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Dear Janice

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

Thank you for your letter dated 19 March in which you advise of the Committee's request for information following its meeting on 18 March, regarding 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 helpful and I would be grateful if you could share with Committee Members.

Yours sincerely

Diane Mulligan

Departmental Assembly Liaison Officer

Private Office

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

Clause 2 – Public houses and hotels: further additional hours

The Committee queried the issue that has been raised in evidence by Hospitality Ulster – who believe that the legislation relating to an Article 44 ‘Permitted hours’ (late licence) on Sundays, which currently only allows for the sale of alcohol until 12 midnight, should be brought into line with Permitted hours for the other late nights granted for the premises under the Article 44.

Please confirm if this issue is covered in the proposed Bill or, if not, would the Minister be in agreement to consider an amendment to cover that issue?

Department’s response

In respect of public houses and hotels, current law provides for the sale of alcoholic drinks under Article 44, 45, and 47 of the Licensing (NI) Order 1996 until 12 midnight on a Sunday.

The issue is not included in the Bill however Minister has considered the evidence provided to the Committee and is minded to consider such an amendment, should the Committee propose.

Clause 2 – Public houses and hotels: further additional hours

The Committee considered a request by Drumbo Park in relation to allowing Places of Public Entertainment to be eligible for late night authorisations.

The Committee is considering the request and is seeking the Department’s views on two potential possibilities in this regard:

1. The Bill is amended to include Places of Public Entertainment and Outdoor Stadia as a category of premises that may apply for additional permitted hours, in line with other licensed premises; or
2. Such places are not currently eligible as they are not currently allowed an Article 47. An amendment to Article 48 could then make them eligible for an Article 47.

Would the Minister be in agreement to consider either of the above amendments?

Department’s response

1. The Department would not be in favour of places of public entertainment or outdoor stadia being eligible for late opening under Article 44. The provision of entertainment and/or substantial refreshment under an Article 44 must be on a habitual basis.
2. Outdoor Stadia are currently included in Article 48 of the Licensing (NI) Order – Suitability of certain premises for functions. The Department would not be in favour of including places of public entertainment within Article 48 as the licence allows the sale of alcoholic drinks as ancillary to the provision of the relevant entertainment.

Should the Committee propose an amendment based on sound evidence, Minister will consider all the information available.

Clause 3 Alignment of closing time for liquor and entertainment

The Committee requests clarification of the alignment of closing time for liquor and entertainment – does this mean in practice that the entertainment must end as soon as the additional permitted hour of alcohol sales has ended or when the ‘drinking-up’ time has ended?

Department’s response

Clause 3 of the Bill requires entertainment to end when “drinking-up” time has ended.

The new Article 44C(5) states “The reference in this Article to the hours specified in Article 42 are references to those hours as extended by Article 46”.

Article 46 of the Licensing (NI) Order 1996 provides for “drinking-up” time.

Clause 9 Requirement for off-licence

The Committee considered a gap in licensing legislation highlighted by the PSNI in relation to road side van sales of open pints and drinks and off-selling of open alcohol (pints/cocktails) from their off-sales.

The Committee requests the Department’s view on whether the following proposed amendment would deal with the gap and, if so, would the Minister be in agreement to consider an amendment to cover that issue:

Clause 9 – insert subsection:

“9 (1), line 14 at end insert

Intoxicating liquor dispensed from a vehicle from the side of the road is not considered to be a licensed premises”;

9(2) (1A)(c) ensure that the liquor is dispatched in the manufacturer’s original sealed packaging”.

Department’s response

The Department has consulted with Office of Legislative Counsel (Counsel) and Counsel’s view would be that the proposed amendment would not be appropriate, as it appears to assume that intoxicating liquor could itself be a type of licensed premises.

Counsel also suggested that the words “from the side of the road” were unnecessary as it would seem easy enough to circumvent that requirement by driving the vehicle into a car park.

Should the Committee propose such an amendment, Minister will consider all the information available.

Clauses 19 and 32 Code of practice

At the end of its closed session yesterday, the Committee had commenced considering the Code of Practice. As part of its deliberations it considered the potential to widen the scope of the persons

or groups with relevant interest as specified in in 76F(2), for example, to include non-industry groups. **Would specific relevant additions be supported by the Minister?**

Department's response

In Clause 19 of the Bill, the new Article 76F(2) provides that

“A person or group has a “relevant interest” if the person or group—

(a) is representative of persons whose business involves the sale of intoxicating liquor under a licence, or

(b) is representative of persons whose business involves the production of intoxicating liquor, or

(c) is representative of persons whose business involves dealing wholesale in intoxicating liquor, or

(d) is engaged in research into, or otherwise has an interest in, the effects of the consumption of intoxicating liquor on personal or public health or on public order.

The Department believes that the new Article 76F(2)(d) above would include non-industry groups and therefore an amendment would not be necessary.

Potential New Clauses:

Duty to Produce Guidance:

The Committee considered the number of places in the Bill where it has had to seek clarification and is of the view that licensed premises and clubs should not have the onus put on them to decipher what the Bill means in practice for their establishment.

The Committee proposes an additional clause laying out a statutory duty on the Department to produce and publish guidance on the provisions of the final Act similar to the Licensing (Scotland) Act 2005. **Would the Minister would be in agreement to consider such an amendment?**

Department's response

The Department has published guides to The Licensing Order (NI) 1996, The Registration of Clubs (NI) Order 1996, and The Licensing and Registration of Clubs (Amendment) Act (NI) 2011 on its website. There are also guides for the Street Trading Act (NI) 2001 and the Unauthorised Encampments (NI) Order 2005.

The Department publishes guides routinely following the completion of the legislative process and does not believe there is a need for a statutory duty to be included in the Bill. This view is shared by Legislative Counsel.

Minister will however consider such a proposal should the Committee still feel that it needs to be included in statute.

Review Clause:

Building on the Committee query in its last letter regarding a review of the extension of drinking-up time into the Bill (Clause 5) and the subsequent departmental response – the Committee has since identified other clauses of the Bill where a review could be considered. At this stage it is considering

an additional clause in the Bill, where all such reviews could be listed and would like to know **if the Minister would be in agreement to consider such an amendment.**

Department's response

The Department intends to carry out an evaluation of the implementation of the Bill. Work has begun on an evaluation plan to identify the types and availability of information which may be required to form a baseline. A number of clauses in the Bill can be amended by regulations and therefore such evaluation is vital.

The Department does not believe that a statutory requirement to review is necessary and a written commitment is adequate.

Minister will however consider such a proposal should the Committee still feel that it needs to be included in statute.

Clauses Relating to U18s

There were a number of issues in this set of clauses where it was agreed that the Department would check and then respond with clarification, suggested changes to wording or where the Minister was already minded to make a change if the Committee proposes one. These were:

Clauses 12 and 28

Department to check with draftsperson on the wording of 12(1)(c) and 28 3A(c) – ‘a meal consisting of at least a main course is being served at the function’ – there are concerns that this will need to be clarified in the Bill or EFM or a guidance document – does it, for example, include a buffet-style meal or food brought by hosts to a club venue etc. **What constitutes a main meal?**

Department's response

The Department has consulted with Counsel, who has confirmed that the definition in the Bill was specifically drafted to capture buffet meals. Counsel confirms that it does not matter where, when or by whom the food was prepared- the issue is that it must be “served” at the function.

Department to check with draftsperson on the wording - in terms of 12(1)(b) and 28(b) – it was proposed that being required to be ‘in the company of a parent’ is potentially too restrictive, for example a child brings a friend or a 16 or 17-year old care leaver who has no ‘parent’. ‘Supervised by a responsible adult’ was suggested by a Member or a ratio of adults to children as per education-related settings or events.

Department's response

The Department is awaiting Counsel's comments and will provide a response at the earliest opportunity.

Clause 29

The Committee noted that the Minister was minded to extend the time period in 29(1) and the number of award nights in 29(3) if the Committee wishes to propose an amendment – this will be considered at its next closed session with the Assembly Bill Office.

Department's response

The Department notes the Committee's intention to consider at the next closed session.

Clause 22

The Committee highlighted evidence it had received from the PSNI regarding the issue of Clubs wishing to alter their premises (potentially to avail of an extension authorisation) and queried whether clubs should have to apply to the Court before any work is carried out; rather than just advise the court when their registration is due for renewal?

The Department stated that there is an anomaly here between clubs and other licensed premises and that the Minister would be minded to consider an amendment if the Committee proposes that. The Committee will consider this at its next closed session with the Assembly Bill Office.

In addition, the Committee highlighted concerns over the use of 1-day club memberships and the Department stated that the Minister is minded to make a clarifying amendment. The Committee will consider this at its next closed session with the Assembly Bill Office.

Department's response

Having reviewed the evidence provided by officials on 18 March, the Committee is asked to note that officials advised the Committee that there was a disparity between licensed premises and registered clubs in respect of alterations and that should the Committee wish to propose an amend for registered clubs, that officials would bring that to Minister for consideration.

Additional Measures

Entertainment Venues

The Committee queried if the Minister would be minded to include cinemas in the list of Places of Public Entertainment in order that they could serve alcohol, similar to theatres etc.

The Department advised that this would be against the policy intention of the Bill and would only increase the number of licensed premises.

The Committee will further consider this at its next closed session with the Assembly Bill Office.

Department's response

The Department notes the Committee's intention to consider at the next closed session.

Article 31

The Department agreed to check with the Courts if any applications are delayed over the summer period when courts are closed.

Department's response

Officials from NI Courts provided the following response:

"There is emergency cover for urgent applications that may need to be made to the County Court during recess periods however ultimately the decision as to the urgency of business is a judicial matter.

The "opening of the court sittings" are outlined in the court calendar issued around Easter time by the judiciary on their website. Each County Court assigns a day in which it will deal with licensing applications.

The dates on which Article 31 applications can be made are laid down in the legislation under Schedule 8, Part 1(i) – where it says in paragraph 2

"A person who intends to make an application shall, not less than 3 weeks before the time of the opening of the court sittings at which the application is to be made, serve notice of the application upon the chief clerk....."

As the current processes and requirements for alterations to premises will often require plans, architects, advertisements and building works to be carried out there is usually a substantial lead in period and there should therefore be adequate time for any applications to be made within the court sitting periods.

List of Licenses

This issue has been discussed a number of times during the Bill sessions and the Department agreed that there was a piece of work to be done to compile a full and accessible list.

Would the Minister be minded to take forward such a piece of work with the Justice Minister?

Department's response

Minister has written to the Justice Minister Naomi Long MLA, asking that she consider investigating the accessibility of liquor licensing data held by the courts.