

The Poppleston Allen Late Night Licensing Survey 2012: The Late Night Levy and Early Morning Restriction Orders

Executive summary

Between April and July 2012 Poppleston Allen contacted by telephone almost every Licensing Authority in England and Wales in order to assess Licensing Authorities' current proposals for the Late Night Levy (the Levy) and Early Morning Restriction Orders (EMROs). The survey is an update on our previous survey published in November last year, "The Poppleston Allen Late Night Survey 2011".

The Levy is a power, soon to be introduced, by which Licensing Authorities (LAs) may introduce a charge for premises that have a licence permitting it to sell alcohol for consumption between midnight and 6am. EMROs, to be introduced at the same time as the Levy, will allow Licensing Authorities to restrict sales of alcohol in the whole or part of their areas from any specified period between midnight and 6am.

The Home Office published a Consultation on these measures in January 2012 and in early July 2012 issued its response. Both the Levy and EMROs are scheduled for introduction on 31 October 2012.

Over 345 licensing officers in licensing authorities across England & Wales responded to the Survey

Approximately **99% of licensing authorities contacted submitted a response** to the research conducted, the vast majority through telephone conversations and, where this was not practicable, by email. The research includes responses from over 345 licensing officers on the Levy and EMROs in licensing authorities across England & Wales. All quotes are from licensing officers to whom we spoke. The data collected are summarised below and in places have been compared to our findings from the Survey in 2011.

The Survey essentially asked licensing officers at LAs whether, in respect of the Levy and EMROs, implementation of the measure was likely; unlikely; not yet fully considered/ no indication either way; or there was no comment on the matter.

Key Findings & Trends

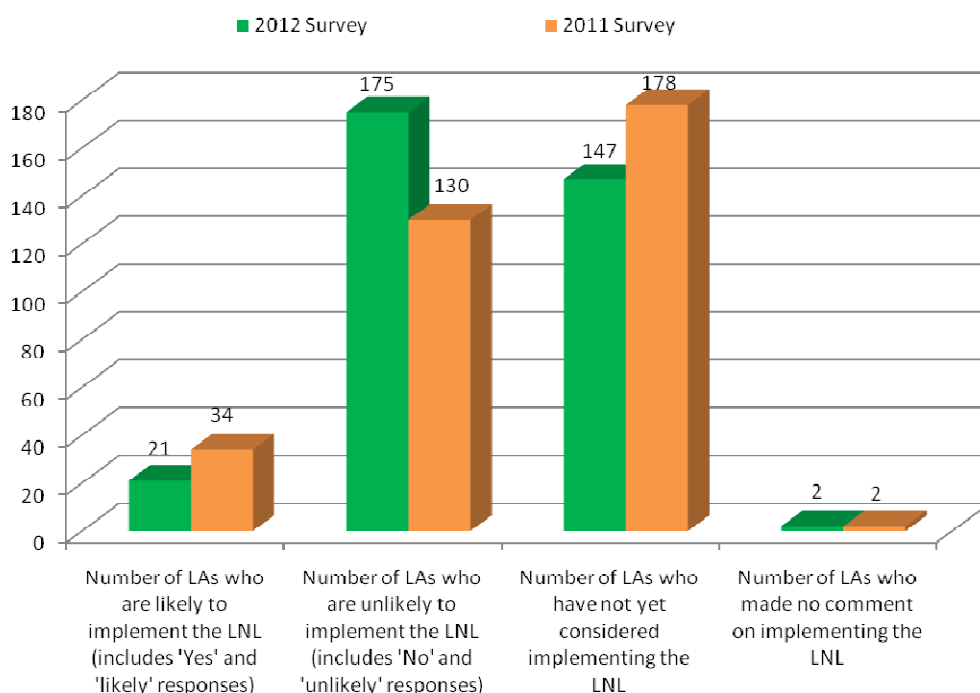
"It's like using a sledgehammer to crack a nut... neither of these measures are proportionate"

"These measures will give us more tools to promote the licensing objectives and reduce crime and disorder [in our area]"

"Conscious of the Levy and EMROs adversely affecting the trade."

The Late Night Levy

"The Levy is a stealth Tax"



The number of LAs who considered they were likely to implement the Levy decreased by more than a third in comparison to the 2011 Survey

6.1% of LAs considered they were likely to implement the Levy, a substantial decrease from the **9.9%** of LAs who were considering this in the 2011 Survey. This is a **decrease of over 38% since 2011**; more than one third of the 34 Licensing Authorities who considered they were likely to implement the Levy.

"Likely to implement the Levy a lot of police backing for it"
"Levy more appealing as high cost of policing in area."

50.7 % of LAs said they were unlikely to implement the Levy, a **rise of 13%** in the number of LAs, 45 more than the 2011 Survey.

An increase in the number of LAs who are unlikely to implement the Levy, 45 more than the 2011 Survey

“ Having a better understanding of the measure through the consultation early indication is the levy would not be financially viable, considering administrative burden and fact that certain operators may be exempt”

42.6% LAs had not yet considered it and **0.6%** made no comment.

The findings indicate a clear change of LAs attitude towards implementing the Late Night Levy over the past six months and a **general lack of appetite for the implementation of the measure. Almost nine times as many LAs said they were unlikely to implement the Levy than those likely to.** Justifications for the negative attitude towards the Levy included that the Levy would neither be fair nor proportionate if covering all premises in a LAs jurisdiction, not being a financially viable option when balanced with the administrative burden and the exemptions and discounts for operators that may apply.

“The Levy not likely as will kill the late night economy. It is not a financially viable option as council will only receive 30%.”

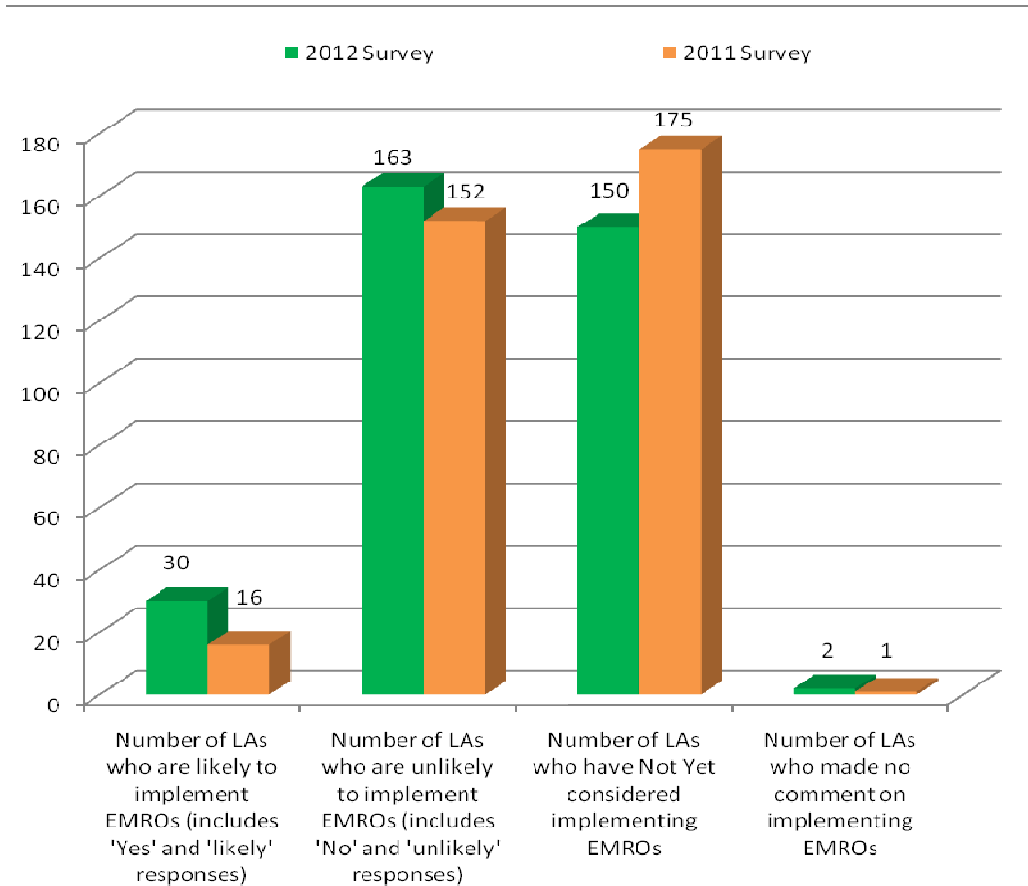
Also there were concerns about the lack of accountability and control on how the majority of the levy funds would be used, which many LAs had raised in their response to the Home Office Consultation.

“Concerned how rest of 70% Levy will be used by police... in response to recent consultation [we] suggested guidance should be created on how levy should be spent by police “

“No guarantee money will be spent on policing late night economy - cannot be ring fenced”

Early Morning Restriction Orders

The amount of LAs considering implementing EMROs has almost doubled since 2011



“EMROs more viable option than Levy which is more impractical as over whole jurisdiction.”

“[EMRO] more discrete and can concentrate on certain premises and areas.”

8.7% of LAs considered they were likely to implement Early Morning Restriction Orders. The **number of LAs considering implementing EMROs has almost doubled** since our findings in 2011.

47.2 % of LAs said they were unlikely to implement EMROs. This is a rise of over 3% in comparison to 2011.

“There is a relocation issue.. if an EMRO prohibits operators in one area, there is nothing to stop businesses popping up somewhere outside this zone”

“EMRO - not necessary as can address issues as LA now responsible authority”

43.5% had not yet considered it and **0.6%** made no comment.

The statistics represent an early indication of LAs' attitude towards Early Morning Restriction Orders. The findings suggest a shift towards implementing EMRO. Almost twice as many LAs are now considering implementing EMROs since the 2011 Survey.

Yet, almost five times as many LAs said they were unlikely to implement EMROs than those likely to. Licensing Officers gave various reasons for not implementing the measure, which ranged from the negative perception an area may receive to the lack of necessity for EMROs in their specific area. Other LAs stated there are already sufficient powers and tools available to effectively deal with any issues. Interestingly one LA stated it was more concerned with tackling late night refreshment premises- which EMROs do not apply to.

*"EMROs are a bit like the old Alcohol Disorder Zones, we do not want [our area] with a tag as a place of disorder".
"It is a shame that there is not a section within the Early Morning Restriction Order section of the legislation that specifically targets non-alcohol based late night premises such as kebab shops, takeaways etc. It is these types of venues that are causing more issues"*

Although the number of LAs who have indicated they are unlikely to implement EMROs has increased slightly since 2011, the findings still suggest there is a shift of opinion towards EMROs. Overall the statistics show that more LAs are more likely to consider implementing EMROs than the Levy.

Greater London

Results indicate a decrease of 6% of Greater London LAs considering implementing the Levy since the 2011 Survey.

Within Greater London, just over 14.3% of LAs said they were likely to consider the Levy. This is a decrease of almost 6% from 2011 of Greater London LAs considering implementing the Levy.

14.3 % of Greater London LAs stated they were likely to consider EMROs. Of the 35 Greater London LAs contacted, 5 of these stated they were considering implementing EMROs, whereas in the last Survey in 2011 no Greater London LAs stated they were likely to implement the measure.

Overall the percentage of Greater London LAs considering implementing either measure is higher than the average across all LAs in England and Wales.

14% of Greater London LAs considering implementing EMROs

Just under half of the Greater London LAs had not yet fully considered either measure. Generally responses from licensing officers from Greater London LAs indicated they were more occupied with the effects of recent changes to licensing legislation and preparation in relation to the upcoming Olympics.

*"After Olympics we will look into [the Levy and EMROs] in more detail and consider it"
"I am concerned about the amount of administration involved with the implementation of either the Levy or the EMRO... there is also no guarantee that the 70% of the proposed share of the income that is to be distributed to the Police will actually be spent on relevant matters within the area."*

Major cities

Upon contacting the 10 LAs which cover the city centre for the largest populations (outside of London), half of them had yet to consider in detail the implementation of either the Levy or EMROs. 20% of these LAs stated that both the Levy and EMRO were likely to be implemented once the regulations came into effect. This is the same percentage of these LAs that stated they were likely to consider implementing the LNL in Survey 2011. Whereas the findings show an increase of 10% on the number of these LAs that are likely to consider implementing the EMROs since the 2011 Survey.

*"Undecided one way or the other as yet, will await regulations."
"Interested in both measures, the EMRO is quite useful to narrow in on specific problem areas.. The Levy may provide extra funds for [Local Authority] to assist in policing the area."
"The Levy administration may be burdensome and including whether premises exemptions apply, this could lead to less effective administration of licensing service."
"Measures may not be politically viable option due to economic climate."*

The percentage of these LAs considering implementing either measure is higher than the average across all LAs in England and Wales. The findings suggest that LAs which cover the city centre of the major cities are more likely to consider these measures than other LAs.

Conclusion

In comparison with the last Survey in 2011, more LAs have further considered implementation of both measures. LAs are less likely to consider implementing either measure but a large percentage stated they would fully consider the measures closer to when the regulations come into effect.

“We will consider the measures in more detail once further guidance has been issued”

“At this moment it is finely balanced, we will await further Government information before any further consideration is given [to the Levy and EMROs]”

From those LAs where the proposals have been initially discussed with their committee members, both the Levy and the EMROs have not been looked on favourably in the majority of cases. In particular many responses mention the costs of administering the process outweighing the estimated income. There have also been concerns expressed regarding the financial impact on the local economy.

“ Levy would not produce enough funds, as we have a Pubwatch, BID and many operators may be exempt- therefore it is not worth the effort for such a minimal gain”

It should be noted that the responses were provided before the Government published its Response to the Consultation on the introduction of the Levy and EMROs.

Yet the findings do highlight a change of attitude of LAs in relation to the two measures over the last 6 months. Notwithstanding many LAs have yet to fully consider the measures, the general trend at this early stage indicates a move away from the Levy, with an increasing number of LAs moving a step closer to EMROs. It is worth noting that these are the views of LAs and not the police, yet many responses suggest the police have expressed interest in EMROs. If local police do request this measure, this may further increase the likelihood of LAs implementing EMROs.

Notes

Licensing law relating to the sale of alcohol, the provision of regulated entertainment and the provision of late night refreshment in England and Wales is regulated by the Licensing Act 2003 and run by a single Licensing Authority (LA) in each area (mainly local authorities). The 2003 Act came into force on 24th November 2005.

Under the new Police Reform and Social Responsibility Act 2011 (PRSRA) which received Royal Assent on 15 September 2011. The PRSRA has created additional licensing tools in the form of the Late Night Levy (LNL) and Early Morning Restriction Orders (EMROs), although the regulations and consultations for these are still pending. When in force LAs will have the powers to implement these measures. The LNL is a fee which would be payable by all licensed premises which authorise the supply of alcohol between midnight and 6am. EMRO, if adopted by licensing authorities, would apply to all licensed premises in a specific area which would be required to stop selling alcohol at a time stipulated by the licensing authority between midnight and 6am.

Research methodology

This data has been collected between 17 April 2012 and 13 July 2012 from telephone conversations with principal licensing officers, where possible, of licensing authorities in England & Wales. The vast majority of responses have been received by telephone and where that has not been possible a response has been given by email. The Home Office's Response to Consultation document was published after most of the responses from licensing authorities were received.

Reporting methodology

Within the commentary percentages in the tables and figures have been rounded to one decimal place. All figures, tables, graphs and statistics are based on the 99 % of licensing authorities which responded to the data collection, i.e. when the research quotes 40% of licensing authorities responded a certain way, this relates to 40% of the 99% of licensing authorities which responded to our data collection not 40% of all licensing authorities. To eradicate errors various validation checks have been made on the data collected from the research before presenting the statistics and findings.

If you have any queries regarding this Research Survey please contact:

Suraj Desor Tel: 0115 9349183 or Lee Johnson Tel: 0115 9349174; or
Email: 2012surveyenquiries@popall.co.uk