

REPORT TITLE – Home Office Consultation on Early Morning Restriction Orders (EMRO) and Late Night Levy (the Levy)

REPORT OF DEPUTY CHIEF EXECUTIVE [COMMUNITY DIRECTION]

WARDS AFFECTED: ['ALL WARDS']



Hinckley & Bosworth
Borough Council

A Borough to be proud of

1. **PURPOSE OF REPORT**

- 1.1 To advise the Licensing Committee of a consultation on secondary legislation for the late night levy and early morning restriction orders (EMRO).

2. **RECOMMENDATION**

- 2.1 Members are asked to provide their views on the consultation to be considered as part of the response from this council as Licensing Authority.

3. **BACKGROUND TO THE REPORT**

- 3.1 On 17th January 2012 the Home Office published a consultation document entitled "Dealing with the Problems of Late Night Drinking" - a consultation on secondary legislation for the late night levy and early morning restriction orders. The consultation period ends on 10th April 2012.

The Proposal

- 3.2 The Government believe that problems in the night time economy should be addressed locally, and is committed to ensuring that the police and local authorities are given the right tools to address the alcohol-related problems in their area, whilst promoting a vibrant night-time economy to benefit businesses and the community that they serve.
- 3.3 The proposed late night levy and the extension of Early Morning Restriction Orders ("EMROs") is proposed by Government as a tool which could be used by local authorities to achieve this aim. If local communities are concerned about premises that are open into the early hours of the morning and causing problems, then they should be able to respond flexibly. The majority (64%) of all violence occurs in the evening or at night and one-fifth of all violent incidents take place in or around a pub or club. By extending EMROs so that they can be applied from midnight, local authorities will have an additional tool to address problem areas in the night time economy.
- 3.4 Where there is a vibrant late night economy, with premises remaining open into the early hours, then the local authority will have the flexibility to charge for a contribution towards any additional policing that this generates, rather than taxpayers picking up this cost. People who enjoy a night out often visit a variety of premises and it is seen appropriate that the costs are shared between these businesses.

- 3.5 This consultation seeks views on the details of the regulations that will implement these policies. In particular, it asks for views on what categories of premises should enjoy exemptions and reductions under both measures. For example, the Government do not wish to unfairly penalise premises that are not part of the wider late night economy. These include, for example, hotels and Bed & Breakfasts (B&B), which serve only to guests, and the consultation therefore proposes these as one of the categories of exemption from both measures.
- 3.6 The Government would welcome views on these and other proposals on how the late night levy and EMROs will be implemented. Overall, the intention is that both measures will empower local communities to act to achieve a more viable night time economy.

Detail of the Proposal

- 3.7 This proposal is about how two measures in the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”) will be implemented through regulations, these being: Early Morning Restriction Orders (“EMROs”) and the late night levy (“the levy”).
- 3.8 Alcohol-related crime and disorder is a serious problem for many of our communities. The promised “café-culture” from later drinking hours has not materialised. In 2010/11, almost one million violent crimes were alcohol-related and almost half of surveyed violent crime victims believed the offender to be under the influence of alcohol, with the police having to fund and provide resources to fight alcohol-related crime and disorder.

A copy of the consultation document is attached at Appendix 1, and the impact assessment is attached at Appendix 2.

The consultation document also contains a process map that licensing authorities will have to follow to implement EMRO’s or the late night levy.

The main questions being asked in the Consultation can be summarised as:

- a) Should alcohol sales on New Years Eve be exempt from any EMRO or levy?
- b) What types of premises should be exempt from an EMRO or levy?
- c) In what circumstances should there be an exemption or reduced rate for the levy? An example given is for Business Improvement Districts being exempt.
- d) What activities should licensing authorities be able to fund from the retained proportion of the levy not allocated to the Police? Examples given include taxi marshalling and street cleaning.

Early Morning Restriction Orders (EMRO)

- 3.9 Where it is appropriate for the promotion of the licensing objectives, a licensing authority may make an Early Morning Restriction Order to prohibit the sale or supply of alcohol between at a time specified between midnight and 6 am as specified in the order.
- 3.10 The order can specify the days, times, or parts of the authority's areas to which it applies, and may be on a temporary basis. They may be varied or revoked, and may contain exemptions in prescribed cases or circumstances.
- 3.11 If an order is made, the time specified in the order would override the times on any existing or future licences, and any Temporary Event Notices. (e.g. If the order specifies 3am as the terminal hour for alcohol sales, a premises licensed for alcohol until 4am will have to stop selling alcohol at 3am after the order is made).
- 3.12 A consultation will have to be carried out locally, and responses considered before an order could be made by Hinckley & Bosworth Borough Council.
- 3.13 Members should note that an EMRO can only be made by full Council as the licensing authority, and can not be delegated to the Licensing Committee or to officers.

LATE NIGHT LEVY

- 3.14 The levy is a power for licensing authorities to introduce a charge for premises that have a late alcohol licence. Whether or not to implement the levy will be left entirely at the discretion of the licensing authority based on the situation in their local area.
- 3.15 After costs of administering the levy, the revenue generated will be split between the Police (minimum 70%) and the licensing authority (maximum 30%). The amount payable will be determined by the Home Office.
- 3.16 The Home Office is introducing this power because the problems caused by the late night economy are particularly costly for the taxpayer as there is an increased need for a police presence on the streets late at night. The Home Office believes it is right that those businesses which profit by selling alcohol in the night time economy contribute towards these costs, rather than relying on other taxpayers in the community to bear the full costs.
- 3.17 Licensing authorities may decide that a late night levy is to apply in its area, after considering:
 - a) policing and other costs for reducing or preventing alcohol-related crime and disorder between midnight and 6 am
 - b) and the desirability of raising revenue in accordance with regulation, of which not less than 70 per cent must be applied to the local policing body after relevant expenses are deducted.

- 3.18 The late night levy must apply to the whole of the licensing area, subject to any time restrictions of premises liable to pay for it; any “permitted exemption categories”, and “permitted reduction categories”. The licensing authority may determine the time of day between midnight and 6 am during which the late-night levy may apply.
- 3.19 The licensing authority will be able to determine exemptions where licence holders do not have to pay the levy, or pay a reduced rate. Licence holders will also be allowed to vary their licences before the levy is introduced, to enable them to reduce their permitted hours and avoid paying the levy.

The proposed amounts for the Late Night Levy are shown below

Rateable Value Bands	Rateable Value	Existing Annual Fee	Proposed Levy Charge
A	0 - £4300	70	299
B	£4301 - £33000	180	768
C	£33001 - £87000	295	1259
D	£87001 - £125000	320	1365
E	£125001 and above	350	1493

4. FINANCIAL IMPLICATIONS [CB]

- 4.1 At this stage of the process there are no financial implications arising directly from this report. Further analysis would need to be undertaken to ascertain whether the proposals would actually generate more income for HHBC, or if the various exemptions on offer would result in any increase being negligible.

5. LEGAL IMPLICATIONS [MR]

- 5.1 Contained within the body of the report.

6. CORPORATE PLAN IMPLICATIONS [RP]

- 6.1 Safer & Healthier Borough: to help ensure that people are provided with a safer and welcoming night time economy.

7. CONSULTATION

- 7.1 This report is for information only at this stage. The Principal Licensing Officer will be responding to the consultation after listening to members views. Once the government have produced regulations on the late night levy and early morning restriction orders those potentially affected will be consulted.

8. RISK IMPLICATIONS

It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

The following significant risks associated with this report / decisions were identified from this assessment:

Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner
Negative Press	Ensure that the council carry out a full consultation with all businesses that may be affected if it decides to implement an EMRO or the levy.	Mark Brymer

9. **KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS**

- 9.1 Those premises eligible for an exemption, where the levy is applied, will need to pursue the exemption with the relevant licensing authority. They may need to amend their licence to meet the criteria of the applicable category. This will incur a minimal cost.

In areas which adopt the late night levy:

- 9.2 Participants in the late night economy, local residents and businesses, where the levy is applied, stand to benefit from the levy as a result of a better funded local police force and local authority services.
Any business with a permanent authorisation to sell alcohol within the 'late night supply period', designated by the licensing authority, will be affected by the late night levy. The supply of alcohol is authorised on a permanent basis by premises licences and club premises certificates.
Licensing authorities which choose to adopt the levy will be affected, but they will be able to deduct the costs they incur in establishing and administering the levy. They will benefit from increased revenue to fund late night services.

In areas which adopt an Early Morning Restriction Order:

- 9.3 Participants in the late night economy, local residents and businesses, where an EMRO is applied, stand to benefit from a safer late night economy.
Any business selling alcohol in an EMRO area at the relevant times, where an EMRO is applied, will no longer be allowed to sell alcohol at that time.
- 9.4 Licensing authorities which choose to use an EMRO will incur a small administrative cost in applying the power. Licensing authorities receive income through licence fees for the costs they incur in discharging their duties under the Licensing Act 2003.

9.5 The police, where an EMRO or the levy is applied, will bear a cost inasmuch as their participation in the licensing authority decision to adopt the levy or an EMRO. They will benefit from increased revenue (minimum of 70% of net levy receipts). They will bear a cost in enforcing an EMRO.

9.6 Late night alcohol buyers (customers) and other late night businesses may be affected by a constrained choice of alcohol retailers and a change in the nature of the late night economy.

The government state that this is unlikely for two reasons:

1. The levy charge is proportional to size of business and, as such, we only expect a small proportion of businesses to reduce their licensed hours to avoid the levy.

2. The Government have suggested provision under option 3 to exempt those country premises, within designated rural settlements with fewer than 3,000 residents, which serve as the 'last' public house in a village. This will help ensure that the levy does not risk closing down the only choice of premises.

10. **CORPORATE IMPLICATIONS**

By submitting this report, the report author has taken the following into account:

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications
- Human Resources implications
- Planning Implications
- Voluntary Sector

Background papers: Home Office – Dealing with the problems of Late Night Drinking and Impact Assessment.
Police Reform & Social Responsibility Act 2011.

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