

Colchester Borough Council

Policy for Determining Film Classification

Appendix A

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 given to it by the Licensing Act 2003.

1.3 This Policy sets out the formal procedure for Colchester Borough Council (the Licensing Authority) to determine within its area –

- the classification of previously unclassified films
- the amendment of classifications and the consideration of appeals by distributors against the BBFC's decisions
- requests to reclassify films.

1.4 Section 26 of the Counter Terrorism and Security Act 2015 places a duty on Colchester Borough 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 area of Colchester Borough. Typically this will be for:

- A film festival covering a specific period of time

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- 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) must be made to the Licensing, Food & Safety Manager and will be determined by the Licensing Committee.

3.2 Applications should be submitted to the Licensing Authority at least 28 days 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.

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3.4 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 for a suitable venue to view the film(s).

3.5 If the film contains dialogue 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. At least one of the Chair or Vice Chair will be present at the viewing.

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 within 5 working days of the viewing.

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.

5. CLASSIFICATION

5.1 The BBFC classifies film 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.

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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 Borough of Colchester 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 in breach of the Copyright Design and Patents Act 1988, or the Counter Terrorism and Security Act 2015; nor 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 reason 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 protecting children from the harms associated directly with alcohol consumption but also wider harms such as exposure to strong language and sexual expletives that may be contained within 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,

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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) cannot only be admitted to the programme unless 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 Colchester Borough Council and will 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 is also not 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.

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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,
 - 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. REVIEW

9.1 The provisions contained within the Policy will come into immediate effect. The Policy will be monitored and reviewed on a regular basis; the period between each review will be no longer than 5 years.

10. CONTACT DETAILS

10.1 All applications should be sent for the attention of: Licensing, Food & Safety Manager, Rowan House, 33 Sheepen Road, Colchester CO3 3WG or emailed to licensing.team@colchester.gov.uk