

Cheltenham Borough Council

Council – 23 March 2020

Adoption of revised Sexual Entertainment Venue Policy

Accountable member	Councillor Andrew McKinlay, Cabinet Members for Development and Safety
Accountable officer	Mike Redman, Director of Environment
Ward(s) affected	All
Key/Significant Decision	No
Executive summary	<p>The authority has adopted a sexual entertainment venue licensing policy. The current policy was adopted by Council in October 2014.</p> <p>A review and consultation on a revised policy has been undertaken on 11 February 2020 Cabinet approved the revised policy document and recommended to Council adoption of the revised policy document.</p>
Recommendations	<p>Council is recommended to:</p> <ol style="list-style-type: none">1. Note the consultation feedback;2. Approve the revised policy document attached at Appendix 5.

Financial implications	<p>There are no financial implications to this paper.</p> <p>Contact officer: Andrew Knott, Andrew.Knott@publicagroup.uk, 01242 264121</p>
Legal implications	<p>The Licensing Authority is required to prepare, publish and keep under review, a statement of the principles it proposes to apply when exercising its functions in licensing Sexual Entertainment Venues.</p> <p>Section 27 of the Policing and Crime Act 2009 came into force on 6 April 2010. This amended Schedule 3 of the 1982 Act and created a new category of sex establishment, namely a sexual entertainment venue. This category added to the existing categories of sex establishment, namely, sex shops and sex cinemas.</p> <p>Whereas the actual determination of an application for a Licence under the Local Government (Miscellaneous Provisions) Act 1982 is a Council function, the function of formulating and adopting a Licensing Policy in relation to this type of licensing is a Cabinet function because neither the Act nor the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 preclude Cabinet from approving such a Policy.</p> <p>Contact officer: Vikki.Fennell@teWKesbury.gov.uk, 01684 272015</p>

HR implications (including learning and organisational development)	No direct HR implications arising from this report. Contact officer: Clare Jones, Clare.Jones@publicagroup.uk
Key risks	As outlined in Appendix 1
Corporate and community plan Implications	A Community Impact Assessment has been undertaken and attached at Appendix 5 of this report.
Environmental and climate change implications	N/A
Property/Asset Implications	N/A Contact officer: Dominic.Stead@cheltenham.gov.uk

1. Background

- 1.1 Sexual Entertainment Venues (“SEVs”) 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 11th of October 2010 and the authority’s current SEV licensing policy was adopted in October 2014.
- 1.3 A review of this policy has been undertaken as outlined in this report and appendices.
- 1.4 On 11 February 2020 Cabinet approved the draft revised SEV policy and passed a resolution to recommend adoption to full Council.

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 authority does not take any moral stand in relation to the regulation of sexual entertainment.

The current policy recognises that Parliament has made it lawful to operate a sex establishment and that such businesses are a legitimate part of the retail and leisure industries. It is this authority's role as the Licensing Authority to administer the licensing regime in accordance with the law.

3.2 The authority 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 in which a SEV could be licensed.

3.3 The current policy position is set out in paragraph 11 of the policy stating:

Cheltenham is a relatively small urban borough that is predominantly residential in nature. The Council has already resolved that it is inappropriate to licence SEVs in or in the vicinity of, amongst others, residential areas. *It is the Council's policy therefore that there is no locality outside of the adopted Central Shopping Area in which it would be appropriate to license a SEV.* Accordingly the appropriate number of SEVs for outside of the adopted Central Shopping Area is nil. (paragraph 11.2)

3.4 Accordingly, there is currently one licensed SEV which is the Two Pigs Pub on Church Street which is inside the relevant locality in which SEVs are permitted.

4. Consultation

4.1 Consultation on the revised SEV policy was undertaken between 1 November 2019 and 6 January 2020.

4.2 Three responses were received. These are outlined, along with officer comments, at Appendix 2.

5. SEV Policy Scrutiny and Review Meeting

5.1 In July 2019, the authority's Licensing Committee held a SEV scrutiny session to give opportunity for Members of the committee to hear from key stakeholders in order to facilitate the review.

5.2 The stakeholders invited to attend were:

5.2.1 Gloucestershire Constabulary;

5.2.2 Ward Members in whose area SEV are, or have been, licensed;

5.2.3 SEV operators; and

5.2.4 Consultees who have previously engaged in the licensing process on a regular basis.

5.3 A copy of the minutes of that meeting is attached at Appendix 3 of this report.

6. SEVs in Cheltenham

6.1 Attached at Appendix 4 is the briefing paper that accompanied the scrutiny group meeting. Members may find the briefing paper helpful in terms of gaining a contextual understanding of SEVs in Cheltenham.

6.2 As outlined in the briefing paper, the authority has licensed and regulated SEVs in some form or another for many years. SEVs are particularly prevalent during horse racing events in Cheltenham on a scale that is not comparable with any other area outside of London.

6.3 As outlined above (under Statutory Context), sexual entertainment can either be licensed or take

place unlicensed as part of infrequent sexual entertainment.

- 6.4 Infrequent sexual entertainment is unlicensed by virtue of a statutory exemption that allows premises to carry on sexual entertainment without a licence if the sexual entertainment is offered for no longer than 24 hours on no more than 11 occasions a year.
- 6.5 Any premises that want to offer relevant entertainment more frequently is required to apply for a SEV licence.
- 6.6 As Members will note from the scrutiny meeting minutes (Appendix 3), there is a lot of debate about whether the authority should change its policy to set a zero limit to apply to the entire borough.
- 6.7 Officer's view is that a borough-wide policy of zero SEVs will not address the concerns raised by people and organisations that are opposed to SEVs; the rationale being that a zero policy for the borough will not achieve a reduction in the amount of sexual entertainment being offered in the town. Instead, the consequence would be that operators will instead rely on the statutory exemption by, instead of operating from one licensed venue, moving between premises around the town but offering the same amount of sexual entertainment.
- 6.8 Under the circumstances described above and recognising that sexual entertainment is a lawful activity, officers are of the view that it is better for the council to regulate SEV through licensing. Venues operating under the statutory exemption are free of any licensing regulation and control.
- 6.9 It is therefore proposed that the policy position with regards to limiting SEVs in Cheltenham not be changed.

7. Proposed policy changes

- 7.1 In addition to minor updates to the policy such as removing references to fax, the following policy changes are proposed:
 - 7.1.1 Under paragraph 11.4 (Sensitive Locations), reference to specific sensitive locations and building be removed in favour of a more general description of the types of locations that may be considered sensitive. Specific examples have in the past limited the Licensing Committee's determination of SEVs.
 - 7.1.2 A number of conditions have been updated or amended as shown on the draft revised policy at Appendix 5.
 - 7.1.3 The "relevant locality" where the authority will permit the licensing of SEVs has been revised. The rationale for this is:
 - 7.1.3.1 Recognition that the adopted Central Shopping Area excludes a number of venues on the Bath Road that can be considered as part of the "wider mix on offer, particularly in the night time economy"; and
 - 7.1.3.2 The Licensing Committee has already determined that the licensing of SEVs in the area referred to above is appropriate.
 - 7.1.4 It is also proposed that the authority include a waiver provision in the policy. Schedule 3, paragraph 7 of the Local Government (Miscellaneous Provisions) Act 1982 makes provision for the council to issue waivers. The effect is that it will remove the requirement for a licence under very limited circumstances as outlined under paragraph 3 of the revised policy.

8. Equality duties

- 8.1 An equality and community impact assessment has been undertaken to accompany this policy

review. The impact assessment is attached at Appendix 6 of this report.

- 8.2 Notwithstanding the fact that Parliament has made it lawful to operate a sex establishment, there is still an overarching duty on the authority to comply with its Public Sector Equality Duty (PSED) as defined by the Equality Act 2010.
- 8.3 The PSED places a duty on the authority to, in the exercise of their functions, have due regard to the need to:
 - 8.3.1 Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the 2010 Act.
 - 8.3.2 Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - 8.3.3 Foster good relations between people who share a protected characteristic and those who do not.
- 8.4 Consideration of the authority's PSED is particularly relevant to the licensing of sexual entertainment. It's licensing and regulation often creates a tension between the statutory right to operate such a venue and equality issues relating to discrimination and objectification of primarily women.
- 8.5 The starting point for the authority is the fact that it cannot take any moral stand in relation to SEVs in recognition that Parliament has made it lawful to operate a sex establishment. This starting point however does not mean that the authority is therefore bound by the primary legislation at the expense of other statutory requirements such as the PSED.
- 8.6 Equality issues may be relevant to (not exhaustive):
 - 8.6.1 The need to protect performers from harassment and threat;
 - 8.6.2 The need to ensure that any protected characteristic group is not more, or less, welcome than another;
 - 8.6.3 The need to properly consider the fear of any protected characteristic group using and accessing public spaces, facilities and infrastructure;
 - 8.6.4 The need to properly understand the relevant locality and the need to ensure, taking into account the relevant locality, any protected characteristic group's view is taken into account such as those relevant to religion or belief or race;
 - 8.6.5 The need to consider the views and experiences of people with disabilities as a protected characteristic group.
- 8.7 Some or all of these equality issues may be addressed through appropriate conditions and robust enforcement. Equally, the licensing process may also be an important tool to achieve the same outcome, for example, licence reviews and policy changes.

9. Reasons for recommendations

- 9.1 To secure adoption of the recommended revised policy as outlined in this report.

10. Alternative options considered

- 10.1 Cabinet can take the view that the policy changes proposed are not necessary and that the current policy remains sufficient for the purpose of regulating SEVs in Cheltenham.
- 10.2 However, this is not recommended as changes to the policy are necessary to ensure information is up to date and the policy continues to ensure SEVs are properly regulated.

Report author	Contact officer: Louis Krog, louis.krog@cheltenham.gov.uk, 01242 262626
Appendices	<ol style="list-style-type: none"> 1. Risk Assessment 2. Consultation feedback 3. SEV Policy Review Meeting minutes 4. SEV Policy Scrutiny Group - briefing paper 5. Revised Sexual Entertainment Venue Policy Statement 6. Community impact assessment
Background information	<ol style="list-style-type: none"> 1. Cabinet, 11 February 2020, 6.00 pm (Agenda item 7) 2. Council, Monday, 13th October, 2014 2.30 pm (Agenda item 8) 3. Cabinet, Tuesday, 16th September, 2014 6.00 pm (Agenda item 9)

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
	If the authority does not approve draft changes to the policy it would be less able to effectively regulate sexual entertainment venues in the borough.	Director of Environment	October 2019	2	3	6	Accept	Approve draft policy change for consultation.		Licensing Team Leader	
	If the authority is not mindful of its Public Sector Equality Duty in reviewing the policy it risks a breach of this duty and the risk of reputational damage and legal challenge.	Director of Environment	October 2019	2	3	6	Accept	Approve draft policy change for consultation.		Licensing Team Leader	
Explanatory notes											
<p>Impact – 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>Likelihood – 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>Control - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											