EXPLANATORY MEMORANDUM TO

THE LICENSING ACT 2003 (FEES) (AMENDMENT) REGULATIONS 2005

2005 No.357

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.

   It relates to the Licensing Act 2003 (Fees) (Amendment) Regulations 2005. The purpose of the memorandum is to apologise to the Joint Committee on Statutory Instruments for the fact that the 21 day rule has been breached and to explain the reasons for this.

2. Description

2.1. The Licensing Act 2003 (Fees) (Amendment) Regulations 2005 are intended to rectify errors found in regulation 4 of the Licensing Act 2003 (Fees) Regulations 2005. The errors relate to the scope of regulation 4(2) and to applications under section 34 of the Act (application to vary premises licence) made at the same time as an application to convert under paragraph 2 of Schedule 8 to the Licensing Act 2003 ("the Act"). The errors were –

(a) No provision was made in regulation 4(2) for an applicant who made an application to vary at the same time as an application to convert to pay a reduced or no fee in respect of the application to vary.
(b) Regulation 4(2) applied where the application related to premises in Band D or Band E and to the use of premises exclusively or primarily for the carrying on on the premises of the supply of alcohol for consumption on the premises. The intention was that regulation 4(2) should apply when the premises were in Band D or Band E and the premises were used exclusively or primarily for the carrying on on the premises of the supply of alcohol for consumption on the premises: that is, it was not intended that the scope of regulation 4(2) should be determined by whether the application related to the supply of alcohol.
(c) In a case falling within regulation 4(3), an applicant who made an application to vary at the same time as an application to convert was to pay a reduced fee (under paragraph(6)) for the application to vary if the application related at all to the supply of alcohol for consumption on the premises but the Regulations did not reflect the intention that if the application did not relate at all to the supply of alcohol on the premises no fee should be payable in respect of the application to vary.
(d) The Regulations did not reflect the intention that, where an application to vary was made at the same time as an application to convert, no fee, in addition to that payable under regulation 4(2) or (3), should be

payable under regulation 4(4) in respect of the application to vary, unless the variation sought was to authorise licensable activities to take place when there were 5000 or more people on the premises.

2.2. The Department has sought to rectify the first of these errors by making regulation 4(2) subject to paragraph (6) and a new paragraph (7).

2.3. The Department has sought to rectify the second error by amending regulation 4(2) to make it clear that it applies where the application relates to a premises in Band D or Band E and the premises is used exclusively for the carrying on on the premises of the supply of alcohol on the premises.

2.4. The Department has sought to rectify the third error by making regulation 4(3) subject to the new paragraph (7).

2.5. The Department has sought to rectify the fourth error by making regulation 4(4) subject to new paragraph (8), to which an exception is made in new paragraph (9).

2.6. In addition to these amendments, regulation 4(4) has been amended by substituting "a fee in addition to any fee determined under paragraphs (2) or (3)" for "an additional fee". The intention is to reflect the fact that, in consequence of the new paragraph (7), there are circumstances in which no fee determined under paragraph (2) or (3) will be required.

2.7. The Department considers that no additional fees will be required in consequence of these amendments.

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

3.1. The Department apologises to the Committee for the fact that it has breached the 21 day rule. The effect of these Regulations is to reduce the amount of the fees that applicants will be liable to pay in circumstances referred to in paragraph 2 above. The Department takes the view that it is very important that the Regulations come into force at the earliest possible time in order to rectify the position and to avoid applicants' being required to pay more fees than was intended.

3.2. Copies of the Regulations will be issued free of charge to all known recipients of the Licensing Act 2003 (Fees) Regulations 2005.

4. **Legislative background**

4.1. Section 55 of the Act makes provision for the payment of a prescribed fee to accompany applications made under Part 3 (premises licences) of the Act.

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 intention in making these Regulations is to achieve the position in relation to fees which it was intended to achieve in the Licensing Act 2003 (Fees) Regulations 2005.

8. **Impact**

8.1. No separate Regulatory Impact Assessment is being prepared for these Regulations as the original RIA was prepared on the erroneous assumption that the original regulations achieved the Government's expressed policy objectives and the income and expenditure described in it.

9. **Contact**

Andrew Cunningham at the Department for Culture Media and Sport. Telephone: 020 7211 6344 or e-mail: Andrew.Cunningham@culture.gsi.gov.uk can answer any queries regarding the instrument.

Department for Culture, Media and Sport
February 2005