

LICENSING COMMITTEE

31 OCTOBER 2013

Report of Corporate Director – Public Experience

A.4 Information on the Late Night Levy and Early Morning Restriction Orders in respect of adoptive powers available to Councils to control the late night economy

(Report prepared by Simon Harvey)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To provide Members of the Licensing Committee with information on two of the new licensing powers made available to Licensing Authorities under the provision of the Police Reform and Social Responsibility Act 2011, namely the use of the Late Night Levy (LNL) or Early Morning Restriction Orders (EMRO) in connection with premises and club premises authorised to sell alcohol between the hours of Midnight and 06.00a.m and the Committee views are being sought with regard to any possible or future implementation of either of these new measures

EXECUTIVE SUMMARY

- This report gives information on powers made available to Licensing Authorities under the Police Reform and Social Responsibility Act 2011
- These powers are adoptive measures that can be implemented if the local circumstances permit or warrant their use, based on sufficient evidence supplied through prior consultation with interested parties and stakeholders, particularly in regards to Essex Police.

RECOMMENDATION(S)

It is recommended that the Committee agree that :

- a) Officers seek evidence from the Police and Crime Commissioner and Essex Police to determine whether there is sufficient evidence to support the implementation of either the Late Night Levy or an Early Morning Restriction Order in the Tendring District which is robust enough to defend this measure against judicial challenge and report the result of this evidence back to the Licensing Committee.
- b) Officers seek evidence from Essex Police to determine whether there is sufficient evidence to support the implementation of an EMRO in the Tendring District which is robust enough to defend this measure against judicial challenge and report the result of this evidence back to the Licensing Committee.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

In terms of the Council's Corporate Priorities in respect of exploring the possibility to implement these measures these are:

Our Prosperity

- **Build a thriving local tourism industry.**

- **Promote sustainable economic growth.**

Our People

- **Reduce health inequalities and disadvantage.**
- **Remain a low crime area and reduce the fear of crime.**

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

There is a net revenue from the Late Night Levy for Local Authorities and the Police which must be retained and spent specifically in connection with Policing the late night economy, the reduction of crime and disorder, the promotion of public safety, the reduction or prevention of public nuisance or the cleaning of any relevant highway or relevant land in the local authority area.

The exact amount of net revenue that would be likely to be collected within the Tendring District Council area is unknown at this point in time and ultimately will depend entirely on how many of our licensed premises would fall within the parameters of the Late Night Levy regulations and criteria.

Estimates of the number of premises and potential gross fee income from the levy has however been included below:

The amount of the levy is prescribed nationally. The annual charges for the levy will be:

| Rateable Value Bands (based on the existing fee bands) | A | B | C | D | E |
|---|-----------------------------|-------------------|--------------------|---------------------|--------------------|
| | No rateable value to £4,300 | £4,301 to £33,000 | £33,001 to £87,000 | £87,001 to £125,000 | £125,001 and above |
| Levy Charges | £299 | £768 | £1,259 | £1,365 | £1,493 |

There is also a multiplier that can be applied to premises that fall within Band D X 2 or E X3 if the premises primarily or exclusively sell alcohol for consumption on the premises (from experience of the fees payable for new applications and annual fees this will be hard to define/prove).

As an initial estimate, the Council could have the following numbers of premises and gross income from a proposed Late Night Levy commencing from Midnight:

| BAND | NUMBER OF PREMISES | FEE AMOUNT | INCOME |
|-------------|---------------------------|-------------------|----------------|
| A | 15 | £299 | £4,485 |
| B | 102 | £768 | £78,336 |
| C | 7 | £1,259 | £8,813 |
| D | 7 | £1,365 | £9,555 |
| E | 12 | £1,493 | £17,916 |

| | | | |
|--------------|------------|--|-----------------|
| TOTAL | 143 | | £119,105 |
|--------------|------------|--|-----------------|

It must be stressed however that these numbers both in terms of premises and potential gross income from the levy are estimates only and will be subject to possible exemptions from the levy as decided by the Council and/or the numbers of premises seeking to take advantage of the free minor variation process to reduce their opening hours below midnight and which would impact on the number of premises subject to the levy and the total amount of income received.

Further details of the exemption process and the minor variation option for premises are shown in the background detail of the report below.

If however these numbers remained reasonably static the Council could estimate gross income from the levy in the region of £119,105 out of which the Council can deduct its administration expenses in relation to the following:

- the procedure it must follow when introducing or amending the levy in its area, which includes the preparation and publication of the consultation document, including publishing it online and sending details to the PCC, the relevant chief officer of police and all premises licence and club premises certificate holders whose authorisations permit the supply of alcohol after midnight on any day;
- the cost of processing applications for a variation in relation to the introduction of the levy;
- its collection and enforcement of levy payments;
- the authority's application of the net amount of levy payments (whether by virtue of payment to the local policing body or in its application of its share of this sum in relation to arrangements it has put in place under section 131 of the 2011 Act); and
- its publication of a statement of estimated expenses (before the beginning of the levy year) and a statement of the net amount of levy payments (after the end of the levy year).

These administrative expenses cannot be estimated at this time however and there is no capacity within the existing resources of the licensing service to implement, administer, collect and if necessary enforce the payment of a late night levy. Therefore the Council would have to ensure that its full reasonable costs and expenses were deducted from the gross revenue amount for the Late Night Levy before apportioning the 70/30% split of net income with the Police.

Any financial risk relating to the levy revenue, such as lower than expected revenue or higher than expected costs, rests at a local level, i.e. it rests entirely with the Council.

There will be no specific restrictions on the amount of the expenses which licensing authorities can claim in expenses, however licensing authorities will have to account for their expenses following existing procedures.

If calculated on gross estimated revenue only, a 70/30% split would result in £83,373 from the levy being apportioned to Essex Police which would leave the Council with a gross balance of around £35,732 remaining.

It must be stressed again however that this estimate is based on a gross revenue figure and does not take into account any administrative costs and expenses to be deducted from this gross revenue figure by the Council before it apportions the net revenue figure on the basis of a 70/30% split between Essex Police and the Council.

Any payment of the levy which is owed to the licensing authority can be recovered as a debt due to the authority. Non-payment of the levy can result in suspension of a Premises License or suspension of Club Premises Certificate.

The Licensing Authority has to pay the 70% net apportionment to the Police in advance however and regardless of whether the late night levy fee has been paid by a premises or whether civil action is being taken to recover non payment.

If a Late Night Levy is introduced, holders of premises licences or club premises certificates with relevant late night authorisations (i.e. on or off sales of alcohol between the hours of Midnight and 06.00a.m.) will be entitled to make a free minor variation to their licence to reduce their licensed hours to avoid operating in the late night supply period (Midnight to 06.00a.m.). The Licensing Authority is recommended to allow licence holders no less than two months to submit such an application. The cost of processing these minor variations will be a deductible expense from the gross levy receipts in year zero which is the first year in which the levy is introduced.

The levy will apply indefinitely unless the Licensing Authority decides that the levy will cease in its area. It is a requirement of the levy that it must be paid by holders of licences that allow the sale of alcohol on or off sale during the hours of Midnight to 06.00a.m. regardless of whether the premises are operating during that period. For example a supermarket with a 24 hour licence would still be liable for payment even if it were not using those actual opening hours.

Notwithstanding, whatever the net amount of revenue is from the levy however, at least 70% is automatically paid to Essex Police with 30% retained by the Council. The Council must pay the Police its 70% proportion of the levy regardless of whether a business or businesses have paid their levy fee.

There is no capacity within the existing staff or financial resources of the licensing service to implement, administer, collect and if necessary enforce the payment of a Late Night Levy. Therefore any such additional work for the service would need to be funded from the gross revenue amount collected before apportionment of the net revenue to Essex Police on the basis of a 70/30% split between Essex Police and the Council.

EARLY MORNING RESTRICTION ORDER

In respect of any implementation of an Early Morning Restriction Order in the District, additional resources would need to be made available to the licensing service in order for it to be able to administer the considerable body of work that will be required to gather information and evidence, consult and if necessary hold a hearing prior to any implementation of an EMRO without this impacting on existing service delivery. There is not the staffing or financial capacity within the existing licensing service to be able to undertake this work without additional resources being made available to it.

Further details as to the requirements on the Council for it to implement an EMRO in its area are detailed in the main body of this report.

Risk

As detailed above in the 'Delivering Priorities' section of this report, there is a potential risk to the Council's reputation in implementing either the Late Night Levy or an Early Morning Restriction Order.

Implementation of either measure could have a substantial negative impact on local businesses that directly or indirectly serve the late night economy and therefore on local employment also. Further details of what that impact might be are shown in the main body of this report.

To be weighed and balanced against this is a possibly much smaller risk to the Council's reputation from criticism that may be levelled against it by some residents for example for not having implemented either of these measures if sufficient evidence or circumstances exists to support such an implementation or warrants such an implementation.

LEGAL

There may be significant legal implications for the Council should either the Late Night Levy or an Early Morning Restriction Order be implemented without sufficient supporting evidence that it is appropriate to do so. In such circumstances a challenge through the Courts against implementation is probable.

A challenge in Court is likely to be in the form of a Judicial Review being brought against the Council which could prove extremely costly for it in the event of the Council losing any such challenge. It is likely that an adoption of either of the new measures without the sufficient appropriate evidence to support their implementation being in place would result in the Council losing such a challenge.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.
Crime and Disorder / Equality and Diversity / Consultation/Public Engagement.

CRIME AND DISORDER

Section 17 of the Crime and Disorder Act 1998 places a responsibility on a local authority to do all that it can to prevent crime and disorder from occurring within its area.

EQUALITY AND DIVERSITY

Any equality and diversity implications will have been considered as part of the Police Reform and Social Responsibility Act 2011 being introduced through Parliament.

AREA/WARDS AFFECTED

All

CONSULTATION

Late Night Levy

The initial decision to introduce a Late Night Levy is for the Licensing Authority to make (through its Licensing Committee). The Licensing Authority is expected to consider the need for a levy with the Chief Officer of Police and The Police and Crime Commissioner (PCC). If a decision is taken to implement a late night levy then a much wider consultation process must take place with for example affected license holders of premises licences and club premises certificates, other late night businesses, e.g. takeaways, taxi

companies, the Police, residents, Councillors etc before any final resolution is made. Such a consultation would last for no less than 12 weeks.

The Home Office recommends that the final decision to introduce, vary or end the requirement for the levy is made by the Full Council on recommendation or otherwise from the Licensing Committee.

Early Morning Restriction Order (EMRO)

The initial decision to introduce a Late Night Levy is for the Licensing Authority to make (through its Licensing Committee). If the Committee decides that there is sufficient evidence that an EMRO is required in all of its area or a specified part of its area it must consult with the following:

- holders of (and applicants for) premises licenses or club premises certificates to which the proposed EMRO would apply;
- premises users in relation to Temporary Event Notices (TEN's) to which the proposed EMRO would apply;
- those who have received a provisional statement in respect of a premises to which the proposed EMRO would apply

The proposed EMRO must be advertised for a period of 42 calendar days by way of a public notice in a local newspaper and on the Council's web site and include information on how representations can be made for or against the proposal.

As well as holders of premises licences and club premises certificates (as outlined above), it is likely that representations will also be made by responsible authorities such as the Police for example, residents, Ward Councillor's, owners and employees of affected businesses, such as take away's or taxi companies, users of the late night economy such as customers and owners and employees of businesses outside of the proposed EMRO area.

The final decision to implement an EMRO (or to vary or revoke one) must be made by Full Council on recommendation or otherwise from the Licensing Committee.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

New licensing enforcement powers in respect of the Licensing Act 2003 were made available to Licensing Authorities under the provision of the Police Reform and Social Responsibility Act 2011.

These were namely the use of the Late Night Levy (LNL) or Early Morning Restriction Orders (EMRO) in connection with premises and club premises authorised to sell alcohol between the hours of Midnight and 06.00a.m.

LATE NIGHT LEVY

The Late Night Levy enables a licensing authority to charge a levy to persons who are licensed to sell alcohol late at night in the authority's area, as a means of raising a contribution towards the costs of policing/enforcing/cleaning the effects of the late-night economy.

The decision to introduce the levy is an option available to Tendring District Council as the licensing authority in the whole of its respective area. The levy would be payable by the holders of any premises license or club premises certificate in relation to all premises in the authority's area, which authorize the sale or supply of alcohol (on or off sales) on any days during a period (known as the 'late night supply period') beginning at or after midnight and ending at or before 6am.

The period can be for any length of time within these parameters, but must be the same every day.

The levy will not apply to Temporary Event Notices (TEN's).

The Home Office recommends that the decision to introduce, vary or end the requirement for the levy is made by the Full Council. Other decisions in relation to the introduction and administration of the levy can be delegated to the Licensing Committee (the Licensing Authority).

The initial decision to introduce the levy is for the Licensing Authority to make. The Licensing Authority is expected to consider the need for a levy with the Chief Officer of Police and The Police and Crime Commissioner (PCC). If a decision is taken to implement a late night levy then a much wider consultation process must take place with for example affected license holders, late night businesses, the Police, residents, Councillors etc before any final resolution is made.

Residents can also use existing channels and forums to put forward views and call for the implementation (or not) of the levy in their area, e.g. Ward Councillors etc.

When considering whether to introduce a levy, a Licensing Authority should take account of any financial risk (for example lower than expected revenue). This risk rests at a local level and should be fully considered prior to implementation.

The Licensing Authority will decide the design of the levy. This includes the late-night supply period, any exemptions or reductions that may apply and the proportion of revenue (after the Licensing Authority's costs are deducted) which will be paid to the PCC, with the remainder being retained by the Licensing Authority to fund other activities.

The net levy revenue must be split between the Licensing Authority and the relevant PCC. The Licensing Authority must pay at least 70% of the net levy revenue to the Police.

The Licensing Authority can choose to amend the portion of the net levy revenue that will be given to the PCC in future levy years. This decision must be subject to consultation in the same way as a decision to introduce the levy (The Home Office has not yet specified what 'future levy years' means yet. For example it could be the following financial year or within the next five financial years).

There are no restrictions on what the PCC's portion of the levy revenue can be spent on, in line with standard practice on the allocation of police funds.

The Home Office has now recommended however that the PCC should consider allocating the funds raised by the levy back to local Police Commanders to allow the revenue raised to be spent on tackling alcohol related crime and disorder in the area it was raised. (This is not mandatory and it is possible from discussions with Police at the Essex Joint Licensing Officer's Forum that there will be pressure on the ground from Police to spend levy money raised across Essex in night time economy hotspot areas across Essex such as Colchester or Chelmsford).

The Licensing Authority will be able to retain up to 30% of the net levy revenue and use it to fund services to tackle late night alcohol-related crime and disorder and services connected to the management of the night-time economy.

Specifically, these activities must have regard to the connection with the supply of alcohol during the late night supply period and related to arrangements for:

- the reduction of crime and disorder;
- the promotion of public safety;
- the reduction or prevention of public nuisance; or
- the cleaning of any relevant highway or relevant land in the local authority area.

(The first three could cover for example the provision of Taxi Marshals to steward late night customers at the taxi rank or late night Town Centre Wardens with accredited Police powers to assist local Police).

The Licensing Authority can deduct the costs it incurs in connection with the introduction or variation, administration, collection and enforcement of the levy from the gross income received from the levy prior to the overall net revenue being apportioned between the Police and Licensing Authority on the basis of a 70/30% split of net revenue.

The Licensing Authority can consider that there are some types of premises in relation to which the license holder should not make a contribution towards the cost of policing the night-time economy through the levy. This is a local decision and the Licensing Authority should make its decision based on its knowledge of the night time economy in its area, including information gathered through the consultation process.

The Licensing Authority is not able to choose a category of premises for an exemption from the levy if it is not prescribed in the covering regulations, nor are they able to exempt specific premises from the requirement to pay the levy.

The types of premises that can be exempted from the levy are as follows:

- Hotels (except where alcohol is served to non guests after midnight and up until 06.00a.m.);
- Theatres and Cinemas;
- Community Amateur Sports Clubs;
- Community Premises (e.g. village halls);
- Bingo Halls
- Country village pubs (within an area with a population of less than 3,000).
- The levy will also not apply on New Year Eve.

The Licensing Authority can also allow a 30% reduction from the levy for other premises which can show that they are promoting the licensing objectives such as for example being a Member of a local Pub and Club watch scheme. They must however meet the following benchmarks set by the covering regulations:

- a clear rationale as to why the scheme's objectives and activities will, or are likely to, result in a reduction of alcohol related crime and disorder;
- a requirement for active participation in the scheme by members; and
- a mechanism to identify and remove in a timely manner those members who do not participate appropriately.

Any payment of the levy which is owed to the licensing authority can be recovered as a debt due to the authority. Non-payment of the levy can result in suspension of a Premises License or suspension of Club Premises Certificate.

The Licensing Authority has to pay the 70% apportionment to the Police in advance however and regardless of whether the late night levy fee has been paid by a premises or whether civil action is being taken to recover non payment.

The levy will apply indefinitely unless the Licensing Authority decides that the levy will cease in its area. It is a requirement of the levy that it must be paid by holders of licences that allow the sale of alcohol on or off sale during the hours of midnight to 06.00a.m. regardless of whether the premises are operating during that period. For example a supermarket with a 24 hour licence would still be liable for payment even if it were not using those actual opening hours.

The Levy is quite likely to prove controversial and unpopular with businesses that may see it as an additional tax on their business at a difficult economic time.

Unless they decide to take advantage of the availability of applying for a minor variation process to reduce their licensed hours to finish before midnight, the levy could take in premises such as social clubs and restaurants that are unlikely to contribute in themselves to alcohol related late night crime and disorder.

If a large number of premises apply to reduce their hours of opening, this could also have a significant negative knock on effect on many other businesses and individuals that serve and depend on the late night economy for a considerable part of their income such as taxi companies, door staff, take aways, hotels and any number of direct and indirect suppliers of goods and services to late night premises and the late night economy as a whole.

Such an outcome at what is a difficult and challenging economic time for many businesses could prove an extremely unpopular measure for the Council to introduce and as a result it could be viewed as business unfriendly, particularly in relation to the evening and late night economy which provides employment both directly and indirectly for a large number of persons. This is particularly the case in an area such as Tendrings which is dependent

on tourism to provide income and employment for a large number of people who live and work in the District.

Listed below are both the potential advantages and disadvantages of introducing a Late Night Levy in our District.

| LATE NIGHT LEVY | |
|---|--|
| POTENTIAL ADVANTAGES | POTENTIAL DISADVANTAGES |
| <ul style="list-style-type: none"> • Additional targeted revenue to be used on extra resources for Policing and cleaning up of the late night economy; • Accountability for premises that contribute most to night time alcohol related crime and disorder and public nuisance issues; • Does not restrict or unnecessarily burden 'one off' events such as charity or Temporary Events; • Does not burden businesses that do not trade past midnight (or the specified hour if later than midnight). | <ul style="list-style-type: none"> • 70/30 split is not ring-fenced and may be apportioned by the Police outside of the Tendring District Council area; • Civil debt recoverable only through the Courts although Police must still be paid within 30 days of invoice regardless of receipt of income by the Council; • May impinge on the 'goodwill' of premises towards the Council and any future voluntary alcohol related crime and disorder reduction measures; • Does not restrict the overall availability of alcohol; • Will undoubtedly be regarded as an additional financial burden on businesses and which they are likely to view themselves as a further 'tax' on top of their business rates and rents and at a time of challenging economic circumstances; • Applies equally across the District and therefore may penalise smaller rural licensed businesses that do not contribute to late night economy alcohol related crime and disorder issues and that sit in areas which will not benefit from the income raised; • May also affect premises such as social clubs that do not negatively impact or contribute in themselves to late night alcohol related crime and disorder because for example they have mixed age groups of members and do not predominantly attract age groups that may prefer high volume vertical drinking ; • May negatively impact on direct and indirect employment in the evening |

and late night economy sector because late night licensed premises may choose to reduce their licensing hours which could affect groups like taxi drivers, door staff and employees at take aways and restaurants;

- Will be additional work for the licensing service which it is not currently resourced to undertake;
- Implementation of a Late Night Levy may be challenged through the Courts by way of a judicial review which could prove very costly to the Council if it was not able show there was sufficient evidence to warrant implementation.

EARLY MORNING RESTRICTION ORDER (EMRO)

An Early Morning Restriction Order (EMRO) is in itself an entirely separate measure or alternative to the Late Night Levy (LNL) and cannot be used in conjunction with the LNL for example.

Both powers were made available for the consideration of Councils and implementation where appropriate under the auspices of the Police Reform and Social Responsibility Act 2011

EMRO's are designed to address recurring problems such as high levels of alcohol-related crime and disorder in specific areas at specific times, serious public nuisance, and other instances of alcohol-related anti-social behaviour which is not directly attributable to specific premises.

An EMRO covers the following key areas:

- Applies to the supply of alcohol authorized by premises licenses, club premises certificates and temporary event notices;
- Applies for any period beginning at or after 12a.m. and ending at or before 6a.m. It does not have to apply on every day of the week, and can apply for different time periods on different days of the week;
- Applies for a limited or unlimited period (for example, an EMRO could be introduced for a few weeks to apply to a specific event);
- Applies to the whole or any part of the licensing authority's area;

An EMRO does not apply to the following key areas:

- Will not apply to any premises on New Year's Eve (defined as 12am to 6am on 1 January every year);
- Will not apply to the supply of alcohol to residents by accommodation providers between 12 am and 6am, provided the alcohol is sold through mini-bars and/or room service; and
- Will not apply to a relaxation of licensing hours by virtue of an order made under section 172 of the 2003 Act (e.g. an event like the Queens Diamond Jubilee celebrations for example).

An EMRO can apply to the whole or part of the licensing authority's area. (It could even be as limited as a street or single shopping precinct for example as long as it is clearly demonstrated that licensed premises in that area are the cause of recurring alcohol related crime and disorder in that area).

Individual premises which can clearly demonstrate to the licensing authority that the licensable activities carried on there do not contribute to alcohol related crime and disorder can be exempted from an EMRO (no specific information has been given at this time on how this assessment is to be made, but any such determination should be made in consultation with the Police and other responsible authorities such as Environmental Health noise nuisance officers for example and the Community Safety Partnership).

The Licensing Committee of the Licensing Authority should be satisfied that it has sufficient evidence to demonstrate that its decision is appropriate for the promotion of the licensing objectives.

This requirement should be considered in the same manner as other licensing decisions, such as the determination of applications for the grant of premises licenses in that the Licensing Committee should consider evidence from partners, including responsible authorities such as the Police and Environmental Health noise nuisance officers and also the local Community Safety Partnership, along with any other appropriate evidence from residents, Ward Councillors or other interested parties such as local businesses, to determine whether an EMRO would be appropriate for the promotion of the licensing objectives.

The kind of evidence that the Licensing Authority may wish to consider/take into account when determining the introduction of an EMRO in its area is also the same type of evidence required to support a cumulative impact policy, i.e. Police evidence, Health Authority information such as A&E or ambulance call out statistics, alcohol related noise nuisance, Environmental Health noise statistics and information from local residents and Ward Councillor's that there is a recurring problem with alcohol related crime and disorder in the area that an EMRO is being proposed.

If the licensing authority has identified a problem in a specific area attributable to the supply of alcohol at two or more premises in that area, and has sufficient evidence to demonstrate that it is appropriate for the promotion of the licensing objectives, it can propose making an EMRO. The licensing authority should first decide on the matters which must be the subject of the proposal.

These are:

- The days (and periods on those days) on which the EMRO would apply;
- The area to which the EMRO would apply;
- The period for which the EMRO would apply (if it is a finite period); and
- The date from which the proposed EMRO would apply.

The proposed EMRO must be advertised for a period of at least 42 calendar days. The public notice must be placed in a local newspaper and on its web site and include information on how representations can be made on the proposal (representations can be for or against the proposal). It must also display a notice of the proposal in the area to which the EMRO will apply in a manner that is likely to bring the proposal to the attention of those who may have an interest in it.

The licensing authority must also send a notice of the proposal to all affected people in its area.

They are:

- Holders of (and applicants for) premises licenses or club premises certificates to which the proposed EMRO would apply;
- Premises users in relation to TEN's to which the proposed EMRO would apply;
- Those who have received a provisional statement in respect of a premises to which the proposed EMRO would apply.

To be considered a relevant representation, a representation must:

- Be about the likely effect of the making of the EMRO on the promotion of the licensing objectives;
- Be made in writing in the prescribed form and manner, setting out the EMRO to which it relates and the nature of the representation;
- Be received within the deadline; and
- If made by a person other than a responsible authority, not be frivolous or vexatious.

In regard to the above criteria, a "person other than a responsible authority" could mean residents, Ward Councillors, or for example employees of affected businesses, owners and employees of businesses outside the proposed EMRO area (such as taxi companies or taxi drivers i.e. persons who work in that late night economy) and also users of the late night economy who may feel that the introduction of an EMRO will ultimately have a much wider negative outcome for businesses and customers of the late night economy while attempting to resolve a relatively small number of alcohol related incidents in a specific area .

A hearing to consider representations made for or against the introduction of an EMRO must be commenced within 30 working days of the end of the representation period. At the end of the hearing (which could last for more than one day depending on the level and strength of representation received either for or against the proposal) the Licensing Authority has three options open to it.

These are:

- To determine that the proposed EMRO is appropriate for promotion of the licensing objectives;
- To determine that the proposed EMRO is not appropriate for the promotion of the objectives and therefore that the process should be ended;
- To determine that the proposed EMRO should be modified.

If the authority proposes that the modified EMRO should differ from the initial proposal in relation to the area specified, any day not in the initial proposal, or the period of any day specified, the authority should advertise this new proposal (as per the process detailed above) so that further representations are capable of being made.

If the Licensing Authority is satisfied that the proposed order is appropriate for the promotion of the licensing objectives, its determination must be put to the Full Council for its final decision and the matters which are set out in the final order must be no different from the matters set out in the original proposal to make the order.

There is no capacity within the existing resources of the licensing service to administer the considerable body of work that will be required to gather information and evidence, consult and if necessary hold a hearing prior to any implementation of an EMRO.

Therefore the Council would need to make additional staff and financial resources available to its licensing service for it to be able to undertake the work of implementing an EMRO.

The implementation of an EMRO in the District or part of the District may prove to be a controversial and unpopular measure with businesses authorised to sell alcohol between the hours of Midnight and 06.00a.m as an EMRO would restrict their hours of opening anytime after Midnight.

An implementation of an EMRO at what is a difficult and challenging economic time for many businesses may be viewed as business unfriendly, particularly in relation to the evening and late night economy which provides employment both directly and indirectly for a large number of persons such as taxi drivers, door staff, hotel staff, employees of take aways and restaurants and those that directly or indirectly supply goods and services to the late night economy. This is particularly the case in an area such as Tendring's which is dependent on tourism to provide income and employment for a large number of persons who live and work in our District.

Listed below are both the potential advantages and disadvantages of introducing an EMRO into our District or for part of our District:

Early Morning Restriction Orders

| EARLY MORNING RESTRICTION ORDERS | |
|---|--|
| POTENTIAL ADVANTAGES | POTENTIAL DISADVANTAGES |
| <ul style="list-style-type: none"> • Can be targeted to the 'worst' area or areas of the authority and not generally across the entire District • Regulations allow for individual premises to be exempted from the requirements of an EMRO if they are able to prove to the satisfaction of the Licensing Authority that they are not the cause of alcohol related crime and disorder etc. • Can specify precise days in the EMRO order, e.g. that it only applies on a Friday and Saturday for example • Totally prohibits the sale of alcohol during the specified times and within the specified area | <ul style="list-style-type: none"> • Restricts local business by removing rights already afforded to them by their premises licence; • Regulations allowing for the exemption of individual premises from the requirements of an EMRO are likely to prove unworkable in practice because if they are the only premises open late at night in an area then they are probably going to attract crime and disorder to their premises because they are the only bar/club that is open; • May impinge on the 'goodwill' of local businesses towards the Council and any future voluntary |

- Does not burden businesses that do not trade past midnight (or the specified hour if later than midnight).

alcohol related crime and disorder reduction measures;

- Prohibits the sale of alcohol by almost every means as it is not restricted to specific types of premises. This therefore potentially prevents 'events/sales' that are not contributory to alcohol related late night economy concerns, e.g. certain charity events;
- Could affect the economy as a whole as it may stop businesses from trading due to 'non profitability' which may adversely affect the daytime economy as well as associated subsidiary businesses that serve the evening and late night economy such as Hotels and Restaurants because late night licensed premises within the designated EMRO would have their licensing hours reduced;
- Introducing an EMRO into an area e.g. Clacton town centre could have a knock on effect for the town's image as a whole and not just its night time economy. The overspill from this negative image could damage the daytime economy also;
- Shutting all alcohol licensed premises within an area at a certain time e.g. the town centre at Midnight for example is likely to mean that alcohol related crime and disorder may simply shift to another part of the District (that may still have premises selling alcohol after Midnight) as people go in search of a late night drink or entertainment or shifts to other towns in Essex where premises remain open. Or premises outside the EMRO area may be tempted to open/apply for later alcohol licenses outside that area and once again this simply may

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| | <p>displace or shift the problem.</p> <ul style="list-style-type: none"> • May also affect premises such as social clubs that do not negatively impact or contribute in themselves to late night alcohol related crime and disorder because for example they have mixed age groups of members and do not predominantly attract age groups that may prefer high volume vertical drinking; • May negatively impact on direct and indirect employment in the evening and late night economy sector, e.g. taxi drivers and companies, door staff, hotel staff, employees of take aways and other businesses that directly or indirectly supply goods and services for the evening and late night economy; • Will be additional work for the licensing service which it is not currently resourced to undertake; • Decision to implement an EMRO may be challenged through the Courts by way of a judicial review which could prove very costly to the Council if it was not able show there was sufficient evidence to warrant implementation. |
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| <p>CURRENT POSITION</p> |
| <p>Implementation of Late Night Levy and EMRO powers are discretionary and at this point in time the Licensing Authority of Tendring District Council has yet to decide on whether or not it wishes to proceed with the adoption of these measures and whether or not it wishes to explore as an interim position with Essex Police if there is sufficient evidence of alcohol related crime and disorder in the Tendring District area to support the implementation of either measure and critically, whether this evidence is sufficient and robust enough to withstand the challenge of judicial review.</p> <p>This report recommends to Members of the Licensing Committee that the Council does explore the feasibility of implementing either a Late Night Levy or an Early Morning</p> |

Restriction Order in order to determine whether there is sufficient evidence of alcohol related crime and disorder to warrant and support such an implementation, so that it can be recorded that the Council has investigated and fully considered the options open to it to adopt additional powers under the Police Reform and Social Responsibility Act 2011 for the control of alcohol related crime and disorder linked to the late night economy or associated with the late night economy.

BACKGROUND PAPERS FOR THE DECISION

- 1) Home Office Late Night Levy Guidance
- 2) The Licensing Act 2003 (Early Morning Alcohol Restriction Regulations) 2012

APPENDICES

There are none