

CHESHIRE EAST COUNCIL

REPORT TO: Licensing Committee

Date of Meeting:	14 th January 2014
Report of:	Miss Kim Evans – Licensing Team Leader
Subject/Title:	Late Night Levy and Early Morning Restriction Orders
Portfolio Holder:	Cllr Les Gilbert - Communities and Regulatory Services

1.0 Report Summary

- 1.1 To provide Members of the Committee with information concerning the implementation of a Late Night Levy (LNL) and the making of Early Morning Restrictions Orders (EMROs).

2.0 Recommendation

- 2.1 That Members note the content of the report, the attached further information and resolve:
- i. That a Late Night Levy or an Early Morning Restriction Order is not appropriate consideration at this time.
 - ii. That further information on the implementation of the Late Night Levy should be presented to a future meeting of the Committee setting out options that should be considered before formal consultation.
 - iii. That further information on the making of an Early Morning Restriction Order(s) should be presented to a future meeting of the Committee setting out options that should be considered before formal consultation.
 - iv. In respect of options ii. and iii. that the (Licensing Team Leader) be given delegated authority to present further options in consultation with the Chairman of the Licensing Committee and the Portfolio Holder for Communities and Regulatory Services.

3.0 Reasons for Recommendations

- 3.1 Members of the Licensing Committee have been requested to consider whether the Council should consider imposing a Late Night Levy.
- 3.2 This report therefore seeks to provide Members of the Committee with information concerning the LNL and EMROs so that they are aware of the different powers that can be used to deal with problems associated with the consumption of alcohol.

4.0 Wards Affected

4.1 All

5.0 Local Ward Members

5.1 All

6.0 Policy Implications

6.1 The Council has committed, in its Strategic Plan, to ensuring that the residents of Cheshire East 'live well and for longer' and that we have a 'strong and resilient economy'.

6.2 Similarly, the Cheshire East Health and Wellbeing Strategy has a number of key aims linked to alcohol consumption:

- § Reduce the levels of alcohol use/misuse by Children and Young People
- § Reduce the incidence of alcohol related harm

6.3 The Council's current Statement of Licensing Policy is silent on the LNL and EMROs as those provisions were not in place when it was adopted in 2009. However, the Council has recently adopted a revised Statement of Licensing Policy (to take effect from February 2014) that confirms the Council will consider whether a LNL or EMRO is appropriate. This revised Policy together with the Statutory Guidance issued by the Home Office in respect of the Licensing Act 2003 confirms the key aims involved in the licensing regime:

- § protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises
- § giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems
- § recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises
- § providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area
- § encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them

7.0 Financial Implications

- 7.1 If Members were minded to consider the implementation of a Levy or the creation of any Orders, additional funding to meet all the implementation requirements (including any further evidence gathering, public notices, and consultation) would need to be identified. Current budgetary allocations make no provision for any work in this area.
- 7.2 The cost of implementing a LNL can be recovered from the gross amount collected and deducted before the apportionment of the net figure (ie a minimum of 70% payable to Cheshire Constabulary). However, if the Council were to consult on the implementation of the Levy and having considered the results of the consultation determine that it should not be implemented additional resources would need to be identified to meet the costs of the consultation process (including public notices).
- 7.3 Additionally, if the Council were to implement the LNL any premises that fall into the levy period would be able to apply for a free variation of licence to curtail their hours. It is impossible to estimate the number of premises that might utilise this facility, but it is likely to impact significantly on the capacity within the Licensing and Legal Teams and consideration should be given to identifying additional staff resources.
- 7.4 There would be no income generated by the creation of an EMRO and it is not possible to quantify the financial benefit, if any, to the Council of their creation.

8.0 Legal Implications

- 8.1 The Police Reform and Social Responsibility Act 2011 enables Licensing Authorities to determine that the LNL is to apply in its area. The Licensing Authority can therefore charge a levy to persons who sell alcohol during the 'late night supply period' to raise contributions towards the enforcement cost associated with the night-time economy
- 8.2 The 'late night supply period' must begin at or after midnight and end at or before 6:00am, but must be the same period every day that it has effect. The LNL must apply to the whole of the Licensing Authority area and is payable by the holder of a 'relevant late night authorisation'. A 'relevant late night authorisation' means a Premises Licence or Club Premises Certificate which authorises the supply of alcohol during the late night supply period.
- 8.3 The Police Reform and Social Responsibility Act 2011 also amended the provisions of the Licensing Act 2003 that gives a Licensing Authority the power to make an EMRO if it considers it appropriate for the promotion of the Licensing Objectives. An EMRO restricts the sale of alcohol in a particular area for a specified period between the hours of midnight and 6:00am.
- 8.4 If an EMRO is made then existing premises licences and club premises certificates granted by the Authority, and temporary event notices given to the

authority, do not have effect to the extent that they authorise the sale of alcohol or the supply to club members during the period specified in the EMRO.

- 8.5 The Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2013 confirms that the functions relating to the Late Night Levy and Early Morning Restriction Orders are not to be the responsibility of the Council's Executive and are Licensing Authority functions. Additionally, the Council has previously made provision in its Constitution for all Licensing Authority functions (save for the adoption of the Statement of Licensing Policy which is reserved to full Council by statute) to be discharged by the Licensing Committee.
- 8.6 In accordance with statutory responsibilities under section 17 of the Crime and Disorder Act 1998 the Council must take reasonable steps to tackle crime, disorder, substance misuse and anti-social behaviour.
- 8.7 The Council also has a statutory responsibility under the Health and Social Care Act 2012 for the health of the population of Cheshire East and it is noted that it is a priority of the local Health and Wellbeing Board to reduce alcohol related harm.

9.0 Risk Management

- 9.1 Members must carefully consider all the information provided and any views received from appropriate stakeholders.
- 9.2 The EMRO and Late Night Levy provisions are both adoptive provisions that require consultation processes to be followed prior to a policy decision on either being made. Adopting either provision in circumstances that may result in a negative impact on existing licence holders will require reliable evidential justifications in order to withstand any potential challenge.
- 9.3 Specific consideration must be given to whether a LNL or EMRO is a proportionate and reasonable response to the problems in our night-time economy or whether alternative measures can be considered. This may include a Cumulative Impact Policy for certain areas or supporting business led best practice schemes (eg Purple Flag or Best Bar None).

10.0 Background

- 10.1 In 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 Police Reform and Social Responsibility Act 2011 (2011 Act), the Late Night Levy and Early Morning Restriction Orders. Following this consultation regulations implemented these powers were made on 31st October 2012.

10.2 Late Night Levy

- 10.2.1 The Late Night Levy is a power at the disposal of the Licensing Authority to introduce a charge for premises that have an alcohol licence with a terminal hour after midnight. It allows the Licensing Authority to charge those businesses for the extra costs that the night-time economy generates for the Police and Local Authority.
- 10.2.2 If introduced, the LNL would apply to all premises (on and off-trade) within the Borough that qualify, the only exceptions being those set by the Government. The levy will be collected at the same time as the annual licensing fee.
- 10.2.3 The licensing authority will need to decide at what time the levy will apply within an operational window that is restricted to between 12 midnight and 6am. Members may wish to consider, if they are minded to consult on the implementation of the LNL, whether different time periods should be consulted on or to leave this open to the views of those who choose to comment.
- 10.2.4 The LNL is aimed not at individual premises, as the costs caused by the night time economy are often not directly linked to any particular businesses, but instead occur as a result of the night time economy as a whole.
- 10.2.5 If introduced, the Licensing Authority can deduct the costs of administering, collecting and enforcing the scheme from the gross collection. From the remainder, at least 70% of the net amount must be passed to the Police. Up to 30% of the total amount retained by the Licensing Authority is ring-fenced to address issues linked to alcohol related crime. No restrictions are imposed on the use of the monies passed to the Chief Officer of Police and the PCC.
- 10.2.6 The levy paid is dependent on the rateable value of the premises and is set by the Government. This is the same as the existing licence fee and annual fee system.
- 10.2.7 Provision is made for a number of discretionary exemptions and reductions in the LNL. Exemptions to the LNL could be offered to:
- § Premises with overnight accommodation
 - § Theatres and cinemas
 - § Bingo halls
 - § Community amateur sports clubs
 - § Community premises
 - § Country village pubs
 - § Business Improvement Districts
- 10.2.8 The Licensing Authority will need to determine whether any of the exemptions should apply and the criteria within which they can be triggered. There is also discretion to offer a 30% reduction from the LNL to premises that are either a member of a specified best practice scheme such as Pubwatch or in receipt of Small Business Rate Relief (with a rateable value of less than £12,000). An exemption to those premises that only have a late-night authorisation to supply alcohol on the premises on 1 January can also be given.

10.2.9 Members should be aware that a significant number of the premises with late licenses may decide to reduce their sale of alcohol hours by submitting a minor variation application as the cost of the LNL may not be worth the continued sales of alcohol after midnight. This would obviously result in a significant reduction in the amount of potential income (there is a requirement to waive the fee for those premises wishing to take advantage of this procedure).

10.3 Early Morning Restriction Orders

10.3.1 An EMRO is a power which enables the Licensing Authority to restrict the sale of alcohol where they consider that there are alcohol related crime and disorder issues in the whole or a part of their area between midnight and 6:00am on all or some days.

10.3.2 This restriction would apply to Premises Licences, Club Premises Certificates and Permitted Temporary Events. There are no exceptions to the type of premises that will be affected by an EMRO except for hotels who provide alcohol to residents through minibars and room service. However hotels who serve alcohol in a bar, lounge or lobby will be affected by an EMRO.

10.3.3 Evidence from Responsible Authorities, local Community Safety Partnerships, together with its own evidence should be used to determine whether an EMRO is appropriate for the promotion of the four Licensing Objectives:

- § The Prevention of Crime and Disorder
- § Public Safety
- § The Prevention of Public Nuisance)
- § The Protection of Children from Harm

10.3.4 The Licensing Authority would need to consider the area, days and times in relation to which the EMRO might apply. However, EMROs will not apply to any premises on New Year's Eve.

10.3.5 Licensing Authorities are required to advertise their proposals on their website and in a local newspaper as well as notifying those licence holders within 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.

10.3.6 If representations are received then a hearing must be held to determine the outcome of the EMRO. It is not unrealistic to expect a large number of representations which could require the hearing being held over a number of days. If it is determined appropriate that an EMRO be made, the licensing authority must be able to demonstrate an evidence based justification for its decision, or risk judicial challenge. If, following representations there are any changes to the original proposal there is a requirement that consultation on the new EMRO be undertaken.

10.3.7 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.

10.4 Conclusions

10.4.1 The decision whether or not to implement a LNL or an EMRO is at the discretion of the Licensing Authority. However, any decisions taken should be evidence based and proportionate.

10.4.2 The introduction of a LNL or an EMRO may result in a reduction of the night time economy where businesses move to other areas where a LNL or EMRO is not in place. Members should consider the financial burden placed upon local businesses directly and indirectly involved in the night time economy.

10.4.3 The Committee is not requested at this stage to decide whether or not to implement the LNL or an EMRO. The Committee is requested to consider the information presented and to resolve whether or not they are minded to have further proposals presented upon which the Authority can consult.

10.4.4 To help Members formulate a decision, the following documents have been produced:

- i. The Home Office Guidance (2012) in relation to the LNL (Appendix A)
- ii. Section 16 of the Guidance issued by the Home Office in relation to the Licensing Act 2003, which provides guidance on EMROs (Appendix B)
- iii. A statistical report from Cheshire Constabulary showing crimes and incidents related to alcohol for the period 01/11/2012 to 31/10/2013 (Appendix C)
- iv. A report from the Cheshire Constabulary setting out their views (Appendix D)
- v. A breakdown of the estimated income that would be generated by the LNL (Appendix E - to follow)

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report author:

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