



CHELTENHAM BOROUGH COUNCIL

COUNCILLOR DR DAVID WILLINGHAM

The Rt Hon Yvette Cooper MP
Secretary of State for the Home
Department
2 Marsham Street
London
SW1P 4DF

Date: 3rd October 2024

Dear Secretary of State,

Ref: 2024-10-03 LGMPA1982 SEV

I am writing to you in my capacity as Chair of Cheltenham Borough Council's Licensing Committee and at the request of that committee, to enquire whether the new Labour Government intends to take a different attitude to sex establishment licensing to the previous Conservative Government, and to review or amend the provisions in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (LGMPA82) as amended by the Police & Crime Act 2009, regulating the licensing of sex establishments.

Our inquiry relates to Sexual Entertainment Venue (SEV) licensing, and more specifically to the "exemption" introduced by the Policing and Crime Act 2009, at section (2A)(3)(b) of Sch. 3 LGMPA82. The effect of which is providing the three conditions in the legislation are complied with by the operator, infrequent relevant entertainment does not require a licence and thus cannot be regulated by the Licensing Authority.

As a town of approximately 120,000 residents, Cheltenham does not seem to have a sufficiently large population to make a permanently licensed SEV premises financially viable. However, during horse racing events, especially March Gold Cup week at Cheltenham Racecourse, the population of the town increases to the point where the demand for the provision of SEV makes it financially viable.

As you can imagine there are a range of views from those who vehemently object to SEV to those who fully support it. As the Licensing Authority, the council cannot take a moral view on SEV¹ and must consider grounds for refusal set out in statute, in the Council's SEV Licensing Policy, in overarching legislation such as the Equality Act 2010, and in relevant case law.

¹ R. v. Newcastle City Council: *ex parte* The Christian Institute [2001] LGR 165

An operator wishing to provide SEV at a single premises for the complete duration of racing events can do so by applying for an SEV licence. This is usually done for premises already operating in the nighttime economy and holding a licence issued under the Licensing Act 2003 (LA2003). If an SEV licence is granted by the Licensing Authority, it can then have enforceable conditions attached to it.

However, the presence in law of the "exemption" has led to the creation of exploitable loopholes. The short duration of racing events and the gaps between events means if the SEV licence is refused or if an operator does not wish to go through the application process, they can use a different premises each night, and the exemption means not only do they not need to apply for a SEV licence, but there are no licensing conditions regulating the activity beyond any on the LA2003 licence. There are further, more convoluted ways to find premises. These could use the Temporary Event Notice process to facilitate LA2003 activities such as sale of alcohol and then also use the exemption in the LGMPA82.

Cheltenham's Member of Parliament, Mr Max Wilkinson MP, recently asked a written parliamentary question² on this matter, but regrettably, the inadequate written answer from Dame Diana Johnson MP, suggests she has completely failed to understand the legal issues associated with the "exemption" or how they affect Cheltenham.

In the current legislative climate, it is the council's belief that the ability to add enforceable conditions to a SEV licence makes licensing more desirable than use of the "exemption", as the ability to add conditions is preferable for the safety of performers, customers and the public.

The nature of SEV provided during Race Week fits the stereotype that many have when SEV is mentioned - a female performer for a male audience. This understandably leads to concerns being expressed about issues such as modern slavery, coercive control, and violence against women and girls. Licensing conditions such as the requirement for performers to produce original, valid, government-issued, photographic ID documents and premises inspections by the Council's Licensing Enforcement and Gloucestershire Constabulary's Licensing Team, provide some mitigation of these risks.

However, even in a town the size of Cheltenham, the use of the "exemption" is not just by female performers for a male audience. The "exemption" is used at events with male performers for a female audience and has also been used by Pride in Gloucestershire for LGBTQ+ events, and these have not generated any complaints about either the provision of SEV or the use of the "exemption".

The overarching provisions of the Equality Act 2010 mean that SEV legislation should apply equally regardless of the sex of the performer or the sexual preference of the audience. This means our request to the Government would be to agree to review the legislation. Possible improvements that could be considered would include a set of mandatory minimum safeguarding conditions regulating the provision of all relevant entertainment even if it is provided via the "exemption", and a restriction on operators preventing them from using different premises in the same licensing authority area on consecutive nights without an SEV licence. However, I suspect licensing professionals in the Institute of Licensing may wish to see a more thorough review of sex establishment licensing with a much wider remit, for example

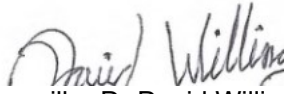
² Max Wilkinson MP, Sex establishments: Licensing, UIN 3850, tabled on 2 September 2024, <https://questions-statements.parliament.uk/written-questions/detail/2024-09-02/3850>

considering premises in large conurbations such as London, Birmingham and Manchester that cater to particular sub-cultures and a public-safety based approach to licensing sex positive venues³.

Should your government decide to review the legislation relating to sex establishment licensing, then representatives from Cheltenham Borough Council would be very happy to provide evidence and testimony into any Home Office research or Parliamentary committees.

When I wrote to the Home Office about this issue in July 2020, the previous Conservative government declined to take any action to look at the effect of the "exemption", and in her reply⁴, then minister Victoria Atkins MP cited "*the reduction of onerous regulation being placed on small businesses*" as the reason for refusing to act. Given councils' regulation and licensing of sex establishments must be done in compliance with statute and case law, I am hopeful that a new government will take a different approach and at least consider reviewing this legislation, so I would be grateful if you could clarify the new Labour Government's position on sex establishment licensing and I look forward to your reply.

Yours sincerely



Councillor Dr David Willingham

Cc:

Cllr Angie Boyes (Vice Chair of Licensing Committee)
Cllr Victoria Atherstone (Cabinet Member for Regulatory Services)
Mr Max Wilkinson MP (Cheltenham Constituency)
Mr Cameron Thomas MP (Tewkesbury Constituency)
Licensing Committee
Gloucestershire LDRS

³ Leo Charalambides & Charles Holland, "No sex discussions please, we're British", Journal of Licensing, Iss. 30, July 2020, <https://www.instituteoflicensing.org/media/w2x15fku/jol-30-web-version.pdf>

⁴ Letter HOCS Reference: MIN 12782/20 VA, dated 21 September 2020.