

**TO: LICENSING AND SAFETY COMMITTEE**  
**7 JANUARY 2016**

---

**LICENSING ACT 2003: DEREGULATION UPDATE**  
**Chief Officer: Environment and Public Protection**

**1 INTRODUCTION**

- 1.1 This report highlights a recent amendment to the Licensing Act 2003 ('the Act') which permits licensing authorities to relax the requirements for licensing of late night refreshment in certain circumstances.
- 1.2 Section 71 of the Deregulation Act 2015 came into effect on 5 November 2015 and amends Schedule 2 of the Licensing Act to allow licensing authorities 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 23:00 and ending no later than 05:00).

**2 SUPPORTING INFORMATION**

- 2.1 Late night refreshment is defined as the sale of hot food and hot drink between 23:00 and 05:00. There are a number of existing exemptions, such as sales of hot drinks from a vending machine, supplies by a registered charity, supplies made on trains or coaches, staff canteens or to persons staying overnight in a hotel.
- 2.2 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.
- 2.3 When choosing to designate a particular area as exempt as per 1.2(a), the licensing authority must define the location, which can be of any size. Guidance issued in respect of these changes states 'Areas which are likely to be considered for exemption by licensing authorities (for example, an area outside a town centre) are unlikely to be areas in which mobile kebab vans would frequently operate.'
- 2.4 When choosing to designate particular categories of premises as exempt as per 1.2(b), a licensing authority can only exempt types of premises set out in the regulations. These are:
- petrol stations and motorway service areas;
  - local authority premises and 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;
  - premises licensed to sell by retail alcohol for consumption on the premises between the hours of 23:00 and 05:00.

A list of the premises currently licensed for late night refreshment in the Borough is attached at Annex A. Many of these premises require a premises licence for other matters, such as sale by retail of alcohol, so it is unlikely that the majority of premises listed would benefit from any exemption.

- 2.5 When choosing to exempt the provision of late night refreshment at particular times as per 1.2(c), the relevant licensing authority must determine the times between 23:00 and 05:00 when the exemption applies. The exemption and any subsequent change to the time will apply to the whole licensing authority area.
- 2.6 The Government have given licensing authorities powers to choose to apply an exemption specifically where they think it will be helpful to businesses and where there are no problems with antisocial behaviour or disorder associated with the night time economy. When deciding which exemption to use, if any, the 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 should be included within the Statement of Licensing Policy, and would therefore be subject to the statutory consultation process with other responsible authorities and relevant parties as set out in the Act. It is for the licensing authority to decide on the detail and extent of any consultation beyond the statutory minimum. It is also for the licensing authority to decide whether the power to grant exemptions is delegated to its licensing committee or to an officer.
- 2.7 The Guidance also confirms that whilst a licensing authority can use more than one type of exemption, it cannot use different forms of exemption in conjunction with one another, giving the example that an authority is not permitted to change the times premises require permission to sell hot food and drink in one geographic area only; it would have to change the hours across the entire areas for the licensing authority.
- 2.8 Licensing authorities can review their exemptions at any time, to change the times, locations or types. However, there is no recourse to bring a premises 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.
- 2.9 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.

### **3 EQUALITIES IMPACT ASSESSMENT**

- 3.1 None.

### **4 STRATEGIC RISK MANAGEMENT ISSUES**

- 4.1 None.

#### Background Papers

None

#### Contact for further information

Laura Driscoll, Licensing Team Leader - 01344 352517

[laura.driscoll@bracknell-forest.gov.uk](mailto:laura.driscoll@bracknell-forest.gov.uk)