

# **Chichester District Council**

## **ALCOHOL & ENTERTAINMENT LICENSING COMMITTEE**

**23 March 2016**

### **Deregulation Act 2015 – Power to exempt the supply of late night refreshment from requirements of the Licensing Act 2003**

#### **1. Contacts**

##### **Report Author**

Laurence Foord, Licensing Manager  
Tel: (01243) 534742  
Email: [lfoord@chichester.gov.uk](mailto:lfoord@chichester.gov.uk)

##### **Cabinet Member**

Roger Barrow, Cabinet Member for Environment  
Tel: (01243) 601100  
Email: [rbarrow@chichester.gov.uk](mailto:rbarrow@chichester.gov.uk)

#### **2. Executive Summary**

The purpose of this report is for Members to be made aware of changes to the Licensing Act 2003 and their new power to exempt certain types of premises providing 'late night refreshment' from requiring a licence.

#### **3. Recommendation**

- 3.1 That Members note amendments to the Licensing Act 2003 in terms of the provision of 'late night refreshment' and content of this report.**
- 3.2 Based on an officer recommendation of no deregulation, that Members determine whether to exempt, or not, certain premises from the requirement to obtain permission authorising 'late night refreshment'**

#### **4. Background**

- 4.1 Chichester District Council, as the Licensing Authority, is responsible for issuing licences to premises or individuals who wish to carry out licensable activities under the Licensing Act 2003 (the 'Act'). One of these activities is the provision of 'late night refreshment' which is the provision of hot food or drink between 23.00hrs and 05.00hrs.**

- 4.2 This report informs Members of the provisions of the Deregulation Act 2015 in so far as it amends the Act and in particular introduces new powers to Licensing Authorities allowing them to exempt the provision of 'late night refreshment' at designated locations, types of premises or at specified times.
- 4.3 The new powers allow the Licensing Authority to exempt the provision of 'late night refreshment' if it takes place:
- On or from premises which are wholly situated in a designated area;
  - On or from premises which are of a designated description; or
  - During a designated period (beginning no earlier than 23.00hrs and ending no later than 05.00hrs)
- 4.4 The types of premises that may be subject to exemption are defined in regulations, Licensing Act 2003 (Late Night Refreshment) Regulations 2015 which are;
- 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 retails alcohol for consumption on the premises between 23.00hrs and 05.00hrs.
- 4.5 The Home Office has released guidance to assist Licensing Authorities in determining whether or not to grant exemptions from the Act, which is attached to this report at **Appendix A**.
- 4.6 Members will note that the guidance is clear in that there is no statutory requirement for a Licensing Authority to use the new power and Authorities can continue to require all late night refreshment venues to be licensed. The guidance acknowledges that;
- '.....Decisions to exempt supplies of late night refreshment are best made with local knowledge. The powers therefore all 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 antisocial behaviour or disorder associated with the night time economy.'* (Paragraph 3.2)
- 4.7 When choosing to designate a particular area as exempt, as specified at 4.3 (a) above, the Licensing Authority must define the location, which can be of any size. Therefore this exemption need *not* apply to the whole district. However, any exemption granted in respect of 'premises of a designated description', 4.3 (b) above, or between particular times, 4.3 (c), must apply to the *whole* district.
- 4.8 The Authority may use more than one type of exemption at the same time, for example by changing the times across the district during which licensing requirements will apply and also exempting premises by type across the whole

district. However, it cannot use different forms of exemption in conjunction with one-another for example, an Authority would not be permitted to change the times in one geographical area only.

### **Current situation**

- 4.9 At the time of writing this report no request to exempt premises from the requirement to have a Premises Licence authorising the provision of 'late night refreshment' has been received.
- 4.10 When considering whether or not to adopt an exemption, Members must consider the potential impact on the promotion of the Licensing Objectives, which are:
- The prevention of crime and disorder;
  - Public Safety;
  - Prevention of public nuisance, and
  - The protection of children from harm
- 4.11 Currently any premises wishing to provide 'late night refreshment' must either hold a Premises Licence, Club Premises Certificate or Temporary Event Notice ('TEN'). All of these are subject to a consultation/notification process, giving Responsible Authorities (and the community other than for 'TEN's) an opportunity to make relevant representations and examine whether conditions are appropriate to ensure the Licensing Objectives are upheld.
- 4.12 Another important facet of only carrying out an activity in accordance with an authorisation is that that authority (licence) can be modified or even withdrawn by way of a statutory review process in the event of there being problems associated with the provision of the licensable activity such as disorder or public nuisance.
- 4.13 Members are asked therefore to be mindful whether or not the reduction in the regulatory burden which may be conferred on certain premises by the introduction of exemption categories is sufficiently balanced against the upholding of the Licensing Objectives.
- 4.14 There are currently 284 premises in the district which are authorised to provide 'late night refreshment' together with other forms of licensable activities usually being the sale of alcohol which may benefit from an exemption. It is important to note that if the exemption for the provision of 'late night refreshment' were to be applied these premises would still have to maintain a Premises Licence in order to continue selling alcohol thus an operator would make no saving on any annual administrative costs.
- 4.15 However of the 284 premises referred to above there are currently only 19 which hold an authorisation solely for the provision of 'late night refreshment'. The premises include internationally recognised late night fast-food establishments, independent takeaways and some national convenience stores. Annual fees payable amongst these premises range from £70 to £320 depending on the non-domestic rateable value of each business. The latest venue trades until 02.00hrs. If minded to grant an exemption Members would need to consider whether or not to authorise a refund of the fees paid.

## **5. Outcomes to be achieved.**

- 5.1 If Members are minded to introduce exemptions they are requested to consider the times that the exemption will apply and the types of premises which will benefit.
- 5.2 The introduction of an exemption will require an amendment of the current Statement of Licensing Policy.

## **6. Proposal.**

- 6.1 Subject to the decision of Members this Authority is proposing to engage with the premises potentially affected and undertake the necessary processes.

## **7. Alternatives that have been considered.**

- 7.1 Members are reminded that in determining this matter there are two alternatives available;
- To resolve *not* to introduce any exemptions from the current requirement to obtain a Licence/TEN for the provision of 'late night refreshment' or
  - To resolve to adopt a model of exemptions from the requirement to obtain a Licence/TEN authorising the provision of 'late night refreshment' in relation to specific types of premises and relevant hours of operation as determined by Members, and to carry out the relevant consultation and policy amendments.

## **8. Resource and Legal Implications**

- 8.1 There are potential resource implications, slight reduction in income and workload, if a determination is made to deregulate the need to obtain authorisation for the provision of 'late night refreshment' at certain premises.

## **9. Consultation**

- 9.1 No consultation is intended to be undertaken with this area of work other than directly with those premises potentially affected.

## **10. Community impact and corporate risks**

- 10.1 There are no community impact and or corporate risks raised by this report.

## **11. Other Implications**

<b>Crime and Disorder –</b> the current licensing regime affords control through the attachment of appropriate conditions along with the review mechanism under the Licensing Act 2003. Deregulation would remove this process.	Yes
<b>Climate Change</b>	None
<b>Human Rights and Equality Impact</b>	None
<b>Safeguarding</b>	None

## **12. Conclusion**

- 12.1 Having noted the contents of this report, the officers recommendation and supporting Home Office guidance that Members determine whether it is appropriate, or not, as the case may be to exempt certain premises from the requirement to obtain authorisation for the provision of 'late night refreshment'.

## **13. Background Papers**

Licensing Act 2003

Deregulation Act 2015

Chichester District Council's Statement of Licensing Policy 2016 - 2021

## **14. Appendices**

Home Office Guidance on the licensing of late night refreshment (2015)