EXPLANATORY MEMORANDUM TO THE

LICENSING ACT 2003 (PERSONAL LICENCE: RELEVANT OFFENCES) (AMENDMENT) ORDER 2005

2005 No. 2366

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 This Order amends the list of offences that are treated as relevant offences for the purposes of a personal licence under Part 6 of the Licensing Act 2003 ("the 2003 Act"). Article 2 amends the entries in paragraphs 18 and 19 of Schedule 4 to the 2003 Act. In paragraph 18 for the existing entry which refers to a sexual offence within the meaning of section 161(2) of the Powers of Criminal Courts (Sentencing) Act 2000 there is substituted a reference to a sexual offence, being any offence listed in Part 2 of Schedule 15 to the Criminal Justice Act 2003, other than an offence mentioned in paragraph 95 (an offence under section 4 of the Sexual Offences Act 1967 (procuring others to commit homosexual acts)), and in addition an offence under section 8 of the Sexual Offences Act 1956 (intercourse with a defective) and an offence under section 18 of that Act (fraudulent abduction of an heiress). In paragraph 19 for the existing entry there is substituted a definition of a "violent offence".

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

3.1 None

4. Legislative Background

4.1 The Licensing Act 2003 introduces a new, unified licensing system which replaces the six existing licensing legislative systems covering the regulation of the sale and supply of intoxicating liquor, public entertainment, theatre, cinema, late night refreshment and night cafes (respectively, the Licensing Act 1964, the Local Government (Miscellaneous Provisions) Act 1982, the London Government Act 1963, the Private Places of Entertainment (Licensing) Act 1967, the Theatres Act 1968, the Cinemas Act 1985, the Late Night Refreshment Houses Act 1969 and the London Local Authorities Act 1990).

4.2 Under the 2003 Act every supply of alcohol under a premises licence must be made or authorised by a person who holds a personal licence. Schedule 8 to the 2003 Act made provision for transitional arrangements (between 7th February 2005 and 6th August 2005) under which the holder of a justices' licence could convert that licence into a personal licence. The provisions in respect of

personal licences under Part 6 of the Act are all in force (with the exception of sections 119 and 121); the last provisions were brought into force on 7th February 2005.

4.3 A licensing authority must grant an application for a personal licence if it appears that the applicant is aged 18 or over, he possesses a licensing qualification or is a person of a prescribed description, he has not forfeited a personal licence held by him in the 5 years ending with the day the application was made and he has not been convicted of any relevant or any foreign offence. Relevant offence means an offence listed in Schedule 4 to the 2003 Act (section 113). A conviction that is spent for the purposes of the Rehabilitation of Offenders Act 1974 must be disregarded. If it appears that an applicant meets these requirements except that he has a conviction for a relevant or foreign offence, the chief officer of police for that area is given the opportunity to object to the application on the grounds of the crime prevention objective and there is provision for a hearing to be held to determine the application. In addition, where a court convicts a personal licence holder for a relevant offence, it is empowered under the 2003 Act to declare the licence suspended for a period of up to three months or to declare it forfeit.

4.4 Paragraph 18 of Schedule 4 to the 2003 Act makes a sexual offence, within the meaning of section 161(2) of the Powers of Criminal Courts (Sentencing) Act 2000 ("the 2000 Act") a relevant offence. Paragraph 19 of Schedule 4 makes a violent offence, within the meaning of section 161(3) of the 2000 Act a relevant offence. Section 161(2) and (3) of the 2000 Act were repealed by the Criminal Justice Act 2003 as of 4 April 2005. This Order substitutes for the reference to the definition of "sexual offence" in paragraph 18 a reference to Part 2 of Schedule 15 to the Criminal Justice Act 2003 other than an offence mentioned in paragraph 95(an offence under section 4 of the Sexual Offences Act 1967 (procuring others to commit homosexual acts)), and in addition an offence under section 8 of the Sexual Offences Act 1956 (intercourse with a defective) and an offence under section 18 of that Act (fraudulent abduction of an heiress). In respect of paragraph 19 this Order substitutes for the reference to the definition of violent offence a definition of a violent offence which replicates the definition in section 161(3) of the 2000 Act.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

Richard Caborn has made the following statement regarding Human Rights:

In my view the provisions of the Licensing Act 2003 (Personal licence: relevant offences) (Amendment) Order 2005 are compatible with the Convention rights.

7. Policy background

7.1 The repeal of sections 161(2) and (3) of the Powers of Criminal Courts (Sentencing) Act 2000 by the Criminal Justice Act 2003 impacts directly on the Licensing Act 2003 and the Gambling Act 2005.

7.2 Under the 2003 Act, personal licences provide an authority to sell alcohol to the public at premises in respect of which a premises licence authorising sales of alcohol has effect. In addition, the Act allows a personal licence holder to give up to 50 temporary event notices, authorising licensable activities for a period of up to four days, in each calendar year, compared with only 5 for a person who does not hold such a licence.

7.3 When a person applies for such a licence, they are required, among other things, to provide evidence of their criminal record. Where that record discloses convictions for relevant offences, the licensing authority is obliged to refer the application to the chief officer of police for that area who may then object to the application if he believes that it would undermine the crime prevention objective in the Act. The application is then determined by the licensing authority in the light of the chief officer's views. In addition, where a court convicts a personal licence holder for a relevant offence, it is empowered under the 2003 Act to declare the licence suspended for a period of up to three months or to declare it forfeit.

7.4 The repeal of sections 161(2) and (3) of the Powers of Criminal Courts (Sentencing) Act 2000 effectively removed violent and sexual offences from the list of the relevant offences in Schedule 4 to the Licensing Act 2003. This seriously undermines the scheme envisaged by Parliament in approving the arrangements applying to personal licence holders. The purpose of the Order is to restore the position Parliament approved. In order to so, the Government has restored the original description of violent offences used in the 2000 Act and has adopted the list of sexual offences listed in Part 2 of Schedule 15 to the Criminal Justice Act 2003, with the exception of the offence under section 4 of the Sexual Offences Act 1967 (procuring others to commit homosexual acts) (paragraph 95) and with the addition of the offences under section 8 of the Sexual Offences Act 1956 (intercourse with a defective) and section 18 of that Act (fraudulent abduction of an heiress). The Government considers that this list of sexual offences covers effectively the range of such offences that Parliament would have expected to be in place.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument.

8.2 The impact of this instrument flows from the amendment of the sexual and violent offences that are relevant offences under Schedule 4 to the 2003 Act.

9. Contact

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Telephone: 0207 211 6344 or email: Andrew.Cunningham@culture.gsi.gov.uk can answer any queries regarding this instrument.