

Title: Late Night Refreshment - Reducing the burdens of the Licensing Act 2003 IA No: HO Lead department or agency: Home Office Other departments or agencies: Department for Transport (DfT).	Impact Assessment (IA)		
	Date: August 2013		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: Sam Hardy 0207 035 1784			
Summary: Intervention and Options			RPC Opinion: GREEN

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£2.9m	£3.0m	-£0.34m	Yes
			OUT

What is the problem under consideration? Why is government intervention necessary?

Late night refreshment (LNR) – i.e. the provision of hot food and drinks between 11 pm and 5 am - is regulated under the Licensing Act 2003 (“the 2003 Act”) given its links to alcohol fuelled crime and disorder in the night-time economy. However, not all LNR provision has such links to late night drinking; and not all LNR premises are trouble hotspots . An obvious example could be LNR at many motorway service areas (MSAs) or other roadside facilities. The Government wishes to lift regulation in cases where there is no risk to the licensing objectives by allowing businesses to provide late night refreshment. This follows the theme of the Red Tape Challenge to remove the unnecessary bureaucratic burdens of the licensing process on business without undermining the licensing objectives. This assessment evaluates and proposes new local discretion for licensing authorities to determine how regulation on LNR licensing is applied in their areas, reducing onerous burdens on business and increasing opportunities for local growth.

What are the policy objectives and the intended effects?

The Government aims to put in place measures to enable licensing authorities (LAs) to use local discretion to implement exemptions for the provision of LNR licensing by amending the 2003 Act so that LNR may be an exempt activity (if the LA so decides) on the basis of one of the following options: (1) in part of their area; (2) by type of premises; or (3) permitting LNR without need for authorisation within an agreed time frame. This will allow LAs to make local decisions on exempting LNR venues, within agreed specific circumstances, that are not connected to the night time economy.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1: is to make no change (do nothing).

Option 2: To extend the nationally-prescribed exemptions for the provision of LNR, for example at Motorway Service Area (MSAs). This option is not to be pursued.

Option 3 (preferred option): To give power to a licensing authority to exempt LNR by either using one of three specific circumstances set out in Schedule 2 of the Act by a) designating an area, b) exempting certain types of premises across its entire area, or c) applying a time frame after which LNR becomes applicable (this was not consulted on). Option 3 provides a greater range of discretionary options for LAs to tailor their approach to local problems as opposed to a ‘one size fits all’ nationally prescribed provision.

Will the policy be reviewed? It will/will not be reviewed. **If applicable, set review date:** TBC through consultation

Does implementation go beyond minimum EU requirements?			Yes		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 2

Description: To extend the nationally-prescribed exemptions for the provision of LNR in specified circumstances, specifically at Motorway Service Area (MSAs), but potentially others as well..

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0.4	High: 0.4	Best Estimate: 0.4

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	Negligible	N/A	N/A

Description and scale of key monetised costs by 'main affected groups'

Notification costs to licensing authorities estimated to be negligible.

Other key non-monetised costs by 'main affected groups'

There will be a small cost to enforcement agencies in familiarising themselves with a new centrally-prescribed exemption.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	0.04	0.4
High	Optional	0.05	0.4
Best Estimate	N/A	0.05	0.4

Description and scale of key monetised benefits by 'main affected groups'

The main benefit will be to suppliers of LNR that are exempted from LNR licensing under the proposed new arrangements. They will no longer incur the administrative costs and fees of applying for and possessing licences.

Other key non-monetised benefits by 'main affected groups'

The current proposed national exemption category, MSAs, all in fact provide LNR already. However, should other exemption categories be identified, there is a potential that consumers will benefit from increased choice.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

Generally, there are links between LNR provision and late night drinking in the night time economy (NTE). The police and LAs use licensing controls to prevent crime and disorder and public nuisance risks around LNR premises. But, some premises providing LNR are not linked in any way to the NTE and could be exempt. There was an interdependency between this proposal and possibilities the Government is considering to lift the ban on alcohol sales at MSAs and to deregulate road facilities more generally. These proposals relating to alcohol sales at MSAs are still being considered. There are no other interdependencies with other Alcohol Strategy measures. These further proposals do not all bear pressure on local discretion for LNR licensing due to the restrictions for its application, and they also strengthen arrangements to avoid legal loopholes. There is a risk that national exemptions could create unintended consequences. However, the Government does not propose to take Option 2 forward on the basis that a localised approach (rather than a national, blanket one) can better identify areas where LNR regulation is not needed.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: Neg	Benefits: 0.04	Net: 0.04	Yes	OUT

Summary: Analysis & Evidence

Policy Options 3

Description: Amending Schedule 2 of the 2003 Act to enable licensing authorities to use local discretion on LNR from being licensed in one of three ways by either; designating an area in which premises are exempt from the provisions of the 2003 Act; designating a type of premises which are exempt from the provisions of the 2003 Act or; defining a time after which LNR becomes licensable

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0.3	High: 5.5	Best Estimate: 2.9

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	0.02	0.2
High	Optional	0.02	0.2
Best Estimate	Negligible	0.02	0.2

Description and scale of key monetised costs by 'main affected groups'

Local discretion to exempt LNR venues would involve notification costs to licensing authorities as well as costs from meetings with other relevant authorities, such as the police. It is assumed that each licensing authority will review its policy on LNR each year; hence these costs will occur annually.

Other key non-monetised costs by 'main affected groups'

There will be a small cost to enforcement agencies in familiarising themselves with a new centrally-prescribed exemption.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	0.05	0.4
High	Optional	0.66	5.7
Best Estimate	N/A	0.35	3.0

Description and scale of key monetised benefits by 'main affected groups'

The main benefit will be to LNR venues that are exempted nationally from the need to possess an authorisation under the 2003 Act. They will no longer incur the administrative costs and fee costs of applying for and possessing licences. We have tentatively estimated a range of possible benefits.

Other key non-monetised benefits by 'main affected groups'

There may be a small increase in profits from those businesses that did not previously provide LNR, and are now able to do so without possessing an authorisation. Consumers may benefit from increased choice.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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As noted above, generally, there are a links between LNR and the NTE and so licensing controls are needed in relation to LNR premises to prevent crime/disorder nuisance and protect public safety. However, some premises providing LNR, including for example, those at MSAs or roadside facilities or on industrial sites supplying workers on nighshifts, are not linked to the NTE and so could be exempt from regulation.). There are no other interdependencies with other national Alcohol Strategy measures. Local discretion creates risks of potential unfairness and uncertainty for businesses, as different approaches may apply in one LA area than another. But local discretion is also the best mechanism for identifying areas or premises at local level that could be exempt. And the Government has an overarching commitment to localism and freeing up local communities.

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: 0.34	Net: 0.34	Yes	OUT

Evidence Base (for summary sheets)

Strategic Overview

A.1 Background

- 1) The provision of LNR is the supply of hot food and drink to the public after 11pm. It is a “licensable activity” under the 2003 Act because of the problems that can occur, for example, outside late night takeaways, which undermine the licensing objectives. The police and other agencies greatly value the safeguards licensing provides, such as the ability to impose conditions on these premises.

In March 2012, the Government published its Alcohol Strategy, setting out a range of measures to tackle the issue of excessive alcohol consumption and its associated harms.¹ The Alcohol Strategy included a commitment to consult on giving licensing authorities greater freedom to take decisions that reflect the needs of their local community, including to reduce the burdens of the licensing regime and support local growth. The “hospitality theme” of the Red Tape Challenge invited members of the public and businesses to suggest regulations that should be scrapped or simplified, where LNR licensing was identified as a potential deregulatory measure. The Government announced plans to develop a new proposal “whereby licensing authorities determine the parts of their areas where premises that do not sell alcohol, would require a licence to provide LNR. This would replace the current default status of the provision of LNR as a licensable activity”.²

The Government committed to removing unnecessary regulations and to exploring how it could make the day to day process of licensing as easy as possible for responsible businesses. It consulted on delivering the Alcohol Strategy in November 2012 (concluding on 6 February 2013). This consultation set out proposals for cutting red tape in the licensing system, including a number of ways to reduce the burdens of licensing on local organisations such as community and arts groups and schools, and businesses that are not connected to alcohol-related problems. Reform of the LNR regime was one of the proposals (see below).

- 2) **Impact of the wider Alcohol Strategy**: The wider Alcohol Strategy includes a number of measures to reduce the health, crime and social harms caused by alcohol, alongside the measures to cut unnecessary red tape for responsible businesses licensed under the 2003 Act. These proposals on LNR are only *indirectly* linked to the wider alcohol measures. We know a link exists between alcohol consumption and crime and disorder at some LNR establishments in the late night economy – late night fast food takeaways for example – used by late night drinkers at the end of an evening’s drinking. But, the proposals under discussion in this IA are aimed at removing regulation from LNR businesses for whom there is no such tangible link with the late night economy or alcohol consumption (e.g. LNR in locations like roadside facilities or industrial estates where alcohol is not sold).
- 3) The Government’s proposal at Option 2 was to introduce blanket, nationally prescribed exemption (or exemptions) for LNR that would apply in all LA areas across England and Wales. The rationale for introducing a national exemption of this kind would be that the type of LNR exempted from regulation would have no link in any way to the alcohol-fuelled NTE. The obvious candidate for such a blanket exemption was thought to be MSAs and this was the only national exemption consulted on in the 2012/13 public consultation on alcohol (see below). It was an obvious example of a possible blanket exemption because MSAs have a separate legal duty to provide hot food for motorists to buy and were not thought to be linked to the alcohol-related disorder or nuisance in the NTE. This is because there is a national ban on the sale of alcohol at MSAs and late night drinkers do not congregate at LNR establishments at MSAs at the end of the evening as they do in town centre LNR venues for example. However, there is an interdependency as the Government also consulted on the possibility of removing the national ban on the sale of alcohol at MSAs. This might potentially undermine the argument that MSAs are always distinct and separate from the NTE. But, in any event, following the public consultation and technical discussions, the Government has decided **not** to pursue option 2 because the issue is not as clear it seemed (see

¹ The Alcohol Strategy is available on the Home Office website: <http://www.homeoffice.gov.uk/publications/alcohol-drugs/alcohol/alcohol-strategy>

² Government announcement of the outcomes of the hospitality theme of the Red Tape Challenge, September 2011 - <https://www.gov.uk/government/news/government-sets-hospitality-food-and-drink-businesses-free-from-regulation>

below). The Government has decided to pursue Option 3 – allowing for various local discretion for exemptions from regulation for LNR in some circumstances. Because LAs will decide locally whether such exemptions are appropriate in their own areas based on the licensing objectives and local knowledge (and so clearly taking into account any relationship between the LNR in question and the alcohol-fuelled NTE), the Government does not consider that there are interdependencies with other national policies arising from the alcohol strategy consultation

This Impact Assessment:

- 4) This is a final stage impact assessment following the recent Alcohol Strategy Consultation. The consultation included a wide range of measures to tackle issues associated with alcohol, and also to give licensing authorities greater freedom to take decisions and reduce burdens on business.
- 5) The Government is **not** proposing to extend the existing list of nationally prescribed exemptions for LNR e.g. to include, MSAs, set out in Option 2 following issues raised during the public consultation (see below). In addition, the Government's recent proposals led by DfT on relaxing regulations for MSAs may potentially see an increase in the number of roadside facilities where LNR may be provided.

Pre-consultation Impact Assessment:

- 6) In considering Option 3 of the pre-consultation IA, where LNR can be exempt by types of premises that provide no other licensable activities, the technical group discussions with licensing officers and police raised further concern. Licensing officers demonstrated that inconsistency across authority areas on the national landscape could leave some licensing authorities open to challenge. Where one authority may determine a type of premises as exempt as it is not connected to the NTE and is low risk may not be the case in another's authority area. The police supported this notion and reiterated the problems with licensed premises currently authorised to provide LNR. It is therefore not a viable option to propose local exemptions by type of premises.
- 7) In addition to considering exemptions by type of premises, we consulted on whether licensing authorities should have the power designate an area where premises are exempt from LNR licensing (pre-consultation IA Option 4). This could be, for example, locations in which people work late at night (such as industrial estates, markets or at transport hubs such as ports), and that are not connected to the NTE. The consultation tested the appetite for such powers, and the possible scope of local implementation if they were introduced. Licensing authorities supported this option in the technical discussions, as areas could be clearly defined, and local knowledge used to assess any direct connection to the NTE. Licensing officers raised further points during discussions that this could also cover a wider range of premises types without needing to define them. There was greater appetite for this amongst licensing authorities with rural areas.
- 8) The impacts of both costs and benefits are estimated in this IA, and builds on evidence received during the consultation period.

A.2 Groups Affected

- 9) Licensing authorities
Licensing authorities are responsible for the administration of the 2003 Act. They would be responsible for the implementation of any locally-determined exemptions, involving notification of affected premises; and would need to familiarise themselves with any centrally-determined exemptions.
- 10) The police and other responsible authorities
The police and other responsible authorities, particularly licensing authorities, are currently responsible for the enforcement of the framework of the 2003 Act as it affects LNR, and would remain responsible if there were further exemptions. They would input into any decision on exemptions determined locally by the LA at its discretion.
- 11) Late night venues

Late night venues and suppliers of LNR that do not provide other licensable activities will potentially benefit from exemptions.

12) Consumers

There is a possibility that consumers will benefit from increased choice of late night food and drink.

A.3 Consultation

- 13) Cabinet Committee and RRC clearances were gained for the publication of the recent consultation on measures in the Alcohol Strategy and the Government's response to this consultation. These clearances include official and Ministerial level discussions with other Government departments, including the Department of Health, Department for Business, Innovation and Skills, Her Majesty's Treasury, HM Revenue and Customs, The Department for Culture, Media and Sport, and the Department for Communities and Local Government.
- 14) The Government consulted on the following proposals for LNR in the consultation in late 2012/early 2013. The specific questions were as follows and were assessed as part of the published pre-consultation IA:
- Licensing authorities should have local discretion:
 - Determining that premises in certain areas are exempt

or

 - Determining that certain premises types are exempt in their local area
- And
- Motorway service areas should receive a nationally prescribed exemption from regulations for the provision of late night refreshment

Alongside the public consultation, the Home Office:

- Held three technical consultation groups, attended by licensing authorities, legal representatives, and trade and business representatives, focusing on wider deregulation including the proposals around LNR, and
- Ran six national consultation events attended by licensing authorities, trade and business representative and the public.

Public Consultation

- 15) The public consultation on the Alcohol Strategy ran from 28 November 2012 to 6 February 2013 and around 1,450 responses were received. Officials also held six roadshows inviting licensing authorities, police, trade and business representatives, legal representatives, and the public, where discussions focussed on a set of key questions from the consultation. There were also three technical working groups specifically focussing on reducing bureaucracy which were attended by licensing officers, police, trade and business representatives, and legal representatives.
- 16) The consultation made two proposals, not mutually exclusive, for how the burdens of the licensing of LNR on business could be reduced. The first was to introduce local discretion on whether LNR should be licensable, either by giving licensing authorities power to determine that premises providing only LNR should be exempt from requiring an authorisation under the 2003 Act in certain parts of their area or by allowing licensing authorities to exempt certain types of premises in their area. The second proposal was to add new centrally prescribed exemptions to those in schedule 2 of the 2003 Act, particularly at MSAs. The consultation asked for views on these proposals, and invited suggestions for other areas that should receive a nationally prescribed exemption from the LNR licensing regime.
- 17) Overall the responses to the consultation did not favour the proposals for licensing authorities locally determining areas or types of premises for exempting LNR. There were over 700 responses to Q27 A – allowing licensing authorities local discretion by area – where 40% (297) of respondents were in favour of the proposal, and 51% (378) against. 42%(306) were in favour of Q27 B - licensing authorities determining types of premises for exemptions – with 51% (375)

against. However, responses to Q28 - extending the nationally prescribed exemptions, such as at MSAs – was positive with 63% (473) in favour and 29%(221) against. Neither the public consultation or technical discussions with key partners including LAs held alongside the consultation, threw up other clear ideas of locally prescribed exemptions however. Although, there was public support for making MSAs exempt on a national basis from LNR licensing, the technical discussions generated evidence that this would be very difficult to do effectively. LAs noted that there are some MSAs at which LNR is provided which are linked to the NTE, where late night drinkers walk to the MSA to buy hot food and drinks on their way home after an evening's drinking. The Government is also considering further changes to its MSA regulation and policy (including the possibility of lifting the current restrictions on the sale of alcohol at MSAs and wider policy including the frequency that MSAs may be situated at the roadside). For these reasons, the question of whether a national blanket exemption from LNR licensing for all MSAs is appropriate is less cut and dry than originally envisaged. The problem is greater when considering roadside facilities (for example on A roads) more generally, where the NTE economy and usage by late night drinkers may encroach or overlap with LNR services aimed at motorists.

- 18) Discussions in the technical groups raised wider issues, for example defining an MSA as a type of premises where multiple outlets operate under one licence. In technical discussions, allowing licensing authorities to exempt areas was also the most favourable option amongst licensing authorities where the new power could support licensing authorities exempting LNR in some rural areas or industrial estates and roadside facilities that are not linked with the night time economy, whilst maintaining regulation on MSAs or other premises that are linked to the night time economy. For all these reasons, the Government has decided to pursue Option 3 alone. A system of local discretion to exempt LNR based on the licensing objectives and local knowledge is the best solution to the problem that the Government is seeking to address - namely freeing up LNR providers from licensing where there is no link to the NTE. LAs, with their local knowledge, are best placed to identify these areas. Following discussions with and requests from LAs, the Government has decided to add discretion to change the times that LNR licensing applies to LAs, as well as the original proposals to exempt types of premises or areas within the LA from LNR licensing.

B. Rationale

- 19) An effective and proportionate regulatory framework is essential to public safety and crime prevention and will also ensure that responsible businesses are not undermined by irresponsible businesses. If misused, alcohol is a dangerous substance and the Government takes the view that the overall framework provided by 2003 Act, as amended by the Police Reform and Social Responsibility 2011, is appropriate. However, a well-run and diverse hospitality industry has the potential to boost growth and representatives of this industry have highlighted concerns as part of the Red Tape Challenge about some of its administrative burdens. The Government is committed to removing unnecessary regulation and to exploring further how it can make the day to day process of licensing as easy as possible for all responsible businesses, as well as freeing up local communities to take local decisions about licensing in their areas.

C. Objectives

- 20) The policy objective behind this proposal in this Impact Assessment is to reduce the administrative burdens of the 2003 Act on responsible businesses without undermining the licensing objectives. The Government therefore proposes to give licensing authorities powers of local discretion to lift the regulation on the requirement to have authorisation for the provision of LNR between the hours of 11pm and 5 am in all or part of the licensing authority areas; for certain types of premises or at certain times, where they are satisfied that the provision of the LNR has no link to the late-night economy. In doing so, opportunities for growth in the hospitality sector develop, whilst providing greater choice for consumers.

D. Options

This impact assessment considers 3 options:

Option 1: do nothing.

Option 2: To extend the nationally-prescribed exemptions for the provision of LNR: the key example being LNR provision at Motorway Service Area (MSAs).

Option 3: To give power to a licensing authority to exempt LNR by using one of three specific circumstances that will be set out in primary legislation in Schedule 2 of the Act by a) designating an area, b) exempt certain types of premises across its entire area, and c) apply a time after which LNR becomes applicable (this was not consulted on).

- 21) Our primary measures for proposing Option 3, local discretion for LNR licensing exemptions in specified circumstances (Option 3), is that exemptions are permitted on the grounds that there is no connection to the night-time economy, and where the premises is not licensed for any other licensable activities. It is known that presently many types of premises in areas that are not part of the night-time economy, are low risk and present no problems, but do not apply for LNR licences as they incur costs. We also know that some premises have to pay for LNR licensing due to the nature of their business and operating hours such as bakeries. Licensing authorities can impose these new exemptions using local knowledge.
- 22) During the technical groups and roadshows, attended by licensing authorities, police, and trade and business representatives, we explored how the proposals would work on the ground, and other suggestions on how to define premises. We considered the powers in the Act that licensing authorities and the police currently rely on with regards to licensing the supply of LNR related to the night-time economy, where we know problems can occur. It was felt during technical group discussions and feedback from roadshows, that by applying specified circumstances³ (as set out in Option 3), licensing authorities could agree with other responsible authorities, such as the police, the criteria for allowing exemptions.
- 23) Local authorities and police in the technical working group showed favour towards determining LNR as a licensable activity at a later hour. For example, that it was licensable only from 12am-5am outside the town centre, and there were suggestions that it would be very helpful in small villages. Licensing authorities saw this as an opportunity to steady the displacement of crowds of people by slowing the flow of people between areas.
- 24) After analysing the responses to the consultation, feedback from the roadshows, and discussions from the technical groups we considered if introducing new powers for local discretion to exempt LNR subject to specific circumstances (Option 3), could be applicable. As the arguments for wider centrally-prescribed exemptions would leave authorities open to challenge, as well as instances where some MSAs are directly connected to the NTE, the Government proposes that Option 3 addresses the best way in which we can offer licensing authorities a choice for exempting LNR, and an OUT for the Red Tape Challenge. Option 3 would allow licensing authorities to decide locally to designate an area, type of premises across its whole area (to be prescribed in regulations) or extending the hours after which LNR becomes licensable. This option provides more flexibility across the different licensing authorities who will apply LNR exemptions, for example, where exempting an area is more suitable than by type of premises in one authority, but where types of premises may suit another.
- 25) **Option 3 is the preferred option.** This preference is based on a combined assessment of the consultation responses, technical discussions and the appraisal of all policy options – which shows option 3 to have a significantly higher net present value (see below). We believe that option 3 best meets the policy objectives.

E. Appraisal (Costs and Benefits)

Appraisal (Costs and Benefits)

³ To give power to a licensing authority to exempt LNR by using one of three specific circumstances set out in Schedule 2 of the Act by a) designating an area, b) exempt certain types of premises across its entire area, and c) apply a time frame after which LNR becomes applicable (this was not consulted on).

OPTION 2 – To extend the nationally-prescribed exemptions for the provision of LNR, such as at MSAs.

Costs

- 26) The following is an illustrative example of a national exemption in relation to MSA and is indicative of the wider problems of introducing a national exemption for certain areas, there will be a notification cost to licensing authorities which have MSAs within areas as they will be required to notify premises of any changes to LNR policy. It is estimated that approximately 60 licensing authorities may have an MSA in their authority area, and that notification will take a maximum of 15 minutes per licensing official per licensing authority⁴. Hence this one-off cost of notifying MSAs is considered to be negligible.

Benefits

- 27) MSAs will no longer have to apply for, vary, or possess licences to provide LNR only. There are 95 MSAs in England and Wales that are restricted from selling alcohol⁵. They are thought to all provide LNR.
- 28) Annual fee benefits: Discussions with licensing officers indicate that, although there might be numerous outlets within each MSA, each MSA possesses a single licence. Annual fees for licences vary from £70 to £350, based on the non-domestic rateable value (NDRV) band of the premises. We will assume that MSAs, as very large premises with high turnovers, are all in the highest fee band, for which the annual fee is £350. The annual fee saving for these premises is therefore £350 x 95 = £33k.
- 29) Application administration costs: The average administrative cost of applying for licences has been estimated as ranging from £488 - £1,121, depending on the complexity of the application⁶. Assuming, as above, that MSAs all fall in the highest NDRV band, they will also pay a fee of £635 on application, meaning that the estimated administrative cost and initial fee saving of not having to apply for a licence is £1,123 - £1,756. Around nine new MSAs have opened per year over the last four years⁷. Assuming this is typical, the total cost savings will be around £10k- £16k **per annum**.
- 30) The total annual saving to business from Option 2 (annual fees and applications) is an estimated **£43k - £49k**, in the first year. This saving might increase over 10 years if there is an increase in the number of MSAs; however with no evidence to suggest such an increase, it is assumed that the average annual saving to business will be the same each year.
- 31) The total benefits of option 2, from annual and application fee savings, is expected to be between **£370k and £420k** in present values over 10 years.

One-in-two-out (OITO)

- 32) INs: N/A.
- 33) OUTs: This option would generate an OUT of around £41k to £47k per year (2009 prices). The best estimate being £44k per year (2009 prices). Therefore, this option would result in a **Net OUT of around £44k per year** (in 2009 prices on an EANCB basis).

Risks

- 34) The example of the national exemption for premises providing LNR at MSAs is interdependent with an alternative proposal to remove (completely or partially) the restriction on alcohol sales at MSAs – which is still subject to Ministerial approval (see paragraphs 2 and 3 of this IA). But, in any event, the Government has decided not to pursue this). There is a risk that a general exemption – as exemplified by the MSA illustration - to allow unlicensed late night refreshment would result in a cross over between the provision of LNR in an NTE area. We are aware of one example in the South West of an MSA in close proximity to the NTE which would bring with it the danger of

⁴ See IA: Consultation on removing the prohibition of the sale of alcohol at motorway service areas

⁵ Figure provided by the Highways Agency.

⁶ See impact assessment for "Licensing Act 2003: proposals to reduce burdens of licensing on those who sell limited amounts of alcohol as part of a wider service". (2012)

⁷ Figures provided by the Highways Agency.

undermining the prevention crime and disorder licensing objective should a national exemption on that basis be prescribed. As noted above, for this reason option 3 below is more viable than option 2.

OPTION 3: To enable a licensing authority, after consultation with other responsible authorities, to have local discretion to exempt on the basis of one of the following: certain **types of premises**, certain **parts of its area**, or a certain **time** after which LNR becomes licensable. Option 3 only allows the application of one of the three powers at any one point in time. **The licensing authority will only use its power in cases where LNR activity is unrelated to the night-time economy.** While respondents to the consultation were not in favour of the proposal to a) to allow LAs to exempt premises on the basis of area or b) by type, we believe that these two options combined with the further option for LAs to determine a time during which LNR would be exempt provide much greater powers and would be more workable than a generally prescribed provision as outlined in option 3.

Costs

- 35) To implement a local discretion for LNR licensing, a licensing authority would have to go through a process of consideration of whether to implement local exemptions and on what basis: by designating an area, by premise type, or by applying a time frame to which LNR becomes applicable. This process would be subsumed into internal committee meetings carried out by licensing authorities and is therefore not counted as an additional burden on their time. There is an unquantified risk of an opportunity cost if this consideration process were to come at the cost of replacing other important agenda items at these meetings. Details of this process will be issued in Guidance following discussions with licensing officers.
- 36) When making a local exemption the licensing authority will have to consult other responsible authorities. While most consultation will be subsumed into internal meetings (above), it is estimated that implementing a local exemption would involve an additional one off meeting between a licensing authority administrative officer and a police officer (sergeant or below). This is estimated at £46.87, assuming a one hour meeting and hourly costs (including overheads) of £13.28⁸ and £33.59⁹ respectively. The total cost for 350 LAs¹⁰ would therefore be £16,400, per annum.
- 37) Additionally, there will be a notification cost to each licensing authority which would have to notify exempted premises within their area. It is estimated that notification of exempt premises will take a maximum of 15 minutes per licensing official per licensing authority¹¹ (generally via the licensing authority’s website). Based on a licensing officer cost of £13.28 per hour we estimate **total** one-off notification costs for the 350 LAs of **£1,160**. Assuming that each licensing authority will review its policy on LNR each year, the total cost to the public sector is estimated to be **£18,000 per annum**.

Table 1: Possible costs of Option 3

Notifying premises		Discussion with police	
Average cost of Licensing Officer	£13.28	Average cost of Police Officer	£33.59

⁸This is the median hourly wage for local government administrative occupations (licensing officers) and business and public service associate professionals (Trading Standards Officers). Data was obtained from the 2012 Annual Survey of Hours and Earnings (provisional). <http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/2012-provisional-results/index.html>. This was updated by 16.40% to include on-costs (see BIS guidance based on http://epp.eurostat.ec.europa.eu/portal/page/portal/labour_market/labour_costs/main_tables)

⁹ This is calculated using Home Office estimates of police time. These were calculated using CIPFA (Chartered Institute of Public Finance and Accounts) and ASHE (Annual Survey of Hours and Earnings) data for 2011/12, figures were then updated to account for inflation using HM Treasury deflator series.

¹⁰ Alcohol and Late Night Refreshment Licensing England and Wales, 2011/12 tables”

<https://www.gov.uk/government/publications/alcohol-and-late-night-refreshment-licensing-england-and-wales-2011-12-tables>

¹¹ See IA: Consultation on removing the prohibition of the sale of alcohol at motorway service areas

		Average cost of Licensing Officer	£13.28
Time per officer (hrs)	0.25	Time per officer (hrs)	1
Total (350 LAs)	£1,160	Total (350 LAs)	£16,400

Benefits

Number of potential beneficiaries:

- 38) The potential beneficiaries from Option 3 are (i) Premises which are currently licensed to provide LNR only, and (ii) Current providers of hot food and drink who may wish to operate after 11pm.
- 39) Premises currently licensed to provide LNR only: Premises that provide other licensable activities, including alcohol sales, will not benefit from a DLE because they will still be required to hold the appropriate licence. Since the consultation stage impact assessment, the most recent licensing statistical bulletin¹² has provided figures for the number of premises licensed to provide LNR (75,388 premises) and LNR only (16,772 premises) in 2011-12. The modelled total number of premises licensed to provide LNR only is estimated to be 19,000 (modelling to take account of the fact the licensing survey only has data from 313 of 350 LAs on this question)¹³.
- 40) Premises which currently hold a licence to provide LNR, but which are now exempted will benefit by no longer needing to pay the annual fee. The average annual fee is £193¹⁴.
- 41) Providers of hot food and drink who may wish to operate after 11pm: It is assumed that some providers of hot food or drink which **do not** currently operate after 11pm may wish to do so, but have previously been deterred by the cost of obtaining the licence required to do so (see paragraph 43 below). These businesses could stand to benefit from increased profit if they were exempted from LNR. There is no precise data on the numbers of hot food and drink providers which might stand to benefit, so estimates are based on the best available information and a number of sensible assumptions. The most relevant proxy for businesses who may stand to benefit is the estimated 66,600 restaurants in England and Wales, who may be licensed for LNR, sales of alcohol, and/or, regulated entertainment, or not be licensed at all.¹⁵ From the ONS Business register we know that 25,800 of these are currently licensed to sell alcohol, and therefore will not benefit¹⁶. This leaves 19,000 – 40,800 potential beneficiaries: 19,000 who currently provide LNR (see paragraph 39) and approximately 22,000 who currently do not do business after 11pm, but may wish to. This large range reflects a considerable degree of uncertainty about how many of this 22,000 may wish to do business after 11pm.
- 42) It should also be noted that some of the 22,000 could have previously applied for a licence to provide LNR only, but may have been rejected, likely to be for reasons of public nuisance, in connection to the night-time economy. In which case it is unlikely that these businesses would be deemed eligible for exemption from LNR. However there is no available information regarding the number of such rejections, or whether they relate to existing restaurants (part of the 22,000) or prospective new providers of LNR only. This uncertainty is addressed by the assumption that only a small proportion of these potential beneficiaries will be unconnected to the night-time economy and will hence be eligible to be exempted from LNR (see paragraph 47 below).
- 43) Premises which do not currently have a licence may now be able to provide LNR without one. We can assume that on average, the upper limit of these businesses' potential annual profit from providing LNR would be equal to the cost of acquiring a licence; otherwise it would have been profitable for those premises to have previously acquired a licence for LNR. The average

¹² Alcohol and Late Night Refreshment Licensing England and Wales, 2011/12 tables”

<https://www.gov.uk/government/publications/alcohol-and-late-night-refreshment-licensing-england-and-wales-2011-12-tables>

¹³ See IA: ‘Licensing Act 2003: Fees Regulation’

¹⁴ Alcohol and Late Night Refreshment Licensing England and Wales, 2011/12 tables”

<https://www.gov.uk/government/publications/alcohol-and-late-night-refreshment-licensing-england-and-wales-2011-12-tables>

¹⁵ UK Business: Activity, Size and Location 2012. <http://www.ons.gov.uk/ons/rel/bus-register/uk-business/2012/index.html>

¹⁶ Inter-Departmental Business Register, ONS, 2012.

application fee is estimated at £235¹⁷. The average cost of obtaining a licence has been estimated as £488 - £1,121 (excluding fee). Hence the maximum potential saving to each applicant would be £723 - £1,356. Hence the upper limit of these businesses' potential annual profit from providing LNR is estimated to be £330 per annum, which is equal to the annual fee (£193) plus one tenth of the maximum application cost (£1,356) – the application cost is spread over the 10 year period.

- 44) There is no clear evidence to suggest that the total stock of LNR providers will increase over time; implying that any new successful applications to provide LNR are offset by equivalent reductions through natural turnover of businesses
- 45) New LNR applicants and fee benefits: In 2011-12, there were modelled totals of 18,000 applications for new premises licences or variations to premises licences, and 198,800¹⁸ licences. The ratio of application to extant licences is 9%. If there are applications for premises licences for late night refreshment only (or for variations to such licences) in the same proportion as other applications, this would imply 1,710 new applications each year for late night refreshment licences. These new applicants for LNR could benefit if they were exempted from needing a licence to provide LNR. As above, the maximum potential saving to each **new** applicant would be equal to the cost of application, estimate at £723 - £1,356.
- 46) Local discretion: The proposal to de-centralise decision-making about LNR is intended to empower local areas to determine their own outcomes. The impact of exemptions nationally will vary significantly according to local decision-making. There are 350 licensing authorities in England and Wales, each of which might potentially adopt a local exemption, or not. The exemptions could be used either in a limited or wide-ranging way.
- 47) Consultation and pre-consultation discussions with licensing officers indicate that they consider that the **vast majority** of premises licensed for LNR are in areas connected to the alcohol-related late night economy and, therefore, not potential candidates for de-regulation. Local exemptions for LNR have not been tried before and there is no data or evidence base available on which to make estimates. Based on this anecdotal evidence from LAs, it is estimated that if local exemptions were made available for cases where LNR is not connected to the night-time economy, between 1% and 5% of premises (i.e. a small but positive minority) would benefit from exemptions in any one year.
- 48) Table 2 shows the possible fee and profit benefits of option 3. The low estimate of £36,700 is based on only 1% of existing LNR providers being exempted and hence benefiting from annual savings of £193. The high estimate of £541,500 is based on 5% of the total 40,800 potential beneficiaries being exempted from LNR – the 19,000 current providers saving £193 annually and the 22,000 potential future providers benefiting from increased annual profit of £330.
- 49) Table 3 shows the possible application cost benefits of option 3. The low estimate of £12,300 is based on only 1% of new applicants (1,710 – see paragraph 45) being exempted and hence benefiting from application cost savings of £723 (lower bound). The high estimate of £116,600 is based on only 5% of new applicants being exempted and hence benefiting from application cost savings of £1,356 (upper bound).

Table 2: Possible annual fee and profit benefits of Option 3

Potential beneficiaries lower range (1% of 19,000)	Potential beneficiaries upper range (5% of 40,800)	Benefit for existing premises	Benefit for potential new providers of LNR	Total saving in E&W lower estimate	Total saving in E&W upper estimate

¹⁷ Figures developed using modelled estimates from the 2008-09 licensing stats bulletin (the most recent data available on fee income by band) http://webarchive.nationalarchives.gov.uk/+http://www.culture.gov.uk/images/research/Licensing_Statistical_Bulletin_2009.pdf ; and estimates of fee band shifts provided by the Valuation Office Agency.

¹⁸ Alcohol and Late Night Refreshment Licensing England and Wales, 2011/12 tables” <https://www.gov.uk/government/publications/alcohol-and-late-night-refreshment-licensing-england-and-wales-2011-12-tables>

190	2040	£193	£330	£36,700	£541,500
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Table 3: Possible application cost benefits of Option 3

	Potential beneficiaries 1% of 1710 premises	Potential beneficiaries: 5% of 1710 premises	Benefit per premises lower estimate	Benefit per premises upper estimate	Total saving in E&W lower estimate	Total saving in E&W upper estimate
	17	86	£723	£1,356	£12,300	£116,600
Total					£49,000	£658,100

50) This implies savings to business of £49k - £658k. This large range reflects considerable uncertainty about both the number of potential beneficiaries; and the extent to which licensing authorities will wish to exempt LNR if they had the power to do so.

51) The net present value of option 3 has been estimated to be around **£0.27m to £5.5m** over 10 years.

One-in-two-out (OITO)

52) INs: N/A

53) OUTs: This option would generate an OUT of about £47k to £630k per year (2009 prices). The best estimate being £340k per year (2009 prices). Therefore, this option would result in a **Net OUT of around £340k per year** (in 2009 prices on an EANCB basis).

Non-monetised benefits of Option 3

54) There could be a benefit to consumers, particularly in terms of choice, if the removal of the need to acquire a licence under the 2003 Act for certain premises led to an increase in the number of LNR providers available.

55) **Risks of Option 3:** As stated in the evidence section above, there is a risk that licensing authorities will not use any power to exempt late night refreshment to a significant extent. Licensing officers, in consultation and pre-consultation discussions, agreed that it could be exempt at MSAs, but not elsewhere.

56) Summary and Recommendations

The table below outlines the costs and benefits of the proposed changes.

Option	Costs	Benefits
2	Notification cost to licensing authorities £Negligible (PV over 10 years)	£0.4m saving in licensing fees (PV over 10 years)
	Cost to local enforcement agencies in implementation (not quantified)	N/A
3	Notification and familiarisation costs of £0.2m (PV over 10 years)	£3m in increased profit from provision of late night refreshment and fee savings (PV over 10 years)
	Cost to local enforcement agencies in implementation (not quantified)	Benefits to consumers and potential annual fee savings of new businesses (not quantified)

Both options have a positive net present value due to the administrative and fee savings and, in the case of Option 3, increased profits from sale of LNRs. Option 3 has a wider ranging impact and a correspondingly larger net present value.

- 57) **Enforcement:** The police and other responsible authorities, particularly licensing authorities, are currently responsible for the enforcement of the framework of the 2003 Act as it affects late night refreshment, and would remain responsible if there were further exemptions. They would input into any decision on locally-determined exemptions. These proposals are likely to result in an increase in the number of premises selling hot food and non-alcoholic drink *lawfully* late at night and it is therefore expected that enforcement activity will be extremely limited.
- 58) **Implementation; familiarisation; and communication:** These changes would be implemented through primary and secondary legislation. For Option 3, this there will be a minimal cost to licensing authorities in familiarising themselves with the changes. Options 3 would be implemented locally by licensing authorities, in consultation with other “Responsible Authorities”, including the police. A process of consideration and implementation would be required. In very rare cases, it is possible that exemptions would have to be revoked, with a similar procedure.
- 59) If implemented, licensing authorities may wish to communicate these policies in their area, most likely on an ad hoc basis (for example, if a person seeks to make an application for premises in an exempt category). The Home Office will communicate the changes via the GOV.UK website; to leading trade bodies; and through the Guidance issued under s.182 of the 2003 Act. Therefore, it is expected that the communication cost to licensing authorities will be minimal.
- 60) **Monitoring and Evaluation:** We will review at the end of five years as part of post implementation scrutiny.
- 61) **Feedback:** In order to accurately assess the effectiveness of option 3, the Government conducted a public consultation exercise to seek views from those who will be most affected by the policy. This included the alcohol industry and its representatives, the police, licensing authorities, responsible authorities and resident groups and other Government departments. Feedback received during the recent consultation has been used to inform this impact assessment.
- 62) Ongoing feedback will be sought from those organisations affected and Government officials during the legislative process and prior to implementing this measure to ensure adequate guidance and support is provided on any changes to the licensing regime.