

BOROUGH OF BARROW-IN-FURNESS

LICENSING COMMITTEE

Meeting, Thursday 30th June, 2016
On rising of the Licensing Regulatory
Committee (Drawing Room)

A G E N D A

PART ONE

1. To note any items which the Chairman considers to be of an urgent nature.

2. To receive notice from Members who may wish to move any delegated matter non-delegated and which will be decided by a majority of Members present and voting at the meeting.

3. Admission of Public and Press

To consider whether the public and press should be excluded from the meeting during consideration of any of the items on the agenda.

4. Declarations of Interest.

To receive declarations by Members and/or co-optees of interests in respect of items on this Agenda.

Members are reminded that, in accordance with the revised Code of Conduct, they are required to declare any disclosable pecuniary interests or other registrable interests which have not already been declared in the Council's Register of Interests. (It is a criminal offence not to declare a disclosable pecuniary interest either in the Register or at the meeting).

Members may however, also decide, in the interests of clarity and transparency, to declare at this point in the meeting, any such disclosable pecuniary interests which they have already declared in the Register, as well as any other registrable or other interests.

5. Apologies for Absence/Attendance of Substitute Members.

6. To confirm the Minutes of the meeting held on 12th May, 2016 (copy attached).

FOR DECISION

(D) 7. Licensing Act 2003 – Delegations: Film Classification.

Membership of Committee

Callister (Chairman)
Seward (Vice Chairman)
Biggins
Cassells
Derbyshire
Gill
Heath
W. McClure
Maddox
Proffitt
Wall
One Vacancy

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BOROUGH OF BARROW-IN-FURNESS

LICENSING COMMITTEE

Meeting: Thursday 12th May, 2016
at 2.00 p.m. (Drawing Room)

PRESENT:- Councillors Callister (Chairman), Seward (Vice-Chairman), Biggins, Cassells, Derbyshire, Gill, Maddox, Proffitt and Wall.

Officers Present:- Anne Pearson (Environmental Health Manager), Graham Barker (Principal Environmental Protection and Licensing Officer), Jennifer Curtis (Senior Licensing Officer), Richard Garnett (Principal Environmental Health Officer), Jane Holden (Acting Principal Legal Officer) and Keely Fisher (Democratic Services Officer).

Legal Representative:- Paul O'Donnell (Local Authority Retained Solicitor)

Police Representative:- PC Caroline Kendall

1 – Apologies for Absence/Attendance of Substitute Members

Apologies for absence were received from Councillors Heath and Opie.

2 – Minutes

The Minutes of the meeting held on 17th December, 2015 were taken as read and confirmed.

3 – Appointments on Outside Bodies, Panels, Working Groups etc.

The Executive Director reported that at the Annual Council meeting on 10th May, 2016 the allocation of seats in respect of Forums, Panels, Working Groups etc. were agreed. Delegated authority was given to the appropriate Committees to make the necessary appointments.

In the case of the Licensing Committee this involved appointments to the Licensing Policy Consultation Working Group and Barrow Alcohol Inquiry Working Party.

In accordance with proportionality rules, the notional seat allocations for 2016/2017 were as follows:-

- Licensing Policy Consultation Working Group – Four Seats (3 Labour: 1 Conservative).
- Barrow Alcohol Inquiry Working Party – Four Seats (3 Labour: 1 Conservative).

The Executive Director requested nominations to the above groups.

RESOLVED:- To agree the appointments to the Licensing Policy Consultation Working and the Barrow Alcohol Inquiry Working Party for 2016/17 as follows:-

(i) Licensing Policy Consultation Working Group (3:1) - Councillors Callister, Gill, Proffitt and Seward; and

(ii) Barrow Alcohol Inquiry Working Party (3:1) - Councillors Callister, Cassells, Gill and Maddox.

The meeting closed at 2.07 p.m.

LICENSING COMMITTEE		Part One (D) Agenda Item 7
Date of Meeting:	30th June, 2016	
Reporting Officer: Principal Environmental Protection & Licensing Officer		
<p>Title: Licensing Act 2003 – Delegations: Film Classification</p> <p>Report Summary:</p> <p>The Council, as the Licensing Authority, is responsible for authorising the public exhibition of films. Section 20 of the Licensing Act 2003 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.</p> <p>Purpose of Report:</p> <p>The Licensing Authority, has received an application requesting the classification of a film and this report sets out the principles used to classify films and also makes proposals to amend the current Scheme of Officer Delegation, in order to ensure that non-contentious films are classified quickly and efficiently and to ensure that premises licensed to exhibit films comply with the Licensing Act 2003.</p>		

1. Background

It is usual for most films to be released across the Country and therefore be classified by the BBFC. However, where a licensed premise seeks to exhibit a film that has not been classified by the British Board of Film Classification (BBFC) then it will be the responsibility of the Licensing Authority to authorise that film. Under the Licensing Act 2003, the definition of the exhibition of a film is the exhibition of moving pictures and the definition of children is any person under the age of 18 years. 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 current scheme of delegated functions of the Licensing Committee under the Licensing Act 2003, gives Members the authority to classify films. Additionally, the Licensing Committee can delegate this function to the Environmental Health Manager.

2. Principles in Determining Film Classifications

Paragraph 10.74 of the National Guidance states that:

The BBFC classifies films in accordance with its published Guidelines which are based on extensive research into public opinion and professional advice. The classifications recommended by the Board should be those normally applied unless there are very good local reasons for a licensing authority to adopt this role.

The classification system used by the BBFC is nationally understood and accepted. Therefore, I recommend that the Licensing Authority adopt 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. An extract of Classification Guidance is attached at **APPENDIX A**. It should be noted however that the Licensing Authority is not obliged to follow these guidelines.

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 an applicant to follow the BBFC's Guidelines for 18 and R18 restricted films.

3. Delegated Authority

Section 10(1)(b) Licensing Act 2003 requires Licensing Committees to determine their own scheme of delegations in the exercise of their functions under the Act. This requirement bypasses Article 13.02 of the Council's constitution which requires these matters to firstly be considered by the Executive Committee prior to approval by Council. The Licensing Act 2003 – Table of Delegated functions is attached at **APPENDIX B**.

This scheme of delegation was adopted by Members (Minute No.5: Licensing Committee; 25th June 2015), allowing the Environmental Health Manager to deal with any matter which is within the Scheme of Delegation as permitted by the Act and the Council's constitution, Part 3(1) was amended accordingly.

Determining the classification or re-classification of films, by the Licensing Authority is a rarity, however the process is time consuming and likely to place undue burden on Council resources. It is also often difficult to find a convenient time for all Members to meet at relatively short notice.

It is a mandatory requirement of the Licensing Authority under the Licensing Act 2003 that all films shown at Licensed Premises are classified. At present there is no provision within the Act for Local Authorities to be able to charge for this function therefore costs must be met from within existing budget.

To ensure that films are classified quickly and efficiently, it is proposed that the Environmental Health Manager and Principal Environmental Protection & Licensing Officer, in her absence, be given delegated authority to classify films on behalf of the Licensing Authority.

4. Options

Options available to members are:

- a) That the Licensing Authority adopt the guidance issued by the British Board of Film Classification as a reference point for determining its recommendation on the restriction of access of children to films; and to
- b) That the Committee delegate to the Environmental Health Manager and the Principal Environmental Protection & Licensing Officer, the power to classify films which have not already been classified by the BBFC; and
- c) Where those Officers are unable to make a formal classification or the content of the film controversial, the matter be referred to the Licensing Sub Committee for determination;

5. Recommendation

- a) That the Licensing Authority adopt the guidance issued by the British Board of Film Classification as a reference point for determining its recommendation on the restriction of access of children to films; and
- b) That the Environmental Health Manager and Principal Environmental Protection & Licensing Officer, in her absence, be given delegated authority to classify films, which have not already been classified by the BBFC, on behalf of the Licensing Authority; and
- c) That responsibility for the classification of films which have not already been classified by the BBFC and where the Environmental Health Manager and/or the, Principal Environmental Protection & Licensing Officer are unable to make a formal classification be referred to the Licensing Sub Committee; and
- d) That responsibility for the re-classification of films already classified by the BBFC be delegated to a Licensing Sub-Committee.

6. Reason for Recommendation

National Guidance under Section 182 of the Licensing Act 2003 states that: *The BBFC classifies films in accordance with its published Guidelines which are based on extensive research into public opinion and professional advice. The classifications recommended by the Board should be those normally applied, unless there are very good local reasons for a licensing authority to adopt this role.*

The delegation will allow the Licensing Authority to discharge its duties and powers under the abovementioned legislation in an efficient and professional manner.

7. Considerations

(i) Legal Implications

Section 20 of the Licensing Act 2003 provides that a mandatory condition shall be applied to all premises licences that authorise the exhibition of films. This relates to the restriction of the admission of children (defined in the Act as “persons aged under 18”) to the exhibition of any film to either the film classification recommended by the BBFC or such other classification recommended by the Licensing Authority.

(ii) Risk Assessment

Not having guidance in place might result in moral or psychological harm being caused to members of the public, in particular children, by film exhibitions containing strong language, horror, violence or sexual images.

(iii) Financial Implications

It is a mandatory requirement of the Licensing Authority under the Licensing Act 2003 that all films shown at Licensed Premises are classified. At present there is no provision within the Act for Local Authorities to be able to charge for this function therefore costs must be met from within existing budgets.

(iv) Health and Safety Implications

The recommendation has no implications.

(v) Council Priorities and Objectives

This recommendation supports Priority 4 - **Service Delivery** – which states that the Council strives to provide good quality, efficient and effective services while reducing overall expenditure.

(vi) Equality and Diversity

The recommendation has no detrimental impact on service users showing any of the protected characteristics under current Equalities legislation.

(vii) Human Rights Implications

The recommendation has no implications.

(viii) Health and Well-being Implications

Licensing Act 2003 – Licensing Objective: Protection of Children from Harm

The recommendation has no adverse effect on the Health and Wellbeing of users of this service.

Background Papers

Secretary of State guidance issued under Section 182 of the Licensing Act 2003:
<https://www.gov.uk/government/publications/section-182-of-the-licensing-act-2003-amended-guidance>

British Board of Film Classification Guidance:
http://www.bbfc.co.uk/sites/default/files/attachments/BBFC%20Classification%20Guidelines%202014_5.pdf

General Classification Considerations

There are general factors that may influence a classification decision at any level and in connection with any issue. These factors are of particular importance when a work lies on the borderline between two age categories.

Context

Context is central to the question of acceptability of film and video content. When considering context therefore, we take into account issues such as public expectation in general and the expectations of a work's audience in particular.

We consider the context in which an issue (such as sex, language or violence) is presented within a film or video. In doing this we take account of factors such as the setting of a work (historical, fantasy, realistic, contemporary); the manner of presentation (for example, an aggressive and directed use of bad language may result in a higher classification than a light-hearted and self-referential use of the same term); the apparent intention of the film; the original production date of the work (for example, outdated attitudes might be considered less offensive, and consequently classified at a lower category, in an old, obviously dated, work); and any special merits of the work.

Theme

Classification decisions will take into account the theme of a work, but will depend significantly on the treatment of that theme, and especially the sensitivity of its presentation. The most challenging themes (for example, drug misuse, sexual violence, paedophilia, racial hatred or violence) are unlikely to be appropriate at the most junior levels of classification. However, there is no reason in principle why most themes, however difficult, could not be presented in a manner which allows classification at 18 or even, where suitable, at lower levels.

Tone and impact

The overall tone of a work may also affect the classification decision. While the presentation of specific issues, such as sex and violence, may not be problematic at a particular category, a work with a dark or unsettling tone may receive a higher classification. Other tonal considerations which might have an influence on classification include the extent to which the work presents a despairing view of the world or the extent to which transgressive or harmful behaviour is condoned or made to appear normal.

We take into account the impact of a work (i.e. how it makes the audience feel), for example in relation to horror films where threat may be more significant than the level of violence.

Specific Classification Considerations

This section of the Guidelines identifies concerns which apply, to a greater or a lesser degree, at all classification levels, and sets out the general approach that we take. The concerns are listed in alphabetical order.

Pages 12 to 24 of the Guidelines provide specific guidance for U through to R18 with regard to such concerns. This should be read together with the General Classification Considerations.

Discrimination

Potentially offensive content relating to matters such as race, gender, religion, disability or sexuality may arise in a wide range of works, and the classification decision will take account of the strength or impact of their inclusion. The context in which such content may appear also has a bearing.

Works with such content may receive a lower category where discriminatory language and behaviour is implicitly or explicitly criticised; or the work as a whole seeks to challenge such attitudes; or the work is obviously dated, with little or no appeal to children.

Drugs

No work taken as a whole may promote the misuse of drugs and any detailed portrayal of drug misuse likely to promote the activity may be cut. Works which normalise or glamorise drug misuse are likely to receive a higher classification than works which show drug misuse while emphasising the dangers.

Where smoking, alcohol abuse or substance misuse feature to a significant extent in works which appeal to children, this will normally be indicated in BBFCinsight. Classification decisions will also take into account any promotion or glamorisation of such activities.

Imitable behaviour

Classification decisions will take into account any detailed portrayal of criminal and violent techniques, and glamorisation of easily accessible weapons, such as knives. Works which portray anti-social behaviour (for example, bullying) uncritically are likely to receive a higher classification. Works which, taken as a whole, actively promote illegal behaviour may be cut or refused a classification.

Portrayals of potentially dangerous behaviour (especially relating to hanging, suicide and self-harm) which children and young people may potentially copy, will be cut if a higher classification is not appropriate.

Language

Language which people may find offensive includes the use of expletives with a sexual, religious or racial association, derogatory language about minority groups and commonly understood rude gestures. The extent of offence may vary according to age, gender, race, background, beliefs and expectations brought by viewers to the work as well as the context in which the word, expression or gesture is used.

For these reasons, it is impossible to set out comprehensive lists of words, expressions or gestures which are acceptable at each category. The advice at different classification levels, therefore, provides general guidance taking account of the views expressed in public consultation exercises.

Nudity

Nudity with no sexual context is in principle acceptable at all classification levels, but will not generally occur more than occasionally at U.

Nudity with a sexual context will receive a higher classification. Strong detail in such a context will usually only be passed at the adult categories (18 or R18).

Sex

The portrayal of sexual activity can range from kissing to detail of unstimulated sex. The normalisation of overtly sexualised behaviour is a concern at the junior categories. The classification system allows progressively stronger portrayals of sexual behaviour as the categories rise.

Sex works (works whose primary purpose is sexual arousal or stimulation) will normally only be passed at the adult categories. Sex works which only contain sex which may be simulated will usually be passed at 18. The R18 category is suitable for sex works containing clear images of real sex, strong fetish material, sexually explicit animated images, or other very strong sexual images. R18 video works may be supplied only in licensed sex shops which no one under 18 may enter. R18 films may be shown only in specially licensed cinemas.

We will apply these Guidelines in relation to sex to the same standard regardless of sexual orientation of the activity portrayed.

Threat

Where films are targeted at a younger audience, classification decisions will take into account factors such as the frequency, length and detail of scary or otherwise unsettling scenes as well as factors such as the impact of music and sound, and whether there is a swift and reassuring outcome.

The classification of threat and horror will take account of the general tone, impact, realism and supernatural elements of a work as well as the level of detail in individual scenes. Fantasy settings may be a mitigating factor.

Violence

Classification decisions will take account of the degree and nature of violence in a work.

Works which feature the following are likely to receive higher classifications:

- portrayal of violence as a normal solution to problems
- heroes who inflict pain and injury
- callousness towards victims
- the encouragement of aggressive attitudes
- characters taking pleasure in pain or humiliation
- the glorification or glamorisation of violence

Sadistic or sexual violence is likely to receive a higher classification. Any depiction of sadistic or sexual violence which is likely to pose a harm risk will be subject to intervention through classification, cuts or even, as a last resort, a refusal to classify.

We may refuse to classify content which makes sexual or sadistic violence look appealing or acceptable, reinforces the suggestion that victims enjoy sexual violence, or invites viewer complicity in sexual violence or other harmful violent activities.

We are also unlikely to classify content which is so demeaning or degrading to human dignity (for example, it consists of strong abuse, torture or death without any significant mitigating factors) that it may pose a harm risk.

APPENDIX B

Licensing Act 2003 – Table of Delegated Functions

Matter to be dealt with	Full Committee	Sub-Committee	Officers
Application for personal licence		If objection made	If no objection made
Application for personal licence, with unspent convictions		All cases	
Application for premises licence/club premises certificate		If a representation made	If no representation made
Application for provisional statement		If a representation made	If no representation made
Application to vary premises licence/club premises certificate		If a representation made	If no representation made
Application to vary premises licence/club premises certificate by way of a minor variation			All cases
Application to vary designated premises supervisor		If a police objection	All other cases
Request to be removed as a designated premises supervisor			All cases
Application for transfer of premises licence		If a police objection	All other cases
Application for Interim Authorities		If a police objection	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious etc			All cases
Decision to object when local Authority is a consultee and not the relevant authority considering the application		All cases	
Determination of a police objection to a temporary event notice		All cases	
Determination of film classification		All cases	

A Full committee will consist of 12 Members, with a quorum of 3.
A Sub-Committee will consist of 3 Members.