

EXPLANATORY MEMORANDUM TO
THE LICENSING ACT 2003 (PERSISTENT SELLING OF ALCOHOL TO
CHILDREN) (PRESCRIBED FORM OF CLOSURE NOTICE) REGULATIONS 2012

2012 No. 963

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 revoke the Licensing Act 2003 (Persistent Selling of Alcohol to Children) (Prescribed Form of Closure Notice) Regulations 2007 (SI 2007/1183) and prescribe a new version of the form of closure notice to give effect to changes made to the Licensing Act 2003 (“the 2003 Act”) by the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”).

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”) which include the sale by retail of alcohol. 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 includes a premises licence or a temporary event notice (“TEN”).

4.2 A premises licence holder or premises user in relation to a TEN commits an offence under section 147A of the 2003 Act if on two or more occasions within three consecutive months alcohol is sold unlawfully to an individual aged under 18 years of age on the premises to which the licence or TEN relates. If a police officer or an inspector of weights and measures is satisfied that this offence has been committed, the officer or inspector may under section 169A of the 2003 Act issue a closure notice to the licence holder or premises user as an alternative to prosecution under section 147A of that Act.

4.3 Previously, the effect of a closure notice was that alcohol sales at the licensed premises to which it relates could be prohibited for a period of up to 48 hours. As a consequence of the changes made by the 2011 Act to the 2003 Act, a closure notice may prohibit alcohol sales from the premises to which it relates for a period of between 48 and 336 hours. These Regulations prescribe the form of a closure notice which contains reference to the period for which

premises may now be prohibited from making sales of alcohol in accordance with the amendment to 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 negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The Government is committed to ensuring that children are protected from the harm of alcohol and, in the 2010 Coalition agreement, undertook to double the maximum fine for the offence of persistent under-age sales of alcohol (under section 147A of the 2003 Act) and also to allow local authorities and the police to shut down premises found persistently selling to children. The Government's changes to the 2003 Act by the 2011 Act double the maximum fine for this offence to £20,000. Alongside this, the 2011 Act changed the 2003 Act to increase the period for which licensed premises can be banned from selling alcohol as a more punitive alternative to prosecution from 48 to 336 hours (two weeks). The Government's public consultation on alcohol licensing in 2010 invited comments on this area. Large numbers of respondents, particularly from the alcohol trade, favoured retaining the 48 hour limit. However, large numbers also suggested that there should be a range of closure periods that can be applied flexibly depending on how serious the circumstances of the offence and taking into account factors such as the size of the premises. The Government is legislating to send out a strong signal that under-age sales are unacceptable, and to ensure that enforcement bodies take the offence seriously and have robust sanctions available to them.

- *Consolidation*

7.2 The Government does not intend to consolidate the legislation.

8. Consultation outcome

8.1 The content of these Regulations has not been the subject of consultation because the amendments they make are necessary to give effect to the changes made by the 2011 Act to the 2003 Act, and formed a part of the proposals which were the subject of consultation in relation to the 2011 Act. This consultation took place in 2010 and specifically included questions on the period of voluntary closure. Details of the consultation, as well as the responses and the Government's response, are available on the Department's website at <http://www.homeoffice.gov.uk/>.

9. Guidance

9.1 Information on these changes will be made available through updates to the Department's website and statutory guidance issued under section 182 of the 2003 Act. Any changes will also be communicated to licensing authorities in England and Wales.

10. Impact

10.1 There is no impact on businesses, charities or voluntary bodies.

10.2 The impact on the public sector is less than £5 million.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business but will not have an adverse impact on it.

12. Monitoring & review

12.1 The impact of the amendments made by these Regulations will be kept under review by the Department.

13. Contact

13.1 Sam Hardy, Drugs and Alcohol Unit, the Home Office on 020 7035 1784 or sam.hardy@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.