

## LICENSING COMMITTEE

23rd June 2014

<b>Title of paper:</b>	Late Night Levy	
<b>Director(s)/ Corporate Director(s):</b>	Andrew Errington \\Director Community Protection	<b>Wards affected: All</b>
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<b>Relevant Council Plan theme(s):</b>		
Choose Nottingham		X
Respect for Nottingham		X
Transforming Nottingham's Neighbourhoods		X
Supporting Nottingham People		X
Serving Nottingham Better		X
<b>Summary of issues (including benefits to customers/service users):</b>		
<p>This report summarises the responses received in relation to the public consultation on the proposed introduction of a Late Night Levy Scheme (the levy) for the City. The Committee is asked to consider the results of the consultation prior to the matter being referred to Council (as Licensing Authority) in July and determine whether it supports the amended scheme which is now proposed.</p> <p>The introduction of a levy allows the Licensing Authority to charge a prescribed fee to any late night alcohol supply venue to help offset the cost of policing the night-time economy. It is for the Licensing Authority to decide whether a levy should be implemented.</p>		
<b>Recommendation(s):</b>		
1	That the Committee indicate whether it would support a recommendation being put to Council proposing the introduction of a Late Night Levy Scheme in the following terms:- <ul style="list-style-type: none"><li>• The Levy to apply from 1 November 2014,</li><li>• to be charged to premises that are authorised to sell alcohol at any time between 00:01 – 06:00.</li><li>• There will be an exemption for premises falling within the following categories as defined in Regulation 4 of the late Night Levy (Expenses, Exemptions and Reductions) Regulations 2012:<ul style="list-style-type: none"><li>(i) Premises with overnight accommodation</li><li>(ii) Theatres and cinemas</li></ul></li></ul>	

	<ul style="list-style-type: none"> <li>(iii) Bingo halls</li> <li>(iv) Community Amateur Sports Clubs</li> <li>(v) Community premises</li> <li>(vi) Premises which are a member of a BID established for relevant purposes</li> <li>(vii) Premises which only become liable for the LNL by virtue of their being permitted to supply alcohol for consumption on the premises on 1st January in every year.</li> </ul> <ul style="list-style-type: none"> <li>• The funds raised, net of the administration costs incurred by the Licensing Authority, be split 30/70 between the Licensing Authority and the Police respectively.</li> <li>• The Licensing Authority's portion of the funding to be used throughout the City to support the prevention of crime and disorder caused by the night time economy during the hours of the levy. This will be achieved through the establishment of two night time Community Protection Officer posts.</li> </ul>

## 1 **BACKGROUND**

1.1 The Police Reform and Social Responsibility Act gives Licensing Authorities such as Nottingham City Council (the Council) the power to charge a Late Night Levy (the levy) to persons licensed to sell alcohol late at night as a means of raising a contribution to fund services to tackle late night alcohol related crime and disorder and services connected to the management of the night-time economy.

1.2 In determining whether a Levy should be applied the Authority must consider:-

- The costs of policing and other arrangements for the reduction and prevention of crime and disorder in connection with the supply of alcohol between midnight and 6 am and
- Having regard to those costs the desirability of raising revenue to be applied by the police and licensing authority.

1.3 On 16<sup>th</sup> December 2013 this Committee considered a report which addressed these issues and proposed a levy scheme. The Committee resolved to consult on the following scheme:-

- A LNL to apply from 1 October 2014,
- to be charged to premises that are authorised to sell alcohol at any time between 00:01 – 06:00.
- a 30% reduction in the fee for premises in the BID and
- an exemption for premises falling within the following categories as defined in Regulation 4 of the late Night Levy (Expenses, Exemptions and Reductions) Regulations 2012:

- i. Premises with overnight accommodation
- ii. Theatres and cinemas
- iii. Bingo halls
- iv. Community Amateur Sports Clubs
- v. Community premises
- vi. Premises which only become liable for the LNL by virtue of their being permitted to supply alcohol for consumption on the premises on 1st January in every year.

- The funds raised, net of the administration costs incurred by the Licensing Authority, be split 30/70 between the Licensing Authority and the Police respectively.
- The Licensing Authority's portion of the funding to be used throughout the City to support the prevention of crime and disorder caused by the night time economy during the hours of the levy. This will be achieved through the establishment of three night time Community Protection Officer posts.

1.4 The consultation was held over a 12 week period from 13<sup>th</sup> January – 6<sup>th</sup> April 2014, details of the methods of consultation used can be found at Appendix 1.

The detailed responses received to the consultation are available in the Members' Room for Councillors to consider in full and will also be available to the Committee when considering this report. These include full copies of all written responses, paper surveys and a print out of the online survey responses.

## **RESULTS AND FEEDBACK FROM THE CONSULTATION**

### Survey

1.4 A total of 99 survey responses were received during the consultation period. 64 responses were from individuals with 26 on behalf of businesses and the rest on behalf of public sector and voluntary organisations. Please note, not all respondents answered all the questions therefore the figures below may not always add up to 99.

An analysis of the survey responses can be found at Appendix 2. 71 of those who submitted a survey response stated that alcohol related antisocial behaviour was a problem with only 19 stating it was not a problem. 24 of the respondents either agreed/strongly agreed with the Council introducing a levy with 74 of respondents disagreeing/strongly disagreeing. Almost 72% of individual respondents fell into this category with 88% of businesses disagreeing/strongly disagreeing with the introduction as well.

#### 1.4.1 Principle of the Levy

A number of common themes arose amongst those who agreed with the proposed introduction of the levy which are detailed below:

- Venues licensed late night created a disproportionate level of nuisance to the wider community and should therefore make more of a contribution to meeting the costs of managing the night time economy (NTE);
- Some venues sell to people who were already drunk, thereby acting irresponsibly, and should pay for costs involved in the NTE;
- The money raised would be used to deal with alcohol related disturbances and this was a good way to raise it; and
- The fee levels seemed fair and proportionate to the problem.

There were also a number of common themes in the comments made by those who disagreed with the levy:

- Levy is an unfair additional financial burden, these businesses already pay taxes

and rates for the police and council services they use

- Businesses already pay to BID which is involved in many initiatives such as street pastors, taxi marshals, etc. The Levy threatens the future of the BID as business wont pay twice so will cease to be members of the BID as the levy will be mandatory.
- The Levy is an indiscriminate financial penalty and does not target those venues causing the issues, if you are only open until 01:00, you may pay the same or even more as a venue open until 05:00.
- Negative impact on NTE, venues will close early or all together and you risk losing the vibrancy of the NTE. Impact on jobs as venues close or reduce hours, particularly on younger people as they make up a significant proportion of those employed in this sector as bar staff, etc. Impact on wider NTE as less people are out, investors may shy away from investing here, both new and old as the city will be seen as 'troubled'.
- Does not take into account issues of pre-loading which lead to a lot of the problems. Off licences, particularly supermarkets, should have to pay as they contribute the most to this problem.

It was also suggested that the Council should instead promote further partnership working with the BID/Street pastors/Best Bar None/Purple Flag given as examples.

Respondents also commented that this was a good way to raise funds to tackle issues within the NTE without general members of the public being penalised as it targets those businesses that benefit from the alcohol in the NTE. Others felt that there was a risk of premises closing at midnight, leading to more people converging on the streets at the same time and creating potential flashpoints.

#### 1.4.2 Late Night Supply Period

In terms of the proposed late night supply period, 24 of those who responded agreed with the Council's proposed levy period of 00:01 to 06:00. Many of these felt this was a reasonable time, other common themes were:

- The LNL period should start earlier (which is not legally possible) whilst others felt a start time of 01:00 or later would be more appropriate.
- By using the revenue raised to target issues at these times, residents who are victims of anti-social behaviour caused by late night alcohol consumption will stand to benefit in terms of reduced nuisance.
- A stepped charge was also suggested with £x for those closing at 01:00 and a higher rate for those closing at 02:00, etc, etc however this is not possible within the parameters set out in the legislation.

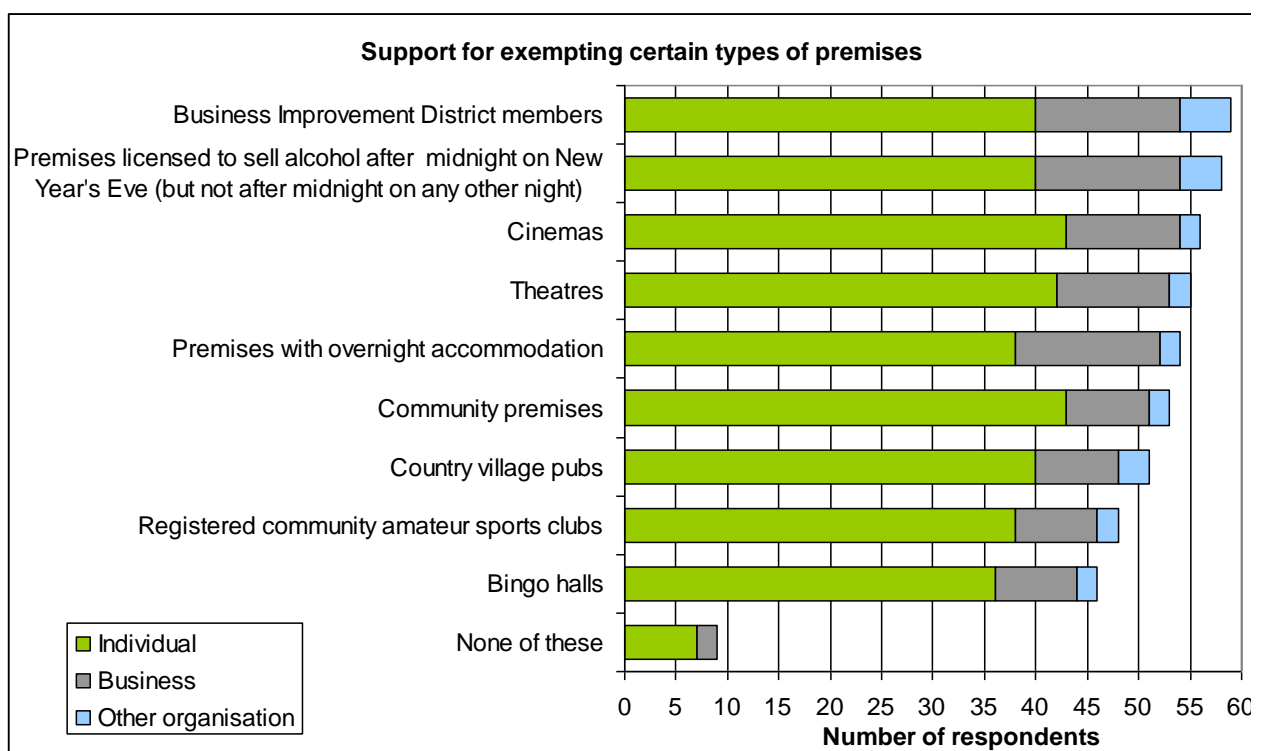
72 respondents disagreed with the proposed period, 17 commented that they disagree with the levy so disagree with its imposition at any time. Several common areas of concern were raised from these respondents as follows:

- targeting offenders, businesses and individuals, rather than blanket levy on all premises would be more appropriate.

- Off licences, particularly supermarkets should pay as they sell cheap alcohol, fuel pre-loading (NB. such premises will be caught by the levy if they sell alcohol within the supply period)
- pre-loading is the issue, with revellers already drunk before they get into town irrespective of timing.
- 00:01 is no longer 'late' due to changing behaviours. The proposals will hit venues that would not traditionally be deemed to be 'late' venues or catering for the 'late' crowd.

### 1.4.3 Exemption Categories

Respondents were also asked to indicate which exemption categories, if any, the Authority should exempt from the Levy. Their responses are shown in the graph below.



An exemption for the BID and for those premises licensed to sell alcohol after midnight on New Years Eve but not on any other night had the most support with 64% and 63% of respondents in favour respectively. At least 50% were also in favour of exemptions for all the other categories with the exception of registered amateur sports clubs and bingo halls. 10% of respondents indicating no exemptions should apply.

49% of respondents were in favour of allowing a 30% discount on the levy for small premises that are eligible for business rate relief, 77% were in favour of a discount for members of a best practice scheme.

### 1.4.4 Proportion of Levy to be paid to the Policing Body

In terms of the split of the net amount raised between the Authority and Nottinghamshire Police, 34% were agreed with the proposed 30/70 split whilst 53% disagreed with the remaining 13% stating they didn't know. Comments regarding the split included those wanting Nottinghamshire Police to get the statutory minimum (70%) and other wanting this to increase to between 85% – 100%.

Of those that disagreed with the proposed apportionment of the funding, 20 have

stated that they disagree with the proposal as a whole, whilst 13 respondents stated the police should receive 100% of the net amount.

#### 1.4.5 Use of Levy Funds

The respondents were also asked their views about the proposal to use the Council's proportion of the funding for the employment of 3 CPOs. 31% were in favour of the proposal whilst 56% were not with 9% not sure.

Those in favour commented that CPOs working during the NTE would be beneficial to the city and an effective supporting tool for the Police. Other comments suggested that some of the issues faced in the NTE do not require a uniformed police staff and CPOs are a useful alternative. A respondent summed it up by stating that '*A visible presence of uniformed officers on the streets would be helpful and reassuring*'.

Those who were not in favour of the money being used for CPOs suggested it would be better spent on building partnership-working, providing funding for the BID or on uniformed Police staff. Some respondents also questioned the effectiveness of CPOs, concerned that they have limited powers as compared to uniformed police staff.

#### 1.5 Written Responses

A total of 194 written responses were received. 123 of these were in the form of a standard letter disagreeing with the levy (Appendix 3,) 9 were from individuals, the rest were submitted by businesses and those involved in the licensed trade. 35 of these respondents also stated they would reduce their business hours to avoid the levy.

36 copies of another standard response disagreeing with the levy (appendix 4) were also submitted by businesses and those involved in the licensed trade.

3 responses were in agreement with the proposal, their views are summarise below:

- Venues licensed late night created a disproportionate level of nuisance to the wider community;
- Venues should make more of a contribution to meeting the costs of managing the night time economy (NTE) as they benefit financially from the NTE;
- Fees seem fair and proportionate to the problem; and

The remaining responses were not in favour of the proposal, their comments included:

- businesses already pay taxes and rates for the police and council services they use and many contribute to BID;
- the levy does not take into account issues of pre-loading;
- Concern over the impact on jobs as venues close or reduce hours, particularly on younger people as they make up a significant proportion of those employed in this sector.
- 00:01 is no longer 'late' and premises may close early to avoid the LNL
- Increased partnership working with the trade and volunteers rather than a levy would be more effective.
  
- The council's proposal included a 30% discount for BID Members if the BID met certain statutory requirements. However the Nottingham BID does not meet these criteria and is therefore ineligible for this discount.

Many respondents, whether for the levy or against it, were in support of some

exemptions, with an exemption for BID members and those premises licensed to sell alcohol after midnight on New Years Eve having the most support.

The Nottinghamshire Police & Crime Commissioner response to the consultation can be found at Appendix 5. The Chief Constable of Nottinghamshire Police was consulted but did not provide a formal response.

## 2 **REASONS FOR RECOMMENDATIONS**

- 2.1 The introduction of a LNL would generate funding to support the Licensing Authority and the Police in dealing with the late night economy. The Authority is required to have regard to the costs of policing and other arrangements for the reduction and prevention of crime and disorder in connection with the supply of alcohol between midnight and 6 am. These have been identified as being in the region of £1,565,182.56 (Appendix 6) However, the Authority must also have regard to the desirability of raising revenue to be applied by the Police and the Authority and the potential viability of any proposed scheme. If the LNL is not imposed the Police and the Council will have chosen not to make use of a potential funding stream.
- 2.2 Whilst considerable resistance and objection has been expressed towards the introduction of a levy the Report to this Committee of 16<sup>th</sup> December 2013 highlighted that there are a significant number of alcohol related crimes and ASB incidents throughout the night, peaking between 22:00 and 02:00 (Appendix 7). In principle it is still felt to be appropriate that those premises which benefit from the night time economy should contribute to providing funding to address the issues of crime and disorder arising from the sale of alcohol within it. However, taking into account the results of the public consultation an amended LNL scheme is now proposed. Whilst the amended proposals include an exemption for various categories of premises the proposed levy scheme will still attach to off licences and supermarkets and to all pubs and clubs outside the BID area which have the ability to sell alcohol within the supply period.
- 2.3 Late Night Supply Period - The levy period cannot begin before midnight. A period of 00:01 to 06:00 has been recommended so those benefitting from the night time economy will be contributing. Of those who agreed with the introduction of the levy in principle many supported this supply period as did the Police and Crime Commissioner. This element of the proposed Scheme remains unaltered following consultation
- 2.4 Exemption and Reduction Categories
- 2.4.1 The legislation allows the Council to offer reductions of 30% to the levy fee to premises that are registered and active members of a business led best practice scheme that promotes the licensing objectives. The Regulations state that there are three elements which should be met by a scheme to qualify for a reduction:
- (i) It is established for a purpose including one which will, or is likely to, result in a reduction or prevention of crime and disorder in connection with the supply of alcohol between midnight and 6am;
  - (ii) Requires its members to take steps to promote that purpose; and
  - (iii) Has a mechanism to identify and remove those members who have failed to promote that purpose.

The original proposal included a 30% discount for Nottingham BID members liable to

pay the levy. During the consultation it has become clear that whilst the Nottingham BID meets the first and second elements out-lined above it does not have a mechanism in place to remove members and is therefore ineligible for the 30% discount.

2.4.2 The Council also has the discretion to exempt local BIDs from the levy where they operate in the night-time economy and have a satisfactory crime & disorder focus. The Nottingham BID already contributes to managing anti-social behaviour in the night time economy and is involved in projects that target retail and leisure issues including delivering strong crime prevention measures in the night time economy. Nottingham BID takes responsibility for the business crime reduction partnership in the city, including the provision of the city centre radio scheme and provision of Taxi Marshalls available every Friday and Saturday between 10pm and 4am. As such, the Nottingham BID does have a strong crime & disorder focus.

2.4.3 The consultation responses have shown a large amount of support for exempting BID premises from the requirements of the Levy. Indeed the Police and Crime Commissioner in his Consultation response indicated that “I support the notion of BID members paying a reduced rate.....I would not want the levy set at such a rate that would jeopardise the BIDs future”. Given that the BID does not meet the statutory criteria for a reduction in levy the only two options if a scheme is to proceed are either to require BID members to pay the full levy amount or to exempt them entirely. The work of the BID is widely recognised and appreciated and as indicated above has a strong crime and disorder focus. On balance it is felt that to require BID members to pay the levy may jeopardise the future of the BID and it is now recommended that members of the BID be exempted from the levy. This does however affect the amount of income likely to be generated by the proposed scheme and this is addressed further below.

2.4.4 The original proposals also contained exemption categories in respect of :-

- i. Premises with overnight accommodation
- ii. Theatres and cinemas
- iii. Bingo halls
- iv. Community Amateur Sports Clubs
- v. Community premises
- vi. Premises which only become liable for the LNL by virtue of their being permitted to supply alcohol for consumption on the premises on 1st January in every year

as more specifically defined within the Regulations. The number of premises which currently fall within these potentially exempt categories (excluding BID) is small and given the nature of these venues and that the sale of alcohol is not their primary source of business it is still felt that it would be disproportionate to bring them within the LNL regime.

2.5 Proportion of Levy to be paid to the Police – consultation resulted in a varied response to the proposed 30/70 split in relation to net monies raised. 70% is the least amount that can be paid to the police and the Police and Crime Commissioner is in agreement with this element of the proposal. It is therefore recommended that this element of the proposed scheme remains unchanged allowing the Authority to use the funds raised to fund additional posts to work alongside the Police in addressing issues caused by the sale of alcohol in the night time economy.

2.6 Date on which the Levy is to first apply - The proposed implementation date has been amended to 1 November 2014 ensure that the statutory notice periods for introducing a



levy are met.

## 2.7 Viability

2.7.1 The regulations allow the Licensing Authority to deduct permitted expenses for administration from the gross amount collected. These expenses have currently been estimated at £22,000. In addition, the authority can also deduct the costs in connection with the introduction of the levy in the first year before apportioning the levy revenue between the Police and the Licensing Authority; this has been calculated at approximately £21,000. Given these deductions, the proposed scheme would generate £53,000 of funding for the Licensing Authority in year zero and £60,000 in subsequent years. (A more detailed breakdown can be found at Appendix 8).

2.7.2 Whilst the proposed exemption of premises falling within the BID reduces the income likely to be raised by the levy the amended proposals still generate significant funding with the Police receiving approximately £125,000 in year zero and £139,000 in subsequent years. These figures are based on the scenario that 20% of venues will vary their licence to avoid falling within the LNL regime. This will contribute to the cost of policing the night time economy and may allow the Police to employ more police staff for the late night economy period. These officers would be working over midnight and all premises open at that time will benefit from their support. The remaining resources will be held by the Licensing Authority which is proposing to invest in additional measures which will benefit the same businesses. The proposed scheme is therefore still felt to be viable and desirable. It should be noted however that should the scheme be implemented and for unforeseen circumstances either not raise sufficient funds to remain viable or require amendment then a full consultation process will be required before the scheme can be amended or revoked. The consultation carried out in relation to the implementation of the scheme has cost £21,000 approximately and it is anticipated that future consultations would cost a similar amount.

2.8 Proposed use of the Authority's proportion of the Levy - Given the reduced funding that will be generated as a result of the proposal to exempt Nottingham BID from the levy, the Licensing Authority's portion of funding will be used for the recruitment of two additional Community Protection Officer posts for the night time economy rather than three. These will support the reduction/prevention of crime in the late night economy arising from the supply of alcohol.

## 3 **OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS**

3.1 Continue with the original proposal with no amendments – legally this is not possible as the BID does not meet the statutory requirements to qualify for a reduction.

3.2 Amend the proposal to include an exemption for members of the BID with a relevant late night authorisation.

3.3 Not to implement the LNL.

#### 4 **FINANCIAL IMPLICATIONS (INCLUDING VALUE FOR MONEY)**

4.1 From the information given in the report the following is a summary of the likely financial position; 2

	<u>2014/15</u>	£	<u>2015/16</u>
Licence fees	(221,097)		(221,097)
Consultation costs etc	20,775		
Running costs	9,220		22,120
	<hr/>		<hr/>
	191,102		198,977
Split between			
Notts Police	133,771		139,284
City Council	57,331		59,693
	<hr/>		<hr/>
	191,102		198,977

The intention is that the City Council will use its share to fund two Community Protection Officers. The cost of these are £19,691 in 2014/15 and £47,258 in a full year.

#### 5 **RISK MANAGEMENT ISSUES (INCLUDING LEGAL IMPLICATIONS, CRIME AND DISORDER ACT IMPLICATIONS AND EQUALITY AND DIVERSITY IMPLICATIONS)**

##### 5.1 Legal Implications

5.1.1 The Licensing Authority has a wide discretion as to whether a Late Night Levy should be applied and if so what form the levy scheme should take. The introduction of a late night levy applies to the entire district and before determining to implement a scheme the Licensing Authority must have regard to the costs of policing and other arrangements for the reduction and prevention of crime and disorder in connection with the supply of alcohol between midnight and 6am. Councillors then have to determine the desirability of raising revenue to be applied to tackle alcohol related crime and disorder and also the management of night time economy. Once again the discretion in relation to desirability is wide and may encompass more than just financial issues.

5.1.2 The Authority must take full and proper account of the consultation responses in deciding whether to introduce a levy, and if so, its design. The proposed scheme has been amended as a result of the consultation responses and justification given for those amendments.

5.1.3 If the Authority decides to adopt a levy there are various statutory notifications which need to be given. The levy will apply indefinitely until such time as the Authority determines to amend or revoke the Scheme. In the event that amendment or revocation is proposed the Authority is obliged to carry out the same procedure as when it adopted the Scheme including the cost of a public consultation.

5.1.4 Like other decisions of the Authority, a decision to introduce a Late Night Levy be would potentially be open to challenge by way of Judicial Review which could have both financial and reputational consequences for the Council.

## 5.2 Equality and Diversity Implications

The LNL if introduced would be applied to all venues within the specific time stated.

## 5.3 Crime and Disorder Act Implications

The LNL could reduce the ability of the premises involved to work towards reducing crime and disorder by them arguing that they are contributing to the LNL and it is therefore not their responsibility anymore.

If premises choose to close earlier, when the Levy starts this could mean far more customers leaving premises at the same time and less staggered closing times.

## 6 **LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION**

6.1 None.

## 7 **PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT**

7.1 The Police Reform and Social Responsibility Act 2011.

7.2 The Late Night Levy (Application and Administration) Regulations 2012.

7.3 The Late Night Levy (Expenses, Exemptions and Reductions) Regulations 2012.

7.4 Amended Guidance on the Late Night Levy.

7.5 Report to Licensing Committee 16 December 2013 – Late Night Levy