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## Chelmsford City Council Licensing Committee

DATE: 3 October 2024

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### LICENSING ACT 2003 - DELEGATION OF POWERS FOR SECTION 20 FILM CLASSIFICATIONS

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Report by: Director of Public Places

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#### Purpose

To consider the delegation of power to the Public Health and Protection Services Manager for determining film classifications under Section 20 of the Licensing Act 2003, with specific reference to the 2025 International Film Festival and other future events. This report outlines three potential options for delegation and includes legal advice on the matter.

#### Options

Members are advised that they have the following options when considering how to delegate or not delegate powers for Section 20 Film Classifications.

1. To delegate the power to classify films specifically for the 2025 International Film Festival to the Public Health and Protection Services Manager. All other events would continue to be referred to the Licensing Committee.
2. To delegate the power to classify films for the 2025 International Film Festival to the Public Health and Protection Services Manager as well as future events involving multiple films.

3. To delegate the power to classify all films under Section 20 to the Public Health and Protection Services Manager. This would eliminate the need to refer film classification applications to the Licensing Committee unless a film is deemed controversial or borderline.

4. To not delegate the power to classify films under Section 20 to officers. This would mean that any film classifications would have to be referred to the Licensing Committee (as is currently the case).

Considering the options outlined above, officers would recommend that the Committee adopt option 3 – a general delegation for all Section 20 film classifications. This option would streamline the process, allowing officers to handle routine classifications efficiently and reducing the administrative burden on the Committee, while still enabling the Committee to oversee controversial or borderline film classifications. It is worth noting that there are other licensing authorities that have in place similar officer delegations for film classifications.

## 1. Background

- 1.1 Under Section 6 of the Licensing Act 2003, each licensing authority is required to establish a Licensing Committee consisting of at least 10 and no more than 15 members. This Committee holds a distinct legal status, separate from ordinary committees established under the Local Government Act 1972, such as Regulatory Committees, granting it a unique level of autonomy.
- 1.2 Section 7(1) of the Licensing Act 2003 stipulates that, with very limited exceptions (outlined in Section 7(2)), all matters related to the discharge of a licensing authority's functions must be referred to and determined by its Licensing Committee, a subcommittee thereof, or, under delegated powers, by an officer, subject to certain restrictions (see 1.4 below).
- 1.3 Under Section 20 of the Licensing Act 2003, local authorities are responsible for determining the classification of films that do not carry a British Board of Film Classification (BBFC) certificate. Traditionally, these decisions have been made by the Licensing Committee. However, in light of the increased volume of films to be classified for events such as the 2025 International Film Festival, there is an opportunity to streamline the process by delegating filmclassification responsibilities to officers.
- 1.4 Under section 10(1)(b) of the 2003 Act a licensing committee may, subject to certain restrictions as set out in subsection (4), arrange for the discharge of functions exercisable by it to an officer of the licensing authority (i.e. the council). The classification of films pursuant to section 20 is a function that can lawfully be delegated to officers.

## 2. Information

- 2.1 Chelmsford, Colchester and Tendring Councils were recently approached by the Cultural Development Officer for Culture, Heritage, and Green Spaces at Essex County Council (ECC) regarding a joint-licensing approach for a pan-Essex film festival. The festival, supported by ECC, is scheduled to take place from Thursday 27th to Sunday 30th March 2025 across Chelmsford, Colchester, and Tendring.
- 2.2 The Culture, Heritage, and Green Spaces team's plan to screen films across multiple districts in the two weeks leading up to the 2025 International Film Festival highlights the importance of adhering to classification regulations. All films, whether shown in Chelmsford, Colchester, or Tendring, must be classified prior to public viewing to maintain consistent standards across the districts. Therefore, delegating authority to the Public Health and Protection Services Manager for film classification is beneficial to ensure efficient and timely processing ahead of these screenings.
- 2.3 In light of this request, discussions were held with Tendring District Council, where it was agreed in principle that Tendring could take the lead on rating the films, leveraging their experience in rating films.
- 2.4 Tendring District Council has provided their film classification policy as a reference. **See Appendix A.** In Tendring, officers play a central role in handling the administrative aspects of film classification, but the final decision remains with the licensing authority. At Colchester City Council, however, officers are delegated full powers to determine classifications.
- 2.5 Colchester Council, which is in a similar position to Chelmsford, responded to the proposal. The key difference between the two councils is that Colchester has already delegated authority for film classifications to its officers, whereas Chelmsford's classifications are still determined by the Licensing Committee. **See Appendix B.**

## 3. Conclusion

- 3.1 Delegating film classification powers to the Public Health and Protection Services Manager under Section 20 would create a more efficient system, reducing the administrative burden on the Licensing Committee. Given the anticipated workload for upcoming film festivals and other events, Option 3 provides the most balanced and efficient solution while maintaining appropriate safeguards for controversial or borderline films. Such films would still be referred to Committee for determination.

### Appendices:

Appendix A – Tendring District Council Film classification policy

Appendix B - Colchester Councils proposal

Background reading:

Licensing Act 2003 - Film Classification.

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Corporate Implications

Legal/Constitutional: The Statement of Principles is necessary in order to provide the Authority with the powers provided under this Act.

Financial: Cost of Newspaper advert

Potential impact on climate change and the environment: None

Contribution toward achieving a net zero carbon position by 2030: None

Personnel: None.

Risk Management: None

Equality and Diversity: None

Health and Safety: None

Digital: None

Other: None

## Tendring District Council



# FILM CLASSIFICATION POLICY



## **POLICY FOR DETERMINING FILM CLASSIFICATION**

### **1. INTRODUCTION**

- 1.1 Section 20 of the Licensing Act 2003 (the Act) provides that where a Premises Licence or Club Premises Certificate authorises the exhibition of a film(s), the licence must include a condition requiring the admission of children to films to be restricted in accordance with recommendations given either by a body designated under section 4 of the Video Recordings Act 1984 specified in the licence, currently only the British Board of Film Classification (BBFC), or by the Licensing Authority itself.
- 1.2 The public exhibition of films on licensed premises must therefore either be classified by the BBFC or authorised by the Licensing Authority under the powers of the Licensing Act 2003.
- 1.3 The purpose of this Policy is to set out the formal procedure for Tendring District Council (the Licensing Authority) to determine within its area, the classification of previously unclassified films, to amend classifications and deal with appeals by distributors against the BBFC's decisions or requests to reclassify films.
- 1.4 Section 26 of the Counter Terrorism and Security Act 2015 places a duty on Tendring District Council to have 'due regard to the need to prevent people from being drawn into terrorism'.
- 1.5 Where a premises seeks or intends to exhibit film(s), the venue must be covered by a Premises Licence, Club Premises Certificate or Temporary Event Notice under the Licensing Act 2003, apart from the limited exemptions detailed at Section 8 of this policy. In the case of a Temporary Event Notice, the Licensing Act 2003 mandatory condition relating to films does not apply, but applicants may still request the assistance of the Council in determining the classification of a film(s)
- 1.6 The Act defines children as 'any person under the age of 18' and the exhibition of film as 'the exhibition of moving pictures'.

### **2. BACKGROUND**

- 2.1 The Licensing Authority may be requested to authorise the showing of an unclassified film(s) within the Tendring District Council district. Typically this will be for:
  - A film festival covering a specific period of time
  - A one off screening of a film(s)
  - A trailer for a film
- 2.2 The Licensing Authority may also be requested to authorise a film that has already been classified by the BBFC when:
  - A distributor of a film wishes to appeal against the decision of the BBFC and request that the Licensing Authority re-classifies/authorises the film for local screening with recommendations on age restrictions) or;
  - An independent party may request that the Licensing Authority reclassifies/authorises the film for local screening (with recommendations on age restrictions).

### **3. PROCEDURE FOR SUBMISSION OF FILM(S)**

- 3.1 Applications for authorisation of film(s) shall be referred to the Licensing Manager and will be determined by the Miscellaneous Licensing Sub Committee.
- 3.2 Applications should be submitted to the Licensing Authority, for the attention of the Licensing Manager, at least 2 months before the proposed screening.

- 3.3 An application for authorisation needs to be in a form that can be viewed, read and understood, should state detailed reasons for the request and include the following information:
- The date(s), time(s) and proposed venue for the exhibition of the film(s)
  - The name of the film maker;
  - A brief synopsis of the film(s);
  - Any recommendation that may have been made by the film maker regarding an age limit for the intended audience for exhibition of the film;
  - Any existing classification issues by an existing classification body, whether within or outside the UK.
  - If the film has previously been classified by another Licensing Authority, details of the classification awarded by that authority, together with the date and venue at which it was shown.
  - Information 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;
  - The language spoken in the film and whether there are subtitles in English
  - Details of how any age restrictions will be enforced;
- 3.4 All requests shall be accompanied by the film(s), where possible in USB format to avoid delays, the cost to be borne by the applicant. Other formats are available and can be discussed and agreed with the Licensing Authority.
- 3.5 If the film contains dialogue that is in a language other than English, an interpreter, approved by the Licensing Authority may be required for the classification, the cost to be borne by the applicant.
- 3.6 Applicants must ensure all material subject of the application complies with the current interpretation of the Obscene Publications Act 1959, the Copyright Design and Patents Act 1988, the Counter Terrorism and Security Act 2015 or any other relevant legislation and has not been created through the commission of a criminal offence.

#### **4. PROCESS**

- 4.1 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.
- 4.2 A Licensing Officer will view the film and prepare a brief report outlining any areas of concern or note in accordance with the BBFC guidelines, and the Licensing Committee will view the film and assess it against the BBFC guidelines and Government Guidance.
- 4.3 The Chair will have the final decision on the classification to be applied to the film. In the absence of the Chair, the decision will be made by the Vice Chair.
- 4.4 A notice of determination will be issued.
- 4.5 The Licensing Authority will formally advise the applicant and the licence holder of any recommendation(s) restricting the admission of children to the film(s).
- 4.6 Where the Licensing Authority has determined to refuse the authorisation of a film, reasons for the decision shall be given.
- 4.7 A fee will be payable on application.

#### **5. CLASSIFICATION**



- 5.1 The BBFC classifies films in accordance with published guidelines that are based on extensive research into public opinion and professional advice, generally reflecting public sensibilities and expectations as they change over time.
- 5.2 The Licensing Authority considers the classification system used by the BBFC to be nationally understood and accepted and will use this system together with any future amendments that may apply, as a reference point for determining its recommendation(s) on the restriction of access of children to the film(s). The Licensing Authority, however, is not obliged to follow these guidelines.
- 5.3 Where a licensed premises within the Tendring District Council district seeks to exhibit a film(s) that has not been classified by the BBFC, then it will be the responsibility of the Licensing Authority to authorise that film(s).
- 5.4 The Licensing Authority recognises the principle within the Human Rights Act 1998 that adults should be free to choose their own entertainment. However, 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, or is in breach of the Copyright Design and Patents Act 1988, or the Counter Terrorism and Security Act 2015; or has been created through the commission of a criminal offence.
- 5.5 The Licensing Authority shall concern itself primarily with the protection of children from harm and will not use its powers to censor films unless there is a clear cause to believe that this is required to promote the licensing objectives.

## **6. PROTECTION OF CHILDREN FROM HARM**

- 6.1 The protection of children from harm is a licensing objective under the Act. Section 182 Government Guidance to Licensing Authorities under the Act states: It includes the protection of children from moral, psychological, and physical harm. This includes not only protection 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. Licensing Authorities must also consider the need to protect children from sexual exploitation when undertaking licensing functions.
- 6.2 In line with the Government 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.
- 6.3 Where a film(s) is recommended by the Licensing Authority as falling into a category requiring any person under a specified age to be accompanied by an adult, no person under the age specified shall be admitted unless accompanied by an adult.
- 6.4 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 or non-admittance. 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.

## **7. AUTHORISATION**

- 7.1 Any authorisation(s) for the exhibition of film issued by the Licensing Authority will only apply when the film is exhibited within the area covered by Tendring District Council and does not affect the authorisations of any other Authority.

- 7.2 Once authorised by the Licensing Authority a film(s) will be authorised for a particular showing or festival only and subject to the recommendations imposed by the Licensing Authority.
- 7.3 The issue of any authorisation by the Licensing Authority is strictly limited to the determination of film classification and it will be 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.
- 7.4 Where the Licensing Authority has authorised unclassified material to be shown, it will require an undertaking from the applicant of that they are satisfied, after making 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, Counter Terrorism and Security Act 2015 or any other relevant legislation and has not been created through the commission of a criminal offence.
- 7.5 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.
- 7.6 Each application will be considered on its individual merits. There is no right of appeal to the classification imposed by the Licensing Authority, save by way of Judicial Review of the decision.
- 7.7 All authorisations issued under a Premises Licence or Club Premises Certificate will be subject to the mandatory conditions contained in the Act relating to the exhibition of film.

## **8. EXEMPTIONS**

- 8.1 The provision of the exhibition of film is exempt from regulation by The Act 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:
    - demonstrate any product,
    - advertise any goods or services, or
    - provide information, education or instruction.
  - the film is shown on a 'not-for-profit' basis in a community premises between the hours of 08.00 and 23.00 provided that the audience does not exceed 500.

## **9. CONTACT DETAILS**

All applications should be sent for the attention of:  
The Licensing Manager  
Licensing Section  
Tendring District Council  
Town Hall  
Clacton on Sea  
Essex CO15 1SE

**Subject:** Essex Film Festival

Hi Gary,

I am writing to confirm Colchester's position.

To fulfil the requirement that films must be rated by the local authority, our legal department require Colchester officers to view all the films, but we will do so having regard to the rating that Tendring has given them. It is anticipated that the rating of both authorities will align, and Colchester will adopt/give the films the same rating as given by Tendring. The process will be charged the officer hourly rate which is £77.16 per hour.

We will not require an interpreter for the foreign language films and will accept that Tendring have fulfilled this requirement.

As you are already aware, the rating of films is an officer function in Colchester and therefore we should be able to do this work without too much delay once we receive the films.

If you need anything further, please don't hesitate to come back to me.

Sarah White

**Licensing Team Leader**  
Colchester City Council