

EXPLANATORY MEMORANDUM TO
THE LATE NIGHT LEVY (APPLICATION AND ADMINISTRATION)
REGULATIONS 2012

2012 No. 2730

1. This explanatory memorandum has been prepared by the Home Office (“the Department”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations prescribe a number of matters relating to the introduction and administration of the late night levy (“the levy”). The levy may be introduced by a licensing authority in its area if it considers it desirable to raise revenue in relation to the costs of policing crime and disorder connected to the supply of alcohol in that area between midnight and 6am, and it is payable by the holder of a premises licence or club premises certificate (“the licence holder”) which authorises the supply of alcohol during those hours.

2.2 The purpose of these Regulations is to prescribe matters which are necessary to give effect to the levy framework in Chapter 2 of Part 2 of the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The 2011 Act sets out a framework in accordance with which a licensing authority in England and Wales may introduce the levy in its area, and contains a number of powers by virtue of which the Secretary of State will prescribe by regulations matters relating to the basis on which licence holders are liable, when they are liable, how they discharge that liability, what adjustments may be made to their liability if their circumstances change and what procedural steps licensing authorities must take in relation to the introduction of the levy in their areas (or its variation in subsequent years).

4.2 In particular, these Regulations prescribe:

- The basis on which the licence holder’s payment year (i.e. the period by reference to which the holder’s liability to the levy is determined) is set.

- The basis on which the liability of licence holders to pay the levy is set and reflects the approach prescribed under the Licensing Act 2003 (by reference to which fees payable by licensed premises are set). As such, it is based on the rateable value of the licence holder's premises and whether, in the case of premises with higher rateable values, they are used exclusively or primarily for the supply of alcohol for consumption on the premises.
- The times by which licence holders must make their first and subsequent levy payments.
- The circumstances in which licence holders may be entitled to a reduction in their liability to the levy. These arise where for example the licence holder's authorisation lapses by virtue of section 27 of the Licensing Act 2003 (i.e. where the holder has died, becomes mentally incapable or insolvent).
- The time by which a licensing authority must pay the relevant local policing body (defined in section 137 of the 2011 Act) its share of the net levy revenue and when it can apply the share of that revenue which it can retain.
- The procedural requirements which a licensing authority must observe when it proposes to introduce a levy in its area, or to vary the basis on which an existing levy is administered. In essence, this is a consultation process to ensure that those who can either inform the decision to introduce the levy, or who may be affected by it, are involved in the process for introduction.

4.3 These Regulations represent the first use of the relevant powers in the 2011 Act.

5. Territorial Extent and Application

5.1. These Regulations apply to England and Wales only.

6. European Convention on Human Rights

6.1 The Minister of State for Crime Prevention and Antisocial Behaviour Reduction has made the following statement:

In my view the provisions of the draft Late Night Levy (Application and Administration) Regulations 2012 are compatible with the Convention rights.

7. Policy background

- *What is being done and why*

7.1 As part of the Government's commitment to overhaul alcohol licensing to tackle alcohol-related crime and disorder and resulting harms in favour of

local communities, various measures were introduced in the 2011 Act. These include provision for the levy, which fulfils a commitment in the Coalition Agreement to permit local councils to charge more for late night licences to pay for additional policing. The Government does not believe it is fair to expect local communities and taxpayers to bear the full brunt of the costs that the late night economy causes in their area. Therefore, this charge allows licensing authorities to require those businesses that benefit from the existence of a late night economy in their area to contribute to some of the costs that it causes.

- 7.2 The levy is a local power that licensing authorities can choose whether to adopt. It must cover the whole of the licensing authority's area but the licensing authority has discretion to choose the period during which the levy applies (between midnight and 6am on each night) and what exemptions and reductions should apply, from a list set out in further regulations which will be laid in due course. These Regulations relate only to the introduction and administration of the late night levy and the activities that licensing authorities can fund with their portion of the revenue.

- ***Consolidation***

- 7.3 This is not applicable as these Regulations represent the first use of powers under Chapter 2 of Part 2 of the 2011 Act.

8. Consultation outcome

- 8.1 The content of these Regulations has been the subject of consultation. This consultation took place between January and April 2011. It generated 631 formal responses. The consultation invited views on the processes for implementing the levy, possible discretionary exemptions and reductions from the levy and services that local authorities can fund with their portion of the levy revenue, as well as matters relating to Early Morning Alcohol Restriction Orders (which are not the subject of these Regulations). In relation to the levy, the consultation was primarily relevant to matters which will be the subject of further, separate regulations.

- 8.2 Details of the consultation, and the Government's response, are available on the Department's website at <http://www.homeoffice.gov.uk/>.

9. Guidance

- 9.1 Guidance to licensing authorities on the application of the levy will be published by the Department when the levy framework in the 2011 Act is commenced.

10. Impact

- 10.1 There is an impact on businesses, charities and voluntary bodies. The estimated total cost to business is expected to be around £18 million per annum. This is primarily made up of the payment of the levy charge. The Government intends that licensing authorities will have the discretion to offer exemptions to premises with overnight accommodation, theatres and cinemas, bingo halls and country village pubs from the levy. The Government also intends that licensing authorities will have discretion to exempt Community Amateur Sports Clubs (which are voluntary or charitable bodies), other community premises, (which are typically operated and used by charitable or voluntary bodies) from the levy and Business Improvement Districts that operate in the night-time economy. Licensing authorities will also have discretion to exempt New Year's Eve. There will also be discretionary reductions available to responsible businesses that participate in best practice schemes and certain types of on-trade premises that receive small business rate relief.
- 10.2 The impact on the public sector is an estimated benefit of around £17 million per annum.
- 10.3 An Impact Assessment has been prepared for this instrument and will be published alongside the Explanatory Memorandum.

11. Regulating small business

- 11.1 The legislation applies to small businesses.
- 11.2 To minimise the impact of the requirements on smaller firms, these Regulations prescribe a tiered system of charges, in which premises with lower non-domestic rateable value, if subject to the levy, pay a lower amount.

12. Monitoring & review

- 12.1 The effect of these Regulations will be kept under review by the Department.

13. Contact

- 13.1 Carla Giudice, Drugs and Alcohol Unit, the Home Office on 020 7035 8751 or Carla.Giudice@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.