

**Report of Head of Licensing and Registration**

**Report to Licensing Committee**

**Date: 15th January 2013**

**Subject: Early Morning Restriction Orders**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input type="checkbox"/> No

**Summary of main issues**

1. The ability to make an early morning restriction orders was conferred on licensing authorities on 31<sup>st</sup> October 2012
2. This report provides details on the legislative process for making an order, and the information the licensing authority could require.

**Recommendations**

3. That Licensing Committee endorses the minimum level of evidence that will be considered to support an early morning restriction order application.
4. That Licensing Committee approves the process described in this report and illustrated at appendix 1 as the council's process for EMROs.

## **1 Purpose of this report**

- 1.1 To provide information to Licensing Committee on Early Morning Restriction Orders (EMRO) and the process that is required to make one.
- 1.2 To recommend to Licensing Committee that a minimum level of evidence is required and there is a period in which premises in the area can take remedial action before an EMRO is imposed.

## **2 Background information**

- 2.1 The power conferred on licensing authorities to make, vary or revoke an EMRO is set out in section 172A to 172E of the Licensing Act 2003. This power was brought into force on 31<sup>st</sup> October 2012 and the government has provided guidance as part of the S182 Guidance to Licensing Authorities.
- 2.2 This EMRO enables a licensing authority to prohibit the sale of alcohol for a specified time period between the hours of 12am and 6am in the whole or part of its area, if it is satisfied that this would be appropriate for the promotion of the licensing objectives.
- 2.3 EMROs are designed to address recurring problems such as high levels of alcohol related crime and disorder in specific areas at specific times; serious public nuisance and other instances of alcohol related anti-social behaviour which is not directly attributable to specific premises.
- 2.4 An EMRO:
  - Applies to the supply of alcohol authorised by premises licences, club premises certificate and temporary event notices;
  - Applies for any period beginning at or after 12am and ending at or before 6am. It does not have to apply on every day of the week and can apply for different time periods on different days of the week;
  - Applies for a limited or unlimited period (for example, an EMRO could be introduced for a few weeks to apply to a specific event);
  - Applies to the whole or any part of the licensing authority's area
  - Will not apply to any premises on New Year's Eve (defined as 12am to 6am on 1 January every year);
  - Will not apply to the supply of alcohol to residents by accommodation providers between 12am and 6am, provided the alcohol is sold through mini-bars/room service; and
  - Will not apply to a relaxation of licensing hours by virtue of an order made under section 172 of the Licensing Act 2003.

### 3 Main issues

#### Initial Request

- 3.1 It is expected that the need for an EMRO may be identified by a number of different organisations. For example the request for an EMRO may originate at an Area Committee, residents association or the local NPT. It may come via the Licensing Enforcement Group. It is likely that more than one organisation may be involved in the process.
- 3.2 It is anticipated that the request would be referred to Entertainment Licensing where a designated procedure will be applied to determine if an EMRO is appropriate. 3.3 If appropriate, the proposals would be to refer the request to the Licensing Committee. Members would be supplied with evidence of the the issues being experienced in the area in support of the EMRO. Licensing Committee will need to decide if, on the strength of the evidence provided, that an EMRO is appropriate for the promotion of the licensing objectives, and if further work is to be undertaken to support the case. Members may decide that other measures would be more effective in dealing with the problems, or that licence holders should engage with the authorities in an attempt to rectify matters before the request is considered further.

#### Evidence

- 3.4 The Section 182 Guidance to Licensing Authorities states that

*“The licensing authority should be satisfied that it has sufficient evidence to demonstrate that its decision is appropriate for the promotion of the licensing objectives. This requirement should be considered in the same manner as other licensing decisions, such as the determination of applications for the grant of premise licences. The licensing authority should consider the evidence from partners, including responsible authorities and local Community Safety Partnerships, alongside its own evidence, to determine when an EMRO would be appropriate for the promotion of the licensing objectives.”*

- 3.5 The guidance then goes on to suggest that the licensing authority may wish to consider the type of evidence it gathers to support a cumulative impact policy. In Leeds we use a variety of sources for evidence including:
- Police evidence of reported alcohol related crime
  - Nuisance statistics compiled from complaints made to Environmental Health in relation to noise, odour and litter nuisance
  - Data gathered from complaints made the Entertainment Licensing on matters which affect the licensing objectives.
  - Anecdotal evidence from residents organisations, ward members and other representatives of people living in a specific area

- Evidence obtained during the public consultation and associated public meetings

3.6 In addition the Guidance suggests other sources of evidence such as

- Health related statistics such as alcohol-related emergency attendances and hospital admissions

3.7 Licensing Committee may wish to endorse the approach that this level of evidence is the minimum it will consider to support an early morning restriction order and should, in part be provided by the organisation or group who are proposing an EMRO should be in force.

3.8

### Process

3.9 Once the Licensing Committee is satisfied that an EMRO is required to address the issues in an area, and all other measures have been tried and failed to address these issues, the formal process of implementing an EMRO will begin.

3.10 The licensing authority should decide on the design of the EMRO. The design should include:

- The days (and periods on those days) on which the EMRO would apply
- The area to which the EMSRO would apply
- The period for which the EMRO would apply
- The date from which the proposed EMRO would apply

3.11 The proposed EMRO must be advertised for at least 42 days. The proposal must be published on the council's website and in a local newspaper. A notice must be sent to all affected people in the area who hold a premises licence or club premises certificate, or people who use TENs or who hold a provisional statement. A notice must be displayed in the area, and sent to responsible authorities and adjacent licensing authorities.

3.12 Anyone affected by the EMRO has 42 days in which to make a representation on any aspect of the EMRO design. If relevant representations are received then a hearing must be held to consider them. If there are a number of representations, the licensing authority may consider whether to hold the hearing over several days. The hearing must be commenced within 30 working days of the end of the notice period.

3.13 As a result of the hearing the licensing authority has three options:

- To decide that the proposed EMRO is appropriate for promotion of the licensing objectives
- To decide that the proposed EMRO is not appropriate and therefore the process should be ended

- To decide that the proposed EMRO should be modified. In this case it may be necessary to advertise again.

### Approval

- 3.14 Once the licensing authority is satisfied that the proposed order is appropriate for the promotion of the licensing objectives, its determination must be put to full Council for its final decision. Once the EMRO is made, the authority must send a notice to all affected persons and make it available for 28 days on the website.
- 3.15 A variation of a revocation of an order must follow the same process, i.e. gather evidence, advertise, hold a hearing and send the final order to full Council. However an order could be applied for a specified time, and in this case the order ceases to apply on the final day.
- 3.16 Once an EMRO is in place, the licensing authority should update its Statement of Licensing Policy as soon as possible to include reference to the EMRO.
- 3.17 A flowchart of the proposed process is attached at appendix 1.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 The EMRO process has a legislative 42 day notice period where the Council must consult with those persons affected by the proposal, including holders of relevant authorisations, partner agencies, neighbouring authorities etc. Those people are able to make a representation and have that representation considered at a hearing.
- 4.1.2 Also in recognition of the serious nature of an EMRO, this report recommends including an additional step where, unless this has already happened, premises are given a period of time to take remedial action.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 An equality impact assessment screening process is undertaken on all policy consultations and licensing work. It is not expected that this process would have specific impact on equality, diversity, cohesion and integration matters. There is an opportunity in the process for affected persons to make representation and it is expected that any equality issues could be raised at that time.

### **4.3 Council policies and City Priorities**

- 4.3.1 An Early Morning Restriction Order is a power which is conferred to the licensing authority under the Licensing Act 2003 licensing regime.

4.3.2 The licensing regime contributes to the following aims:

**By 2030, Leeds will be fair, open and welcoming**

- Local people have the power to make decisions that affect them
- There is a culture of responsibility, respect for each other and the environment
- Our services meet the diverse needs of our changing population
- Everyone is proud to live and work

**By 2030, Leeds' economy will be prosperous and sustainable**

- Opportunities to work with secure, flexible employment and good wages

**By 2030, all Leeds' communities will be successful**

- Communities are safe and people feel safe

4.3.3 The licensing regime contributes to the following city priorities:

**Best city... for communities:**

- Reduce crime levels and their impact across Leeds
- Effectively tackle and reduce anti-social behaviour in communities

#### **4.4 Resources and value for money**

4.4.1 An Early Morning Restriction Order requires significant resources to coordinate the gathering of evidence and the design of the levy. There is also a cost in providing a public consultation, including advertising. There is no licence fee or charge made against the organisation requesting the order, and therefore it is a burden on resources not met under the licence fee.

#### **4.5 Legal Implications, Access to Information and Call In**

4.5.1 As an EMRO restricts the use of a licence, and has an immediate effect on licensed premises, it is highly likely that an EMRO will be challenged by way of a Judicial Review.

#### **4.6 Risk Management**

4.6.1 A good evidence base, providing the opportunity to change and allowing proper consultation may well go some way to mitigate the risk of Judicial Review.

### **5 Conclusions**

5.1 Making an EMRO is a power conferred on licensing authorities under the Licensing Act 2003. A process is laid out in secondary legislation which should ensure a fair hearing for anyone affected by an EMRO, however there are still significant risk of legal challenge. Good evidence, a clear process and the opportunity to change practices to avoid the implementation of an EMRO may go some way to mitigate that risk.

## **6 Recommendations**

- 6.1 That Licensing Committee endorses the minimum level of evidence that will be considered to support an early morning restriction order application.
- 6.2 That Licensing Committee approves the process described in this report and illustrated at appendix 1 as the council's process for EMROs.

## **7 Background documents<sup>1</sup>**

- 7.1 There are no unpublished background documents.

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<sup>1</sup> The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.

## EMRO Process

