



## Report of the Cabinet Member for Commercial Opportunities & Innovation

Cabinet – 17 May 2018

### Review of the Policy on the Licensing of Sex Establishments

<b>Purpose:</b>	To seek approval for the draft of the revised Policy on the Licensing of Sex Establishments , be issued for consultation
<b>Policy Framework:</b>	The Licensing of Sex Establishments Policy 2013
<b>Consultation:</b>	Legal, Finance, Access to Services
<b>Recommendation(s):</b>	It is recommended that Cabinet:  1) agree the proposed changes to the Council’s policy on the Licensing of Sex Establishments;  2) agree that the existing “relevant localities” for the purposes of determining applications for sex establishments and the “appropriate number” of sex establishments for each locality are retained;  3) agree that the revised policy is issued for consultation prior to reporting back to Council for adoption
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#### 1.0 Background

- 1.1 Sex Establishment Licences are issued under the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (the 1982

Act). There are three types of sex establishment in the 1982 Act, these are sexual entertainment venues (SEVs), sex cinemas and sex shops. (Relevant definitions associated with sex establishments can be found in the draft policy attached at Appendix A).

- 1.2 The 1982 Act is adoptive and was adopted by Swansea Council in November 1983. Amended provisions of the 1982 Act were adopted in February 2011 and as a result, anyone wishing to operate a sex establishment in the Swansea Council area requires a licence.
- 1.3 Following adoption of the legislation Council also adopted a policy on the Licensing of Sex Establishments (the Policy). The most recent policy was adopted by Council on the 30<sup>th</sup> July 2013 and states that a review of the policy will be undertaken within a maximum period of 5 years.

## **2.0 Current Position**

- 2.1 There are currently two premises licensed as sex establishments in Swansea. These are long standing licences issued to premises trading as sex shops.

## **3.0 Current Policy**

- 3.1 The current policy states that the role of the Council as Licensing Authority is to administer the licensing regime in accordance with the law and not in accordance with any moral standing, recognising that Parliament has made it lawful to operate this type of establishment.
- 3.2 The aim of the 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 determining an application.
- 3.3 Whilst it is clear that each application will be dealt with on its own merits, the Policy gives prospective applicants an early indication as to whether their application is likely to be granted or not.
- 3.4 The Policy also details the legislative controls that can be exercised over sex establishments. These include both the mandatory and discretionary grounds for refusal of a licence and attaching conditions to any licence issued.

## **4.0 Review of the Policy**

- 4.1 Officers have undertaken a review of the Policy and some minor changes are proposed. A draft of the proposed changes to the Policy is attached at Appendix A. The proposed changes are identified in bold italic type and where it is proposed to remove information, this is shown

by striking through the text. A summary of the changes is detailed below:

- Minor amendments have been made to the introduction to the policy at points 1.1, 1.2, 1.3, 1.4, 1.6 as follows:
  - (***the Act***) has been added after the name of the relevant act at paragraph 1.1;
  - “Therefore” has been deleted from the start at paragraph 1. 2;
  - the order of the wording in paragraph 1.3 has been changed;
  - the details of the adoption and subsequent changes to the policy has been summarised in paragraph 1.4. Reference to legislation has been removed;
  - paragraph 1.6 has been deleted and the relevant information added to paragraph 1.4;
  - reference to the 1982 Act has been added to paragraph 3.1

## **5.0 Matters for Consideration**

5.1 A local authority may refuse an application for the grant or renewal of a licence for a sex establishment on a number of mandatory and discretionary grounds specified in the 1982 Act. The discretionary grounds include:

- a) that the number of sex establishments, or sex establishments 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 the locality;
- b) the grant would be inappropriate having regard to –
  - i) the character of the relevant locality;
  - ii) the use to which any premises in the vicinity are put;
  - iii) the layout, character or condition of the premises, vehicle, vessel or stall in respect of when the application is made.

5.2 The Council may determine an “appropriate number” of sex establishments for the “relevant locality” and nil may be an appropriate number where the character of an area is considered to be unsuitable for the siting of a sex establishment.

5.3 The Council previously determined the “relevant localities” for the purposes of determining applications as “*the City Centre area*” and “*outside the City Centre*”, as defined on the map in Appendix A.

- 5.4 The Council considered the character of its relevant localities and determined the following as appropriate numbers of sex establishments:
- i) The appropriate number of sex establishments outside the City Centre area will be nil unless varied by the Council.
  - ii) The appropriate number of sexual entertainment venues in the City Centre area will be nil unless varied by the Council.
- 5.5 The Council also agreed that “vicinity” will be determined in the circumstances of each case, having regard to the Policy.
- 5.6 It is considered that the existing “relevant localities” for the purposes of determining applications for sex establishments and the existing “appropriate number” of sex establishments for each locality are still relevant for considering applications and it is proposed that they are retained within the Policy.
- 5.7 It should be noted however that each case must be considered on its individual merits. It is not open to an authority to refuse to consider an application, even one which does not comply with its policy and consideration must be given to whether the particular facts of the case warrant an exception to the Policy.

## **6.0 Equality and Engagement Implications**

- 6.1 An Equality Impact Assessment (EIA) screening form has been completed and the outcome indicates that a full report is not required.
- 6.2 The review does not propose changes to the existing policy in respect of the presumption that an application for a Sex Establishment outside the city centre and an application for a SEV in the city centre will be refused. The list of premises near to which Sex Establishments would not be considered appropriate is extensive and therefore strengthens the policy.

## **7.0 Financial Implications**

- 7.1 There are no financial implications associated with the review of the policy.

## **8.0 Legal Implications**

- 8.1 A decision to retain nil as an appropriate number can be challenged by Judicial Review. The Council will need to show how the relevant locality, having regard to the character of the area, would be affected by a SEV.
- 8.2 The Council cannot take any moral stand in adopting the policy.

- 8.3 Retaining an appropriate number of nil will not prevent applications being made. The Council cannot refuse to accept any application because it has a nil policy.
- 8.4 Any application will need to be considered on its own merits and whether the particular facts of the case warrant an exception to the policy. Applications must be dealt with objectively and impartially and any refusal has to be non discriminatory, necessary and proportionate. Any refusal will need to be on one or more of the mandatory and / or discretionary grounds. Reasons must be given for any refusal. Even if there is no statutory right to appeal a refusal for a licence, the decision can be challenged by Judicial Review.
- 8.5 Any decision must not breach Convention rights under the Human Rights Act 1998.

**Background Papers:** Licensing of Sex Establishments Policy 2013

**Appendices:** Appendix A – Draft Licensing of Sex Establishments Policy 2018