

**LICENSING AND REGISTRATION COMMITTEE**

**25 MARCH 2024**

**REPORT OF THE ASSISTANT DIRECTOR GOVERNANCE**

**A.2. LICENSING ACT 2003 – EXHIBITIONS OF FILM - FILM CLASSIFICATION POLICY**

**PART 1 – KEY INFORMATION**

**PURPOSE OF THE REPORT**

The Council is the licensing authority under the Licensing Act 2003 and exhibitions of film is one of the types of regulated activity requiring an authorisation from the Council under that Act. Most exhibitions of film have a classification to indicate the age restrictions that should apply to the exhibition of the individual film. In the UK the classification body is generally the British Board of Film Classification (the BBFC). However, not all films have a classification.

For this Council, there is currently no formal policy or procedure to deal with the classification of previously unclassified films as well as to deal with circumstances where there are appeals by distributors against the BBFC decisions or to reclassify films.

This report considers a proposed Film Classification Policy to be adopted. As a policy matter, in due course, any decision to adopt the policy will be a matter for the Council's Cabinet (following a recommendation from this Committee).

**EXECUTIVE SUMMARY**

Tendring District Council is a Licensing Authority under the provisions of the Licensing Act 2003 (the Act). A function of the Licensing Authority under the Act is to receive, consider and determine applications for Premises Licences or Club Premises Certificates. The Act regulates various activities (known as licensable activities or in the case of a private club operating pursuant to a Club Premises Certificate, qualifying club activities). Those activities include the provision of regulated entertainment.

The Act seeks to promote 4 licensing objectives. These are:

- Prevention of crime and disorder
- Prevention of public nuisance
- Public safety
- Protection of children from harm

Schedule 1 of the Licensing Act 2003 sets out what activities are regarded as the provision of regulated entertainment. The description of entertainment activities licensable under the Act include the exhibition of film. To be licensable, an activity needs to be provided for the purpose (at least partly) of entertaining an audience; has to be held on premises made available for the purpose of enabling that activity; and must also either:

Take place in the presence of a public audience, or  
Where that activity takes place in private, be the subject of a charge made with a view to profit.

All premises licences that permit regulated entertainment in the form of the exhibition of films have a mandatory condition attached to it relating to the admission of children to that premises. Children under the Licensing Act 2003 are defined as anyone under the age of 18. The mandatory condition is a requirement under Section 20 of the Licensing Act 2003. The mandatory condition reads as follows:

**“Admission of children to the premises must be restricted in accordance with the film classification recommended by the British Board of Film Classification **or recommended by this licensing authority as appropriate.**”**

The emphasis shown above is solely for this report.

When considering any film which has been put forward for a classification, the Licensing Authority will consider it in terms of how the exhibition of this film will impact on the licensing objectives, including the protection of children from harm. This will apply to any films that have been put forward for a classification that will allow children to watch it. There are seven classification tiers (U, PG, 12, 12A, 15, 18 & R18) relating to what age a child may be permitted to watch the film on their own or whether there should be any parental or adult supervision.

The British Board of Film Classification (BBFC) is the national standard classification body for films. However, as the premises licence condition quoted above states, the Licensing Authority may classify films (even where the BBFC has classified it). Where no classification from the BBFC exists, the Council may wish to apply its own film classification. Such local classifications apply solely to the District of Tendring. When classifying any film, the Licensing Authority will have regard to the BBFC Guidelines.

There are specific factors that may influence a classification decision such as:

- Discrimination
- Drugs
- Imitable behaviour
- Language
- Nudity
- Sex
- Threat
- Violence

## **RECOMMENDATION(S)**

**It is recommended that the Committee:**

**Approve for an eight week public consultation the draft policy for Film Classification (as attached to this report at Appendix A) and for the outcome of that consultation to be submitted to a future meeting of this Committee.**

## REASON(S) FOR THE RECOMMENDATION(S)

It is recommended that the Council use 'The British Board of Film Classification Guidelines' as a reference point for its considerations concerning the access of children to the film(s). In particular, the 'General Classifications Considerations' section of this Guidance may be helpful.

## ALTERNATIVE OPTIONS CONSIDERED

The public exhibition of films upon licensed premises must either be classified by the British Board of Film Classification or authorised by the Licensing Authority under the powers of the Licensing Act 2003.

## PART 2 – IMPLICATIONS OF THE DECISION

### DELIVERING PRIORITIES

The draft Film Classification Policy set out at Appendix A is intended to support the following themes from the Council's Corporate Plan 2024-28:

- Pride in our area and services to residents – putting residents first
- Promoting our heritage offer, attracting visitors and encouraging them to stay longer – promote the district

### LEGAL REQUIREMENTS (including legislation & constitutional powers)

The Licensing Act 2003 includes the following relevant provisions:

- Part 1 Section 1 – sets out that regulated entertainment is a licensable activity under the Act.
- Schedule 1 Part 1 – defines regulated entertainment as being for members of the public (or section of the public), members of a club/guests or otherwise with a view to a profit. It goes on to list types of regulated entertainment covered by the Act and these include exhibition of a film.

Since April 2015 there has no longer been a need for an authorisation under the Licensing Act 2003 if the exhibition of a film is a) not-for-profit and b) to be held between 8.00am and 11.00pm.

In exercising the express powers of the Council as Licensing Authority under the Licensing Act 2003 it must do so with a view to promoting the licensing objectives defined in that Act, as follows:

- The prevention of crime and disorder;
- Public Safety;
- The prevention of public nuisance;
- The protection of children from harm.

Film classification under section 20 of the Licensing Act 2003: Mandatory condition: exhibition of films

*“(1) Where a premises licence authorises the exhibition of films, the licence must include a condition requiring the admission of children to the exhibition of any film to be restricted in accordance with this section.*

- (2) *Where the film classification body is specified in the licence, unless subsection (3)(b) applies, admission of children must be restricted in accordance with any recommendation made by that body.*
- (3) *Where—*
- (a) *the film classification body is not specified in the licence, or*
  - (b) *the relevant licensing authority has notified the holder of the licence that this subsection applies to the film in question, admission of children must be restricted in accordance with any recommendation made by that licensing authority.*
- (4) *In this section—*
- *“children” means persons aged under 18; and*
  - *“film classification body” means the person or persons designated as the authority under section 4 of the Video Recordings Act 1984 (c. 39) (authority to determine suitability of video works for classification).”*

The Council is required to have regard to the Secretary of State’s guidance under Section 182 of the Licensing Act 2003. This guidance includes a section on the exhibition of films (paragraphs 10.59-10.60). This section of the guidance covers the position in respect of adverts. Paragraph 11.27 of the guidance references offences around licensed premises being used for the evasion of copyright in respect of pirated or unlicensed films and music. There are then references to circumstances in which entertainment activities are not licensable and this includes particular circumstances for the exhibition of films in paragraphs 16.5 and 16.6 of the guidance. Due regard has been given to these elements of the guidance (and more generally) in the drafting of the Film Classification policy set out at Appendix A.

#### **FINANCE AND OTHER RESOURCE IMPLICATIONS**

The cost of the activity in support of carrying out the film classification has been set at the Licensing and Registration Committee during the fees and charges report.

The Licensing Authority have a fee scheme run on a cost recovery basis. The fees charged will cover the costs associated with the film classification process.

#### **USE OF RESOURCES AND VALUE FOR MONEY**

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	The adoption of a policy for film classification is designed to support efficiency and openness to the public including those wishing to screen films that the Council may be called upon to classify.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	The adoption of a policy for film classification is designed to provide a framework for decisions on classifications going forward.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	The adoption of a policy for film classification should avoid any unnecessary activity that would be required as and when the Council is in a position to consider classifying a film.

#### **MILESTONES AND DELIVERY**

The Council has undertaken limited consultation already on the draft policy. It is now

proposed to give the public the opportunity to comment on the policy and for the outcome of that consultation to be submitted to it when called upon to consider recommending the Cabinet to approve such a policy.

#### **ASSOCIATED RISKS AND MITIGATION**

The primary risk at the moment is that, in the absence of a policy, the Council applies its film classification role in a way that is 'Wednesbury' unreasonable. The adoption of a policy following a period of consultation is intended to mitigate against that risk.

It is the role of Officers, initially, and the Committee, periodically, to consider issues identified as risks and determine the appropriate responses.

#### **OUTCOME OF CONSULTATION AND ENGAGEMENT**

The following organisations have been consulted in preparing this report:

Electric Palace, Harwich; and  
Picturedrome Clacton Century.

At the time of writing this report, only Electric Palace have responded that the consultation "was extremely helpful and looked as expected. We are grateful for you sharing this with us".

#### **EQUALITIES**

In preparing this report, due consideration has been given to the Council's statutory Equality Duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, as set out in Section 149(1) of the Equality Act 2010.

The Licensing Authority will have due regard to the public sector equality duty under the Equality Act 2010. Under this duty, the Authority (in the exercise of its functions) must have due regard to the need to:

- eliminate any form of unlawful discrimination (including direct or indirect discrimination, harassment, victimisation, and any other conduct prohibited under the Act);
- advance equality of opportunity between people who share a relevant characteristic and people who do not;
- foster good relations between people who share a protected characteristic and people who do not.

#### **SOCIAL VALUE CONSIDERATIONS**

There are no social value considerations directly related to this report.

#### **IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030**

There are no environmental implications arising directly from the content of this report.

#### **OTHER RELEVANT IMPLICATIONS**

**Consideration has been given to the implications of the proposed decision in respect of**

<b>the following and any significant issues are set out below.</b>	
<b>Crime and Disorder</b>	The Council has a duty under Section 17 of the Crime and Disorder Act 1998 to do all that it reasonably can to prevent crime and disorder in its area.
<b>Health Inequalities</b>	There are no direct implications arising from the proposals set out in this report.
<b>Area or Ward affected</b>	All

### **PART 3 – SUPPORTING INFORMATION**

<b>BACKGROUND</b>
<p>The current process requires all film classification requests to be submitted to the Licensing Authority with suggested age classifications from the film maker.</p> <p>The processing officer will follow the guidelines set out by the BBFC. The officer's aim is to always protect children and vulnerable adults from potentially harmful or unsuitable content.</p> <p>Members of the Premises / Personal Sub Committee watch the films and determines the classification following consideration of the officers' recommendations.</p> <p>There is currently no formal policy or procedure for the Licensing Authority to deal with the classification of unclassified films and with the adoption of the new policy, this will enable both the applicant and the Licensing Authority to process these requests.</p>
<b>PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.</b>
Not Applicable
<b>BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL</b>
None

<b>APPENDICES</b>
Appendix A – Proposed Film Classification Policy

<b>REPORT CONTACT OFFICER(S)</b>	
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