

	<p>Licensing Committee 20th November 2017</p>
<p>Title</p>	<p>Film Classification Policy</p>
<p>Report of</p>	<p>Commissioning Director for Environment</p>
<p>Wards</p>	<p>All</p>
<p>Status</p>	<p>Public</p>
<p>Urgent</p>	<p>No</p>
<p>Key</p>	<p>No</p>
<p>Enclosures</p>	<p>Appendix 1 – Draft Policy</p>
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<p>Summary</p>
<p>This report seeks approval from Members to adopt the 2017-2022 draft policy in relation to film classification</p>

<p>Recommendations</p>
<p>That the Committee approve the Draft Policy at Appendix 1.</p>

1. WHY THIS REPORT IS NEEDED

- 1.1 The public exhibition of all films on licensed premises must either be classified by the British Board Film Classification (BBFC) or authorised by the Licensing Authority under the powers of the Licensing Act 2003.
- 1.2 It is usual for most films to be released across the country and therefore be classified by the BBFC.
- 1.3 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 at a film festival within the Borough. Therefore, the Licensing Authority must have a formal procedure in place to determine this classification.
- 1.4 The London Borough of Barnet is a culturally diverse borough and therefore being able to classify films and encourage small scale film festivals is beneficial to the whole borough.
- 1.5 The current policy for film designation was adopted in 2013. All policies within the Licensing team are informally reviewed annually with a formal review needed every five years.
- 1.6 Only minor changes have been made to the policy, these are listed below:

Section of policy	Amendment made
4.2	Address updated to reflect the current address of the team
4.4	The acceptable formats in which the films are provided has been updated to include electronic copies as well as DVDs
5.2	Clearer clarification on who is undertaking the classifications is given. Previously it stated 2 members of the Licensing team and this is not the process that is currently followed. Therefore this is updated to reflect the current process
11.2	7 days is changed to 5 working days in line with information already given on timescales in the document

- 1.7 As the changes to the policy are so minor it is not felt that it is necessary to undertake a public consultation on the documents, therefore this report is seeking to approve the draft policy to take immediate effect.

2. REASONS FOR RECOMMENDATIONS

- 2.1 It is best practice to regularly review and improve the policy which the Council applies when implementing regulatory regimes. This ensures clarity for traders and other interested parties in the application and enforcement processes.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 The Committee could consider consulting on the proposed policy; however as the changes are so minor it is not felt that this is necessary.
- 3.2 The Council could choose not to introduce a new policy, however this would mean that the 2013 policy would remain in effect and this is clearly out of date in relation to the matters identified above.

4. POST DECISION IMPLEMENTATION

- 4.1 The policy will take immediate effect and will be published on the London Borough of Barnet webpage.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 Films shown at local small film festivals support the objectives contained within the Corporate Plan. In particular, in relation to "Promoting Community Engagement"

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1 Administration and enforcement of the legislation will be carried out by the Licensing team within Re, together with support from HB Public Law and from Governance Services.
- 5.2.2 The recommendations within this report have no financial implications as this will be delivered within existing resources.

5.3 Social Value

- 5.3.1 Not relevant to this report

5.4 Legal and Constitutional References

5.4.1 The Local Authority has been provided powers under the Licensing Act 2003 in order to be able to classify films for exhibition within the London Borough of Barnet. This policy sets out how the London borough of Barnet will discharge this function.

5.4.2 A good policy ensures that fair and equitable decisions are taken by the London Borough of Barnet.

5.4.3 The Council's constitution, Article 7 Committees, Forums, Working Groups and Partnerships October 2017 details the functions of the licensing committee to include:

“for all policy matters relating to licensing with licencing hearings concerning all licencing matters delegated to sub-committees”

5.5 Risk Management

5.5.1 It is important that the London Borough of Barnet adopts a robust and accountable regulatory regime in relation to film classification in order to ensure fair trading, and to protect consumers.

5.6 Equalities and Diversity

5.6.1 The Council has a legal obligation under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups.

5.6.2 A consistent approach will be adopted when considering applications. All applications will be considered in line with the relevant legislation and policy.

5.6.3 An initial equalities impact screening has been completed and there is no identified impact on any of the groups with protected characteristics. Therefore a full impact assessment is not required.

5.7 Consultation and Engagement

5.7.1 There is no consultation needed in relation to this policy.

5.8 Insight

5.8.1 Not relevant to this report

6 BACKGROUND PAPERS

None

London Borough of Barnet

Film Classification Policy

2017-2022

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Definitions

2003 Act	The Licensing Act 2003
<i>Children</i>	Any person under the age of 18 years.
<i>Exhibition of a film</i>	The exhibition of moving pictures

Introduction

- 2.1 The public exhibition of all films on licensed premises must either be classified by the British Board of Film Classification (BBFC) or authorised by the Licensing Authority under the powers of the Licensing Act 2003.
- 2.2 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 the British Board of Film Classification (the BBFC) or by the Licensing Authority itself
- 2.3 The purpose of this Policy is to set out the formal procedure for the Licensing Authority to determine the classification of previously unclassified films, appeals by distributors against the British Board of Film Classification's decisions or requests to reclassify films.
- 2.4 Where a premises seeks or intends to exhibit film(s), that venue must be covered by a Premises Licence, Club Premises Certificate or Temporary Event Notice under the Licensing Act 2003.

Circumstances the Licensing authority may classify a film

- 3.1 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 at a film festival within the Borough. Therefore, the Licensing Authority must have a formal procedure in place to determine this classification.
- 3.2 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.
- 3.3 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 subject to certain conditions and restrictions.

The Application

- 4.1 Applications for authorisation of films shall be referred to and determined by the Licensing department on behalf of the Licensing Authority.
- 4.2 All applications must be made to the London Borough of Barnet either by email or addressed to:

London Borough of Barnet
Community Protection Team
London
N20 0EJ
Barnet House
1255 High Road
Whetstone
London
N20 0EJ

licensingadmin@barnet.gov.uk

- 4.2 Applications should be submitted to the Licensing Authority with a minimum of 28 days before the proposed screening.
- 4.3 An application for authorisation should include the following information:
1. The name of the film maker;
 2. A brief synopsis of the film
 3. Any recommendation as may have been made by the film maker upon age limit for the intended audience for exhibition of the film;
 4. any existing classification issued by an existing classification body, whether within or outside the UK;
 5. 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.
 6. The language spoken in the film and whether there are subtitles in English.
 7. Details of how any age restrictions will be enforced.
- 4.4 All requests shall be accompanied by the film(s) where possible in DVD or **electronic format** to avoid delays, the cost to be borne by the applicant. If DVD/**electronic format** are not possible then arrangements will be made for a suitable venue to view the film.
- 4.5 If the film contains dialogue in a language other than English an interpreter will be required for the classification. The London Borough of Barnet will arrange for a suitable interpreter and the applicant will be responsible for the cost of this.
- 4.6 All requests must be accompanied by detailed reasons for the request.

- 4.7 Applicants must ensure that all material that is the subject of the application complies with 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.

Determining the application

- 5.1 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.
- 5.2 The film will be reviewed by 2 individuals, 1 officer from the licensing department and the other a member of the Licensing Committee. Each will view the entire film and assess it against the BBFC guidelines and National Guidance.
- 5.3 If their decision is unanimous in relation to the classification that classification will be applied. Should the officers be unable to reach consensus then the classification for that film will be referred to the Licensing Sub Committee
- 5.4 The Chairman of the subcommittee will have the final decision on the classification to be applied to the film.
- 5.4 The Licensing Department/Sub Committee (as appropriate) shall issue a Notice of Determination of the authorisation within 5 working days from the date of viewing.
- 5.5 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).
- 5.6 Where the Licensing Authority has determined to refuse authorisation of a film clear and concise reasons shall be given

Classification

- 6.1 The BBFC classifies films in accordance with published Guidelines, which are based on extensive research into public opinion and professional advice.
- 6.2 The National Guidance under Section 182 of the LA03 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

- 6.3 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 film(s). It should be noted however that the Licensing Authority is not obliged to follow these guidelines.
- 6.4 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.
- 6.5 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 has been created through the commission of a criminal offence.
- 6.6 In accordance with paragraph 10.31 of the 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.

Protecting children from harm

- 7.1 In terms of film exhibitions and festivals, the most relevant licensing objective is the Protection of Children from Harm.
- 7.2 Paragraph 2.41 of the National Guidance states:
- 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.*
- 7.3 In line with the National Guidance, where a film is recommended by the Licensing Authority as falling into an age restrictive category, no person under the age specified shall be admitted.
- 7.4 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.

7.5 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.*

Classification Waiver

8.1 Any authorisations for the exhibition of film without classification issued by the Licensing Authority shall only apply when the film is exhibited within the London Borough of Barnet and does not affect the authorisation or recommendations in any other borough.

8.2 Once the classification has been waived by the Licensing Authority a film will be authorised for a particular showing or festival only. This will be subject to the recommendations imposed by the Licensing Authority (unless further application for re-classification is made). Details of the waiver including any recommendations shall be available from the Council's Licensing Services.

8.3 The issue of any waiver by the London Borough of Barnet is strictly limited to the authorisation within the Borough 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.

8.4 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 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 another relevant legislation and has not been created through the commission of a criminal offence.

8.5 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

Exemptions

9.1 The provision of the exhibition of a film is exempt from regulation by the Licensing Act 2003 (LA03) if:

It consists of or forms part of an exhibit put on show for any purposes of a museum or art gallery (the LA03 does not define a museum or art gallery so the ordinary meaning of the term is taken)

or:

Its sole or main purpose is to:

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

Fees

10.1 The current fees applicable are laid out in the London Borough of Barnet's Fees and Charges Schedule.

Decisions

11.1 The reasons for any decision(s) taken by the London Borough of Barnet in respect of an application for a licence will be provided in writing to all parties to the proceedings within **5 working days** of the decision.

11.2 Decisions will be taken having regard to this Policy and the relevant legislation