

EXPLANATORY MEMORANDUM TO
THE VIDEO RECORDINGS (LABELLING) REGULATIONS 2012

2012 No. 1767

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 requirements for the labelling of video recordings in the U.K. It applies to the supply of films and some video games in the form of physical discs (e.g. DVD's), magnetic tape and other storage devices. These Regulations come into force at the same time as certain provisions of the Digital Economy Act 2010 are commenced (namely, sections 40(2), (3), (5) and (6)). These legislative changes will extend the statutory classification requirement to video games that are only suitable for viewing by persons aged 12 years and over and stipulate new requirements for the labelling of such video games. The labelling requirements for video works other than video games remain unchanged.

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

3.1 There are no matters of special interest here. The Video Recordings (Labelling) Regulations 2012 ("the 2012 Regulations") are made under section 8 and 22A of the Video Recordings Act 1984 (the "1984 Act") and will supersede the current labelling regulations (the Video Recordings (Labelling) Regulations 2010 (S.I. 2010/115)). The 1984 Act regulates the supply of films and certain video games in the form of the physical product (such as discs, magnetic tape and other physical storage devices). The labelling regulations require an indication as to the classification certificate issued by the designated authority to be shown on the video recording and also on the container or outer casing in which the video recording is supplied. Unless exempt, it is an offence under section 13 of the 1984 Act to supply a film or video game in breach of the labelling requirements set down by these Regulations. The requirements for labelling of video games set down in the 2012 Regulations will only apply to those video games for which a classification certificate is issued by the newly designated "video games authority" on or after the 30th July 2012.

3.2 On 10th May 2012, the Secretary of State laid a proposed designation for the "video games authority" before both Houses of Parliament in accordance with the procedure specified in section 5 of the 1984 Act. The Chair (Baroness Shephard of Northwold) and the two Vice-chairs (Mr Iain Muspratt and Mr James Lake) of the Video Standards

Council (the “VSC”) were so proposed for designation as the authority responsible for making arrangements for matters specified in the 1984 Act as regards video games.

4. Legislative Context

4.1 The 2012 Regulations come into force on the same date as sections 40(2), (3), (5) and (6) of the Digital Economy Act 2010 are commenced and the Chair and Vice-Chairs of the Video Standards Council are designated as the new “video games authority” by the Secretary of State. These legislative changes collectively provide for a new statutory classification regime for video games that are only suitable for persons aged 12 years and over (namely “12+ video games”). 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.

4.2 On or after the coming into force date of these Regulations, 12+ video games intended for supply in the UK, will be required to be classified by the VSC (but subject to any allocation of responsibility made under section 4ZB of the 1984 Act). The VSC is responsible for administering the Pan-European Games Information (PEGI) system in the UK which will now be used to classify video games intended for supply in the UK. 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 in the UK.

4.3 These Regulations stipulate certain requirements as to the indications of the contents of any classification certificate (issued on or after the coming into force date), in the form of labels and markings, and the position in which such labels and markings are to be shown on any video recording containing the video work in respect of which the certificate was issued. In addition, these Regulations specify the position in which such labels and markings are to be shown on any spool, case or other thing on or in which the video recording is kept.

4.4 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) on 11th January 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 This instrument is subject to the 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 whether or not video works are suitable for classification certificates to be issued in respect of them. If a video work is considered to be suitable for the issue of a classification certificate limitations may apply to it ranging from works deemed suitable for general viewing and unrestricted supply to those that may only be sold in licensed sex shops. The 2012 Regulations are vital to the classification regime set out within the 1984 Act as the labels displayed on video works are used by consumers to determine the content of what they are proposing to buy, and also by retailers and enforcement agencies to determine any age restrictions that may apply to a product to ascertain whether or not the product is being sold/supplied correctly.

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 the UK’s current system of labelling and control of 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 for 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 and children. Accordingly, following a full UK-wide public consultation on the options for the future classification regime for video games, government decided to implement changes that would see all 12+ games subject to statutory classification requirements using the PEGI age rating system. Games suitable for children below the age of 12 will continue to be age rated voluntarily by industry.

7.3 The Digital Economy Act 2010 provides for these changes to take effect. In order to fully implement the changes new requirements must be set out for the labelling of products – so that the PEGI symbols and pictograms are carried on 12+ video games and their packaging. The 2012 Regulations were drafted in close consultation with the industry, the BBFC, VSC and Trading Standards and allow for video games to be labelled in accordance with the classification certificate issued by the designated “video games authority”. Video works that comprise films are largely unaffected by the classification changes for video games. They will continue to be classified by the British Board of Film classification and thus the 2012 Regulations do not impose any new requirements on such products.

7.4 If a video recording contains video works which attract different age ratings, it is the highest rating which must be shown on the box. This approach reflects the existing labelling requirements and is believed to offer the most simple and unambiguous advice to consumers whose primary need is to understand the upper age restriction applying to that product, as supplied. The labelling requirements set down by the 2012 Regulations will ensure that key information is provided to consumers, retailers and trading standards officers when video games are supplied in the UK.

- Consolidation

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

8. Consultation outcome

8.1 A formal consultation on this instrument has not been undertaken. However, options for labelling requirements were discussed over a lengthy period with the industry themselves (the UK Interactive Entertainment Association, Entertainment Retail Association, British Video Association, the BBFC, the VSC and representatives from Trading Standards). Where a VSC classification certificate is issued for a 12+ video game on or after the 30th July then the product is required to carry the PEGI age rating and pictogram. With respect to mixed content products it was decided that only the highest age rating need appear on the product and its packaging. This offers clarity and simplicity for consumers and this approach was strongly favoured by industry. Where the classifications awarded are equal publishers can decide whether to put on the BBFC symbol or the PEGI symbol. Should video games publishers wish to include additional information on product packaging to indicate that two bodies have been involved in reviewing the content, they can do so on a voluntary basis.

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 There is an impact on business by this instrument.

10.2 The impact on the public sector is that the functions of the Video Recordings Act 1984 and the Digital Economy Act 2010 will be fulfilled if the 2012 labelling regulations and the other parallel legislative changes come into force.

10.3 An Impact Assessment for this instrument has been prepared and cleared by the Regulatory Policy Committee (see link - http://www.culture.gov.uk/what_we_do/creative_industries/3274.aspx). The Impact Assessment shows that the changes to the labelling of video games that are introduced via the 2012 Regulations will offer an estimated £2m per annum cost benefit to business (specifically for video games publishers). This is because under the new PEGI-based age rating and labelling system they will largely avoid any need to produce separate packaging for the UK market, given that PEGI symbols are used across most of Europe. The impact assessment examined the comparative costs of the two options considered specifically for any products which have mixed content. The option government chose delivers the most advantageous cost savings to business.

11. Regulating small business

11.1 These Regulations have a direct impact on the workings of the VSC, the BBFC and the video games industry with limited anticipated impact on small business given that most video games publishers are large business concerns. The legislation applies to all activities distributing physical copies of video games in the UK and the labelling requirements are designed to provide protection for consumers. Exempting any businesses from the labelling requirements would undermine this protection. There is scope for the labelling changes to affect some small and micro-businesses however an overall net benefit is envisaged for businesses from these measures. A waiver from the micro-businesses regulation moratorium for has been agreed with the Economic Affairs Committee, the Home Affairs Committee and Reducing Regulation Policy Committee. It was also agreed that the 2012 Regulations could be brought into force outside the common commencement dates.

12. Monitoring & review

12.1 Officials will maintain a watching brief on the effective operation of the new video games labelling requirements. Also, in terms of the classification regime for video works, officials will monitor the system to ensure that the VSC and the BBFC fulfil their statutory obligations as the designated “video games authority” and “video works authority” under the 1984 Act. A formal review of this policy is expected to be carried out in 2015.

13. Contact

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