

AGENDA

LICENSING ACT 2003 COMMITTEE MEETING



Date: Thursday 24 January 2013
Time: 6.45 pm or at the conclusion of
the Licensing Committee
Venue: Town Hall, High Street,
Maidstone

Membership:

Councillors Barned, Mrs Gibson, Mrs Gooch,
Mrs Grigg, Mrs Hinder, Mrs Joy,
B Mortimer, Naghi, Parvin, Mrs Parvin
and Yates

Page No.

1. Apologies for Absence
2. Notification of Substitute Members
3. Notification of Visiting Members
4. Disclosures by Members and Officers
5. Disclosures of Lobbying

Continued Over/:

Issued on 16 January 2013

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**Alison Broom, Chief Executive, Maidstone Borough Council,
Maidstone House, King Street, Maidstone, Kent ME15 6JQ**

6. To consider whether any items should be taken in private because of the possible disclosure of exempt information.
7. Minutes of the Meeting held on 12 November 2012 1 - 2
8. Report of the Head of Democratic Services - Early Morning Alcohol Restriction Orders and Late Night Levy 3 - 30

MAIDSTONE BOROUGH COUNCIL

LICENSING ACT 2003 COMMITTEE

MINUTES OF THE MEETING HELD ON 12 NOVEMBER 2012

Present: Councillor Mrs Joy (Chairman), and
Councillors Barned, Mrs Gibson, Mrs Gooch,
Mrs Grigg, Mrs Hinder, B Mortimer, Naghi, Parvin and
Mrs Parvin

22. APOLOGIES FOR ABSENCE

An apology for absence was received from Councillor Yates.

23. NOTIFICATION OF SUBSTITUTE MEMBERS

There were no Substitute Members.

24. NOTIFICATION OF VISITING MEMBERS

There were no Visiting Members.

25. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members or Officers.

26. DISCLOSURES OF LOBBYING

There were no disclosures of lobbying.

27. EXEMPT ITEMS

RESOLVED: That the items on the Agenda be taken in public as proposed.

28. MINUTES

RESOLVED: That the Minutes of the Meeting held on 30 July 2012 be approved as a correct record and signed.

29. GAMBLING ACT 2005 - DRAFT STATEMENT OF LICENSING PRINCIPLES

The Committee considered the report of the Head of Democratic Services regarding the statement of licensing principles under the Gambling Act 2005.

RESOLVED TO RECOMMEND TO COUNCIL: That the Gambling Act 2005 Statement of Licensing Principles, as attached to the report of the Head of Democratic Services, be approved.

30. REVIEW OF LICENSING FEES AND CHARGES

The Committee considered the report of the Head of Democratic Services regarding the level of fees to be charged in respect of Statutory set fees relating to Licensing Act 2003 licences and Gambling Act 2005 fees within prescribed bands.

RESOLVED:

1. That the position with regard to the statutory licensing fees for Licensing Act 2003 licences be noted.
2. That the Gambling Act 2005 licence fees be raised, as set out in the Appendix to the report of the Head of Democratic Services, for implementation from 1 April 2013.

31. DURATION OF MEETING

7.16 p.m. to 7.23 p.m.

MAIDSTONE BOROUGH COUNCIL

LICENSING ACT 2003 COMMITTEE

24 JANUARY 2013

REPORT OF HEAD OF DEMOCRATIC SERVICES

Report prepared by Neil Harris

1. EARLY MORNING ALCOHOL RESTRICTION ORDERS AND LATE NIGHT LEVY

1.1 Issue for Decision

- 1.1.1 To consider the changes to licensing legislation relating to Early Morning Restriction Orders (EMRO'S) and the Late Night Levy (LNL).

1.2 Recommendation of Head of Democratic Services

- 1.2.1 That the report be noted and the position reviewed if approaches are made from the appropriate partners.

1.3 Reasons for Recommendation

- 1.3.1 The Police Reform and Social Responsibility Act 2011 introduced amendments to the Licensing Act 2003 and new powers on licensing. Whilst the majority of these changes were implemented on 26 April 2012 those in relation to Early Morning Alcohol Restriction Orders and a Late Night Levy, came into force on 31, October 2012. Both of these are intended to provide tools to tackle alcohol related crime and disorder and to help to pay for extra enforcement costs associated with late opening premises. Guidance notes issued by the Home Office are attached as Appendix 1.

1.3.2 Early Morning Alcohol Restriction Orders (EMRO'S)

The making of an EMRO is a power which has been extended by the 2011 Act to enable Licensing Authorities to restrict the sale of alcohol, in the whole or a part of their area, for a specified period, between 12 midnight and 06.00am, on all or some days, indefinitely or for a limited period. This restriction applies to premises licences, club premises certificates and temporary event notices. There are no exceptions to the type of premises that will be affected by an EMRO except for hotels which provide alcohol to

residents through mini-bars and room service for residents to consume alcohol in their rooms. However hotels which serve alcohol in a bar, lounge or lobby will be affected by an EMRO. EMROs will not apply to any premises on New Year's Eve or on any special occasion ordered by the Secretary of State.

- 1.3.3 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 behavior which is not directly attributable to specific premises. A Licensing Authority can decide to make an EMRO if they have sufficient evidence to demonstrate that the decision to make an order is appropriate for the promotion of the four licensing objectives. Guidance also indicates that an authority should consider whether other measures may address the problems they have identified and consider the potential burden on licence holders as well as the potential benefits for promoting the licensing objectives.
- 1.3.4 This is a power for the authority to consider on the basis of evidence and the guidance says that evidence from partners, including responsible authorities and the local CSU should be considered alongside its own evidence. It is likely that an approach with evidence would lead to consideration and that may come from the Police or possibly public.
- 1.3.5 Licensing Authorities are required to advertise any proposals for an EMRO on their website and in their local newspaper as well as notifying affected licence holders within the proposed EMRO area (but not all licence holders within the borough) and displaying a notice in the proposed EMRO area. Any person wishing to make representations for, or against, the proposal will have 42 days in which to lodge their comments, in a prescribed form.
- 1.3.6 If representations are received then a hearing must be held , (unless it is agreed to be unnecessary), within 30 working days, to determine the outcome of the EMRO. The options are for the proposed EMRO to be decided to be appropriate to promote the licensing objectives or not, or if it is decided that the proposal should be modified it would need to return to the advertisement stage as a new proposal with further representations being possible. If it is deemed appropriate that an EMRO be made, the licensing authority must be able to fully justify its decision or it may be challenged by judicial review. Full Council would need to approve the Order and decide on a start date for the Order, no less than two months after is made. The licensing authority should then monitor the effectiveness of the Order and periodically review whether it is appropriate to continue with it. Any variation or

revocation would require the same process as followed for the introduction.

1.3.7 **Late Night Levy**

The late night levy is a power for Licensing Authorities to charge a levy for holders of premises licences,(on or off), or CPCs, in the whole borough area, authorising the sale or supply of alcohol during the chosen late night supply period, (which must be beginning at after midnight or ending at or before 6am). It is a means of raising a contribution towards the cost of policing the late night economy. Guidance states that it is expected that the Licensing Authority should consider the need for a levy with the relevant Chief Officer of Police and the Police and Crime Commissioner (PCC). It suggests that local residents should use existing channels to put forward their views. During this consideration the authority are reminded that any financial risk is at local level. It is for the authority to design the levy, late night supply period, exemptions, reductions and proportion of net revenue to be paid to the PCC.

The levy does not apply to TENs. However, exemptions from the levy are only available to the authority by setting the late night supply period or as discretionary exemptions from a list set out in the legislation

- Premises with overnight accommodation
- Theatres and cinemas
- Bingo halls
- Community Amateur Sports Clubs
- Community Premises
- Country village pubs, (the sole pub within a designated rural settlement with a population of less than 3,000).
- Business Improvement Districts
- New Years Eve

Licensing Authorities will also have the discretion to offer a 30% reduction from the levy to premises that are either a member of a best practice scheme (the scheme must fulfil specific criteria), or are an on licensed premises in receipt of Small Business Rate Relief and have a rateable value of less than £12,000.

If the Licensing Authority considers it appropriate to exercise the power then it must formally consult by publishing online and in a local newspaper and by sending written details to the police, the PCC, licence holders whose licences authorise sale or supply during the proposed late night supply period and any other interested persons about its proposal.

The authority then consider the consultation responses and make a final decision on whether to introduce a levy and its design and put it to full Council to approve.

1.3.8 Income and Expenditure

- 1.3.9 Premises licence holders may choose to reduce the authorised hours on their licence to avoid payment of the levy. This would be by application for a minor variation and for a period, guidance suggests at least 2 months, be free of charge. The licence holder would still have the ability to apply for Temporary Events Notices for 21 days a year. This would lead to a significant amount of extra work for the licensing team with little income as TENs only cost £21. The cost of the free variation has been estimated at approximately £90 per application. The cost of these will be funded from the income received from the levy in the first year. However what cannot be quantified is impact this would have on the Partnership administration team in dealing with the totality of its work including the ongoing increase in work arising from the increase number of TEN's. The authority is required to publish on its website annually an estimate of the costs to be deducted from the levy.
- 1.3.10 If introduced, once the levy has been collected, the Licensing Authority will firstly deduct costs incurred in administering, collecting and enforcing the scheme. Following this deduction, at least 70% of the net amount must be passed to the PCC. The Licensing Authority will have restrictions imposed on them regarding the types of services that they can fund with their portion of the levy. Which will mean that it must be spent on tackling late night alcohol-related crime and disorder and services connected to the management of the night time economy, specifically with regard to the supply of alcohol in the late night supply period and arrangements for the licensing objectives. There is no such restriction placed upon the PCC. However should the Late Night Levy be approved the use of the PCC proportion of the levy is recommended by guidance for consideration for returning to

the local police commander for tackling alcohol related crime and disorder in the area in which it was raised.

1.3.11 Premises will be split into bands based upon their rateable value to determine how much they would pay under the levy. This system applies to the existing licence fee and annual r fee and means that larger businesses will make greater contributions to the levy than smaller ones.

1.3.12 The levy set is as follows:

Rateable Value Bands	A No rateable value to £4,300	B £4,301 to £33,000	C £33,001 to £87,999	D £87,001 to £125,000	E £125,001 to above	Dx2 Multiplier applies to premises in category D that primarily or exclusively sell alcohol	Ex3 Multiplier applies to premises in category E that primarily or exclusively sell alcohol
Annual Levy Charge	£299	£768	£1,259	£1,365	£1,493	£2,730	£4,440

Annual Retainer Fee (maintenance fee paid to council)	£70	£180	£295	£320	£350	£640	£1,050
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Disregarding the potential exemptions and reductions in the levy, the table shown in Appendix 2 shows the number of premises that would be affected by the Levy and the potential income generated. This income would be the total that could be collected before any exemptions were applied which could reduce the total quite significantly depending on what exemptions are applied.

1.3.13 Members should be aware that it is possible that a significant number of the premises with late licences may decide to reduce their sale of alcohol hours by submitting a minor variation

application as the cost of the levy may not be worth the continued selling of alcohol after midnight. In particular I would draw your attention to the amount raised in the levy by premises opening up to 1.00pm the greater majority of which would vary their hours. This would obviously result in a significant reduction in the amount levied (before any deductions or exemptions are considered).

1.4 Alternative Action and why not Recommended

1.4.1 The Committee could choose not to consider the use of EMROs or the Late Night Levy but this would mean the Committee would miss the opportunity to consider their implications for Maidstone borough. The alternative would be to consider options, from leave as it is and monitor to exploring specific evidence to design schemes.

1.5 Impact on Corporate Objectives

1.5.1 The report sets out a new powers available to tackle alcohol related crime and disorder ,if appropriate on the basis of the evidence available and for LNL viability, which may help improve Maidstone as a decent place to live . Any the introduction of which would need to be considered against the need to support a growing economy.

1.6 Risk Management

1.6.1 A drawback of EMRO'S and the levy is the impact that they could have on managing the vibrancy of Maidstone borough, as it would put extra financial strain on licensed premises. A balance needs to be struck between protecting residents from any nuisance and late night alcohol related crime and disorder and protecting the local economy. What would also need to be taken into account is the potential adverse reaction to the levy if having collected it there is no perceptible increased policing or improvements in the level of nuisance.

1.6.2 The Council would not be able to charge for any variation to reduce hours of sale for alcohol as a result of the implementation of the late night levy. This would be recouped from the costs element deducted from the levy in the first year, reducing the net amount available for distribution as well as the number of premises due to pay. Premises could however submit Temporary Events Notices, which, whilst generating income, could severely impact on the licensing service in terms of the numbers of licence applications it would be required to process. Appendix 3 details the 'pros' and 'cons' of adopting these enforcement measures.

1.6.3 If EMRO'S and the Late Night Levy are introduced and other authorities do not then this could have a negative effect on the local night time economy which could suffer financial problems and would not be on a even footing with their competitors.

1.7 Other Implications

1.7.1

1. Financial	X
2. Staffing	
3. Legal	X
4. Equality Impact Needs Assessment	
5. Environmental/Sustainable Development	
6. Community Safety	X
7. Human Rights Act	
8. Procurement	
9. Asset Management	

1.7.2 The details of these implications are set out in the body of the report. If the licensing authority decides to implement the levy it must formally consult the Police and Crime Commissioner, the police, licence holders and others about its decision. Failure to do so and being able to fully justify its decision in imposing either an EMRO or a Late Night Levy could result in legal challenge

1.7.3 Licensing regulation provides the Council with a means of promoting prevention of crime and disorder as well as an ability to protect persons from public nuisance.

1.8 Relevant Documents

1.8.1 Appendices

1.8.2 Appendix 1 – Home Office Guidance on EMRO's and the LNL

1.8.3 Appendix 2 – Calculations of Late Night Levy income

1.8.4 Appendix 3 – Pros and Cons of EMRO's and LNL

1.8.5 Background Documents

1.8.6 None

IS THIS A KEY DECISION REPORT?

Yes

No

If yes, when did it first appear in the Forward Plan?

.....

This is a Key Decision because:

.....

Wards/Parishes affected:

.....

16. Early morning alcohol restriction orders

GENERAL

- 16.1 This chapter provides guidance to licensing authorities about Early Morning Alcohol Restriction Orders (“EMROs”). The power conferred on licensing authorities to make, vary or revoke an EMRO is set out in sections 172A to 172E of the 2003 Act. This power 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.
- 16.2 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.
- 16.3 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.

THE EMRO PROCESS

- 16.4 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.
- 16.5 If the licensing authority already has a Cumulative Impact Policy (“CIP”) in its Licensing Policy Statement, it should consider the relationship between the CIP and proposed EMRO area, and the potential overall impact on its local licensing policy.

EVIDENCE

- 16.6 The licensing authority should be satisfied that it has sufficient evidence to demonstrate that its decision is appropriate for the promotion of the licensing objectives. This requirement should be considered in the same manner as other licensing decisions, such as the determination of applications for the grant of premises licences. The licensing authority should consider evidence from partners, including responsible authorities and local Community Safety Partnerships, alongside its own evidence, to determine whether an EMRO would be appropriate for the promotion of the licensing objectives.

16.7 When establishing its evidence base, a licensing authority may wish to consider the approach set out in paragraphs 13.23 to 13.26 of this Guidance which includes indicative types of evidence, although this should not be considered an exhaustive list of the types of evidence which may be relevant.

INTRODUCING AN EMRO

16.8 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. The licensing authority should consider whether other measures may address the problems that they have identified as the basis for introducing an EMRO. As set out in paragraphs 9.38-9.40 of this Guidance, when determining whether a step is appropriate to promote the licensing objectives, a licensing authority is not required to decide that no lesser step will achieve the aim, but should consider the potential burden that would be imposed on premises licence holders as well as the potential benefits in terms of promoting the licensing objectives. Other measures that could be taken instead of making an EMRO might include:

- introducing a CIP;
- reviewing licences of specific problem premises;
- encouraging the creation of business-led best practice schemes in the area; and
- using other mechanisms such as those set out in paragraph [13.39] of this Guidance.

16.9 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.

In relation to the date when it plans to introduce the EMRO, the licensing authority should note that this may change when it is specified in the final order.

ADVERTISING AN EMRO

16.10 The proposed EMRO must be advertised. The licensing authority should include a short summary of the evidence and the manner in which representations can be made in the document, as well as the details of the proposed EMRO. The proposal must be advertised for at least 42 days (a reference in this Chapter to a period of “days” means a period made up of any days and not only working days). The licensing authority must publish the proposal on its website and in a local newspaper. If no newspaper exists, it must be published in a local newsletter, circular or similar document. The licensing authority must also send a notice of the proposal to all affected people in its area. They are:

- holders of (and applicants for) premises licences or club premises certificates to which the proposed EMRO would apply;
- premises users in relation to TENs to which the proposed EMRO would apply;

- those who have received a provisional statement in respect of a premises to which the proposed EMRO would apply.

16.11 Licensing authorities must, moreover, 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.

16.12 The licensing authority should also inform responsible authorities in its area and neighbouring licensing authorities of its proposal to make an EMRO. It may also like to consider what further steps could be taken, in any particular case, to publicise the proposal in order to draw it to the wider attention of any other persons who are likely to have an interest in it.

REPRESENTATIONS

16.13 Those who are affected by a proposed EMRO, responsible authorities or any other person have 42 days (starting on the day after the day on which the proposed EMRO is advertised) to make relevant representations. To be considered a relevant representation, a representation must:

- be about 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, setting out the EMRO to which it relates and the nature of the representation;
- be received within the deadline; and
- if made by a person other than a responsible authority, not be frivolous or vexatious. Chapter 9 of this Guidance gives further advice on determining whether a representation is frivolous or vexatious.

Representations can be made in relation to any aspect of the proposed EMRO. If a licensing authority decides that a representation is not relevant, it should consider informing the person who has made that representation.

16.14 Responsible authorities may wish to make representations, as may affected persons (as set out in the above paragraph).

16.15 Others may also wish to make representations about the proposed EMRO. These persons could include, but are not limited to:

- residents;
- employees of affected businesses;
- owners and employees of businesses outside the proposed EMRO area; and
- users of the late night economy.

HEARINGS

16.16 If a relevant representation or 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). The licensing authority should consider, based on the number of relevant representations received by it and any other circumstances it considers appropriate, whether to hold the hearing over several days, which could be arranged to take place other than on consecutive working days.

16.17 Licensing authorities should be familiar with the hearing process as it has similarities with other processes under the 2003 Act. Further guidance on hearings can be found in Chapter 9 of this Guidance (paragraphs 9.27 to 9.37). However, licensing authorities should note the following key points in relation to a hearing about a proposed EMRO:

- the hearing must be commenced within 30 working days, beginning with the day after the end of the period during which representations may be made;
- the hearing do not have to take place on consecutive working days, if an authority considers this to be necessary to enable it to consider any of the representations made by a party or if it considers it to be in the public interest;
- a licensing authority must give its determination within 10 working days of the conclusion of the hearing; and
- the authority is not required to notify those making representations of its determination so that the determination may be put before the full council of the authority to decide whether or not to make the EMRO.

16.18 The licensing authority will determine the manner in which the hearing will be conducted in accordance with the Licensing Act 2003 (Hearings) Regulations 2005. If a licensing authority determines that a representation is frivolous or vexatious, it must notify in writing the person who made the representation.

16.19 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. In this case, if the authority proposes that the modified EMRO should differ from the initial proposal in relation to the area specified, any day not in the initial proposal or the period of any day specified, the authority should advertise what is in effect a new proposal to make an EMRO in the manner described above, so that further representations are capable of being made.

FINAL EMRO

16.20 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.

16.21 The matters set out in the final order must be no different from the matters set out in the proposal to make the order, subject to the caveat described above in paragraph 16.18. The order must be set out in the prescribed form and contain the prescribed content.

16.22 No later than 7 days after the day on which the EMRO is made, the licensing authority must send a notice to all affected persons of the EMRO, and make the order available for at least 28 days on its website and by displaying a notice in the EMRO area. A licensing authority should retain details of the EMRO on its website for as long as the EMRO is in force. It is recommended that the licensing authority advises neighbouring licensing authorities and the Secretary of State that the order has been made, the nature of the order and when (and for how long) it will take effect.

- 16.23 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. The licensing authority should consider setting out its policy in relation to reviewing EMROs (if any) in its statement of licensing policy.
- 16.24 The variation or revocation of an order requires the licensing authority to undertake the same process as that which applied on its introduction; that is after gathering the appropriate evidence, it advertises its new EMRO proposal, following the process set out above so that those affected and anyone else can make representations.
- 16.25 If an order applies for a finite period, the order will cease to apply on its last day. If the licensing authority wishes to introduce a further (new) EMRO, it must follow the full process for proposing a new EMRO.
- 16.26 Licensing authorities should update their statement of licensing policy (in accordance with section 5 of the 2003 Act) to include reference to the EMRO as soon as reasonably possible.

EXCEPTIONS TO AN EMRO

- 16.27 EMROs will not apply on New Year's Eve in recognition of its status as a national celebration. The supply of alcohol to residents through mini-bars and room service in premises with overnight accommodation will also not be subject to an EMRO.

ENFORCEMENT OF EMROS

- 16.28 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. Moreover, it may result in a closure notice being served on the premises under section 19 of the Criminal Justice and Police Act 2001 as a precursor to an application for a closure order under section 21 of that Act. This may alternatively, result in the licence being reviewed on crime prevention grounds. Further information on reviews can be found in Chapter 11 of this Guidance.
- 16.29 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.

AMENDED GUIDANCE ON THE LATE NIGHT LEVY

December 2012



Home Office

GUIDANCE ON THE LATE NIGHT LEVY

- 1.1 The late night levy (“the levy”) is a power, conferred on licensing authorities by provision in Chapter 2 of Part 2 of the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”). This 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.
- 1.2 The decision to introduce the levy is an option available to all licensing authorities in the whole of their respective areas. The levy will be payable by the holders of any premises licence or club premises certificate (“holders”), in relation to premises in the authority’s area, which authorise the sale or supply of alcohol on any days during a period (the “late night supply period”) beginning at or after midnight and ending at or before 6am.
- 1.3 A licensing authority is the authority which carries out licensing functions under the Licensing Act 2003 (“the 2003 Act”). The main licensing authorities, as defined in the 2003 Act, are:
 - the council of a district in England;
 - the council of a county in England in which there are no district councils;
 - the council of a county or county borough in Wales;
 - the council of a London borough.
- 1.4 It is recommended that the decision to introduce, vary or end the requirement for the levy is made by the full council. Other decisions in relation to the introduction and administration of the levy may be delegated in the manner which the licensing authority considers most appropriate.

INTRODUCTION OF THE LEVY

- 1.5 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.¹ Local residents can use existing channels and forums to put forward views and call for the implementation or not of the levy in their area.
- 1.6 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.
- 1.7 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 as set out in paragraph 1.42.

1 In this guidance, a reference to a PCC include a reference to the holder of the Mayor’s Office for Policing and Crime. Elections for Police and Crime Commissioners (PCCs) in all police force areas in England and Wales (except in London, where the Mayor of London has taken on the powers of a PCC in relation to the Metropolitan Police) take place on 15th November 2012. Once appointed, PCCs will be expected to have a central role working in partnership with local authorities, enforcement bodies and other local partners to decide on what action is needed to tackle alcohol-related crime and disorder in their areas. However, the Chief Officer of Police will remain the named responsible authority under the 2003 Act.

- 1.8 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 during the late night supply period. 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.
- 1.9 The late night supply period must begin at or after midnight and end at or before 6am. The period can be for any length of time within these parameters but must be the same every day. If licensing authorities decide that it would be appropriate that certain types of premises should not pay the levy, they can set the late night supply period to suit the opening times of premises in their local area (for example the supply period could begin at 1am).
- 1.10 The licensing authority must consider the desirability of introducing a levy in relation to the matters described in section 125(3) of the Police Reform and Social Responsibility Act 2011. These matters are 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.
- 1.11 The licensing authority should discuss the need for a levy with the relevant PCC and the relevant chief officer of police. The licensing authority will then decide whether to move to the next stage in the process and consult on its proposal to introduce a late night levy. The consultation document will state its intention to introduce a levy, its proposed design (including the late night supply period and proposed exemption and/or reduction categories) and the services that the licensing authority intends to fund with its share of the levy revenue.
- 1.12 The licensing authority will publish the consultation online and in a local newspaper. It will also send written details to the PCC, the relevant chief officer of police and all premises licence and club premises certificate holders whose authorisations permit the supply of alcohol during the period when it is proposed the levy will apply. The consultation is intended to be targeted at those affected by the levy, particularly businesses, the police, residents and other interested parties. The consultation process, including the period, is expected to be proportionate and targeted, so that the type and scale of engagement is relative to the potential impacts of the proposal.
- 1.13 The licensing authority will assess consultation responses and make a final decision about whether to introduce (or vary) the levy and, if so, its design. The decision to introduce the levy, and its design, will then be put to the full council to approve.
- 1.14 If the full council approves the introduction (or variation) of the levy, it is recommended that the licensing authority notifies adjoining authorities. It would be helpful if licensing authorities also notified the Secretary of State for transparency purposes, via the Home Office.

IMPLEMENTATION OF THE LEVY

- 1.15 The licensing authority must notify the relevant chief officer of police, the PCC and all holders of a licence or certificate in relation to premises which permit the supply of alcohol within the late night supply period (“relevant late night authorisation”) of the start date for the levy, the late night supply period, any exemptions and reductions, and how the revenue will be shared between the police force and licensing authority. Holders of relevant late-night authorisations should also be notified of the date before which any applications for a minor variation must be made to the authority, as set out in paragraph 1.16. We recommend that licensing authorities set the start date of the levy no less than three months after those notifications have been sent.
- 1.16 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. It is recommended that licensing authorities may wish to allow holders no less than two months to make such applications. 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.
- 1.17 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 will determine the manner in which any statement is published.
- 1.18 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. Licensing authorities may wish to notify holders of a relevant late night authorisation of any such decision.

DESIGN OF THE LEVY

- 1.19 The levy must apply to the whole of the licensing authority’s area. It will apply to all holders (on and off-trade) of relevant late night authorisations situated in the licensing authority’s area. Any such holder will be liable to pay the levy, regardless of whether the holder’s premises are actually operating during the period. For example, a holder in relation to a supermarket with a 24 hour licence will be required to pay the levy regardless of its actual opening hours.
- 1.20 As set out in paragraph 1.9, the late night supply period must begin at or after midnight and end at or before 6am. The licensing authority can decide the times within the late-night supply period at which the levy will apply (which must be the same every day). The late-night supply period cannot apply on different days or times.
- 1.21 The levy will apply to boats, which are licensed at the place where they are usually moored or berthed. It will also apply to mobile bars, which are required to be licensed at the place where they are parked and carry on the licensable activity.
- 1.22 The levy will not apply to Temporary Event Notices (TENs).

EXEMPTIONS FROM THE LEVY

- 1.23 Licensing authorities may consider that there are some types of premises in relation to which the holder should not make a contribution towards the cost of policing the night-time economy through the levy. This is a local decision – the licensing authority should make its decision based on its knowledge of the night-time economy in the area, including information gathered through the consultation process.
- 1.24 Licensing authorities are not able to choose a category of premises for an exemption from the levy, if it is not prescribed in regulations. Likewise, licensing authorities are not able to exempt specific premises from the requirement to pay the levy.
- 1.25 Licensing authorities can decide, when considering the levy design, if any of the following permitted categories of premises should be exempt from the requirement to pay the levy. These exemption categories are specified in the Late Night Levy (Expenses, Exemptions and Reductions) Regulations 2012.
- 1.26 **Premises with overnight accommodation:** This exemption is not applicable to any premises which serve alcohol to members of the public who are not staying overnight at the premises, such as a hotel bar which can be accessed by the general public.
- 1.27 **Theatres and cinemas:** Premises in this category must ensure that, during the late night supply period, the sale of alcohol is only made for consumption on the premises to ticket holders, participants in the production or invited guests to a private event at the premises. Licensing authorities should be satisfied that premises which are eligible for this exemption are bona-fide theatres or cinemas, and that the sale of alcohol is not the primary purpose of their businesses. The definition of a “cinema” or a “theatre” should be readily understood by its plain, ordinary meaning.
- 1.28 **Bingo halls:** Premises in this category must be licensed and regulated under the Gambling Act 2005.
- 1.29 **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).
- 1.30 **Community premises:** Premises in this category must have successfully applied for the removal of the mandatory designated premises supervisor (“DPS”) requirement and demonstrated that they operate responsibly.
- 1.31 **Country village pubs:** In England, premises in this category must be the sole pub situated within a designated rural settlement with a population of less than 3,000. The definition of a rural settlement appears in the qualifications for rural rate relief in Part III of the Local Government Finance Act 1988.
- 1.32 **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.

1.33 **Business Improvement Districts (“BIDs”)**: Licensing authorities can offer an exemption from the levy for premises which participate in BIDs that operate in the night-time economy and have a satisfactory crime and disorder focus. Licensing authorities have the discretion to determine whether the BIDs in their area are eligible.

REDUCTIONS FROM THE LEVY

1.34 Licensing authorities may wish to use the late night levy to promote and support participation by premises in other business-led best practice schemes. Licensing authorities can decide, when considering the levy design, if holders whose premises participate in such schemes should benefit from a reduction to the amount they are required to pay under the levy.

1.35 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. Licensing authorities can offer a reduction to best practice schemes that meet the following benchmarks specified in the Late Night Levy (Expenses, Exemptions and Reductions) Regulations 2012:

- a clear rationale as to why the scheme’s objectives and activities will, or are likely to, result in a reduction of alcohol-related crime and disorder;
- a requirement for active participation in the scheme by members; and
- a mechanism to identify and remove in a timely manner those members who do not participate appropriately.

1.36 Licensing authorities have discretion as to how best practice schemes can demonstrate that they meet these benchmarks. We expect licensing authorities to use their existing partnerships with best practice schemes, and understanding of a scheme’s operation in their area, to identify eligible schemes in their areas. Licensing officials could visit representatives from best practice schemes in their area, or request written details of the scheme’s objectives, if they decide to consider this reduction category.

1.37 Licensing authorities can also offer a reduction to holders in relation to on-trade premises that are in receipt of Small Business Rate Relief (as specified in Part III of the Local Government Finance Act 1988) and have a rateable value of £12,000 or less. This reduction is only available to holders in relation to premises that supply alcohol for consumption on the premises. The relevant billing authority may have information on which premises in the licensing authority area are in receipt of Small Business Rate Relief.

1.38 If the licensing authority decides to introduce or remove categories of exemption and/or reduction after Year zero, they will need to follow the same procedure for consultation as set out in 1.11-1.13 though the consultation should only refer to the new proposal. If a licensing authority chooses to remove categories of exemption and/or reduction after Year zero, they should consider that the opportunity for businesses to make a free variation to their licence is only available when the levy is initially introduced.

LEVY REVENUE

1.39 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.

- 1.40 There are no restrictions on what the PCC's portion of the levy revenue can be spent on, in line with standard practice on the allocation of police funds. The PCC's proportion will be subject to the same transparency measures as those that apply in relation to other aspects of the operation of the PCC. The Police and Crime panel will be able to request any documents of the PCC in order to hold them to account in the allocation and use of their funds.²
- 1.41 We recommend that the licensing authority should use its existing partnership with the police to discuss the police intentions for their share of the levy revenue. We also recommend that the PCC should consider allocating the funds raised from the levy back to local commanders to allow the revenue to be spent on tackling alcohol-related crime and disorder in the area in which the levy was raised.
- 1.42 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.
- 1.43 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. Regulations have prescribed descriptions of expenses which may be deducted. As set out in paragraph 1.6, any financial risk relating to the levy revenue, such as lower than expected revenue or higher than expected costs, rests at a local level.
- 1.44 These deductible costs may include (but are not necessarily limited to) the following:
- the preparation and publication of the consultation document, including publishing it online and sending details to the PCC, the relevant chief officer of police and all premises licence and club premises certificate holders whose authorisations permit the supply of alcohol after midnight on any day;
 - the collection of levy payments;
 - the enforcement of levy payments; and
 - the cost of processing applications for a variation in relation to the introduction of the levy.
- 1.45 There will be no specific restrictions on the amount of the expenses which licensing authorities can claim in expenses, however licensing authorities will have to account for their expenses following existing procedures. The Government may specify a cap on the amount of expenses in further regulations if considered necessary.

² This excludes documents that are operationally sensitive or those that would compromise national security.

LEVY CHARGE AND COLLECTION PROCESS

1.46 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 No rateable value to £4,300	B £4,301 to £33,000	C £33,001 to £87,000	D £87,001 to £125,000	E £125,001 and above	D x 2 Multiplier applies to premises in category D that primarily or exclusively sell alcohol	E x 3 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

1.47 The levy charges are based on the current licence fee system under the 2003 Act, with holders being placed in bands based on their premises rateable value. A multiplier is applied to premises in Band D and E that primarily or exclusively sell alcohol for consumption on the premises to ensure that larger clubs and bars make a higher contribution towards the levy. Regulations include provision for premises that do not have a rateable value (Band A) or premises that are in the course of construction (Band C).

1.48 The levy will be collected at the same time as the annual licence fee (except in relation to holders premises who obtain a relevant late night authorisation during a levy year). The holder will, therefore, be required to pay the levy on an annual basis. For holders whose licences exist at the time that the first levy year begins, the payment year will be the same as the levy year³. These holders will make their first levy payment when they pay their annual fee. For holders who are granted a licence in the first or subsequent levy years, the payment year runs from the date of the grant of the licence and for each year thereafter. Their first payment will be made 14 days after the grant of the licence, and thereafter when they pay their annual fee.

1.49 In the following circumstances, licensing authorities should adjust a holder's liability to the levy:

- a licence lapses under section 27 of the 2003 Act (that is if the holder of the licence dies, becomes mentally incapable, becomes insolvent, if the partnership holding the license is dissolved or if it is a club, ceases to be a recognised club);
- an EMRO is made which prohibits premises from serving alcohol at any time when the levy applies; or
- the amount of the levy reduction is the amount found by applying the formula: $R = (L/365) \times N$ (see footnote⁴).

³ The payment year is the period by reference to which a licence holder's liability to the levy is determined. The levy year is the period during which the levy applies.

⁴ R is the levy reduction, L is the amount of the late night levy payable by the holder of the relevant late night authorisation and N is the number of days in the payment year beginning on the day following the date on which the relevant event occurred.

- 1.50 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.
- 1.51 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.



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Final hour	Rateable Value Band A Levy - £299	Rateable Value Band B Levy - £768	Rateable Value Band C Levy - £1259	Rateable Value Band D Levy - £1365	Rateable Value Band E Levy - £1493	Total	Maximum Levy	Number of premises
24 hours & opening before 06:00 Midnight	8	8			5	£16001	£153839	21
01:00	2	55	10	5	8	£74,197	£79,642	80
02:00	8	17	3		10	£34,155	£45,487	38
03:00	2	5	6	1	1	£14,850	£30,637	15
04:00		1	4		3	£10,283	£20,354	8
05:00	1	1	1			£2,326	£18,028	3
06:00		1	1			£2,027	£16,001	2

Early Morning Restriction Orders		
Pros	Cons	Comment
<p>Will assist control of any alcohol related crime and disorder between midnight and 6am that can be proven as coming from a certain area.</p> <p>Will stop the sale of alcohol from a time to be decided by the Licensing Authority between midnight and 0600 hours thereby influencing when the NTE finishes, with the consequent effect on police resources.</p>	<p>Could increase the fear of crime by the public which could result in certain areas of the town wrongly becoming 'no go' areas and affecting licensees within the area who do run their premises properly</p> <p>Introduction of an EMRO in one area could cause shifting of late night alcohol problems to another area within the borough</p> <p>Introduction of an EMRO without sufficient and robust evidence would leave Maidstone at the risk of judicial review</p> <p>An EMRO stops the sale or supply of alcohol. It does not close the premises.</p> <p>EMROs will have the effect of zoning ie the sale of alcohol will stop in a particular specific zone or area of a council, possibly pushing any issues into another area of the council. Premises that are not affected and outside of the EMRO may try to take advantage and open later.</p> <p>Politically this could be seen as anti business, in a climate where the promotion of business and associated jobs is an important part of council's</p>	<p>This type of legislation is probably more appropriate to cities and large towns with a large crowds of clientele going from premises to premises being anti-social.</p> <p>Pre LA 2003 it was law for premises to stop the sale of alcohol at 0200 hours but it was common practice for entertainment to be continued until a later time ie 0300 hours or 0400 hours. Premises may do the same in an attempt to increase business.</p> <p>Careful thought will have to given as to where an EMRO is brought into effect as it could simply move problems to other areas.</p> <p>The imposition of an EMRO could have the effect of closing some businesses with associated loss of jobs. Many licensed premises are running on tight margins and this</p>

	<p>policies.</p> <p>If neighbouring councils do not impose an EMRO, people may travel to premises that open later in neighbouring towns, rather than use local businesses.</p>	could be perceived as anti business.
Late Night Levy		
Pros	Cons	Comment
Premises reduce their hours for the sale of alcohol	<p>Licensees could reduce the amount of door supervisors they employ if they reduce their hours</p> <p>Usually only obliged to provide after X hours by condition.</p>	This will involve more work for the licensing section without any income being generated cost of minor variations will be deductible from first levy period.
Licensees could apply for more Temporary Events Notices if they reduce their standard hours resulting in more income for the Council	An increase in TENs will result in an increase in administration for police. Conditions that are on a premises licence can only be put onto a TEN if the police and Environmental Health put in representations to the council.	<p>This will inevitably lead to more work for the licensing section and could also result in more Licensing Sub committee hearings if the Police or Environmental Health object to a TEN</p> <p>TEN income would not cover the cost of the administration generated as TEN's cost £21 currently.</p>
	Those licensees who pay the levy could decide that to make it worthwhile they will open longer.	<p>This could lead to more anti-social behaviour and nuisance as revellers make their way home especially as a lot of off-licences open at 06.00am.</p> <p>If licensees did wish to stay open longer then they would need to submit a variation application in the normal way which would be a source of income to the Council but would be more likely to come in one mass which would clog up the system.</p>
	There could be an expectation by licensees and the public alike that more police officers would be readily available	A levy will be council wide, not just in a town centre. While there is an discretionary exemption available for some rural business, this will not exclude many pubs etc. and certainly those in larger villages will still have to pay. There will be an

		expectation from premises that believe they have paid for extra policing (which is how the levy is being promoted by the government) and for that policing to be present and available. This expectation will also be held by town centre premises. Kent Police will not be able to fulfil these expectations, especially as the amount collected will be relatively small. How will these expectations be managed.
	There could be bad publicity for the Council from businesses which perceive the Council of not helping them to create a vibrant night-time economy and of causing them economic difficulties	As with the EMRO above this is seen by the trade as a 'tax', and the council may be reluctant to be seen to be 'anti-business'.
	There could be increased problems in obtaining payment for both the annual retainer fee as well as the levy	The licensing authority do now have the ability to suspend licences for non-payment but this could impact severely on the work of the licensing team in having to deal with a lot more suspensions and re-instatement notices
Give Kent Police an additional funding stream to address issues of alcohol related crime and disorder.		Even a relatively small amount of money could fund either a reduced hours dedicated officer or targeted operations.
	It is unclear how much money will actually be raised by this measure.	While this measure will be enforced council wide it is still very unclear how much money will be collected from it. Not only are there discretionary exemptions, but there are discounts available and premises will also be allowed to remove themselves free of charge (this point is important to councils as it has a cost implication, and they will have to do this free) from any levy that is imposed.
	Councils may not feel it is financially worth their while collecting a levy that does not benefit them to any great extent.	Councils will be able to take from the levy their costs incurred in calculating, collecting and enforcing the collection. In addition they can then take 30% of what is left, leaving the remaining 70% for the police. It is proscribed in the regulations what this can be spent on, giving councils few options on how to spend the money. How much of an incentive is there to impose the levy in order to collect money for another organisation ie the police?

