

## 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

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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 24<sup>th</sup> 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 24<sup>th</sup> 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 24<sup>th</sup> 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 <sup>th</sup> Nov 2018	Cabinet	<ul style="list-style-type: none"> <li>• Cabinet recommend to Council to agree the commencement of public consultation to adopt Schedule 3 of the 1982 Act.</li> <li>• 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.</li> </ul>
5 <sup>th</sup> Dec 2018	Council	<ul style="list-style-type: none"> <li>• Council agree the commencement of public consultation to adopt Schedule 3 of the 1982 Act.</li> </ul>
Public Consultation – 8 weeks		
27 <sup>th</sup> February 2019	Council	<ul style="list-style-type: none"> <li>• Council agree to adopt Schedule 3 of the 1982 Act.</li> </ul>
Late February/ Early March	Licensing Board	<ul style="list-style-type: none"> <li>• Licensing Board consultation on amendments to the Sex Establishment Licensing Policy following consultation.</li> </ul>
18 <sup>th</sup> Mar 2019	Cabinet	<ul style="list-style-type: none"> <li>• Cabinet agree to adopt a Sex Establishment Licensing Policy.</li> </ul>

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:-

	<b>Named Officer</b>	<b>Date</b>
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

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