

SEV Policy Scrutiny Group – Briefing Paper

Background – SEVs in Cheltenham

Cheltenham Borough Council has licensed and regulated sexual entertainment venues (SEVs) in some form or another for many years.

Prior to 2009, sexual entertainment venues were not licensable and were able to operate largely without any council control. The only requirement would have been a premises licence under the Licensing Act 2003 authorising the sale/supply of alcohol and regulated entertainment such as the performance of dance and playing recorded music.

Prior to the legislative change in 2009, only one SEV operated in Cheltenham which was The Blue Room on St Margaret's Road.

In 2009 the Policing and Crime Act 2009 came into force that introduced for the first time a formal licensing requirement for SEVs. The Blue Room ceased trading in 2011 as a SEV.

In 2013 the first SEV licence was granted to the then Diamond Gentleman's Club on Bath Road. That venue, later known as Fantasy, was licensed until 2017 as a SEV.

In 2016 the council issued a SEV licence to the Two Pigs Pub on Church Street. The Two Pigs Pub continues to be licensed as a SEV to date.

The law change in 2009 also created a statutory exemption for infrequent SEVs. The majority of venues in the town that offer sexual entertainment do so under the statutory exemption.

Legislation

The need for a licence

SEVs are licensed as sex establishments under schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 and schedule 3 of the Policing and Crime Act 2009.

“Sexual entertainment venue” is defined as any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

“Relevant entertainment” means 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).

Any premises that offers “relevant entertainment” more frequently than once a month, lasting longer than 24 hours at a time, or on more than eleven occasions per year requires a SEV licence.

Premises that offer infrequent “relevant entertainment” (i.e. no more than once/month, lasting no longer than 24 hours on each of these occasions and no more than 11 occasions/year) can do so without the need for a licence and are free from council regulation and control.

Determination

The legislation prescribes the circumstances under which the council can refuse or revoke a SEV licence:

1. Mandatory grounds:

- a) to a person under the age of 18;
- b) to a person who is for the time being disqualified under paragraph 17(3)¹;
- c) to a person, other than a body corporate, who is not resident in the United Kingdom or was not so resident throughout the period of six months immediately preceding the date when the application was made;
- d) to a body corporate which is not incorporated in the United Kingdom;
- e) to a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

2. Discretionary grounds:

- a) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- b) that if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;
- c) that the number of sex establishments in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality;
- d) that the grant or renewal of the licence would be inappropriate, having regard:
 - i. to the character of the relevant locality; or
 - ii. to the use to which any premises in the vicinity are put; or
 - iii. to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

The council has the power to prescribe conditions. The council’s standard conditions are attached for reference.

¹ Where a licence is revoked, its holder shall be disqualified from holding or obtaining a licence in the area of the appropriate authority for a period of 12 months beginning with the date of revocation.

National Guidance

The Government has issued guidance for licensing authorities. The guidance is available online (<https://webarchive.nationalarchives.gov.uk/20100408140149/http://www.crimereduction.homeoffice.gov.uk/crimereduction057a.pdf>)

Policy

The council has adopted Policing and Crime Act 2009 in so far as it relates to SEVs. The council has also adopted a SEV licensing policy.

The most current version of the SEV policy was adopted in October 2014. [The policy document](#) should be read in conjunction with this briefing note.

It is an overarching principle of the policy that the council does not take any moral stand in relation to the licensing of SEVs. The council 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 council's role as the licensing authority to administer the licensing regime in accordance with the law.

Councils are able to set a limit on the number of SEVs it will permit in its administrative area – including a zero limit.

Cheltenham Borough Council's SEV policy has set limits on the number of SEV as follows:

- a) The appropriate number of SEVs for outside of the adopted Central Shopping Area is nil.
- b) The Council has resolved that it will not set a limit on the number of permitted SEVs in the adopted Central Shopping Area providing those premises are not near properties with sensitive uses or in sensitive locations.

Properties with sensitive uses or in sensitive locations are defined as:

- a) The fact that the premises are sited in a residential area;
- b) Whether the premises are sited near shops used by or directed at families or children, or on frontages frequently passed by the same;
- c) Whether the premises are sited near properties which are sensitive for religious purposes e.g. churches, mosques, temples; and/or
- d) Whether the premises are sited near premises or areas which are sensitive because they are frequented by children, young persons or families, including but not limited to educational establishments, leisure facilities such as parks, libraries or swimming pools, markets and covered markets.

Equality Issues

An issue that has consistently been raised is that of council's Public Sector Equality Duty (PSED) and its interaction with the licensing of SEVs.

The PSED places a statutory duty on the council, in the exercise of its functions, to have due regard to the need to:

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Protected characteristics are:

- age
- disability
- gender reassignment
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

The licensing and regulation of SEVs does fall within the council's PSED and therefore the council must have regard to the matters listed above when, for example, setting policy and issuing licences.

The licensing and regulation of SEVs often creates a tension between the statutory right to operate such a venue and equality issues relating to discrimination and objectification of primarily women.

The starting point for the council is the fact that it cannot take any moral stand in relation SEVs in recognition that Parliament has made it lawful to operate a sex establishment. This starting point however does not mean that the council is therefore bound by the primary legislation at the expense of other statutory requirements.

When setting policy or determining individual applications, the council must have regard to its PSED taking into account the individual merits of each application.

Equality issues may be relevant to (not exhaustive):

1. The need to protect performers from harassment and threat;
2. The need to ensure that any protected characteristic group is not more, or less, welcome than another;
3. The need to properly consider the fear of any protected characteristic group using and accessing public spaces, facilities and infrastructure;
4. The need to properly understand the relevant locality and the need 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;
5. The need to consider the views and experiences of people with disabilities as a protected characteristic group.

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.

Waivers

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.

The legislation allows an applicant to apply to the council for a waiver either as part of a substantive application or just for a waiver by itself.

The circumstances that may lead the council to grant a request for a waiver is not clear in the legislation and therefore it should come down to local decision making and policy to define and provide guidance. The general principle should be that regulated activity should be minimal or largely ancillary to something else that is cannot be regarded as relevant entertainment. Examples of this could include some nudity in a burlesque show, shops with a small amount of sex toys and objects and/or ad hoc film festivals where erotic films are shown.

Since the legislation is silent on criteria to be applied when applications for a waiver is submitted, it is appropriate for the council's licensing policy to provide further guidance and set criteria to be applied.

Proposed policy on waivers:

The power to waive licensing requirements is not a substitute for licensing, and applicants will be expected to demonstrate exceptional circumstances in justifying why the licensing requirement should be waived in their case.

In considering applications for waivers, the council's general approach will be:

- 1. Waivers must be sought in respect of a temporary events*
- 2. Waivers will not be granted for events that includes relevant entertainment (i.e. striptease, lap-dancing, pole dancing or similar activities) recognising that a statutory exemption already exists for infrequent sexual entertainment*
- 3. Licensable activities (that would normally have required a licence) must principally be ancillary and kept to an absolute minimum to other activities not licensable under the provisions of the 1982 Act*
- 4. Waivers will only be considered, on its merits, in exceptional circumstances*

Applications will be considered by the Licensing and Committee, or delegated sub-committee thereof, and reasons shall be given of the decision taken.

A waiver may be for such period as the Council sees fit. Where the Council grants an application for a waiver, notice will be given to the applicant stating that it has granted the application. The Authority may at any time give a person who would require a licence, notice that the waiver is to terminate, on such date not less than 28 days from the date on which it gives the notice, or as may be specified in the notice.

APPENDIX 1

STANDARD CONDITIONS REGARDING SEXUAL ENTERTAINMENT VENUES

General Conditions:

1. The premises shall only permit adult entertainment between the hours of hours and hours the following morning as determined by the licensing committee.
2. Only activities which have previously been agreed in writing by the Council shall take place.
3. The agreed activities shall take place only in designated areas approved by the Council.
4. There shall not be displayed outside the premises, in the immediate vicinity, or elsewhere within the Town any advertisements, photographs or images that indicate or suggest that striptease-type dancing takes place on the premises.
5. Any flyers advertising the adult entertainment must not display any photographs or images of the entertainment and any images must be approved by the Advertising Standards Agency and not be handed to persons who look under the age of 21. Any handbills must only be distributed after 19.00hrs with the exception of race days. Examples of the handbills that are in use shall be lodged with the licensing authority prior to their distribution.
6. No flyers or similar promotional material for the premises shall be distributed within the Town.
7. Rules shall be produced by the licensee for customers indicating conduct that is deemed acceptable. These rules shall be prominently displayed at all tables and at other appropriate locations within the club.
8. A clear Notice shall be displayed inside the entrance to the premises in the following terms:
“Striptease-style entertainment takes place on these premises. No persons under 18 shall be permitted in the premises.”
9. The performance must not be visible from the street, and any person who can be observed from the outside of the premises must be properly and decently dressed. Scantily-clad individuals employed in the premises must not exhibit themselves in the entrance or in the vicinity of the premises.
10. When the premises are open for Striptease/Lap/Pole Dancing no person under the age of 18 shall be permitted to be on the premises. Anyone appearing to be under the age of 21 years shall be asked to produce valid photographic identification. If this is not produced the individual shall be refused access.
11. The premises shall maintain a Refusals Log whereby any occasion a person is refused entry shall be recorded and available upon request by the Police or an authorised officer of the Council.

Conditions regarding Performers:

12. Striptease and similar entertainment may only take place in ‘designated areas’ that are marked on the plan of the premises.

13. The entertainment shall be provided by professional performers only. The audience must at all times remain fully-clothed.
14. Performers shall be aged not less than 18 years and the licence holder (or his nominated deputy who is authorised in writing) shall satisfy him/herself that this is the case by requesting valid photographic ID, if necessary, prior to the performance.
15. A 'Signing-in' Register shall be kept at the premises that records the time that the performer starts and finishes at the premises. This shall be made available for immediate inspection by a Police Officer or authorised Officers of Cheltenham Borough Council (who will carry identification).
16. During any performance there must be no physical contact between the performer and any member of the viewing public.
17. No performances shall include any sexual act with other performers.
18. No performances shall include any sexual act with objects.
19. There shall be no nudity by performers in public areas of the premises, unless the Council has agreed in writing that the area may be used for performances of sexual entertainment.
20. At the completion of the relevant entertainment the performers shall dress themselves immediately and leave the designated performance area. Performers not engaged in performing shall not remain in any area in a state of undress.
21. Performers are not to solicit, exchange addresses or telephone numbers with customers, liaise with customers of the premises, or incite customers to purchase alcoholic drinks.
22. An appropriate room shall be set aside to provide a changing and rest area for performers. Access to this room shall be restricted to performers only, whilst the performers are on the premises and shall be marked on the plan of the premises.
23. Any bodily contact between entertainers or performers or any movement that indicates sexual activity or simulated sex between entertainers or performers is strictly forbidden.
24. Entertainers or performers not performing must not be in a licensed area in a state of undress.
25. There shall be prominently and legibly displayed a comprehensive tariff of all charges and prices in respect of relevant entertainment, including any charge for the company of any person working at the premises, which shall be placed in such a position that it can at all times be easily and conveniently read by persons inside the premises.

Briefing:

26. Prior to performers carrying out any activity on the premises, they shall be briefed (verbally or in writing) by the licence holder or his nominated deputy who is authorised in writing as to the conditions that pertain to these particular premises, including the fact that their activities will be recorded on CCTV. The performer(s) shall sign in the Register that they have been briefed.

Door-Supervisors:

27. Subject to a minimum of two, SIA-registered door-supervisors shall be employed at a minimum ratio of 1:50 customers on the premises whilst Striptease/Lap/Pole-dancing activity is taking place.
28. The licence holder, or his nominated deputy who is authorised in writing, or door-supervisors, shall carry out regular monitoring of all areas of the premises to which the public have access, and shall intervene promptly, if necessary, to ensure compliance with Licence conditions by customers and performers.
29. Door-supervisors shall regularly monitor the area immediately outside the premises for a distance of 30 metres in all directions and shall take steps to deal with (by alerting the Police if appropriate) any unsavoury activity that may be attracted to the vicinity due to the nature of the business.
30. A dedicated SIA-registered door supervisor shall remain at all times in any 'private' performance area where performers are performing nude, and shall intervene promptly, if necessary, to ensure compliance with the Licence conditions.
31. When performers leave the premises they are to be escorted to their cars or taxi by a door-supervisor or member of staff.

CCTV System:

32. A digital CCTV system shall be installed and be maintained in good working order, shall record at all times the premises are open, and recordings shall be kept for 14 days. The CCTV system is to be installed in all areas as recommended by the Police Crime Reduction Officer
33. The CCTV recording device, controls and recordings shall be kept under suitable security to prevent unauthorised access/tampering. Access shall be restricted to the licence holder or his nominated deputy who will be authorised in writing and no more than two designated persons.
34. Unaltered CCTV recordings shall be provided on request (as soon as possible and in any event within 24 hours) to the Police or authorised Officers of the Cheltenham Borough Council (who will carry identification).
35. No CCTV footage is to be copied, given away or sold (except as required by Police/Council for investigation/enforcement purposes).
36. Except in accordance with the requirements for CCTV as described above, no photographs, films or video recordings shall be taken of the performances. Nor shall electronic transmissions of performances take place.
37. Notices shall be displayed informing customers of the presence of CCTV.