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British Board of Film Classification (Accountability to Parliament and Appeals) Bill

Bill 16 of 2007-08

The present Bill aims to reform the British Board of Film Classification by making its senior appointments and classification guidelines subject to scrutiny by a select committee. It also provides for decisions of the BBFC to be subject to appeal or review in cases where an early day motion garners the support of fifty or more Members of Parliament.

While the Bill would only cover video works (including some computer games) this paper provides an overview of the classification of cinema films and the regulation of media content in general – with particular regard to sex and violence.

The Bill is due to have a second reading on 29 February. It is of UK extent.

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Summary of main points

Attempts to regulate media content, whether written, spoken or visual, have met with mixed outcomes. A primary aim is to protect individuals, particularly children, from exposure to harmful and offensive material. It has sometimes proved difficult to achieve a widely acceptable balance between the rights of adults to choose their own entertainment and the protection of the morals of wider society.

Established by the film industry in 1912 as the British Board of Film Censors to guide local authorities in the exercise of their cinema licensing role, the BBFC now has statutory duties by dint of the *Video Recordings Act 1984*. It is now the British Board of Film Classification, a name change that reflects the greater part of the organisation's activity.

Video recordings – cassettes, DVDs and some particularly graphic computer games – are subject to classification under the 1984 Act. The BBFC is designated under the Act as the authority responsible for determining the suitability of such works for classification. The Act provides for a variety of offences, including supplying a video recording of an unclassified work and supplying a work in breach of its classification. One example of the latter would be supplying a certificate-18 work to a minor.

The *British Board of Film Classification (Accountability to Parliament and Appeals) Bill 2007-08* would amend the *Video Recordings Act 1984*. As such, it is a UK-wide measure which applies to films on video cassettes and DVDs and to some computer games.

The Bill provides for the scrutiny by a House of Commons select committee of senior individual appointments to the BBFC. In particular, when a vacancy exists in any of the BBFC's "principal offices" a shortlist of at least three candidates would have to be submitted. The Secretary of State could not confirm the appointment of a candidate rejected by the select committee.

The Bill also provides for the establishment of a new body to consider appeals against the classifications awarded individual video works. Such appeals can already be made by the submitters of such works, but the Bill would allow Parliament a role: early day motions attracting the support of at least fifty Members of Parliament would trigger reviews of works undergoing classification by the BBFC. They would also allow the Secretary of State to require the review of a work already classified.

CONTENTS

I	Media and harm	7
II	Societal attitudes	8
III	Extreme pornography	11
IV	Obscene publications	11
	1. The written word	12
	2. Music	13
	3. Television	14
V	Content classification	15
	A. Films	17
	B. Videos and DVDs	17
	C. Computer games	18
VI	Statistics on prosecutions	19
VII	British Board of Film Classification	20
	A. Appointments and accountability	21
	B. Classification process	22
	1. Submission of works	22
	2. Appeals	24
	3. Statistics on BBFC decisions	25
VIII	The Bill	26

I Media and harm

The regulation of media content relies on a mix of statutory controls, voluntary codes of practice and self-restraint. Some content, most particularly child pornography, is considered so harmful that both its possession and publication are illegal. This is one form of censorship that commands near universal support. Further controls exist to prevent children from being exposed to harmful content such as graphic depictions of violence or sexual activity. Less consensus exists in relation to what adults might properly access, where tensions can arise between the proscription of obscene material and freedom of expression. As two media law QCs, Robertson and Nicol, put it:

The deep division in society over the proper limits of sexual permissiveness is mirrored by an inconsistent and ineffective censorship of publications that may offend or entertain, corrupt or enlighten, according to the taste and character of individual readers. The problem of drawing a legal line between moral outrage and personal freedom has become intractable at a time when one person's obscenity is another person's bedtime reading.¹

Legal guidance is embodied in the provisions of Article 10 of the *European Convention on Human Rights*:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 10 does not provide an absolute right to freedom of expression: it is qualified at Article 10(2). Under the *Human Rights Act 1998*, the European Convention is now part of the legislative framework.

Concerns over the nature of some of the material in the public domain have been articulated by, among others, the author of the *British Board of Film Classification (Accountability to Parliament and Appeals) Bill 2007-08*:

Mr. Julian Brazier (Canterbury) (Con): Following the Prime Minister's reply to the right hon. Member for Leicester, East (Keith Vaz) a few weeks ago, does he now accept that there is an urgent need for reform of the British Board of Film Classification? What possible justification can there be for the board's decision to

¹ Geoffrey Robertson QC and Andrew Nicol QC, *Media Law*, 5th edition, 2007, p191

release into British high street outlets videos and DVDs such as “SS Experiment Camp”, which shows in voyeuristic detail women being tortured to death by SS camp guards?

The Prime Minister: I share the hon. Gentleman’s concerns. I think it is true to say, as I have looked at it, that the British Board of Film Classification has put a higher category on many films in a different way from that recommended by the distributor, but it is also true to say that he expresses the concerns of many people among the general public. That is why I have agreed to meet him and my right hon. Friend the Member for Leicester, East (Keith Vaz) to talk about the issues, and why we set up the review headed by Dr. Tanya Byron. It will report very soon, and on the basis of that we can make recommendations for the future. As for the Conservatives who say it is wrong to review the issues, I say that the right thing to do is to review them and then make a decision.²

The objectives of the Byron review to which the Prime Minister referred are:

To undertake a review of the evidence on risks to children’s safety and wellbeing of exposure to harmful or inappropriate material on the internet and in video games

To assess the effectiveness and adequacy of existing measures to help prevent children from being exposed to such material and help parents understand and manage the risks of access to inappropriate content, and to make recommendations for improvements or additional action.³

Some video games – usually those containing violence against realistic human figures – need to be submitted to the British Board of Film Classification along with video works in general. And it is not just the welfare of children the Board has in mind. As it acknowledges: “research suggests that a minority of men can be influenced by violence, particularly sexual, towards women, and for this reason the Board ensures that such images are not permitted for purposes of ‘entertainment’.”⁴

II Societal attitudes

In line with certain UK legislation and the requirements of the *Human Rights Act 1998*, there is a need to make the process of classification, and the criteria used for it, clear. This is fulfilled by the publication of the BBFC Guidelines, the latest set of which was published in February 2005.⁵

As with the previous set of published guidelines, (September 2000), the BBFC carried out an extended period of intensive public consultation and research prior to producing the finished document.

² HC Deb 20 February 2008 c346

³ Department for Children, Schools and Families Press Notice 2007/0158, *New review helps children and parents get the best from new technologies, while protecting them from harmful images*, 6 September 2007

⁴ <http://www.bbfcc.co.uk/faq/index.php> (FAQ: *Why does the BBFC cut certain things from videos?*)

⁵ <http://www.sbbfc.co.uk/documents/BBFCGuidelines2005.pdf>

When the BBFC published Guidelines in September 2000 the research underpinning them was one of the most extensive research exercises into public attitudes carried out by any media regulator. To ensure that we stay in line with public opinion the Board carried out an even more extensive consultation exercise in 2004 resulting in a new set of Guidelines, published in February 2005. Over 11,000 people (7,000 more than in 1999/2000) across the UK gave their views on whether the Guidelines still accurately reflected what they expect from content at the different category ratings. Demographically and geographically balanced qualitative and quantitative opinion polling has resulted in Guidelines which have been fine-tuned but not radically amended. They continue to pay particular attention to the protection of children and other vulnerable groups.⁶

The following table shows how respondents answered questions on a variety of issues relating to the need for the BBFC to protect young people, the effects of watching films, what people should be able to watch and the BBFC guidelines in general.

⁶ p1, *Public opinion and the BBFC guidelines 2005*, BBFC

Percentage respondents to the following statements:

	Agree	Neutral	Disagree
<i>Role of the BBFC</i>			
“The BBFC should protect young people under 18 from material which has the potential to cause them harm”	94	4	2
“The BBFC should protect young people under 18 from material that is unsuitable”	90	7	3
<i>Effects of watching films</i>			
“Watching criminal or dangerous activity in films can sometimes lead to copycat behaviour in real life”	69	19	13
“Watching violence in films generally makes people more likely to be violent in real life”	45	27	28
“As people move from childhood to adulthood, they are better able to cope with disturbing imagery in films”	60	21	18
<i>What should be seen in film, and by whom</i>			
“Adults (over 18) should be able to watch whatever they want on film and video/DVD”	66	14	19
“Young people (under 18) should be able to watch whatever they want on film and video/DVD”	9	9	83
“Parents should have the final say on what their children watch on film and video/DVD”	81	9	10
“There should be no limits on what can be shown in ‘R18’ videos/DVDs, providing they do not contain sexual violence, or break the law”	52	17	31
“There should be no limits on what can be shown in ‘R18’ videos/DVDs”	23	17	60
<i>The BBFC Guidelines</i>			
“The Guidelines offer clear insight into the way films and videos/DVDs are classified”	63	24	11
“The Guidelines should contain more specific detail”	58	30	11

Source: *Public opinion and the BBFC guidelines 2005*, BBFC

Respondents were also asked to attach degrees of importance to nine issues in rating films. When ranked according to the percentages saying each was ‘very important’, drugs and drug taking headed the list (75%), followed by violence (65%), sexual activity (56%) and swearing and strong language (49%), then by racial offence (46%) and religious offence (34%), with nudity (29%), cigarette smoking (25%) and drinking alcohol (22%) at the bottom of the ranking.

The next table shows the percentage of respondents believing the BBFC guidelines relating to sex, violence, language and drugs were too strict, about right or not strict enough. For each of the four standards a majority of respondents thought that the Guidelines were about right, a marginally larger percentage than said the same thing in 2000.

Percentages believing that the standards outlined in the Guidelines are.....

	Too strict	About right	Not strict enough
Sex			
2000	12	54	32
2004	10	58	30
Violence			
2000	5	51	42
2004	4	53	41
Language			
2000	5	48	43
2004	5	51	43
Drugs			
2000	4	45	47
2004	4	52	43

Source: *Public opinion and the BBFC guidelines 2005*, BBFC

III Extreme pornography

Section 1 of the *Protection of Children Act 1978* (as amended by the *Sexual Offences Act 2003*) makes it a criminal offence to take, permit to be taken or to make, distribute, show, advertise or possess any indecent photograph or pseudo-photograph of a child under the age of 18. Exceptions to the possession offence cover such instances as married couples and the investigation of crime. The 1978 Act defines a pseudo-photograph as “an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph.” The *Criminal Justice and Immigration Bill*, currently in the House of Lords, would extend the definition of an indecent photograph to include a tracing or other image derived from it. That Bill would also introduce a ban on the possession of extreme pornographic material. Extreme images are defined as those depicting life-threatening acts, acts which cause or could cause serious injury to a person’s anus, breasts or genitals, and acts of necrophilia or bestiality. A pornographic image is one that appears to have been produced solely or principally for the purpose of sexual arousal. Under the *Obscene Publications Act 1959* it is already illegal to publish material meeting the above definitions. The rationale for introducing an offence of possession is, at least in part, a response to the challenge posed by the Internet, the international nature of which can impede enforcement action against publishers.

IV Obscene publications

Publication of obscene material, including child pornography and extreme adult pornography, is illegal under the *Obscene Publications Act 1959* (which extends to England and Wales). Section 2 (as amended by the *Obscene Publications Act 1964*) prohibits the “publication” of obscene material. Subsection 1 reads:

- (1) Subject as hereinafter provided, any person who, whether for gain or not publishes an obscene article or who has an obscene article for publication for gain (whether gain to himself or gain to another) shall be liable—

- (a) on summary conviction to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding six months;
- (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding three years or both.

For the purposes of the Act publication includes the distribution, circulation, sale, giving or loan of the obscene article.⁷ An important point is that the definition of obscene depends partly on the person who sees the material. Thus, section 1 of the Act begins:

- (1) For the purposes of this Act an article shall be deemed to be obscene if its effect or (where the article comprises two or more distinct items) the effect of any one of its items is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.
- (2) In this Act “article” means any description of article containing or embodying matter to be read or looked at or both, any sound record, and any film or other record of a picture or pictures.

The following passage in Tom Crone’s book, *Law and the Media*, provides an illustration:

The 1959 Act modifies the common law test [of obscenity] set out in *R v Hicklin*. It changes the type of person likely to be depraved from those into whose hands it ‘may fall’ to those to whom the material is likely to be given or sold. For example, ‘adult’ material sold in a sex shop will not be obscene under the 1959 Act just because its effect would be to ‘tend to deprave’ a child, because in normal circumstances this sort of adult material will not be sold to children. On the other hand, adult material published in a national newspaper that is available and likely to be read by almost every section of the community, including children, is likely to be obscene.⁸

Sex shops can sell “stronger” material because of an exception, under the *Indecent Displays (Controls) Act 1981*, for establishments that do not admit persons under 18.

1. The written word

A brief consideration of the written word is instructive: it illustrates how the application of the 1959 Act can be both problematical and lead to unintended consequences. In their book on *Media Law*, Geoffrey Robertson and Andrew Nicol comment:

The central irony of the courtroom crusade – what might be termed ‘the *Spycatcher* effect’ – is always present: seek to suppress a book by legal action [in *Spycatcher*, the Government actually sued for breach of confidence] because it tends to corrupt, and the publicity attendant upon its trial will spread that assumed corruption far more effectively than its quiet distribution. *Lady Chatterley’s Lover* sold three million copies in the three months following its prosecution in 1961. The last work of literature to be prosecuted for obscenity in a full-blooded Old Bailey trial was an undistinguished paperback entitled *Inside Linda Lovelace*. It

⁷ *Obscene Publications Act 1959*, section 1(3)

⁸ Tom Crone, *Law and the Media*, fourth edition, p206

had sold a few thousand copies in the years before the 1976 court case: within three weeks of its acquittal 600,000 copies were purchased by an avid public. That trial seems finally to have convinced the Director of Public Prosecutions (DPP) of the unwisdom of using obscenity laws against books with any claim to literary or sociological merit.⁹

The long title of the *Obscene Publications Act* reads: “An Act to amend the law relating to the publication of obscene matter; to provide for the protection of literature; and to strengthen the law concerning pornography”. On the protection of literature aspect, Robertson and Nicol comment:

...the 1959 Act has worked to secure a very large measure of freedom in Britain for the written word. It took two decades and a number of celebrated trials for the revolutionary implications of the legislation to be fully realised and applied. The credit for securing this freedom belongs not so much to the legislators (many of whom later professed themselves appalled at developments) but to a few courageous publishers who risked jail by inviting juries to take a stand against censorship, and to the ineptitude and corruption of police enforcement.¹⁰

In 1979 the Williams Committee reported on the obscenity laws and recommended, among other things, that all restraints on the written word should be lifted. This was to some extent an acknowledgment of what the Committee judged to be the *de facto* situation.¹¹

2. Music

Whether material on a music CD is obscene in the statutory sense of the word is a matter for the courts to determine within the terms of the *Obscene Publications Acts 1959 and 1964*, which impose the test of having a tendency to deprave and corrupt. However, prosecutions are likely to be inhibited by much the same factors that apply to the written word. There are no controls on music recordings analogous to those that exist for videos;¹² control of the availability of videos was seen to be necessary because visual material on a screen is perceived to have a much more immediate effect than words, written, spoken or sung, not accompanied by pictures, moving or otherwise.

The recording industry has adopted a voluntary system of coding for CDs, largely as guidance for parents and others. One of the objects of any form of censorship is protective: to prevent material which in itself is not unlawful from falling into the hands of people who are likely to be offended by it. In this context, it is significant that the BBC, for example, has played “radio edits” of recordings by the rap artist Eminem supplied by the manufacturer, so that people who just happen to tune in to that service will not hear material which they would not normally choose to listen to. Broadcasters (including the BBC) are subject to the Ofcom Broadcasting Code provided for by section 319 of the *Communications Act 2003*.¹³

⁹ Geoffrey Robertson & Andrew Nicol, *Robertson & Nicol on Media Law*, fourth edition 2002 p 155

¹⁰ Geoffrey Robertson & Andrew Nicol, *Robertson & Nicol on Media Law*, fourth edition 2002 p 157

¹¹ *Committee on Obscenity and Film Censorship* (The Williams Committee), Cmnd 7772, 1979

¹² *Video Recordings Act 1984*

¹³ <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>

Robertson & Nicol on Media Law includes the following passage that ends by referring to the first CD involved in an obscenity case:

There are still occasional threats against meritorious art or literature. In 1998, provincial policemen threatened Random House for publishing a lavish book of Robert Mapplethorpe photographs (priced at £75), a copy of which they had discovered in a university library. In 2002, a posse of policemen descended on the Saatchi gallery, stoked up by tabloid claims that a picture of naked children on a beach amounted to child pornography. In both cases a Q.C.'s opinion was necessary to persuade the DPP to drop the proceedings. The latitude he allowed to respectable white publishers did not extend to black "rap" artists from the American urban ghetto, and the Island Records group *Niggaz With Attitude* suffered the first obscenity case brought in relation to a compact disc. It was solemnly played to elderly lay justices at Redbridge Magistrate's Court, who found it impossible to conclude that whatever it was that they were hearing could excite sexually.¹⁴

The court reached its judgment – that the album was not obscene – in November 1991. The *Guardian* reported:

The Los Angeles rap band Niggaz with Attitude - NWA for short - are shocking and disturbing. But their second album is not obscene, a court decided yesterday.

The thin dividing line between the offensive and the illegal was considered at Redbridge magistrates' court, Essex.

Nearly 25,000 copies of the album, *Efil4zaggin* (Niggaz 4 Life backwards) were seized by police on the day of its British release in June under Section 3 of the Obscene Publications Act, 1959, the first intervention against music.

Last night the album was officially allowed back in the shops after the magistrates decided the stock should not be destroyed.

The album, replete with vigorous swearing and allusions to drugs, oral sex and violence, had been played to the court during a four-hour hearing...¹⁵

3. Television

The *Obscene Publications Act* also applies to television and radio. Of more practical relevance is the fact that television is covered by the Ofcom Broadcasting Code; a significant part of this is designed to secure that young people (under 18) in particular are not exposed to harmful and offensive material.

The Ofcom code came about after a period of public consultation, one headline change in comparison with the ITC¹⁶ Code that preceded it being the replacement of the term

¹⁴ Geoffrey Robertson & Andrew Nicol, *Robertson & Nicol on Media Law*, fifth edition, 2007, p197

¹⁵ "Court win for US rap band marks changing attitude", *Guardian*, 8 November 1991

¹⁶ Independent Television Commission

“taste and decency” with “harm and offence”. Under the latter heading the Ofcom Broadcasting Code includes the following:

2.3 In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context (see meaning of “context” below). Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example, on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence.¹⁷

The code also contains further rules in relation to programming before the 9pm watershed with the intention of protecting the under-eighteens. Ofcom can, and does,¹⁸ fine broadcasters who are found in breach of the Code and, in extreme cases, can revoke a licence (though the latter course of action will be unavailable in relation to the BBC which operates under Royal Charter).

V Content classification

With films, videos and computer games, the British Board of Film Classification acts as a filter effectively banning (at least some) obscene material. This is not to say that underground copies might not circulate, risking potential prosecutions under the 1959 Act.

In relation to classified works, Robertson and Nicol comment that a BBFC certificate, “while not a guarantee of immunity from prosecution under the Obscene Publications Act, has become just that, and the prospect of proceedings against those who purvey films and cassettes protected by its classification must be regarded as remote.”¹⁹

The detailed criteria that guide classification by the BBFC are available online.²⁰ In general terms, the following factors are taken into account: theme, language, nudity, sex, violence, imitable techniques, horror and drugs. In summary, the classification system is as follows:

- Uc, U: Universal - Suitable for all. Videos classified 'Uc' are particularly suitable for pre-school children
- PG: Parental Guidance - General viewing, but some scenes may be unsuitable for young children. Unaccompanied children of any age may watch. A 'PG' film should not disturb a child aged around eight or older. However, parents are advised to consider whether the content may upset younger or more sensitive children.

¹⁷ <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>

¹⁸ <http://news.bbc.co.uk/1/hi/entertainment/5098936.stm>

¹⁹ Geoffrey Robertson & Andrew Nicol, *Robertson & Nicol on Media Law*, fifth edition, 2007, p819

²⁰ <http://www.bbfc.co.uk/policy/policy-class-u.php>

- 12A, 12: Suitable for 12 years and over. No-one younger than 12 may see a '12A' film in a cinema unless accompanied by an adult. No-one younger than 12 may rent or buy a '12' rated video or DVD. Responsibility for allowing under-12s to view lies with the accompanying or supervising adult.
- 15: Suitable only for 15 years and over. No-one younger than 15 may see a '15' film in a cinema. No-one younger than 15 may rent or buy a '15' rated video or DVD.
- 18: Suitable only for adults. No-one younger than 18 may see an '18' film in a cinema. No-one younger than 18 may rent or buy an '18' rated video.
- R18 (restricted): To be shown only in specially licensed cinemas, or supplied only in licensed sex shops, and to adults of not less than 18 years. 'R18' videos may not be supplied by mail order. The 'R18' category is a special and legally restricted classification primarily for explicit works of consenting sex between adults.

The BBFC goes on to indicate the kind of material that would not receive a classification:

The following content is not acceptable:

- any material which is in breach of the criminal law, including material judged to be obscene under the current interpretation of the Obscene Publications Act 1959.
- material (including dialogue) likely to encourage an interest in sexually abusive activity (eg paedophilia, incest, rape) which may include adults role-playing as non-adults.
- the portrayal of any sexual activity which involves lack of consent (whether real or simulated). Any form of physical restraint which prevents participants from indicating a withdrawal of consent.
- the infliction of pain or physical harm, real or (in a sexual context) simulated. Some allowance may be made for mild consensual activity. Penetration by any object likely to cause actual harm or associated with violence.
- any sexual threats, humiliation or abuse which does not form part of a clearly consenting role-playing game. Strong abuse, even if consensual, is unlikely to be acceptable.

These guidelines will be applied to the same standard whether the activity is heterosexual or homosexual.²¹

²¹ <http://www.bbfc.co.uk/policy/policy-class-r18.php>

A. Films

Under the *Licensing Act 2003*, cinemas require a licence from the local authority in whose area they operate.²² The licence must include a condition requiring the admission of children (under 18) to any film to be restricted having regard to the recommendations of the BBFC. The licensing objectives are:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm

There is some scope for a local authority to override a BBFC classification. However, since this must be done on the basis of one or more of the four "licensing objectives", the likeliest circumstance is the raising of the age category, in order to protect children from harm.

In addition to their cinema licensing role, local authorities license sex shops. They therefore influence the availability of R18 videos which can only be sold via such outlets. A police constable and/or an authorised officer of the local authority have enforcement powers in relation to sex shops.

B. Videos and DVDs

Section 11 of the *Video Recordings Act 1984* deals with the supply of a video of a classified work in breach of classification:

11 Supplying video recording of classified work in breach of classification

(1) Where a classification certificate issued in respect of a video work states that no video recording containing that work is to be supplied to any person who has not attained the age specified in the certificate, a person who supplies or offers to supply a video recording containing that work to a person who has not attained the age so specified is guilty of an offence unless the supply is, or would if it took place be, an exempted supply.²³

The 1984 Act requires the BBFC to have special regard (among the other relevant factors) to the likelihood of works being viewed in the home, and to:

- any harm to those likely to view a video
- any harm to society through the behaviour of those viewers afterwards
- In considering these issues the Board has in mind the possible effect not only on children but also on other vulnerable people²⁴

²² <http://www.bbfcc.co.uk/policy/policy-legal.php> (the 2003 Act applies to England and Wales; in Scotland the *Cinemas Act 1985* applies)

²³ The 1984 Act defines an exempted supply as one which is neither 'a supply for reward' nor 'in the course or furtherance of a business'.

²⁴ <http://www.bbfcc.co.uk/policy/policy-legal.php>

The Act further requires that special regard is paid to the manner in which the work deals with:

- criminal behaviour
- use of illegal drugs
- violent behaviour or incidents
- horrific behaviour or incidents
- human sexual activity

When a feature film is issued on DVD, it must be resubmitted to the Board. Before approving it for DVD release, they may require cuts to be made. Thus the DVD version is not necessarily identical to that shown in cinemas.

In so far as the actual labelling of classified works is concerned, the relevant legislation, made under the 1984 Act, is the *Video Recordings (Labelling) Regulations SI 1985/911*.²⁵ The regulations detail the design of the labelling and stipulate that this should be clearly legible.

C. Computer games

In October 2004, a written answer by a then Minister at the Department for Culture, Media and Sport provided information on the regulatory regime governing computer games:

Keith Vaz: To ask the Secretary of State for Culture, Media and Sport what support the Government has given to the establishment of a classification system for video and computer games.

Estelle Morris: The Video Recordings Act 1984 requires video games to be classified if, to any significant extent, they depict: human sexual activity; gross violence towards humans or animals; human genital organs, urinary or excretory functions; or techniques likely to be useful in the commission of offences. The very small number of video games that fall into this category (32 of the 1,484 published in the UK in 2003), are submitted to the British Board of Film Classification. The BBFC carefully assesses all such games against published guidelines. Under the 1984 Act, it is a criminal offence to supply or offer to supply a legally classified game to a person below the specified age; the penalty is a fine of up to £5,000 or imprisonment of up to six months, or both. It is also an offence to supply or offer to supply an uncertificated video game that should have been legally classified by the BBFC; the maximum penalty is an unlimited fine or imprisonment of up to two years, or both. Trading Standards Officers are the enforcement authorities for the 1984 Act.

All other video games offered for sale or rental in the UK are subject to a voluntary classification system introduced by the industry itself. This is the Pan-European Game Information (PEGI) system, which now applies across 16 European countries, and is administered in the UK by the Video Standards

²⁵ as amended by SI 1995/2550 and SI 1998/852

Council. Between 1994 and the Spring of 2003, nearly 70 per cent. of published video games were rated as suitable for playing by people of all ages.²⁶

Complementary information is also provided on the website of the BBFC:

Under the Video Recordings Act, most video games are exempt from BBFC classification. However, they may lose this exemption - and therefore require a formal BBFC classification - if they depict, to any significant extent, gross violence against humans or animals, human sexual activity, human urinary or excretory functions or genital organs, or techniques likely to be useful in the commission of offences. In the early days of video games, the quality of graphics was so low that, even when 'human' or 'animal' characters were depicted, they were unlikely to be realistic enough to be covered by the Act. However, the increasing sophistication of computer graphics means that nowadays a number of games require classification, usually because they contain violence against realistic human figures. In some cases, games may also need to be submitted to the BBFC because they contain non-interactive video elements (eg trailers or film clips) that do not enjoy the same exemption as interactive games.

Games that retain their exemption - for example because they do not feature violence or sex involving realistic human figures - are classified under the PEGI system, a voluntary pan-European rating system. In the UK, the system is administered by the Video Standards Council, who also advise publishers on whether or not their game requires a formal BBFC classification. For more information on the Video Standards Council, please visit their website <http://www.videostandards.org.uk/>²⁷

VI Statistics on prosecutions

The table below shows the number of defendants prosecuted and offenders convicted for or selected offences related to pornography and video recordings. The most relevant offences in the context of the present Bill are those under the Video Recording Act 1984.

²⁶ HC Deb 25 October 2004 c 992W

²⁷ <http://www.bbfc.org.uk/faq/>

RESEARCH PAPER 08/21

Number of defendants proceeded against at magistrates courts and found guilty at all courts for selected offences related to pornography and video recordings, England and Wales, 2002–06(1)(2)

Offence description	Principal statute	Proceeded against					Found guilty				
		2002	2003	2004	2005	2006	2002	2003	2004	2005	2006
Supplying video recording of unclassified work	Video Recording Act 1984 S.9 as amended by Criminal Justice and Public Order Act 1994 S.88	62	44	42	28	15	59	44	31	28	12
Possessing video recording of unclassified work for the purpose of supply	Video Recording Act 1984 S.10 as amended by Criminal Justice and Public Order Act 1994 S.88	64	40	49	43	63	62	31	43	37	53
Supplying video recording of classified work in breach of classification	Video Recording Act 1984 S.11 as amended by Criminal Justice and Public Order Act 1994 S.88	22	25	11	13	16	14	17	8	9	8
Supplying certain video recordings in any place other than a licensed sex shop	Video Recording Act 1984 S.12 as amended by Criminal Justice and Public Order Act 1994 S.88	9	13	64	12	9	4	10	48	12	8
Supply of video recording not complying with requirements as to labels etc	Video Recording Act 1984 S.13	-	-	1	2	1	-	-	-	1	-
Supply of video recordings containing false indication as to classification	Video Recording Act 1984 S.14 as amended by Criminal Justice and Public Order Act 1994 S.88	-	2	2	3	-	-	-	2	2	-
Improper use of public electronic communications network	Communications Act 2003 S.127	*	*	214	355	550	*	*	143	260	377
Possessing obscene material for publication for gain	Obscene Publications Act 1959 S.2(1) as amended by Obscene Publications Act 1964 8.1(1)	52	39	30	35	29	42	31	25	35	18
Take, permit to be taken or to make distribute or publish indecent photographs or pseudo-photographs of children	Protection of Children Act 1978 S.1 as amended by Criminal Justice and Public Order Act 1994 S.84	582	1,464	1,097	1,101	937	434	1,048	978	958	768
Indecent matter publicly displayed	Indecent Displays (Control) Act 1981 SS.1 and 4	3	6	2	6	1	-	3	-	3	-
Total		794	1,633	1,512	1,598	1,621	615	1,184	1,278	1,345	1,244

(1) These data are on the principal offence basis.

(2) Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

* = not applicable

Source: RDS - Office for Criminal Justice Reform, Ministry of Justice

VII British Board of Film Classification

The BBFC's website²⁸ gives the following introductory information:

The British Board of Film Classification is an independent, non-governmental body, which has classified cinema films since it was set up in 1912, and videos since the passing of the Video Recordings Act in 1984.

Cinema

The British Board of Film Censors was set up in 1912 by the film industry as an independent body to bring a degree of uniformity to the classification of film nationally.

Statutory powers on film remain with the local councils, which may overrule any of the Board's decisions, passing films we reject, banning films we have passed,

²⁸ <http://www.bbfc.co.uk>

and even waiving cuts, instituting new ones, or altering categories for films exhibited under their own licensing jurisdiction.

Video

In 1984 Parliament passed the Video Recordings Act. This act stated that, subject to certain exemptions, video recordings offered for sale or hire commercially in the UK must be classified by an authority designated by the Secretary of State. The President and Vice Presidents of the BBFC were so designated, and charged with applying the new test of 'suitability for viewing in the home'. At this point the Board's title was changed to British Board of Film Classification to reflect the fact that classification plays a far larger part in the Board's work than censorship.

A. Appointments and accountability

The BBFC is an industry body, charged with ensuring fair and effective regulation of that industry. It is a private company, limited by guarantee. The Directors of the company are the Members of the Council of Management together with the President. According to the most recent annual report, the principal officers of the BBFC in 2006 were as follows:

President: Sir Quentin Thomas, CB
Vice Presidents: Janet Lewis-Jones and Lord Taylor of Warwick

Director: David Cooke
Deputy Director: Penny Averill
Head of Communications: Sue Clark
Head of Technology: David Harding
Head of Personnel: Clive Hooper
Financial Controller: Imtiaz Osman
Head of Process: Dave Barrett
Head of Policy: Peter Johnson

Council of Management

Chairman: Graham Lee
Vice Chairman: Steve Jaggs
Treasurer: John Millard
Members: Michael Cox, John Holton, William McMahon MBE, Ewart Needham, Sylvia Sheridan OBE, Patrick Swaffer, John Wilson OBE

An explanation of this structure appears in evidence the BBFC gave to the Culture, Media and Sport Select Committee's inquiry into *New media and the creative industries*:

The BBFC's structure reflects the importance of keeping decisions relating to finance separate from those relating to classification determinations. Responsibility for classification decisions and policy ultimately rests with the President and two Vice-Presidents, while the BBFC's business affairs are controlled by a separate Council of Management which has no involvement in policy work or classification. This memorandum is being submitted on behalf of

the BBFC by the Director, who is delegated to make executive decisions, and to formulate and ensure the execution of policy.²⁹

The Council has no involvement in policy development though it appoints the President, Director and Deputy Director. The vice-presidents are also appointed by the BBFC.³⁰ A suggested rationale for this came in a written answer to a parliamentary question:

Bob Spink: To ask the Secretary of State for Culture, Media and Sport what plans she has to change the (a) membership and (b) constitution of the British Board of Film Classification; and if she will make a statement.

Estelle Morris: The British Board of Film Classification (BBFC) is independent of government and is responsible for its own membership and constitution. The Government recognise the importance of preserving the independence of the BBFC and has no plans to intervene on these matters.³¹

At the same time, the Government is at least consulted – apparently in connection with the BBFC’s statutory role in relation to videos:

Mrs. Lait: To ask the Secretary of State for the Home Department when he expects to announce the appointment of the Vice-President of the British Board of Film Classification.

Mr. Michael: The principal officers of the British Board of Film Classification (BBFC) are appointed by the BBFC’s Council of Management in consultation with my right hon. Friend, who is responsible under the Video Recordings Act 1984 for designating the authority for classifying video works. The Council of Management has recently advertised two vice presidential posts and will announce any appointments in due course.³²

That different departments answered the above parliamentary questions is nothing more than a consequence of the shift in responsibilities for the *Video Recordings Act 1984* following the 2001 General Election. The Department for Culture, Media and Sport is currently the department responsible.

B. Classification process

1. Submission of works

The BBFC provides detailed instructions on the submission for classification of films, video works on DVD and video games.³³ The details of initial submission take into account the differing nature of the media in question; for example BBFC examiners require supporting material to ensure that all parts of video games are easily accessible.

²⁹ House of Commons Culture, Media and Sport Committee, *New media and the creative industries*, HC 509-II 2006-07, Ev 272

³⁰ *Home Office press release 449/98*, “Designation of new vice presidents of the British Board of Film Classification”, 12 November 1998

³¹ HC 9 December 2004 c 665W

³² HC Deb 10 March 1998 c 130W

³³ http://www.bffc.co.uk/customer/cust_proc.php

However, the main examination process and initial approval procedures are broadly the same. The following BBFC instructions are taken from online information for those customers wishing to submit for classification video works on DVD:

Examination

The examiners apply the current BBFC Guidelines to propose the appropriate category for the work. The Guidelines are published on the website and available on request.

Requesting a category

Specific category requests can be made on the submission form. The classification decision is reached following the BBFC Guidelines but, for example, if it is imperative that the work be awarded a '12' category and it is assessed as '15' the customer will be contacted to discuss the possibility of a second viewing of the work by senior examining staff or cuts to the work to reduce the category. This has the benefit to the customer of saving the time which would be involved in receiving a classification higher than required and having to repeat the submission process.

Cuts required

Most works are passed without any cuts and with little difficulty regarding the category. However, if the work does require cuts you will receive a letter which gives a summary of the cuts and then gives a detailed description of each cut that is required. See below for an example.

At 108.5 mins	Example cut
Status	Cuts for Category
Ground	BBFC Guidelines
Issues	Sex/Nudity
Category with cut	15
Category without cut	18

A summary of the cuts is published on the BBFC website once the work has been classified.

Approval

The formal authority for approval of works under the provisions of the Video Recordings Act rests with the President of the BBFC. This authority is delegated to the senior staff of the BBFC, the Director, the Head of Policy and the Senior Examiners. In this document these people are referred to as "approvers".

All category proposals are considered by an approver...³⁴

³⁴ http://www.bbfc.co.uk/customer/cust_proc.php

2. Appeals

There are slightly different appeals procedures for film and video works (including DVDs, video games etc) because of the different legislative frameworks. The BBFC allows appeals by the submitting companies.³⁵ Stage One of the appeals procedure involves requesting a reconsideration by the BBFC of a classification.

On receipt of a valid written request for reconsideration, the BBFC will ensure that the work, or the relevant parts of the work, are viewed by a Senior Examiner, the Head of Policy (or, if unavailable, the Chief Assistant (Policy)), and the Director (or, if unavailable, the Deputy Director).³⁶

In the case of video works, once a classification certificate has been issued, the *Video Recordings Act* allows no revision for that particular version. The distributors of the work nonetheless have similar scope for appeal because they are made aware of the impending classification via an earlier "interim clearance form". For both videos and films, BBFC reconsideration decisions are final.

If a submitting company receives an adverse reconsideration decision, it has the option of appealing to an authority independent of the BBFC. This "stage two" of the appeals procedure is also available where works are rejected outright by the BBFC which the latter will not reconsider. In the case of films, submitting companies need to appeal to individual local authorities (usually the licensing department of the relevant council) and the process can vary from area to area. Many councils will not accept appeals directly from the distributors but only from the cinemas in question (as it is the cinemas over which they exert licensing authority).

In the case of video works the stage two appeal is to the independent Video Appeals Committee, established by the BBFC under the provisions of the *Video Recordings Act 1984*. The appellate panel is selected by the BBFC itself but, at least according to Robertson and Nicol, it has "recently demonstrated a robust independence".³⁷ The same commentators confirm the restrictions on who may appeal:

Section 4 of the Video Recordings Act requires the BBFC to establish a system of appeal "by any person against a determination that a video work submitted by him" for certification has been either refused or placed in the wrong age category. This statutory language ensures that only persons who submit videos for classification can activate the appeals procedure, thereby excluding pressure groups and busybodies, but also shutting out producers and directors who may be aggrieved by cuts consented to by the distributors who have submitted their work for classification.³⁸

³⁵ *Appeals Procedure*, BBFC policy document
<http://www.bbfcc.co.uk/downloads/pub/Submitting%20Companies/Appeals%20Policy.pdf>

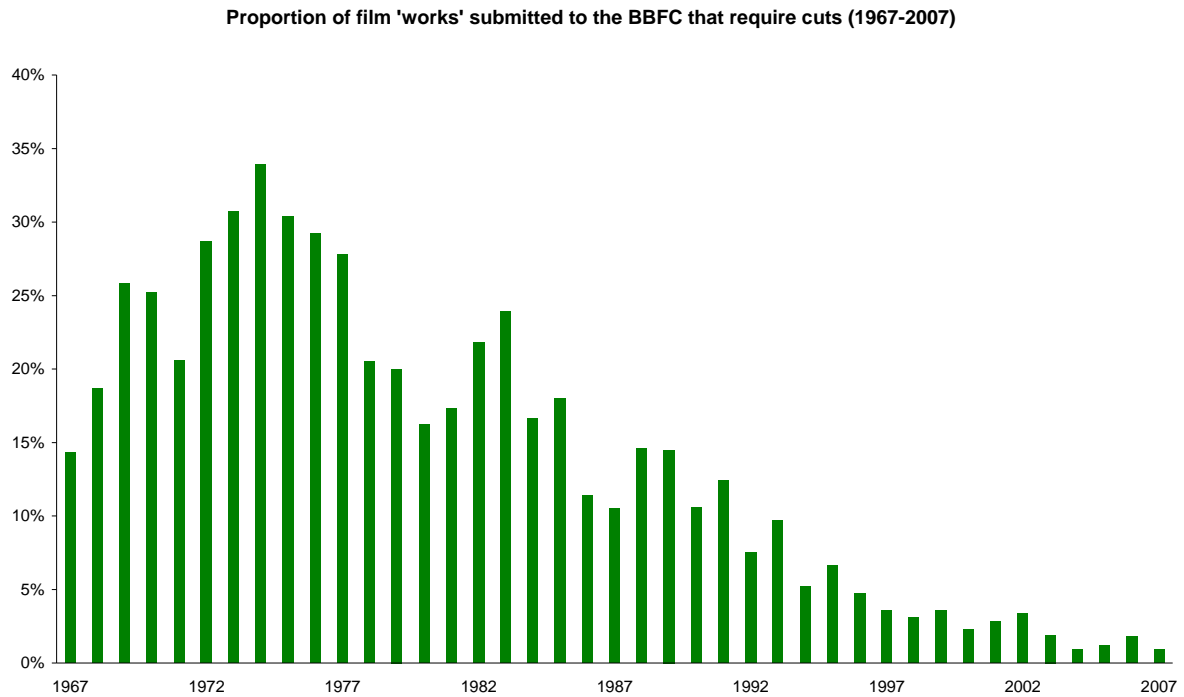
³⁶ *ibid.*

³⁷ *Robertson & Nicol on Media Law*, fifth edition, p 858

³⁸ *ibid.*, pp 857-8

3. Statistics on BBFC decisions

The following chart shows that there has been a significant decrease in the proportion of films that have been cut over the past 40 years.



Film 'works' classified by the BBFC, by year and classification received

	U	PG	12/12A	15	18	R18	Rejected		Cut		Total number of works submitted
							Number	% of total	Number	% of total	
1987	31	85	n/a	132	96				36	10.5%	344
1988	25	89	n/a	143	112				54	14.6%	369
1989	41	79	20	161	105				59	14.5%	406
1990	34	80	50	144	115		1	0.2%	45	10.6%	424
1991	49	67	48	129	86				47	12.4%	379
1992	38	99	34	124	76				28	7.5%	371
1993	32	83	54	126	84	1			37	9.7%	380
1994	46	92	60	122	81				21	5.2%	401
1995	37	110	49	123	91				27	6.6%	410
1996	42	98	65	166	75				21	4.7%	446
1997	38	115	60	134	92				16	3.6%	439
1998	56	109	40	174	69				14	3.1%	448
1999	67	127	72	193	73				19	3.6%	532
2000	63	112	88	175	86		1	0.2%	12	2.3%	525
2001	43	121	107	177	60				14	2.8%	508
2002	71	142	122	201	48				20	3.4%	585
2003	61	132	152	186	56	1			11	1.9%	588
2004	41	102	148	222	49				5	0.9%	562
2005	63	100	153	218	55	1			7	1.2%	590
2006	53	92	160	198	52				10	1.8%	555
2007	36	104	159	222	53				5	0.9%	574

Source: www.bbfc.co.uk/statistics/index.php

Video 'works' classified by the BBFC, by year and classification received

	Uc	U	PG	12	15	18	R18	Rejected		Cut		Total number of works submitted
								Number	% of total	Number	% of total	
1987	63	738	745	n/a	897	925	57	16	0.46%	406	11.8%	3,441
1988	72	757	596	n/a	570	513	51	5	0.20%	234	9.1%	2,564
1989	149	959	802	n/a	722	694	43	1	0.03%	253	7.5%	3,370
1990	110	1,212	823	n/a	696	700	55	1	0.03%	279	7.8%	3,597
1991	117	1,008	769	n/a	691	796	22	0	0.00%	238	7.0%	3,403
1992	96	818	731	n/a	656	759	14	3	0.10%	195	6.3%	3,077
1993	98	633	747	n/a	706	749	19	1	0.03%	216	7.3%	2,953
1994	161	652	712	92	608	788	14	5	0.16%	193	6.4%	3,032
1995	160	766	638	259	511	901	23	3	0.09%	219	6.7%	3,261
1996	157	803	782	336	583	1,033	27	6	0.16%	264	7.1%	3,727
1997	143	711	669	297	544	878	32	5	0.15%	229	7.0%	3,279
1998	111	900	1,090	415	656	1,090	42	4	0.09%	327	7.6%	4,308
1999	150	975	1,091	457	899	1,067	29	9	0.19%	250	5.3%	4,677
2000	125	1,354	1,590	813	1,244	986	212	4	0.06%	173	2.7%	6,328
2001	152	1,471	1,826	859	1,322	1,059	651	1	0.01%	255	3.5%	7,341
2002	121	1,807	2,014	1,155	1,721	1,008	1,061	2	0.02%	324	3.6%	8,889
2003	152	2,084	2,280	1,685	2,244	980	1,405	3	0.03%	429	4.0%	10,833
2004	119	2,534	2,485	1,677	2,113	870	1,387	2	0.02%	456	4.1%	11,187
2005	65	3,104	3,381	2,273	2,669	1,137	1,237	7	0.05%	525	3.8%	13,873
2006	66	3,009	4,101	2,808	2,889	1,031	1,217	1	0.01%	589	3.9%	15,122
2007	5	2,359	2,579	2,525	2,249	903	1,157	1	0.01%	547	4.6%	11,778

Source: www.bbfc.co.uk/statistics/index.php

Games and other interactive 'works' classified by the BBFC, by year and classification received

	U	PG	12/12A	15	18	R18	Rejected		Cut		Total number of works submitted
							Number	% of total	Number	% of total	
1993		2		3	4				1	11.1%	9
1994	1	5		6	8				0		20
1995	2	8	3	9	27				1	2.0%	49
1996		6	15	22	19	2			1	1.6%	64
1997		1	2	23	21				1	2.1%	47
1998		5	1	10	25				2	4.9%	41
1999		1		3	17				3	14.3%	21
2000		1		10	17				1	3.6%	28
2001		1		6	20				3	11.1%	27
2002	6	4	2	14	9				1	2.9%	35
2003	1	1	2	20	7	1			1	3.1%	32
2004	1	3	3	18	17				0		42
2005	32	25	18	79	43	1			2	1.0%	198
2006	38	42	31	112	74	1			2	0.7%	298
2007	29	33	40	92	59	1	4		4	1.6%	258

Source: www.bbfc.co.uk/statistics/index.php

VIII The Bill

The *British Board of Film Classification (Accountability to Parliament and Appeals) Bill 2007-08* would amend the *Video Recordings Act 1984*. As such, it is a UK-wide measure which applies to films on video cassettes and DVDs and to some computer games. It does not cover films for cinema exhibition though it is conceivable that the proposed changes to the constitution of the BBFC and the video classifications arrived at under new arrangements might impact on cinema classifications or audiences. A BBFC that is more accountable to Parliament might be expected to classify films in better accord with political opinion; and public opinion if and where the two chime. It also seems plausible, if not inevitable, that a film refused a classification for viewing in the home might attract greater audiences for its cinema exhibition.

Clause 1 of the Bill would amend section 4 of the 1984 Act which enables the Secretary of State to designate persons to serve as an authority responsible for video classification. The British Board of Film Classification is currently the authority so designated and designation powers currently reside with the Secretary of State for

Culture, Media and Sport. Section 5 of the 1984 Act provides for a parliamentary veto of a designation by the Secretary of State:

5 Parliamentary procedure for designation

(1) Where the Secretary of State proposes to make a designation under section 4 of this Act, he shall lay particulars of his proposal before both Houses of Parliament and shall not make the proposed designation until after the end of the period of forty days beginning with the day on which the particulars of his proposal were so laid.

(2) If, within the period mentioned in subsection (1) above, either House resolves that the Secretary of State should not make the proposed designation, the Secretary of State shall not do so (but without prejudice to his power to lay before Parliament particulars of further proposals in accordance with that subsection)...

The present Bill envisages that the existing parliamentary procedure be retained, but that it should be preceded by scrutiny of senior individual appointments by a select committee. In particular, when a vacancy exists in any of the “principal offices” of the designated authority, the latter would have to provide the House of Commons Home Affairs Committee with a shortlist of at least three candidates. The Secretary of State could not confirm the appointment of a candidate rejected by the Home Affairs Committee. Reference to the Home Affairs Committee does not necessarily indicate that the relevant Secretary of State should be the one for the Home Department; furthermore, *clause 5* of the Bill interprets “Home Affairs Committee” to include any committee appointed under a different name with substantially the same functions. As to the principal offices that would be subject to this additional layer of scrutiny, these would be specified by the Secretary of State in a statutory instrument. It seems likely that, at least, the President and two Vice-Presidents would be included since it is with these individuals that classification decisions and policy ultimately reside.

Section 4(3) of the 1984 Act provides that “adequate arrangements” should be made to allow any person submitting a work for classification by the BBFC to appeal a decision:

(3) The Secretary of State shall not make any designation under this section unless he is satisfied that adequate arrangements will be made for an appeal by any person against a determination that a video work submitted by him for the issue of a classification certificate--

- (a) is not suitable for a classification certificate to be issued in respect of it, or
- (b) is not suitable for viewing by persons who have not attained a particular age,

or against a determination that no video recording containing the work is to be supplied other than in a licensed sex shop.

The “adequate arrangements” for appeal referred to in the Act currently take the form of the Video Appeals Committee. *Clause 2* anticipates the establishment of a new appeals body with a wider remit and subject to constitutional arrangements prescribed by the clause. The clause would insert three new sections into the 1984 Act covering the

establishment of the new appeals body and the introduction of early day motions as triggers for reviews by that body of decisions by the BBFC.

The first section, 4ZA, inserted by *clause 2* would require the designated authority to establish the new appeals body to hear all appeals or reviews of the authority's decisions on classification and "other matters" related to video works (i.e. videos, DVDs and some computer games). The pool of potential appellants would be extended (by new sections 4ZB and 4ZC) to include Parliament in addition to the submitters of works who are already provided for. Interestingly, in 2006, no appeals were made by the latter to the Video Appeals Committee.

The new appeals body would be composed of a panel of persons independent of the film and video industry from whom a jury of 12 would be selected at random for each hearing of an appeal or review. The jury chair would be appointed by the designated authority. In reaching a decision, by majority vote, on the classification (or rejection) of a video work, the jury would be required to have "special regard to public concerns about violence and the sexualisation of children". At present, the BBFC is exposed to public opinion by a variety of routes, as outlined in its annual report. It periodically conducts opinion polls of public attitudes to inform its classification guidelines as well as engaging in correspondence with individual members of the public. In addition, it receives input from advisory groups comprising a mix of industry representatives, relevant professionals and independent members. The BBFC's annual report provides information on membership and the terms of reference of both the Advisory Panel on Children's Viewing and the Consultative Council.

New section 4ZA also prescribes practical details concerning the operation of the new appeals body and the publication of its rulings. These include the payment of no more than reasonable expenses and the imposition of a five-year term limit on membership. As stated in the explanatory notes on the Bill, "this time limit is to avoid any desensitising as a result of repeated exposure to video work of differing suitability." *Clause 5* defines "suitability" as meaning suitability for the issue of a classification or certificate of a particular description.

Clause 2 also inserts two new sections, 4ZB and 4ZC, into the 1984 Act. These two new sections would provide for early day motions to trigger the review, respectively, of video works undergoing classification or of existing classified video works. Before considering these two new clauses in turn, it is worth noting the novelty of these proposals: they would provide additional purposes to which early day motions could be put. At present, EDMs are generally used either to "pray against" proposed statutory instruments or to draw Parliament's attention to a wide range of issues of public interest. The former type is much the more likely to be granted parliamentary time for debate. Greater use of the EDM mechanism has been raised in Parliament recently in the context of the modernisation of the House of Commons. John Bercow asked the Leader of the House to consider the merits of a certain number of signatures to an early day motion automatically triggering a debate.³⁹ Harriet Harman responded that "if the trigger were simply a number of Members signing an early-day motion, we might find that this House

³⁹ HC Deb 25 October 2007 c445

would debate the football results. Someone such as myself would need to provide a filter so that that did not happen".⁴⁰

New Section 4ZB provides for parliamentary input into the video (but not cinema film) classification process of the designated authority (at present the BBFC). If at least 50 MPs were to sign an early day motion calling for a review of a "relevant decision" then that decision would be referred to the appeals body. The appeals body would then have to review the designated authority's decision following the same procedures as for appeals by the distributors of video works. A "relevant decision" is defined in the new section as "a decision by the designated authority concerning the classification of a video or about the handling of such a matter." This would seem to provide for the BBFC's video classification procedures to be subject to independent review at the behest of fifty or more MPs.

In the same way, fifty MPs signing an EDM would allow the Secretary of State to put in place a mechanism by which the classification of an existing video work would be reviewed by the appeals body. New section 4ZC(1) begins:

The Secretary of State may by order provide that, where not fewer than 50 Members of the House of Commons give notice of a motion calling for a review by the appeals body of the suitability of an existing video work, the video specified in the notice of motion shall stand referred to the appeals body...

Any such order to review an existing video work would have to provide for the suspension of its sale, supply and distribution if the Secretary of State considered it likely that the work was unsuitable for classification. Conceivably this could allow the continuing sale of any certificate 18 videos that might more appropriately be given an R18 certificate. In some ways, this review provision mirrors the one introduced by an amendment made to the 1984 Act by the *Criminal Justice and Public Order Act 1994*. The latter made provision for the review of videos that had been classified before the introduction, by the 1994 Act, of criteria for suitability to which special regard had to be given.⁴¹ In particular, the 1994 Act introduced section 4A which begins:

- (1) The designated authority shall, in making any determination as to the suitability of a video work, have special regard (among the other relevant factors) to any harm that may be caused to potential viewers or, through their behaviour, to society by the manner in which the work deals with--
- (a) criminal behaviour;
 - (b) illegal drugs;
 - (c) violent behaviour or incidents;
 - (d) horrific behaviour or incidents; or
 - (e) human sexual activity.

The present Bill does not place analogous restrictions on the existing video works that could be subject to the review order provisions of new section 4ZC. In other words, videos classified after the coming into force of the Bill could in principle still be subject to

⁴⁰ HC Deb 25 October 2007 c446

⁴¹ sections 4A and 4B, *Criminal Justice and Public Order Act 1994*

future review if an appropriate EDM garnered sufficient support. Any resulting order made by the Secretary of State would be exercisable by statutory instrument subject to annulment by either House. In principle, therefore, the relative merits of an individual video work could be debated by either House though only the Commons could debate the associated EDM. Even, as seems more than likely, such debates did not occur, the attendant publicity could serve to promote the video work in question – following much the same pattern that has applied to books prosecuted under obscenity laws. The Internet poses another challenge, given the relative ease with which material, including that unavailable in the shops, can be downloaded.

Clause 3 of the Bill provides for parliamentary scrutiny of the BBFC's video classification guidelines. Specifically, once in every Parliament, and prior to any proposed revision, the designated authority (assumed to be the BBFC) must submit its guidelines to "the Committee". The guidelines or the revised guidelines would require the approval of the Committee before coming into force. The Bill's explanatory notes imply that it is the Home Affairs Committee that would be involved but, as noted earlier, the Bill allows this to be construed to mean the Culture, Media and Sport Committee. Since only video works guidelines would be covered by these arrangements there would in principle be scope for these to diverge over time from those that apply to cinema exhibition. However, in practice, it seems more likely that the BBFC would aim to keep its guidelines broadly compatible for clarity and consistency. Compatibility between cinema and video guidelines does not imply that the same standards apply, for reasons given in the following frequently asked question on the BBFC website:

Why are there different standards for film and video?

It is more likely that a cinema audience has made a specific commitment to see a particular film and knows what to expect. In addition, admission is regulated by age at the cinema entrance. The Video Recordings Act, by contrast, specifically requires the Board to take into account the likelihood that the video may be seen "in the home". The possibility that some viewers may be below the age for which the work was classified is clearly greater. In addition, video offers the possibility of freeze-frame, rewind, and frame-by-frame advance, thus allowing viewers to watch scenes out of context, while a cinema film can only be watched in the way originally intended. For these reasons videos may be cut or classified more strictly than the same work for the cinema.

Clause 4 raises the penalties for various offences under the 1984 Act. For example, supplying a video recording of an unclassified work can at present attract, on conviction on indictment, an unlimited fine and a two-year prison sentence. The latter would be raised to seven years by the Bill. On summary conviction, the potential sentence would be doubled to 12 months (with the maximum fine remaining at £20,000). Only summary convictions are available for the offence of supplying a video recording of a classified work in breach of classification; here the possible sentence would also be doubled to 12 months. The maximum fine available for this offence would be raised from level 5 (currently £5,000)⁴² to £20,000.

⁴² http://www.cjsonline.gov.uk/offender/community_sentencing/fine/index.html

The commencement provisions of the Bill, in the form of a statutory instrument, allow the Secretary of State to make “such transitional or consequential provisions to amend or repeal Acts or statutory instruments” as necessary or expedient.