EXPLANATORY MEMORANDUM TO

THE LICENSING ACT 2003 (MANDATORY LICENSING CONDITIONS) ORDER 2014

2014 No.

1. This explanatory memorandum has been prepared by the Home Office ("the Department") and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This Order will be made in accordance with powers contained in sections 19A and 73B of the Licensing Act 2003 ("the 2003 Act"). The Secretary of State considers that it is appropriate to make this Order for the promotion of the licensing objectives in the 2003 Act. Its purpose is to introduce a further mandatory condition, applicable to all premises licences and club premises certificates, which will prohibit licensed premises from making a sale or supply of alcohol below the "permitted price"; this is defined as the aggregate of the duty chargeable in relation to the alcohol and the amount of that duty multiplied by a percentage which represents the rate of VAT chargeable in relation to the alcohol.

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

3.1 This Order contains revised provision to reflect comments made by the Joint Committee in relation to a previous draft of the Order which was laid before Parliament and published on 5th February 2014, but was withdrawn before being debated by either House of Parliament. The revision comprises a technical amendment to paragraph 2(b)(ii) in the Schedule (to replace the earlier reference in it to "rate" with a reference to "amount") in order to aid clarity.

4. Legislative Context

4.1 The 2003 Act sets out a detailed framework for the regulation of licensable activities; these activities include the sale and supply of alcohol. Under this framework, premises licences or club premises certificates authorise the holder of the licence or certificate to use the premises to which the licence or certificate relates for licensable activities. The licence or certificate contains conditions; some are mandatory in accordance with the 2003 Act and some are imposed by licensing authorities. The sale or supply of alcohol is subject to certain mandatory conditions prescribed by the 2003 Act.

4.2 The Policing and Crime Act 2009 amended the 2003 Act to confer a power on the Secretary of State to specify further mandatory licensing conditions relating to the sale by retail or supply of alcohol by premises licences and club premises certificates. The amendments to the 2003 Act introduced an enabling power that allows the Secretary of State to set out (in secondary legislation) further mandatory licence conditions relating to the sale and supply of alcohol for all new and existing relevant premises licences and for all new and existing relevant club premises certificates respectively (or for those premises licences or club premises certificates of a particular description). A "relevant" licence or certificate means a licence or certificate which authorises the sale or supply of alcohol.

4.3 All conditions must be made with a view to promoting the four licensing objectives set out in the 2003 Act. These are: the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm.

4.4 The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2014 will represent the second use of the powers inserted into the 2003 Act by the Policing and Crime Act 2009.

5. Territorial Extent and Application

5.1 This Order extends to England and Wales only.

6. European Convention on Human Rights

6.1 Norman Baker, the Minister of State for Crime Prevention, has made the following statement:

In my view the provisions of the Licensing Act 2003 (Mandatory Licensing Conditions) Order 2014 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 As part of the Government's commitment to tackle alcohol-related crime and disorder and resulting harms, it has decided to ban the sale of alcohol below the permitted price, broadly meaning the aggregate cost of duty and the VAT attributable to the amount of that duty, which fulfils a commitment in the Coalition Agreement. The permitted price is defined as the aggregate of the duty chargeable in relation to a particular alcoholic product and the amount of that duty multiplied by a percentage which represents the rate of VAT chargeable in relation to that product.. The Government is committed to ensuring that the worst cases of cheap alcohol are banned from sale.

7.2 The ban is a new licensing condition in the Mandatory Code of Practice. The Mandatory Code of Practice applies to all licensed premises in England and Wales, including those which carry on licensable activities in accordance with a club premises certificate. The ban will prevent anyone who supplies alcohol from selling alcohol at heavily discounted prices and aims to reduce excessive alcohol consumption and its associated impact on alcohol related crime and health harms.

7.3 Alcohol-related harm is estimated to cost society £21bn per year, with £11bn of this relating to alcohol-related crime. In nearly half (47%) of all violent incidents, the victim believed the perpetrator to be under the influence of alcohol. The most common type of anti-social behaviour experienced or witnessed – by one in ten people (10%) – was drink related.

7.4 Evidence supports the view that below cost selling is a real issue (below cost defined as selling a good for less than the cost at which it was supplied). Six out of seven major supermarkets sold alcohol below cost in 2008 with below cost selling taking place at 11.9% below cost price on average for all goods. This resulted in retailers selling 220.2m litres of below cost alcohol during that same year. There is a growing body of evidence linking "pre-loading" to alcohol-related harm, particularly alcohol-related crime and disorder. Two recent small scale studies provide some indication of the scale and impact of pre-loading. Two thirds (66%) of 17-30 year olds arrested in a city in England claimed to have pre-loaded before a night out, with the majority (83%) buying alcohol from a supermarket, in advance, in preparation for pre-loading. A further study found that pre-loaders were two and half times more likely to be involved in violence than other consumers.

- ***Consolidation***

7.5 The Department considers that it is not appropriate to make this Order by way of an amendment to the Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010, but will consider consolidation if it subsequently uses the powers in sections 19A and 73B of the 2003 Act.

8. Consultation outcome

8.1 The Department has carried out two separate public consultations in relation to proposals for alcohol pricing.

8.2 From July to September 2010, the Government conducted a public consultation exercise on 'Rebalancing the Licensing Act'. This consultation included a request for responses on the following areas:

- Simple and effective ways to define the 'cost' of alcohol.
- Effective ways to enforce a ban on below cost selling and their associated costs.

- The feasibility of using mandatory licensing conditions under the 2003 Act to impose a condition that no alcohol can be sold below cost, without defining cost.

8.3 The Department received a total of 1,089 responses to the consultation. This included 370 from members of the public; 164 from those involved in the retail or manufacture of alcohol or their trade associations; 387 from those involved in enforcement, licensing and health; and 117 responses from others including legal specialists, those involved in the entertainment industry, village halls, charities and a range of other organisations.

8.4 Seven regional events were held across England and Wales, which gave interested parties the opportunity to hear more about the proposals and to discuss their responses in workshops.

8.5 The most recent public consultation on the Alcohol Strategy ran from 28 November 2012 to 6 February 2013, and around 1,450 responses were received. This consultation included questions on minimum unit pricing. Strong arguments were presented both in opposition to and in support of a minimum unit price for alcohol.

8.6 The Department has also held discussions with a range of representatives such as local authorities and the alcohol industry to discuss various pricing options, including minimum unit pricing, a ban on the sale of alcohol below cost and taxation.

8.7 Details of the consultation and the Government's response are available on the Department's website at http://www.homeoffice.gov.uk/.

9. Guidance

9.1 Licensing authorities must have regard to the statutory guidance (issued under section 182 of the 2003 Act) in the exercise of their functions under the 2003 Act. The statutory guidance will be revised to reflect the changes brought about by the introduction of this Order.

10. Impact

10.1 There is an impact on businesses, consumers and public bodies, particularly, local authorities, the NHS and the criminal justice system. The estimated total cost to business is expected to be around £0.4 million per annum. There is also an estimated initial one-off cost to business of £4.1 million, made up of familiarisation costs and implementation costs.

10.2 The impact on the public sector is split as follows. There is an estimated cost of £5.3 million per annum, plus £0.2 million implementation costs. There is an estimated benefit in reduction of healthcare costs of £1.15 million per annum. The benefit to society, for example to victims, the police and the

criminal justice system through a reduction in alcohol related crime is estimated as £3.6m per annum.

10.3 An Impact Assessment has been prepared for this instrument and will be published alongside the Explanatory Memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the Government consulted with businesses in order to minimise any potential burdens. The new mandatory condition will apply to all alcohol retailers and hence they will apply to many small businesses. However, the mandatory condition will only affect businesses that heavily discount alcohol products and it is therefore unlikely that all small businesses will be affected. It is unlikely that the on-trade will be affected.

11.3 The aim of the mandatory conditions is to ensure that those businesses, both small and large, who are selling alcohol irresponsibly, act more responsibly to help tackle alcohol-related crime and disorder. Exempting small businesses could jeopardise this aim because it is likely that there are a number of small businesses who are selling alcohol below the cost of duty plus VAT and which the Government wants to target through the condition. The Government therefore does not consider it appropriate to exempt small businesses from the proposed conditions.

11.4 The basis for the final decision on what action to take to assist small business is that the Government will produce exemplar policies and good practice guidance to further minimise impact.

12. Monitoring & review

12.1 The application and effect of this Order will be kept under review by the Department.

13. Contact

13.1 Debbie Goodier, Drugs and Alcohol Unit, the Home Office on 020 7035 0572 or Debbie.goodier2@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.