

LICENSING AND REGISTRATION COMMITTEE

24 JULY 2024

REPORT OF THE ASSISTANT DIRECTOR - GOVERNANCE

A2. LICENSING ACT 2003 – REGULATED ENTERTAINMENT – EXHIBITIONS OF FILM - FILM CLASSIFICATION POLICY

(report prepared by Michael Cook & Keith Simmons)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

For the Committee to consider the responses received from the public consultation that has taken place and for the Licensing Authority to deal with the classification of otherwise unclassified films, appeals by distributors against the British Board of Film Classification (BBFC) decisions as to the classification of a film or to reclassify films. This report sets out the proposed Film Classification Policy to be adopted.

EXECUTIVE SUMMARY

This Council is the 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.”

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, namely the protection of children from harm. This will apply to any films that have been put forward for a classification that will permit children to watch it. There are seven BBFC 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 Licensing Authority defers to the British Board of Film Classification (BBFC) as the standard classification body for films. However, the Licensing Authority is ultimately able to set film classifications relating to the exhibition of films within the District of Tendring and has the power to classify films away from those adopted by the BBFC. Having said that, it would be unreasonable to disregard any classification applied by the BBFC for a particular film. In addition, when classifying any film, it has been the Licensing Authority’s approval to have regard to the BBFC Guidelines and one element of the proposals in this report is to formally confirm this approach.

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

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

The Licensing and Registration Committee at its meeting of 25 March 2024 agreed to undertake an 8 week public consultation on the draft policy for Film Classification for this District.

RECOMMENDATION(S)

It is recommended that the Committee received and considers the outcome of the public consultation on a draft Film Classification and then determine whether to recommend the policy attached to this report as Appendix A to Cabinet for adoption.

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. This is captured in the Film Classification Policy for the Council as set out in Appendix A.

ALTERNATIVE OPTIONS CONSIDERED

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

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The 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

LEGAL REQUIREMENTS (including legislation & constitutional powers)

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 section 4 of the Act, as follows:

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

Section 20 of the Licensing Act 2003 concerns films classification and mandatory conditions. It reads:

“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).”

FINANCE AND OTHER RESOURCE IMPLICATIONS

There are no immediate resource implications for the Council or others. The adoption of a film classification policy seeks to provide the framework for the Licensing Authority to consider film classification matters and thereby assist it, and others, when such matters present themselves.

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 policy referenced in this report does not directly impact a financial sustainability.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	The adoption of a film classification policy seeks to support good governance in respect of matters where film classification are relevant.
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 policy referenced in this report does not directly impact an economic, efficiency and effectiveness considerations.

MILESTONES AND DELIVERY

This report sets out elsewhere the development timeline for the policy and the consultation undertaken, subject to the decision of the Committee, Cabinet will then consider adoption of the proposed policy.

ASSOCIATED RISKS AND MITIGATION

The principal risks this policy seeks to address to those around supporting good decision making in respect of film classification matters.

OUTCOME OF CONSULTATION AND ENGAGEMENT

The draft film classification policy submitted to the Committee at its meeting of 25 March 2024 was subject to public consultation and scrutiny for a period of 8 weeks from 1 April 2024 to 26 May 2024.

The consultation included the Electric Palace, Harwich; and Picturedrome Clacton Century,

Responsible Authorities, a selection of premises licence holders and the policy was also made available to view, download and comment on through the Council's website.

Only Electric Palace have responded that the consultation "was extremely helpful and looked as expected. We are grateful for you sharing this with us". No other views were received.

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 direct social value considerations arising from 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 the following and any significant issues are set out below.

Crime and Disorder	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.
Health Inequalities	There are no direct implications arising from the proposals set out in this report.
Area or Ward affected	All

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The Licensing Authority's current process requires all classification requests to be submitted with suggested age classifications from the film maker.

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.

Members of the Premises / Personal Sub Committee watch the films and confirm the Authority's classification having considered the officer's recommendations.

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.

The Licensing and Registration Committee at its meeting of 25 March 2024 agreed to undertake an 8 week public consultation on the draft policy for Film Classification.

PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.

Licensing and Registration Committee of 25 March 2024 (minute 45 refers)

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

None

APPENDICES

Appendix A – Proposed Film Classification Policy

REPORT CONTACT OFFICER(S)

Include here the Name, Job Title and Email/Telephone details of the person(s) who wrote the report and who can answer questions on the content.

Name	Michael Cook Keith Simmons
Job Title	Licensing Manager Head of Democratic Services and Elections
Email/Telephone	licensingsection@tendringdc.gov.uk 01255 686565