

EARLY MORNING RESTRICTION ORDERS (EMROs) AND THE LATE NIGHT LEVY (LNL)

Purpose of Report

1. To advise members of the Council's current position in respect of the introduction of EMROs and a Late night Levy

Information and Analysis

2. Section 119 of the Police Reform and Social Responsibility Act 2011 (PR & SR Act 2011) has amended the Licensing Act 2003 and has introduced a power to make early morning alcohol restriction orders (EMROs) if a licensing authority considers it appropriate for the promotion of the licensing objectives. This provision would mean that alcohol could not be sold or supplied during the period specified in the order. This period would begin no earlier than 12 midnight and cease no later than 6 am (except for New Year's Eve) and would apply not only to premises licences/club premises certificates but also to Temporary Event Notices (TENs). It can also apply to specific premises, to specific areas and for specific periods or days.
3. Section 125 of the PR & SR Act 2011 provides a new power for a licensing authority to introduce a Late Night Levy (LNL) to be paid by premises (including clubs) where alcohol is sold or supplied after a "late night supply period" which could be any time after midnight and before 6 am. This would not however apply to TENs. The Late night Levy is to reduce or prevent crime and disorder in connection with the supply of alcohol and, if adopted, would apply across the entire council borough. 70% of the net revenue raised by such a levy would be automatically given to the Police while the remaining 30% would be retained by the licensing authority to fund activities specific to the late night economy. These could include taxi marshals, street wardens etc.
4. If Licensing Authorities are minded to adopt either or both of the provisions detailed above this will be subject to a lengthy consultation process, which has been prescribed through Regulations and will require the approval of Full Council.

5.0 EARLY MORNING RESTRICTION ORDERS

5.1 EMROs have been created to address recurring problems in a district such as:

- i) major problems in respect of alcohol-related crime and disorder in a specific area at specific times;
- ii) serious public nuisance; or
- iii) other instances of alcohol-related anti social behaviour not directly attributable to specific premises

5.2 When considering whether or not an EMRO is appropriate the Licensing Authority needs to balance the potential burden on businesses against the benefit of promoting the licensing objectives. At present, the Licensing Act 2003 provides for the **review** of an

individual premise when it is appropriate to promote the 4 licensing objectives. Reviews can be called for by any of the Responsible Authorities and also by “other persons”.

5.3 In addition there are a range of other measures that could be utilised such as:

- encouraging business-led best practice schemes such as Pub Watch;
- planning controls;
- additional CCTV, taxi marshals, street pastors, etc;
- additional police enforcement of alcohol-related disorder and anti social behaviour including the issue of fixed penalty notices
- police closure powers conferred under the Licensing Act 2003

5.4 The introduction of an EMRO requires evidence of alcohol-related disorder and associated anti social behaviour. This may come from information such as the number of reviews of premises licences in a specific area and the level of complaints received about crime and disorder in a specific area. Other factors to consider will include the impact the EMRO would have on the late night economy and whether the problems are so great that targeting of individual premises (i.e. by review of licence etc) would be ineffectual.

5.5 THE LEGAL PROCESS FOR ADOPTING AN EMRO

The process to be followed for the adoption of an EMRO is as follows: -

- i) If the licensing authority (LA) has identified a problem in a specific area attributable to the supply of alcohol at **two or more** premises in that area, and has sufficient evidence to demonstrate that it is appropriate for the promotion of the licensing objectives it can propose making an EMRO.
- ii) The LA should first decide on:
 - a) Whether there is sufficient evidence to support the introduction of an EMRO
 - b) The days and times (between 12 midnight and 6 am) on which the EMRO would apply;
 - c) The area to which the EMRO would apply;
 - d) The period for which the EMRO would apply (if it is a finite period);
 - e) The date from which the EMRO would apply.
- iii) The proposed EMRO must be advertised and include a short summary of the evidence and the manner in which representations can be made. The proposal must be advertised for at least 42 days. The advertisement should be placed in a local newspaper and on the Licensing Authority’s website. A notice of the proposal must be sent to all affected people in the area.
- iv) The LA must also display a notice of the proposal in the area to which the EMRO would apply, in a manner, which is likely to bring the proposal to the attention of those who may have an interest in it.
- v) The LA must notify the Responsible Authorities in its area of the proposal and also the neighbouring Licensing Authorities.

- vi) The LA must take any other appropriate steps to draw the proposed EMRO to the wider attention of other persons who are likely to have an interest in it.
- vii) Those who are affected by a proposed EMRO, including Premises Licence holders, Responsible Authorities or any other person have a minimum of 42 days to make relevant representations. The representation must:
 - Be concerned with the likely effect of the making of the EMRO on the promotion of the licensing objectives;
 - Be made in writing in the prescribed form and manner;
 - Be received within the prescribed consultation period; and
 - Not be frivolous or vexatious.
- viii) If relevant representations are received, the LA must hold a hearing to consider them. The hearing must start within 30 days after the end of the consultation period and the LA must make its determination within 10 working days of the conclusion of the hearing.
- ix) As a result of the hearing the Licensing Authority has three options:
 - a) to confirm that the proposed EMRO is appropriate for the promotion of the licensing objectives;
 - b) To decide that the proposed EMRO is not appropriate and that the process should be ended; and
 - c) To decide that the proposed EMRO should be modified (in which case the process must begin again, based on the modified terms).
- x) If the LA is satisfied that the proposed EMRO is appropriate for the promotion of the licensing objectives its determination must be referred to full Council with whom the final decision rests.
- xi) If the EMRO is adopted, the LA must monitor its effectiveness to ensure it continues to be appropriate for the promotion of the licensing objectives.
- xii) If the LA subsequently wishes to vary or revoke the EMRO it must follow the same procedure as used for its initial introduction

5.6 ADDITIONAL INFORMATION

Members may be aware that Hartlepool Borough Council has decided to seek to introduce an EMRO in its Town Centre area because of the level of alcohol related crime and disorder experienced there. The other Tees Valley Authorities have advised that they are not currently seeking to go down this route as there is insufficient evidence to support such a proposal. Officers can advise that in Darlington the position at present is the same as the remainder of the Tees Valley Authorities in that there is currently insufficient evidence to support such a proposal and the Police have not approached the Council with either a request to introduce an EMRO or sufficient evidence to support an EMRO. Should the position change then the matter may be revisited.

6.0 LATE NIGHT LEVY

- 6.1 A LNL applies only to premises licensed for the sale or supply of alcohol and is a way of generating income towards the cost of policing the late night economy. It can only be introduced by the Local Authority and if it is introduced it applies to the entire Local Authority district. The time that the levy applies can be from any period between 12 midnight and 6 am that is specified by the Council (e.g. if the levy applies from 12 midnight then all premises licensed for alcohol sales or supply after 12 midnight will be required to pay the levy) and will apply to all premises that are licensed to sell or supply alcohol during the levy hours. This means that small pubs in villages will be required to pay the levy as well as the town centre pubs and clubs even if all policing of the late night economy is targeted on the town centre areas. Even premises that do not utilise their licensing hours will be caught, as will premises which have late hours only for specific periods e.g. Public Holidays. There will be the opportunity for premises to make a free application to vary their premises licence to reduce their hours and avoid the levy, but the “free” application will only apply before the actual introduction of the levy.
- 6.2 The Police and or the Police Crime Commissioner may approach the Council to introduce a LNL and the Licensing Authority (LA) would then need to balance the costs of policing and any other activity designed to reduce crime and disorder against the desirability of a levy in relation to those costs. At least 70% of the net levy income must be paid to the Police/PCC who can determine where the levy should be spent. The remainder of the net levy may be retained by the LA but must be spent on measures specific to the late night economy (e.g. taxi marshals, street cleaning etc). The net levy is reached after the LA’s administrative costs have been met. Should the costs to the LA not be covered by the entire gross levy then the LA would be responsible for those additional costs. Once introduced, the levy will apply indefinitely until the local authority decides to disapply it

6.3 EXEMPTIONS

There are not any statutory exemptions from the levy however the LA will have discretion to allow exemptions for the following premises:

1. Premises with overnight accommodation. This is restricted to guests staying overnight at a premises. A hotel where the bar remains open to the public during the levy period will not be exempt;
2. Theatres and Cinemas (restricted to ticket holders, participants and invited guests at private events)
3. Bingo Halls (restricted to premises licensed under the Gambling Act 2005)
4. Community Amateur Sports Clubs (CASC) (restricted to clubs qualifying for business rate relief as a CASC)
5. Community Premises (restricted to premises that have successfully applied to remove the mandatory requirement for a DPS and demonstrate they operate responsibly)
6. Country Village Pubs (restricted to premises that are the sole village pub; and within a rural settlement with a population of less than 3,000)
7. New Year’s Eve (restricted to premises where the only day during the levy period that they are permitted to open is New Year’s Eve into New Year’s Day)

8. Business Improvement Districts (BIDs) (restricted to premises which participate in BIDs that operate in the night-time economy and have a satisfactory focus on crime and disorder. The LA must determine whether or not an individual BID scheme qualifies for an exemption based on the work the BID Company undertakes to address late-night alcohol-related crime and disorder).

Any amendments to the exemption categories after a levy has been introduced would be subject to a new consultation process. No other exemptions are permitted

6.4 REDUCTIONS

There are not any statutory reductions for the levy but the local authority will have a discretion to allow a 30% reduction for the following premises:

1. Small Business Rate Relief (restricted to premises that sell/supply alcohol for consumption on the premises that: are in receipt of small business rate relief; and have a rateable value of £12,000 or less
2. Best Practice Schemes (restricted to schemes that the local authority determines meet the prescribed benchmark for reduction).

The reductions detailed above are not cumulative and a maximum 30% reduction will be available to any individual premises. Any amendment to the reduction categories after a levy has been introduced would be subject to a new consultation process. No other reductions are permitted.

6.5 THE STANDARD LEVY CHARGES

The amount of the Levy is shown below:

Bands	Rateable Value	Annual Levy
Band A	No NDRV to £ 4,300	£299
Band B	£4,301 to £33,000	£768
Band C	£33,001 to £87,000	£1,259
Band D	£87,001 to £125,000	£1,365 (Multiplier = £2,730)
Band E	£125,001 and above	£1,493 (Multiplier = £4,440)

The multiplier only applies to premises within Bands D and E where the business is established primarily or exclusively for the sale of alcohol.

There are no reductions if a licensed premise voluntarily applies to reduce its hours below the levy period during the course of a levy year. There are also no reductions during the course of a levy year if a premise's hours are reduced below the levy period at a review hearing

If the levy is not paid by the due date then, similar to the payment of an annual fee, the licence can be suspended until the levy has been paid in full

6.6 THE PROCESS FOR INTRODUCING A LATE NIGHT LEVY

Prior to the introduction of a levy the local authority must undertake a consultation process. The consultees **must** include the Police Crime Commissioner, The Chief Constable and the holders of late night authorisations

The proposed LNL must detail:

- The date on which the levy is to commence
- the hours during which the levy will apply;
- the percentage of the net levy to be given to the Police/PCC;
- any exemption categories;
- any reduction categories; and
- how the Local Authority intends to spend its portion of the levy

An advertisement must be placed in a local newspaper and on the Licensing Authority's website. The proposal must be targeted at all those affected in the area and must be sent to all those detailed in the paragraph above.

The Home Office Guidance has made it clear that the consultation process, including the period for consultation should be proportionate and targeted. The LA will consider the consultation responses and make a final decision about whether to introduce (or vary) the levy. The decision to introduce the levy must then be referred to the full Council to approve. If full Council approves the introduction (or variation) of the levy, the Home Office recommends that the LA notifies adjoining authorities and the Secretary of State (via the Home Office). Full Council can resolve to remove the levy without a further consultation but only with effect from the end of a levy year.

6.7 THE DARLINGTON POSITION

We currently have **77** premises that sell or supply alcohol with permitted hours beyond midnight. If the LNL was applied from midnight **without** any exemptions it would currently raise **£82053**.

If the LNL applied from 1am it would raise **£49582** without any exemptions

If the LNL applied from 2am it would raise **£33047** without any exemptions

If the LNL applied from 3am it would raise **£22187** without any exemptions

If the LNL applied from 4am it would raise **£4245** without any exemptions

If the exemption was given to hotels, theatres, community sports clubs etc. but excluded the premises in the BID zone, we would have **61** premises that would be required to pay the levy.

If the LNL was applied from midnight it would currently raise **£62105**

If the LNL applied from 1am it would raise **£41795**

If the LNL applied from 2am it would raise **£22787**

If the LNL applied from 3am it would raise **£13186**

If the LNL applied from 4am it would raise **£4245**

If the exemption was extended to the premises in the BID zone, we would have **26** premises that would be required to pay the levy. If the LNL applied from midnight it would currently raise **£29657**.

If the LNL applied from 1am it would raise **£18009**

If the LNL applied from 2am it would raise **£14061**

If the LNL applied from 3am it would raise **£9453**

If the LNL applied from 4am it would raise **£4245**

Two of the premises included in the calculations above are not currently operational. If the premise licence holders decided to surrender these licences the above totals would reduce by £5208. Both premises currently have a terminal hour of 4 am.

The above totals have not taken into account potential reductions (e.g. up to 30% for best practice schemes etc) which if implemented would reduce the totals further. Similarly the above totals are gross. The cost of administering the levy would have to be deducted before a net figure is arrived at. In the first year of the levy the costs of actually introducing the levy e.g. cost of advertising etc would significantly impact on the net levy and may actually cost more than the revenue received.

It is likely that premises in the BID area would seek to persuade the Council to apply its discretion and grant an exemption to them. Members will be aware that such premises are in the heart of the town centre and it is likely that this is where most police resources are deployed.

It is likely that a commencement time before 2 am for any levy would be subject to challenge from the late night economy businesses. It is clear from the information provided above that a 2 am commencement would bring in gross revenue ranging from £33047 (without any exemptions and including the 2 premises which are not operational currently) down to £14061 (with all discretionary exemptions applied and still including the 2 said premises). If 30% reductions were also applied to remaining premises it is clear that the gross revenue would reduce further.

It is for this reason that Officers would advise Members that at present it would not be financially viable for a Late Night Levy to be introduced. Should this position change the matter can be revisited in the future.

6.8 ADDITIONAL INFORMATION

Officers understand that it is not the intention of any of the Tees Valley LAs currently to pursue the introduction of a late night levy. It is also understood that Newcastle City Council **is** pursuing this course of action

7.0 CONSULTATION WITH POLICE

7.1 On 21 February a copy of this report was sent to Durham Constabulary inviting their comments in respect of both EMROs and the Late Night Levy. On 28 March 2013 the Police responded with the following comments:

“Durham Constabulary has now completed a review of the available evidence.

In terms of the late night levy, we agree that due to the BID having recently been developed within Darlington Town Centre, it would be inappropriate to enforce a further levy on those licensed premises who are already contributing to the BID. We do intend however, to ask that the BID board to consider a project to support a sustainable and safe night time economy for the town centre.

The work undertaken in respect of an EMRO has highlighted a number of issues which we will be pursuing further, however at the current time only 3 premises close after 2am, with the very late licence of Inside Out currently awaiting a review hearing where reduced hours will be sought. Due to this, Durham Constabulary does not believe an EMRO is necessary at this moment in time.

We would ask that consideration of both powers are reviewed on a yearly basis or as and when evidence comes to our attention that a review would be appropriate”

7.2 The Licensing Manager has responded and advised the Police that should they have evidence in the future they may approach the Licensing Authority with a formal request to introduce either an EMRO or Late night Levy

8.0 LEGAL IMPLICATIONS

There are no issues that the Borough Solicitor considers need to be brought to the specific attention of Members, other than those highlighted in the response.

9.0 CRIME AND DISORDER ACT 1998 SECTION 17

The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. The contents of the Appendix to this report do impact on this responsibility in that crime and disorder is a focal point for the introduction of both the Late Night Levy and EMROs

10.0 RECOMMENDATIONS

Members are invited to confirm that:

- i) it is not appropriate at present to introduce an Early Morning Restriction Order
- ii) it is not appropriate at present to introduce a Late Night Levy

Richard Alty
Director of Services for Place

Background Papers

The Licensing Act 2003

The Police Reform and Social Responsibility Act 2011

The Home Office Consultation Document – Dealing with the Problems of Late night Drinking.

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