

**EXPLANATORY MEMORANDUM TO  
THE LICENSING ACT 2003 (LATE NIGHT REFRESHMENT)  
REGULATIONS 2015**

**2015 No. 1781**

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 The provision of late night refreshment involves the supply of hot food or hot drink to members of the public between 11pm and 5am and is regulated under the Licensing Act 2003 (“the 2003 Act”). The Deregulation Act 2015 amended the 2003 Act to enable licensing authorities to exempt the provision of late night refreshment from licensing requirements in certain categories including certain prescribed premises types. These Regulations provide the list of descriptions of premises which a licensing authority may choose to designate as being exempt from requiring a licence to provide late night refreshment.

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

3.1 None.

**4. Legislative Context**

4.1 The 2003 Act provides a system of authorisation for certain activities (referred to as “licensable activities”), namely: the sale by retail of alcohol; the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club; the provision of regulated entertainment; and the provision of late night refreshment. It is an 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.

4.2 Schedule 2, paragraph 1(1) of the 2003 Act defines the provision of late night refreshment as the supply of hot food or hot drink at any time between the hours of 11.00 p.m. and 5.00 a.m. to members of the public, or a section of the public, on or from any premises, whether for consumption on or off the premises. A number of exemptions to the licensing requirements are set out at paragraphs 3, 4 and 5.

4.3 Section 71(1) of the Deregulation Act 2015 inserts new paragraph 2A into Schedule 2 to the 2003 Act to enable a licensing authority to designate as exempt from the requirements of the 2003 Act those supplies of late night refreshment made (i) at certain designated locations, (ii) at certain designated premises of a prescribed description or (iii) at certain designated times. These regulations provide the prescribed list of descriptions of premises that licensing authorities may choose to exempt under Schedule 2, paragraph 2A(1)(b). Premises are prescribed under paragraph 2A(2).

## **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 the 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 provision of late night refreshment is regulated under the 2003 Act because it is often linked to alcohol-fuelled crime and disorder in the night-time economy, for example, fast-food shops where late night drinkers congregate. The 2003 Act provides appropriate regulation on how late night refreshment businesses should operate in these circumstances. However, there are some premises that provide late night refreshment that have no links to alcohol consumption, for example a motorway service area or hospital. The Government believes that for these premises and many other types of late night refreshment provider, these safeguards can be unnecessary and disproportionate considering the application fees of £100 to £635 and annual renewal fees of £70 to £350 per year, as well as administrative costs.

7.2 The Deregulation Act 2015 gives licensing authorities powers to exempt supplies of late night refreshment from the regulation requirements that are:

- (i) within particular designated areas within the licensing authority area;
- (ii) made on or from a particular designated premises;
- (ii) made at certain designated times

7.3 Where a licensing authority decides to exempt certain types of premises from the licensing requirements, it must choose from the prescribed list. These regulations provide the list of prescribed premises that the licensing authority may choose to exempt. Requiring licensing authorities to choose from a prescribed list ensures consistency in the system and safeguards against unsuitable premises becoming unregulated. At the same time it affords licensing authorities the discretion to make decisions based on local knowledge. When added to the other options for exempting the provision of late night refreshment from licensing requirements, the reforms offer licensing authorities a large degree of flexibility.

- *Consolidation*

7.4 The Department considers that this does not apply.

## **8. Consultation outcome**

8.1 The Government carried out a public consultation on proposals for deregulating the provision of late night refreshment as part of the wider Alcohol Strategy consultation from late 2012 to early 2013. The consultation

sought views on two proposals (1) local discretion for determining localised exemptions, not including discretion to change the times when late night refreshment licensing applies; and (2) increasing the list of “blanket” centrally-prescribed prescriptions already in the 2003 Act, including making all motorway service areas (MSAs) exempt from the need to have a late night refreshment licence given that late night refreshment at MSAs is unlikely to be linked to alcohol consumption. Over 700 respondents answered the questions on local discretion and over 750 answered the question on blanket exemptions.

- 8.2 Half of respondents were against localised exemptions. Licensing authorities had some concerns that exercising local discretion would increase the risk of local challenge. There were also concerns from some that there would be a risk that licensing authorities would not choose to exercise their powers. There was 2 to 1 support in favour of the Government creating a new blanket exemption at MSAs. However, feedback from technical discussions with licensing authorities and the police suggested that this would be problematic because some MSAs are within walking distance of pubs and are used for late night refreshment by those who have been drinking alcohol. The issue was further complicated by the fact that at some MSAs it is lawful to sell alcohol. Given these local discrepancies, the Government took the position that it is better to let decisions be made locally about what areas or types could be exempt. The full analysis is available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/223774/Govt\\_response\\_to\\_Alc\\_Consultation\\_v7.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/223774/Govt_response_to_Alc_Consultation_v7.pdf)
- 8.3 The Government subsequently carried out a targeted consultation with licensing authorities / associations representing licensing authorities about the types of premises it would be appropriate to include in these regulations.

## **9. Guidance**

- 9.1 Guidance was published on the Gov.uk website on 1 October 2015 and is non-statutory at present but will be included in the statutory guidance at the next available opportunity. Notification of the change brought about by these Regulations and the Deregulation Act 2015 has been given to all licensing authorities.

## **10. Impact**

- 10.1 The impact assessment published in 2013 estimated that the reforms to late night refreshment will generate annual net savings to business of £0.34m per year.
- 10.2 These savings will result from the fact that exempted venues will no longer incur the administrative and fee costs of applying for and possessing licences. There may also be a small increase in profits from those businesses that did not previously provide late night refreshment and are now able to do so without possessing an authorisation.

**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 Department will review and update the Regulations as and when necessary in consultation with licensing authorities, the police and the licensed trade.

**13. Contact**

13.1 Rob Turner, Drugs and Alcohol Unit, the Home Office on 020 7035 8836 or [robert.turner2@homeoffice.gsi.gov.uk](mailto:robert.turner2@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.