

LICENSING COMMITTEE

17 OCTOBER 2013

EARLY MORNING ALCOHOL RESTRICTION ORDER

REPORT BY GROUP MANAGER – ENVIRONMENTAL HEALTH & TRADING STANDARDS

SUMMARY

Under the Licensing Act 2003, a Licensing Authority is entitled to make an Early Morning Alcohol Restriction Order (EMRO) which has the effect of prohibiting the sale of alcohol between the hours of midnight and 6am in such areas as the Authority determines appropriate on the basis of evidence of recurring problems associated with the sale of alcohol, including high-levels of crime and disorder, public nuisance or other anti-social behaviour that is not directly attributable to a specific premises.

At its meeting in May the Committee agreed that a proposal for an Early Morning Alcohol Restriction Order (or Orders) should be progressed, to relate to the area covered by the Kingston Town Cumulative Impact Special Policy, for the period of time between 3am and 6am. The Committee requested further detailed evidence be submitted to this Committee meeting in order to assist the Committee to decide whether a proposal for such an EMRO is appropriate and, if so, to determine the specific details of that proposal. This evidence, from Kingston Police, is provided in **ANNEX 1** to the report.

RECOMMENDATIONS

It is **RECOMMENDED** that

1. the evidence provided in respect of the need for a proposal for an Early Morning Alcohol Restriction Order is noted, and:
 - EITHER no proposal for an Early Morning Alcohol Restriction Order is made, in which case Members are invited to consider whether this should be reviewed and, if so by when.
 - OR it is determined that a proposal for an Early Morning Alcohol Restriction Order (or Orders) is made - with the Committee to determine (ref. para 16):
 - the days and periods of those days when the EMRO would apply
 - whether the EMRO will apply to a part of the Borough or the whole of it
 - the period for which the EMRO would apply
 - the date from which the EMRO would apply
2. if an EMRO is to be proposed:
 - a date for commencement of the consultation period (date of advertisement) is agreed;
 - the Committee resolves to delegate the preceding step of advertising the proposed EMRO to Officers;
 - consideration is given to the mechanism of consultation (ref para 20);
 - a process and procedure for any hearing into representations is agreed;
 - the Committee delegates the functions of holding a hearing to consider representations and making a determination to a Licensing sub-committee comprising of 5 Members;
 - a date is agreed for the next meeting in the process, being either a hearing to consider representations or to agree the implementation of an EMRO.

REASON FOR RECOMMENDATIONS – To respond to the legislative opportunity to introduce an Early Morning Alcohol Restriction Order, with reference to the objective evidence, provided that this is an appropriate mechanism to promote the licensing objectives.

BACKGROUND

1. In May, the Committee received a report outlining a new power that had come into force which allows Licensing Authorities to make an Early Morning Alcohol Restriction Order [EMRO], and resolved that:
 - a proposal for an Early Morning Alcohol Restriction Order (or Orders) should be progressed, to relate to the area covered by the Kingston Town Cumulative Impact Special Policy for the period of time between 3am and 6am, and
 - further detailed evidence be submitted to this Committee meeting in order to assist the Committee to decide whether proposal of an EMRO is appropriate and, if so, to enable Committee to determine the specific details of that proposal.

Early Morning Alcohol Restriction Orders (EMRO)

2. The power to make an Early Morning Alcohol Restriction Order allows a Licensing Authority to prohibit the sale of alcohol for a specified time period (between the hours of midnight and 6:00am) in the whole or part of its area, where it is satisfied that it would be appropriate to do so for the promotion of the Licensing Objectives.
3. EMRO's are designed to address recurring problems such as high levels of alcohol related crime and disorder, serious public nuisance and other instances of alcohol-related anti-social behaviour which is not directly attributable to specific premises.
4. An EMRO can apply to the whole or a part of a Licensing Authority's area, and the terms can be very flexible in order to respond to specific issues in specific areas. EMRO's apply to the sale of alcohol under Premises Licences, Club Premises Certificates and Temporary Event Notices, and automatically overrides all existing authorisations.
5. In making an EMRO, an Authority must be satisfied that it has sufficient evidence to demonstrate that its decision is appropriate for the promotion of the licensing objectives, and therefore the Authority should have regard to evidence from its partners, including responsible authorities.
6. EMRO's are a powerful tool, and guidance on their use is included within chapter 16 of the October 2012 edition of the Secretary of State's Guidance under s182 of the Licensing Act 2003.

Evidence of the need for an EMRO

7. The Secretary of State's Guidance on the implementation of an EMRO establishes that other measures that may address the problems must have been considered before implementing an EMRO, including introducing a Cumulative Impact Policy, reviewing licences of specific problem premises, encouraging business-led best practice schemes and other control measures available to the authority.
8. A Special Policy on Cumulative Impact has been in place since October 2011, and a number of reviews of specific premises have been undertaken over the years. A number of business and regulator led best practice schemes exist, including Pubwatch, Town Link Radio, Best Bar None, Purple Flag and a variety of information campaigns.
9. These schemes have all had a positive impact on the promotion of the licensing objectives, and each has its part to play in managing the night-time economy.

10. However, despite the existence of these measures, should the Authority consider that areas are experiencing high level of alcohol related crime and disorder then an EMRO may be a solution.
11. The principal source of evidence as to whether high levels of Crime and Disorder exist is clearly the Police. Chief Inspector Taylor of Kingston Police has provided a breakdown of alcohol related crimes within the last 12 months in order to assist the Committee in establishing whether an EMRO may be appropriate. This evidence is set out at **ANNEX 1** to the report .
12. Against the background of this evidence, it is necessary that the Authority considers the impact of the other measures, and the general trend of crime and disorder in the area. Clearly recent high profile cases have resulted in increased public interest in this matter.
13. It is important to recognise that, as with all decisions, the decision to propose an EMRO can be subject to judicial review, and it is crucial therefore that evidence upon which such a decision is robust. It should be noted that, whilst there is a right to make representations against a proposal to make an EMRO, there is no right of appeal to the Magistrates' court.
14. The police regularly report to Pubwatch and other committees that crime and disorder statistics are apparently improving, and it is therefore important that the Committee considers whether, despite this improvement, there remains a significant problem of alcohol related crime and disorder, such that an EMRO is appropriate to promote the licensing objectives.

Implementation of an EMRO

15. Where it is considered that sufficient evidence exists to identify a problem in a specific area that is attributable to the supply of alcohol and, having considered all other matters, a Local Authority may determine that an EMRO will be proposed.
16. In making a proposal, the Authority must first determine the matters to be included within the terms of the EMRO, and these should include:
 - a. the days and periods of those days when the EMRO would apply – the Authority is free to set variable days and times in which the EMRO shall apply to suit the particular circumstances. The times the EMRO has effect need not be the same on every day (but can only be no earlier than midnight and no later than 6am) nor need the EMRO be applied on every day of the week.
 - b. the area to which the EMRO would apply – this can be the whole borough or any part of it
 - c. the period for which the EMRO would apply – EMRO's can, for example, be 'seasonal' or even apply for a specific period of time in relation to a particular event for example.
 - d. the date from when it is proposed that the EMRO will apply
17. The proposed EMRO will then be advertised, together with a short summary of the evidence that has led to the decision. The Committee is invited to delegate the preceding step of advertisement to Officers. The Secretary of State's Guidance states that any preceding steps to introducing an EMRO are for the Licensing Committee but that the Committee may delegate these steps to the Licensing Sub-Committee or officers as it sees fit (paragraph 16.6)

18. The proposal must be advertised online and in a local newspaper, and by way of a public notice displayed in the area of the proposed EMRO for no less than 42 days. In addition, persons likely to be affected by the proposal, being holders of premises licences or club premises certificates in the area of the proposed EMRO, must be consulted directly. It may also be appropriate to seek views of local residents and other interested parties through direct consultation, and members are invited to consider this.
19. The Authority must hold a hearing to consider any relevant representations made in respect of the proposed EMRO. The hearing must be held within 30 working days of the last date on which representations can be made and the decision of that committee must be resolved by Council.
20. The Secretary of State's Guidance states that the Licensing Committee may delegate the functions of holding a hearing to hear representations and making a determination in respect of an EMRO to a licensing sub-committee or to an officer. However, the guidance goes on to recommend that a decision to make an EMRO should be made by either the licensing committee or a licensing sub-committee (paragraph 16.18). As a hearing into representations regarding an EMRO proposal has the potential to take a number of days, it is recommended that (if the Committee decides to introduce an EMRO), the Committee delegates the function of hearing any representations and making a determination in respect of an EMRO to an EMRO Representations Sub-Committee comprising of 5 named Members of the Licensing Committee (reflecting the political proportionality of the Council ie three from the Liberal Democrat Group and two from the Conservative Group.)
21. It should be noted that the legislation provides that any EMRO is automatically deemed not to apply on New Year's Eve (into New Year's Day), nor does it apply to hotels or guesthouses supplying alcohol to residents through mini-bars or room service.

PROPOSAL

Determination of the need for an EMRO

22. Whilst generic crime and disorder figures are available in connection with specific wards and the Cumulative Impact Policy, the Authority is obliged to apply a more critical test to the evidence before determining the need for an EMRO than it would have to for other initiatives (such as the Cumulative Impact Policy).
23. The Committee is invited to consider, on the basis of the evidence and knowledge of the other measures in place to promote the licensing objectives, whether or not it is appropriate to propose an EMRO.
24. If so, Members are invited to consider the format of the proposal, considering those matters set out at paragraph 16. Any deviation from the determination made in the Committee's decision of May 2013 must also be accounted for.
25. If the Committee considers that it is not appropriate to propose an EMRO at this stage, Members are invited to consider whether this should be reviewed and, if so, by when.

FINANCIAL IMPLICATIONS

26. There are no particular financial implications arising from the introduction of an EMRO. However, there will be costs associated with advertisement of a proposal, consultation on the proposal and in conducting a hearing into any representations. There is no direct means of recovery of these costs, and they would therefore have to be met from existing budgets.

LEGAL IMPLICATIONS

27. The power to make an Early Morning Alcohol Restriction Order is contained within Section 172 of the Licensing Act 2003. Regulations set out the process of determination, consultation and implementation of an Early Morning Alcohol Restriction Order.
28. There is no appeal against a decision to implement an EMRO. However, failure to ensure robust evidence exists, to follow due process, or to give appropriate consideration to representations may result in legal challenge by way of an application for judicial review to the High Court.
29. Any decision to make an EMRO is likely to be subject to close scrutiny by both residents and businesses affected by the Order.

EQUALITY IMPACT ASSESSMENT IMPLICATIONS

30. If a decision is made to make an EMRO, the proposal will need to be subject to EQIA. An assessment would be carried out on the proposed EMRO prior to consultation, and would be reviewed on completion of the consideration of representations made during the consultation process.

ENVIRONMENTAL IMPLICATIONS

31. The Early Morning Alcohol Restriction Order is a power contained within the Licensing Act 2003, which itself sets out to promote the prevention of crime and disorder, public safety, prevention of public nuisance and protection of children from harm.

TIMESCALE

32. If the Committee decide to progress with a proposal to make an EMRO, a further meeting of the Committee (or the sub-committee if the Committee delegates the function to a sub-committee) will need to be scheduled to hold a hearing into any representations received, or, in the event of no representations, to determine making a recommendation to full Council that they make the EMRO.

Background papers: held by the author of report, *David Kingstone, Environmental Health Manager (Licensing & Pollution Control)* – tel 020 8547 5537, e-mail: david.kingstone@rbk.kingston.gov.uk

- Chapter 16, Amended Guidance issued under s182 of the Licensing Act 2003 (Home Office, October 2012)
- The Licensing Act 2003 (Early Morning Alcohol Restriction Orders) Regulations 2012

ANNEX 1 – Evidence from police