

 Licensing Committee 18th February 2013		Agenda Item No. 6
Title	Late Night Levies and Early Morning Restriction Orders	
For further information about this report please contact	David Davies, Licensing Services Manager, Community Protection. Tel: 01926 456113. david.davies@warwickdc.gov.uk	
Service Area	Community Protection	
Wards of the District directly affected	None	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006	No	
Date and meeting when issue was last considered and relevant minute number	N/A	
Background Papers	None	

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	No
Included within the Forward Plan? (If yes include reference number)	No

Officer/Councillor Approval		
With regard to officer approval all reports <i>must</i> be approved by the report author's relevant director, Finance, Legal Services and the relevant Portfolio Holder(s).		
Officer Approval	Date	Name
Relevant Director	23/01/2013	Roger Jewsbury
Chief Executive		
CMT	06/02/2013	
Section 151 Officer		
Legal		
Finance		
Portfolio Holder(s)	23/01/2013	Councillor Coker
Consultation Undertaken		
None		
Final Decision?		Yes
Suggested next steps (if not final decision please set out below)		

1. **SUMMARY**

- 1.1 An explanation to Members of the Licensing Committee about the new licensing powers inserted into the Licensing Act 2003 by the Police Reform and Social Responsibility Act 2011 and the possible options to use Late Night Levy (LNL), Early Morning Restriction Orders (EMROs) or apply the increase in annual licensing fees shortly to be set by Central Government via imminent future regulation.

2. **RECOMMENDATION**

- 2.1 That Members note the contents of the report and recommend to full council that, at the present time, this Authority does not implement the use of Late Night Levy (LNL) or Early Morning Restriction Orders (EMROs) within the District.
- 2.2 The Council should await Regulations to be laid later in 2013 which permit Local Authorities to set their own annual fees, subject to a maximum set by central government. These fees will continue to be based on the non-domestic rateable value of the premises, but will apply to all premises with no exemptions. This will mean that *all* premises that impact the night time economy will have to pay an increased fee. The current annual premises licence fees have not been increased since the inception of the Licensing Act 2003 in November 2005.

3. **REASONS FOR THE RECOMMENDATION**

- 3.1 For the time being, officers feel that this Authority should not rush any decision and that a wait and see approach should be adopted, awaiting possible developments from the police and noting the approach that is generally adopted across the country
- 3.2 It is likely, as outlined later, that any decision to implement either the LNL or EMROs by will be challenged by judicial review either by single premises or premises that have banded together to enlist the services of counsel. The cost of defending such reviews could be many thousands of pounds.
- 3.3 It is also likely, in the current economic climate, that the important night time economy of the District may be decimated and possibly collapse by the introduction of such large extra fees. Operators considering investing in the District may be deterred by any additional restrictions and may be inclined to go to other areas who have not adopted the provisions.

4. **ALTERNATIVE OPTION CONSIDERED**

- 4.1 Members may decide that they would want to not take the Officers recommendation and to implement either the LNL or EMROs. It should be noted that there are implications and risks to such action as outlined in the paragraphs below. However if it was the Licensing Committee and Full Council's decision to implement either of the above options, then Members are requested to agree to the information on the LNL and EMROs being disseminated to licence holders, stakeholders and members of the public via the Authority's website and other social media opportunities.

The Late Night Levy

- 4.2 It is very possible that the Levy is unlikely to be viable, especially in rural areas. It is anticipated that there may be some possible interest from the police who see the Levy as a useful method of raising revenue to fund additional policing resources. For local authorities, however, the financial benefits are dubious, as, by the time administrative costs have been deducted and certain types of premises excluded from the Levy, the net yield is likely to be lower than many might anticipate. The proposed Levy annual fees are significant. For example, £768 for the most common group of premises (Band B) represents a substantial extra cost on business in difficult economic times – and it is likely that there will be a great financial incentive for licence holders to resist and challenge its imposition.
- 4.3 Officers believe that the Levy is a 'blunt instrument'. It might possibly be viable for large authorities, such as Birmingham, where there is a high concentration of premises in a relatively small area but it may prove inappropriate for Warwick District's comparatively small town centres.
- 4.4 Should the Licensing Authority decide to consider the Levy option, the council will need to exercise great care to ensure the fairness of the consultation procedure, proper consideration of responses and the robustness of its decision-making process in order to avoid legal challenge.
- 4.5 There would be a significant amount of officer time involved in administering the LNL. Most of these costs can be recovered from the revenue generated but there will also be costs involved in preparing for and advertising the Levy. However, the cost is not merely financial, as most departments within the council are operating with reduced staffing due to the current economical situation.
- 4.6 Any funds left over after the administration may not be put into the council's general funds, but must be used for the night time economy. However, these funds are, in officer's opinion, not going to be significant.
- 4.7 Any increase in income generated from an increase in premises licence fees will still have to be ring fenced under the legislation requirements for the administration and compliance of licensed premises and will not be available for general council funds.
- 4.8 It must also be born in mind, as outlined later, that the police must be given 70% on the net amount collected. It might easily be viewed that the council is merely acting as a collection agency for the police, who do not even have to spend the money on the night time economy, or even in this District for that matter.

Early Morning Restriction Orders (EMRO).

- 4.9 An EMRO may be targeted at a specific area (or areas) where there is evidence of alcohol-related crime and disorder and is more flexible in its application. However, it must be *evidence-based* and any licensing authority contemplating making an Order will need to give careful consideration to the area(s) to be covered and the potential impact on the night time economy. It could have an adverse effect on local businesses, deter local investment and simply displace activity into other areas or other towns.
- 4.10 As with the LNL Licensing Authorities would need to exercise great care to ensure the fairness of the consultation procedure, proper consideration of

responses and the robustness of its decision-making process in order to avoid legal challenge.

- 4.11 There would be a significant amount of officer time involved in administering Early Morning Restriction Orders. Unlike the Late Night Levy these costs may not be recovered from an additional charge to premises. There would also be additional costs involved in preparing and advertising the necessary Orders.

5. BUDGETARY FRAMEWORK

- 5.1 It is likely that Regulations will be laid later in 2013 which permit Local Authorities to set their own annual fees, based on full cost recovery, but subject to a maximum set by central government. These fees will continue to be based on the non-domestic rateable value of the premises, but will apply to all premises with no exemptions. This will mean that *all* premises that impact the night time economy will have to pay an increased fee. The current annual premises licence fees have not been increased at all since the inception of the Licensing Act 2003 in November 2005
- 5.2 At the time of writing this report, the increase in the annual fee which authorities may charge have not been released. However, it is envisaged that they will easily meet or exceed the income to this authority that a LNL would generate the high risk of challenges and without the use of as much officer time.
- 5.3 In contrast, if the option was to implement either the Late Night Levy or Early Morning Restriction Orders (EMRO), there would be a significant amount of officer time involved in administration. In the case of the Levy, these costs can be recovered from the revenue generated but there is no similar provision for an EMRO. There will also be costs involved in making and advertising the necessary Orders. It is too early to quantify these costs with any accuracy. **Appendix 1** to the report shows the potential income LNL.

6. POLICY FRAMEWORK

- 6.1 Whatever decision is taken by Members in relation to this report will require the Councils current Licensing Policy to be amended to incorporate some, or all, of these changes as required by the Licensing Act 2003.

7. BACKGROUND

- 7.1 The Police Reform and Social Responsibility Act (PRSRA) received Royal Assent on 15 September 2011. The declared main purpose of the Act was to 're-balance' the Licensing Act 2003 by giving more power to licensing authorities and local communities.
- 7.2 Some of these changes (for example removing the vicinity test, reducing the burden of proof and introducing changes for temporary event notices) came into effect in April 2012, whilst some of the more far-reaching powers contained in the Act came into force on the 31st October 2013. The Home Office has now published regulations governing two of these powers. This report provides Members with further detail on these important elements of the legislation, together with some recommendations.

7.3 The Late Night Levy

- 7.3.1 The Act gives licensing authorities the power to raise a financial contribution from late opening alcohol-licensed premises towards the cost of policing the night time economy. In deciding whether to apply the Levy, the licensing authority must consider:
 "The costs of policing and other arrangements for the reduction or prevention of crime and disorder in connection with the supply of alcohol between midnight and 6.00 am" (PRSRA, s.125(3)).
- 7.3.2 If adopted the Levy must be applied to the *whole of the local authority area*. This would include village and rural licensed premises. The licensing authority would be able to choose the period (between midnight and 6.00 am) during which the levy would apply and could decide, within the parameters allowed by the legislation, what exemptions and reductions should apply. The late night supply period must begin at or after midnight and end at or before 6am. The licensing authority could decide the times within the late-night supply period at which the levy will apply (which must be the same every day). The late-night supply period cannot apply on different days or times.
- 7.3.3 Licensing authorities would have discretion to exempt the following premises from the Levy:
- Premises with overnight accommodation (e.g. hotels, guest houses). (An exemption can apply only where their licences only permit the sale of alcohol between midnight and 6.00 am (a) to a person who is staying at the premises (not their guests) and (b) for consumption on the premises.
 - Theatres and cinemas
 - Bingo halls
 - Community premises (village halls and similar)
 - Participants in Business Improvement Districts
 - Community Amateur Sports Clubs
 - Public houses entitled to rural rate relief
 - Premises which are licensed to supply alcohol between midnight and 6.00 am on New Year's Eve – this will allow all premises licensed to sell alcohol after midnight to stay open on New Year's Eve without having to pay a levy.
- 7.3.4 At least 70% of any proceeds generated by the Levy must go to the police, *although there is no requirement for the police to spend their share in Warwick District, or even on the night time economy in general*; with the remaining 30% going to the District Council to fund relevant crime prevention initiatives (connected with the late night economy only).
- 7.3.5 The potential yield from the Levy (once exempt premises have been excluded) is likely to be relatively low - particularly after any exemptions are imposed. At the time of preparing this report the possible amounts involved (*without any exclusions or exemptions being factored into the figures*) are shown in **Appendix 1**.
 It should be noted that the figures are only a very rough estimate as a number of assumptions have been made that may not follow through in the longer term.
- 7.3.6 The levy rates have been set by central government and are dependent on the non-domestic rateable value of the premises. The fees must be paid in addition to the annual premises licence fee. The prescribed annual levy is shown below with the current annual fee due in brackets.

Rateable value:	£0 - £4,300	levy £299 (£70)
Rateable value:	£4301 - £33,000	levy £768 (£180)
Rateable value:	£33,001 - £87,000	levy £1,259 (£295)
Rateable value:	£87,001 - £125,000	levy £1,365 (£320)
Rateable value:	Over £125,000	levy £1,493 (£350)

- 7.3.7 Regulations also permit the licensing authority to allow a reduction of 30% in the amount of the Levy for premises which are members of best practice schemes such as Pubwatch (most town centre premises), Best Bar None etc., and licensed premises which are entitled to small business rate relief.
- 7.3.8 If it decides to introduce a LNL, the licensing authority must consult the local police force, the Chief Officer of Police for the area and the holders of 'relevant late night authorisations' (premises licence holders). The Authority must also publish a notice of the proposal and send this to the above persons. In contrast to an EMRO, there is no provision for persons to make representations about a proposal to introduce the Levy. However, the Authority must fully consider all responses to the consultation before making an Order. Licence holders who wish to 'escape' the Levy will be able to apply for a *free* minor variation, to reduce their alcohol licensing hours prior to the Levy coming into force.
- 7.3.9 The Levy does not apply to premises licensed only for regulated entertainment or late night refreshment. Meaning that 'taking away' style premises are automatically exempt. This is a surprising omission given the issues that these premises cause.
- 7.3.10 Any decision to introduce the LNL is for the *licensing authority to make* and any decision to introduce it must be put to full Council for approval. Local residents can use existing channels and forums to put forward views and call for the implementation or not of the levy in their area.
- 7.3.11 Licensing authorities will be able to deduct certain specified expenses from the proceeds of the Levy to cover administration and enforcement costs. These expenses are widely expected to be quite high, especially during the introduction. However it is too early to quantify the costs with any accuracy.
- 7.3.12 The Council must publish estimates of expenses at the beginning of the Levy year and statements of receipts at the end of the Levy year and may have to pay the police authority their share of the levy, *despite possibly not all of it being collected*.
- 7.3.13 The Authority may amend or vary the Levy at any time after its introduction in accordance with Regulations. This includes the late-night supply period and any exemptions or reductions that may apply. However, as mentioned earlier in this report, central government sets the Levy amounts and if adopted the Levy must apply *across the whole district*.
- 7.3.14 Non-payment of the Levy will result in suspension of licence/certificate by the Authority in the same way that applies now for failure to pay the annual fee.
- 7.3.15 There is no provision for appeal against a local authority's decision to apply the

Late Night Levy. However, it is anticipated that several challenges to LNLs would be mounted by way of judicial reviews. Leading licensing barristers have indicated their willingness to take such action as the process is inherently complex and, apparently, easily challenged.

7.4 Early Morning Restriction Orders

- 7.4.1 An Early Morning Restriction Order (EMRO) is a power which would enable a licensing authority to restrict the sale of alcohol if it considered this appropriate for the promotion of the licensing objectives. Unlike the Levy, the authority may make an Order for the whole or a part of its area. (This could extend to a town centre or a single street where problems associated with late night drinking have been identified).
- 7.4.2 An EMRO is intended to be a flexible tool which may be applied for any period between midnight and 6.00 am and may be for a finite period or of unlimited duration. It may be made for the same period every day or for different periods on different days.
- 7.4.3 An application for an EMRO may be made by a member of the public, an organisation or a statutory authority. However, it is for *the licensing authority to justify an EMRO* so any person applying for an EMRO would be expected to produce robust and extensive evidence in support of their application.
- 7.4.4 The Act sets out the procedural requirements for making an EMRO including the advertisement of a proposed Order for a period of no less than 42 days. A Responsible Authority and any person who is likely to be affected by an EMRO may make representations to the licensing authority about the Order and, provided they are relevant, this will trigger a hearing. This could be potentially burdensome to a licensing authority if a high number of representations are received.
- 7.4.5 The only exceptions to an EMRO will be:
- Premises authorised to sell alcohol between midnight and 6.00 am on New Year's Eve; and
 - Premises such as hotels or similar premises supplying alcohol to persons consuming alcohol in the privacy of their room.
- 7.4.6 A licensing authority may vary or revoke an EMRO at any time but must follow the same procedures as for making an Order
- 7.4.7 It is important to note that an EMRO restricts just the sale of alcohol and not consumption. *It does not require premises to close at a specified time.* This is a potential weakness in the legislation as there is nothing to prevent a person from ordering alcohol prior to the commencement hour of the Order and consuming it afterwards during such time as the premises is permitted to stay open.
- 7.4.8 There is no provision for appeal against a local authority's decision to make an EMRO. Any challenge would, as in the case of the levy, be by way of judicial Review, and, as pointed out in the case of the levy, leading licensing barristers have indicated their willingness to take such action as the process is inherently complex and, apparently, easily challenged. In addition, licensees may group together to challenge any EMRO put into force and delay its commencement for a considerable period of time.

Appendix 1

Amount collected	Admin	Balance	Council	Police
<u>Applicable to premises who are permitted to open up to 01:00</u>				
£77,000	£7,700	£69,300	£20,790	£48,510

Applicable to premises who are permitted to open up to 02:00

£49,000	£4,900	£44,100	£13, 230	£30,870
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Applicable to premises who are permitted to open up to 03:00

£21,000	£2,100	£18,900	£5,670	£13,230
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All of the above do not take into account ANY exemptions or discounts.

In addition, many of the town centre premises are in Pubwatch, so may have up to 30% reduction of the LNL fee which would reduce the gross figures above considerably.