

Dear Cllr Dr Willingham,

Thank you for your letter on behalf of the Cheltenham Borough Council Licensing Committee regarding the licensing of Sexual Entertainment Venues (SEVs). We are grateful for the Committee's interest in this issue. Our apologies for the delay in sending a substantive response. This area is not without complexity, as you appreciate, and it has been necessary to look into this issue with care.

We note your observation that residents in Cheltenham with concerns regarding SEVs are "a minority with moral objections". Respectfully, that is not our assessment. We have been contacted by a number of constituents whose concerns are not moral (as they have been at pains to point out) but focused instead on the risks of harassment, the safety of women and public disorder.

We are unclear how the council believes it is restricted from monitoring and acting on inappropriate behaviour in both permanent and temporary SEVs, given that such venues require permissions under the Licensing Act 2003 either by means of a Temporary Events Notice or the premises' current premises licence.

As you will also be aware, the legislation allows the council's environmental health department and the joint CBC/police SOLACE team to submit objections to any notice if they think the event could:

- (i) lead to crime and disorder
- (ii) cause a public nuisance
- (iii) be a threat to public safety
- (iv) put children at risk of harm

We note the Committee's focus on Temporary Events Notice. Under paragraph 2A(3) of Schedule 3 of the Licensing Act 2003, premises that provide "relevant entertainment" on an "infrequent basis" are not sexual entertainment venues. However such premises providing relevant entertainment on an infrequent basis do remain regulated under the Licensing Act 2003.

For clarity the Home Office was asked "whether the conditions that a council can require of a venue that has an SEV licence can also be imposed on a club that hosts one-off events through a temporary event notice (TEN). If the answer is no, what powers, if any, does a council have to control nudity (for eg) at an event licensed through a TEN?"

The Home Office has now responded - copied below. As you will see, this refers to Home Office guidance on sexual entertainment venues (March 2010):

Whilst the Home Office holds the policy on sexual entertainment venues, Local Authorities license these venues and as a result, we do not hold any data centrally on them. However, we have checked the SEV guidance and believe the answer to the original question is No:

(2.12) Premises which provide relevant entertainment on an infrequent basis will continue to be regulated under the 2003 [Licensing] Act, insofar as they are providing regulated entertainment under that Act, either by virtue of a premises licence or club premises certificate issued under Part 3 or Part 4 or a temporary events notice issued under Part 5 of that Act. Any premises that provide relevant entertainment on more occasions, more frequently or for a longer period of time than is permitted under the exemption will be operating as a sexual entertainment venue and will have committed an offence under Schedule 3 unless they hold a sexual entertainment venue licence or the local authority has waived the requirement for such a licence.

From the above wording we believe TENS (Temporary event notices) are subject to regulation under provisions in the 2003 Licensing Act and only require a SEV license (and thus held to its conditions) if operating for more than 168 hours (according to section 100(1)(5)(b) in the legislation).

TENS only be given for licensable activities under the terms of the Licensing Act 2003. Sexual entertainment is not a licensable activity. Just like any other place, a sexual entertainment venue could give a TEN for: the sale of alcohol; the provision of regulated entertainment (e.g. a play or an indoor sporting event); or the sale of late-night refreshment. Sexual entertainment could be going on at the same time as those activities, but it would have to be carried out in accordance with the conditions of the sexual entertainment licence. Conditions can be applied to a standard TEN (if there are any objections to a late TEN, a counter notice is the only option), but they must derive from a premises licence granted under the Licensing Act 2003. To quote section 106A(2)(b) of the Act:

“the conditions are also imposed on a premises licence or club premises certificate that has effect in respect of the same premises, or any part of the same premises, as the temporary event notice...”

Links:

Legislation:

<https://www.legislation.gov.uk/ukpga/2003/17/section/100#commentary-key-84ac22ea7da7752fd87d9d3b5e6d06b1>

The same question was also put to the DCMS (responsible for TENS and entertainment licensing) who responded

On the question of whether a council can impose the same conditions as those that appear on a SEV license, on a temporary event notice under the 2003 Act, the answer is no unless those conditions reflect those already included on the relevant club premises certificate. The LA does however have the ability to issue a counter notice where the event proposed (eg: nudity) would undermine the licensing objectives - and this power may lead the event organiser voluntarily to agree to make changes to the planned event. Whether an event could undermine the licensing objectives will need to be considered on the facts of each case.

Your letter states “This means that while licensed venues have in the region of forty enforceable licensing conditions, which exist to protect the performers and the customers; venues using the exemption only have an advisory and unenforceable code of conduct.” To confirm, where an already licensed venue chooses to host a TEN for sexual entertainment - then the existing licensing and premises requirements would still apply under the 2003 Act.

As mentioned above, this is an issue that we have raised with both the Council and directly with Ministers in Parliament, most recently by Alex Chalk MP in January 2020 (copied below)

Q: “To ask the Secretary of State for the Home Department, whether the Government has plans to review the current policy on sexual entertainment licences that allows for venues to operate pop-up sexual entertainment venues.

A: “We currently have no plans to amend the legislation surrounding the licensing of sexual entertainment venues. However, we routinely review local licensing regulations and we continue to work with the police to make sure that public nuisance issues are being tackled.”

Best wishes,

Alex Chalk MP    Laurence Robertson