EXPLANATORY MEMORANDUM TO

THE VIDEO RECORDINGS ACT 1984 (EXEMPTED VIDEO WORKS) REGULATIONS 2014

2014 No.

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.

2. Purpose of the instrument

2.1 To ensure that all hard copy video works (eg DVDs, Blu-Ray discs and VHS recordings) which contain material unsuitable for younger children are given an age rating certificate before being sold or rented out. By younger children we mean children younger than 12 years of age.

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

3.1 None.

4. Legislative Context

4.1 The Video Recordings Act 1984 ("the Act") applies to hard copy video works – which in the current market are mostly likely to be works on DVDs and Blu-ray discs. The Act provides for labelling and classification requirements (by way of an age symbol) prior to the supply of the work. It is a criminal offence to supply a video work other than in accordance with an age restriction labelled on a work. The British Board of Film Classification (BBFC) is the body designated by the Secretary of State to determine classification for video works in the UK (unless the video works are video games, in which case the designated body is the Video Standards Council).

4.2 Section 2(1) of the Video Recordings Act 1984 currently allows an exemption from classification (and thus also labelling) for video works if, taken as a whole, they are designed to inform, educate or instruct, or are concerned with sport, religion or music. However, such video works lose their exempt status if they depict, to a significant extent, certain material specified in section 2(2) of the Act. The depictions are: sexual activity or acts of force or restraint associated with such activity; mutilation or torture of, or other acts of gross violence towards, humans or animals; human genital organs or human urinary or excretory functions; techniques likely to be useful in the commission of offences; and associated matters. These carve-outs broadly equate to 18 or R18 rated material.

4.3 The effect of the current law is that a video work, such as a music, sport, documentary or training video, may contain material that would attract a 15 certificate or the video work may contain a short amount 18 rated material which is of high impact but does not amount to a depiction to a "significant extent" in a long work. Such video works may be unsuitable for younger children but can, currently, be lawfully sold to anyone.

4.4 The Regulations amend this scheme by introducing more stringent carve-outs for video works (other than video games) so that if the work depicts certain material or promotes certain behaviour that is unsuitable for younger audiences the product will lose its exempted status. If the music, sport, religion or education-themed video works do not contain such material, they will remain exempt. If they do contain such material, they must be classified by the BBFC before being supplied.

4.5 These more stringent carve-outs have been developed on the basis of the BBFC classification guidelines. In general, material contained that would attract an age rating of 12 or above will no longer be exempt. While the BBFC classification guidelines are non-statutory, they are well understood and used by industry, and are backed up by a considerable amount of public research and engagement. The BBFC published new classification guidelines in January 2014, revised in the light of a major, independent survey carried out during 2013 which set out to gauge public attitudes towards film content, particularly to depictions involving violence, sex, swearing and imitable behaviour.

4.6 The classification requirements for all other video works and for all video games released in physical formats will remain unchanged by these Regulations - for example, all narrative works like feature films or dramas originally screened on television have to be classified by the BBFC when released on DVD and disc or cartridge-based video games must be classified by the Video Standards Council if they are unsuitable for younger children.

4.7 The current arrangements for exempted supply of video works are also maintained. The changes introduced by the Regulations will not be retrospectively applied to music, sport, religion and education-themed works that have already been placed on the market. They will only apply to works placed on the market after 1 October 2014.

4.8 On 9th December 2013, a draft of these Regulations was notified to the European Commission in accordance with the Technical Standards Directive (Directive 98/34/EC, as amended by Directive 98/48/EC). No comments were received from the Commission or any Member State.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Culture, Communications and Creative Industries, Ed Vaizey MP, has made the following statement regarding Human Rights:

In my view the provisions of the Video Recordings Act 1984 (Exempted Video Works) Regulations 2014 are compatible with the Convention Rights.

7. Policy background

7.1 A review of the exemptions from classification was a specific recommendation of the independent Bailey Review of the commercialisation and sexualisation of children - "Letting Children be Children" - published in 2011 which raised concerns about some products, particularly in the music genre, being placed on the UK market without any restrictions on their sale to children or labelling to indicate their age-suitability.

7.2 The primary purpose of the Video Recordings Act 1984 is child protection. Some video works are deemed inappropriate for children to view and the 1984 Act gives powers to an independent designated authority to determine whether or not video works are suitable for classification certificates to be issued in respect of them; and if they are considered to be suitable for the issue of a classification certificate, limitations may apply ranging from works deemed suitable for general viewing and unrestricted supply to those that may only be sold in licensed sex shops. The changes introduced by the Regulations aim to ensure that children are better protected from exposure to inappropriate content.

7.3 The exemptions from classification for music, sports, religion and education-themed video works have been in place since the Video Recordings Act first entered into force in 1984. However, the nature of works in these genres has changed considerably since then. During the passage of the Digital Economy Act 2010 - which introduced a new classification regime for video games - a number of Members of Parliament suggested that some currently-exempt video works contained material that could be harmful to children and argued that the exemptions from classification should be removed.

7.4 The planned legislative changes introduced by these Regulations were announced by Government in May 2013, following a full public consultation. They will provide for better control in the supply and distribution of music, sports, religious and educational content on DVD and Blu-ray disc (and other physical formats) in the UK and ensure more products carry labels indicating their age-suitability. Ultimately they will offer better levels of child protection and enable consumers, particularly parents, make more informed

choices about the products they buy and about which products they may or may not wish to allow their children to view.

- Consolidation

7.5 Not applicable. These Regulations do not consolidate any legislation.

8. Consultation outcome

8.1 A full public consultation was launched in May 2012 seeking views on whether the exemptions from classification for music, sport, religion and education-themed works - or a different approach - offered the best framework in terms of a) protecting children, b) compliance for product producers and retailers and c) promoting consumer confidence, ensuring they are able to make informed decisions about video purchases and their suitability, particularly when they are acquiring products that may be watched by children.

8.2 The consultation discussed four potential options :

- **Leaving the exemptions unchanged**
- **Removing the exemptions** so that in future music, sport, education and religion-themed video works must be subject to statutory classification by the BBFC.
- **Changing the exemptions for music, sport and educational and religious videos** so that more such products are classified by the BBFC but those likely to be suitable for viewing by younger audiences remain exempt.
- **Asking the industry to introduce a self-regulatory 'parental advisory'** labelling system for currently exempt products

8.3 Twenty three organisations, one business and three individuals responded to the consultation. Respondees included groups representing businesses that will be affected (the British Video Association, the BPI, the Entertainment Retail Association), the ratings bodies (BBFC and VSC), enforcement agencies (the Trading Standards Institute) and several third sector organisations, particularly those representing the health and wellbeing of children and young people (for example the NSPCC, Family Education Trust and Family and Parenting Institute).

8.4 The majority of responses to the consultation supported the view that exemptions from classification for music, sports, religion and education-themed works should in future be disapplied wherever the video works are unsuitable for younger children). Most regarded the full removal of the exemptions as a disproportionate response to the problem. It was felt that the vast majority of works in the exempt categories do not contain content that is unsuitable for children and this option would represent a disproportionate financial and administrative burden on businesses. The possibility of voluntary "parental advisory" scheme for products in the exempt genres was not favoured

by any of the responses – it was believed to offer insufficient protection for children and industry did not necessarily welcome the task of creating and maintaining such a scheme.

8.5 The draft Regulations were developed in close collaboration with the BBFC and with informal consideration by organisations such as the British Video Association and the BPI. They were then formally published on 9th December 2013 and comments were requested by 31st March 2014. Over the 8 week consultation period, eleven responses were received, including from the NSPCC, Mothers Union, CARE, Brook and the Family Planning Association, the Holocaust Education Trust, the Samaritans, the Children's Charities Coalition and the representatives of the Reframe Rewind campaign. Most responses supported the Regulations without making any comment on the drafting.

8.6 Two responses raised concerns about possible unintended consequences of the drafting on the content definitions in the Regulations that are designed to ensure discriminatory content is submitted to the BBFC for classification. They suggested that specifying content "intended to or likely to cause offence …on the grounds of race, gender, disability, religion or belief or sexual orientation" was too subjective and, for example, could mean that any religious content would have to be classified. However, Government notes that the BBFC already makes determinations about whether content is or is not discriminatory for other video works – such as feature films and indeed exempt works that are voluntarily submitted for classification – and it does this from an objective viewpoint and based on principles set out in its classification guidelines. Distributors of music, sports, religion or education-themed video works will be able to refer to BBFC guidance when considering whether content in their products may be caught by the carve out in respect of discriminatory content in the Regulations, and it is the BBFC that will ultimately make classification decisions.

8.7 A couple of responses questioned whether the terms such "mild" would work effectively without being cross-referenced to the BBFC classification Guidelines in the legislation. Under the current legislative framework, it is not possible for the BBFC Guidelines to be referred to in the legislation. But the Department notes that the terms such as "mild" and "moderate" are a long-standing feature of the BBFC classification guidelines and are very familiar to many video distributors and the general public and it believes these terms will bear their normal, everyday meaning. These terms will also be explored in more detail in the new guidance that the BBFC is preparing specifically for industry which will include real-life examples from previously-classified films as illustrations.

8.8 One respondent to the consultation on the draft Regulations felt that video works primarily about education should remain exempt, arguing these products may support curriculum subjects and as such are already targeted at specific age groups and subject to sufficient controls through schools policies. In fact submissions to the original consultation on the exemptions from classification showed significant concerns about unclassified video works that are primarily designed to educate or instruct, including documentaries which can cover a very broad range of subject matter, some of which is clearly unsuitable for children. Some respondents also raised concerns about unclassified sex education products that are specifically produced for schools. The Department

aniticpates that BBFC age classifications and content advice on educational products will be helpful to those caring for children - whether in professional teaching or other roles - by providing additional information about the content and a useful reference point for any consultations they may need to hold with parents. It should also be noted that the BBFC takes context into account when classifying video works and this includes considering what the material was created for and how it will be used. This may be particularly relevant in respect of video works specifically designed and distributed for use in a supportive, teacher-led environment. In response to an additional responsibility for classifying more educational products in future, the BBFC has been consulting with teaching professionals and is ensuring that teachers are represented on its standing Advisory Panel on Children's Viewing.

8.9 Since the consultation on the Regulations closed, a small number of independent suppliers of speciality (mostly horror film) DVDs for niche markets have proposed that documentaries added to DVDs alongside 18-rated feature film DVDs remain exempt from classification and thus excluded from the Regulations. Government however notes that that the classification requirements of the Video Recordings Act apply to individual video works and a blanket exemption for extra features that accompany another work that has been classified would not be possible. Furthermore there would be significant risks in assuming that extra features on DVDs would necessarily have the same or lower classification that the main feature. It is possible such DVD extras could be classified by the BBFC as higher or indeed be refused classification entirely because of their content. However, the BBFC is in discussion with the speciality DVD distributors to explore their concerns. They are looking for example at whether they can reduce the administrative burdens on small businesses who may have to send some DVD extras for classification in future.

9. Guidance

9.1 Many of the businesses impacted already submit other video works to the BBFC for classification and are used to dealing with their processes and familiar with the BBFC's classification guidelines which set out how they expect to carry out their classifications role. Moreover, the BBFC is creating a substantial new online information resource for industry using sample video clips to illustrate the types of material specified in the Regulations. This will for example offer examples of material the BBFC consider represents "imitable dangerous activity", "words or images intended or likely to convey a sexual message (ignoring words or images depicting mild sexual behaviour)" and other material set out on the Regulations as the types of material that will mean a music, sport, religion or education-themed video work must in future be referred to the BBFC for classification as it is likely to be unsuitable for younger children.

10. Impact

10.1 There is an impact on business by this instrument.

10.2 An Impact Assessment for this instrument has been prepared and was assessed as fit for purpose by the Regulatory Policy Committee. The Impact Assessment shows that the changes to the classification and labelling of music, sports, religion and education-themed video works introduced by the Regulations will result in new costs to business, specifically for publishers and distributors of DVDs and Blu-ray discs. The Impact Assessment estimates new costs will be in the region of £0.3m per annum (approximately £2.9m over 10 years) deriving from additional classification fees payable to the BBFC and other administrative burdens. The Impact Assessment notes that there are significant risks and assumptions with these estimates - the numbers of DVD, Blu-ray etc releases in the music, sport, religion and educational genres are not known with complete certainty. The data provided by industry may not include all products on the UK market and particularly may not include those released by small and micro-businesses dealing in speciality genres and niche demand. Additionally the proportion of future music, sport, religion or education-themed releases which may or may not be unsuitable for children cannot be accurately predicted.

10.3 Retailers will be affected in that more of the products they stock in future may have BBFC age classifications on them. Entertainment product retailers should already be configured to deal with sales of DVDs and other hard-copy video works that carry BBFC classifications.

10.4 The BBFC will see some impact in terms of its remit and classification caseload those this should be cost neutral. The BBFC is a not-for-profit organisation and the resources need to deal with the larger number of submissions that the organisation receives should be wholly covered by the classification fees it charges to distributors.

10.5 The benefits of the changes introduced by the Regulations are that more products will carry advice for consumers about the suitability of content for children and offer increased protection for a vulnerable group of society. It will prevent the direct supply to younger children of products that are unsuitable for their age groups and which may could cause them harm,. However the changes avoid the financial burden of BBFC classification for specific products which can safely remain exempt as they are suitable for all audiences. The size and monetary value of these benefits is extremely difficult to assess reliably and the Impact Assessment therefore does not recognise any monetised benefits.

11. Regulating small business

11.1 The legislation applies to all businesses distributing physical copies of videos works in the UK. The classification and labelling requirements are designed to provide protection for consumers and exempting any businesses from the labelling requirements would undermine this protection. It is likely that the changes will affect some small and micro-businesses. As noted above, the BBFC is looking at whether it can reduce the

administrative burdens on small businesses who may have to send some DVD extras for classification in future.

12. Monitoring & review

12.1 Officials will maintain a watching brief on the effective operation of the new Regulations. A formal review of this policy is expected to be carried out three years after implementation.

13. Contact

Lynne Kilpatrick at the Department for Culture, Media and Sport Tel: 020 7211 6142 or email: Lynne.kilpatrick@culture.gsi.gov.uk can answer any queries regarding the instrument.