

Committee Name and Date of Committee Meeting

Cabinet – 10 June 2019

Report Title

Adoption of a 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, Strategic Director of Regeneration and Environment

Report Author(s)

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Ward(s) Affected

Borough-Wide

Report Summary

Following public consultation, the Council passed a resolution on 22nd May to adopt powers to regulate sex establishments across Rotherham from 1st July 2019. The adoption by Council of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, now allows the Council to set a clear Policy.

The proposed Policy will cover all sexual entertainment venues, sex cinemas and sex shops. If adopted, the Policy will allow the Local Authority to better regulate Sex Establishments, taking account of the views of residents, including the appropriate number and localities for such establishments and the establishment of welfare conditions for those working within such establishments.

In December 2018, Council authorised a public consultation be undertaken to understand the views of local communities in respect of the Council adopting these powers and setting a Policy. The consultation began on 19th December 2018 and ended on 20th February 2019.

Based on the feedback from public consultation this report proposes the adoption of a Sex Establishments Policy, to be effective from 1st July 2019.

Whilst the Council would still be required to consider applications when they arise, the Policy proposes that the appropriate number of Sex Entertainment Venues and Sex Cinemas in each Ward of the Borough is nil.

Recommendations

1. That the Cabinet notes and has due regard to the attached reports including the Equality Analysis and the consultation document appended to this report.
2. That the proposed Sex Establishment Licensing Policy be adopted (see Appendix 2), including: proposed limits on the numbers of Sex Establishments in localities of the Borough and the types of areas where Sex Establishments would/would not be deemed appropriate; to be effective from 1st July 2019.
3. That the charging arrangements for the licensing of Sex Establishments, to be effective from 1st July 2019, be approved.

List of Appendices Included

Appendix 1 Local Government (Miscellaneous Provisions) Act 1982 Considerations
Appendix 2 Proposed Sex Establishments Licensing Policy
Appendix 3 Equality Analysis

Background Papers

Cabinet Report - [Consultation on the Adoption of Schedule 3 of the Local Government \(Miscellaneous Provisions\) Act 1982 and a Rotherham Sex Establishment Licensing Policy](#), 19th November 2018

Council Resolution - [Consultation on the Adoption of Schedule 3 of the Local Government \(Miscellaneous Provisions\) Act 1982 and a Rotherham Sex Establishment Licensing Policy](#), 5th December 2018

Cabinet Report – [Adoption of Schedule 3 of the Local Government \(Miscellaneous Provisions\) Act](#), 18th March 2019

Council Resolution - Adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act, 22nd May 2019

[Home Office Guidance, Sexual Entertainment Venues](#) – March 2010

Consideration by any other Council Committee, Scrutiny or Advisory Panel
Licensing Board – 24 September 2018

Council Approval Required

No

Exempt from the Press and Public

No

Adoption of a Sex Establishment Licensing Policy

1. Background

- 1.1 Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') was amended by Section 27 of the Policing and Crime Act 2009, which classified lap dancing clubs and similar establishments, as 'sexual entertainment venues' within the definition of 'sex establishments' found in the 1982 Act.
- 1.2 The definition of 'sex establishment' within the 1982 Act already included 'sex cinemas' and 'sex shops', which the Council already licences within the specific provisions. The amendments to Schedule 3 of the 1982 Act, added 'sexual entertainment venues' to the meaning of 'sex establishments' within the 1982 Act.
- 1.3 This amendment is only available to Councils where the provisions are formally adopted. Home Office guidance highlights that public consultation on the adoption of the powers is not statutorily required but that it is good practice to seek public views.
- 1.4 Currently, premises where lap dancing or similar activity takes place in Rotherham are licensed and regulated under the Licensing Act 2003. This arrangement does not provide for appropriate regulation of these premises and activities, or for attachment of appropriate conditions to licences, given that the available conditions under the Licensing Act 2003 are not specific to 'sex establishments'.
- 1.5 In December 2018, the Council authorised a public consultation to be undertaken to understand the views of residents, and other interested parties in respect of the Council adopting these powers. The subsequent consultation began on 19th December 2018 and ended on 20th February 2019.
- 1.6 Following the public consultation a report to Cabinet in March 2019 recommended that Cabinet recommend to Council to pass a resolution to adopt powers contained within Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended). Council passed a resolution on 22nd May 2019 to adopt the powers with effect from 1st July 2019, giving the Council the Powers to adopt a formal Sex Establishments Policy.

2. Key Issues

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

- 2.1 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. The premises licence 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.
- 2.2 The Policing and Crime Act 2009 amendments and guidance, extended the meaning of 'sex establishment' within the 1982 Act, which previously only covered sex cinemas and sex shops, to include 'sexual entertainment venues' such as:
- Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows and
 - Live sex shows
- 2.3 The provisions in the 2009 Act also include annual applications for sex establishment licences; grants, renewals and transfer of licences; variations and revocation of licenses; refusal of applications; and powers to make standard conditions.
- 2.4 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.

Sex Establishment Licensing Policy

- 2.5 Whilst the powers in Appendix 1 can be applied without a formal Policy being in place, Home Office guidance establishes that it is reasonable and potentially useful to future applicants for the Council to develop a Policy for the Licensing of Sex Establishments. This provides clarity to applicants, in advance of application that certain areas are, or are not, considered appropriate locations for sex establishments or that a particular number of sex establishments might be assumed to be allowed in certain locality areas. On balance (see section 3 below), officers therefore recommend that a formal Policy be adopted.
- 2.6 The proposed Sex Establishment Licensing Policy will apply to premises falling into the following categories:
- sexual entertainment venues
 - sex shops
 - sex cinemas
- 2.7 In developing the proposed Policy, Officers have taken account of the Council's corporate strategies and priorities as represented by Rotherham's Council Plan, Children and Young People's Plan, the Rotherham Safeguarding Adults Board Strategy and the Safer Rother Partnership Plan, of the legal context, and public consultation (see section 4) in determining its policy in this regard. A

description of the consultation and its outcomes is provided within section 3 of the proposed Policy in Appendix 2.

Appropriate Localities

- 2.8 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.
- 2.9 The Council's proposed Sex Establishment Licensing Policy identifies defined areas that would not be appropriate locations for sex establishments, or where sex establishments would not fit in with the character of such areas.
- 2.10 The proposed Policy is that there is a presumption against licensing sexual entertainment venues or sex cinemas in any of the following areas:
- A residential area;
 - A rural area, including for example where an industrial unit may already be located;
 - Rotherham town centre;
 - Built up areas like other town and village centres in the borough;
 - An industrial area.
- 2.11 In relation to Sex Shops, the proposed Policy is that there is a presumption against licensing Sex Shops in any of these types of areas, with the exception of Industrial Areas.
- 2.12 Furthermore, the proposed Policy sets out that there is a presumption against licensing any sex establishments (sexual entertainment venues, sex cinemas or sex shops) in proximity to any of the following sensitive locations:
- People's homes,
 - Premises used by charities,
 - Offices and other workplaces,
 - Places of worship,
 - Parks and play areas,
 - Family leisure facilities such as cinemas, theatres and concert halls,
 - Women's refuge facilities,
 - Youth facilities,
 - Places used for celebration or commemoration,
 - Schools and other education establishments,
 - Cultural leisure facilities such as libraries and museums,
 - Historic buildings,
 - Civic and other public buildings, or
 - Retail shopping areas.

Number of Sex Establishments

- 2.13 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.

- 2.14 In considering each of Rotherham's Wards, Officers have considered if there are any localities which would fall outside of the areas and locations described in 2.11 and 2.13 above. Whilst the Council would still be required to consider applications when they arise, on the basis of this consideration, there is no locality in the Borough where it would be appropriate for a Sexual Entertainment Venue or Sex Cinema to be located. Accordingly, the Policy proposes that the appropriate number of Sexual Entertainment Venues and Sex Cinemas in each Ward of the Borough is nil.
- 2.15 Cabinet are requested to be mindful that, although the proposed policy has a presumption towards the non-registration of Sexual Entertainment Venues and Sex Cinemas within the Borough, it would not be lawful for the Council to fetter its discretion in this matter. An application for a licence for any Sex Establishment will be formally considered and the appropriate decision made set against the Sex Establishment Licensing Policy. The facts of each individual application will be fully considered before any decision is made.
- 2.16 The Policy does not propose a limit on numbers in each locality in relation to Sex Shops. These applications will be dealt with on a case by case basis.

Worker Rights

- 2.17 In addition to safeguards around safety and welfare, it is essential that, where sexual entertainment venues are licensed, workers are protected from exploitation. The proposed Policy will therefore require that sex establishments have clear policies and codes of conduct in place, to protect staff and the interests of customers. These include:
- 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').
 - A code of conduct for workers on the premises.
 - A code of conduct for customers.
 - A pricing policy.
- 2.18 The appropriate proposed standard conditions will be applied to all sex establishment licences issued by Rotherham Metropolitan Borough Council. The Council does however reserve the right to amend these conditions or attach additional conditions as appropriate to individual applications.

Charging Arrangements

- 2.19 The adoption of Schedule 3 requires the formal setting of a fee for the licensing of Sexual Entertainment Venues under the Sex Establishments Licensing Policy. The current fee for the licensing of Sex Establishments is £7,560 and the Council proposes to set the fee at this same level for any Sexual Entertainment Venues for the 2019/20 financial year.

3. Options considered and recommended proposal

- 3.1 **Option 1:** the Council does not adopt the proposed Sex Establishment Licensing Policy. The Council has adopted the powers contained within Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended), and sex establishments can therefore be licensed using the powers under this Act. Appendix 1 sets out the basis on which those powers may be applied without a Policy being in place.
- 3.2 The lack of a clear Policy would mean lack of clarity for both applicants, and for Licensing Committee, in terms of the determination of licences. This could potentially mean a lack of consistency in determining licenses and potential unnecessary legal challenge to decisions.
- 3.3 **Option 2:** the Council adopts the proposed Sex Establishment Licensing Policy. The adoption of the policy would enable the Council to more robustly respond to ensure that the licensing of sex establishments is considered, taking account of the views of residents, including the appropriate number and localities for such establishments and the establishment of welfare conditions for those working within such establishments.
- 3.4 A Policy would give clarity to both applicants and Licensing Committee in determining applications.
- 3.5 It is clear that the current regulatory position is not satisfactory in enabling the Council to properly regulate sex establishments across the Borough. Option 2 is therefore the preferred option.

4. Consultation on proposal

- 4.1 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.
- 4.2 The Council undertook full public consultation about the adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009, and proposals for a Sex Establishment Licensing Policy between 19th December 2018 and 20th February 2019. The consultation involved (amongst others) the general public, statutory authorities, the users and managers of those sensitive locations identified, religious groups, community and voluntary groups, residents living near to premises, workers within the industry and their representatives, as well as industry representatives.
- 4.3 A description of the consultation and its outcomes is provided within section 3 of the proposed Policy in Appendix 2.
- 4.4 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

Establishment Licensing Policy on 24th September 2018. The feedback from Licensing Board has been considered as part of the consultation on the adoption of Schedule 3 of the 1982 Act and on a Sex Establishment Policy.

5. Timetable and Accountability for Implementing this Decision

- 5.1 The Council has adopted the powers contained within Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended), and sex establishments can therefore be licensed using the powers under this Act. The powers have been adopted with effect from 1st July 2019.
- 5.2 Should Cabinet agree to adopt the proposed Sex Establishment Licensing Policy, which supports the application of these powers, the Policy will be therefore be effective from 1st July 2019.
- 5.3 In line with Home Office guidance, the proposed Policy includes a requirement that a transitional period of twelve months, from the effective date, is allowed to ensure the compliance of existing licence holders (see section 7).

6. Financial and Procurement Advice and Implications

- 6.1 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.
- 6.2 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.
- 6.3 In the event that the new provisions are adopted, a costings exercise will be carried out after twelve months, to establish appropriate application fees on a full cost recovery basis in line with Central Government guidelines.
- 6.4 There are no anticipated procurement implications as a result of the proposals within this report.

7. Legal Advice and Implications

- 7.1 The resolution to adopt the amended Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 is to be effective from the 1 July 2019. A transitional period then commences and lasts for 12 months from the first appointed day. The process that follows is set out below.
- 7.2 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.

- 7.3 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.
- 7.4 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.
- 7.5 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.
- 7.6 An informed policy will ensure consistency and transparency in relation to all applications received and minimise the risks in relation to any legal challenge around the application process. Depending upon the result of an application, each applicant has the right of appeal to the Magistrates Court. A policy will provide guidance in relation to the application and decision making process, which in turn should serve to minimise the potential for any challenge.
- 7.7 The content of the Sex Establishments Policy has been formulated taking account of the representations contained in the consultation document as well as the appropriate legislation, statutory guidance and council policies.

8. Human Resources Advice and Implications

- 8.1 The application of the Policy will be undertaken utilising resources within the existing Licensing Team. The Licence fee is set on the basis of the resources required to administer the Policy. There are therefore no Human Resources implications of this report.

9. Implications for Children and Young People and Vulnerable Adults

- 9.1 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.
- 9.2 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.
- 9.3 It is considered that the adoption of the Sex Establishment Licensing Policy will allow for the effective regulation of sex establishments in Rotherham and mitigate the risk of harm that is presented to children, young people and vulnerable adults.

10. Equalities and Human Rights Advice and Implications

10.1 A full Equality Impact Assessment (EIA) has been undertaken in support of this report, and the proposals outlined within it (see Appendix 3). The EIA has been reviewed and updated following the public consultation.

11. Implications for Partners

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

12. Risks and Mitigation

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

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

13. Accountable Officer(s)

Tom Smith, Assistant Director, Community Safety and Street Scene

Approvals obtained on behalf of:-

	Named Officer	Date
Chief Executive		Click here to enter a date.
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	22/05/19
Head of Legal Services (Monitoring Officer)	Bal Nahal	23/05/19
Assistant Director of Human Resources (if appropriate)	John Crutchley	07/05/19
Head of Procurement (if appropriate)	Karen Middlebrook	30/04/19

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