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## **LICENSING ACT 2003 - Guidance - Late Night Refreshment**

### **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 11.00pm and the following 5.00am. It includes takeaways, fast food outlets and mobile catering vehicles. Premises that provide late night refreshment need to hold a Premises Licence under the Licensing Act 2003.

Under the Act, you can also apply to your local authority for consent to sell alcohol from your premises using the same form.

### **Are there exemptions?**

The following are exempt from requiring a Premises Licence for the provision of late night refreshment:

- Hot alcoholic drinks, or drinks containing alcohol (although a Premises Licence is still required for consent to sell or supply the alcohol itself);
- Hot drink vending machines that are operated by the customer only;
- Hot food or hot drink supplied free of charge, where there is also no charge for admission to the 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 (i.e. a charity which is registered under the Charities Act 1993 or a charity not required by the Charities Act 1993 to be registered);
- Hot food or hot drink supplied on a vehicle, which is not permanently or temporarily parked at the time;
- Hot food or hot drink supplied to members and guests of premises holding a Club Premises Certificate;
- Hot food or hot drink supplied to hotel and bed & breakfast guests;
- Refreshment in staff canteens to people working between 11.00pm and the following 5.00am.

If a supermarket or other business premises (i.e. garage / petrol station) heats food or drink for customers between 11.00pm and the following 5.00am, or provides facilities for customers to heat food or drink above the ambient temperature, a late night refreshment licence is required. However, if the business is selling only cold food and drink, and not providing facilities to heat it, a late night refreshment licence is not required.

### **So what happens with my application and how do I fill the form in?**

See the separate guidance notes for full details of the application process.

## **What about one off events and special occasions?**

If you are holding a licensable activity that falls in to one of the following categories:

- Less than 500 people attending;
- Lasting for not more than seven days (168 hours), with a break of at least 24 hours thereafter;

then you can hold your event by submitting a Temporary Event Notice (TEN) to us.

This notice allows you to hold licensable activities, including late night refreshment, on premises that are not currently licensed, or to hold activities your existing licence does not permit, or an extension of activities that your existing licence does permit (for instance, where later than usual hours are required for a one-off function). This would allow you to occasionally open later than normal, or occasionally sell alcohol, for example.

Usually, a TEN must be lodged no later than ten working days prior to the event taking place (not including the date of lodging, the date of the event, intervening weekends, and any intervening bank holiday). However, a facility for lodging a 'Late TEN' exists, which must be lodged no later than five working days prior in circumstances where the ten-day deadline has been inadvertently missed. The same application form exists for both, although it is completed slightly differently when the TEN is lodged late.

We will consult the Police and Environmental Health on your application. They can object in line with the four licensing objectives: Prevention of Crime & Disorder, Prevention of Public Nuisance, Public Safety, and the Protection of Children from Harm. If they do object, we will hold a public hearing in front of our Licensing Sub-Committee to determine your application (unless all parties can agree a hearing is unnecessary). The Committee will listen to evidence from both sides before deciding whether the event can go ahead. However, Government guidance requires that we refuse permission for the event in these circumstances unless there are exceptional reasons not to.

If a TEN is granted to enable new activities, or an extension of existing activities, at a premises where a licence is already in place, it would be possible for conditions that already exist on that licence to be attached to the TEN as well, in order to address any or all of the four licensing objectives.

Further, it is important to know that in the event of a 'Late TEN', the application will be deemed refused immediately on receipt of an objection, given the reduced timescale renders it impossible to put the matter before our Sub-Committee in time.

## **Are there any restrictions on TEN's?**

- You can only have up to 50 TEN's a year if you are a Personal Licence Holder (see section below on Personal Licences) – of those 50, ten can be late;
- You can have only have up to five TEN's a year if you are not a Personal Licence Holder – of those five, two can be late;
- You must be aged 18 or over;
- Restrictions apply where the applicant is an "associated person" of someone who has already given a TEN, including spouses, close relations, agents and employees, and their spouses. The word "spouse" also includes someone living with the notice giver;
- You can only have a maximum of 12 TEN's a year for any particular premises, subject to an overall limit of no more than 21 aggregate days in total (where the TEN lasts for more than one day).

If your event/activity falls outside these restrictions, you will require a full Premises Licence.

If the number of TEN's you seek in a year exceeds the limits above, the local authority must serve a counter notice prohibiting the event from going ahead. This must be served at least 24 hours before the event.

### **What is a Personal Licence?**

Alcohol sales can only be made by, or under the authority of, a Personal Licence Holder. Not everyone who affects a sale has to hold a Personal Licence, so long as a Personal Licence Holder has authorised the sale. This does not apply to Qualifying Clubs or premises operating under a Temporary Event Notice.

You must apply for your Personal Licence to the local authority in whose district you live.

You can have as many Personal Licence Holders on the premises as you wish, but there can be only one Designated Premises Supervisor (see below). You can also choose to become a Personal Licence Holder if you wish to apply for more than five TEN's a year, but otherwise you would not require one.

Additionally, all premises operating under a Premises Licence to sell or supply alcohol must appoint a Designated Premises Supervisor (DPS) for the premises. The DPS will be held as the person in overall charge of the premises. You should therefore choose this person with care.

You have to nominate the DPS on your Premises Licence application form. This person does not have to be on the premises at all times, but they must take responsibility for what happens there. This means the DPS should ensure any staff they appoint are appropriately trained in the requirements of the Licensing Act 2003 and are aware of any specific conditions attached to the Premises Licence. A person cannot become a DPS unless they are also a Personal Licence Holder.

**This leaflet has been made as comprehensive as possible. However, in attempting to simplify the law, certain requirements have been omitted. Full details of what you must do are in the legislation itself.**

**Laws can and do change. This information was accurate when produced, but may have changed since. We must advise that only the Courts can give an authoritative opinion on statute law.**

**This information is available in alternative formats such as large print, Braille or on audio cassette if required. Please contact us should you require any further information or assistance.**

*Revised w.e.f. August 2012.*