



NORTHAMPTON
BOROUGH COUNCIL

LICENSING COMMITTEE REPORT

Report Title	PROPOSAL FOR AN EARLY MORNING RESTRICTION ORDER
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AGENDA STATUS: PUBLIC

Committee Meeting Date:	18th June 2013
Policy Document:	Early Morning Restriction Orders
Directorate:	Customers and Communities

1. Purpose

For the Licensing Committee to consider this report and supporting evidence in order that consideration be given to introduce an Early Morning Restriction Order (EMRO) under the Police Reform and Social Responsibility Act 2011.

2. Recommendations

2.1 Having considered the evidence and all options, it is recommended that members resolve to agree that sufficient evidence exists with two or more premises and for the promotion of the licensing objectives namely,

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm

to advertise the proposal to introduce an EMRO and therefore to commence a consultation period of no less than 42 days, in accordance with section 172B(1)(a) of the Licensing Act 2003 and the Licensing Act 2003 (Early Morning Alcohol Restriction Orders) Regulations 2012, the EMRO detailed in 3.3 option D, as follows:-

- D** An EMRO commencing on the 18th November 2013, to prohibit the sale of alcohol between the hours of 03:00am and 06:00am, Monday to

Sunday, for an indefinite period, in respect of the Leisure zone area designated on the plan in **Appendix 1**
(Leisure zone being an area with a high concentration of licensed premises)

- 2.2 To consider any representations arising from the advertising of the proposed order in accordance with the timetable referred to in paragraph 3.4 and within the context of promoting the licensing objectives.

3. Issues and Choices

3.1 Report Background

- 3.1.1 On the 11 February 2013 the Licensing Committee agreed that Northampton Borough Council should not pursue consideration of the imposition of a Late Night Levy, but that it should conduct a more detailed analysis in respect of introducing an early morning alcohol restriction order in Northampton.
- 3.1.2 Since the implementation of the Licensing Act 2003 on the 23rd November 2005, governments have recognised that alcohol related crime and disorder has increased. The coalition government considered that this increase was in part due to the proliferation of extended operation into the late night and early morning hours. It responded to these concerns with a range of measures contained in the Police Reform and Social Responsibility Act 2011. The Police Reform and Social Responsibility Act 2011 (PRSRA) gave licensing authorities the power to make an early morning alcohol restriction order (EMRO).
- 3.1.3 EMRO's are designed to address recurring problems such as high levels of alcohol-related crime and disorder in specific areas at specific times during the late night and early morning hours; serious public nuisance; and other instances of alcohol-related anti-social behaviour which are not directly attributable to specific premises.
- 3.1.4 An EMRO is a power which has been introduced by the (PRSRA) enabling licensing authorities to restrict the sale of alcohol where they consider that there are alcohol related crime and disorder, public nuisance, protection of children from harm, public nuisance issues in the whole or a part of their area between 12 midnight and 06.00am on all or some days.
- 3.1.5 The Home Office have made it clear in its consultations and publications that the purpose of the PRSRA is the rebalancing of the Licensing Act 2003 in favour of local communities and regulatory authorities. An EMRO is one of a range of tools which can be used to rebalance the licensing regime. As with other functions of a licensing authority this is to be exercised for the promotion of the licensing objectives.

Late Night Drinking in Northampton

- 3.1.6 The Licensing Act 2003 (LA03) came into force at midnight on the 23rd November 2005 and established a single integrated scheme for licensing premises used for the sale or supply of alcohol, regulated entertainment and late night refreshment. The new system replaced the requirement to apply for several different licences under different schemes and created one unified authorisation regime, with the flexibility to apply for a 24 hour licence tailored to the requirement of each premise. The new Act also made provision for individuals to apply to the local authority for a one off Temporary Event Notice (TEN) in order to obtain the necessary permissions on unlicensed premises, or as an extension to the existing hours for those already holding a licence.
- 3.1.7 Previously in accordance with the Licensing Act 1964, magistrates granted standard hours until 11pm for the sale of alcohol, with additional hours being granted under special certificates, or for those premises who applied for a public entertainment licence, with the latest terminal hour for the sale of alcohol in Northampton being granted until 03:00 am.
- 3.1.8 Magistrates and local authority records indicate that in 2004 Northampton had 70 premises granted public entertainment licences, or special certificates for extended hours past midnight. In comparison and since the introduction of the LA03, Northampton currently has 183 licences granted for the sale of alcohol after midnight, with 35 selling alcohol beyond 03:00am.
- 3.1.9 A detailed breakdown of the number of licences that existed in 2004 and comparable data as at January 2013, shown by type, and the latest hour granted for the sale of alcohol is detailed in **Appendix 2**
- 3.1.10 During the transitional period in 2005, applicants had the opportunity to apply to the local authority to simply convert their existing licence, or apply to convert and extend their hours. At this time a small number of premises applied to extend their existing hours for the sale of alcohol.
- 3.1.11 Since the transitional period to take advantage of the new flexible hours, NBC has received and granted over 100 applications, permitting hours for the sale of alcohol past midnight. There has been an increase of 150% in the number of premises now selling alcohol beyond midnight; this in turn has created a domino effect whereby premises are now applying to extend their hours in order to compete with other premises. It is well documented and generally recognised that the late night economy on both a national and local level now starts and ends later. Evidence of this continuing need and gradual shift for later hours, for the sale of alcohol is detailed in **Appendix 2**
- 3.1.12 The data analysed has been calculated using the end of permitted hours for the sale of alcohol, on the day of the week with the latest permitted hour for each premises, and not the closing time of the premises.
- 3.1.13 In addition to those applying to increase their licence into the early hours on a permanent basis, evidence from data extracted has shown that in recent years there has been an increase in the number of days where Temporary Event Notices (TEN) permissions have been granted for the sale of alcohol, with a peak in the number of days between 02:01am – 03:00am and 04:01am

– 05:00am in 2012. A sample of the data in 2012 between these times, shows that a high percentage of those days granted are within the area of the leisure zone. Evidence of this is detailed in **Appendix 2**

- 3.1.14 As a result of these changes in legislation and increasing numbers of premises staying open later, the night time economy in Northampton now starts and ends later and with an increase in alcohol-related crime and disorder during the early hours of the morning.
- 3.1.15 Northampton Borough Council, Northamptonshire Police and other relevant partners, have produced evidence showing the impact that late night drinking is having within Northampton. This evidence shows that there is an increase in alcohol related crime and disorder into the early hours of the morning, with a higher, disproportionate problem within the leisure zone. Evidence of this increase is shown in **Appendix 3**
- 3.1.16 Crime and disorder also has a significant cost implication for the Northampton economy. In September 2012, Northamptonshire County Council published a report detailing the cost of Alcohol to the Northamptonshire Economy. Pages 13 and 14 of the report show the costs of alcohol misuse appropriated to the Northampton area. Evidence of this report is attached in **Appendix 4**
- 3.1.17 To tackle these problems, all partnership agencies in Northampton have and continue to work proactively using tools available to assist with the promotion of all of the licensing objectives (not just crime and disorder), for example these include;
- Setting up a Community Safety Partnership
 - The adoption in 2009 of a Designated Public Places Order and using directions to leave under section 27 of the Violent Crime Reduction Act 2006.
 - Actively participating within the local Pubwatch scheme.
 - Establishing and maintaining a Best Bar None awards scheme.
 - Taxi Marshalls
 - Street Pastors
 - Dedicated police licensing officers.
 - Closure Notices
 - Road Closures
 - Nightsafe
- 3.1.18 It is of note that significant work has been undertaken by the partnership agencies and the licensees to develop a Best Bar None scheme. However there has seen a drop in applications from 38 in 2012, to 23 in 2013.
- 3.1.19 Under the current legislation, the hours of trade permitted by the licence can only be amended by either a variation, or by order of a licensing sub-committee following a review of the licence. Northamptonshire Police has used this tool to bring about the review of premises and will continue to take this course of action where there has been evidence of crime and disorder clearly linked to particular premises. Since the implementation of the LA03, Northamptonshire Police have applied for 28 reviews of licences within the

Northampton area under the licensing objective of the prevention of crime and disorder.

- 3.1.20 Northamptonshire Police have also worked with a number of premises to voluntarily restrict the hour for the last entry of customers, in an effort to minimise the movement of people from one premises to another. Whilst it has been recognised that licensees have cooperated fully, it is very difficult for the police to evidence **ALL** incidents of crime and disorder to any particular premises and call for a review, in order to bring about a reduction in the permitted hours.
- 3.1.21 In 2009 Northampton Borough Council successfully applied for and received authorisation to implement a Designated Public Places order for the whole of the Borough. This allows police officers to confiscate alcohol in public places if deemed there is potential for anti-social behaviour or disorder.
- 3.1.22 Having used these tools, the local authority having consulted with the Community Safety Partnership is now of the view that it is appropriate for an EMRO to be considered and for consultation to be commenced in accordance with The Licensing Act 2003 (Early Morning Alcohol Restriction Orders) Regulations 2012.
- 3.1.23 Northampton has not adopted a cumulative impact policy, which is dealt with under the s.182 Guidance and is not specifically mentioned in the Licensing Act 2003. This type of policy allows a local authority the opportunity to make a presumption against any new/variation of premises licence applications, on the basis that the applicant would be unable to promote the licensing objectives, unless they could demonstrate otherwise. This type of policy is not designed to redress retrospectively those premises already operating.
- 3.1.24 In arriving at the proposal officers have considered the location and the timing of an EMRO and the following are key findings to support this proposal.

Is an EMRO appropriate?

- 3.1.25 Violence is reducing at a slower rate than all crime and accounts for a higher proportion of all crime in recent years than it did in 2004/5. All agency data relating to crime and disorder shows a peak at weekends 00.00-04.49 with some data showing peaks extending to 05.59.
- 3.1.26 Anti-Social Behaviour is increasing on the Leisure Zone in general, and nearly a fifth takes place during the night time economy period with levels remaining high until 04.59 at weekends.
- 3.1.27 CCTV incidents show a peak until 04.59 at weekends in line with the peaks seen in crime, violence, incidents, East Midlands Ambulance Service and A&E data.

The Location of an EMRO

- 3.1.28 The leisure zone area, and the night time economy period specifically account for a disproportionate amount of crime within Northampton Borough. Crime in the leisure zone has fallen at a slower rate when compared with the rest of Northampton.

- 3.1.29 Where alcohol has been identified as a factor for the offender, the majority are violence against the person, and a large proportion occurs within the Leisure Zone and night time economy period.
- 3.1.30 Within the leisure zone, there is a clear correlation between the location of licensed premises selling alcohol at a specific time of night and assaults recorded by police and ambulance services at that time. This correlation is not evident across the rest of the borough so crimes cannot be attributed to alcohol licensing for the whole borough.
- 3.1.31 There is a concentration of violence after 02.00 within a specific area of the leisure zone, in close proximity to open licensed premises, and a disproportionate amount of violence 03.00-05.59 in the same area.
- 3.1.32 Data from health partners directly relating to assaults correspond with police recorded crime. Showing significantly more incidents between 00:00 – 04:59 on weekend nights in the leisure zone than any other time of the week. The peak is outside of the leisure zone tends to be earlier than this, with volume reducing around 02:59 - 03:59.

What time is appropriate?

- 3.1.33 Violent crime in Northampton peaks between 01:00 – 03:00, although the peak has extended later into the night since 2004-05.
- 3.1.34 Crime occurring on the leisure zone between 03.00-05.59 Saturday and Sunday mornings is increasing in volume and disproportionately. There is an increased risk that the public are subject to more crime and disorder during this time than they have in the past, thus undermining the promotion of the prevention of crime and disorder.
- 3.1.35 Violence on the leisure zone between 03.00-05.59 has increased by 107% between 2004/5 and 2012/13. There has been a 26% increase in violence between 02:00 – 05:59 in the leisure zone when comparing the same periods.
- 3.1.36 The increase in violent crime between 03:00 – 06:00 on Saturday and Sundays only is 91%, this is slightly less than the overall week.
- 3.1.37 Incident volumes occurring during 03.00-05.59 have not changed notably over the last 3 years despite a fall in those occurring during the wider NTE period.
- 3.1.38 When comparing 2004-5 and 2012-13, every day of the week has had an increase in violent crime in the leisure zone between 03:00 – 06:00, excluding Thursdays, which had one fewer crime.
- 3.1.39 Data from health partners directly relating to assaults correspond with police recorded crime and shows significantly more incidents between 00:00 – 04:59 on weekend nights in the leisure zone than any other time of the week. The peak outside of the leisure zone tends to be earlier than this, with volume reducing around 02:59 - 03:59.
- 3.1.40 Given the high concentration of crime and incidents within the Leisure Zone, the fact that crime and incident patterns and trends have not mirrored what has happened elsewhere on Northampton Borough, and that the NTE period, specifically incidents of crime and disorder after 03.00 is growing, it is

important for all agencies to target this area and time period to ensure the licensing objectives are met.

Impact of Proposal

- 3.1.41 If adopted this restriction will apply to all premises licences; club premises certificates and temporary event notices operating past 03:00am within the leisure zone area detailed within the proposals, and will apply every day Monday to Sunday throughout the year, for an indefinite period, with the exception of the early hours on New Year's Day.
- 3.1.42 All types of premises that sell alcohol will be affected by these proposals, except for hotels that provide alcohol to residents through minibars and room service. Hotels who serve alcohol in a bar, lounge or lobby will be affected by this EMRO.
- 3.1.43 Northampton has 35 premises which operate past 3:00am, of those premises 25 will be affected by the area recommended in the EMRO proposal, this includes a mixture of pubs, clubs, bars, casinos, restaurants and supermarkets. A map and details of those premises affected is shown at **Appendix 5**
- 3.1.44 To consider the impact of dispersal, it is worth noting the dispersal times of premises in 2004 and the current licensing permissions. In 2004, premises by law had what was commonly known as a "drinking up time", being 20 minutes in addition to the last sale of alcohol (30 minutes being allowed for restaurants). Under the current legislation and with the flexibility of the 24 hour licence, the "drinking up time" is now determined by the discretion of the individual making the application for a premises licence or club premises certificate or the licensing sub-committee.
- 3.1.45 The closing times of premises under the current legislation has been analysed further and data indicates that approximately 50% of those premises selling alcohol between midnight and 06:00am have a 30 minute drinking up time, with approximately 25% having a 60 minute period and 25% having no drinking up time. These percentages are similar throughout the night time economy, including the leisure zone.
- 3.1.46 As other licensable activities, including for example regulated entertainment and late night refreshment (sale and supply of hot food), will not be affected by this EMRO, premises will be able to continue past 03:00 am, in accordance with their existing closing times.
- 3.1.47 In considering the impact of dispersal, it has been encouraged by both regulation and good practice schemes that licensees take responsibility for allowing a "drinking up", or "winding down" period and it is envisaged that licensees will continue with this good practice and use their existing permissions to carry on with the licensable activities that will not be affected by the proposed EMRO.
- 3.1.48 In addition Northampton has 27 takeaways which are currently licensed for late night refreshment later than 03:00am, 21 of which are located within the recommended proposed EMRO leisure zone area, and who will not be

affected by these proposals and will be able to continue to operate in accordance with their existing permissions.

3.2 Feasibility Study of adopting and implementing an EMRO **- Informal Consultation**

3.2.1 The aim of this informal consultation was to find out people's views on the potential introduction of an EMRO, as requested at Licensing Committee on 11 February and in accordance with guidelines detailed in s.182 of the Licensing Act 2003 paragraphs 16.7, 13.23 -13.24.

3.2.2 Key stakeholders, including residents, businesses, licensees, relevant businesses and services and any other interested party were invited to provide initial views on the possibility of an EMRO(s) being introduced in Northampton to help tackle problems associated with drinking.

3.2.3 The informal consultation started 28 February 2013 and ran for 5 weeks, closing on 5 April 2013.

3.2.4 People were able to engage in a range of ways:

- Licensing Committee 11 February 2013-Open to the public
- Address and e-mail address given for comments/views etc.
- Engagement with our key stakeholders and partners

This activity was advertised through the Council's website, direct letters to key stakeholders, news releases to the local media and social media, including twitter alerts and reminders.

3.2.5 Views were also sought from responsible authorities and their feedback (including data) is not included in this part of this study.

3.2.6 Over 1000 letters were sent out to key stakeholders.

3.2.7 A total of 56 residents visited our dedicated webpages during the informal consultation.

3.2.8 A list of all parties contacted and those who responded can be found at **Appendix 6**

3.2.9 Results

3.2.10 A total of 43 written responses were received. Copies of communications received are available in **Appendix 7**

3.2.11 It should be noted that additional activity relating to EMROs was undertaken independently of this exercise during the period of informal consultation and that the views expressed during such events are not included in this report.

3.2.12 Findings

Out of the 43 comments and representations received, 22 were in favour of an EMRO (although 5 of those felt that if an EMRO was introduced, it would be

more appropriate after 2am or 3am in the morning); 19 were against an EMRO at any time and 2 neither for nor against.

A key summary of the issues raised by those objecting to the introduction of EMRO:-

- **Displacement-** "it is likely that drinkers would start drinking in other towns"; encourage house parties/illegal parties/raves/street drinkers
- **Burden on Licensees-**Unfair to licensed premises who operate safe, secure and well managed premises; financial impact on licensees; a blunt instrument; "A balance must be sought to ensure that only those implicated in contributing to the problem are the recipients of restrictions in the trade"; businesses trapped into long leases; unfair competition; potential job losses
- **Policing/Enforcement-**Surge in customers/flashpoints
- **Impact on Northampton-** businesses will close; damage town economy; premises will close; difficult to attract new business tenants; discourage investment in town; increase anti-social behaviour; job losses; loss of business rates revenue ; discourage students coming to Northampton University; reduce town centre spending; loss of revenue in the town ; restrict special occasions, i.e. sporting events

A key summary of the issues raised by those supporting the introduction of EMRO:-

- **Discourage pre-loading** ; drinkers will come into town earlier
- **Police resourcing-** Allow police resources to be targeted more effectively
- **Level playing field for bars and clubs**
- **Promote licensing objectives** –Crime and disorder; Reduce public nuisance ; noise impact and better quality of life for residents
- **Reduce resources on ambulance and health service**

3.3 Options

3.3.1

- A. Do nothing
- B. An EMRO to prohibit the sale of alcohol for an indefinite period between; the hours of 03:00 am to 06:00 am Monday to Sunday in respect of the whole licensing authority area.
- C. An EMRO to prohibit the sale of alcohol for an indefinite period between; the hours of 02:00am and 06:00 am Monday to Sunday in respect of the whole of the licensing authority area.
- D. An EMRO to prohibit the sale of alcohol for an indefinite period between; the hours of 3:00am and 06:00am, Monday to Sunday, in respect of the leisure zone area designated on the plan in **Appendix 1**

- E. An EMRO to prohibit the sale of alcohol for an indefinite period between; the hours of 2:00am and 06:00am, Monday to Sunday in respect of the leisure zone area designated on the plan in **Appendix 1**

3.3.2 The committee have the option to;

- Decide that the recommended proposal D detailed above is appropriate for the promotion of the licensing objectives and commence consultation on the proposal;
- Decide that the proposals detailed above are not appropriate and that the process should be ended; or
- Decide that the proposal should be modified. In this case the process must begin again, based on any modified terms.

3.4 Timetable if Committee decide to proceed

18 th June 2013	Licensing Committee consider EMRO proposal for consultation and if agreed;
Local Authority will advertise the proposal on the 27 th June 2013 by:	Publishing a notice on its website Publish at least one advert in a local newspaper Displaying a notice in the proposed area Notify all affected persons
28 th June 2013	42 day consultation begins
Representations:	A responsible authority or any person wishes to make representation may do so; starting on the day after the day the proposal is advertised. Representations must be made in writing and on the prescribed form.
9 th August 2013	Consultation ends
Hearing no later than the 20 th September 2013	If relevant representations are received, a hearing will be held within 30 working days, beginning with the day after the end of the consultation to consider all representations and if agreed
Determination by Licensing Committee no later than 4 th October 2013	A determination will be resolved within 10 working days of the conclusion of the hearing
14 th October 2013	Report to Special Full Council
Publication of Order:	A notice of an EMRO order if agreed at Full Council, will be sent within 7 days to all affected persons and a notice will be published on its website

	and placed within the affected area for a period of no less than 28 days
18 th November 2013	EMRO commences

- 3.4.1 NBC is required to advertise these proposals on its website and in its local newspaper as well as notifying those licence holders within the proposed EMRO area. Any person wishing to make representations for, or against, these proposals will have 42 days in which to lodge their comments. A timetable of the expected consultation period is given at 3.4.
- 3.4.2 If representations are received during the consultation period then a hearing will be held and further consideration will be given to those representations/objections before the outcome of these EMRO proposals are decided. If amendments to the proposals are considered necessary, the process for adopting an EMRO will start again.
- 3.4.3 Full Council would need to approve and decide on a start date for the Order.

4. Implications (including financial implications)

4.1 Policy

- 4.1.2 The Council's Statement of Licensing Policy will be given a full review and updated to reflect the relevant changes to legislation.

4.2 Resources and Risk

- 4.2.1 Costs associated with advertising, consultation and administration of the EMRO will be met from the Licensing Departments budget.
- 4.2.2 There is always a risk in any process of this nature that the process and decisions of Council could be subject to legal challenge or review. Officers will carefully manage the process to seek to minimise this risk.

4.3 Legal

- 4.3.1 The framework for EMRO's is set out in Sections 172A to 172E of The Licensing Act 2003. These sections enable a licensing authority to make an EMRO in its area if it considers that this is appropriate for the promotion of the licensing objectives. An EMRO has the effect of prohibiting the supply of alcohol under the 2003 Act, subject to prescribed exceptions. An EMRO may apply for any period beginning at or after midnight and ending at or before 6 am, on all or some days, for different periods on different days, for a limited or unlimited period and in relation to the whole or any part of the licensing authority's area.
- 4.3.2 Committee members should note that the amended guidance issued under S182 of the Licensing Act 2003 states that licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case by case basis. They should take into account any

representations or objections that have been received from responsible authorities or other persons and representations made by the applicant or premises users as the case may be.

- 4.3.3 The authorities determinations should be evidence based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.
- 4.3.4 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. The local authority should seek to exercise its functions as are an appropriate and proportionate response to the causes of concern. However it is imperative that the members ensure that the factors which form the basis of its determination are limited to consideration of the promotion of the licensing objectives and nothing outside those parameters.

4.4 Equality

- 4.4.1 An equality screening prior to the potential introduction of an EMRO was carried out and is attached at **Appendix 8**. This analysis did not highlight any disproportionate adverse impacts on groups with protected characteristics. The feedback received during the informal consultation stage did not identify equality concerns. If this matter proceeds to further consultation, feedback received will be taken into consideration and review undertaken as relevant and appropriate.

4.6 Consultees (Internal and External)

Internal

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

External

Key stakeholders and other interested parties as stated in 3.2.8 above. A list of those invited to comment is available in **Appendix 6**

4.7 Background Papers

The Licensing Act 2003
The Police Reform and Social Responsibility Act 2011
Home Office Guidance Early Morning Restriction Orders
The Licensing Act 2003 s.182 Guidance

David Kennedy
Chief Executive