

# AMENDED GUIDANCE ON THE LATE NIGHT LEVY

December 2012



Home Office



## GUIDANCE ON THE LATE NIGHT LEVY

- 1.1 The late night levy (“the levy”) is a power, conferred on licensing authorities by provision in Chapter 2 of Part 2 of the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”). This enables licensing authorities to charge a levy to persons who are licensed to sell alcohol late at night in the authority’s area, as a means of raising a contribution towards the costs of policing the late-night economy.
- 1.2 The decision to introduce the levy is an option available to all licensing authorities in the whole of their respective areas. The levy will be payable by the holders of any premises licence or club premises certificate (“holders”), in relation to premises in the authority’s area, which authorise the sale or supply of alcohol on any days during a period (the “late night supply period”) beginning at or after midnight and ending at or before 6am.
- 1.3 A licensing authority is the authority which carries out licensing functions under the Licensing Act 2003 (“the 2003 Act”). The main licensing authorities, as defined in the 2003 Act, are:
  - the council of a district in England;
  - the council of a county in England in which there are no district councils;
  - the council of a county or county borough in Wales;
  - the council of a London borough.
- 1.4 It is recommended that the decision to introduce, vary or end the requirement for the levy is made by the full council. Other decisions in relation to the introduction and administration of the levy may be delegated in the manner which the licensing authority considers most appropriate.

## INTRODUCTION OF THE LEVY

- 1.5 The decision to introduce the levy is for the licensing authority to make. The licensing authority is expected to consider the need for a levy with the chief officer of police and police and crime commissioner (“PCC”) for the police area in which it is proposed the levy will be introduced.<sup>1</sup> Local residents can use existing channels and forums to put forward views and call for the implementation or not of the levy in their area.
- 1.6 When considering whether to introduce a levy, licensing authorities should note that any financial risk (for example lower than expected revenue) rests at a local level and should be fully considered prior to implementation.
- 1.7 The licensing authority will decide the design of the levy. This includes the late-night supply period, any exemptions or reductions that may apply and the proportion of revenue (after the licensing authority’s costs are deducted) which will be paid to the PCC, with the remainder being retained by the licensing authority to fund other activities as set out in paragraph 1.42.

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<sup>1</sup> In this guidance, a reference to a PCC include a reference to the holder of the Mayor’s Office for Policing and Crime. Elections for Police and Crime Commissioners (PCCs) in all police force areas in England and Wales (except in London, where the Mayor of London has taken on the powers of a PCC in relation to the Metropolitan Police) take place on 15th November 2012. Once appointed, PCCs will be expected to have a central role working in partnership with local authorities, enforcement bodies and other local partners to decide on what action is needed to tackle alcohol-related crime and disorder in their areas. However, the Chief Officer of Police will remain the named responsible authority under the 2003 Act.

- 1.8 The levy is a power and some licensing authorities will not consider that it is appropriate to exercise it. The licensing authority may wish to decide whether or not it believes it has a viable proposal to introduce the levy before incurring the costs of the formal consultation process. It is recognised that some licensing authorities may not have a large number of premises which are licensed to sell alcohol during the late night supply period. At this stage, some licensing authorities may decide that the levy will not generate enough revenue to make it a viable option in their area.
- 1.9 The late night supply period must begin at or after midnight and end at or before 6am. The period can be for any length of time within these parameters but must be the same every day. If licensing authorities decide that it would be appropriate that certain types of premises should not pay the levy, they can set the late night supply period to suit the opening times of premises in their local area (for example the supply period could begin at 1am).
- 1.10 The licensing authority must consider the desirability of introducing a levy in relation to the matters described in section 125(3) of the Police Reform and Social Responsibility Act 2011. These matters are the costs of policing and other arrangements for the reduction or prevention of crime and disorder, in connection with the supply of alcohol between midnight and 6am.
- 1.11 The licensing authority should discuss the need for a levy with the relevant PCC and the relevant chief officer of police. The licensing authority will then decide whether to move to the next stage in the process and consult on its proposal to introduce a late night levy. The consultation document will state its intention to introduce a levy, its proposed design (including the late night supply period and proposed exemption and/or reduction categories) and the services that the licensing authority intends to fund with its share of the levy revenue.
- 1.12 The licensing authority will publish the consultation online and in a local newspaper. It will also send written details to the PCC, the relevant chief officer of police and all premises licence and club premises certificate holders whose authorisations permit the supply of alcohol during the period when it is proposed the levy will apply. The consultation is intended to be targeted at those affected by the levy, particularly businesses, the police, residents and other interested parties. The consultation process, including the period, is expected to be proportionate and targeted, so that the type and scale of engagement is relative to the potential impacts of the proposal.
- 1.13 The licensing authority will assess consultation responses and make a final decision about whether to introduce (or vary) the levy and, if so, its design. The decision to introduce the levy, and its design, will then be put to the full council to approve.
- 1.14 If the full council approves the introduction (or variation) of the levy, it is recommended that the licensing authority notifies adjoining authorities. It would be helpful if licensing authorities also notified the Secretary of State for transparency purposes, via the Home Office.

## IMPLEMENTATION OF THE LEVY

- 1.15 The licensing authority must notify the relevant chief officer of police, the PCC and all holders of a licence or certificate in relation to premises which permit the supply of alcohol within the late night supply period (“relevant late night authorisation”) of the start date for the levy, the late night supply period, any exemptions and reductions, and how the revenue will be shared between the police force and licensing authority. Holders of relevant late-night authorisations should also be notified of the date before which any applications for a minor variation must be made to the authority, as set out in paragraph 1.16. We recommend that licensing authorities set the start date of the levy no less than three months after those notifications have been sent.
- 1.16 Holders with a relevant late-night authorisation may make a free variation to their licence to reduce their licensed hours to avoid operating in the late-night supply period. It is recommended that licensing authorities may wish to allow holders no less than two months to make such applications. The cost of processing free variations will be a deductible expense from the levy receipts in Year zero. Year zero is the first year in which the levy is introduced by the licensing authority.
- 1.17 The licensing authority must publish on their website an estimate of the costs it will deduct from the levy revenue each year. The licensing authority will determine the manner in which any statement is published.
- 1.18 The levy will apply indefinitely until the licensing authority decides that the levy will cease to apply in its area. Licensing authorities may wish to review the requirements for the levy at appropriate intervals. A decision that the levy should cease to apply can only be made at the end of a levy year. Licensing authorities may wish to notify holders of a relevant late night authorisation of any such decision.

## DESIGN OF THE LEVY

- 1.19 The levy must apply to the whole of the licensing authority’s area. It will apply to all holders (on and off-trade) of relevant late night authorisations situated in the licensing authority’s area. Any such holder will be liable to pay the levy, regardless of whether the holder’s premises are actually operating during the period. For example, a holder in relation to a supermarket with a 24 hour licence will be required to pay the levy regardless of its actual opening hours.
- 1.20 As set out in paragraph 1.9, the late night supply period must begin at or after midnight and end at or before 6am. The licensing authority can decide the times within the late-night supply period at which the levy will apply (which must be the same every day). The late-night supply period cannot apply on different days or times.
- 1.21 The levy will apply to boats, which are licensed at the place where they are usually moored or berthed. It will also apply to mobile bars, which are required to be licensed at the place where they are parked and carry on the licensable activity.
- 1.22 The levy will not apply to Temporary Event Notices (TENs).

## EXEMPTIONS FROM THE LEVY

- 1.23 Licensing authorities may consider that there are some types of premises in relation to which the holder should not make a contribution towards the cost of policing the night-time economy through the levy. This is a local decision – the licensing authority should make its decision based on its knowledge of the night-time economy in the area, including information gathered through the consultation process.
- 1.24 Licensing authorities are not able to choose a category of premises for an exemption from the levy, if it is not prescribed in regulations. Likewise, licensing authorities are not able to exempt specific premises from the requirement to pay the levy.
- 1.25 Licensing authorities can decide, when considering the levy design, if any of the following permitted categories of premises should be exempt from the requirement to pay the levy. These exemption categories are specified in the Late Night Levy (Expenses, Exemptions and Reductions) Regulations 2012.
- 1.26 **Premises with overnight accommodation:** This exemption is not applicable to any premises which serve alcohol to members of the public who are not staying overnight at the premises, such as a hotel bar which can be accessed by the general public.
- 1.27 **Theatres and cinemas:** Premises in this category must ensure that, during the late night supply period, the sale of alcohol is only made for consumption on the premises to ticket holders, participants in the production or invited guests to a private event at the premises. Licensing authorities should be satisfied that premises which are eligible for this exemption are bona-fide theatres or cinemas, and that the sale of alcohol is not the primary purpose of their businesses. The definition of a “cinema” or a “theatre” should be readily understood by its plain, ordinary meaning.
- 1.28 **Bingo halls:** Premises in this category must be licensed and regulated under the Gambling Act 2005.
- 1.29 **Community Amateur Sports Clubs (“CASCs”):** Premises in this category must have relief from business rates by virtue of being a CASC (Section 658 of the Corporation Tax Act 2010).
- 1.30 **Community premises:** Premises in this category must have successfully applied for the removal of the mandatory designated premises supervisor (“DPS”) requirement and demonstrated that they operate responsibly.
- 1.31 **Country village pubs:** In England, premises in this category must be the sole pub situated within a designated rural settlement with a population of less than 3,000. The definition of a rural settlement appears in the qualifications for rural rate relief in Part III of the Local Government Finance Act 1988.
- 1.32 **New Year’s Eve:** Licensing authorities can offer an exemption from the levy for holders in relation to premises which are only have a relevant late-night authorisation by virtue of their being permitted to supply alcohol for consumption on the premises on 1st January in every year.

1.33 **Business Improvement Districts (“BIDs”)**: Licensing authorities can offer an exemption from the levy for premises which participate in BIDs that operate in the night-time economy and have a satisfactory crime and disorder focus. Licensing authorities have the discretion to determine whether the BIDs in their area are eligible.

## REDUCTIONS FROM THE LEVY

1.34 Licensing authorities may wish to use the late night levy to promote and support participation by premises in other business-led best practice schemes. Licensing authorities can decide, when considering the levy design, if holders whose premises participate in such schemes should benefit from a reduction to the amount they are required to pay under the levy.

1.35 Eligible premises will receive a 30 per cent reduction from the levy. There will be no cumulative discounts available for holders in relation to premises that are eligible for more than one reduction category. Licensing authorities can offer a reduction to best practice schemes that meet the following benchmarks specified in the Late Night Levy (Expenses, Exemptions and Reductions) Regulations 2012:

- a clear rationale as to why the scheme’s objectives and activities will, or are likely to, result in a reduction of alcohol-related crime and disorder;
- a requirement for active participation in the scheme by members; and
- a mechanism to identify and remove in a timely manner those members who do not participate appropriately.

1.36 Licensing authorities have discretion as to how best practice schemes can demonstrate that they meet these benchmarks. We expect licensing authorities to use their existing partnerships with best practice schemes, and understanding of a scheme’s operation in their area, to identify eligible schemes in their areas. Licensing officials could visit representatives from best practice schemes in their area, or request written details of the scheme’s objectives, if they decide to consider this reduction category.

1.37 Licensing authorities can also offer a reduction to holders in relation to on-trade premises that are in receipt of Small Business Rate Relief (as specified in Part III of the Local Government Finance Act 1988) and have a rateable value of £12,000 or less. This reduction is only available to holders in relation to premises that supply alcohol for consumption on the premises. The relevant billing authority may have information on which premises in the licensing authority area are in receipt of Small Business Rate Relief.

1.38 If the licensing authority decides to introduce or remove categories of exemption and/or reduction after Year zero, they will need to follow the same procedure for consultation as set out in 1.11-1.13 though the consultation should only refer to the new proposal. If a licensing authority chooses to remove categories of exemption and/or reduction after Year zero, they should consider that the opportunity for businesses to make a free variation to their licence is only available when the levy is initially introduced.

## LEVY REVENUE

1.39 The net levy revenue must be split between the licensing authority and the relevant PCC. The licensing authority must pay at least 70 per cent of the net levy revenue to the police. The licensing authority can choose to amend the portion of the net levy revenue that will be given to the PCC in future levy years. This decision must be subject to consultation in the same way as a decision to introduce the levy.

1.40 There are no restrictions on what the PCC's portion of the levy revenue can be spent on, in line with standard practice on the allocation of police funds. The PCC's proportion will be subject to the same transparency measures as those that apply in relation to other aspects of the operation of the PCC. The Police and Crime panel will be able to request any documents of the PCC in order to hold them to account in the allocation and use of their funds.<sup>2</sup>

1.41 We recommend that the licensing authority should use its existing partnership with the police to discuss the police intentions for their share of the levy revenue. We also recommend that the PCC should consider allocating the funds raised from the levy back to local commanders to allow the revenue to be spent on tackling alcohol-related crime and disorder in the area in which the levy was raised.

1.42 The licensing authority will be able to retain up to 30 per cent of the net levy revenue to fund services it provides to tackle late night alcohol-related crime and disorder and services connected to the management of the night-time economy. Specifically, these activities must have regard to the connection with the supply of alcohol during the late night supply period and related to arrangements for:

- the reduction of crime and disorder;
- the promotion of public safety;
- the reduction or prevention of public nuisance; or
- the cleaning of any relevant highway or relevant land in the local authority area.

1.43 A licensing authority can deduct the costs it incurs in connection with the introduction or variation, administration, collection and enforcement of the levy, prior to the levy revenue being apportioned between the police and licensing authority. Regulations have prescribed descriptions of expenses which may be deducted. As set out in paragraph 1.6, any financial risk relating to the levy revenue, such as lower than expected revenue or higher than expected costs, rests at a local level.

1.44 These deductible costs may include (but are not necessarily limited to) the following:

- the preparation and publication of the consultation document, including publishing it online and sending details to the PCC, the relevant chief officer of police and all premises licence and club premises certificate holders whose authorisations permit the supply of alcohol after midnight on any day;
- the collection of levy payments;
- the enforcement of levy payments; and
- the cost of processing applications for a variation in relation to the introduction of the levy.

1.45 There will be no specific restrictions on the amount of the expenses which licensing authorities can claim in expenses, however licensing authorities will have to account for their expenses following existing procedures. The Government may specify a cap on the amount of expenses in further regulations if considered necessary.

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<sup>2</sup> This excludes documents that are operationally sensitive or those that would compromise national security.

## LEVY CHARGE AND COLLECTION PROCESS

1.46 The amount of the levy will be prescribed nationally. The annual charges for the levy will be:

Rateable Value Bands (based on the existing fee bands)	A No rateable value to £4,300	B £4,301 to £33,000	C £33,001 to £87,000	D £87,001 to £125,000	E £125,001 and above	D x 2 Multiplier applies to premises in category D that primarily or exclusively sell alcohol	E x 3 Multiplier applies to premises in category E that primarily or exclusively sell alcohol
Levy Charges	£299	£768	£1,259	£1,365	£1,493	£2,730	£4,440

1.47 The levy charges are based on the current licence fee system under the 2003 Act, with holders being placed in bands based on their premises rateable value. A multiplier is applied to premises in Band D and E that primarily or exclusively sell alcohol for consumption on the premises to ensure that larger clubs and bars make a higher contribution towards the levy. Regulations include provision for premises that do not have a rateable value (Band A) or premises that are in the course of construction (Band C).

1.48 The levy will be collected at the same time as the annual licence fee (except in relation to holders premises who obtain a relevant late night authorisation during a levy year). The holder will, therefore, be required to pay the levy on an annual basis. For holders whose licences exist at the time that the first levy year begins, the payment year will be the same as the levy year<sup>3</sup>. These holders will make their first levy payment when they pay their annual fee. For holders who are granted a licence in the first or subsequent levy years, the payment year runs from the date of the grant of the licence and for each year thereafter. Their first payment will be made 14 days after the grant of the licence, and thereafter when they pay their annual fee.

1.49 In the following circumstances, licensing authorities should adjust a holder's liability to the levy:

- a licence lapses under section 27 of the 2003 Act (that is if the holder of the licence dies, becomes mentally incapable, becomes insolvent, if the partnership holding the license is dissolved or if it is a club, ceases to be a recognised club);
- an EMRO is made which prohibits premises from serving alcohol at any time when the levy applies; or
- the amount of the levy reduction is the amount found by applying the formula:  $R = (L/365) \times N$  (see footnote<sup>4</sup>).

<sup>3</sup> The payment year is the period by reference to which a licence holder's liability to the levy is determined. The levy year is the period during which the levy applies.

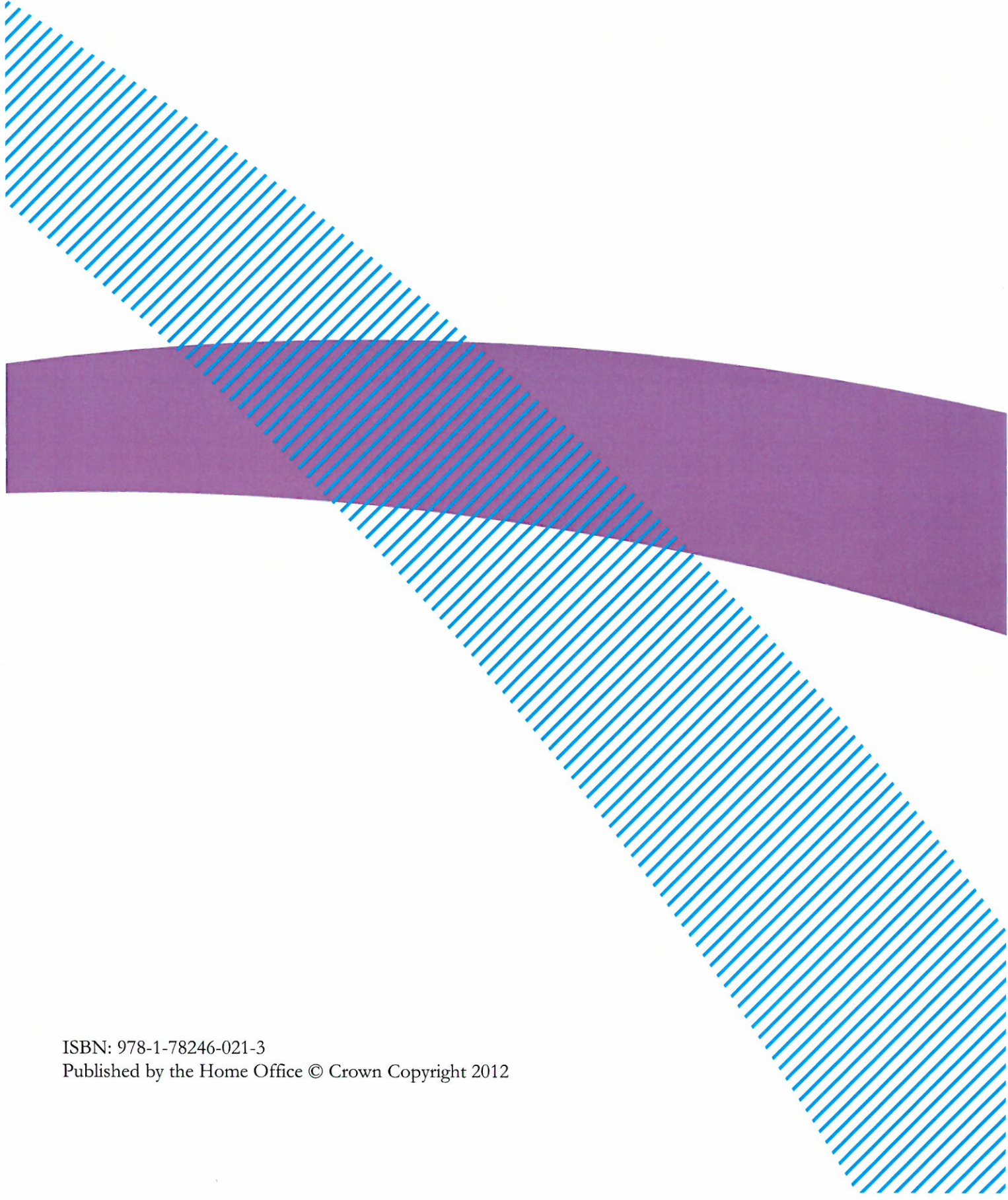
<sup>4</sup> R is the levy reduction, L is the amount of the late night levy payable by the holder of the relevant late night authorisation and N is the number of days in the payment year beginning on the day following the date on which the relevant event occurred.



- 1.50 Licensing authorities have discretion to adjust a holder's liability if the licence is surrendered (for instance, because the licence holder ceases to trade). The circumstance for surrendering a licence will vary considerably from case to case; for instance, a licensing authority might choose to exercise this discretion for a long-term illness, but not when a licence holder surrendered a licence in anticipation of it being revoked. Holders whose licences are revoked for contravening the licensing objectives would not be eligible for a reduction.
- 1.51 Any payment of the levy which is owed to the licensing authority can be recovered as a debt due to the authority. Non-payment of the levy can result in suspension of a premises licence or suspension of club premises certificate.



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