

**Classification:** Public

**Key Decision:** No

## **Gravesham Borough Council**

**Report to:** Licensing Committee

**Date:** 20 September 2012

**Reporting officer:** Sarah Kilkie, Assistant Director (Communities)

**Subject:** Early Morning Alcohol Restriction Orders and Late Night Levy

### **Purpose and summary of report:**

To provide an update to Members in relation to changes to the Licensing Act 2003 specifically relating to Early Morning Alcohol Restriction Orders (EMRO'S) and the Late Night Levy (LNL)

### **Recommendations:**

- 1) That the report be noted but no action or decisions will be taken until legislative changes are confirmed.
- 2) Although no decisions are sought from Members on whether to introduce either an EMRO or a late night levy at this stage, as all the regulations have not yet been released by Government, Members are asked to consider the implications of the following options:
  - a) At present, based on the information available, whether or not Members look favourably at introducing either an EMRO or a late night levy in the district of Gravesham
  - b) That alternative voluntary schemes working with the licensed trade and such initiatives as Purple Flag accreditation be considered

## **1. Background**

- 1.1 The Police Reform and Social Responsibility Act 2011 introduced amendments to the Licensing Act 2003. Whilst the vast majority of these changes were implemented on 26 April 2012 further amendments are expected in October and these changes are expected to include the introduction of Early Morning Alcohol Restriction Orders and a Late Night Levy, both of which are intended 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 on this subject are attached as Appendix 2.

## **2. Early Morning Alcohol Restriction Orders (EMRO'S)**

- 2.1 An EMRO is a power which has been extended by the 2011 Act to enable licensing authorities to restrict the sale of alcohol where they deem 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. 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 who provide alcohol to residents through mini-bars and room service for residents to consume alcohol in their rooms. However hotels who serve alcohol in a bar, lounge or lobby will be affected by an EMRO.

- 2.2 A licensing authority can decide to make an EMRO if they have sufficient evidence that the order is appropriate for the promotion of the four licensing objectives. The Police and Crime Commissioner or the public may request the introduction of an EMRO. It falls to the licensing authority to decide the area, days and times in relation to which the EMRO would apply. However, in recognition on New Years Eve's status as a night of national celebration, EMRO'S will not apply on this date.
- 2.3 Licensing authorities will be 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 (but not all licence holders within the borough). Any person wishing to make representations for, or against, the proposal will have 42 days in which to lodge their comments.
- 2.4 If representations are received then a hearing must be held to determine the outcome of the EMRO. If it is deemed appropriate that an EMRO be made, the licensing authority must be able to fully justify its decision or risk a possible 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.
- 2.5 The Government will provide further information to licensing authorities in revised statutory guidance issued under section 182 of the Licensing Act 2003. It is therefore anticipated that the earliest date that a licensing authority could make an EMRO would be March 2013.

### **3. Late Night Levy**

- 3.1 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.
- 3.2 Prior to making a decision to implement the levy, the licensing authority should have discussions with the relevant chief officer of police, the PCC and local police to decide whether it is appropriate to introduce the levy in its area. If the licensing authority considers it appropriate, then it must formally consult the police, the PCC, licence holders and any other persons about its decision. This consultation should also ask 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.
- 3.3 Nevertheless whether or not to implement the levy will be left entirely at the discretion of the licensing authority. If the levy is introduced it will apply to all premises within the borough that qualify (both in the on-trade and the off-trade) with the only exceptions being those categories set by Government, and the levy will be collected annually at the same time as the annual retainer fee. It will be up to the licensing authority to decide the time at which the levy applies in their area, although it will be restricted to applying it sometime between the hours of 12 midnight and 06.00am.

- 3.4 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. This would lead to a large amount of extra work for the licensing team with very little income as these notices only cost £21
- 3.5 The late night levy is said not to be targeted at individual premises because the costs caused by the night time economy are often not directly linked to particular businesses, but instead occur as a result of the night time economy as a whole. For example, a fight may take place between groups of individuals who have each visited a variety of different premises over the evening. It is said that application of the levy across the whole licensing authority area ensures that a meaningful amount is collected and is simple to adopt and administer.
- 3.6 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 Police. Whilst the licensing authority will have restrictions imposed on them regarding the types of services that they can fund with their 30% portion of the levy and which will mean that its must be spent on tackling alcohol-related crime and disorder and services connected to the management of the night time economy there is no such restriction placed upon the Police. However should the Late Night Levy be approved the use of the police proportion of the levy is at the direction of the Police and Crime Commissioner rather than at local level.
- 3.7 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 retainer fee and means that larger businesses will make greater contributions to the levy than smaller ones.
- 3.8 The levy set is as follows:

<b>Rateable Value Bands</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>Dx2</b>	<b>Ex3</b>
	<b>No rateable value to £4,300</b>	<b>£4,301 to £33,000</b>	<b>£33,001 to £87,999</b>	<b>£87,001 to £125,000</b>	<b>£125,001 to above</b>	<b>Multiplier applies to premises in category D that primarily or exclusively sell alcohol</b>	<b>Multiplier applies to premises in category E that primarily or exclusively sell alcohol</b>
Annual Levy Charge	£299	£768	£1,259	£1,3365	£1,493	£2,730	£4,440
Annual Retainer Fee (maintenance fee paid to council)	£70	£180	£295	£320	£350	£640	£1,050

- 3.9 Provision is being 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

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 in receipt of Small Business Rate Relief and have a rateable value of less than £12,000. Guidance on reductions will be published on the Home Office's website in October 2012. It is unclear whether the 'G-Safe' scheme will fall into the criteria required for reductions.

- 3.10 A flow chart mapping out the processes to be followed in adopting either an EMRO or a Late Night Levy is shown as Appendix 3.

#### **4. Income and Expenditure**

- 4.1 Disregarding the potential exemptions and reductions in the levy, the table shown in Appendix 4 shows the number of premises that would be affected by the Levy and the potential income generated. Figures are also given demonstrating the reduction in income should exemptions be given
- 4.2 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. This would obviously result in a significant reduction in the amount levied (before any deductions or exemptions are considered).

#### **5. Options**

- 5.1 There are obviously 'pros' and 'cons' when deliberating whether EMRO'S or the Late Night Levy would be appropriate to adopt for Gravesham borough. Some of the arguments in this respect are shown as Appendix 5 and reflect both the views of council officers and the police.
- 5.2 Initial discussions with Kent Police indicate that they have a desire to reduce the overall trading hours of licensed premises but feel that a watching brief of 18 months would be more appropriate in respect of the new EMRO and Late Night Levy measures.

- 5.3 In the meantime it is proposed by council officers and the police to explore alternative and voluntary ways of working with the licensed trade to achieve the desired outcomes of a properly run and profitable night time economy. Initiatives such as Purple Flag accreditation will be amongst the schemes considered as will the establishment of a Town Centre Forum targeted specifically at working in co-operation with licensees.

## 6. BACKGROUND PAPERS

Anyone wishing to inspect background papers should, in the first place, be directed to Committee & Electoral Services who will make the necessary arrangements.

<b>IMPLICATIONS</b>		<b>APPENDIX 1</b>	
<b>Legal</b>	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		
<b>Finance and Value for Money</b>	If licensed premises choose to reduce their licensed hours to avoid paying the late night levy then any anticipated income could be severely reduced.		
<b>Risk Assessment</b>	<p>A drawback of EMRO'S and the levy is the impact that it could have on the vibrancy of Gravesham borough as it will put extra financial strain on licensed premises. A balance needs to be struck between protecting residents from nuisance and late night alcohol related crime and protecting local economy.</p> <p>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. 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 4 details the 'pros' and 'cons' of adopting these enforcement measures.</p> <p>If we introduce EMRO'S and the Late Night Levy and other authorities do not then this could have a negative effect on our night time economy who could suffer financial problems and would not be on a even footing with their competitors.</p>		
<b>Equality Impact Assessment</b>	<b>Screening for Equality Impacts</b>		
	<b>Question</b>	<b>Answer</b>	<b>Explanation</b>

	a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	<b>No</b>	EMRO's and the Late Night Levy would apply to all licensees who qualify equally with no exceptions for different community groups
	b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	<b>No</b>	N/A
	c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		N/A
<i>In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above</i>			
<b>Corporate Business Plan</b>	There are direct links to area of focus: Focus Area 1 – Keeping Gravesham Safe There are indirect links to area of focus: Focus Area 12 – Driving the economic development of the borough		
<b>Crime and Disorder</b>	Licensing regulation provides the Council with a means of reducing crime and disorder as well as an ability to protect vulnerable persons.		