

Committee(s):	Date(s):	
Licensing Committee	22 October 2012	
Subject: Late Night Levy and Early Morning Restriction Orders	Public	
Report of: Director Markets and Consumer Protection	For Information	
<u>Summary</u>		
<p>The Police Reform and Social Responsibility Act 2011 (PRSRA) has introduced the power for licensing authorities to impose a late night levy on the whole of the City and also to impose an Early Morning Restriction Order on part or all of the City as a means of changing the balance of the night time economy in favour of the general community.</p> <p>Further guidance on the application of both measures is still to be published. This report sets out the maximum expected revenue of the levy and seeks the views of Members in proceeding with either of the two measures.</p> <p>Recommendations</p> <ul style="list-style-type: none"> • Whilst this report is primarily for information it is recommended that Members consider the options set out at paragraphs 21 -25 and indicate their preference. 		

Main Report

Background

1. The Police Reform and Social Responsibility Act 2011 (PRSRA) has introduced the power for licensing authorities to impose a late night levy on the whole of their area and also to impose an Early Morning Restriction Order on part or all of their area. Draft regulations, The Late Night Levy (Application and Administration) Regulations 2012, have been published for the late night levy but final regulation and the detailed guidance on the application of both of these measures has yet to be published.
2. The late night levy (the levy) enables licensing authorities to raise a contribution from late-opening alcohol suppliers towards policing the night-time economy. It will be a local power that licensing authorities can choose whether or not to exercise. It must cover the whole of the licensing authority's area. However, the licensing authority can also choose the period during which the levy applies every night, between midnight and 6am, and decide what exemptions and reductions should apply from a list set out in regulations.

3. An Early Morning Alcohol Restriction Order (EMRO) is a power in the Licensing Act 2003 that will enable licensing authorities to restrict sales of alcohol in the whole or a part of their areas for any specified period between 12 midnight and 6 am, if they consider this appropriate for the promotion of the licensing objectives.

Current Position

Late Night Levy

4. The aim of the levy is to empower local areas to charge businesses that supply alcohol late into the night for the extra enforcement costs that the night-time economy generates for police and licensing authorities. The rationale behind this is that the Government in The Coalition Agreement included the commitment to permit local councils to charge more for late night licences to pay for additional policing. The Government consider it right that businesses which profit by selling alcohol in the night-time economy should contribute towards these costs, rather than relying on other taxpayers in the community to bear the full costs.
5. If a licensing authority chooses to introduce the levy in their area, all licensed premises which are authorised to supply alcohol in the levy period will be affected. Premises that do not wish to operate in the levy period will be able to make a free minor variation to their licence before the levy is introduced to alter their hours so as to avoid the levy.
6. Licensing authorities will have the discretion to offer an exemption from the levy to the following categories of premises and schemes:
 - Premises with overnight accommodation
 - Theatres and cinemas
 - Bingo halls
 - Community Amateur Sports Clubs
 - Community premises
 - Country village pubs
 - Business Improvement Districts
7. Premises will have to meet specific criteria to be considered for these exemptions. Licensing authorities will also have the discretion to exempt premises that only open late on New Year's Eve.
8. Licensing authorities will have the discretion to offer a 30% reduction from the levy to premises that are either a member of a best practice scheme (the

scheme must fulfil specific criteria), or in receipt of Small Business Rate Relief and have a rateable value of less than £12,000.

9. The amount of the late night levy will be set at a national level. The charge is calculated according to rateable value. This system applies to the existing licence fee and the levy charge will be collected alongside the annual licence fee. The following charges will apply to the levy:

Rateable Value (£)	Rateable Band	Amount (£)
0 -4,300	A	299
4,301 – 33,000	B	768
33,301 -87,000	C	1,259
87,001 – 125,000	D	1,365 2,730 if exclusively or primarily for sale of alcohol for consumption on the premises
125,001 +	E	1,493 4,440 if exclusively or primarily for sale of alcohol for consumption on the premises

10. A multiplier is applied to premises in Band D and E that primarily or exclusively sell alcohol for consumption on the premises. This is set to ensure that larger clubs and bars make a higher contribution towards the levy.
11. The City Police would receive at least 70% of the net levy revenue. The licensing authority can retain up to 30% of the net levy revenue to fund other activities besides policing. There will be restrictions on the types of services that licensing authorities can fund with the levy revenue to ensure that levy is spent on tackling alcohol-related crime and disorder and services connected to the management of the night-time economy. The licensing authority will be able to deduct permitted administration, collection and enforcement costs from the gross levy revenue.
12. Appendix 1 sets out the maximum potential income attributable to City Police and City Licensing Authority assuming no variations to hours are applied for to avoid the levy and no scheme is accredited to allow for a 30% reduction in fee. Both of these are unlikely eventualities. The Police have given an initial indication to us that their preference would be to apply the levy at 0100 (closing after midnight). This would provide maximum revenue before exemptions and any discounts of £474,949 of which £332,464 must go to City Police and the remaining £142,484 to the licensing authority to deal with the night time economy. The relevant figures if the levy were exercised at 0200 (closing after 0100) are £301,917 with £211,341 to City Police and £90,575 to the licensing authority.

13. The legislation with power to apply the levy will come into force on 31 October 2012. Licensing authorities will need to consult the police, licensed premises and other relevant parties before deciding whether to introduce the levy in their area. The Government anticipate that the earliest date that a licensing authority could introduce a levy would be approximately June 2013. The consultation process will have to follow the final regulations and detailed guidance which is yet to be published.
14. In making a decision to introduce the levy the licensing authority must, as a minimum, consider the costs of policing and other arrangements for reduction or prevention of crime and disorder connected with the sale of alcohol between midnight and 6 a.m. and the desirability of raising revenue to be applied to such arrangements.
15. There are other wider considerations which may also be taken into account such as: the economic effects of the levy on operators, City Police's own capacity to fund crime prevention, the effect of the levy on voluntary schemes for reducing crime and disorder (Safety Thirst), whether there are any alternative means to reduce crime and disorder such as a Business Crime Reduction Partnership, and the equitability of changing the burden to operators rather than the community. These options would be addressed in any further detailed report on this issue.

Early Morning Restriction Orders (EMRO)

16. The Police Reform and Social Responsibility Act 2011 extended the flexibility of the existing EMRO power in the Licensing Act 2003 to provide licensing authorities with an additional tool to address specific problems caused by late night drinking. The 2011 Act extended these un-commenced powers to cover a longer period each night and lowered the threshold for introducing them. Licensing authorities will now have the power to make EMRO's if they consider this appropriate for the promotion of licensing objectives, rather than necessary. The Government states that EMRO's are being introduced alongside various other measures aimed at rebalancing the Licensing Act 2003 in favour of local communities, and to increase the powers available to licensing authorities and the police to tackle alcohol-related problems in local areas.
17. EMROs are a local power that licensing authorities can choose whether or not to exercise. The EMRO may be selected for all or part of the local authority area, will apply to hours of the day between midnight and 6 a.m., may apply different hours for different days, and may be either open ended or for a limited period. The test for the consideration of an EMRO is whether it is appropriate. In determining that an EMRO is appropriate in a particular area the licensing authority will need to be satisfied that this is being applied for the promotion of the four licensing objectives (the prevention of crime and disorder; public safety; the prevention of public

nuisance; and the prevention of children from harm) under the Licensing Act 2003. This may not necessarily preclude wider considerations being taken into account.

18. If a licensing authority introduces an EMRO, it will apply to premises licences, club premises certificates and temporary event notices that operate within the specified EMRO period. Licensing authorities will be required to advertise the proposal to make the EMRO and demonstrate that they have evidence to justify doing so, as well as considering representations, before its introduction.
19. Following its public consultation, *Dealing with the Problems of Late Night Drinking*, the Government announced that in relation to EMROs there will be no exemptions for types of premises, as there are in relation to the late night levy to ensure that EMROs will be a simple tool for licensing authorities to use to readjust the focus of their night-time economy away from problem drinking, if such a measure would promote the licensing objectives. The Government will however ensure that the provision to supply alcohol to residents through mini-bars and room service in premises with overnight accommodation is not subject to an EMRO and, in recognition of New Year Eve's status as a night of national celebration, EMROs will not apply on New Year's Eve.
20. The introduction of an EMRO could be suggested by the public, the Police, Members or the Licensing Authority. The licensing authority decides whether or not to introduce an EMRO. The Government expects to bring legislation to create EMROs into force on 31 October 2012 although detailed guidance on the process and its application is still awaited. It is anticipated by Government that the earliest date that a licensing authority could make an EMRO would be approximately March 2013.

Options

Late Night Levy

21. As the levy is not mandatory the City could simply keep the power in abeyance and carry on with the normal operation of the City Police and licensing authority.
22. Officers consider that it would be beneficial in principle to adopt the levy as a mechanism to provide more resources for proactive activities in areas such as Carter Lane and Minories which have previously been the subject of complaint regarding crime and disorder and public nuisance. Officers will consult with City Police about their costs and how the potential levy revenue would be allocated as well as considering, when issued, the impact of the guidance on consultation and other related processes in more detail before Members need to reach a decision, following a further report to Grand Committee.

23. If Members subsequently decide to proceed with a levy this will need to be the subject of a full report to Licensing Committee and Court of Common Council.

EMRO

24. The creation of one or more EMROs is not mandatory and the City could simply keep the power in abeyance and carry on with the normal operation of the City Police and licensing authority.
25. In previous reports to the Committee there has been no evidence found for Cumulative Impact Areas. There are areas, for example Carter Lane, that may in the future have the potential to be considered for application of an EMRO and Officers could be instructed to identify the evidence available when detailed guidance has been published and advise the Committee, or The Licensing Reference Sub – Committee, whether they consider it appropriate to utilise this power.

Proposals

26. Officers consider that, as a general principle, the levy may benefit the City in providing greater resource for ensuring compliance of the night time economy with the licensing objectives and would welcome Members agreement. As crucial guidance on the application of the two measures is yet to be published it is proposed that the Committee discuss the general outline of these measures and give guidance to Officers on possible hours of operation for the levy, taking into account the maximum potential revenue available as set out in paragraph 11, 12 and Appendix 1. Similarly, if there are any areas that the Committee consider should be the subject of an EMRO, this could then be examined by Officers alongside consideration of the necessary processes when the government guidance is finally issued.

Corporate & Strategic Implications

27. The possible use of the levy encompasses two key policies in the Corporate Plan 2012 -2016; KPP1 ‘Supporting and promoting the international and domestic finance and domestic business sector’ and KPP2 ‘seeking to maintain the quality of our public services whilst reducing our expenditure and improving our efficiency’. The consideration of use of these two new measures, the levy and EMRO, also fits with one of the City Corporation’s 3 strategic aims ‘to provide modern, efficient and high quality services and policing within the Square Mile for workers, residents and visitors with a view to delivering sustainable outcomes’.

Implications

28. The full legal implications will only become clear once final regulation and accompanying guidance is published by Government. It is clear from the draft regulations on the levy that there will need to be specific accounts produced to Committee confirming the amounts raised by the levy and detailing how this has been spent in relation to the night time economy.

Conclusion

29. Draft Regulations and primary legislation is in place for the introduction of two new measures, the levy and EMROs, although detailed guidance on the processes and application is yet to be published. At the time of this report it is possible for Members to consider the general principles of whether the introduction of the levy or specific area EMROs is something they wish Officers to pursue and subsequently report back to the appropriate Committee(s).

Background Papers:

Appendices

Appendix 1: Table of Maximum Potential Revenue from the Levy

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