

EAST HERTS COUNCIL

LICENSING COMMITTEE – 14 MARCH 2013

REPORT BY DIRECTOR OF NEIGHBOURHOOD SERVICES

8. LICENSING ACT 2003 AS AMENDED POLICE REFORM AND SOCIAL RESPONSIBILITY ACT 2011: EARLY MORNING RESTRICTION ORDERS AND LATE NIGHT LEVY

WARD(S) AFFECTED: ALL

Purpose/Summary of Report:

- This report describes the arrangements for declaring an early morning restriction order, and invites the Committee to debate the extent to which an Early Morning Restriction Order (EMRO) should be implemented in the East Herts area.

RECOMMENDATIONS FOR LICENSING COMMITTEE: That:

(A)	The principle of an EMRO and/or Late Night Levy being implemented in East Herts be supported;
(B)	The process of commencing public consultation for a draft EMRO and/or Late Night Levy be supported;
(C)	If an EMRO and/or Late Night Levy is made, the Statement of Licensing Policy be reviewed and revised accordingly; and
(D)	Consideration be given to the potential advantages of Cumulative Impact Areas as an alternative to either or both the Late Night Levy and EMROs.

1.0 Background

- 1.1 The Police Reform and Social Responsibility Act 2011 amended the Licensing Act 2003 to allow Licensing Authorities to make an Early Morning Restriction Order to operate for a period that the Licensing Authority may define, between midnight and 6 a.m.

- 1.2 It was initially proposed that EMROs would be mutually exclusive with the Late Night Levy, however this was not implemented, and it is possible to have both.
- 1.3 Before the Licensing Authority make an EMRO, they must consider it is appropriate for the promotion of the Licensing Objectives:
 - The promotion of public safety;
 - The protection of children from harm;
 - The prevention of crime and disorder;
 - The prevention of public nuisance.
- 1.4 Before the Licensing Authority make an EMRO, they must have regard to Guidance issued under s.182 Licensing Act (currently Chapter 16, page 102). A copy of the current version of the guidance is included as an appendix to a separate report to this Committee on Statement of licensing Policy Review Timetable.
- 1.5 The effect of an Order once made, is to invalidate authorisations for sale and supply of alcohol made under Premises Licences, Club Premises Certificates, and Temporary Event Notices.
- 1.6 An Order may apply to any time period between midnight and 6 a.m. on every day, or on particular days of the week and year. The time period specified may be different on different days of the week.
- 1.7 An Order may apply to the whole or any part of the district, and may be indefinite, or for a fixed period of time.
- 1.8 On making the Order, the Licensing Authority must within 7 days serve notice by post on every licence holder and applicant, advertise the Order, and publish it on the Council's website for a period of 28 days.
- 1.9 The Late Night Levy is a power in Part 2 of the Police Reform and Social Responsibility Act 2011. Licensing authorities may charge a levy to persons licensed to sell alcohol late at night, to raise contributions towards mitigating adverse effects of the late-night economy.
- 1.10 The levy is available over the whole of the administrative area. The levy would be payable by premises licence holders and club premises certificate, in relation to premises, which authorise the

sale or supply of alcohol on any days during the “late night supply period” beginning at or after midnight, ending at or before 6am.

- 1.11 Any decision to introduce, vary or end the requirement for the levy should be made by full council.
- 1.12 Home Office guidance on the Late night Levy is presented with this report.
- 1.13 Cumulative impact areas may be declared in areas where an increase in the number of alcohol licensed outlets is likely to result in additional crime, disorder, and nuisance. There is a policy presumption that applications for new premises licences, and intensification in existing premises licences will be refused, unless the applicant can demonstrate in a positive way that the grant will not have an adverse impact on the Licensing objectives.
- 1.14 The requirements for declaring a Cumulative Impact Area have changed so that instead of being ‘necessary’ for the licensing objectives, it now only need be ‘appropriate’.
- 1.15 When considering whether a cumulative impact area is appropriate, the licensing Authority must have regard to guidance issued under s 182 Licensing Act (13.9 et seq).

2.0 Report

- 2.1 Initial views have been sought from the Police, Community Safety colleagues, from the Portfolio Holder, and from Chairman of the Licensing Committee.
- 2.2 The Portfolio Holder requests that Licensing Committee are clear about the aims they wish to achieve through use of an Early Morning Restriction Order, and whether any of these aims may be better achieved through use of the Late Night Levy or other measures
- 2.3 The Portfolio Holder also requests that Licensing Committee address themselves specifically to the impact on the licensed restaurant trade, and the impact on traders.
- 2.3 A sample of licensed restaurant closing times has been included in **Essential Reference Paper B** to assist members assess the potential impact of any EMRO on the licensed restaurant trade.

- 2.3 The Police have identified that appropriate use of an Early Morning Restriction Order to prevent alcohol sales after 1 a.m. would assist them in planning their rota shifts. An EMRO would provide a greater level of certainty than could be achieved through use of the Late Night Levy, as an Early Morning Restriction Order prevents TENs being served on as little as 10 working day's notice, to authorise late night events with the sale of alcohol. The police stated that policing the late night economy has resource implications for other police night time activities, including detection and investigation of night time burglary.
- 2.4 An EMRO would restrict the lateness at which alcohol related crime, disorder and nuisance may take place.
- 2.5 Setting the time of an EMRO as early as midnight could potentially re-create the problems, time-shifted by one hour, that were experienced before the Licensing Act after 11 p.m. closing, with widespread alcohol related crime, disorder, anti-social behaviour and nuisance.
- 2.6 Setting the EMRO time too late would have no benefit to the Police in planning their shift patterns. If an EMRO is considered, officers suggest a time of 1:30 a.m. would be appropriate.
- 2.4 Benchmarking has been carried out to assess whether other local authorities are planning to implement EMROs or alternatives such as the Late Night Levy, and data is presented in **Essential Reference Paper A**.
- 2.5 A Late Night Levy may raise funds for the Licensing Authority, and may make it uneconomic for some premises to continue to offer alcohol after the Levy cut in hour.
- 2.6 Smaller premises such as restaurants that wish for e.g. to offer a liqueur coffee at the end of their trading session may be more adversely affected than larger high volume drinking establishments that could choose to add a small additional cost to a pint served after the levy hour.
- 2.7 30% of the Late Night Levy revenue may be retained by the Licensing Authority, and must be spent on measures to ameliorate the negative effects of the late night economy. At least 70% must be paid to the Police Authority central funds. There is no obligation on the Police to hypothecate these funds to expenditure on policing the late night economy.

- 2.8 If every premises currently licensed to sell alcohol after midnight were to elect to maintain their existing licensed hours, then approximately £18,000 in additional fees to the Licensing Authority could be raised by implementing a late night levy from midnight.
- 2.9 If the Licensing Authority decides to implement a Late Night Levy, then any premises currently entitled to retail alcohol during the levy period will be entitled to make a free variation application to reduce licensed hours, so as to avoid the Late Night Levy.
- 2.10 Premises operating under a Temporary Event Notice will not be required to pay the Late Night Levy.
- 2.11 The amounts payable to the Licensing Authority that will in practice be raised by the late night levy are not known, but are estimated to be below £10,000.
- 2.12 The additional cost of the late night Levy may have an adverse impact on town centre metrics that inform investment decisions made by commercial organisations. This may in turn have a disproportionate impact on the health of the local economies.
- 2.13 Cumulative Impact Areas may be considered as an alternative, or additional measure for helping control crime, disorder, anti social behaviour and public nuisance.
- 2.14 A cumulative impact area would prevent the number of alcohol licensed retail outlets from expanding. This may find favour with existing operators that have maintained a presence in our town centres during the economic slowdown, as they will benefit the greatest amount when and if the economy does start to expand again.
- 2.15 A dip sample of all restaurant premises with names beginning A-K (approximately half of the predominantly restaurant led premises, 26 premises) was undertaken.
- 2.16 Latest sale of alcohol:

	Friday to Sunday	Monday to Thursday
Before midnight	8	9
Midnight	13	13

1.00 a.m.	1	3
2.00 a.m.	4	1

2.17 Imposition of a Late Night Levy for sales of alcohol after midnight is likely to affect approximately 10 restaurant premises in the district.

2.18 Approximately 8 restaurant premises are likely to be affected by an Early Morning Restriction Order taking effect at 1 a.m. or later.

3.0 Implications/Consultations

3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

Guidance issued under s.182 Licensing Act 2003 (as Essential Reference Paper to a separate report to this committee, Statement of Licensing policy Timetable for implementation). Guidance: Late Night Levy.

Contact Member: Councillor Malcolm Alexander – Executive Member for Community Safety and Environment
malcolm.alexander@eastherts.gov.uk

Contact Officer: Brian Simmonds – Head of Community Safety and Health Services, Extn: 1498.
brian.simmonds@eastherts.gov.uk

Report Author: Paul Newman – Licensing Manager, Extn: 1521.
paul.newman@eastherts.gov.uk