

**Telford & Wrekin Council**

**Licensing Committee 13<sup>th</sup> March 2013**

**Police Reform and Social Responsibility Act 2011**

**Report of the Service Delivery Manager – Public Protection**

**1. Purpose**

1.1 To inform Members of the Licensing Committee of the implications of the Police Reform and Social Responsibility Act 2011 with regard to the Late Night Levy and Early Morning Restriction Order.

**2. Recommendations**

2.1 It is recommended 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 Borough.

**3. Summary**

3.1 The report is to inform Members of the Licensing Committee about the new licensing powers including the possible options to use Late Night Levy (LNL) and Early Morning Restriction Orders (EMROs).

**4. Previous Minutes**

4.1 Minutes from Licensing Committee 27<sup>th</sup> June 2012 LC-05.

**5. Information**

**5.1 Background**

5.1.1 The majority of the measures brought in by The Police Reform and Social Responsibility Act 2011 (PRSRA 2011) came into force on 25 April 2012 and were considered by the Licensing Committee on 27<sup>th</sup> June 2012.

5.1.2 Some of the alcohol provisions introduced in the Act required substantive changes to secondary legislation prior to commencement. Early Morning Restriction Orders and Late Night Levy's were enacted on 31<sup>st</sup> October 2012.

5.1.3 The Changes which came into effect on 31<sup>st</sup> October 2012 are as follows :

## **Early Morning Restriction Orders**

### **What an Early Morning Restriction Order (EMRO) is.**

An EMRO restricts the sale or supply of alcohol in a licensing authority area between the hours of midnight and 6am for premises licences, club premises certificates and temporary event notices (TENs).

### **The purpose of the EMRO**

An EMRO is designed to address recurring problems of high levels of alcohol related crime and disorder in an area which cannot be attributed to one specific premises and so cannot be dealt with by way of the review of a premises.

### **The procedure for adopting an EMRO**

The decision to introduce, vary or revoke an EMRO must be made by Full Council.

A licensing authority can have two or more EMRO's covering different areas of the authority.

If a licensing authority decides to introduce an EMRO, its decision must be supported by evidence.

There is no evidence in the Borough of Telford and Wrekin to support the introduction of an EMRO.

Where there is supporting evidence Guidance issued by the Home Office under section 182 of the Licensing Act 2003, paragraph 16.8 indicates that 'The licensing authority should consider whether other measures may address the problems that they have identified as the basis for introducing an EMRO first.

### **Unintended consequences of an EMRO**

There is concern nationally amongst licensing practitioners and the licensed trade that an EMRO which reduces the licensing hours in a particular area of an authority would mean that there would be displacement with people going to a different area with later hours, effectively reducing or even destroying the night time economy in areas covered by an EMRO.

### **When an EMRO can apply**

An EMRO can apply to any or all days of the week, the same time for each specified day, or different times for different days, and for an open-ended or time-limited period, and can apply to the whole of a local authority area, or just a part of it. It cannot apply on New Years Eve, to the supply of alcohol to residents of accommodation as long as the alcohol is sold through mini-bars and/or room service, or to a relaxation of licensing hours made by the Secretary of State.

### **Exemption of premises from an EMRO**

It is possible that premises within the proposed area of the EMRO could state a case as to why they should be exempt from the effects of the EMRO, if for example they can demonstrate that they do not contribute to the problems that have resulted in the EMRO.

### **Late Night Levy's**

#### **What a Late Night Levy is**

A late Night levy is an annual charge made by the Licensing authority on premises which are licensed to sell alcohol between midnight and 6am in their area

#### **The amount of the Levy**

The levy charges are an annual charge and have been set by the Government, based on the non-domestic rateable value of the premises. These charges range from £299 per annum to £4440 per annum for band B to E premises.

#### **The purpose of the Levy**

The levy is intended to raise a contribution towards the cost of policing the late-night economy, After deducting administrative expenses the remaining net Levy will be divided between the Police and the local authority. The Police must receive at least 70% of the proceeds, and the local authority would receive up to 30% of the proceeds. There are no restrictions within the legislation on what the Police may spend their portion of the money on. The licensing authority must spend the income apportioned to them form a Late Night Levy on policing the night-time economy.

Superficially it appears that the introduction of a Late Night Levy would generate income for a licensing authority. The costs of the consultation process and the free variations to licences before the introduction of the Levy fall to the licensing authority and would be deducted from the total Levy income before it is divided with 70% of the remainder going to the Police and 30% to the licensing authority. This reduction will impact on the amount of any financial gain.

#### **Who the Levy is payable by**

If a levy is introduced, it will be payable by all premises and club premises in the Borough who are licensed for the supply of alcohol during the levy hours, regardless of whether they are actually operating, or whether they contribute to problems in the late night economy. Prior to the Levy being introduced, premises may apply, free of

charge, for a minor variation to change their licensable hours so that they do not fall within the late-night supply period.

### **The procedure for the Levy**

The Home Office Guidance recommends that the decision to introduce, vary or end a Late Night Levy is made by Full Council and that other decisions relating to the introduction and administration of the Late Night Levy can be delegated as the licensing authority sees fit.

The licensing authority can specify any time between midnight and 6am that it wants the Levy to be in place, and the same time will apply every day of the year.

If a Levy fee remains unpaid, then the procedure is the same as that for an unpaid annual fee and may result in suspension of the licence.

### **The premises that can be exempted from the Levy**

The licensing authority can also exempt certain premises from the Levy. These exemptions must be taken from a designated list. These are:

1. Premises with overnight accommodation.
2. Theatres and cinemas.
3. Bingo Halls.
4. Community Amateur Sports Clubs (“CASCs”)
5. Community Premises.
6. Country Village Pubs.
7. New Year’s Eve.
8. Business Improvement Districts (“BIDs”)

The Levy will not apply to Temporary Event Notices.

The licensing authority can also approve a reduction of up to 30% in the amount paid for the Levy by certain businesses involved in best led business schemes, for example Best Bar None or Pubwatch.

#### **5.1.4 Likely impact on Borough businesses**

It is likely, in the current economic climate, that the important night time economy of the Borough may be affected. by the introduction of such large extra fees. Additionally, operators considering investing in the Borough might be deterred by any additional restrictions and may be inclined to go to other areas who have not adopted the provisions.

#### **5.1.5 Police views**

West Mercia Police have agreed to look at what happens nationally with EMROs before making a final decision. For the time being, Licensing Officers feel that this Authority

should not rush any decision and Telford & Wrekin Council should await possible developments from the police and also note the approach that is generally adopted across the country in this matter.

West Mercia Police and also West Mercia licensing authorities have informed Telford & Wrekin Council Licensing Officers that they would not support the introduction of a Late Night Levy.

- 5.1.6 The Statement of Licensing Policy will need to be amended to incorporate these changes.

## 5.2 **Equal Opportunities**

- 5.2.1 None – statutory provisions being implemented only.

## 5.3 **Environmental Impact**

- 5.3.1 Not applicable for the purposes of this report.

## 5.4 **Legal Comment**

- 5.4.1 Section 119 of the Police Reform and Social Responsibility Act 2011 amends the Licensing Act 2003 to include Early Morning Restriction Orders. It sets out the power to make early morning alcohol restriction orders, the procedural requirements, the making of an order, variation and revocation, and exceptions.

- 5.4.2 Chapter 2 of the Police Reform and Social Responsibility Act 2011 sets out the provisions for the Late Night Levy requirement.

## 5.5 **Links with Corporate Priorities**

- 5.5.1 This report has links to the following priorities :

- To Protect and Support our Vulnerable Children and Adults
- Protect and create jobs as a “Business Supporting, Business Winning Council”

## 5.6 **Financial Comment**

- 5.6.1 The current licensing budget does not include income in respect of the EMRO or LNL. If the Late Night Levy were to be imposed it would generate additional income of approximately £139k. Of this £97k (70%) would be payable to the Police with £42k being retained by the Council. This does not account for any additional administrative costs as a

result of implementing the Late Night Levy which would need to be deducted before splitting the net income between the two bodies.

- 5.6.2 There are no direct financial implications of implementing EMRO's as this would be administered within existing resources.  
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## 5.7 Risks and Opportunities

5.7.1 In proposing this action the Corporate Risk Management Methodology has been complied with. This approach is not intended to eliminate risks but to identify the risks and manage them. However not all risks can be managed all of the time and some risks may not have been identified.

5.7.2 The following key risks and opportunities associated with this action have been identified and assessed and arrangements will be put in place to manage them.

- (i) A legal challenge by way of Judicial Review should the Council not consider the changes brought about by the PRSRA 2011.
- (ii) A legal challenge by way of Judicial Review should the Council introduce a Late Night Levy or EMRO.

## 6. Ward Implications

6.1 This report has Borough wide Implications.

## 7. Background Papers

- 7.1 Police Reform and Social Responsibility Act 2011
- 7.2 Licensing Act 2003
- 7.3 Home Office Amended Guidance Issued Under Section 182 of The Licensing Act 2003
- 7.4 Home Office guidance on the Late Night Levy.

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