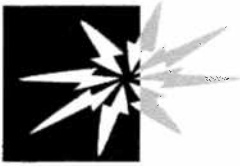


Briefing Paper:	REGULATORY COMMITTEE 22 ND NOVEMBER 2012	Item Number:	
Title:	Briefing on the Draft Late Night Levy Regulations- For Information only		
Briefing Paper authorised by:	Stephen McDonnell – Assistant Director, Single Frontline		
Lead Officer:	Daliah Barrett- Licensing Team Leader		
Ward(s) affected: All	Report for Key/Non Key Decisions:		

1. Describe the issue under consideration

1.1 The Committee has previously been advised of the measures being brought in by Central Government to equip the Licensing Authorities and the police to better deal with problems arising from the late night economy. The government carried out extensive consultation under the Police Reform and Social Responsibility Act 2011 to bring in various changes to the Licensing Act 2003. The heaviest of these will be the Late Night levy and Early Morning Restriction Orders. This briefing note is to update the Regulatory Committee on the Regulations for the Late Night Levy which came into effect on 31st October 2012.

- A licensing authority **may** decide that a late night levy should be applied to licensed premises in its area with the aim of contributing towards the policing costs for any crime and disorder arising from alcohol supply between **12 midnight and 6 am**.
- A licensing authority may not limit the late night levy to only **part** of its area, although it will have discretion on the time period to be applied between 12 midnight and 6 am and the days of the week.
- The levy will not apply to TEN's and will also not apply to any relaxation of hours for special occasions permitted by the Secretary of State under s.172 Licensing Act 2003 (e.g. the Diamond Jubilee celebrations, New Years).
- Setting a levy is a function relating to licensing- Counsel advises that Regulatory committee would need to discuss the issues. This would then go to Full Council firstly to set the terms of the consultation. The matter would then go back to Full Council a second time to decide whether or not to implement the levy.



2. Background information

- 2.1 This briefing only deals with the regulations for the Late Night Levy. The EMRO regulations have not yet been published.
- 2.2 The PRSR enables a Licensing Authority in England and Wales to introduce a Late Night Levy (LNL) in its area if it considers it desirable to raise revenue in relation to the costs of policing crime and disorder connected to supply of alcohol in that area between midnight and 6.00am. If such a Levy is introduced, it can apply at any time between midnight and 6.00am, and is payable by holders of Premises Licences and Club Premises Certificates which authorise the supply of alcohol during the period specified by the Licensing Authority, so called 'Late Night Authorisations'. The draft regulations sets out a number of matters in relation to the introduction and administration of the LNL.
- 2.3 The draft regulations do not set out the possible exemptions from the Late Night Levy. It is anticipated that these will follow shortly.

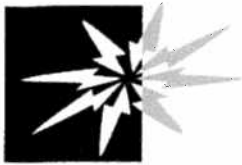
The main points to consider are:

- Local residents can use their existing rights to make representations and other channels of communication to call for the implementation of the levy in their area.
- Premises with overnight accommodation, theatres, cinemas, bingo halls, community premises, country village pubs and BIDs will be available as a discretionary local exemption from the levy.
- Restaurants, casinos and private member's clubs will not be available as a discretionary local exemption from the levy.
- The levy will not apply on New Year's Eve.
- Licensing authorities will be able to offer a 30% reduction from the levy for best practice schemes that meet relevant criteria and pubs that are in receipt of Small Business Rate Relief and have a rateable value below £12,000.
- There will be no cumulative discounts from the levy.
- Licensing authorities will be able to fund services that are connected to the management of the night-time economy and services that prevent and tackle alcohol-related crime and disorder with their revenue from the levy.

The amount of the Levy has been confirmed as follows, based upon the Non-domestic Rateable Value of the relevant premises:

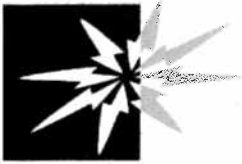
Table demonstrating Band Rateable Value Levy Amount

	A	B	C	D	E
Rateable Value Bands	No Rateable Value to £4,300	£4,301 to £33,000	£33,001 to £87,000	£87,001 to £125,000	£125,001 and above
Annual Levy charge	£299	£768	£1,259	£1,365	£1,493



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- 2.4 Premises liable to pay £1,365 or £1,493 (Bands D and E) will pay an additional fee if they are used exclusively or primarily for the supply of alcohol for consumption on the premises, they will pay £2,730 and £4,440 per year respectively. Premises under construction and not yet operational are also caught under the LNL and will fall into Band C. Developers with premises 'under construction' will be liable to a levy amount of £1,259.00 even where the building has not been completed.
- 2.5 The LNL will be payable on the date the annual fee is payable, unless the premises are granted a new premises license or vary an existing licence to bring it into the LNL in which case the fee is due 14 days after the grant or variation. Licensing Authorities will have the power to suspend licences for non-payment of the annual fee and the Levy.
- 2.6 There are no reductions if you become liable to pay the levy half way through a levy year; similarly, there are no reductions if you vary your licence to reduce the hours and therefore opt out of the levy hours during a levy year. Licensing Authorities may therefore see surges in applications immediately before the introduction of a Late Night Levy or its second and subsequent years - either by operators not wanting to be caught for a whole years' levy fee when they intend to reduce their hours, or alternatively operators planning to trade later and therefore wanting to make the most out of this added financial outlay.
- 2.7 There are provisions for adjustments to the levy if:
- a Licence or Certificate lapses due to Insolvency, Mental Incapacity or Death; or
 - the supply of alcohol during that late night supply period is prohibited by an Early Morning Restriction Order.
 - The Licensing Authority has a discretion to treat the surrender of a licence as requiring a reduction in the levy payment for that particular year.
- 2.8 The Licensing Authority's portion of the levy is limited to 30% and this must be used for the reduction or prevention of crime and disorder; the promotion of Public Safety; the reduction or prevention of Public Nuisance and/or the cleaning of any relevant highway. Local Authorities are obliged to account for how this money is spent.
- 2.9 The police will benefit from 70% of the money raised from premises caught by the LNL, it should be noted that the fee to the Police will have to be paid whether the Council is able to recoup the money from all the affected licence holders or not. The money owed would become a debt the Council would have to pay.
- 2.10 When proposing a Late Night Levy the Licensing Authority must:
- send a copy of the proposals to all holders of relevant Late Night Authorisations (not all Licence Holders), and only to those with licences with similar hours;
 - send a copy of the proposals to the Police;
 - it must also place a notice on its website and publish the proposals in a Local Newspaper or, if there is none, a Local News Letter;
 - the Notice must set out the start date for the Late Night Levy;
 - the hours during which the levy takes effect;
 - any permitted exemption or reduction categories; and



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- the proportion of the levy that will be going to the Police.

3 Conclusion- Key points:

- 3.1 It is interesting to note that the Regulations does not allow for economic factors to be taken into account. The Council will need to weigh up the level of late night problems associated with licensed premises in the borough and consider if declaring a levy would be the best way to deal with such problems. A levy may have a negative impact in an area and could see town centres made lifeless by the additional administration. The Council would have to be reliant on the Police demonstrating the crime and disorder matters stemming from the late night venues and their costs in dealing with these matters.
- 3.2 Haringey has not had the need to declare a 'Cumulative Impact Area' in any parts of the Borough due to late night drinking problems, so it would be a push to consider the need for a late night levy to be declared for the borough. In the 7 years since the Licensing Act 2003 has been in operation the Authority has had 2 licences revoked under the crime and disorder objective.
- 3.3 Members need to be aware that if a scheme were introduced that 30% of the fees collected in by the Council will have to be used in crime prevention measures, whereas the 70% of fees that will be given to the Police and they will not have any requirements placed upon them for it to be used for crime prevention measures in the late night economy or even within the borough it is collected.
- 3.4 It is important to point out that if the Council were to impose the levy scheme, existing licence holders would be able to vary their licenses at no extra cost, to adjust their hours for the sale of alcohol and leave their hours for regulated entertainment as it was (regulated entertainment is not affected by the levy). Customers could buy their alcohol before the terminal hour and still remain on the premises drinking that alcohol beyond the time the levy would have taken effect, consumption of alcohol is not a licensable activity. The license holder would not be caught by the levy as he/she would have ceased serving alcohol by the definitive time, but the premises would still be able to operate until its 4am closing time.
- 3.5 There is a current appeal case affecting Westminster Council that has the potential to have far reaching effects on the issue of levying costs for enforcement. The Licensing Act 2003 is one of the many legislations and services that were considered in the scope of the European Directive 2009. This Directive says that the Councils should not account for the cost of enforcement in the various functions affected; it should only seek to cover its cost in the administration of those functions. Representatives from the Home Office are watching this case with interest.
- 3.6 This judgement in itself does have implications across the board for Councils and a separate briefing on this matter will be presented to the Committee at a later date.