

**Report of the Assistant Director to the
Statutory Licensing Regulatory Board
to be held on the 28 October 2015**

LATE NIGHT REFRESHMENT LICENSING REPORT

1. Purpose of Report

The purpose of this report is to provide Members with an overview regarding Home Office guidance relating to the licensing of late night refreshment premises following the commencement of provisions contained within the Deregulation Act 2015.

2. Background

Members are minded to note that the content of this report refers only to guidance published to date and does not in any way reflect the views and opinions of the local authority.

3. Current Position

The Home Office guidance released is intended to assist licensing authorities and the Police with monitoring and enforcement activity in relation to the provision of late night refreshment. It has been produced at this stage to reflect changes to the Licensing Act 2003 allowing licensing authorities to apply for a number of exemptions.

Members are minded to note that the provisions in the Deregulation Act 2015 that this guidance covers came into force on 1 October 2015, however the changes will not come into effect in full until November 2015 when the regulations prescribing premises types comes into force

The guidance released sets out to identify activities that are to be treated as the provision of late night refreshment and as such are regulated under the Licensing Act 2003. It also sets out which activities are exempt from the late night refreshment aspects of the licensing regime. In particular, it includes guidance on the provisions in the Deregulation Act 2015 which amends the 2003 Act to give licensing authorities powers to opt to exempt supplies of late

night refreshment from certain designated locations, types of premises or times.

Schedule 2 to the 2003 Act provides a definition of what constitutes the provision of late night refreshment which involves only the supply of hot food and hot drink between the hours of 11pm and 5am.

There are a number of stores and supermarkets selling cold food and cold drink, whether it is immediately consumable or not, from 11.00pm are not licensable as providing late night refreshment. The 2003 Act affects premises such as night cafés and takeaway food outlets where people may gather to purchase hot food or drink at any time from 11.00pm and until 5.00am. In this case, supply takes place when the hot food or hot drink is given to the customer and not when payment is made. For example, supply takes place when a table meal is served in a restaurant or when a takeaway is handed to a customer over the counter.

Some premises provide hot food or hot drink between 11.00pm and 5.00am by means of vending machines. The supply of hot drink by a vending machine is not a licensable activity and is exempt under the 2003 Act provided the public have access to and can operate the machine without any involvement of the staff.

However, this exemption does not apply to hot food. Premises supplying hot food for a charge by vending machine are licensable if the food has been heated on the premises, even though no staff on the premises may have been involved in the transaction.

It is not expected that the provision of late night refreshment as a secondary activity in licensed premises open for other purposes such as public houses, cinemas or nightclubs or casinos should give rise to a need for significant additional conditions.

The supply of hot drink which consists of or contains alcohol is exempt under the 2003 Act as late night refreshment because it is licensed by the provisions relating to the sale or supply of alcohol. The supply of hot food or hot drink free of charge is not a licensable activity. However, where any charge is made

for either admission to the premises or for some other item in order to obtain the hot food or hot drink, this will not be regarded as “free of charge”. Supplies by a registered charity or anyone authorised by a registered charity are also exempt.

The provision of late night refreshment is regulated primarily because it is often linked to alcohol-fuelled crime and disorder in the night-time economy, such as at fast-food takeaways where late-night drinkers congregate. However, these safeguards may not be needed everywhere or for every type of late night refreshment business. For example, some late-night cafés serving hot drinks after 11pm may be located nowhere near pubs and nightclubs or areas associated with alcohol-related crime and disorder.

Paragraph 2A of Schedule 2 to the 2003 Act (as inserted by the Deregulation Act 2015) gives licensing authorities powers to exempt premises, in certain circumstances, from the requirement to have a licence to provide late night refreshment. Decisions to exempt supplies of late night refreshment are best made with local knowledge. The powers therefore allow licensing authorities to choose to apply an exemption specifically where they think it will be helpful to businesses and where there are no issues relating to antisocial behaviour or disorder associated with the night time economy.

It is anticipated this approach will release businesses concerned from unnecessary costs, which in turn may allow for a greater flexibility for licensing authorities to target their resources more effectively.

The powers allow a relevant licensing authority to exempt the supply of late night refreshment if it takes place:

- a) on or from premises which are wholly situated in a designated area;
- b) on or from premises which are of a designated description; or
- c) during a designated period (beginning no earlier than 11.00 p.m. and ending no later than 5.00 a.m.).

When choosing to designate particular categories of premises as exempt, a licensing authority can only exempt types of premises set out in the regulations. These include:

- Motorway service areas;
- Petrol stations;
- Local authority premises (except domestic premises) unless there is an event taking place at which more than 500 people are present;
- Schools (except domestic premises) unless there is an event taking place at which more than 500 people are present;
- Hospitals (except domestic premises);
- community premises (church, chapel, village, parish or community hall or other similar building) unless there is an event taking place at which more than 500 people are present;
- licensed premises authorised to sell by retail alcohol for consumption on the premises between the hours of 11pm and 5am

A relevant licensing authority may use more than one type of exemption at the same time, for example by changing the times across the licensing authority area during which licensing requirements will apply and also exempting premises by type across the whole licensing authority area. However, it cannot use different forms of exemption in conjunction with one another – for example, it would not be permitted to change the times in one geographic area only.

Where a premise is situated in the areas of two or more licensing authorities, any of those authorities may be the relevant licensing authority and it would be advisable for an authority wishing to apply an exemption to discuss it with the other authority concerned. This might apply, for example, where an area or premises type exemption is being applied and the licensing authority is aware that a particular premise such as, a motorway service area sits across the boundary of two or more licensing authority areas.

Licensing authorities do not have to use the exemptions at all and can continue to require all late night refreshment providers to be licensed. However, licensing authorities should consider deregulation where appropriate.

Existing late night refreshment licences for premises that become exempt from regulation will remain extant unless the holder chooses to surrender it to the licensing authority, but there will be no requirement on the licence holder to pay annual renewal fees and any conditions on the licence will cease to apply for as long as the exemption is in place. In cases where an exemption in relation to late night refreshment provision is applied, other licensing is unaffected. For example if a premise is licensed to sell alcohol and is exempt from requiring a late night refreshment licence, their licence in respect of the sale of alcohol is unaffected. Where a premises benefits from an exemption applied by the licensing authority, any existing conditions on a licence relating solely to the provision of late night refreshment will have no effect during the period of the exemption.

When deciding which exemption to use, if any, the relevant licensing authority should always first consider what the risks are in terms of the promotion of the licensing objectives. The decision to make an exemption is a licensing function that licensing authorities should include within their statement of licensing policy. It would then therefore be subject to the statutory consultation process with other responsible authorities and relevant parties set out in s.5 of the 2003 Act. However, it is for the licensing authority to decide on the detail and extent of the consultation beyond the statutory minimum. The licensing authority may decide to only consult on the proposed exemption or, alternatively, it may form part of a wider review of other matters within its statement of licensing policy. It is also for the licensing authority to decide within its statement of licensing policy whether the decision to grant exemptions is delegated to its licensing committee or to an officer.

Furthermore, when applying any of the exemptions the relevant licensing authority must publicise the changes and should decide on the most appropriate way to do this, in addition to updating its statement of licensing policy as soon as is practical. There is no requirement for licensing authorities

to advise premises individually, however, it should publicise the exemption in a way that ensures that those who are likely to be affected may benefit from it. If any fees are paid prior to an exemption coming into effect, licensing authorities should consider whether a refund or partial refund is appropriate. It is for each individual licensing authority to develop its own refund policy and ensure that it is communicated appropriately to all licence holders that are likely to be affected by an exemption.

Licensing authorities can review the exemptions at any time, to change the times, locations or types. However, unlike many other types of licensing decision, the late night refreshment exemptions are not made on a case by case basis and there is no recourse to bring an individual premise back into the licensing regime if there is a problem with that particular premises. In such cases the licensing authority would have to take a decision about the entire exemption and apply it across the whole area. Alternatively, depending on the scale of the problem, other powers could be used such as closure powers under the Anti-social Behaviour, Crime and Policing Act 2014. Environmental health legislation around noise nuisance may also offer a solution.

4. Proposal

To await further instruction to be contained within the statutory guidance under s.182 of the 2003 Act before Members make a full an informed decision relating to whether it is minded to award an exemption.

5. Background Papers

There are no background papers relating to this report.

6. Officer Contact

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