

**Extract from Dealing with the problems of late night drinking  
A consultation on secondary legislation for the Late Night Levy and  
Early Morning Restriction Orders**

**3. PROCESS**

3.01 The 2011 Act allows an EMRO to be applied by licensing authorities flexibly between midnight and 6am to restrict the sale of alcohol. Licensing authorities can apply these orders to areas where they consider that restricting the late night supply of alcohol is appropriate to promote the licensing objectives. Before this power is commenced, regulations must be made.

3.02 The regulations will prescribe details of the process for making an EMRO and the kinds of premises that will be exempt from an EMRO. Consultation respondents are asked to consider the proposed process map in Annex A.

CONSULTATION QUESTION 1:

**Do you think that the proposed processes for Early Morning Restriction Orders include sufficient consultation with those likely to be affected by an EMRO?**

Yes

No

Don't know

If no, please explain what else is needed

**4. EXEMPTIONS TO EMROS**

4.01 EMROs are designed to address recurring problems with alcohol-related crime and disorder in specific areas. The licensing authority will be able to decide during which hours the EMRO will apply, whether it is applied every day or on particular days; whether it will run for a limited or unlimited period; and whether it will apply to whole or part of the licensing authority's area. In each case, the decision will be based on what is appropriate for the promotion of the licensing objectives<sup>1</sup>. There are some types of premises which should not be subject to an EMRO, wherever it is applied. Some businesses, wherever they may be located, do not contribute to alcohol-related crime and disorder. For example, a hotel may only serve alcohol to its guests who are staying overnight. As such, the 2011 Act enables the Secretary of State to make regulations which prescribe exemptions to an EMRO by reference to particular kinds of premises or particular days.

4.02 Many licences have additional authorisations on New Year's Eve to stay open later than usual. The government proposes that EMROs will not apply between midnight on 31st December and 6am on 1st January of each year.

CONSULTATION QUESTION 2:

**The government proposes that EMROs will not apply (i.e. will not restrict alcohol sales) between midnight on 31st December and 6am on 1st January of each year. Do you think that EMROs should apply on New Year's Eve?**

- Yes – the EMRO should apply on New Year's Eve
- No– the EMRO should not apply on New Year's Eve
- Neither agree nor disagree
- Don't know
- Please give reasons for your answer

4.03 Local discretion in setting the EMRO area is paramount, and the intention is to have only a few nationally prescribed exemptions. Some premises may need to vary their licence (to, for example, add a condition via the minor variations process) before an exemption is applicable to them.

4.04 EMROs will operate to restrict alcohol sales even when a Temporary Event Notice (TEN) is otherwise in effect. Section 172 of the Licensing Act 2003 enables the Secretary of State to make a licensing hours order to relax licensing hours on special occasions. Primary legislation includes provision that, unless the licensing hours order provides otherwise, the EMRO will not be effective to prevent alcohol sales in a period to which the extended hours order applies.

4.05 The proposed exemptions cover some types of premises where the only customers during the relevant period will be members or their guests; or those who stay overnight; or those who attend for a performance. We also propose that there is an exemption for community premises which have demonstrated that they do not need a Designated Premises Supervisor (DPS). We propose that the following exemptions will apply to every EMRO:

Name	Definition
<b>Premises with overnight accommodation</b>	Premises at which the sale of alcohol is subject to a condition to the effect that, between midnight and 6am, such sales can only be made to residents for consumption on the premises. This will not exempt hotels and guest houses that serve alcohol to members of the public who are not staying overnight at the premises.
<b>Theatres and cinemas</b>	Premises at which the sale of alcohol is subject to a condition to the effect that, between midnight and 6am, such sales can only be made to ticket holders or

	participants in the production for consumption on the premises, when there is otherwise no access to the general public.
<b>Community premises</b>	Those premises that have successfully applied to remove the mandatory DPS requirement.
<b>Casinos and bingo halls with a membership scheme</b>	Premises licensed to provide these facilities for gambling under the Gambling Act 2005 with a membership scheme in operation between midnight and 6am.

CONSULTATION QUESTION 3:

**Do you agree or disagree that the categories of premises above should be exempt from EMROs?**

Agree – these categories of premises should be exempt from EMROs

Disagree – these categories of premises should not be exempt from EMROs

Neither agree nor disagree

Don't know Please give reasons for your answer, specifying any exemptions that you disagree with

CONSULTATION QUESTION 4:

**Do you have any other suggestions on the types of premises that should be considered for an exemption from EMROs?**

Yes

No

Don't know If yes, please specify which other types of premises and give reasons.

## PART 2 THE LATE NIGHT LEVY

### 5. PROCESS

5.01 The levy will allow licensing authorities to raise a contribution from late opening alcohol retailers towards the policing costs generated by the late night economy. The levy will apply to all premises (on and off-trade), throughout the licensing authority's area, which are authorised to sell or supply alcohol in the time period set by the licensing authority. This can be any time between midnight and 6am. Section 172 of the Licensing Act 2003 permits the Secretary of State to make a licensing hours order to relax licensing hours on special occasions. The Government intends to ensure that this will not result in some premises inadvertently becoming liable to pay the late night levy. The levy will not apply to TENs. The 2011 Act makes provision for the Government to prepare draft regulations before the levy scheme is commenced.

5.02 Regulations will prescribe details of the process for adopting the late night levy. Consultation respondents are asked to consider the proposed process maps in Annex B.

5.03 Prior to making a decision to implement the levy, it is intended that the licensing authority will have discussions with the Police and Crime Commissioner (PCC) and local police to decide whether it is appropriate to introduce the levy in its area. If so, the licensing authority must formally consult the PCC, the police, licence holders and others about its decision to introduce the levy. The consultation should ask whether it needs to apply any exemptions or discounts to the levy and how it will apportion net levy revenue between the police and licensing authority. The licensing authority will have the final decision in all of these areas.

#### CONSULTATION QUESTION 5:

**Do you think that there should be an option for local residents/ community groups to recommend the implementation of the levy in their area?**

Yes

No

Don't know

If yes, do you have any suggestions on how this process should operate?

### 6. EXEMPTIONS AND REDUCTIONS TO THE LEVY

6.01 There are some types of premises which licensing authorities may consider should not make a contribution towards late night police costs

through the late night levy. To enable local discretion, the levy will allow licensing authorities to select exemptions or reductions that they consider should apply in their area. It is proposed that the following types of business are available as exemptions for licensing authorities to adopt:

<b>Name</b>	<b>Definition</b>
<b>Premises with overnight accommodation</b>	Premises at which the sale of alcohol is subject to a condition to the effect that, between midnight and 6am, such sales can only be made to residents for consumption on the premises. This will not exempt hotels and guest houses that serve alcohol to members of the public who are not staying overnight at the premises.

<b>Restaurants</b>	Premises that have condition(s) on their licence that have the effect of making clear their status as restaurants run on a permanent, more formal basis. These could, for example, include conditions which require that, between midnight and 6am: customers are shown to their table; food is provided in the form of substantial table meals that are served and consumed at the table; premises primarily serve meals to those eating on them, and alcohol is not be supplied to, or consumed on the premises by, any person other than those who are taking substantial table meals and where the consumption of alcohol by such persons is ancillary to taking such meals.
<b>Theatres and cinemas</b>	Premises at which the sale of alcohol is subject to a condition to the effect that, between midnight and 6am, such sales can only be made to ticket holders or participants in the production for consumption on the premises, when there is otherwise no access to the general public.
<b>Casinos Bingo Halls</b>	Premises licensed to provide facilities for gambling under the Gambling Act 2005

	with a membership scheme in operation between midnight and 6am.
<b>Community Amateur Sports Clubs (CASCs)</b>	Those premises that have a relief from business rates by virtue of being a CASC (definition found in Schedule 18 of the Finance Act 2002.)
<b>Community premises</b>	Those premises that have successfully applied for the removal of the mandatory DPS requirement.
<b>Country village pubs</b>	Premises within designated rural settlements with a population of less than 3,000 (as appear in the qualifications for rural rate relief).

CONSULTATION QUESTION 6:

**Do you agree or disagree that licensing authorities should be able to exempt these premises from the levy?**

Agree

Disagree

Please give reasons for your answer, specifying any exemptions that you disagree with

**Business Improvement Districts**

6.02 Business Improvement Districts (BIDs, established under the Local Government Act 2003) are a defined area within which businesses pay a fee in order to fund improvements within their boundaries and can prove valuable to business communities. An increasing number of late night or licensed trade BIDs are being established. Some of these schemes may fulfil the purpose of the levy, by raising contributions towards late night services, without the need for local authority intervention. These schemes should be actively encouraged. It is proposed that licensing authorities are able to grant an exemption to those paying a levy as part of a BID where the authority is satisfied that the aims meet a satisfactory crime and disorder focus.

CONSULTATION QUESTION 7:

**Do you agree or disagree that licensing authorities should be able to exempt Business Improvement Districts from the late night levy?**

Agree – licensing authorities should be able to exempt Business Improvements Districts

Disagree – licensing authorities should not be able to exempt Business Improvement Districts

Neither agree nor disagree

Don't know

### **Members' clubs**

6.03 Many private members' clubs operate under 'Club Premises Certificates' (CPCs). Alcohol cannot generally be supplied under a CPC for profit or to the general public. Some licensing authorities may consider that private member's clubs in their area should not make a contribution to late night enforcement costs. Should clubs be exempt from the late night levy, the police revenue in the average licensing authority area from the levy will be reduced by approximately 10%.

CONSULTATION QUESTION 8:

**Do you think that premises operating under a club premises certificate should be exempt from the late night levy?**

Yes

No

Don't know

Please give reasons for your answer

### **Small Business Rate Relief**

6.04 Small Business Rate Relief offers business ratepayers that meet certain criteria the opportunity to receive reductions on their rates bills. The criteria vary slightly in England and Wales but, in general, businesses are typically eligible if they occupy only one property and their rateable value is below a certain level. This may apply, for example, to small local pubs.

CONSULTATION QUESTION 9:

**What are your views on affording a reduction from the late night levy to businesses that receive small business rate relief?**

Please give reasons for your answer

### **New Year's Eve**

6.05 Some premises may have a one-off late night authorisation on their licence to celebrate the New Year. On the one hand, it could be argued that the ability to host one-off special occasions will not be hindered by the late night levy. Before the levy begins in any area, premises will be able to make a free minor variation to their licence to reduce their hours. On special occasions, they may use a TEN to authorise the sale of alcohol.

6.06 On the other hand, an exemption for those premises whose only late night authorisation is for New Year will benefit many premises.

CONSULTATION QUESTION 10:

**Do you agree or disagree that there should be an exemption for New Year's Eve?**

Agree – there should be an exemption for New Year's Eve

Disagree - there should not be an exemption for New Year's Eve  
Neither agree nor disagree  
Don't know

### **Reductions for best practice schemes**

6.07 Licensing authorities may also wish to use the late night levy to promote and support participation in other business-led best practice schemes. These schemes encourage businesses to join together to address some of the negative effects of selling alcohol. The following schemes are recommended as available reduction categories

Members of a locally accredited **Best Bar None** scheme

Members of a locally accredited **Pubwatch, Clubwatch or Shopwatch** scheme.

The discount can only apply to one of the above three schemes. Criteria to be an applicable pubwatch scheme:

- • The local authority is satisfied that the scheme has clear aims and objectives which are subject to a formal statement of intent or a constitution and that it has demonstrated that its members are actively working to reduce crime and disorder.
- • Membership is open to all licensed premises within the geographic area.
- • The scheme has a Chair person and/or Coordinator who is responsible for maintaining verifiable records of membership.

Those premises which pay an annual **individual** contribution to a **Community Alcohol Partnership** in their area. This definition does not include subsidiaries of companies that pay a contribution on a national level.

Premises that pay a levy in a **Business Improvement District** (established under the Local Government Act 2003) where the authority is satisfied that the aims meet a satisfactory crime and disorder focus

CONSULTATION QUESTION 11:

**Do you agree or disagree that licensing authorities should be able to ask for a reduced levy payment from these businesses?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

### **Other local best-practice schemes**

6.08 The best practice schemes referred to in Question 11 are locally accredited schemes that are part of a national network. It has been suggested that some schemes have been created locally without any national accreditation. Groups of businesses may join together and fund late night services or address specific community problems. Regulations could grant licensing authorities the power to give discounts to schemes that they recognise as



effective. Schemes would have to meet readily recognised and measurable benchmarks in order to be capable of qualifying for a discount.

CONSULTATION QUESTION 12:

**Do you have any suggestions for benchmarks that can be applied to grassroots schemes to ensure members are actively working to reduce crime and disorder?**

6.09 We propose that there is a 10% discount to the levy for every relevant best practice scheme (up to a maximum of 30%). This is in recognition that many businesses are members of multiple schemes.

CONSULTATION QUESTION 13:

**Do you agree or disagree with this set-up of cumulative discounts?**

Agree

Disagree

Neither agree nor disagree

Don't know

6.10 There may be other types of premises that should not be required to contribute fully towards the levy, for example, community-run pubs or others with an established community and social character.

CONSULTATION QUESTION 14:

**Should there be scope for further exemptions and reductions from the late night levy?**

Yes

No

If yes, please state what you think these should be and how this type of premises should be defined.

## **7. LICENSING AUTHORITY LEVY REVENUE**

7.01 There are many different types of local authority-funded services which make the late night economy a more welcoming place to do business. Some examples include taxi marshals, late night town wardens and street cleaning services. The licensing authority can retain up to 30% of the net levy revenue to fund other activities besides policing. This section considers whether there should be any restrictions on how authorities spend this money.

CONSULTATION QUESTION 15:

**What activities do you think licensing authorities should be able to fund with their retained proportion?**

**Restrictions on funded activities**

7.02 It is intended that the proportion of net levy revenue retained by licensing authorities (a maximum of 30%) is used to fund services which tackle alcohol-related crime and disorder, such as taxi marshalling and 'booze buses' that provide assistance to those who otherwise might become victims or offenders. This would not extend to the wider management of the night time economy. For example, it would include the clean-up of the after-effects of alcohol-related crime and disorder, such as broken glass and public urination, but not general clean-up activities, such as the collection of waste from outside fast food restaurants

CONSULTATION QUESTION 16:

**What restrictions do you think there should be on the types of services that licensing authorities will be able to fund?**

Please state whether you think the types of services should be limited to preventing and tackling alcohol related crime and disorder; or should extend to both preventing and tackling alcohol related crime and disorder and management of night time economy?

## **8. IMPACT ASSESSMENT**

8.01 An Impact Assessment for late night levy secondary legislation is attached. Consultation respondents are encouraged to comment on this document.

CONSULTATION QUESTION 17:

**If you have any comments on the Impact Assessment, please detail them here?**

CONSULTATION QUESTION 18:

**If you are responding on behalf of a licensing authority, how many premises do you expect will be affected by EMROs in your area?**

## **9. ABOUT YOU**

9.01 Please indicate in what capacity you are responding to this consultation:

Licensing authority

Member of the public

Police officer

Person involved in licensed trade/club premises

Other please specify

**Police officers only: Which Police Force are you from?**

9.02 Licensed trade only: Please tick one of the following boxes which would best describe you/your organisation

Individual

Members' Clubs

Micro company (1 – 9 employees)  
Small business (10-49 employees)  
Small – medium enterprise (50-249 employees)  
Large company (over 250 employees)

**Licensing officer only: Which Licensing Authority are you from?**  
**Member of the public/Other only: Which Local Authority or London Borough are you from?**

