



Video Recordings Bill

Bill 14 of 2009-10

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The *Video Recordings Bill 2009-10* would repeal and immediately revive, without amendment, the *Video Recordings Act 1984*. Its purpose is to rectify a procedural error made during the passage of the 1984 Act, thereby to make the latter enforceable in UK courts. It would also allow the 1984 Act to be subsequently amended by the *Digital Economy Bill 2009-10*. The *Video Recordings Bill 2009-10* is due to be fast-tracked in the House of Commons on 6 January 2010 – when all stages will be considered. It extends to the UK.

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Contents

	Summary	1
1	Introduction	2
2	The Bill	3
	2.1 Overview	3
	2.2 Offences	4
	2.3 Human rights	5
3	The fast-tracking of legislation	6
	3.1 The introduction of a procedure for fast-tracked legislation	6
	3.2 Constitution Committee proposals	6
	3.3 Government Response	8
4	Video Recordings Act 1984	9
	4.1 Video cassettes and DVDs	9
	4.2 Video games	10
	4.3 Enforcement	11
5	Statistics	14
	5.1 British Board of Film Classification (BBFC) statistics	14
	5.2 Prosecutions and convictions	15
	Appendix 1 – Minister’s letter, 24 August 2009	16
	Appendix 2 – <i>Video Recordings Bill 1983-84</i>: parliamentary stages	17

Summary

The *Video Recordings Bill 2009-10* has only one purpose: to make enforceable the *Video Recordings Act 1984*. It has only recently come to light that the latter was passed without notifying the European Commission as required by the then Council Directive 83/189/EEC of 28 March 1983. This so-called “Technical Standards Directive” has undergone subsequent amendment and was codified by Directive 98/34/EC. The Bill would achieve its purpose by repealing and immediately reviving the 1984 Act, with transitional provision to allow for other relevant legislation and documents over the last quarter of a century. By putting the *Video Recordings Act 1984* on a proper statutory footing, it would also be possible to amend it along the lines envisaged by the *Digital Economy Bill 2009-10* which is currently in the House of Lords.

It is proposed that all stages of the Bill will be considered by the House of Commons in a single day. This fast-tracking is designed to minimise the current interregnum during which the age-rated classification and supply controls embodied by the 1984 Act cannot be enforced (though they are being continued on a voluntary basis). The Bill is the first to be fast-tracked since the House of Lords Constitution Committee published its report on the fast-tracking of legislation in July 2009.

The *Video Recordings Act 1984* aims to control the supply of video cassettes, DVDs and some video games by the creation of offences related to the following:

- Supplying video recording of unclassified work
- Possession of video recording of unclassified work for the purposes of supply
- Supplying video recording of classified work in breach of classification
- Certain video recordings only to be supplied in licensed sex shops
- Supply of video recording not complying with requirements as to labels, etc
- Supply of video recording containing false indication as to classification

The number of successful prosecutions for offences under the 1984 Act was 81 in 2006 compared to 139 in 2002.

1 Introduction

The function of the *Video Recordings Act (VRA) 1984* was to introduce a statutory requirement that, subject to certain exemptions, video recordings offered for sale or hire commercially in the UK must be classified according to their suitability for viewing in the home by an authority designated by the Secretary of State. The designated authority is the British Board of Film Classification (BBFC) and the term “video recording” now embraces DVDs as well as some video games. Provisions in the *Digital Economy Bill*, HL Bill 1 2009-10, would amend the 1984 Act in respect of video games regulation. The purpose of the *Video Recordings Bill*, Bill 14 2009-10 is to close a legal loophole which has resulted in the 1984 Act being unenforceable. A government factsheet summarises the background to this:

Unfortunately, during preparations for the Digital Economy Bill in August 2009, the Government became aware that the VRA 1984 was no longer enforceable in UK law because of a failure to notify certain provisions of the Act to the European Commission, as required under the Technical Standards Directive. The provisions of the 1984 Act have now been notified to the Commission under that Directive, and the repeal and revival of these provisions will make the offences in the 1984 Act enforceable in the courts once again.¹

Further details were provided in a letter, dated 24 August 2009, to “stakeholders” from the Parliamentary Under Secretary, Department for Culture, Media and Sport, Barbara Follett. The letter is reproduced in full in Appendix 1. In her letter, Barbara Follett wrote:

As, twenty five years ago, the then British Government did not notify the European Commission of the VRA’s classification and labelling requirements, they cannot now be enforced against individuals in UK courts.

I am, therefore, writing to let you know about this unfortunate situation and to assure you that our priority is to remedy it as quickly as possible. I would also like to seek the industry’s assurance that they will continue to retail these products in the same way and that they will remain compliant with the provisions of the VRA on a voluntary and best practice basis.

That said, current or proposed prosecutions under the Act will not be pursued until further notice.

Some press reports have suggested that individuals convicted of offences under the 1984 Act – such as supplying underage children with videos in breach of classification – could seek to overturn their convictions or seek compensation. On 25 August 2009, the *Guardian* reported:

There were 1,659 successful prosecutions under the act between 1995 and 2007 – the only figures available – and lawyers for the department [DCMS] insist those convictions will remain safe.

The department said it had received legal advice that people who had been prosecuted and convicted would be unable to overturn their convictions or seek compensation. However, it is possible that those who were convicted may mount legal challenges as they were, in effect, prosecuted under an act that should not have been enforced.²

¹ *Video Recordings Act 1984: Factsheet*, Department for Business, Innovation and Skills, Intellectual Property Office and Department for Culture, Media and Sport, November 2009

² [“UK video pirates could challenge convictions”](#), *Guardian*, 25 August 2009

On 15 December, a government press release that accompanied publication of the *Video Recordings Bill 2009-10* quoted Creative Industries Minister Siôn Simon thus:

This Bill is essential to ensure proper protection of the public from inappropriate content in video recordings and boxed video games.

The purpose of the Bill is simply to repeal and revive the existing provisions of the Video Recordings Act 1984 in order to make the criminal offences in the 1984 Act enforceable.

Since this historic problem emerged in the summer, retailers have shown a highly commendable sense of responsibility by continuing to observe the age ratings system on a voluntary basis.³

2 The Bill

2.1 Overview

The *Video Recordings Bill 2009-10* comprises only two clauses and a schedule making transitional provision. Its purpose is to repeal and revive provisions of the *Video Recordings Act 1984*. The sections of the 1984 Act to be adopted – in effect the Act in its current form – are available online.⁴ Clause 1(1) of the Bill contains the substance of the legislation:

On the commencement of this Act, sections 1 to 17, 19, 21 and 22 of the Video Recordings Act 1984 (regulation of the distribution of video recordings)—

- (a) cease to be in force, and
- (b) having been notified to the European Commission in accordance with the Technical Standards Directive on 10 September 2009, come into force again by virtue of this subsection.

Clause 1(2) refers to the Technical Standards Directive, 98/34/EC (as amended),⁵ and the explanatory notes accompanying the Bill explain its significance:

4. The Technical Standards Directive requires that, where a member state wishes to impose a technical regulation, for example by making legislation relating to compulsory requirements as to the size, packaging or labelling of a product, it must send a draft of the regulation to the European Commission and other member states and, except in urgent cases, wait for a period of three months before adopting the regulation. The purpose of this is to enable the European Commission and other member states to comment on the draft technical requirements if they are concerned that the requirements will act as a barrier to Community trade. Depending on the nature of any comments made by other member states or the European Commission, the waiting period of three months may be extended to a period of up to 18 months.

5. Sections 1 to 17, 19, 21 and 22 of the 1984 Act were notified to the European Commission on 10 September 2009. The three month waiting period required by the Technical Standards Directive expired on 11 December 2009. The Bill will provide for

³ DCMS media release 172/09, *Publication of the Video Recordings Bill*, 15 December 2009

⁴ *Sections of the Video Recordings Act 1984 to be adopted*, DCMS [on 23 December 2009]

⁵ Council Directive 83/189/EEC of 28 March 1983 (“the Technical Standards Directive”) as amended by Council Directive 88/182/EEC of 22 March 1988 and by Directive 94/10/EEC of the European Parliament and of the Council of 23 March 1994, codified by Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998, and amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998.

those provisions to cease to be in force and then immediately to come into force again.⁶

If approved by Parliament, the Bill would come into force on Royal Assent. It applies to the whole of the UK.⁷ The main function of the Bill's schedule is to ensure that references, or allusions, in other legislation and documents to the 1984 Act are unaffected by that Act's repeal and revival.⁸ The Bill's explanatory notes contain some specific examples of subsequent legislation which contains powers to modify earlier legislation.⁹ Modifications include the power to vary maximum prison sentences or the interpretation of terms such as "solicitors". In such contexts, the practical impact of the Schedule is the same as if the 1984 Act had been properly brought into force a quarter of a century ago. Paragraph 3 of the Schedule would ensure that certain actions under the 1984 Act would also be unaffected by the Bill; the explanatory notes give the examples of the designation of the BBFC as the relevant authority and the validity of certificates issued by the BBFC.¹⁰ Amendments¹¹ to the 1984 Act provided for the review of earlier classifications of video works against specified criteria – this would also be unaffected by the repeal and revival effected by the present Bill.¹²

2.2 Offences

Paragraph 5 of the Schedule confirms that offences under sections 9 to 14 of the 1984 Act would continue to be "relevant offences" for the purposes of the *Regulatory Enforcement and Sanctions Act 2008*. The latter provides for the imposition of civil sanctions in connection with certain offences in place at the time. The offences covered by sections 9 to 14 of the 1984 Act cover the following:

- Supplying video recording of unclassified work
- Possession of video recording of unclassified work for the purposes of supply
- Supplying video recording of classified work in breach of classification
- Certain video recordings only to be supplied in licensed sex shops
- Supply of video recording not complying with requirements as to labels, etc
- Supply of video recording containing false indication as to classification

If the present Bill were not passed, the above offences would not be available – though the Bill's explanatory notes acknowledge that some limited coverage is provided by means of other legislation including the *Obscene Publications Act 1959*. However, the *Video Recordings Act 1984* is the only legislation that imposes a (well-understood) classification requirement as a means of controlling the supply of video recordings. Even so, the 1959 Act does allow for some flexibility in that the definition of "obscene" is partly dependent on the recipient of the material in question. Section 1 of the 1959 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

⁶ [Video Recordings Bill \[Bill 14 of 2009-10\] – Explanatory Notes](#), 15 December 2009

⁷ Clause 2

⁸ Schedule, paragraph 2

⁹ [Video Recordings Bill \[Bill 14 of 2009-10\] – Explanatory Notes](#), 15 December 2009, paras 23-25

¹⁰ *Ibid*, para 26

¹¹ Sections 4A and 4B inserted by the *Criminal Justice and Public Order Act 1994*, section 90

¹² Schedule, paragraph 4

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 1959 Act proscribes the distribution, circulation, sale, the giving or loan of obscene material. A point to make here is that at least some successful prosecutions under the 1984 Act could well have been made under the 1959 Act: pornographic material that might be legally supplied to an adult could be obscene if given to a child. This point is developed in a similar context by the following passage in Tom Crone’s book, *Law and the Media*:

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 deprived 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.¹³

2.3 Human rights

The explanatory notes to the Bill deal at some length with the human rights implications of the legislation, although the focus is on the *Video Recordings Act 1984* itself rather than any issues to do with its repeal and revival. Any censorship legislation engages Article 10 of the European Convention on Human Rights which serves to protect freedom of expression – but the right is qualified by the consideration given to, among other things, the protection of health or morals and the prevention of disorder or crime.

During a justification for the fast-tracking of the Bill (covered in more detail in the following section), the explanatory notes state: “The Bill has only one purpose, which is to secure the enforceability of provisions which have been on the statute book since 1984.”¹⁴ This raises a question as to the relevance of Article 7 of the Convention:

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.

As noted above, the Government’s legal advice appears to be that previous convictions under the 1984 Act are safe. However, knowledge of the technical requirements of what was then a new (Technical Standards) EC Directive, which only recently came to light, has triggered a suspension of prosecutions pending the enactment of the present Bill.¹⁵

¹³ Tom Crone, *Law and the Media*, fourth edition, p206

¹⁴ [Video Recordings Bill \[Bill 14 of 2009-10\] – Explanatory Notes](#), 15 December 2009, para 12

¹⁵ Ibid

3 The fast-tracking of legislation

3.1 The introduction of a procedure for fast-tracked legislation

The *Video Recordings Bill 2009-10* is the first bill to be fast-tracked since the House of Lords Constitution Committee report on fast-tracking legislation was published.¹⁶ On 15 December 2009, the day the Bill was introduced into the House of Commons, the Government announced in a written ministerial statement that a full explanation of the reasons for the expedition of the Bill, in line with a recommendation from the Committee, would be given in the explanatory notes. The Government also announced that such a practice would be followed whenever legislation was expedited in future:

The [Constitution Committee's] report recommended that where the Government were proposing expedited legislation they should provide an explanation of why the legislation should be fast-tracked. The Government accept in principle the committee's recommendation that, for all Bills which are to be passed with unusual expedition, an explanation of the reasons for using a fast-track procedure should be provided.

I am therefore informing the House that any future legislation which will be subject to expedited procedures will contain a full explanation in the accompanying Explanatory Notes to the legislation. The explanation will address the questions set out in paragraph 186 of the committee's report:

[see section 3.2, below]

The Video Recordings Bill which has been introduced in this House today is the first Bill to be fast-tracked since the committee published its report. The Explanatory Notes to this Bill reflect the new approach.¹⁷

The same written ministerial statement was made in the House of Lords, by the Leader of the House of Lords, Baroness Royall of Blaisdon.¹⁸

The explanatory notes to the *Video Recordings Bill 2009-10*, as introduced, are available on the parliamentary internet.¹⁹ The explanation for the necessity of fast-track legislation is given in paragraphs 11-20.

3.2 Constitution Committee proposals

The Constitution Committee of the House of Lords undertook an inquiry into fast-track legislation in the 2008-09 Session. The Committee described it as an inquiry into "constitutional issues that may arise when there is resort to emergency legislation", and in particular, "situations where bills receive an expedited passage through Parliament".²⁰ In its inquiry, it used a definition of fast-track legislation based on the evidence provided by the Clerk of the House of Commons: "bills ... which the Government of the day represents to Parliament must be enacted swiftly ... and then uses its power of legislative initiative and control of Parliamentary time to secure their passage".²¹

The Committee identified eleven problems and issues that arose as a result of fast-tracking legislation:

¹⁶ Select Committee on the Constitution, *Fast-track Legislation: Constitutional Implications and Safeguards*, 7 July 2009, HL 116-I 2008-09

¹⁷ HC Deb 15 December 2009 cc117WS-118WS

¹⁸ HL Deb 15 December 2009 cWS238

¹⁹ *Video Recordings Bill [Bill 14 of 2009-10] – Explanatory Notes*, 15 December 2009

²⁰ Select Committee on the Constitution, *Fast-track Legislation: Constitutional Implications and Safeguards*, 7 July 2009, HL 116-I 2008-09, para 3

²¹ *Ibid*, para 27

- Constrained parliamentary scrutiny
- The degree to which legislation is fast-tracked
- Does fast-tracking of legislation lead to bad legislation?
- Pressure on the procedural process
- Pressure on campaigners and interested organisations
- The “something must be done” syndrome
- Exaggerating the case for fast-tracking
- Including non-urgent matters in a fast-tracked bill
- “Act in haste and repent at leisure”
- Executive dominance of the fast-track process
- Differences between the Commons and the Lords²²

The Committee considered some of these issues in more detail through case studies of particular pieces of legislation.

When a bill was fast-tracked, the Committee recommended that, in the House of Lords, an oral ministerial statement should be made and its details set out in the explanatory notes of a bill to justify the fast-tracking of any primary legislation. It recommended that the oral statement should be made when the bill was introduced to allow an early announcement on the justification for fast-tracking without affecting the second reading debate. The Committee made specific recommendations as to the contents of the ministerial statement:

186. In the light of the evidence we have received about the potential problems and issues pertaining to the use of fast-track legislation, we recommend that the Ministerial Statement should be required to address the following principles:

- (a) Why is fast-tracking necessary?
- (b) What is the justification for fast-tracking each element of the bill?
- (c) What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximised?
- (d) To what extent have interested parties and outside groups been given an opportunity to influence the policy proposal?
- (e) Does the bill include a sunset clause (as well as any appropriate renewal procedure)? If not, why do the Government judge that their inclusion is not appropriate?
- (f) Are mechanisms for effective post-legislative scrutiny and review in place? If not, why do the Government judge that their inclusion is not appropriate?
- (g) Has an assessment been made as to whether existing legislation is sufficient to deal with any or all of the issues in question?
- (h) Have relevant parliamentary committees been given the opportunity to scrutinise the legislation?

187. We recommend that in its consideration of whether to allow a bill to be fast-tracked through its legislative stages, the House should bear in mind whether the Government’s Ministerial Statement justifying fast-tracking has adequately addressed

²² *Ibid*, paras 32-63

these principles. We will do this in the course of our scrutiny of any bill that it is proposed should be fast-tracked.²³

The Committee also reminded the House of Lords that in order to take two stages of a bill in a single day, the Government has to ask the House to approve a motion to suspend Standing Order 47, which is entitled “No two stages of a Bill to be taken on one day”.²⁴

The Committee also recommended that the Government put mechanisms in place “to ensure that relevant parliamentary committees and stakeholders are consulted about and given the opportunity to respond to proposed fast-track legislation ahead of Second Reading in the House in which the bill is introduced”; and commented that “this should be possible in all but the most extreme circumstances”,²⁵ that there should be a presumption in favour of sunset clauses appearing in fast-tracked legislation to ensure that it is subject to parliamentary review;²⁶ and that there should be a presumption in favour of early post-legislative review of fast-tracked legislation.²⁷

3.3 Government Response

The House of Lords debated the report on 10 November 2009. In that debate, Lord Goodlad, the chairman of the Constitution Committee, outlined the Committee’s principal recommendations.²⁸ He noted that the Committee had received a response from the Government but at the time of the debate, had not had the opportunity to consider it.²⁹ The Committee published the Government’s response on 7 December 2009.³⁰

Baroness Royall of Blaisdon, the Chancellor of the Duchy of Lancaster and the Leader of the House of Lords, responded to the debate for the Government. In its written response, the Government made the following commitment on providing information on the need to expedite legislation:

The Government firmly believes that all members of both Houses are entitled to a full explanation of why a piece of legislation is being proposed for fast tracking; and we would expect to be held [to] account for its timetabling. Ministers remain prepared to justify the need for any expedition to the House, including covering those issues set out in the Committee’s Report.³¹

In the debate, Baroness Royall went a little further:

The committee reminded us that the Minister responsible for the Bill should be required to make an Oral Statement to your Lordships when the Bill is introduced, making the case for fast-tracking—a key part of the debate today. The committee also set out a detailed list of issues that such a Statement should cover. The Government fully agree with the principle of the committee’s recommendation, and the issues on which the House can expect an explanation. We welcome the greater openness and transparency that adherence to the principle should bring. We will ensure that Ministers make their case on each occasion that fast-tracking is proposed. The list of points set

²³ *Ibid*, paras 186-187

²⁴ House of Lords, *Standing Orders of the House of Lords relating to Public Business*, 16 July 2007

²⁵ Select Committee on the Constitution, *Fast-track Legislation: Constitutional Implications and Safeguards*, 7 July 2009, HL 116-I 2008-09, para 163

²⁶ *Ibid*, para 198

²⁷ *Ibid*, paras 208-209

²⁸ HL Deb 10 November 2009 cc725-726

²⁹ HL Deb 10 November 2009 c724

³⁰ Select Committee on the Constitution, *Government Response to Fast-track Legislation: Constitutional Implications and Safeguards*, 7 December 2009, HL 11 2009-10

³¹ *Ibid*

out in paragraph 186 of the committee's report offers an excellent template for how such explanations should be formulated. The procedure by which the Government put their case for fast-tracking before the House is something that deserves further consideration. I would like to discuss this further with the noble Lord, Lord Goodlad, as well as the usual channels.

I well understand the importance that my noble friend Lord Rowlands and others attach to an Oral Statement, but I want to ensure that whatever is agreed really meets the demands of the committee. Simply requesting an Oral Statement would not in every case meet those needs. I very much agree that the Explanatory Memorandum to the Bill could—perhaps should—include a statement about the need for fast-tracking. I will certainly pursue this further. I also note the suggestion of the noble Lord, Lord Norton of Louth, about the suspension of standing orders when we need to condense stages. I will take that back and reflect further.³²

In its response to the Committee, the Government argued that the use of a sunset clause would be approached on a case-by-case basis. On post-legislative scrutiny it re-affirmed the commitment it had given in *Post-legislative scrutiny – The Government's Approach*³³ to conduct a review within three to five years. In the debate, Baroness Royall reiterated the Government's response on the sunset clauses and on post-legislative scrutiny.³⁴

Further information on the Constitution Committee's proposals are given in the Library Standard Note, *Fast-track legislation*.³⁵

4 Video Recordings Act 1984

This section gives an overview of some of the features of the *Video Recordings Act 1984* which the present Bill aims to repeal and revive for later amendment by the *Digital Economy Bill 2009-10*. One focus is the enforcement regime, which is in effect suspended pending the enactment of the corrective legislation represented by the *Video Recordings Bill 2009-10*. Appendix 2 provides details of the parliamentary stages of the original *Video Recordings Bill 1983-84* to facilitate any consultation of the debates that took place at the time.

4.1 Video cassettes 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.³⁶

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

³² HC Deb 10 November 2009 c748

³³ Office of the Leader of the House of Commons, *Post-legislative scrutiny – The Government's Approach*, March 2008, Cm 7320; 17 HC Deb 20 March 2008 c74WS

³⁴ HC Deb 10 November 2009 cc748-749

³⁵ House of Commons Library Standard Note, *Fast-track legislation*, SN/PC/5256, 22 December 2009

³⁶ 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".

- 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 people³⁷

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 BBFC. 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 1985/911.³⁸ The regulations detail the design of the labelling and stipulate that this should be clearly legible.

4.2 Video games

Controls over the classification and sale of video games are less well-developed, and this is something the *Digital Economy Bill 2009-10* will be seeking to address. In this context relevant work includes the Byron review³⁹ together with a report (and the Government's response)⁴⁰ by the Culture, Media and Sport Committee, *Harmful content on the Internet and in video games*.⁴¹ The website of the British Board of Film Classification contains much background on the subject. This includes the following on classification:

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

³⁷ Section 4A, *Video Recordings Act 1984*

³⁸ As amended by SI 1995/2550 and SI 1998/852

³⁹ *Safer Children in a Digital World: The Report of the Byron Review*, DCSF/DCMS, 2008

⁴⁰ *Government Response to the Culture, Media and Sport Select Committee Report on Harmful Content on the Internet and in Video Games*, Cm 7477, October 2008`

⁴¹ Culture, Media and Sport Committee, *Harmful content on the Internet and in video games*, HC 353 2007-08

to be submitted to the BBFC because they contain non-interactive video elements (e.g. 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/>⁴²

The detailed criteria that guide classification by the BBFC are also available online. However, in summary, the classification system is as follows:

Uc - universal particularly suitable for young children.

u - universal suitable for all.

pg - parental guidance general viewing, but some scenes may be unsuitable for young children.

12 - suitable only for persons of 12 years and older. Not to be supplied to any person below that age.

15 - suitable only for persons of 15 years and older. Not to be supplied to any person below that age.

18 - suitable only for persons of 18 years and older. Not to be supplied to any person below that age.

restricted 18 - to be supplied only in licensed sex shops to persons of not less than 18 years.⁴³

4.3 Enforcement

Both the police and inspectors of weights and measures (or trading standards officers as they are more commonly known) have been, until recently, exercising enforcement powers under the 1984 Act. The latter have also made use of test purchases.

Section 16A relates to trading standards officers:

16A Enforcement

(1) The functions of a local weights and measures authority include the enforcement in their area of this Act.

(1A) Subject to subsection (1B) below, the functions of a local weights and measures authority shall also include the investigation and prosecution outside their area of offences under this Act suspected to be linked to their area as well as the investigation outside their area of offences suspected to have been committed within it.

(1B) The functions available to an authority under subsection (1A) above shall not be exercisable in relation to any circumstances suspected to have arisen within the area of another local weights and measures authority without the consent of that authority.

⁴² [Why are some video games classified?](#), BBFC website, Frequently asked questions

⁴³ [Video Recordings Act 1984](#), Federation against Copyright Theft website

(2) The following provisions of the Trade Descriptions Act 1968 apply in relation to the enforcement of this Act by such an authority as in relation to the enforcement of that Act--

section 27 (power to make test purchases),

section 28 (power to enter premises and inspect and seize goods and documents),

section 29 (obstruction of authorised officers), and

section 33 (compensation for loss, &c. of goods seized under s. 28).

(3) Nothing in this section shall be taken as authorising a local weights and measures authority in Scotland to initiate proceedings for an offence.

(4) Subsections (1) and (1A) above does not apply in relation to the enforcement of this Act in Northern Ireland, but the functions of the Department of Economic Development include the enforcement of this Act in Northern Ireland.

For that purpose the provisions of the Trade Descriptions Act 1968 specified in subsection (2) apply as if for the references to a local weights and measures authority and any officer of such an authority there were substituted references to that Department and any of its officers.

(4A) For the purposes of subsections (1A), (1B) and (2) above--

(a) offences in another area are "linked" to the area of a local weights and measures authority if--

(i) the supply or possession of video recordings in contravention of this Act within their area is likely to be or to have been the result of the supply or possession of those recordings in the other area; or

(ii) the supply or possession of video recordings in contravention of this Act in the other area is likely to be or to have been the result of the supply or possession of those recordings in their area; and

(b) "investigation" includes the exercise of the powers conferred by sections 27 and 28 of the Trade Descriptions Act 1968 as applied by subsection (2) above;

and sections 29 and 33 of that Act shall apply accordingly.

(5) Any enactment which authorises the disclosure of information for the purpose of facilitating the enforcement of the Trade Descriptions Act 1968 shall apply as if the provisions of this Act were contained in that Act and as if the functions of any person in relation to the enforcement of this Act were functions under that Act.

The role of the police is referred to in section 17:

17 Entry, search and seizure

(1) If a justice of the peace is satisfied by information on oath that there are reasonable grounds for suspecting--

(a) that an offence under this Act has been or is being committed on any premises, and

(b) that evidence that the offence has been or is being committed is on those premises,

he may issue a warrant under his hand authorising any constable to enter and search the premises within one month from the date of issue of the warrant.

(2) A constable entering or searching any premises in pursuance of a warrant under subsection (1) above may use reasonable force if necessary and may seize anything found there which he has reasonable grounds to believe may be required to be used in evidence in any proceedings for an offence under this Act.

(3) In subsection (1) above--

(a) the reference to a justice of the peace is, in Scotland, a reference to the sheriff or a justice of the peace and, in Northern Ireland, a reference to a resident magistrate, and

(b) the reference to information is, in Scotland, a reference to evidence and, in Northern Ireland, a reference to a complaint.

Judging from the following brief passage on law enforcement that appeared⁴⁴ on the website of the British Board of Film Classification, local trading standards officers would ordinarily have been involved in the first instance:

The BBFC does not have a direct role in enforcement.

The BBFC provides statements of evidence in support of Trading Standards and other enforcement agencies such as Police and Customs.

If a member of the public believes that an offence is being committed under the VRA they should report this to their local Trading Standards in the first instance.

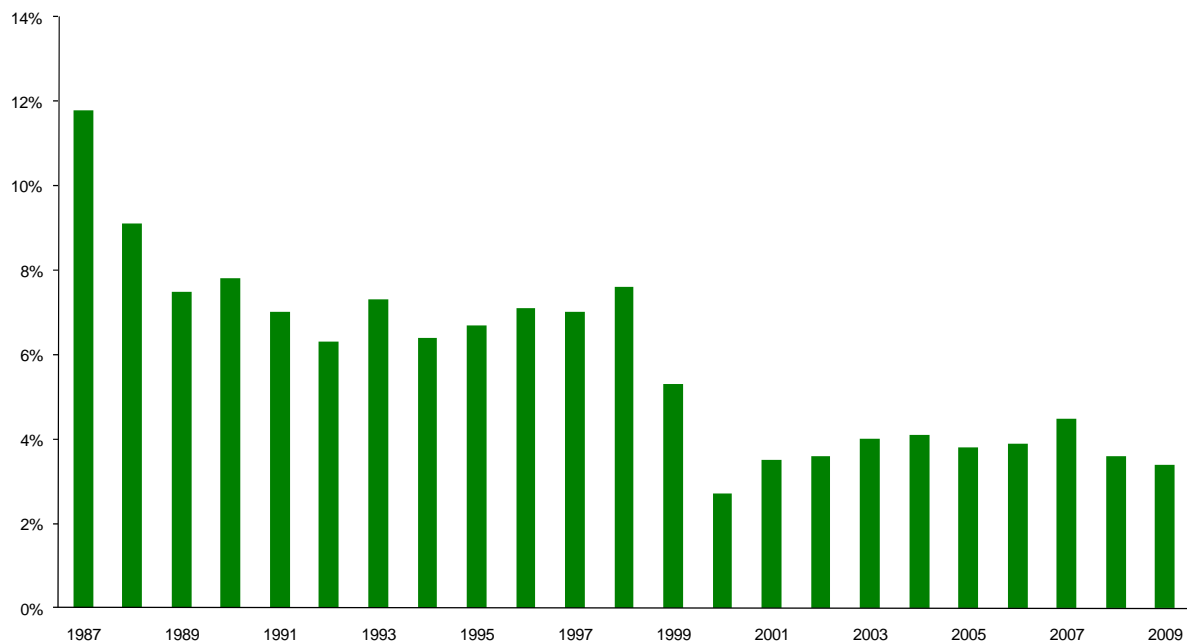
⁴⁴ BBFC website, accessed 22 February 2008

5 Statistics

5.1 British Board of Film Classification (BBFC) statistics

The following chart, and accompanying table, shows that there has been a decline in the proportion of films that have required cuts over the past 20 years.

Proportion of video 'works' submitted to the BBFC that require cuts (1987-2009)



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	12	2,480	2,721	2,562	2,344	950	1,159	1	0.01%	547	4.5%	12,228
2008	15	1,967	2,609	2,613	2,432	904	897	2	0.02%	411	3.6%	11,439
2009	7	1,450	2,219	2,453	2,416	660	861	2	0.02%	341	3.4%	10,068

Note: 2009 data as at 29 December

Source: www.bbfc.co.uk/statistics

5.2 Prosecutions and convictions

The table below shows the number of defendants prosecuted and offenders convicted for offences under the *Video Recordings Act 1984* between 2002 and 2006. Such data is not routinely published although the figures for 2007 would be available in response to a parliamentary question. The 2008 data is due to be available from the end of January 2010.

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	-
Total		157	122	166	96	103	139	102	130	86	81

(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.

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

Appendix 1 – Minister’s letter, 24 August 2009

The following is the text of a letter, dated 24 August 2009, sent out to stakeholders which contains details of the announcement made by Barbara Follett about problems with the *Video Recordings Act 1984*.

AMENDMENTS TO VIDEO RECORDINGS ACT

A serious issue has come to light during preparations to amend the Video Recordings Act 1984 (VRA) in order to establish a new video games classification system. It appears that the then British Government failed to notify the European Commission under the Technical Standards and Regulations Directive (83/189/EEC) of the existence of the new Act. Unfortunately, the discovery of this omission means that, a quarter of a century later, the VRA is no longer enforceable against individuals in United Kingdom courts.

As you will know, the VRA is the legislation which imposes the statutory requirement for videos, DVDs and some video games to be classified and age rated by the British Board of Film Classification [BBFC]. The legislation also sets out various criminal offences in the UK relating to the supply of these materials.

It has come to light that the classification and labelling requirements set out in the 1984 Act fall under the provisions of the Technical Standards and Regulations Directive, (Directive 83/189/EEC) the purpose of which is to facilitate the free movement of goods in the European Union. Since national laws and regulations on goods may constitute an obstacle to free movement the Directive establishes a ‘standstill period’ of three months during which member states must notify draft legislation to the Commission and other EU members before it can take legal effect.

As, twenty five years ago, the then British Government did not notify the European Commission of the VRA’s classification and labelling requirements, they cannot now be enforced against individuals in UK courts.

I am, therefore, writing to let you know about this unfortunate situation and to assure you that our priority is to remedy it as quickly as possible. I would also like to seek the industry’s assurance that they will continue to retail these products in the same way and that they will remain compliant with the provisions of the VRA on a voluntary and best practice basis.

That said, current or proposed prosecutions under the Act will not be pursued until further notice. My officials will be in close consultation with the prosecuting authorities across the UK until this problem with the Act is resolved. Equally, my officials are ready to work with you to deal with any complexities or questions arising out of this matter in the coming months. We would seek your assistance in ensuring this matter is handled with some care and sensitivity to ensure minimal advantage can be taken of the gap in the enforcement regime.

Once again, please be assured that we are doing all we can to ensure that there is a robust system of classification for films and video games in the UK.

Yours sincerely

Barbara Follett MP

Parliamentary Under Secretary

Appendix 2 – Video Recordings Bill 1983-84: parliamentary stages

Video Recordings Bill 1983-84		Passed Cap 39
20 July 1983	Bill 14	Presented by Graham Bright
8 November 1983	HC Lib	“Video Nasties” Background Paper 130
11 November 1983	48 c 523	Second reading
23 November 1983	SC Deb	Considered in Standing Committee C (Clauses 1 and 2)
30 November 1983	SC Deb	Second Sitting (Clause 2)
7 December 1983	SC Deb	Third Sitting (Clauses 2 and 3)
14 December 1983	SC Deb	Fourth Sitting (Clauses 3 and 4)
18 January 1984	SC Deb	Fifth Sitting (Clause 4)
25 January 1984	SC Deb	Sixth Sitting (Clause 4)
1 February 1984	SC Deb	Seventh Sitting (Clause 4: 18R Films Division)
8 February 1984	SC Deb	Eighth Sitting (Clause 4)
15 February 1984	SC Deb	Ninth Sitting (Clauses 4-21; New clause 9)
15 February 1984	HC 270	Minutes of Proceedings of Standing Committee C
15 February 1984	Bill 104	As amended in Standing Committee C
16 March 1984	56 c 610	Remaining stages
26 March 1984	HL 178	Brought from the Commons
2 April 1984	450 c 514	Second Reading
27 April 1984	451 c 262	Committee first day (Clauses 1-3)
4 May 1984	451 c 743	Committee second day (Clauses 3-4)
14 May 1984	451 c 1198	Committee third day (Clauses 4-7)
18 May 1984	451 c 1620	Committee fourth day (Clauses 8-23)
18 May 1984	HL 226	As amended in Committee
6 June 1984	452 c 690	Report, debate adjourned due to lack of quorum
14 June 1984	452 c 1337, 1343	Report (second day) (Clauses 12, 15, 17, 18)
18 June 1984	453 c 85	Report (third day) (Clauses 21, 23)
18 June 1984	HL 255	As amended on Report
27 June 1984	453 c 967	Third Reading
28 June 1984	Bill 206	As amended by the Lords
6 July 1984	63 c 590	Lords amendments considered & agreed to
12 July 1984	Cap 39	Royal Assent
12 June 1985	SI	Commencement (No. 1) Order, SI 1985/883
21 June 1985	SI	Commencement (Scotland) (No. 1) Order, SI 1985/904
26 July 1985	SI	Commencement (No. 2) Order, SI 1985/1264
1 August 1985	SI	Commencement (Scotland) (No. 2) Order, SI 1985/1265
12 May 1986	474 c 955	LPQ on Implementation
2 July 1986	SI	Commencement (No. 3) Order, SI 1986/1125
7 July 1986	SI	Commencement (Scotland) (No. 3) Order, SI 1986/1182
3 February 1987	SI	Commencement (No. 4) Order, SI 1987/160