



LICENSING (LICENSING ACT 2003) COMMITTEE

Monday, 19th March, 2012

**At the rising of the Licensing
Committee**

Town Hall, Watford

Publication date: 9 March 2012

CONTACT

If you require further information or you would like a copy of this agenda in another format, e.g. large print, please contact Jodie Kloss in Legal and Property Services on 01923 278376 or by email to legalanddemocratic@watford.gov.uk (Minicom available on 01923 278499).

Welcome to this meeting. We hope you find these notes useful.

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COMMITTEE MEMBERSHIP

Councillor J Brown (Chair)

Councillor K Hastrick (Vice-Chair)

Councillors K Brodhurst, J Connal, K Crout, G Derbyshire, J Dhindsa, P Jeffree, C Leslie, M Mills, A Mortimer, F Qureshi, D Scudder, L Scudder and D Walford

AGENDA

PART A - OPEN TO THE PUBLIC

1. **APOLOGIES FOR ABSENCE/ COMMITTEE MEMBERSHIP**
2. **DISCLOSURE OF INTERESTS (IF ANY)**
3. **MINUTES**

To approve for signature the minutes of the meeting held on 9 January 2012.

4. **EARLY MORNING RESTRICTION ORDERS AND LATE NIGHT LEVIES** (Pages 1 - 12)

Report of the Head of Environmental Services

This report asks the Committee to endorse the response to the Government's consultation paper.

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*PART A

Report to: Licensing Committee
Date of meeting: 19 March 2012
Report of: Head of Environmental Services
Title: Early morning restriction orders and late night levies

1.0 SUMMARY

- 1.1 The Government intend to introduce later this year two measures to deal with the problems of late-night drinking. These two instruments – early morning restriction orders (EMROs) and late night levies (LNLs) – are part of a package of measures introduced under the Police Reform and Social Responsibility Act 2011.
- 1.2 In January this year the Government published a consultation document (available at <http://www.homeoffice.gov.uk/publications/about-us/consultations/late-night-drinking/>) on how EMROs and LNLs will work in practice and Members are asked for their comments.

2.0 RECOMMENDATIONS

- 2.1 That the response to the Government's consultation paper at appendix 1 is endorsed, with any further amendments the Committee thinks fit.
- 2.2 Officers submit a further report to the Committee in due course on the merits of implementing an EMRO or LNL in Watford.

Contact Officer:

For further information on this report please contact: Jeffrey Leib (Licensing Manager) - telephone extension: 8429 or email: jeffrey.leib@watford.gov.uk.

Report approved by: Head of Environmental Services, Alan Gough.

3.0 **DETAILED PROPOSAL**

3.1 As part of the Coalition Government Agreement to “rebalance” the Licensing Act 2003, Parliament has enacted a number of measures to tackle alcohol-related crime through the Police Reform and Social Responsibility Act 2011.

3.2 The Government are currently consulting on how to introduce two specific measures, which are detailed in the following paragraphs, with a draft response for Members to consider being set out at appendix 1.

3.3 Early Morning Restriction Orders

EMROs can be introduced by the licensing authority for any part of the Borough where it is considered that restricting the sale of alcohol between 12 midnight and 6 am is appropriate to promote the four objectives in the Licensing Act 2003. It can apply either every day or for certain days, and for an unlimited or time-limited period.

3.4 Prior to introducing an EMRO, the authority must consult directly with responsible authorities and licensed premises, and more widely with residents and others likely to be affected. Any representations must be made within a 28-day period and be considered by the Licensing Committee; the EMRO itself must be endorsed by the full Council.

3.5 Once introduced, the EMRO will make it an offence to sell alcohol during the times specified in the order, whether under a premises licence, club premises certificate or temporary event notice (TEN). The order will apply to existing permissions, so for example all town centre premises that currently trade until 2 am could have their alcohol sales curtailed at 1 am on all or specific nights of the week.

3.6 The Government is proposing that there could be some exemptions from an EMRO:

(1) for all premises between midnight on 31 December and 6 am on 1 January, to allow for New Year’s Eve celebrations;

(2) in premises with overnight accommodation, so hotel guests will be able to continue enjoying 24-hour alcohol sales although non-residents will not be able to be served whilst the EMRO is in force;

(3) theatres and cinemas between midnight and 6 am;

(4) community premises that have successfully applied to remove the mandatory requirement to have a designated premises supervisor (and there are none of those in Watford);

(5) casinos and bingo halls with a membership scheme (and there are none of those in Watford).

3.7 Officers are not commenting at this time on the merits of introducing an EMRO in Watford, but will bring a further report later in the year following initial discussions with relevant parties.

3.8 Late Night Levies

Late night levies are based broadly on the “polluter pays” principle. If introduced after a stringent consultation process (similar to that for EMROs) that includes the new Policing and Crime Commissioners (PCC) and police, the LNL is applied to all on- and off-trade premises in the Borough that trade during a period specified by the licensing authority between midnight and 6 am, although unlike EMROs it will not apply to TENS.

3.9 After deductions for expenses in collecting the levy, at least 70 per cent of the levy must be paid to the PCC with the licensing authority able to decide on what other services it wishes to fund with the remainder.

3.10 It would take at least nine months to introduce a LNL. During this time premises can apply for a minor variation to their licence free of charge to reduce their hours to avoid being caught by the LNL hours. The “late night levy year” then begins, after which failure to pay the LNL can lead to suspension of the premises licence and the debt can be recovered through the civil courts. Premises pay for the LNL at the same time as their annual licence fees, which in the majority of cases would be each November.

3.11 The licensing authority has to repeat the same consultation process each year if it wishes to amend or end the scheme, but not if it simply wishes to continue the levy. The levy proceeds must be paid to the PCC within four months of the end of the “late night levy year”, which can therefore be over a year since the original decision was made to introduce it. Officers calculate the earliest that proceeds from the LNL would therefore be realised could be October 2013.

3.12 In a similar fashion to EMROs, it is proposed that some classes of premises can be exempt from paying the levy if the licensing authority think its appropriate they should be exempt:

(1) premises with overnight accommodation;

(2) restaurants;

(3) theatres and cinemas;

(4) casinos and bingo halls with membership schemes in operation between midnight and 6 am;

(5) community amateur sports clubs;

(6) community premises that have successfully applied to remove the mandatory requirement to have a designated premises supervisor;

(7) country village pubs that qualify for rural rate relief (and there are none within Watford);

(8) business that are part of a Business Improvement District;

(9) private members’ clubs operating under club premises certificates;

(10) premises which trade on New Year's Eve – imposing the levy on New Year's Eve may unfairly impact on some premises whose only late-night authorisation is for that 31 December.

- 3.13 The Government is proposing that businesses which benefit from Small Business Rate Relief (for one example small local pubs which only occupy one property and below a certain rateable level) could receive a reduction from the LNL.
- 3.14 The Government wishes to promote best practice schemes such as Best Bar None, Pubwatch; Community Alcohol Partnerships; Business Improvement Districts; or other locally established schemes established to tackle late-night problems. Members of those schemes could benefit from a reduction in the LNL.
- 3.15 Finally, the consultation paper asks whether there should be any restrictions on the types of services that licensing authorities could fund with their maximum 30% of the LNL – it is intended it should fund services that tackle alcohol-related crime and disorder such as taxi marshalling.
- 3.16 This report does not deal with the specific merits of the LNL for Watford and officers will bring a further report later in the year on this and the EMROs.

4.0 **IMPLICATIONS**

4.1 **Financial**

- 4.1.1 The Head of Strategic Finance comments that there are no financial implications arising from this report. Any financial issues will be discussed in a further report once the relevant regulations have been implemented.

4.2 **Legal Issues** (Monitoring Officer)

- 4.2.1 The Head of Legal and Property Services comments that there are no legal implications arising from this report and any financial issues will be discussed in a further report once the relevant regulations have been brought into force.

4.3 **Equalities**

- 4.3.1 Not applicable.

4.4 **Potential Risks**

- 4.4.1 None
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Appendices

- Late night levies and EMROs – appendix 1 response.

Background Papers

Dealing with the Problems of Late Night Drinking – A Consultation on Secondary Legislation for the Late Night Levy and Early Morning Restriction Orders (Home Office, January 2012).

File Reference

- *None*

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APPENDIX 1

DEALING WITH THE PROBLEMS OF LATE NIGHT DRINKING – A CONSULTATION ON SECONDARY LEGISLATION FOR THE LATE NIGHT LEVY AND EARLY MORNING RESTRICTION ORDERS

Early morning restriction orders

1. Do you think that the proposed processes for EMROs include sufficient consultation with those likely to be affected by an EMRO?

Yes.

2. The Government proposes that EMROs will not apply between midnight on 31 December and 6 am on 1 January of each year. Do you think that EMROs should apply on New Year's Eve?

Yes – the EMRO should apply on New Year's Eve. Licensing authorities will have the ability to set the EMROs according to the local needs, and may decide to apply EMROs on New Year's Eve. Conversely, they may wish to have the flexibility to decide that an EMRO does not apply on New Year's Eve or on other specified dates throughout the year such as Spring Bank Holiday, Easter Sunday or dates of local significance.

3. Do you agree or disagree that the categories of premises should be exempt from EMROs?

Agree that the suggested list of premises should be exempt from EMROs.

4. Do you have any other suggestions on the types of premises that should be considered for an exemption from EMROs?

Further categories that could be considered to be exempt including sports facilities such as leisure centres that have bars (albeit very few are likely to be open beyond midnight); snooker and pool clubs with a condition of membership between midnight and 6 am; and restaurants (which meet the definition set out for exemptions from the LNL).

Late night levy

5. Do you think there should be an option for local residents/community groups to recommend the implementation of the levy in their area?

No. EMROs are perhaps the better tool of the two in securing a reduction in trading hours to reduce alcohol-related crime and disorder in an area. LNLs are of more use in dealing with the after-effects of the problems rather than

necessarily preventing them occurring in the first place. We would prefer to see an option for local residents or community groups to call for an EMRO rather than a LNL, subject to suitable safeguards to prevent unnecessary burdens on licensing authorities such as only one such request being permitted for a specific area within a calendar year or a power to reject successive and repetitive calls without further consultation.

6. Do you agree or disagree that licensing authorities should be able to exempt these premises from the levy?

Agree, as in our experience the premises listed in the consultation document rarely if at all cause alcohol-related crime or disorder late at night.

7. Do you agree or disagree that licensing authorities should be able to exempt Business Improvement Districts from the late night levy?

Agree – licensing authorities should be able to exempt Business Improvement Districts where they have been established at least in part to address problems associated with having a night-time economy.

8. Do you think that premises operating under a club premises certificate should be exempt from the late night levy?

Private members' clubs can be as much as, if not more, problematic as venues with premises licences. This is often because of the relative inexperience of the committee running the club compared to the holder of a personal licence holder qualification where there is a premises licence. It can manifest itself in many ways, such as alcohol sales to under-age children (commonly associated with anniversary birthday parties); nuisance to neighbours from members, guests and non-members leaving such venues; sale/supply of alcohol to non-members; and non-compliance with conditions due to the uneven sharing of responsibility and understanding of the need for compliance amongst many committee members.

It was our experience that during the transition period from the previous regime to the Licensing Act 2003 that several members' club converted their club certificates to premises licences to benefit from being able to allow members of the public into their premises. We would be concerned that exempting CPCs from the levy would see many premises licence holders converting to members' clubs in order to avoid liability from the levy.

For those reasons we do not believe CPCs should be exempt from the levy.

9. What are your views on affording a reduction from the late night levy to businesses that receive Small Business Rate Relief?

A business may be small, as defined by their occupancy of only one property and with a low rateable value. This does not, from what we understand, relate to the businesses profitability or turnover although we accept there is a link between those and the size of the business itself. Just because a licensed business is small does not mean that its customers would not contribute to alcohol-related disorder. Indeed, it could be argued that a smaller business will have fewer staff to supervise responsible alcohol consumption and so the impact of the business on the local community could in some cases be just as significant as a large nightclub. For those reasons we do not believe that a reduction of more than 25 per cent is appropriate. This would be line with the deduction offered to restaurants and pubs which have a rateable value between £7,801 and £11,000.

10. Do you agree or disagree there should be an exemption for New Year's Eve?

As the LNL applies throughout the year without the flexibility of the EMRO, we think it appropriate to grant an exemption from the LNL for New Year's Eve.

11. Do you agree or disagree that licensing authorities should be able to ask for a reduced levy payment from businesses in a best practise scheme?

We agree that those premises should be able to benefit from a reduced levy payment, but also that locally accredited Offwatch schemes for off-licences should be included. We understand that many Pubwatch and similar schemes are designed for those premises within a specific locality rather than "the geographic area" stated in the consultation document which seems to imply the whole of the licensing authority's area and we would suggest that the definition be subtly amended to take that into account.

12. Do you have any suggestions for benchmarks that can be applied to grassroots schemes to ensure members are actively working to reduce crime and disorder?

We would suggest some of the benchmarks for such grassroots schemes could include:

- the scheme has a recognisable, local character
- it seeks to work with responsible authorities to reduce crime and disorder in the vicinity of its members' premises
- it has at least one specific target of success against which it can be measured.

13. Do you agree or disagree with the set-up of cumulative discounts?

We understand from the consultation document that the Government would prefer alcohol-licensed businesses to participate in voluntary best practice schemes rather than being compelled to pay a levy, and we strongly support that position. On that basis we agree that cumulative discounts would work as a strong incentive for businesses to participate in those schemes but would want to see real evidence of participation to prevent businesses paying lip-service just in order to avoid paying their dues in full. Therefore, members of a locally accredited Best Bar None scheme for instance should have to demonstrate involvement in the current scheme with evidence of continuous improvement, or that the Pubwatch scheme (as we suggest above) has at least one specific target of success against which it can be measured.

14. Should there be scope for further exemptions and reductions from the late night levy?

It appears to us that, as drafted, holders of time-limited premises licences authorising the sale of alcohol – perhaps as part of a local festival or a pop concert until the early hours – would be liable to pay the levy. Very often, these would be organised for charitable purposes or the organisers would have already negotiated payments for any additional police services for their events. Licensing authorities should therefore be able to exempt time-limited premises licences from the levy.

15. What activities do you think licensing authorities should be able to fund with their retained proportion.

Licensing authorities ought to be able to fund activities such as:

- alcohol-related crime and disorder reduction measures
- taxi marshalling
- additional late-night licensing enforcement exercises
- signage specifically related to management of the night-time economy, such as that for night-buses or night-time taxi ranks
- provide grants to appropriate bodies to institute measures to reduce alcohol-related crime, disorder or nuisance.

16. What restrictions do you think there should be on the types of services that licensing authorities will be able to fund?

Licensing authorities ought not to be able to spend money on core licensing activities such as day-time licensing inspections, or general administration of the licensing scheme which should be properly recouped through licence fees. Nor should licensing authorities be able to fund activities from the levy which are properly the function of other agencies, such as road safety casualty reduction.

17. If you have any comments on the Impact Assessment, please detail the here.

None.

18. If you are responding on behalf of a licensing authority, how many premises do you expect will be affected by EMROs in your area?

We estimate 28 premises within the Borough of Watford could be affected by an EMRO that starts at midnight.

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