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**RESPONSE TO THE HOME OFFICE CONSULTATION IN RESPECT OF EARLY MORNING RESTRICTION ORDERS (EMRO'S) AND LATE NIGHT LEVY**

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**Purpose of Report**

1. To invite Members to approve a response by Members of the Licensing Committee to the Home Office consultation into the proposal to introduce Early Morning Restriction Orders (EMROs) and a Late Night Levy in accordance with the Police Reform and Social Responsibility Act 2011.

**Information and Analysis**

2. Section 119 of the Police Reform and Social Responsibility Act 2011 (PR & SR Act 2011) amends the Licensing Act 2003 and introduces 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 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 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 marshalls, 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 will be prescribed through Regulations and will require the approval of Full Council.
5. A consultation document has been issued by the Home Office which proposes a range of implementation criteria and exemption categories. It commenced on 17 January 2012 and closes on 10 April 2012.
6. A joint response from the majority of the Tees Valley Authorities has been initially undertaken and it is proposed that this response should also be sent from Darlington Council's Licensing Committee. It has been attached for Members' consideration at Appendix A.

## **Legal Implications**

7. 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.

## **Crime and Disorder Act 1998 Section 17**

8. 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 directly impact on this responsibility.

## **Recommendation**

9. Members are invited to approve the response to the consultation.

**Richard Alty, Director of Place**

## **Background Papers**

- (i) The Licensing Act 2003
- (ii) The Police Reform and Social Responsibility Act 2011
- (iii) The Home Office Consultation Document – Dealing with the Problems of Late night Drinking.

## **Appendices**

Appendix A – The Response of Darlington Council’s Licensing Committee to the Home Office Consultation - Dealing with the Problems of Late Night Drinking – EMROs and the Late night Levy

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## RESPONSE TO THE LATE NIGHT LEVY/EMRO CONSULTATION

### CONSULTATION QUESTION 1:

**Do you think that the proposed processes for Early Morning Restriction Orders include sufficient consultation with those likely to be affected by an EMRO?**

*We consider that as well as consulting all responsible authorities and holders of premises licence and club premises certificates, that the proposed order should be advertised to residents and any other party who may be affected by the order. Such advertisements could be placed on LA websites.*

### CONSULTATION QUESTION 2:

**The government proposes that EMROs will not apply (i.e. will not restrict alcohol sales) between midnight on 31st December and 6am on 1st January of each year. Do you think that EMROs should apply on New Year's Eve?**

Although we understand that there may be police concerns if the EMRO did not apply on New Year's Eve we do not believe that it would be proportionate to do so and therefore we agree with the proposal.

### CONSULTATION QUESTION 3:

**Do you agree or disagree that the categories of premises above should be exempt from EMROs?**

We agree that the categories of premises detailed in the consultation (premises with overnight accommodation, theatres & cinemas, community premises, casinos & bingo halls) should be exempt from the EMRO, however it may be advisable to put in place a process to include a specific premise that has previously been exempt if it proves necessary to do so to promote the 4 licensing objectives.

### CONSULTATION QUESTION 4:

**Do you have any other suggestions on the types of premises that should be considered for an exemption from EMROs?**

No

### CONSULTATION QUESTION 5:

**Do you think that there should be an option for local residents/ community groups to recommend the implementation of the levy in their area?**

No because the implementation should be on the basis of firm evidence.

### CONSULTATION QUESTION 6:

**Do you agree or disagree that licensing authorities should be able to exempt these premises from the levy?**

Yes we agree with exemptions for premises with overnight accommodation, restaurants, theatres & cinemas, casinos & bingo halls, community amateur social clubs, community premises and country village pubs on the following basis:

- That restaurants which are exempt must not permit patrons onto their premises after 12 midnight.
- That the exemption for country village pubs be based on “the only pub in the village”
- That a process is put in place to include specific premises that have previously been exempt if it proves necessary to do so to promote the 4 licensing objectives.
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We also recommend that further clarification is given in respect of hotels which hold functions such as weddings etc where some of the party are staying overnight. Is it intended that these residents could purchase alcohol for their guests who are not staying overnight?

CONSULTATION QUESTION 7:

**Do you agree or disagree that licensing authorities should be able to exempt Business Improvement Districts from the late night levy**

While we agree in principle with the proposal to exempt premises in a BID area we do have concerns that many BID areas are within town centres where the premises that cause problems are located. It would be inequitable to exclude all of these premises and require premises outside of such areas (who are unlikely to be a source of crime and disorder or public nuisance) to pay for the policing and other costs associated with problem town centres.

CONSULTATION QUESTION 8:

**Do you think that premises operating under a club premises certificate should be exempt from the late night levy?**

No we do not agree with such exemptions. Most clubs do not open beyond 12 midnight so would not be caught by the Late Night Levy but of those who do, many are based in and around town centre areas and cannot be said not to contribute in any way to crime and disorder and anti social behaviour.

CONSULTATION QUESTION 9:

**What are your views on affording a reduction from the late night levy to businesses that receive small business rate relief?**

We do not agree that such premises should be given a reduction on the basis of small business relief as this does not in any way correlate to less crime and disorder.

CONSULTATION QUESTION 10:

**Do you agree or disagree that there should be an exemption for New Year’s Eve?**

Yes we agree that there should be an exemption in respect of New Year’s Eve. Some premises have late hours for this night only as a consequence of the grandfather rights, still on the licence, in respect of the old New Year’s Eve deregulation order. To grant a universal exemption will save TENs notifications and the subsequent cost of administering the process.

#### CONSULTATION QUESTION 11:

**Do you agree or disagree that licensing authorities should be able to ask for a reduced levy payment from these businesses?**

We have concerns at the proposals contained within this section of the consultation, namely to apply reductions for Best Bar None membership, Pub Watch membership. CAP premises (BID has been dealt with at Q 7). Best Bar None is far more onerous than Pub Watch Membership. We have concerns that premises could become Pub Watch members but not actively participate in the scheme. We would suggest that a maximum reduction of 20% be applied for Best Bar None /CAP only. We also would wish to raise the issue that Best Bar None is not universally available because of cost implications etc and therefore some premises would not be able to access the reduction.

#### CONSULTATION QUESTION 12:

**Do you have any suggestions for benchmarks that can be applied to grassroots schemes to ensure members are actively working to reduce crime and disorder?**

We accept that Best Bar None accreditation may be a useful benchmark. We do not propose similar benchmarking for Pub Watch etc as such schemes are particular to a locality and address the areas of concern for that locality.

#### CONSULTATION QUESTION 13:

**Do you agree or disagree with this set-up of cumulative discounts?**

We think there should be a maximum discount of 20% regardless of membership of schemes etc. It is unusual to find someone with Best Bar None accreditation who does not belong to Pub Watch and therefore dual membership does not add value. We would also refer you to our response to question 11.

#### CONSULTATION QUESTION 14:

**Should there be scope for further exemptions and reductions from the late night levy?**

We believe that the LA should be empowered to grant further exemptions/reductions on an individual basis. These may be applied, for example to well run premises, outside of the town centre area, which do not contribute to crime and disorder and without such exemption/reduction may find themselves paying more than premises who do contribute to crime and disorder. We do not believe that it would be fair or proportionate to require such premises to pay for policing that may not be of any benefit to them.

#### CONSULTATION QUESTION 15:

**What activities do you think licensing authorities should be able to fund with their retained proportion?**

We believe that activities relating to the late night economy should be funded

CONSULTATION QUESTION 16:

**What restrictions do you think there should be on the types of services that licensing authorities will be able to fund?**

We do not think there should be any restrictions subject to the requirement that the services should be those that prevent and tackle alcohol related crime and disorder and manage the late night economy

CONSULTATION QUESTION 17:

**If you have any comments on the Impact Assessment please detail them here.**

We do not have any comments to make in respect of the impact Assessment

CONSULTATION QUESTION 18:

**If you are responding on behalf of a licensing authority, how many premises do you expect will be affected by EMROs in your area**

Each LA in the Tees Valley will be responding separately. The total number for Darlington Borough Council is 83.

**GENERAL COMMENTS:**

Given that licences are to be suspended for non payment of the annual fee it would be helpful if such a requirement was attached to the Late Night Levy, given that it will be recovered with the annual fee. Debt recovery for unpaid fees is costly and places an additional burden on the LA.

We have concerns that by the time we apply exemptions and reductions this whole scheme may not be financially viable.