

PROCEDURE FOR THE DETERMINATION OF FILM CLASSIFICATION

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Wards Affected: All
Key Decision: No
Report To: Licensing Committee 7th February 2023

Purpose of Report

1. To seek approval from the Licensing Committee in regard to creating a scheme of delegation to determine requests to certify films not already classified by the BBFC. Currently this function does not feature in the scheme of delegations attached to the statement of licensing policy.
2. There is currently a formal procedure for the Council to deal with films that are unclassified by the British Board of Film Classifiers for Public Exhibition, or requests to reclassify such films. As the Council's responsibilities in relation to film classification are incorporated in the Licensing Act 2003 it is necessary to adopt such a scheme of delegation. This report is for the Committee to consider delegating these decisions to the Licensing Sub-Committee

Recommendations

3. **That the Licensing Committee delegate authorisation of film classifications, for those films which have not been classified by the British Board of Film Classification ("BBFC") or previously by the Council to Licensing Sub Committee B, and that the Terms of Reference for that sub-committee are updated to include film licensing.**
 4. **The Licensing Committee is recommended to endorse the procedure for dealing with requests for classifications of films as set out at Appendix 1 to this report.**
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Background

5. The British Board of Film Classification (BBFC) is an independent, non-governmental body funded through the fees it charges to those who submit films, videos, DVDs and digital games for classification. The BBFC classifies films on behalf of the local authorities who license cinemas under the Licensing Act 2003. It does not have any powers of enforcement.
6. Whilst the British Board of Film Classification (BBFC) performs a national film classification role, the Council, as Licensing Authority, is the classification body for the public exhibition of films shown in the District by virtue of the Licensing Act 2003. As such the Licensing Authority has the right to classify films that are shown in premises licensed under the Act such as cinemas, hotels, clubs and public houses. In practice local authorities do rely on the BBFC classification (Statutory Guidance issued under Section 182 of the Act does recommend that licensing authorities should not duplicate the BBFC's work by choosing to classify films themselves).

7. Public screening of material which has not been passed by the BBFC (for example films imported from overseas especially for a festival, or locally made films not entering formal UK distribution) is subject to local authority consent, usually with at least a month's notice in writing. Cinemas seeking to include such material in their programme usually have to submit in advance details of the unclassified films, and sometimes screening discs, to the local authority licensing committee.
8. Section 20 of the LA03 provides that a mandatory condition shall be applied to all premises licences that authorise the exhibition of films. This relates to the restriction on the admission of children (defined in LA03 as "persons aged under 18") to the exhibition of any film to either the film classification recommended by the BBFC or, if the Licensing Authority does not agree with that recommendation, to such other classification recommended by the Licensing Authority.
9. The Licensing Authority may be required to classify a film that has not been classified by the BBFC. A typical example of this would be a locally made film to be shown within the District. Therefore, the Licensing Authority must have a formal procedure in place to determine this classification.
10. A distributor of a film or other party may appeal to the Licensing Authority against a decision of the BBFC requesting that the Licensing Authority reclassifies the film for local screening.
11. In addition to classifying films the Licensing Authority can issue a classification waiver, which permits the exhibition of the film or films within the local area without a classification but is subject to certain conditions and restrictions.
12. As a requirement is placed on the Licensing Authority to carry out this function it is not proposed to carry out any form of consultation as this is a procedural matter for Licensing Authorities contained within the Act. If approval of the recommendations are given this would be implemented with immediate effect.

It will not be necessary to change the terms of reference of the Licensing Committee as stated within the Constitution. It is already responsible for all matters relating to the discharge, by the Council, of its functions relating to licensing under the Licensing Act 2003.

13. The adoption of the BBFC Guidance and the proposed procedure for determining film classifications will be incorporated into the next revision of the Councils Statement of Licensing Policy.

Policy Context

14. Section 20 of the Licensing Act 2003 provides that a mandatory condition shall be applied to all premises licences that authorise the exhibition of films.

Section 20 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).

15. Premises must restrict the admission of children to the exhibition of any film to either the film classification recommended by the BBFC, or to such classification recommended by Mid Sussex District Council.

16. Under the Licensing Act 2003, the Licensing Authority must carry out its functions with a view to promoting the licensing objectives. The objectives are;

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

17. In terms of film exhibitions, clearly the most relevant licensing objective is the protection of children from harm. There may, however, be instances where there could be a case for relying on the prevention of crime and disorder objective, although evidence would have to be produced that a particular film would lead to crime and disorder.

18. The protection of children from harm includes the protection of children from moral, psychological and physical harm. This includes not only protecting children from the harms associated directly with alcohol consumption but also wider harms such as exposure to strong language and sexual expletives (for example, in the context of exposure to certain films or adult entertainment).

Financial Implications

19. The recommended delegation procedures will be undertaken as part of the Authority's licensing function. There is a fees policy in place for these types of applications.

Risk Management Implications

20. The following key risks and opportunities associated with this action have been identified and assessed and arrangements will be put in place to manage them. “Not having a policy might result in the moral and psychological harm being caused to members of the public, in particular children, by film exhibitions containing strong language, horror/violence or sexual images”

21. There is no right of appeal when a decision is made by the Council but any decision could be the subject of a judicial review. This risk is minimised by adopting a policy, following the BBFC guidance and ensuring that classification decisions are made in line with the Licensing Act 2003 Section 182 Guidance.
22. There is currently no formal scheme of delegation in place in relation to the classification of films. This introduction will ensure a robust and transparent procedure is followed

Equality and customer service implications

23. The procedure is intended to protect the public, including those who are vulnerable owing to their age

Sustainability Implications

24. None for the purposes of this report.

Background Papers

Appendix 1 – Current Procedure

Appendix 1

LICENSING ACT 2003 - PROCEDURE FOR THE CLASSIFICATION OF FILMS

1. General Policy

In accordance with the Section 182 National Guidance, the Licensing Authority shall concern itself primarily with the protection of children from harm. It will not use its powers to censor films save where there is clear cause to believe that this is required to promote the licensing objectives.

The Protection of children from harm includes the protection of children from moral, psychological and physical harm and this would include the protection of children from too early an exposure to strong language and sexual expletives, for example in the context of film exhibitions or where adult entertainment is provided

2. General Principles in Determining Film Classifications

The BBFC classifies films in accordance with its published Guidelines, which are based on extensive research into public opinion and professional advice. The section 182 Guidance recommends that:

“Licensing Authorities should not duplicate the BBFC’s work by choosing to classify films themselves. The classifications recommended by the BBFC should be those normally applied unless there are very good local reasons for a Licensing Authority to adopt this role. Licensing Authorities should note that the provisions of the 2003 Act enable them to specify the Board in the licence or certificate and, in relation to individual films, to notify the holder or club that it will make a recommendation for that particular film”

The Licensing Authority considers the classification system used by the BBFC to be nationally understood and accepted. It will therefore use this system, and any amendments thereto, as a reference point for determining its recommendation(s) on the restriction of access of children to the films(s). It should be noted that the Licensing Authority is not obliged to follow these guidelines.

Where a licensed premises seeks to exhibit a film that has not been classified by the BBFC then it will be the responsibility of the Licensing Authority to authorise that film.

The Licensing Authority recognises the principle within the Human Rights Act 1998, that adults should be free to choose their own entertainment. Material should not be in breach of the criminal law, including material judged to be obscene under the current interpretation of the Obscene Publications Act 1959, the Copyright Design and Patents Act 1988 or any other relevant legislation and has not been created through the commission of a criminal offence.

Any authorisations for the exhibition of film(s) issued by the Licensing Authority shall only apply when the film(s) is exhibited within Mid Sussex District Council area and does not affect the authorisation or recommendations in any other local authority area.

Once authorised by the Licensing Authority a film will be authorised for a particular showing or festival only subject to the recommendations imposed by the Licensing Authority (unless further application for re-classification is made).

The issue of any authorisation by Mid Sussex District Council is strictly limited to the authorisation within District and it is assumed that all relevant third-party consents and licences in respect of any and all copyright, confidential information and all other intellectual property rights have been obtained.

The Licensing Authority will consider each authorisation on its own merit and may impose additional and more specific recommendations where it deems necessary in order to comply with the Protection of Children from Harm Licensing Objective.

Where the Licensing Authority authorises unclassified material to be shown the Licensing Authority will require an undertaking from the applicant that he has satisfied himself/herself after proper enquiry that no material to be exhibited contravenes the current interpretation of the Obscene Publications Act 1959, the Copyright Design and Patents Act 1988 or any other relevant legislation and has not been created through the commission of a criminal offence.

The Licensing Authority shall also not be liable for any material that has been created through the commission of a criminal offence. It is the responsibility of the applicant to ensure that no film or trailer contravenes the law

Classification Requests for films that are already classified by the BBFC

1. Applications for authorisation of films already classified by the BBFC shall be referred to and determined by the Licensing Sub Committee on behalf of the Licensing Authority. This Sub Committee shall consist of a minimum of three Members. Applications should be made to the Licensing Authority
2. In accordance with the National Guidance all requests shall be made with the film(s) where possible in DVD format to avoid delays, the cost to be borne by the applicant. If DVD format is not possible then alternatively a related weblink should be provided. All requests should be submitted through to the Licensing Authority a minimum of 28 days before the proposed screening in the Council District.
3. Where an individual or organisation not connected with the film(s) requests re-classification of a BBFC classified film, they are not expected to provide a copy of the film(s). The Licensing Authority will then make suitable arrangements to view the film. It is also accepted that in these circumstances, it may not be possible to give 28 days' notice before the proposed screening
4. All requests must be accompanied by detailed reasons for the request. Requests will be dealt with as expeditiously as possible as it is appreciated that films are generally only shown in cinemas for a relatively short period
5. A report containing a synopsis of the film and other relevant information will be submitted to the Licensing Sub Committee. The Sub-Committee will view the entire film and assess it against the BBFC guidelines whereupon the Sub Committee will issue the appropriate classification. The Licensing Authority shall issue a notice of determination of the classification within 5 working days from the hearing date.
6. Requests must be relevant to the protection of children from harm licensing objective and not frivolous, vexatious or repetitive. Requests may also be relevant to

the prevention of crime and disorder licensing objective but only in relation to the contravention of the current interpretation of the Obscene Publications Act 1959 or any other relevant legislation.

7. In line with the National Guidance, where a film(s) is recommended by the Licensing Authority as falling into an age restrictive category, no person under the age specified shall be admitted. Where a film(s) is recommended by the Licensing Authority as falling into a category requiring any persons under a specified age to be accompanied by an adult, no person under the age specified shall be admitted unless accompanied by an adult

In these circumstances, the licence holder will be required to display in a conspicuous position a notice clearly stating the relevant age restrictions and requirements.

With regard to the wording of such notices, the Licensing Authority shall have regard to National Guidance,

e.g.:

Persons under the Age Of (insert appropriate age) Cannot Be Admitted TO Any Part of The Programme.

Persons under the Age Of (insert appropriate age) Can Only Be Admitted To The Programme If Accompanied By An Adult.

Requests to classify a new film not already classified by the BBFC

1. Any request by a distributor or promoter to classify a previously unclassified film must include an application for authorisation should include the following information:

- a) the film maker,
- b) such recommendation as may have been made by the film maker upon age limit of the intended audience for exhibition of the film,
- c) any existing classification issued by an existing classification body, whether within or outside the UK,
- d) a synopsis identifying the material within the film considered by the exhibitor to be likely to have a bearing on the age limit for the audience for exhibition of the film. Where an applicant seeks an authorisation allowing exhibition of the film to persons 18 years and over only, a detailed synopsis will not be required,
- e) if known, a legitimate and legal internet site where the film, or a portion of the film is available to view without charge,
- f) any proposals on age restrictions for viewing the film that the applicant intends to impose, and
- g) details on how age restrictions will be enforced
- h) give a minimum of 28 days' notice of the proposed screening.
- j) be accompanied by the appropriate fee

In accordance with National Guidance all requests shall be accompanied by the film(s) where possible in DVD format to avoid delays, the cost to be borne by the applicant. If DVD format is not possible then arrangements will be made for a suitable venue to view the film. This will allow the Licensing Sub Committee Members to view and authorise the film(s) so that the licence holder is able to adhere to any recommendations on age restrictions the Licensing Authority may impose

2. A report containing a synopsis of the film and other relevant information will be submitted to the Licensing Sub Committee. The Sub-Committee will view the entire film and assess it against the BBFC guidelines. The Sub-Committee will then issue

the appropriate classification. The Licensing Authority shall issue a notice of determination of the classification within 5 working days from the hearing date.

In line with the National Guidance, where a film(s) is recommended by the Licensing Authority as falling into an age restrictive category, no person under the age specified shall be admitted. Where a film(s) is recommended by the Licensing Authority as falling into a category requiring any persons under a specified age to be accompanied by an adult, no person under the age specified shall be admitted unless accompanied by an adult

3. In order to ensure the promotion of the Protection of Children from Harm and Prevention of Crime and Disorder licensing objectives, the Licensing Authority will formally advise the licence holder and holder of any recommendation(s) on the restriction of the age of access for children to the film(s). This may include any relevant notices required to be displayed by the licence holder inside and outside the premises. The licensed premises hosting the exhibition of film will be expected to comply with these recommendations.

In these circumstances, the licence holder will be required to display in a conspicuous position a notice clearly stating the relevant age restrictions and requirements.

With regard to the wording of such notices, the Licensing Authority shall have regard to National Guidance,
e.g.:

Persons under the Age Of (insert appropriate age) Cannot Be Admitted TO Any Part of The Programme.

Persons under the Age Of (insert appropriate age) Can Only Be Admitted To The Programme If Accompanied By An Adult.

4. The Licensing Authority recognises the principle that adults should be free to choose their own entertainment and will not normally override this principle – as such requests shall not normally be refused. However, in all cases the Licensing Authority will expect the applicant to follow the BBFC's Guidelines for 18 and R18 restricted films. When considering classification requests, the Sub-Committee must do so with a view to promoting the relevant licensing objective(s).

Requests to Waive a Film Classification

The provision of the exhibition of film(s) is exempt from regulation by the Licensing Act 2003 if either

It consists of or forms part of an exhibit put on show for any purposes of a museum or art gallery

Or:

Its sole or main purpose is to:

- a) demonstrate any product,
- b) advertise any goods or services (excluding the advertising of films), or
- c) provide information, education or instruction.

Waiver requests will be determined by the Licensing Sub-Committee

If a waiver is not granted the applicant would be able to apply for classification of the film under the process detailed above.