

EAST HERTS COUNCIL

LICENSING COMMITTEE – 10 MARCH 2011

REPORT BY DIRECTOR OF NEIGHBOURHOOD SERVICES

CERTIFICATION OF FILMS

WARD(S) AFFECTED: ALL

Purpose/Summary of Report

To inform Members about Licensing Authority Powers under the Licensing Act 2003 to authorise public screenings of films that do not have British Board of Film Censor Certificates, and to present options for exercising those powers.

<u>RECOMMENDATION FOR DECISION:</u>	
	That the Licensing Committee delegate to Officers and the Licensing Sub-Committee the power to issue certificates authorising film exhibitions.

1.0 Background

1.1 This report presents information about Licensing Authority powers to issue Film Certificates.

2.0 Report

2.1 The Council as Licensing Authority has responsibilities for authorising public film exhibitions.

2.2 Premises Licences and Club Premises Certificates that authorise film exhibition must include a condition that 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 (Licensing Act 2003 s. 20) (the Act).

Therefore admission of children to the exhibition of any film(s) must be restricted in accordance with:

- EITHER the BBFC classification;
 - OR where the film is not classified by the BBFC, any recommendations made by the Licensing Authority.
- 2.3 Venues that exhibit or intend to exhibit films have a Premises Licence, Club Premises Certificate, or Temporary Event Notice issued under the Act.
- 2.4 'Children' means all people under 18 years old.
- 2.5 'Exhibition of a film' means the exhibition of moving pictures.
- 2.6 The Licensing Authority must take Statutory Guidance into account when authorising films (Section 182 of the Act) ('the Guidance').
- 2.7 The Licensing Authority may consider a request to authorise a film that has already been classified by the British Board of Film Classification (BBFC), in various circumstances:
- a) a distributor of a film may 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); and
- b) An independent party may request that the Licensing Authority re-classifies/authorises the film for local screening (with recommendations on age restrictions).
- 2.8 In addition, the Licensing Authority 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
 - A trailer for a film
- 2.9 To comply with the Guidance (para. 10.31), the Licensing Authority should be primarily concerned with the protection of children from harm. It should not use its powers to censor films except where it believes that this is necessary to promote the licensing objectives.
- 2.10 The objective of protection of children from harm includes the protection of children from moral, psychological and physical harm. This includes 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. (Paragraph 2.41)

- 2.11 The principles to be applied in determining film classifications are those listed below at 2.12 and 2.13.
- 2.12 The BBFC classifies films following its own Guidelines, which are based on extensive research into public opinion, and on professional advice. The Guidance recommends:

“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”

- 2.13 The classification system used by the BBFC is nationally understood and accepted. While Licensing Authorities are not obliged to follow BBFC classification guidelines, they should normally refer to that system to determine recommendations on the restriction of access of children to films.
- 2.14 Where a licensed premises wants to show a film that has not been classified by the BBFC, then the Licensing Authority is responsible for authorising that film. This document sets out alternative suitable procedures that may be followed.
- 2.15 In accordance with Human Rights Act principles, adults should be free to choose their own entertainment. However, material should not breach the criminal law. This includes material that is obscene according to the Obscene Publications Act 1959, or which has been created through the commission of a criminal offence. It also includes material in breach of the Copyright Design and Patents Act 1988, and all other relevant legislation.
- 2.16 It is the applicant’s responsibility to ensure that all material complies with the criminal law, and to obtain all relevant third party consents and licences in respect of copyright, confidential information, and any other intellectual property rights. Authorisation by East Herts is for the screening only, and in no way guarantees that the applicant has fulfilled their other obligations.
- 2.17 Film exhibition authorisations issued by the East Herts Licensing Authority will only apply to exhibitions of that film inside the East Herts geographical area.
- 2.18 The Licensing Authority may authorise a film for specified festival or showing(s), and may impose age admission restrictions (unless further application for re-classification is made). It is suggested to

Members that details of any authorisation, including any restrictions should be listed on the Council's website.

- 2.19 Each application for authorisation should be consider on its own merits. More specific restrictions may be imposed where it is necessary to uphold the Protection of Children from Harm Licensing Objective.
- 2.20 Where the Licensing Authority authorises unclassified material to be shown, it is suggested that the Licensing Authority should require the applicant to supply a copy of the material in DVD format, and 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 the commission of a criminal offence.
- 2.21 It is the responsibility of the applicant to ensure that no film or trailer contravenes the law. The Licensing Authority will not be liable for any material that it certifies as suitable for viewing, which has been created through the commission of a criminal offence.
- 2.22 If the Licensing Authority decides to refuse authorisation of a film(s), full reasons must be given.
- 2.23 Licensing Committee is invited to decide whether authority to issue film certificates should be delegated to Officers and the Licensing Sub-Committee in accordance with the draft procedure in Essential Reference Paper B.

3.0 Implications/Consultations

- 3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

BBFC Guidance

Contact Member: Councillor Malcolm Alexander – Executive Member for Community Safety and Protection

Contact Officer: Brian Simmonds – Head of Community Safety and Licensing – Extn1498

Report Author: Paul Newman – Interim Licensing Manager

ESSENTIAL REFERENCE PAPER 'A'

Contribution to the Council's Corporate Priorities/ Objectives <i>(delete as appropriate)</i> :	Promoting prosperity and well-being; providing access and opportunities <i>Enhance the quality of life, health and wellbeing of individuals, families and communities, particularly those who are vulnerable.</i>
Consultation:	For information only, and no partner or external consultation has taken place.
Legal:	No issues identified by report author or contact officer
Financial:	No issues identified by report author or contact officer
Human Resource:	No issues identified by report author or contact officer
Risk Management:	No issues identified by report author or contact officer

Essential Reference Paper B – Draft procedure

PROCEDURE FOR AUTHORISATION OF FILMS WHICH HAVE NOT BEEN CLASSIFIED BY THE BBFC OR EAST HERTS DISTRICT COUNCIL

Applications for authorisation will in the first instance be considered by Officers under delegated powers. Any request to authorise an unclassified film may however, be referred by the Officer or at his/her discretion to the Licensing Sub Committee for determination.

Applications should be made in writing at least **28 days** before the proposed screening. The Licensing Authority will not guarantee to issue a determination if less than 28 days notice is given.

Authorisation applications must include information about:

- (a) the film maker;
- (b) recommendations about age limits of the intended audience, made by the film maker;
- (c) existing classifications issued by existing classification bodies, whether within the UK or not;
- (d) a synopsis of the material in the film that the exhibitor considers relevant to the age limit of the intended audience. The synopsis need not be detailed where the applicant seeks authorisation for exhibition of the film to persons 18 years and over only;

- (e) a copy of the material in DVD format, or arrangements whereby Officers and/or Sub Committee may view the film or trailer, the cost to be borne by the applicant..
- (f) any proposals on age restrictions for viewing the film that the applicant intends to impose; and
- (g) details of how age restrictions will be enforced.

Where officers at their discretion determine it is possible to formulate recommendations to the licence holder in relation to the exhibition of the film on the basis of information provided, recommendations may be made without viewing the material.

Officers or Sub Committee while viewing the film(s) shall have regard to BBFC Guidelines and National Guidance, and shall issue a Notice of Determination of the application within 5 working days from the date of the viewing.

When considering all such requests Officers or Sub Committee will pay particular attention to the Protection of Children from Harm Licensing Objective.

In line with Annex D Part 5 of 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 unaccompanied 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 adopt the example as laid out in the National Guidance:

“PERSONS UNDER THE AGE OF [*INSERT APPROPRIATE AGE*] CANNOT BE ADMITTED TO ANY PART OF THE PROGRAMME”

Or

“PERSONS UNDER THE AGE OF [*INSERT APPROPRIATE AGE*] CAN ONLY BE ADMITTED TO THE PROGRAMME IF ACCOMPANIED BY AN ADULT”

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 applicant of any recommendation(s) on the restriction on the age of access for children to the film(s). This may also 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.

Where requests are made to the Licensing Authority to exhibit a film(s) to be shown to persons 18 and over, and Officers under delegated powers decide the material need not be viewed, the licence holder will be required to display in a conspicuous position a notice clearly stating that the Licensing Authority has authorised the film(s) but has not viewed it. This statement should be incorporated within any promotional literature and on any relevant web site including where relevant the licence holder’s web site.

The Licensing Authority recognises the principle that adults should be free to choose their own entertainment and will not normally override this principle, and such requests

will not normally be refused. However, in all cases the Licensing Authority will require the applicant to follow the BBFC's Guidelines for 18 and R18 restricted films.