

LICENSING COMMITTEE (LICENSING ACT 2003 FUNCTIONS)

Agenda Item 24

Brighton & Hove City Council

Subject:	Consultation response on Late Night Levies and Early Morning Restriction Orders Report		
Date of Meeting:	8 March 2012		
Report of:	Head of Planning and Public Protection		
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Ward(s) affected:	All		

FOR GENERAL RELEASE/ EXEMPTIONS

1. SUMMARY AND POLICY CONTEXT:

- 1.1 To report on the response to Home Office on proposed Late Night Levies (LNLs) and Early Morning Restriction Orders (EMROs).

2. RECOMMENDATIONS:

- 2.1 That Committee note the report.
- 2.2 That members to resolve to agree the consultation response

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The Early Morning Restriction Order was an uncommenced power within the Licensing Act 2003, reintroduced by the Police Reform and Social Responsibility Act 2011 (PRSRA) at Part 2, section 119. Chapter 2, section 125, of the PRSRA introduced the concept of Late Night Levies as part of "Rebalancing the Licensing Act".
- 3.2 On 17 January 2012, the Home Office launched a consultation paper "Dealing with the problems of late night drinking – a consultation on secondary legislation for the Late Night Levy and Early Morning Restriction Orders". Consultation runs for 12 weeks and will close on 10 April 2012. Here is a link to the website <http://www.homeoffice.gov.uk/publications/about-us/consultations/late-night-drinking/>
- 3.3 Early Morning Restriction Orders could be applied by licensing authorities flexibly between midnight and 6am to restrict the sale of alcohol. Licensing authorities could apply these orders to areas where they consider that restricting the late night supply of alcohol is appropriate to promote the licensing objectives. Before this power is commenced, regulations must be made which will prescribe details

- of the process for making an EMRO and the kinds of premises that will be exempt from an EMRO.
- 3.4 There is no fee payable by premises within an EMRO but there are many steps that would have to be taken by the licensing authority including notifying all responsible authorities and holders of club premises certificates and premises licences, advertising the proposed order to residents and others who may be adversely affected by the proposed order who then have 28 days to make relevant representations (for or against), the authority then considers representations and holds any hearings that may be required. If satisfied that the proposed order is 'appropriate' the authority would have to have the order approved by Full Council.
 - 3.5 The licensing authority would decide on a start date for the order, no less than two months after it is made and would then put the order and its justification onto its website and would have to notify all affected premises. The authority would also have to put notices in the affected area.
 - 3.6 The Late Night Levy would allow licensing authorities to raise a contribution from late opening alcohol retailers towards the policing costs generated by the late night economy. The levy would apply to all premises (on and off-trade) throughout the licensing authority's area which are authorised to sell or supply alcohol in the time period set by the licensing authority (any time between midnight and 6am). The levy would not apply to Temporary Event Notices. The 2011 PRSRA makes provision for the Government to prepare draft regulations before the levy scheme is commenced. Regulations will prescribe details of the process for adopting the late night levy.
 - 3.7 Prior to making a decision to implement the levy, the licensing authority would have to have discussions with the Police and Crime Commissioner (PCC) and local police to decide whether it is appropriate to introduce the levy in its area. If so, the licensing authority must formally consult the PCC, the police, licence holders and others about its decision to introduce the levy. (The PCC has not yet been appointed).
 - 3.8 There is a fee payable by premises within the LNL, based around the rateable value of the premises. (LNL Fee: Band A £299, Band B £768, Band C £1259, Band D £1365 (with multiplier £2730), Band E £1493 (with multiplier £4440)). Fees would be collected by the licensing authority, and money raised from the levy, minus administration costs would be shared with a minimum of 70% going to the Police and a maximum of 30% to the licensing authority.
 - 3.9 The licensing authority should use the 30% to fund late night services such as late night street wardens, late night taxi marshals and late night street cleaning. Police may use their 70% for high profile policing initiatives to tackle violent or disorderly behaviour, multi-agency education and information programmes (understanding the risk to children and young persons targeted at parents and teachers; ditto targeted at bar staff in the night time economy to increase awareness of risks, vulnerability and consequences; financial support for projects to expand the use of volunteers in the night time economy with an emphasis on safeguarding vulnerable people and promoting the perception of safety).

- 3.10 Licence holders wishing to avoid the effects of EMRO or LNL will be able to make a minor variation to bring back their hours. This would normally cost £89 but under this legislation, would be free of charge to them whilst involving the licensing authority in a potentially massive amount of work.
- 3.11 There are likely to be exemptions to some categories of premises, such as premises with overnight accommodation (B&B or hotel who does not sell to non-residents), restaurants, theatres and cinemas, casinos and bingo halls, community amateur sports clubs and community premises, although officers would seek greater definition for some of these categories.
- 3.12 There may be a reduction (10%) to the fee paid if the licence holder was part of a Business Improvement District; if they receive small business rate relief; if they are a members club; if they take part in best practice schemes (like Best Bar None, Pubwatch, Clubwatch, Shopwatch) or contribute towards a Community Alcohol Partnership (up to a total of 30%). Greater clarification on these categories will be sought by officers.
- 3.13 Officers intend to respond to the consultation – see appendix 1 and 2.

4. COMMUNITY ENGAGEMENT AND CONSULTATION

- 4.1 This matter has been discussed at the Licensing Strategy Group.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 Officers are concerned about the number of free Minor Variation Applications that would have to be dealt with. The Home Office Impact Assessment (IA) states on page 16 “There may be other costs in administering the levy, such as sending out a levy invoice, but these processes will be done in tandem with the existing licence fee regime and will not constitute a new cost”. Page 17 of the IA “Enforcement” states “There will not be any significant cost in enforcement costs. The late night levy can be collected alongside the annual licence fee and contain negligible new costs”. The licensing authority will only be able to keep up to 30% of income collected (after administration costs have been taken out) but this will have to be used as specified (see 3.8). Officers are concerned that introduction of EMROs or LNL will necessitate a large amount of work not already carried out, possibly requiring more staff.

Finance Officer Consulted: Karen Brookshaw Date: 22/02/12

Legal Implications:

- 5.2 Within the body of the report

Lawyer Consulted: Rebecca Sidell Date: 22/02/12

Equalities Implications:

- 5.3 None

Sustainability Implications:

- 5.4 Late night levy and EMRO could lessen night time noise disturbance and disorder.

Crime & Disorder Implications:

- 5.5 LNL and EMRO are government policies to address late night disorder.

Risk and Opportunity Management Implications:

- 5.6 There is a risk to the local economy based in entertainment and the licensed trade.

Public Health Implications:

- 5.7 Reduced alcohol availability should reduce alcohol related harms.

Corporate / Citywide Implications:

- 5.8 A balance needs to be struck between protecting residents from nuisance and protecting local economy.

SUPPORTING DOCUMENTATION

Appendices:

- 1. Officers proposed response to consultation.
- 2. Extract from Dealing with the problems of late night drinking (pages 8-16)
- 3. Dealing with the problems of late night drinking
- 4. LNL flow chart
- 5. EMRO flow chart
- 6. LNL – subsequent year flow chart

Documents in Members' Rooms

- 1. None

Background Documents

- 1. None