EXPLANATORY MEMORANDUM TO

DIGITAL ECONOMY ACT 2010 (TRANSITIONAL PROVISION) REGULATIONS 2012

2012 No. 1764

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 These Regulations make transitional provision with respect to the issue of classification certificates by the authority (or authorities) designated under section 4 and 4ZA of the Video Recordings Act 1984. Regulation 3 of this statutory instrument preserves any determination made by the "video games authority" or "video works authority" prior to 30th July 2012 as to the suitability of a video game to be viewed by persons aged 12 years or above.

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

3.1 There are no matters of special interest here. Sections 40(2), (3) and (5) of the Digital Economy Act 2010 (the 2010 Act") come into force on 30th July 2012 by Appointed Day Order made under section 47((3) of the 2010 Act. This order making power does not include power to make transitional provision. These Regulations are made under section 44 of the 2010 Act but are to be read and considered alongside the commencement of sections 40(2), (3) and (5) of the 2010 Act.

4. Legislative Context

4.1 Currently most video games are exempted from the classification requirement unless they contain content such as sexual activity, gross violence or the other matters of concern mentioned in section 2(2) and (3) of the Act. Sections 4(2), (3) and (5) of the Digital Economy Act 2010 make amendments to the Video Recordings Act 1984 ("the 1984 Act") to secure a reformed and extended classification regime for video games. These provisions will be commenced on 30th July 2012 by Appointed Day Order. Under the new legislative regime all video games suitable for viewing by persons aged 12 years and above, and 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).

4.2 Also on the 30th July 2012 the Chair and Vice-Chairs of the Video Standards Council ("the VSC") will be formally designated as the "video games authority" under sections 4 and 4ZA of the 1984 Act; and on that date new labelling Regulations made under section 8 of the 1984 Act 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 age rating using the PEGI system.

4.3 The President and Vice-Presidents of the British Board of Film Classification remain designated as the "video works authority" responsible for classifying video works other than video games.

4.4 These Regulations preserve any determination made by the VSC or the BBFC prior to the 30th July 2012 as to the suitability of a video game to be viewed by persons aged 12 years and above, so that video game publishers will not be required to re-submit the same video game to the newly designated "video games authority" for the formal issue of a classification certificate on or after the 30th July 2012.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 These Regulations make transitional provision only: no statement is required.

7. Policy background

- What is being done and why

7.1 The legislative changes brought into force by section 40(2), (3) and (5) of the Digital Economy Act 2010 are intended to better control and regulate the supply of video games as the physical product, in the UK. The underlying policy aim of the classification requirement is to protect children and consumers. 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 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 stipulated age rating. Alongside this statutory requirement, video games publishers also submit their products for classification voluntarily under the Europe-wide, PEGI system. Under PEGI, video games are classified 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, some carry the advisory-only PEGI age ratings and in some cases games may carry both.

7.2 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 that consumers needed. She also found that the existing legislative requirements to classify the kinds of games only suitable for those aged 15 years and above provided inadequate protection for younger children. Professor Byron recommended extending the statutory classification requirement to all video games that are only suitable for persons aged 12 years and above, and ensuring that the UK has a video games classification system that gives clearer and less ambiguous guidance to consumers. 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 games subject to statutory classification using the PEGI system. Games suitable for children below the age of 12 years will continue to be rated voluntarily by industry. The legislative changes brought into effect by section 40(2), (3) and (5) of the Digital Economy Act 2010 will make the voluntary industry arrangements statutory requirements by extending the classification requirement to all 12+ video games. The formal designation of the Chair and two Vice-Chairs of the VSC as the "video games authority" provide for these changes to be fully implemented and for the VSC to be responsible for making arrangements for the classification of video games.

7.3 It is likely that there will be many video games already age-rated by the VSC or the BBFC before 30th July 2012 in supply in the UK. It is not intended that such video games which have already been submitted to the VSC or the BBFC for an age rating should be required to be re-submitted for the issue of a formal classification certificate under the 1984 Act, after the 30th July 2012. Therefore these Regulations make transitional provision to preserve such pre-commencement determinations.

- Consolidation

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

8. Consultation outcome

8.1 A consultation on this instrument has not been undertaken. It makes transitional provision only. A full public consultation was undertaken on the video games classification system and the future structure of it following the Byron Review. Please see - http://www.education.gov.uk/ukccis/about/a0076277/the-byron-reviews. And - http://webarchive.nationalarchives.gov.uk/20100407120701/http://www.culture.gov.uk/reference_library/consultations/5345.aspx

9. Guidance

9.1 Guidance is not thought to be necessary at this stage.
The VSC is producing a comprehensive information resource about the classification regime for video games and labelling requirements for industry and separately for 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. To coincide with commencement of the new video games classification and labelling system on the 30th July 2012, the video games industry and the VSC will be mounting a major public information campaign to raise awareness and understanding of the PEGI age ratings and to promote "safe gaming" messages to parents and indeed to consumers more generally. The campaign will run until Christmas 2012 as most video games are purchased in the last sales quarter before Christmas.

10. Impact

10.1 An impact assessment has not been prepared for this instrument. There is minimal impact on business and industry. This instrument preserves the status quo for any determinations already made by the VSC and the BBFC prior to the commencement of the new classification regime for video games. An Impact Assessment was prepared for the legislative changes proposed by the Digital Economy Act 2010 during passage of the Bill through Parliament.

11. Regulating small business

11.1 This instrument will have minimal impact on small business as it preserves the status quo with respect to determinations already made by the VSC and BBFC before 30th July 2012.

11.2 Section 40(2), (3) and (5) will impact on the VSC, the BBFC and the video works industry with limited anticipated impact on small business given that most video games publishers are large business concerns. The video games classification 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 eb carried out in 2015.

13. Contact

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