

Report to	Licensing committee 3 October 2013	Item 5
Report of	Head of citywide services	
Subject	Police Reform and Social Responsibility Act 2011: - Early Morning Restriction Orders	

Purpose

Following receipt of relevant representations concerning the council's proposal to introduce three separate Early Morning Restriction Orders (EMROs) under the Police Reform and Social Responsibility Act 2011, that members consider appointing a Licensing sub-committee of five members to consider the representations received and to be given delegated authority to make recommendations to full council.

Recommendation

1. A licensing sub-committee comprising of five members of the Licensing committee be appointed to consider the relevant representations received regarding the council's proposal to introduce three separate EMROs under the Police Reform and Social Responsibility Act 2011.
2. That following consideration of the relevant representations in respect of each of the proposed separate EMRO's, the appointed licensing sub-committee be given delegated authority to make recommendations on the proposals to full council.

Corporate and service priorities

The report helps to meet the corporate priority of a safe and clean city and the service plan priority of protecting the interests of the public through the administration of the licensing function.

Financial implications

Advertising costs to be met from existing budget.

Ward/s: All wards

Cabinet member: Councillor Stonard – Environment, development and transport

Contact officers

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Background documents

None

Report

1. At the meeting of the licensing committee on 21 March 2013 members considered a revised proposal from the police requesting the introduction of three separate EMRO's. The committee resolved to recommend to Council to advertise the proposals in accordance with section 172B (1)(a) of the Police Reform and Social Responsibility Act 2011. A copy of the relevant minute is attached at Appendix A.
2. On 25 June 2013 council resolved unanimously to:

Advertise in accordance with section 172B(1)(a) of the Police Reform and Social Responsibility Act 2011 the introduction of the three proposed EMROs detailed as Zone 1, Zone 2 and Zone 3 below:

Zone 1: an EMRO to prohibit the sale of alcohol between the hours of 03:00 and 06:00, Monday to Friday and between the hours of 03:45 and 06:00 Saturday and Sunday in the area marked as Zone 1 on appendix 9 of the police report (included in appendix A attached to this report) covering all premises with a postal address together with the highway and any external area within any part of London Street, Bank Plain, Queens Street, Upper King Street and Tombland which falls in the area marked as Zone 1.

Zone 2: an EMRO to prohibit the sale of alcohol between the hours of 03:00 and 06:00, Monday to Friday and between the hours of 03:45 and 06:00 Saturday and Sunday in the area marked as Zone 2 on appendix 9 of the police report (included in appendix A attached to this report) covering all premises with a postal address together with the highway and any external area within any part of Prince of Wales Road, Rose Lane and St Vedas Street which falls in the area marked as Zone 2.

Zone 3: an EMRO to prohibit the sale of alcohol between the hours of 03:00 and 06:00, Monday to Friday and between the hours of 03:45 and 06:00 Saturday and Sunday in the area marked as Zone 3 on appendix 9 of the police report (included in appendix A attached to this report) covering all premises with a postal address together with the highway and any external area within any part of the Riverside Development (including all premises facing onto the pedestrian walk way, and any external area, that commences on the junction of Koblenz Avenue and leads through the entertainment complex onto Wherry Road), Koblenz Avenue and Wherry Road which falls in the area marked as Zone 3.

Hearings

3. The statutory period for advertising the proposed EMROs has expired and relevant representations have been received. In accordance with the statutory requirements a hearing(s) has to be held to consider the representations received. It is recommended that a licensing sub-committee of five members be appointed to consider the representations and hearings be held on:
 - Monday 21 October 2013 to consider the proposed "Zone 1" EMRO;
 - Tuesday 22 October 2013 to consider the proposed "Zone 2" EMRO;
 - Wednesday 23 October 2013 to consider the proposed "Zone 3" EMRO.

4. As a result of the hearing(s) the Licensing sub-committee has three options:
 - To determine that the proposed EMRO is appropriate for the promotion of the licensing objectives;
 - To determine that the proposed EMRO is not appropriate for the promotion of the licensing objectives and therefore that the process should be ended;
 - To determine that the proposed EMRO should be modified.

In the final case, if the sub-committee proposes that the modified EMRO should differ from the initial proposal in relation to the area specified, any day not in the initial proposal or the period of any day specified, the authority should advertise what is in effect a new proposal to make an EMRO so that further representations may be made.

5. If the licensing sub-committee determines that a proposed EMRO is appropriate for the promotion of the licensing objectives, its determination must be put to full council for its final decision.

Guidance issued under section 182 of the Licensing Act 2003

6. Attached at Appendix B to the report is the relevant section relating to EMROs contained in the amended guidance issued by the Home Office under section 182 of the Licensing Act 2003.



MINUTES

Licensing committee (extract from the minutes of the meeting held on 21 March 2013)

Present: Councillors Kendrick (Chair), Haynes (Vice chair), Barker, Button, Henderson, Maxwell, Manning, Price, Neale, Sands (M), Stammers, Thomas, Wright.

Also present: Councillors Wright and Driver and Superintendent Paul Sanford (Norfolk Constabulary)

4. POLICE REFORM AND SOCIAL RESPONSIBILITY ACT 2011 : EARLY MORNING RESTRICTION ORDERS AND LATE NIGHT LEVY

(Report of the head of citywide services)

The licensing manager presented the report.

In response to a member's question, Superintendent Paul Sanford explained that the voluntary agreement entered into by bars and clubs along Prince of Wales Road agreeing to close at 4am had proved successful. As such, the introduction of the early morning restriction order (EMRO) would legally cement the last sale of alcohol at 03:00 Monday to Friday and 03:45 Saturday and Sunday in the EMRO area. Although earlier times had been discussed, setting the hours any earlier would mean a sudden exit of larger numbers of customers from clubs and bars. This would place extra strain on policing resources, increasing risk to the safety of all involved. He also explained that during this process, economic factors had had to be considered and that the stated times represented the best balance of all factors. He also said that not all bars currently included within the 4am voluntary closure scheme would be covered by the introduction of the EMRO; however, the small number of venues outside the EMRO zone that offer alcohol and entertainment do not generate sufficient crime levels to warrant the extension of the EMRO zone.

In response to a further question, Superintendent Sanford explained that whilst the SOS bus initiative provided an excellent service, it was staffed by volunteers and as such could not be run after 3am.

RESOLVED to recommend to council that it asks the head of law and governance to advertise in accordance with section 172B(1)(a) of the Police Reform and Social Responsibility Act 2011 the three proposed EMROs within the zones detailed within the report.

APPENDIX B

16. Early morning alcohol restriction orders

GENERAL

16.1 This chapter provides guidance to licensing authorities about Early Morning Alcohol Restriction Orders (“EMROs”). The power conferred on licensing authorities to make, vary or revoke an EMRO is set out in sections 172A to 172E of the 2003 Act. This power 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.

16.2 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.

16.3 An EMRO:

- applies to the supply of alcohol authorised by premises licences, club premises certificates 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 12 am and 6am, provided the alcohol is sold through mini-bars and/or room service; and
- will not apply to a relaxation of licensing hours by virtue of an order made under section 172 of the 2003 Act.

THE EMRO PROCESS

16.4 An EMRO can apply to the whole or part of the licensing authority’s area. The area may, for example, comprise a single floor of a shopping complex or exclude premises which have clearly demonstrated to the licensing authority that the licensable activities carried on there do not contribute to the problems which form the basis for the proposed EMRO.

16.5 If the licensing authority already has a Cumulative Impact Policy (“CIP”) in its Licensing Policy Statement, it should consider the relationship between the CIP and proposed EMRO area, and the potential overall impact on its local licensing policy.

EVIDENCE

16.6 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 premises licences. The licensing authority should consider evidence from partners, including responsible authorities and local Community Safety Partnerships, alongside its own evidence, to determine whether an EMRO would be appropriate for the promotion of the licensing objectives.

16.7 When establishing its evidence base, a licensing authority may wish to consider the approach set out in paragraphs 13.23 to 13.26 of this Guidance which includes indicative types of evidence, although this should not be considered an exhaustive list of the types of evidence which may be relevant.

INTRODUCING AN EMRO

16.8 An EMRO is a powerful tool which will prevent licensed premises in the area to which the EMRO relates from supplying alcohol during the times at which the EMRO applies. The licensing authority should consider whether other measures may address the problems that they have identified as the basis for introducing an EMRO. As set out in paragraphs 9.38-9.40 of this Guidance, when determining whether a step is appropriate to promote the licensing objectives, a licensing authority is not required to decide that no lesser step will achieve the aim, but should consider the potential burden that would be imposed on premises licence holders as well as the potential benefits in terms of promoting the licensing objectives. Other measures that could be taken instead of making an EMRO might include:

- introducing a CIP;
- reviewing licences of specific problem premises;
- encouraging the creation of business-led best practice schemes in the area; and
- using other mechanisms such as those set out in paragraph [13.39] of this Guidance.

16.9 If the licensing authority has identified a problem in a specific area attributable to the supply of alcohol at two or more premises in that area, and has sufficient evidence to demonstrate that it is appropriate for the promotion of the licensing objectives, it can propose making an EMRO. The licensing authority should first decide on the matters which must be the subject of the proposal. These are:

- the days (and periods on those days) on which the EMRO would apply;
- the area to which the EMRO would apply;
- the period for which the EMRO would apply (if it is a finite period); and

- the date from which the proposed EMRO would apply.

In relation to the date when it plans to introduce the EMRO, the licensing authority should note that this may change when it is specified in the final order.

ADVERTISING AN EMRO

16.10 The proposed EMRO must be advertised. The licensing authority should include a short summary of the evidence and the manner in which representations can be made in the document, as well as the details of the proposed EMRO. The proposal must be advertised for at least 42 days (a reference in this Chapter to a period of “days” means a period made up of any days and not only working days). The licensing authority must publish the proposal on its website and in a local newspaper. If no newspaper exists, it must be published in a local newsletter, circular or similar document. The licensing authority must also send a notice of the proposal to all affected people in its area. They are:

- holders of (and applicants for) premises licences or club premises certificates to which the proposed EMRO would apply;
- premises users in relation to TENs to which the proposed EMRO would apply;
- those who have received a provisional statement in respect of a premises to which the proposed EMRO would apply.

16.11 Licensing authorities must, moreover, display a notice of the proposal in the area to which the EMRO would apply, in a manner which is likely to bring the proposal to the attention of those who may have an interest in it.

16.12 The licensing authority should also inform responsible authorities in its area and neighbouring licensing authorities of its proposal to make an EMRO. It may also like to consider what further steps could be taken, in any particular case, to publicise the proposal in order to draw it to the wider attention of any other persons who are likely to have an interest in it.

REPRESENTATIONS

16.13 Those who are affected by a proposed EMRO, responsible authorities or any other person have 42 days (starting on the day after the day on which the proposed EMRO is advertised) to make relevant representations. To be considered a relevant representation, a representation must:

- be about the likely effect of the making of the EMRO on the promotion of the licensing objectives;
- be made in writing in the prescribed form and manner, setting out the EMRO to which it relates and the nature of the representation;
- be received within the deadline; and
- if made by a person other than a responsible authority, not be frivolous or vexatious. Chapter 9 of this Guidance gives further advice on determining whether a representation is frivolous or vexatious.

Representations can be made in relation to any aspect of the proposed EMRO. If a licensing authority decides that a representation is not relevant, it should consider informing the person who has made that representation.

16.14 Responsible authorities may wish to make representations, as may affected persons (as set out in the above paragraph).

16.15 Others may also wish to make representations about the proposed EMRO. These persons could include, but are not limited to:

- residents;
- employees of affected businesses;
- owners and employees of businesses outside the proposed EMRO area; and
- users of the late night economy.

HEARINGS

16.16 If a relevant representation or representations are received, the licensing authority must hold a hearing to consider them (unless the authority and anyone who has made representations agree that this is unnecessary). The licensing authority should consider, based on the number of relevant representations received by it and any other circumstances it considers appropriate, whether to hold the hearing over several days, which could be arranged to take place other than on consecutive working days.

16.17 Licensing authorities should be familiar with the hearing process as it has similarities with other processes under the 2003 Act. Further guidance on hearings can be found in Chapter 9 of this Guidance (paragraphs 9.27 to 9.37). However, licensing authorities should note the following key points in relation to a hearing about a proposed EMRO:

- the hearing must be commenced within 30 working days, beginning with the day after the end of the period during which representations may be made;
- the hearing do not have to take place on consecutive working days, if an authority considers this to be necessary to enable it to consider any of the representations made by a party or if it considers it to be in the public interest;
- a licensing authority must give its determination within 10 working days of the conclusion of the hearing; and
- the authority is not required to notify those making representations of its determination so that the determination may be put before the full council of the authority to decide whether or not to make the EMRO.

16.18 The licensing authority will determine the manner in which the hearing will be conducted in accordance with the Licensing Act 2003 (Hearings) Regulations 2005. If a licensing authority determines that a representation is frivolous or vexatious, it must notify in writing the person who made the representation.

16.19 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 for the promotion of the objectives and therefore that the process should be ended;
- to decide that the proposed EMRO should be modified. In this case, if the authority proposes that the modified EMRO should differ from the initial proposal in relation to the area specified, any day not in the initial proposal or the period of any day specified, the authority should advertise what is in effect a new proposal to make an EMRO in the manner described above, so that further representations are capable of being made.

FINAL EMRO

16.20 If the licensing authority is satisfied that the proposed order is appropriate for the promotion of the licensing objectives, its determination must be put to the full council for its final decision.

16.21 The matters set out in the final order must be no different from the matters set out in the proposal to make the order, subject to the caveat described above in paragraph 16.18. The order must be set out in the prescribed form and contain the prescribed content.

16.22 No later than 7 days after the day on which the EMRO is made, the licensing authority must send a notice to all affected persons of the EMRO, and make the order available for at least 28 days on its website and by displaying a notice in the EMRO area. A licensing authority should retain details of the EMRO on its website for as long as the EMRO is in force. It is recommended that the licensing authority advises neighbouring licensing authorities and the Secretary of State that the order has been made, the nature of the order and when (and for how long) it will take effect.

16.23 The licensing authority should monitor the effectiveness of the EMRO to ensure it continues to be appropriate for the promotion of the licensing objectives and periodically review whether it is appropriate to continue to apply it. The licensing authority should consider setting out its policy in relation to reviewing EMROs (if any) in its statement of licensing policy.

16.24 The variation or revocation of an order requires the licensing authority to undertake the same process as that which applied on its introduction; that is after gathering the appropriate evidence, it advertises its new EMRO proposal, following the process set out above so that those affected and anyone else can make representations.

16.25 If an order applies for a finite period, the order will cease to apply on its last day. If the licensing authority wishes to introduce a further (new) EMRO, it must follow the full process for proposing a new EMRO.

16.26 Licensing authorities should update their statement of licensing policy (in accordance with section 5 of the 2003 Act) to include reference to the EMRO as soon as reasonably possible.

EXCEPTIONS TO AN EMRO

16.27 EMROs will not apply on New Year's Eve in recognition of its status as a national celebration. The supply of alcohol to residents through mini-bars and room service in premises with overnight accommodation will also not be subject to an EMRO.

ENFORCEMENT OF EMROS

16.28 The supply of alcohol in contravention of an EMRO is an 'unauthorised licensable activity' which is an offence under section 136 of the 2003 Act. Moreover, it may result in a closure notice being served on the premises under section 19 of the Criminal Justice and Police Act 2001 as a precursor to an application for a closure order under section 21 of that Act. This may alternatively, result in the licence being reviewed on crime prevention grounds. Further information on reviews can be found in Chapter 11 of this Guidance.

16.29 An EMRO overrides all authorisations to supply alcohol under the 2003 Act (including temporary event notices). It is immaterial whether an authorisation was granted before or after an EMRO was made as there are no authorisations that have the effect of authorising the sale of alcohol during the EMRO period, with the only exception being a licensing hours order made under section 172 of the 2003 Act.