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Dear Janice

## **DELIBERATIONS ON THE LICENSING AND REGISTRATION OF CLUBS (AMENDMENT) BILL**

Thank you for your letter dated 12 March in which you advise of the Committee's request for information following its deliberations on the Licensing and Registration of Clubs (Amendment) Bill.

Please see attached responses to the questions raised by the Committee at Annex A.

I hope you find this response helpful and I would be grateful if you could share this with Committee Members.

Yours sincerely

**Diane Mulligan**

Departmental Assembly Liaison Officer

Private Office

**DELIBERATIONS ON THE LICENSING AND REGISTRATION OF CLUBS (AMENDMENT) BILL**

**Clauses 1 and 23 – Removal of additional restrictions at Easter**

**The Committee queried whether there was scope to consider staff protection in the Bill. The Officials suggested that there was nothing further required given that staff currently have opt-outs for Sunday working but agreed to clarify whether the retail legislation that covers this would also include licensed premises. I would be grateful if they would liaise with colleagues in the Department for Economy to clarify whether existing legislation covers staff in licensed premises.**

DfE advises that there is no statutory provision to require employers to allow workers to opt out of working on religious festivals unless there is a specific agreement on the matter within the individual's contract of employment or written statement of terms and conditions. This applies to all employers/workers irrespective of sector.

The opposite is true when it comes to working on Sundays (any Sunday). A worker cannot be required to work on a Sunday unless the requirement is written into his or her contract. This applies generally.

There are also special provisions in the Shops (Sunday Trading &c.) (Northern Ireland) Order 1997 for shop workers and betting shop workers but these Regulations do not apply to licensed premises which sell alcohol for consumption on the premises.

DfE further advises that employers would need to be aware that a refusal to grant Christian employees time off for any of the bank holidays with religious significance could amount to indirect religious discrimination, if it places them at a particular disadvantage when compared with employees of other faiths, or non-religious employees.

**Clause 4 – Police authorisations for additional hours**

**Members suggested that if there was a proposal made to increase to 104 days for clubs then it would be logical to also do the same for small pubs. The Officials affirmed this and suggested that the Minister would consider this if it was requested by the Committee. I would like to confirm that, if the Committee did ask for an amendment, the Minister would be in agreement to take the amendment forward.**

The Minister is minded to consider a proposal from the Committee to increase the number of police authorisations for additional hours. Should the Committee ask for an amendment increasing the number of police authorisations for “small pubs”, the Minister will take the views

of all members into consideration. Should the Minister agree with the Committee's proposal, the department would take forward the amendment, subject to Executive agreement.

#### **Clause 5 – Extension on “drinking-up” time**

**Members asked if it would be reasonable to build in a review of the extension provision into the bill. The Officials stated there was no need for a review of the extension to be on the face of the Bill, rather the Minister could give a commitment to the Assembly to review the extension. I would be grateful if this commitment could be provided in writing.**

Minister Hargey is content to provide a written commitment to a review of the extension of “drinking-up” time. The Bill includes a power for “drinking-up” time to be amended to 30 minutes by regulations. Evaluation and review of the extension is vital in terms of providing an evidence base should there be any need to revert back to 30 minutes.

#### **Clauses 15 and 30 – Prohibition on self-service and vending machines**

**Whilst Members supported this clause, the Chairperson asked about the use of an ‘honesty box’, e.g. in a guest house, to pay for alcohol. The Officials indicated they may need to look into this and I would be grateful for a reply on this issue.**

There are a number of conditions within licensing law in respect of the conduct of licensed premises. Licence holders are responsible for ensuring that these conditions are met, with offences associated with non-compliance. Licence holders may use due diligence as a defence when charged with an offence. Where no direct supervision of a sale has taken place, there is no due diligence and therefore any licence holder providing such a facility is taking a significant risk.

Officials have discussed the issue with the Bill's draftsman and believe that honesty boxes would be captured under clauses 15 and 30.

#### **Clause 16 – Restrictions on off-sales drinks promotions in supermarkets etc.**

**Members discussed and sought clarity on the distribution of leaflets/brochures within a 200m radius of licences premises. The Officials advised that they would seek legal advice on this and I would be grateful if a reply on this could be forwarded as soon as possible.**

Officials have discussed with the Bill's draftsman and believe that the distribution of leaflets within the 200m radius would be captured under clause 16. It should be noted however that only leaflets/brochures which wholly or mainly promote the purchase on those premises are captured.

## **Clause 17 – Prohibition of loyalty schemes**

**Members noted the operation of different loyalty schemes by larger retailers that operate across the devolved administrations, and the Republic of Ireland, and that tobacco and lottery cards are not included in these schemes. Members recognised that retailers would require a sufficient lead-in time to make the relevant changes. Officials agreed to check the variation in loyalty schemes across UK and I would be grateful for a reply on this issue.**

Tesco and Sainsbury's are the two largest supermarkets which operate a loyalty point scheme. Tesco operates in NI, ROI and GB. Sainsbury's operates in NI and GB.

The Sainbury's website states that "spirits and liqueurs are no longer included in promotions and coupons in the same way that baby formula, fuel, stamps, tobacco and other excluded items are not". The website also includes a list of excluded items:

"Spirits; Liqueur; Wine when on any buy 6 save 25% promotion; In Scotland and Wales, all alcohol is excluded from qualifying spend. Alcohol Minimum Unit Pricing applies; Infant formula baby milk products; Tobacco and related products".

The Tesco website states that "You can't collect points on some products due to various legal, regulatory or contractual reasons". It further states

"Minimum Unit Pricing sets the price below which alcoholic drinks cannot be sold. This is a legal requirement in Scotland however may be extended to other jurisdictions within the United Kingdom. Separately, there is legislation in England and Wales, which means that alcoholic drinks cannot be sold below the Permitted Price (being the cost of duty plus VAT).

When purchasing alcohol as a Clubcard Plus subscriber, you may not receive some or all of the 10% discount to the extent that it would reduce the price of the products concerned below (i) the Minimum Unit Price in Scotland or (ii) the Permitted Price in England and Wales.

For example, if in Scotland, you purchased a bottle of wine costing £8.00 which would be reduced to £7.20 by the 10% discount, but the Minimum Unit Price for that bottle of wine is £7.60, then the discount price would be £7.60 and any additional discount that would otherwise be linked to that bottle will not be applied.

If, following publication of these terms and conditions, legislation changes with regard to Minimum Unit Pricing within other jurisdictions within the United Kingdom, this same principle will also apply."

## **Clauses 6 and 25 – Major events**

**The Committee asked if, in the absence of a Minister, the Department should have the power to designate Major Events. The Officials recognised that this was a valid issue and that they would come back with a response. I would be grateful for a response on this issue.**

Officials have engaged with colleagues in TEO and can confirm that, where power is given to the “Department” in primary legislation, that power may be exercised by the Minister for that Department or a senior officer of that Department.

Should there be a situation in the future where no Minister was in place, the power to designate a major event under clauses 6 and 25 could still be taken by a senior officer.

#### **Clause 8 – Licence for off-sales**

**Members noted that the issue of taprooms had been around since the 2016 legislation and yet the Department did not include it in the Bill consultation or conduct any of the extensive research which the Officials now say is necessary before they could make any recommendations. This is an issue that will be revisited by the Committee in the coming weeks as deliberations continue.**

**However, the Committee would like to know, if Members agree to seek an amendment to allow for the licensing of taprooms, would the Minister agree to take this forward. Alternatively, if the Minister does not agree to an amendment to license taprooms, would she be agreeable to an amendment requiring her to introduce the licensing of taprooms within a certain timeframe, and following consultation, e.g. 12 months after Royal Assent.**

The 2016 Bill did not include a provision for local producers of alcoholic drinks, although it was discussed during evidence provided to the Committee. The 2016 Bill was nearing the end of its Committee Stage when it fell with the dissolution of the Assembly in January 2017. Officials work under the direction of Ministers to deliver Minister’s policies. The consultation carried out by the Department in October 2019 therefore sought general opinion on current liquor licensing laws, as without Ministers in place, no changes to current policy could be considered.

The consultation asked for public opinion on the adequacy of the current number of premises which are eligible to apply to the courts for a liquor licence. Responses to this question included calls for local producers to be able to sell directly to the public.

Following the appointment of Ministers in January 2020, the current Bill was introduced in the Assembly and includes provision to add local producers as a category of premises which may apply for a liquor licence. The policy remains that the sale of alcohol directly to the public is permitted for consumption off the premises. Consumption on the premises is for sampling purposes only.

In the absence of compelling evidence for or against allowing the licensing of taprooms, Minister would not agree to take forward such an amendment. Should the Committee

propose an amendment based on sound evidence then the Minister will consider all the information available.

The Minister is minded however to commit to the Department carrying out the relevant research and producing a report on the issue in the Assembly. It would not be appropriate to provide a commitment on the face of legislation to introduce taprooms when the outcome of any research or consultation is unknown.