

## EXPLANATORY MEMORANDUM TO THE

LICENSING ACT 2003 (TRANSITIONAL PROVISIONS) ORDER 2005;  
LICENSING ACT 2003 (LICENSING AUTHORITY'S REGISTER) (OTHER  
INFORMATION) REGULATIONS 2005;  
LICENSING ACT 2003 (PERSONAL LICENCES) REGULATIONS 2005;  
LICENSING ACT 2003 (PREMISES LICENCES AND CLUB PREMISES CERTIFICATES)  
REGULATIONS 2005;  
LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005

### 1. Introduction

- 1.1 This explanatory memorandum is laid before Parliament by Command of Her Majesty.
- 1.2 This explanatory memorandum has been prepared by the Department for Culture, Media and Sport. This memorandum relates to five instruments to better assist their scrutiny where the intent and purpose of those instruments are connected.

### 2. Description

- 2.1 All five instruments form the major part of the implementation of the Licensing Act 2003 necessary for the transitional provisions provided by Schedule 8 to that Act to have full force and effect for the first appointed day on 7<sup>th</sup> February 2005, this being the day appointed as such by S.I 2004/1739, and for associated purposes.
- 2.2 The Licensing Act 2003 (Transitional provisions) Order 2005 (the Order) makes detailed provision for applications to convert the authorisations in respect of using premises for the sale and supply of intoxicating liquor and the provision of public entertainment, theatre, cinema, late night refreshment and night cafes under existing licences (existing licensable activities) to authorisations in respect of using premises for the sale and supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment (licensable activities) under new premises licences provided by the Licensing Act 2003 (the 2003 Act). The Order further makes provision for applications to convert the authorisations in respect of using club premises for the supply of intoxicating liquor under existing club certificates by registered clubs (existing qualifying club activities) to authorisations in respect of using premises for the supply of alcohol under new club premises certificates provided by the 2003 Act. Finally, the Order prescribes the form of the photograph to be provided by the holder of a justices' licence granted under Part 1 of the Licensing Act 1964 when applying for the grant of a personal licence under section 117 of the 2003 Act during the transitional period; S.I No. 2004/1739 provides that the period from 7<sup>th</sup> February 2004 to 6<sup>th</sup> August 2005 shall be the transitional period for such applications.

2.3 The Licensing Act 2003 (Licensing authority's register) (other information) Regulations 2005 (the register Regulations) prescribe, for the purposes of section 8(1)(d) of the 2003 Act, the further information each licensing authority must record in the register it is required to keep for the purposes of the said section 8 over and above the requirements of section 8 of and Schedule 3 to the 2003 Act. Section 8 of and Schedule 3 to the 2003 Act require records to be kept in the register of each premises licence, club premises certificate and personal licence issued by the licensing authority, each temporary event notice received by it and of a range of applications and notices made or given to it. The additional information each licensing authority must record in its register are operating schedules and club operating schedules (or revisions or variations of these), plans of premises and schedules of works and plans in relation to applications for authorisations under the 2003 Act. Further, the register must record the ground or grounds for a review of a premises licence or club premises certificate and the determination of the magistrates' court on its consideration of a closure order made under Part 8 of the 2003 Act. Finally, the register Regulations require a record to be kept in the register of the existing licensable activities, existing qualifying club activities and plans of premises accompanying applications for conversion of existing authorisations under the Order.

2.4 The Licensing Act 2003 (Personal licences) Regulations 2005 (the personal licences Regulations) make detailed provision for applications for the grant, or renewal, of a personal licence under section 117 of the 2003 Act. A personal licence is an authority to an individual under the 2003 Act to supply alcohol, or authorise the supply of alcohol in accordance with a premises licence. The personal licence Regulations provide for the documents to accompany applications for personal licences. The personal licences Regulations also prescribe, for the purposes of section 120(2)(b) of the 2003 Act (persons of a prescribed description) three categories of person who do not need to possess a licensing qualification to be granted a personal licence. These categories are: first, a member of the company of the Master, Wardens, Freemen and Commonalty of the Mystery of the Vintners of the City of London, secondly, a person operating under a licence granted by the University of Cambridge and, finally a person operating under a licence granted by the Board of the Green Cloth. The latter two categories will be time limited as licences granted by the University of Cambridge and by the Board of the Green Cloth will cease to have effect when the new system introduced by the 2003 Act is fully operational on the second appointed day to be appointed under powers in paragraph 1 of Schedule 8 to the Act.

2.5 The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (the premises licences and club premises certificates Regulations) make detailed provision for the applications for the grant of a premises licence or club premises certificate (and for variations and reviews of these) for the use of premises or club premises and for the issue of a provisional statement for the use of premises, for the supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment. Further they make detailed provision for an application to transfer a premises licence to a new holder and the giving of an interim authority notice to reinstate the authorisation granted by a premises licence following the death etc. of a licence holder. Also, the premises licences and

club premises certificate Regulations make detailed provision concerning the advertising and notification of applications and reviews, the making of representations by interested parties, for example local residents, and responsible authorities, for example the police, in respect of applications and the form of plans and consents to accompany such applications. In addition, they prescribe the form of a premises licence and club premises certificate and the summary of each. Finally, the premises licence and club premises certificate Regulations prescribe weights and measures authorities as additional responsible authorities which must be notified of applications for premises licences and club premises certificates etc. and, for the purposes of section 47(2)(a) of the 2003 Act the persons to have a prescribed interest in premises so as to be eligible to give an interim authority notice and the manner in which a person giving notice of his property interest in any premises under section 178 of the 2003 Act shall give that notice to the relevant licensing authority.

2.6 The Licensing Act 2003 (Hearings) Regulations 2005 make provision for the procedure to be followed in relation to hearings held by a relevant licensing authority under the 2003 Act. In general the hearings concerned arise following the making of relevant representations or the giving of objection notices in relation to applications made and notices given under the 2003 Act.

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

3.1 None.

### **4. Legislative background**

4.1 These five instruments are being made under a range of powers to make subordinate legislation provided in the 2003 Act to ensure that applicants for authorisations under the new regulatory system for the licensing of the use of premises for licensable activities have comprehensive procedures in place to be able to make such applications and to ensure that licensing authorities appointed by section 3 of the 2003 Act can carry out the functions conferred upon them by the Act.

4.2 Schedule 8 to the 2003 Act makes provision for transitional arrangements for the conversion of existing authorisations under six current licensing regimes to the new regime introduced by the Act. The existing licensing regimes are provided under the Licensing Act 1964, the London Government Act 1963, the Private Places of Entertainment (Licensing) Act 1967, the Theatres Act 1968, the Late Night Refreshment Houses Act 1969, the Local Government (Miscellaneous Provisions) Act 1982, the Cinemas Act 1985 and the London Local Authorities Act 1990 and the arrangements in Schedule 8 to the 2003 Act provide a right to holders of existing licences and to registered clubs to move their existing authorisations into the new regime subject to minimal requirements. The transitional arrangements also provide that existing justices' licence holders can apply for the grant of a personal licence under Part 6 of the 2003 Act without having to possess a licensing qualification which would otherwise be required under the new regime. Schedule 8 to the 2003 Act contains powers for an order

to be made to make provision for the more detailed requirements necessary to enable the conversions (with variations if applied for simultaneously) and for applications for personal licences to be considered by the licensing authorities. Those powers are contained in paragraphs 2, 6, 11, 12, 14, 18 and 23 of Schedule 8 to the 2003 Act.

4.3 Section 8 of the 2003 Act places an obligation on each licensing authority to keep a register which will contain records of the authorisations granted by, notices received or given by and applications made to it. The 2003 Act confers a new right on a class of person known as interested parties (sections 13 and 69) to make representations about most applications and it is the Government's intention that such parties can use the information recorded on the register to inform their decision as to whether to make such representations. The matters required to be recorded in the register in section 8 of and Schedule 3 to the 2003 Act are statements of fact alone and such records would be insufficient to enable an interested party to decide whether to exercise his or her rights. Section 8(1)(d) provides a power to prescribe a record of other information to be contained in the register.

4.4 Section 125 of the 2003 Act, which relates to the form of a personal licence, makes provision for the licence to be in a prescribed form. Section 133 of the 2003 Act contains powers for regulations to be made to make provision for the detailed requirements as to the form of an application for a personal licence, the manner in which it is to be made and any information or documents to accompany it, including a requirement for a fee to accompany the application.

4.5 Throughout the 2003 Act there are a range of powers which are relevant to providing the detailed requirements which must be complied with if a person is applying for a premises licence, a variation of that licence or to review that licence, or for the issue of a provisional statement, the transfer of a licence or the giving of an interim authority notice if the licence has lapsed due to the death etc. of its holder. Powers are also given which are relevant to providing the detailed requirements which must be complied with by a club applying for a club premises certificate, a variation of that certificate or by a person wishing to review a club premises certificate. Sections 17, 29, 30, 34, 37, 42, 47, 51 and 54 provide relevant powers in relation to premises licences and provisional statements and sections 71, 84, 87 and 91 provide relevant powers in relation to club premises certificates. Sections 24 and 78 confer powers on the Secretary of State to prescribe the form of the premises licence and its summary and the club premises certificate and its summary. There are a number of ancillary powers that are relevant to the issue of premises licences and club premises certificates which enable the Secretary of State to prescribe additional persons as responsible authorities (sections 13 and 69), persons who have an interest in premises for the purposes of giving an interim authority notice under section 47 of the 2003 Act and to prescribe the form of the notice and information to be given by a person wishing to register his, her or its interest in premises under section 178 of the 2003 Act. Finally, the 2003 Act provides powers for detailed requirements as to the giving of notices about and advertising of reviews it is to undertake following a closure order made under Part 8 of the Act pursuant to its section 167.

4.6 Section 183 of the 2003 Act confers power on the Secretary of State by regulations to make detailed provisions as to the procedure to be followed by a

licensing authority in relation to any hearing it is required to hold under the Act. In addition, section 9 of the 2003 Act confers power on the Secretary of State by regulations to make provision about the proceedings of licensing committees and sub-committees, public access to their meetings, publicity to be given to those meetings and the agendas and records to be produced and the public access to those agendas and records. The Government considers that it should make provision for aspects of the procedure in preparation for and at hearings to be specified in relation to the regulatory role of local authorities as licensing authorities in recognition of the need for consistency and transparency across all licensing authorities. Subject to such specified requirements, section 9 of the 2003 Act states that the licensing committees and sub-committees may regulate their own procedure. Local authorities acting as licensing authorities would be subject also to general local government legislation insofar as the 2003 Act or regulations made under it do not make provision for such matters, for example the Local Government Act 1972.

## **5. Extent**

5.1 The Licensing Act 2003 extends to England and Wales.

## **6. European Convention on Human Rights**

6.1 Not applicable.

## **7. Policy background**

7.1 The Government intends the new regime in relation to the regulation of the use of premises for licensable activities to be responsive to local considerations and to be conducted as necessary in the public interest at the local level by locally accountable bodies. In view of this approach the Government is keen that local decision making takes place with as little central interference as possible. However, it is recognised that for the new regime to be and be seen as fair to all who are to be regulated by it and to provide rights that are exercisable by interested parties and responsible authorities in a transparent and accessible way certain detailed requirements which must be adhered to by all applicants, notice givers, makers of representations and licensing authorities are necessary to ensure that the new regime provides an effective, fair and enforceable control for all affected by it.

7.2 Between 15 September and 11 November 2004 the Government conducted a public consultation about the content of these Regulations and Order. This built upon extensive discussions which the Government had held with local authority representative bodies, industry, the police and representatives of various community and voluntary groups and performers. There were 269 responses to the consultation from 230 public bodies, organisations and individuals, some of which wrote more than once. These included:

- 115 local authorities and local authority representative bodies;
- 18 solicitors

- 1 magistrates' court
- 5 Members of Parliament
- 4 fire authorities
- 49 industry
- 9 police forces and their representative bodies
- 8 Crime and Disorder Reduction Partnerships
- 21 others

7.3 As a result of the consultation, the Government made several changes to the drafts on which it had consulted. The main policy changes included deciding:

- to clarify various forms on which applications would be made under the terms of the legislation;
- not to prescribe the Mayor of London (and other similar Mayors) or Crime and Disorder Reduction Partnerships as responsible authorities;
- to prescribe weights and measures authorities (trading standards authorities) as responsible authorities;
- not to require licensing authorities to advertise reviews of premises licences and club premises certificates in newspapers circulating locally in the area; and
- not to require that plans accompanying applications for premises licences and club premises certificates to include areas where consumption of alcohol takes place on or in conjunction with licensed premises and alternatively, to require a written description of this information on application forms.

## **8. Impact**

8.1 A Regulatory Impact Assessment has been prepared in relation to all five instruments. The Regulatory Impact Assessment is attached to this memorandum.

## **9. Contact**

9.1 Andrew Cunningham at the Department for Culture Media and Sport, telephone: 020 7211 6344 or e-mail: [andrew.cunningham@culture.gsi.gov.uk](mailto:andrew.cunningham@culture.gsi.gov.uk) can answer any queries regarding these instruments.

Department for Culture, Media and Sport  
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