

LICENSING AND REGULATION COMMITTEE

11 OCTOBER 2012

CHANGES TO THE LICENSING ACT 2003

REPORT OF HEAD OF LEGAL SERVICES

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RECENT REFERENCES:

LR 376 - Changes to the Licensing Act 2003 – 14 June 2012

EXECUTIVE SUMMARY:

This report is to apprise Members of significant changes to the Licensing Act 2003 relating to Early Morning Alcohol Restriction Orders and the Late Night Levy.

It is also to apprise Members of changes to the Licensing Act 2003 brought about by the Live Music Act 2012.

RECOMMENDATIONS:

- 1 That the Committee notes the contents of the Late Night Levy (Application and Administration) Regulations 2012.
- 2 That the Committee notes the contents of the Early Morning Alcohol Restriction Order legislation.
- 3 That the Head of Legal Services be instructed to bring a report back to the Committee if a request to implement the legislation is made by the Police.

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CHANGES TO THE LICENSING ACT 2003 – DEALING WITH THE PROBLEM OF LATE NIGHT DRINKING

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DETAIL:

1 Introduction

- 1.1 The Licensing Act 2003 came into force on 24 November 2005. Since that time there have been a number of amendments. The latest amendments which are now to be brought into effect include provisions for Early Morning Alcohol Restriction Orders (EMARO), a Late Night Levy, and changes to the requirements for licensing of entertainment. Report LR376 outlined the proposed changes, and this report informed Members of the latest position on each.
- 1.2 The Police Reform and Social Responsibility Act 2011 imposed some changes which came into force on 25 April 2012, such as power to suspend premises licences and club premises certificates, the introduction of relevant convictions for personal licences, and changes to the legislation relating to temporary event notices.
- 1.3 The purpose of the legislation is an attempt to tackle alcohol- related crime and disorder as the promised “café culture” envisaged at the time of the implementation of the Licensing act 2003 did not materialise. The inclusion of provisions on the Late Night Levy and EMAROs were intended to support this objective.
- 1.4 The secondary legislation for the Late Night Levy will come into force on 31 October 2012. The Legislation relating to Early Morning Alcohol Restriction Orders (EMARO) does not yet have a commencement order but it is probable that it will also come into force in October 2012.
- 1.5 As well as the Police Reform and Social Responsibility Act 2011, changes to the Licensing Act 2003 have been made by the Live Music Act 2012, which will commence on 1 October 2012. This Act will de-regulate live music under certain circumstances.

2 Late Night Levy

- 2.1 The Late Night Levy is intended to raise a contribution from late opening alcohol retailers towards policing the night time economy.

- 2.2 If adopted, the licensing authority can choose the time period during which the levy may apply. This may be set for any period between midnight and 0600 on any day.
- 2.3 The levy fees will be set nationally. After extracting the costs of administering the process, at least 70% of the proceeds must be given to the police.
- 2.4 The remaining 30% (or less) is to be used to fund services which tackle alcohol related crime and disorder (i.e. taxi marshals, late night street cleaning etc.)
- 2.5 Generally, any premises selling alcohol during the specified period will be liable to pay the levy. There would be certain exemptions for the requirement to pay the levy.
- 2.6 Local residents can use both their existing rights to make representations and other channels of communication to call for the implementation of the levy in their area.
- 2.7 There will be a small number of exemptions from the levy - premises with overnight accommodation, theatres, cinemas, bingo halls, Community Amateur Sports Clubs (CASCs), community premises, country village pubs and premises within a Business Improvement District (BID) area will be able to apply to the Council as for a discretionary local exemption from the levy. The City Centre is a BID area, and therefore those premises within the centre of Winchester which would be due to pay the Levy would be eligible to apply for the exemption.
- 2.8 Restaurants, casinos and private members' clubs will not be eligible for an exemption from the levy.
- 2.9 Licensing authorities will be able to offer a 30% reduction from the levy for best practice schemes that meet relevant criteria, such as Pubwatch, and pubs that are in receipt of Small Business Rate Relief and have a rateable value below £12,000.
- 2.10 There will be no cumulative discounts from the levy.
- 2.11 Licensing authorities will be able to fund services that are connected to the management of the night-time economy and services that prevent and tackle alcohol-related crime and disorder with their revenue from the levy.
- 2.12 Some of the exemptions during the relevant period may be:

Hotels etc., where there are conditions restricting the sale of alcohol to persons staying there;

Restaurants which have conditions restricting the sale of alcohol to persons taking a table meal there;

Theatres and cinemas where the sale of alcohol is restricted to ticket holders only;

Community premises where the requirement for a designated premises supervisor has been disapplied;

Country village pubs where the population is less than 3000;

Premises that only have post midnight alcohol sales on New Year's Eve.

- 2.14 Some premises licences only permit the sale of alcohol to continue for a short period of time after midnight, or for only one day a week or a month. Any premises licence holder will have the option of a free variation to bring the hours back to midnight, thus avoiding the levy.
- 2.15 It should be borne in mind that the part of the levy passed to the police may not actually be used to police the night time economy in this district. It could be used for any purpose within Hampshire.

3 EMAROs

- 3.1 The legislation relating to EMAROs was originally contained in the Crime and Security Act 2010 and the Licensing Act 2003. The 2011 Act modified the provisions, which are likely to come into force in October 2012.
- 3.2 The legislation will give the power to licensing authorities to make an early morning restriction order (EMARO) to restrict the sale of alcohol between the hours of midnight and 0600 at any premises with a premises licence or club premises certificate, if it was considered necessary for the promotion of the licensing objectives.
- 3.3 An EMARO can be applied over all or part of the licensing authority's area and for a specified time period between the hours of midnight and 0600.
- 3.4 The order may apply to the same time every day, different times on different days, or may specify certain days when it will apply.
- 3.5 The licensing authority decides whether or not to introduce an EMARO. This could be suggested by the public or the Police and Crime Commissioner.
- 3.6 To ensure that other interested parties are aware, a proposal to introduce an EMARO must also be publicised on the licensing authority's website and in a local newspaper.
- 3.7 The licensing authority must hold a hearing to consider any relevant representations. The period for persons that may be affected by an EMARO

to make relevant representations for, or against, a proposed EMARO has been set at 42 days.

- 3.8 Licensing authorities shall be required to notify licensed premises that would be included in the scope of a proposed EMARO.
- 3.9 EMAROs will not apply on New Year's Eve. Other than that, there will be no exemptions from EMAROs.
- 3.10 Winchester District has a fairly low alcohol-related crime rate so it is unlikely that it would be necessary to impose an EMARO.

4 Conclusions on Late Night Levy and EMAROs

- 4.1 The statutory guidance on these provisions from the Home Office will not be published to licensing authorities until a date, as yet unknown, in October 2012.
- 4.2 Hampshire Constabulary is to form a working party to consider the Late Night Levy and EMAROs. The Hampshire and Isle of Wight Licensing Officers Group has requested to be a member of the working party.
- 4.3 It is likely that, after taking into account the exemptions and free variations to return the alcohol hours to pre-midnight, and after extracting the Council's costs, the net income will be small and make it unviable to impose the levy.
- 4.4 It is the recommendation of the Head of Legal Services that the contents of this report are noted until the Police's working party has reviewed the implications of the legislation, and a true estimate of the income and expenditure which will be incurred is known.

5 Regulated Entertainment

- 5.1 New Regulations came into force on 1 October 2012 which implement the Live Music Act 2012.
- 5.2 The Live Music Act removes the licensing requirements for:
- amplified live music between 8am and 11pm before audiences of no more than 200 people on premises authorised to sell alcohol for consumption on the premises;
 - amplified live music between 8am and 11pm before audiences of no more than 200 people in workplaces not otherwise licensed under the 2003 Act (or licensed only for the provision of late night refreshment); and
 - unamplified live music between 8am and 11pm in all venues.
- 5.3 Where a premises continues to operate licensable activities (such as the sale of alcohol), any conditions relating to the activities above will be suspended

unless they have been added following a licence review. It would also be possible to reinstate or impose conditions about live music following a review of a premises licence or club premises certificate relating to premises authorised to supply alcohol for consumption on the premises.

- 5.4 The Live Music Act will also remove licensing requirements for the provision of entertainment facilities. In addition, it will widen the licensing exemption for live music integral to a performance of Morris dancing or dancing of a similar type, so that the exemption applies to live or recorded music instead of unamplified live music.

OTHER CONSIDERATIONS:

6 SUSTAINABLE COMMUNITY STRATEGY AND CORPORATE BUSINESS PLAN (RELEVANCE TO):

- 6.1 The report concerns issues which relate to the Outcomes of Active Communities and Prosperous Economy.

7 RESOURCE IMPLICATIONS:

- 7.1 If the Late Night Levy is implemented, the authority may deduct the costs of implementation and administration from the income from the levies. However it is believed that there will be a cap on the amount, which has not yet been set.
- 7.2 The costs of implementing the EMAROs will be officer time in liaising and consulting with the Police and other interested parties, the administrative costs of writing to all premises affected, and the costs of holding a hearing to consider representations. This will therefore be slightly above the costs of dealing with a contested premises licence application, and could be funded from the existing budget, if required.

8 RISK MANAGEMENT ISSUES

- 8.1 There are no risk management issues which are relevant to this report.

BACKGROUND DOCUMENTS:

None

APPENDICES:

None