

# DEALING WITH THE PROBLEMS OF LATE NIGHT DRINKING RESPONSE TO CONSULTATION

July 2012

APPENDIX FOUR



Home Office

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# 1. Introduction

1.01 The ‘Dealing with the Problems of Late Night Drinking’ consultation invited views on two measures in the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”) that will be implemented through regulations: early morning alcohol restriction orders (“EMROs”) and the late night levy (“the levy”). The consultation closed on 10th April 2012, following a 12 week consultation period.

1.02 The Coalition Agreement included a commitment to overhaul the Licensing Act 2003 (“the 2003 Act”) to give local authorities and the police stronger powers to remove licences from, or refuse to grant licences to, any premises that are causing problems in the local area. The 2011 Act extended the flexibility of the existing (uncommenced) EMRO powers in the 2003 Act to provide licensing authorities with an additional tool to shape and determine local licensing. EMROs will allow licensing authorities to restrict sales of alcohol in the whole or a part of their areas for any specified period between 12am and 6am if they consider this appropriate for the promotion of the statutory licensing objectives.

1.03 The Coalition Agreement also included the commitment to permit local councils to charge more for late night licences to pay for additional policing. The levy will allow licensing authorities to raise a contribution from late-opening alcohol retailers towards policing the late night economy. It will be a local power that licensing authorities can choose whether or not to adopt. It must cover the entire local authority area. However the licensing authority will also choose the period during which the levy applies, between midnight and 6am on each night.

1.04 The consultation invited our key partners and the general public to comment in a number of areas about how the levy and EMROs should work. These proposals included the processes for implementing an EMRO and possible exemptions from any EMRO (Section 2); and the processes for implementing the levy, possible discretionary exemptions and reductions from the levy and services that local authorities can fund with their portion of the levy revenue (Section 3).

1.05 We are grateful to all those who took the time to respond to the consultation. The Home Office received a total of 631 responses to the consultation. 312 responses were submitted online and 319 were submitted in hard copy. Of these, 174 were various campaign or proforma responses including 32 responses submitted on behalf of Community Amateur Sports Clubs (CASCs) and 24 responses submitted by The Institute of Licensing, following a survey of their members. Campaign responses were analysed alongside others received. The 11 responses received after the consultation closed were not included.

1.06 To inform this consultation, working groups and meetings were held with representatives from the police, the licensed trade, licensing authorities and the hospitality industry. Officials also held regional consultation meetings in Brighton, Cardiff, Cheltenham and Leeds with local representatives.

## 2. EMROs

2.01 **EMROs** will help licensing authorities to address specific problems caused by the late night supply of alcohol in their areas. An EMRO is a power which has been extended by the 2011 Act to enable licensing authorities to restrict the sale of alcohol in the whole or a part of their areas between 12am and 6am on all or some days. Local authorities, acting in their capacity as a licensing authority, will be able to make an EMRO in relation to problem areas if they have evidence that the order is appropriate for the promotion of the licensing objectives. This restriction applies to premises licences, club premises certificates and temporary event notices. The consultation invited views on the proposed processes for implementing an EMRO and whether certain types of premises should be exempt from every EMRO.

### CONSULTATION PROCESS

2.02 A licensing authority can decide to make an EMRO if a situation arises where it is appropriate to restrict the late night supply of alcohol in a particular area. The Police and Crime Commissioner or the public may suggest the introduction of an EMRO. The licensing authority should decide the area, days and times in relation to which the proposed order shall apply.

2.03 The 2003 Act (as amended by the 2011 Act) provides that the licensing authority must advertise the proposed EMRO and that persons affected have the right to make a relevant representation about the proposed order. Secondary legislation will set out the manner in which the licensing authority should advertise the proposed order and the means by which affected persons can make a relevant representation about the order.

2.04 The consultation stated that the licensing authority should advertise the proposed order on its website and should be required to notify directly all responsible authorities, holders of club premises certificates and holders of premises licenses in the authority area. The licensing authority should also take reasonable steps to advertise the proposed order to residents and others who may be adversely affected by the EMRO. Affected persons should have 28 days to make any relevant representations for, or against, the proposed order.

### **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?**

2.05 Of those who responded to the question (435 respondents) 56% agreed that the proposed processes included sufficient consultation with those likely to be affected by an EMRO. 30% disagreed with this proposal and 14% responded that they did not know.

2.06 Some respondents expressed concern that 28 days gave insufficient time to prepare for a hearing. We have therefore increased the period for affected persons to make relevant representations for, or against, the proposed order from **28 days to 42 days**. Whilst the existing precedent for making representations in the licensing regime is 28 days, we recognise that EMROs are a new tool which will have an impact on at least several premises, and affected persons should have sufficient time to gather any relevant evidence if they wish to make a representation.

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1 From 2012, the public across England and Wales will elect a Police and Crime Commissioner ("PCC") in each police area who will be accountable for how crime is tackled in each of those areas.

2.07 Some local authorities argued that a requirement to notify all licensed premises holders in their area placed a disproportionate burden upon them. **We will therefore remove the proposed requirement for licensing authorities to notify all holders of club premises certificates and holders of premises licences in the authority area.** Licensing authorities will instead be required to notify directly only those premises included in the proposed EMRO. To ensure that other interested parties are aware, a proposal to introduce an EMRO should also be publicised **on the licensing authority's website and in their local newspaper.** No new processes will be required to implement this and licensing authorities can use their existing arrangements for advertising. Further information on notifying premises will be given in guidance.

## NEW YEAR'S EVE

2.08 Many premises already have a specific authorisation to open later than their usual licensed hours on New Year's Eve. In recognition of this, the consultation proposed that EMROs should not apply between midnight on 31st December and 6am on 1st January in 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?**

2.09 Of those who responded to the question (548 respondents) 73% agreed with the proposal that an EMRO should not apply on New Year's Eve. 19% disagreed with this proposal.

2.10 In recognition of New Year's Eve's status as a night of national celebration, **EMROs will not apply on New Year's Eve.** This is a national exemption and will apply to every EMRO made.

## EXEMPTIONS

2.11 The 2003 Act (as amended by the 2011 Act) enables the Secretary of State to make regulations which prescribe national exemptions in relation to any EMRO. The consultation invited views on a limited number of nationally prescribed exemptions. The proposed categories of exemption were premises with overnight accommodation; theatres and cinemas; community premises, and casinos and bingo halls with a membership scheme.

**Consultation Question 3: Do you agree or disagree that the categories of premises above should be exempt from EMROs?**

2.12 Of those who responded to the question (427 respondents), 61% agreed that the proposed categories of premises should be exempt from EMROs. 28% disagreed with this proposal.

**Consultation Question 4: Do you have any other suggestions on the types of premises that should be considered for an exemption from EMROs?**

2.13 Of those who responded to the question (423 respondents) 39% had suggestions on the types of premises that should be considered for an exemption from EMROs. 54% did not have any further suggestions.

2.14 Suggestions for types of premises that should be considered for an exemption from EMROs included charity events; art galleries; best practice schemes; Community Amateur Sports Clubs (CASCs); private member's

clubs; restaurants and community or country pubs. Other comments suggested that responsible premises should be exempt from every EMRO; that licensing authorities should have the discretion to introduce their own exemptions; and that there should be no exemptions from EMROs.

2.15 We received mixed responses regarding the merits of exemptions. Some respondents thought that premises which operate outside of the wider night-time economy, such as art galleries and charitable events supplying alcohol, should be included as categories of exemption. Other respondents believed that responsible premises (which they defined as those that do not contribute to crime and disorder) should be considered for an exemption, if they are included in the scope of an EMRO and that EMROs should have the same categories of exemption as proposed for the levy. It would be difficult for licensing authorities to define specific premises which do not contribute to any crime and disorder that occurs in the night-time economy; this would also place an unnecessary evidential burden on licensing authorities.

2.16 However, some respondents argued that there should be no exemptions from EMROs at all. Reasons given included difficulties in tightly defining some of the categories, concerns that this could introduce loopholes from EMROs and concerns that exemptions from EMROs would create unfair competition for licensed premises that are included in the scope of an EMRO. Some local authorities and police officers raised concerns that premises from the proposed categories can, and do, contribute to alcohol-related crime and disorder.

2.17 We have decided that **there will be no exemptions from EMROs**. The intention is that an EMRO should be a simple, pre-packaged tool for licensing authorities to use to readjust the focus of their night-time economy away from problem drinking, when it is found not to promote the licensing objectives. Exemptions would dilute the impact of an EMRO; licensing authorities have the discretion to determine when and where such a restriction should apply as is appropriate for their area.

2.18 We recognise that hotels have in some areas a different business model to other licensed premises in that they offer services to residents similar to those that they can enjoy in their own home. We do not wish to penalise residents who consume alcohol in their room. Therefore we will 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**. This would only apply to premises that are only authorised to provide these specific services between midnight and 6am. Premises that are authorised to serve alcohol in a hotel bar, lounge or lobby will be subject to an EMRO for the supply of alcohol in communal areas. Provision for this will be made in regulations and we will provide further advice on this exemption in the guidance issued under Section 182 of the 2003 Act.

## IMPLEMENTATION OF EMROS

2.19 To support the finalisation of the Impact Assessment, the consultation asked for information on the number of premises that could be affected by an EMRO.

**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?**

2.20 We recognise that EMROs will not be an appropriate tool for all licensing authorities to introduce in their area, but it will be a useful measure for licensing authorities to have at their disposal if such a situation arises.

2.21 In total, 126 licensing authorities replied to the consultation. Many stated that it was too early to give an estimate of the number of premises that could be affected by an EMRO. Some gave the maximum number of premises in their area which could be affected. This is understandable, given that a decision to apply an EMRO will have to be made by the licensing authority on the basis of the promotion of the licensing objectives, rather than on a purely discretionary basis. Some licensing officers confirmed they were unable to predict the outcome because this would mean pre-judging the outcomes of local consultation and licensing committee decisions. However, discussions with some licensing officers have indicated that, where EMROs are imposed, they are likely to target relatively small problem areas of perhaps 15-30 premises.

## 3. Late night levy

3.01 The late night levy is a power for licensing authorities to introduce a charge for all premises in the local authority area that are authorised to sell alcohol between midnight and 6am. The option to implement the levy will be left entirely at the discretion of the licensing authority, which will make the decision based on the situation in its local area. In the areas in which it is introduced, the levy will be collected annually and the revenue will be split between licensing authorities and the police.

### CONSULTATION

3.02 Prior to making a decision to implement the levy, it is intended that the licensing authority will have discussions with the relevant chief officer of police, the PCC (from November 2012) and local police to decide whether it is appropriate to introduce the levy in its area. If the licensing authority considers it appropriate, then the licensing authority must formally consult the PCC, the police, licence holders and any other persons about its decision to introduce the levy. The consultation invited views on whether there should be an option for local residents or community groups to recommend the implementation of the levy in their area.

#### **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?**

3.03 Of those who responded to the question (544 respondents) 33% agreed that there should be an option for local residents/community groups to recommend the implementation of the levy in their area. 64% disagreed with this proposal and 3% responded that they did not know.

3.04 **Local residents can use their existing rights to make representations and other channels of communication to call for the implementation of the levy in their area.** The 2011 Act has provided residents with new opportunities to be involved in licensing decisions by removing the requirement that they must demonstrate vicinity to premises before making a representation. Local residents will be able to shape their local night-time economy through contacting their local councillors and PCC to recommend the implementation of the levy in their area. Whilst the decision to introduce the levy is at the discretion of the licensing authority, we expect that licensing authorities will take residents views into consideration when assessing the desirability of introducing a levy in their area.

### EXEMPTIONS

3.05 Unlike EMROs, if a licensing authority chooses to implement a levy in its area, it must apply the levy to the whole of its area, as set out in the legislation. To enable local discretion, licensing authorities may select exemptions or reductions from a list set out in secondary legislation that they consider should apply in their area. The consultation invited views on including the following premises as categories of exemption from the levy: premises with overnight accommodation; restaurants; theatres and cinemas; casinos and bingo halls with a membership scheme; CASCs; community premises and country village pubs.

#### **Consultation Question 6: Do you agree or disagree that licensing authorities should be able to exempt these premises from the levy?**

3.06 Of those who responded to the question (443 respondents) 73% agreed that licensing authorities should be able to exempt these premises from the levy. 27% disagreed with this proposal.



3.07 There were different views on the number of exemptions which should be set out in secondary legislation. Some licensing authorities wanted a broader list of potential exemptions to enable them to respond to conditions in their local area. However, others wanted to limit the numbers, to avoid the levy becoming overly bureaucratic. There was also concern that exemptions could create loopholes, particularly if a category were difficult to define, reducing the effectiveness of the levy.

3.08 While allowing local discretion, it is important that the levy is a simple tool for licensing authorities to adopt in their area. To avoid placing unduly bureaucratic obstacles on licensing authorities to judge different categories in their area, **there will be a smaller number of exemptions from the levy** than the number of exemption categories in the consultation. These are discussed below.

## PREMISES WITH OVERNIGHT ACCOMMODATION

3.09 In terms of specific exemptions, **premises with overnight accommodation will be included as a discretionary local exemption from the levy**, provided that 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 therefore not exempt hotels and guest houses that serve alcohol to members of the public who are not staying overnight at the premises.

3.10 We recognise that alcohol sales are not the primary focus of the majority of hotels and B&Bs and, therefore, we do not wish to unfairly penalise premises which are not part of the wider late night economy. Police officers have told us that B&Bs contribute towards crime and disorder in some areas; licensing authorities, including the minority of areas that experience particular problems with B&Bs, will have the discretion not to exempt premises with overnight accommodation from the levy. However, we believe that premises which only supply alcohol to bona-fide residents after midnight are not part of or profiting from the wider night-time economy.

## RESTAURANTS

3.11 **Restaurants will not be exempt from the levy.** We believe that restaurants which operate between midnight and 6am are usually part of and profiting from the night-time economy. Licensing authorities have also informed us that it would be difficult to define a restaurant as a condition on a licence. A definition could also provide a loophole for premises such as gastro-pubs to become eligible for an exemption from the levy. Regardless of whether or not a premises serves food, it should be liable to pay the levy. It would be difficult for licensing authorities to enforce this, if it were included as an exemption. We do not wish to place a burden on licensing authorities to determine whether restaurants in their area meet extensive and specific criteria, which would be required to be eligible for an exemption. Restaurants that supply alcohol after midnight are usually those which operate throughout the night and can serve as a terminal point in the night-time economy.

## THEATRES AND CINEMAS

3.12 **Theatres and cinemas will be included as a discretionary local exemption from the levy**, provided 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) or to invited guests to a corporate hire event at the premises. We will also include in regulations a description of the premises to ensure that only bona fide theatres and cinemas will fall within it.

3.13 We recognise that the sale of alcohol is ancillary to the main business of theatres and cinemas. Police officers and licensing authorities have reported few problems with these types of premises. We do not wish to penalise responsible adults who may enjoy a drink during a show or a private event and are unlikely to continue their evening in the wider night-time economy.

## CASINOS AND BINGO HALLS

3.14 **Casinos with a membership scheme will not be exempt from the levy; bingo halls will be included as a discretionary local exemption from the levy.** Responses to the consultation suggest that casinos and bingo halls premises are viewed differently particularly by licensing authorities and police officers. As such, we have considered the merits of including these premises as a possible exemption from the levy separately. A range of respondents raised concerns about the possible inclusion of casinos as an exemption from the levy. Casinos are recognised as a destination or terminal point in the night-time economy for those who have already visited a range of licensed premises. It is fair that casinos which supply alcohol between midnight and 6am should contribute to the levy.

3.15 However, there were few concerns raised by respondents regarding bingo halls from a crime and disorder perspective. Some respondents raised concerns about an exemption for bingo halls being used as a loophole for other licensed premises to avoid paying the levy. This is unlikely due to the requirement to obtain a bingo licence; the provision of bingo is subject to stringent licensing and regulation under the Gambling Act 2005. The majority of bingo halls do not operate past midnight on a regular basis; those that are licensed to sell alcohol after midnight could be liable to pay the levy, if appropriate in that area.

## COMMUNITY AMATEUR SPORTS CLUBS

3.16 **CASCs will be included as a discretionary exemption from the levy,** provided that such premises have relief from business rates by virtue of being a CASC (definition found in section 658 of the Corporation Tax Act 2010). CASCs, such as golf and yacht clubs, are not typically part of the wider night-time economy. CASCs have a specific status and therefore would be a simple exemption for licensing authorities to adopt, if appropriate, for their area.

## COMMUNITY PREMISES

3.17 **Community premises will be included as a discretionary exemption from the levy,** provided that such premises have successfully applied for the removal of the mandatory Designated Premises Supervisor (“DPS”) requirement and demonstrated that they operate responsibly. Community premises usually operate outside the wider night-time economy and such premises will have demonstrated that they do not undermine the crime and disorder objective through having successfully applied to remove the mandatory DPS requirement.

## COUNTRY VILLAGE PUBS

3.18 **Country village pubs will be included as a discretionary exemption from the levy, subject to specific definitions.** In England, this exemption is applicable to those premises which are within designated rural settlements with a population of less than 3,000 (the same definition as appears in the qualifications for rural rate relief in Part III of the Local Government Finance Act 1988). A rural settlement is defined by a local authority. Guidance on this area can be obtained from the Department of Communities and Local Government.

This exemption would apply to the sole pub in a rural settlement. Rural rate relief does not apply in Wales. We are working with the Welsh Government to explore a suitable discretionary exemption that could apply in Wales. The Government is committed to protect local pubs where they are seen to be important community assets.

3.19 Some suggestions for other exemptions were made, such as a suggestion that all ‘responsible’ premises should be excluded. The purpose of the levy is to raise a meaningful contribution towards late-night policing. Although many premises operate in a responsible manner, all premises benefit from the provision of late-night policing.

## **BUSINESS IMPROVEMENT DISTRICTS**

3.20 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. The consultation proposed that licensing authorities should be able to grant an exemption to those making a financial contribution to initiatives that tackle alcohol-related crime and disorder as part of a BID, where the authority is satisfied that the aims meet a satisfactory crime and disorder focus. Licensing authorities may wish to use the late night levy to promote and support participation in BIDs.

### **Consultation Question 7: Do you agree or disagree that licensing authorities should be able to exempt Business Improvement Districts from the late night levy?**

3.21 Of those who responded to the question (529 respondents) 70% agreed that licensing authorities should be able to exempt BIDs from the levy. 18% did not agree with this proposal and 4% responded that they did not know.

3.22 **BIDs that operate in the night-time economy, with a satisfactory crime and disorder focus, will be included as a discretionary exemption from the levy.** Licensing authorities will determine whether BIDs in their area are eligible for an exemption using this criteria. We will provide more information on this criterion in guidance. We recognise that an increasing number of night-time BIDs are being established, and that such schemes may already fulfil the purpose of the levy by raising contributions towards late night services, without the need for licensing authority intervention.

## **CLUB PREMISES CERTIFICATES**

3.23 Private member’s clubs operate under Club Premises Certificates (“CPCs”) and are authorised to sell alcohol only to members and their guests. In recognition of private members’ clubs specific status under the 2003 Act, the consultation invited views on whether such premises should be exempt from the levy.

### **Consultation Question 8: Do you think that premises operating under a club premises certificate should be exempt from the late night levy?**

3.24 Of those who responded to the question (444 respondents) 39% agreed that club premises certificates should be exempt from the levy. 55% disagreed with the proposal and 5% responded that they neither agreed nor disagreed with the proposal.

3.25 In addition, 37 respondents believed that CPCs should be exempt because they only sell alcohol to members (29 of these responses were part of a campaign). 27 respondents stated that CPCs are run in a responsible manner and effectively police their own members. However, there were a wide range of arguments against exempting CPCs from the levy. 37 respondents replied that people who drink at CPCs often go out into the wider night-time economy; 5 respondents thought that CPCs cannot guarantee the behaviour of their members; 8 respondents argued that CPCs sell cheaper alcohol and 9 respondents stated that CPCs can be used for private events, such as birthdays and wedding, which are accessed by non-members.

3.26 **Premises operating under a club premises certificate will not be exempt from the levy.** We believe that they should be treated in the same way as other licensed premises that supply alcohol after midnight. As outlined above, respondents have raised concerns that those who drink at CPCs often go on to drink in the wider night-time economy, after consuming cheap alcohol at the club. Whilst we recognise that CPCs are often run in a responsible manner, members are able to bring guests to such premises.

## NEW YEAR'S EVE

3.27 The levy will apply to all premises which have an authorisation to supply alcohol between midnight and 6am on any day of the year. Many licences currently have additional authorisations on New Year's Eve to stay open later than usual for celebrations. Before the levy begins in any area, premises will be able to make a free minor variation to their licence to reduce their hours to avoid becoming liable to pay the levy. Instead they could use a Temporary Event Notice ("TEN") on special occasions, such as New Year's Eve to authorise the sale of alcohol. The consultation invited views on whether New Year's Eve should be available as a discretionary exemption for licensing authorities to implement across the area.

### **Consultation Question 10: Do you agree or disagree that there should be an exemption for New Year's Eve?**

3.28 Of those who responded to the question (544 respondents) 66% agreed that there should be an exemption from the levy for New Year's Eve. 15% disagreed with the proposal and 5% responded that they did not know.

3.29 **New Year's Eve will be included as a discretionary exemption from the levy.** We recognise that many premises only have one late night authorisation on their licence for New Year's Eve; this allows premises to open later than their usual licensed hours. Such premises would be entitled to make a free minor variation to change their hours and would instead use a TEN to open on New Year's Eve. However, this would create a significant burden on local authorities, who would need to process numerous applications in a short period of time. An exemption for premises that only have one late night authorisation to supply alcohol beyond midnight on New Year's Eve recognises this event as a national celebration.

## REDUCTIONS

### BEST PRACTICE SCHEMES

3.30 Licensing authorities may 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 consultation proposed that the following schemes should be available as reduction categories from the levy: Best Bar None; Pubwatch, Clubwatch or Shopwatch; Community Alcohol Partnership and BIDs.

#### **Consultation Question 11: Do you agree or disagree that licensing authorities should be able to ask for a reduced levy payment from these businesses?**

3.31 Of those who responded to the question (527 respondents) 75% agreed that licensing authorities should be able to ask for a reduced levy payment from these businesses. 18% disagreed with the proposal and 6% responded that they neither agreed nor disagreed with the proposal.

3.32 Licensing authorities and trade representatives have highlighted that different national schemes have varying levels of success across the country; a scheme that is extremely valuable in one area may have little impact in another. Respondents also argued that local initiatives which are working to reduce alcohol-related crime and disorder should be eligible for a discount from the levy.

3.33 Other comments included that reductions would be complex to administer (2%) and that membership of schemes does not necessarily mean that premises are behaving responsibly (9%).

3.34 We want to ensure that licensing authorities are able to offer a reduction to the schemes that make a difference in their area. Therefore, we will enable licensing authorities to **offer a discretionary reduction to best practice schemes that meet relevant criteria**. This will ensure that both national and local best practice schemes can be recognised for the contribution that they already make to the management of the night-time economy, at the discretion of the licensing authority.

3.35 The consultation recognised that some best practice schemes have been created locally without any national accreditation. Certain standards should be met. Groups of businesses may join together and fund late night services or address specific community problems. The consultation asked for potential benchmarks that should apply.

#### **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?**

3.36 There was a wide range of suggestions for benchmarks that could be applied to grassroots schemes to ensure that members are actively working to reduce crime and disorder. Of those who responded to the question (262 respondents), 73 highlighted the benefits of specific best practice schemes. 208 respondents suggested benchmarks that schemes could meet, which include: partnership working with the police and/or licensing authority (27%); licensing authority approval or endorsement of the scheme (22%); active participation of members in the scheme (16%); schemes have clear targets to be achieved (13%); national accreditation standards (12%); regional/local accreditation standards (9%); demonstration of a reduction in crime and disorder

as a result of the scheme; endorsed by the licensing authority (8%); scheme is funding local initiatives to reduce crime and disorder (4%); and accreditation using previous Home Office standard benchmarks (1%).

**3.37 Benchmarks will be used to determine discretionary reductions from the levy for both national and grassroots best practice schemes.** The following benchmarks will be prescribed in legislation as the basis on which licensing authorities should make decisions on whether a best practice scheme in their areas could receive a reduction from their required levy payment. All schemes should be able to demonstrate the following principles:

- A clear rationale as to why the scheme's objectives and activities will, or are likely to, result in a reduction of alcohol-related crime and disorder.
- A requirement for active participation in the scheme by members.
- A mechanism to identify and remove in a timely manner those members who do not participate appropriately.

Officials will meet with practitioners to discuss these principles in further detail. The guidance will give advice on what active participation could include.

**3.38** The consultation proposed that there will be a 10% discount from the levy for every relevant best practice scheme, up to a maximum cumulative discount of 30% for premises that are members of numerous schemes.

### **Consultation Question 13: Do you agree or disagree with this set-up of cumulative discounts?**

**3.39** Of those who responded to the question (417 respondents), 33% agreed with this set-up of cumulative discounts; 21% disagreed with this proposal and 14% neither agreed nor disagreed with the proposal. The remaining 33% of respondents did not know whether they agreed with this proposal.

**3.40** We have received responses from police, licensing authority and best practice scheme representatives arguing that the proposed level of discount from the levy should be higher, to avoid membership of such schemes being discouraged. In recognition of this, **licensing authorities will be able to offer a maximum 30% discount to best practice schemes that meet the specified benchmarks.** However, the discount will not be cumulative (i.e. a member of both Pubwatch and Best Bar None will receive a 30% reduction from the levy).

### **SMALL BUSINESS RATE RELIEF**

**3.41** Small Business Rate Relief offers business ratepayers that meet certain criteria the opportunity to receive reductions on their rates bills. In general, businesses are eligible if they occupy only one property and their rateable value is below a certain level. The consultation invited views on offering a reduction to premises that receive small business rate relief, such as off-licences and 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?**

**3.42** Of those who responded to the question (345 respondents), 53% were broadly positive towards offering a reduction from the levy to businesses that receive small business rate relief. 34% disagreed with the proposal and 14% were indifferent towards the proposal.

3.43 Some thought that the reduction would: reduce the risk that small businesses could close as a result of the levy; reduce the burden of taxation on those who are least able to pay the levy; and promote the benefits of small community pubs. It was also suggested that small premises do not contribute towards alcohol-related crime and disorder.

3.44 However, others suggested that: a reduction would be unfair on other premises and create a disparity; all those selling alcohol late at night should contribute to the levy; the levy should be kept simple, with no exemptions; the size of a premises does not mean that it is less likely to undermine the licensing objectives; the levy charge is already based on non-domestic rateable value, so the reduction is unnecessary; and the reduction would be unfair on other premises and create a disparity.

3.45 **Certain types of on-trade premises that receive small business rate relief will be eligible for a discretionary reduction from the levy. This will apply to certain types of premises that are in receipt of small business rate relief and have a rateable value below £12,000.** Further information regarding which premises will be eligible for a reduction will be included in guidance. The government is committed to reduce the burden on small businesses where possible. As with all exemptions and reductions from the levy, the reduction will be available for local authorities to introduce if they deem it appropriate for their area.

3.46 Eligible premises can either receive a reduction if they are in receipt of the relevant Small Business Rate Relief or a member of a relevant best practice scheme. There will be no cumulative discounts from the levy.

## FURTHER EXEMPTIONS AND REDUCTIONS

3.47 In addition to the proposed categories of exemption in Question 6, the consultation invited views on whether other types of premises should be considered for an exemption from the levy, such as community 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?**

3.48 Of those who responded to the question (541 respondents) 64% agreed that there should be further exemptions and reductions from the levy. 36% disagreed with this proposal.

3.49 The suggestions for further exemptions and reductions from the levy included rural pubs (3 respondents), community pubs (5 respondents), premises with an established community and social character (2%), community sports clubs that do not have CASC status (6%), premises that do not generate crime and disorder (4%), Business Crime Reduction Partnership (22%), Purple Flag (22%), premises operating under a seasonal licence (3 respondents), racecourses or other sporting stadiums (2 respondents), festivals (1%) and charitable events (5 respondents).

3.50 Other comments included: community pubs are hard to define (5 respondents); licensing authorities should have the discretion to introduce their own exemptions (5%); premises should be judged individually on their own merit (2%); additional exemptions would make the levy too bureaucratic (1%); and licensing authorities should be able to exempt specific areas from the levy (4 respondents).

3.51 **There will be no further exemptions from the levy**, to avoid placing bureaucratic obstacles on licensing authorities to judge various premises in their area. Police officers and licensing authorities argued against the proposed exemption for community pubs; there is no legal definition of a community pub, which could create a loophole for other types of premises. The majority of community pubs are likely to close before midnight, and therefore will not be affected by the levy.

## LICENSING AUTHORITY REVENUE

3.52 Primary legislation sets out that the revenue from the levy will be split between the police and the licensing authority. The licensing authority can currently 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.

### **Consultation Question 15: What activities do you think licensing authorities should be able to fund with their retained proportion?**

3.53 Of those who responded to the question (333 respondents), the majority of respondents commented that licensing authorities should be able to fund the following activities or services with their retained proportion of the levy revenue: 'booze buses' (9%); CCTV (9%); clean-up of the streets and graffiti (25%); education (15%); enforcement of the 2003 Act (15%); taxi marshals or 'street angels' and other related night-time economy marshals (33%); signage relating to the night-time economy and street lighting (7%); toilets (5%); and transport (7%).

3.54 Some licensing authorities have argued that there should be no restrictions on how they apply their portion of the net levy revenue. However, it will be possible for licensing authorities to fund the vast majority of activities that have been identified in the consultation as preventing alcohol-related crime and disorder in the night-time economy. These include booze buses, CCTV, taxi marshals, 'street angels', street lighting and provision of toilets, amongst other activities. However, we are also aware that licensing authorities believe that the restrictions on their portion of the levy revenue should be broader to ensure that they can fund services that are appropriate for the local area.

3.55 The consultation proposed that the proportion of the net levy revenue retained by licensing authorities should be used to fund services which tackle alcohol-related crime and disorder, but the revenue could not be used to fund the wider management of the night-time economy. This would mean that the levy revenue could fund 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. Licensing authorities have told us that this would place an unnecessary burden on their services; street cleaners attend to the entire night-time economy, rather than specifically cleaning certain items.

### **Consultation Question 16: What restrictions do you think there should be on the types of services that licensing authorities will be able to fund?**

3.56 Of those who responded to the question (327 respondents), the majority of respondents were broadly positive of the proposal to extend the restrictions on licensing authority revenue to include funding management of the night-time economy (34%). Other suggestions included: services should be connected to the geographical area in which the levy was predominately collected (4%); the revenue should only fund services which tackle alcohol-related crime and disorder (11%); licensing authorities should not be able to fund activities relating



to their statutory duties (5%); there should be no restrictions on licensing authority revenue (14%); and the interpretation of restrictions should be as broad as possible (4%).

**3.57 Licensing authorities will be able to fund services (in relation to the supply of alcohol late at night) connected to the management of the night-time economy in addition to services that prevent and tackle alcohol-related crime and disorder. This will enable licensing authorities to fund street cleaning with the levy revenue.** Licensing authorities will have more flexibility to spend their portion of the levy revenue to improve the night-time economy. We will issue guidance to licensing authorities regarding the types of services that they may wish to fund with their revenue and review this in due course.

## 4. Impact assessment

4.01 A consultation-stage Impact Assessment was published alongside the consultation.

**Consultation Question 17: If you have any comments on the Impact Assessment, please detail them here.**

4.02 We received 104 comments on the Impact Assessment from respondents. These have been considered whilst producing the Impact Assessment for secondary legislation. This Impact Assessment has been published alongside this document and can be accessed on the Home Office website.

## 5. Conclusion

5.01 This Government is committed to ensuring that licensing authorities and enforcement agencies are given the right tools to address the problems in their area, whilst promoting a healthy night-time economy to benefit business and the community that they serve. EMROs will give licensing authorities the freedom to respond to the needs of their local area – our decision that there should be no exemptions from any EMRO ensures that licensing authorities can apply them to the crime hotspots in their area, without the risk that their effect will be diluted.

5.02 The levy will contribute to the costs incurred by licensing authorities and the police when tackling alcohol-related crime late at night. It is not acceptable that taxpayers currently bear the full burden of these costs, rather than those who sell alcohol. Exemptions will be available, at the discretion of the licensing authority, to premises that are not part of the wider night-time economy or sell alcohol as an activity ancillary to their main business and are therefore not part of the wider night-time economy. This will ensure that a meaningful contribution is raised to tackle alcohol-related crime and disorder subject to secondary legislation. Reductions will also be available, to allow licensing authorities to use the levy to promote and support participation in other business-led best practice schemes.

5.03 We intend to commence the provisions containing the framework for EMROs and the levy in October 2012. Guidance in relation to EMROs will be included in statutory guidance issued under section 182 of the 2003 Act. Separate guidance on the levy will be published on the Home Office website.

# 6. Summary of Policy Decisions

The following details have been decided as a result of this consultation:

## EMROS

- Persons that may be affected by an EMRO will have 42 days to make relevant representations for, or against, a proposed EMRO. (Paragraph 2.06)
- Licensing authorities will be required to notify licensed premises that would be included in the scope of a proposed EMRO, rather than all licensed premises in the licensing authority area. (Paragraph 2.07)
- A proposal to introduce an EMRO should be publicised on the licensing authority's website and in their local newspaper. (Paragraph 2.07)
- EMROs will not apply on New Year's Eve. (Paragraph 2.10)
- There will be no exemptions from EMROs. There will be provision to ensure that premises with overnight accommodation can still provide room service and mini-bars, if they are included in the scope of an EMRO. (Paragraph 2.17-2.18)

## LATE NIGHT LEVY

- Local residents can use their existing rights to make representations and other channels of communication to call for the implementation of the levy in their area. (Paragraph 3.04)
- Premises with overnight accommodation (Paragraph 3.09), theatres, cinemas (Paragraph 3.12), bingo halls (Paragraph 3.14), CASCs (Paragraph 3.16), community premises (Paragraph 3.17), country village pubs (Paragraph 3.18) and BIDs (Paragraph 3.20) will be available as a discretionary local exemption from the levy.
- Restaurants (Paragraph 3.11), casinos (Paragraph 3.14) and private member's clubs (Paragraph 3.26) will not be available as a discretionary local exemption from the levy.
- The levy will not apply on New Year's Eve. (Paragraph 3.29)
- Licensing authorities will be able to offer a 30% reduction from the levy for best practice schemes that meet relevant criteria (Paragraph 3.34) and pubs that are in receipt of Small Business Rate Relief and have a rateable value below £12,000 (Paragraph 3.45).
- There will be no cumulative discounts from the levy. (Paragraph 3.40)
- 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. (Paragraph 3.56)



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