

STATES OF JERSEY



DRAFT VIDEO RECORDINGS (AMENDMENT) (JERSEY) LAW 201-

Lodged au Greffe on 28th January 2015
by the Minister for Economic Development

STATES GREFFE



Jersey

DRAFT VIDEO RECORDINGS (AMENDMENT) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Economic Development has made the following statement –

In the view of the Minister for Economic Development, the provisions of the Draft Video Recordings (Amendment) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator L.J. Farnham**

Minister for Economic Development

Dated: 13th January 2015

REPORT

The Video Recordings Law was adopted by the States in 1990 to ensure that supplies of hard copy video works in Jersey were subject to the same classification system as those offered for sale in the United Kingdom (UK). In effect it means that the British Board of Film Classification (BBFC) age-suitability symbols which are ‘U’, ‘PG’, ‘12’, ‘15’, or ‘18’ must be carried on the hard copy item and the associated packaging. It is an offence for a trader to sell products rated ‘12’ or above to anyone not meeting the age requirement.

In common with relevant UK legislation (the Video Recordings Act 1984), the Jersey Law currently gives exemption from age classification for certain categories of video works. This is provided they do not feature any content involving sex, violence or criminal behaviour, as well as other criteria set out in the Law. The exemption applies to video works that are concerned with –

- Music
- Sport
- Religion
- Education or instruction (which is generally interpreted to include documentaries).

Recently the UK government reviewed the criteria for exempted works in light of product and cultural changes since the Video Recordings Act was passed in 1984. Particular concern was highlighted about the possible impact on young people of some music video content. Following a full public consultation and consideration of a number of options, the UK government decided to lower the existing statutory thresholds on exemptions for music, sport, educational and religious videos. As a result, some video works that would previously have been exempt will now need to be BBFC classified if they contain material which does not meet the new criteria and consequently is unsuitable for young children.

The amendments made to UK legislation came into force on 1st October 2014. It is important that the Video Recordings Law is amended in line with the UK changes, to ensure that the BBFC classifications on supplies in the Island remain consistent. The amendments set out in the draft Law will maintain this position.

The opportunity has also been taken to introduce a definition for the term ‘video game’ which brings such games within the scope of the Law, again maintaining consistency with UK legislation. The BBFC classifies video games featuring strong content, and the draft amendments now clearly set out the circumstances in which they are not considered to be exempted works.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this draft Law.

Human Rights

The notes on the human rights aspects of the draft Law in the Appendix have been prepared by the Law Officers’ Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX TO REPORT

Human Rights Notes on the Draft Video Recordings (Amendment) (Jersey) Law 201-

These Notes have been prepared in respect of the Draft Video Recordings (Amendment) (Jersey) Law 201- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The Video Recordings (Jersey) Law 1990 (the “**principal Law**”) provides labelling and certification requirements in respect of the supply of video works. Article 2(1) of the principal Law provides that a video work is exempt from these requirements if, taken as a whole, it is designed to inform, educate or instruct, or is concerned with sport, religion or music. This exemption is subject to Article 2(2) of the principal Law, which sets out circumstances in which such a video work is not an exempted work even if it otherwise falls within Article 2(1) of the principal Law. The draft Law will amend the principal Law to expand the relevant criteria under which a video work, a video game and a supply is deemed not to be exempt from labelling and classification requirements.

Articles 3 and 4 of the draft Law engage Article 10 ECHR (freedom of expression). Article 10 ECHR has a broad and inclusive scope, and protects even those expressions whose substance, content and form are considered to offend, shock or disturb. Furthermore, Article 10 ECHR protects not only the substance of the ideas and information expressed, but also the form and means by which they are conveyed. Any restriction on the means of dissemination necessarily interferes with the right to receive and impart information.

The scope of works that are potentially engaged by the principal Law will be protected forms of expression for the purposes of Article 10 ECHR. Moreover, the supply of those works will also be a protected aspect under that Article. The principal Law provides that the offer to supply or the supply of, and possession for the purposes of supplying, an unclassified video work, is an offence unless the supply, or the video work itself, is exempted from classification requirements. That method of regulation in the principal Law will amount to a restriction on the freedom of expression protected by Article 10 ECHR. The draft Law seeks to reinforce that regulation by expanding on the scope of those video works which are not deemed ‘exempted works’ (see amendment to Article 2) and, accordingly, the amendments in the draft Law will enhance the limitation on the Article 10 right.

An interference with Article 10 ECHR will be justified if it has a legitimate aim (i.e. those listed in Article 10(2) ECHR), is prescribed by law and is necessary in a democratic society. The ‘necessity’ test is often expressed as the requirement that the means employed must be proportionate to the aim pursued, or that the restriction should correctly balance the conflicting individual and public interests at stake.

The legitimate aim in Article 10(2) ECHR pursued by the measures contained in the principal Law, and the amendments in the draft Law, is the protection of morals. The

amendments to Articles 2 and 3 of the principal Law expand on or refine existing provisions relating to what is not an exempt work or an exempt supply. The amendments enhance the detail of the limit of the applicable exemption by reference to works that, generally speaking, contain violent or explicit images or depict illegal activities.

Introducing such amendments to the principal Law, although amounting to a restriction on the Article 10 ECHR right, is proportionate to the legitimate aim of protecting morals. The circulation of video works containing excessive or extreme images is not absolutely prohibited, rather their circulation is subject to a system of classification to ensure dissemination and viewing by an appropriate audience. Such a system, and the application of exemptions from classification, is entirely within the broad margin of appreciation afforded to states as regards restrictions on expression related to the moral demands of the relevant audience. Accordingly, the further refinement to the criteria for applying the exemption from classification continues to represent a proportionate restriction on the Article 10 right.

The final aspect to cover in assessing the ECHR compatibility of the draft Law is the requirement for the measures to be 'prescribed by law'. This requirement is satisfied, given that the measures are to be introduced by legislation which is accessible and, on balance, sufficiently precise.

Explanatory Note

This Law amends the Video Recordings (Jersey) Law 1990 (the “principal Law”). The principal Law provides labelling and certification requirements in respect of the supply of video works. By Article 2(1) of the principal Law, a video work is exempt from these requirements if, taken as a whole, it is designed to inform, educate or instruct, or is concerned with sport, religion or music. This exemption is subject to Article 2(2) of the principal Law which sets out certain circumstances in which such a video work is not an exempted work even if it otherwise falls within Article 2(1) of the principal Law.

Article 1 defines “principal Law” as the Video Recordings (Jersey) Law 1990.

Article 2(a) amends Article 1(2) and (3) of the principal Law to widen the scope of the definitions “video work” and “video recordings” so that provision is made for any device capable of storing data electronically rather than merely disc and magnetic tape.

Article 2(b) inserts a definition for the term “video game” as Article 1(3A) of the principal Law.

Article 3 substitutes Article 2(2) of the principal Law with new provisions which specify the circumstances in which a video work (other than a video game) is not an exempted work. The cases relate to violence (other than mild violence); dangerous activities; drugs, alcohol and tobacco; suicide, scarification, mutilation and self-harm; criminal offences; sexual messages and sexual activity (other than mild sexual activity, but not including acts of force or restraint); genitalia and urinary or excretory functions; swearing (other than mild bad language) and offensive or otherwise discriminatory behaviour. The more limited criteria which was originally specified for a video work that is not an exempted work (sexual activity and acts of force or restraint associated with such activity; mutilation or torture; genitalia and urinary or excretory functions) now apply in respect of a video game. A video game is not an exempted work if, to any significant extent, it depicts criminal activity which is likely, to any significant extent, to stimulate or encourage the commission of offences.

Article 4 amends Article 3(5) of the principal Law which specifies the circumstance in which the supply of video works is an exempted supply, and currently operates by way of cross reference to Article 2(2) of the principal Law. The effect of the amendment is to maintain the current scope of this exemption.

Article 5 provides for the Law to be cited as the Video Recordings (Amendment) (Jersey) Law 201- and provides for it come into force 7 days after it is registered in the Royal Court.



Jersey

DRAFT VIDEO RECORDINGS (AMENDMENT) (JERSEY) LAW 201-

Arrangement

Article

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Jersey

DRAFT VIDEO RECORDINGS (AMENDMENT) (JERSEY) LAW 201-

A LAW to amend the Video Recordings (Jersey) Law 1990.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law “principal Law” means the Video Recordings (Jersey) Law 1990¹.

2 Amendment of Article 1

In Article 1 of the principal Law –

- (a) in paragraphs (2) for the words “disc or magnetic tape” there shall be substituted the words “disc, magnetic tape or any other device capable of storing data electronically”;
- (b) For paragraph (3) there shall be substituted the following paragraph –
 - “(3) ‘Video recording’ means –
 - (a) any disc or magnetic tape; or
 - (b) any other device capable of storing data electronically, containing information by the use of which the whole or a part of a video work may be produced.”.
- (c) after paragraph (3) there shall be inserted the following paragraph –
 - “(3A) ‘Video game’ means any video work that is a game played by manipulating the visual images.”.

3 Amendment of Article 2

For Article 2(2) of the principal Law there shall be substituted the following paragraphs –

- “(2) A video work other than a video game is not an exempted work for the purposes of paragraph (1) if it does one or more of the following –
- (a) it depicts or promotes violence or threats of violence;
 - (b) it depicts the immediate aftermath of violence on human or animal characters;
 - (c) it depicts an imitable dangerous activity without also depicting that the activity may endanger the welfare or health of a human or animal character;
 - (d) it promotes an imitable dangerous activity;
 - (e) it depicts or promotes activities involving illegal drugs or the misuse of drugs;
 - (f) it promotes the use of alcohol or tobacco;
 - (g) it depicts or promotes suicide or attempted suicide, or depicts the immediate aftermath of such an event;
 - (h) it depicts or promotes any act of scarification or mutilation of a person, or of self-harm, or depicts the immediate aftermath of such an act;
 - (i) it depicts techniques likely to be useful in the commission of offences or, through its depiction of criminal activity, promotes the commission of offences;
 - (j) it includes words or images intended or likely to convey a sexual message (ignoring words or images depicting any mild sexual behaviour);
 - (k) it depicts human sexual activity (ignoring any depictions of mild sexual activity);
 - (l) it depicts or promotes acts of force or restraint associated with human sexual activity;
 - (m) it depicts human genital organs or human urinary or excretory functions (unless the depiction is for a medical, scientific or educational purpose);
 - (n) it includes swearing (ignoring any mild bad language); or
 - (o) it includes words or images that are intended or likely (to any extent) to cause offence, whether on the grounds of race, gender, disability, religion or belief or sexual orientation, or otherwise.
- (3) For the purposes of paragraph (2), a video work promotes something if the work is likely (to any extent) to stimulate or encourage that thing.
- (4) In paragraph (2) –
- ‘human or animal character’ means a character that is or whose appearance is similar to that of –

- (a) a human being; or
 - (b) an animal that exists or has existed in real life,
- but does not include a simple stick character or any equally basic representation of a human being or animal;
- ‘imitable dangerous activity’ means an activity which –
- (a) if imitated by a person, may endanger the welfare or health of any person or animal; and
 - (b) may be easily imitated by a person; and
- ‘violence’ does not include any violence that is –
- (a) mild; or
 - (b) not directed towards human or animal characters,
- unless it is sexual violence.

- (5) A video game is not an exempted work for the purposes of paragraph (1) if, to any significant extent, it depicts –
 - (a) human sexual activity or acts of force or restraint associated with such activity;
 - (b) mutilation or torture of, or other acts of gross violence towards, humans or animals; or
 - (c) human genital organs or human urinary or excretory functions,

or is likely to any significant extent to stimulate or encourage anything falling within sub-paragraph (a) or, in the case of anything falling within sub-paragraph (b), is likely to any extent to do so.
- (6) A video game is not an exempted work for the purposes of paragraph (1) if, to any significant extent, it depicts criminal activity which is likely to any significant extent to stimulate or encourage the commission of offences.”.

4 Amendment of Article 3

In Article 3(5) of the principal Law for sub-paragraphs (b) and (c) there shall be substituted the following sub-paragraphs –

- “(b) does not, to any significant extent, depict any of the following –
 - (i) human sexual activity or acts of force or restraint associated with such activity,
 - (ii) mutilation or torture of, or other acts of gross violence towards, humans or animals, or
 - (iii) human genital organs or human urinary or excretory functions; and
- (c) is not designed –
 - (i) to any significant extent to stimulate or encourage anything falling within sub-paragraph (b)(i), or

- (ii) to any extent to stimulate or encourage anything falling within sub-paragraph (b)(ii),”.

5 Citation and commencement

This Law may be cited as the Video Recordings (Amendment) (Jersey) Law 201- and shall come into force 7 days after it is registered.

¹ *chapter 11.800*