

LICENSING AND REGISTRATION COMMITTEE

18 FEBRUARY 2016

REPORT OF CORPORATE DIRECTOR (LIFE OPPORTUNITIES)

A.1 REPORT ON CHANGE TO LICENSING ACT 2003 IN REGARDS TO LATE NIGHT REFRESHMENT (Report prepared by Simon Harvey)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

The Licensing and Registration Committee is asked to determine whether or not they wish to adopt the optional mechanism made available through the Deregulation Act 2015 to exempt premises that provide Late Night Refreshment which is classified as the sale of hot food and/or hot drink between the hours of 11p.m and 05:00a.m from the requirement to hold a licence or permission to do so under the Licensing Act 2003.

EXECUTIVE SUMMARY

- The Government has introduced via the Deregulation Act 2015 an optional mechanism for Licensing Authorities (Council's) under the Licensing Act 2003 (LA 2003) to exempt premises that provide Late Night Refreshment (the sale of hot food and/or hot drink between 11p.m and 05:00 hours) from needing to be licensed for this activity
- This would mean that in the case of pubs or restaurants for example they would not need to include Late Night Refreshment as a licensable activity on their premises licence, but all other licensable activities such as the sale of alcohol and live or recorded music would remain on their premises licence
- Where the only activity shown on a Premises Licence is the provision of Late Night Refreshment such as a late night takeaway premises selling kebabs or burgers for example, the Council may, if it wishes to, completely exempt these types of premises from the requirement to hold a premises licence and they would also not be liable to pay any grant or annual fee.
- The Licensing and Registration Committee is being asked to decide whether or not it wishes to implement across the whole or part of the District, all, part, or none of the optional deregulation to exempt premises that provide Late Night Refreshment from needing to be licensed for this activity or from the requirement of holding a premises licence.

RECOMMENDATION(S)

It is recommended that the Committee:

(a) notes the content of the report and the Home Office document 'Guidance on the licensing of late night refreshment'; and

(b) determines not to implement any of the optional provisions of 'The Licensing Act 2003 (Late Night Refreshment) Regulations 2015'.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

Our Prosperity

- Build a thriving local tourism industry
- Promote sustainable economic growth

By removing the requirement for premises to hold a licence to be able to provide Late Night Refreshment between the hours of 11:00p.m and 05:00a.m it would mean a saving for existing premises in their not having to pay an annual fee for the licence and for new premises a saving in the costs associated with the grant of a brand new premises licence. Such savings could assist in the building of a thriving tourist industry and also in promoting sustainable economic growth and regeneration.

Our People

- Remain a low crime area and reduce the fear of crime

In removing these premises from the LA 2003 licensing regime it will however mean a loss of control for the Council, Responsible Authorities such as the Police or Environmental Health and also residents and Councillors in being able to scrutinise closing times and operating policies of the premises in question as part of the grant, variation or review of premises licences that forms part of the LA 2003 process. Premises that serve the late night economy can be the focal point for late night crime and disorder or alcohol related public nuisance. Removing these premises from the licensing regime and therefore from their requirement to positively promote the four licensing objectives as they are required to do under the LA 2003, (i.e. the Prevention of Crime and Disorder, the Prevention of Public Nuisance, Public Safety and the Protection of Children from Harm), could have a negative impact on crime and the fear of crime on our District.

Our Place

Regenerate the District and improve deprived areas

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

If the Licensing and Registration Committee decide for example to exempt existing premises that are currently licensed to be able to provide Late Night Refreshment between 11:00p.m and 05:00a.m it would mean an immediate loss of annual revenue of £4095 from the Licensing Act 2003 2016/17 revenue budget. There is no provision within the budget to balance this shortfall which would be ongoing throughout future financial years.

No new grant application fees for solely Late Night Refreshment Premises Licences would be received in future either. The cost of this is however unknown.

The cost of not having to pay an annual fee or a grant of new application fee would be a saving for the businesses concerned some of which are small individual businesses. Although 5 of the 28 premises that hold a premises licence to solely provide Late Night Refreshment are recognised multi-national chained take away premises, albeit probably owned and run on a franchise basis. One of these premises also has 24 hour opening.

As examples of potential savings to these 28 businesses, premises subject to a rateable Band B category would save an annual fee of £180 and a Band C would save £295.

In terms of exempting Late Night Refreshment from premises such as pubs or restaurants that also provide other licensable activities such as the sale of alcohol or the provision of live or recorded music it would have no effect on the revenue budget as the premises concerned would still be liable to pay an annual fee because of the other licensable activities that are permitted by their premises licence.

There is therefore no loss of annual or grant fee revenue for the Council, but no saving for the businesses concerned either.

In the short term however there would be a definite cost to the Council in the Licensing and Registration Committee taking any decision to exempt Late Night Refreshment as a licensable activity, or exempt premises from being required to hold a premises licence to be able to solely provide Late Night Refreshment between the hours of 11:00p.m to 05:00am either in a part of the District or the whole of the District.

This is because any decision taken to exempt Late Night Refreshment would require a revision to the Council's Licensing Policy and such an amendment would be subject to the statutory consultation process as set out in Section 5 of the Licensing Act 2003. This would mean that all Responsible Authorities and other relevant and interested parties would need to be consulted with over such a proposal.

A final decision to exempt existing Late Night Refreshment premises either in part of the District or the whole of the District would mean that their licences would have to be amended or cancelled and the premises concerned notified of this change to their licence status. These amendments would also have to be publicised. The cost of officer time to undertake all of this administrative work is unknown, but is likely to be in the region of several hundred pounds.

Risk

There are three potential risks to the Council in agreeing to exempt premises from needing to hold a permission, or a licence, to provide Late Night Refreshment. These are:

- Loss of control of Late Night Refreshment premises through the grant, variation or review of licenses under the Licensing Act 2003. This could have a potentially negative impact on the promotion of the licensing objectives.
- Loss of annual fee and grant of new license revenue.
- Once exempted, Late Night Refreshment premises cannot be brought back into the licensing regime if for example the premises became the cause or source of crime and disorder and/or public nuisance.

LEGAL

There is no legal requirement under the Deregulation Act 2015, the Licensing Act 2003 (Late Night Refreshment) Regulations 2015 or the 'Guidance on the licensing of late night refreshment' document issued to Local Authorities by the Home Office for the Council through its Licensing and Registration Committee to consider the question of exemption for Late Night Refreshment premises one way or the other. However for transparency and certainty, it is preferable that the Council does hold a robust position or view on this question one way or the other. I.e. either the Council agrees to allow a part or a whole exemption from the requirement to hold a Late Night Refreshment permission or licence in part of the District or the whole of the District or it does not agree.

Any decision taken by the Licensing and Registration Committee either to agree a part or whole exemption for Late Night Refreshment premises across part or whole of the District, or conversely any decision taken not to adopt the optional mechanism made available

under the Deregulation Act 2015 to allow the exemption of Late Night Refreshment premises could be subject to legal challenge through the Court. If the Council were to lose such a challenge, the costs of any Court case brought could be awarded against it.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Consultation/Public Engagement.

CRIME AND DISORDER

If for example the Licensing and Registration Committee decided to exempt premises currently subject to the LA 2003 licensing regime and the four licensing objectives under the Act which includes the Prevention of Crime and Disorder, the Council's ability as the Licensing Authority to control closing times for Late Night Refreshment premises would be lost and this could have a negative effect on Crime and Disorder across the District. Exempting these premises would also mean that they would no longer be subject to the review mechanism available under the Licensing Act 2003 to Responsible Authorities such as the Police or Environmental Health or for example residents or Ward Councillors. This would also result in a potential loss of compliance and control where a premises (such as a takeaway) had become the source or focus of late night crime and disorder or public nuisance. Once exempted, premises cannot be brought back into the Licensing regime.

EQUALITY AND DIVERSITY

Equality and Diversity considerations in regard to the deregulation of Late Night Refreshment premises will have been considered by Parliament as part of the Deregulation Act 2015 and also by the Home Office when issuing its 'Guidance on the licensing of late night refreshment' document to Local Authorities.

AREA/WARDS AFFECTED

All

CONSULTATION

No consultation is required in respect to the Licensing and Regulation Committee making a decision not to adopt the optional deregulation of Late Night Refreshment as a licensable activity from the requirement to hold a premises licence. A public consultation would be required if a decision was made by the Committee to agree an exemption for Late Night Refreshment premises however as this would require a revision to the Council's Licensing Policy and which would have to be statutorily consulted on in compliance with Section 5 of the Licensing Act 2005.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The introduction of the Licensing Act 2003 (LA 2003) in November 2005 integrated into one single licensing regime a number of activities that had previously required a separate licence or permission in their own right.

These activities included the sale and supply of alcohol, live and recorded music, films, plays and also the provision of late night refreshment (LNR).

Late night refreshment is classed as the provision of hot food and/or hot drinks between 11:00p.m and 05:00a.m. Food or drink is classed as hot if it is supplied or consumed at a temperature above the ambient air temperature.

Any premises providing LNR between 11:00p.m and 05:00a.m regardless of whether or not they also provide any other licensable activity such as the sale of alcohol would require either a premises licence or would have to do so by the use of a Temporary Event Notice if they do not hold a premises licence.

The only exceptions to this is where for example hot food and/or hot drink is provided for someone staying at a hotel, guest house or hostel, or in a works canteen, or for a member of a recognised club.

CURRENT POSITION

Last November, the Government introduced regulations which gave Council's the ability to exempt premises that currently hold a premises licence under the LA 2003 to provide LNR from needing to be licensed. The exemption would also apply to any premises wishing to include LNR as a licensable activity as part of a new premises licence application, or LNR as the sole activity permitted on a new application.

In terms of premises that solely hold a premises licence to provide LNR there are 28 of these licensed across the District. A list of these premises is attached to this report as **APPENDIX 1**.

The Licensing Act 2003 (Late Night Refreshment) Regulations 2015 provides a list of prescribed premises which a Licensing Authority may exempt from the requirement under the Licensing Act 2003 for the provision of late night refreshment.

The list includes premises such as:

- Motorway service areas;
- Premises used for the retailing of petrol or derv;
- Licensed Premises authorised to sell by retail alcohol for consumption on the premises between 11:00p.m and 05:00a.m;
- School and Local Authority premises where no more than 500 people are present (non-domestic premises);
- Community premises and hospitals subject to certain requirements.

The Licensing Authority can also decide to exempt premises within a certain geographic area of the District from the requirement to license Late Night Refreshment, and also change the hours during which LNR premises will require a license which would apply across the whole of the District. For example, the Licensing Authority could decide that it will only require premises to hold a LNR license if they remain open between the hours of Midnight and 05:00a.m. These are matters for the Licensing Authority's discretion and are not prescribed in any Regulations.

In deciding whether to apply an exemption for either part of the district or the whole of the district the Licensing Authority would take into consideration matters such as the levels of late night anti- social behavior that occur in the geographic area proposed for exemption, or the instances of late night anti –social behavior linked to a particular take away or take aways in a geographic area, or the likely effect on late night anti-social behavior by applying an exemption from licensing to such premises.

If the Licensing Authority through the decision of its Licensing and Registration Committee decides to apply any of the exemptions to Late Night Refreshment that can be applied by implementing the new LNR Regulations it must publicize the exemption and also statutorily re-consult on its Statement of Licensing Policy in accordance with Section 5 of the Licensing Act 2003.

As detailed in the financial information section of this report, this would entail substantial costs to the Council in carrying out such a consultation and to report it back to the Licensing and Registration Committee. Exempting all premises from being required to hold a premises license to provide Late Night Refreshment could cost the Council £4095 annually from revenue lost to the LA 2003 budget. There is no provision within the budget to balance this shortfall.

The Licensing and Registration Committee are therefore asked to consider the potential for exempting premises from the requirement to be licensed to provide Late Night Refreshment in either part of the District or the whole of the District that the Licensing Act 2003 (Late Night Refreshment) Regulations 2015 allows and to weigh the possible benefits of de-regulation to businesses against the loss of control and revenue to the Council and its residents that such an exemption is likely to bring.

It is prudent and transparent that the Committee does so in order that if asked by any of the businesses or license holders concerned to consider implementing the Licensing Act 2003 (Late Night Refreshment) Regulations 2015, it is clear that the Council has considered the matter and has taken a position on it.

BACKGROUND PAPERS FOR THE DECISION

Home Office 'Guidance on the licensing of late night refreshment'

APPENDICES

APPENDIX 1 – List of Premises in Tendring District that hold a licence to provide Late Night Refreshment

LATE NIGHT REFRESHMENT PREMISES ONLY

PREMISES NAME	PREMISES ADDRESS	BAND	REFERENCE
Amber Chinese Takeaway	55 The Street, Little Clacton, Essex CO16 9LB	A	05/00499/PREMGR
Beijing Chinese Takeaway	6 Oakley Road, Dovercourt, Harwich, Essex CO12 4QR	A	11/00052/PREMTR
Best Kebab	37 Bluehouse Avenue, Clacton On Sea, Essex CO16 7BA	B	15/00501/PREMGR
Choices	20 Broadway, Jaywick, Essex CO15 2EH	A	05/00212/PREMGR
Dial A Pizza	159 Old Road, Clacton-on-Sea, Essex CO15 3AU	A	05/00464/PREMGR
Dilan 2 Kebab And Pizza House	89 Old Road, Clacton-on-Sea, Essex CO15 1HW	B	07/00066/PREMTR
Domino's	Unit 1B, Harwich Gateway Retail Park, Freshfields Road, Harwich, Essex CO12 4EN	C	15/00734/PREMGR
East India Takeaway	182 Old Road, Clacton-on-Sea, Essex CO15 3LR	A	05/01225/PREMGR
Essex Kebabs	34 St. Osyth Road, Clacton-on-Sea, Essex CO15 3BW	A	11/00374/PREMTR
Family Pizza	8 Old Pier Street, Walton On The Naze, Essex CO14 8AW	B	14/00313/PREMGR
Favorite Chicken And Ribs	44 Rosemary Road, Clacton-on-Sea, Essex CO15 1PB	B	05/01165/PREMGR
Favorite Grill Takeaway	57 Ravensdale, Clacton-on-Sea, Essex CO15 4QH	B	12/00815/PREMTR
Ho Lok Chinese Takeaway	289 Old Road, Clacton-on-Sea, Essex CO15 3NR	A	05/00718/PREMGR
KFC Drive-Thru	K F C Plc, Brook Retail Park, London Road, Clacton-on-Sea, Essex CO16 9QX	C	05/00392/PREMGR
McDonalds Restaurant Limited	Colchester Road, Weeley, Essex CO16 9AD	C	12/00546/PREMVA
McDonalds Restaurant Limited	24/26 Pier Avenue, Clacton-On-Sea, Essex CO15 1QN	D	08/00697/PREMTR
Phoenix House Chinese Takeaway	105 Pole Barn Lane, Frinton-on-Sea, Essex CO13 9NQ	A	05/00427/PREMGR
Pizza Direct	102 Old Road, Clacton-on-Sea, Essex CO15 3AA	A	07/01127/PREMTR
Quality Diner	47 Rosemary Road, Clacton-on-Sea, Essex CO15 1PB	B	14/00303/PREMVA
Rose Kebab House	7 - 8 Shop Parade, Halstead Road, Kirby Cross, Essex CO13 0LN	A	05/00584/PREMGR
Starfast Foods	5 New Street, Brightlingsea, Essex CO7 0BZ	B	07/01225/PREMTR
Station Kebab	103 Station Road, Clacton-on-Sea, Essex CO15 1TW	A	09/00706/PREMTR
Subway	40 Station Road, Clacton On Sea, Essex CO15 1SX	B	12/00814/PREMTR
Sun Yau	18 Broadway, Jaywick, Essex CO15 2EH	B	14/00235/PREMGR
Tasty House	47 - 51 St. Osyth Road, Clacton-on-Sea, Essex CO15 3BU	A	05/01041/PREMGR
Tasty Takeaway	159 High Street, Harwich, Essex CO12 3QB	B	09/00323/PREMVA
The Burger Bar	1 Seaview Road, St Osyth, Essex CO16 8SH	A	06/00086/PREMGR
USA Fried Chicken	4 Central House, High Street, Harwich, Essex CO12 3PT	B	09/00613/PREMTR



Home Office

Guidance on the licensing of late night refreshment

1. Introduction

- 1.1 This guidance sets out what activities are to be treated as the provision of late night refreshment and as such are regulated under the Licensing Act 2003 (“the 2003 Act”). It also sets out which activities are exempt from the late night refreshment aspects of the licensing regime. In particular, it includes guidance on the provisions in the Deregulation Act 2015 which amends the 2003 Act to give licensing authorities powers to opt to exempt supplies of late night refreshment from the licensing requirements of the 2003 Act which are made at or from certain designated locations, types of premises or times.
- 1.2 This guidance is not issued as part of the statutory guidance under section 182 of the 2003 Act but will be incorporated into the section 182 guidance when it is next updated. It is intended to assist licensing authorities and police forces with monitoring and enforcement activity in relation to the provision of late night refreshment. It may also help businesses who wish to provide hot food or drink to determine whether they will require a licence under the 2003 Act in order to do so.

2. General

- 2.1 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. 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.
- 2.2 Shops, stores and supermarkets selling cold food and cold drink, whether it is immediately consumable or not, from 11.00pm are not licensable as providing late night refreshment. The 2003 Act affects premises such as night cafés and takeaway food outlets where people may gather to purchase hot food or drink at any time from 11.00pm and until 5.00am. In this case, supply takes place when the hot food or hot drink is given to the customer and not when payment is made. For example, supply takes place when a table meal is served in a restaurant or when a takeaway is handed to a customer over the counter.
- 2.3 Some premises provide hot food or hot drink between 11.00pm and 5.00am by means of vending machines. The supply of hot drink by a vending machine is not a licensable activity and is exempt under the 2003 Act provided the public have access to and can operate the machine without any involvement of the staff.
- 2.4 However, this exemption does not apply to hot food. Premises supplying hot food for a charge by vending machine are licensable if the food has been heated on the premises, even though no staff on the premises may have been involved in the transaction.
- 2.5 It is not expected that the provision of late night refreshment as a secondary activity in licensed premises open for other purposes such as public houses, cinemas or nightclubs or casinos should give rise to a need for significant additional conditions.
- 2.6 The supply of hot drink which consists of or contains alcohol is exempt under the 2003 Act as late night refreshment because it is licensed by the provisions relating to the sale or supply of alcohol.
- 2.7 The supply of hot food or hot drink free of charge is not a licensable activity. However, where any charge is made for either admission to the premises or for some other item in order to obtain the hot food or hot drink, this will not be regarded as “free of charge”. Supplies by a registered charity or anyone authorised by a registered charity are also exempt.

- 2.8 Supplies made on moving vehicles (for example boats, trains or coaches) are also exempt. However supplies made from a vehicle which is permanently or temporarily parked, such as from a mobile takeaway van, are not exempt (see section 3.4 below for more detail on provisions for 'Vessels, vehicles and moveable structures').
- 2.9 Supplies of hot food or hot drink from 11.00pm are exempt from the provisions of the 2003 Act if there is no admission to the public to the premises involved and they are supplies to:
- a member of a recognised club supplied by the club;
 - persons staying overnight in a hotel, guest house, lodging house, hostel, a caravan or camping site or any other premises whose main purpose is providing overnight accommodation;
 - an employee of a particular employer (for example in a staff canteen);
 - 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);
 - a guest of any of the above.

3. Exemptions based on designated locations, premises types and times

- 3.1 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. However, these safeguards may not be needed everywhere or for every type of late night refreshment business. For example, some late-night cafés serving hot drinks after 11pm may be located nowhere near pubs and nightclubs or areas associated with alcohol-related crime and disorder.
- 3.2 Paragraph 2A of Schedule 2 to the 2003 Act (as inserted by the Deregulation Act 2015) gives licensing authorities powers to exempt premises, in certain circumstances, from the requirement to have a licence to provide late night refreshment. 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. As well as freeing up the businesses in question from unnecessary costs, this can also provide greater flexibility for licensing authorities to target their resources more effectively.
- 3.3 The powers allow a relevant licensing authority 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 11.00 p.m. and ending no later than 5.00 a.m.).
- 3.4 When choosing to designate a particular area as exempt, the relevant licensing authority must define the location, which can be of any size.

Vessels, vehicles and moveable structures

Under section 189 of the 2003 Act, a vehicle which is not permanently situated in the same place and is or is proposed to be used for one or more licensable activities while parked at a particular place, is to be treated as if it were premises situated at that place. Therefore, a mobile provider of late night refreshment, such as a kebab van, could be treated as exempt if it supplied hot food to the public late at night in an area which had been designated as exempt. If the mobile van drove to and began operating in a non-exempt area, a licence to carry on this activity would be required. Should the licensing authority introduce an exemption, and subsequently wish to revoke it if problems arise, it has the power to do so. 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. As such, mobile vehicles selling late night refreshment are likely to still require licences in the areas in which they are more commonly found.

- 3.5 When choosing to designate particular categories of premises as exempt, a licensing authority can only exempt types of premises set out in the regulations. These 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 retail alcohol for consumption on the premises between the hours of 11pm and 5am.
- 3.6 When choosing to exempt the provision of late night refreshment at particular times, the relevant licensing authority must determine the times between 11pm and 5am when the exemption applies. The exemption and any subsequent change to the time will apply to the whole licensing authority area.
- 3.7 A relevant licensing authority may use more than one type of exemption at the same time, for example by changing the times across the licensing authority area during which licensing requirements will apply and also exempting premises by type across the whole licensing authority area. However, it cannot use different forms of exemption in conjunction with one another – for example, it would not be permitted to change the times in one geographic area only.
- 3.8 Where a premises is situated in the areas of two or more licensing authorities, any of those authorities may be the relevant licensing authority and it would be advisable for an authority wishing to apply an exemption to discuss it with the other authority concerned. This might apply, for example, where an area or premises type exemption is being applied and the licensing authority is aware that a particular premises such as a motorway service area sits across the boundary of two or more licensing authority areas.

- 3.9 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.
- 3.10 Existing late night refreshment licences for premises that become exempt from regulation will remain extant unless the holder chooses to surrender it to the licensing authority, but there will be no requirement on the licence holder to pay annual renewal fees and any conditions on the licence will cease to apply for as long as the exemption is in place. In cases where an exemption in relation to late night refreshment provision is applied, other licensing is unaffected. For example if a premises is licensed to sell alcohol and is exempt from requiring a late night refreshment licence, their licence in respect of the sale of alcohol is unaffected. Where a premises benefits from an exemption applied by the licensing authority, any existing conditions on a licence relating solely to the provision of late night refreshment will have no effect during the period of the exemption.
- 3.11 When deciding which exemption to use, if any, the relevant 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 licensing authorities should include within their statement of licensing policy. It would then therefore be subject to the statutory consultation process with other responsible authorities and relevant parties set out in section 5 of the 2003 Act. However, it is for the licensing authority to decide on the detail and extent of the consultation beyond the statutory minimum. The licensing authority may decide to only consult on the proposed exemption or, alternatively, it may form part of a wider review of other matters within its statement of licensing policy. It is also for the licensing authority to decide within its statement of licensing policy whether the decision to grant exemptions is delegated to its licensing committee or to an officer.
- 3.12 When applying any of the exemptions the relevant licensing authority must publicise the changes and should decide on the most appropriate way to do this, in addition to updating its statement of licensing policy as soon as is practical. There is no requirement for licensing authorities to tell premises individually, however they should publicise the exemption in a way that ensures that those who are likely to be affected may benefit from it. If any fees are paid prior to an exemption coming into effect, licensing authorities should consider whether a refund or partial refund is appropriate. It is for each individual licensing authority to develop its own refund policy and ensure that it is communicated appropriately to all licence holders that are likely to be affected by an exemption.
- 3.13 Licensing authorities can review the exemptions at any time, to change the times, locations or types. However, unlike many other types of licensing decision, the late night refreshment exemptions are not made on a case by case basis and there is no recourse to bring an individual 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 and apply it across the whole area. Alternatively, depending on the scale of the problem, other powers could be used such as closure powers under the Anti-social Behaviour, Crime and Policing Act 2014. Environmental health legislation around noise nuisance may also offer a solution.