EXPLANATORY MEMORANDUM TO

THE LICENSING ACT 2003 (AMENDMENT OF THE GAMING ACT 1968) (TRANSFER OF GAMING MACHINE PERMITS) ORDER 2005

2005 No.3027

AND

THE LICENSING ACT 2003 (AMENDMENT OF THE LOTTERIES AND AMUSEMENTS ACT 1976) (TRANSFER OF AMUSEMENTS WITH PRIZES PERMITS) ORDER 2005

2005 No. 3028

1. This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 Changes to the alcohol licensing system mean that local authorities will take over responsibility, from licensing justices, for licensing alcohol premises, e.g. pubs, on 24th November 2005. These orders ensure that gaming machine permits and commercial amusements with prizes permits for alcohol licensed premises are transferred as part of the process of changing from the old system of justices' licences to the new system of premises licences under the Licensing Act 2003. Transfer is required where this process has lead to a different person holding the alcohol licence.

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

3.1 None

4. Legislative Background

4.1 The Licensing Act 2003 ("the 2003 Act") introduces a new licensing system for alcohol in England and Wales. Schedule 8 to the 2003 Act makes arrangements for the conversion of old justices' licences under the Licensing Act 1964 into new 2003 Act licences, prior to full implementation of the Act on 24th November 2005. Under Schedule 8, the identity of the person holding the new 2003 Act licence may be different from that of the person who held the 1964 Act licence.

4.2 Since 7th February 2005 it has also been possible for applications to be made under section 17 of the 2003 Act for a premises licence (where a conversion under Schedule 8 is not available e.g. because the time limits have passed for a Schedule 8 application). This includes those cases where an existing justices' licence is in force in respect of the premises. Where such an application is granted under section 18 of that Act before the 24th November 2005 the premises licence will take effect on that day when the new licensing regime is fully brought into force. As with converted licences it is possible that the identity of the person holding the new 2003 Act licence will be different from the person who held the 1964 Act in respect of the same premises.

4.3 The Gaming Act 1968 ("the 1968 Act") controls, amongst other things, the use of gaming machines on alcohol licensed premises, by means of permits under section 34 of that Act. The Lotteries and Amusements Act 1976 ("the 1976 Act") controls low value gaming and lottery amusements on alcohol licensed premises, by means of permits under section 16. In both cases, the legislation prohibits transfer of the permit, and provides for the permit to cease to have effect if the permit holder ceases to hold the alcohol licence relating to the premises.

4.4 The 2003 Act makes a number of consequential amendments to the 1968 and 1976 Acts (in Schedule 6, paragraphs 48 to 52, and 62 to 66) in relation to section 34 and section 16 permits. However, the 2003 Act did not amend those Acts to ensure that gaming machine permits and amusements with prizes permits do not lapse upon conversion of an old alcohol licence into a new alcohol licence when the identity of the licence holder changes.

4.5 Under section 198(2) of the 2003 Act the Secretary of State can amend primary legislation if she thinks it is needed as a result of anything contained in the 2003 Act. DCMS is using section 198(2) to make the necessary amendments to the 1968 and the 1976 Acts.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

The Minister for Sport has made the following statements regarding Human Rights:

In my view the provisions of the Licensing Act 2003 (Amendment of the Gaming Act 1969) (Transfer Of Gaming Machine Permits) Order 2005 are compatible with the Convention rights.

In my view the provisions of the Licensing Act 2003 (Amendment of the Lotteries and Amusements Act 1976) (Transfer Of Amusements With Prizes Permits) Order 2005 are compatible with the Convention rights.

7. Policy background

7.1 Under existing law, pubs and other holders of certain alcohol on-licences can apply for permits to provide either gaming machines on their premises, or low-value amusements with prizes that amount to gaming or a lottery (e.g. prize bingo). Such permits are issued in the name of the holder of the alcohol licence, and lapse if the name on the alcohol licence changes.

7.2 As a result of the Licensing Act 2003, a process is currently in train to convert all existing alcohol licences to new alcohol premises licences. Under the new Act, the named licence holder will no longer need to be the landlord or manager of the premises. Rather it could be the name of the company or brewery which owns the premises. Many pubs are electing to follow this route, as it will mean they will not need to seek a new or amended licence every time, for example, the manager of an establishment changes.

7.3 As the law stands, any premises in this position would see their existing permit lapse and the holder of the new alcohol licence would be required to apply for a new permit if they wanted to continue to provide gaming machines or amusements with prizes after the new alcohol licence takes effect on 24th November 2005. Ministers do not consider that such a requirement is necessary for regulatory purposes, and would impose an unnecessary additional administrative burden on both industry and the licensing authorities required to administer the changes. The Secretary of State has therefore decided to transfer automatically all valid gaming machine and amusements with prizes permits to the new holders of alcohol licence which result from the conversion process.

7.4 These orders will mean that in practice pubs and other businesses serving alcohol for consumption on the premises will only need to address the question of the name change on their alcohol licence when their current permit becomes due for renewal. Any name change will be dealt with administratively at that stage.

7.5 These orders only provide for the transfer of permits where that is required because the identity of the alcohol licence holder changes on 24th November 2005 as a result of the process of changing from the old system of justices' licences to the new system of premises licences under the Licensing Act 2003.

7.6 This approach has been welcomed by all the key trade and representative bodies who will be directly affected by the changes. DCMS has worked closely with the following bodies to develop extensive guidance for local authorities and industry on what the changes mean for them: Local Authority Co-ordinators on Regulatory Services (LACORS); British Beer and Pub Association (BBPA); British Amusement Catering Trade Association (BACTA), which represents the gaming machine manufacturers and suppliers; the Magistrates' Association; and the Justices' Clerks' Society.

7.7 DCMS will continue to work with these bodies to raise awareness about the changes among local authorities and in the industry.

8. Impact

8.1 In accordance with the guidance of the Better Regulation Executive, a Regulatory Impact Assessment has not been prepared for these instruments as they introduce merely technical administrative changes, which will have a negligible, though beneficial impact on costs for industry.

8.2 The changes will have a neutral effect on local authorities. They will have a positive effect on the administrative burdens on local authorities because they will not be required to issue new permits to all pubs and other alcohol licensed premises, where there is a name change on the alcohol licence. However, as local authorities would have been able to make a charge a fee for issuing new permits to cover their costs, in reality this change will be cost-neutral for local authorities.

9. Contact

David Fitzgerald, Head of Gaming and Lotteries at the Department for Culture, Media and Sport (Tel: 020 7211 6479 or e-mail: david.fitzgerald@culture.gsi.gov.uk) can answer any queries regarding the orders.