EXPLANATORY MEMORANDUM TO

DIGITAL ECONOMY ACT 2010 (APPOINTED DAY NO 3) ORDER 2012

2012 No. 1766 (C.69)

1. This explanatory memorandum has been prepared by The Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This Order appoints 30th July 2012 as the day on which the following provisions of the Digital Economy Act 2010 come into force – sections 40(2), (3), (5), and (6) and the entry in Schedule 2 relating to section 2 of the Video Recordings Act 1984 (and section 45 so far as it relates to that entry).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 There are no matters of special interest here. Article 2 of this Order appoints the 30th July 2012 as the day on which the provisions mentioned in paragraphs (a) and (b) of that article come into force. These provisions make amendments to the Video Recordings Act 1984 (the "1984 Act") to extend the statutory classification requirement to video games that are only suitable for viewing by persons aged 12 years and above ("12+ video games"). Therefore, unless exempt, such video games will be required to be submitted for classification to the new "video games authority" if intended for supply as the physical product in the UK.

3.2 On the 10th May 2012 a proposed designation for the "video games authority" was laid before both Houses of Parliament in accordance with the procedure specified in section 5 of the 1984 Act and no resolution against this proposal was made. On the 30th July 2012 the present Chair (Baroness Shephard of Northwold) and the two Vice-chairs (Mr Iain Muspratt and Mr James Lake) of the Video Standards Council (the "VSC") will be designated as the authority responsible for determining the suitability of video games for classification and as the authority responsible for making arrangements for matters specified in the 1984 Act with respect to video games. Furthermore on 30th July 2012 new labelling regulations made under section 8 of the 1984 Act will come into force.

4. Legislative Context

4.1 The 1984 Act makes it an offence to supply a video recording, such as a DVD, containing a video work (such as a film or video game) unless the video work has been submitted to an authority designated by the Secretary of State under section 4 of that Act,

for classification as to its suitability to be viewed by persons of particular ages, and the video recording is supplied in accordance with the classification certificate. Furthermore the video recording must be labelled in accordance with stipulations set down in the regulations made under section 8 of the 1984 Act. Certain types of video works are currently exempt from the classification requirement (see section 2 of the 1984 Act). They include video works that taken as a whole are designed to inform, educate or instruct, or that are concerned with sport, religion or music, provided they do not contain the particularly objectionable content described in sections 2(2) and (3) of the 1984 Act.

4.2 This Order makes amendments to the 1984 Act to extend the classification regime to 12+ video games. Under the new legislative regime all 12+ video games intended for supply as the physical product in the UK, will be required to be submitted for classification to the "video games authority" (but subject to any allocation of responsibility made under section 4ZB of the 1984 Act). On the 30th July 2012 the VSC will be formally designated as the video games authority under sections 4 and 4ZA of the 1984 Act; and on that date the new labelling Regulations made under section 8 of the 1984 Act also come into force. The VSC will apply the existing Pan-European Game Information (PEGI) age rating system to video games but subject to some UK specific adaptations. At present almost all video games intended for supply in Europe are submitted voluntarily for PEGI age ratings. The legislative provisions commenced by this Order place these voluntary industry arrangements (with respect to 12+ video games) on a statutory footing.

4.3 The President and Vice-Presidents of the British Board of Film Classification will remain designated as the video works authority responsible for classifying video works other than video games. The UK specific adaptations of the PEGI system are as follows - (i) classification certificates will be formally issued by the VSC; (ii) some video games will continue to be classified by the BBFC (for example, ancillary video games included on film discs and video games restricted for supply to licensed sex shops only); and (iii) it will be possible to prohibit a game from being supplied in the UK altogether. Matters which the VSC and BBFC must have special regard to, in making any determination as to the suitability of issuing a classification certificate are already specified in section 4A of the 1984 Act.

4.4 Transitional provision has been set out in the accompanying Regulations to this Order, (made under section 44 of the Digital Economy Act 2010). In addition all the provisions contained in the Digital Economy Act 2010 that make changes to the 1984 Act concerning the classification of video games were notified in draft to the European Commission in accordance with the Technical Standards Directive (Directive 98/34/EC, as amended by Directive 98/48/EC).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 This is an Appointed Day Order, no statement is required.

7. Policy background

- What is being done and why

7.1 The legislative changes brought into force by this Order are intended to better control and regulate the distribution of video games, supplied as the physical product, in the UK. The underlying policy aim of the classification requirement is to protect children and consumers.

7.2 At present only video games that contain explicit sex, gross violence or other matters of concern (listed at section 2(2) and (3) of the 1984 Act) are required to be submitted for classification for supply in the UK. Games featuring such content are reviewed by the BBFC and awarded BBFC 15, 18 or R18 classifications as appropriate. It is an offence to supply BBFC-classified video games to anyone not meeting the age requirement. Alongside this statutory requirement, video games publishers also submit their products for age rating under the Europe-wide PEGI system on an entirely voluntary basis. Under PEGI, video games are rated as suitable for persons of 3, 7, 12, 16 or 18 years of age. Thus some video games sold in the UK carry statutory BBFC age ratings, and some carry the voluntary PEGI age ratings and in some cases, video games may carry both.

7.3 In her independent review to Government, entitled "*Safer Children in a Digital World*", http://www.education.gov.uk/ukccis/about/a0076277/the-byron-reviews Professor Tanya Bryon found that this dual regime of BBFC and PEGI classifications for video games lacked the clarity and simplicity that consumers and enforcement agencies needed. She also found that the current requirement to classify the kinds of games only suitable for those aged 15 years and up provided inadequate protection for younger children. Professor Byron recommended extending the statutory classification requirement for all video games that are only suitable for persons aged 12 years and ensuring the UK has a video games classification system that gives clearer and less ambiguous guidance to consumers and children. Accordingly, following a full UK-wide public consultation on options for the future classification regime for video games, government decided to implement changes that would see all 12+ video subject to statutory classification using the PEGI system. Games suitable for children below the age of 12 will continue to be age rated voluntarily by the industry.

7.4 The BBFC will remain responsible for classifying any video games that ought to be restricted to supply in licensed sex shops only (R18 games) and in addition they would continue to classify ancillary games included on discs that primarily contain film content.

7.5 The PEGI games rating system, administered by the VSC in the UK, was considered to be the best possible option because PEGI is highly adaptable, it is used in most European countries, it works well for games distributed both online and offline, and it includes tough sanctions for publishers who breach the rules; and in addition PEGI has strong industry credibility and support. Following the passage through Parliament of the Digital Economy Act 2010 providing for the new video games classification system, the VSC made key operational changes which give clarity on its role and independence in the UK – for example it has set up robust processes for the review of classification decisions by way of appeal. The VSC will also take into account UK sensibilities in the execution of its classification decisions for the UK. An expert will be appointed by the VSC within the next 6 months to provide robust advice on how to undertake meaningful analysis of UK public opinion; possibilities include on-line forums, public questionnaires and public workshops.

- Consolidation

7.6 Not applicable. These regulations do not consolidate any legislation.

8. Consultation outcome

8.1 A consultation on this specific instrument has not been undertaken. A full public consultation was undertaken on the video games classification system and the future structure of it following the Byron Review – please see following web links - http://webarchive.nationalarchives.gov.uk/20100407120701/http://www.culture.gov.uk/reference_library/consultations/5345.aspx
And http://www.education.gov.uk/ukccis/about/a0076277/the-byron-reviews.
The consultation considered 4 options: an enhanced BBFC system, an enhanced PEGI, a hybrid BBFC/PEGI system and a voluntary code of practice. The enhanced PEGI system was selected as the option that best met the child protection requirements set out in Dr Byron's report and which offers the least negative impact on business.

9. Guidance

9.1 Guidance is not thought to be necessary at this stage though this will be kept under review.

9.2 The VSC and the BBFC have agreed general arrangements between themselves with government approval to set out how their separate roles in the new classification regime will work and interact. Please see link – http://www.videostandards.org.uk/VSC/downloads.html.

This assures clarity around the procedures for dealing with those video games which will be allocated across to the BBFC for classification (for example games that should be restricted to supply in licensed sex shops only). In addition the VSC is producing a comprehensive information resource about the classification regime and the labelling requirements for both industry and the general public. Some of that information can already be found on its website - http://www.videostandards.org.uk/GRA. The VSC holds regular briefing and discussion sessions with industry stakeholders.

10. Impact

10.1 There is an impact on business and industry by this instrument.

10.2 The impact on the public sector is that the functions of the Video Recordings Act 1984 and the Digital Economy Act 2010 will be fulfilled if the provisions mentioned in article 2 of this Order come into force.

10.3 An Impact Assessment has not been prepared for this instrument; however an impact assessment was prepared for the legislative changes proposed by the Digital Economy Act 2010 during passage of the Bill through Parliament. The impact assessment detailed the costs to industry of the 4 options that had been offered for the video games classification system as follows: the "enhanced BBFC" option would cost £7,220,319 pa; the "hybrid BBFC/PEGI" option would cost £5,651,479 pa and a code of practice option would cost £3,503,213 pa. The "enhanced PEGI" option chosen by government was estimated to cost £5,444,233 pa. Only the code of practice would have been cheaper but that option could not deliver in terms of meeting the essential elements of child protection and consumer confidence.

11. Regulating small business

11.1 This Order will have a direct impact on the workings of the VSC, the BBFC and the video games industry with limited anticipated impact on small business given that most video games publishers are large business concerns. The legislation applies to all activities supplying physical copies of video games in the UK and the underlying aim is to provide protection for consumers and children from inappropriate content. Exempting any businesses from the requirements would undermine this protection. A waiver from the micro-businesses regulation moratorium has been agreed with the Economic Affairs Committee, the Home Affairs Committee and Reducing Regulation Policy Committee.

12. Monitoring & review

12.1 Officials will maintain a watching brief to ensure that the requirements of the 1984 Act are fully implemented and the VSC and the BBFC fulfil their statutory duties as the designated “video games authority” and “video works authority” under the Video Recordings Act 1984. A formal review of this policy is expected to be carried out in 2015.

13. Contact

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