

DIGITAL ECONOMY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Topic 9: Video recordings

Section 40: Classification of video games etc

183. The Act extends the statutory classification requirement to video games that are only suitable for viewing by persons aged 12 years and above (see new subsection (1A) of section 2 of the 1984 Act). This extension of the classification requirement to a wider age bracket for video games implements Professor Tanya Byron's recommendation set out in her independent review entitled *Safer Children in a Digital World*¹ and it follows in the wake of a UK-wide public consultation on the future structure of the video game classification system.
184. [Section 40](#) sets out the conditions that must be satisfied for the game to be an exempted work under the 1984 Act. The existing statutory exemptions for video games will continue to apply. So those games that, taken as a whole, are designed to inform, educate or instruct, and those concerned with sport, religion or music, will not be required to be classified, provided that they do not depict human sexual activity, gross violence or any of the other matters set out in section 2(2) and (3) of the 1984 Act.
185. A video game will also be exempted if it satisfies one or more the conditions set out in new section 2A. The first condition is that the game does not contain anything listed in section 2A(2)(a) to (h). The second condition is that the designated authority (or a person nominated by it) has confirmed in writing that the game is suitable for viewing by persons under the age of 12. The criteria listed in section 2A(2)(a) to (h) are based on the criteria used by the PEGI² system to determine whether a video game is only suitable for those aged 12 years and above. They include depictions of violence against human or animal characters, depictions of activity involving illegal drugs, swearing and offensive language. Depictions of violence against human or animal characters would not meet the criteria if the character was of a rudimentary form, such as a simple stick character.
186. The Secretary of State will have power to amend the criteria set out in section 2A(2)(a) to (h) by regulations, which must be approved by both Houses of Parliament. This will enable the criteria to be updated, if necessary, in the future, subject to Parliamentary scrutiny. The Secretary of State will also have power, by regulations subject to approval by Parliament, to add or remove further criteria for exempted video games.
187. [Section 40](#) confers a new power on the Secretary of State to amend section 2 of the 1984 Act by adding, amending or removing cases in which video works are not exempted works for the purposes of the Act (see new subsection (4) of section 2 of the 1984 Act).

¹ <http://www.dcsf.gov.uk/byronreview>

² PEGI age related logos, content descriptors and the guidelines for completing the ratings questionnaire can be downloaded from the opening page of VSC website <http://www.videostandards.org.uk>.

*These notes refer to the Digital Economy Act 2010
(c.24) which received Royal Assent on 8 April 2010*

The power is exercisable by regulations, which must be approved by both Houses of Parliament.

188. Section 3 of the 1984 Act sets out the circumstances in which a supply of a video recording is an exempted supply, even if the film or game contained in the video recording is not exempted. The Act amends that section to secure that the supply of video games by means of amusement arcade machines is exempted (see new subsections (8A) and (8B)), unless the game includes any of the matters mentioned in section 2(2) and (3) of the 1984 Act. It also confers on the Secretary of State a new power to amend section 3 of the 1984 Act, by regulations subject to parliamentary approval, by adding, varying or removing exempted supplies under the Act.