



## **EARLY MORNING RESTRICTION ORDERS & LATE NIGHT LEVY UPDATE**

### **SUMMARY**

- 1.1 The Police Reform and Social Responsibility Act 2011 (PRSA) has introduced the power for licensing authorities to impose a late night levy on the whole of the City and also to impose an Early Morning Restriction Order on part or all of the City as a means of changing the balance of the night time economy in favour of the general community.

### **RECOMMENDATION**

- 2.1 To note the contents of the report.
- 2.2 To investigate the feasibility of adopting and implementing an Early Morning Restriction Order and / or a Late Night Levy within Derby City Council's administrative area.

### **REASONS FOR RECOMMENDATION**

- 3.1 The implementation of an Early Morning Restriction Order and / or a late night levy will give the local authority powers to help combat crime and disorder within the night time economy.

### **SUPPORTING INFORMATION**

#### **Early Morning Restriction Orders (EMRO's)**

- 4.1 An EMRO is a power which has been extended by the (PRSA) to enable licensing authorities 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 12 midnight and 06.00am on all or some days.
- 4.2 This restriction would apply 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 who provide alcohol to residents through mini-bars and room service. However hotels who serve alcohol in a bar, lounge or lobby will be affected by an EMRO.

- 4.3 The licensing authority should consider evidence from Responsible Authorities, local Community Safety Partnerships, together with its own evidence to determine whether an EMRO is appropriate for the promotion of the four licensing objectives.
- 4.4 As the Council has a Cumulative Impact Policy (CIP), it needs to consider how an EMRO may affect the CIP and the Council's Licensing Policy.
- 4.5 It falls to the licensing authority to decide the area, days and times in relation to which the EMRO would apply. However, EMRO's will not apply to any premises on New Year's Eve.
- 4.6 Licensing authorities are required to advertise their proposals on their website and in their 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.
- 4.7 If representations are received then a hearing must be held to determine the outcome of the EMRO. 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.
- 4.8 Full Council would need to approve the Order and decide on a start date for the Order, which must be no less than two months after is made.
- 4.9 Central Government has provided more information to licensing authorities in revised statutory guidance issued under section 182 of the Licensing Act 2003. This can be found at <http://www.homeoffice.gov.uk/publications/alcohol-drugs/alcohol/guidance-section-182-licensing>
- 4.10 Given the timescales involved it is anticipated the earliest date that a licensing authority could make an EMRO would be April 2013.

### **Late Night Levy**

- 4.11 The late night levy is a power for licensing authorities to introduce a charge for premises that have an alcohol licence with a terminal hour after 12 midnight. It allows licensing authorities to charge those businesses for the extra enforcement costs that the night-time economy generates for police and local authorities. Further information is available at <http://www.homeoffice.gov.uk/publications/alcohol-drugs/alcohol/alcohol-supporting-guidance/late-night-levy-guidance>
- 4.12 Prior to making a decision to implement the levy, the licensing authority should have discussions with the Chief Officer of Police, the Police and Crime Commissioner (PCC) and local police to decide whether it is appropriate to introduce the levy in its area.
- 4.13 If the licensing authority considers it appropriate, then it must conduct a formal consultation with the police, the PCC, existing licence holders and any other persons, including residents about its decision.

- 4.14 This consultation should also consider whether the licensing authority needs to apply any exemptions or discounts to the levy and how it will apportion net levy revenue between the police and the licensing authority.
- 4.15 The decision whether or not to implement a levy is left entirely to the discretion of the licensing authority.
- 4.16 If introduced, the levy will apply to all premises (on and off-trade) within the city area that qualify, the only exceptions being those set by Central Government. The levy will be collected annually at the same time as the annual fee.
- 4.17 The licensing authority will decide at what time the levy will apply within an operational window that is restricted to between 12 midnight and 6am.
- 4.18 Premises licence holders who choose to reduce the hours on their licence would still have the ability to apply for Temporary Events Notices for 21 days a year.
- 4.19 The late night levy 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. This ensures the application of the levy across the whole licensing authority area, and that a meaningful amount is collected and is simple to adopt and administer.
- 4.20 If introduced, the licensing authority can deduct the costs of administering, collecting and enforcing the scheme. 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 towards addressing issues that include tackling alcohol-related crime and disorder and services connected to the management of the night time economy, including street cleaning. No restrictions are imposed on the use of the monies passed to the Chief Officer of Police and the PCC.
- 4.21 The levy paid is dependent on the rateable value of the premises and is set by Central Government. This is the same as existing licence fee and annual fee system.
- 4.22 The levy is set at:

Rateable Value Bands	A No rateable value to £4300	B £4301 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 Category D premises that primarily or exclusively sell alcohol	E x 3 Multiplier applies to Category E premises that primarily or exclusively sell alcohol
Levy Charges	£299	£768	£1,259	£1,365	£1,493	£2,730	£4,440
Annual Fee	£70	£180	£295	£320	£350	£700	£1050

4.23 Provision is made for a number of discretionary exemptions and reduction in the levy. Exemptions to the levy 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

It is therefore in the licensing authority's discretion whether any of the exemptions should be applicable, and the criteria within which they can be triggered.

Licensing authorities also have the discretion to offer a 30% reduction from the levy to premises that are either a member of a specified best practice scheme, or in receipt of Small Business Rate Relief and have a rateable value of less than £12,000.

Licensing authorities can also offer an exemption to those premises which only have a late-night authorisation to supply alcohol on the premises on 1 January.

4.24 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 that could be generated by adopting this provision.

4.25 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 sales of alcohol after midnight. This would obviously result in a significant reduction in the amount of potential income.

### **Conclusion**

4.26 There are advantages and disadvantages when considering whether EMRO'S or the Late Night Levy would be appropriate for Derby City Council.

4.27 Informal discussions with Derbyshire Police indicate that they have a preference for an EMRO, as opposed to a late night levy, but a more in-depth assessment of any evidence and further discussions are needed before any definite decision regarding applying for an EMRO can be made.

4.28 The potential risk of reduced income should be fully explored before implementation of a late night levy. A high proportion of premises currently have a licence to sell or supply alcohol after 12 midnight on 1 or 2 days a week; mainly to just 1am.

4.29 The implementation of an EMRO may have an adverse affect on neighbouring areas. On the arrival of the terminal hour, this may lead to customers moving on to another area, which is not subjected to an EMRO.

- 4.30 Any possible reduction in trading hours imposed by an EMRO may have a negative impact on commerce, employment and tourism, by curtailing the trading hours. There are other mechanisms to deal with individual problem premises, such as using the licence review process.
- 4.31 EMRO's and late night levy's were proposals originally set out in the Government's previous consultation exercise 'Re-balancing the Licensing Act'. In September 2010, Committee made some comments as part of that consultation process and these have re-produced for information at Appendix 3.

## OTHER OPTIONS CONSIDERED

- 5.1 Not applicable.

**This report has been approved by the following officers:**

<b>Legal officer</b>	Olu Idowu
<b>Financial officer</b>	N/A
<b>Human Resources officer</b>	N/A
<b>Service Director(s)</b>	John Tomlinson
<b>Other(s)</b>	

<b>For more information contact:</b>	Sandra Mansell, Tel. 01332 641931, e-mail <a href="mailto:sandra.mansell@derby.gov.uk">sandra.mansell@derby.gov.uk</a>
<b>Background papers:</b>	None
<b>List of Appendices:</b>	Appendix 1 – Implications Appendix 2 – Potential Income from a Late Night Levy Appendix 3 – Rebalancing the Licensing Act Comments

<b>IMPLICATIONS</b>
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**Financial**

- 1.1 None related to the consultation process itself but there will be some financial implications for Council in their administration of any adopted scheme in the future.

**Legal**

- 2.1 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 result in a negative impact on existing licence holders will require reliable evidential justifications in order to withstand the rigours of potential judicial challenge.

**Personnel**

- 3.1 None directly arising from this report.

**Equalities Impact**

- 4.1 Any proposed changes will apply equally to all groups within the community and no particular group(s) will be disadvantaged.

**Health and Safety**

- 5.1 None directly arising from this report.

**Carbon commitment**

- 6.1 None directly arising from this report.

**Value for money**

- 7.1 None directly arising from this report.

**Corporate objectives and priorities for change**

- 8.1 The information set out in this report supports the corporate priorities so the people of Derby **enjoy being safe and feeling safe** and the Council provides **good quality services that meet local needs**.

## Appendix 2

<b>Rateable Value Bands</b>	<b>A No rateable value to £4300</b>	<b>B £4301 to £33,000</b>	<b>C £33,001 to £87,000</b>	<b>D £87,001 to £125,000</b>	<b>E £125,001 and above</b>	<b>D x 2 Multiplier applies to Category D premises that primarily or exclusively sell alcohol</b>	<b>E x 3 Multiplier applies to Category E premises that primarily or exclusively sell alcohol</b>
<b>Levy Charges</b>	£299	£768	£1,259	£1,365	£1,493	£2,730	£4,440
<b>No.s of Premises Potentially Affected</b>	20	112	51	15	24	2	3
<b>Potential Income (assuming no exemptions)</b>	£5980	£86,016	£64,209	£20,475	£35,832	£5,460	£13,320

<b>POTENTIAL TOTAL</b>	<b>£145,276</b>
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## Rebalancing the Licensing Act Comments

<p>Q12. What is the likely impact of extending the flexibility of Early Morning Restriction Orders to reflect the needs of local areas?</p>	<p>We welcome the flexibility provided by the proposed change. However, we recognise that the new powers could lead to a return to the 'terminal hour' as in previous legislation, but on a more localized basis.</p>
<p>Q15. Do you believe that the late night levy should be limited to the recovery of these additional costs? Do you think that local authorities should be given some direction on how much they can charge under the levy?</p>	<p>We support the introduction of a late night levy, which should be used to recover additional costs incurred by both the authorities of the police and the licensing authority. We believe that licensing authorities should be given some discretion on how much can be charged via the levy.</p>
<p>16. Do you think it would be advantageous to offer such reductions for the late night levy?</p>	<p>We do not support this proposal. It would create administrative burdens for the licensing authority as businesses join and leave different 'best practice schemes'.</p>
<p>17. Do you agree that additional costs of these services should be funded by the late night levy?</p>	<p>Yes, we welcome this proposal.</p>