



Gwynedd Council

## **Policy for Determining Film Classifications**

### **Purpose**

Gwynedd Council, as the Licensing Authority, is responsible for authorising the public exhibition of films. 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.

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.

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.

The definition of children is any person under the age of 18 years.

Under the Licensing Act 2003, the definition of the exhibition of a film is the exhibition of moving pictures.

In summary, the public exhibition of all films on licensed premises must either be classified by the BBFC or authorised by the Licensing Authority under the powers of the Licensing Act 2003.

The Licensing Authority when authorising film(s) shall at all times take into account the Guidance issued under section 182 of the Licensing Act 2003 (the National Guidance).

The Licensing Authority 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 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 reclassifies/authorises the film for local screening (with recommendations on age restrictions).

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

## **1. General Policy**

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.

In terms of film exhibitions and festivals, the most relevant licensing objective is the Protection of Children from Harm. The Section 182 Guidance issued by the Home Office 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.*

## **2. Principles in Determining Film Classifications**

The BBFC classifies films in accordance with its published Guidelines, which are based on extensive research into public opinion and professional advice. The Licensing Authority will not duplicate the BBFC's work by choosing to classify films itself. The classifications recommended by the BBFC will be those normally applied unless there are very good local reasons for a Licensing Authority to adopt this role.

Gwynedd Council retain the right to refuse to consider an application for classification itself but instead recommend the film for submission to the BBFC. This will be done in all cases where the summary of the film suggests that it may be considered for a Restricted 18 classification.

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.

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. As such the procedures outlined later in this document will be followed.

The Licensing Authority 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 or has been created through the commission of a criminal offence.

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.

Any authorisations for the exhibition of film(s) issued by the Licensing Authority shall only apply when the film(s) is exhibited within the County of Gwynedd and does not effect the authorisation or recommendations in any other area.

### **Delegation of powers under s20 of the Licensing Act 2003**

The power to authorize a classification of a film for the purposes noted in this document is delegated by the Central Licensing Committee to the Head of Regulatory Services .

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

The issue of any authorisation by Gwynedd Council is strictly limited to the authorisation within the County of Gwynedd 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.

The Licensing Authority 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

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 any other relevant legislation and has not been created through the commission of a criminal offence.

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.

Where the Licensing Authority has determined to refuse authorisation of a film(s) clear and concise reasons will be given.

### 3. Procedures for Authorisation Requests for Procedures for Approval of Films Already Classified by The BBFC

Applications for authorisation of films already classified by the BBFC shall be referred to and determined by the Licensing Manager on behalf of the Licensing Authority. Applications should be submitted in writing to the Licensing Section within Public Protection.

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. This will allow the Licensing authorised officers time to view and authorise the film(s) so that the licence holder is able to adhere to any recommendations on age restrictions the Licensing Authority may impose. In any event, all requests should be submitted on the Licensing Authority's application form a minimum of **28 days** before the proposed screening.

Where an individual or organisation not connected with the film(s) requests reclassification of a BBFC classified film, they are not expected to provide a copy of the film(s). The Licensing Authority 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.

All requests must be accompanied by detailed reasons for the request. 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.

Authorised licensing officers will then view the entire film and assess it against the BBFC guidelines and National Guidance and shall issue a Notice of Determination of the authorisation within 5 working days from the date of viewing. The Licensing Authority will then formally advise the applicant and the licence holder of any recommendation(s) restricting the admission of children to the film(s).

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.

In line with 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 unless accompanied 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 requirement, in line with the following examples:

*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.*

#### **4. Procedure for Authorisation of Films Which Have Not Been Classified by The BBFC or Gwynedd Council**

Applications for authorisation will in the first instance be considered by licensing officers. Any request to authorise an unclassified film may however, be referred by a Licensing Manger.

Applications should be submitted a minimum of **28 days** before the proposed screening.

An application for authorisation should include the following information:

- (a) the film maker;
- (b) such recommendation as may have been made by the film maker 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) 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.

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. This will allow the Licensing officers time to view and authorise the film(s) so that the licence holder is able to adhere to any recommendations on age restrictions the Licensing Authority may impose. In any event, all requests should be submitted a minimum of **28 days** before the proposed screening.

The Licensing officers whilst viewing the film(s) will have regard to BBFC Guidelines and s182 Guidance issued by the Home Office and shall issue a Notice of Determination of the application within five working days from the date of the viewing.

When considering all such requests the Licensing officers will pay particular attention to the Protection of Children from Harm Licensing Objective. In line with 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 unless accompanied 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 following examples:

*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.*

In order 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.

The Licensing Authority recognises the principle 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 Licensing Authority will expect the applicant to follow the BBFC's Guidelines for 18 and R18 restricted films.

## **5. Section 20 Licensing Act 2003: Exhibition of Films**

All premises permitted to exhibit films are subject to the following mandatory conditions:

*1. Where a Premises Licence or Club Premise Certificate authorises the exhibition of films, the licence or certificate must include a condition requiring the admission of children to the exhibition at any film to be restricted in accordance with these paragraphs.*

*2. Where a film classification body is specified in the licence or certificate, unless paragraph 3 (b) below 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 Certificate; or*

*(b) the Licensing Authority has notified the holder of the Licence or the Club which holds the Certificate that this paragraph applies to the film in question, admission of children must be restricted in accordance with any recommendation made by the Licensing Authority.*

*4. In these paragraphs "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*

## **6.Exemptions for The Showing of Films**

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

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:

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

## **7. Appeals**

There is no right of appeal against the decision of the Licensing Service Manager to classify a film. Any challenge should be brought by way of a Judicial Review.