EXPLANATORY MEMORANDUM TO

THE VIDEO RECORDINGS (LABELLING) REGULATIONS 2010

2010 No. 115

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 set out the requirements for labelling video recordings, such as DVDs and videos, with information regarding their age classification. They require the appropriate symbol and statement explaining the symbol to be displayed clearly and indelibly on the case of the DVD or video. The Regulations also require the appropriate symbol and title of the work to be displayed on the disc, magnetic tape or spool containing the magnetic tape.

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

3.1 For the reasons below, these Regulations have been laid in Parliament less than 21 days before they come into force. In essence, this is to close a legal loophole in the enforceability of a criminal offence under the Video Recordings Act 1984 ("the 1984 Act") as quickly as possible.

3.2 In August 2009, during preparations for the Digital Economy Bill, it was identified that certain provisions of the 1984 Act, and the previous labelling regulations – The Video Recordings (Labelling) Regulations 1985 (1985/911) (as amended) ("the 1985 Regulations") - were "technical regulations" as defined in the Technical Standards Directive (83/189/EEC) ("the Directive").

3.3 Under the Directive, these provisions of the 1984 Act and the 1985 Regulations were required to be notified in draft to the European Commission and a 3 month standstill period observed. This was not done, as it should have been, before the 1984 Act was passed and before the 1985 Regulations came into force.

3.4 The purpose of the Directive is to facilitate the free movement of goods in the EU. It lays down a procedure for the provision of information in the field of technical standards and regulations. Under the Directive, Member States are required to notify draft "technical regulations" to the Commission before they are brought into force to enable the Commission and the Member States to have an opportunity to propose amendments to a draft measure in order to remove or reduce barriers which it might create to the free movement of goods.

3.5 As a result of the failure to notify the 1984 Act and the 1985 Regulations, the technical regulations contained within the 1984 Act were unenforceable against

individuals in UK courts. This meant that the offences set out in the 1984 Act could not be prosecuted against individuals until the position was remedied.

3.6 In order to secure the enforceability of the video classification regime and associated criminal offences and also to comply with the Directive, the department notified the content of the 1984 Act and the 1985 Regulations as draft measures to the European Commission in September 2009. The 3 month standstill expired on 11 December 2009 and the department received no comments from the Commission or Member States on the content of the provisions.

3.7 On 21 January 2010 the Video Recordings Act 2010 received Royal Assent and came into force. Having complied with the notification procedure under the Directive, the Video Recordings Act 2010 repealed and then immediately brought back into force (revived) the notified provisions of the 1984 Act, with the effect of making the provisions of the 1984 Act enforceable against individuals in UK courts. Given the urgent need to restore the public protection of the video classification regime, the Video Recordings Act 2010 proceeded through Parliament as fast-track legislation.

3.8 Similarly, it is necessary to make, lay and bring back into force the notified labelling regulations so that compliance with their requirements may be enforced through the criminal courts if offences under section 13 the 1984 Act are committed.

3.9 These Regulations (The Video Recordings (Labelling) Regulations 2010) consolidate the amendments to the 1985 Regulations[i] and, apart from one minor clarifying amendment, contain the same provisions as the 1985 Regulations. The minor amendment makes clear that, in relation to a classification certificate containing a statement of the kind mentioned in items 1 or 2 of the Table in regulation 2(2)(a), "the appropriate symbol" means the letters "Uc".

3.10 These Regulations were made the day after the Video Recordings Act 2010 came into force. The department has laid the Regulations as soon as possible after they were made, and the Regulations will come into force the day after they are laid.

3.11 In summary, the 21-day rule has not been observed in this case because of the pressing need to close a loophole in the enforceability of a criminal offence under the 1984 Act. This loophole, which is a matter of public record and widely known, was caused by a failure, made 25 years ago, to comply with the procedural requirements of the Directive. The result was that certain provisions of the 1984 Act were unenforceable against individuals. It has been necessary to remedy this exceptional situation with the utmost expedition in order to restore public confidence and to provide prosecutors with the powers required to enforce the video classification regime. This has been addressed by fast-track legislation.

3.12 Section 13 of the 1984 Act concerns offences of supplying a video recording in breach of requirements as to labels, etc. Thus it is necessary to bring these Regulations in force as soon as possible so that section 13 of the 1984 Act is fully enforceable, and so that there is as small a delay as possible in the enforceability of that offence. The department has acted to ensure that these Regulations have been

made, laid and will come into force in the shortest practical time after the 1984 Act was repealed and revived.

3.13 The consequence of delaying the coming into force of the Regulations to comply with the 21-day rule is that the criminal offence in section 13 of the 1984 Act will be unenforceable until the Regulations come into force. This would deprive prosecuting authorities of the legislative powers they need in order to secure the enforceability of the video classification regime.

3.14 These Regulations simply consolidate the previous regulations (namely, the Video Recordings (Labelling) Regulations 1985 (S.I. 1985/911), as amended by the Video Recordings (Labelling) (Amendment) Regulations 1995 (S.I. 1995/2550) and the Video Recordings (Labelling) (Amendment) Regulations 1998 (S.I. 1998/852). Therefore the substantive content of these Regulations will already have been scrutinised by the Joint Committee. The department does not consider that it is necessary to expressly revoke the previous regulations in accordance with the general rule that subordinate legislation ceases to be in force on repeal of the enactment under which it is made.

4. Legislative Context

4.1 These Regulations are made under section 8 of the Video Recordings Act 1984, as repealed and revived by the Video Recordings Act 2010. As such, this is the first use of this power, as repealed and revived.

4.2 The reason for making these Regulations is explained above: to make the criminal offence in relation to labelling requirements under the 1984 Act enforceable, following compliance with the notification procedure under the Technical Standards Directive.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 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 a designated authority to determine the suitability of a video work and classify it accordingly. This suitability ranges from those works which are suitable for general viewing to those which may only be sold in a licensed sex shop (ensuring that the recipient of the video work is verifiably over 18).

The labelling regulations are vital to the 1984 Act as the labels displayed on video works are used by consumers to determine the content to assist purchasing decisions and by retailers and enforcers to determine who can legally buy the product and whether or not the product is being sold or supplied in the correct way.

It is important, following compliance with the notification procedure under the Directive, that these Regulations are made and brought into force as quickly as possible to ensure that the important role that the labels play in protecting children from inappropriate content can be enforced.

- ***Consolidation***

7.2 These Regulations consolidate the amendments made to the Video Recordings (Labelling) Regulations 1985 (S.I. 1985/911) by the Video Recordings (Labelling) (Amendment) Regulations 1995 (S.I. 1995/2550) and the Video Recordings (Labelling) (Amendment) Regulations 1998 (S.I. 1998/852).

8. Consultation outcome

8.1 No consultation has been undertaken due to the fact that these Regulations merely consolidate the previous labelling regulations, and due to the pressing need to bring these Regulations into force as quickly as possible.

9. Guidance

9.1 For the reasons given above, no specific new guidance will be prepared to explain the obligations in the Regulations. The department has issued a press release to inform the public generally, and manufacturers and suppliers of DVDs and videos that the labelling regulations have been re-made and that the 1984 Act has been repealed and revived by the 2010 Act.

10. Impact

10.1 The impact on business, charities or voluntary bodies is unchanged from the impact of the previous labelling regulations.

10.2 The impact on the public sector is unchanged from the impact of the previous labelling regulations.

10.3 An Impact Assessment has not been prepared for this instrument because it is not introducing any additional requirements or burdens, it is merely re-making the labelling requirements that have been in place for 25 years.

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11. Regulating small business

11.1 The legislation applies to small business in the same way that it does for all businesses. This has been the case for 25 years and all sizes of business have generally complied with the labelling requirements since 1985.

12. Monitoring & review

12.1 These Regulations will be monitored and reviewed in the light of any relevant changes to the 1984 Act brought about by the Digital Economy Bill.

13. Contact

Wendy Parker at the Department for Culture, Media and Sport (Tel: 020 7211 6428 or email: wendy.parker@culture.gsi.gov.uk) can answer any queries regarding the instrument.

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[i] The 1985 Regulations were amended by the Video Recordings (Labelling) (Amendment) Regulations 1995 (S.I. 1995/2550) and the Video Recordings (Labelling) (Amendment) Regulations 1998 (S.I. 1998/852).