

Tunbridge Wells Borough Council Film Classification Policy

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Purpose

1. The Licensing Authority (subsequently referred to as the Council) is responsible for authorising the public exhibition of films.
2. Sections 20 & 74 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/Certificate must include a condition requiring the admission of children to films to be restricted in accordance with recommendations given by the British Board of Film Classification (the BBFC) or by the Council itself.
3. The purpose of this Policy is to set out the formal procedure for the Council to determine the classification of previously unclassified films, appeals by distributors against the British Board of Film Classification's decisions, or request to reclassify films.
4. Where a premise 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. There are some limited exemptions to the 2003 Act for community venues showing films without a 'view to profit', where the admission of children is subject to the recommendations of the BBFC or the Council itself.
5. The definition of 'children' is any person under the age of 18 years.
6. Under the Licensing Act 2003, the definition of the 'exhibition of a film' is the exhibition of moving pictures.
7. In summary, the public exhibition of all films on licensed premises must either be classified by the BBFC or authorised by the Council under the powers of the Licensing Act 2003.
8. The Council when authorising film(s) shall at all times take into account the Guidance issued under s.182 of the Licensing Act 2003 (as amended).
9. The Council may be requested to authorise a film that has already been classified by the British Board of Film Classification (BBFC) in two different circumstances:
 - (a) A distributor of a film may appeal against the decision of the BBFC and request that the Council re-classifies/authorises the film for local screening (with recommendations on age restrictions); and
 - (b) An independent party may request that the Council reclassifies/authorises the film for local screening (with recommendations on age restrictions).
10. In addition, the Council may be requested to authorise the showing of an unclassified film(s). This normally occurs in the following cases:
 - A film festival covering a specific period of time;
 - A one off screening of a film; or
 - A trailer for a film.

Exemptions

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

- (a) It consists of or forms part of an exhibit put on show for any purpose of a museum or art gallery (the Licensing Act 2003 does not define a museum or art gallery so the ordinary meaning of the term is taken).
- (b) Its sole or main purpose is to:
 - Demonstrate any product;
 - Advertise any goods or services (excluding the advertising or films); or
 - Provide information, education or instruction.
- (c) The film is shown on a 'not-for-profit' basis held in a community premises between the hours of 08:00 and 23:00 on any day provided that the audience does not exceed 500
 - Obtains consent to the screening from a person who is responsible for the premises; and
 - Ensures that each screening abides by age classification ratings.

Policy

12. In accordance with the s.182 Statutory Guidance issued to Licensing Authorities, the Council 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.
13. Under the Licensing Act 2003, the Council must carry out its function with a view to promoting the Licensing Objectives;
 - (a) The prevention of crime and disorder
 - (b) Public safety
 - (c) Prevention of public nuisance
 - (d) Protection of children from harm
14. In terms of film exhibitions and festivals, the most relevant licensing objective is the protection of children from harm.

Protection of Children from Harm

15. Paragraph 2.41 of the Statutory Guidance issued to Authorities states:

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).

Principles in Determining Film Classifications

16. The BBFC classifies films in accordance with its published Guidelines, which are based on extensive research into public opinion and professional advice. S. 182 of the 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.

17. The Council 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 recommendations(s) on the restriction of access of children to the film(s). It should be noted however that the Council is not obliged to follow these guidelines.
18. Where a licensed premise seeks to exhibit a film that has not been classified by the BBFC then it will be responsibility of the Council to authorise that film. As such, the procedures outlined later in this document will be followed.
19. The Council 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.

20. Applicants must ensure that all materials 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.
21. Any authorisations for the exhibition of film(s) issued by the Council shall only apply when the film(s) is exhibited within the Borough of Tunbridge Wells and does not effect the authorisation or recommendations in any other council area.
22. Once authorised by the Council, a film will be authorised for a particular showing or festival only subject to the recommendations imposed by the Council (unless further application for re-classification is made). Details of the authorisation including any recommendations shall be available from the Council's Licensing Service.
23. Films designed to be part of a film festival within the Borough, will be exempt from the payment of a classification fee up to five films per calendar year.
24. The issue of any authorisation by the Council is strictly limited to the authorisation within the Borough of Tunbridge Wells 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.
25. The Council 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.
26. Where the Council authorises unclassified material to be shown the Council 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 any other relevant legislation and has not been created through he commission of a criminal offence.
27. The Council 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.
28. A fee of £70 is payable per hour, even if the film duration is 15 minutes, you will be required to pay for the full hour.
29. Where the Council has determined to refuse authorisation of a film(s) clear and concise reasons shall be given.

Procedures for Authorisation Requests for Procedures for Approval of Films Already Classified by BBFC

30. Applications for authorisation of films classified by the BBFC shall be referred to and determined by the Licensing Officer on behalf of the Council. Applications should be applied for online via the Council's website www.tunbridgewells.gov.uk
31. 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 to view the film in an alternative format as authorised by the Licensing Officer or arrangements made for a suitable venue to view the films. This will allow the Officer time to view and authorise the film(s) so that the licence holder is able to adhere to any recommendations on age restrictions that the Officer may impose. In any event, all requests should be submitted on the Council's application form a minimum of **28 days** before the proposed screening.
32. 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 Officer 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.
33. All requests must be accompanied with reasons for the request. Requests will be dealt with as expeditiously as possible as it is appreciated that films are generally shown only in cinemas for a relatively short period.
34. The Licensing Officer will then view the entire film and assess it against the BBFC guidelines and the s.182 Guidance and shall issue a Notice of Determination of the authorisation within five working days from the date of viewing. The Officer will formally advise the applicant and the licence holder of any recommendation(s) restricting the admission of children to the film(s).
35. 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.
36. 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.
37. 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 unaccompanied by an adult.
38. 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 Officer shall have regard to the s.182 Guidance, for example:
 - Persons Under the Age of (insert appropriate age) Cannot Be Admitted To Any Part of the programme: and
 - Persons Under the Age Of (insert appropriate age) Can Only Be Admitted To The Programme If Accompanied By An Adult.

Procedures for Authorisation of Films that have not been classified by the BBFC or Tunbridge Wells Borough Council

39. Applications for authorisation will in the first instance be considered by officers under delegate powers. Any request to authorise an unclassified film may however be referred to the Licensing Committee for determination.
40. Applications should be submitted on the Council's application form a minimum of **28 days** before the proposed screening.
41. An application for authorisation should include the following information:
- (a) The filmmaker;
 - (b) Such recommendation as may have been made by the filmmaker upon age limit for 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) The language spoken in the film and whether there are subtitles in English;
 - (g) Any proposals on age restrictions for viewing the film that the applicant intends to impose; and
 - (h) Details of how age restrictions will be enforced.
42. 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 to view the film in an alternative format as authorised by the Licensing Officer or arrangements made for a suitable venue to view the films. The cost to be borne by the applicant. This will allow the Officer time to view and authorise the film(s) so that the licence holder is able to adhere to any recommendations on age restrictions that the Officer may impose.
- In any event, all requests should be submitted on the Council's application form a minimum of **28 days** before the proposed screening.
43. If the film contains dialogue in a language other than English, an interpreter, approved by the Council may be required for the classification, the cost to be borne by the applicant.
44. The Licensing Officer, whilst viewing the film(s) will have regard to BBFC Guidelines and the s.182 Guidance issued to Licensing Authorities and shall issue a Notice of Determination of the application within five working days from the date of the viewing.
45. When considering all such requests the Licensing Officer will pay particular attention to the Protection of Children from Harm Licensing Objective.
46. 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.

47. 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 unaccompanied by an adult.
48. 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 Officer shall have regard to the s.182 Guidance, for example:
- Persons Under the Age of (insert appropriate age) Cannot Be Admitted To Any Part of the Programme; and
 - Persons Under the Age Of (insert appropriate age) Can Only Be Admitted To The Programme If Accompanied By An Adult.
49. In order to ensure the promotion of the Protection of Children from Harm and Prevention of Crime and Disorder Licensing Objectives, the Licensing Officer will formally advise the licence holder and applicant of any recommendations(s) on the restriction on the age of access for children to the film(s). This may also include any relevant notice required to be displayed by the licence holder inside and outside the premises. The licensed premise hosting the exhibition of film will be expected to comply with these recommendations.
50. The Council recognises the principal 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 Council will expect the applicant to follow the BBFC's Guidelines for 18 and R18 restricted films.

Licensing Act Mandatory Conditions

51. Where a **Premises Licence** authorises the exhibition of films, the licence must include the following mandatory conditions in accordance with Section 20 of the Licensing Act 2003
- 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 a film classification body is specified in the licence, unless paragraph 3 (b) applies, admission of children must be restricted in accordance with any recommendation 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 or the Club that holds the Certificate that this subsection applies to the film in question;*

admission of children must be restricted in accordance with any recommendation made by the 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).
52. Where a **Club Premises Certificate** authorises the exhibition of films the Certificate must include the following mandatory conditions in accordance with Section 74 of the Licensing Act 2003
- 1) *Where a Club Premises Certificate authorises the exhibition of films, the certificate 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 a film classification body is specified in the licence, unless paragraph 3 (b) applies, admission of children must be restricted in accordance with any recommendation by that body.*
 - 3) *Where:*
 - (c) *The film classification body is not specified in the Certificate; or*
 - (d) *The relevant licensing authority has notified the club which holds the Certificate that this subsection applies to the film in question;*

admission of children must be restricted in accordance with any recommendation made by the 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).