

# Cheltenham Borough Council

Cabinet – 18 March 2014

## Triennial Review of the Sexual Entertainment Venue Policy

<b>Accountable member</b>	<b>Councillor Peter Jeffries – Cabinet Member for Housing &amp; Safety</b>
<b>Accountable officer</b>	<b>Grahame Lewis – Executive Director</b>
<b>Ward(s) affected</b>	<b>All</b>
<b>Key Decision</b>	<b>No</b>
<b>Executive summary</b>	<p>The Council's current Sexual Entertainment Venue Policy Statement was adopted by the Licensing Committee on the 4<sup>th</sup> of February 2011.</p> <p>Although there is no statutory requirement to undertake a triennial review of the policy statement, there is a commitment set out in the policy statement to do so at least once every three years to ensure the policy remains up to date and relevant.</p> <p>Consultation has been undertaken and Members are asked to consider feedback and decide whether it should change its current policy.</p>
<b>Recommendations</b>	<p><b>Members are recommended to:</b></p> <ol style="list-style-type: none"><li><b>1. Note the initial consultation feedback received outlined under paragraph 5;</b></li><li><b>2. Note the proposed changes to the policy at Appendix 3 resulting from the initial consultation; and</b></li><li><b>3. Approve further consultation on the specific issue outlined at paragraph 7.3 of the report and bring back a further report to Cabinet outlining feedback received.</b></li></ol>

<b>Financial implications</b>	<p>There are no financial implications arising from this report.</p> <p><b>Contact officer: Sarah Didcote, sara.didcote@cheltenham.gov.uk, 01242 264125</b></p>
<b>Legal implications</b>	<p>As outlined in the report.</p> <p><b>Contact officer: Vikki Fennell, vikki.fennell@tewkesbury.gov.uk, 01684 272015</b></p>
<b>HR implications (including learning and organisational development)</b>	<p>There are no HR implications arising from this report.</p> <p><b>Contact officer: Richard Hall, Richard.Hall@cheltenham.gov.uk, 01594 812634</b></p>
<b>Key risks</b>	<p><b>As identified in Appendix 1</b></p>

<b>Corporate and community plan Implications</b>	Communities feel safe and are safe.  Our residents enjoy a strong sense of community and involved in resolving local issues.
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## 1. Background

- 1.1 Sexual Entertainment Venues (“SEVs” hereafter) are regulated under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009.
- 1.2 The amended provisions were adopted by Council on the 11<sup>th</sup> of October 2010 when it also approved a draft policy statement for consultation.
- 1.3 The current policy statement was adopted by the Licensing Committee on the 4<sup>th</sup> of February 2011.
- 1.4 Although there is no statutory requirement to undertake a triennial review of the policy statement, there is a commitment set out in the policy statement to do so at least once every three years to ensure the policy remains up to date and relevant.

## 2. Statutory Context

- 2.1 Section 27 of the Police and Crime Act 2009 (“2009 Act”) amended schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (“1982 Act”) to introduce a new type of sex establishment known as a sexual entertainment venue.
- 2.2 Any premises that want to offer “relevant entertainment” can only do so by obtaining a SEV licence.
- 2.3 Relevant entertainment is defined as 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).
- 2.4 Under the 2009 Act, a premises can provide relevant entertainment on an infrequent basis without the need for a SEV licence. Infrequent relevant entertainment is defined as relevant entertainment offered for no longer than 24 hours on no more than 11 occasions a year. Any premises that want to offer relevant entertainment more frequently is required to apply for a SEV licence.

## 3. Current Policy Position

- 3.1 The Council is empowered by schedule 3 paragraph 12(4) of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) to set a limit on the number of licensed SEVs permitted in the relevant locality of which zero can be a number. For information, the current policy defines “relevant locality” as the local ward.
- 3.2 The Council’s current policy is not to limit the number of licensed SEVs but instead to deal with each application on a case by case basis. The rationale for this is that, up until recently, there have been no SEVs licensed in Cheltenham to warrant a limit.

## 4. Consultation

- 4.1 In September 2013 Cabinet approved a draft amended policy for consultation. Consultation was undertaken for 12 weeks between October and December 2013.
- 4.2 A copy of the proposed amended policy is attached at **Appendix 2**.
- 4.3 3 responses were received from Gloucestershire Constabulary, Revd Robin Littlewood (on behalf of the Parish of Saint Gregory) & Cheltenham Borough Council Licensing Committee.

## 5. Consultation Feedback

- 5.1 Cheltenham Borough Council's Licensing Committee** – The Licensing Committee supported the view that the Council should not at this stage set limits on the number of SEVs permitted in the relevant locality.
- 5.2** The Committee did however express concern about the provision of sexual entertainment under the legal exemption (see 2.4 above).
- 5.3 Gloucestershire Constabulary** – The constabulary did not have any specific feedback regarding the proposed amendments. CI Steve Gillett, in his response, did raise the general issue of safeguarding and suggested that this should be included as a discretionary ground for refusal of a licence.
- 5.4 Revd Robin Littlewood** – Revd Littlewood did not make any specific comments apart from acknowledging the policy position with regards to the discretionary grounds for refusal particularly in relation to properties “sensitive for religious purposes”.

## 6. Officer Response

- 6.1** With regards to CI Gillett's response in relation to safeguarding issues, officers are satisfied that sufficient safeguards are put in place by law, the Council's pool of standard conditions, the Council's power to set additional conditions and proactive inspection work. The purpose of licensing such venues is to ensure that, amongst others, the potential safeguarding issues are adequately addressed through the measures mentioned above.
- 6.2** On the particular point of introducing a new discretionary ground for refusal based on safeguarding, the Council is not empowered to do so because the grounds for refusal are set out in the primary legislation.
- 6.3** Members are however to note that whilst safeguarding issues can be addressed through the licensing regime, the same cannot be said for sexual entertainment offered under the legal exemption because the legal exemption renders the Council and the Police unable to apply any statutory control. This was a concern raised by the Licensing Committee.
- 6.4** In an attempt to address the above, the proposed amended policy is seeking to introduce a code of practice for exempt sexual entertainment. The draft amended policy recognises that whilst *“...the Council cannot legitimately impose restrictions on infrequent sexual entertainment...The intention of the code of practice is to promote responsible and properly managed exempt sexual entertainment. The Council expects any premises wishing to offer infrequent sexual entertainment to adhere to the code of practice.”*
- 6.5** Other proposed changes to the Council's policy are outlined in **Appendix 3**.

## 7. Recent Decision to Grant SEV Licence

- 7.1** Members will be aware that the Licensing Committee voted on 7 February 2014 to grant a SEV licence in respect of Diamonds located on the Bath Road. The licence was granted after the end of the policy consultation period.
- 7.2** There was significant local opposition to the application in respect of this application which has again raised the question of whether the Council should limit the number of SEVs permitted in the borough.
- 7.3** As previously mentioned, it was initially not proposed that the Council set a limit on the number of

licensed SEVs it will permit in the borough because up to very recently there were non licensed in the borough. However, as a result of the recent application and associated local feeling, it is considered appropriate that further consultation be undertaken specifically seeking views on the question of whether it would be appropriate for the Council to impose a limit on the number of SEVs it will licence in the borough.

## 8. Moving forward

8.1 Officers are proposing a number of amendments to the current policy which are outlined in Appendix 3 for the information of Members. If Members are to approve further consultation, there is likely to be further changes to the policy and as a result Members are not at this stage recommend to formally adopt the proposed changes.

8.2 Again subject to Members approving further consultation, a consolidated amended policy will be submitted to Cabinet later this year for consideration and approval.

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<b>Appendices</b>	<ol style="list-style-type: none"> <li>1. Risk Assessment</li> <li>2. Draft Amended Policy Statement</li> <li>3. List of proposed changes to the Council's policy</li> </ol>
<b>Background information</b>	<ol style="list-style-type: none"> <li>1. Minutes and officer report – Cabinet, September 2013</li> <li>2. Current adopted Sexual Entertainment Venue Policy Statement, adopted by the Licensing Committee on the 4<sup>th</sup> of February 2011</li> <li>3. Schedule 3, Local Government (Miscellaneous Provisions) Act 1982</li> <li>4. Section 27 &amp; Schedule 3 of the Police and Crime Act 2009</li> <li>5. Sexual Entertainment Venues Guidance for England and Wales, March 2010</li> </ol>

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	The Council would be less able to effectively regulate sexual entertainment if its policies are out of date.	Licensing & Business Support Team Leader	March 2014	3	3	9	Accept	Approve amended policy and maintain triennial review.		Licensing & Business Support Team Leader	
<p><b>Explanatory notes</b></p> <p><b>Impact</b> – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)</p> <p><b>Likelihood</b> – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)</p> <p><b>Control</b> - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											