



PART A:

REPORT TO: LICENSING COMMITTEE

DATE: 22 NOVEMBER 2012

REPORT OF THE: HEAD OF ENVIRONMENT, STREETSCENE, FACILITIES, ICT
PHIL LONG

TITLE OF REPORT: EARLY MORNING ALCOHOL RESTRICTION ORDERS AND
LATE NIGHT LEVY UPDATE

WARDS AFFECTED: ALL

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

1.1 This report is to update Members on the progress of The Police Reform and Social Responsibility Act 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).

2.0 RECOMMENDATION

2.1 That the report is noted but no action or decisions be taken.

2.2 Although no decisions are sought from Members on whether to introduce either an EMRO or a LNL at this stage, Members are asked to consider based on the information available to date, whether or not Members would look favourably at introducing either an EMRO or a LNL in Ryedale District.

3.0 REASON FOR RECOMMENDATION

3.1 To keep Members informed regarding the implications of adopting either EMRO's or a LNL in Ryedale and the potential implications such a decision may have on the local night time economy.

4.0 SIGNIFICANT RISKS

4.1 Not applicable

REPORT

5.0 BACKGROUND AND INTRODUCTION

5.1 The Police Reform and Social Responsibility Act 2011 introduced amendments to the Licensing Act 2003. Members attention was drawn to the implementation of the Act in a report to this Committee on the 7th June 2012. Whilst the vast majority of these changes were implemented on the 26th April 2012, further amendments were introduced at the end of October and these changes include the introduction of EMRO`s and a LNL, both of which are intended to tackle alcohol related crime and disorder and to help pay for additional enforcement costs associated with late night opening premises. No decision has yet been made on the introduction of locally set fees.

6.0 POLICY CONTEXT

6.1 The following Policies have informed this report:

- Ryedale District Council's Licensing Policy

7.0 CONSULTATION

7.1 Not applicable.

8.0 REPORT DETAILS

EARLY MORNING ALCOHOL RESTRICTION ORDERS (EMRO`s)

8.1 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 part of their area between 12 midnight and 06:00am on all or some days. This restriction applies at any time between 12 midnight and 06:00 am to premises licences, club premises certificates and temporary event notices. There are no exceptions to the type of premises that are 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.

8.2 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 Police Crime Commissioner (PCC) 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.

8.3 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 district). Any person wishing to make a representation for, or against, the proposal will have 42 days in which to lodge their comments.

- 8.4 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. After making an Order, the licensing authority must publish it or otherwise make it available in a prescribed form and manner and within the prescribed period.
- 8.5 The Government has recently provided further information to licensing authorities in revised statutory guidance issued under section 182 of the Licensing Act 2003.

LATE NIGHT LEVY (LNL)

- 8.6 The LNL 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 extra enforcement costs that the night-time economy generates for police and local authorities.
- 8.7 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.
- 8.8 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 district that qualify (both in the on-trade and 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 licence 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.
- 8.9 Members should note that a significant number (possibly in excess of 50%) of the licensed premises who would currently be affected by the imposition of such a levy are premises like hotels, restaurants, village pubs, premises that only open for additional hours at bank holidays and clubs and would be likely to vary their current licence to a terminal hour of 12 midnight thus avoiding the cost of the levy. It is worth noting that this licensing authority would not be allowed to charge for any variation to reduce hours for the sale of alcohol as a result of the implementation of the LNL. This would have an impact on the licensing service as it is likely that a significant number of such variations would need to be processed. Further, 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.
- 8.10 The LNL is said not to be targeted at individual premises because the cost 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. However, in practice it tends to be a very small minority of premises in specific locations operating after 12 midnight that are linked directly with any trouble, the majority of premises who

operate after 12 midnight do so without issue. It seems that those premises operating responsibly may be financially penalised because of the actions of a minority.

- 8.11 If introduced, once the levy has been collected, the licensing authority would firstly deduct costs incurred in the collection and administration of 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 it regarding the types of services that they can fund with their 30% portion of the levy (monies can only 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. In fact, the use of the police proportion of the levy is at the direction of the police and PCC rather than at local level and therefore the police do not have to spend their proportion of the levy in the local area where it has been collected or on policing associated with alcohol related crime and disorder.
- 8.12 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 licensing fees and the annual retainer fee and means that depending on the type of licensed premise, the area that its in and the services it offers will affect the rateable value and hence the level of contribution to the levy. The levy is set as follows:-

Rateable Bands	A No rateable value to £4,300	B £4,301 to £33,000	C £33,001 to £87,000	D £87,001 to £125,000	E £125,001 And above	Dx2 Multiplier applies to premises in Category D that primarily or exclusively sell alcohol	Ex2 Multiplier applies to premises in Category E that primarily or exclusively sell alcohol
Annual Levy Charge	£299	£768	£1,259	£1,365	£1,493	£2,730	£4,440
Annual Retainer Fee (fee currently paid to the Council)	£70	£180	£295	£320	£350	£640	£1,050
New annual fee(annual fee plus late night levy)	£369	£948	£1554	£1685	£1843	£3370	£5490
% increase if levy adopted	427	427	427	427	427	427	427

8.13 Licensing authorities would have discretion to exempt the following from any levy introduced.

- Premises with overnight accommodation(currently 12 in Ryedale)
- Theatres
- Cinemas
- Bingo Halls
- Community amateur sports clubs(CASCs)
- Community Premises
- Country Village pubs(those entitled to rural rate relief-currently 15 in Ryedale))
- Business improvement districts(BIDs)

There will be no exemptions available to:

- Restaurants
- Casinos
- Private members clubs

Licensing Authorities will have the discretion to offer a 30% reduction from the levy fee if businesses are able to demonstrate that best practice schemes (these must fulfil specific criteria) have been adopted and implemented e.g. Pubwatch. This level of discretionary reduction can also be offered to public houses that are receipt of small business rate relief and have a rateable value below £12,000 (22 currently in Ryedale).

INCOME AND EXPENDITURE

8.14 The Council will be able to deduct permitted administration, enforcement and collection costs from the gross levy revenue. This is not factored into the figures below as at this stage it is not possible to predict.

If the Council does not offer any exemptions or discounts and chooses to implement the levy from midnight it would affect 145 (40%) of the licensed premises in Ryedale. The income generated from these premises would be:-

No of Premises	Rateable Band	Levy	Total Possible Income
15	A	£299	£4485
103	B	£768	£79104
17	C	£1259	£21403
3	D	£1365	£4095
7	E	£1493	£10451
		TOTAL	£119538
		70% POLICE	£83677
		30% RYEDALE	£35861

As stated in 8.9 above, it is envisaged that a considerable number of premises eligible to pay the late night levy will choose to vary their licence to terminate sales at midnight. We have estimated possibly as many as 90 premises may choose to reduce their hours because of the cost implications of paying the levy for the limited gain from selling alcohol after midnight. The types and number of premises are as follows:- restaurants(10), Guest houses/B&B/Hotels(16), those premises with extensions for Christmas/Bank holidays only(25), Clubs(7), Public houses in Market towns(15), Village public houses(14) and theme parks(3). If these premises were to opt out of paying the levy the income would be as follows:-

No of Premises	Rateable Band	Levy	Total Possible Income
9	A	£299	£2691
64	B	£768	£49152
10	C	£1259	£12590
1	D	£1365	£1365
6	E	£1493	£8958
		TOTAL	£74756
		70% POLICE	£52329
		30% RYEDALE	£22427

OPTIONS

- 8.15 Initial informal discussions with North Yorkshire Police indicate that there is no desire to ask for the introduction of either EMRO's or the LNL at this stage, particularly with the impending PCC election due to take place shortly. The police would continue to look to review the licence or prosecute those premises that are responsible for causing problems and not penalise those premises operating responsibly.
- 8.16 There are obviously "pros" and "cons" when deliberating whether EMRO's or the LNL would be appropriate to adopt in Ryedale District. Some of the arguments in this respect are shown in the table below and reflect the views of council officers.

EARLY MORNING RESTRICTION ORDERS		
PROS	CONS	COMMENT
Will ensure that any alcohol related crime that can be proven as coming from a certain area can be controlled	<p>Could increase the fear of crime by the public which could result in certain areas of the towns wrongly becoming "no go" areas and affecting licensees within the area who do run their premises properly.</p> <p>Introduction of an EMRO in one area could simply cause the shifting of late night alcohol problems to another area within the district.</p> <p>Introduction of an EMRO</p>	<p>This type of legislation is probably more appropriate to cities and large towns with large crowds of customers going from premises to premises behaving in an anti-social manner rather than Ryedale where the majority of public houses are in villages or those limited to market towns where an errant licensee could more properly be made accountable for their actions by the bringing of a Review against that premise.</p>

	without sufficient and robust evidence would leave Ryedale District Council at risk of judicial review.	
Will stop the sale of alcohol from a time decided by the Licensing Authority between midnight and 06:00 hours thereby controlling when the night time economy finishes in certain areas, with the subsequent effect, if any on police resources	<p>An EMRO stops the sale or supply of alcohol, it does not close the premises.</p> <p>EMRO's will have the effect of zoning ie the sale of alcohol will stop in a particular specific zone or area of the district/town, possibly pushing any issues into another area of the district/town. Premises that are not included or who are outside of the EMRO may try and take advantage and open later.</p> <p>Politically this could be seen as inequitable, causing unfair competition or even anti-business.</p> <p>If neighbouring Councils do not impose EMRO's, people will travel to premises that open later in neighbouring towns, rather than use local businesses.</p>	<p>The premises may still stay open offering regulated entertainment till a later time.</p> <p>Careful thought will have to be given as to where an EMRO is brought into effect as it could simply move problems to other areas.</p> <p>The imposition of an EMRO may well have the effect of closing businesses with associated job losses. Many licensed premises are running on tight margins and this could be perceived as anti-business.</p> <p>As with the last comment may lead to a possible loss of businesses and jobs.</p>
LATE NIGHT LEVY		
PROS	CONS	COMMENT
Premises reduce their hours for the sale/supply of alcohol	Licensees could reduce bar staff numbers and doorstaff if they close earlier	If premises decide to vary their licences to close before the midnight "cut off" imposed by the levy, the authority cannot charge for this. As stated above this could generate a substantial amount of work for the licensing section without income generation.
Licensees could apply for Temporary Events Notices if they reduce their standard operating hours in order to circumvent the Late Night	An increase in TENs will result in an increase in administration for the police, environmental health and licensing. Conditions that are	This will inevitably lead to more work for the licensing section as more Licensing Sub Committee hearings will be required if the police or

<p>Levy</p>	<p>on a premises licence can only be put onto a TEN if either the police or Environmental Health put in a representation to the Council, this would result in the need for a licensing sub committee hearing to make a decision.</p>	<p>environmental health put in representations against the TEN applications</p> <p>TEN income would not cover the cost of the potential number of hearings. TENS only cost £21.</p>
	<p>Those licensees who pay the levy may well decide that to make it worthwhile they will apply to vary their licence to open even later.</p>	<p>If these premises are allowed to open later it could lead to more anti-social behaviour and nuisance particularly as customers make their way home.</p> <p>Again as above, premises applying to vary their licences would increase the workload for licensing. Further, such applications because of their nature would inevitably lead to Licensing Sub Committee hearings. The cost of these is not covered by the application fee.</p>
	<p>There will be an expectation by licensees and the public alike that more police officers would be readily available</p>	<p>Any levy will be Council wide, not just in a town centre. While there is an exemption for some rural pubs (15) this will not exclude many village pubs, restaurants, clubs and overnight accommodation who will still have to pay. There will be an expectation from premises that believe they have paid for extra policing (which is how the levy is being promoted) and for that policing to be present and available within Ryedale. The same expectation will be held by market towns. It is likely that North Yorkshire Police will not be able to fulfil these expectations as the number of police appears to be reducing and the money is not ring fenced to either the area the levy is collected in or policing relating to the</p>

		night time economy and associated crime and disorder. How would the Council manage these expectations?
	There could be bad publicity for the Council from businesses who could accuse the Council of not helping them to create a viable night time economy and of causing them financial hardship.	As with EMROs above, this could be seen as anti-business or even as a "trade tax".
	There could be increased problems in obtaining payments for both the annual retainer fee as well as the levy itself	The Licensing Authority now have the ability to suspend licences for non-payment but this could impact severely on the work of the licensing section in having to deal with a lot more suspensions and re-instatement notices. This is also likely to cause an increase in work for the legal department.
	It is still unclear how much money will actually be raised by this measure.	While this measure will be enforced council wide it is still unclear how much money will actually be collected. Not only are there exemptions, but there are discounts available and premises will also be allowed to remove themselves free of charge (this is a very important point as it has cost implications for the council) from any levy that is imposed by reducing their hours.
	Councils may not feel it is financially worth their while collecting a levy that does not benefit them to any great extent in that monies raised can only be spent on the night time economy alcohol related issues.	Councils will be able to take from the levy only the costs incurred in calculating, collecting and enforcing the collection. In addition they can then take only 30% of what is left, leaving the remaining 70% for the police. It is prescribed in regulations what this can be spent on, giving councils very little options on how to spend the money, unlike the police who can spend the money where and how it sees fit. How

		much of an incentive is there to impose the levy in order to collect monies for another organisation i.e. the police?.
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9.0 IMPLICATIONS

9.1 The following implications have been identified:

- a) Financial
If licensed premises choose to reduce their licensed hours to avoid paying the LNL then any anticipated income could be severely reduced and most importantly many licensed premises may close.
- b) Legal
If the Licensing Authority decides to implement the levy it must formally consult the PCC, the police, and all 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 LNL could result in legal challenge/judicial review.
- c) Others
A drawback of EMRO`s and the LNL is the impact that it could have on the vibrancy of Ryedale`s night time economy 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 disorder and protecting local economy.

The Council would not be able to charge for any variation to reduce hours for the sale of alcohol as a result of the implementation of the LNL. Premises could however submit Temporary Event Notices, which, while generating income, could severely impact on the licensing service in terms of the numbers of licence applications it would be required to process. Paragraph 8.16 above details the “pros” and “cons” of adopting these enforcement measures

If Ryedale introduced EMRO`s or the LNL and other authorities did not, then this could have a negative effect on our night time economy. Locals may well utilise neighbouring authorities later licensing hours resulting in loss of trade for local retailers.

Phil Long
Head of Environment

Author: Steven Richmond, Health and Environment Manager
Telephone No: 01653 600666 ext: 247
E-Mail Address: steve.richmond@ryedale.gov.uk

Background Papers:

Licensing Act 2003

Guidance issued under Section 182 of the Licensing Act 2003

Police and Social Responsibility Act 2011

The Licensing Act 2003(Early Morning Alcohol Restriction Orders) Regulations 2012

The Late Night Levy (Expenses, Exemptions and Reductions) Regulations 2012