

OVERVIEW AND SCRUTINY MANAGEMENT BOARD

- Date and Time :-** Wednesday, 14 November 2018 at 11.00 a.m.
- Venue:-** Town Hall, Moorgate Street, Rotherham.
- Membership:-** Councillors Brookes, Cowles, Cusworth, Evans, Keenan, Mallinder, Napper, Sansome, Short, Steele (Chair) Walsh and Wyatt.

This meeting will be webcast live and will be available to view [via the Council's website](#). The items which will be discussed are described on the agenda below and there are reports attached which give more details.

Rotherham Council advocates openness and transparency as part of its democratic processes. Anyone wishing to record (film or audio) the public parts of the meeting should inform the Chair or Democratic Services Officer of their intentions prior to the meeting.

AGENDA

1. Apologies for Absence

To receive the apologies of any Member who is unable to attend the meeting.

2. Declarations of Interest

To receive declarations of interest from Members in respect of items listed on the agenda.

3. Questions from Members of the Public and the Press

To receive questions from members of the public or press who are present at the meeting.

4. Exclusion of the Press and Public

To consider whether the press and public should be excluded from the meeting during consideration of any part of the agenda.

Items for Pre-Decision Scrutiny

In accordance with the outcome of the Governance Review in 2016, the following items are submitted for pre-decision scrutiny ahead of the Cabinet meeting on 19 November 2018. Members of the Overview and Scrutiny Management Board are invited to comment and make recommendations on the proposals contained within the report.

5. Consultation on the Adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and a Rotherham Sex Establishment Licensing Policy (Pages 1 - 53)

Cabinet Portfolio:- Waste, Roads and Community Safety

Strategic Directorate:- Regeneration and Environment

For Information/Monitoring:-

6. September 2018/19 Financial Monitoring Report (Pages 54 - 68)

Cabinet Portfolio:- Corporate Services and Finance

Strategic Directorate:- Finance and Customer Services

7. Urgent Business

To determine any item which the Chairman is of the opinion should be considered as a matter of urgency.

8. Date and time of next meeting

The next meeting of the Overview and Scrutiny Management Board will be held on Wednesday 28 November 2018 commencing at 11.00 a.m. at Rotherham Town Hall.



SHARON KEMP,
Chief Executive.

Summary Sheet

Name of Committee and Date of Committee Meeting

Cabinet – 19 November 2018

Report Title

Consultation on the Adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and a Rotherham Sex Establishment Licensing Policy.

Is this a Key Decision and has it been included on the Forward Plan?

Yes

Strategic Director Approving Submission of the Report

Paul Woodcock, Acting Strategic Director of Regeneration and Environment

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Ward(s) Affected

Borough-wide

Executive Summary

This report outlines a proposal to consult on the adoption of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 that, following amendment through the Policing and Crime Act 2009, classifies the following establishments as sex entertainment venues:

- Lap, pole and table dancing;
- Strip shows;
- Peep shows and live sex shows.

This report asks Cabinet to recommend that Council approve the commencement of public consultation on the adoption of the Schedule.

The adoption of the Schedule would give local communities a greater say about the presence of sex establishments, including sex entertainment venues, sex shops and sex cinemas, and would allow the local authority to more effectively regulate such premises through a formal Sex Establishment Licensing Policy.

The report therefore also seeks Cabinet approval to begin public consultation on a proposed Sex Establishments Licensing Policy to run parallel to consultation on the adoption of Schedule 3.

Recommendations

1. That the proposal to adopt Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended) be considered, and that Cabinet recommend to Council to agree the commencement of public consultation in relation to the proposed adoption.
2. That approval be given to begin public consultation, in line with Option 2(b) (section 4), on a proposed Sex Establishment Licensing Policy, to run parallel to consultation on the adoption of Schedule 3 above.

List of Appendices Included

- Appendix 1 Sex Establishments Local Government (Miscellaneous Provisions) Act 1982 Considerations
- Appendix 2 Draft Rotherham Metropolitan Borough Council Sex Establishment Licencing Policy for Consultation
- Appendix 3 Equality Impact Assessment

Background Papers

Home Office Guidance for England and Wales in relation to Sexual Entertainment Venues

Consideration by any other Council Committee, Scrutiny or Advisory Panel

Licensing Board – 24 September 2018

Council – 5 December 2018

Council Approval Required

Yes

Exempt from the Press and Public

No

Consultation on the Adoption of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 and a Rotherham Sex Establishment Licensing Policy.

1. Recommendations

- 1.1 That the proposal to adopt Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended) be considered, and that Cabinet recommend to Council to agree the commencement of public consultation in relation to the proposed adoption.
- 1.2 That Cabinet approval be given to begin public consultation, in line with Option 2(b) (section 4), on a proposed Sex Establishment Licensing Policy, to run parallel to consultation on the adoption of Schedule 3 above.

2. Background

- 2.1 Any sex shop or sex cinema located within the Borough of Rotherham currently requires a licence from the Council issued under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act'). Such premises are referred to in the 1982 Act as 'sex establishments'.
- 2.2 At the present time, all premises in Rotherham that provide lap dancing or similar activities require a premises licence issued under the Licensing Act 2003, rather than being licensed as 'sex establishments'.
- 2.3 Although the Licensing Act 2003 provides local authorities with the ability to regulate establishments where lap dancing or similar entertainment takes place, this legislation did not give communities sufficient powers to control where lap dancing clubs and the like, were established. Similarly, Councils were not provided with sufficient powers in relation to the regulation of such premises, such as the requirement for sex establishments to apply for an annual licence with appropriate conditions being attached.
- 2.4 The Policing and Crime Act 2009 came into effect in April 2010 and reclassified lap dancing clubs and similar as 'sexual entertainment venues', adding these to the category of 'sex establishment' within the 1982 Act. These provisions allow local authorities to consider and determine applications on potentially wider grounds than is permitted under the Licensing Act 2003, and allows local people a greater say over the regulation of sex establishments in their area.
- 2.5 Importantly, the amendments to the 1982 Act allows local authorities to set a policy in relation to the licensing of sex establishments that sets out the Council's approach to the licensing of these premises, including the setting of conditions, restrictions on locations and limits on the number and type of sex establishments within the area.
- 2.6 However, the amendments to the 1982 Act only apply where they are adopted by local authorities.

3. Key Issues

Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982

- 3.1 The majority of venues providing lap dancing, table dancing or other similar striptease entertainment currently need hold only premises licences with music and dancing issued under the Licensing Act 2003 to operate lawfully, which only requires them to be subject to the four licensing objectives which are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance and
 - The protection of children from harm.
- 3.2 The Policing and Crime Act 2009 amendment, which together with guidance, now ensures that the following are within the scope of the 1982 Act:
- Lap, pole and table dancing;
 - Strip shows;
 - Peep shows and live sex shows.
- 3.3 The provisions do include some clarifications and exemptions nevertheless, applications for a sex establishment licence will need to be made in writing and consider all details set out in the 1982 Act and the Council's Sex Establishment Licensing Policy.
- 3.4 The 1982 Act sets out mandatory grounds for the refusal of applications, making it clear that a licence must not be granted in prescribed circumstances. Additionally, a Council may choose to refuse a licence on discretionary grounds under specified circumstances. Detail in relation to the considerations can be found at Appendix 1.
- 3.5 Home Office guidance details that, whilst public consultation on the adoption of the powers is not statutorily required, it is good practice to seek the public's views on the matter.

Sex Establishment Licensing Policy

- 3.6 Home Office guidance establishes that it is reasonable and potentially useful to future applicants for the Council to specify in advance of receiving applications that certain areas are, or are not, appropriate locations for sex establishments or a particular number of sex establishments that might be allowed.

Locations

- 3.7 The Council's proposed Sex Establishment Licensing Policy, seeks to identify defined areas that would not be appropriate locations for sex establishments, or would not fit in with the character of such areas. A draft Policy presented at Licensing Board for consultation on 24th September, proposed examples of such sensitive locations as follows:

- Residential areas
- Parks / play areas
- Places of worship
- Women's refuge facilities
- Family leisure facilities such as cinemas, theatres and concert halls
- Youth facilities
- Places used for celebration or commemoration
- Schools and other education establishments
- Cultural leisure facilities such as libraries and museums
- Historic buildings
- Retail shopping areas

Licensing Board were supportive of this proposed approach, however no decision has been made on the Policy in relation to sensitive locations at this stage.

- 3.8 The Council's definition of what constitutes a locality can be challenged if it was found that the area covered was unreasonable, and the policy therefore should be informed through a thorough consultation process (see section 4).

Number of Sex Establishments

- 3.9 The Council can set limits on the number of sex establishments (sex shops and sex cinemas) and sexual entertainment venues in a proscribed area, such as the Town Centre, taking into account the impact of such establishments on the character and amenity of particular locations. It is required that this principle should be subject to robust public consultation.
- 3.10 The Council may therefore refuse a licence on the grounds that the number of licences of that type is equal to or exceeds the number which the authority considers is appropriate for that locality. Guidance is clear that nil may be an "appropriate number" for a "relevant locality" where the character of the area is considered to be unsuitable for the siting of a sex establishment.
- 3.11 The draft policy presented to Licensing Board on 24th September proposed to limit the number of sex establishments within the town centre area to a maximum of two, providing those premises are not too near and / or do not impact properties with sensitive uses or in sensitive locations. Licensing Board were minded to support the proposed approach, so as not to effect the existing two sex establishments (one sex shop and one sexual entertainment venue) in Rotherham. However no decision about the appropriate number of sex establishments in any relevant locality, has been made at this stage.

Other Conditions

- 3.12 In addition to safeguards around safety and welfare, it essential that the workers in sexual entertainment venues are protected from exploitation. Given that it is proposed that specific conditions to address this are attached to all sexual entertainment venue licences.

3.13 The appropriate proposed standard conditions will be applied to all sex establishment licences issued by Rotherham MBC. The Council does however reserve the right to amend these conditions or attach additional conditions as appropriate.

4. Options considered and recommended proposal

4.1 **Option 1:** the Council does not consult on the adoption of the provisions provided within the amended Schedule 3 to the 1982 Act, and does not therefore consult on a Sex Establishments Licensing Policy. This option would maintain the status quo, and therefore mean that the Council could not adopt Schedule 3 and could not introduce a robust Sex Establishment Licensing Policy. This would limit the ability of local people to challenge the presence of sex establishments in their area.

4.2 In addition, the current position of regulating lap dancing clubs through the Licensing Act 2003 would remain, limiting the ability of the Council to deal effectively with any concerns around lap dancing clubs.

4.3 This option would reduce cost burdens on the Council in respect of undertaking public consultation and subsequent costs of implementing the changes and Policy.

4.4 **Option 2:** the Council consults on the adoption of the provisions within the amended Schedule 3 to the 1982 Act, and on a Sex Establishments Licensing Policy. Within Option 2 there are two potential consultation approaches:

4.5 **Option 2(a):** to develop a draft policy, including proposals relating to the type of locations and number of sex establishments, and to seek views on that draft policy. Whilst this would potential aid a consultation, as it would give consultees a draft set of locations and a suggested number of sex establishments to consider, it could potentially limit the range of sensitive localities being identified, and limit the range of responses in relation to the number of sex establishments in particular locations.

4.6 **Option 2(b):** to publish a draft policy, leaving the sections of the policy relating to the type of locations and number of sex establishments blank, in order to facilitate a structured consultation, and to seek a wider range of views, to fully inform the future policy. Whilst this option would not give consultees a specific proposal to respond to, it is likely to elicit a more comprehensive range of views about sensitive localities and the appropriate number of sex establishments within those localities.

4.7 It is clear that the current regulatory position is not satisfactory. In order to develop a robust policy, there is a need for an open consultation, which is not presumptuous in terms of the outcome. Option 2(b) is therefore the preferred approach.

- 4.8 The preferred option to consult means that Council can subsequently consider whether to adopt Schedule 3 of the 1982 Act, and that Cabinet can consider whether to agree a formal Sex Establishment Licensing Policy. This would ultimately provide the Council with a more robust response to ensure that the future licensing of sex establishments is considered taking account of the views of residents, the establishment of welfare conditions for those employed, and provides for consideration of the location of such establishments.

5. Consultation

- 5.1 The decision to adopt a Sex Establishments Licensing Policy, or to consult upon one, are decisions for Cabinet as they relate to policy rather than the determination of individual applications for licences, which would be matters for Licensing Board. The adoption of Schedule 3 to the 1982 Act, or a decision to consult on adoption, is a matter for Council, which would have to pass a resolution to apply Schedule 3 to the Borough in order for Schedule 3 to apply.
- 5.2 Subject to Cabinet and Council approvals, a public consultation will commence during December 2018, with a view to providing evidence for a further report in February 2019 to consider whether or not to adopt the powers. Once the consultation is completed, responses will be considered and incorporated into further report to Council and Cabinet.
- 5.3 Any proposed Sex Establishments Licensing Policy should be developed through robust and meaningful consultation with all relevant stakeholders. The proposed public consultation would seek views as to the importance of key elements of the proposals including:
- The adoption of Schedule 3 of the 1982 Act, and the need for a specific Sex Establishments Licensing Policy, to provide residents with a means of challenging the presence of sex establishments within their area;
 - The type and nature of locations where sex establishments would not be appropriate;
 - The boundaries of “relevant localities” where any policies would apply;
 - The number of sex establishments considered appropriate within the proposed “relevant localities” of the Borough;
 - The consideration of other bespoke prescribed conditions on licences that would allow for effective regulation of sex establishments;
 - The value of including specific conditions that seek to ensure that the welfare of workers within sex establishments are prescribed.
- 5.4 The Council’s Licensing Board was consulted in relation to the proposed adoption of the amended Schedule 3 of the 1982 Act and on a draft Sex Establishments Licensing Policy on 24th September 2018. The feedback from Licensing Board will be considered as part of the consultation on the adoption of Schedule 3 of the 1982 Act and on a Sex Establishments Policy.
- 5.5 Feedback from the Cabinet Member for Waste, Roads and Community Safety is that the character of Rotherham town centre makes it an inappropriate locality for Sexual Entertainment Venues.

- 5.6 Public consultation will be undertaken for a period of 8 weeks. All appropriate consultation methods will be used in order to ensure that the consultation is both effective and meaningful. The consultation will involve (amongst others) the general public, statutory authorities, the users and managers of those sensitive locations identified in section 3.7 above, religious groups, community and voluntary groups, residents living near to premises, the employees within the industry and their representatives, as well as industry representatives.

6. Timetable and Accountability for Implementing this Decision

- 6.1 It is proposed that consultation on the proposal to adopt Schedule 3 of the 1982 Act and consultation on a Sex Establishments Licensing Policy, will take place in parallel with one another, given the intrinsic links between the two proposals. An indicative timetable for adoption is therefore as follows:

Date	Meeting	Decision
19 th Nov 2018	Cabinet	<ul style="list-style-type: none"> • Cabinet recommend to Council to agree the commencement of public consultation to adopt Schedule 3 of the 1982 Act. • Cabinet give approval to begin consultation on a proposed Sex Establishment Licensing Policy to run parallel to consultation on the adoption of Schedule 3 above.
5 th Dec 2018	Council	<ul style="list-style-type: none"> • Council agree the commencement of public consultation to adopt Schedule 3 of the 1982 Act.
Public Consultation – 8 weeks		
27 th February 2019	Council	<ul style="list-style-type: none"> • Council agree to adopt Schedule 3 of the 1982 Act.
Late February/ Early March	Licensing Board	<ul style="list-style-type: none"> • Licensing Board consultation on amendments to the Sex Establishment Licensing Policy following consultation.
18 th Mar 2019	Cabinet	<ul style="list-style-type: none"> • Cabinet agree to adopt a Sex Establishment Licensing Policy.

- 6.2 Should the powers ultimately be adopted, there is a requirement that a transitional period of twelve months is allowed to ensure the compliance of existing licence holders.

7. Financial and Procurement Implications

- 7.1 Schedule 3 to the 1982 Act states that the application for grant, renewal, variation or transfer of a sex establishment licence shall pay a reasonable fee determined by the appropriate authority.

- 7.2 The current annual fee for a new sex establishment licence is £7,560. If Schedule 3 is adopted this would potentially bring one other establishment, currently in the Borough, in to this charging regime.
- 7.3 In the event that the new provisions are adopted, a costings exercise will be carried out aimed at establishing appropriate application fees on a full cost recovery basis in line with Central Government guidelines.
- 7.4 Consultation will involve some additional printing and postage costs, but will also utilise the Council's existing website. It is envisaged that any additional costs will be minimal and that this can be delivered within existing resources.
- 7.5 There are no anticipated procurement implications as a result of the proposals within this report.

8. Legal Implications

- 8.1 In the event that the adoptive provisions are to be taken up, Council must pass a resolution stating this decision and which specifies the day (the first appointed day) that the provisions will come into effect in the area. The specified date must be more than one month after the day on which the resolution was passed.
- 8.2 The resolution and the date of the first appointed day must then be published in notices appearing for two consecutive weeks in a local newspaper circulated in its area. The first publication of the notices must give at least 28 days' notice of the specified date.
- 8.3 A 'transitional period' then commences lasting twelve months beginning with the first appointed day. The process that follows is set out below:
- To allow time to comply with the new regime, existing operators, who immediately before the first appointed day, hold a premises licence issued under the 2003 Licensing Act, which allows the licensee to lawfully use premises as a sexual entertainment venue will be allowed to continue to provide relevant entertainment until either the third appointed day (which falls twelve months after the first appointed day) or until such time as any application they have submitted is determined.
 - New operators (who do not hold relevant 2003 Act premises licences) who wish to use premises as sexual entertainment venues after the first appointed day will not be able to use those premises until they have been granted a sexual entertainment venue licence.
 - After the second appointed day (which falls six months after the first appointed day) the local authority must consider all applications received since the first appointed day, together. New applications granted will then take immediate effect. Licences granted to existing operators come into effect on the third appointed day.
 - Applications made after the second appointed day shall be considered when they are made but only once all applications made before the second appointed day have been determined.

8.4 The decision to adopt the amended Schedule 3 is one which must be made at a meeting of Council. Council may also determine to delegate the decision making in relation to applications and other matters to a Council Committee or Regulatory Board – this matter will be addressed further in the final report that will be brought before Council following public consultation.

8.5 In order to mitigate the risk of any legal challenge to the proposed adoption of the amended Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, the Authority will need to ensure that any consultation is carried out with all relevant persons/bodies and must be carried out over a sufficient period of time

9. Human Resources Implications

9.1 There are no HR implications arising from this report in respect of the proposed consultation.

10. Implications for Children and Young People and Vulnerable Adults

10.1 A failure to effectively regulate sex establishments may expose children and young people to psychological harm as a result of coming into contact with activities that are intended for adults only.

10.2 In addition, vulnerable adults may be exploited by the practices of sex entertainment venues (in particular) and therefore it is essential that such premises are appropriately regulated in order to ensure that vulnerable people are not exposed to physical, emotional and psychological harm.

10.3 It is considered that the adoption of the amended Schedule 3 of the 1982 Act along with the introduction of the Sex Establishment Licensing Policy will allow for the effective regulation of sex establishments in Rotherham and the mitigate the risk of harm that is presented to children, young people and vulnerable adults.

11. Equalities and Human Rights Implications

11.1 An initial Equality Impact Assessment (EIA) has been undertaken in support of this report, and the proposals outlined within it (see Appendix 3). The EIA will be regularly reviewed and updated throughout the process and will be finalised following the proposed public consultation, prior to agreement of the Policy.

12. Implications for Partners and Other Directorates

12.1 There are no implications anticipated for partners or other Directorates.

13. Risks and Mitigation

13.1 Failure to implement the adoptive legislation and Policy, presents a continuing risks to children and vulnerable adults.

13.2 Failure to address sex establishments effectively with the best available regulatory tools, presents a risk of reputational damage to the Council.

13.3 There is a risk that public consultation may support the adoption of the powers, but might not support the contents of a future Policy.

14. Accountable Officer(s)

Tom Smith, Interim Assistant Director, Community Safety and Street Scene
Paul Woodcock, Acting Strategic Director of Regeneration and Environment

Approvals obtained on behalf of:-

	Named Officer	Date
Strategic Director of Finance and Customer Services	Julie Copley	22/10/18
Assistant Director of Legal Services	Dermot Pearson	31/10/18
Head of Procurement (if appropriate)	Karen Middlebrook	29/10/18
Head of Human Resources (if appropriate)	John Crutchley	22/10/18

This report is published on the Council's website or can be found at:-

<http://modern.gov.rotherham.gov.uk/ieDocHome.aspx?Categories=>

Appendix A: Local Government (Miscellaneous Provisions) Act 1982 Considerations

- 1.1 Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 provides local licensing authorities with adoptive licensing provisions for sex establishments, comprising the categories of sex shops and sex cinemas.
- 1.2 The majority of venues providing lap dancing, table dancing or other similar striptease entertainment currently need hold only premises licences with music and dancing issued under the 2003 Act to operate lawfully. Applications for premises licence under the 2003 Act are subject only to considerations relevant to the four licensing objectives being:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance and
 - The protection of children from harm.
- 1.3 Paragraph 2A of Schedule 3 as inserted by Section 27 of the Policing and Crime Act 2009 defines the newly created category of 'sexual entertainment venue' as "any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer". The meaning of 'relevant entertainment' is "any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must be reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means)".
- 1.4 Guidance produced by the Home Office provides that while local authorities should judge each case on its merits, the definition of relevant entertainment would be expected to apply to the following forms of entertainment as they are commonly understood:
 - Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows and
 - Live sex shows
- 1.5 The guidance emphasises that although reference is made to "live display of nudity" the mere fact that there is a display of nudity does not mean that a sex establishment licence will necessarily be required. For example, if the display forms part of a drama or dance performance in a theatre, in most cases it cannot reasonably be assumed to be provided 'solely or principally for the purpose of sexually stimulating any member of the audience'.

- 1.6 Schedule 3 sets out the definition of a 'display of nudity'. In the case of a woman, it means exposure of her nipples, pubic area, genitals or anus and, in the case of a man, it means exposure of his pubic area, genitals or anus.
- 1.7 The provisions do include some clarifications and exemptions. Spontaneous displays of nudity or a lap dance by a customer or guest will not result in the premises being classified as a sexual entertainment venue. Furthermore, paragraph 2A(3) of Schedule 3 sets out those premises that are not sexual entertainment venues. These are:
- Sex shops and sex cinemas (which fall into other categories under the 1982 Act);
 - Premises which provide relevant entertainment on an infrequent basis. These are defined as where:
 - No relevant entertainment has been provided on more than 11 occasions within a 12 month period;
 - No such occasion has begun within a period of one month beginning with the end of the previous occasions; and
 - No such occasion has lasted longer than 24 hours.
- 1.8 Premises which provide relevant entertainment on an occasional basis will continue to be regulated by the 2003 Act. Premises which provide relevant entertainment on a regular basis will require a licence under the 1982 Act and, in all probability, a further licence under the 2003 Act should alcohol or late night refreshment sales be intended, but they will no longer be able to operate only under a 2003 Act licence alone.

Application process

- 1.9 Schedule 3 of the 1982 Act outlines the application process for a sex establishment licence, and provides details of the circumstances that merit (or may merit) refusal of an application for a licence.
- 1.10 Applications for a licence should be made in writing and should provide all details as set out in the 1982 Act and the Council's Sex Establishment Licensing Policy.
- 1.11 In addition, the application process will require:
- The payment of a reasonable fee;
 - Public advertisement of applications by way of a notice exhibited at the premises for a period of 21 days and a notice published in a local newspaper;
 - Written objections to be lodged relevant to the ground for refusal of a licence; and
 - Public hearing of the application and any objection(s) to the application.
- 1.12 The 1982 Act sets out mandatory grounds for the refusal of an application and makes it clear that a licence must not be granted:

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

1.13 Additionally, a Council may choose to refuse licence on discretionary grounds where:

- The applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- If the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;
- The number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality;
- That the grant of the licence would be inappropriate, having regard:
 - To the character of the area or the relevant locality, or
 - To the use to which any premises in the vicinity are put, or
 - To the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

Locality

1.14 A local licensing authority may refuse applications on grounds related to an assessment of the 'relevant locality'. The Home Office guidance establishes that it is reasonable and potentially useful to future applicants for a local authority to decide in advance of receiving applications that certain areas are, or are not, appropriate locations for sex establishments or a particular number of sex establishments.

1.15 Nil may be an "appropriate number" where the character of the area is considered to be unsuitable for the siting of a sex establishment.

1.16 The locations will be specifically referenced during the public consultation period that will take place as part of the adoption process. The views of respondents will be taken in account when considering the appropriateness of these locations for inclusion in the policy.

- 1.17 When considering a particular application case law has indicated that the relevant locality does not have to be a clearly pre-defined area nor are local authorities required to be able to define its precise boundaries.
- 1.18 Therefore, while a local authority is not prevented from defining the exact area of the relevant locality, it is equally free to conclude that it simply refers to the area which surrounds the premises specified in the application and does not require further definition.
- 1.19 Nevertheless a local authority's view of what constitutes a locality could be open to challenge if they took a completely unreasonable view of the area covered, and therefore it would be appropriate for the licensing authority to confirm the their interpretation of the term "relevant locality" on a case by case basis.
- 1.20 Case law also indicates that a relevant locality cannot be an entire local authority area or an entire town or city.
- 1.21 Once the appropriate authority has determined the relevant locality, it should seek to make an assessment of the 'character' of the relevant locality and how many, if any, sex establishments, or sex establishments of a particular kind, it considers appropriate for that relevant locality. 3.38 Section 27 amends paragraph 12(3)(c) of Schedule 3 to allow local authorities to determine an appropriate number of sex establishments of a particular kind. In practice, this means that the appropriate authority may, for example, decide that a particular locality is suitable for a sex shop but is not suitable for a sexual entertainment venue or vice versa.
- 1.22 Case law has defined that a 'relevant locality' cannot be an entire local authority area or entire city or town. All applications must be considered upon their own merits.

Conditions

- 1.23 When granting licence to a sex establishment, a local authority is able to impose terms, conditions and restrictions on that licence. These conditions are intended to protect the general public, customers, performers and the local environment.

**Rotherham MBC
SEX ESTABLISHMENT LICENSING POLICY
September 2018**

(DRAFT for CONSULTATION)

DRAFT FOR CONSULTATION

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1. Introduction

- 1.1. Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009, provides for local authorities to adopt a policy and standard conditions relating to the regulation of:
- sexual entertainment venues
 - sex shops
 - sex cinemas
- 1.2. Rotherham Borough Council (the Council) adopted the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009 on XXXXXXXX, with effect from XXXXXXXX.
- 1.3. This policy sets out the Councils approach to the regulation of the premises detailed in paragraph 1.1 above under the provisions of the 1982 Act.
- 1.4. This policy should be read with reference to the statutory Statement of Licensing Policy published under the Licensing Act 2003.
- 1.5. A review of this policy will commence one year after its introduction. It will be then be reviewed on a three yearly basis.
- 1.6. Interpretations can be found at Appendix A.

2. Purpose and Scope

- 2.1. This policy is concerned with the regulation of sex establishments as defined by the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009 (the Act), namely
- sexual entertainment venues;
 - sex shops; and
 - sex cinemas
- 2.2. The full legal definition of a sexual entertainment venue, sex cinema and sex shop can be found within sections 2, 2A, 3 and 4 of the Act.
- 2.3. The aim of this policy is to ensure that sex establishments operate within the authority area in a safe, fair and discreet manner, and do not negatively affect residents, visitors to the area or the character, or economic development of the Borough. The policy is written taking into account the principles laid out within Rotherham's Children and Young People's Plan (2016 to 2019), the Rotherham Safeguarding Adults Board Strategy (2016 to 2019) and the Safer Rother Partnership Plan (2018-21).
- 2.4. The Council is mindful of the possible concerns of the local community and that there may be conflict between the wishes of an applicant in respect of a licence and those who object to such applications. The aim of this policy is to provide guidance for prospective applicants, existing licence holders, those who may wish to object to an application and Members of the Licensing Committee when making a determination on an application.
- 2.5. The Policy also identifies the relevant localities where sex establishments would not be considered appropriate, and the number of sex establishments that the Council considers appropriate in a particular locality. The Policy also sets standard conditions to address advertising and the external appearance of premises, crime and disorder safeguards, and staff welfare issues.
- 2.6. While each application will be dealt with on its own merits, this policy gives prospective applicants an early indication as to whether their application is likely to be granted or not and creates a presumption that any application for a sex establishment outside of the town centre area and any application for a sex entertainment venue in the town centre area will normally be refused. It also provides prospective applicants with details of what is expected of them should an application be made.
- 2.7. The Council will impose conditions where necessary to promote responsible licensed activity and will use effective enforcement to address premises where there are problems, in partnership with key agencies such as:
- South Yorkshire Police
 - South Yorkshire Fire & Rescue Service
 - Safer Rotherham Partnership
- 2.8. The Council will keep the policy under constant review and make such revisions it

considers appropriate, in the light of new or amended legislation.

3. Public Consultation

3.1 [Section to be completed following public consultation]

4. General Principles

4.1. In determining licensing applications the Council will treat each application on an individual basis, on its own merits, taking into account this policy, the guidance issued by the Home Office and the Act.

4.2. A decision to refuse the licence application will not be made on moral grounds or that the establishment may cause offence.

Mandatory grounds for the refusal of an application

4.3. Mandatory grounds for the refusal of an application for a sex establishment are that the applicant:

- is under the age of 18;
- is for the time being disqualified from holding a sex establishment licence;
- is not a body corporate, and is not resident or has not been resident in an EEA state for six months immediately preceding the date of the application;
- is a body corporate which is not incorporated in an EEA state;
- has in the period of 12 months preceding the date of the application been refused the grant or renewal of a licence for the premises, vehicle, vessel, or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

Discretionary grounds for the refusal of an application

4.4. Discretionary ground for the refusal of an application for a sex establishment are that:

- the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason;
- if the licence were to be granted, the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant of such a licence if he made the application himself;
- the number of sex establishments, or sex establishment of a particular kind, in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality. Nil may be an “appropriate number” where the character of the area is considered to be unsuitable for the siting of a sex establishment.
- granting of a licence would be inappropriate, having regard:

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

Suitability of applicant

4.5. When considering the suitability of the applicant to hold a licence the Council will take into account such matters as it considers to be relevant including but not limited to whether the applicant:

- is honest;
- is qualified by experience to run the type of sex establishment in question;
- has a clear understanding of the conditions that may be attached to the licence;
- has no unspent conviction of a nature that deem him/her unsuitable;
- a management structure is in place which delivers compliance with the operating conditions, e.g. through managerial competence, presence, a credible management structure, enforcement of rules internally, a viable business plan and policies for welfare of dancer / performers / workers;
- will act in the best interests of dancer / performers / workers, e.g. the facilities they enjoy, how they are protected and how and by who their physical and psychological welfare is monitored;
- can be relied upon to protect the public, e.g. transparent charging, freedom from solicitation;
- can show a track record of management of compliant premises, or that he/she will employ individuals who have such a track record.

4.6. The Council will require the applicant to identify the proposed manager or beneficiary of the business (along with any changes in the manager or beneficiary once the licence is issued). In considering the suitability of these persons the Council will apply the principles at 4.5 of this policy.

Appropriate numbers and localities

4.7. There is provision within the Act which enables the Council to impose a numerical control on the number of sex establishments in a particular locality. The control applies not only to the number of sex establishments overall, but also to the number of each kind of premises.

4.8. The Council may refuse a licence on the grounds that the number of licences of that type is equal to or exceeds the number which the authority considers is appropriate for that locality. Nil may be an “appropriate number” where the character of the area is considered to be unsuitable for the siting of a sex establishment.

[Section to be completed following public consultation]

Links to other Legislation

- 4.9. The Council will consider and have regards to the following legislation when applications are determined:
- a) Crime and Disorder Act 1998
 - b) The Provision of Services Regulations 2009
 - c) Equality Act 2010
 - d) Human Rights Act 1998
 - e) Any other current or future relevant legislation

Planning

- 4.10. The use of premises is subject to planning control. Such use will require planning permission or must otherwise be lawful under planning legislation. Planning permission is generally required for the establishment of new premises or the change of use of premises.
- 4.11. In general, all premises which are the subject of an application, should have the benefit of planning permission, or be deemed permitted development. The onus will be on the applicant to demonstrate that planning permission has been granted or that the premises have the benefit of permitted development rights.
- 4.12. In addition, all new developments and premises which have been subject to works that require an application covered by Building Regulations should have building control approval in the form of a Building Regulations Completion Certificate. The onuses will be on the applicant to demonstrate that any such works have been approved by a building control body.
- 4.13. Any decision on a licence application will not consider whether any decision to grant or refuse planning permission or building consent was lawful and correct.

Advertising

- 4.14. As part of the standard conditions attached to licences there is a requirement that all advertising and the external appearance of the premises must be approved by the Council. This approval will be sought at a sub-committee hearing. Applicants will be entitled to attend the hearing. Please contact the Licensing Section for further information on how to submit changes to advertising material and external appearance.

Staff Training

- 4.15. The Council requires that all persons employed on licensed premises are trained and made aware of their responsibilities in relation to the Act, especially the offences under the Act, and the conditions of the licence.

4.16. Licensed premises will be required to document training undertaken by staff. Such records will be kept for a minimum of one year and will be made available for inspection on request by an authorised officer or the police.

Prohibition on the practice of fining

4.17. The Council is aware that in some sexual entertainment venues it is the usual practice of some businesses to fine dancer / performers for misdemeanours such as chewing gum, wearing inappropriate clothing or being late for a shift. The practice of fining can lead to an air of mistrust and resentment in the work place. More importantly the Council is aware that in a majority of cases of fining that have been noted in premises the (predominantly male) management fine female dancer / performers; however they do not fine bar staff or door staff.

4.18. Therefore, for reasons of gender inequality, a standard condition has been imposed on all new and renewed licences to prohibit the practice of fining.

Whistleblowing Policy

4.19. The Council is aware of the potential for workers within sexual entertainment venues to lack the confidence to report any breaches of licensing conditions or other issues to management or the Licensing Authority.

4.20. Therefore a standard condition has been imposed requiring a code of conduct to be in place that clearly sets out the process for workers to report any concerns anonymously to the manager of the venue, and/or the Licensing Authority (a 'whistleblowing policy').

Exemptions

4.21. Under the Act there is an exemption for sexual entertainment venues for premises which provide relevant entertainment on an infrequent basis. These are defined as premises where –

- no relevant entertainment has been provided on no more than 11 occasions within a 12 month period;
- no such occasion has begun within a period of one month beginning with the end of the previous occasions; and
- no such occasion has lasted longer than 24 hours
- other premises or types of performances or displays exempted by an order of the Secretary of State.

4.22. This exemption does not apply to sex shops or sex cinemas.

5. Application procedure

5.1. Applications must be made to the Council in the form prescribed, which is available from the Licensing Section.

5.2. The applicants / operators suitability will be checked before a licence is granted. The suitability of the applicant/operator is important to ensure that the interests of the public are protected. The Council will use the methods detailed below to ensure that the proposed licence holder and operator:

- is honest
- has a clear understanding of the conditions that may be attached to the licence
- has a suitable business plan which will deliver compliance of the standard conditions
- has no unspent convictions of a nature that deem him/her unsuitable

5.3. Applicant / operator suitability checks may be achieved by the following means:

- application form
- criminal record check
- personal interview
- information and/or intelligence relating to any previous licenses held
- accreditation

5.4. On receipt of the application it will be sent to South Yorkshire Police who may conduct a check. Applicants/operators may be asked to provide basic Disclosure and Barring Service checks, or attend an interview, to support their application.

5.5. Applications for sexual entertainment venue or sex establishment licences will also show that there are clear policies and codes of conduct in place, to protect staff and the interests of customers, in relation to a:

- workers' welfare policy including clear guidance as to the process for workers to report any concerns anonymously to the manager of the venue, and/or the Licensing Authority (a 'whistleblowing policy').
- code of conduct for workers on the premises.
- code of conduct for customers.
- pricing policy.

5.6. These criteria will be taken into account when the Council determine the licence. Non-compliance with one or more of the criteria will not necessarily exclude the operator from holding a licence, providing the applicant is able to prove to the Council that the interest of the public is protected.

5.7. Checks/enquiries may also be made with regard to the operator's company structure, to ensure that the operator is not working on behalf of an individual or company that would not be granted a licence in their own right.

5.8. These checks/enquiries may be made via South Yorkshire Police, Companies House, personal interview or applicants may be asked to provide business records.

Fees

5.9. The fee must be submitted as part of the application. The fee is based on the recovery of costs incurred by the Council in determining the application.

Plans

5.10. The applicant must submit an appropriate number of plans / diagrams that will allow the identification of:

- the locality of the premises and the proximity of any sensitive premises,
- the external footprint of the premises,
- the internal layout of the premises (to include areas where licensable activity will take place, staff areas, changing rooms, welfare facilities, means of access and egress, etc.)

Notices

5.11. It is a legal requirement that the applicant must advertise the application in the following ways:

- publish an advertisement in a local newspaper within 7 days of the application being submitted to the Council
- display a notice of the application on or near the premises for 21 consecutive days
- send a copy of the notice of application to the Chief Officer of Police for South Yorkshire within 7 days of the application being submitted to the Council

5.12. Proof that the applicant has advertised the application will be required.

5.13. The Council recommends that it is good practice to notify the occupiers of any nearby properties of the details of any proposed applications in relation to a premises

Objections

5.14. Anyone can object to an application for a sex establishment. Objection should be received by the Council no later than 28 days after the date that the application was received by the Council. Objections can be on any matter but should not be based on moral grounds/values. Appropriate weight will be given to objections which relate to the purpose of the legislation which is the control of sex establishments.

5.15. The Council will notify the applicant in writing of the general terms of any objection it receives within the 28 days of the application. Objectors will, however, remain anonymous and efforts will be made to redact the contents of the objections so the objector's identity remains anonymous. If the objectors wish for their details to be released to the applicant they should make this clear in their objection.

Hearings - decision making process

- 5.16. It is the Council's practice to provide notice of committees and sub-committee hearings to all interested parties (applicants and objectors) five days before the hearing as laid down in the Local Government Act 1972. This notice will provide the date and time of the hearing, the procedure for the hearing, and will require the addressee to confirm their attendance and the attendance of any witnesses they may wish to call. The hearing will take place in public except where the public interest requires otherwise.
- 5.17. In determining licence applications under the Act the Council will take into consideration the application before it, any objections received as well as local knowledge including local issues and cultural sensitivities.
- 5.18. The decision to refuse or revoke a licence can be made by the Licensing Board, sub-committee or Officers. Any decision to refuse or revoke a licence will be accompanied by clear reasons for the decision.
- 5.19. Where possible a decision will be given verbally at the sub-committee hearing, with the written reasons to follow in due course. However in exceptional circumstances the sub-committee may defer the decision in order to allow further consideration of the case and in such circumstances the decision and reasons will be issued in writing to all parties.

Conditions

- 5.20. The Council will impose standard conditions on all licences. However, if deemed necessary, the Council may add to, change or replace the standard conditions with conditions that are relevant to the application. The standard conditions can be found at Appendix B.
- 5.21. Through the standard conditions the Council seeks to ensure that sex establishments are well managed and supervised, restrict sexual entertainment activities and the manner in which they are permitted to be provided, protect performers and workers, protect customers and control the impact that the premises has in relation to the general public and locality.
- 5.22. Any change to the standard conditions will be applied to licences at the time of renewal when all conditions are reviewed.
- 5.23. Where it is considered appropriate the Council may attach conditions, in addition to the standard conditions, to a licence in the individual circumstances of an application.

Right of appeal

- 5.24. Only the applicant has the right to appeal the Council's decision to the Magistrate's Court and only on limited grounds, within 21 days of written reasons of decision. There is no right

to appeal for objectors or statutory authorities. Further information can be found at Section 27 of the Act.

Term of licence

5.25. A sex establishment licence shall remain in force for a maximum period of one year. The authority may grant a shorter licence period if it thinks fit. A licence may be brought to an early end by being surrendered or revoked.

Renewal / transfer

5.26. The process for applying for a renewal or transfer of the licence is the same as when applying for a new licence.

5.27. Applications for the renewal of a licence must be made prior to the date of expiry. The licence is deemed to continue until the application is withdrawn by the applicant or determined by the licensing authority.

5.28. The previous conduct / history of an applicant / licence holder (insofar as it relates to licensable activities or the impact thereon) will be taken into consideration when assessing a renewal or transfer application.

Variation

5.29. A licence holder can apply to vary the terms, conditions or restrictions of a licence at any time. The 1982 Act does not set out procedural requirements in relation to variations, therefore it has been decided that the variation application process in Rotherham will be the same as the grant application process; with the exception that a plan of the premises need not be provided (unless the variation relates to structural alterations).

Revocation

5.30. The Council may revoke the sex establishment licence if information is received in relation to either the mandatory grounds, detailed at paragraph 4.3, or the first two of the discretionary grounds, details at paragraph 4.4.

5.31. Should the Council consider revocation of the licence to be appropriate, the licensee will be given an opportunity to appear before and be heard by the Licensing Board or Sub-Committee.

5.32. The licensee will be given a statement in writing of the reasons for revocation within seven days of the requirement being made.

5.33. The revocation will take effect once the appeal period referred to in section 5.24 above has expired, or if an appeal is lodged after the determination or abandonment of the appeal.

Waiver

- 5.34. Provisions within the Act allow licensing authorities to waive the need for a licence. Should the Council decide that a licence would be unreasonable or inappropriate, it may waive the need for a licence, for example in the case of a medical book shop, sex clinic, in border line cases, to correct errors or for minor or temporary events.
- 5.35. The Council would only waive the need for a licence where activity is low risk and/or temporary. However, a waiver will not be considered in the cases where a licence is reasonable and appropriate or where there is public interest.
- 5.36. The application for a waiver uses the same form as an application for a new licence, this should be accompanied by a letter which describes the circumstances under which the need for a licence should be waived. There is no requirement to advertise the application. There is a fee. Applicants should contact the Licensing Section before making their application.
- 5.37. The decision to waive the need for a licence will be taken at a licensing sub-committee hearing and a Notice of Waiver will be issued in due course.
- 5.38. Unsuccessful applications for waivers will be notified accordingly and provision will be made for them to make a formal application for a sex establishment licence.

Interpretations

Advertisement means any word, letter, image, model, sign, placard, board, notice, device or representation, whether illuminated or not, in the nature of and employed wholly or partly for the purposes of, advertisement or announcement.

Authorised officer means an officer employed by Rotherham Metropolitan Borough Council and authorised by the Council to act in accordance with provisions of the Local Government (Miscellaneous Provisions) Act 1982.

The Council means Rotherham Metropolitan Borough Council.

Display of nudity means:

- (a) in the case of a woman, exposure of her nipples, pubic area, genitals or anus; and
- (b) in the case of a man, exposure of his pubic area, genitals or anus.

Dancer / performer means dancer / performer, entertainment, performer, or other such person employed, or otherwise, to provide relevant entertainment.

Licence means any sex establishment licence that the Council can grant under the Local Government (Miscellaneous Provisions) Act 1982.

Licensee means the holder of a sex establishment licence.

Licensed area means the part of the premises marked on the plan where licensable activities are to take place.

Premises includes any vehicle, vessel or stall but does not include any private dwelling to which the public is not admitted.

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

Responsible person means the person nominated by the licensee who has personal responsibility for and be present on the premises whilst the premises is open to the public. This may be the manager or the relief manager.

Sex shop means any premises, vehicle, vessel or stall 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 the connection with, or for the purpose of stimulating or encouraging sexual activity.

Sexual entertainment venue means any premises at which relevant entertainment is provided before a live audience, directly or indirectly for the financial gain of the organiser (i.e. a person who is responsible for organisation of management of the entertainment or the premises).

Standard conditions will mean any terms, conditions or restrictions contained or referred to in the schedule to a licence granted under Schedule 3, but does not include any private dwelling to which the public is not admitted.

Unsolicited (in relation to advertising) means any material that is unasked for, not looked for or unsought, i.e. newspaper advertising, flyers, posters, radio advertisements, television advertising, advertising hoardings etc.

Vehicle means a vehicle intended or adapted for use on roads.

Worker means any individual that works on or at the premises whether on a paid or unpaid basis. It includes management, bar staff, security personnel, dancers, performers and any other person that is involved in the operation of the premises during the period when licensable activity is taking place, including those who are self-employed.

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Standard Conditions**Sexual Entertainment Venues****General**

1. In accordance with Home Office guidance, where a condition conflicts with a condition in a Licensing Act 2003 premises licence, the more onerous applies.
2. Unless stated otherwise, the licence hereby granted will remain in force for one year from the date on the licence, after which it will cease to be in effect unless an application for renewal is submitted in the manner prescribed by the Council.
3. The licence may be revoked by the Council if at any time the holder is convicted of an offence of using the licensed premises, or other premises for which a similar licence has been granted, other than in accordance with the terms, conditions or restrictions of the licence or is convicted of any offence under any enactment defined in paragraph 1 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended.
4. 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.
5. The name of the premises must be approved by the Council in writing. Any change to the name of the premises must be approved by the Council in writing.

Exhibition of the licence

6. The licence or a certified copy must be prominently displayed at all times so as to be readily and easily seen by all persons using the premises and all authorised officers. A copy of the conditions attached to the licence must be kept on the premises and be available for inspection by an authorised officer of the Council.

Hours of opening

7. Except with the written consent of the Council, the premises will only open to the public during the following hours:

Monday	21:00 – 00:00	Friday	21:00 – 01:00
Tuesday	21:00 – 00:00	Saturday	21:00 – 01:00
Wednesday	21:00 – 00:00	Sunday	21:00 – 01:00
Thursday	21:00 – 00:00		

Conduct of the premises

8. Relevant entertainment will only be performed by the dancer / performer. There must be no audience participation.
9. Dancer / performers will only perform on the stage area, or in booths / areas for VIPs as identified on the plan attached.
10. Any performance will be restricted to dancing and the removal of clothes. There will not be any other form of sexual activity or stimulation which, for the avoidance of doubt, includes

kissing.

11. Sex toys must not be used and penetration of the genital area by any means must not take place.
12. Dancer / performers shall re-dress at the conclusion of the performance.
13. Customers will not be permitted to throw money at the dancer / performers.
14. No customers shall be admitted to the premises or allowed to remain on the premises if they appear to be intoxicated or unruly.
15. No person shall take any photographs, videos or other similar recordings (including mobile phones and video streaming) of the authorised relevant entertainment.
16. Performers must never be alone in the company of a customer except in an area open to the public within the premises.
17. The licensee is to ensure a sufficient number of staff are employed ('floor supervisors') inside the premises whilst sexual entertainment is provided to supervise the performers and customers.
18. Performers must not perform a nude table dance unless in a supervised area or within five metres of a floor supervisor.
19. Performers are never to be in the company of a customer except in an area open to the public within the premises (excluding the toilets).
20. Notices must be clearly displayed on each table, each bar and at the entrance to the premises stating:
 - (1) there is no physical contact between customers and performers;
 - (2) a minimum distance of 300 millimetres must be maintained between performers and customers;
21. Performers must not:
 - (1) climb on furniture provided for patrons
 - (2) simulate sex acts
 - (3) remain in a state of undress once they have completed their act.
22. Performers shall at all times wear a non-transparent G-string or similar piece of clothing on the appropriate part of the body, and at no time will it reveal any part of their genitalia or anus.
23. The licensee must ensure that during the performance of a table dance:
 - (1) customers must be seated in an upright position against the back of the booth or seat with their hands by their sides before a dancer can start a table dance;
 - (2) customers must remain seated during the entire performance of the dance;
 - (3) for the purpose of restraint only, performers may only touch a customer above the customers chest with their hands only;
 - (4) performers must not sit or straddle the customer;
 - (5) performers must not place their feet on the seats.

24. The licensee must ensure that during performances to which this licence relates:
- (1) performers may not perform any act that clearly simulates any sexual act;
 - (2) performers may not intentionally touch a customer any time during the performance unless absolutely accidentally or due to a third party;
 - (3) performers may not use inappropriate, suggestive or sexually graphic language at any time;
 - (4) performers must never intentionally touch the genitals or breasts of another dancer or to knowingly permit another dancer to intentionally touch their genitals or breast;
 - (5) performers must not engage in communications that could be deemed as acts of prostitution or solicitation, even if the performer has no intention of carrying out the act;
 - (6) performers only perform nude or semi-nude dancing (of any description) within areas specified by the Council.
25. The licensee must ensure that during performances to which the licence relates:
- (1) customers may not dance at any time except in areas specifically designated by the Council as being separate from areas for sexual entertainment;
 - (2) customers must remain appropriately clothed at all times.

External appearance

26. There will be a notice displayed inside each entrance or doorway to the premises, clearly visible on entering the premises, which states the following words and no others:

STRICTLY NO ADMITTANCE TO PERSONS UNDER 18 YEARS OF AGE

This premises operates a Challenge 25 policy.
Persons who appear to be under the age of 25 will be required to show proof of age.

27. The external appearance of the premises must be approved by the Council in writing. Any change to the external appearance must be approved by the Council. The operator must advise of any change in writing including a drawing of the existing and proposed street elevation. This must be approved by the Council in writing before work is undertaken.
28. Access to the licensed area of the premises should be through a lobby area which is constructed in such a way that the inside of the licensed premises where relevant entertainment takes place is not visible to passing members of the public when the doors of the premises are opened.
29. Windows and opening to the premises, other than entrances, shall be obscured in a manner and with such material approved by the Council. Door entrances shall also be obscured by blinds or material approved by the Council so as to prevent any member of the public from seeing through to the premises whilst relevant entertainment is taking place.
30. External signage will only be illuminated, and moveable signs will only be displayed, during times that the premises is open and licensable activities are taking place.

Advertising

31. Any unsolicited written, visual or auditory advertisement material, posters, signage or window display must not be of a sexually explicit or suggestive nature, will not contain

images or text of a sexually explicit, obscene or offensive nature, or be of a detriment to the amenity or character of the local vicinity, and must be approved by the Council in writing.

32. Staff employed or subcontracted by the premises will not verbally or otherwise promote, tout or advertise the premises, except by way of flyers. Staff employed or subcontracted by the premises will not direct potential customers to transport connected with the premises.
33. The distribution of flyers will only be permitted in such a way where it does not cause public offence. Therefore, the distribution of flyers is only permitted between the hours of 9.00pm and 12.30am. The licensee will remove any leaflets/flyers from the highway within a 100 metre radius of the premises by 5.00am. Flyers must not be distributed by and to persons under the age of 18 years.

Layout of the premises

34. Access to ground floor premises may only be through two or more doors placed consecutively, so arranged that when a person enters or leaves the premises the interior of the premises is not recognisable to persons outside the premises. The first set of entry doors must be fitted with a device to provide for their automatic closure and such a device shall be maintained in good working order.
35. No access will be permitted through the premises to any other adjoining or adjacent premises except in the case of an emergency.
36. No alterations (including temporary alterations) will be made to the structure and installations on the premises, without the prior written consent of the Council. This condition will not require notice to be given in respect of routine maintenance works. Where there is any doubt the licensee should seek advice from the Council.
37. Where works necessitate the premises being closed for a long period of time, the premises shall not reopen for the purpose of the licence, until the licensee has been notified in writing by the Council of the satisfactory completion of the work.
38. All parts of the premises shall be well maintained and kept in a clean condition to the satisfaction of the Council.

Management of the premises

39. Where the licensee is a body corporate, or an un-incorporated body, any change of director, company secretary or other person responsible for the management of the body will be notified in writing to the Council within 14 days of such change. Such details as the Council may require in respect of the change of personnel will be furnished within 14 days of a request in writing from the Council.
40. The licensee, or a responsible person nominated by him/her in writing for the purpose of managing the venue ("the manager") will have personal responsibility for and be present on the premises whilst relevant entertainment is being performed. Any such nomination will be produced on demand to an authorised officer of the Council or the police.

41. The licensee will ensure that any person nominated by him/her under the above:
 - a) has been provided with a copy of the conditions relating to the premises and is fully conversant with them; and
 - b) is in possession of a written nomination referred to about at all times when they are in charge of the premises.
42. Where the licensee, director, company secretary, or responsible person nominated for the purpose of managing the venue (“the manager”), is charged with, or convicted of, an offence, they must, as soon as practicable after the charge or conviction, inform the Council of the charge or conviction, giving details of the nature and date of the charge or conviction, and any conditions or sentence imposed.
43. The licensee will retain control over all parts of the premises and will not let, licence or part with possession of any part of the premises. The Council must be notified immediately in the event that any part of the premises affected by the termination of a lease or other event affecting the licensee’s control of the premises.
44. The licensee will ensure that the public is not admitted to any part or parts of the premises that has not been approved by the Council.
45. No person under the age of 18 will be admitted to the premises.
46. The licensee will operate a Challenge 25 age verification policy. People who appear to be under the age of 25 will be required to show proof of ID prior to admittance. A notice to this effect, in accordance with condition 18 will be displayed on the premises.
47. The licence holder will not employ any person under the age of 18 in any capacity.
48. The licensee will comply with all statutory provisions and any regulations made hereunder.
49. The licensee will provide, for approval in writing of both the police and the licensing authority, a code of practice for the dancer / performers. This code must be given to all dancer / performers and displayed in staff areas. This code must be made available upon request to both the police and authorised officers.
50. The licensee will provide, for approval in writing of both the police and the licensing authority, a code of conduct for customers, this must be printed in a manner which is clear and easy to read during normal operation of the premises. This code must be prominently displayed at each entrance to the premises, at the entrance to any private dance areas and in suitable locations within the licensed premises, such locations to be agreed with the Council, such as at bars.
51. Price lists for both drinks and sexual entertainment will be clearly displayed at each entrance to the premises, at each bar and at each table.
52. Suitable and sufficient training will be provided to all staff including the nominated responsible person. The training will be recorded and the training records must be made available upon request to both the police and authorised officers.
53. The name of the person responsible for the management of the premises, whether the licensee or manager, shall be displayed in a conspicuous position within the premises throughout the period during which he/she is responsible for its conduct.

Safety and security

54. A colour digital CCTV system will be maintained and operational at the premises at all times when licensable activities are being carried out and at any other times when member of the public are present on the premises.
55. The CCTV system will cover all areas of the premises occupied by the public under the terms of the licence, including corridors, stairways, each dance booth and VIP areas (excluding within toilets and changing rooms). The CCTV system will cover the main entrances and external areas of the premises occupied by the public, for example queuing areas, beer gardens, smoking areas and car parks.
56. The locations of CCTV cameras are identified on the site plan of the premises. No amendments to the locations of the cameras will be made without prior consultation with South Yorkshire Police and the Council.
57. The CCTV system will be of a satisfactory resolution quality which will enable the identification of persons and activities, and other fine details such as vehicle registration number plates.
58. Recorded CCTV images will be maintained and stored for a continuous period of 28 days. The CCTV equipment shall have constant time/date generation which must be checked on a daily basis for accuracy.
59. Where CCTV is recorded onto a hard drive system, any DVDs subsequently produced will be in a format so it can be played back on a standard DVD player.
60. The nominated person ("the manager") must be trained in the use of any such CCTV equipment and be able to produce CCTV images to the police or Licensing Authority.
61. CCTV footage will be controlled and kept in a secure environment to prevent tampering and unauthorised viewing.
62. The data controller, under the Data Protection Act 1998, who is responsible for any CCTV images captured on cameras on the premises will, on the lawful request of the police or an authorised officer of the Council, cause any required footage to be downloaded immediately, or where this is not possible, as soon as reasonably practicable, and supplied to the requesting officer. Where the CCTV images are not supplied at the time of the request being made the data controller will ensure that they are secured to prevent any overwriting.
63. A minimum of two Security Industry Authority registered door staff (numbers to be subject to police and licensing authority approval) will be present on the premises during the performance of relevant entertainment.
64. An incident log shall be kept at the premises, and made available on request to the Licensing Authority or the Police, which will record the following:
 - a) all crimes reported to the venue;
 - b) all ejections of patrons;
 - c) any complaints received;
 - d) any incidents of disorder;
 - e) seizures of drugs or offensive weapons;

- f) any faults in the CCTV system or searching equipment or scanning equipment;
 - g) any refusal of the sale of alcohol;
 - h) any visit by a relevant authority or emergency service;
 - i) any breach of licence conditions reported by a Performer
65. The licensee will ensure that a fire safety risk assessment is carried out in connection with the premises, and is retained on the premises at all times and available for inspection by an authorised officer or a member of the Fire Authority.
66. The licensee will maintain good order in the premises at all times, and ensure that persons entering or leaving the licensed premises conduct themselves in an orderly manner and do not in any way cause annoyance to residents in the vicinity and persons passing by.

Worker welfare (see Appendix A for interpretation of the term “worker”)

67. Dancer / performers will be aged 18 years or over.
68. Before a dancer / performer is permitted to work on the premises the licensee will ensure that the dancer / performer:
- a) has not been convicted of theft, drug offences, sexual offences, violent offences, or prostitution
 - b) has the right to work in the UK

The licensee will keep records of the checks, including copies of any documentation such as a basic disclosure, passport, visa, driving licence or national insurance number provided by the dancer / performer.

69. All premises that provide relevant entertainment will provide dancer / performers with copies of the following documents:
- a) A copy of the conditions attached to the Sex Establishment Licence;
 - b) Details of any other conditions applied by management of the premises;
 - c) A copy of the code of practice for dancer / performers;
 - d) A copy of the code of conduct for customers;
 - e) Price lists for drinks and sexual entertainment.

The licensee must ensure that a record is kept of the provision of these documents, and that the record is signed and dated by the dancer / performer.

70. Dancer / performers will be provided with separate secure dressing rooms, facilities to secure valuables and proper sanitation facilities. No person other than performers and authorised staff will be allowed in or near the dressing rooms, therefore safe and controlled access will be maintained at all times. The documents detailed in condition 69 will be displayed in the dressing rooms.
71. There will be at least one female member of staff authorised to be responsible for the safety and welfare of the dancer / performers. This staff member must on the premises at all times when licensable activities are taking place.
72. All booths and VIP areas used for private dances must be visible to supervision and must not have closing doors, or curtains.

73. All booths and VIP areas used for private dances must be directly supervised by either a SIA registered door supervisor, or a member of staff who has direct contact with a SIA registered door supervisor working on the premises at all times the booths/areas are in use. Direct supervision does not include remote supervision by CCTV.
74. Dancer / performers will only be present in the licensed area in a state of nudity when they are performing on stage or providing a private dance.
75. Any person on the premises who can be observed from outside the premises will be properly and decently dressed.
76. The practice of fining is prohibited.
77. Customers and staff must not be allowed to interact while using the smoking area, and where possible a separate smoking area should be provided for staff. Dancer / performers must be covered up at all times with knee length robes or coats whilst using the smoking areas.
78. Throughout the lap or table dance customers will remain seated and fully clothed, with their hands clearly visible, either resting on the arms of the chair/sofa or on the seat cushion, or customers must be asked to sit on their hands.
79. If a dancer / performer is invited to have a drink with a customer, the dancer / performer will remain fully clothed during this period. Dancers / performers will not be paid commission on the sale of beverages.
80. On leaving the premises dancers / performers will be escorted to their transport by a SIA registered door supervisor.
81. Individual records shall be kept at the premises of the real names, stage names and addresses of all dancers / performers working at the premises. The record will include either a copy of their birth certificate, current passport, EU driving licence or national identity card and shall be made immediately available for inspection by the Police and/or the Licensing Authority upon request.
82. The licence holder must not for any reason discriminate against current or prospective workers. This will include age, race, physical ability or affiliation with any organisation.

Vessels, vehicles and stalls

83. In the case of licensed premises that are a vessel, vehicle or stall, the licensee shall not move the vessel, vehicle or stall from the location specified in the licence unless 28 days written notice is given to the Council of such intended removal. The Council may require the licensee to lodge such written application as it may deem appropriate and pay such a fee as it may deem reasonable in respect of such application.
84. The requirements of condition 83 will not apply to a vessel, vehicle or stall habitually operating from a fixed location, which is regularly moved, whether under its own propulsion or otherwise, from another place for storage purposes. This place must be specified in the licence and must not be used for the purposes for which the licence is granted and any other location than that specified in the licence.
85. Vehicles must not be used for personal solicitation, touting or advertising.

Variation of conditions

86. The Council may, at the time of grant or renewal of the licence, waive, modify or vary these conditions or impose additional conditions as appropriate.
87. The licensee may apply to the Council to vary any of the terms of the licence.
88. Applications to vary conditions of the licence must be advertised by the licensee in the same manner as the application for the grant, renewal or transfer of the licence.

DRAFT FOR CONSULTATION

Standard Conditions

Sex Shops

General

1. Unless stated otherwise, the licence hereby granted will remain in force for one year from the date on the licence, after which it will cease to be in effect unless an application for renewal is submitted in the manner prescribed by the Council.
2. The licence may be revoked by the Council if at any time the holder is convicted of an offence of using the licensed premises, or other premises for which a similar licence has been granted, other than in accordance with the terms, conditions or restrictions of the licence or is convicted of any offence under any enactment defined in paragraph 1 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended.
3. 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.
4. The name of the premises must be approved by the Council in writing. Any change to the name of the premises must be approved by the Council in writing.

Exhibition of the licence

5. The licence or a certified copy shall be prominently displayed at all times so as to be readily and easily seen by all persons using the premises and all authorised officers. A copy of the conditions attached to the licence shall be kept on the premises and be available for inspection by an authorised officer of the Council.

Hours of opening

6. Except with the written consent of the Council, the premises will only open to the public during the following hours:

Monday	09:00 – 20:00	Friday	09:00 – 20:00
Tuesday	09:00 – 20:00	Saturday	09:00 – 20:00
Wednesday	09:00 – 20:00	Sunday	12:00 – 20:00
Thursday	09:00 – 20:00		

Conduct of the premises

7. The premises will be conducted primarily for the purpose of the sale or hire of goods by retail.
8. The licensee, or any other person concerned in the conduct or management of the premises, will only obtain custom by means of personal solicitation or touting from the premises in such a way that it does not cause concern to the public or the licensing authority. All literature used will not contain images or text of a sexually explicit, obscene or offensive nature.

9. No part of the premises will be used by prostitutes.
10. All sex articles or other items displayed for sale, hire, exchange or loan within the premises will be clearly marked to show the price being charged.
11. All printed material offered for sale, hire, exchange or loan will be available for inspection prior to purchase and a notice to this effect will be displayed in a conspicuous position within the premises.
12. No film, DVD or video recording (or computer game) will be exhibited, sold or supplied unless it has been passed by the British Board of Film Classification and bears a certificate to that effect.
13. No moving picture will be provided on display at the licensed premises unless it is that of advertising videos on a loop system or allowing a prospective purchaser a short preview of films upon request, being no longer than 3 minutes in length.
14. Items offered for sale, hire, exchange or used in any promotion/advertising must not contravene any current legislation i.e. Section 12 Video Recordings Act 1984 (as amended).

External appearance

15. There will be a notice displayed inside each entrance or doorway to the premises, clearly visible on entering the premises, which states the following words and no others:

STRICTLY NO ADMITTANCE TO PERSONS UNDER 18 YEARS OF AGE

This premises operates a Challenge 25 policy.
Persons who appear to be under the age of 25 will be required to show proof of age.

16. The external appearance of the premises must be approved by the Council in writing. Any change to the external appearance must be approved by the Council. The operator must advise of any change in writing including a drawing of the existing and proposed street elevation. This must be approved by the Council in writing before work is undertaken.
17. The frontage of the licensed premises will be of such a nature that the inside of the licensed premises are not visible and the contents of the licensed premises should not be visible when the doors of the licensed premises is open.
18. There will be no illuminated or protruding signs fixed to the premises and no signs placed outside the premises on the public highway.

Advertising

19. Any unsolicited written, visual or auditory advertisement material, posters, signage or window display must not be of a sexually explicit or suggestive nature, will not contain images or text of a sexually explicit, obscene or offensive nature, or be of a detriment to the amenity or character of the local vicinity, and must be approved by the Council in writing.
20. The distribution of flyers will only be permitted in such a way where it does not cause public offence. Flyers must not be distributed by and to persons under the age of 18 years.

Layout of the premises

21. Access to ground floor premises may only be through two or more doors placed consecutively, so arranged that when a person enters or leaves the premises the interior of the premises is not recognisable to persons outside the premises. The first set of entry doors must be fitted with a device to provide for their automatic closure and such a device shall be maintained in good working order.
22. No access will be permitted through the premises to any other adjoining or adjacent premises except in the case of an emergency.
23. No alterations (including temporary alterations) will be made to the structure and installations on the premises, without the prior written consent of the Council. This condition will not require notice to be given in respect of routine maintenance works. Where there is any doubt the licensee should seek advice from the Council.

Management of the premises

24. Where the licensee is a body corporate, or an un-incorporated body, any change of director, company secretary or other person responsible for the management of the body will be notified in writing to the Council within 14 days of such change. Such details as the Council may require in respect of the change of personnel will be furnished within 14 days of a request in writing from the Council.
25. The licensee, or a responsible person nominated by him/her in writing for the purpose of managing the venue ("the manager") will have personal responsibility for and be present on the premises whilst the premises are open to the public. Any such nomination will be produced on demand to an authorised officer of the Council or the police.
26. The licensee will ensure that any person nominated by him/her under the above:
 - a) has been provided with a copy of the conditions relating to the premises and is fully conversant with them; and
 - b) is in possession of a written nomination referred to about at all times when they are in charge of the premises.
27. Where the licensee, director, company secretary, or responsible person nominated for the purpose of managing the venue ("the manager"), is convicted of an offence, they must, as soon as practicable after the conviction, inform the Council of the conviction giving details of the nature and date of the conviction, and any sentence imposed.
28. The licensee will retain control over all parts of the premises and will not let, licence or part with possession of any part of the premises. The Council must be notified immediately in the event that any part of the premises affected by the termination of a lease or other event affecting the licensee's control of the premises.
29. The licensee will ensure that the public is not admitted to any part or parts of the premises that has not been approved by the Council.
30. The holder of the licence will keep a record of all workers who are asked to work on the premises which will include their full name, date of birth, current and previous address and any convictions recorded against that person (subject to the Rehabilitation of Offenders Act 1984).

31. An authorised and certified copy of the full personal record or a record of an individual will be produced on demand to an authorised officer of the Council or the police.
32. No person under the age of 18 will be admitted to the premises.
33. The licensee will operate a Challenge 25 age verification policy. People who appear to be under the age of 25 will be required to show proof of ID prior to admittance. A notice to this effect, in accordance with condition 18 will be displayed on the premises.
34. The licence holder will not employ any person under the age of 18 in any capacity.

Vessels, vehicles and stalls

35. In the case of licensed premises that are a vessel, vehicle or stall, the licensee shall not move the vessel, vehicle or stall from the location specified in the licence unless 28 days written notice is given to the Council of such intended removal. The Council may require the licensee to lodge such written application as it may deem appropriate and pay such a fee as it may deem reasonable in respect of such application.
36. The requirements of condition 35 will not apply to a vessel, vehicle or stall habitually operating from a fixed location, which is regularly moved, whether under its own propulsion or otherwise, from another place for storage purposes. This place must be specified in the licence and must not be used for the purposes for which the licence is granted and any other location than that specified in the licence.
37. Vehicles must not be used for personal solicitation, touting or advertising.

Variation of conditions

38. The Council may, at the time of grant or renewal of the licence, waive, modify or vary these conditions or impose additional conditions as appropriate.
39. The licensee may apply to the Council to vary any of the terms of the licence.
40. Applications to vary conditions of the licence must be advertised by the licensee in the same manner as the application for the grant, renewal or transfer of the licence.

Standard Conditions

Sex Cinemas

General

1. Unless stated otherwise, the licence hereby granted will remain in force for one year from the date on the licence, after which it will cease to be in effect unless an application for renewal is submitted in the manner prescribed by the Council.
2. The licence may be revoked by the Council if at any time the holder is convicted of an offence of using the licensed premises, or other premises for which a similar licence has been granted, other than in accordance with the terms, conditions or restrictions of the licence or is convicted of any offence under any enactment defined in paragraph 1 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended.
3. 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.
4. The name of the premises must be approved by the Council in writing. Any change to the name of the premises must be approved by the Council in writing.

Exhibition of the licence

5. The licence or a certified copy shall be prominently displayed at all times so as to be readily and easily seen by all persons using the premises and all authorised officers. A copy of the conditions attached to the licence shall be kept on the premises and be available for inspection by an authorised officer of the Council.

Hours of opening

6. Except with the written consent of the Council, the premises will only open to the public during the hours specified in the licence.

Conduct of the premises

7. The premises will be conducted primarily for the purpose of the exhibition of films.
8. The licensee, or any other person concerned in the conduct or management of the premises, will only obtain custom by means of personal solicitation or touting from the premises in such a way that it does not cause concern to the public or the licensing authority. All literature used will not contain images or text of a sexually explicit, obscene or offensive nature.
9. No part of the premises will be used by prostitutes.

External appearance

10. There will be a notice displayed inside each entrance or doorway to the premises, clearly visible on entering the premises, which states the following words and no others:

STRICTLY NO ADMITTANCE TO PERSONS UNDER 18 YEARS OF AGE
--

This premises operates a Challenge 25 policy. Persons who appear to be under the age of 25 will be required to show proof of age.
--

11. The external appearance of the premises must be approved by the Council in writing. Any change to the external appearance must be approved by the Council. The operator must advise of any change in writing including a drawing of the existing and proposed street elevation. This must be approved by the Council before work is undertaken.
12. The frontage of the licensed premises will be of such a nature that the inside of the licensed premises are not visible and the contents of the licensed premises should not be visible when the doors of the licensed premises is open.
13. There will be no illuminated or protruding signs fixed to the premises and no signs placed outside the premises.

Advertising

14. Any unsolicited written, visual or auditory advertisement material, posters, signage or window display must not be of a sexually explicit or suggestive nature, will not contain images or text of a sexually explicit, obscene or offensive nature, or be of a detriment to the amenity or character of the local vicinity, and must be approved by the Council in writing.
15. The distribution of flyers will only be permitted in such a way where it does not cause public offence. Flyers must not be distributed by and to persons under the age of 18 years.

Layout of the premises

16. Access to ground floor premises may only be through two or more doors placed consecutively, so arranged that when a person enters or leaves the premises the interior of the premises is not recognisable to persons outside the premises. The first set of entry doors must be fitted with a device to provide for their automatic closure and such a device shall be maintained in good working order.
17. No access will be permitted through the premises to any other adjoining or adjacent premises except in the case of an emergency.
18. No alterations (including temporary alterations) will be made to the structure and installations on the premises, without the prior written consent of the Council. This condition will not require notice to be given in respect of routine maintenance works. Where there is any doubt the licensee should seek advice from the Council.

Management of the premises

24. Where the licensee is a body corporate, or an un-incorporated body, any change of director, company secretary or other person responsible for the management of the body will be notified in writing to the Council within 14 days of such change. Such details as the Council may require in respect of the change of personnel will be furnished within 14 days of a request in writing from the Council.

25. The licensee, or a responsible person nominated by him/her in writing for the purpose of managing the venue (“the manager”) will have personal responsibility for and be present on the premises whilst the premises are open to the public. Any such nomination will be produced on demand to an authorised officer of the Council or the police.
26. The licensee will ensure that any person nominated by him/her under the above:
 - a) has been provided with a copy of the conditions relating to the premises and is fully conversant with them; and
 - b) is in possession of a written nomination referred to about at all times when they are in charge of the premises.
27. Where the licensee, director, company secretary, or responsible person nominated for the purpose of managing the venue (“the manager”), is convicted of an offence, they must, as soon as practicable after the conviction, inform the Council of the conviction giving details of the nature and date of the conviction, and any sentence imposed.
28. The licensee will retain control over all parts of the premises and will not let, licence or part with possession of any part of the premises. The Council must be notified immediately in the event that any part of the premises affected by the termination of a lease or other event affecting the licensee’s control of the premises.
29. The licensee will ensure that the public is not admitted to any part or parts of the premises that has not been approved by the Council.
30. The holder of the licence will keep a record of all workers who are asked to work on the premises which will include their full name, date of birth, current and previous address and any convictions recorded against that person (subject to the Rehabilitation of Offenders Act 1984).
31. An authorised and certified copy of the full personal record or a record of an individual will be produced on demand to an authorised officer of the Council or the police.
32. No person under the age of 18 will be admitted to the premises.
33. The licensee will operate a Challenge 25 age verification policy. People who appear to be under the age of 25 will be required to show proof of ID prior to admittance. A notice to this effect, in accordance with condition 18 will be displayed on the premises.
34. The licence holder will not employ any person under the age of 18 in any capacity.
35. The licence holder must notify the Council immediately should there be any changes to the management or operation of the premises.

Safety and security

36. A colour digital CCTV system will be maintained and operational at the premises at all times when licensable activities are being carried out and at any other times when member of the public are present on the premises.
37. The CCTV system will cover all areas of the premises occupied by the public under the terms of the licence, including corridors and stairways. The CCTV system will cover the main entrances and external areas of the premises occupied by the public, for example queuing areas, smoking areas and car parks.

38. The locations of CCTV cameras are identified on the site plan of the premises. No amendments to the locations of the cameras will be made without prior consultation with South Yorkshire Police and the Council.
39. The CCTV system will be of a satisfactory resolution quality which will enable the identification of persons and activities, and other fine details such as vehicle registration number plates.
40. Recorded CCTV images will be maintained and stored for a continuous period of 28 days. The CCTV equipment shall have constant time/date generation which must be checked on a daily basis for accuracy.
41. Where CCTV is recorded onto a hard drive system, any DVDs subsequently produced will be in a format so it can be played back on a standard DVD player.
42. The nominated person ("the manager") must be trained in the use of any such CCTV equipment and be able to produce CCTV images to the police or Licensing Authority.
43. CCTV footage will be controlled and kept in a secure environment to prevent tampering and unauthorised viewing.
44. The data controller, under the Data Protection Act 1998, who is responsible for any CCTV images captured on cameras on the premises will, on the lawful request of the police or an authorised officer of the Council, cause any required footage to be downloaded immediately, or where this is not possible, as soon as reasonably practicable, and supplied to the requesting officer. Where the CCTV images are not supplied at the time of the request being made the data controller will ensure that they are secured to prevent any overwriting.
45. Regular checks will be carried out in the auditorium(s) when screenings are taking place.
46. A refusals/incident/accident register will be maintained and shall record all refusals relating to alcohol, access to the premises and all incidents or accidents.
47. The licensee will ensure that a fire safety risk assessment is carried out in connection with the premises, and is retained on the premises at all times and available for inspection by an authorised officer or a member of the Fire Authority.
48. The licensee will maintain good order in the premises at all times, and ensure that persons entering or leaving the licensed premises conduct themselves in an orderly manner and do not in any way cause annoyance to residents in the vicinity and persons passing by.

Vessels, vehicles and stalls

49. In the case of licensed premises that are a vessel, vehicle or stall, the licensee shall not move the vessel, vehicle or stall from the location specified in the licence unless 28 days written notice is given to the Council of such intended removal. The Council may require the licensee to lodge such written application as it may deem appropriate and pay such a fee as it may deem reasonable in respect of such application.
50. The requirements of condition 48 will not apply to a vessel, vehicle or stall habitually operating from a fixed location, which is regularly moved, whether under its own propulsion or otherwise, from another place for storage purposes. This place must be specified in the licence and must not be used for the purposes for which the licence is granted and any other location than that specified in the licence.

51. Vehicles must not be used for personal solicitation, touting or advertising.

Variation of conditions

52. The Council may, at the time of grant or renewal of the licence, waive, modify or vary these conditions or impose additional conditions as appropriate.

53. The licensee may apply to the Council to vary any of the terms of the licence.

54. Applications to vary conditions of the licence must be advertised by the licensee in the same manner as the application for the grant, renewal or transfer of the licence.

DRAFT FOR CONSULTATION

RMBC - Equality Analysis Form for Commissioning, Decommissioning, Decision making, Projects, Policies, Services, Strategies or Functions (CDDPPSSF)

Under the Equality Act 2010 Protected characteristics are Age, Disability, Sex, Gender Reassignment, Race, Religion or Belief, Sexual Orientation, Civil Partnerships and Marriage, Pregnancy and Maternity.	
Name of policy, service or function. If a policy, list any associated policies:	Consultation on the Adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and a Rotherham Sex Establishment Policy.
Name of service and Directorate	Community Safety and Street Scene, Regeneration and Environment
Lead manager	Lewis Coates
Date of Equality Analysis (EA)	22/10/18
Names of those involved in the EIA (Should include at least two other people)	Tom Smith, Lewis Coates
Aim/Scope	
<p>Any sex shop and sex cinema located within the Borough of Rotherham requires a licence from the Council issued under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act'). Such premises are referred to in the 1982 Act as 'sex establishments'.</p> <p>At the present time, all premises in Rotherham that provide lap dancing or similar activity require a premises licence issued under the Licensing Act 2003 rather than being licensed as 'sex establishments'.</p> <p>Although the Licensing Act 2003 provides local authorities with the ability to regulate establishments where lap dancing or similar entertainment takes place, this legislation did not give communities sufficient powers to control where lap dancing clubs and the like, were established. Similarly, Councils were not provided with sufficient powers in relation to the regulation of such premises, such as the requirement for sex establishments to apply for an annual licence with appropriate conditions being attached.</p> <p>The Policing and Crime Act 2009 came into effect in April 2010 and reclassified lap dancing clubs and similar as 'sexual entertainment venues', adding these to the category of 'sex establishment' within the 1982 Act. These provisions allow local authorities to consider and determine applications on potentially wider grounds than is permitted under the Licensing Act 2003, and allows local people a greater say over the regulation of sex establishments in their area.</p> <p>Importantly, the amendments to the 1982 Act allows local authorities to set a policy in relation to the licensing of sex establishments that sets out the Council's approach to the licensing of these premises, including the setting of conditions, restrictions on locations and limits on the number and type of sex establishments within the area.</p> <p>However, the amendments to the 1982 Act only apply where they are adopted by local authorities.</p>	

RMBC - Equality Analysis Form for Commissioning, Decommissioning, Decision making, Projects, Policies, Services, Strategies or Functions (CDDPPSSF)

This initial Equality Impact Assessment (EIA) seeks to address any identified equality and diversity issues of the adoption of Schedule 3 of the 1982 Act, and of the adoption of a Sex Establishments Licensing Policy.

The EIA will be regularly reviewed and updated throughout the process and will be finalised following the proposed public consultation, prior to agreement of the Policy.

What equality information is available? Include any engagement undertaken and identify any information gaps you are aware of. What monitoring arrangements have you made to monitor the impact of the policy or service on communities/groups according to their protected characteristics?

This EIA is being undertaken prior to public consultation about the adoption of Schedule 3 and the Policy. Equality information will be sought as part of the proposed consultation in order to identify any gaps.

The need for monitoring arrangements will be assessed following consultation, and addressed as part of the implementation of the adoption and Policy, should it be agreed by Council and Cabinet.

Engagement undertaken with customers. (date and group(s) consulted and key findings)

A full consultation on adoption of schedule 3 of the 1982 Act and a proposed Sex Establishments Policy which will aim to engage with a wide range of customer and stakeholders.

Engagement undertaken with staff about the implications on service users (date and group(s) consulted and key findings)

A full consultation on adoption of schedule 3 of the 1982 Act and a proposed Sex Establishments Policy which will engage with staff within the Council's Licensing Service.

The Analysis

How do you think the Policy/Service meets the needs of different communities and groups?

The proposed adoption of Schedule 3 and the subsequent proposed adoption of a Sex Establishments Policy would support local communities and those from protected groups to challenge the presence of sex establishments in their area, according to a set criteria.

The proposed Policy will therefore deliver a positive benefit to different communities and groups.

Analysis of the actual or likely effect of the Policy or Service:

Does your Policy/Service present any problems or barriers to communities or Group? Does the Service/Policy provide any improvements/remove barriers?

The Council's proposed Sex Establishment Licensing Policy, seeks to identify defined

RMBC - Equality Analysis Form for Commissioning, Decommissioning, Decision making, Projects, Policies, Services, Strategies or Functions (CDDPPSSF)

areas that would not be appropriate locations for sex establishments, or would not fit in with the character of such areas. For this reason the proposed policy is deemed to have a positive impact upon local communities, younger people and children, and faith groups.

In terms of gender, the proposed policy has a positive impact by helping to protect women living or working in or visiting the vicinity of sex establishments by diminishing the impact that sexual entertainment venues (SEVs) are permitted to have on their surroundings, e.g. through limiting their numbers and controlling the external appearance, advertising and solicitation associated with such premises.

Examples of harassment of women in public spaces in the vicinity of sexual entertainment venues have been reported. The proposed policy will have a positive impact by ensuring that sexual entertainment venues are only located in appropriate places.

It should be noted that any decision to refuse a licence application cannot be made on moral grounds or that the establishment may cause offence. The Policy must therefore take account of this principle when seeking to address concerns raised by different communities or groups.

What affect will the Policy/Service have on community relations?

It is currently assessed that the proposed policy could have positive implications for community relations, in that it will restrict sex establishments to those areas where it is deemed there would be no negative impact on particular communities.

Please list any **actions and targets** by Protected Characteristic that need to be taken as a consequence of this assessment and ensure that they are added into your service plan.

Website Key Findings Summary: To meet legislative requirements a summary of the Equality Analysis needs to be completed and published.

RMBC - Equality Analysis Form for Commissioning, Decommissioning, Decision making, Projects, Policies, Services, Strategies or Functions (CDDPPSSF)

Equality Analysis Action Plan

Time Period 2019/2020

Manager: Tom Smith

Service Area: Community Safety and Street Scene

Tel: 01709 822902

Title of Equality Analysis:

If the analysis is done at the right time, i.e. early before decisions are made, changes should be built in before the policy or change is signed off. This will remove the need for remedial actions. Where this is achieved, the only action required will be to monitor the impact of the policy/service/change on communities or groups according to their protected characteristic.

List all the Actions and Equality Targets identified

Action/Target	State Protected Characteristics as listed below	Target date (MM/YY)				
Undertake a full consultation on adoption of schedule 3 of the 1982 Act and a proposed Sex Establishments Policy.	A, D, S, GR, RE, RoB, SO, C	02/19				
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td data-bbox="98 1129 687 1203">Name Of Director who approved Plan</td> <td data-bbox="687 1129 1285 1203">Paul Woodcock</td> <td data-bbox="1285 1129 1668 1203">Date</td> <td data-bbox="1668 1129 2024 1203"></td> </tr> </table>			Name Of Director who approved Plan	Paul Woodcock	Date	
Name Of Director who approved Plan	Paul Woodcock	Date				

***A = Age, D= Disability, S = Sex, GR Gender Reassignment, RE= Race/ Ethnicity, RoB= Religion or Belief, SO= Sexual Orientation, PM= Pregnancy/Maternity, CPM = Civil Partnership or Marriage. C= Carers, O= other groups**

RMBC - Equality Analysis Form for Commissioning, Decommissioning, Decision making, Projects, Policies, Services, Strategies or Functions (CDDPPSSF)

Website Summary – Please complete for publishing on our website and append to any reports to Elected Members SLT or Directorate Management Teams

Completed equality analysis	Key findings	Future actions
<p>Initial web-based assessment undertaken prior to proposed consultation process.</p>	<p>Potential positive impacts on local communities, women, younger people and children, and faith groups have been identified.</p> <p>The potential to limit the impact of sex establishments on the character or amenity of local areas, will limit the impact of such establishments on women, young people, different communities and faiths.</p> <p>The potential to regulate sex establishments employment practices through a policy, also has potential positive impacts on the women working within these establishments.</p> <p>The initial assessment is that there is unlikely to be any direct positive or negative impact on other protected groups, such as the LGBT+ community, pregnant women, civil partnerships or marriage, carers, or other groups.</p>	<p>To undertake a thorough and robust consultation on adoption of schedule 3 of the 1982 Act and a proposed Sex Establishments Policy, to fully assess any potential equality and diversity impacts.</p>

Summary Sheet

Name of Committee and Date of Committee Meeting

Cabinet – 19 November 2018

Report Title

September Financial Monitoring Report 2018/19

Is this a Key Decision and has it been included on the Forward Plan?

Yes

Strategic Director Approving Submission of the Report

Judith Badger, Strategic Director of Finance and Customer Services

Report Author(s)

Nikki Kelly, Finance Manager
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Graham Saxton, Assistant Director – Financial Services
01709 822034 or graham.saxton@rotherham.gov.uk

Ward(s) Affected

All

Executive Summary

This report sets out the financial position as at the end of September 2018 and is based on actual costs and income for the first half of the financial year with forecasts for the remaining 6 months of 2018/19. Financial performance is a key element within the assessment of the Council's overall performance framework, and is essential for the achievement of the objectives within the Council's Policy Agenda. For that reason, this report is part of a series of monitoring reports for the current financial year which will continue to be brought forward to Cabinet on a regular basis.

As at September 2018, the Council needs to identify a further £3.1m of cost reduction actions by financial year-end in order to achieve a balanced financial outturn, after taking account of the £10m budget contingency approved within the 2018/19 budget.

The overspending against budget in Children's and Young People's Services Directorate is continuing in the current financial year as a result of demand for services outstripping budget capacity. The number of children in care continues to increase this financial year and has reached 655 at the time of writing this report. The forecast overspend on Children's Services has now increased to £15.7m

The increased number of Looked after Children also places significant pressure on Legal Services within the Finance and Customer Services Directorate. The current forecast overspend for Legal Services is £1.488m. The Finance and Customer Services Directorate overall is forecasting to outturn within budget after putting into place a range of mitigating actions to compensate for the legal service forecast overspend.

The Adult Care Services Directorate are still on track to bring the overspend down to £6.221m. A combination of increased client numbers, the rising cost of care packages, and delays in delivery of savings plans have led to pressure on budgets across all client groups. A recovery plan has been developed to address previously undelivered savings and project plans are currently being finalised with the expectation that further savings will be identified from this activity.

Regeneration and Environment Directorate is forecasting a balanced budget, although it is facing challenges from a combination of declining business from the School Meals service and challenges with delivery of budget savings, including transport and property savings.

Mitigating savings and actions identified to date are set out in Table 1 and described in Paragraph 3.9 of the report.

Recommendations

1. That Cabinet note the forecast General Fund outturn position.
2. That further actions that are identified to reduce the forecast level of expenditure be reported back to Cabinet.
3. That Cabinet note the updated position of the Capital Programme.

List of Appendices Included

None

Background Papers

Revenue Budget and Council Tax Setting Report for 2018/19 to Council – 28 February 2018

Revenue Budget 2018/19 May Financial Monitoring Report to Cabinet and Commissioners' Decision Making Meeting – 9 July 2018

July Financial Monitoring Report 2018/19 to Cabinet and Commissioners' Decision Making Meeting - 17 September 2018

Consideration by any other Council Committee, Scrutiny or Advisory Panel

Overview and Scrutiny Management Board – 28 November 2018

Council Approval Required

No

Exempt from the Press and Public

No

September Financial Monitoring Report 2018/19

1. Recommendations

- 1.1 That Cabinet note the forecast General Fund outturn position.
- 1.2 That further actions that are identified to reduce the forecast level of expenditure be reported back to Cabinet.
- 1.3 That Cabinet note the updated position of the Capital Programme.

2. Background

- 2.1 As part of its performance and control framework the Council is required to produce regular and timely reports for the Strategic Leadership Team and Cabinet to keep them informed of financial performance so that, where necessary, actions can be agreed and implemented to bring expenditure in line with the approved budget for the financial year.
- 2.2 Delivery of the Council's Revenue Budget, Medium Term Financial Strategy (MTFS) and Capital Programme within the parameters agreed by Council is essential if the Council's objectives are to be achieved. Financial performance is a key element within the assessment of the Council's overall performance framework.
- 2.3 This report is part of a series of financial monitoring reports to Cabinet for 2018/19, setting out the projected year-end revenue budget financial position in light of actual costs and income for the first half of the financial year. This report includes, with revenue forecasts, details of capital spending and the projected capital outturn position.
- 2.4 The current revenue position after six months shows that further actions are required to reduce forecast expenditure by at least £3.1m in order to deliver a balance financial outturn after taking account of the £10m budget contingency approved within the 2018/19 budget.

3. Key Issues

- 3.1 Table 1 below shows, by Directorate, the summary forecast revenue outturn position after management actions which have already been quantified and implemented.

Table 1: Forecast Revenue Outturn 2018/19 as at September 2018

Directorate / Service	Budget 2018/19	Forecast Outturn 2018/19	Forecast Variance over / under (-)
	£'000	£'000	£'000
Children & Young People's Services	58,667	74,390	+15,723
Adult Care & Housing	58,470	64,691	+6,221
Public Health	16,014	16,014	0
Regeneration & Environment Services	40,634	40,634	0
Finance & Customer Services	15,504	15,504	0
Assistant Chief Executive	6,857	6,598	-259
Central Services, Capital Financing and Treasury Management	15,929	12,329	-3,600
SUB TOTAL	212,075	230,160	18,085
Budget Contingency (£4.8m budget, £5.2m reserves)	4,800	(5,200)	-10,000
TOTAL	216,875	224,960	8,085
Additional in-year cost reduction activity :			
Forecast of reduced severance costs frees up Capital Receipts to fund revenue transformation expenditure			-1,000
Use of Directorate balances			-3,980
= Further actions required to reduce total expenditure to within Budget Contingency			3,105
Dedicated Schools Grant			4,536
Housing Revenue Account (HRA)	82,312	82,312	0

The following section (paragraphs 3.2 to 3.7) provide further information regarding the key reasons for forecast under or overspends within Directorates, and the progress of savings delivery and how the Council plans to deliver a balanced budget by the end of the financial year.

3.2 Children & Young People's Directorate (£15.723m forecast overspend)

3.2.1 Children's and Young People's Services are forecast to have an over spend of £15.723m for this financial year. The projected over spend has increased by £2.7m this period due to children in care numbers remaining high (currently 655).

3.2.2 The major pressures are as follows:

- The placement budget is £21.3m with a projected spend of £34.0m, an overspend of £12.7m. The main pressures are linked to high cost placements across external residential, independent foster carers and leaving care supported accommodation. The forecast placement costs have increased by £2.4m as whilst the Right Child Right Care initiative and other demand management strategies are having a positive impact, the initial target levels of reduction of children in care are not being met and the reductions which are being achieved are being offset by new admissions into care.
- The other element of the placement strategy is to reduce the number of children in high cost placements by stepping down into lower cost placements e.g. independent fostering to in-house foster care. The reduction is not being achieved as planned and following consideration of the current estimated impact of demand management strategies the anticipated placements cost savings to the financial year-end have been significantly reduced.
- Staffing and agency costs across CYPS base budgets are forecast to overspend by £1.8m due to the number of agency workers across the service, which is now reducing (35 FTE at the end of September).

3.2.3 It should be noted that the position has been exacerbated by a significant amount of placements that have arisen from the complex child protection work and associated interventions with further cases related to Operation Stovewood. Further, it has to be emphasised that Rotherham is not significantly out of step with many local authorities throughout the country in experiencing a significant increase in the numbers of Looked After Children.

3.2.4 A budget saving of £750k was agreed for a review of Business Support as part of the 2017/18 budget. To date £200k has been achieved from existing staff turnover leaving a balance to address (£550k). There is an ongoing review of business support across Children's Services to implement a long term and sustainable service in the future (Phase 1), consultation on proposals ended 23 October. Phase 2 is planned for next financial year.

3.2.5 The number of young people requiring support from the Leaving Care service has increased significantly in the last two years, the Government's new responsibilities placed on Councils increasing the provision up to the age of 25 has also increased costs, all leading to a current forecast overspend of £1.8m.

3.2.6 Budget review meetings continue and have identified a number of further budget savings options and considerations for this financial year. A challenging examination of potential efficiencies is continuing to take place, recognising the need for these to be thoroughly reviewed, discussed and considered so that the Directorate can bring forward options for immediate implementation. Proposals are being actively pursued to identify savings in the current financial year, having due regard for the continued safeguarding of vulnerable children.

3.3 Dedicated Schools Grant

3.3.1 The Directorate is currently forecasting an over spend on its Dedicated Schools Grant (DSG) High Needs Block of £4.536m, this is an increase from the previously reported figure of £3.489m, the main reasons for the over spend are the number of external residential placements and an increase in the number of high needs learner places.

3.3.2 Both the Early Years and the Schools' block are expected to be broadly in line with allocations in 2018/19.

3.3.3 The overall deficit on the non-delegated DSG at the end of the financial year 2017/18 was £9.687m, and comprised as follows:

- Early Years Block: £0.032m Underspend
- Schools Block: £0.328m Underspend
- High Needs Block: £10.047m Overspend

3.3.4 The service has developed a recovery plan which aims to try and reduce the in-year pressures on the High Needs Block. The key areas of focus to reduce the over spend are:

- A revised Special School funding model;
- A review of high cost out of authority education provision to reduce cost and move children back into Rotherham educational provision
- Work with schools and academies to maintain pupils in mainstream settings wherever possible
- A review of inclusion services provided by the Council.
- To redirect funding from the schools block into the high needs block in 2019/20

To enable a redirection of funding from the Schools block, all schools and academies need to be consulted on the proposal and agreement to the transfer is needed from the Schools Forum. If agreement is reached a disapplication request will then be made to the Secretary of State to approve the transfer.

3.4 Regeneration and Environment Directorate (Forecast balanced budget)

3.4.1 The Regeneration and Environment Directorate has approved savings of £3.827m to deliver in 2018/19 as well as savings requirements from previous years. This is a challenging position for the Directorate, and in order to meet this challenge, the Directorate will continue the tight financial discipline that enabled it to outturn within budget in 2017/18. Budget monitoring has, however, highlighted some significant pressures, many of which arise from delays in delivery of savings.

3.4.2 The major pressures are as follows:

- Facilities Management (£1.307m). The 2018/19 budget includes a £1m saving on property arising from service reviews within other Council services. A pressure of £863k is being reported in respect of this saving, as a result of delays in concluding the service reviews. The savings are expected to be achieved in the long term, but their delivery has been delayed. In addition, a pressure of £140k is being reported in respect of a saving to let office space at Riverside House, as a result of the proposed tenant withdrawing.
- Catering service (£273k). This mainly arises from a continuing impact of the loss of contracts resulting from academy conversions, where academy chains have alternative provider arrangements in place.
- Street Scene Services (£787k). This is mainly in respect of continuing additional demand pressures on Home to School transport, which was also a pressure in 2017/18.
- Regulation and Environment (£139k), principally the Licensing service, arising from a forecast under recovery of income against the budget and additional vehicle testing costs.

3.4.3 In order to try to mitigate these pressures the Directorate Management team will continue to keep a tight control on budgets, limit officers to essential spending and have identified some non-recurring underspends including:

- Holding vacant posts where this can be done without significantly impacting on service delivery;
- Additional income in Building Consultancy;
- Other windfall income;
- Maximisation of capital resources;
- Review of provisions and maximisation of grant funding

It is envisaged that these actions will enable the Directorate to deliver a balanced budget by year end.

3.4.4 The following alternative savings are proposed to replace savings which are not being delivered as originally planned and approved.

- Charge for street naming (property addressing) £20k – the additional income is not being met due to reduced applications. This will be mitigated by the delivery of additional income following the Government's decision to increase planning fees for 2018/19.
- Increase in Local Land Charge (search) fees £50k – the additional income is not being delivered due to a reduction in volumes. This will be offset by the delivery of additional planning income following the Government's decision to increase planning fees for 2018/19.

- Increasing number of applications and incidental fees, and review fees and charges £20k – this is not being met due to reduced volumes. This will be mitigated by deleting a vacant post.
- Software savings by migrating information to an App £14k – to be mitigated by a reduction in equipment budgets in licensing.

3.5 Adult Care & Housing (£6.221m overspend)

3.5.1 Adult Care Services are still on track to reduce the overspend to £6.221m in 2018/19 (after allocation of £5.9m of the additional Better Care Funding).

3.5.2 Whilst there were no new budget savings for Adult Care agreed within 2018/19 budget setting, there are £3.224m of savings agreed in previous years to take effect in 2018/19 in addition to the £7.346m agreed in 2017/18. The forecast overspend for 2018/19 includes an anticipated shortfall of £7.393m in the delivery of these accumulated budget savings within the current financial year.

3.5.3 The main reasons for the delayed delivery of savings are the complexity, rather than the volume of new cases (including transition) – as the overall customer base has been relatively static. Also, contributing to the delay is historical assessment practice across all cohorts; in terms of over reliance on residential care, poor application of self-directed support and over provision of care hours.

3.5.4 Neighbourhood services' (Housing General Fund) latest forecast is a favourable variance against budget, which is included in the overall Directorate position. This is as a result of additional income from the increase in take up of the furnished homes scheme and from one off savings generated from the housing repairs contracts.

3.5.5 Adult Care recognises that the primary pressures on its budget centre on previously undelivered savings. As a result, a suite of high level project plans have been developed to address the savings challenge which includes reviewing Learning Disability Services (My Front Door), right sizing care packages and resource/operating models. Digital Transformation, Work Force Development and the Intermediate Care and Re-ablement Pathways will be enablers to these. This will be in line with the Rotherham Integrated Health and Social Care Place plan priorities. In addition, new savings options will be identified and fall out of this activity to meet the 2019/20 and 2020/21 requirements.

Public Health (Forecast Balanced budget)

3.5.6 The Public Health ring fenced specific grant was reduced by a further £430k to £16.304m for 2018/19.

3.5.7 The latest forecast is an overall balanced budget, which includes a planned transfer from the Public Health Grant reserve of £441k in order to achieve a balanced budget. There are some forecast pressures within Drugs and Alcohol and Tobacco control but these are being offset by underspends within Children's obesity and sexual health contracts, together with staff vacancies with the Public Health team.

3.5.8 Budget savings agreed as part of the budget setting process for 2018/19 totalling £0.653m are forecast to be fully achieved in year.

3.6 Finance & Customer Services (Forecast Balanced Budget)

3.6.1 Although, as at the September monitoring, F&CS Directorate is forecasting a balanced outturn position, the Directorate currently has an underlying overspend of £1.488m as a result of the ongoing pressures on Legal Services from Children's Services. Significant challenges exist within this department from the continued demand for legal support with child protection hearings and court case costs relating to Looked After Children. Ongoing recruitment to vacancies is progressing, but in the interim, there is heavy reliance on locum solicitors alongside a temporary arrangement with Sheffield City Council, which comes at a premium cost.

3.6.2 It is envisaged that these financial pressures will not diminish until the current resourcing problems are resolved, and the volume of social care proceedings begins to reduce. The number of court proceedings in 2018/19 is reducing slightly compared to previous years (92 cases to the end of September, compared to 107 as at September 2017), and should this continue, it is hoped that the financial position will improve accordingly. Work is ongoing to identify ways of reducing demand for legal advice, coupled with a management restructure within the department, with the aim of better controlled use of resources.

3.6.3 Legal Services also have pressures in respect of Statutory Costs, where the forecast overspend is currently projected at £85k as a result of the volume of statutory and planning notices. A review into the demand drivers for this area is ongoing, with analysis showing that approximately half of the cost is driven by activity in Regeneration & Environment. A way forward is required to better align costs and responsibility, and thus control spend.

3.6.4 Within Customer Information and Digital Services, vacancies are deliberately being held across the service whilst a complete review of Digital Services management and staffing structures is completed, alongside consideration of current commitments and service demand. The legacy savings decisions that have been causing pressure within CIDS have now been resolved, with just one saving due to be completed in 2019/20.

3.6.5 Loss of income from Schools Traded Services following conversion of schools to academies and their withdrawal from purchased Council finance support services is creating a pressure of £226k within Financial Services. This pressure comprises staff absence claims paid out to the value of £77k more than budget, combined with a legacy income budget of £149k that is now unachievable. Consideration is to be given as to the future viability of the School Staff Absence Fund. The pressure in year is being offset by vacancy control across the finance function, along with restrictions on overtime within Revenues and Benefits.

3.6.6 The recovery of Housing Benefit overpayments is projected to deliver income in excess of budget of £400k as a result of robust recovery processes.

3.6.7 As a result of robust and rigorous management actions the Directorate had identified and implemented mitigating actions to reduce the underlying overspend to £666k as at the end of September. Further work has identified additional savings/cost reductions of £342k, leaving £324k to address. Work continues on a range of options to mitigate the remaining £324k and ensure that the Directorate delivers a balanced budget by the end of the financial year.

3.7 Assistant Chief Executive (£0.259m Forecast Underspend)

3.7.1 The Assistant Chief Executive's Directorate are forecasting a budget underspend of £0.259m, which is a slight increase of £44k since the last report. This is attributable to underspends within HR from a considerable number of staff vacancies, and the decision to delay recruitment for as long as possible. It is worthy of note that, given the amount of staff turnover within this department, the forecast underspend could increase if recruitment is deferred further.

3.7.2 Vacancies within Business and Innovation Team are, however offset by planned expenditure to support the delivery of service transformation across the Council, whilst a delay in delivery of savings within the Management Support Team has been mitigated from underspends elsewhere across the Directorate.

3.7.3 It should also be noted that a restructure within HR consultancy has delivered an in-year saving that will be removed from the budget in 2019/20 to contribute to future funding pressures

3.8 Central Services (£3.6m Forecast Underspend)

3.8.1 As highlighted in previous financial reports to Cabinet and Council over the past year a thorough review has been undertaken of all the Council's Central Services Budgets and Provisions, Corporate Funding and Accounting and Apportionments, including classification of expenditure between revenue and capital and between HRA and General Fund. Savings from these reviews fed into the updated Medium Term Financial Strategy reported to Cabinet in July. Capital financing decisions made as part of the 2017/18 financial outturn, along with further savings from treasury management activity, reviews of PFI funding and payment profiles and finalisation of inflation funding requirements results in a further saving of £3.6m in 2018/19.

3.9 Achieving a Balanced Budget in 2018/19

3.9.1 A range of actions as reported in December 2017 and in the Budget Report 2018/19 to Cabinet and Council in February 2018 have been implemented

3.9.2 Strategic measures have been put into place as part of mitigating budget pressures. These include :

- Further controls on recruitment and a reduction in the use of agency staff
- Reductions on general spend across all Council services
- Review of financing options, including PFI schemes and staff severance payments
- Use of Directorate balances with re-provision for any liabilities to be funded by those balances being reprovided in future years.

Additional actions are being developed to address the need to reduce spend still further by an estimated £3.1m in order to achieve a balance financial outturn after taking account of the £10m Budget Contingency.

3.10 Housing Revenue Account (HRA) – (Forecast Balanced Budget)

3.10.1 The Housing Revenue Account is a statutory ring-fenced account that the Council has to maintain in respect of the income and expenditure incurred in relation to its council dwellings and associated assets. The Housing Revenue Account is forecast to outturn in budget. There are some potential minor pressures but there are plans in place to mitigate against these should they arise.

3.11 Capital Programme

Updated Capital Programme 2018/19 to 2021/22

3.11.1 The Capital Programme 2018/19 totals £107.054m split between the general fund £63.102m and HRA £43.952m, this has reduced overall by £6.105m from the position reported to Cabinet on 17 September 2018. The movement is based on the latest profiles of expenditure against schemes, factoring in slippage of £6.179m, and the addition of grant funded schemes totalling £0.074m.

3.11.2 The main items of slippage are within the Regeneration and Environment programme, £5.936m in total, includes

- £4.313m on the Growth Fund allocation for Brighton Link which has been re-profiled into 2019/20 following delays in gaining final confirmation of the Sheffield City Region approval of funding.
- The Holmes Tail Goit Pumping Station has slipped £0.800m into 2019/20 to align with the latest scheme profile, and
- £0.200m of the Bridges Local Transport Plan funding has slipped to support the development of Crinoline bridge in 2019/20.

3.11.3 Additional grant funded schemes are added to the Capital Programme on an ongoing basis in accordance with the Financial and Procurement Procedure Rules. Schemes added since the report to Cabinet in September are listed below.

Table 2: New Grant Funded Schemes

Directorate/Scheme	2018/19 £M	Post 2018/19 £m
Regeneration & Environment		
Chantry Bridge Pumping Station Phase 2 (EA Funding), a contribution of £60k has been awarded to the Council for the delivery of works.	0.060	0.000
Assistant Chief Executive		
Thurcroft Creatives: Inclusion of ring fenced Sawn Moor Section 106 monies in Thurcroft to fund a community environmental/public Arts project.	0.014	0.000
Total Additions	0.074	0.000

The updated Capital Programme to 2021/22 is shown by Directorate in Table 3 below.

Table 3: Updated Capital Programme 2018/19 to 2021/22

Directorate	2018/19 Budget £m	2019/20 Budget £m	2020/21 Budget £m	2021/22 Budget £m	Total Budget £m
General Fund Capital					
Children and Young People's Services	9.767	10.490	11.297	2.406	33.961
Assistant Chief Executive	1.338	0.210	0.210	0.210	1.968
Adult Care & Housing	4.154	5.976	11.976	6.116	28.222
Finance and Customer Services	3.832	1.969	1.775	1.775	9.351
Regeneration and Environment	42.012	39.025	20.432	25.698	127.166
Capitalisation Direction	2.000	2.000	2.000	0.000	6.000
Total General Fund Capital	63.102	59.670	47.690	36.205	206.667
Total HRA Capital					
	43.952	39.881	28.113	22.275	134.220
Total RMBC Capital Programme					
	107.054	99.550	75.803	58.480	340.887

The £107.054m of capital expenditure is funded as shown in the table below;

Table 4: Funding of the approved Capital Programme

Funding Stream	2018/19 Budget £m
Grants and Contributions	23.966
Unsupported Borrowing	29.328
Revenue Contributions	2.014
Capital Receipts	7.794
Total Funding - General Fund	63.102
Grants and Contributions	4.025
Housing Major Repairs Allowance	12.759
Useable Capital Receipts	2.434
Revenue Contributions	24.734
Total Funding - HRA	43.952
Total	107.054

Capital Receipts

3.11.4 The Council is continuing to undertake a comprehensive review of its assets and buildings portfolio with the aim of rationalising both its operational and non-operational asset holdings. This may contribute future capital receipts which are earmarked to support the revenue budget, using the new capital receipts flexibilities introduced from the 1st April 2016 to fund expenditure relating to transforming Council service to generate future revenue efficiency savings

3.11.5 To date General Fund Capital receipts of £0.743m have been generated as shown in the table below.

Table 5 – General Fund Capital Receipts Received in 2018/19

Description	Total as at 30th September 2018 £m
Land at White Hill Lane, Brinsworth	0.025
Beighton Link, Chesterfield Road	0.100
Other De-minimus	0.005
Sub Total – Usable In-Year Capital Receipts	0.130
Repayment of Loans	0.613
Total Capital Receipts	0.743

The disposal programme includes a number of General Fund receipts with forecasts for these, estimated between £1.215m to £1.723m.

4. Options considered and recommended proposal

- 4.1 The Council is currently forecasting a need to identify a further £3.1m of savings to enable a balanced financial outturn for 2018/19. To any extent that further savings are not identified and a balanced budget is not achieved for 2018/19, there will be an impact on the Council's reserves. Within the current financial climate, effective and careful use of reserves is ever more critical to the Council's ability to maintain a robust balanced budget.

5. Consultation

- 5.1 The Council consulted extensively on budget proposals for 2018/19. Details of the consultation are set out within the Budget and Council Tax 2018/19 report approved by Council on 28th February 2018

6. Timetable and Accountability for Implementing this Decision

- 6.1 Strategic Directors, Managers and Budget Holders will ensure ongoing tight management and close scrutiny of spend this financial year.
- 6.2 Financial Monitoring reports are taken to Cabinet meetings during the year. The next Financial Monitoring Report with the position as at the end of November 2018 will be considered by Cabinet on 17th December 2018.

7. Financial and Procurement Implications

- 7.1 The current forecast identifies a need for additional actions and savings required to reduce expenditure by a further £3.1m in order to deliver a balanced financial outturn for 2018/19, after taking account of the £10m Budget Contingency.
- 7.2 If budget and planned savings and spend reductions are not delivered as intended, there will be an impact on the Council's reserves, as any expenditure in excess of budget impacts reserves levels. Control over spending is therefore critical to a robust Medium Term Financial Strategy. All savings are being closely monitored and tracked, with all areas at risk of shortfall subject to review to identify alternative options.
- 7.3 Failure to achieve planned savings and to contain revenue expenditure within the agreed budget for this financial year will have further implications for financial years 2019/20 and 2020/21, where the MTFs identifies a further £30m of savings as being required to balance the budget.
- 7.4 The approved Capital Programme was updated in the July report to September Cabinet to reflect the 2017/18 Outturn position and new grant funded schemes. The further additions in this report are all grant funded schemes.

8. Legal Implications

- 8.1 No direct implications.

9. Human Resources Implications

9.1 No direct implications.

10. Implications for Children and Young People and Vulnerable Adults

10.1 This report includes reference to the cost pressures on both Children's and Adult' Social care budgets.

11. Equalities and Human Rights Implications

11.1 No direct implications.

12. Implications for Partners and Other Directorates

12.1 No direct implications. As management actions are developed some of these may impact upon Partners. Timely and effective communication will therefore be essential in these circumstances.

13. Risks and Mitigation

13.1 At a time of economic difficulty and tight financial constraints, managing spend in line with the Council's Budget is paramount. Careful scrutiny of expenditure and income across all services and close budget monitoring therefore remain a top priority if the Council is to deliver both its annual and medium term financial plans while sustaining its overall financial resilience.

14. Accountable Officer(s)

Graham Saxton, Assistant Director – Financial Services
Nikki Kelly, Finance Manager

Approvals obtained on behalf of:-

	Named Officer	Date
Strategic Director of Finance & Customer Services	Judith Badger	05.11.2018
Director of Legal Services	Dermot Pearson	05.11.2018
Head of Procurement (if appropriate)	N/A	
Head of Human Resources (if appropriate)	N/A	

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