

Licensing Committee

Licensing Act 2003

17 December 2012

Report of Head of Public Protection & Development Management

PURPOSE OF REPORT

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

This report is public

Recommendations

The meeting is recommended:

- (1) To note the report.

Executive Summary

Introduction

- 1.1 The Police Reform and Social Responsibility Act 2011 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 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 due to non-payment of annual fees
- 1.2 Whilst the majority of changes took effect from April 2012, the changes to Early Morning Restriction Orders (EMRO) and the introduction of the Late Night Levy (LNL) only took effect on 31 October 2012.
- 1.3 This report aims to advise the Committee on EMRO's and LNL's with regard

to what they are and the impact these measures may have upon Cherwell District Council.

Background Information

Early Morning Restriction Orders (EMRO's)

- 2.1 Licensing Authorities now have the power to make, vary or revoke an Early Morning Restriction Order (EMRO) as set out in sections 172A to 172E of the Licensing Act 2003
- 2.2 An EMRO enables a licensing authority to prohibit the sale of alcohol for a specified time period between the hours of 12am and 6am in the whole or part of its area, if it is satisfied that this would be appropriate for the promotion of the licensing objectives.
- 2.3 EMROs are designed to address recurring problems such as high levels of alcohol-related crime and disorder in specific areas at specific times; serious public nuisance; and other instances of alcohol-related anti-social behaviour which is not directly attributable to specific premises.
- 2.4 An EMRO:
 - applies to the supply of alcohol authorised by premises licences, club premises certificates and temporary event notices;
 - applies for any period beginning at or after 12am and ending at or before 6am. It does not have to apply on every day of the week, and can apply for different time periods on different days of the week;
 - applies for a limited or unlimited period (for example, an EMRO could be introduced for a few weeks to apply to a specific event);
 - applies to the whole or any part of the licensing authority's area;
 - will not apply to any premises on New Year's Eve (defined as 12am to 6am on 1 January every year);
 - will not apply to the supply of alcohol to residents by accommodation providers between 12 am and 6am, provided the alcohol is sold through mini-bars and/or room service; and will not apply to a relaxation of licensing hours by virtue of an order made under section 172 of the 2003 Act
- 2.5 An EMRO can apply to the whole or part of the licensing authority's area. The area may, for example, comprise a single floor of a shopping complex or exclude premises which have clearly demonstrated to the licensing authority that the licensable activities carried on there do not contribute to the problems which form the basis for the proposed EMRO.
- 2.6 The decision whether or not to implement an EMRO lies solely with the licensing authority. As a result, it is the licensing authorities decision to ensure that there is sufficient evidence to support the proposal and that all other avenues have been exhausted in respect of resolving the issues. the licensing authority can work closely with other responsible authorities to gather this information.
- 2.7 An EMRO is a powerful tool which will prevent licensed premises in the area

to which the EMRO relates from supplying alcohol during the times at which the EMRO applies. Other measures that could be taken instead of making an EMRO might include:

- introducing a Cumulative Impact Policy (CIP);
- reviewing licences of specific problem premises;
- encouraging the creation of business-led best practice schemes in the area;

2.8 If the licensing authority 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. The licensing authority should first decide on the matters which must be the subject of the proposal. These are:

- the days (and periods on those days) on which the EMRO would apply;
- the area to which the EMRO would apply;
- the period for which the EMRO would apply (if it is a finite period); and
- the date from which the proposed EMRO would apply

2.9 The proposed EMRO must be advertised. Amongst other measures, this includes a 42 day consultation period through site notices, press notices and the Council's website. The licensing authorities is also required to inform responsible authorities and neighbouring licensing authorities of the proposal along with any other persons who may have an interest in the EMRO.

2.10 If relevant representations are received, the licensing authority must hold a hearing to consider them (unless the authority and anyone who has made representations agree that this is unnecessary).

2.11 As a result of the hearing, the licensing authority has three options:

- to decide that the proposed EMRO is appropriate for promotion of the licensing objectives;
- to decide that the proposed EMRO is not appropriate for the promotion of the objectives and therefore that the process should be ended;
- to decide that the proposed EMRO should be modified.

2.12 If the licensing authority is satisfied that the proposed order is appropriate for the promotion of the licensing objectives, its determination must be put to the full council for its final decision.

2.13 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.

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

2.15 EMROs will not apply on New Year's Eve in recognition of its status as a national celebration.

- 2.16 The supply of alcohol in contravention of an EMRO is an 'unauthorised licensable activity' which is an offence under section 136 of the 2003 Act.
- 2.17 An EMRO overrides all authorisations to supply alcohol under the 2003 Act (including temporary event notices). It is immaterial whether an authorisation was granted before or after an EMRO was made as there are no authorisations that have the effect of authorising the sale of alcohol during the EMRO period, with the only exception being a licensing hours order made under section 172 of the 2003 Act.
- 2.18 A copy of the relevant sections of the Guidance issued under Section 182 of the Licensing Act 2003 in relation to EMRO's is attached to this report at Appendix 1.

Late Night Levy (LNL)

- 2.19 The late night levy enables licensing authorities to charge a levy to persons who are licensed to sell alcohol late at night in the authority's area, as a means of raising a contribution towards the costs of policing the late-night economy.
- 2.20 The decision to introduce the levy is for the licensing authority to make. The licensing authority is expected to consider the need for a levy with the chief officer of police and police and crime commissioner ("PCC") for the police area in which it is proposed the levy will be introduced.
- 2.21 A Late Night Levy:
- Applies to the whole district
 - Applies to all premises and clubs with permissions to supply alcohol, on and off the premises, regardless of whether or not they are actually open during the late night supply period
 - The late night supply period can be dictated by the licensing authority, beginning at or any time after midnight and ending no later than 6am.
 - The period can be for any length of time within these parameters but must be the same every day.
 - The levy will not apply to Temporary Event Notices (TENs)
 - The licensing authority must publish on their website an estimate of the costs it will deduct from the levy revenue each year.
 - The licensing authority must pay at least 70 per cent of the net levy revenue to the police
 - The licensing authority will be able to retain up to 30 per cent of the net levy revenue to fund services it provides to tackle late night alcohol-related crime and disorder and services connected to the management of the night-time economy.
- 2.22 It is recommended that the decision to introduce, vary or end the requirement for the levy is made by full council.

- 2.23 When considering whether to introduce a levy, licensing authorities should note that any financial risk (for example lower than expected revenue) rests at a local level and should be fully considered prior to implementation.
- 2.24 The licensing authority will decide the design of the levy. This includes the late-night supply period, any exemptions or reductions that may apply and the proportion of revenue (after the licensing authority's costs are deducted) which will be paid to the PCC, with the remainder being retained by the licensing authority to fund other activities.
- 2.25 The levy is a power and some licensing authorities will not consider that it is appropriate to exercise it. The licensing authority may wish to decide whether or not it believes it has a viable proposal to introduce the levy before incurring the costs of the formal consultation process. It is recognised that some licensing authorities may not have a large number of premises which are licensed to sell alcohol late at night.
- 2.26 At this stage, some licensing authorities may decide that the levy will not generate enough revenue to make it a viable option in their area.
- 2.27 The licensing authority should discuss the need for a levy with the relevant PCC and the relevant chief officer of police including the costs of policing and other arrangements for the reduction or prevention of crime and disorder, in connection with the supply of alcohol between midnight and 6am. At this time, Cherwell District Council has been unable to do this as the PCC was not in position when these legislative measures were made..
- 2.28 Should the licensing authority decide to consult upon introducing a levy, this will be carried out in accordance with legislation.
- 2.29 The licensing authority will assess consultation responses and make a final decision about whether to introduce the levy and, if so, its design. The decision to introduce the levy will then be put to the full council to approve.
- 2.30 Holders with a relevant late-night authorisation may make a free variation to their licence to reduce their licensed hours to avoid operating in the late-night supply period.
- 2.31 These applications will only be permitted for a two month period. The cost of processing free variations will be a deductible expense from the levy receipts in Year zero. Year zero is the first year in which the levy is introduced by the licensing authority.
- 2.32 The levy will apply indefinitely until the licensing authority decides that the levy will cease to apply in its area. Licensing authorities may wish to review the requirements for the levy at appropriate intervals. A decision that the levy should cease to apply can only be made at the end of a levy year
- 2.33 Certain exemptions are prescribed in legislation for the licensing authorities to abide by. These exemptions include:
- **Premises with overnight accommodation:** residential sales only
 - **Theatres and cinemas:** ticket holders only

- **Bingo halls:** must be licensed under the Gambling Act 2005.
- **Community Amateur Sports Clubs (“CASCs”):** Premises in this category must have relief from business rates by virtue of being a CASC (Section 658 of the Corporation Tax Act 2010).
- **Community premises:** must have successfully applied for the removal of the mandatory designated premises supervisor (“DPS”) requirement and demonstrated that they operate responsibly.
- **Country village pubs:** In England, must be the sole pub situated within a designated rural settlement with a population of less than 3,000.
- **New Year’s Eve:** Licensing authorities can offer an exemption from the levy for holders in relation to premises which are only have a relevant late-night authorisation by virtue of their being permitted to supply alcohol for consumption on the premises on 1st January in every year
- **Business Improvement Districts (“BIDs”):** premises which participate in BIDs that operate in the night-time economy and have a satisfactory crime and disorder focus.

2.34 Please note, the above list is not exhaustive. Please refer to the legislation for full details. It is the licensing authorities’ decision whether or not a premise qualifies for a reduction.

2.35 Certain reductions can also be applied for premises that are deemed to be operating responsibly and in accordance with business-led best practice schemes. Licensing authorities must refer to the legislation for guidance on such schemes.

2.36 Eligible premises will receive a 30 per cent reduction from the levy. There will be no cumulative discounts available for holders in relation to premises that are eligible for more than one reduction category.

2.37 After year zero, any amendments to be made by the licensing authority in respect of reductions must be consulted upon.

2.38 The net levy revenue must be split between the licensing authority and the relevant PCC. The licensing authority must pay at least 70 per cent of the net levy revenue to the police. The licensing authority can choose to amend the portion of the net levy revenue that will be given to the PCC in future levy years. This decision must be subject to consultation in the same way as a decision to introduce the levy.

2.39 The licensing authority will be able to retain up to 30 per cent of the net levy revenue to fund services it provides to tackle late night alcohol-related crime and disorder and services connected to the management of the night-time economy. Specifically, these activities must have regard to the connection with the supply of alcohol during the late night supply period and related to arrangements for:

- the reduction of crime and disorder;

- the promotion of public safety;
- the reduction or prevention of public nuisance; or
- the cleaning of any relevant highway or relevant land in the local authority area.

2.40 A licensing authority can deduct the costs it incurs in connection with the introduction or variation, administration, collection and enforcement of the levy, prior to the levy revenue being apportioned between the police and licensing authority.

2.41 The amount of the levy will be prescribed nationally. The annual charges for the levy will be:

Rateable Value Bands (based on the existing fee bands)	A	B	C	D	E	D x 2	E x 3
	No rateable value to £4,300	£4,301 to £33,000	£33,001 to £87,000	£87,001 to £125,000	£125,001 and above	Multiplier applies to premises in category D that primarily or exclusively sell alcohol	Multiplier applies to premises in category E that primarily or exclusively sell alcohol
Levy Charges	£299	£768	£1,259	£1,365	£1,493	£2,730	£4,440

2.42 Licensing authorities have discretion to adjust a holder's liability if the licence is surrendered (for instance, because the licence holder ceases to trade). The circumstance for surrendering a licence will vary considerably from case to case; for instance, a licensing authority might chose to exercise this discretion for a long-term illness, but not when a licence holder surrendered a licence in anticipation of it being revoked. Holders whose licences are revoked for contravening the licensing objectives would not be eligible for a reduction.

2.43 Any payment of the levy which is owed to the licensing authority can be recovered as a debt due to the authority. Non-payment of the levy can result in suspension of a premises licence or suspension of club premises certificate.

2.44 Specific Guidance issued under the Licensing Act 2003 in relation to LNL's has been issued by the Home Office and is attached to this report at Appendix 2.

Key Issues for Consideration/Reasons for Decision and Options

3.1 There are currently no plans to implement either EMRO or LNL. The licensing authority will be discussing LNL with the Chief of Police and PCC in the New Year

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

Wards Affected

All

Document Information

Appendix No	Title
Appendix 1	Relevant Sections of 182 Guidance in relation to EMRO's
Appendix 2	Guidance in relation to LNL's
Background Papers	
All members of the Committee have been issued with up to date copies of the Guidance issued under Section 182 of the Licensing Act 2003. Full copies of the Act itself are available on request from the Licensing Team.	
Report Author	Claire Bold, Licensing Team Leader
Contact Information	01295 753741 claire.bold@cherwell-dc.gov.uk