

Is the final decision on the recommendations in this report to be made at this meeting?

YES**Film Classification Policy**

Final Decision-Maker	Licensing Committee
Portfolio Holder	Councillor Dr Ronen Basu, Portfolio Holder for Sustainability
Lead Director	Paul Taylor Director of Change and Communities
Head of Service	Gary Stevenson, Head of Housing, Health & Environment
Lead Officer/Report Author	Sharon Degiorgio, Senior Licensing Officer
Classification	Non-exempt
Wards affected	All

This report makes the following recommendations to the final decision-maker:

1. To approve a draft Policy for adoption regarding the classification of Films by the Council.
2. To approve the level of fee for classification of a film as set out within the draft Policy (subject to exemptions).

This report relates to the following Five Year Plan Key Objectives:

- A Confident Borough

In the interests of transparency the licensing regime is intended to ensure that the people of Tunbridge Wells can be confident that premises providing regulated entertainment are subject to relevant codes of practice and guidance in managing their business activities in a controlled manner.

Timetable

<i>Meeting</i>	<i>Date</i>
Licensing Committee	11 June 2019

Film Classification Policy

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 The Public exhibition of all films on licensed premises must be either classified by the British Board of Film Classification (BBFC) or authorised by the Licensing Authority under the powers of the Licensing Act 2003.
- 1.2 The authorisation for the classification of films is delegated to the Head of Housing, Health & Environment, however a policy sets out the formal procedure and provides a framework for consistent decision making.

2. INTRODUCTION AND BACKGROUND

- 2.1 The Public exhibition of all films on licensed premises must be either classified by the British Board of Film Classification (BBFC) and independent body established by the film industry or authorised by the Licensing Authority under the powers of the Licensing Act 2003.
- 2.2 It is usual for the majority of films to be released nationwide and therefore be classified by the BBFC. However, where a local film festival is taking place showing films that are not on general release in the United Kingdom, they can apply to the local authority for that area to authorise/classify the film.
- 2.3 Further, where a film distributor believes a film has been classified incorrectly, they can apply to the local authority for the area they wish to show the film in for a reclassification.
- 2.4 Whilst the British Board of Film Classification (BBFC) performs a national film classification role, the Council, as a Licensing Authority, is the classification body for public exhibition of films shown in the Borough 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.
- 2.5 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.
- 2.6 The Licensing Act 2003 also provides for a number of exemptions for certain types of films, such as those exhibited for the purposes of advertisement, information, education etc. If the premises and/or exhibition of a film are not regulated by the Licensing Act 2003, it may still be necessary to comply with the recommendations issued by the BBFC or Licensing Authority regarding classification and the admission of children for example regarding community premises.
- 2.7 There is currently no formal procedure for the Council to deal with the classification of previously unclassified films, appeals by distributors against the British Board of Film Classification's (BBFC) decisions, or requests to reclassify films. As the Council's responsibilities in relation to film classifications are incorporated within the Licensing Act 2003 it is necessary to adopt such a procedure.
- 2.8 The Local Government Act 2003 gave Local Authorities powers to charge for existing discretionary services that are currently being provided free of charge. Charges may be set on a cost recovery only. A fee of £70 per hour to cover all reasonable costs is therefore proposed.

- 2.9 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.
- 2.10 Should Members approve the Policy at Appendix A the Policy will be implemented with immediate effect.

3. AVAILABLE OPTIONS

- 3.1 Members approve the draft policy and associated fees at Appendix A.

4. OPTION AND REASON FOR RECOMMENDATION

Currently there is no formal procedure or Policy in place relating to the classification of films. A comprehensive policy will improve the consistency in delivering the service and will better inform applicants of the process in an open and transparent way, enabling the authority to have a 'fit for purpose' policy in place.

5. CONSULTATION RESULT AND PREVIOUS COMMITTEE FEEDBACK

- 5.1 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.

6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 6.1 Should Members approve the draft Policy at Appendix A this will be implemented with immediate effect.

7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off (name of officer and date)
<p>Legal including Human Rights Act</p>	<p>The purpose of the proposed Policy to set a procedure for the determination of the classification of the classification of previously unclassified films, appeals by distributors against the BBFC decisions, or requests to re-classify films. This will enable the Council to support, if needed, any mandatory conditions imposed pursuant to s.20 of the Licensing Act 2003 and also any other situation where the Council may be requested to authorise the showing of an unclassified film. Such examples could include a film festival covering a specific period of time, a one off screening of a film, a trailer for a film.</p> <p>There is no right of appeal when a decision is made by the Council, however any decision could be the subject of a Judicial Review. This risk is minimised by adopting a policy, following BBFC guidance and</p>	<p>Robin Harris, Senior Lawyer (Contentious) 24.05.2019</p>

	ensuring that classifications are made in line with the Licensing Act 2003 s.182 Guidance.	
Finance and other resources	There is a cost to the Council to deal with any film classification requests; the fees proposed will recover this cost.	Sharon Degiorgio, Senior Licensing Officer 14.05.19
Staffing Establishment	The adoption, implementation and application of the draft policy will be undertaken using existing resources.	Sharon Degiorgio, Senior Licensing Officer 14.05.19
Risk Management	No issues identified	Sharon Degiorgio, Senior Licensing Officer 14.05.19
Data Protection	No implications	Sharon Degiorgio, Senior Licensing Officer 14.05.19
Environment and sustainability	No issues identified	Sharon Degiorgio, Senior Licensing Officer 14.05.19
Community Safety	No issues identified	Sharon Degiorgio, Senior Licensing Officer 14.05.19
Health and Safety	No issues identified	Sharon Degiorgio, Senior Licensing Officer 14.05.19
Health and Wellbeing	No issues identified	Sharon Degiorgio, Senior Licensing Officer 14.05.19
Equalities	<p>Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to</p> <ul style="list-style-type: none"> i. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010; ii. Advance equality of opportunity between people from different groups; and iii. Foster good relations between people from different groups. <p>Films may be subject to relevant age restrictions and requirements based on the protection of Children from Harm Licensing Objective which relates to any person under the age of 18. The Equality Act includes provisions where organisations are permitted to provide different treatment in services based on age under certain circumstances.</p>	Sarah Lavallie, Corporate Governance Officer 15.05.19

8. REPORT APPENDICES –

The following documents are to be published with this report and form part of the report:

- Appendix A – Draft Film Classification Policy

9. BACKGROUND PAPERS

- Licensing Act 2003 - <https://www.legislation.gov.uk/ukpga/2003/17/contents>
- S.182 Guidance issued to Licensing Authorities - <https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>
- BBFC Guidelines - <https://www.bbfc.co.uk/what-classification/classification-guidelines>