EXPLANATORY MEMORANDUM TO

THE LICENSING ACT 2003 (EARLY MORNING ALCOHOL RESTRICTION ORDERS) REGULATIONS 2012

2012 No. 2551

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

2. Purpose of the instrument

2.1 These Regulations prescribe the requirements and forms in relation to the process which a licensing authority, and other persons, must follow to make, vary or revoke an early morning alcohol restriction order ("EMRO").

2.2 These Regulations also prescribe two forms which relate to the process for making etc. an EMRO and the exceptions which apply to any EMRO.

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

3.1 None.

4. Legislative Context

4.1 The Licensing Act 2003 ("the 2003 Act") provides a system of authorisation for certain activities (referred to as "licensable activities"); these include the sale by retail of alcohol and the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club. It is a criminal offence to carry on, or attempt to carry on, a licensable activity on or from any premises without an appropriate authorisation under the 2003 Act. Such an authorisation may comprise a premises licence, a club premises certificate or a temporary event notice.

4.2 An EMRO has the effect of prohibiting the supply of alcohol in accordance with any authorisation under the 2003 Act, subject to prescribed exceptions. The framework for EMROs is set out in sections 172A to 172E of the 2003 Act. These provisions were inserted into the 2003 Act by section 119 of the Police Reform and Social Responsibility Act 2011 ("the 2011 Act"). This framework enables a licensing authority to make an EMRO in its area if it considers that this step is appropriate for the promotion of the licensing objectives. An EMRO may apply for any period beginning at or after midnight and ending at or before 6am, on all or some days, for different periods on different days, for a limited or unlimited period and in relation to the whole or any part of the licensing authority's area. The framework also

confers a number of powers on the Secretary of State to prescribe by regulations matters relating to:

- the advertising of the proposal to make an EMRO,
- how and when representations (whether by persons affected by the proposal or otherwise) can be made,
- the hearing of any such representations,
- how the EMRO is published, and
- exceptions to an EMRO.

4.3 In relation to the hearing of representations, these Regulations amend the Licensing Act 2003 (Hearings) Regulations 2005 (S.I. 2005/44) to apply to the EMRO process certain aspects of existing processes which apply to other hearings under the 2003 Act. However, these Regulations confer additional powers on a licensing authority to enable it to manage the EMRO process in a manner which safeguards the rights of those who have made representations.

4.4 The prescribed exceptions to an EMRO relate to certain types of alcohol sales by hotel and other overnight accommodation providers, and sales by licensed premises on New Year's Eve.

4.5 These Regulations represent the first use of the relevant powers in the 2003 Act.

5. Territorial Extent and Application

5.1. These Regulations apply to England and Wales only.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

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

7.1 As part of the Government's commitment to overhaul alcohol licensing to tackle alcohol-related crime and disorder and resulting harms, a number of relevant measures were introduced or amended by the 2011 Act. These include EMROs, which were an uncommenced power in the 2003 Act introduced by the previous Government. The power was amended by the 2011 Act to allow EMROs to be applied more flexibly between midnight and

6am, (rather than only between 3am and 6am) and on the basis that their application is appropriate rather than necessary to promote the licensing objectives.

7.2 EMROs will help licensing authorities address specific problems caused by the late night supply of alcohol in their areas. Licensing authorities will be able to prohibit sales of alcohol in the whole or a part of their areas for any specified period between 12 midnight and 6am, if they have evidence of specific problems and consider that making the EMRO is appropriate for the promotion of the licensing objectives. An EMRO will apply to premises licences, club premises certificates and temporary event notices that operate within the specified EMRO period. Each licensing authority area may have one or more EMROs, but the exemptions to EMROs prescribed by these Regulations apply to all authority areas in England and Wales.

7.3 The Government has decided that there should be no exemptions for individual types of premises, to ensure that EMROs are a simple, pre-packaged tool for licensing authorities to use to readjust the focus of their night-time economy. It is considered that such exemptions would dilute the impact of an EMRO, and licensing authorities anyway have the discretion to determine when and where such a prohibition should apply. However, exemptions will permit alcohol to be to supplied to residents through mini-bars and room service at premises with overnight accommodation, as it is recognised that they offer services to residents similar to those that they can enjoy in their own home. EMROs will also not apply to supplies of alcohol on New Year's Eve in recognition of its status as a night of national celebration.

7.4 These Regulations also prescribe the procedure which licensing authorities must follow when proposing to introduce an EMRO. The process is intended to give those affected by, or with an interest in, the EMRO the opportunity to make representations and have these considered by the licensing authority before it comes to a final decision.

- ***Consolidation***

7.5 This is not applicable as these Regulations represent the first use of powers under sections 172A to 172E of the 2003 Act.

8. Consultation outcome

8.1 The content of these Regulations has been the subject of consultation in 'Dealing with the Problems of Late Night Drinking'. This consultation took place between January and April 2012 and generated 631 formal responses. The consultation invited views on the consultation process that licensing authorities must follow when proposing to introduce an EMRO and on what exemptions should apply, as well as matters relating to the late night levy which are not the subject of these Regulations.

8.2 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 Guidance to licensing authorities on the application of the EMRO will be published by the Department as a part of revised guidance issued under section 182 of the 2003 Act.

10. Impact

10.1 There is an impact on premises operating in the late night economy. The estimated total cost to business is expected to be around £10.1 million per annum. This is made up of lost revenue from alcohol sales during the restricted period. A large number of local variables will affect the impact of each EMRO, including the area or areas in which licensing authorities chose to introduce an EMRO, the days and times to which it applies and the period of time for which it is to have effect. Such local variables mean that the estimated impact of EMROs is subject to considerable uncertainty.

10.2 There will be some costs to licensing authorities and the police. However, because of the high cost of alcohol-related crimes, particularly violent crimes, it is expected that the benefits of an EMRO in delivering a safer night-time economy will outweigh the costs.

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 businesses.

11.2 To minimise the impact of the requirements on smaller firms, the Regulations prescribe reductions in relation to certain types of premises with lower non-domestic rateable values, if subject to the levy charge.

12. Monitoring & review

12.1 The application and effect of these Regulations will be kept under review by the Department and is covered by the duty to review in section 124 of the 2011 Act.

13. Contact

13.1 Carla Giudice, Drugs and Alcohol Unit, the Home Office on 020 7035 8751 or Carla.Giudice@homeoffice.gsi.gov.ukmailto: can answer any queries regarding the instrument.