

2012 No. 2551

LICENCES AND LICENSING, ENGLAND AND WALES

The Licensing Act 2003 (Early Morning Alcohol Restriction Orders) Regulations 2012

<i>Made</i>	- - - -	<i>3rd October 2012</i>
<i>Laid before Parliament</i>		<i>9th October 2012</i>
<i>Coming into force</i>	- -	<i>31st October 2012</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 9(2), 172A to 172C, 172E(a), 183 and 193(b) of the Licensing Act 2003(c).

Citation and commencement

1.—(1) These Regulations may be cited as the Licensing Act 2003 (Early Morning Alcohol Restriction Orders) Regulations 2012.

(2) These Regulations come into force on 31st October 2012.

Interpretation

2. In these Regulations—

“the Act” means the Licensing Act 2003;

“affected person” has the same meaning as in section 172B(3) of the Act;

“the 2005 Regulations” means the Licensing Act 2003 (Hearings) Regulations 2005(d).

Early morning alcohol restriction order: form and content of order

3. An early morning alcohol restriction order must be in the form and must contain the information set out in Schedule 1.

Early morning alcohol restriction order: advertisement of proposed order

4. A licensing authority must advertise a proposal to make an early morning alcohol restriction order—

(a) for a period of no less than 42 days—

(i) by publication of a notice of the proposal on its website,

(a) Sections 172A to 172E were inserted into the Licensing Act 2003 (c. 17) by section 119 of the Police Reform and Social Responsibility Act 2011 (c. 13).

(b) See the definitions of “prescribed” and “regulations”.

(c) 2003 c.17.

(d) S.I. 2005/44 as amended by S.I. 2005/78 and S.I. 2007/2502.

- (ii) by displaying a notice in the area in relation to which the proposed order is to be made in a manner which is likely to bring the proposal to the attention of persons who have an interest in it; and
- (b) on at least one occasion during the period of 42 days starting on the day on which the proposal is first advertised in accordance with paragraph (a)—
 - (i) by publication of a notice of the proposal in a local newspaper or, if there is none, in a local newsletter, circular or similar document, circulating in the licensing authority's area;
 - (ii) by notice sent to all affected persons.

Early morning alcohol restriction order: representations

5.—(1) A responsible authority or any other person making representations to a licensing authority may make those representations at any time during a period of 42 days starting on the day after the day on which the proposal to make an order is advertised in accordance with regulation 4.

- (2) Any representations made under paragraph (1) must be—
 - (a) in writing, and
 - (b) in the form and must contain the information set out in Schedule 2.

Early morning alcohol restriction order: hearings

6. The 2005 Regulations are amended in accordance with regulations 7 to 13 of these Regulations.

7. For regulation 5 to the 2005 Regulations substitute—

“5.—(1) Subject to paragraph (2), hearings to be held under the provisions listed in column 1 of the table in Schedule 1 must be commenced within the period of time specified in column 2 of the table and in a case where the hearing is to be held on more than one day, the hearing must be arranged to take place on consecutive working days.

(2) Hearings to be held under the provision listed in the entry numbered 15A in the table in Schedule 1 can be arranged to take place other than on consecutive working days if an authority considers this to be necessary—

- (a) for its consideration of any representations made by a party, or
- (b) in the public interest.”.

8. In regulation 26 of the 2005 Regulations—

- (a) in paragraph (2) after “other case” insert “(except in the case of a hearing under section 172B(1)(b))”, and
- (b) after paragraph (2) add—
 - “(3) In the case of a hearing under section 172B(1)(b), the authority must make its determination within the period of ten working days beginning with the day or the last day on which the hearing was held.”.

9. In regulation 28 of the 2005 Regulations—

- (a) in paragraph (1), for “In a case” substitute “Subject to paragraph (3), in a case”, and
- (b) after paragraph (2) add—
 - “(3) The authority is not required to notify a party of its determination in respect of a hearing under section 172B(1)(b).”.

10. In Schedule 1 to the 2005 Regulations, after the entry in the table numbered 15, insert the following entry—

“15A	Section 172B(1)(b) (procedural requirements for early morning alcohol restriction orders)	30 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 172B(2)(c).”
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11. In Schedule 2 to the 2005 Regulations, after the entry in the table numbered 15, insert the following entry—

“15A	Section 172B(1)(b) (procedural requirements for early morning alcohol restriction orders)	The persons who have made relevant representations as defined in section 172B(2).”
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12. In Schedule 3 to the 2005 Regulations, after the entry in the table numbered 14, insert the following entry—

“15	Section 172B(1)(b) (procedural requirements for early morning alcohol restriction orders)	An affected person who has made relevant representations as defined in section 172B(2).	The relevant representations as defined in section 172B(2).”
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13. In Schedule 4 to the 2005 Regulations, after paragraph 15 insert—

“15A. the relevant representations as defined in section 172B(2), in accordance with section 172B(1)(b),”.

Early morning alcohol restriction order: publication etc. of order

14. A licensing authority must, no later than 7 days after the day on which it makes an early morning alcohol restriction order, make the order available—

- (a) by notice sent to all affected persons;
- (b) for a period of no less than 28 days—
 - (i) by publication on its website, and
 - (ii) by displaying a notice in the area in relation to which the order has been made in a manner which is likely to bring the order to the attention of persons interested in it.

Early morning alcohol restriction order: exceptions

15.—(1) For the purposes of section 172E(1) of the Act, prescribed cases or circumstances are—

- (a) premises which are a hotel or comparable premises at which the supply of alcohol between midnight and 6am on any day may only be made to a person—
 - (i) who is staying at the premises, and
 - (ii) for consumption only in the room at which the person is staying on the premises;
- (b) premises which are authorised to supply alcohol for consumption on the premises between midnight and 6am on 1st January in every year (but are not so authorised at those times on any other day in any year).

(2) In this regulation, premises are “comparable premises” to a hotel if they are a guest house, lodging house or hostel.

SCHEDULE 1

Regulation 3

[Insert name and address of relevant licensing authority and its reference number (optional)]

Early morning alcohol restriction order

The [*insert name of relevant licensing authority*] has made an early morning alcohol restriction order under section 172A of the Licensing Act 2003.

The early morning alcohol restriction order means that any premises licence, club premises certificate or temporary event notice in the area in relation to which the order has been made does not have effect to the extent that it authorises the sale or supply of alcohol on the days and at the times set out below.

Part 1 – Days and periods (Please read guidance note 1)

Day	Period
Monday	
Tuesday	
Wednesday	
Thursday	
Friday	
Saturday	
Sunday	

Part 2 – Area (Please read guidance note 2)

Description of area (postal addresses, ordnance survey map references or description)

Part 3 – Period of time (Please read guidance note 3)

The early morning alcohol restriction order applies indefinitely.

The early morning alcohol restriction order applies for a limited period
(If so, please complete the box below)

If the early morning alcohol restriction order is to apply for a limited period, give the description of that period.

Part 4 - Date

The early morning alcohol restriction order will have effect from:

DDMMYYYY

Notes for Guidance

1. An early morning alcohol restriction order (“EMRO”) can apply to any period on each day beginning at or after 12am and ending at or before 6am. It does not have to apply on every day, and can apply for different time periods on different days.
2. An EMRO can apply to the whole or any part of the licensing authority’s area. The EMRO will apply to premises licences, club premises certificates and temporary event notices in relation to premises situated in the specified area.
3. An EMRO can apply for a limited or unlimited period of time. For example, an EMRO may apply for a few weeks in relation to a specific event or apply for an indefinite period.

SCHEDULE 2

Regulation 5

[Insert name and address of relevant licensing authority and its reference number (optional)]

Representations about a proposal to make an early morning alcohol restriction order under section 172A of the Licensing Act 2003

A responsible authority or any other person can make representations to a licensing authority about its proposal to make an early morning alcohol restriction order.
(Please read guidance note 1)

A responsible authority or any other person may make representations during the 42 day period from the day after the day on which the proposal is advertised.

Part 1 – Personal Details

I am: **(Please tick as appropriate)**

An individual or body which is not a responsible authority.

A responsible authority

Name:

Responsible authority (if relevant):

Address:

Postcode:

Part 2 - Representations

Please describe the early morning alcohol restriction order in relation to which you are making representations. (Please read guidance note 2)

Description of area (postal addresses, ordnance survey map reference or description)

Please state clearly, in the relevant box below, the evidence on which you intend to rely in support of your representations and what the likely effect of the proposal to make the order will have on the promotion of the licensing objectives.

A relevant representation must be about the likely effect of the making of the order on the promotion of the licensing objectives. Those making representations may provide evidence in relation to one or more of the licensing objectives.

The prevention of crime and disorder

Public safety

The prevention of public nuisance

The protection of children from harm

Part 3 - Declaration

I believe that the facts and matters described above are true to the best of my knowledge and belief.

Signed:

Date:

Notes for Guidance

A responsible authority is a body listed in sections 13(4) and 69(4) of the Licensing Act 2003. This order would enable the licensing authority to restrict the sale of alcohol in the specified area during the specified period, if the licensing authority considers it appropriate for the promotion of the licensing objectives.

It is possible that a licensing authority may propose to make more than one early morning alcohol restriction order (“EMRO”) in its area. You may wish to replicate the description of the geographical area of the EMRO which the licensing authority has included in the proposed order.

A licensing authority proposing to make an EMRO must hold a hearing to consider any relevant representations, unless the authority and each person who has made such a representation agree that a hearing is unnecessary.

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations prescribe requirements in relation to the process for making an early morning alcohol restriction order (“EMRO”) under section 172A of the Licensing Act 2003 (“the 2003 Act”).

The framework for EMROs is set out in sections 172A to 172E of the 2003 Act, and enables a licensing authority to make an EMRO in its area if it considers that this is appropriate for the promotion of the licensing objectives. An EMRO has the effect of prohibiting the supply of alcohol under the 2003 Act, subject to prescribed exceptions. An EMRO may apply for any period beginning at or after midnight and ending at or before 6am, on all or some days, for different

periods on different days, for a limited or unlimited period and in relation to the whole or any part of the licensing authority's area. The framework confers a number of powers on the Secretary of State to prescribe by regulations matters relating to the advertising of the proposal to make an EMRO, how and when representations (whether by persons affected by the proposal or otherwise) can be made, the hearing of any such representations and how the EMRO is published.

Regulation 1 makes provision to the effect that these Regulations come into force simultaneously with the introduction of sections 172A to 172E into the 2003 Act, because these Regulations prescribe matters which are necessary to give effect to those provisions.

Regulation 2 defines a number of terms to which reference is made in these Regulations.

Regulation 3 prescribes the form and content of an EMRO (set out in Schedule 1).

Regulation 4 prescribes how a licensing authority must advertise a proposal to make an EMRO, including a requirement that it publishes notice of the proposal on its website for at least 42 days and sends notice to all affected persons (defined in section 172B(3) of the 2003 Act).

Regulation 5 prescribes the form of representations (set out in Schedule 2), and the time and manner by which they must be made to the licensing authority.

Regulations 6 to 13 prescribe how a licensing authority will hear and determine representations (where made) in relation to its proposal to make an EMRO. These regulations amend the Licensing Act 2003 (Hearings) Regulations 2005 (SI 2005/44) so as apply to the EMRO process aspects of existing processes which apply to the determination of other matters under the 2003 Act, but these Regulations also confer additional case management powers on a licensing authority to ensure that it can hear and determine relevant representations in a manner which safeguards the rights of those who have made such representations.

Regulation 14 prescribes the form in which an EMRO must be published by a licensing authority after it is made, and the time and manner by which those steps must be taken.

Regulation 15 prescribes exceptions to an EMRO. These are:

- hotels and comparable premises (i.e. guest houses, lodging houses or hostels) at which any supplies of alcohol between midnight and 6am may only be made to persons staying at the premises for consumption in their rooms (e.g. alcohol supplied by room service or by virtue of mini-bars); and
- licensed premises which supply alcohol in the early hours only on 1st January each year.

Premises of these descriptions may continue to supply alcohol notwithstanding that they are situated in an area in which an EMRO applies.

A full regulatory impact assessment on the effect of this instrument is annexed to the Explanatory Memorandum which is available alongside this instrument on www.legislation.gov.uk.

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