EXPLANATORY MEMORANDUM TO

THE LICENSING ACT 2003 (HEARINGS) (AMENDMENT) REGULATIONS 2014

2014 No. 2341

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 amend the Licensing Act 2003 (Hearings) Regulations 2005 (S.I. 2005/44) ("the 2005 Regulations") to modify requirements on licensing authorities about how to give notices in respect of hearings into a proposal to make, vary or revoke an early morning alcohol restriction order ("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 and the hearing of any such representations.

4.3 In relation to the hearing of representations, the 2005 Regulations include provisions which apply to the EMRO process, with modifications where appropriate, certain aspects of existing processes which apply to other hearings under the 2003 Act.

5. Territorial Extent and Application

5.1 These Regulations extend 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

7.1 Following discussions with a number of licensing authorities and others involved in the EMRO process, the Government has decided to simplify the process for giving notice with regards to EMRO hearings. These Regulations have the effect of modifying that process.

7.2 The 2005 Regulations require licensing authorities to give notices relating to hearings electronically, but only in cases where they have first obtained express consent from the parties involved and they subsequently send the notice by other than electronic means. EMRO hearings often relate to a number of premises, and licensing authorities often receive high numbers of representations. This makes the volume of documentation which the licensing authority must process exceptionally high. Recognising the pressure that this puts on licensing authorities when giving notice of EMRO hearings to affected persons and those who have made representations, the Government has decided to reduce this burden by allowing licensing authorities to use electronic notifications without having to obtain the prior consent of the recipient or having to follow up with a notice in hard copy.

7.3 This will give licensing authorities greater flexibility in how they choose to give notice of EMRO hearings, but will continue to afford safeguards to those to whom the notice is being given. For example, the licensing authority must be satisfied that the text of the notice will need to be capable of being accessed by the recipient, legible in all material respects and capable of being reproduced in written form and used for subsequent reference.

- ***Consolidation***

7.4 The Department does not consider that consolidation is appropriate.

8. Consultation outcome

8.1 Informal discussions were held in 2014 with those involved in the EMRO process (including licensing officers and members of the police). Licensing authorities reported that the requirements to provide notifications in hard copies rather than electronically could be a burden. This change to the 2005 Regulations was suggested as a part of these discussions. No formal consultation has been conducted as this is a minor, technical change to the 2005 Regulations and as such the Department considers that no further consultation is necessary. The Government carried out a full public consultation on its plans for the regulations for the EMRO in 2012 (Dealing with the problems of late night drinking). The consultation and the Government's response (published in July 2012) are available on the Gov.uk website at https://www.gov.uk/government/consultations/dealing-with-the-problems-of-late-night-drinking

9. Guidance

9.1 Licensing authorities must have regard to the statutory guidance (issued under section 182 of the 2003 Act) in relation to the exercise of their functions under the 2003 Act. The statutory guidance will be revised to reflect the changes brought about by the coming into force of these Regulations.

10. Impact

10.1 No formal impact assessment has been completed as there is no or a negligible adverse impact on businesses, charities, voluntary bodies or the public sector of this minor change. A full impact assessment was carried out when the Licensing Act 2003 (Early Morning Alcohol Restriction Orders) Regulations 2012 (S.I. 2012/2551) ("the EMRO Regulations"), which made detailed provision about the processes (including the hearing processes) in accordance with which EMROs are made etc., were introduced. This is available on the Gov.uk website.

11. Regulating small business

11.1 The impact on small businesses will be negligible as the safeguards in respect of the dissemination of hearing documents will remain in place to those who do not have access to electronic copies. There may be some increased cost to businesses in relation to the printing of hearing documents received electronically but this will be negligible.

12. Monitoring & review

12.1 The EMRO Regulations (including these Regulations) will be reviewed five years after commencement as a part of the duty to review contained in section 124 of the Police Reform and Social Responsibility Act 2011.

13. Contact

13.1 Ann Oldroyd, Drugs and Alcohol Unit, the Home Office on 020 7035 1587 or Ann.Oldroyd@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.