Authorisation to provide a gambling facility where the stakes and prizes are very low or gambling is not the main function of the premises.
Personal Licence	Formal authorisation to individuals who control facilities for gambling or are able to influence the outcome of gambling. Cannot be held by companies.
Pool Betting - Tracks	Betting offered at a horse racecourse by the Tote and at a dog track by the holder of the Premises Licence for the track.
Premises	Defined as 'any place'. It is for the Licensing Authority to decide whether different parts of a building can be properly regarded as being separate premises.
Premises Licence	Licence to authorise the provision of gaming facilities on casino premises, bingo premises, betting premises, including tracks, Adult Gaming Centres and Family Entertainment Centres.
Private Lotteries	<p>There are three types of Private Lotteries:</p> <ul style="list-style-type: none"> ❑ Private Society Lotteries - tickets may only be sold to members of the Society or persons who are on the premises of the Society; ❑ Work Lotteries - the promoters and purchasers of tickets must all work on a single set of work premises;

	<input type="checkbox"/> Residents' Lotteries - promoted by, and tickets may only be sold to, people who live at the same set of premises.
Prize Gaming	Where the nature and size of the prize is not determined by the number of people playing or the amount paid for or raised by the gaming. The prizes will be determined by the operator before play commences.
Prize Gaming Permit	A permit to authorise the provision of facilities for gaming with prizes on specific premises.
Provisional Statement	<p>Where an applicant can make an application to the Licensing Authority in respect of premises that he:-</p> <ul style="list-style-type: none"> <input type="checkbox"/> Expects to be constructed. <input type="checkbox"/> Expects to be altered. <input type="checkbox"/> Expects to acquire a right to occupy.
Regulations	Regulations made by the Secretary of State under the Gambling Act 2005.
Relevant Representations	Representations that relate to the Gambling Licensing Objectives, or that raise issues under the Licensing Policy or the Gambling Commission's Guidance or Codes of Practice.
Responsible Authorities	<p>Public Bodies that must be notified of all applications and who are entitled to make representations in relation to Premises Licences, as follows:-</p> <ul style="list-style-type: none"> <input type="checkbox"/> The Licensing Authority in whose area the premises is partly or wholly situated <input type="checkbox"/> The Gambling Commission <input type="checkbox"/> The Chief Officer of Police <input type="checkbox"/> Fire and Rescue Service <input type="checkbox"/> The Planning Authority for the local authority area <input type="checkbox"/> Environmental Health Service for the local authority area <input type="checkbox"/> The Body competent to advise on the protection of children from harm <input type="checkbox"/> HM Revenue and Customs <input type="checkbox"/> Authority in relation to vulnerable adults <input type="checkbox"/> Vessels only - the Navigation Authority whose statutory functions are in relation to waters where the vessel is usually moored or berthed, i.e. the Environment Agency, British Waterways Board, the Maritime and Coastguard Agency <p>Full details of Responsible Authorities for the Tendring District are contained in Appendix 'B' to this Policy.</p>
Small Society Lottery	A lottery promoted on behalf of a non commercial society, i.e. lotteries intended to raise funds for good causes.
Society	The society, or any separate branch of such a society, on whose behalf a lottery is to be promoted.
Temporary Use Notice	To allow the use of a premises for gambling where there is no Premises Licence but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling.
The Act	The Gambling Act 2005

The Council	Tendring District Council
The Commission	The Gambling Commission
The Policy	The Statement of Licensing Principles published by the Licensing Authority under Section 349 of the Act.
Tote [or Totalisator]	Pool betting on tracks.
Track	Sites where races or other sporting events take place, e.g. horse racing, dog racing or any other premises on any part of which a race or other sporting event takes place or is intended to take place.
Travelling Fair	A fair that 'wholly or principally' provides amusements and must be on a site used for fairs for no more than 27 days per calendar year.
Unlicensed Family Entertainment Centre	Premises offering Category D machines only with unrestricted entry.
Vehicles	Defined trains, aircraft, sea planes and amphibious vehicles other than hovercraft. No form of commercial betting and gaming is permitted.
Vulnerable Persons	No set definition, but likely to mean group to include people who:- <ul style="list-style-type: none"> <input type="checkbox"/> gamble more than they want to <input type="checkbox"/> gamble beyond their means <input type="checkbox"/> who may not be able to make informed or balanced decisions about gambling due to a mental impairment, alcohol or drugs
Young Person	An individual who is not a child but who is less than 18 years old.

ANNEX 'C'

SUMMARY OF MACHINE PROVISIONS BY PREMISES

Machine category							
Premises type	A	B1	B2	B3	B4	C	D
Large casino (machine/table ratio of 5-1 up to maximum)				Maximum of 150 machines Any combination of machines in categories B to D (except B3A machines), within the total limit of 150 (subject to machine/table ratio)			
Small casino (machine/table ratio of 2-1 up to maximum)				Maximum of 80 machines Any combination of machines in categories B to D (except B3A machines), within the total limit of 80 (subject to machine/table ratio)			
Pre-2005 Act casino (no machine/table ratio)				Maximum of 20 machines categories B to D (except B3A machines), or any number of C or D machines instead			
Betting premises and tracks occupied by pool betting				Maximum of 4 machines categories B2 to D (except B3A machines)			
Bingo premises¹				Maximum of 20% of the total number of gaming machines which are available for use on the premises categories B3 or B4		No limit on category C or D machines	
Adult gaming centre²				Maximum of 20% of the total number of gaming machines which are available for use on the premises categories B3 or B4		No limit on category C or D machines	
Licensed family entertainment centre³				No limit on category C or D machines			
Family entertainment center (with permit)³				No limit on category D machines			
Clubs or miners' welfare institute (with permits)⁴				Maximum of 3 machines in categories B3A or B4 to D			
Qualifying alcohol-licensed premises				1 or 2 machines of category C or D automatic upon notification			
Qualifying alcohol-licensed premises (with licensed premises gaming machine permit)				Number of category C-D machines as specified on permit			
Travelling fair				No limit on category D machines			

ANNEX 'D'

TABLE OF DELEGATIONS OF LICENSING FUNCTIONS

MATTER TO BE DEALT WITH	FULL COUNCIL	COMMITTEE	OFFICERS
Three year licensing policy	X		
Policy not to permit casinos	X		
Fee Setting - when appropriate	-	X	-
Application for premises licences		Where representations have been received and not withdrawn	Where no representations received/ representations have been withdrawn
Application for a variation to a licence		Where representations have been received and not withdrawn	Where no representations received/ representations have been withdrawn
Application for a transfer of a licence		Where representations have been received from the Commission	Where no representations received from the Commission
Application for a provisional statement		Where representations have been received and not withdrawn	Where no representations received/ representations have been withdrawn
Review of a premises licence		X	
Application for club gaming /club machine permits		Where representations have been received and not withdrawn	Where no representations received/ representations have been withdrawn
Cancellation of club gaming/ club machine permits		X	
Applications for other permits			X
Cancellation of licensed premises gaming machine permits			X
Consideration of temporary use notice			X
Decision to give a counter notice to a temporary use notice		X	
Consideration of an Occasional Use Notice			X

LICENSING AND REGISTRATION COMMITTEE

24 JULY 2024

REPORT OF THE ASSISTANT DIRECTOR - GOVERNANCE

A6. PAVEMENT LICENSING POLICY

(report prepared by Michael Cook & Keith Simmons)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

This report is to explain the changes to the temporary pavement licensing regime under the Business & Planning Act 2020 and the impact of the changes to this regime made by the Levelling-Up and Regeneration Act 2023. Seeking the Committee's approval for a draft Pavement Licensing Policy, to be circulated to key stakeholders for consultation purposes for the outcome of the consultation to be reported back to this Committee for consideration together with a proposed policy.

EXECUTIVE SUMMARY

Under the Business and Planning Act 2020, pavement licensing was given to the Licensing Authority as a temporary measure due to the Covid pandemic. The Levelling Up and Regeneration Act 2023 has now become legislation which supersedes the Business and Planning Act 2020.

The temporary legislation and was due to expire at the end of September 2024, however, the government has made the scheme permanent, with some amendments, through the Levelling Up & Regeneration Act which received royal assent last year and came into force on Sunday 31 March 2024.

RECOMMENDATION(S)

- a) **The Committee take note of the changes from the temporary pavement licensing to the levelling up and regeneration act 2023.**
- b) **That, subject to any matters the Committee may wish to raise, that the draft Pavement Licensing Policy as set out in Appendix A to this report be approved for the purposes of the consultation in c) below.**
- c) **That the draft Pavement Licensing Policy be circulated to the Licensing Authority's key stakeholders for consultation purposes and that any representations received be considered at a future meeting of the Committee.**

REASON(S) FOR THE RECOMMENDATION(S)

New legislation has come into force on 31 March 2024 to make changes to the temporary pavement licensing regime currently under the Business & Planning Act 2020 and has introduced changes including a new capped level fee structure for new and renewal applications.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The draft schedule set out at Appendix A is intended to support the following themes from the Council's Corporate Plan 2024-28:

- Pride in our area and services to residents
- Working with Partners to improve quality of life
- Promoting our Heritage offer, attracting visitors and encouraging them to stay longer

LEGAL REQUIREMENTS (including legislation & constitutional powers)

Legislation for Pavement Licensing is set out within the background part of the report.

FINANCE AND OTHER RESOURCE IMPLICATIONS

There are resource implication in administering the pavement licensing regime which include advice, administration, compliance and enforcement. There are staff costs associated to this.

The Act stipulates that an application must be sent to the Licensing Authority using electronic communications in such a manner as the authority may specify, and be accompanied by such fee not exceeding £500 as the authority may require. An online portal has been developed for this purpose, to enable applicants to complete all of the application questions, upload the relevant documents and make payment in a streamlined manner. This will ensure that staff are managing applications in the most efficient way without the need for constant follow-up queries.

The new provisions allow for the Council to remove, store and ultimately dispose of furniture in prescribed circumstances. This will be a cost to the Council but the Act allows for full recovery of those costs from the licence holder.

USE OF RESOURCES AND VALUE FOR MONEY

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	The policy does not, in itself, directly impact on financial sustainability.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	The policy directly seeks to support consistency good decision making.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and	The implementation of the policy will be reviewed to ensure it can be delivered in a way that supports economic, efficient and effective

performance to improve the way it manages and delivers its services.	delivery of services.
MILESTONES AND DELIVERY	
ASSOCIATED RISKS AND MITIGATION	
<p>The risk of not charging a fee is that the Council do not recovery costs in association with this area of work.</p> <p>The risk of not issuing licences for the maximum term is that the regime may become burdensome and require additional resource to consider applications on a more frequent basis.</p>	
OUTCOME OF CONSULTATION AND ENGAGEMENT	
<p>As part of the proposed review, the Committee would be invited to considered all representations received during a consultation with stakeholders on a revised Pavement Licensing Policy and to recommend the proposed new Policy to Council.</p>	
EQUALITIES	
<p>In preparing this report, due consideration has been given to the Council's statutory Equality Duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, as set out in Section 149(1) of the Equality Act 2010.</p> <p>The Licensing Authority will have due regard to the public sector equality duty under the Equality Act 2010. Under this duty, the Authority (in the exercise of its functions) must have due regard to the need to:</p> <ul style="list-style-type: none"> • eliminate any form of unlawful discrimination (including direct or indirect discrimination, harassment, victimisation, and any other conduct prohibited under the Act); • advance equality of opportunity between people who share a relevant characteristic and people who do not; • foster good relations between people who share a protected characteristic and people who do not. 	
SOCIAL VALUE CONSIDERATIONS	
<p>There are no direct social value considerations arising in respect of this policy.</p>	
IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030	
<p>There are no environmental implications arising directly from the content of this report.</p>	
OTHER RELEVANT IMPLICATIONS	
<p>Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.</p>	
Crime and Disorder	<p>The Council has a duty under Section 17 of the Crime and Disorder Act 1998 to do all that it reasonably can to prevent crime and disorder in its area.</p>

Health Inequalities	There are no direct implications arising from the proposals set out in this report.
Area or Ward affected	All

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The Business and Planning Act 2020 (“BPA20”) received royal assent on 22nd July 2020 and made significant changes designed to help premises (including public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours) to survive and bounce-back from the pandemic lockdown.

It included a new “Pavement Licence” regime, to be administered by local authorities, designed to make it easier for premises serving food and drink (such as bars, restaurants and pubs) to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.

The pavement licence provisions were originally due to expire in September 2021 but due to the continuation of the pandemic and the success of the scheme it was extended multiple times.

As part of the Levelling Up and Regeneration Act 2023 (“LURA23”) the pavement licensing scheme has been made permanent, albeit with some amendments from the temporary provisions which are summarised in Table 1.

Changes	Business Planning Act 2020	Levelling Up and Regeneration Act 2023
Licence length	Max 1 year	Max 2 years
Fees	£0-£100	£0-£500 (new applications) £0-£350 (renewals)
Renewals	No renewal process	Renewal requirements introduced
Consultation time frame	7 days	14 days
Determination time frame	7 days	14 days
Public Space Protection Order (PSPO)	Not included as an exemption	Included as an exemption
Enforcement	Permits for revocation and serving of notices	Permits for revocation and serving of notices and also permits the removal of furniture, storage of it, recovery of costs incurred and disposal of it. Also that instead of revocation the licence can be amended in prescribed circumstances.

PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.**BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL**

[Levelling-up and Regeneration Act 2023 \(legislation.gov.uk\)](https://legislation.gov.uk)

[Pavement licences: guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

APPENDICES

Appendix A – Draft Pavement Licensing Policy

Appendix B – Letter from Department for Levelling Up, Housing & Communities.

REPORT CONTACT OFFICER(S)

Include here the Name, Job Title and Email/Telephone details of the person(s) who wrote the report and who can answer questions on the content.

Name

**Michael Cook
Keith Simmons**

Job Title

**Licensing Manager
Head of Democratic Services and Elections**

Email/Telephone

licensingsection@tendringdc.gov.uk
01255 686565

This page is intentionally left blank

Tendring District Council



PAVEMENT LICENSING POLICY

Adopted as Policy on **XXXX**

Introduction

The Business and Planning Act 2020 (as amended) was introduced as temporary legislation to assist businesses and remove existing bureaucracy around what were known as Tables and Chairs Licences under the Highways Act. The Business and Planning Act 2020 has now been amended by the Levelling Up and Regeneration Act 2023 which makes the Pavement Licence regime permanent.

The Act allows Tendring District Council to permit specified furniture to be placed on the highway (mostly footpaths and pedestrianised areas) although where applicable, businesses may still need the activity to be licensed, for example, sale of alcohol.

Definition of ‘pavement licence’

A pavement licence is a licence granted by the local authority, or deemed to have been granted, which allows the licence holder to place removable furniture over certain highways adjacent to the premises in relation to which the application was made, and for certain purposes.

Eligible Businesses

A person (which includes a body corporate) which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a licence. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, ice cream parlours or similar.

A licence permits the business to use furniture placed on the highway in order to serve food or drink and/or allow it to be used by people for consumption of food or drink supplied from, or in connection with the use of the premises.

A pavement licence does not licence the activity, only the placing of the furnishings. The pavement licence is issued to a person or incorporated body. Where there is a change to that person or incorporated body then the licence will lapse, and a further application will need to be made by any new person.

Eligible Locations

Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980.

Generally, these are footpaths restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited. Highways maintained by Network Rail or over the Crown land are exempt (so a licence cannot be granted).

Tables and chairs can only be placed in front of the façade the licence holder is responsible for.

Tables and Chairs will not be permitted where they would restrict any pedestrianised public highway to less than 1.5 metres unobstructed pavement in width or impede any designated cycle route.

Type of furniture permitted

Seating, tables and, if required, umbrellas and heaters (together with a secure base) as well as any proposed barriers to enclose the seating area are permitted.

The furniture must be fit for purpose and designed specifically for commercial outdoor use (and comply with all relevant BS standards). It must be kept in good order; damaged or faded items must be replaced.

This furniture is required to be removable, meaning that it is not a permanent fixed structure, and is able to be moved easily, and should be stored away when the premises are closed for activity.

There is an expectation that the type and style of furniture would be 'in keeping' with the local area.

Picnic benches and plastic tables and chairs designed for domestic use (e.g. white plastic furniture) are not permitted.

Any form of gazebo or enclosed shelter with one or more sides is not permitted.

Barriers

When tables and chairs are in place a standard barrier consisting of a fabric banner and associated post/rail system shall be used. The function of the barriers is to demarcate and contain the tables and chairs but also to give a clear warning particularly to people with visual impairments.

The barriers shall be secured by a purpose designed post and rail system with weighted post bases to prevent being knocked or blown over and be of a height range of 800mm to 1000mm so to not visually obstruct views down the street or be an obstructing hazard.

Street café barriers should be of a design to complement the character of the surrounding area. Banners should be of one design, in a plain style and can incorporate the business name or brand logo. Posts and rails should be stainless steel, chrome plated or powder coated.

Times of Operation

The tables and chairs can be placed on the highway only when the premises are open for business and in any event not before 6.00 am and normally until 30 minutes of the terminal hour of the licence.

Where nuisance is likely to be caused to residents e.g. late at night, businesses may be required to remove the tables and chairs before the close of business.

Planning Permission

Once a licence is granted the applicant will also benefit from deemed planning permission to use the land for anything done only pursuant to the licence while the licence is valid, but not for any other purpose.

Consultation

Applications are consulted upon for 14 days, starting with the day after that on which the application is made to the Council (an application will not be considered to have been properly made unless each requirement has been met).

The applicant is required to fix a notice to the premises, so it is easily visible and legible to the public on the day they submit the application to the local authority. They must ensure that the notice remains in place for the duration of the public consultation period.

The Council is required by law to consult with the Essex County Council Highways Authority. In addition, to ensure that there are no detrimental effects in granting such a licence the Council will also consult with:

- Environmental Health Service
- Planning Department
- Essex Police

Members of the public and others listed above can contact the Council to make representations.

The Council must take into account representations received during the public consultation period and consider in their determination of the application.

Appeals

There is no statutory appeal process against the decision of the Council.

Cost

There is an application fee and a renewal fee payable every two years. Details can be found on the application form and Tendring District Council website.

Insurance

Operators must indemnify both Tendring District Council and Essex County Council in respect of injury, damage or loss arising out of the grant of permission (unless such claims arise out of the Councils' negligence). All operators must have public liability insurance in the sum of £10,000,000 in respect of any one event. A copy of this insurance must be produced to the Council before a licence will be issued.

The Licence holder shall make no claim or charge against the Council in the event of the furniture or other objects being lost, stolen or damaged in any way.

Litter

Refuse and litter deposited on the highway in the vicinity of the chairs and tables must be collected at not less than hourly intervals (or more frequent intervals if required under the Environmental Protection Act 1990).

Litter is not to be placed in the litter bins situated on the highway for use by the general public, but in the trade refuse bins.

All tables must be cleared as soon as practicable after being vacated by customers to avoid litter being deposited unnecessarily on the highway.

Miscellaneous Conditions

The Licence holder must remove any furniture if required to do so to permit works in or the use of the highway by the Council, the County Council, the emergency services any statutory undertaker or telecommunications code operator or where the Licence holder has been notified of a special event taking place.

No charge can be made by the Licence holder for the use of the furniture.

All licences are renewable every two years.

ANNEX 1 – CONDITIONS

LICENCE FOR THE PLACEMENT AND USE OF TABLES, CHAIRS AND ASSOCIATED FURNITURE (THE FACILITY)

National Conditions Made by the Secretary of State

1. Clear routes of access along the highway must be maintained, taking into account the needs of disabled people, and the recommended minimum footway widths (1.5 metres) and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of Inclusive Mobility.
2. There must be clear 'smoking' and 'non-smoking' areas, with 'no smoking' signage displayed in designated 'smoke-free' zones in accordance with Smokefree (Signs) Regulations 2012.
3. No ash trays or similar receptacles to be provided or permitted to be left on furniture where smoke-free seating is identified.
4. The licence requires a minimum 2m distance between non-smoking and smoking areas, wherever possible.

Standard Licence Local Conditions

1. To use the highway permitted within the licence for the purpose of The Facility and for no other purpose whatsoever listed outside of the licence.
2. The boundary of the licensed area must be adhered to and ideally marked with a rigger barrier system that is stable so as not to be easily blown or knocked over, or as agreed otherwise in writing with the Licensing Authority.
3. Parasols must not overhang the area of The Facility and must not be erected in high winds.
4. The licence does not permit any fixtures or excavations of any kind to the surface of the highway.
5. The Facility must be removed for the purpose of allowing:
 - a. Works in, under or over the highway or in connection with works in, under or over land adjacent to the premises as may be required by Tendring District Council, Highway Authority or any statutory undertaker
 - b. Use and access by emergency services
 - c. Any other reasonable cause
6. To remove The Facility within 30 minutes of the terminal hour of the licence or upon any suspension or revocation of the licence.
7. The Facility within the marked boundary and any reasonable area outside of the boundary, caused by The Facility, must be kept free of litter, debris and food and drink spillages. The licensed area is to be washed at the close of each day using a method and materials sufficient to remove food debris, grease and spillages.
8. Plastic or toughened glasses and bottles are only permitted for the consumption of alcohol within The Facility as required by Tendring District Council or Essex police.
9. The Facility is to be used for seated customers only.
10. The licence holder must ensure The Facility is covered by valid and up to date public liability insurance cover of ten million pounds which is valid for the duration of the licence period.

11. A copy of the licence must be prominently displayed at the licensed area and must be made available for inspection by any Authorised Officer of the council or Police.



Department for Levelling Up,
Housing & Communities

Marsham Street
London
SW1P 4DF
pavementlicensing@levellingup.gov.uk

All Chief Executives of
local authorities in England

2 April 2024

Dear Chief Executive,

**PERMANENT PAVEMENT LICENSING REGIME
LEVELLING UP AND REGENERATION ACT 2023 COMMENCEMENT**

On 31 March 2024, we commenced the pavement licensing provisions laid out in the Levelling Up and Regeneration Act 2023. The provisions introduce a permanent pavement licensing regime in England to replace the temporary provisions introduced by the Business and Planning Act 2020. This permanent regime retains the key features of the 2020 regime, intended to streamline processing and reduce costs, but also incorporates some changes, outlined below, to ensure the long-term sustainability of the model.

Amendments set out in the LURA 2023

The LURA introduces several new pavement licensing provisions:

Firstly, the fee cap for a pavement licence application is increasing. It will no longer be capped at £100 but instead be capped at £500 for first time applications and £350 for renewal applications, subject to each local authority deciding the level of fee up to the cap. The increase and fee cap intend to balance both local authority and business interests. This increase in fee cap is intended to allow local authorities to recover the costs of processing, monitoring and enforcing licences.

Under the permanent regime, local authorities will now also be able to grant pavement licences for a length of their choosing up to a maximum of two years. As set out in the updated guidance, we encourage local authorities to grant businesses the maximum two years unless there is a good reason to do otherwise.

The 7-day consultation and 7-day determination periods provided under the temporary regime, will be extended to 14 days for each. This change has been made to reflect asks from local authorities to have a reasonable time to process applications; while balancing

businesses' need for a quick determination; and the need of members of local communities, particularly those with disabilities, to have a sufficient time to input, in mind.

Finally, the new pavement licensing provisions under the LURA 2023 grants local authorities' new enforcement powers. From the commencement date, local authorities will now, with the consent of the licence-holder, be able to amend the licence in certain circumstances. Local authorities will also be able to give notice to businesses who have placed furniture on the relevant highway without the required licence. If furniture continues to be placed on the highway, in contravention of the notice, the authority may remove and store the furniture, recover the costs from the business for the removal and storage of the furniture, and refuse to return the furniture until those costs have been paid. If within three months of the notice being served, the costs are not paid, the authority can dispose of the furniture by sale or other means and retain the proceeds.

Additional smaller changes in the guidance

Along with the amendments to the pavement licensing regime under the LURA 2023, we have made several minor changes to the guidance to clarify certain points within it and make it more comprehensive and considerate of the various groups affected by the regime.

We have clarified section 4.1 of the guidance, which sets out what local authorities, when considering the needs of disabled people, should assess when they set conditions, determine applications, and consider whether enforcement action is required. The previous guidance interpretation [Inclusive Mobility](#) was misleading. New guidance makes clear that under normal circumstances a width of 2000mm is the minimum that should be provided. In cases where this is not possible, a width of 1500mm could be regarded as the minimum acceptable distance. Though, local authorities should take a proportionate approach when measuring this.

In addition to this change we have also flagged that when considering the no obstruction condition licencing offices should be mindful of the cumulative impact of multiple pavement licences and the potential impact this could have on disabled pavement users.

Following feedback, we have provided more clarity on which types of furniture are permissible under this pavement licensing regime. Licences granted under this provision are exclusively for the use of furniture pertaining to the consumption of food and drinks, for example, tables and chairs. Other furniture, such as advertising boards, are not included. This furniture must be removeable.

Transitional Arrangements

The new pavement licensing provisions came into effect on 31 March 2024. Along with the renewals process introduced under the new regime, there are transitional arrangements in place to ensure the transition from the temporary regime to the permanent one is a smooth one for the entire sector.

Existing licence-holders can retain their licences granted under the temporary regime until the expiration date on their licence. After these existing licences expire, on or after 31 March 2024, businesses can reapply under the renewals process and be charged up to the

maximum renewal fee of £350, subject to the local authority deciding the level of fee up to the cap.

Existing licences with no fixed end date will be extended for two years from the commencement date and licences that were deemed to be granted due to the local authority not being able to determine the application on time, will also be extended for two years from the commencement date.

Applications submitted to the local authority on or before 30 March 2024 but determined on or after 31 March 2024 will be subject to some of the arrangements of the temporary regime, namely the 7-day consultation and 7-day determination periods and the up to £100 application fee. However, they will benefit from the new maximum duration of up to two years.

Applications determined before 31 March 2024, will be subject to the new enforcement power under the permanent regime, which grants authorities the power to amend the licence in certain circumstances with the licence-holder's consent.

You can access the updated guidance, which outlines the changes and transitional arrangements, [here](#).

For any queries, do reach out to pavementlicensing@levellingup.gov.uk.

Kind Regards,

Ruby Thompson,
Deputy Director of Planning Policy and Reform.

This page is intentionally left blank

By virtue of paragraph(s) 1 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank