

## Annex B

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### Extract from the Licensing Act 2003: Late Night Refreshment

#### SCHEDULE 2

Section 1

#### PROVISION OF LATE NIGHT REFRESHMENT

##### *The provision of late night refreshment*

- 1 (1) For the purposes of this Act, a person “provides late night refreshment” if —
- (a) at any time between the hours of 11.00 p.m. and 5.00 a.m., he supplies hot food or hot drink to members of the public, or a section of the public, on or from any premises, whether for consumption on or off the premises, or
  - (b) at any time between those hours when members of the public, or a section of the public, are admitted to any premises, he supplies, or holds himself out as willing to supply, hot food or hot drink to any persons, or to persons of a particular description, on or from those premises, whether for consumption on or off the premises,
- unless the supply is an exempt supply by virtue of paragraph 3, 4 or 5.
- (2) References in this Act to the “provision of late night refreshment” are to be construed in accordance with sub-paragraph (1).
- (3) This paragraph is subject to the following provisions of this Schedule.

##### *Hot food or hot drink*

- 2 Food or drink supplied on or from any premises is “hot” for the purposes of this Schedule if the food or drink, or any part of it, —
- (a) before it is supplied, is 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, is above that temperature, or
  - (b) 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.

##### *Exempt supplies: clubs, hotels etc. and employees*

- 3 (1) The supply of hot food or hot drink on or from any premises at any time is an exempt supply for the purposes of paragraph 1(1) if, at that time, a person will neither —
- (a) be admitted to the premises, nor
  - (b) be supplied with hot food or hot drink on or from the premises,
- except by virtue of being a person of a description falling within sub-paragraph (2).
- (2) The descriptions are that —
- (a) he is a member of a recognised club,
  - (b) he is a person staying at a particular hotel, or at particular comparable premises, for the night in question,

- (c) he is an employee of a particular employer,
  - (d) he is engaged in a particular trade, he is a member of a particular profession or he follows a particular vocation,
  - (e) he is a guest of a person falling within any of paragraphs (a) to (d).
- (3) The premises which, for the purposes of sub-paragraph (2)(b), are comparable to a hotel are —
- (a) a guest house, lodging house or hostel,
  - (b) a caravan site or camping site, or
  - (c) any other premises the main purpose of maintaining which is the provision of facilities for overnight accommodation.

*Exempt supplies: premises licensed under certain other Acts*

- 4 The supply of hot food or hot drink on or from any premises is an exempt supply for the purposes of paragraph 1(1) if it takes place during a period for which —
- (a) the premises may be used for a public exhibition of a kind described in section 21(1) of the Greater London Council (General Powers) Act 1966 (c. xxviii) by virtue of a licence under that section, or
  - (b) the premises may be used as near beer premises within the meaning of section 14 of the London Local Authorities Act 1995 (c. x) by virtue of a licence under section 16 of that Act.

*Miscellaneous exempt supplies*

- 5 (1) The following supplies of hot food or hot drink are exempt supplies for the purposes of paragraph 1(1) —
- (a) the supply of hot drink which consists of or contains alcohol,
  - (b) the supply of hot drink by means of a vending machine,
  - (c) the supply of hot food or hot drink free of charge,
  - (d) the supply of hot food or hot drink by a registered charity or a person authorised by a registered charity,
  - (e) the supply of hot food or hot drink on a vehicle at a time when the vehicle is not permanently or temporarily parked.
- (2) Hot drink is supplied by means of a vending machine for the purposes of sub-paragraph (1)(b) only if —
- (a) the payment for the hot drink is inserted into the machine by a member of the public, and
  - (b) the hot drink is supplied directly by the machine to a member of the public.
- (3) Hot food or hot drink is not to be regarded as supplied free of charge for the purposes of sub-paragraph (1)(c) if, in order to obtain the hot food or hot drink, a charge must be paid —
- (a) for admission to any premises, or
  - (b) for some other item.
- (4) In sub-paragraph (1)(d) “registered charity” means —
- (a) a charity which is registered under section 3 of the Charities Act 1993 (c. 10), or
  - (b) a charity which by virtue of subsection (5) of that section is not required to be so registered.

*Clubs which are not recognised clubs: members and guests*

- 6 For the purposes of this Schedule —
- (a) the supply of hot food or hot drink to a person as being a member, or the guest of a member, of a club which is not a recognised club is to be taken to be a supply to a member of the public, and
  - (b) the admission of any person to any premises as being such a member or guest is to be taken to be the admission of a member of the public.