

**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:

<b>Rateable Value Bands</b>	<b>A No rateable value to £4,300</b>	<b>B £4,301 to £33,000</b>	<b>C £33,001 to £87,999</b>	<b>D £87,001 to £125,000</b>	<b>E £125,001 to above</b>	<b>Dx2 Multiplier applies to premises in category D that primarily or exclusively sell alcohol</b>	<b>Ex3 Multiplier applies to premises in category E that primarily or exclusively sell alcohol</b>
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?

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This is a Key Decision because: .....

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Wards/Parishes affected: .....

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