RESPONSE TO THE HOME OFFICE CONSULTATION DOCUMENT
"DEALING WITH THE PROBLEMS OF LATE NIGHT DRINKING - A CONSULTATION ON SECONDARY LEGISLATION FOR THE LATE NIGHT LEVY AND EARLY MORNING RESTRICTION ORDERS"

REPORT BY THE EXECUTIVE DIRECTOR FOR TRANSPORT AND TECHNICAL SERVICES

1. Introduction

1.1 On the 17 January 2012 the Home Office published a consultation document “Dealing with the Problems of Late Night Drinking - A Consultation on Secondary Legislation for the Late Night Levy and Early Morning Restriction Orders”. The Home Office has asked for responses to 19 questions set out in their document by the 10 April 2012. I attach a draft copy of the Council’s proposed response as Appendix A to this report, which, if agreed, will go through the Council’s Key Decision process. You can read the full Home Office paper and Impact Assessment at:

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

I have sent the internet link for this consultation paper and the Royal Borough’s draft response to the Chairman of the Licensing Committee.

1.2 Early Morning Restriction Orders (EMROs) and the Late Night Levy were introduced in sections 119, and sections 125 to 136, respectively of the Police Reform and Social Responsibility Act 2011.

1.3 This paper is an initial consultation on the secondary legislation that will create a Commencement Order for these two provisions. The paper does not deal with whether or not this Authority would choose to impose either of these provisions in the Royal Borough.

2. EARLY MORNING RESTRICTION ORDERS

2.1 EMROs will enable a Licensing Authority to identify areas within its Borough where restrictions on the hours for the sale of alcohol are needed in order to promote the licensing objectives. The hours within which restrictions can be imposed are at any time between midnight and 6am.

2.2 An EMRO can be imposed permanently, or for a specified period of the year, or for different times on different days of the week. It
would have the effect of banning the sale or supply of alcohol from the commencement time (midnight or afterwards) until such time up until 6am as specified in the Order.

2.3 The EMRO would have effect for any licensed premises that may have permission on their premises licences to sell/supply alcohol between the times specified in the Order, and would also have effect in relation to any Temporary Event Notices (TENs).

2.4 Section 119 of the Police Reform and Social Responsibility Act 2011 allows the Secretary of State, by Regulations, to exempt certain categories of premises from the effect of an EMRO.

2.5 This section also prescribes the procedural and consultation arrangements a Licensing Authority must follow in order to impose an EMRO on an area within its Borough.

2.6 The Home Office consultation paper contains proposals for exempt categories of premises and the method by which a Licensing Authority will be able to impose an EMRO.

3. **THE LATE NIGHT LEVY**

3.1 The Police Reform and Social Responsibility Act 2011 also introduces the Late Night Levy. This is basically a tax the Licensing Authority can levy on licensed premises open for the sale/supply of alcohol at any time between midnight and 6am. The Authority would decide at what time the Levy would apply between these hours. A Late Night Levy can only be imposed on the whole Licensing Authority area, rather than specific areas within it as with EMROs.

3.2 However, after taking off the cost incurred by the Authority in collecting the Levy, a minimum of 70% of whatever this Authority collects must be passed on to the Metropolitan Police. A Licensing Authority may only retain a maximum of 30% of the total collected and it is proposed that this can only be spent on services which tackle alcohol related crime and disorder. It should be noted that it is proposed that the 70% allocated to the Metropolitan Police will not be sent directly to our Borough Commander for use within the Royal Borough but will be sent to New Scotland Yard to be used in any area of London as seen to be appropriate by the Commissioner of the Metropolitan Police.

3.3 The Act states that the Secretary of State may, by Regulation, prescribe categories of premises that a Licensing Authority may
choose to exempt from a Late Night Levy, or who may be charged a lower amount.

3.4 The Secretary of State will also, by Regulation, prescribe the procedure to be followed by Licensing Authorities wishing to impose the Levy in its area.

3.5 The Home Office consultation paper contains proposals on categories of premises that may be exempted from paying all, or part of the Levy, types of activity monies collected from the Levy may be spent on by a Licensing Authority, and the procedure to be followed to introduce a Late Night Levy.

3.6 There are currently 223 premises licensed to sell alcohol between midnight and 6am on at least one day a week in the Royal Borough.

4. Comments from the Legal Department

4.1 The Director of Legal Services has commented upon and contributed to the draft response to the consultation which deals with the legal implications arising from the proposed changes.

5. Comments from the Finance Department

5.1 The Finance Department have no comments to make on this consultation paper.

6. Comments from Equalities

6.1 There are no equalities issues raised in this consultation paper.

7. Comments from Community Safety

7.1 The Community Safety Team have no comments to make on this consultation paper.

8. Comments from the Culture Department

8.1 The Culture Department have no comments to make on this consultation paper.
9. **Comments from the Environmental Health Department**

9.1 The Environmental Health Department have no comments to make on this consultation paper.

10. **Comments from the Planning Policy Team**

10.1 The Planning Policy Team have no comments to make on this consultation paper.

Submitted for your consideration

**Nicholas Austin**  
**Director for Environmental Health**

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**Local Government (Access to Information) Act 1985** –  
**Public Background Papers used in preparation of this report:**  
The Licensing Act 2003  
The Police Reform and Social Responsibility Act 2011  
The Crime and Security Act 2010  
Home Office 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”  
Home Office Impact Assessment – “Dealing with the Problems of Late night Drinking – Secondary Legislation Consultation”

**Officer Contact:**  
Patrick Crowley, Licensing Team Manager, Council Offices, 37 Pembroke Road, London W8 6PW  
(Tel: 020 7341 5601), E-mail: Patrick.Crowley@rbkc.gov
Dear Sir/Madam,

Home Office 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”

Thank you for inviting responses to this consultation paper. The Royal Borough has studied all the proposals contained in the paper and has completed your questionnaire.

We welcome this opportunity to become involved in this consultation exercise, and would also welcome any opportunity there may be to become involved in any amendments that may be considered for the Secretary of State’s Guidance issued under section 182 of the Licensing Act 2003.

Yours faithfully

Nicholas Austin
Director for Environmental Health
APPENDIX A

HOME OFFICE CONSULTATION QUESTIONS:

EARLY MORNING RESTRICTION ORDERS

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. Should we decide to implement an Early Morning Restriction Order (EMRO) in any part of the Royal Borough we will ensure that a full consultation process takes place, including any residents, businesses and licensed premises operators that may be affected should the Order be imposed. It is also sensible that we would inform neighbouring Boroughs of our intention.

However, we have serious concerns regarding the proposed method of dealing with any “representations” from any interested party as a result of this consultation. We note that a hearing must be convened to consider any representations, but it is unclear from this document and from the primary legislation whether these hearings can be delegated to a Licensing sub-Committee, or whether they will have to be heard by the whole 15 Member Licensing Committee. Additionally, is it the intention of the Government that these hearings follow the procedures set out in the Licensing Act (Hearings) Regulations 2005?

Licensing Authorities will need to have a clearer explanation from the Home Office regarding this matter. A consultation exercise to decide whether or not an EMRO should be imposed on any particular area within the Royal Borough is likely to attract a significant number of representations, both for and against the proposal. This would require a hearing that would possibly extend over several days in order that the matter can be dealt with fully and fairly. This would be incredibly difficult to arrange if the whole 15 members of the Licensing Committee were required to hear the case. It would be much more practicable, and sensible, to allow these hearings to be delegated to the Licensing sub-Committee. Members of the sub-Committee could then set aside enough time to hear the representations and then recommend to the Licensing Authority (Full Council) whether an EMRO should be imposed on the selected area or not. We strongly recommend this.

This recommendation can be included in a full report to the Council along with evidence from other interested parties, such as the Police, Environmental Health, Planning Department, local residents and other
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?

We believe that the discretion a Licensing Authority would have, should it chose to impose an EMRO in its area, would allow New Year’s Eve to be exempted if the Authority believed that was appropriate. In other Authority areas it may not be deemed to be acceptable to exempt this because of particular issues in that Borough. Therefore, we believe that a general exemption for New Year’s Eve in the legislation is not appropriate – this should be left to the discretion of individual Licensing Authorities.

CONSULTATION QUESTION 3:

Proposed Categories of Premises that would be Exempt from an EMRO

<table>
<thead>
<tr>
<th>Name</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Premises with overnight accommodation</td>
<td>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.</td>
</tr>
<tr>
<td>Theatres and cinemas</td>
<td>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.</td>
</tr>
<tr>
<td>Community premises</td>
<td>Those premises that have successfully applied to remove the mandatory DPS requirement.</td>
</tr>
<tr>
<td>Casinos and bingo halls with a membership scheme</td>
<td>Premises licensed to provide these facilities for gambling under the Gambling Act 2005 with a membership scheme in operation</td>
</tr>
</tbody>
</table>
Do you agree or disagree that the categories of premises above should be exempt from EMROs?

The Royal Borough agrees that hotels and guest houses may sell alcohol to those persons staying overnight in the premises, but we note that this does not include the bona fide guests of residents staying overnight. For the purposes of EMROs we would not want guests of those residents to be included in the exemption.

The Royal Borough agrees that theatres and cinemas should also be exempt where alcohol is sold to ticket holders and participants in a production that takes place between midnight and 6am. We would not agree for an exemption to be available for ticket holders, or participants, where the production ends before midnight. This is not made clear in the proposal shown above.

We have one community premises which has had the mandatory DPS requirement removed. These premises operate well with no crime and disorder or other issues and, therefore, we would not object to this category of premises being exempt.

The Royal Borough currently has 4 casinos and no bingo halls operating in this area. We would agree to the proposal to exempt casinos from an EMRO, however we are aware that these premises no longer require membership for customers. We welcome the proposal that only members may be allowed to buy alcohol between midnight and 6am. This would probably mean that these casinos would have to re-introduce membership schemes.

CONSULTATION QUESTION 4:

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

No

LATE NIGHT LEVY

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?
We believe that there are already a number of existing options available that residents and community groups can use to lobby Local Authorities to take particular courses of action. Therefore, we believe that it is sufficient that the Licensing Authority, in partnership with the Police and Crime Commissioner and the local police, should make the decision on whether to propose the introduction of a Late Night Levy.

**CONSULTATION QUESTION 6:**

Proposed Categories of Premises that a Licensing Authority may Exempt from a Late Night Levy

<table>
<thead>
<tr>
<th>Name</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Premises with overnight accommodation</td>
<td>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.</td>
</tr>
</tbody>
</table>
| 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:  
  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  

Community Amateur Sports Clubs (CASCs)  

Community premises  

Country village pubs  

Premises licensed to provide facilities for gambling under the Gambling Act 2005 with a membership scheme in operation between midnight and 6am. 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.) Those premises that have successfully applied for the removal of the mandatory DPS requirement. Premises within designated rural settlements with a population of less than 3,000 (as appear in the qualifications for rural rate relief).

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

We agree that hotels and guest houses could be exempt from the Late Night Levy where sales of alcohol between midnight and 6am are restricted to those guests who are staying overnight at the premises (at the discretion of the individual Licensing authority).

We do not agree that restaurants as described above should be exempt from the late night levy. Restaurants serving alcohol late at night often become a “destination venue” for people who have been out drinking at other premises and can often cause crime, disorder and nuisance problems for the police, the local authority and residents. Although this is not true of every late night restaurant, as a category they should not be exempt because of the proportion of these premises where their customers can cause resource issues for the police and local authority.

Our answer in relation to cinemas and theatres is the same as at Question 3 above.

Our answer in relation to casinos and bingo halls is the same as at Question 3 above.

We have no Community Amateur Sports Clubs in the Royal Borough and make no comment on whether they should be an exempt category or not.

We have one community premises which has had the mandatory DPS requirement removed. These premises operate well with no crime and disorder or other issues and, therefore, we would not object to this category of premises being exempt.

We have no Country Village Pubs as described in the Royal Borough and make no comment on whether they should be an exempt category or not.
CONSULTATION QUESTION 7:

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

This Authority does not have a Business Improvement District within its area and makes no comment on whether this should be an exempt category.

CONSULTATION QUESTION 8:

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

No. This Authority believes that premises operating under a club premises certificate should not be exempt from payment of a Late Night Levy. As with restaurants, there is a proportion of this category of premises that do have issues with crime, disorder and nuisance and should not be considered to be exempt from payment of a Late Night Levy.

CONSULTATION QUESTION 9:

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

No comment.

CONSULTATION QUESTION 10:

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

Because of the special nature of New Year’s Eve this Authority believes that, if premises have permission on their licence to operate beyond midnight on this occasion only, they should not become subject to the Late Night Levy.

CONSULTATION QUESTION 11:

Categories of premises that are recommended to be charged a reduced fee:

i) Members of a locally accredited Best Bar None scheme
ii) 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:

a) 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.

b) Membership is open to all licensed premises within the geographic area.

c) The scheme has a Chair person and/or Coordinator who is responsible for maintaining verifiable records of membership.

iii) 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.

iv) Premises that pay a levy in a **Business Improvement District** (established under the Local Government Act 2003) where the authority is satisfied

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

This Authority does not object to any of these categories of premises being charged a reduced fee if a particular Licensing Authority decides that is appropriate.

**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?

No

**CONSULTATION QUESTION 13:**

Do you agree or disagree with this set-up of cumulative discounts?
Although we do not contest the proposal to have the discretion to offer discounts to these categories of premises, we would argue that instead of fixing a discount for each category at 10%, rising to 30% dependent on the number of memberships an individual premises has, we believe that the Authority should have discretion to charge a reduced fee of \textit{upto} 10% for each category, with a total reduction not to exceed 30%.

The Late Night Levy is a discretionary tax a Local Authority can impose on late night licensed premises and, although we recognise that there must be an overall upper limit fixed, we believe that the level of any discount for membership of these schemes should be a decision for that Local Authority.

**CONSULTATION QUESTION 14:**

\textbf{Should there be scope for further exemptions and reductions from the late night levy?}

No comment.

**CONSULTATION QUESTION 15:**

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

This Authority believes that monies collected through this Levy should be spent on the costs of the night time economy generally, rather than solely the costs of alcohol related crime and disorder. Costs that the Local Authority incurs that are indirectly linked to late night alcohol sales and consumption should be valid expenses. For example, you specifically state that it should not include the collection of waste from fast food outlets but this waste is often accumulated by customers of late night drinking venues. Any Levy collected should be used to cover the cost of night time street waste collection as well as the examples given in the consultation paper.

**CONSULTATION QUESTION 16:**

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

As stated above, we believe that the Levy should be used to recover any costs incurred by the Local Authority that are either directly, i.e. taxi marshals, street wardens, broken glass and public urination, or indirectly,
i.e. general night time street waste collections, linked to late night sales and consumption of alcohol. We feel it important to mention that we are concerned that any monies collected on behalf of the Police will be directed to the Commissioner of the Metropolitan Police for use anywhere in London that he feels appropriate. We strongly feel that, should this Borough impose a Late Night Levy, any monies collected on behalf of the Police should be used by our own Borough Commander to tackle alcohol related crime and disorder issues in this area rather than elsewhere in London.

CONSULTATION QUESTION 17:

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

No comments

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?

A total of 223 premises, of which 25 are hotels, could be affected by an EMRO in the Royal Borough’s area.