



LICENSING COMMITTEE REPORT

Report Title	EARLY MORNING RESTRICTION ORDERS & LATE NIGHT LEVY
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AGENDA STATUS: PUBLIC

Committee Meeting Date:	11/02/2013
Policy Document:	Early Morning Restriction Orders & Late Night Levy
Directorate:	Customers and Communities

1. Purpose

To advise the Licensing Committee of changes made to the Licensing Act 2003 with regard to Early Morning Restriction Orders and Late Night Levies

2. Recommendations

- 2.1 To note the contents of the report.
- 2.2 To investigate the feasibility of adopting and implementing Early Morning Restriction Orders within the Borough of Northampton.
- 2.3 To commence a full consultation process for an Early Morning Restriction Order once proposals have been agreed
- 2.4 Not to proceed with a Late Night Levy for the Borough of Northampton for the foreseeable future.

3. Issues and Choices

3.1 Report Background

3.11 The Police Reform and Social Responsibility Act 2011 (PRSA) received Royal Assent on September 2011. The Act brings about several changes to the Licensing Act 2003, mainly:

- doubling the fine for persistent underage sales to £20,000

- introducing a Late Night Levy (LNL) to help cover the cost of policing the late night economy
- increasing the flexibility of early morning alcohol restriction orders
- lowering the evidential threshold on licensing authorities
- removing the vicinity test for licensing representations to allow wider local community involvement
- reforming the system of temporary event notices (TENs)
- suspension of premises licences for non-payment of annual fees

3.12 Whilst the majority of changes took effect from April 2012, the changes to Early Morning Restriction Orders (EMROs) and the introduction of the Late Night Levy only took effect on 31 October 2012.

3.2 Early Morning Restriction Orders

3.2.1 An EMRO is a power which has been extended by the (PRSA) enabling licensing authorities to restrict the sale of alcohol where they consider that there are alcohol related crime and disorder issues in the whole or a part of their area between 12 midnight and 06.00am on all or some days.

3.2.2 This restriction would apply to premises licences, club premises certificates and temporary event notices. There are no exceptions to the type of premises that will be affected by an EMRO except for hotels who provide alcohol to residents through minibars and room service. However hotels who serve alcohol in a bar, lounge or lobby will be affected by an EMRO.

3.2.3 The licensing authority should consider evidence from Responsible Authorities, local Community Safety Partnerships, together with its own evidence to determine whether an EMRO is appropriate for the promotion of the four licensing objectives:-

- the prevention of crime and disorder (*where there is an identifiable problem*)
- public safety (*physical safety of the people using the premises*)
- the prevention of public nuisance (*eg noise, light, smells or litter*)
- the protection of children from harm (*ie moral, psychological or physical harm*)

3.2.4 It falls to the licensing authority to decide the area, days and times in relation to which the EMRO would apply. However, EMROs will not apply to any premises on New Year's Eve.

3.2.5 Licensing authorities are required to advertise their proposals on their website and in their local newspaper as well as notifying those licence holders within the proposed EMRO area. Any person wishing to make representations for, or against, the proposal will have 42 days in which to lodge their comments.

3.2.6 If representations are received then a hearing must be held to determine the outcome of the EMRO. It is not unrealistic to expect a large number of representations which could require the hearing being held over a number of

days. If it is determined appropriate that an EMRO be made, the licensing authority must be able to demonstrate an evidence based justification for its decision, or risk judicial challenge. If, following representations there are any changes to the original proposal there is a requirement that consultation on the new EMRO be undertaken.

3.2.7 Full Council would need to approve and decide on a start date for the Order, which must be no less than two months after the Order is made.

3.2.8 The licensing authority should monitor the effectiveness of the EMRO to ensure it continues to be appropriate for the promotion of the licensing objectives and periodically review whether it is appropriate to continue to apply it.

3.2.9 Licensing authorities should update their statement of licensing policy to include reference to the EMRO as soon as reasonably possible.

3.2.10 Central government has provided more information to licensing authorities in revised statutory guidance issued under section 182 of the Licensing Act 2003. This can be found at <http://www.homeoffice.gov.uk/publications/alcohol-drugs/alcohol/guidance-section-182-licensing>

3.2.11 Given the timescales involved it is anticipated that the earliest date that an EMRO could be put in place for Northampton would be June/July 2013.

3.3 Late Night Levy

3.3.1 The Late Night Levy is a power for licensing authorities to introduce a charge for premises that have an alcohol licence with a terminal hour after 12 midnight. It allows licensing authorities to charge those businesses for the extra enforcement costs that the night-time economy generates for police and local authorities. Further information is available at <http://homeoffice.gov.uk/publications/alcohol-drugs/alcohol/alcohol-supporting-guidance/late-night-levy-guidance>

3.3.2 Prior to making a decision to implement the levy, the licensing authority should have discussions with the Chief Officer of Police, the Police and Crime Commissioner (PCC) and local police to decide whether it is appropriate to introduce the levy in its area.

3.3.3 If the licensing authority considers it appropriate, it must then conduct a formal consultation with the police, the PCC, existing licence holders and any other persons, including residents, about its decision.

3.3.4 This consultation should also consider whether the licensing authority needs to apply any exemptions or discounts to the levy and how it will apportion net levy revenue between the police and the licensing authority.

3.3.5 The decision whether or not to implement a levy is left entirely to the discretion of the licensing authority.

- 3.3.6 If introduced, the levy will apply to all premises (on and off-trade) within the Borough boundary that qualify, the only exceptions being those set by central government. The levy will be collected at the same time as the annual licensing fee.
- 3.3.7 The licensing authority will decide at what time the levy will apply within an operational window that is restricted to between 12 midnight and 6am.
- 3.3.8 Premises licence holders who choose to reduce the hours on their licence would still have the ability to apply for Temporary Events Notices for 21 days a year.
- 3.3.9 The late night levy is aimed not at individual premises, as the costs caused by the night time economy are often not directly linked to any particular businesses, but instead occur as a result of the night time economy as a whole. This ensures the application of the levy across the whole licensing authority area, and that a meaningful amount is collected and is simple to adopt and administer.
- 3.3.10 If introduced, the licensing authority can deduct the costs of administering, collecting and enforcing the scheme. From the remainder, at least 70% of the net amount must be passed to the Police. Up to 30% of the total amount retained by the licensing authority is ring-fenced towards addressing issues that include tackling alcohol-related crime and disorder, and services connected to the management of the night time economy, including street cleaning. No restrictions are imposed on the use of the monies passed to the Chief Officer of Police and the PCC.
- 3.3.11 The levy paid is dependent on the rateable value of the premises and is set by central government. This is the same as the existing licence fee and annual fee system.
- 3.3.12 Provision is made for a number of discretionary exemptions and reductions in the levy.

Exemptions to the levy could be offered to:

- Premises with overnight accommodation
- Theatres and cinemas
- Bingo halls
- Community amateur sports clubs
- Community premises
- Country village pubs
- Business Improvement Districts

It is therefore in the licensing authority's discretion whether any of the exemptions should be applicable, and the criteria within which they can be triggered.

Licensing authorities also have the discretion to offer a 30% reduction from the levy to premises that are either a member of a specified best practice scheme,

such as Pubwatch, or in receipt of Small Business Rate Relief and have a rateable value of less than £12,000.

Licensing authorities can also offer an exemption to those premises which only have a late-night authorisation to supply alcohol on the premises on 1 January.

3.3.14 Members should be aware that it is possible that a significant number of the premises with late licences may decide to reduce their sale of alcohol hours by submitting a minor variation application as the cost of the levy may not be worth the continued sales of alcohol after midnight. This would obviously result in a significant reduction in the amount of potential income. (The licensing authority is required to waive the fee for those premises wishing to take advantage of this procedure).

3.4 Conclusions

3.4.1 At this time of significant change in the legislative and policy regime, consultation with interested parties on the adoption and implementation of new powers is essential both for legal requirements and to gain support for such change.

3.4.2 Informal discussions with Northamptonshire Police indicate that at this stage they have a preference for an EMRO, with consideration being given to a Late Night Levy at a later stage, but a more in-depth assessment of any evidence and further discussions are needed before any definite decision regarding applying for an EMRO can be made.

3.4.3 It may seem unjust to run a Levy or an EMRO during hours that are not problematic. e.g. If crime and disorder is an issue from 2am, why should bars which close at 1am pay a levy?

4. Implications (including financial implications)

4.1 Policy

4.1.2 The Council's Statement of Licensing Policy will be updated to reflect the changes to legislation

4.2 Resources and Risk

4.2.1 There is a potential risk of reduced income if implementing a Late Night Levy as a high proportion of premises currently have a licence to sell or supply alcohol after 12 midnight on 1 or 2 days a week; mainly to just 1am, and may well cut back their hours.

4.2.2 Not to explore the use of these two new tools in the licensing authority's suite of licensing controls could lead to challenge from both Responsible Authorities and the local community.

4.3 Legal

4.3.1 The EMRO and Late Night Levy provisions are both adoptive provisions that require consultation processes to be followed prior to a policy decision on either being made. Adopting either provision in circumstances that result in a negative impact on existing licence holders will require reliable evidential justifications in order to withstand the rigours of potential judicial challenge.

4.4 Equality

4.4.1 Any proposed changes will apply equally to all groups within the community and no particular group(s) will be disadvantaged.

4.5 Resources and Risk

4.5.1 None related to any consultation process that may be undertaken, but there will be some financial implications for Council in their administration of any adopted scheme in the future.

4.6 Consultees (Internal and External)

Leader of the Council
Director of Customers & Communities
Head of Public Protection
NBC Finance
NBC Legal Services
NBC Senior Licensing Officers

4.7 Background Papers

The Licensing Act 2003
The Police Reform and Social Responsibility Act 2011
Home Office Guidance Early Morning Restriction Orders
Home Office Guidance Late Night Levies

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