

Title of Report:	Police Reform & Social Responsibility Act 2011
Report to be considered by:	Licensing Committee
Date of Meeting:	20 March 2013.
Forward Plan Ref:	N/A

Purpose of Report:

To update Members on the introduction of the provisions for the Late Night Levy (LNL) and the Early Morning Restriction Order (EMRO) as provided for in the Police Reform and Social Responsibility Act 2011, which amends the Licensing Act 2003.

Recommended Action:

To note the content of the report pending a further report in 2013.

Reason for decision to be taken:

The Act is now active and Members will shortly have the option of adopting the LNL and/or the EMRO, following consultation.

Other options considered:

None

Key background documentation:

The Police Reform & Social Responsibility Act 2011

The proposals contained in this report will help to achieve the following Council Strategy priority:

☒ **CSP1 – Caring for and protecting the vulnerable**

The proposals contained in this report will help to achieve the above Council Strategy priority:

Giving the Council, in conjunction with Thames Valley police, increased control over the night time economy thus reducing crime and the fear of crime.

Portfolio Member Details	
Name & Telephone No.:	Councillor Hilary Cole - Tel (01635) 248542
E-mail Address:	hcole@westberks.gov.uk
Date Portfolio Member agreed report:	7 March 2013.
Contact Officer Details	
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Implications

Policy:	The provisions
Financial:	If the Late Night Levy is adopted, licensing income will increase, however approximately 70% of the net income must be paid to the police in order to fund any increase in police support in controlling the late night economy that may be required. At the time of writing this report the full extent of any increased income is not known.
Personnel:	None
Legal/Procurement:	Adoption of the appropriate section of the Act will be required.
Property:	None
Risk Management:	The risk to the economy could be that premises which are subjected to the levy could choose to reduce their opening hours to before midnight thus being outside of the levy provisions. None to the Council.
Equalities Impact Assessment:	Completed

Executive Summary

1. Introduction

- 1.1 The Police Reform & Social Responsibility Act 2011 was given Royal Assent on the 20th September 2011.
- 1.2 Chapter 2 of the Act amends the Licensing Act 2003 and will make quite considerable differences to a number of sections of the Licensing Act. These will have implications for the way in which Licensing Authorities operate in the future.
- 1.3 A summary of the provisions of the appropriate sections of the Act together with potential income and other pro's and cons are contained in the main body of this report and its appendices.
- 1.4 Members are asked to consider whether to introduce an EMRO or a Late Night Levy, additionally to consider alternative voluntary schemes working with the licensed trade and such initiatives such as Best Bar None and Purple Flag accreditation.

2. Proposals

- 2.1 To consider the Council position in the matter of adopting either EMRO or LNL, or both.

3. Equalities Impact Assessment Outcomes

- 3.1 Consultation will be required dependent upon any potential decision to consider adopting the provisions for EMRO and LNL. Adoption could potentially have an impact of alcohol licensed premises currently opening after midnight.

4. Conclusion

- 4.1 The Police and Crime Commissioner and Thames Valley Police will have an important role to play in the decision to adopt or not adopt Chapter 2, and in the delivery of the adopted provisions by the Council of the legislation.
- 4.2 If a decision is taken to adopt these provisions, the matter must be approved by full Council following this report.

Executive Report

1. Introduction

- 1.1 This report follows on from a previous report presented to Members on the 5th December 2012.
- 1.2 Members agreed to note the contents of the report with a request that officers write to the newly appointed Police and Crime Commissioner (“PCC”) and converse with the local chief officer of police to solicit their views.
- 1.3 Additional guidance on the Late Night Levy was produced by the Home Office in December 2012.

2. Early Morning Alcohol Restriction Orders (EMRO’S)

- 2.1 An EMRO is a power which has been extended by the 2011 Act to enable licensing authorities to restrict the sale of alcohol where they deem that there are alcohol related crime and disorder issues in the whole or a part of their area between 12 midnight and 06.00am on all or some days. This restriction applies to premises licences, club premises certificates and temporary event notices. There are no exceptions to the type of premises that will be affected by an EMRO except for hotels who provide alcohol to residents through mini-bars and room service for residents to consume alcohol in their rooms. However hotels who serve alcohol in a bar, lounge or lobby will be affected by an EMRO.
- 2.2 A licensing authority can decide to make an EMRO if they have sufficient evidence that the order is appropriate for the promotion of the four licensing objectives. The Police and Crime Commissioner or the public may request the introduction of an EMRO. It falls to the licensing authority to decide the area, days and times in relation to which the EMRO would apply. However, in recognition on New Years Eve’s status as a night of national celebration, EMRO’S will not apply on this date.
- 2.3 Licensing authorities will be required to advertise their proposals on their website and in their local newspaper as well as notifying those licence holders within the proposed EMRO area (but not all licence holders within the borough). Any person wishing to make representations for, or against, the proposal will have 42 days in which to lodge their comments.
- 2.4 If representations are received then a hearing must be held to determine the outcome of the EMRO. If it is deemed appropriate that an EMRO be made, the licensing authority must be able to fully justify its decision or risk a possible judicial review. Full Council would need to approve the Order and decide on a start date for the Order, no less than two months after is made.
- 2.5 It is anticipated that the Government will provide further information to licensing authorities in revised statutory guidance issued under section 182 of the Licensing Act 2003 but this as yet has not been forthcoming.

3. Late Night Levy

- 3.1 The late night levy is a power for licensing authorities to introduce a charge for premises that have an alcohol licence with a terminal hour after 12 midnight. It allows licensing authorities to charge those businesses for the extra enforcement costs that the night-time economy generates for police and local authorities.
- 3.2 Prior to making a decision to implement the levy, the licensing authority should have discussions with the relevant chief officer of police, the PCC and local police to decide whether it is appropriate to introduce the levy in its area. If the licensing authority considers it appropriate, then it must formally consult the police, the Police and Crime Commissioner, licence holders and any other persons about its decision. This consultation should also ask whether the licensing authority needs to apply any exemptions or discounts to the levy and how it will apportion net levy revenue between the police and the licensing authority.
- 3.3 Nevertheless whether or not to implement the levy will be left entirely at the discretion of the licensing authority. If the levy is introduced it will apply to all premises within the borough that qualify (both in the on-trade and the off-trade) with the only exceptions being those categories set by Government, and the levy will be collected annually at the same time as the annual retainer fee. It will be up to the licensing authority to decide the time at which the levy applies in their area, although it will be restricted to applying it sometime between the hours of 12 midnight and 06.00am.
- 3.4 When considering whether to introduce a levy, licensing authorities should note that any financial risk (for example lower than expected revenue) rests at a local level and should be fully considered before implementation. Holders of relevant late night authorisations may make a free variation to their licence to reduce their hours to avoid operating in the late night supply period – this cost can be a deductible expense in the first year in which the levy is introduced.
- 3.5 Premises licence holders who choose to reduce the hours on their licence would still have the ability to apply for Temporary Events Notices for 21 days a year. This would lead to a large amount of extra work for the licensing team with very little income as these notices only cost £21 as well as additional workload for the Environmental Health Noise team.
- 3.6 The late night levy is said not to be targeted at individual premises because the costs caused by the night time economy are often not directly linked to particular businesses, but instead occur as a result of the night time economy as a whole. For example, a fight may take place between groups of individuals who have each visited a variety of different premises over the evening. It is said that application of the levy across the whole licensing authority area ensures that a meaningful amount is collected and is simple to adopt and administer.
- 3.7 If introduced, once the levy has been collected, the licensing authority will firstly deduct costs incurred in administering, collecting and enforcing the scheme. Following this deduction, at least 70% of the net amount must be passed to the Police. Whilst the licensing authority will have restrictions imposed on them regarding the types of services that they can fund with their 30% portion of the levy and which will mean that it must be spent on tackling alcohol-related crime and disorder and services connected to the management of the night time economy

there is no such restriction placed upon the Police. However should the Late Night Levy be approved the use of the police proportion of the levy is at the direction of the Police and Crime Commissioner rather than at local level.

- 3.8 Premises will be split into bands based upon their rateable value to determine how much they would pay under the levy. This system applies to the existing licence fee and annual retainer fee and means that larger businesses will make greater contributions to the levy than smaller ones.

The levy is as follows:

Rateable Value Bands (based on The existing Fee bands)	A No rateable value to £4,300	B £4,301 to £33,000	C £33,001 to £87,000	D £87,001 to £125,000	E £125,000 and above	D x 2 Multiplier applies to premises in category D that primarily or exclusively sell alcohol	E x 3 Multiplier applies to premises in category E that primarily or exclusively sell alcohol
Levy Charges	£299	£768	£1,259	£1,365	£1,493	£2,730	£4,440

- 3.9 Provision is being made for a number of discretionary exemptions and reduction in the levy. Exemptions to the levy could be offered to:

- Premises with overnight accommodation
- Theatres and cinemas
- Bingo halls
- Community Amateur Sports Clubs
- Community Premises
- Country village pubs
- Business Improvement Districts

- 3.10 Licensing authorities will also 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. Guidance on reductions will be published on the Home Office's website in October 2012.

4. Income and Expenditure

- 4.1 Disregarding the potential exemptions and reductions in the levy, the table shown in Appendix 2 shows the number of premises that would be affected by the Levy and the potential income generated. Figures are also given demonstrating the reduction in income should exemptions be given

- 4.2 Members should be aware that it is possible that a significant number of the premises with late licences may decide to reduce their sale of alcohol hours by submitting a minor variation application as the cost of the levy may not be worth the continued selling of alcohol after midnight. This would obviously result in a significant reduction in the amount levied (before any deductions or exemptions are considered).

5. Options

- 5.1 There are obviously 'pros' and 'cons' when deliberating whether EMRO'S or the Late Night Levy would be appropriate to adopt for West Berkshire District Council. Some of the arguments in this respect are shown as Appendix 3 and reflect both the views of council officers and the police.
- 5.2 Initial discussions with Thames Valley Police indicate that they view the option of an EMRO rather than adoption of the LNL to be the way forward as they feel that a blanket reduction of overall trading hours of licensed premises would damage an already struggling night time economy and would in fact only displace any crime and disorder issues. They wondered if a watching brief could be kept on any decision made.
- 5.3 In the meantime it is proposed by council officers and the police to explore alternative and voluntary ways, of working with the licensed trade to achieve the desired outcomes of a properly run and profitable night time economy. Initiatives such as Purple Flag accreditation will be amongst the schemes considered as will the establishment of the Newbury Business Improvement District (BID).

Appendices

Appendix A – Equality Impact Assessment – Stage 1

Appendix B – Late night levy – possible income

Appendix C – Early morning restriction orders: Pros & cons

Appendix D – 2012 Survey by Poppleston Allen

Consultees

Local Stakeholders: Members of the public. Holders of licences which allow the sale of alcohol between the hours of midnight and 6am.

Officers Consulted: Paul Anstey Joint Service Delivery Manager

Trade Union: None

APPENDIX A

Equality Impact Assessment – Stage One

Name of item being assessed:	Police Reform & Social Responsibility Act 2011
Version and release date of item (if applicable):	Version 1
Owner of item being assessed:	Steve Broughton
Name of assessor:	Brian Leahy
Date of assessment:	5 March 2013

1. What are the main aims of the item?
To consult members on whether to adopt LNL or EMRO's following new legislation.

2. Note which groups may be affected by the item, consider how they may be affected and what sources of information have been used to determine this. (Please demonstrate consideration of all strands – age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation)		
Group Affected	What might be the effect?	Information to support this.
Members of the Public engaging in the late night (alcohol) economy	A provision within the Act (Early morning Restriction Orders) could result in areas of the district closing earlier than at present, for the purposes of selling alcohol.	EMRO provision in the Police Reform & Social Responsibility Act 2011.
Premises selling alcohol in town and large village centres.	The Council may choose, where deemed necessary, to control late night/early morning crime and disorder, by causing alcohol premises to terminate their activities earlier than at present.	EMRO provision in the Police Reform & Social Responsibility Act 2011
Certain premises selling alcohol in the District currently open after midnight.	The Council will be able to charge a Late Night Levy against premises selling alcohol beyond midnight. The levy could impose an additional financial burden on these businesses.	Adoptive provisions of the Police Reform & Social Responsibility Act 2011. (Late Night Levy)
Further comments relating to the item:		
Certain provisions in the Act are adoptive and this report seeks to inform Members of their options prior to any decision being taken.		

3. Result (please tick by clicking on relevant box)	
<input checked="" type="checkbox"/>	Medium Relevance - This needs to undergo a Stage 2 Equality Impact Assessment

For items requiring a Stage 2 equality impact assessment, begin the planning of this now, referring to the equality impact assessment guidance and Stage 2 template.

4. Identify next steps as appropriate:	
Stage Two required	
Owner of Stage Two assessment:	
Timescale for Stage Two assessment:	
Stage Two not required:	

Name: Brian Leahy

Date: 5 March 2013.

APPENDIX B

LATE NIGHT LEVY – POSSIBLE INCOME

The Council will be able to deduct permitted administration, collection and enforcement costs from the gross levy revenue. This is not factored into the figures below as at this stage it is not possible to predict. Figures do not take into account any possible income that may be lost by permitted exemptions.

92 premises have licensed hours after midnight – of these the following applies

8 pubs/clubs/restaurants have a terminal hour of 00.30

39 pubs/clubs/restaurants have a terminal hour of 01.00

10 pubs/clubs/restaurants have a terminal hour of 01.30

1 pub has a terminal hour of 01.45

21 pubs/clubs/restaurants have a terminal hour of 02.00

2 Pubs/clubs/restaurants/other have a terminal hour of 02.30

6 pubs/clubs/restaurants/other have a terminal hour of 03.00

3 pubs/clubs/restaurant/have a terminal hour of 04.00

2 clubs have a terminal hour of after 04.30

Maximum Income Possible

No of Premises	Rateable Band	Levy	Total Possible Income
4	Band A	£299	£1,196
62	Band B	£768	£47,616
14	Band C	£1,259	£17,626
3	Band D	£1,365	£4,095
9	Band E	£1,493	£13,437
		Total	£83,970
		70% Police	£58,779
		30% Council	£25,191

Income if levy imposed at 01.00

No of Premises	Rateable Band	Levy	Total Possible Income
4	Band A	£299	£1,196
56	Band B	£768	£43,008
13	Band C	£1,259	£16,367
3	Band D	£1,365	£4,095
9	Band E	£1,493	£13,437
		Total	£78,103
		70% Police	£54,672
		30% Council	£23,430

Income if levy Imposed at 02.00

No of Premises	Rateable Band	Levy	Total Possible
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			Income
1	Band A	£299	£299
16	Band B	£768	£12,288
8	Band C	£1,259	£10,072
1	Band D	£1,365	£1,365
7	Band E	£1,493	£10,451
		Total	£34,475
		70% Police	£24,132
		30% Council	£10,342

Premises that may qualify as exempt premises (country pubs etc) – this amount would need to be subtracted from the expected income in the case of any levy introduced			
No of Premises	Rateable Band	Levy	Total Income Deducted
20	Band B	£768	£15,360
3	Band C	£1,259	£3,777
		Total	£19,137

APPENDIX C

Early Morning Restriction Orders		
Pros	Cons	Comments
Will ensure that any alcohol related crime that can be proven as coming from a certain area can be controlled	<p>Could increase the fear of crime by the public which could result in certain areas of the town wrongly becoming 'no go' areas and affecting licensees within the area who do run their premises properly.</p> <p>Introduction of an EMRO in one area could cause shifting of late night alcohol problems to another area within the borough</p> <p>Introduction of an EMRO without sufficient and robust evidence would leave West Berkshire Council at the risk of judicial review</p>	<p>This type of legislation is probably more appropriate to cities and large towns with a large crowds of clientele going from premises to premises being anti-social rather than Newbury town where an errant licensee could more properly be made accountable for his actions by the bringing of a review against his premises</p>
Will stop the sale of alcohol from a time to be decided by the Licensing Authority between midnight and 0600 hours thereby controlling when the NTE finishes, with the subsequent effect on police resources.	<p>An EMRO stops the sale or supply of alcohol. It does not close the premises</p> <p>EMROs will have the effect of zoning ie the sale of alcohol will stop in a particular specific zone or area of a council, possibly pushing any issues into another area of the council. Premises that are</p>	<p>Premises may decide to continue entertainment after alcohol sales finish in an attempt to Increase business.</p> <p>Careful thought will have to given as to where an EMRO is brought into effect as it could simply move problems to other areas.</p>

	<p>not effected and outside of the EMRO may try and take advantage and open later.</p> <p>Politically this could be seen as anti business, in a climate where the promotion of business and associated jobs is an important part of council's policies.</p> <p>If neighbouring councils do not impose an EMRO, people will travel to premises that open later in neighbouring towns, rather than use local businesses.</p>	<p>The imposition of an EMRO may well have the effect of closing businesses with associated loss of jobs. Many licensed premises are running on tight margins and this could be perceived as anti business. Councillors may be unwilling to impose an EMRO because of this.</p> <p>As with the last comment councillors may see an EMRO as a negative due to the possible loss of business. This argument (along with many others) will be used by local licensed premises to argue against an EMRO</p>
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Late Night Levy		
Pros	Cons	Comments
<p>Premises reduce their hours for the sale of alcohol</p> <p>Licensees could join BBN Scheme/BID in order to pay a reduced levy</p>	<p>Licensees could reduce the amount of door supervisors they employ if they reduce their hours</p> <p>Licensees could decide to cease being members of BBN/BID – to save money or because they may perceive there would be less need</p>	<p>This will involve more work for the licensing section without any income being generated</p>
<p>Licensees could apply for more Temporary Events Notices if they reduce their standard hours resulting in</p>	<p>An increase in TENs will result in an increase in administration for police. Conditions that are on a</p>	<p>This will inevitably lead to more work for the licensing section and could also result in more</p>

more income for the Council	premises licence can only be put onto a TEN if the police put in representations to the council.	<p>Licensing Panel hearings if the Police or Environmental Quality Team object to a TEN</p> <p>TEN income would not cover the cost of the income generated by the Late Night Levy as TEN's cost £21</p>
	Those licensees who pay the levy could decide that to make it worthwhile they will open longer.	<p>This could lead to more anti-social behaviour and nuisance as revellers make their way home especially as a lot of off-licences open at 06.00am.</p> <p>If licensees did wish to stay open longer then they would need to submit a variation application in the normal way which would be a source of income to the Council</p>
	There could be an expectation by licensees and the public alike that more police officers would be readily available	<p>A levy will be council wide, not just in a town centre. While there is an exemption for some rural business, this will not exclude many pubs etc. and certainly those in larger villages will still have to pay. There will be an expectation from premises that believe they have paid for extra policing (which is how the levy is being promoted by the Government) and for that policing to be present and available. This expectation will also be held by town centre premises. Thames Valley Police will not be able to fulfil these expectations, especially as the amount collected will be relatively small. How will we manage these expectations?</p>

	There could be bad publicity for the Council from businesses who could accuse the Council of not helping them to create a vibrant night-time economy and of causing them economic difficulties	As with the EMRO above this is seen by the trade as a 'tax', and councillors may be reluctant to be seen to be 'anti-business'.
	There could be increased problems in obtaining payment for both the annual retainer fee as well as the levy	The licensing authority do now have the ability to suspend licences for non-payment but this could impact severely on the work of the licensing team in having to deal with a lot more suspensions and reinstatement notices
Give Thames Valley Police an additional funding stream to address issues of alcohol related crime and disorder in the NTE.		Even a relatively small amount of money could fund either a reduced hours dedicated NTE officer or targeted operations
	It is unclear how much money will actually be raised by this measure	While this measure will be enforced council wide it is still very unclear how much money will be collected from it. Not only are there exemptions, but there are discounts available and premises will also be allowed to remove themselves free of charge (this point is important to councils as it has a cost implication, and they will have to do this free) from any levy that is imposed.
	Councils may not feel it is financially worth their while collecting a levy that does not benefit them to any great extent.	Councils will be able to take from the levy their costs incurred in calculating, collecting and enforcing the collection. In addition they can then take 30% of what is left, leaving the remaining 70% for the police. It is proscribed in the regulations what this can be spent on, giving councils very little options

		on how to spend the money. How much of an incentive is there to impose the levy in order to collect money for another organisation ie the police?
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APPENDIX D 2012 Survey – Poppleston Allen