

EAST HERTS COUNCIL

LICENSING COMMITTEE – 17 MARCH 2016

REPORT BY CHIEF EXECUTIVE

GUIDANCE ON THE LICENSING OF LATE NIGHT REFRESHMENT

WARD(S) AFFECTED: ALL

Purpose/Summary of Report:

- To present Members with details of the Home Office guidance on licensing late night refreshment and consider the new power to exempt premises from the requirement to be licensed.

RECOMMENDATIONS FOR LICENSING COMMITTEE: that	
(A)	The consideration of an exemption to the requirement to be licensed for the supply of late night refreshment as part of the wider consultation on the revised Statement of Licensing Policy be approved; and
(B)	Members recommend which combination of the available exemptions should be consulted upon.

1.0 Background

- 1.1 The Deregulation Act 2015 provides for the removal or reduction of burdens relating to areas of businesses, the administration of Justice, public authorities and legislative reform.
- 1.2 The Act also provides for a duty on those exercising specified regulatory functions to have regard to the desirability of promoting economic growth. In addition, the Act repeals legislation that is no longer of practical use.
- 1.3 Schedule 2 to the 2003 Act provides a definition of what constitutes the provision of late night refreshment. It involves only the supply of 'hot food and hot drink' between the hours of 11pm and 5am.
- 1.4 Under Schedule 2, food or drink is considered to be 'hot' if, before it is supplied, it has been heated on the premises or elsewhere for

the purpose of enabling it to be consumed at a temperature above the ambient air temperature and at the time of supply it is above that temperature; or after it is supplied, may be heated on the premises for the purpose of enabling it to be consumed at a temperature above the ambient air temperature.

- 1.5 There are existing exemptions from the requirement to licence and these are detailed in section 2 of Home Office Guidance on the licensing of late night refreshment, attached as **Essential Reference Paper 'B'**.
- 1.6 The Deregulation Act 2015 amends Schedule 2 of the Licensing Act 2003 giving licensing authorities the power to exempt the supply of late night refreshment based on designated locations, premises types and times.
- 1.7 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.

2.0 Report

- 2.1 Paragraph 3.1 of the Home Office guidance states:

'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 take-aways where late-night drinkers congregate. However, these safeguards may not be needed everywhere or for every type of late night refreshment business.'

- 2.2 Paragraph 3.2 of the Home Office guidance states:

'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 problems with anti-social behaviour or disorder associated with the night-time economy.'

- 2.3 The power allows the licensing authority to exempt the supply of late night refreshment if it takes place:

- a) from a premises situated in a designated area;

- b) from premises which are of a designated description;
- c) during a designated period, between 23:00 and 05:00.

- 2.4 If the licensing authority chooses to designate an area or areas, those areas can be of any size..
- 2.5 The licensing authority can designate which type of premises the exemption will apply to from the list given in the regulations. The exemption can be for one or more of the types of premises detailed in paragraph 3.5 of the Home Office Guidance on the licensing of late night refreshment, attached as **Essential Reference Paper 'B'**.
- 2.6 The licensing authority can determine the times between 23:00 – 05:00 at which any exemption applies. Once the time is determined it would apply to the designated area or areas.
- 2.7 Any combination of the above exemptions can be used so a specific area could be designated (not necessarily the whole District), it could apply to only schools and apply only between 23:00 – 00:00.
- 2.8 When considering whether or not to use an exemption the licensing authorities should first consider what the risks are in terms of the promotion of the licensing objectives. As this is a licensing function the details of any exemption or the fact that there is no exemption should be included in the Licensing Policy.
- 2.9 Members may feel that they do not have enough information to make a recommendation regarding which exemptions should be used. If this is the case then officers would suggest that all of the exemptions be consulted on and the responses considered at a later meeting.
- 3.0 Implications/Consultations
- 3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

Deregulation Act 2015 -

<http://www.legislation.gov.uk/ukpga/2015/20/section/71/enacted>

Licensing Act 2003 -

<http://www.legislation.gov.uk/ukpga/2003/17/contents>

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