



## Report of the Cabinet Member for Corporate Service & Performance

Cabinet – 19 January 2023

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

<b>Purpose:</b>	To seek approval for the reviewed Policy on the Licensing of Sex Establishments to be issued for consultation
<b>Policy Framework:</b>	The Licensing of Sex Establishments Policy 2018
<b>Consultation:</b>	Legal, Finance, Access to Services
<b>Recommendation(s):</b>	It is recommended that Cabinet:  1) 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;  2) Agree that the 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 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 26<sup>th</sup> July 2018 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 is currently one premises licensed as sex establishments in Swansea. This is a long standing licence issued to a premises trading as a sex shop.

## **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 it is considered that no changes are necessary as the Policy remains relevant and fit for purpose.

## **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 Integrated Assessment Implications**

6.1 The Council is subject to the Equality Act (Public Sector Equality Duty and the socio-economic duty), the Well-being of Future Generations (Wales) Act 2015 and the Welsh Language (Wales) Measure, and must in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Acts;
- Advance equality of opportunity between people who share a protected characteristic and those who do not;
- Foster good relations between people who share a protected characteristic and those who do not;
- Deliver better outcomes for those people who experience socio-economic disadvantage;
- Consider opportunities for people to use the Welsh language;
- Treat the Welsh language no less favourably than English; and
- Ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

6.2 The Well-being of Future Generations (Wales) Act 2015 mandates that public bodies in Wales must carry out sustainable development. Sustainable development means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the 'well-being goals'.

6.3 Our Integrated Impact Assessment (IIA) process ensures we have paid due regard to the above. It also takes into account other key issues and priorities, such as poverty and social exclusion, community cohesion, carers, the United Nations Convention on the Rights of the Child (UNCRC) and Welsh language.

6.4 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. The screening identifies that 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.

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.

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.

Therefore, the Policy on the Licensing of Sex Establishments will assist all those involved in licensing applications in Swansea.

6.5 The proposed changes identified, if approved will proceed to consultation where members of the public, all members of the licensed trade and associated professions, will have the opportunity to respond, in line with the legislation.

6.6 All aspects of the WFG Act principles were considered and the potential risk is considered to be low. A copy of the completed IIA screening form is attached at **Appendix B**.

## **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 2018

**Appendices:** Appendix A – Proposed Policy on the Licensing of Sex Establishments Policy, 2023  
Appendix B - IIA