

LICENSING ACT 2003 GUIDANCE NOTES THE PROVISION OF LATE NIGHT REFRESHMENT

Premises which serve late night refreshment must be licensed.

What is Late Night Refreshment?

Late night refreshment means the supply of hot food or hot drink to the public, for consumption on or off the premises, between 11.00 pm and 5.00 am, or the supply of hot food or hot drink to any persons between those hours on or from premises to which the public has access.

Food or drink is “hot” for the purposes of the Act if it is heated above ambient air temperature on the premises or elsewhere before it is supplied: or if it may be heated on the premises for this purpose after it is supplied.

Applications

To be authorised to provide late night refreshment, an application for a premises licence must be made to the licensing authority. To make an application, the following must be submitted:

- A completed application form;
- An operating schedule;
- A plan of the premises; (Scale 1cm:100cm)
- The prescribed fee.

What is an Operating Schedule?

The operating schedule is a document in which the applicant sets out various details of the premises and the proposed licensable activities. It must include the following information:

- The licensable activities to be carried out;
- The proposed hours that the licensable activities are to take place;
- The proposed hours that the premises are to be open to the public;
- A statement of the steps the applicant proposes to take to promote the four licensing objectives;
- Details of the Designated Premises Supervisor (see separate Guidance Note) if alcohol is to be sold;
- Where a licence is for a limited period, that period.

The significance of the operating schedule is that if the application for the premises licence is granted, it will be incorporated into the licence itself and will set out the permitted activities and the limitations on them.

What are the Four Licensing Objectives?

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance;
- The protection of children from harm.

Late Night Refreshment Exemptions

There are some instances where the provision of hot food and hot drink do not need to be licensed under the Act. These are:

- Hot drink consisting of, or containing alcohol (although a premises licence will still be required for the supply of alcohol);
- Hot drink distributed by means of a vending machine where the payment for the hot drink is inserted into the machine by a member of the public and the hot drink is supplied directly by the machine to the member of the public (this exemption does not apply to hot food);
- Hot food or hot drink supplied free of charge, where there is also no charge for admission to any premises, or for some other item to obtain the hot food or hot drink;
- Hot food or hot drink supplied by a registered charity or by a person authorised by a registered charity;
- Hot food or hot drink supplied on a vehicle, which is not permanently or temporarily parked at the time.

Supplies of hot food or hot drink are also exempt when the premises are used exclusively for:

- Guests of hotels or similar premises – that is guest houses, lodging houses, hostels, caravan or camping sites or other premises supplying accommodation as their main purpose;
- Members of recognised clubs and their guests;
- Employees of a particular employer and their guests- for example, where refreshment is made available to employees whose shift patterns require them to be present at the workplace between 11.00 pm and 5.00 am;
- A person who is engaged in a particular profession or who follows a particular vocation – for example, a tradesman carrying out work at particular premises.

I am the owner of a late night take-away shop. I have never needed a licence before, will I need one now?

Yes. The Act is going to regulate licensing laws across England and Wales, which means that late night take-aways and cafes will now need an authorisation to serve hot food or drink to the public on or from the premises between 11.00 pm and 5.00 am.

Will restaurants with a special hours certificate need to include late night refreshment in their premises licences as a separate licensable activity?

Yes. There will be no equivalent of special hours certificates under the new licensing regime. A restaurant owner will need to apply for a premises licence to replace the existing permission from the magistrates. This will allow a premises to provide, or continue to

provide, alcohol with meals, and, depending on their preferred hours of opening, to provide hot food or hot drink between 11.00 pm and 5.00 am.

Are clubs that possess a club premises certificate covered by the provisions for late night refreshment?

Club premises certificates do not need to authorise the provision of late night refreshment by the club to members of the club and their guests. This is because the supply of hot food or hot drink to members and guests of recognised clubs are exempt in the circumstances described above.

More information on club premises, certificates can be found in the separate Guidance Note Registered Clubs.

Personal visit to: Exeter City Council Offices (we would advise callers to make appointments)	Writing to us at: The Licensing Section Environmental Health Service Exeter City Council Civic Centre Paris Street EXETER. EX1 1RQ
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