

# Cheltenham Borough Council

## Licensing Committee – 4 September 2024

### Review of Sexual Entertainment Licensing Policy

#### Report of the Head of Public Protection

#### 1. Introduction

- 1.1 The authority's Sexual Entertainment Venue (SEV) licensing policy is due for a review. The current policy was adopted by Full Council in July 2020.
- 1.2 The SEV licensing policy sets out the authority's approach to the regulation of licensed SEVs in the borough including, but not limited to, the considerations the authority will apply when determining applications for licensed SEVs.
- 1.3 This report intends to brief the committee on the current policy position and statutory context, outline the proposed approach to undertaking the review and seek nominations from the committee to participate in the review process as outlined in this report.

#### Recommendations:

- 1.4 The Licensing Committee is recommended to:
  - 1.4.1 Note the current policy on licensed SEVs as outlined in this report at 3.1 to 3.8;
  - 1.4.2 Approve the proposed approach to undertaking the review as outlined in this report at 4.1 to 4.5;
  - 1.4.3 Nominate Members of the committee to participate in the review process as outlined in this report at 4.1 to 4.5;
  - 1.4.4 Delegate authority to the Head of Public Protection, in consultation with the chair and/or vice-chair of the Licensing Committee to produce the terms of reference and other relevant arrangements to facilitate the review process.

#### Implications

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#### 2. Statutory Context

- 2.1 SEVs are regulated under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009.
- 2.2 Under the relevant legislation above, lap dancing and other sexual entertainment venues fall within two categories, licensed and exempt sexual entertainment.
- 2.3 Premises where lap dancing and other sexual entertainment takes place is exempt from any licensing requirements if, the provision of this type of entertainment, takes place no more than on eleven occasions within the period of 12 months, and no such occasion has lasted for more than 24 hours, and no such occasion has begun within the period of one month beginning with the end of any previous occasion. This is referred to as infrequent sexual entertainment.

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- 2.4 Premises where lap dancing and other sexual entertainment takes place on a more frequent basis requires a licence from the local licensing authority.
- 2.5 The legislation prescribes circumstances where the licensing authority must refuse an application for a SEV licence (referred to as mandatory grounds for refusal). In addition, the same legislation also provides the licensing authority with discretionary grounds for refusal:
- 2.5.1 that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- 2.5.2 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;
- 2.5.3 that the number of sex establishments, or of sex establishments of a particular kind, 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; and/or
- 2.5.4 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.
- 2.6 Nil may be an appropriate number for the purposes of 2.5.3.
- 2.7 Much of the policy issues arising stems from these discretionary grounds for refusal including the authority's discretion to set a nil limit for the whole borough.

### 3. Current Policy

- 3.1 Much of the authority's licensing policy follows the statutory provisions. It acknowledges that the authority does not take any moral stand in adopting this policy and that Parliament has made it lawful to operate a sex establishment. As such, these 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 However, the discretionary grounds for refusal does provide the authority with opportunity to sets its own licensing policy around these grounds, most notably in relation to the discretion to adopt a nil limit for the whole borough.
- 3.2 The authority's current policy position is that, for most of the borough, it has set a nil limit. However, the policy recognises that the "Designated Permitted Area" (as outlined in the policy) offers a unique position and therefore requires a different approach. For this area, the licensing policy is to determine each application on its merits taking into account, for example, properties with sensitive uses or in sensitive locations.
- 3.3 The principal policy issue that generates the most debate and strong feeling surrounds the current policy position not to set a nil limit for the whole borough given that the authority has the discretion to do so.
- 3.4 The authority's position in relation to the above is that, setting a nil limit for the whole borough will not result in lap dancing and other sexual entertainment not taking place in the borough due to the licensing exemption for infrequent lap dancing and other sexual entertainment.

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- 3.5 The practical implications of a nil limit, whilst the licensing exemption is in place, is that operators will use this exemption to continue to offer lap dancing and other sexual entertainment but with the crucial difference that it will be unregulated which will provide no safeguards for anyone.
- 3.6 Therefore, with the licensing exemption in place, a nil limit is not expected to have a significant impact on the amount of lap dancing and other sexual entertainment. With this in mind, the authority prefers an approach where premises are licensed and therefore regulated to safeguard performers, customers and wider public.
- 3.7 The authority has lobbied Government, the Institute of Licensing and the Local Government Association on the issue and to seek a closure of the licensing exemption loophole.
- 3.8 The policy position as outlined above, and other policy measures, will of course be all subject to review as part of this review.

#### **4. Proposed Policy Review Process**

- 4.1 The authority is fully aware of the strong feeling, views and opinions on the licensing and operation of SEVs both locally and nationally.
- 4.2 As such, the authority is keen to listen to the broad range of views and opinions on the issue as part of this policy review process.
- 4.3 To this end, the chair and vice-chair of the Licensing Committee has, subject to full committee approval, agreed to hold a number of face-to-face engagement sessions with a range people, organisations and stakeholders at the outset of the policy review. These include:
  - Objector groups;
  - Groups representing women’s interest and safety;
  - Religious group objectors/representatives
  - Gloucestershire Police, Gloucestershire Police and Crime Commissioner, Elected MPs & elected members for the affected wards;
  - Operators of SEVs; and
  - Performers (separate from operators).
- 4.4 As outlined, this report seeks endorsement from the Full Committee on the approach set out above and to delegate authority to officers, in consultation with the chair and/or vice-chair, to produce the terms of reference and other relevant arrangements to facilitate the review process.
- 4.5 The committee can decide how many Members should be nominated and whether the same Members should be present on both sessions. It is important that the nominations are representative, as far as is practical, and Members may wish to consider this when deciding on nominations.

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