

Report of the Cabinet Member for Crime and Stronger Communities

Early Morning Restriction Orders & Late Night Levy

Summary

1. The purpose of this report is to inform the Cabinet of the recent changes made to the Licensing Act 2003 (2003 Act), following the implementation of Section 119 (Early Morning Restriction Orders) and Chapter 2 (Late Night Levy) of the Police Reform and Social Responsibility Act 2011 (2011 Act), on 31 October 2012 and the potential impact on the Licensing Authority.

Background

2. In January 2012 the Home Office carried out a 12 week consultation “Dealing with the Problems of Late Night Drinking”, inviting views on two measures in the 2011 Act, Early Morning Restriction Orders (EMRO) and the Late Night Levy. These regulations were implemented on 31 October 2012 and recommended that the licensing authority consider the need for an EMRO or Levy with the Chief Officer of the Police and Police and Crime Commissioner, however it is the Local Authorities decision as to the introduction.

Early Morning Restriction Orders (EMROs)

3. EMROs will allow licensing authorities to restrict sales of alcohol in the whole or part of their area for any specified period between midnight and 06:00 hrs, if they consider this appropriate for the promotion of the statutory licensing objectives.
4. 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.

5. An EMRO applies:
 - To the supply of alcohol authorised by premise licences, club premise certificates and temporary event notices;
 - For any period beginning at or after midnight and ending at or before 06:00 hrs. 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;
 - For a limited or unlimited period, for example, an EMRO could be introduced for a few weeks to apply to a specific event;
 - To whole or part of the authority's area;

6. An EMRO will not apply:
 - To any premises on New Year's Eve, defined as midnight to 06:00 hrs on 1 January every year;
 - To the supply of alcohol to residents by accommodations providers between midnight and 06:00 hrs, provided the alcohol is sold through mini-bars and / or room service; and
 - To a relaxation of licensing hours by virtue of an order made under section 172 of the 2003 Act.

7. Licensing authorities should be satisfied that it has sufficient evidence to demonstrate that its decision is appropriate for the promotion of the licensing objectives. Evidence should be considered from partners, including responsible authorities and local Community Safety Partnerships.

Late Night Levy (the Levy)

8. The Levy will allow licensing authorities to raise a contribution from late-opening alcohol retailers towards managing the late night economy. It is a local power that licensing authorities can choose whether or not to adopt and must cover the entire local authority area. However the licensing authority can choose the period during which the Levy applies, between midnight and 06:00 hrs (the late night supply period).

9. The amount of the Levy has been set at a national level. The charge is calculated according to non-domestic rateable value (this system applies to existing licence fees). The charges are:

Band	Annual Levy charge
A - No value to £4,300	£299
B - £4,301 to £33,000	£768
C - £33,001 to £87,000	£1,259
D - £87,001 to 12,500	£1,365
E - £125,001 and above	£1,493
Dx2 Cat D premises that primarily or exclusively sell alcohol	£2,730
Ex3 Cat E premises that primarily or exclusively sell alcohol	£4,440

10. The net revenue from the Levy must be split between the licensing authority and Police and Crime Commissioner (PCC). The licensing authority must pay at least 70% of the net Levy revenue to the PCC. This decision must be subject to consultation. The amount paid to the PCC is not ring fenced and can be used by the PCC to support policing initiatives outside of the local authority area where it is raised.
11. The percentage retained by the licensing authority will fund services to tackle late night alcohol related crime and disorder, and services connected to the management of the night-time economy.
12. Licensing authorities will decide the design of the Levy, this will include the late night supply period, any exemptions or reductions that may apply and the proportion of the revenue which will be paid to the PCC.
13. Licensing authorities may consider that it is not appropriate to introduce the Levy.

Current situation within the authority area

14. The councils 'Statement of Licensing Policy' includes a 'Saturation and Cumulative Impact' policy. This policy identifies an area that is under stress because of the cumulative effect of the concentration of late night drink led premises which has led to serious problems of disorder and/or public nuisance. Since the introduction of this policy in 2005 the council and police has been able to prevent the increase in numbers of certain types of licensed premises in the area and substantial variations to existing licensed premises. The policy has worked very well at controlling alcohol related crime and disorder in this area.
15. The 2003 Act has always offered responsible authorities, local residents, local businesses and Ward Councillors the provision to apply to review

any premise licence or club premise certificate if one or more of the four licensing objectives are being undermined. The review process targets individual 'problem' premises. Issues at these premises can be dealt with in less than 2 months from an application being received to a decision being made at a sub-committee hearing. The Police, Environmental Protection Unit, Fire Authority and local residents have used the review process to deal with licensed premises undermining the licensing objectives. The outcome of these reviews have led to conditions being placed on licences, the reduction of licensing hours and in one case the licence being revoked.

16. The council as the licensing authority works in partnership with the police, other responsible authorities and Safer York Partnership. Through this partnership working issues relating to licensed premises are closely monitored, with appropriate agreed action taken if/when required.

Consultation

17. The Home Office consulted a wide range of people and organisation on their proposals before regulations were implemented. If the council consider introducing either EMROs or the Levy a full formal consultation would have to take place, as stated in legislation and guidance.

Options

18. **Option 1** - Recommend that officers consult with North Yorkshire Police, the Police and Crime Commissioner, other responsible authorities, Safer York Partnership and the relevant Business Community with regards to the introduction of EMROs and/or the Levy. Following consultation bring a report back to the Cabinet Member with views/recommendations.
19. **Option 2** - Recommend that officers take no further action at this time as current measures within legislation and partnership working works well. Officers to review the situation annually.

Analysis

20. York has for many years been held in high regard nationally for the way it manages its night-time economy. To achieve this the council has worked in partnership with the police, other agencies and on occasion the licence trade. Option 1 would see the council consulting with relevant bodies, as recommended by guidance. However, consideration must be given to the current position within the authority area.

EMROs

21. Having looked at the evidence base / information, at this time officers cannot identify an area within the authority where they believe an EMRO would be required.

The Levy

22. When considering the Levy, the authority has 263 licensed premises authorised to sell/supply alcohol between the hours of midnight to 06:00hrs (246 premise licences, 17 club premise certificates). The following table sets out the number in each of the non-domestic rateable value bands and broken down by hourly intervals:

	Midnight to 01:00	01:00 to 02:00	02:00 to 03:00	03:00 to 04:00	04:00 to 05:00	05:00 to 06:00	Total per Band
Band A	6	3	0	1	2	0	12
Band B	91	24	8	5	5	0	134
Band C	34	19	5	5	2	0	66
Band D	3	4	0	0	1	0	8
Band E	9	7	10	1	5	0	32
Band Dx2	1	4	3	1	0	0	8
Band Ex3	0	1	2	0	0	0	3
Total	144	62	28	13	15	0	263

23. When considering the above premises against charges set out in Para 9, if the Levy was introduced with a late night supply period of midnight to 06:00hrs, and if no one changes their operating hours, there is potential for an annual gross income of £286k. However it should be noted that there is a very strong likelihood that a number of premise licence holders will request a minor variation to reduce their licensable hours for the sale of alcohol so that their hours no longer fall within the late night supply period, this could see the amount of income significantly reduce.
24. If all the premises with a licence to supply alcohol until 01:00hrs requested a variation to reduce their hours to midnight the gross income would reduce to £152k. Once administration costs are deducted, the net income has to be proportioned at a minimum 70/30 with the PCC which, at the lower level would mean a potential net income to the licensing authority of £45k.
25. If the Levy was introduced the licensing authorities can deduct the costs incurred in connection with the administration, collection and enforcement of the Levy, prior to the revenue being apportioned between the PCC and licensing authority. If the Levy was introduced, with a late night supply period of midnight to 06.00hrs and all 246 premises paid,

the administration costs would be £14K. This could reduce to £6.3K if a number of licensed premises apply to reduce their licensable hours for the supply of alcohol.

26. Within the first year there will be additional administration costs, which would include:
 - The formal consultation;
 - Associated work of introducing the Levy; and
 - Minor variations – provision within the legislation free of charge
27. The costs of a formal consultation and associated works are difficult to estimate. However, for example the costs of minor variations if 144 premises reduced their licensable hours for the supply of alcohol would be £12.8K (statutory fee for a minor variation is £89).
28. If a number of licensed premises apply to reduce their hours so that they no longer fall within the late night supply period, this would result in a reduction in the level of income from the Levy. It could also potentially create anti-social behaviour issues with a large number of premises closing at the same time.
29. If the Levy is introduced the licensing authority can set reduction or exemptions to the Levy. The legislation sets out the type of premises where exemption or reduction can be offered. These are:
 - Premises with overnight accommodation;
 - Theatres & cinema's;
 - Bingo Halls;
 - Community amateur sports clubs;
 - Community premises; &
 - Country village pubs.
30. In addition to the types of premises where exemption / reduction can be offered, the legislation also enables the licensing authority to give exemption to premises with Business Improvement District and on New Year's Eve.
31. The potential income set out in Para's 23 & 24 excludes premises with overnight accommodation authorised to supply alcohol to residents of the hotel 24hrs. If these were included the gross income would increase by approximately £58k.

32. When considering the introduction of the Levy it could be seen as an extra financial burden, imposed by the licensing authority, on businesses / operators who are already struggling in the current financial climate.
33. Within the legislation and guidance there are no restrictions on what the PCC's portion of the Levy revenue can be spent on, this is in line with standard practice on the allocation of police funds. Officers believe that if this authority was to introduce the Levy that agreement should be in place with the PCC that their portion of the Levy revenue should be spent on additional activity to manage / police the late night supply period within this authority area.
34. Crime figures provided by Safer York Partnership in relation to crimes within a 50m radius of licensed premises for the proposed late night supply period, from January 2012 – December 2012, show that 95 premises have violent crime, 130 premises have ASB and 78 premises have damage. These premises are located in 12 wards. However, 118 of these premises are located within the 2 city centre wards, Guildhall and Micklegate. Out of the 246 city wide licences premises authorised to sell/supply alcohol during the late night supply period 130 are located in Guildhall and Micklegate wards.
35. Since the 2003 Act came into force on 24 November 2005, the police have never issued a closure order on a licensed premises under Sections 161 of the Act. The police have only issued 3 closure notices under Section 19 of the Crime Justice and Police Act 2001 on licensed premises. Relevant issues have been rectified within 24-48 hours therefore the police have not proceeded further to Magistrates Court to request closure orders to take effect.
36. When considering the health impacts of alcohol related ASB, Accident & Emergency (A&E) admission figures provided by Safer York Partnership (based on data supplied by YDH) for 2011 show that the estimated number of alcohol related attendances at A&E between midnight and 06:00hrs were 665, with a further 196 admissions between 06:00 – 08:00hrs. For 2012 the number of attendances at A&E for victims of assault between midnight and 06:00hrs was 331, of these 164 were alcohol related.
37. Since the 2003 Act came into force the Council has received 14 applications to review premise licences, 8 of these applications were received from responsible authorities and 6 from local residents. Of these applications 5 were withdrawn by the applicant prior to a Sub Committee Hearing and 1 was for a late night refreshment house. At the time of writing this report 1 application is pending a hearing.

38. Due to the low number of crimes associated with licensed premises, and that a majority of these crimes take place in 2 city centre wards, the low number of notices served on licensed premises and the low number of reviews applications received the Council would have to consider the evidence base to ensure a sound justification for the introduction of a Levy and its design.

Council Priorities

39. The Licensing Act 2003 has 4 objectives, the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm.
40. The promotion of the licensing objectives will support the Council's priorities to protect vulnerable people, build strong communities, and protect the environment.
41. By introducing an EMRO or the Levy, the licensing authority will be able to protect vulnerable people and communities that are affected by alcohol related public nuisance and crime and disorder during the late night supply period, either in a specified area (EMRO) or the whole authority area (the Levy). This will make communities safer and stronger for residents and businesses in York.

Implications

42. The implications arising direct from this report are:
- **Financial:** The introduction of the Levy would generate income for the council and police to assist in managing the late night economy. However, the introduction of the Levy would impact on the licensed trade by implementing a financial burden on them.
 - **Human Resources:** The introduction of a levy will result in additional work within the licensing team, however the cost of this will be covered by any income received.
 - **Equalities:** A community impact assessment has been carried out. There are no Equalities implications associated with this report.
 - **Legal:** The introduction of an EMRO or Levy can be legally challenged; therefore clear evidence and reasoning must be in place.
 - **Crime and Disorder:** The introduction of an EMRO or Levy would promote the licensing objective "the prevention of crime and disorder".
 - **Information Technology (IT):** There are no IT implications associated with this report.
 - **Other:** There are no other implications associated with this report.

Risk Management

43. There are no known risks associated with this report. However the introduction of an EMRO or the Levy can legally challenged.

Recommendations

44. Cabinet Members are asked to:

- Approve Option 1, as set out at Para 18, to consult with North Yorkshire Police, the Police and Crime Commissioner, other responsible authorities, Safer York Partnership and the relevant Business Community with regards to the introduction of EMROs and/or the Levy.

Reason: To ensure that the council have the appropriate evidence to consider the introduction of EMROs or a Late Night Levy.

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	Report Approved	√	Date 4 April 2013
Specialist Implications Officer(s) <i>List information for all</i> None			
Wards Affected: <i>List wards or tick box to indicate all</i>		All	√
For further information please contact the author of the report			

Background Papers:

None

Annexes

None