

HAVANT BOROUGH COUNCIL

At a meeting of the Licensing Committee held on 31 October 2012

Present

Councillor Johnson (Chairman)

Councillors Branson, Brown, Farrow, Hunt, Kennedy (Vice-Chairman), Shimbart, Mrs Smallcorn and Wilson

14. Apologies

Apologies for absence were received from Councillor Caren Tarrant

15. Minutes

RESOLVED that the minutes of the meeting of the Licensing Committee held on 25 September 2012 be approved as a correct record.

16. Matters Arising

There were no matters arising from the minutes of the last meeting

17. Declarations of Interests

There were no declarations of interest from any of the members present

18. Chairman's Report

There were no matters the Chairman wished to report

19. Ward Members on Licensing Sub-Committees

At the request of the Committee (minute 10/09/2012 refers) the Solicitor to the Committee provided information about Councillors' rights under the legislation to sit on Licensing Sub-Committee when determining applications from premises within their ward.

RESOLVED that members be prohibited from sitting on Licensing Sub-Committees where an application before the Sub-Committee relates to premises situated within the member's ward or in a ward where the member resides.

20. Late Night Levy

The Committee received a report setting out details of the new Late Night Levy. The Committee was asked to consider whether to proceed with a consultation on the introduction of the Levy, to charge premises authorised to sell alcohol

(on and off trade) between 12am and 6am, after considering the need for the Levy and the likely income and costs if it is introduced.

The Committee noted that, if it was minded not to introduce the Late Night Levy at the present time, this could be revisited at a later date if necessary.

RESOLVED that the Late Night Levy not be implemented at this time.

The meeting commenced at 5.00 pm and concluded at 5.24 pm

NON EXEMPT

HAVANT BOROUGH COUNCIL

Licensing Committee

31 October 2012

WARD MEMBERS ON LICENSING SUB-COMMITTEES

Report of the Senior Solicitor, Contracts and
Licensing

REPORT NO 7

FOR DECISION YES

Environment and Neighbourhood Quality Portfolio: Councillor Collins

Key Decision: N/A

1.0 Purpose of Report

- 1.1 To consider the issue of whether Ward Members should be permitted to sit on Licensing Sub-Committees considering applications within their wards in the light of amended legislation.

2.0 Recommendation

- 2.1 That Ward Members be prohibited from sitting on Licensing Sub-Committees where the application before the Licensing Sub-Committee relates to premises situated within the Ward Member's ward.

3.0 Summary

- 3.1 At the last meeting of the Licensing Committee there was a discussion as to whether Ward Members could now sit on licensing sub-committees since at a recent training session the trainer had informed members that the law had changed. The Committee's solicitor undertook to circulate details of members' rights under the legislation to attend meetings of the Licensing Sub-Committee when determining applications from premises within their ward or near to where they lived.

4.0 Subject of Report

- 4.1 The position is that there never has been any actual legislation disqualifying ward members from sitting on licensing sub-committees. When selecting members for licensing sub-committees it has always been the practice of officers not to appoint members of the ward where the premises, the subject of the application are situated.
- 4.2 This practice derives from some guidance notes upon licensing published by LACORS (Local Authority Co-ordinators of Regulatory Services)

which is part of the Local Government Association. Within that guidance the restriction on ward members is discretionary and a matter for each licensing authority to decide for itself and not a legal requirement, In addition there was never any provision in the Home Office guidance requiring a restriction on ward members, nor is it mentioned in the Council's own Statement of Licensing Policy or Constitution. The restriction has been applied as a matter of convention rather than as a legal or constitutional rule.

- 4.3 The LACORS guidance was concerned with the appearance of bias at licensing hearings, the test for bias being "whether a fair minded and informed observer, having considered the facts would conclude that there was a real possibility of bias". The guidance states that where the decision to be made is quasi-judicial, as at Licensing Sub-Committees, the key issue to ensure the legality of the decision is the avoidance of the "public perception of a probability of unconscious bias". Officers felt that a fair minded observer could indeed conclude that a ward member might have an unconscious bias and have therefore always avoided appointing members of the ward where the application premises are situate.
- 4.4 The background law **has** nevertheless changed as indicated to members at the Licensing Training session. The underlying principles relating to suitability of members for sub-committees were those of personal and prejudicial interests as set out in the Members Code of Conduct. The concept of "personal and prejudicial interests" has recently been abolished and members recently adopted a new Code of Conduct which provides that members must notify the Council's Monitoring Officer of any disclosable pecuniary interest and that members must disclose those interests at any meeting of the Council where they may have a disclosable interest in any matter being considered unless the matter is a "sensitive" matter.
- 4.5 The "interest" of a Ward Member in a licensing application for premises in that members ward would not be a disclosable pecuniary interest, but nor would it have been a personal or prejudicial interest under the old regime either.
- 4.6 Therefore this change in the law regarding members interests has not affected the issue. It is nevertheless desirable that members formally confirm the policy of excluding ward members from Licensing Sub-Committees for the avoidance of doubt/challenge and therefore members are recommended to adopt the recommendation.

5.0 Implications

5.1 **Resources:**
None

5.2 **Legal:**
Prohibiting members of the ward in which premises the subject of a licensing application are situate will provide clarity for officers and the continuation of this practice will protect the Council for potentially costly licensing appeals

5.3 **Strategy:**
Not applicable

- 5.4 **Risks:**
None
- 5.5 **Communications:**
None
- 5.6 **For the Community:**
The recommendation assists in giving the public a perception of fairness in Licensing Sub Committee hearings.
- 5.7 **The Integrated Impact Assessment (IIA) has been completed and concluded the following:**
N/A
- 6.0 **Consultation**
N/A

Appendices:
Nil

Background Papers:

LACORS Guidance – The Role of Elected Members in relation to Licensing Committee Hearings under the Licensing Act 2003 for Local Authorities In England dated February 2005.

Agreed and signed off by:

Legal Services: 19 October 2012

Executive Head of Governance & Logistics: 22 October 2012

Executive Head for Environment and Neighbourhood Quality: 22 October 2012

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NON EXEMPT

HAVANT BOROUGH COUNCIL

Licensing Committee

31 October 2012

LATE NIGHT LEVY

Report of the Licensing Officer

REPORT NO 6

FOR DECISION YES

Environment and Neighbourhood Quality Portfolio: Cllr Collins

Key Decision: N/A

1.0 Purpose of Report

- 1.1 To consider whether Havant Borough Council should proceed with a consultation to charge the Late Night Levy (LNL) to premises authorised to sell alcohol (on and off trade) between 12am and 6am after considering the need for the levy and the likely income and costs if it is introduced.

2.0 Recommendation

That the Committee determine which of the following initial options should be adopted:

- a) Not to implement the late night levy at this time. (The option to implement it can be revisited at a later date if necessary.)
- b) To authorise the commencement of the formal consultation process with a possible view to implementing the late night levy across the whole borough.

3.0 Summary

- 3.1 The Coalition Agreement included a commitment to overhaul the Licensing Act 2003 and extended the flexibility by means of the Police Reform and Social Responsibility Act 2011 (PRSR). Provisions from the PRSR11 include the Late Night Levy where the Licensing Authority may choose to charge a levy based on the premises rateable value. The powers to commence implementation begins on 31st October 2012 and Home Office guidance has been issued as at Appendix 1.
- 3.2 After informal consultations with the Police and the Licensed trade along with the small amount revenue that the levy would raise, it is the Licensing Officers opinion that option a) would be the more preferable option.

4.0 Subject of Report

- 4.1 The option to implement is left to the discretion of the Licensing Authority which will make the decision based on the situation in it's local area. The Licensing Authority may choose the period during which the levy applies every night between 12am and 6am. This will not apply to events covered by a temporary event notice (TEN).
- 4.2 There is a provision that any premises that is licensed to open during Levy hours, and therefore subject to the LNL, will be able to submit a free (normally £89) minor variation application to change their hours so trading ends before the levy period takes effect. The Government estimates that a third of licensed premises may currently trade after midnight but that a quarter of these licensed premises will submit a free minor variation to close earlier in order to avoid the levy
- 4.3 The Home Office expects that many Local Authorities will not find it appropriate to charge the levy.**
- 4.4 The LNL must apply to the whole of the Council's area however the Council may wish to apply any of the exemptions listed in Appendices 1 & 2.
- 4.5 If the LNL was charged, current premises would have to pay the levy at the same time as the annual fee. With new premises, the first levy would be taken 14 days after the grant of licence and then with the annual fee the following year. Failure to pay the levy would result in the suspension of the licence, in the same way as non-payment of the annual fee.
- 4.6 Income raised from the levy would have the Council's implementation and administration costs deducted and the balance shared between the Police and Licensing Authority on a minimum ratio of 70% to the Police and 30% to the Local Authority. There are no restrictions on how the Police may spend this additional income, in fact they could spend Havant money on policing the Portsmouth late night trade, however the Licensing Authority can only spend their 30% on late night alcohol related arrangements for the reduction of crime and disorder, promotion of public safety, reduction of public nuisance or cleaning of any relevant highway connected to the management of the late night economy. Therefore this may include late night street wardens, late night street cleaning, late night taxi marshals or similar, so it is likely that any income generated would go to community safety/street cleansing departments.
- 4.7 The Local Authority must pay the Police its minimum 70% portion within 28 days of the last day of the levy year
- 4.8 The levy fee (charged annually) is based on the rateable value of the premises:

Rateable Value	Rateable Band	Levy Fee
0-£4,300	A	£299
£4301-£33,000	B	£768
£33,001-£87,000	C	£1,259

£87,001- £125,000	D	£1,365
£125,001 +	E	£1,493

4.9 It would be charged in addition to the current annual fee of:

Rateable Value	Rateable Band	Levy Fee	Annual Fee	Total costs
0-£4,300	A	£299	£70	£369
£4301- £33,000	B	£768	£180	£948
£33,001- £87,000	C	£1,259	£315	£1,574
£87,001- £125,000	D	£1,365	£320	£1,685
£125,001 +	E	£1,493	£350	£1,843

- 4.10 Preliminary calculations indicate the likely maximum income from the LNL, if all 70 late licensed premises kept their current licensed hours, would be in the anticipated region of £62,945, however if discretionary 30% Pubwatch reductions are granted this would be reduced to £46245.
- 4.11 It is expected that a significant number of premises will choose to apply for a free variation to escape the LNL. The government suggests 25% of affected premises but this is likely to be much higher in Havant Borough.
- 4.12 It is anticipated that 58 premises (those that either close between 0000 – 0100 or only open late on Bank Holidays) may take advantage of the free variation therefore this lack of levy would reduce the gross income to £4139.
- 4.13 Council administration costs are then taken from the income. This would be the set up costs and the annual collection of the Levy. The set up cost includes a formal consultation. The consultation process includes an advertisement in the newspaper and notifying all affected premises.
- 4.14 Administration costs have been estimated as £7432 in the set up year and £536 in subsequent years
- 4.15 This remaining income would be shared, with the Police receiving 70% and LA 30%:
- 4.16 In the set up year the likely Council share would be £-3293 (ie a cost to the Council)
- 4.17 In subsequent years the estimated Council income would be £1078

- 4.18 Should the late night levy be implemented and prove unsuccessful, the consultation process and advertisement will have to be repeated if the levy is to be removed.

5.0 Implications

5.1 Resources:

If the LNL was introduced there would be an increase in workload on Licensing staff to incorporate the additional duties (writing to consultees, report writing, publications of notices, updating of financial systems, minor variations, potential for more licence suspensions, collating additional figures for budgets, publishing statement of estimated and net deductions at the start and end of the levy year). The approximate cost of the consultation is £1240.

5.2 Legal:

If the Licensing Authority decided not to implement the LNL then no further action is necessary. If the Licensing authority considers the Late Night Levy appropriate for its area, then it must formally consult with the Police Crime Commissioner (elected November 2012), the Police, premises licence holders and any other person about its proposed decision to introduce the levy. The Licensing Committee assess the results of the consultation and decide whether or not to forward the decision to Full Council. If the Local Authority decides not to implement the LNL then no further action is necessary. Please see flowchart of process attached at Appendix 3.

5.3 Strategy: N/A

5.4 Risks:

A Customer Access Impact Assessment would be completed after any official consultation undertaken.

5.5 Communications:

Initial conversations with the Police Licensing Officer for the Havant Borough indicate that the figures for alcohol related crime and disorder have reduced and that there is no specific policing (such as patrol van) arranged or required for the town centre and surrounding areas late night. This can be partly attributed to the success of Pubwatch. Violent offences linked to licensed premises has dropped from 148 incidents between August 2010 – September 2011 to 85 incidents between August 2011 – September 2012 (decrease of 57%), as at Appendix 4.

Our waste operations department confirm they do not provide a late cleanse of any precinct. Their service is conducted between 0730 – 1630 and is deemed to be sufficient at present with no significant mess left in the precincts from finish at 1630 to re-visit at 0730 each morning. They are not aware of any complaints about litter associated outside of their normal working hours and they have no evidence to suggest that any further service needs to be implemented.

The community safety department informs that Havant Public Space CCTV already provide CCTV coverage of town centre locations by 44 cameras. Hours of operation are Monday to Thursday 8am to 1am, Friday to Saturday 8am to 2am and Sunday 9am to midnight.

5.6 For the Community if implemented:

Advantages: There will be a small amount of income ring-fenced to tackling late night alcohol related crime and disorder and there may be some positive publicity because of this.

Disadvantages: There will be an additional monetary burden on alcohol licensed premises who are finding trade reduced and difficult due to the economic climate. This may lead to negative publicity with comments such as those already expressed at Pubwatch meetings 'I keep a well run premises, why should I have to pay for those premises that aren't so well run?' and 'If I'm paying the council and police a levy to tackle late night alcohol related crime and disorder, why should I still have to pay for door staff as well?'

The local authority will provide administration for the LNL however the Police would receive the higher percentage and this is not ring-fenced to their Licensing sections.

5.7 The Integrated Impact Assessment (IIA) has been completed and concluded the following:

N/A

6.0 Consultation

PC P Barron, Police Licensing Officer
Mr C Haynes, HBC Waste Operations Team Leader
Mr T Pointer, HBC Community Safety Team Leader
Mr A Cox, HBC Management Accountant

Appendices:

Appendix 1 – Home Office Guidance, Late Night Levy

Appendix 2 – Additional Exemptions

Appendix 3 – Late Night Levy Process Maps

Appendix 4 - Alcohol related crime figures provided by the Havant District Intelligence Research and Analysis Team.

Background Papers:

Nil

Agreed and signed off by:

Legal Services: 15 October 2012

Executive Head of Governance & Logistics: 22 October 2012

Executive Head for Environment and Neighbourhood Quality: 15 October 2012

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Late Night Levy

What is the late night levy?

The late night levy ('the levy') will enable licensing authorities to raise a contribution from late-opening alcohol suppliers towards policing the night-time economy. It will be a local power that licensing authorities can choose whether or not to exercise. It must cover the whole of the licensing authority's area. However, the licensing authority will also choose the period during which the levy applies every night, between midnight and 6am, and decide what exemptions and reductions should apply from a list set out in regulations.

What is the policy's aim?

The levy will empower local areas to charge businesses that supply alcohol late into the night for the extra enforcement costs that the night-time economy generates for police and licensing authorities.

Why is the late night levy needed?

The Coalition Agreement included the commitment to permit local councils to charge more for late night licences to pay for additional policing. We believe it is right that businesses which profit by selling alcohol in the night-time economy should contribute towards these costs, rather than relying on other taxpayers in the community to bear the full costs.

Who will the late night levy affect?

If a licensing authority chooses to introduce the levy in their area, all licensed premises which are authorised to supply alcohol in the levy period will be affected. Premises that do not wish to operate in the levy period will be able to make a free minor variation to their licence before the levy is introduced.

Exemptions

We do not wish to unfairly penalise premises which are not part of the wider night-time economy, and licensing authorities will therefore have the discretion to offer an exemption from the levy to the following categories of premises and schemes:

- Premises with overnight accommodation (subject to a condition to the effect that, between 0000 – 0600 hours, alcohol 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 (subject to a condition to the effect that, between 0000 – 0600 hours, alcohol 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).
- Bingo halls (with a GA05 membership scheme in operation between 0000 – 0600 hours)
- Community Amateur Sports Clubs ('CASCs') (have relief from business rates by virtue of being a CASC as defined by Schedule 18 of the Finance Act 2002)
- Community premises (that have successfully applied for the removal of the mandatory DPS requirement)
- Country village pubs (designated rural settlement of less than 3,000)

- Business Improvement Districts ('BIDs') (a defined area within which businesses pay a fee to the local authority in order to fund improvements within their boundaries)

Appendix 2 – Additional exemptions

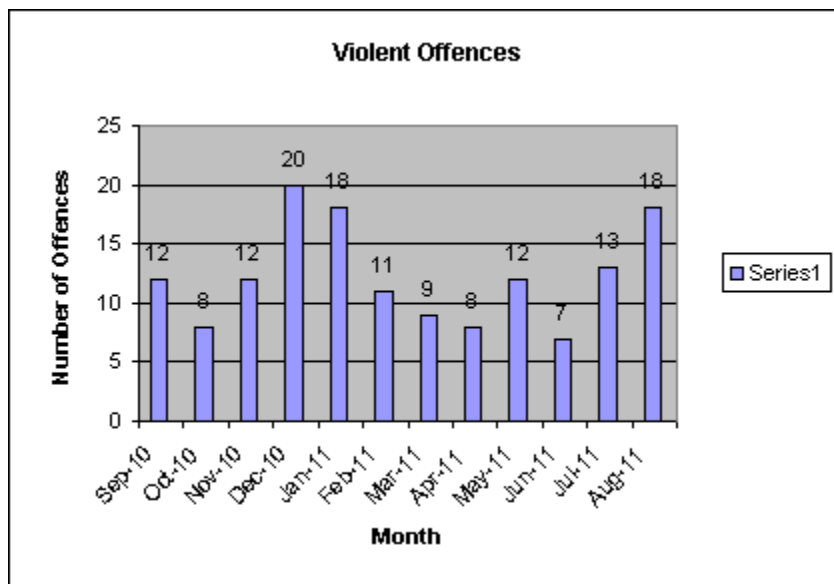
The LNL must apply to the whole of the Council's area however there are a selection of exemptions from a list set out in secondary legislation as above at Appendix 1 and also:

- New Year's Eve will be included as a discretionary exemption from the levy.
- Premises that participate in best practice schemes that meet relevant criteria and specified benchmarks, such as Pubwatch, may be offered a discretionary 30% reduction.

Appendix 4 – Alcohol related crime figures provided by the Havant District Intelligence Research and Analysis Team.

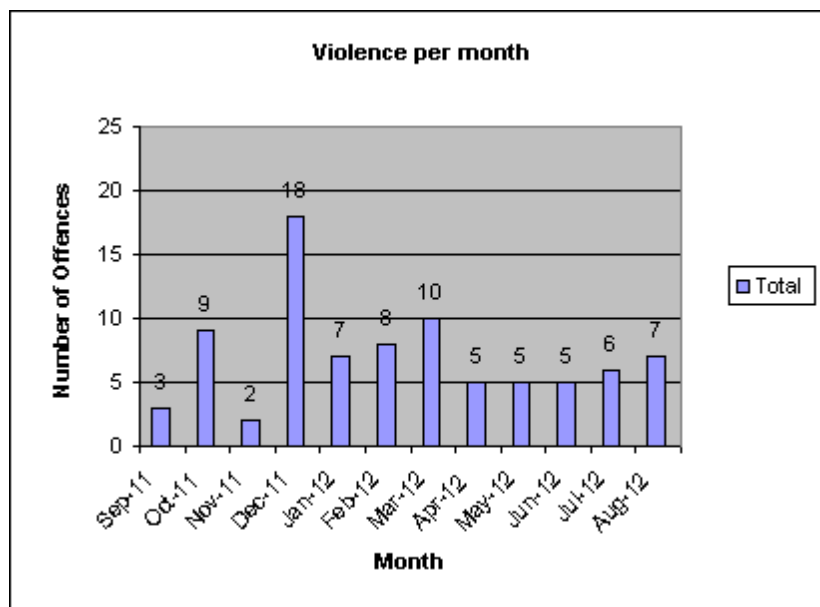
Sept 10 - Aug 11

Month	Total
Sep-10	12
Oct-10	8
Nov-10	12
Dec-10	20
Jan-11	18
Feb-11	11
Mar-11	9
Apr-11	8
May-11	12
Jun-11	7
Jul-11	13
Aug-11	18
Total	148



Sept 11 - Aug 12

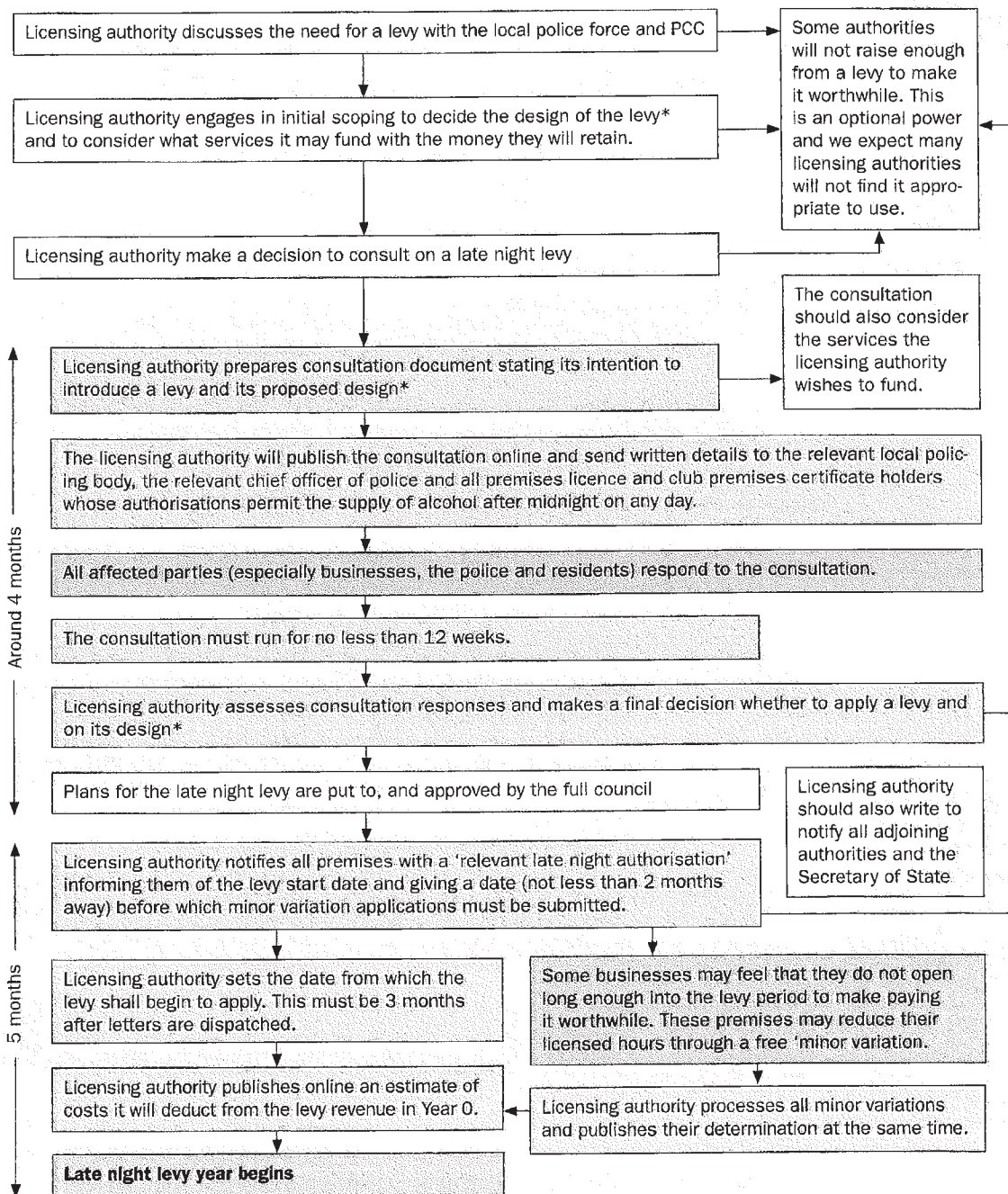
Month	Total
Sep-11	3
Oct-11	9
Nov-11	2
Dec-11	18
Jan-12	7
Feb-12	8
Mar-12	10
Apr-12	5
May-12	5
Jun-12	5
Jul-12	6
Aug-12	7
Total	85



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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)

