

## What Does the Licensing Act Cover?

Under the Licensing Act 2003, the following activities must be authorised by a premises licence (or a temporary event notice, for one-off events):

- sale of alcohol
- provision of late night refreshment
- provision of regulated entertainment

## What is "Late Night Refreshment"?

Late night refreshment is defined as **"the provision of hot food and/or hot drink at any time between 11 p.m. and 5 a.m. daily."**

Vending machines are exempt from the requirement for a licence. However, "vending machine" is narrowly defined to include only those machines where payment is inserted into the machine by a member of the public and the hot drink is supplied directly by the machine.

Therefore, where coffee is supplied between 11 p.m. and 5 a.m. in service stations, garages or forecourt shops and is paid for "over the counter", a premises licence is required, even if the coffee itself is dispensed from a machine.

## The Main Service Station Building has a Premises Licence – Does it Cover the Shop?

Pre-2005, a night café licence was required for any food or drink sold and consumed **on** the premises. When the 2003 Act came into force many of the old night café licences were converted to premises licences under the transitional arrangements. Therefore, many service stations may already benefit from a premises licence covering the restaurant/café area. However, it is unlikely that shops would have been covered, unless a specific application was made.

Under the Licensing Act 2003 Act, it does not matter whether the food or drink will be consumed on or off the premises. **If a forecourt (or shop) sells coffee and/or hot snacks, that forecourt/shop must also be covered.** Check the plans attached to your premises licence to see if the shop is covered. The provision of licensable activities without authorisation is an offence punishable by a fine of up to £20,000 and/or 6 months imprisonment.

## Can Alcohol be Sold?

A valid premises licence covering the sale of alcohol is required to authorise any retail sale of alcohol. However, there are restrictions on the sale of alcohol from service stations, garages and forecourt shops under the Licensing Act 2003.

## Motorway Service Areas

Traditionally, alcohol could not be sold from Motorway Service Areas (MSAs) or adjacent/ ancillary hotels/ lodges. However, under the Act, it is only "premises situated on land acquired or appropriated by a special road authority" ( the Highways Agency) which are excluded.

Any MSAs developed since 1992, have been acquired / appropriated by the private sector, not by the Highways Agency; and therefore this exemption does not apply to these sites. There are therefore a few licensing authorities which have granted licences for the sale of alcohol for MSAs on privately acquired land. However, it is rare for forecourt shops at MSAs to be authorised for alcohol, because of the separate exclusion for premises used primarily as a garage (see below).

## Forecourt shops / Non-Motorway Service Areas

No premises licence can have effect to authorise the sale of alcohol from premises which are used primarily as a garage (garage premises are premises used for retailing petrol or diesel, the sale of motor vehicles and/ or the maintenance of motor vehicles).

However, if it can be shown that the use of the forecourt shop is not primarily as a garage, a premises licence can properly authorise the sale of alcohol. The proportion of transactions which do not include fuel, turnover, range of products, shelf space for motoring items (oil, maps etc), non-garage signage (cash points, coffee etc) could all be relevant factors in determining whether a premises is used primarily as a garage.

## Applications

Premises licence applications are subject to scrutiny by responsible authorities such as the police, environmental health service, public safety, planning and fire authority; and by local residents and businesses. Often, applications for service stations are controversial. If objections are received, the application will be determined by the Licensing Committee of the Local Authority at a hearing.



## Proposed Changes – Home Office Consultation on Alcohol Strategy

The Home Office Consultation on Alcohol Strategy has proposed that the exclusion for Motorway Service Areas to sell alcohol in the 2003 Act be removed altogether. If this proposal is implemented, applications for pre-1992 MSAs to sell alcohol, will also be permitted.

It is also proposed under the Consultation that the requirement for late night refreshment to be authorised at Motorway Service Areas is removed. This is likely to have widespread support, given that MSAs are legally obliged to provide late night refreshment on a rolling 24 hour basis.

The Consultation does not propose any amendment to the requirements for non-MSA service stations or forecourts, so it is likely that the current exclusion for premises which are used primarily as a garage, will continue. However, there is a general proposal that Licensing Authorities should be given discretion to exempt premises from the requirement for a premises for late night refreshment. If Authorities are permitted this discretion, it may cover service stations, as well as other types of late night refreshment venues.

If you would like any further advice or information, please contact a member of the licensing team at Squire Sanders.

## Contacts

### Stephanie Perraton

Partner

T +44 (0)121 222 3559

F +44 (0)870 460 2829

M +44 7778 341 244

E [stephanie.perraton@squiresanders.com](mailto:stephanie.perraton@squiresanders.com)

### Nicola Smith

Senior Associate

T +44 (0)121 222 3230

F +44 (0)870 460 2915

M +44 7771 726 555

E [nicola.smith@squiresanders.com](mailto:nicola.smith@squiresanders.com)



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