





**Brighton & Hove
City Council**

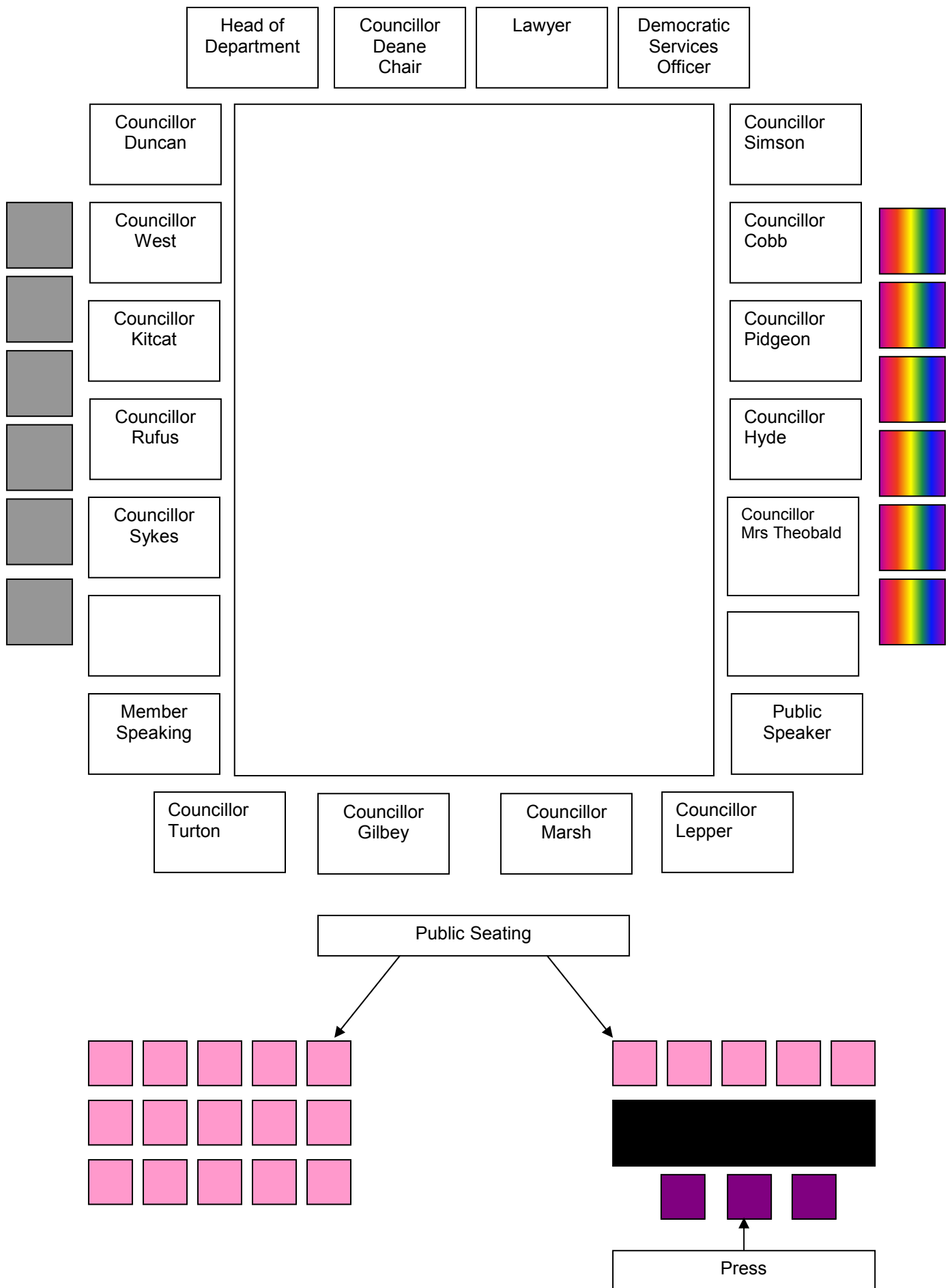
Licensing Committee

(Licensing Act 2003 Functions)

Title:	Licensing Committee (Licensing Act 2003 Functions)
Date:	8 March 2012
Time:	3.00pm
Venue	Council Chamber, Hove Town Hall
Members:	Councillors: Deane (Chair), Sykes (Deputy Chair), Cobb, Duncan, Gilbey, Hyde, A Kitcat, Lepper, Marsh, Pidgeon, Rufus, Simson, C Theobald, Turton and West
Contact:	Penny Jennings Democratic Services Officer 01273 291065 penny.jennings@brighton-hove.gov.uk

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Democratic Services: Meeting Layout



AGENDA

Part One

Page

20. PROCEDURAL BUSINESS

- (a) Declaration of Substitutes - Where Councillors are unable to attend a meeting, a substitute Member from the same Political Group may attend, speak and vote in their place for that meeting.
- (b) Declarations of Interest by all Members present of any personal interests in matters on the agenda, the nature of any interest and whether the Members regard the interest as prejudicial under the terms of the Code of Conduct.
- (c) Exclusion of Press and Public - To consider whether, in view of the nature of the business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

NOTE: Any item appearing in Part 2 of the Agenda states in its heading either that it is confidential or the category under which the information disclosed in the report is exempt from disclosure and therefore not available to the public.

A list and description of the categories of exempt information is available for public inspection at Brighton and Hove Town Halls.

21. MINUTES OF THE PREVIOUS MEETING

1 - 6

Minutes of the meeting held on 17 November 2011 (copy attached)

22. CHAIR'S COMMUNICATIONS

23. PUBLIC QUESTIONS

(The closing date for receipt of public questions is 12 noon on 1 March 2012)

No public questions received by date of publication.

24. CONSULTATION RESPONSE ON LATE NIGHT LEVIES AND EARLY MORNING RESTRICTION ORDERS

7 - 54

Report of the Head of Planning and Public Protection (copy attached)

Contact Officer: Jean Cranford

Tel: 29-2550

Ward Affected: All Wards

25. SCHEDULE OF REVIEWS

55 - 56

Report of the Head of Planning and Public Protection (copy attached)

LICENSING COMMITTEE (LICENSING ACT 2003 FUNCTIONS)

Contact Officer: Jean Cranford *Tel:* 29-2550
Ward Affected: All Wards

26. SCHEDULE OF LICENSING APPEALS RECEIVED

57 - 58

Report of the Strategic Director, Resources (copy attached)

Contact Officer: Rebecca Sidell *Tel:* 29-1511
Ward Affected: All Wards

27. ITEMS TO GO FORWARD TO COUNCIL

To consider items to be submitted to the 22 March 2012 Council meeting for information.

In accordance with Procedural Rule 24.3a the Committee may determine that any item is to be included in its report to Council. In addition each Minority Group may specify one further item to be included by notifying the Chief Executive by 10.00am on 12 March 2012.

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For further details and general enquiries about this meeting contact Penny Jennings, (01273 291065), email penny.jennings@brighton-hove.gov.uk or email democratic.services@brighton-hove.gov.uk

Date of Publication - Wednesday, 29 February 2012

LICENSING COMMITTEE (LICENSING ACT 2003 FUNCTIONS)	Agenda Item 21 Brighton & Hove City Council
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BRIGHTON & HOVE CITY COUNCIL

LICENSING COMMITTEE (LICENSING ACT 2003 FUNCTIONS)

3.00PM 17 NOVEMBER 2011

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

Present: Councillors Deane (Chair), Sykes (Deputy Chair), Cobb, Duncan, Gilbey, Hyde, J Kitcat, Lepper, Marsh, Pidgeon, Rufus, Simson, C Theobald and West

Apologies: Councillors Turton

PART ONE

11. PROCEDURAL BUSINESS

11a Declaration of Substitutes

11.1 Councillor J. Kitcat declared that he was substituting for Councillor A. Kitcat.

11b Declarations of Interest

11.2 There were none.

11c Exclusion of the Press and Public

11.3 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Committee considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I of the Act).

11.4 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of the items listed on the agenda.

12. MINUTES OF THE PREVIOUS MEETING

- 12.1 Councillor Marsh referred to paragraph 1.2 and suggested that some clarification was required to the wording.
- 12.2 The Committee agreed that the paragraph should be revised and asked that the Democratic Services Officer rewrite the paragraph and amend the minutes accordingly.
- 12.3 **RESOLVED** – That the minutes of the Licensing Committee (Licensing Act 2003 Functions) Meeting held on 23rd June 2011 be agreed and signed as a correct record subject to the amendment to paragraph 1.2 being completed and approved the Chair.

13. CHAIR'S COMMUNICATIONS

- 13.1 The Chair reported that with regard to Alcohol Pricing, in September, as Licensing Chair she wrote, with the Council's Chief Executive and the Director of Public Health, to the Home Secretary and Her Majesty's Treasury. They expressed concerns over some of the negative impacts of binge drinking, pre loading and street drinking, assaults, rowdyism and ill health. Licensing controls do not address the supply of alcohol currently, except the cumulative impact zone. We recommended addressing affordability and accessibility by using VAT to discourage off sales but support the local hospitality sector. Hazardous drinking is a public health issue and licensing authorities are limited in the remedial action they can take.
- 13.2 The Treasury responded to me, explaining that the alcohol tax system is constrained by EU legislation. Apparently the EU's VAT rules do not allow different tax rates for the same product, although member states can apply a reduced rate to restaurants. The Government's proposals to address problem drinking have included:
- a ban to sell alcohol below cost, although this is only duty and VAT;
 - an increased duty on super strength beer; and
 - the public health responsibility deal.
- 13.3 Although I appreciated the thoughtful response, I am still concerned, particularly about rising alcohol related morbidity and mortality. The National Institute for Health & Clinical Excellence recognises that the critical ways of preventing harmful drinking are by raising price, reducing availability and limited marketing.

14. PUBLIC QUESTIONS

- 14.1 The Chair noted that no public questions had been submitted.

15. STATEMENT OF LICENSING POLICY CONSULTATION RESPONSE

- 15.1 The Licensing Manager introduced the report which outlined the findings of a consultation exercise in relation to a review of the Council's Licensing Policy, which included the proposed increase of the Cumulative Impact Area (CIA) and Special Stress Areas (SSA) and the introduction of a 'matrix' approach to licensing decision making.

She noted that the review had followed a request from the Council meeting in February and a report to Committee in June. The council's consultation portal had been used and 178 responses had been received along with twelve separate letters. She noted that the majority of respondents were in favour of extending the areas and the matrix approach, although the Brighton and Hove Licensees Association was opposed to it. She also noted that with regard to the matrix approach the reference on page 28 for night clubs in mixed commercial and residential areas should be listed as a 'No' rather than a yes.

- 15.2 The Lawyer to the committee stated that in relation to Licensing Guidance, the requirement in the Licensing Act 2003, Section 4, was for the authority to have regard to guidance issued by the Secretary of State. This did not mean that it must be followed to the letter and it was permissible to depart from the guidance for good reason, in particular if local circumstances and experience warranted this. Brighton and Hove had a complex local picture and the responses had highlighted this, referring to problems for example of pre-loading, street drinking and proxy purchasing.
- 15.3 Members of the Committee welcomed the report but queried whether in view of the level of responses it was felt that any legal challenge to an extended CIA could be withstood. Members also expressed concern over how the consultation responses and findings were being reported as some aspects were confusing.
- 15.4 The Head of Environmental Health and Licensing stated that any change in the policy had to be approved by the Full Council and national guidance provided that a local authority set its CIA as it wishes as long as there is local evidence to support that. The Council had been advised in December 2010 by its Monitoring Officer that any changes required due consideration and consultation to be undertaken beforehand, hence the decision to refer back to the Committee and to have the consultation exercise. He could not guarantee the outcome of a legal challenge but any changes to the policy would have resulted from a fair process. He noted the concern over how the information was produced following the consultation and would raise this with the officers responsible.
- 15.5 Councillors West, Simson and Lepper noted the comments and stated that they would have found it helpful to have had a better explanation of the findings. They felt that there was some confusion even for individual respondents in responding to the various questions and this meant that there was a degree of misunderstanding in that an extended CIA would not necessarily mean no new licences were approved.
- 15.6 Councillor Simson also felt that the response rate was not sufficient to get a full picture of how residents felt and that legal challenge remained a concern.
- 15.7 Councillor Hyde also expressed concern in relation to low number of responses to the consultation exercise and in particular whether residents in the Marina had been aware of the process.
- 15.8 Councillor C. Theobald stated that she felt the process had been well managed and noted that an extended CIA should reduce the number of applications coming forward and that it was supported by the police. She therefore fully supported the recommendations detailed in the report.

- 15.9 Councillor West noted that there was an overwhelming support for the extension of the CIA, and SSA's and the matrix approach. However he was concerned that the matrix was not well defined and therefore could lead to a lack of consistency.
- 15.10 Councillor J. Kitcat stated that he welcomed the proposed changes to the policy and noted that Brighton and Hove was a unique area and in a unique position and therefore believed that the policy could be defended should it be subject to legal challenge. He therefore hoped that the committee would support the recommendations.
- 15.11 Councillor Marsh stated that she felt further clarification was required on how the CIA and SSA's would operate and that the council would need the support of its regulatory partners if it was going to be successful. There were other factors such as on/off premises selling cheap alcohol and the changing ownership of premises that needed to be addressed. The greater availability of alcohol and pricing were two factors that had to be taken into account.
- 15.12 Councillor Lepper stated that as a licensing authority Brighton and Hove had a good reputation, and having taken a brave decision to introduce the CIA, it gained support of all involved. However, she had some misgivings in regard to the proposed extension and felt that further consideration was needed before a recommendation was made to council.
- 15.13 Councillor West stated that he had had similar misgivings but felt that these had been addressed and therefore supported the recommendations.
- 15.14 Councillor Cobb stated that there was a concern about residents' expectations and how these could be addressed, and she was also concerned about the impact an increased CIA would have on council and partner organisations' resources.
- 15.15 The Head of Environmental Health and Licensing stated that the council had met its statutory obligations and it was for elected representatives to determine the policy.
- 15.16 Councillor Kitcat formally moved that the item be put to the vote.
- 15.17 Councillor Duncan seconded the motion.
- 15.18 The Chair noted that the motion had been moved and put it to the vote which was carried. She therefore stated that she would put the recommendations as listed in the report to vote.
- 15.19 **RESOLVED:**
- (1) That the council be recommended to approve the expansion of the Cumulative Impact Area and the Special Stress Area as shown on the map in appendix 3 to the report; and
 - (2) That the council be recommended to implement a 'matrix' approach to licensing decisions as shown in appendix 1 to the report.

15.20 The Chair noted that the meeting had been in progress for sometime and decided to hold a short adjournment for Members convenience.

15.21 The meeting was adjourned at 4.55pm.

15.22 The Chair reconvened the meeting at 5.00pm.

16. DCMS PROPOSALS TO DEREGULATE REGULATED ENTERTAINMENT

16.1 The Licensing Manager introduced the report and stated that the Department of Media & Support (DCMS), had issued a consultation document which outlined proposals to deregulate regulated entertainment for audiences of less than 5000 people. She stated that officers were concerned that such deregulation was not appropriate and sought agreement to respond to the consultation on that basis.

16.1 Councillor West expressed concern over the proposal and suggested that a response from the Council should be clear in that it was not an appropriate way forward and that the figure of 5000 was too high.

16.2 Members of the Committee expressed their concern over the proposals and the possibility of reduced numbers being introduced should the 5000 figure be seen as too high but deregulation still preferred by the government.

16.3 Councillor Duncan proposed that the recommendation should be amended to delete the wording after the word 'justified' as this would give a clear indication of the council's view on this matter.

16.4 Councillor J. Kitcat seconded the motion.

16.5 Councillor Lepper proposed that a letter should also be sent to the Secretary of State, outlining the council's view in the strongest terms that there should be no deregulation and pointing out how well the control of entertainment works in the city with regulation in place.

16.6 Councillor J. Kitcat seconded the motion.

16.7 The Chair noted that two motions had been moved and put each to the vote which were carried and therefore put the amended recommendation 1 and the additional recommendation 2 to the vote which were carried.

16.8 RESOLVED:

(1) That the officers concerns regarding deregulated entertainment be noted and that the council's response to DCMS is that deregulation is not justified; and

(2) That officers be requested to write to the Secretary of State for Culture, Media & Support expressing the Committee's view that deregulation should not take place.

17. SCHEDULE OF REVIEWS

17.1 **RESOLVED:** That the report be noted.

18. SCHEDULE OF APPEALS RECEIVED

18.1 Councillor Duncan welcomed the outcome of the Sainsbury's appeal as detailed.

18.2 **RESOLVED:** That the report be noted.

19. ITEMS TO GO FORWARD TO COUNCIL

19.1 **RESOLVED:** That Item 15, Statement of Licensing Policy Consultation Response be referred to Council for approval.

The meeting concluded at 5.30pm

Signed

Chair

Dated this

day of

LICENSING COMMITTEE (LICENSING ACT 2003 FUNCTIONS)

Agenda Item 24

Brighton & Hove City Council

Subject:	Consultation response on Late Night Levies and Early Morning Restriction Orders Report		
Date of Meeting:	8 March 2012		
Report of:	Head of Planning and Public Protection		
Contact Officer:	Name:	Jean Cranford	Tel: 29-2550
	Email:	jean.cranford@brighton-hove.gov.uk	
Ward(s) affected:	All		

FOR GENERAL RELEASE/ EXEMPTIONS

1. SUMMARY AND POLICY CONTEXT:

- 1.1 To report on the response to Home Office on proposed Late Night Levies (LNLs) and Early Morning Restriction Orders (EMROs).

2. RECOMMENDATIONS:

- 2.1 That Committee note the report.
- 2.2 That members to resolve to agree the consultation response

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The Early Morning Restriction Order was an uncommenced power within the Licensing Act 2003, reintroduced by the Police Reform and Social Responsibility Act 2011 (PRSRA) at Part 2, section 119. Chapter 2, section 125, of the PRSRA introduced the concept of Late Night Levies as part of "Rebalancing the Licensing Act".
- 3.2 On 17 January 2012, the Home Office launched a consultation paper "Dealing with the problems of late night drinking – a consultation on secondary legislation for the Late Night Levy and Early Morning Restriction Orders". Consultation runs for 12 weeks and will close on 10 April 2012. Here is a link to the website <http://www.homeoffice.gov.uk/publications/about-us/consultations/late-night-drinking/>
- 3.3 Early Morning Restriction Orders could be applied by licensing authorities flexibly between midnight and 6am to restrict the sale of alcohol. Licensing authorities could apply these orders to areas where they consider that restricting the late night supply of alcohol is appropriate to promote the licensing objectives. Before this power is commenced, regulations must be made which will prescribe details

- of the process for making an EMRO and the kinds of premises that will be exempt from an EMRO.
- 3.4 There is no fee payable by premises within an EMRO but there are many steps that would have to be taken by the licensing authority including notifying all responsible authorities and holders of club premises certificates and premises licences, advertising the proposed order to residents and others who may be adversely affected by the proposed order who then have 28 days to make relevant representations (for or against), the authority then considers representations and holds any hearings that may be required. If satisfied that the proposed order is 'appropriate' the authority would have to have the order approved by Full Council.
 - 3.5 The licensing authority would decide on a start date for the order, no less than two months after it is made and would then put the order and its justification onto its website and would have to notify all affected premises. The authority would also have to put notices in the affected area.
 - 3.6 The Late Night Levy would allow licensing authorities to raise a contribution from late opening alcohol retailers towards the policing costs generated by the late night economy. The levy would apply to all premises (on and off-trade) throughout the licensing authority's area which are authorised to sell or supply alcohol in the time period set by the licensing authority (any time between midnight and 6am). The levy would not apply to Temporary Event Notices. The 2011 PRSRA makes provision for the Government to prepare draft regulations before the levy scheme is commenced. Regulations will prescribe details of the process for adopting the late night levy.
 - 3.7 Prior to making a decision to implement the levy, the licensing authority would have to have discussions with the Police and Crime Commissioner (PCC) and local police to decide whether it is appropriate to introduce the levy in its area. If so, the licensing authority must formally consult the PCC, the police, licence holders and others about its decision to introduce the levy. (The PCC has not yet been appointed).
 - 3.8 There is a fee payable by premises within the LNL, based around the rateable value of the premises. (LNL Fee: Band A £299, Band B £768, Band C £1259, Band D £1365 (with multiplier £2730), Band E £1493 (with multiplier £4440)). Fees would be collected by the licensing authority, and money raised from the levy, minus administration costs would be shared with a minimum of 70% going to the Police and a maximum of 30% to the licensing authority.
 - 3.9 The licensing authority should use the 30% to fund late night services such as late night street wardens, late night taxi marshals and late night street cleaning. Police may use their 70% for high profile policing initiatives to tackle violent or disorderly behaviour, multi-agency education and information programmes (understanding the risk to children and young persons targeted at parents and teachers; ditto targeted at bar staff in the night time economy to increase awareness of risks, vulnerability and consequences; 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).

- 3.10 Licence holders wishing to avoid the effects of EMRO or LNL will be able to make a minor variation to bring back their hours. This would normally cost £89 but under this legislation, would be free of charge to them whilst involving the licensing authority in a potentially massive amount of work.
- 3.11 There are likely to be exemptions to some categories of premises, such as premises with overnight accommodation (B&B or hotel who does not sell to non-residents), restaurants, theatres and cinemas, casinos and bingo halls, community amateur sports clubs and community premises, although officers would seek greater definition for some of these categories.
- 3.12 There may be a reduction (10%) to the fee paid if the licence holder was part of a Business Improvement District; if they receive small business rate relief; if they are a members club; if they take part in best practice schemes (like Best Bar None, Pubwatch, Clubwatch, Shopwatch) or contribute towards a Community Alcohol Partnership (up to a total of 30%). Greater clarification on these categories will be sought by officers.
- 3.13 Officers intend to respond to the consultation – see appendix 1 and 2.

4. COMMUNITY ENGAGEMENT AND CONSULTATION

- 4.1 This matter has been discussed at the Licensing Strategy Group.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 Officers are concerned about the number of free Minor Variation Applications that would have to be dealt with. The Home Office Impact Assessment (IA) states on page 16 “There may be other costs in administering the levy, such as sending out a levy invoice, but these processes will be done in tandem with the existing licence fee regime and will not constitute a new cost”. Page 17 of the IA “Enforcement” states “There will not be any significant cost in enforcement costs. The late night levy can be collected alongside the annual licence fee and contain negligible new costs”. The licensing authority will only be able to keep up to 30% of income collected (after administration costs have been taken out) but this will have to be used as specified (see 3.8). Officers are concerned that introduction of EMROs or LNL will necessitate a large amount of work not already carried out, possibly requiring more staff.

Finance Officer Consulted: Karen Brookshaw Date: 22/02/12

Legal Implications:

- 5.2 Within the body of the report

Lawyer Consulted: Rebecca Sidell Date: 22/02/12

Equalities Implications:

- 5.3 None

Sustainability Implications:

- 5.4 Late night levy and EMRO could lessen night time noise disturbance and disorder.

Crime & Disorder Implications:

- 5.5 LNL and EMRO are government policies to address late night disorder.

Risk and Opportunity Management Implications:

- 5.6 There is a risk to the local economy based in entertainment and the licensed trade.

Public Health Implications:

- 5.7 Reduced alcohol availability should reduce alcohol related harms.

Corporate / Citywide Implications:

- 5.8 A balance needs to be struck between protecting residents from nuisance and protecting local economy.

SUPPORTING DOCUMENTATION

Appendices:

- 1. Officers proposed response to consultation.
- 2. Extract from Dealing with the problems of late night drinking (pages 8-16)
- 3. Dealing with the problems of late night drinking
- 4. LNL flow chart
- 5. EMRO flow chart
- 6. LNL – subsequent year flow chart

Documents in Members' Rooms

- 1. None

Background Documents

- 1. None

**DEALING WITH THE
PROBLEMS OF LATE
NIGHT DRINKING**
A CONSULTATION
ON SECONDARY
LEGISLATION FOR
THE LATE NIGHT LEVY
AND EARLY MORNING
RESTRICTION ORDERS

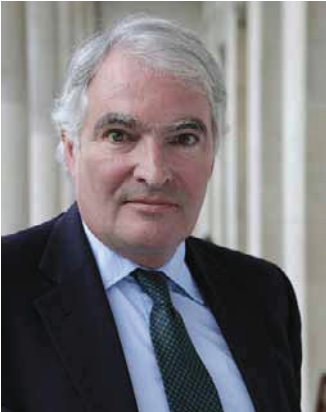


Home Office

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MINISTERIAL FOREWARD



I believe that problems in the night-time economy should be addressed locally. The Government is committed to ensuring that the police and local authorities are given the right tools to address the alcohol-related problems in their area, whilst promoting a vibrant night-time economy to benefit business and the community that they serve. The late night levy and the extension of Early Morning Restriction Orders (“EMROs”) will enable local authorities to achieve this. If local communities are concerned about premises that are open into the early hours of the morning and causing problems, then they should be able to respond flexibly. The majority (64%) of all violence occurs in the evening or at night and one-fifth of all violent incidents take place in or around a pub or club. By extending EMROs so that they can be applied from midnight, local authorities will have an additional tool to address problem areas in the night time economy.

Where there is a vibrant late night economy, with premises remaining open into the early hours, then the local authority should have the flexibility to charge for a contribution towards any additional policing that this generates. Tax payers should not simply be left to pick up this cost. People who enjoy a night out often visit a variety of premises and it is appropriate that the costs are shared between these businesses.

This consultation seeks views on the details of the regulations that will implement these policies. In particular, it asks for views on what categories of premises should enjoy exemptions and reductions under both measures. For example, I do not wish to unfairly penalise premises which are not part of the wider late night economy. These include, for example, hotels and B&Bs which serve only to guests, and the consultation therefore proposes these as one of the categories of exemption from both measures.

I would very much welcome views on these and other proposals on how the late night levy and EMROs will be implemented. Overall, our intention is that both measures will empower local communities to act to achieve a more viable night time economy.

A handwritten signature in black ink, appearing to read 'Henley'.

Lord Henley

Minister of State for Crime Prevention and Antisocial Behaviour Reduction

1. INTRODUCTION

- 1.01 This consultation is about two measures in the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”) that will be implemented through regulations: Early Morning Restriction Orders (“EMROs”) and the late night levy (“the levy”).
- 1.02 Alcohol-related crime and disorder is a serious problem for many of our communities. The promised “café-culture” from later drinking hours has not materialised. In 2010/11, almost one million violent crimes were alcohol-related and almost half of surveyed violent crime victims believed the offender to be under the influence of alcohol. The police are fighting an expensive battle against alcohol-related crime and disorder. The Coalition Programme for Government recognised these problems and contained a set of commitments to tackle alcohol misuse, especially late at night. The necessary changes to primary legislation have been made through the 2011 Act.
- 1.03 EMROs will help licensing authorities to address specific problems caused by the late night supply of alcohol in their areas. An EMRO is a power introduced by the previous Government (which has not yet been commenced) which, under existing provisions, would enable licensing authorities to restrict the sale of alcohol in the whole or a part of their areas between 3am and 6am on all or some days. The 2011 Act amends existing provisions to allow EMROs to be applied more flexibly between midnight and 6am. Licensing authorities will be able to make an EMRO in relation to problem areas if they have evidence that the order is appropriate for the promotion of the licensing objectives. However, we believe that some types of premises should not be subject to an EMRO. Section 4 of this consultation considers exemptions to the EMRO power that will apply to all EMROs.
- 1.04 The levy will allow licensing authorities to raise a contribution from late-opening alcohol retailers towards policing the late night economy. It will be a local power that licensing authorities can choose whether to adopt for their areas. The licensing authority will also choose the period during which the levy applies, between midnight and 6am on each night. Non-exempt premises licensed to supply alcohol in this period will be required to pay the levy.
- 1.05 Licensing authorities will decide whether any (and, if so, which) of the categories of exemptions and reductions will apply to the levy. Section 6 of this consultation considers the available categories of premises to which exemptions and reductions will apply. The government is also keen to promote local and business-led initiatives. Many businesses successfully work together in schemes like Best Bar None, Business Improvement Districts (BIDs) and Community Alcohol Partnerships. Authorities and business communities might wish to consider these schemes as possible alternatives or complements to EMROs or the levy. Section 6 also considers this issue.
- 1.06 To inform this consultation, working groups and meetings were held with representatives from the police, the licensed trade, best-practice schemes, licensing authorities and the hospitality industry.
- 1.07 A consultation-stage Impact Assessment is attached to this consultation. This will be updated following the consultation if necessary.

2. ABOUT THIS CONSULTATION

Scope of the consultation

Topic of this consultation:	<p>This consultation seeks views on certain aspects of EMROs and the late night levy.</p> <p>EMROs</p> <ul style="list-style-type: none">• Process of adopting an EMRO.• Categories of business which will be exempt from any EMRO. <p>Late night levy</p> <ul style="list-style-type: none">• Process of adopting the levy.• Categories of business which individual licensing authorities may choose to exempt from, or afford a reduction in relation to, the late night levy.• The kinds of services a licensing authority may fund with the 30% of net levy receipts it may retain from the net levy revenue.
Scope of this consultation:	<p>Regulations will be made under powers in the 2011 Act and Licensing Act 2003 in relation to the late night levy and EMROs. The Government intends to commence both powers, but would like to hear views on the above and on the impact assessment before preparing the regulations.</p>
Geographical scope:	<p>England and Wales</p>
Impact assessment (IA):	<p>A consultation stage IA is included with the consultation document. A small firm impact test is included</p>

Basic Information

To:	We are keen to hear from everyone who will be affected by the two measures, including; members of the public to whom alcohol is supplied; those affected by alcohol-related crime; those that own or work in pubs, clubs, supermarkets and shops; best practice scheme representatives; criminal justice agencies; licensing authorities; and trade associations representing those who sell alcohol.
Duration:	The consultation runs for 12 weeks from 17th January to 10th April.
Enquiries:	Alcohol.Consultation@homeoffice.gsi.gov.uk
How to respond:	Information on how to respond to this consultation can be found on the Home Office Website at http://www.homeoffice.gov.uk/about-us/consultations . Responses can be submitted online through the Home Office website or by post by sending responses to: Home Office Drugs and Alcohol Unit 4th Floor Fry Building 2 Marsham Street London, SW1P 4DF
Additional ways to become involved:	Please contact the Home Office (as above) if you require information in any other format, such as Braille, large font or audio. The Department is obliged to offer, and provide on request, these formats under the Equality Act 2010.
After the consultation:	Responses will be analysed and a 'Response to Consultation' document will be published. This will explain the Government's final policy intentions. All responses will be treated as public, unless stated otherwise.

Background

Getting to this stage:	The two powers were consulted on as part of the ‘Rebalancing the Licensing Act’ consultation (Summer 2010) and introduced in the Police Reform and Social Responsibility Act (September 2011).
Previous engagement:	The government has already consulted a number of key partners prior to publishing this consultation. As well as engagement as part of the ‘Rebalancing the Licensing Act’ consultation, officials have held pre-consultation working groups with stakeholders from the on and off trade; police and local authorities; best practice schemes and the voluntary sector.

PART 1 EARLY MORNING RESTRICTION ORDERS

3. PROCESS

3.01 The 2011 Act allows an EMRO to be applied by licensing authorities flexibly between midnight and 6am to restrict the sale of alcohol. Licensing authorities can apply these orders to areas where they consider that restricting the late night supply of alcohol is appropriate to promote the licensing objectives. Before this power is commenced, regulations must be made.

3.02 The regulations will prescribe details of the process for making an EMRO and the kinds of premises that will be exempt from an EMRO. Consultation respondents are asked to consider the proposed process map in Annex A.

CONSULTATION QUESTION 1:

Do you think that the proposed processes for Early Morning Restriction Orders include sufficient consultation with those likely to be affected by an EMRO?

Yes

No

Don't know

If no, please explain what else is needed

4. EXEMPTIONS TO EMROS

4.01 EMROs are designed to address recurring problems with alcohol-related crime and disorder in specific areas. The licensing authority will be able to decide during which hours the EMRO will apply, whether it is applied every day or on particular days; whether it will run for a limited or unlimited period; and whether it will apply to whole or part of the licensing authority's area. In each case, the decision will be based on what is appropriate for the promotion of the licensing objectives¹. There are some types of premises

¹ Licensing objectives are: the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm.

which should not be subject to an EMRO, wherever it is applied. Some businesses, wherever they may be located, do not contribute to alcohol-related crime and disorder. For example, a hotel may only serve alcohol to its guests who are staying overnight. As such, the 2011 Act enables the Secretary of State to make regulations which prescribe exemptions to an EMRO by reference to particular kinds of premises or particular days.

4.02 Many licences have additional authorisations on New Year's Eve to stay open later than usual. The government proposes that EMROs will not apply between midnight on 31st December and 6am on 1st January of each year.

CONSULTATION QUESTION 2:

The government proposes that EMROs will not apply (i.e. will not restrict alcohol sales) between midnight on 31st December and 6am on 1st January of each year. Do you think that EMROs should apply on New Year's Eve?

Yes – the EMRO should apply on New Year's Eve

No – the EMRO should not apply on New Year's Eve

Neither agree nor disagree

Don't know

Please give reasons for your answer

4.03 Local discretion in setting the EMRO area is paramount, and the intention is to have only a few nationally prescribed exemptions. Some premises may need to vary their licence (to, for example, add a condition via the minor variations process) before an exemption is applicable to them.

4.04 EMROs will operate to restrict alcohol sales even when a Temporary Event Notice (TEN) is otherwise in effect. Section 172 of the Licensing Act 2003 enables the Secretary of State to make a licensing hours order to relax licensing hours on special occasions. Primary legislation includes

provision that, unless the licensing hours order provides otherwise, the EMRO will not be effective to prevent alcohol sales in a period to which the extended hours order applies.

relevant period will be members or their guests; or those who stay overnight; or those who attend for a performance. We also propose that there is an exemption for community premises which have demonstrated that they do not need a Designated Premises Supervisor (DPS). We propose that the following exemptions will apply to every EMRO:

4.05 The proposed exemptions cover some types of premises where the only customers during the

Name	Definition
Premises with overnight accommodation	Premises at which the sale of alcohol is subject to a condition to the effect that, between midnight and 6am, such sales can only be made to residents for consumption on the premises. This will not exempt hotels and guest houses that serve alcohol to members of the public who are not staying overnight at the premises.
Theatres and cinemas	Premises at which the sale of alcohol is subject to a condition to the effect that, between midnight and 6am, such sales can only be made to ticket holders or participants in the production for consumption on the premises, when there is otherwise no access to the general public.
Community premises	Those premises that have successfully applied to remove the mandatory DPS requirement.
Casinos and bingo halls with a membership scheme	Premises licensed to provide these facilities for gambling under the Gambling Act 2005 with a membership scheme in operation between midnight and 6am.

CONSULTATION QUESTION 3:

Do you agree or disagree that the categories of premises above should be exempt from EMROs?

- Agree – these categories of premises should be exempt from EMROs
- Disagree – these categories of premises should not be exempt from EMROs
- Neither agree nor disagree
- Don't know

Please give reasons for your answer, specifying any exemptions that you disagree with

CONSULTATION QUESTION 4:

Do you have any other suggestions on the types of premises that should be considered for an exemption from EMROs?

- Yes
- No
- Don't know

If yes, please specify which other types of premises and give reasons.

PART 2 THE LATE NIGHT LEVY

5. PROCESS

- 5.01 The levy will allow licensing authorities to raise a contribution from late opening alcohol retailers towards the policing costs generated by the late night economy. The levy will apply to all premises (on and off-trade), throughout the licensing authority's area, which are authorised to sell or supply alcohol in the time period set by the licensing authority. This can be any time between midnight and 6am. Section 172 of the Licensing Act 2003 permits the Secretary of State to make a licensing hours order to relax licensing hours on special occasions. The Government intends to ensure that this will not result in some premises inadvertently becoming liable to pay the late night levy. The levy will not apply to TENs. The 2011 Act makes provision for the Government to prepare draft regulations before the levy scheme is commenced.
- 5.02 Regulations will prescribe details of the process for adopting the late night levy. Consultation respondents are asked to consider the proposed process maps in Annex B.
- 5.03 Prior to making a decision to implement the levy, it is intended that the licensing authority will have discussions with the Police and Crime Commissioner (PCC) and local police to decide whether it is appropriate to introduce the levy in its area. If so, the licensing authority must formally consult the PCC, the police, licence holders and others about its decision to introduce the levy. The consultation should ask whether it needs to apply any exemptions or discounts to the levy and how it will apportion net levy revenue between the police and licensing authority. The licensing authority will have the final decision in all of these areas.

CONSULTATION QUESTION 5:

Do you think that there should be an option for local residents/ community groups to recommend the implementation of the levy in their area?

- Yes
- No
- Don't know

If yes, do you have any suggestions on how this process should operate?

6. EXEMPTIONS AND REDUCTIONS TO THE LEVY

- 6.01 There are some types of premises which licensing authorities may consider should not make a contribution towards late night police costs through the late night levy. To enable local discretion, the levy will allow licensing authorities to select exemptions or reductions that they consider should apply in their area. It is proposed that the following types of business are available as exemptions for licensing authorities to adopt:

Name	Definition
Premises with overnight accommodation	Premises at which the sale of alcohol is subject to a condition to the effect that, between midnight and 6am, such sales can only be made to residents for consumption on the premises. This will not exempt hotels and guest houses that serve alcohol to members of the public who are not staying overnight at the premises.
Restaurants	<p>Premises that have condition(s) on their licence that have the effect of making clear their status as restaurants run on a permanent, more formal basis. These could, for example, include conditions which require that, between midnight and 6am:</p> <ul style="list-style-type: none"> (i) customers are shown to their table; (ii) food is provided in the form of substantial table meals that are served and consumed at the table; (iii) premises primarily serve meals to those eating on them, and (iv) alcohol is not be supplied to, or consumed on the premises by, any person other than those who are taking substantial table meals and where the consumption of alcohol by such persons is ancillary to taking such meals.
Theatres and cinemas	Premises at which the sale of alcohol is subject to a condition to the effect that, between midnight and 6am, such sales can only be made to ticket holders or participants in the production for consumption on the premises, when there is otherwise no access to the general public.
Casinos Bingo Halls	Premises licensed to provide facilities for gambling under the Gambling Act 2005 with a membership scheme in operation between midnight and 6am.
Community Amateur Sports Clubs (CASCs)	Those premises that have a relief from business rates by virtue of being a CASC (definition found in Schedule 18 of the Finance Act 2002.)
Community premises	Those premises that have successfully applied for the removal of the mandatory DPS requirement.
Country village pubs	Premises within designated rural settlements with a population of less than 3,000 (as appear in the qualifications for rural rate relief).
Country village pubs	Premises within designated rural settlements with a population of less than 3,000 (as appear in the qualifications for rural rate relief).

CONSULTATION QUESTION 6:

Do you agree or disagree that licensing authorities should be able to exempt these premises from the levy?

Agree
Disagree

Please give reasons for your answer, specifying any exemptions that you disagree with

Business Improvement Districts

6.02 Business Improvement Districts (BIDs, established under the Local Government Act 2003) are a defined area within which businesses pay a fee in order to fund improvements within their boundaries and can prove valuable to business communities. An increasing number of late night or licensed trade BIDs are being established. Some of these schemes may fulfil the purpose of the levy, by raising contributions towards late night services, without the need for local authority intervention. These schemes should be actively encouraged. It is proposed that licensing authorities are able to grant an exemption to those paying a levy as part of a BID where the authority is satisfied that the aims meet a satisfactory crime and disorder focus.

CONSULTATION QUESTION 7:

Do you agree or disagree that licensing authorities should be able to exempt Business Improvement Districts from the late night levy?

Agree – licensing authorities should be able to exempt Business Improvements Districts
Disagree – licensing authorities should not be able to exempt Business Improvement Districts
Neither agree nor disagree
Don't know

Members' clubs

6.03 Many private members' clubs operate under 'Club Premises Certificates' (CPCs). Alcohol cannot generally be supplied under a CPC for profit or to the general public. Some licensing authorities may consider that private member's clubs in their area should not make a contribution to late night enforcement costs. Should clubs be exempt from the late night levy, the police revenue in the average licensing authority area from the levy will be reduced by approximately 10%.

CONSULTATION QUESTION 8:

Do you think that premises operating under a club premises certificate should be exempt from the late night levy?

Yes
No
Don't know

Please give reasons for your answer

Small Business Rate Relief

6.04 Small Business Rate Relief offers business ratepayers that meet certain criteria the opportunity to receive reductions on their rates bills. The criteria vary slightly in England and Wales but, in general, businesses are typically eligible if they occupy only one property and their rateable value is below a certain level. This may apply, for example, to small local pubs.

CONSULTATION QUESTION 9:

What are your views on affording a reduction from the late night levy to businesses that receive small business rate relief?

Please give reasons for your answer

New Year's Eve

- 6.05 Some premises may have a one-off late night authorisation on their licence to celebrate the New Year. On the one hand, it could be argued that the ability to host one-off special occasions will not be hindered by the late night levy. Before the levy begins in any area, premises will be able to make a free minor variation to their licence to reduce their hours. On special occasions, they may use a TEN to authorise the sale of alcohol.
- 6.06 On the other hand, an exemption for those premises whose only late night authorisation is for New Year will benefit many premises.

CONSULTATION QUESTION 10:

Do you agree or disagree that there should be an exemption for New Year's Eve?

- Agree – there should be an exemption for New Year's Eve
- Disagree - there should not be an exemption for New Year's Eve
- Neither agree nor disagree
- Don't know

Reductions for best practice schemes

- 6.07 Licensing authorities may also wish to use the late night levy to promote and support participation in other business-led best practice schemes. These schemes encourage businesses to join together to address some of the negative effects of selling alcohol. The following schemes are recommended as available reduction categories:

Members of a locally accredited Best Bar None scheme
Members of a locally accredited Pubwatch, Clubwatch or Shopwatch scheme. The discount can only apply to one of the above three schemes. Criteria to be an applicable pubwatch scheme:
<ul style="list-style-type: none"> • The local authority is satisfied that the scheme has clear aims and objectives which are subject to a formal statement of intent or a constitution and that it has demonstrated that its members are actively working to reduce crime and disorder. • Membership is open to all licensed premises within the geographic area. • The scheme has a Chair person and/or Coordinator who is responsible for maintaining verifiable records of membership.
Those premises which pay an annual individual contribution to a Community Alcohol Partnership in their area. This definition does not include subsidiaries of companies that pay a contribution on a national level.
Premises that pay a levy in a Business Improvement District (established under the Local Government Act 2003) where the authority is satisfied that the aims meet a satisfactory crime and disorder focus

CONSULTATION QUESTION 11:

Do you agree or disagree that licensing authorities should be able to ask for a reduced levy payment from these businesses?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Other local best-practice schemes

6.08 The best practice schemes referred to in Question 11 are locally accredited schemes that are part of a national network. It has been suggested that some schemes have been created locally without any national accreditation. Groups of businesses may join together and fund late night services or address specific community problems. Regulations could grant licensing authorities the power to give discounts to schemes that they recognise as effective. Schemes would have to meet readily recognised and measurable benchmarks in order to be capable of qualifying for a discount.

CONSULTATION QUESTION 12:

Do you have any suggestions for benchmarks that can be applied to grassroots schemes to ensure members are actively working to reduce crime and disorder?

6.09 We propose that there is a 10% discount to the levy for every relevant best practice scheme (up to a maximum of 30%). This is in recognition that many businesses are members of multiple schemes.

CONSULTATION QUESTION 13:

Do you agree or disagree with this set-up of cumulative discounts?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

6.10 There may be other types of premises that should not be required to contribute fully towards the levy, for example, community-run pubs or others with an established community and social character.

CONSULTATION QUESTION 14:

Should there be scope for further exemptions and reductions from the late night levy?

- Yes
- No

If yes, please state what you think these should be and how this type of premises should be defined.

7. LICENSING AUTHORITY LEVY REVENUE

7.01 There are many different types of local authority-funded services which make the late night economy a more welcoming place to do business. Some examples include taxi marshals, late night town wardens and street cleaning services. The licensing authority can retain up to 30% of the net levy revenue to fund other activities besides policing. This section considers whether there should be any restrictions on how authorities spend this money.

CONSULTATION QUESTION 15:

What activities do you think licensing authorities should be able to fund with their retained proportion?

Restrictions on funded activities

7.02 It is intended that the proportion of net levy revenue retained by licensing authorities (a

maximum of 30%) is used to fund services which tackle alcohol-related crime and disorder, such as taxi marshalling and ‘booze buses’ that provide assistance to those who otherwise might become victims or offenders. This would not extend to the wider management of the night time economy. For example, it would include the clean-up of the after-effects of alcohol-related crime and disorder, such as broken glass and public urination, but not general clean-up activities, such as the collection of waste from outside fast food restaurants

CONSULTATION QUESTION 16:

What restrictions do you think there should be on the types of services that licensing authorities will be able to fund?

Please state whether you think the types of services should be limited to preventing and tackling alcohol related crime and disorder; or should extend to both preventing and tackling alcohol related crime and disorder and management of night time economy?

8. IMPACT ASSESSMENT

8.01 An Impact Assessment for late night levy secondary legislation is attached. Consultation respondents are encouraged to comment on this document.

CONSULTATION QUESTION 17:

If you have any comments on the Impact Assessment, please detail them here?

CONSULTATION QUESTION 18:

If you are responding on behalf of a licensing authority, how many premises do you expect will be affected by EMROs in your area?

9. ABOUT YOU

9.01 Please indicate in what capacity you are responding to this consultation:

Licensing authority
Member of the public
Police officer
Person involved in licensed trade/club premises
Other please specify

Police officers only: Which Police Force are you from?

9.02 Licensed trade only: Please tick one of the following boxes which would best describe you/ your organisation

Individual
Members’ Clubs
Micro company (1 – 9 employees)
Small business (10-49 employees)
Small – medium enterprise (50-249 employees)
Large company (over 250 employees)

Licensing officer only: Which Licensing Authority are you from?

Member of the public/Other only: Which Local Authority or London Borough are you from?

10. CONFIDENTIALITY & DISCLAIMER

The information you send us may be passed to colleagues within the Home Office, the Government or related agencies. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 [FOIA], the Data Protection Act 1998 [DPA] and the Environmental Information Regulations 2004).

If you want other information that you provide to be treated as confidential, please be aware that, under

the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

GOVERNMENT CODE OF PRACTICE ON CONSULTATION

The Consultation follows the Government's Code of Practice on Consultation the criteria for which are set out below:

Criterion 1 – When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2 – Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3 – Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4 – Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5 – The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6 – Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7 – Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

The full Code of Practice on Consultation is available at: <http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html>

CONSULTATION CO-ORDINATOR

If you have a complaint or comment about the Home Office's approach to consultation, you should contact the Home Office consultation co-ordinator, Adam Mcardle. Please DO NOT send your response to this consultation to Adam Mcardle. The Co-ordinator works to promote best practice standards set by the Government's Code of Practice, advises policy teams on how to conduct consultations and investigates complaints made against the Home Office. He does not process your response to this consultation. The co-ordinator can be emailed at: Adam.Mcardle2@homeoffice.gsi.gov.uk or alternatively you can write to him at:

Adam Mcardle, Consultation Coordinator
Home Office
Performance and Delivery Unit
Better Regulation Team
3rd Floor Seacole
2 Marsham Street
London
SW1P 4DF

11. CHECKLIST

CONSULTATION QUESTION 1:

Do you think that the proposed processes for Early Morning Restriction Orders include sufficient consultation with those likely to be affected by an EMRO?

CONSULTATION QUESTION 2:

The government proposes that EMROs will not apply (i.e. will not restrict alcohol sales) between midnight on 31st December and 6am on 1st January of each year. Do you think that EMROs should apply on New Year's Eve?

CONSULTATION QUESTION 3:

Do you agree or disagree that the categories of premises above should be exempt from EMROs?

CONSULTATION QUESTION 4:

Do you have any other suggestions on the types of premises that should be considered for an exemption from EMROs?

CONSULTATION QUESTION 5:

Do you think that there should be an option for local residents/ community groups to recommend the implementation of the levy in their area?

CONSULTATION QUESTION 6:

Do you agree or disagree that licensing authorities should be able to exempt these premises from the levy?

CONSULTATION QUESTION 7:

Do you agree or disagree that licensing authorities should be able to exempt Business Improvement Districts from the late night levy?

CONSULTATION QUESTION 8:

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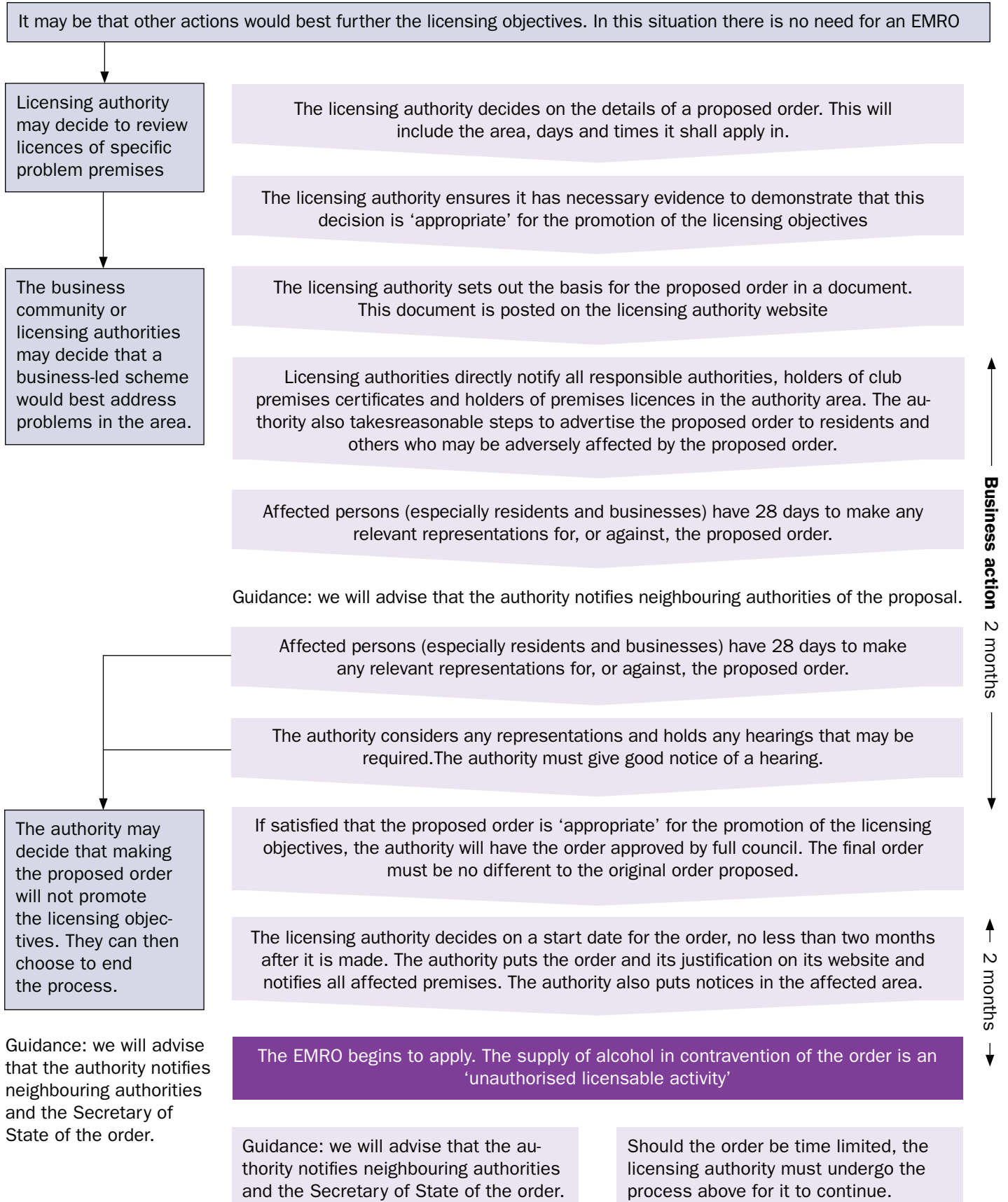
If you have any comments on the Impact Assessment, please detail them here?

CONSULTATION QUESTION 19:

If you are responding on behalf of a licensing authority, how many premises do you expect will be affected by EMROs in your area?

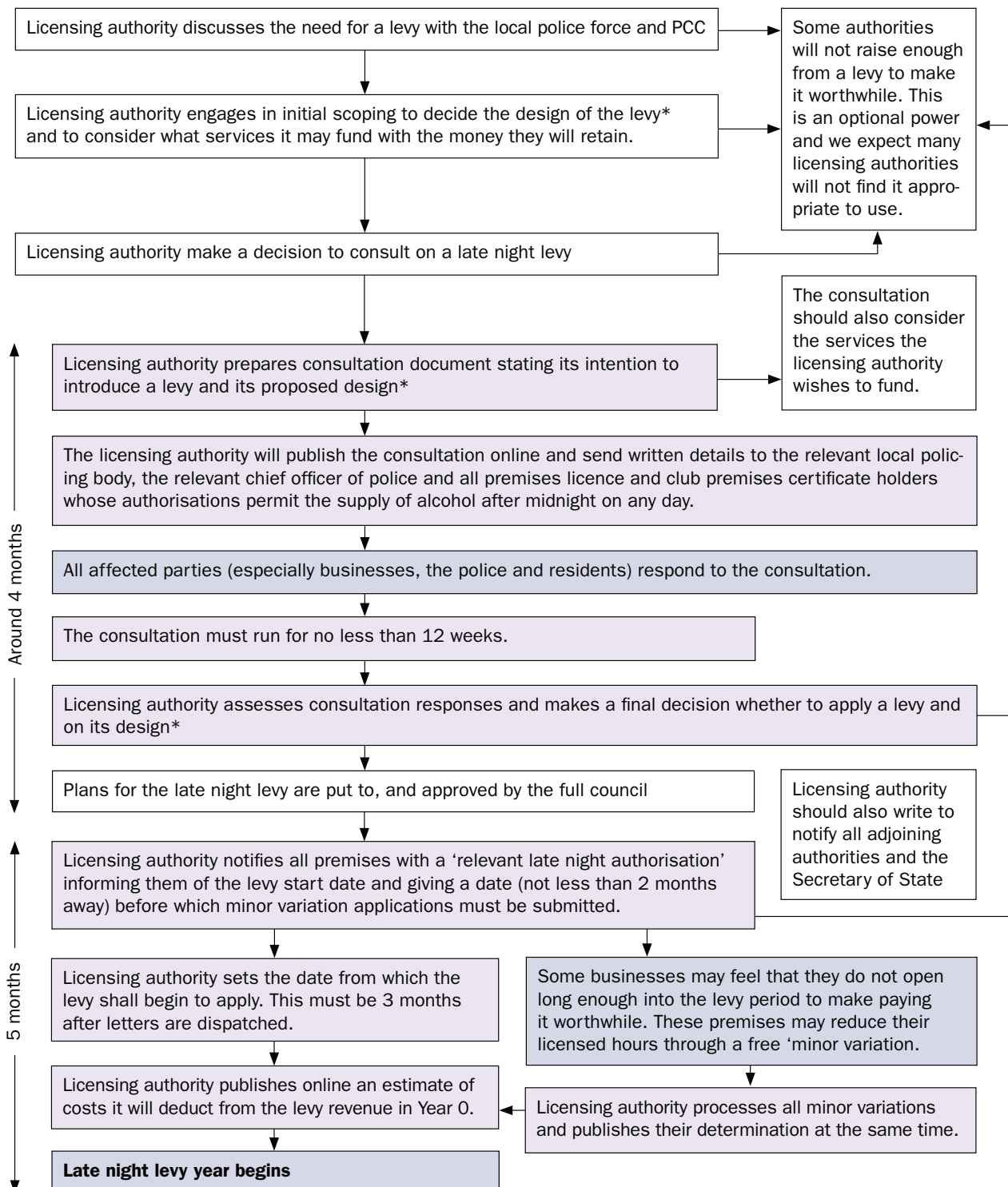
ANNEX A - EMRO PROCESS MAP

A situation arises where there is need to restrict the late night supply of alcohol in a particular area. The licensing authority can decide, possibly at the suggestion of the public or the PCC, to make an EMRO.

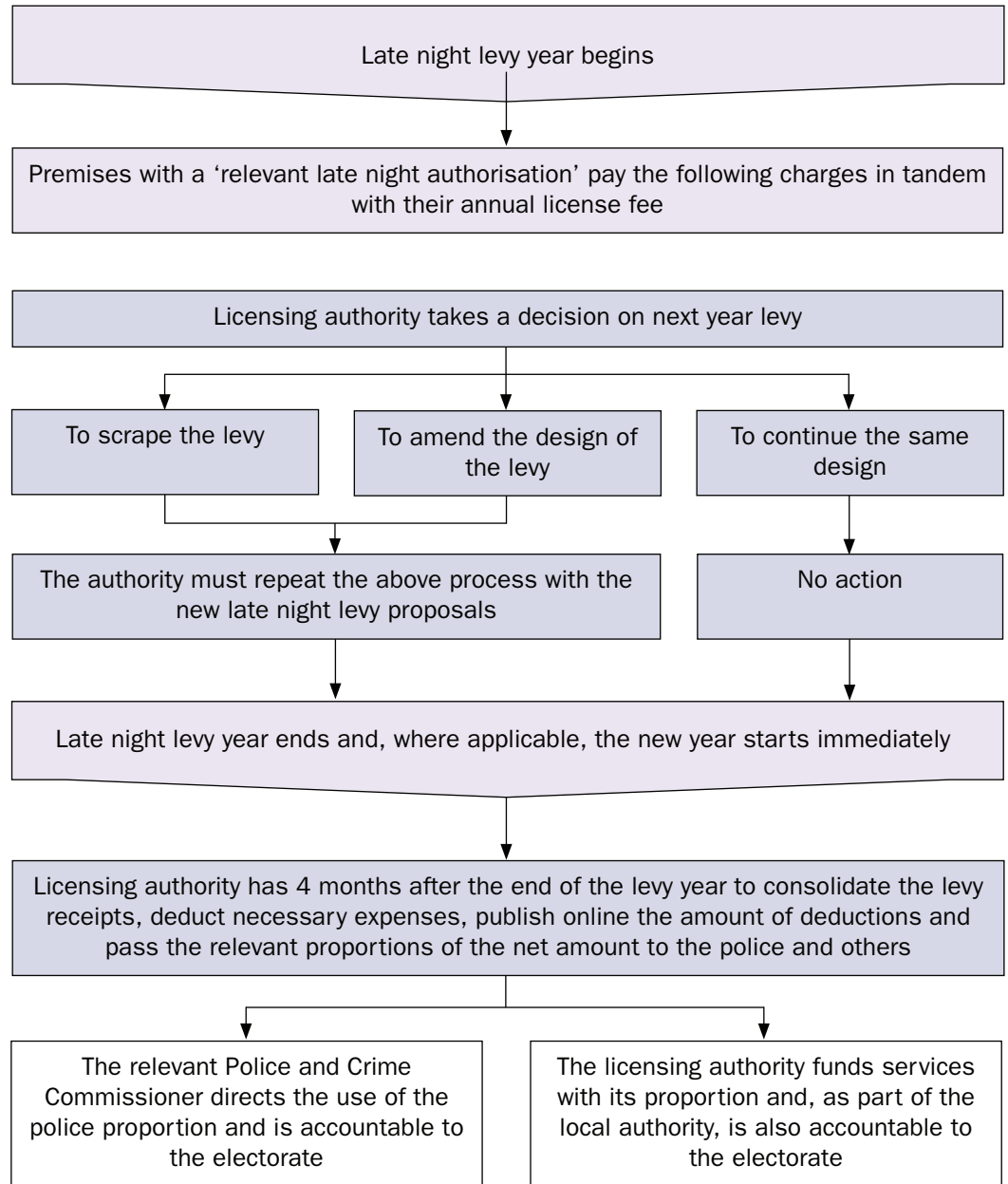


ANNEX B - LATE NIGHT LEVY PROCESS MAPS - (Part I - Introduction)

Essential processes which will be deductible from levy revenue	<p>'late night supply period'- This is the time period where the levy applies. The licensing authority chooses this period but it must be within the window of midnight and 6am.</p> <p>'relevant late night authorisation'- a licence or certificate which permits the supply of alcohol within the 'late night supply period'</p>
Key stages for business	<p>*The levy design - is the licensing authority's choice of the 'late night supply period', any exemptions or reductions that apply and the proportion of the revenue (after administrative costs are deducted) which the licensing authority wishes to keep to fund other activities (max 30%).</p>



ANNEX B - LATE NIGHT LEVY PROCESS MAPS CONTINUED - (Part II - Levy year)





Home Office

ISBN: 978-1-84987-615-5

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To view online visit:

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

**Extract from Dealing with the problems of late night drinking
A consultation on secondary legislation for the Late Night Levy and
Early Morning Restriction Orders**

3. PROCESS

3.01 The 2011 Act allows an EMRO to be applied by licensing authorities flexibly between midnight and 6am to restrict the sale of alcohol. Licensing authorities can apply these orders to areas where they consider that restricting the late night supply of alcohol is appropriate to promote the licensing objectives. Before this power is commenced, regulations must be made.

3.02 The regulations will prescribe details of the process for making an EMRO and the kinds of premises that will be exempt from an EMRO. Consultation respondents are asked to consider the proposed process map in Annex A.

CONSULTATION QUESTION 1:

Do you think that the proposed processes for Early Morning Restriction Orders include sufficient consultation with those likely to be affected by an EMRO?

Yes

No

Don't know

If no, please explain what else is needed

4. EXEMPTIONS TO EMROS

4.01 EMROs are designed to address recurring problems with alcohol-related crime and disorder in specific areas. The licensing authority will be able to decide during which hours the EMRO will apply, whether it is applied every day or on particular days; whether it will run for a limited or unlimited period; and whether it will apply to whole or part of the licensing authority's area. In each case, the decision will be based on what is appropriate for the promotion of the licensing objectives¹. There are some types of premises which should not be subject to an EMRO, wherever it is applied. Some businesses, wherever they may be located, do not contribute to alcohol-related crime and disorder. For example, a hotel may only serve alcohol to its guests who are staying overnight. As such, the 2011 Act enables the Secretary of State to make regulations which prescribe exemptions to an EMRO by reference to particular kinds of premises or particular days.

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The government proposes that EMROs will not apply (i.e. will not restrict alcohol sales) between midnight on 31st December and 6am on 1st January of each year. Do you think that EMROs should apply on New Year's Eve?

- Yes – the EMRO should apply on New Year's Eve
- No– the EMRO should not apply on New Year's Eve
- Neither agree nor disagree
- Don't know
- Please give reasons for your answer

4.03 Local discretion in setting the EMRO area is paramount, and the intention is to have only a few nationally prescribed exemptions. Some premises may need to vary their licence (to, for example, add a condition via the minor variations process) before an exemption is applicable to them.

4.04 EMROs will operate to restrict alcohol sales even when a Temporary Event Notice (TEN) is otherwise in effect. Section 172 of the Licensing Act 2003 enables the Secretary of State to make a licensing hours order to relax licensing hours on special occasions. Primary legislation includes provision that, unless the licensing hours order provides otherwise, the EMRO will not be effective to prevent alcohol sales in a period to which the extended hours order applies.

4.05 The proposed exemptions cover some types of premises where the only customers during the relevant period will be members or their guests; or those who stay overnight; or those who attend for a performance. We also propose that there is an exemption for community premises which have demonstrated that they do not need a Designated Premises Supervisor (DPS). We propose that the following exemptions will apply to every EMRO:

Name	Definition
Premises with overnight accommodation	Premises at which the sale of alcohol is subject to a condition to the effect that, between midnight and 6am, such sales can only be made to residents for consumption on the premises. This will not exempt hotels and guest houses that serve alcohol to members of the public who are not staying overnight at the premises.
Theatres and cinemas	Premises at which the sale of alcohol is subject to a condition to the effect that, between midnight and 6am, such sales can only be made to ticket holders or

	participants in the production for consumption on the premises, when there is otherwise no access to the general public.
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Casinos and bingo halls with a membership scheme	Premises licensed to provide these facilities for gambling under the Gambling Act 2005 with a membership scheme in operation between midnight and 6am.

CONSULTATION QUESTION 3:

Do you agree or disagree that the categories of premises above should be exempt from EMROs?

Agree – these categories of premises should be exempt from EMROs

Disagree – these categories of premises should not be exempt from EMROs

Neither agree nor disagree

Don't know Please give reasons for your answer, specifying any exemptions that you disagree with

CONSULTATION QUESTION 4:

Do you have any other suggestions on the types of premises that should be considered for an exemption from EMROs?

Yes

No

Don't know If yes, please specify which other types of premises and give reasons.

PART 2 THE LATE NIGHT LEVY

5. PROCESS

5.01 The levy will allow licensing authorities to raise a contribution from late opening alcohol retailers towards the policing costs generated by the late night economy. The levy will apply to all premises (on and off-trade), throughout the licensing authority's area, which are authorised to sell or supply alcohol in the time period set by the licensing authority. This can be any time between midnight and 6am. Section 172 of the Licensing Act 2003 permits the Secretary of State to make a licensing hours order to relax licensing hours on special occasions. The Government intends to ensure that this will not result in some premises inadvertently becoming liable to pay the late night levy. The levy will not apply to TENs. The 2011 Act makes provision for the Government to prepare draft regulations before the levy scheme is commenced.

5.02 Regulations will prescribe details of the process for adopting the late night levy. Consultation respondents are asked to consider the proposed process maps in Annex B.

5.03 Prior to making a decision to implement the levy, it is intended that the licensing authority will have discussions with the Police and Crime Commissioner (PCC) and local police to decide whether it is appropriate to introduce the levy in its area. If so, the licensing authority must formally consult the PCC, the police, licence holders and others about its decision to introduce the levy. The consultation should ask whether it needs to apply any exemptions or discounts to the levy and how it will apportion net levy revenue between the police and licensing authority. The licensing authority will have the final decision in all of these areas.

CONSULTATION QUESTION 5:

Do you think that there should be an option for local residents/ community groups to recommend the implementation of the levy in their area?

Yes

No

Don't know

If yes, do you have any suggestions on how this process should operate?

6. EXEMPTIONS AND REDUCTIONS TO THE LEVY

6.01 There are some types of premises which licensing authorities may consider should not make a contribution towards late night police costs

through the late night levy. To enable local discretion, the levy will allow licensing authorities to select exemptions or reductions that they consider should apply in their area. It is proposed that the following types of business are available as exemptions for licensing authorities to adopt:

Name	Definition
Premises with overnight accommodation	Premises at which the sale of alcohol is subject to a condition to the effect that, between midnight and 6am, such sales can only be made to residents for consumption on the premises. This will not exempt hotels and guest houses that serve alcohol to members of the public who are not staying overnight at the premises.

Restaurants	Premises that have condition(s) on their licence that have the effect of making clear their status as restaurants run on a permanent, more formal basis. These could, for example, include conditions which require that, between midnight and 6am: customers are shown to their table; food is provided in the form of substantial table meals that are served and consumed at the table; premises primarily serve meals to those eating on them, and alcohol is not be supplied to, or consumed on the premises by, any person other than those who are taking substantial table meals and where the consumption of alcohol by such persons is ancillary to taking such meals.
Theatres and cinemas	Premises at which the sale of alcohol is subject to a condition to the effect that, between midnight and 6am, such sales can only be made to ticket holders or participants in the production for consumption on the premises, when there is otherwise no access to the general public.
Casinos Bingo Halls	Premises licensed to provide facilities for gambling under the Gambling Act 2005

	with a membership scheme in operation between midnight and 6am.
Community Amateur Sports Clubs (CASCs)	Those premises that have a relief from business rates by virtue of being a CASC (definition found in Schedule 18 of the Finance Act 2002.)
Community premises	Those premises that have successfully applied for the removal of the mandatory DPS requirement.
Country village pubs	Premises within designated rural settlements with a population of less than 3,000 (as appear in the qualifications for rural rate relief).

CONSULTATION QUESTION 6:

Do you agree or disagree that licensing authorities should be able to exempt these premises from the levy?

Agree

Disagree

Please give reasons for your answer, specifying any exemptions that you disagree with

Business Improvement Districts

6.02 Business Improvement Districts (BIDs, established under the Local Government Act 2003) are a defined area within which businesses pay a fee in order to fund improvements within their boundaries and can prove valuable to business communities. An increasing number of late night or licensed trade BIDs are being established. Some of these schemes may fulfil the purpose of the levy, by raising contributions towards late night services, without the need for local authority intervention. These schemes should be actively encouraged. It is proposed that licensing authorities are able to grant an exemption to those paying a levy as part of a BID where the authority is satisfied that the aims meet a satisfactory crime and disorder focus.

CONSULTATION QUESTION 7:

Do you agree or disagree that licensing authorities should be able to exempt Business Improvement Districts from the late night levy?

Agree – licensing authorities should be able to exempt Business Improvements Districts

Disagree – licensing authorities should not be able to exempt Business Improvement Districts

Neither agree nor disagree

Don't know

Members' clubs

6.03 Many private members' clubs operate under 'Club Premises Certificates' (CPCs). Alcohol cannot generally be supplied under a CPC for profit or to the general public. Some licensing authorities may consider that private member's clubs in their area should not make a contribution to late night enforcement costs. Should clubs be exempt from the late night levy, the police revenue in the average licensing authority area from the levy will be reduced by approximately 10%.

CONSULTATION QUESTION 8:

Do you think that premises operating under a club premises certificate should be exempt from the late night levy?

Yes

No

Don't know

Please give reasons for your answer

Small Business Rate Relief

6.04 Small Business Rate Relief offers business ratepayers that meet certain criteria the opportunity to receive reductions on their rates bills. The criteria vary slightly in England and Wales but, in general, businesses are typically eligible if they occupy only one property and their rateable value is below a certain level. This may apply, for example, to small local pubs.

CONSULTATION QUESTION 9:

What are your views on affording a reduction from the late night levy to businesses that receive small business rate relief?

Please give reasons for your answer

New Year's Eve

6.05 Some premises may have a one-off late night authorisation on their licence to celebrate the New Year. On the one hand, it could be argued that the ability to host one-off special occasions will not be hindered by the late night levy. Before the levy begins in any area, premises will be able to make a free minor variation to their licence to reduce their hours. On special occasions, they may use a TEN to authorise the sale of alcohol.

6.06 On the other hand, an exemption for those premises whose only late night authorisation is for New Year will benefit many premises.

CONSULTATION QUESTION 10:

Do you agree or disagree that there should be an exemption for New Year's Eve?

Agree – there should be an exemption for New Year's Eve

Disagree - there should not be an exemption for New Year's Eve
Neither agree nor disagree
Don't know

Reductions for best practice schemes

6.07 Licensing authorities may also wish to use the late night levy to promote and support participation in other business-led best practice schemes. These schemes encourage businesses to join together to address some of the negative effects of selling alcohol. The following schemes are recommended as available reduction categories

Members of a locally accredited **Best Bar None** scheme

Members of a locally accredited **Pubwatch, Clubwatch or Shopwatch** scheme.

The discount can only apply to one of the above three schemes. Criteria to be an applicable pubwatch scheme:

- The local authority is satisfied that the scheme has clear aims and objectives which are subject to a formal statement of intent or a constitution and that it has demonstrated that its members are actively working to reduce crime and disorder.
- Membership is open to all licensed premises within the geographic area.
- The scheme has a Chair person and/or Coordinator who is responsible for maintaining verifiable records of membership.

Those premises which pay an annual **individual** contribution to a **Community Alcohol Partnership** in their area. This definition does not include subsidiaries of companies that pay a contribution on a national level.

Premises that pay a levy in a **Business Improvement District** (established under the Local Government Act 2003) where the authority is satisfied that the aims meet a satisfactory crime and disorder focus

CONSULTATION QUESTION 11:

Do you agree or disagree that licensing authorities should be able to ask for a reduced levy payment from these businesses?

Agree
Disagree
Neither agree nor disagree
Don't know

Other local best-practice schemes

6.08 The best practice schemes referred to in Question 11 are locally accredited schemes that are part of a national network. It has been suggested that some schemes have been created locally without any national accreditation. Groups of businesses may join together and fund late night services or address specific community problems. Regulations could grant licensing authorities the power to give discounts to schemes that they recognise as

effective. Schemes would have to meet readily recognised and measurable benchmarks in order to be capable of qualifying for a discount.

CONSULTATION QUESTION 12:

Do you have any suggestions for benchmarks that can be applied to grassroots schemes to ensure members are actively working to reduce crime and disorder?

6.09 We propose that there is a 10% discount to the levy for every relevant best practice scheme (up to a maximum of 30%). This is in recognition that many businesses are members of multiple schemes.

CONSULTATION QUESTION 13:

Do you agree or disagree with this set-up of cumulative discounts?

Agree

Disagree

Neither agree nor disagree

Don't know

6.10 There may be other types of premises that should not be required to contribute fully towards the levy, for example, community-run pubs or others with an established community and social character.

CONSULTATION QUESTION 14:

Should there be scope for further exemptions and reductions from the late night levy?

Yes

No

If yes, please state what you think these should be and how this type of premises should be defined.

7. LICENSING AUTHORITY LEVY REVENUE

7.01 There are many different types of local authority-funded services which make the late night economy a more welcoming place to do business. Some examples include taxi marshals, late night town wardens and street cleaning services. The licensing authority can retain up to 30% of the net levy revenue to fund other activities besides policing. This section considers whether there should be any restrictions on how authorities spend this money.

CONSULTATION QUESTION 15:

What activities do you think licensing authorities should be able to fund with their retained proportion?

Restrictions on funded activities

7.02 It is intended that the proportion of net levy revenue retained by licensing authorities (a maximum of 30%) is used to fund services which tackle alcohol-related crime and disorder, such as taxi marshalling and 'booze buses' that provide assistance to those who otherwise might become victims or offenders. This would not extend to the wider management of the night time economy. For example, it would include the clean-up of the after-effects of alcohol-related crime and disorder, such as broken glass and public urination, but not general clean-up activities, such as the collection of waste from outside fast food restaurants

CONSULTATION QUESTION 16:

What restrictions do you think there should be on the types of services that licensing authorities will be able to fund?

Please state whether you think the types of services should be limited to preventing and tackling alcohol related crime and disorder; or should extend to both preventing and tackling alcohol related crime and disorder and management of night time economy?

8. IMPACT ASSESSMENT

8.01 An Impact Assessment for late night levy secondary legislation is attached. Consultation respondents are encouraged to comment on this document.

CONSULTATION QUESTION 17:

If you have any comments on the Impact Assessment, please detail them here?

CONSULTATION QUESTION 18:

If you are responding on behalf of a licensing authority, how many premises do you expect will be affected by EMROs in your area?

9. ABOUT YOU

9.01 Please indicate in what capacity you are responding to this consultation:

Licensing authority

Member of the public

Police officer

Person involved in licensed trade/club premises

Other please specify

Police officers only: Which Police Force are you from?

9.02 Licensed trade only: Please tick one of the following boxes which would best describe you/your organisation

Individual

Members' Clubs

Micro company (1 – 9 employees)
Small business (10-49 employees)
Small – medium enterprise (50-249 employees)
Large company (over 250 employees)

Licensing officer only: Which Licensing Authority are you from?
Member of the public/Other only: Which Local Authority or London Borough are you from?

Dealing with the problems of late night drinking consultation questions

CONSULTATION QUESTION 1:

Do you think that the proposed processes for Early Morning Restriction Orders include sufficient consultation with those likely to be affected by an EMRO?

Yes

No

Don't know

~~If no, please explain what else is needed~~

CONSULTATION QUESTION 2:

The government proposes that EMROs will not apply (i.e. will not restrict alcohol sales) between midnight on 31st December and 6am on 1st January of each year. Do you think that EMROs should apply on New Year's Eve?

~~Yes – the EMRO should apply on New Year's Eve~~

No – the EMRO should not apply on New Year's Eve

~~Neither agree nor disagree~~

Don't know

~~Please give reasons for your answer – We relax late night noise services as not appropriate on New Year's Eve.~~

CONSULTATION QUESTION 3:

Do you agree or disagree that the categories of premises above should be exempt from EMROs?

Agree – these categories of premises should be exempt from EMROs

~~Disagree – these categories of premises should not be exempt from EMROs~~

~~Neither agree nor disagree~~

Don't know

~~Please give reasons for your answer, specifying any exemptions that you disagree with EMROs present a high risk to licensed trade~~

CONSULTATION QUESTION 4:

Do you have any other suggestions on the types of premises that should be considered for an exemption from EMROs?

Yes

No

Don't know

~~If yes, please specify which other types of premises and give reasons. There is no discretion on premises type and exemptions. Give local authority discretion. EMROs present a burden to local businesses.~~

CONSULTATION QUESTION 5:

Do you think that there should be an option for local residents/ community groups to recommend the implementation of the levy in their area?

~~Yes If yes, do you have any suggestions on how this process should operate?~~

No

Don't know. Allowing residents to recommend LNL without detailed access to budgets and policing priorities will create expectation variance.

CONSULTATION QUESTION 6:

Do you agree or disagree that licensing authorities should be able to exempt these premises from the levy?

Agree

Disagree

~~Please give reasons for your answer, specifying any exemptions that you disagree with~~ There is no discretion on locality and no link to cumulative impact policies. The licensing authority should be able to apply LNL to a geographical area such as cumulative impact zone. The amount of revenue raised is likely to be too low to fund services. Burdens on LA include unfunded minor variations, potentially huge amounts of TENS and complex justification procedures. There needs to be a definitive definition of what each of these premises are: e.g. what exactly is a restaurant? Use of TENS creates a loop hole.

CONSULTATION QUESTION 7:

Do you agree or disagree that licensing authorities should be able to exempt Business Improvement Districts from the late night levy?

Agree – licensing authorities should be able to exempt Business Improvements Districts. A proportionate reduction should be made for partnerships like our local Business Crime Reduction Partnership. Problem in finding out which premises are included in a BID.

~~Disagree – licensing authorities should not be able to exempt Business Improvement Districts~~

~~Neither agree nor disagree~~

~~Don't know~~

CONSULTATION QUESTION 8:

Do you think that premises operating under a club premises certificate should be exempt from the late night levy?

Yes

No

Don't know

~~Please give reasons for your answer~~ They are not profit making businesses. Exemption could be made for an occupant capacity of less than 100, consistent with our local licensing policy to avoid substitution of premises licences with club premises certificates as an avoiding factor.

CONSULTATION QUESTION 9:

What are your views on affording a reduction from the late night levy to businesses that receive small business rate relief?

Please give reasons for your answer: In favour due to economic climate. The LNL power is a potential risk to our night time economy with 12% of working population working in this sector. Problem with finding out which premises attract small business rates relief. If small off licences attract small business rates relief, then they wouldn't be caught by the LNL.

CONSULTATION QUESTION 10:

Do you agree or disagree that there should be an exemption for New Year's Eve?

Agree – there should be an exemption for New Year's Eve

~~Disagree – there should not be an exemption for New Year's Eve~~

~~Neither agree nor disagree~~
~~Don't know~~

CONSULTATION QUESTION 11:

Do you agree or disagree that licensing authorities should be able to ask for a reduced levy payment from these businesses?

Agree but consider income achieved will be too limited to fund work to ameliorate alcohol related harms.

~~Disagree~~

~~Neither agree nor disagree~~

~~Don't know~~

CONSULTATION QUESTION 12:

Do you have any suggestions for benchmarks that can be applied to grassroots schemes to ensure members are actively working to reduce crime and disorder? Alcohol related offending, alcohol related hospital admissions, domestic violence, noise complaints from licensed premises.

CONSULTATION QUESTION 13:

Do you agree or disagree with this set-up of cumulative discounts? Yes but consider that the scheme will be cumbersome, complex and raise limited revenue.

CONSULTATION QUESTION 14:

Should there be scope for further exemptions and reductions from the late night levy?

Yes

~~No~~

If yes, please state what you think these should be and how this type of premises should be defined: Local authorities should have discretion. Cost of unfunded minor variations is burdensome on licensing authorities.

CONSULTATION QUESTION 15:

What activities do you think licensing authorities should be able to fund with their retained proportion? Taxi marshals and medical services. The 30% proportion needs increasing to achieve a meaningful contribution. The LA contribution is too low to fund taxi marshals etc. Cost of collection will reduce the cost effectiveness and be seen as taxation. The Police contribution should be ring fenced and be applied to the area in which it is collected.

CONSULTATION QUESTION 16:

What restrictions do you think there should be on the types of services that licensing authorities will be able to fund?

Please state whether you think the types of services should be limited to preventing and tackling alcohol related crime and disorder; or should extend to both preventing and tackling alcohol related crime and disorder and management of night time economy?

They should allow security and medical provision. The costs of minor variations and TENS resulting from declaration should be included.

CONSULTATION QUESTION 17:

If you have any comments on the Impact Assessment, please detail them here? The threat to local economies is not fully recognised. There would be a severe burden on local businesses and the local economy. Process complexity may discourage application. The impact on licensing authorities is entirely underestimated. The collection process is complex and likely to be onerous and costly.

CONSULTATION QUESTION 18:

If you are responding on behalf of a licensing authority, how many premises do you expect will be affected by EMROs in your area? Very careful balance between the fragile local economy and protecting residents would need to be considered.

Please indicate in what capacity you are responding to this consultation:

Licensing authority

~~Member of the public~~

~~Police officer~~

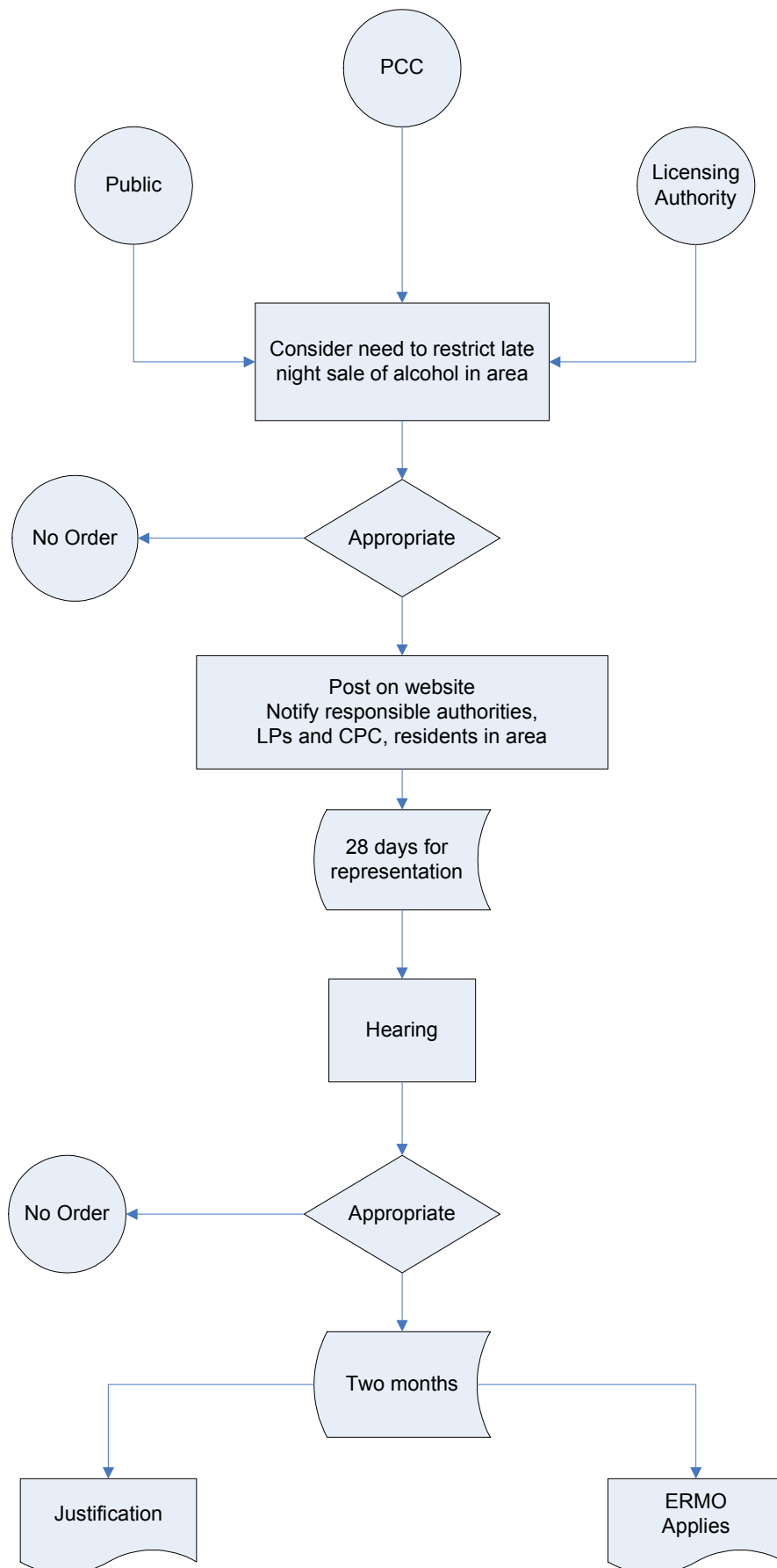
~~Person involved in licensed trade/club premises~~

~~Other please specify~~

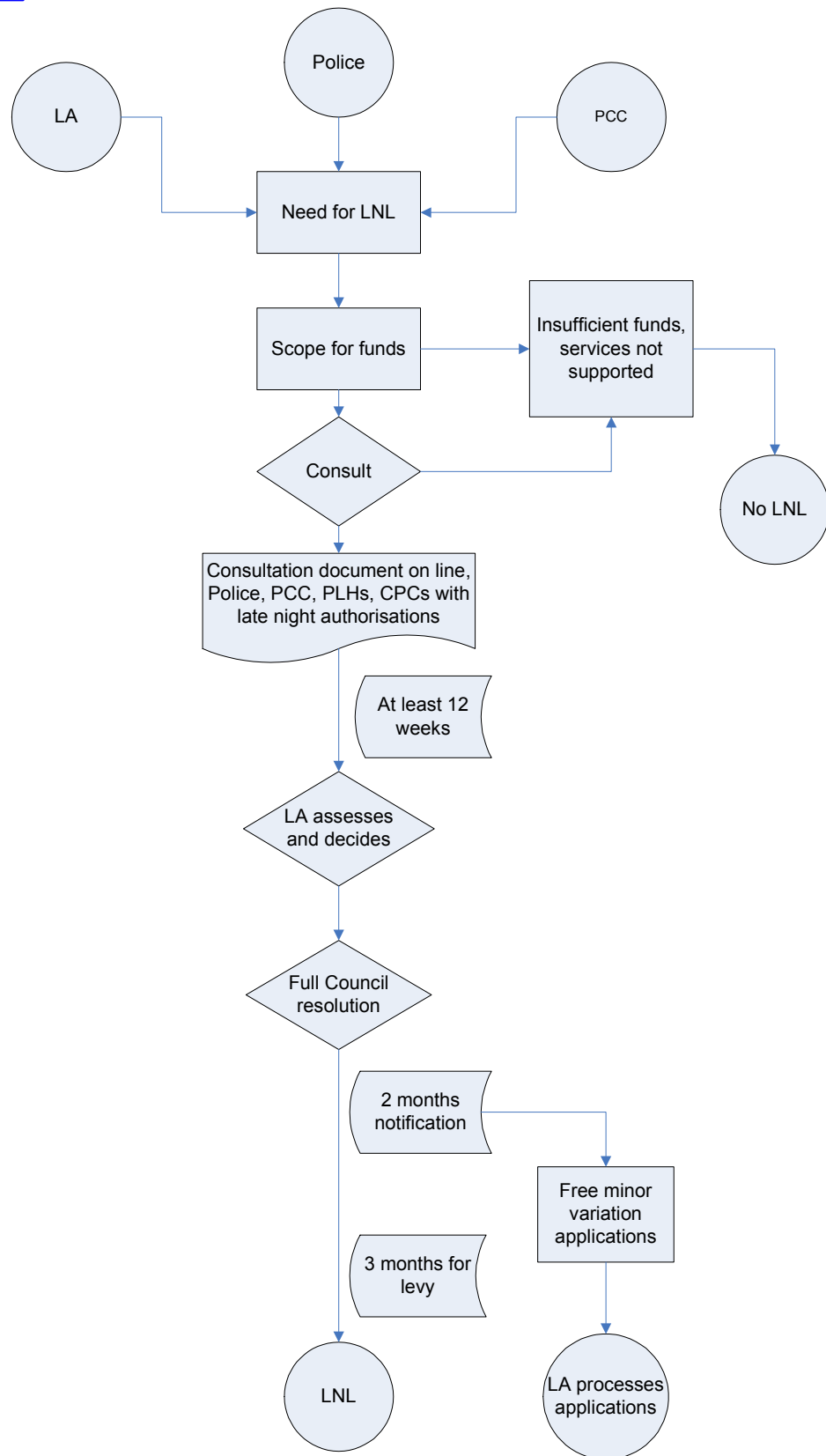
Licensing officer only: Which Licensing Authority are you from?

Brighton & Hove City Council.

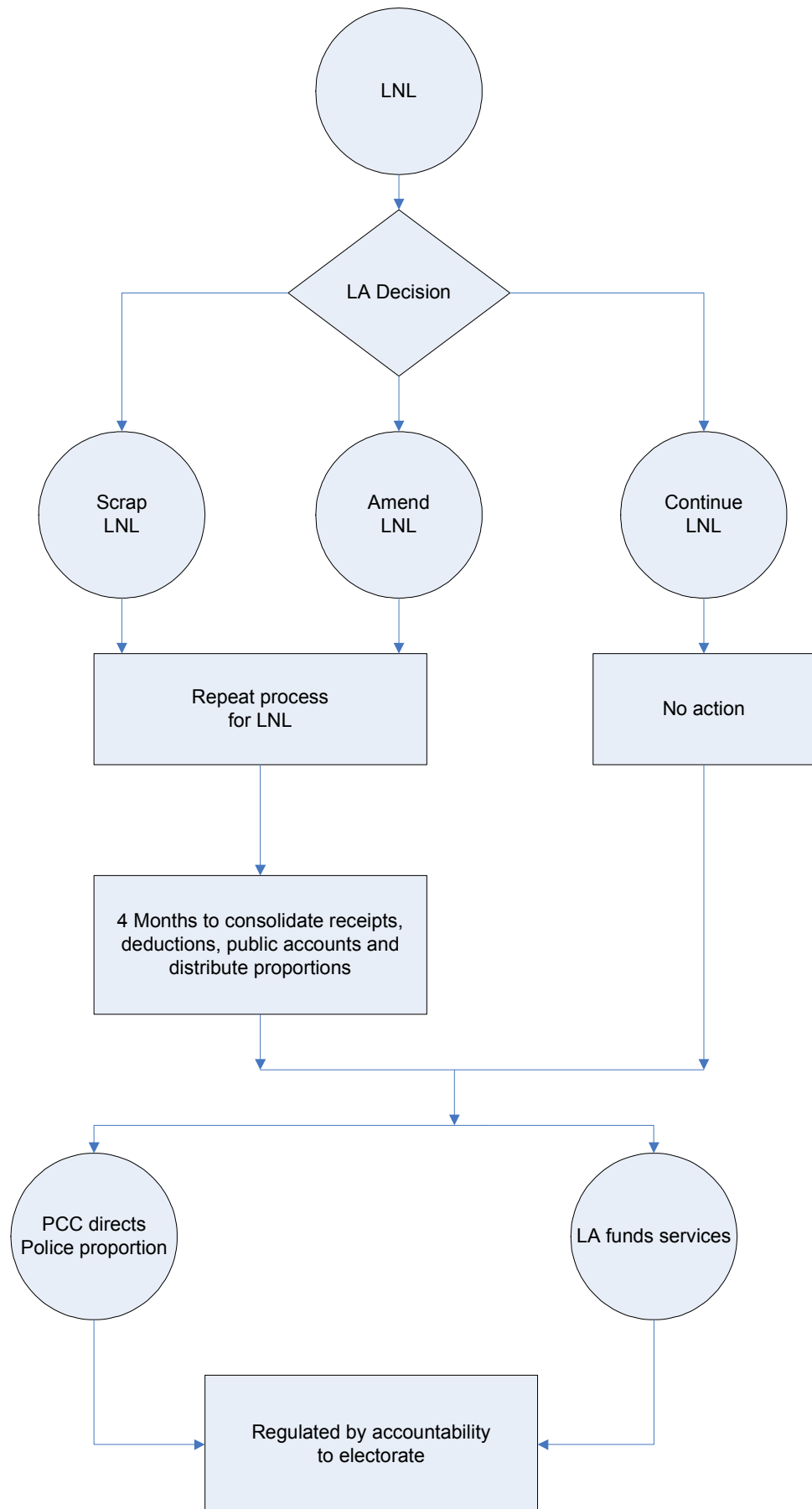
ERMO Process



LNL Process



LNL : Subsequent years



LICENSING COMMITTEE (LICENSING ACT 2003 FUNCTIONS)	Agenda Item 25 Brighton & Hove City Council
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REVIEWS RECEIVED

<u>NAME AND ADDRESS OF PREMISES</u>	<u>Date consideration of closure order received from Magistrates</u>	<u>DATE OF HEARING</u>	<u>DETERMINATION</u>
Sweet N Things 100B Western Road Brighton BN1 2AA		06.12.11	Revoked
Tipple 52 Queens Road Brighton Brighton & Hove BN1 3XB52		19.12.11	Revoked
Rolyn's News 57A North Road Brighton BN1 1YD		20.12.11	Suspended for 2 months plus amended hours and additional condition.
Park Road News 7 Park Road Brighton BN1 9AA		14.02.12	Revoked

**LICENSING COMMITTEE
(LICENSING ACT 2003
FUNCTIONS)**

Agenda Item 25

Brighton & Hove City Council

**Schedule of Licensing Appeals: Date of Meeting: 8th March
2012**

Premises	Appellant	PTR	Hearing	Outcome
Allsorts Newsagents 159 North Street, Brighton	Licence holder Mr Abadi	10.10.11	22 nd and 23 rd February 2012	
Dharni Stores/Food and Beverage 4U, 165 Hangleton Way Hove	Licence Holder Antonello Cavallaro/Food and Beverage 4U Ltd	10.10.11	19 th January 2012	Appeal was remitted back for re-hearing by licensing panel. Panel issued 'yellow card'.
Sweets n Things 100B Western Road Brighton	Licence Holder	13 th February 2012		
Tipple, 52 Queens Road, Brighton	Licence Holder	13 th February 2012		

