

EXPLANATORY MEMORANDUM TO
THE DIGITAL ECONOMY ACT 2010 (APPOINTED DAY NO 2) ORDER 2012

2012 No. 1164 (C. 39)

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 1st May 2012 as the day on which the following provisions of the Digital Economy Act 2010 come into force – section 41(1) and paragraphs 2 to 4, 6 to 9 and 10(2) of Schedule 1 (and section 41(2) so far as it relates to those provisions), and the entries in Schedule 2 relating to sections 4 and 22 of the Video Recordings Act 1984 (and section 45 so far as it relates to those entries).

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 1st May 2012 as the day on which the provisions mentioned in paragraphs (a) to (c) of that article come into force. These provisions make amendments to the Video Recordings Act 1984 to enable a new authority to be designated by the Secretary of State under section 4 of the 1984 Act as the authority responsible for making arrangements in respect of video games. A proposed designation for the new “video games authority” will be laid before both Houses of Parliament in accordance with the procedure specified in section 5 of the 1984 Act. It is intended that 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 proposed as the new designated authority for video games.

4. **Legislative Context**

4.1 The Secretary of State for Culture, Olympics, Media and Sport designates any person as the authority to make arrangements for, and carry out, the classification of video works under section 4 of the Video Recordings Act 1984. Under new section 4ZA (which will be inserted into the Video Recordings Act 1984 by section 41(1) of the Digital Economy Act 2010) the power to designate an authority under section 4 includes the power to designate different persons as the authority responsible for making arrangements in respect of video games and as the authority responsible for making arrangements in respect of video works. Under section 5 of the 1984 Act, where the Secretary of State proposes to make a designation under section 4, he must lay particulars of his proposal before both Houses of Parliament. Either House has a period of 40 days to resolve against

the proposed designation. The Secretary of State intends to propose that the present Chair (Baroness Shephard of Northwold) and the two Vice-Chairs (Mr Iain Muspratt and Mr James Lake) of the VSC be designated as the “video games authority”. The President and Vice-Presidents of the British Board of Film Classification (the “BBFC”) will remain designated as the “video works” authority responsible for classifying video works other than video games. The designation of the Chair and Vice-Chairs of the VSC as the video games authority will reform the regime for classifying (age-rating) video games in the UK. The VSC is responsible for administering the Pan-European Games Information (PEGI) system in the UK, and this system will now be used to classify video games supplied in the UK. Sections 40 and 41 of the Digital Economy Act 2010 and Schedule 1 to that Act make amendments to the Video Recordings Act 1984 to extend the statutory classification requirement to video games that are only suitable for viewing by persons aged 12 years and above. Currently most video games are exempted from statutory classification under the 1984 Act unless they contain content such as sexual activity, gross violence or other matters of concern listed in section 2(2) and (3) of the 1984 Act. The designation of the new video games authority will take place on completion of the Parliamentary procedure set down in section 5 of the 1984 Act, and upon commencement of sections 40(2), (3), (5) and (6) of the Digital Economy Act 2010 and upon the coming into force of the new labelling Regulations to be made under section 8 of the 1984 Act:

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

7.1 The Secretary of State for Culture, Media and Sport is able to appoint persons as the designated authority to carry out the classification of video works and video games. The extension of the statutory classification requirement to a wider range of video games implements Professor Tanya Byron’s recommendations set out in her independent review entitled “*Safer Children in a Digital World*” and it follows in the wake of a UK-wide public consultation on the future structure of the video games classification system. Video games which are currently exempted under the 1984 Act are currently age-rated by the VSC using the PEGI system but on a voluntary basis. The changes being made to the Video Recordings Act 1984 by the Digital Economy Act 2010 place the majority of such voluntary arrangements on a statutory footing by extending the statutory classification requirement to all video games suitable for viewing by persons aged 12 years and above. The designation of the Chair and two Vice-Chairs of the VSC is required to provide for these changes to be fully implemented and for the VSC to be responsible for making arrangements for the classification of video games.

- 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.

9. Guidance

9.1 Guidance is not thought to be necessary at this stage.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies by this instrument.

10.2 The impact on the public sector is that the functions of the Video Recordings Act 1984 may be fulfilled if the provisions mentioned in article 2 of the Order come into force and a proposed designation is thereby made by the Secretary of State.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

11.2 The instrument has a potential impact only on the workings of the VSC and the BBFC.

12. Monitoring & review

12.1 Officials will maintain a watching brief to ensure that 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.

13. Contact

Eleanor Hodge at the Department for Culture, Media and Sport Tel: [Telephone number] or email: [email address] can answer any queries regarding the instrument.