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|---|---|--|---------------------------|
| Title: Dealing with the problems of late night drinking – implementation of secondary legislation IA No: Lead department or agency: Home Office Other departments or agencies: None | Impact Assessment (IA) | | |
| | Date: 09/05/2012 | | |
| | Stage: Final | | |
| | Source of intervention: Domestic | | |
| | Type of measure: Secondary legislation | | |
| Contact for enquiries: Paul Nicol Paul.Nicol@homeoffice.gsi.gov.uk | | | |
| Summary: Intervention and Options | | | RPC Opinion: GREEN |

| Cost of Preferred (or more likely) Option | | | |
|---|----------------------------|--|---|
| Total Net Present Value | Business Net Present Value | Net cost to business per year (EANCB on 2009 prices) | In scope of One-In, Measure qualifies as One-Out? |
| -£106.9m | -£242m | £28.2m | Yes IN |

What is the problem under consideration? Why is government intervention necessary?
The late night levy will enable licensing authorities (LAs) to collect a contribution towards the large police costs of maintaining a safe late night economy. Early Morning Restriction Orders (EMROs) will enable LAs to clamp down on pockets of late night alcohol-related problems by banning alcohol sales. The levy was introduced; and the EMROs power was extended prior to commencement; by the Police Reform and Social Responsibility Act 2011. The primary legislation requires that we make regulations prescribing certain details of the measures before they are commenced and LAs have the power to implement them locally.

What are the policy objectives and the intended effects?
Late night levy secondary legislation: to enable LAs to choose whether to implement exemptions or reductions for prescribed categories of licences as appropriate; including using this provision to allow LAs to support responsible businesses and encourage participation in business-led best practice schemes; and prescribe a proportionate levy charge (and other details of the local implementation process).
EMRO secondary legislation: to ensure that appropriate categories of premises or days are exempt from the effects of all EMROs; and to prescribe other details of the process by which an LA makes an EMRO.
The measures will be available to LAs in England and Wales.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
Late night levy: Option 1 – to not commence the primary legislation; Option 2 – make levy available to LAs without exemptions or reductions; Option 3 (preferred) - prescribe available categories of exemption and reduction to allow LAs to promote business-led best practice schemes and exempt certain categories of premises. Option 3 is preferred as it will enable LAs to achieve the policy aim whilst exempting categories of premises that are not associated with alcohol-related crime and disorder, and promote best practice.
EMROs: Option A –to not commence the primary legislation; Option B (preferred) – make EMROs available to LAs with an exemption for New Year’s Eve, but without exemptions for categories of premises; Option C– make EMROs available to LAs, subject to a wider range of nationally-prescribed exemptions. Option B is preferred because it will enable LAs to apply EMROs within appropriate areas but minimise the risk of loopholes (e.g., premises that meet exemption criteria but nevertheless undermine the licensing objectives).

| | | | | | |
|--|--|---------------------|-----------------------|-------------------------|----------------------|
| Will the policy be reviewed? It will be reviewed. If applicable, set review date: 06/2017 | | | | | |
| Does implementation go beyond minimum EU requirements? | | | | N/A | |
| Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base. | | Micro Yes | < 20 Yes | Small Yes | Medium Yes |
| What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent) | | Traded: 0 | | Non-traded: 0 | |

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: _____ Lord Henley _____ Date: 23/06/2012

Summary: Analysis & Evidence

Levy: Policy Option 2

Description:

Late night levy without exemptions or reductions

FULL ECONOMIC ASSESSMENT

| Price Base Year 2011 | PV Base Year 2011 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
|----------------------|-------------------|----------------------|---------------------------------------|-------------|----------------------|
| | | | Low: -37.3 | High: -10.7 | Best Estimate: -23.8 |

| COSTS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|---|--|----------------------------|
| Low | 1.15 | 19.8 | 172 |
| High | 0.89 | 22.9 | 198 |
| Best Estimate | 0.89 | 21.4 | 185 |

Description and scale of key monetised costs by 'main affected groups'

Ongoing cost - holders of 'relevant late night authorisation' bear an annual cost equal to their levy charge. Premises that choose to avoid the levy will bear a loss of profit up to the level of the levy charge. The low estimate assumes that premises which avoid the levy will face a one-off administration cost of changing their licensed hours but no loss in profit as they are not currently operating beyond midnight (even if their licence allows it). There will be transition and administrative costs of processing the levy, incurred by licensing authorities but recouped from levy income.

Other key non-monetised costs by 'main affected groups'

Potential minor cost to individuals facing reduced availability of premises beyond midnight. Expected to be negligible as premises are expected to make higher profits than the cost of the levy and thus not be dissuaded from operating (as distinct from possessing authorisation allowing them to operate).

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|---|--|-------------------------------|
| Low | | 18.7 | 161 |
| High | | 18.7 | 161 |
| Best Estimate | | 18.7 | 161 |

Description and scale of key monetised benefits by 'main affected groups'

Monetised benefit is the net receipts of the levy (after administration costs). The police will receive 70% of this monetised benefit. LAs will fund services with the remainder.

Other key non-monetised benefits by 'main affected groups'

There will be a potential benefit of a safer night time economy due to improved funding of local services such as police enforcement in preventing alcohol-related violence.

Key assumptions/sensitivities/risks:

Discount rate (%)

3.5

The monetised estimates for costs are higher than the monetised estimates for benefits because of administration costs, and because a significant proportion of premises are assumed (as explained below) to change their authorised hours to avoid the levy, and incur a cost equivalent to the levy charge. We use an "average licensing authority scenario", based on the assumption that only authorities with the most premises are likely to adopt the levy. Assumptions are summarised in Table 8.1. There is a risk that more or fewer LAs than expected will implement it e.g., in the latter case, estimating low net receipts (low income and/or high administrative costs) in their area.

BUSINESS ASSESSMENT (Option 2)

| | | | | |
|---|-------------|------------|-------------------|----------------------|
| Direct impact on business (Equivalent Annual) £m: | | | In scope of OIOO? | Measure qualifies as |
| Costs: 20.3 | Benefits: 0 | Net: -20.3 | No | NA |

Summary: Analysis & Evidence

Levy: Policy Option 3 (preferred)

Description:

Late night levy with available exemptions and reductions

FULL ECONOMIC ASSESSMENT

| Price Base Year 2011 | PV Base Year 2011 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
|----------------------|-------------------|----------------------|---------------------------------------|-------------|----------------------|
| | | | Low: -29.0 | High: -11.7 | Best Estimate: -20.3 |

| COSTS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|---|--|----------------------------|
| Low | 1.32 | 18.3 | 159 |
| High | 1.15 | 20.3 | 176 |
| Best Estimate | 1.15 | 19.3 | 167 |

Description and scale of key monetised costs by 'main affected groups'

Transition costs - some premises may amend licence to fit exemption category - £0.26m. Ongoing cost - holders of 'relevant late night authorisations' bear annual cost equal to their levy charge. Premises which choose to avoid the levy will bear loss of profit up to the level of the levy charge. The low estimate assumes that premises which avoid the levy will face a one-off administration cost of changing their licensed hours but no loss in profit as they are not currently operating beyond midnight. There will be transition and administrative costs of processing the levy, incurred by licensing authorities but recouped from levy income.

Other key non-monetised costs by 'main affected groups'

Potential minor cost to individuals facing reduced availability of premises beyond midnight. Expected to be negligible as premises are expected to make higher profits than the cost of the levy and thus not be dissuaded from operating.

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|---|--|-------------------------------|
| Low | | 17.1 | 147 |
| High | | 17.1 | 147 |
| Best Estimate | | 17.1 | 147 |

Description and scale of key monetised benefits by 'main affected groups'

Monetised benefit is the net receipts of the levy (after administration costs) with exemptions and reductions. The police will receive 70% of this monetised benefit. LAs will fund services with the remainder.

Other key non-monetised benefits by 'main affected groups'

Exemptions or reductions may result in enhanced take-up of business-led best practice schemes, benefitting responsible businesses. Licensing authorities will have discretion to exempt types of premises that do not contribute to late night enforcement costs in their area. There will be a potential benefit of a safer night time economy due to improved funding of local services such as police enforcement in preventing alcohol-related violence.

Key assumptions/sensitivities/risks:

Discount rate (%) 3.5

The monetised estimates for costs are higher than the monetised estimates for benefits because of administration costs, and because a significant proportion of premises are assumed (as explained below) to change their authorised hours to avoid the levy, and incur a maximum cost equivalent to the levy charge. We use an "average licensing authority scenario", based on the assumption that only authorities with the most premises are likely to adopt the levy, as described below. Assumptions are summarised in Table 8.1. There is a risk that more or fewer LAs than expected will implement it e.g., in the latter case, estimating low net receipts (low income and/or high administrative costs) in their area. The % reduction available for best-practice schemes is assumed to be 30% but is subject to further Ministerial consideration.

BUSINESS ASSESSMENT (Option 3)

| | | |
|---|-------------------|----------------------|
| Direct impact on business (Equivalent Annual) £m: | In scope of OIOO? | Measure qualifies as |
| Costs: 18.1 | No | NA |
| Benefits: 0 | | |
| Net: -18.1 | | |

Description: Early Morning Alcohol Restriction Orders (EMROs) without exemptions for categories of premises (but with an exemption for New Years' Eve)

FULL ECONOMIC ASSESSMENT

| Price Base Year 2011 | PV Base Year 2011 | Time Period Years 10 | Net Benefit (Present Value (PV) (£m)) | | |
|----------------------|-------------------|----------------------|---------------------------------------|--------------|----------------------|
| | | | Low: -3.7 | High: -1,406 | Best Estimate: -86.6 |

| COSTS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|---|--|----------------------------|
| Low | | 0.4 | 3.7 |
| High | | 163.4 | 2,109.3 |
| Best Estimate | 0 | 10.1 | 86.6 |

Description and scale of key monetised costs by 'main affected groups'

Premises subject to EMROs will bear a cost from reduced income from alcohol sales. As set out on page 24, a large number of variables will affect the impact of EMROs when they are implemented locally. We estimate a total cost of £10.1m per year in England and Wales.

Other key non-monetised costs by 'main affected groups'

Potential customers of premises that sell alcohol late at night may have their choice constrained. Licensing authorities will bear the cost of deciding whether to use an EMRO, enforcing the EMRO and maintaining the EMRO. There will also be a cost to the police of enforcing the terms of the EMRO.

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|---|--|-------------------------------|
| Low | | | |
| High | | | |
| Best Estimate | NK | NK | NK |

Description and scale of key monetised benefits by 'main affected groups'

N/A

Other key non-monetised benefits by 'main affected groups'

Potential reduction in alcohol-related problems late at night through the better delivery of LA's existing duty to promote the licensing objectives, which are: the prevention of public nuisance; the prevention of crime and disorder; public safety; and the protection of children from harm. Reduced enforcement costs to police, local councils through the prevention of alcohol sales late at night; and reduced costs to businesses negatively affected by alcohol-related problems. Reduced cost to licensing authorities of reviewing individual licences in the problem area.

Key assumptions/sensitivities/risks:

Discount rate (%) 3.5

EMROs are in scope for OIOO.

There is a possibility that few licensing authorities will adopt an EMRO, because, for example, other powers are used or the use of an EMRO is not appropriate for the promotion of the licensing objectives in their area. A large number of local variables will affect the impact of each EMRO. It is assumed that premises affected by an EMRO will lose all turnover during the hours (not, for example, remaining open and focussing on other areas of business). Other assumptions are set out on pages 24-26.

BUSINESS ASSESSMENT (Option 2)

| | | | |
|---|--------------|-------------------|----------------------|
| Direct impact on business (Equivalent Annual) £m: | | In scope of OIOO? | Measure qualifies as |
| Costs: -10.1 | Benefits: NK | Net: -10.1 | Yes IN |

Summary: Analysis & Evidence

Policy Option C

Description: EMROs with prescribed exemptions for categories of premises

FULL ECONOMIC ASSESSMENT

| Price Base Year 2009 | PV Base Year 2011 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
|----------------------|-------------------|----------------------|---------------------------------------|--------------|----------------------|
| | | | Low: -3.4 | High: -1,306 | Best Estimate: -80.5 |

| COSTS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|---|--|----------------------------|
| Low | | 0.4 | 3.4 |
| High | | 151.8 | 1,306.3 |
| Best Estimate | 0 | 9.3 | 80.5 |

Description and scale of key monetised costs by 'main affected groups'

Premises subject to EMROs will bear a cost from reduced income from alcohol sales. As set out on page 24, a large number of variables will affect the impact of EMROs when they are implemented locally. We estimate a total cost of £9.3m per year in England and Wales.

Other key non-monetised costs by 'main affected groups'

Potential customers of premises that sell alcohol late at night may have their choice constrained. Licensing authorities will bear the cost of deciding whether to use an EMRO, the cost of processing exemptions, enforcing the EMRO and maintaining the EMRO. There will also be a cost to the police of enforcing the terms of the EMRO, including the application of exemptions (e.g., ensuring that premises that operate under an exemption are in fact compliant).

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|---|--|-------------------------------|
| Low | | | |
| High | | | |
| Best Estimate | NK | NK | NK |

Description and scale of key monetised benefits by 'main affected groups'

N/A

Other key non-monetised benefits by 'main affected groups'

Potential reduction in alcohol-related problems late at night through the better delivery of LA's existing duty to promote the licensing objectives, which are: the prevention of public nuisance; the prevention of crime and disorder; public safety; and the protection of children from harm. Reduced enforcement costs to police, local councils through the prevention of alcohol sales late at night. Reduced cost to licensing authorities of reviewing licences. The EMRO would be subject to nationally-prescribed exemptions that will prevent the EMRO affecting certain types of premises, and thus reduce the costs to premises.

Key assumptions/sensitivities/risks:

Discount rate (%) 3.5

EMROs are in scope for OIOO.
There is a possibility that few licensing authorities will adopt an EMRO, because, for example, other powers are used or the use of an EMRO is not appropriate for the promotion of the licensing objectives in their area. A large number of local variables will affect the impact of each EMRO. It is assumed that premises affected by an EMRO will lose all turnover during the hours (not, for example, remaining open and focussing on other areas of business). Other assumptions are set out on pages 24-26.

BUSINESS ASSESSMENT (Option 3)

| | | |
|---|-------------------|----------------------|
| Direct impact on business (Equivalent Annual) £m: | In scope of OIOO? | Measure qualifies as |
| Costs: -9.3 | Yes | IN |
| Benefits: NK | | |
| Net: -9.3 | | |

Evidence Base (for summary sheets)

A. Strategic Overview

A.1 Background

The 'late night levy' was introduced by the Police Reform and Social Responsibility Act 2011. It is a local tax-raising power for local authorities (acting in their capacity as a licensing authority). The licensing authority will, having regard to the costs of policing late night alcohol-related crime and disorder, consider the desirability of raising revenue in their area through a levy. We recognise that many authorities may not consider it desirable in their area. For example, they may consider that enforcement costs are not sufficiently high, or that potential net receipts would be too low in their area (for example, because few premises are open after midnight, or because they would have particularly high administrative costs, which would be incurred by the licensing authority but then recouped from income, thereby lowering net receipts). Should they decide to adopt the levy, they will also decide the time period when the levy shall apply. This can be at any time beginning on or after midnight and ending on or before 6am on every day, (subject to any exemption applied locally). Premises which are licensed to sell alcohol within this period shall pay an annual contribution to enforcement costs when they pay their annual licence fee.

Once the levy receipts have been collected, licensing authorities will deduct the costs they incur in administering and introducing the scheme. Following this deduction, at least 70% of the net amount must be passed to the police. The remainder will be kept by the licensing authority to fund late night services. This impact assessment assumes that the revenue is split exactly 70:30. This is assumption **A7** (see Table 8.1).

The primary legislation has made provision for regulations (which are the subject of this Impact Assessment) to specify, in particular:

- what services a licensing authority may fund with any money they retain from the levy;
- the level of the levy charge; and
- what exemption or reduction categories of premises may be available for licensing authorities to adopt.

Early Morning Restriction Orders (EMROs): An EMRO is a power, under the Licensing Act 2003, that enables a licensing authority to prevent sales of alcohol in the whole or a part of their area on the days it determines, if they consider this appropriate for the promotion of the licensing objectives. The power was initially to be introduced by the Crime and Security Act 2010, and was to apply between 3am and 6am, but the measure was not commenced. The Police Reform and Social Responsibility Act 2011 extended the power to allow licensing authorities to apply it flexibly from midnight to 6am¹. The primary legislation has made provision for regulations (the subject of this IA) to prescribe that EMROs will not apply to defined kinds of premises or on certain days.

This Impact Assessment assesses the implementation of levys and EMROs as well as the provision of exemptions and reductions for levys and exemptions for EMROs

A.2 Groups Affected

Both policies: Options 2 and 3 (late night levy) and B and C (EMROs) will affect premises operating (or, in the case of the levy, licensed to operate) in the late night economy; local residents and businesses; and public protection agencies, particularly licensing authorities and the police.

In areas which adopt the late night levy: Premises with a permanent authorisation to sell alcohol within the 'late night supply period' designated by the licensing authority (and not subject to one of the proposed discretionary exemptions under Option 3), will be affected in that they will have to pay a levy charge (unless they change their authorised hours to avoid it). They also stand to benefit from the levy through a better funded local police force and local authority services, which should make the late night economy safer for their staff and customers. The police will benefit from

¹ It should be noted that the 2011 Act has also lowered the evidence threshold on LAs for making licensing decisions, including the introduction of an EMRO, from the test of what it is "necessary" to promote the licensing objectives to that which is "appropriate".

increased revenue. Customers in the late night economy may be affected by a slight increase in prices as businesses pass on the costs of the levy charge; and will benefit from a safer late night economy.

In areas which adopt an EMRO: Participants in the late night economy, local residents and businesses, where an EMRO is applied, stand to benefit from a safer late night economy. The police and licensing authorities, in particular, will be affected by the reduction of alcohol-related problems late at night.

Any premises selling alcohol in an EMRO area at the relevant times (and, under Option C, not subject to an exemption) where an EMRO is applied will no longer be allowed to sell alcohol at that time. This may indirectly affect other businesses within the EMRO area, such as late night refreshment providers and taxi companies.

Late night alcohol buyers (customers) and other late night businesses may be affected by a constrained choice of alcohol retailers and a change in the nature of the late night economy.

A.3 Consultation

Public Consultation

The primary legislation that has introduced the late night levy and amended EMROs was consulted on as part of the public consultation “**Rebalancing the Licensing Act**” from July to September 2010. Other options (including non-regulatory options) were considered prior to laying primary legislation on the late night levy and EMROs. The legislation, alongside its impact assessment², received public scrutiny by Members of Parliament and the House of Lords. A specific consultation on the secondary legislation implementing the levy and EMROs, entitled “**Dealing with the problems of late night drinking**”, accompanied by an impact assessment, was held between 17 January and 10 April 2012. It is available at the following link:

<http://www.homeoffice.gov.uk/publications/about-us/consultations/late-night-drinking/>

To assist with the effective design of that consultation on the secondary legislation, officials held meetings with representatives from the licensed trade, licensing authorities, the police and best practice schemes. Further meetings were held with similar groups to discuss the consultation questions in more detail during the consultation period.

Dealing with the problems of late night drinking: main outcomes

Late night levy: Licensing authorities will have the discretion to choose from the exemptions and reductions set out in regulations. The consultation invited views on a number of possible exemptions: premises with overnight accommodation; restaurants; theatres; cinemas; casinos and bingo halls with a membership scheme; Community Amateur Sports Clubs (CASCs); community premises and country village pubs. There were also specific questions about whether Business Improvement Districts (BIDs), private members’ clubs which carry on licensable activities under a Club Premises Certificate (CPCs) and businesses that receive small business rate relief should also be considered for an exemption.

Around 65% of website respondents agreed that there should be exemptions from the levy, and 30% disagreed. However, concerns were raised by licensing authorities that exemptions in general, and some exemptions in particular, will make the levy less attractive to implement. For example, they were concerned they might face legal challenges if they choose not to exempt a type of premises that they were entitled to exempt. They were also concerned that some of the categories were inherently difficult to define or open to manipulation, creating loopholes and additional administrative expense. Police officers told us that several of the proposed categories cause crime and disorder in their areas and are part of the wider night-time economy.

² <http://www.homeoffice.gov.uk/publications/about-us/legislation/police-reform-bill/ia-alcohol-measures-bill?view=Binary>

Therefore, we are proceeding with fewer exemption categories than were proposed in the consultation document, focusing exemptions that can be clearly defined; present less of a risk to crime and disorder; and where sales of alcohol for profit are not the primary focus of the business or organisation. Offering a limited number of exemptions is likely to reduce the risk of challenge, and administrative expense for licensing authorities, and increase potential revenue from the levy for police and local authorities. This means that the levy is more likely to be used by local authorities.

EMROs: EMROs will apply to specific areas in which there are problems, and on days and during hours that are set locally. Under the primary legislation, the exemptions for categories of premises set out in the regulations will apply to every EMRO: licensing authorities will have no discretion locally on their application. The consultation invited views on four possible exemptions: premises with overnight accommodation (that only serve alcohol to guests), theatres and cinemas, community premises and casinos and bingo halls with a membership scheme. 39% of respondents agreed generally with the exemptions given, as opposed to 18% who disagreed. Some responses argued for further exemptions (such as restaurants), but others were concerned that exemptions introduced loopholes.

Licensing officers and police, in particular, raised concerns in their response to the consultation, and during consultation events, that the categories of premises proposed for exemptions can and do contribute to crime and disorder. It was also suggested that the exemptions provide opportunities for loopholes (for example, because it could become worthwhile to meet the criteria for the purpose of taking advantage of the exemption).

Given that EMROs are, fundamentally, designed to tackle alcohol-related problems late at night by stopping alcohol sales in specific areas, and the risk that the proposed exemptions may dilute their effect, we will not proceed with the exemptions for categories of premises proposed in the consultation. However, there was widespread support, including from police and licensing officers and police, for an exemption for New Year's Eve, and this will be exempt. We will also seek to ensure that certain sales in bedrooms in hotels (such as room service or mini-bars) are exempt.

Within Government

Cabinet agreement was gained for both public consultations, and for the measures introduced in the Police Reform and Social Responsibility Act 2011. In reaching agreement, discussions have been held across Government, including, in particular, with Business, Innovation and Skills; Her Majesty's Treasury; the Department for Culture, Media and Sport; and the Department for Communities and Local Government.

B. Rationale

The late night levy will ensure that premises that sell alcohol late at night will make a contribution to the high costs of policing it generates. EMROs will help licensing authorities to prevent alcohol-related crime and disorder in parts of their area (or the whole area, if appropriate). The overall rationale of the two measures was considered in advance of laying primary legislation and during the Parliamentary process. A summary rationale follows:

The late night levy: Alcohol-related crime and disorder causes a large cost to the police. According to the British Crime Survey, 16% of violent crime occurs between midnight and 6am (British Crime Survey, 2010-11³). In addition to the direct effects, the police are, for example, required to carry out follow-up activities such as investigations and arranging custody. Furthermore, in 44% of all violent incidents, the victim believed the offender to be under the influence of alcohol⁴. When 38 police authorities were asked about overtime arrangements, 22 said that the night time economy was a major cause of their overtime payments⁵. As most of these costs are a result of the supply of alcohol late at night, those who profit from this activity should make a greater contribution.

³ Chaplin R. Flatley J. and Smith K. (2011): Crime in England and Wales 2010/11, Home Office Statistical Bulletin 10/11, Home Office, London – Table 7 <http://www.homeoffice.gov.uk/science-research/research-statistics/crime/crime-statistics/bcs-supplementary-tabs/>

⁴ *Crime in England and Wales 2010-11*, Home Office Statistical Bulletin 2010-11

⁵ Understanding Overtime in the Police Service, February 2010 <http://library.npia.police.uk/docs/homeoffice/police-overtime.pdf>

In response to these costs, the Government's "Programme for Government" made a commitment to allow local authorities to charge more for late night licences to help pay for policing. Options were considered through the "Rebalancing the Licensing Act", and delivered through the introduction of the 'late night levy' by Police Reform and Social Responsibility Act 2011.

EMROs: An EMRO is a power under the Licensing Act 2003 to prevent alcohol sales within a designated area (including, if appropriate, the entire licensing authority area), if the licensing authority determines that it is appropriate for the promotion of the licensing objectives. It overrides other authorisations under the Licensing Act. An EMRO can be imposed flexibly within the hours of midnight to 6am; either every day or on particular days; (and it may be imposed for different hours on different days). The Government made a commitment, in the "Programme for Government", to 'give much stronger powers' to licensing authorities to remove licences from premises that cause problems. The extension of EMROs is one of the measures that will achieve this aim, by rendering authorisations in particular hours ineffective, and will therefore provide licensing authorities with a powerful additional tool to promote the licensing objectives. The proposals received widespread support in response to the 'Rebalancing the Licensing Act' consultation. Residents and resident groups informed us that the night-time economy makes certain parts of the town no-go-areas at night and anti-social behaviour associated with late night drinking spreads into residential communities. Some licensing authorities have indicated that they will seek to use the power.

C. Objectives

The key objectives of **late night levy regulations** are to:

- Ensure that the late night levy, if implemented, achieves the objective of raising a significant contribution to enforcement costs. Given that administration costs are recouped from revenue, this means making it as simple as possible to implement and administer at the local level.
- Grant local discretion to licensing authorities to exempt appropriate categories of premises from the levy if they consider it is desirable in their area.
- Grant discretion to licensing authorities to encourage participation in best practice schemes, by allowing appropriate reductions from the levy for participants in schemes that tackle late night crime and disorder in their area.
- Allow licensing authorities to exempt those premises whose only late night authorisation during the levy period is New Year's Eve (thus reducing administrative burdens on licensing authorities and those premises).
- Prescribe the criteria that determine the services that licensing authorities can fund with their retained portion of the levy, ensuring that they remain focussed on reducing crime and disorder and the late night economy.
- Set appropriate levels for the levy and charge, and make provisions for the process of for adopting the levy and passing on the net funds to local services.

The key objectives of **EMRO regulations** are to:

- Ensure that the EMRO achieves the aim of providing a powerful tool for licensing authorities in promoting the licensing objectives.
- Make provisions for the process of adopting; amending; and ending an EMRO.
- Defining the appropriate centrally-prescribed exemptions from the affect of EMROs (applying to particular kinds of days or particular days, or both).

D. Options

This Impact Assessment accompanies the introduction of secondary legislation implementing existing primary legislation.

| | | |
|-------------------------|------------|--|
| Late Night Levy: | Option 1 - | to not commence the primary legislation; |
| | Option 2 - | make levy available to LAs without exemptions or reductions; |

Option 3 - (preferred): prescribe available categories of exemption and reductions to allow LAs to promote business-led best practice schemes and exempt certain categories of premises.

EMROs:

- Option A - to not commence the primary legislation;
- Option B - (preferred): make EMROs available to LAs without exemptions;
- Option C - make EMROs available to LAs, subject to nationally-prescribed exemptions.

N.B. The late night levy and EMROs fulfil two very different needs for local intervention and are not mutually exclusive; we are not choosing between the two.

E. Appraisal (Costs and Benefits)

General Assumptions and Data for Options 1-3

The costs and benefits of the late night levy will depend on how many licensing authorities adopt it. Smaller or more rural areas, or those with higher administrative costs, may not consider, for example, that they will raise enough net revenue to make it worthwhile. The Impact Assessment for the Police Reform and Social Responsibility Act 2011 estimated that 94 licensing authorities would raise enough from the levy to make collecting it worthwhile. We have used this as an upper estimate for national impact (**Assumption A8**).

Licensing authorities areas vary widely and, if introduced, the net amount of money raised from the levy will differ depending on, in particular, the number of payers; their rateable value band (to which the level of levy charge is linked); and the choices made locally about the period during which it is applicable and the applications of exemptions and reductions.

This Impact Assessment uses an ‘average licensing authority’ scenario, based on the balance of premises types in the 100 largest licensing authorities (i.e., those who are broadly most likely to introduce the levy) using available data. As Table 1 shows, the average number of licences and club premises certificates in force in each of these areas was 932 in 2010.

Table 1 - Licences in force on 31 March 2010 in largest licensing authority areas⁶

| Premises Licence | | | Club Premises Certificates | | Total alcohol authorisations | Average number of premises |
|------------------------------------|---------------------------|--|------------------------------------|--|------------------------------|----------------------------|
| On-sales or supply of alcohol only | Off-sales of alcohol only | Both on and off sales or supply of alcohol | On-sales or supply of alcohol only | Both on and off sales or supply of alcohol | | |
| 19,955 | 25,758 | 40,418 | 3,440 | 3,626 | 93,197 | 932 |

Premises with a ‘relevant late night authorisation’ in the average licensing authority

Licensing authorities can choose the ‘late night supply period’ that shall apply in their area. This can be any time within the parameters of midnight and 6am. This impact assessment assumes that every licensing authority that adopts the levy chooses to apply it from midnight to 6am. This will give us an upper estimate of the costs/benefits. To indicate the proportion of premises that open in this levy period, we purchased data from ‘CGA Strategy Ltd’ in August 2010, which suggested that 33.4% of on-trade premises hold a licence to sell alcohol after midnight (**Assumption A1**). This data addressed some types of business separately, as referred to in Table 4 below (re hotels). We will assume that off-trade premises will have the same proportion of late night permissions. We thus come to an average licensing authority scenario with 33.4% of 932 = 311 late opening premises (**Assumption A2**).

⁶ “DCMS National Statistics Bulletin , Alcohol, Entertainment and Late Night Refreshment Licensing England and Wales, April 2009 – March 2010”. The sale of alcohol is licensed through ‘premises licences’ and ‘club premises certificates’. An ‘on’ licence is for consumption on the premises and an ‘off’ licence is for consumption off the premises. Both kinds of authorisation to sell alcohol will be affected by the late night levy.

Levy charges

The levy charges are designed to reflect an estimate of the number of police hours that may be required as a result of premises opening beyond midnight. It was estimated that, very broadly, one hour of a police officer's time may reasonably be expected to be incurred for every two hours that a large premises opens late (This was not intended to provide an accurate assessment of how much the late night economy costs police forces, but provided a means for setting an appropriate levy charge based on the principle that police resources are employed as a result of premises opening late). To ensure that the charge was a fair and proportionate burden on business, proportionately smaller charges were set for premises with lower rateable value (and, for larger premises, those not used primarily or exclusively for the sale of alcohol for consumption on the premises). The same rateable value bands are used as are used for licensing fees. The charges are as follows:

Table 2 – levy charges

| Licence fee band | A | B | C | D | Dx* | E | Ex* |
|--|-------------|-------------------|--------------------|---------------------|--------|--------------------|--------|
| Rateable value ⁷ | £0 - £4,300 | £4,301 to £33,000 | £33,001 to £87,000 | £87,001 to £125,000 | | £125,001 and above | |
| Existing annual licence fee (for comparison only) | £70 | £180 | £295 | £320 | £640 | £350 | £1,050 |
| Levy charge | £299 | £768 | £1,259 | £1,365 | £2,730 | £1,493 | £4,440 |
| *(Dx and Ex) Multiplier applies to premises in category D and E that primarily or exclusively sell alcohol for consumption on the premises | | | | | | | |

Amount raised by the levy

To calculate the amount raised by the levy, we need to know the band of the premises in the average licensing authority scenario. Data with rateable value band breakdowns is not available for 2010. (Therefore, Table 1 and 3 do not match in 'total authorisations'). Using the largest 100 licensing authorities (with available data) in 2009, we estimated the average breakdown of premises by licence without authorisation for alcohol sales (e.g. premises with authorisation for regulated entertainment only). We assumed that the breakdown is similar for those with alcohol permissions.

Table 3 – Proportions of premises in each licence fee band

| | Totals | Band A | Band B | Band C | Band D no multiplier | Band D with multiplier | Band E no multiplier | Band E with multiplier | Number with no fee applicable/ fee band unknown |
|--|--------------------|--------|--------|--------|----------------------|------------------------|----------------------|------------------------|---|
| Premises Licences | 92,648 | 21,085 | 48,468 | 12,531 | 2,683 | 387 | 6,645 | 499 | 4,656 (a) |
| Club premises certificates | 6,453 | 1,645 | 4,269 | 387 | 44 | 0 | 108 | 0 | 22 (b) |
| Total with known fee band | 94,423* (-a and b) | 22,730 | 52,737 | 12,918 | 2,727 | 387 | 6,753 | 499 | |
| % of premises in each band in 'average licensing authority scenario' (Assumption A3) | | 24.07% | 55.85% | 13.68% | 2.89% | 0.41% | 7.15% | 0.53% | |

Table 3 shows that three-quarters of premises are in Bands A and B and a further 13.7% are in Band C. Just over 10% of premises would fall into the four Bands with the highest levy charges.

⁷ Non-domestic rateable value is set by the Valuation Office Agency (VOA). More information is available at the VOA's website : http://www.2010.voa.gov.uk/rli/static/HelpPages/English/faqs/faq116-what_does_rv_mean.html

When applying these percentages we have consistently rounded up. This is important to ensure that some band Dx and Ex premises (see Table 2) are recorded (i.e. in Table 10, 0.41% of 102 is 0.41; but we round to 1). This has been applied to both cost and benefit calculations. We will apply the above percentages to the average licensing authority scenario throughout this impact assessment.

Premises choosing to avoid the levy

Holders of authorisation that apply during the levy period will be able to make a free “minor variation” to reduce their licensed hours to avoid paying the levy. This option is likely to be used where the premises does not in fact use these hours, or does so infrequently. We expect that only a very small proportion of premises will reduce their actual operating hours to avoid the levy. (This should be distinguished from the expectation that some premises will reduce the permitted hours on their licence for this purpose). We assume that they will only do so if the levy charge exceeds their profits in the levy period. We therefore make the assumption that no premises will reduce their hours should profit minus the levy charge be greater than or equal to zero (**Assumption A5**). In other words, that the loss caused by the levy, including its avoidance, will not be more than the charge itself, and may be no higher than the one-off administrative cost of making a free minor variation. Following feedback we received during public consultation⁸ and our discussions with stakeholders, we consider that 25% is a reasonable estimate of the proportion of premises that avoid the levy in this way (**Assumption A6**).

Exemptions and reductions – Late Night Levy

The exemption and reduction categories in Table 4 will be available to licensing authorities to introduce in their area. To estimate costs and benefits, we will need to estimate the number of premises which fall into these categories within the ‘average licensing authority scenario’. For some of the premises types below, detailed figures were not available for those with an alcohol licence and we have made estimates, as described. We have further broken the data down to estimate how many have an applicable licence to sell alcohol beyond midnight.

Table 4 - Exemption categories – Late Night Levy

| Category | Source of data used to estimate the number in category in the average licensing authority scenario | Est. number in category in E&W | Est. proportion with a late night authorisation to sell alcohol (and source of data) | Est. number liable to levy across E&W (348 licensing authorities) | Number in average licensing authority scenario |
|---|---|--------------------------------|--|---|--|
| Overnight accommodation providers (subject to certain conditions) | “UK Business: Activity, Size and Location 2010” from National Statistics. Table B3.4 estimates the number of VAT and/or PAYE based enterprises in all industries across the United Kingdom by 2010 Standard Industrial Classification (UKSIC (2007)) Class by Government Office Region. | 7,665 | 37.3% (In dataset as A1) | 2,859 | 9 |
| Bingo Halls | The Bingo Association provided figures based on their membership. | 187 | 33.4% (all premises average from A1) | 62 | 1 |
| Theatres and cinemas (subject to certain conditions) | The Society of London Theatre and Theatrical Management Association provided a survey of their members on how many stayed open late. Arts Council | 843 | 60% (Proportion of members with late night authorisations) | 506 | 2 |

⁸ For more information on the consultation: <http://www.homeoffice.gov.uk/drugs/alcohol/rebalancing-consultation/>

| | | | | | |
|--------------------------------|---|-------|--|-------|-----------|
| | England provided figures on the number of premises in England. | | | | |
| Community premises | The estimate of 4,000 premises that were likely to be affected in the 2009 “Impact Assessment of the proposal to remove the requirements for a Designated Premises Supervisor and personal licence holder for community premises)” ⁹ . | 4000 | 33.4% (all premises average from A1) | 1,336 | 4 |
| Community Amateur Sports Club | Estimated by “CASCinfo” | 6,000 | 33.4% (all premises average from A1) | 2,004 | 6 |
| Rural village pubs | Please see comments below | | | | |
| New Year’s Eve | Please see comments below | | | | |
| Business Improvement Districts | Please see comments below | | | | |
| Total | | | | | 22 |

These figures have been rounded up to avoid having scenarios where 0 exemptions occur in a category.

Rural village pubs

These will be a specific class of pubs within small rural settlements that benefit from for rural rate relief. However, evidence from stakeholders during the consultation events indicates that this type of premises is unlikely to be open after midnight. We estimate that there will not be any in the ‘average licensing authority’ scenario.

New Year’s Eve exemption category

We will also make an available exemption category which covers those premises whose liability for the levy charge arises only in respect of New Year’s Eve. Without this category, it is likely that the majority of liable on-trade premises would submit a free minor variation application to avoid the levy and then issue a Temporary Event Notice to authorise sales at New Year. This could be a significant administrative cost to licensing authorities (recouped from income, and thereby reducing the net levy receipts) and premises (for example, in submitting a TEN). As such, the impact of this exemption is assumed to be equal to the baseline and not assessed separately (i.e., that premises with this one authorisation will not pay the levy under any of the options).

Business Improvement Districts (BIDs)

A BID is a scheme whereby additional services or improvements of benefit to the local community are funded by a levy, raised from non-domestic ratepayers. For a BID to be established, a majority of those who would be liable to pay the levy must first vote in favour. Although we expect there to be a significant total number of members of qualifying best practice schemes (as below), BIDs with a night-time focus are relatively rare, (there are currently only two or three in the country) and we do not expect there to be any premises fitting this description in the “average licensing authority scenario”.

Table 5: Reduction categories – Late Night Levy

The regulations will enable licensing authorities to afford a reduction to business-led best practice schemes that they consider to have a sufficient focus on reducing alcohol-related late night crime and disorder and public nuisance in their area, and which meet certain criteria (referred to as ‘benchmarks’). There are many schemes that could potentially meet these requirements, both nationally and locally led. The following is an approximation of the likely maximum number of premises which might be afforded the reduction in an area adopting the levy:

⁹ The National Statistics Bulletin referred to in note 5 (the most recent data available) above reports that 244 premises had applied at that time. However, this relates only to a part of the first year in which the process was available. The availability of an exemption from the levy and EMROs may encourage further take-up.

| Example of scheme to which authority may apply discount of 30% | Source of data used to estimate the number in category in the average licensing authority scenario | Number in 'average licensing authority scenario' |
|---|--|--|
| Business-led schemes that meet defined benchmarks. (E.g. relevant BIDs; Purple flag area; Special licensing authority approved schemes) | There is only likely to be one of these in each licensing authority area. For example, West Yorkshire Police's 'Operation Capital Scheme' which involves around 20 city centre premises. We shall use this as the basis for our estimation | 20 |
| Best Bar None | We have taken a sample amount from the website of the Sheffield Best Bar None scheme (47 accredited members). | 47 |
| Pubwatch, Clubwatch, Shopwatch, CAPs, BCRPs | We have estimated 20 premises. | 20 |
| Total | | 87 |

Reduction given to above categories

We therefore assume that 87 premises will typically benefit from the reduction of 30% (**Assumption A4**).

Licensing Authority Administrative Expenses – Late Night Levy

This section of the impact assessment estimates the cost for licensing authorities to run the levy, which will be recouped from levy income. These estimates have been derived from discussions with licensing authority representatives.

They are based on two key estimates:

1. One hour of an administrative officer's time (including overheads) costs £28. This estimate was provided by a licensing authority partner and is in line with estimates used in previous impact assessments. It should be noted that one authority, in response to the consultation, suggested that this hourly rate should be higher. As set out above, it is accepted that authorities with lower net revenues (due to lower potential income or relatively high potential administrative costs) may not implement the levy.
2. The cost of processing a free minor variation of licence to avoid the levy: £38.43. This estimate is based on the estimates used for setting the fee for a minor variation (£89), taking into account that these applications will be relatively simple to administer, given that they are unlikely to have an adverse effect on the licensing objectives and that some processes (such as contacting responsible authorities) will be unnecessary.

In the table below we have estimated the number of hours needed for each process. (Other processes may be required in administering the levy, such as sending out an invoice, but these processes will be done in tandem with the existing licence fee regime and will not constitute a significant additional cost). These estimates are based on discussions with licensing authorities.

Tables 6 and 7 – Processes when introducing the levy (one-off)

| | Process | Hours | Cost to licensing authority (hours x £28) |
|---|---|-------|---|
| A | Sifting licences to determine liability for levy | 50 | £1,400 |
| B | Preparation of consultation | 35 | £980 |
| C | Writing to licensees, councillors, responsible authorities and interested parties. The hours of time in this process account for the costs of postage. | 40 | £1,120 |
| D | Analysis of consultation responses | 35 | £980 |
| E | Preparation for committee | 30 | £840 |
| F | Report to cabinet | 20 | £560 |

| | | | |
|---|---|----|--------|
| G | Writing to liable premises | 20 | £560 |
| H | Option 3 only - Processing exemptions and reductions | 40 | £1,120 |

| | | |
|---|--------------------|---------------------|
| | Option 2 (I) | Option 3 (J) |
| Number of minor variations made to avoid levy | 78 (see Table 8.1) | 51 (see Table 12.1) |
| Cost of making these variations (number of variations x £38.43) | £2,998 | £1,941 |

As such, total transitional costs:

Option 2 = A to G (not H) and I: £9,428

Option 3 = A to H and J: £9,501

Table 8 – Processes when running the levy (annual)

| | Process | Hours of time | Cost to licensing authority |
|---|---|---------------|-----------------------------|
| A | Sifting licences to check for changes in liability | 20 | £560 |
| B | (Option 3 only) Ensuring reduction categories up to date | 40 | £1,120 |
| C | Collection (with licence fee) | 150 | £4,200 |
| D | Enforcement (with licence fee) | 150 | £4,200 |
| E | Miscellaneous admin | 100 | £2,800 |
| | Total ongoing cost option 2 (A-E minus B) | - | £11,760 |
| | Total ongoing cost option 3 (A-E) | - | £12,880 |

This impact assessment assumes that licensing authority decisions are rational, procedurally fair, non discriminatory, ECHR compliant etc. There should be no legal fee burden for licensing authorities who adopt the levy, should they follow the procedures that will be set out in primary and secondary legislation.

This impact assessment also assumes, for the purposes of making estimates, that all licensing authorities that adopt the measure do so from the first year.

Enforcement Costs – Late Night Levy

The levy will not cause significant enforcement costs. The charge will be collected alongside the annual licence fee and, as for the annual fee, non-payment will result in the suspension of licences.

Table 8.1 - The following were explained in this section (this table serves as a reference):

| | | |
|----|--|------------------|
| A1 | The percentage of premises in average licensing authority open past midnight | Average of 33.4% |
| A2 | The number of premises in the average licensing authority scenario | 311 |
| A3 | The split of premises in the average licensing authority scenario by licence fee bands | In Table 3 |
| A4 | The amount of reduction to the levy to be assumed in this Impact Assessment | 30% |
| A5 | No premises will change hours given that (profit – levy charge ≥ 0) | - |
| A6 | Amount of premises that may change their licence to avoid the levy | 25% |
| A7 | (Detailed above) That the licensing authority will split the net levy revenue by the minimum requirement of primary legislation (70% to police and 30% to other services). | - |
| A8 | The maximum number of licensing authorities that will raise enough from the levy to make collecting it worthwhile | 94 |

OPTION 1A – DO NOT COMMENCE BOTH PROVISIONS

This impact assessment considers regulations that are to be made ahead of commencing existing policies. The 'do nothing' option (no levy and no EMROs) is provided as a baseline for comparison with the potential impacts of the levy and EMRO.

Under these proposals, the police and local authorities would continue to experience substantial costs in the late night economy (as explained in the 'Background' section). Residents' groups and others would continue to consider that some town centres are 'no go areas' as a consequence of alcohol-related crime and disorder; and public nuisance. There would also be an opportunity cost contained in these options, through not commencing measures that has recently been scrutinised by both Houses of Parliament and received Royal Assent.

These are two local powers and we expect licensing authorities to consider the nature of their late night economies before adopting them. This will include analysis of the costs and benefits of all the options. Policing costs and the nature of late night economies differ throughout the country. We cannot make a broad statement on the costs and benefits of the late night economy nationally.

Option 2 – A late night levy without exemptions and reductions

Costs (excluding OIOO)

Levy payers will not incur additional costs from the late night levy beyond the charge itself. Payment will be made in tandem with the current annual licence fee. As such, holders of a 'relevant late night authorisations' will bear a maximum **ongoing** annual cost as specified in **Table 2** above. As described, some premises may use a free minor variation to limit their authorised hours to avoid paying the levy. As explained earlier, we have assumed that 25% of liable licence holders will avoid the levy (**assumption A6**). However, we consider that this is unlikely to significantly restrict the ability of potential customers to obtain alcohol as most premises open beyond midnight are expected to make profits greater than the levy cost. Some premises may not use the hours on their licence, or do so infrequently. Those who wish to continue to sell alcohol late on an occasional basis can issue a Temporary Event Notice.

Our high estimate assumes that premises which decide to avoid the levy will bear the cost of loss of business at the level of the levy charge (**under assumption A5**). We have assumed that there will be a 50% transfer rate of profit to other neighbouring businesses who decide to stay open.¹⁰ Our low estimate assumes that premises that choose to avoid the levy will bear only a one-off administrative cost of £35 to vary their licence through a free minor variation (reflecting the time taken to comply with the minor variation application process).¹¹ This is based on the assumption that some of those avoiding the levy will have authorisations to sell alcohol in the levy period, but do not do so in practice. The best estimate is a mid-point estimate. Table 9 sets out the cost to licence holders in the "average licensing authority" scenario.

¹⁰ As per assumptions made in 'New alcohol measures in Section 182 Guidance of the Licensing Act 2003' Impact Assessment 2012, soon to be published.

¹¹ Based on the unit costs used in 'Impact Assessment of Proposal exempt small live music events from the Licensing Act 2003', 2009 http://webarchive.nationalarchives.gov.uk/20100407120701/http://www.culture.gov.uk/images/consultations/IA_exemptsmall_livemusicevents.pdf

Table 9 - Cost to licence holders in “average licensing authority”, Option 2

| | Band A | Band B | Band C | Band D no multiplier | Band D with multiplier | Band E no multiplier | Band E with multiplier | Total |
|--|-------------|---------------|-------------|----------------------------|------------------------------|----------------------------|------------------------------|---------------|
| % per band (using A3) | 24.07% | 55.85% | 13.68% | 2.89% | 0.41% | 7.15% | 0.53% | - |
| Levy charge | £299 | £768 | £1,259 | £1,365 | £2,730 | £1,493 | £4,440 | - |
| No. paying full fee | 56 | 130 | 32 | 7 | 1 | 17 | 1 | 244 |
| No. avoiding fee | 19 | 43 | 11 | 2 | 0 | 6 | 0 | 81 |
| Total cost to business (High) | £19,585 | £116,722 | £46,868 | £10,735 | £3,046 | £29,049 | £6,404 | £232,409 |
| Total cost to business (Best) | £18,186 | £108,385 | £43,521 | £9,968 | £2,828 | £26,974 | £5,946 | £215,808 |
| <i>Transition cost to business (Low)</i> | <i>£655</i> | <i>£1,520</i> | <i>£372</i> | <i>£79</i> | <i>£11</i> | <i>£195</i> | <i>£14</i> | <i>£2,846</i> |
| Total cost to business (Low) | £16,787 | £100,047 | £40,173 | £9,201 | £2,611 | £24,899 | £5,489 | £199,208 |

The sum of premises in the “no. paying full fee” row is 244 instead of 233. This is due to rounding, as described in the note to Table 3 above.

As a result, the maximum cost to licence holders in the average licensing authority scenario will be £232k. When multiplied by the number of licensing authorities that adopt the levy (estimated to be 94, as Assumption A8), the cost is estimated as:

| | Total cost (annual) | PV |
|-------------------------|---------------------|-------|
| High | £21.8m | £188m |
| Best | £20.3m | £175m |
| Low (transition) | £268k | - |
| Low (annual) | £18.7m | £161m |

Administrative Burdens (excluding OIOO)

As described above, the licensing authority will bear administrative burdens that will be recouped through levy income (thus reducing the net benefit). For premises licence holders, there will be little administrative burden as the levy is paid in tandem with the licence fee and they will be given good warning of their liability. Administrative burdens on the licensing authority were estimated in **Tables 6, 7 and 8**, above.

| | |
|--|---------|
| Y0 (Table 6 and 7 transitional costs + Table 8 administrative costs) | £21,188 |
| Y1 – Y9 (just Table 8 administrative costs) | £11,760 |

Costs (OIOO) and Administrative Burdens (OIOO)

A late night levy will be a power of taxation. As such it is ‘out of scope’ for the purposes of one in one out.

TOTAL COSTS

The total cost includes the cost to premises of 75% of them estimate to pay the levy and 25% avoiding it, based on the scenarios outlined above, as well as the administration costs to licensing authorities for processing the levy.

| | High | Best | Low |
|-----------------------|--------|--------|--------|
| Annual average | £23.0m | £21.5m | £19.9m |
| Present value | £198m | £185m | £172m |

Benefits (excluding OIOO)

It has been assumed that 25% of liable licence holders avoid the levy. Therefore 233 licence holders are estimated to pay the levy, based on the assumptions outlined above.

Table 10 – Money raised from those premises that do not change their hours (Option 2)

| | Band A | Band B | Band C | Band D no multiplier | Band D with multiplier | Band E no multiplier | Band E with multiplier | Total |
|---|---------|----------|---------|----------------------------|------------------------------|----------------------------|------------------------------|----------|
| % of premises in each band (as T.3 above) | 24.07% | 55.85% | 13.68% | 2.89% | 0.41% | 7.15% | 0.53% | - |
| Levy payers | 56 | 130 | 32 | 7 | 1 | 17 | 1 | 244 |
| Levy Charge (as T.2 above) | £299 | £768 | £1,259 | £1,365 | £2,730 | £1,493 | £4,440 | - |
| Amount raised | £16,787 | £100,047 | £40,173 | £9,201 | £2,611 | £24,899 | £5,489 | £199,208 |

Note: The sum of premises in the “Levy payers” row is 244, instead of 233. This is due to rounding, as described in the note to Table 3 above.

As Table 10 shows, on this basis, the best estimate of the money raised from the levy will be £199,208 p.a. per licensing authority. On a national level, this equates to:

Annual Average: £18.7m
Present Value: £161m

Table 11 – Spending of the levy revenue p.a. (Option 2)

| | | |
|---|-----------------------------|---------------------------|
| | Average licensing authority | England and Wales (as A8) |
| Total raised by late night levy | £199k | £18.7m |
| Y0 transitional expenses | £9.43k | £0.886m |
| Ongoing administrative expenses p.a. | £11.8k | £1.11m |
| Y0 net levy revenue (1 minus 2 minus 3) | £178k | £16.7m |
| Y1-9 p.a. net levy revenue (1 minus 3) | £187k | £17.6m |
| Net present values (as A8) | | £151m |
| Split of net levy revenue (using A7) | | |
| Y0 to police | £125k | £ 11.7m |
| Y1-9 to police | £131k | £ 12.3m |
| Y0 to licensing authority services | £53.4k | £ 5.02m |
| Y1-9 to licensing authority services | £56.2k | £ 5.29m |

Figures to 3.s.f.

The benefit of the levy is that the police and licensing authorities are better funded to tackle crime and disorder in the late night economy; and the taxpayer's burden of the costs is reduced. As shown in Table 11, using A8 (94 authorities adopt the levy), the police nationally stand to raise around £12.3m p.a after the first year. This would achieve the overall objective of raising money for the police.

Indirectly there is benefit in the form of services that are provided with the money raised. What these are will depend on local decision in the licensing authority area that adopts the levy.

Benefits from additional revenue for police activity

The Home Office estimates the cost of alcohol-related crime at £11bn per year at 2010-11 prices¹². This figure includes the cost of general offences (like violent crime) that are alcohol-related, the cost to the Criminal Justice System of alcohol specific offences (like drink driving) and the cost of issuing Penalty Notices for Disorder.

At least 70% of the net levy revenue will be passed to the local police authority to spend in line with local priorities. We cannot monetise the societal benefit resulting from the better-funded police force. We are committed to giving operational independence to locally accountable police forces. On this basis, the following description of where money could be spent is provided just as an example.

In the scenario in Table 11, the police (per licensing authority area¹³) will stand to raise approximately £131k per year after the first year. To give a better idea of what this means, discussions with the police suggest that an average constable costs around £30 per hour (including overheads). This figure would imply that the levy could provide approximately 4,400 hours of visible late night policing in one area per year.

We consulted an urban-based police force on the potential for receiving income from the levy. Representatives suggested that it could help fund some of the following schemes:

- *Multi-agency education and information programmes* - to increase the understanding of risk to children and young persons, targeted at parents and teachers for the under 16s.
- *Multi-agency education programmes targeting bar staff in the night-time economy* - to increase awareness of risks, vulnerability and consequences and their personal responsibility.
- *Financial support for projects to expand the use of volunteers in the night-time economy* - with an emphasis on safeguarding vulnerable people and promoting the perception of safety.
- *High profile policing initiatives* - to tackle violent or disorderly behaviour.

The levy could also help fund operations to tackle a range of alcohol-related offences or other offences connected to the late night economy, such as offences relating to drugs, public order or violence against the person. It should also enhance partnership working between licensing authorities and the police, with the two bodies working better together to tackle the negative effects of the sale of alcohol late at night.

In the scenario in Table 11, the licensing authority stands to raise around £56k annually after the first year from the levy. Licensing authorities have indicated that, subject to regulations, they may use this funding to support services such as:

- *Late night street wardens* - to provide a visible presence on the street; alert the police to incidents; and assist door staff with problem customers.
- *Late night taxi marshals* - to help people disperse safely and speedily.
- *Late night CCTV* – to deter crime and help the police identify offenders.

TOTAL BENEFITS

The analysis above, which takes into account some premises avoiding the levy, provides our 'best estimate' of £18.7m (annual average). Summary:

Annual Average: £18.7m
Present Value: £161m

¹² The Home Office has recently updated the estimate of the cost of alcohol-related crime: £11 billion in 2010/11 prices. This figure includes the cost of general offences (like violent crime) that are alcohol-related, the cost to the Criminal Justice System of alcohol specific offences (like drink driving) and the cost of issuing Penalty Notices for Disorder. This estimate was arrived at using the same methodology as that which lay behind the widely quoted figure of £8-13 billion in 2006/07 prices. The previous estimate was presented as a range due to a methodological uncertainty, which has now been resolved. Further information is available on request from the Home Office.

¹³ There are 349 licensing authorities and 43 police force areas. Therefore, the amount raised per police force area would be larger, on average.

NET EFFECT

As highlighted in Table 11 above, the levy charge is a transfer from holders of late night authorisations to the public sector. The public sector stands to gain up to £17.6m per year from the charge which will be distributed between police and licensing authorities. The monetised net effect is negative (~£3.6m in the first year) due to the administration costs of processing the levy and the costs to licence holders who avoid the levy.

Option 3 – late night levy with exemptions and reductions

Costs (excluding OIOO)

Levy payers will not receive added costs from the late night levy beyond the charge itself. Payment will be in tandem with the current annual licence fee. As such, holders of a 'relevant late night authorisations' will bear an **ongoing** annual cost as specified in **Table 2** above. As described, some premises may use a free minor variation to limit their authorised hours to avoid paying the levy. As explained earlier, we have assumed that 25% of liable licence holders will avoid the levy (**assumption A6**). However, we consider that this is unlikely to restrict significantly the ability of potential customers to obtain alcohol as most premises open beyond midnight are expected to make profits greater than the levy cost. Some premises may not use the hours on their licence, or do so infrequently. Those who wish to sell alcohol late on an occasional basis can issue a Temporary Event Notice.

Our high estimate assumes that premises which decide to avoid the levy will bear the cost of loss of business up to the level of the levy charge (**under assumption A5**). We have assumed that there will be a 50% transfer rate of profit to other neighbouring businesses that decide to continue to sell alcohol.¹⁴ Our low estimate assumes that premises that choose to avoid the levy will bear a one-off administration cost of £35 to vary their licence through a free minor variation (reflecting the time taken to comply with the minor variation application process).¹⁵ The low estimate is based on the assumption that some licence holders have late night authorisations but do not actually use these in practice. The best estimate is a mid-point estimate.

Our estimates (above Table 4) suggest that 22 premises in the average licensing authority scenario will be exempted from paying the levy. As a result, the costs in this scenario will be shared, to different extents, by 311 (as **A2**) minus 22 = 289 premises. Table 5 suggests that around 87 will be eligible for a reduction of 30% of the applicable levy charge (as **A4**).

Table 12 set out the maximum cost to licence holders:

Table 12 - Cost to licence holders in “average licensing authority”, Option 3

| | Band A | Band B | Band C | Band D no multiplier | Band D with multiplier | Band E no multiplier | Band E with multiplier | Total |
|------------------------------------|--------|--------|--------|----------------------------|------------------------------|----------------------------|------------------------------|-------|
| % per band (using A3) | 24.07% | 55.85% | 13.68% | 2.89% | 0.41% | 7.15% | 0.53% | - |
| Levy charge | £299 | £768 | £1,259 | £1,365 | £2,730 | £1,493 | £4,440 | - |
| Number eligible to 30% discount | 21 | 49 | 12 | 3 | 0 | 6 | 0 | 91 |
| No. paying full charge | 36 | 85 | 21 | 4 | 1 | 11 | 1 | 158 |

¹⁴ As per assumptions made in 'New alcohol measures in Section 182 Guidance of the Licensing Act 2003' Impact Assessment 2012, soon to be published.

¹⁵ Based on the unit costs used in 'Impact Assessment of Proposal exempt small live music events from the Licensing Act 2003', 2009 http://webarchive.nationalarchives.gov.uk/20100407120701/http://www.culture.gov.uk/images/consultations/IA_exemptsmall_livemusicevents.pdf

| | | | | | | | | |
|--|---------|----------|---------|--------|--------|---------|--------|----------|
| No. avoiding levy | 12 | 28 | 7 | 1 | 0 | 4 | 0 | 53 |
| Total cost to business (High) | £17,104 | £101,935 | £40,931 | £9,375 | £2,660 | £25,369 | £5,592 | £202,965 |
| Total cost to business (Best) | £16,195 | £96,520 | £38,756 | £8,877 | £2,519 | £24,021 | £5,295 | £192,183 |
| <i>Transition cost to business (Low)</i> | £425 | £987 | £242 | £51 | £7 | £126 | £9 | £1,848 |
| Total cost to business (Low) | £15,286 | £91,104 | £36,582 | £8,379 | £2,377 | £22,674 | £4,998 | £181,401 |

Note: The sum of premises in the “no. paying full charge” and “no. avoiding levy” rows is 211, not 202. This is due to rounding, as described in the note to Table 3 above.

The maximum cost to licence holders in the average licensing authority scenario (set out in Table 12) will be £203k. When multiplied by the number of licensing authorities that adopt the levy (estimated to be 94, as Assumption A8), the cost is estimated as:

| | Total cost (annual) | PV |
|-------------------------|----------------------------|-----------|
| High | £19.1m | £150m |
| Best | £18.1m | £155m |
| Low (transition) | £174k | - |
| Low (annual) | £17.1m | £147m |

Administrative Burdens (excluding OIOO)

Some premises may be eligible for an exemption, but need to have specific conditions on their licence to fall within the category. To put new conditions on the licence, premises must submit an £89 ‘minor variation’ application. There will also be an administration cost for the application which is estimated to be £35.¹⁶ Here we must return to the ‘average licensing authority scenario’. In this scenario 22 premises will be potentially eligible for an exemption to the levy.

In most cases, the applicability of these exemptions will depend on the licence being subject to defined conditions. If we assume that all 22 premises have to add conditions, there will be an administrative burden of £2,728 ((£89+£35) x 22) per licensing authority and £0.26m nationally. This is a one-off transitional cost.

Should there be an administrative burden on premises that wish to avoid the levy, we assume this will not be greater than the potential charge they wish to avoid (as **A5**). As such, the impact is encapsulated in the ‘costs’ calculations above.

Further administrative burdens are borne by the licensing authority and recouped through levy income. These were estimated in **Tables 6, 7 and 8**, above as:

| | |
|---|---------|
| Y0 (Table 6 and 7 transitional costs + Table 8 administrative costs) | £22,381 |
| Y1 – Y9 (just Table 8 administrative costs) | £12,880 |

Costs (OIOO) and Administrative Burdens (OIOO)

A late night levy will be a power of taxation. As such it is ‘out of scope’ for the purposes of one in one out.

TOTAL COSTS

¹⁶ Based on the unit costs used in ‘Impact Assessment of Proposal exempt small live music events from the Licensing Act 2003’, 2009 http://webarchive.nationalarchives.gov.uk/20100407120701/http://www.culture.gov.uk/images/consultations/IA_exemptsmall_livemusicevents.pdf

The total cost includes the cost to business of 75% paying the levy and 25% avoiding it, based on the range of scenarios outlined above; as well as the administration costs to licensing authorities in administering the levy; and potentially exempt licence holders in qualifying for an exemption.

| | | | |
|-----------------------|--------|--------|--------|
| | High | Best | Low |
| Annual average | £20.4m | £19.4m | £18.4m |
| Present value | £176m | £167m | £159m |

Benefits (excluding OIOO)

Table 12.1 – Breakdown of premises in average licensing authority scenario under option 3

| | |
|---|-----|
| Number of premises liable in average licensing authority scenario | 311 |
| Exempted premises | 22 |
| Those liable for the levy after exemptions (Table 4) | 289 |
| Those eligible for 30% (A4) reduction (Table 5) | 87 |
| Premises liable for full charge | 202 |

It has been assumed that 25% of liable licence holders avoid the levy. Therefore 152 licence holders are estimated to pay the full levy (after exemptions and reductions), based on the assumptions outlined above.

Table 13 – Money raised from those premises that do not change their hours

| | Band A | Band B | Band C | Band D no multiplier | Band D with multiplier | Band E no multiplier | Band E with multiplier | Total |
|-------------------------------|---------|---------|---------|----------------------------|------------------------------|----------------------------|------------------------------|----------|
| % per band (A3) | 24.07% | 55.85% | 13.68% | 2.88% | 0.41% | 7.15% | 0.52% | |
| Levy charge | £299 | £768 | £1,259 | £1,365 | £2,730 | £1,493 | £4,440 | |
| No. eligible for 30% discount | 21 | 49 | 12 | 3 | 0 | 6 | 0 | 91 |
| No. of full payers | 36 | 85 | 21 | 4 | 1 | 11 | 1 | 158 |
| Total raised | £15,286 | £91,104 | £36,582 | £8,379 | £2,377 | £22,674 | £4,998 | £181,401 |

Note: The sum of premises in the “No. eligible for 30% discount” and “No. of full payers” rows is 249, not 239. This is due to rounding, as described in the note to Table 3 above.

The best estimate of the money raised from the levy will be £181K p.a. per licensing authority. On a national level, this equates to:

Annual Average: £17.1m

Present Value: £147m

Table 14 – Spending of the levy revenue p.a. (Option 3)

| | Average licensing authority | England and Wales (as A8) |
|---|-----------------------------|---------------------------|
| Total raised by late night levy | £181k | £17.1m |
| Y0 transitional expenses | £9.50k | £0.893m |
| Ongoing administrative expenses p.a. | £12.9k | £1.21m |
| Y0 net levy revenue (1 minus 2 minus 3) | £159k | £14.9m |
| Y1-9 p.a. net levy revenue (1 minus 3) | £169k | £15.8m |
| Present values (as A8) | | £135m |
| Split of net levy revenue (using A7) | | |

| | | |
|--------------------------------------|--------|---------|
| Y0 to police | £111k | £ 10.5m |
| Y1-9 to police | £118k | £ 11.1m |
| Y0 to licensing authority services | £47.7k | £ 4.48m |
| Y1-9 to licensing authority services | £50.6k | £ 4.75m |

Figures to 3.s.f.

See *Option 2* for breakdown of how this revenue is likely to be spent by the police and licensing authorities.

Under *Option 3* specifically, licensing authorities would be able to determine that premises which participate in schemes that tackle late night problems in the local area should be afforded a reduction from the levy. These reductions would enable them to give a clear signal on the advantages of active participation in those schemes and lead to a reduction in the harms connected to the late night supply of alcohol. The available exemption for Business Improvement Districts with a late night focus would, likewise, enable licensing authorities to promote non-regulatory business action as an alternative way to improve the late night economy and reduce enforcement costs.

Benefits (OIOO) N/A

TOTAL BENEFITS

The analysis above, which takes into account some premises avoiding the levy, provides our 'best estimate' of £17.1m (annual average). Summary:

Annual Average: £17.1m

Present Value: £147m

NET EFFECT

As highlighted in Table 14 above, the levy charge is a transfer from holders of late night authorisations to the public sector. The public sector stands to gain up to £15.8m per year from the charge which will be distributed between police and licensing authorities.

The net effect is negative (~-£3.4m in the first year) due to the administration costs of processing the levy and licence holders avoiding the levy.

General Assumptions for Option B and Option C

The extension and implementation of the power to introduce Early Morning Alcohol Restriction Orders (EMROs) is intended to empower local areas to determine their own outcomes. The impact of EMROs will vary significantly according to local circumstances and how a licensing authority considers it appropriate to address them. To implement an EMRO, licensing authorities will have to consider that it is 'appropriate' for the promotion of the licensing objectives (the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm). The following variables relating to local decision-making will affect the overall cost to businesses of the introduction of the power to implement EMROs:

Local decisions affecting the impact of EMROs

- We cannot be sure how many licensing authorities will adopt an EMRO. The Police Reform and Social Responsibility Act 2011 included a number of measures to give licensing authorities stronger powers over licensing in their area, including EMROs. It may be that many licensing authorities will find other powers to be sufficient in their area, or consider the outright ban on alcohol sales to be inappropriately restrictive.
- EMROs can be applied in the whole or part of a local authority area. Some licensing authorities may apply an EMRO to an area containing just a few premises; others may apply it to their whole area (although we consider this to be unlikely).
- EMROs can apply on particular days or on any day.
- EMROs can apply flexibly between midnight and 6am (and on different hours on different days).
- EMROs can last for as long as the authority can show that its existence is appropriate for the promotion of the licensing objectives.
- If a licensing authority intends to impose an EMRO, those affected by it may make representations against or in favour of it, potentially resulting in amendments to a proposed EMRO (such as to the time period or days on which it would apply).

These local variables mean that the estimate of the impact of EMROs below is subject to considerable uncertainty. Of the 'Factors' set out below, these decisions affect the outcome of A and B; and (in part), C and D. The decisions will follow a process in which those affected are able to make representations; and be made on the basis of what is appropriate for the promotion of the licensing objectives. The remaining factors will be governed by a variety of local circumstances (for example, how long premises are open in that area, and their turnover during this period).

To calculate an estimate of the range of possible effects of EMROs nationally, we have estimated the probable upper and lower range for the following factors, and put forward a best estimate in each case. It should be noted that B, C, and D are interrelated in reality, because premises are in fact open until different times on different days. However, we have presented them as separate factors to form a simplified narrative that relates to the local decisions set out above.

Factor A: Number of licensing authorities imposing EMROs

There are 349 licensing authorities in England and Wales, each of which might potentially adopt one or more EMROs. Responses to the public consultation did not provide an estimate of the number of licensing authorities which would in fact do so. A decision to impose an EMRO locally can only be made after there has been an opportunity for those affected to make representations, and must be made on the basis of what is appropriate for the promotion of the licensing objectives. It is highly likely that it will be made following a formal hearing. The responses to the consultation may indicate that local officials are understandably unwilling to pre-judge or predict the outcome of these processes.

Research conducted independently (by Poppleston Allen, a firm of licensing solicitors) similarly indicated an unwillingness to predict local outcomes: "fewer than 5% [of licensing authorities] were likely to implement these orders. Almost half (44%) said they were unlikely to, while almost 52% had not yet considered the issue."¹⁷ This survey could suggest a potential range of between 0 and

¹⁷ Available here: <http://www.popall.co.uk/news/general/popplestonallenslatenightlicensingurveythelatenightlevyemros.asp>

around 192 licensing authorities (if the likely and undecided authorities all eventually impose EMROs). “Fewer than 5%” (16 licensing authorities) is consistent with response to the consultation, in that very few authorities made it clear that they were likely to impose EMROs, and will form the best estimate. However, we consider that it extremely unlikely that anything approaching 192 authorities will impose an EMRO in any single year, as there is no evidence that it will be appropriate in so many areas, and because the strengthened powers under the Licensing Act 2003 to, for example, impose conditions on and review individual premises, are likely to be sufficient in the great majority of licensing authorities’ areas. For the upper estimate, therefore, we will assume that the “undecided” will adopt EMROs in the same proportion as those who gave a firmer view, making a total of 40 authorities. For the lower range, we will assume that only half of the authorities who reported that they were ‘likely’ to impose an EMRO in fact do so (8 authorities), with a best estimate of 16.

- We estimate that 16 licensing authorities is the best estimate; and that the likely range is between 8 and 40.

Factor B: Number of late night premises affected by EMROs

Licensing authorities differ widely in terms of the number of premises within their area. EMROs can be applied in the whole or part of a licensing authority area. Some licensing authorities may apply an EMRO to an area containing just a few premises; others may apply more widely.

The responses to the consultation that did provide a figure for the number of premises affected appeared to reflect the maximum number of premises that could be affected, rather than the likely number that would be affected. Discussions with licensing officers who indicated that one or more EMROs were likely in their area, however, indicated that they would impact on around 15-30 premises in their area.

- We estimate that 15-30 is the range of the number of premises affected, and use the midpoint (22.5) as the best estimate.

Factor C: Days on which EMROs would apply and affect businesses

We have no direct evidence about how many days per year EMROs might be imposed. However, to impact businesses, an EMRO would have to both be imposed and affect premises that are open on those nights. For example, it is likely that, in many areas where there are problems, premises are only open late on three nights per week, such as Friday, Saturday, and a “student night”. We will assume that it may be imposed and affect a significant number of premises on every day of the week throughout the year except New Year’s Eve, which is a nationally-applicable exemption (364 days per year). The likely minimum will be an EMRO imposed on just one night per week, (52 days per year) although a licensing authority would, for example, be able to implement an EMRO for just selected nights in a year. For the best estimate, we will assume that, where an EMRO is imposed, it will only affect premises significantly on three days a week, such as Friday and Saturday, plus another night, such as a local “student night” (156 days per year).

- We estimate that the days affected will range from 52 (one day a week) to 364 days per year (seven days a week, but excluding New Year’s Eve); with 156 days (3 days a week) as the best estimate.

Factor D: Times at which EMROs apply and hours of businesses lost by affected premises

EMROs can apply flexibly between midnight and 6am (and on different hours on different days). We do not have any information about the likely hours during which an EMRO would be applied. However, to impact businesses, an EMRO would have to both be imposed and affect premises that are operating during those hours. To calculate an upper range, we could assume EMROs applied for this entire six-hour period. However, as described below, in any area affected by an EMRO, it is highly unlikely that all affected premises would be open for the entire six-hour maximum period, even if the EMRO were imposed for that period.

Data obtained by the Home Office in 2010¹⁸ indicated that, amongst premises trading after midnight on Saturday nights, the average number of hours traded was approximately 1.4¹⁹. Only

¹⁸ From CGA Strategy, commercially obtained.

18% of premises in the study that were open after midnight on a Saturday night were still open after 2am. Only 6.1% were still open beyond 3am and only 1.8% after 4am. We will assume that Friday and one other day have the same characteristics as a Saturday.

Only 57% as many premises were open after midnight on a Wednesday as on a Saturday. The average number of hours that they were open after midnight was approximately 1.2 hours. We will assume that the remaining three days of the week share the characteristics of a Wednesday.

For the purposes of estimating an upper range, therefore, we will estimate that the average premises affected might be affected for 2.75 hours on three days a week (i.e., that all the affected premises would otherwise shut in the 2am-3am period²⁰). For the remaining four days, because we assume that only just over half (57%) as many premises are open at all after midnight, and that they tend not to open quite so late, we will treat this as being equivalent to half the number of hours (1.38 hours)²¹. For a seven day week, therefore, the maximum estimated average will be:

$$\frac{[3 \text{ days} \times 2.75 \text{ hours}] + [4 \text{ days} \times 1.38 \text{ hours}]}{7 \text{ days}} = 2 \text{ hours}$$

We will therefore assume that, for the purpose of estimating the upper range, the maximum average hours of business lost (i.e., on every day of the year) where EMROs are applied is 2 hours. For the “best estimate”, we will use the average number of hours for Saturday night (1.4).

- We estimate that the premises that are affected will be affected for an average of 1 to 2 hours, with a “best estimate” of 1.4 hours.

Factor E: Lost revenue per hour in various premises types

Many different types of premises are authorised to sell alcohol under the Licensing Act 2003. National statistics on licensing²² do not provide a breakdown by premises type. An EMRO is likely to affect different premises differently. For example, a pub may have to close during the designated hours as a result of not being allowed to sell alcohol, whilst a convenience store or concert venue might be affected to a lesser or even marginal extent as primary activities continue.

The British Beer and Pub Association have previously provided a figure of £300,000 turnover per year for a typical pub, this equates to £822 average per day and £68 per hour²³. However, some pubs naturally have hourly rates that are substantially higher than this. One respondent to the consultation, representing a firm operating larger pubs, put forward a figure of around £306 per hour for their post-midnight turnover. It has been suggested that they are more likely to remain open after midnight and be affected by an EMRO. However, several licensing officers who thought that their authority was likely to adopt an EMRO reported that the areas that might be targeted did not contain any large premises. We will assume that a 50-50 split of the “typical pub” and “larger” premises forms the maximum average hourly rate in an area affected by an EMRO (resulting in an average of £187 per hour); that the minimum hourly rate is equal to the BBPA based estimate of £68; and that the “best estimate” is made up 75-25 split (resulting in an average of £128 per hour).

¹⁹ Approximate because: (a) we do not know when, within each period of one hour, each premises closed. We have assumed they closed at either half past or on the hour (in equal proportion); and (b) a very small proportion of premises were open for an unknown length of time beyond 4am.

²⁰ This period has been selected to reflect the “upper” range of what is reasonably likely: given that only 6.1% of premises in the sample that were open after midnight were still open after 3am, it would be highly unlikely that post-3am closing times were the “average” in any area. It is a coincidence that this assumed “upper” average is approximately double the average number of hours that premises in the data were open after midnight (1.4)

²¹ This assumption is based on the expected number of premises affected (57% of those affected on a Saturday) and the slightly lower average hours open after midnight (1.2 hours against 1.4 hours on Saturday). However, as mentioned on page 24 above, due to the interactions between factors B, C and D, an alternative way to model this would be to reduce the number of days on which premises are estimated to be affected down from 364.

²² Available here: <http://www.culture.gov.uk/publications/7456.aspx>

²³ An alternative approach to estimating hourly turnover is to calculate the average revenue per authorisation. Discounting alcohol sold under temporary event notices (which are unlikely to account for a significant proportion of sales); we can divide the total alcohol expenditure in England and Wales in 2010 (£37.4bn, from 2011 ONS Consumer Trends, <http://www.ons.gov.uk/ons/rel/consumer-trends/consumer-trends/q1-2011/index.html>, combined with Nielsen Data (2008)) by the number of permanent authorisations. The average revenue per licence is estimated to be £185k, £507 average per day and £42 per hour (assuming the premises are open for 12 hours). However, this appears unrealistically low for premises that might be affected by an EMRO, and does not include non alcohol-related turnover (which would also be affected in many cases).

It should be noted that some turnover in many premises will be unconnected to alcohol. However, we will assume that premises selling alcohol in an area affected by an EMRO will not continue to operate for non-alcohol sales only (or else that alcohol sales are not their primary business).

- We therefore estimate that the average hourly cost per premises ranges from £68-£187; and that the best estimate is £128.

Conclusion

Table 14a – summary of estimated potential cost to businesses of EMROs

| | A | B | C | D | E | |
|-------|--|--|---|---|---------------------------|--------------------------|
| | Number of licensing authorities imposing EMROs | Number of premises affected by each EMRO | Number of days on which the EMRO will affect them | Hours of business lost per premises per night | Revenue per hour lost (£) | Total impact (AxBxCxDxE) |
| lower | 8 | 15 | 52 | 1 | 68 | £424,320 |
| upper | 40 | 30 | 364 | 2 | 187 | £163,363,200 |
| best | 16 | 22.5 | 156 | 1.4 | 128 | £10,063,872 |

The upper and lower estimates for the impact of EMROs in England and Wales form an extremely large range. The uncertainty results, to a great extent, from the fact that many aspects of EMROs will be determined by decisions that will be made locally; following a mandatory local process during which those that are affected will be able to make representations; and according to statutory criteria. Local officials are understandably reluctant to provide estimates that assume the outcomes of those processes. We have nevertheless estimated a best estimate for each factor, resulting in an estimated impact of £10.1m per year.

Option B – Commence EMROs with very limited exemptions

Option B is to commence EMROs with only very limited exemptions. These are for New Year's Eve (i.e., the early morning of New Year's Day, which will be unaffected by any of the options) and for sales from minibars and room service at premises providing overnight accommodation (but not other sales at those premises, such as sales at hotel bars).

Costs (excluding OIOO)

Administrative Burdens

Licensing authorities that choose to use EMROs will incur an administrative cost in applying the power. In most cases, we have estimated similar administrative costs for EMRO processes as for the levy processes described above (which were based on consultation with licensing authorities). However, in the case of advertising a proposed EMRO, the requirements are likely to be significantly less extensive than those for a consultation on the levy (because licensing authorities will be required to advertise a proposed EMRO, rather than write to all licensed premises). The estimate of the cost of a hearing (£1,860) is also based on discussions with licensing authorities. It is assumed that there is a particularly high likelihood of relatively complex representations for a proposed EMRO, in comparison with a licence review hearing, and that a hearing will always be required.

Table 15– Processes when introducing the EMRO (one-off)

| Process | Hours | Cost to licensing authority (hours x £28) |
|--|-------|---|
| Development of proposed EMRO | 35 | £980 |
| Advertising proposed EMRO | 20 | £560 |
| Analysis of representations | 35 | £980 |
| Hearing | - | £1,860 |
| Decision by council of licensing authority | 20 | £560 |
| Notifying affected premises | 20 | £560 |
| Total | | £5,500 |

Therefore, as shown in Table 15, **the one-off cost to a licensing authority would be £5,500.**

The police and licensing authorities, where an EMRO is applied, would bear a cost if enforcement is necessary with regard to the EMRO. As stated earlier, discussions with the police suggest that an average constable costs around £30 per hour (including overheads).

Late night alcohol buyers (customers) and other late night businesses may be affected by a constrained choice of alcohol retailers and a change in the nature of the late night economy. However, we have not attempted to monetise this cost as this is wholly dependant on the uncertainties outlined above.

Costs (OIOO)

As set out above, the range of uncertainties make any estimate of the impact on business from the introduction of EMROs very tentative. Our best estimate is that Option B might cost businesses around £10.1m per year in terms of lost revenue.

Benefits (excluding OIOO)

Administrative benefits

Licensing authorities that impose an EMRO may benefit from reduced costs of reviewing licences (which are likely to be required to address the problems that are undermining the licensing objectives). Discussions with licensing authorities have indicated that the administrative cost of a review hearing is in the region of £1,860. Therefore, an EMRO would be likely to result in cost savings if it prevented the need for a review of three or more individual premises licences.

The police and licensing authorities are likely to benefit from substantial cost savings in lower enforcement costs caused by alcohol no longer being supplied during the period the EMRO is in effect, for example, a reduced late night police presence. This benefit could be reduced by the application of exemptions centrally under Option C.

Benefits of crime prevented by an EMRO

The EMRO has been designed to tackle areas that have specific problems that undermine the licensing objectives. The main benefit will therefore be a reduction in, in particular, alcohol-related crime and disorder and public nuisance. If an EMRO delivers a safer night time economy, this will be a benefit to the community as a whole, including businesses, individuals and public protection agencies such as the police and the licensing authority. It has been estimated that the cost of a common assault is £1,750, the cost of criminal damage is £1,053 and the cost of an offence of 'less serious wounding' is £9,790.²⁴ Therefore if an offence of 'less serious wounding' was prevented this would save £9,790. It is important to note that this is not a monetisable saving as it includes intangible costs such as the emotional cost to the victim.

²⁴ Home Office Unit Cost of Crime Estimates, 2011, <http://www.homeoffice.gov.uk/publications/crime/reducing-reoffending/IOM-phase2-costs-multipliers?view=Binary>

Benefits (OIOO)

N/A

Net Effect

As set out above, the main benefit of an EMRO is expected to be the promotion of the licensing objectives, including the prevention of crime and disorder and the prevention of public nuisance. There will be a loss of late night alcohol sales to premises in the area affected by the EMRO, with a best estimate of £10.1m per year, but subject to considerable uncertainty. There will be some administrative costs to licensing authorities and the police. Because of the high cost of alcohol related crimes, particularly violent crimes, it is expected that the benefits of an EMRO will outweigh these costs.

Option C – commencing EMROs with exemptions for categories of premises

Option C is to commence EMROs with nationally-prescribed exemptions for all of the possible exemption categories that the ‘Dealing with the problems of late night drinking’ consultation invited views upon. In addition to New Year’s Eve, they were: premises with overnight accommodation (that only serve alcohol to guests); theatres; cinemas; community premises; and casinos and bingo halls with a membership scheme.

Costs (excluding OIOO)

Administrative Burdens

Licensing authorities that choose to use an EMRO will incur an administrative cost in applying the power. In most cases, we have estimated similar administrative costs for EMRO processes as for the Levy processes described above (which were based on consultation with licensing authorities). However, in the case of advertising a proposed EMRO, the requirements are likely to be significantly less extensive than those for a consultation on the levy. The estimate of the cost of a hearing (£1,860) is also based on discussions with licensing authorities. It is assumed that there is a particularly high likelihood of relatively complex representations for a proposed EMRO, in comparison with a licence review hearing, and that a hearing will always be required.

Option 3 will also contain an administrative cost in processing exemptions for premises with overnight accommodation that only serve alcohol to guests; theatres; cinemas; community premises; and casinos and bingo halls with membership schemes.

Table 16– Processes when introducing the EMRO (one-off)

| Process | Hours | Cost to licensing authority (hours x £28) |
|--|--------------|--|
| Development of proposed EMRO | 35 | £980 |
| Advertising proposed EMRO | 20 | £560 |
| Analysis of representations | 35 | £980 |
| Hearing | - | £1,860 |
| Decision by council of licensing authority | 20 | £560 |
| Notifying affected premises | 20 | £560 |
| Processing exemptions | 40 | £1,120 |
| Total | | £6,620 |

Table 16 shows that **the one-off cost to a licensing authority would be £6,620.**

The police and licensing authorities, where an EMRO is applied, would bear a cost if enforcement were necessary with regard to the EMRO. Such costs would potentially be greater under Option C, if there were exempt or potentially exempt premises in the EMRO area (that is, premises with

overnight accommodation that only serve alcohol to guests; theatres; cinemas; community premises; and casinos and bingo halls with membership schemes). As stated earlier, discussions with the police suggest that an average constable costs around £30 per hour (including overheads).

Late night alcohol buyers (customers) and other late night businesses may be affected by a constrained choice of alcohol retailers and a change in the nature of the late night economy. However, we have not attempted to monetise this cost as this is wholly dependant on the uncertainties outlined above.

Under **Option C** there may be a small administrative burden upon premises which are eligible for an exemption but do not currently meet the criteria (in terms of conditions on their licence). This will mean they will bear the burden in making a minor variation (cost: £89 fee plus estimated £35 administrative burden) to add conditions. We cannot be sure of how many premises will do this, although it is likely to be only a small proportion of premises who would wish to meet the criteria.

Costs (OIOO)

The OIOO burden of **Option C** would be slightly less than **Option B** due to the provision of centrally-determined exemptions that would reduce the negative impact on business. Such exemptions would be intended to target premises that commonly do not cause alcohol-related crime and disorder. Premises with overnight accommodation that only serve alcohol to guests; theatres; cinemas; community premises; and casinos and bingo halls with membership schemes were proposed in the consultation. A tight definition of the categories would be required to avoid the creation of potential loopholes. For example, if “cinema” were a centrally-defined exemption category, it would be necessary to define the factors that distinguish the premises from a “pub” that shows films. These distinct types of premises (except “community premises”) are not currently defined under the Licensing Act, and would have to be defined according to centrally-set descriptions of the conditions on their licence, with a determination made locally in each case.

We will assume that the potentially exempt premises under Option C are equally likely to be in an area affected by an EMRO as in an area affected by the levy (see pages 12 and 13 above). This suggested that there would typically be 22 premises in exempt categories in a scenario where 311 premises are open after midnight, or 7.1% of the premises in that scenario. We will also assume that the exempt premises would be affected by an EMRO to the same degree as average premises in terms of, for example, hourly income and average hours open. This assumption will not be legitimate for individual premises with different business models: for example, casinos in an EMRO area are relatively more likely to be affected than a community premises. However, it is likely to be broadly reasonable across the full spectrum of premises. The ‘best estimate’ cost to business is therefore estimated to be 7.1% less than Option C: £9.3m per year.

Benefits (excluding OIOO)

Administrative benefits

Licensing authorities that impose an EMRO may benefit from reduced costs of reviewing licences (which are likely to be required to address the problems that are undermining the licensing objectives). Discussions with licensing authorities have indicated that the administrative cost of a review hearing is in the region of £1,860. Therefore, an EMRO would be likely to result in cost savings if it prevented the need for a review of four or more individual premises licences.

The police and licensing authorities are likely to benefit from substantial cost savings in lower enforcement costs caused by alcohol no longer being supplied during the period the EMRO is in effect, for example, a reduced late night police presence. This benefit could be reduced by the application of exemptions to accommodation that only serve alcohol to guests; theatres; cinemas; community premises; and casinos and bingo halls with membership schemes under Option C.

Benefits of crime prevented by an EMRO

The EMRO has been designed to tackle areas that have specific problems that undermine the licensing objectives. The main benefit will therefore be a reduction in, in particular, alcohol-related

crime and disorder and public nuisance. If an EMRO promotes a safer night time economy, this will be a benefit to the community as a whole, including businesses, individuals and public protection agencies such as the police and the licensing authority. This benefit could be reduced by the application of exemptions to accommodation that only serve alcohol to guests; theatres; cinemas; community premises; and casinos and bingo halls with membership schemes under Option C. It has been estimated that the cost of a common assault is £1,750, the cost of criminal damage is £1,053 and the cost of an offence of 'less serious wounding' is £9,790.²⁵ Therefore if an offence of 'less serious wounding' was prevented this would save £9,790. It is important to note that this is not a monetisable saving as it includes intangible costs such as the emotional cost to the victim.

Benefits (OIOO)

N/A

Net Effect

As set out above, the main benefit of an EMRO is expected to be the promotion of the licensing objectives, including the prevention of crime and disorder and the prevention of public nuisance. This effect might be potentially diluted by the exemption under Option C. There will be a loss of late night alcohol sales to premises in the area affected by the EMRO estimated to total £9.3m per year but subject to considerable uncertainty. This loss might be reduced under Option C through premises being exempt. There will be some administrative costs to licensing authorities and the police. Because of the high cost of alcohol related crimes, particularly violent crimes, it is expected that the benefits of an EMRO will outweigh these costs.

F. Risks

Options 2 and 3 – late night levy with available exemptions and reductions

There is a risk that more or fewer LAs than expected will implement it e.g., in the latter case, estimating low net receipts (low income and/or high administrative costs) in their area. However, the levy has been designed as an optional tool for licensing authorities and the Government considers that the decision should be made locally.

It has been assumed that only licence holders who decide that the cost of the levy is greater than the revenue made from staying open may vary their licence to remove the authorisation in the levy period. It is possible that there may be a reduction in availability of alcohol late at night for potential customers.

As described above, the levy will, if implemented, result in a cost to premises that are licensed to sell alcohol late at night. There is a risk, under Option 3, that licensing authorities do not adopt any exemptions or reductions in their area, which would increase this effect. However, the Government believes that licensing authorities are best placed to make the decision on which available types of premises should not make a contribution, or make a reduced contribution, towards enforcement costs.

This impact assessment assumes, for the purposes of making estimates, that all licensing authorities that adopt the measure do so from the first year. Some licensing authorities may take longer to adopt the measures.

The estimates do not reflect the changing number of premises licences and clubs premises certificates over time. We have assumed that a constant number of premises hold late night licences for the 10 year period.

²⁵ Home Office Unit Cost of Crime Estimates, 2011, <http://www.homeoffice.gov.uk/publications/crime/reducing-reoffending/IOM-phase2-costs-multipliers?view=Binary>

The percentage reduction available for best-practice schemes is assumed to be 30%, leading to a cost of around £192k to business in an “average licensing authority scenario”. However, the level is currently subject to further Ministerial consideration. The impact of changes to this assumption has been analysed. As an illustration, if there were a 40% reduction, the cost would be £185k.

Both Options B and C – Early Morning Restriction Orders

It has been suggested that the imposition of an EMRO would, potentially, merely transfer the problem to another area. We do not consider that this is likely to be a substantial effect. Although some customers may go elsewhere, the second area would, for example, need to already have a corresponding population of licensed premises with similar deficiencies in their management for the same problems to re-occur. As described above, there are a wide range of powers, extended and strengthened through the Police Reform and Social Responsibility Act 2011, which can be used to tackle alcohol-related problems locally. Additionally, as described in the process map accompanying the consultation, we expect licensing authorities to notify neighbouring authorities of their intentions. This will be particularly relevant where the potential levy area adjoins a portion of another authority containing licensed premises that may potentially be affected by the EMRO.

Late night alcohol buyers (customers) and other late night businesses may be affected by a constrained choice of alcohol retailers and a change in the nature of the late night economy. However, we have not attempted to monetise this cost. The effect is unlikely to be substantial, given that the use of the power will be limited to what is appropriate for the promotion of the licensing objectives. Premises such as hotels, restaurants and supermarkets will be able to continue operation without making alcohol sales during the EMRO hours, and will only be within an EMRO area if the EMRO is appropriate for the promotion of the licensing objectives. For both options the calculation of risk will be taken by the relevant licensing authorities as they determine whether an EMRO is appropriate for the promotion of the licensing objectives. This is in line with the Government’s localism agenda.

There is a risk that EMROs are adopted by few licensing authorities. However, EMROs have been designed as a powerful tool, to be used when it is appropriate in the circumstances.

As described above, there is a risk that an EMRO will harm the hospitality industry by reducing income from alcohol sales. However, an EMRO should only be introduced if it is appropriate for the promotion of the licensing objectives, and therefore benefits the wider local community.

G. Enforcement

We do not expect that the levy will require significant enforcement activity. The late night levy charge can be collected with the annual licence fee. Non-payment of the levy by liable premises can, in common with non-payment of the licence fee, be addressed through suspension of the licence. The licence fee system is compliant with the principles of the Hampton Code. Enforcement costs only relate to non-payment.

EMROs may result in a slight increase in enforcement cost as licensing authorities and the police ensure that premises are not contravening the order. However, any increase in enforcement cost is likely to be greatly outweighed by the reductions in enforcement costs resulting from the absence of alcohol sales, and the consequent reduction in late night crime and, for example, the reduction in requirements for late night policing. Enforcement requirements will be made by the local licensing authority and police force in deciding whether to make an order. As described above, the licensing authority is also likely to have to conduct fewer review hearings. Any enforcement costs that do arise will be borne by the licensing authority (funded through licence fees) and local police forces.

H. Summary and Recommendations

The table below outlines the costs and benefits of the proposed changes.

NM = Non-monetised
M = Monetised

| Table H.1 Costs and Benefits | | |
|-------------------------------------|--|--|
| Option | Costs | Benefits |
| 2 M | PV = £171-198m in cost through levy charge or loss of business and transition costs to licensing authorities | PV = £161m in benefits for services in the late night economy. I.e. More resources for the police and licensing authority services which address the effects of the sale of alcohol late at night. |
| 2 NM | Costs to hospitality and entertainment trades. | Benefits resulting from better funded local services – a safer late night economy (potential reduction in alcohol-related violence). |
| 3 M | PV = £158-176m in cost through levy charge or loss of business and transition costs to licensing authorities and business in changing licence to meet exemption criteria | PV = £147m in benefits for services in the late night economy. I.e. More resources for the police and licensing authority services which address the effects of the sale of alcohol late at night. |
| 3 NM | | Benefits resulting from better funded local services – a safer late night economy (potential reduction in alcohol-related violence). Benefits for society as a result of greater take-up of best practice schemes |
| B M | PV = £87m in costs to premises from loss of alcohol sales resulting from an EMRO. | |
| B NM | Cost to individuals due to reduction in alcohol availability. Administration costs to licensing authorities. | A safer late night economy with reductions in alcohol-related crime and disorder and public nuisance. Administrative cost savings to licensing authorities and the police. |
| C M | PV = £80m in costs to premises from loss of alcohol sales resulting from an EMRO. | |
| C NM | Cost to individuals due to reduction in alcohol availability. Administration costs to licensing authorities. | A safer late night economy with reductions in alcohol related crime and disorder and public nuisance. Reduced costs to suggested exemption categories, but increased administration costs for public protection agencies. Administrative cost savings to licensing authorities and the police. |

Analysis in sections E and F suggests that Option 3 offers a better (less negative) net present value than Option 2 and that the unquantified effects of Option 3 are more favourable than those of Option 2.

The preferred option is Option 3 due to the better net present value. Option 3 is also the preferred option because it is expected to provide the most proportionate method for late opening alcohol retailers to contribute towards late night enforcement costs. It will allow licensing authorities to exempt or grant reduction to certain categories of business. Although the benefits of this option are lower, it constitutes a reduction in costs for businesses which already make contributions through other means or those businesses which licensing authorities may feel should not make a contribution at all.

Option 3 creates an additional administrative cost of £0.2m on premises licence holders, which is out of scope for a 'transfer'. This cost is necessary to ensure that exemption categories can be

enforced. For the benefit it shall give to the hospitality industry, we believe exemption categories are worth the additional cost.

The benefits for Options B and C could not be quantified. The preferred option is Option B. Whilst Option C would have a reduced impact on certain types of business (namely those named as suggested exemption categories in the consultation document) and therefore a slightly lower present value cost, it would be administratively difficult to achieve and might risk diluting the impact of an EMRO in tackling late night problems. Therefore the (unquantified) net benefit of Option B is expected to be greater than that for Option C.

It should be noted that, even if the Government implements its preferred options, the decision to apply both powers will be made locally by licensing authorities. Should they feel that Option 1 and Option A are more appropriate in the individual context within which they operate, they may choose not to use either of the powers.

I. Implementation

The Government plans to introduce these measures in secondary legislation made under the Police Reform and Social Responsibility Act 2011, and aims to introduce them in October 2012.

The Government will not implement this power at a local level. Licensing authorities will choose whether to adopt the levy. The levy will commence in local areas whenever the licensing authorities have complied with regulations by, among other things, consulting affected persons and giving sufficient notice to liable premises.

J. Monitoring and Evaluation

The impact of the levy and EMROs will be assessed as part of an internal review based on feedback from licensing authorities and the police. Please see the Post Implementation Review plan (Annex 1) and section K below.

K. Feedback

The effect and appropriateness of the levy and EMROs will depend on the area in which it is adopted. Licensing authorities will assess these aspects in their annual decision on whether to continue collecting the levy in the following year. We will consider suggesting in guidance that licensing authorities write to the Home Secretary on the adoption of the levy in their area, and will gather feedback from these authorities.

L. Specific Impact Tests

Small firms and competition explanatory memoranda are attached in annex 2

Annex 1: Post Implementation Review (PIR) Plan

Basis of the review:

In line with the Government policy on “sunsetting” and review of legislation, a “Duty to Review” clause is included in the Police Reform and Social Responsibility Act 2011 and covers EMROs. This duty is applicable after a minimum of five years after the measures come into force. In the Police Reform and Social Responsibility Bill Impact Assessment, the Government committed to assess the impact of the alcohol measures in the Bill that do not qualify as regulatory measures for the purposes of "one in one out". The late night levy is included in this category.

The review will be carried out alongside the statutory review of the other alcohol measures in the Bill. The review will ascertain whether expected benefits have been realised. More detail can be found in the impact assessment for the alcohol measures in the Police Reform and Social Responsibility Bill.

Review objective:

The late night levy and EMROs are local powers. As such, the review will consider whether they are a proportionate and effective tool for licensing authorities to raise greater resources for enforcement services late at night or target areas where the licensing objectives are being undermined, through, for example alcohol-related crime and disorder or public nuisance.

Review approach and rationale:

The review will primarily be based on feedback from licensing authorities. Local areas are best placed to determine the impact and appropriateness of the policies in their area. In guidance we will consider suggesting that licensing authorities write to the Home Secretary on adoption of the levy or an EMRO in their area.

Baseline:

The current baseline position will be considered in local areas when licensing authorities take a decision on whether to adopt the policies. On a national basis, the current baseline is outlined in the Impact Assessment in the consideration of police and licensing authority costs in the late night economy.

Success criteria:

The success of the levy depends on whether licensing authorities deem it to be an appropriate tool in their areas. In the case of an EMRO, success will be determined by whether the licensing objectives are more effectively delivered by use of the levy. Success on a local level will be assessed by the licensing authority on an annual basis as part of their decision to continue or scrap the levy in their area or whether they should use an EMRO.

Monitoring information arrangements:

We will consider suggesting in guidance that licensing authorities write to the Home Secretary on the adoption of the levy or EMRO in their area.

Annex 2. Specific Impact Tests

Small Firms Impact Test – Explanatory Memorandum

1. In conducting the initial consultation we were particularly mindful of the potential impact on small firms and sought to ensure that they were fully engaged.
2. Small businesses are often defined in terms of employee numbers. If we use this definition, then the vast majority of licensed trade businesses are classified as ‘small or micro businesses’. These businesses often rely on a pool of shift workers and only have a small base of full time management staff. The industry snapshot below attempts to estimate the proportion of small businesses selling alcohol in England and Wales.

| Standard Industry Classification 2007 | Description | Number with <10 employees in England and Wales (Micro) | Number with <20 employees in England and Wales (Small) | Number with <50 employees in England and Wales (Medium) |
|---------------------------------------|---|--|--|---|
| 4711 | Retail sale in non-specialised stores with food, beverages or tobacco predominating | 23,056 | 24,354 | 24,803 |
| 4725 | Retail sale of alcoholic and other beverages | 4,285 | 4,454 | 4,486 |
| 5510 | Hotels | 4,284 | 5,616 | 6,814 |
| 5610 | Restaurants | 46,259 | 51,483 | 53,593 |
| 5630 | Public Houses and bars | 32,905 | 38,751 | 40,664 |
| Total | | 110,789 | 124,658 | 130,360 |
| Percentage of total | | 84% | 94% | 98% |

This table is based on data from UK Business: Activity, Size and Location – 2010 which contains data from a snapshot of the Inter Departmental Business Register (IDBR) taken on 22 March 2010. Table B3.1 provides a breakdown of the number of enterprises in the UK by Standard Industry Classification 2007 and number of employees. These numbers are scaled down to England and Wales using table B3.4 (regional distribution). These data also include those restaurants, hotels and shops which do not sell alcohol. This is likely to skew the results. In March 2010 there were 182,800 premises licences and club premises certificates with an authorisation to sell alcohol.

The late night levy

3. The late night levy proposals can affect all types of licensed premises with a licence to sell alcohol after midnight. As such, the levy will affect small businesses.
4. The late night levy is a tax. As such, it is out of scope for the purposes of One In One Out and the micro-business moratorium.
5. The late night levy will ask for a contribution from business towards the enforcement costs generated as a result of the sale of alcohol late at night. It shall be paid by those businesses that are authorised to supply alcohol late at night. Small businesses, like large ones, participate in this late night economy and should contribute to the enforcement costs incurred as a result.
6. We have not considered an exemption for small businesses based on employee numbers. Should this exemption be used, the contribution towards policing costs would be fully borne by a small minority of larger businesses. Under this scenario the amount raised will not raise a meaningful amount for policing and, as such, will undermine the objectives of the coalition commitment. The commitment to the late night levy has not been based on the impact of different sizes of business, rather on the impact of the sale of alcohol late at night.

Early Morning Restriction Orders (EMROs)

7. The Early Morning Restriction Order will allow licensing authorities to react to problems resulting from the supply of alcohol in specific areas, at specific late night times, and on specific days. The imposition of an EMRO must be appropriate for the promotion of the licensing objectives. A licensing authority must provide evidence to support its decision. Premises will then be able to make representations to prove that they do not, in fact, undermine the licensing objectives. As such, it would be reasonable to assume that those premises that eventually fall within an EMRO are partially responsible for alcohol-related crime, public nuisance or disorder in that area.
8. EMROs are not a blanket regulation. They are a focussed tool for licensing authorities. Where an EMRO is used, it will be fully justified in the context of the promotion of the licensing objectives in an area. An exemption for small businesses, using the definition above, would render the policy unusable in relation to its intention to tackle pockets of alcohol-related crime and disorder.
9. EMROs are in scope for “One In One Out”. We have obtained a waiver for this policy from the micro-business moratorium.

Consultation with small firms on reducing the burden of the late night levy

10. As an alternative to exemptions, we have consulted small firms and sought to reduce the impact of the levy on small business in a number of ways.
11. Representatives of premises licence holders wanted to see the levy charges varied according to the size of premises. The levy charges have been based on rateable value. This ensures that premises with lower rateable values (broadly likely to be smaller businesses) will pay a much lower levy charge. Those businesses in Band A (rateable value of £0 to £4,300) will pay only £299. The majority of licensed premises fall within Band B (rateable value of £4,301 to £33,000). These premises will only pay £768 annually.
12. Premises licence holders will pay the levy with their annual licence fee. As such, there will be little added administrative burden on small businesses in paying the levy.
13. The levy charges will be uniformly calculated nationally. We will also ensure that licensing authorities give good notice to all premises which are liable for the levy in their area. As such, there will be no added compliance burden on small businesses in working out liability and calculating their charge.
14. Meetings regarding small businesses pointed out that some small businesses may want to change their authorised hours to avoid paying the late night levy. As a result, the late night levy has made provision for businesses to make a change to their licence without paying a fee. This will mean that businesses can make a simple decision on whether to stay open based on profit after midnight and the potential levy charge. As discussed in the accompanying Impact Assessment, the loss of business will be no higher than the charge the business wishes to avoid. For small businesses, this is a maximum of £299/£768 annually.
15. Some representatives have argued that small hospitality businesses e.g. Bed and Breakfasts should be exempt from the late night levy. There will be an exemption from the levy charge available for premises that only serve to overnight guests (late at night) in defined circumstances.

Competition Impact – Explanatory Memorandum

Do the policies:

1. Directly limit the number or range of suppliers?

The late night levy does not directly limit the number or range of suppliers.

EMROs may limit the range of suppliers in an area and during the specified time when it is applied. The EMRO will be justified on the grounds of the promotion of the licensing objectives (including the prevention of crime and disorder and the prevention of public nuisance) and will only limit the range of suppliers where it can provide evidence that this is appropriate for the promotion of the licensing objectives.

2. Indirectly limit the number or range of suppliers?

In areas where it is adopted, the late night levy may result in a very small number of premises deciding to no longer sell alcohol late at night, if their profit in those hours is not higher than the applicable levy charge. They will make a free change to their hours if they do not consider it profitable to pay the levy and stay open late. Costs will not vary for existing suppliers as compared with new entrants or vice-versa. The late night levy charges are consistent wherever it is applied and the EMRO will affect all premises equally in the specified problem area.

3. Limit the ability of suppliers to compete?

EMROs will restrict the areas where some businesses can operate at specific late night times. These areas will be set to promote the licensing objectives and on the basis of crime and disorder. The levy will not limit the ability of suppliers to compete (although it may have a very minor effect as between different areas).

4. Reduce suppliers' incentives to compete vigorously?

No. Neither policy will have an effect on the exchange of information between suppliers.

We expect the two policies to have only a minor impact on competition, for example, between local authority areas. However, these effects have not been monetised and quantified at this stage.