EXPLANATORY MEMORANDUM TO
THE LICENSING ACT 2003 (DESCRIPTIONS OF ENTERTAINMENT) (AMENDMENT) ORDER 2013

2013 No. 1578

1. This explanatory memorandum has been prepared by the Department for Culture, Media and Sport ("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 amends the descriptions of entertainment in paragraph 2 of Schedule 1 to the Licensing Act 2003 ("the 2003 Act") so that indoor sporting events and the performance of plays and dance are licensable only to the extent that applicable conditions (including conditions relating to audience limits and when those entertainment activities take place) are satisfied.

2.2 The Order also amends:

(a) the definition of a 'sporting event' in paragraph 16(2) of Schedule 1 to the 2003 Act, so that a boxing or wrestling entertainment can no longer be authorised as an indoor sporting event; and

(b) the definition of a 'boxing or wrestling entertainment' in paragraph 17 of Schedule 1 so as to make clear that a contest, exhibition or display that combines boxing or wrestling with one or more martial arts is a 'boxing or wrestling entertainment' for which, if other conditions are satisfied, an authorisation (e.g. a premises licence or a club premises certificate) may be required under the 2003 Act.

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

3.1 The Order will be made by the Secretary of State in the exercise of powers conferred by section 197(2) of, and paragraph 4 of Schedule 1 to, the 2003 Act.

3.2 The Order relies on the power in paragraph 4 of Schedule 1 of the 2003 Act to modify (by adding, varying or removing) some of the descriptions of entertainment in paragraph 2 of that Schedule. In addition, the Order also draws on this power to modify two of the definitions relating to those descriptions of entertainment in Part 3 of that Schedule (interpretation).

4. Legislative context

4.1 The 2003 Act provides that it is a criminal offence to carry on, or attempt to carry on, certain activities (referred to as "licensable activities") without an appropriate authorisation. Such an authorisation may comprise a premises licence, a club premises certificate or a temporary event notice.

4.2 One of the licensable activities is the provision of regulated entertainment, defined in paragraph 1 of Schedule 1 of the 2003 Act as the provision of entertainment of a description falling within paragraph 2 of Schedule 1 where certain conditions are also satisfied.

4.3 The descriptions of entertainment in paragraph 2(1) of that Schedule include a performance of a play, an indoor sporting event, a boxing or wrestling entertainment and a performance of dance.

5. Territorial extent and application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Minister of State, Hugh Robertson MP, has made the following statement regarding human rights:

"In my view, the provisions of the Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013 are compatible with the Convention rights."

7. Policy background

- What is being done and why

7.1 In line with the Government's objective of removing unnecessary burdens, the Department conducted a consultation exercise in 2011 to explore the scope for removing licensing requirements for most activities defined as "the provision of regulated entertainment" under Schedule 1 of the 2003 Act. In response to the consultation, a Written Ministerial Statement laid before Parliament on 7 January 2013 proposed a number of deregulatory measures relating to the 2003 Act, to be delivered through a range of legislative mechanisms, including through the Order. The intention is that the Order will, in particular, remove unnecessary bureaucracy and cost from community performance activities and local sport regulation in particular, as well as bolstering creativity, community participation and volunteering opportunities, and removing burdens from small and medium sized business.

7.2 The Order amends paragraph 2 of Schedule 1 to the 2003 Act by modifying some of the descriptions of entertainment. The effect of these modifications is that a licence is no longer required for entertainment that poses an acceptably low threat to the achievement of the licensing objectives. One reason why this threat may be acceptably low is the impact of relevant duties imposed by other legislation: for example, noise, fire safety and health and safety.

7.3 Entertainment of a description listed in paragraph 2 of Schedule 1 continues to be licensable to the extent that the conditions specified in paragraphs 1 and 2 of that Schedule are satisfied. Paragraph 2 continues to provide that no licence is needed for the provision of any entertainment activity unless it takes place in the presence of an audience and is provided for the purpose, or for purposes including the purpose, of entertaining that audience. However, the Order amends the 2003 Act so that a licence will no longer be required in respect of an indoor sporting event or the performance of a play or dance, to the extent that the following specified conditions are satisfied.

7.4 The Order additionally provides that no licence is required for a performance of a play or dance to the extent that that performance takes place between 8am and 11pm on any day before an audience that does not exceed 500 people. Similarly, the Order also provides that no licence is required in respect of an indoor sporting event to the extent that that event takes place between 8am and 11pm on any day before an audience that does not exceed 1,000 people.

7.5 The controls set out in the 2003 Act will be retained for activities considered to be a greater threat to the licensing objectives (e.g. boxing or wrestling entertainment). It is for this reason that a performance of dance remains licensable (even if the performance takes place before an audience of 500 or fewer, between 8am and 11pm) if it is sufficiently sexual in nature as to be "relevant entertainment" within the meaning of paragraph 2A of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

7.6 A licence for an indoor sporting event or the performance of a play or dance is still required to that extent that one or more of these conditions is not satisfied; to the extent that, for example, a play overruns and finishes after 11pm, or the number of people in the audience for any of these activities increases so as to be in excess of the relevant threshold. Other existing licensing requirements (e.g. for the sale or supply of alcohol) will be unaffected throughout such activities.

7.7 The Order also amends the definition of a "sporting event" in paragraph 16(2) of Schedule 1 to the 2003 Act, to the effect that a boxing or wrestling entertainment can no longer be licensed as an indoor sporting event. In addition, the definition of "a boxing or wrestling entertainment" in paragraph 17 is amended to make clear that a contest, exhibition or display that combines boxing or wrestling with one or more martial arts ("combined fighting sports") is, whether the activity takes place indoors or not, a boxing or wrestling entertainment for which (if other conditions

are satisfied) a licence is required. This is to ensure that a licence is still required under the 2003 Act for entertainment activities deemed to be of higher risk, such as mixed martial arts, after the 2003 Act is amended so that certain indoor sporting events no longer require a licence.

7.8 Where an existing premises licence or club premises certificate authorises combined fighting sports (or any other boxing or wrestling entertainment) as an indoor sporting event, the Order provides that the relevant licence or certificate is treated as authorising those activities as a boxing or wrestling entertainment. The Order also ensures that any relevant licence conditions on that licence or certificate continue to apply notwithstanding the reclassification of those activities as a boxing or wrestling entertainment.

7.9 Recent discussions between the Department and a number of licensing authorities and providers of combined fighting sports activities have taken place. Licensing authorities were asked whether, at present, any combined fighting sports activities took place outdoors otherwise than under the authority of a premises licence or club premises certificate. Such a position might have arisen where a licensing authority considered that certain combined fighting sports activities were not licensable, or licensable only as an indoor sporting event. No licensing authority – including those that already license these activities – knew of any such outdoor activities which were not already so authorised under the 2003 Act. Furthermore, the providers of such activities have indicated that they are aware that all such activities will continue to be licensable under the 2003 Act. The Department will nevertheless write to key providers to draw attention to the laying of the Order.

- Consolidation

7.10 Not applicable.

8. Consultation outcome

8.1 A consultation exercise to examine the scope for deregulation of activities defined as “the provision of regulated entertainment” in Schedule 1 to the 2003 Act was carried out by the Department from 10 September to 3 December 2011. The consultation contained a central proposal to examine the removal of licensing requirements for performances of plays, dance and live music, the playing of recorded music, indoor sporting events and film exhibition for audiences under 5,000 people. The consultation requested views on end times for such activities, audience limits, whether each activity could safely be deregulated, as well as a range of risk-based questioning. It also requested views on whether the definition of boxing or wrestling entertainment should include martial arts and cage fighting.

8.2 Just under 1,400 responses were received from practitioners and performers, local authorities, responsible authorities, community organisations and other interested parties (e.g. residents groups). A summary of the consultation responses is published on http://www.culture.gov.uk/consultations/9650.aspx.

8.3 Whilst there was general support for some level of deregulation of many of these activities, concerns were expressed, largely around public order and public safety, in relation to full deregulation in all locations for performances with audiences up to 4,999 and with no set end time. However, for the activities covered under the Order, there was support for the deregulation of plays, dance and indoor sport where audiences are under 500 (1,000 for indoor sport) and where performances end before 2300 hours. These views have been reflected in the proposals set out in the Order.

8.4 There was overwhelming support from local Government, responsible authorities and residents groups to ensure that cage fighting and mixed martial arts should be clearly regulated within Schedule 1 of the 2003 Act, should indoor sport be deregulated. This is also reflected in the provisions of the Order.

9. Guidance

9.1 By section 182 of the 2003 Act, the Secretary of State must issue guidance to licensing authorities on the discharge of their functions under that Act. On the same day that the proposed Order comes into force, it is intended that a revised version of this statutory guidance will be laid before Parliament. Section 182 provides that revised versions of this guidance come into force when laid before Parliament by the Secretary of State, subject to the negative resolution procedure.

10. Impact

10.1 An Impact Assessment has been prepared for the range of deregulatory proposals arising from the consultation exercise in 2011, which demonstrates net benefits for society, business and local Government.

10.2 The impact on business, charities or voluntary bodies includes a net direct benefit resulting from the removal of direct cost burdens arising from the requirement to obtain licences to stage live entertainment. There will be substantial benefits to the voluntary sector and local communities arising from opportunities for growth in live entertainment markets with positive effects on community wellbeing, as well as increased business opportunities. This impact, which is estimated to be considerable, has not been quantified due to lack of maturity in existing modelling. There are no direct costs to business arising from the provisions of the Order. The annual net direct benefit to business is estimated to be approximately **£1.1m** in constant prices.

10.3 The impact on the public sector is a net benefit to local authorities. Whilst the Impact Assessment provides a worst case scenario of potential increased costs to responsible authorities arising from the need to address increased case of noise disturbance and licence reviews, these are more than offset by reduced administrative burdens from processing and commenting on licence applications

from public sector organisations (for which no fee is payable) It is estimated that overall there will be an annual net benefit to local government of £**0.5m** in constant prices.

10.4 The Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk. The nature of the Assessment, and the operation of the licensing regime, mean that it is not possible to disaggregate the benefits for each individual entertainment category covered under Schedule 1 of the 2003 Act.

11. Regulating small business

11.1 The Order applies to small business by removing the requirement for small scale venue owners, organisers and performers to apply for licences to stage plays, dance and indoor sporting events in the circumstances specified by the provisions of the Order. The Department expects that the changes made to the 2003 Act by the Order will be of particular benefit to indoor sporting events and performances of plays and dance that are staged by small scale organisations, and these changes impose no direct costs on small businesses. Many small businesses responded to the consultation process, and were overwhelmingly supportive of the level of deregulation proposed in the Order.

12. Monitoring & review

12.1 The Department will continue to monitor and review the impact of the provisions of the Order, seeking relevant information from licensing authorities.

13. Contact

13.1 Ian Jenkins at the Department for Culture, Media and Sport (tel: 020 7211 2288 or email: ian.jenkins@culture.gsi.gov.uk) can answer any queries regarding the instrument.