EXPLANATORY MEMORANDUM TO

THE LICENSING ACT 2003 (FEES) REGULATIONS 2005

2005 No.79

THE LICENSING ACT 2003 (TRANSITIONAL CONVERSIONS FEES) ORDER 2005

2005 No.80

1. Introduction

1.1 This explanatory memorandum is laid before Parliament by Command of Her Majesty.

1.2 This explanatory memorandum has been prepared by the Department for Culture, Media and Sport. This memorandum relates to two instruments to better assist their scrutiny where the intent and purpose of those instruments are connected.

2. Description

2.1 The Licensing Act 2003 (Transitional conversions fees) Order makes provision for the fee to accompany an application under paragraph 2 or 14 of Schedule 8 to the Licensing Act 2003 (the Act). Applications under these paragraphs of Schedule 8 of the Act relate to conversions of existing licences or club certificates to new premises licences and club premises certificates and the Licensing Act 2003 (Transitional) Order 2005 (S.I 2005/40) makes provision for the form and manner of such applications.

2.2 The Licensing Act 2003 (Fees) Regulations make provision for all other fees to accompany applications made or notices given under the Act, including the fees to accompany an application to vary a premises licence made at the same time as an application to convert existing licences under paragraph 2 of Schedule 8 to the Act. Further, they make provision for the payment of an annual fee. The Licensing Act 2003 (Personal licences) Regulations 2005 (S.I 2005/41) and the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (S.I 2005/42) make provision for the form and manner of making such applications and giving notices.

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

3.1 The Department regrets that in relation to the Order and the Regulations it has slightly breached the 21 day rule. The Department had anticipated being in a position to make and lay the Order and the Regulations when it made and laid S.Is 2005/40, 2005/41 and 2005/42 and two other associated instruments forming a major part of the implementation of the Act. However, responses to the Department's wide ranging consultation exercise necessitated further consideration of the fee structure and the level of fees and the undertaking of some further independent research so as to ensure that the fee structure and fee levels to be provided are both robust and set at levels designed to achieve full cost recovery within the national system. The consequence of this has been the need to effect a number of major changes to the structure and fee levels and, whilst the Department has made every effort to make the Order and Regulations as quickly as possible, after this process this has not enabled the Department to observe the rule. It is essential that the fee structure and levels provided by the Order and the Regulations are in place for the first appointed day on 7th February 2005 (which was appointed by S.I 2004/1739) so that the new system introduced by the Act can be financed. The department apologises that this situation became unavoidable.

3.2 There are no other matters of special interest to the Committee.

4. Legislative background

4.1 Paragraphs 2(5) and 14(4) of Schedule 8 to the Act make provision for applications to convert exiting licences and registration certificates into new premises licences and club premises certificates to be accompanied by a specified fee. Paragraph 34 of that Schedule provides that the power is to be exercised by way of order. Sections 55, 92, 100(7)(b), 110(3), 133(2) and 178(1)(b) all make provision for the payment of a prescribed fee to accompany applications made and notices given under the Act. Section 193 of the Act provides that the powers are to be exercised by way of regulations.

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 Government intends that the new regime in relation to the use of premises for licensable activities should achieve the recovery of the full costs of administration, inspection and enforcement from the payment of fees made by those wishing to use premises and using premises for such activities. Under the existing licensing regimes, fees associated with use of premises for all of the licensable activities other than the supply of alcohol and cinema, which are set centrally by regulation, are determined by each local authority. This has resulted in a wide variance of fees and, through the Act, the Government intends to remove anomalies in the current regimes and achieve a system providing full cost recovery that is fair to the industry.

8. Impact

8.1 A Regulatory Impact Assessment is being prepared for the Order and the Regulations and will deposited as soon as possible.

9. Contact

9.1 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
January 2005