

Cheltenham Borough Council

Cabinet – 16 September

Revisions to Sexual Entertainment Venue Policy

Accountable member:

Councillor Victoria Atherstone, Cabinet Member for Safety and Communities

Accountable officer:

Head of Public Protection, Louis Krog

Ward(s) affected:

All

Key Decision: Yes

Executive summary:

The authority has adopted a Sexual Entertainment Venue (SEV) licensing policy with the current policy being adopted by Full Council in 2020.

A review and public consultation of the current policy has been completed and Cabinet is asked to consider feedback, approve the draft policy and recommend adoption to Full Council.

Recommendations: That Cabinet:

1. notes the consultation feedback;
 2. approves the revised policy document attached at Appendix 3; and
 3. recommends to Full Council adoption of the revised policy document attached at Appendix 3.
-

1. Implications

1.1 Financial, Property and Asset implications

Signed off by: Ela Jankowska, Finance Business Partner

Date: 17.06.2025

1.2 Legal implications

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.

The legislation provides for local authorities to adopt a policy and standard conditions relating to sexual entertainment venues, sex shops and sex cinemas. 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. Anyone liable to be affected by a licensing policy should be consulted and any feedback duly considered before it is finalised. The provisions of the legislation and the Home Office guidance were taken into account when drafting the current Licensing of Sex Entertainment Venues Policy.

The Council's policy may be challenged by judicial review proceedings.

Signed off by: One Legal, legalservices@onelegal.org.uk

1.3 Environmental and climate change implications

None arising from this report

1.4 Corporate Plan Priorities

This report contributes to the following Corporate Plan Priorities:

- Ensuring residents, communities and businesses benefit from Cheltenham's future growth and prosperity
- Being a more modern, efficient and financially sustainable council

1.5 Equality, Diversity and Inclusion Implications

As outlined in Appendix 4 of this report.

1.6 Performance management – monitoring and review

Through normal regulatory decision making.

2 Background

2.1 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.

2.2 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.

2.3 Any premises that want to offer “relevant entertainment” can only do so by obtaining a SEV licence.

2.4 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).

2.5 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.

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

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 an EEA state 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 or an EEA state;
- 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

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.

licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

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 themselves;
- 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.

2.7 The authority has the power to prescribe conditions. The authority's standard conditions are included in the current policy document.

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's general regulatory approach is one that prefers licensing and, therefore, full regulation of SEVs as opposed to allowing these venues to operate under the infrequency exemption (para 2.5). This general approach is driven by:

- a. Acknowledgement that there is a high probability that SEVs would continue to operate regardless of a nil limit set in policy;
- b. The fact that SEVs would continue to operate unlicensed and unregulated also means the public protection and public safety risks are substantially increased.
- c. Equally, unlicensed and unregulated SEVs will not serve to alleviate or

mitigate the equality concerns raised. Unlicensed and unregulated SEVs will likely have the opposite effect as an unregulated activity.

3.3 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. Relevant locality could be defined as the entire borough of Cheltenham or different parts within the borough.

3.4 With the above in mind, the authority's existing licensing policy sets two relevant localities:

- a. An adopted "Designated Permitted Area" where the policy sets no limit on the number of licensed SEVs; and
- b. The rest of the borough where the policy sets a nil limit.

3.5 Within the "Designated Permitted Area" locality, each application is determined on its merits taking into account the statutory discretionary grounds for refusal and the policy measures supporting these grounds for refusal (i.e. providing those premises are not near properties with sensitive uses or in sensitive locations).

4 Policy revisions, consultation and feedback

4.1 The Licensing Committee undertook informal engagement sessions with key stakeholders prior to commencement of the formal policy review. Informal engagement was undertaken with:

- Objector groups
- Groups representing women's interest and safety
- Religious group objectors/representatives
- Gloucestershire Police and Police and Crime Commissioner
- Operator(s) of SEVs
- Performers/representative groups

4.2 The Licensing Committee was keen to stress that it was genuinely open to listen and hear from these stakeholders and people/groups/organisations at an early stage of the policy review process to ensure the outcomes from these sessions are fully considered. The policy proposals that were consulted on incorporated the outcome of these engagement sessions.

4.3 Attached at appendix 3 is the draft policy for adoption incorporating changes as outlined in this report.

4.4 Several policy changes were proposed and consulted on as outlined below.

Attached at appendix 2 is the consultation report and redacted copies of individual responses submitted as part of the policy consultation.

4.4.1 **A preference in favour of licensing** – the authority consulted on whether its current approach in favour of licensing SEVs remains the correct approach. The majority (34 to 28) of consultees agreed. It is therefore proposed that the current approach in favour of licensing SEVs remains.

4.4.2 **Relevant localities** – the authority proposed not to change its current relevant localities (i.e. nil licensed SEVs in the borough aside from the Designated Permitted Area where no limit will be set and applications determined on its merits).

The majority (34 to 29) of consultees disagreed with this proposal. Consultee comments pointed out that existing and previously licensed SEVs have been in close proximity to properties with sensitive uses or in sensitive locations which is contrary to the policy and inappropriate. Some comments noted that the relevant localities should be reviewed and refined to avoid the aforementioned and to take into account the changing nature of the town centre being more residential.

If the authority continues with its approach in favour of licensing SEVs (4.1.1), it should define relevant localities. Listening to the comments and concerns around the Designated Permitted Area locality, the revised policy proposes additional guidance to ensure the authority's policy and approach is clear and unambiguous. The guidance is outlined in pages 11 and 12 of the proposed revised policy.

4.4.3 **Maximum number of permitted licences** – The authority consulted on a maximum number of permitted SEV licences within the Designated Permitted Area locality. It was proposed that a maximum number of two set as a matter of policy on the basis of licensing history and experience that has suggested two licensed SEVs are sufficient to satisfy demand for this type of licensed activity.

The majority (41 to 21) of responders disagreed with this proposal. This proposal is supported by licensed operators that agreed that evidence has supported the notion that two is sufficient to meet demand.

However, in light of the strong consultation feedback not supporting this proposal, it is proposed that this proposal be dropped. Instead of a maximum limit, the authority will continue to license SEVs in the Designated Permitted Area locality on a case-by-case basis.

- 4.4.4 Amend the Designated Permitted Area to incorporate the Promenade (A4015)** - The authority consulted on amending the Designated Permitted Area locality to incorporate parts of the Promenade acknowledging that the Licensing Committee has consistently granted a SEV licence in this location despite it falling outside the designated area.

The majority (44 to 18) of responders disagreed with this proposal. This proposal is supported by licensed operators that pointed out that the area in question is within the town's evening and night-time economy and that the Licensing Committee has consistently deemed this area suitable for licensing.

In summary, other consultees were not in favour of increasing the area for permitted SEVs concerned that this would make the precedent permanent which will have an adverse impact on the area.

Considering the strong consultation feedback not supporting this proposal, it is proposed that the authority does not proceed with this proposal.

- 4.4.5 Removal of licensing condition 4** – the authority consulted on removing this condition as it was substantially addressed by condition 6. This proposal sought to tidy up the policy by removing any substantial duplication.

However, the majority (35 to 27) disagreed. As a technical amendment to the policy, listening to the consultees, it is not proposed that this proposal will be taken forward and the effect of this will be minimal.

- 4.4.6 Amendments to condition 6** – the authority consulted on amendments to condition 6. This condition states:

There shall not be displayed outside the premises, in the immediate vicinity, or elsewhere within the Town any advertisements that indicate or suggest that any form of Relevant Entertainment takes place on the premises.

The consultation sought to add "with the exception of any registered trademark, trading name or trading symbol that has been provided to the authority in connection with the most recent application for licence, its renewal or variation as the case may be."

The proposal sought to provide a reasonable balance that will allow greater flexibility for operators whilst ensuring public protection and safeguarding though restricting the "exempt" advertisement content.

Although safeguards were proposed via a CBC approval process, the majority (44 to 19) disagreed with this proposal. This proposal is supported by licensed operators pointing out that, in summary, the Licensing Committee has, for several years, been agreeable to amendments to this condition.

In light of the overwhelming feedback disagreeing with the proposed changes to condition 6, it is proposed that the authority does not proceed with this proposal. The implication of this is that the standard condition will remain unchanged and that the Licensing Committee will need to determine applications for variation on a case-by-case basis.

4.4.7 Amendments to conditions 22 & 24 – the authority consulted on amendments to conditions 22 and 26 to replace "state of undress" with "display of nudity" to provide clarity of definition.

The majority (34 to 27) agreed with this proposal. As such, it is proposed that this amendment be implemented.

For the avoidance of doubt, "display of nudity" will be defined in accordance with its statutory definition set out in schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).

4.4.8 Amendments to condition 26 – the authority consulted on amendments to conditions 24 that seeks to address suitable and adequate rest facilities for performers. The proposal outlined the requirements and expectations more clearly and with more detail.

The majority (44 to 19) agreed with this proposal. However, it was pointed out, on behalf of the operators, that whilst they are supportive of the majority of the proposals, the proposal requiring "separate and private sanitary facilities for performers" is not practical and achievable. As a consequence, it is proposed that condition 3. be amended as follows:

Such room(s) should provide separate and private sanitary facilities for performers. Where direct access to separate and private sanitary facilities for performers is not available or practical, *other arrangements ensuring restricted and protected access to performers only would be permissible subject to the approval of the authority;*

This will provide operators with some freedom to implement alternative arrangements – such as security guarding of spaces used by performers – where permanent separate and private sanitary facilities are not practical/possible.

It is proposed that this amendment be implemented as outlined on page 18 of appendix 3.

4.4.9 Amendment to condition 25 – the authority consulted on amendments to condition 25 that reads:

Any bodily contact between entertainers or performers or any movement that indicates sexual activity or simulated sex between entertainers or performers is strictly forbidden.

The amendment proposed removal of “Any bodily contact between entertainers or performers” but retain “Any movement that indicates sexual activity or simulated sex between entertainers or performers is strictly forbidden.” This is to address a technical breach where accidental bodily contact between entertainer or performer could occur, for example in communal open areas.

The majority (36 to 27) disagreed with this proposal. It is however important for the authority to ensure its conditions are clear and enforceable. The wording of condition 25 is currently not clear and therefore enforceable and does require an amendment. Listening to consultation feedback but recognising the need for this proposed amendment, it is proposed that condition 25 be amended as follows:

Any bodily contact between entertainers or performers within the definition of Relevant Entertainment is strictly forbidden.

It is proposed that this amendment be implemented as outlined on page 19 of appendix 3.

4.4.10 Amendment to condition 35 – the authority consulted on a technical amendment to condition 35 to replace “Police Crime Reduction Officer” with “Gloucestershire Constabulary” for the purpose of clarity.

The majority (55 to 8) agreed with this proposal, and it is therefore proposed for adoption.

4.4.11 New Acquired Rights Policy – the authority consulted on a proposed acquired rights policy that seeks to acknowledge that there are SEVs within the borough that have been licensed for a number of years. As such, under the proposed “Acquired Rights” policy, the authority proposed to determine that these licensed SEVs will continue to be renewed, on application, by the existing operators during the lifetime of this policy if there is no material change in the character of the area in the intervening period. If there are any

objections to an application, it will be considered by the Licensing Committee in accordance with the relevant statute.

The majority (41 to 21) disagreed with this proposal. Whilst it is acknowledged that, on behalf of operators, there was strong support for this proposal, the overwhelming general feedback has not supported the adoption of an acquired rights policy. It is therefore not proposed that this proposal be adopted.

4.4.12 Amendments to plans accompanying applications - the authority consulted on proposed changes to the requirements for plans and drawings accompanying applications. These changes reflected the feedback from those who have engaged in the licensing process that, at times, plans accompanying applications have not been sufficiently clear, up to date and/or sufficient for the purpose of commenting on individual applications.

The majority (51 to 12) agreed with this proposal. On behalf of operators, the implementation of the following proposals were objected to:

- a. Replace h) “The dressing room of performers” with “The room(s) allocated to allow performers to rest, dress and store personal items including any bathrooms or other facilities set aside for exclusive use by performers.”
- b. New section o) “Must clearly indicate the location, layout and sizes of all booths inside the premises used for “Relevant Entertainment””.

In relation to a. above, acknowledging the proposed amendments to condition 4 (4.1.8 above), “where relevant” has been added so that the new plan requirement h) reads “The dressing room of performers” with “The room(s) allocated to allow performers to rest, dress and store personal items including, *where relevant*, any bathrooms or other facilities set aside for exclusive use by performers.”

In relation to b. above, the operators stated, in summary, that requiring specific booth size details on layout plans for a venue used only occasionally can create a significant administrative and financial burden, especially when minor annual variations in booth dimensions—caused by different demarcation methods—necessitate a variation of the SEV licence. Even changes of just a few millimetres could trigger costly and time-consuming processes involving professional, council, and publication fees, as well as hearings. Additionally, the limited setup time before events makes it impractical to submit timely variation applications, complicating compliance for the operator.

Acknowledging the practical difficulties expressed by the operators, the authority will continue to require operators to indicate the location and layout of booths within the premises but will not seek to impose a size requirement. This will be subject to further work and consultation.

4.4.13 Designated Person in charge - The authority proposed a new requirement on applicants and licensees to clearly identify a designated person in charge who will be responsible for the day to day management of the licensed SEV, including:

1. responsibility to ensure compliance with law and licensing conditions;
2. being available during inspections and;
3. able to respond to requests by the police or authorised officers of the council for information, evidence (i.e. CCTV footage) and/or addressing immediately issues arising from the operation of the SEV.

The majority (55 to 11) agreed with this proposal. On behalf of operators, it was pointed out that imposing such a requirement may be burdensome on operators when changes are necessary – which would technically require a licence variation for each change. On behalf of operators, it was submitted that a Designated Person in charge could be formally notified to the authority and Gloucestershire Police as an alternative to displaying these details on a licence.

Acknowledging the practical difficulties expressed by the operators, it is proposed that the above-mentioned alternative approach be adopted and formalised in the standard licensing conditions as outlined on page 17 of appendix 3.

4.4.14 Additional guidance on discretionary grounds - The authority consulted on proposals to supplement its licensing policy with additional guidance on the statutory discretionary grounds for refusal. This is to assist licence holders, potential licence holders, the public and the Licensing Committee with further guidance on relevant matters to consider when determining applications.

The majority (48 to 13) agreed with this proposal. Consultation responses pointed to the need for clear and stronger guidance to ensure the authority does not deviate from its policy. Consultation responses commented that previous decisions made on individual applications have been contrary to policy by licensing SEVs in inappropriate locations, for example in the vicinity of churches and locations outside the policy's permitted area.

In acknowledging these local concerns, the authority is proposing to take forward this recommendation with added guidance as outlined in pages 10 to 12 of appendix 3.

5 Reasons for recommendations

5.1 The recommendations are necessary for full consideration of the consultation feedback and to enable Cabinet to make decision on the adoption of the policy amendments.

6 Alternative options considered

6.1 The Cabinet can decide not to adopt any, or some, of proposals outlined in the report.

7 Key risks

7.1 As outlined in Appendix 1.

Report author:

Louis Krog, Head of Public Protection, louis.krog@cheltenham.gov.uk

Appendices:

- i. Risk Assessment
- ii. Consultation report and redacted copies of individual responses
- iii. Draft policy for adoption incorporating changes as outlined in this report
- iv. Equality Impact Assessment

Background information:

Background Papers – individual and other licensing consultation responses (incorporated in to appendix 2 report).

Appendix 1: Risk Assessment

[illegible]