

**CARDIFF COUNCIL
CYNGOR CAERDYDD**

Agenda No.

LICENSING COMMITTEE: 6 August 2013

Report of the Head of Regulatory and Supporting Services

LATE NIGHT LEVY & EARLY MORNING RESTRICTION ORDERS

1. Background

1.1 The Police Reform & Social Responsibility Act 2011 introduced a number of changes to the Licensing Act 2003. Since 31st October 2012 two discretionary powers have been available to local authorities to deal with alcohol related crime and disorder, namely the Late Night Levy and Early Morning Restriction Order (EMROs). The Purpose of this report is to provide the Committee with details of these provisions.

2. Late Night Levy.

2.1 The Late Night Levy is a discretionary local power that enables the police and licensing authorities to raise a 'levy' from late-opening alcohol suppliers to assist with the costs of policing the night time economy. If a licensing authority resolves to introduce the Levy it must apply to the whole of the licensing authority's area. The period to which the levy relates must begin at or after midnight and end at or before 6am.

2.2 The licensing authority can deduct administrative expenses from the gross levy revenue. The police would then receive 70% of the net revenue, with the remaining 30% going to the licensing authority.

2.3 The licensing authority's portion must be spent on services connected with the management of the night time economy that are targeted at dealing with alcohol related crime and disorder. The Act does not specify how the Police's portion of the levy is to be spent.

- 2.4 The amount of the levy has been set by regulation and is calculated according to the rateable value of the premises. It would be collected alongside the annual licence fee.

Rateable Value (£)	Rateable Band	Amount of Levy per annum (£)
0 – 4,300	A	299
4,301 – 33,000	B	799
33,001 – 87,000	C	1,259
87,001 – 125,000	D	1,365
87,001 – 125,000	D1	2,730 (Premises exclusively or primarily for the sale of alcohol for consumption on the premises)
125,001 +	E	1,493
125,001 +	E1	4,440 (premises exclusively or primarily for the sale of alcohol for consumption on the premises)

3. **Position in Cardiff**

- 3.1 In Cardiff the majority of licensed premises are in Rateable Bands B & C. There are roughly 700 licensed premises in Cardiff that are authorised to sell alcohol between midnight and 6am. The levy could also capture premises that have standard opening hours that finish before midnight, but have extensions on certain days e.g. midnight on St Patrick’s Day; exceptions to this provision are set in Section 4 below.
- 3.2 The majority of premises operating within the levy period would be paying an annual levy fee of £799 (Band B) or £1259 (Band C), in addition to their annual licence fee of £180 (Band B) or £295 (Band C).
- 3.3 Relevant expenses incurred by the licensing authority in connection with the levy such as administrative costs, enforcement costs of the levy requirement, and publication of a statement etc. would be deducted from the gross levy.
- 3.4 It should be noted that in the event of a levy being implemented licensed premises would be offered a free minor variation to reduce their hours for the sale of alcohol to take them outside the levy period. This could substantially decrease the estimated levy income.

4. Exemptions and Reductions

4.1 The Late Night Levy (Expenses, Exemptions and Reductions) Regulations 2012, specify a number of exemptions and reductions to the levy fee that can be applied. Permitted exemption categories include the following:

- **Premises with overnight accommodation:** This exemption is only applicable to any premises which serve alcohol for consumption on the premises to guests who are staying overnight at the premises,
- **Theatres and Cinemas:** Premises in this category must ensure that, during the late night supply period, the sale of alcohol is only made for consumption on the premises to ticket holders, participants in the production or invited guests to a private event at the premises.
- **Bingo Halls:** Premises must be licensed and regulated under the Gambling Act 2005 and the playing of bingo is the primary activity carried on at the premises.
- **Community Amateur Sports Clubs (CASC):** This exemption only applies to those premises registered as a CASC under section 658 of the Corporation Tax Act 2012.
- **Community premises:** Premises in this category must have successfully applied for the replacement of the mandatory 'designated premises supervisor' condition.
- **Country village pubs:** Not applicable in Cardiff
- **New Year's Eve:** This applies to premises which are authorised to sell alcohol in the supply period only by virtue of the fact they are permitted to supply alcohol during this period on 1st January each year.
- **Business Improvement Districts (BIDs):** Licensing authorities can offer an exemption from the levy for premises which participate in BIDs that operate in the night time economy.

In addition to the above a licensing authority can also offer a reduction of 30% to:

- Premises that are in receipt of Small Business Rate Relief and have a rateable value of £12,000 or less. The reduction is only available to premises that supply alcohol for consumption on the premises.
- Membership of a suitable best practice scheme designed to reduce alcohol crime and disorder.

5. **Council's Levy Portion**

5.1 The Regulations states that the Council must apply its share:

'having regard, in each case in connection with the supply of alcohol between midnight and 6am, to arrangements for-

- (a) the reduction or prevention of crime and disorder,*
- (b) the promotion of public safety,*
- (c) the reduction or prevention of public nuisance,*
- (d) the cleaning of any highway maintainable at the public expense (other than a trunk road which is a special road) within the City or any land within the City to which the public are entitled or permitted to have access with or without payment and which is open to the air'*

5.2 Suggestions of services in Cardiff that the levy could contribute to the funding of are as follows:

- Street cleansing
- Street Pastors
- Providing temporary public conveniences
- Temporary emergency triage facilities
- Night time economy management
- Improved CCTV systems
- Personal safety initiatives
- Enforcement operations

6. **Possible Advantages of implementing levy:**

6.1 Some of the costs of policing the late night economy will be recovered, which would reduce the burden on Cardiff's taxpayers; the quantum of that contribution is uncertain.

6.2 There could be an increase in business led best practice schemes due to the applicable reduction categories. This could lead to improvements in the management of the night time economy and a reduction in alcohol related crime and disorder. This positive move would however over time reduce the amount generated by the levy.

6.3 There could be benefits to local businesses and residents from a safer night time economy.

7. **Possible Disadvantages of implementing levy:**

- 7.1 There would be an increased workload for the Licensing Section to process additional applications and collect the levy. It is envisaged that a number of premises would apply for minor variation applications to take them out of levy period. This could then result in a possible increase in TEN applications (which aren't captured by the levy) for later hours within the levy period which currently only attracts a £21 fee.
- 7.2 The police proportion of the levy does not have the same constraints upon the use of the money. This could possibly frustrate local businesses if the money collected from them is not spent on policing the night time economy or possible not spent within Cardiff.
- 7.3 The introduction of the Licensing Act 2003 led to more staggered opening hours in licensed premises. This somewhat reduces problems of nuisance and crime and disorder as there isn't large numbers on the street trying to get home at the same time. It is possible that licensed premises will vary their licence in order to avoid the levy, resulting in more uniform closing hours
- 7.4 The levy may produce a negative effect on the night time economy and has been the source of most of the objections raised in other parts of the Country. If neighbouring authorities do not introduce the levy, business may not choose to locate or expand in Cardiff.
- 7.5 Many members of the licensed trade are already stating that their businesses are struggling; the additional fees may cause further financial difficulties.

8. Early Morning Restriction Orders

- 8.1 An Early Morning Restriction Order (EMRO) is a discretionary power which enables licensing authorities to restrict sales of alcohol in the whole **or part** of their area for any specified period between midnight and 6am. An EMRO does not have to apply on every day of the week, and different periods can be applied on different days. In this respect, it is a more flexible measure to deal with crime and disorder.

However, the licensing authority **can only introduce** an EMRO if they consider it to be appropriate for the promotion of the licensing objectives, and they have evidence for their justification.

- 8.2 EMROs apply to premises licences, club premises certificates and temporary event notice.
- 8.3 The only exemptions to an EMRO are on New Year's Eve and in premises such as hotels/guest houses whereby the supply of alcohol to residents is through a mini-bars and room service.
- 8.4 An EMRO is considered more of a last resort than other measures available under the Licensing Act 2003. The Section 182 Guidance suggests that before introducing an EMRO local authorities have regard to other measures such as the introduction of a Cumulative Impact Zone, reviewing licenses of specific problem premises, encouraging the creation of business led best practice schemes etc.

9. Possible Advantages of EMROs

- 9.1 It could reduce alcohol related crime, disorder and nuisance in problem areas, improving the area for residents and businesses.
- 9.2 It would control the time that the night-time economy ends, which could be useful for enforcement agencies to target and apportion resources. Conversely, the imposition of a terminal hour could see an increase in problems of nuisance and anti-social behaviour if large groups of people are leaving premises at the same time.

10. Possible Disadvantages of EMROs

- 10.1 It may label an area as a crime hotspot, which could in turn increase the public's fear of crime, resulting in 'no go' areas and well run licensed premises within these areas would be affected, although the problems in the area may not be attributable to them.

- 10.2 Premise may choose to relocate to other areas, this could be bad for the economy in the EMRO area and may shift the problems elsewhere.
- 10.3 An EMRO can only stop the sale of alcohol, it does not close the premises so may not address all the problems in an area.
- 10.4 People may choose to drink in premises just outside an EMRO area to take advantage of later drinking times. This may lead to a widening of problems outside the original EMRO area.
- 10.5 The effect of restricted hours may be financially detrimental to many businesses, especially in the current economic climate. Some businesses may choose to relocate to other areas which could have an effect on the authority area as a whole.
- 10.6 There would be an increased demand on Council and Police resources in terms of monitoring compliance and enforcement of the EMRO. This would need to be paid for with taxpayer's money as an EMRO does not generate income.

11. Achievability

This report contains no equality personnel or property implications.

12. Legal Implications

- 12.1 All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council eg. standing orders and financial regulations; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

13. Financial Implications.

- 13.1 This report is just for noting and as such has no direct financial implications. If future consideration is given to implement these proposals an estimate of the additional income that would be generated and the additional costs incurred would be required so that an informed decision could be made. Any surpluses generated by this activity should be ring-fenced and used for the management of the night time economy and targeted at dealing with alcohol related crime and disorder.

14. Recommendation

14.1 That the report be noted

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1st July 2013

This report has been prepared in accordance with procedures approved by Corporate Managers.

Background Papers: None