

Draft Regulations laid before Parliament under section 154(2) of the Police Reform and Social Responsibility Act 2011, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No.

**LICENCES AND LICENSING,
ENGLAND AND WALES**

**The Late Night Levy (Application
and Administration) Regulations 2012**

Made - - - - 2012
Coming into force - - 31st October 2012

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 126, 128, 129, 131, 134 and 136 of the Police Reform and Social Responsibility Act 2011⁽¹⁾. In accordance with section 136(1) of that Act, the Treasury have consented to the making of these Regulations.

In accordance with section 154(2) of that Act, a draft of these Regulations was laid before and approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Late Night Levy (Application and Administration) Regulations 2012.

(2) These Regulations come into force on 31st October 2012.

Interpretation

2. In these Regulations—

“the Act” means the Police Reform and Social Responsibility Act 2011;

“the 2003 Act” means the Licensing Act 2003⁽²⁾;

(1) 2011 c. 13.

(2) 2003 c. 17. Section 27(1)(b) was amended by section 67(1) of, and paragraph 46 of Schedule 6 to, the Mental Capacity Act (c. 9). Section 172A was inserted by section 119 of the Police Reform and Social Responsibility Act 2011 (c. 13). Sections 41A and 86A were inserted by the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 (S.I. 2009/1772).

“insolvency practitioner”, in relation to a person, means a person acting as an insolvency practitioner in relation to that person within the meaning of section 388 of the Insolvency Act 1986⁽³⁾;

“personal representative” has the same meaning as in section 55 of the Administration of Estates Act 1925⁽⁴⁾;

“rateable value”, in relation to any premises, is the value for the time being in force for the premises entered in the local non-domestic rating list for the purposes of Part III of the Local Government Finance Act 1988⁽⁵⁾;

“relevant premises” means premises in relation to which there is a relevant late night authorisation;

“specified proportion” has the same meaning as in section 131(3) of the Act.

Late night levy: payment years

3.—(1) A payment year in relation to a person who holds a relevant late night authorisation at the beginning of a levy year is—

- (a) the period of one year beginning immediately following the beginning of the levy year, and
- (b) each subsequent year.

(2) A payment year in relation to a person who is granted a relevant late night authorisation in a levy year is—

- (a) the period of one year beginning on the date of the grant of the authorisation, and
- (b) each subsequent year.

Late night levy: bands for relevant premises

4.—(1) In a case where the relevant premises have a rateable value specified in column 1 of the table in Schedule 1, the premises shall be in the band specified for that rateable value in column 2 of that table.

(2) In all other cases, the relevant premises shall be in Band A except where the relevant premises are in the course of construction, in which case the relevant premises shall be in Band C.

(3) For the purposes of this regulation, in a case where the relevant premises form part only of a hereditament⁽⁶⁾ in the local non-domestic rating list for the purposes of Part III of the Local Government Finance Act 1988, the relevant premises shall be treated as having a rateable value equal to the rateable value for the hereditament of which they form part.

(4) For the purposes of this regulation, in a case where the relevant premises comprise two or more hereditaments in the local non-domestic rating list, the relevant premises shall be treated as having a rateable value equal to the rateable value for the hereditament with the higher or highest rateable value.

Late night levy: amount

5.—(1) Subject to paragraph (2), the amount of the late night levy payable in respect of relevant premises shall be the amount applicable to the band appearing in column 1 of the table in Schedule 2

(3) 1986 c. 45. Section 388 was amended by article 15 of the Insolvent Partnerships Order 1994 (S.I. 1994/2421) and section 4 of the Insolvency Act 2000 (c. 39).

(4) 1925 c. 23.

(5) 1988 c. 41.

(6) A hereditament is defined in section 64 of the Local Government Finance Act 1988 (c. 41).

for the relevant premises to which the late night levy relates, determined in accordance with regulation 4, specified in column 2 of that table.

(2) In respect of relevant premises in Band D or Band E which are used exclusively or primarily for the supply of alcohol for consumption on the premises, the amount of the late night levy shall be—

- (a) in the case of relevant premises in Band D, £2,730, and
- (b) in the case of relevant premises in Band E, £4,440.

Late night levy: first and subsequent payments

6.—(1) The holder of a relevant late night authorisation must make the first payment of the late night levy—

- (a) in a case to which regulation 3(1) applies, on the date in the first payment year on which the annual fee in relation to the authorisation is payable under section 55(2) or 92(2) of the 2003 Act, or
- (b) in a case to which regulation 3(2) applies, 14 days after the date of the grant of the authorisation.

(2) The holder of a relevant late night authorisation must in any second or subsequent payment year make a payment of the late night levy on the date in that payment year on which the annual fee is payable under section 55(2) or 92(2) of the 2003 Act.

Late night levy: adjustments to payments

7.—(1) The amount of the late night levy payable by the holder of a relevant late night authorisation is reduced by an amount (“the levy reduction”), determined in accordance with paragraph (4), if a relevant event occurs in the payment year to which the liability relates.

(2) A relevant event occurs on the date on which—

- (a) a relevant late night authorisation lapses under section 27 of the 2003 Act, or
- (b) the supply of alcohol during the late night supply period in accordance with a relevant late night authorisation is prohibited by an order made under section 172A of the 2003 Act.

(3) For the purposes of paragraph (1), a licensing authority may also decide that a relevant event occurs on the date on which a relevant late night authorisation is surrendered under section 28 or 81 of the 2003 Act.

(4) The amount of the levy reduction is the amount found by applying the formula—

$$R = (L / 365) \times N$$

where—

- (a) R is the levy reduction,
- (b) L is the amount of the late night levy payable by the holder of the relevant late night authorisation, and
- (c) N is the number of days in the payment year beginning on the day following the date on which the relevant event occurred.

(5) Where the holder of a relevant late night authorisation has made a payment of the late night levy in accordance with regulation 6, the licensing authority must pay the amount of any levy reduction to the holder within 28 days of the day following the date on which the relevant event occurred.

(6) Where a payment of the late night levy has not become payable by the holder of a relevant late night authorisation in accordance with regulation 6, the licensing authority must reduce the amount of the holder’s liability to pay the late night levy by the amount of any levy reduction.

(7) In this regulation, a reference to a holder of a late night authorisation includes a person who, in relation to a person who held a relevant late night authorisation, is—

- (a) a personal representative,
- (b) a person who acts for the holder of the relevant late night authorisation under an enduring power of attorney or lasting power of attorney registered under the Mental Capacity Act 2005(7), or
- (c) an insolvency practitioner.

Late night levy: payment and application of net amount of late night levy payments

8.—(1) The licensing authority must pay the specified proportion to the relevant local policing body within 28 days of the last day of the levy year to which it relates.

(2) The licensing authority must apply the non-specified proportion of the net amount of levy payments having regard, in each case in connection with the supply of alcohol between midnight and 6am, to arrangements for—

- (a) the reduction or prevention of crime and disorder,
- (b) the promotion of public safety,
- (c) the reduction or prevention of public nuisance,
- (d) the cleaning of any relevant highway or relevant land in its area.

(3) The licensing authority may determine from time to time when it will apply the non-specified proportion in relation to arrangements set out in paragraph (2).

(4) In this regulation—

“non-specified proportion” means the remainder of the net amount of levy payments for any levy year after deduction of the specified proportion;

“relevant highway” means a highway which is—

- (a) maintainable at the public expense other than a trunk road which is a special road, and
- (b) in the licensing authority’s area;

“relevant land” means land—

- (a) to which the public are entitled or permitted to have access with or without payment, and
- (b) which is—
 - (i) open to the air,
 - (ii) not a relevant highway, and
 - (iii) in the licensing authority’s area;

“highway” (and “highway maintainable at the public expense”), “special road” and “trunk road” have the same meaning as in the Highways Act 1980(8).

Late night levy: procedure on introduction or variation

9.—(1) A licensing authority must—

- (a) in relation to any proposal to make a relevant decision—

(7) 2005 c. 9.

(8) 1980 c. 66.

- (i) consult the persons set out in paragraph (2),
 - (ii) publish notice of the proposal in the manner set out in paragraph (3);
 - (b) in relation to a relevant decision, publish notice of it in the manner set out in paragraph (3); and
 - (c) in relation a decision under section 125(2) of the Act, make arrangements in accordance with paragraph (5).
- (2) The persons referred to in paragraph (1)(a)(i) are—
- (a) the relevant local policing body,
 - (b) the relevant chief officer of police, and
 - (c) holders of relevant late night authorisations.
- (3) For the purposes of paragraphs (1)(a)(ii) and (1)(b), the notice of the proposal or the relevant decision must be—
- (a) placed on the licensing authority’s website containing the information set out in paragraph (4),
 - (b) published in a local newspaper or, if there is none, in a local newsletter, circular or similar document, circulating in the licensing authority’s area, and
 - (c) sent to—
 - (i) all holders of relevant late night authorisations,
 - (ii) the relevant local policing body, and
 - (iii) the relevant chief officer of police.
- (4) For the purposes of paragraph (3)(a), the notice must set out—
- (a) the date on which the late night levy requirement is first to apply,
 - (b) the late night supply period,
 - (c) the permitted exemption categories (if any) which are to apply,
 - (d) the permitted reduction categories (if any) which are to apply, and
 - (e) the specified proportion.
- (5) For the purposes of paragraph (1)(c)—
- (a) the holder of a relevant late night authorisation may make an application to vary the authorisation under section 34, 41A, 84 or 86A of the 2003 Act to the effect that the authorisation would cease to be a relevant late night authorisation before the beginning of the levy year, and
 - (b) no fee is payable under section 55(1) or 92(1) of the 2003 Act in relation to an application under sub-paragraph (a).
- (6) In this regulation, “relevant decision” means a decision of a licensing authority under section 125(2), 132(1) or 133(1) of the Act.

Home Office
Date

Name
Minister of State

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory
Instrument: *The Late Night Levy (Application and Administration) Regulations 2012 No. 2730*

We consent

Date

Two of the Lords Commissioners of Her
Majesty's Treasury

SCHEDULE 1

Regulation 4

Rateable Values and Bands

<i>Column 1</i>	<i>Column 2</i>
<i>Rateable Value</i>	<i>Band</i>
No rateable value to £4,300	A
Greater than £4,300 to £33,000	B
Greater than £33,000 to £87,000	C
Greater than £87,000 to £125,000	D
Greater than £125,000	E

SCHEDULE 2

Regulation 5

Amount of Late Night Levy

<i>Column 1</i>	<i>Column 2</i>
<i>Band</i>	<i>Amount</i>
A	£299
B	£768
C	£1,259
D	£1,365
E	£1,493

EXPLANATORY NOTE*(This note is not part of these Regulations)*

These Regulations prescribe a number of matters relating to the introduction and administration of the late night levy (“the levy”). The framework for the levy is set out in Chapter 2 of Part 2 of the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”). This framework enables a licensing authority in England and Wales to introduce a late night levy in its area if it considers it desirable to raise revenue in relation to the costs of policing crime and disorder connected to the supply of alcohol in that area between midnight and 6am. If the levy is introduced, it is payable by holders of premises licences or club premises certificates which authorise the supply of alcohol at times beginning at or after midnight and ending at or before 6am (the licensing authority may determine the times but these must be the same each night). Section 126(2) of the 2011 Act defines such licences and certificates as relevant late night authorisations.

The framework for the levy confers a number of powers on the Secretary of State to prescribe by regulations matters relating to the basis on which the holders of relevant late night authorisations are liable, when they are liable, how they discharge that liability, what adjustments may be made to their liability if their circumstances change and what procedural steps licensing authorities must take in relation to the introduction of the levy in their areas (or the variation to the levy in subsequent years).

Regulation 1 makes provision to enable these Regulations to come into force simultaneously with the commencement of the provisions in Chapter 2 of Part 2 of the 2011 Act, because these Regulations prescribe matters which are necessary to give effect to those provisions.

Regulation 2 defines a number of terms to which reference is made in these Regulations.

Regulation 3 provides for the basis on which a payment year for the holder of a relevant late night authorisation is determined (“payment year” and “relevant late night authorisation” are defined in section 137 of the 2011 Act).

Regulations 4 and 5 (in tandem with the tables in Schedules 1 and 2) prescribe the basis on which the liability of holders of relevant late night authorisations to pay the levy is determined. This closely reflects the approach prescribed under the Licensing Act 2003 (by reference to which licence fees payable by licensed premises are determined), and is based on the rateable value of premises in relation to which authorisations are held and whether, in the case of premises with higher rateable values, they are used exclusively or primarily for the supply of alcohol for consumption on the premises.

Regulation 6 prescribes when the holder of a relevant late night authorisation must make the first and subsequent payments of the levy. This is determined in accordance with whether the authorisation was held at the beginning of the first levy year or was granted once the levy year had begun.

Regulation 7 makes provision for the circumstances in which the holder of a relevant late night authorisation may be entitled to a reduction in that holder’s liability to the levy. This arises in three cases. The first is where the holder’s authorisation lapses by virtue of section 27 of the Licensing Act 2003 (“the 2003 Act”) (i.e. where the holder has died, becomes mentally incapable or insolvent). The second is where the holder is prohibited from supplying alcohol as a result of an early morning restriction order made by the licensing authority under section 172A of the 2003 Act. The third is where the holder surrenders the authorisation under section 28 or 81 of the 2003 Act; in this case, the licensing authority may decide to treat this occurrence as entitling the holder to a reduction in liability. This regulation prescribes the basis on which the reduction is calculated, and includes provision for cases where the holder’s estate or assets are administered by, for example, a personal representative or insolvency practitioner.

Regulation 8 provides that the licensing authority must pay the relevant local policing body (defined in section 137 of the 2011 Act) its share of the net levy revenue within 28 days of the end of the levy year to which the revenue relates. This share (called the “specified proportion”) represents 70% of the net levy revenue (the net amount is reached after the licensing authority has deducted its costs of introducing and administering the levy). This regulation also prescribes the purposes by reference to which the licensing authority can apply the remainder of the net levy revenue, and permits the authority to apply that revenue for those purposes.

Regulation 9 prescribes the procedural requirements which a licensing authority must observe when it proposes to introduce a levy in its area, or to vary the basis on which an existing levy is administered. In relation to either step, the licensing authority must consult specified persons (for example, the relevant local policing body and holders of relevant late night authorisations) and publish notice of the proposal (by publication of specified information on its website, by publication in a newspaper or similar document and by sending direct notification to holders of relevant late night authorisations). In relation to a proposal to introduce the levy, a licensing authority is required to make arrangements that no fee is required to be paid by the holders of authorisations (who would become relevant late night authorisations were the levy to be introduced) who apply to vary their

authorisations under the 2003 Act so as to avoid becoming liable for the levy, and to require that no fee accompany any such applications.