

LICENSING AND REGISTRATION OF CLUBS (AMENDMENT) BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Department for Communities in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause or schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. Consultations on a wide range of policy proposals, commenced by the Direct Rule Minister for Social Development in 2005 and revised by the Executive Minister on the restoration of the Assembly, resulted in the Licensing and Registration of Clubs (Amendment) Act (Northern Ireland) 2011.
4. Changes introduced by the above Act included the introduction of a system of penalty points to be levied by courts on licensees who break the law; a statutory proof-of-age scheme specifying, for the first time, acceptable proof-of-age documentation; new closure powers to allow the closure for up to 24 hours of licensed or registered club premises where there is actual or expected disorder; and powers to ban certain irresponsible drinks promotions that encourage excessive drinking and specified pricing practices.
5. Following growing concern surrounding the level of alcohol misuse in Northern Ireland and calls from the licensed trade for changes to the law a new Bill was considered necessary. The policy objective of this Bill is to build on measures in the current law to help address concerns about excessive consumption of alcohol, and to support the hospitality sector.

CONSULTATION

6. A consultation on proposed changes to the law regulating the sale and supply of alcohol in Northern Ireland took place between 24 July and 12 November 2012. Responses were requested to establish views on the proposed changes, which were categorised

under the following headings: regulating the sale of alcohol in supermarkets and off-sales premises; regulating the sale of alcohol in pubs and other on-sales premises; regulating private member clubs; codes of practice; and miscellaneous changes.

7. There was general consensus that legislative change was required to encourage those who do drink, to do so moderately and to support the local hospitality industry. A large number of those who responded suggested that proposals for further opening hours for public houses and other on sales premises didn't go far enough and should be brought into line with the rest of the UK and other European jurisdictions.
8. Following the level of concern expressed about some of the proposed changes to the availability of alcohol in supermarket premises, measures to place further restrictions on the areas where alcohol is displayed in such premises, banning under 18s from these areas, and the introduction of alcohol only tills, have not been pursued.
9. There was general consensus in favour of proposed changes to the regulation of registered private member clubs.

OPTIONS CONSIDERED

10. Two options were considered:

- 11. Option 1:- Do nothing**

Failure to take account of how a shift in drinking patterns from pubs to the home contributes to alcohol misuse would be irresponsible. One in five respondents to the 2013 Adult Drinking Pattern Survey reported weekly drinking levels considered to be hazardous and 4% which were harmful.

Self-regulation in the form of the Responsible Retailing Code NI goes some way in encouraging the reduction of these figures by attempting to stop the irresponsible promotion of alcohol in licensed premises. This alone however is not enough to change the drinking culture in Northern Ireland. Maintaining the status quo would also hinder efforts to develop the night time economy and enhance the hospitality industry.

- 12. Option 2:- Introduce further reforms to the law regulating the sale of alcohol**

A shift in drinking patterns now indicates that up to 70% of alcohol is sold in supermarkets for consumption at home. This has resulted in more people drinking at home or 'pre loading' with cheap alcohol at home before going out for the evening. This has raised concerns about how this form of drinking contributes to alcohol-related health and social harms. Further regulation of the availability of alcohol in supermarkets and off licence premises is considered necessary to emphasise that alcohol is not an ordinary product and to ensure that customers are not encouraged to buy more alcohol than they intended.

Issues surrounding the increased financial pressures on the hospitality sector, linked to the general economic downturn, and the decline in the traditional pub trade, have been identified. Therefore, it is considered necessary to introduce measures to help make the hospitality industry become more sustainable and attractive to tourists; and to develop a more balanced relationship between responsible drinking and the economic realities of the sector, which the PSNI will be able to enforce. Other problems, in particular enforcement difficulties which arise due to the differing requirements of the separate liquor licensing and entertainment licensing regimes, also need to be addressed. The inclusion of a number of minor changes to the law to assist private member clubs' efforts to make recreational and social activities available to their members is also considered appropriate at this stage.

13. The Bill implements Option 2.

OVERVIEW

14. The Bill contains 27 clauses which amend, and in some places replace, the existing provisions of the Licensing (Northern Ireland) Order 1996 (the Licensing Order) and the Registration of Clubs (Northern Ireland) Order 1996 (the Clubs Order). It also contains a Schedule of repeals.

COMMENTARY ON CLAUSES

PART 1 – LICENSING

Clause 1: Additional hours at Easter

Subsection (1) adds new paragraphs in Article 30 of the Licensing Order (Occasional licences), Article 44 (Orders for additional permitted hours), Article 45 (Authorisations for additional permitted hours) and Article 47 (Extension licences for sale, etc. in certain premises outside permitted hours). The above Articles provide for later opening for the sale of intoxicating liquor under the authority of an occasional licence or in certain licensed premises. Later opening for the Thursday before Good Friday (previously 11.00pm to midnight) now mirrors the duration of later opening available for any other weekday in the year (11.00pm to 1.00am the following day).

Clause 2: Additional hours: applications to court

Subsection (1) introduces new Article 30A in the Licensing Order (Occasional licences: additional hours).

Article 30A allows a court of summary jurisdiction or a clerk of petty sessions to grant an additional occasional licence to holders of certain licences who are permitted to sell intoxicating liquor, on an occasional basis, at some place other than licensed premises.

An additional occasional licence permits later opening for an additional one hour on any day to which an occasional licence granted under Article 30 applies (1.00am - 2.00am on weekdays; 12.00 midnight - 1.00am on Sundays).

Such a licence may authorise an additional hour for a maximum of 12 days in any year but not for Christmas Day, Easter Day or Good Friday.

Subsection (3) introduces new Articles 44A and 44B in the Licensing Order in relation to further later opening.

Article 44A (Orders for further additional permitted hours) empowers a court or clerk of petty sessions, in certain circumstances, to make an order to extend later opening by one hour in certain licensed premises which are structurally adapted to provide entertainment and/or substantial refreshment and which hold a court order for later opening under Article 44.

An order under Article 44A permits later opening for an additional one hour on any day to which an order under Article 44 applies (1.00am - 2.00am on weekdays; 12.00 midnight - 1.00am on Sundays).

An order under Article 44A also permits later opening for three hours in premises which hold an order for later opening under Article 44, on a day which is not covered in that order (11.00pm - 2.00am on weekdays; 10.00pm - 1.00am on Sundays). Entertainment and/or substantial refreshment must be provided throughout the later opening just as if an order under Article 44 applied to that day.

An order under 44A may be made for a maximum of 12 days in any year but may not be made for Christmas Day, Easter Day or Good Friday.

The Department may make regulations to change the number of days on which orders under Article 44A may be made. The regulations cannot come into operation unless and until approved by the Assembly.

Article 44B (Orders under Article 44A: revocation, modification etc.) provides powers for a court of summary jurisdiction to revoke or modify an order for further later opening. These powers mirror the powers a court has to revoke or modify an order for later opening made under Article 44.

Subsection (5) introduces a new Article 47A to the Licensing Order (Extension licences: further additional permitted hours).

Article 47A empowers a court of summary jurisdiction or clerk of petty sessions to grant an additional extension licence to premises granted an extension licence under Article 47. An additional extension licence extends later opening for an additional 1 hour (1.00am - 2.00am on weekdays; 12.00 midnight -1.00am on Sundays) in premises to which an order under Article 48 applies (premises suitable to hold functions). An additional extension licence may be granted for a maximum of 12 days in any year but not on Christmas Day, Easter Day or Good Friday.

The Bill also gives the Department a power to make regulations to change the number of days for which an additional extension licence may be granted. The regulations cannot come into operation unless and until approved by the Assembly.

Clause 3 – Section 2: consequential provision etc.

Clause 3 makes necessary consequential amendments to the Licensing Order including to Schedule 1 (application procedure for the grant of a liquor licence) and Schedule 10A (penalty points for offences) to take account of the introduction of new Articles 30A, 44A and 47A.

Clause 4: Additional hours: police authorisations

Clause 4 amends Article 45 of the Licensing Order (authorisations for additional permitted hours).

Subsection (1) amends Article 45(1) to allow police to authorise later opening (11.00pm - 1.00am on weekdays; 10.00pm - 12.00 midnight on Sundays), in pubs which have a court order for later opening under Article 44, on a day that is not covered in the Article 44 order.

Subsection (2) inserts a new Article 45(1A) detailing the conditions which must be satisfied before an authorisation can be made to pubs holding an order under Article 44.

Subsection (3) substitutes Article 45(2) to allow the police to authorise later opening in pubs holding an order under Article 44 for a maximum of 20 days in any year; introduces Article 45(2A) to increase the number of authorisations to pubs not holding an order for later opening under Article 44 from 20 days to 85 days in any year; and introduces Article 45(2B) to provide the Department with a power to make regulations to change the number of days on which orders under Article 45(2) or (2A) may be made. The regulations cannot come into operation unless and until approved by the Assembly.

Clause 5: Extension of “drinking-up time”

Clause 5 amends Article 46 of the Licensing Order (Exceptions from prohibition of sale, etc., of intoxicating liquor outside permitted hours).

Subsection (1) amends Article 46(1)(a) which provides for the duration of the “drinking-up time” at the end of normal opening hours or later opening in licensed premises, substituting the current “30 minutes” with “60 minutes”.

Subsection (2) omits Article 46(1)(b)(i). The effect of this change is that sealed containers of intoxicating liquor may not be taken from pubs during “drinking-up time”.

Subsection (3) provides that the amended “drinking-up time” of 60 minutes under subsection (1) will be limited to a period of 1 year unless regulations provide that it continues after the end of that period. The regulations cannot come into operation unless and until approved by the Assembly.

Subsection (4) allows “drinking-up time” to revert to 30 minutes by way of regulations. The regulations cannot come into operation unless and until approved by the Assembly.

Clause 6: Alignment of liquor, entertainment and refreshment provision etc.

Clause 6 adds a new Article 44C in the Licensing Order (Alignment of liquor, entertainment and refreshment provision etc) to ensure that the entertainment or refreshment provided during later opening under Article 44, or further later opening under Article 44A, is not allowed to continue after the end of drinking-up time. This ensures that entertainment or the provision of refreshment must end at the latest at 2.00am when an Article 44 order applies and 3.00am when an Article 44A order applies.

New Article 44C(2) provides that an entertainment licence granted by a relevant district council will cease to be valid at 2.00am on weekdays or at 1.00am on Sundays in premises which have later opening under an Article 44 order. Where premises have been granted further later opening under an Article 44A order an entertainment licence will cease to have effect at 3.00am on weekdays and 2.00am on Sundays.

Clause 7: Removal of requirement for children’s certificate, etc.

Subsection (1) repeals Article 59 of the Licensing Order (Children’s certificates) which required licensees to hold a children’s certificate if they wished young people under 18 years of age to be allowed in areas of their premises which contain a bar or are used mainly or exclusively for the consumption of intoxicating liquor.

Subsections (2) and (3) amend Article 58 of the Licensing Order (young persons prohibited from certain premises) to put safeguards in place before young people under 18 years of age are allowed in areas of their premises which contain a bar or are used mainly or exclusively for the consumption of intoxicating liquor. Meals must be available, a young person must be accompanied by an adult and sit at a table away from the bar, and must leave the premises by 9.00pm (9.30pm if consuming a meal purchased before 9.00pm).

Subsections (4) - (9) make consequential amendments to Article 58 of the Licensing Order (young persons prohibited from certain premises), Article 60B (duty to display notice relating to age), Article 2 (interpretation) and Article 34 (register of licences), to take account of the removal of the requirement for children’s certificates.

Subsections (10) and (11) make consequential amendments to Schedule 1 to the Licensing Order (applications for the grant of licences) and Schedule 9 (application procedure for children’s certificate).

Subsection (12) clarifies the area of supermarket premises in which young people under 18 years of age are not permitted.

Clause 8: Underage functions

Subsection (1) introduces new Article 58A in the Licensing Order (Suitability of certain premises for underage functions).

Article 58A permits courts to make an order specifying any part of certain licensed premises as suitable to hold underage functions.

Subsection (1) also introduces new Article 58B (Authorisations for underage functions).

Article 58B permits a court of summary jurisdiction or the clerk of petty sessions in certain circumstances, to authorise underage functions in certain licensed premises, up to 1.00am in a part of licensed premises to which an order under Article 58A applies.

Subsections (2) - (5) make consequential amendments to Article 58 of the Licensing Order (young persons prohibited from certain premises) and Schedule 9 to the Licensing Order (applications to courts), Schedule 10 (applications for extension licences etc.) and Schedule 10A (penalty points for offences punishable with level 3 fine) to take account of the introduction of new Articles 58A and 58B.

Subsection (6) inserts paragraph 4ZA in Article 108 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (use of gaming machines on other premises). This paragraph makes it an offence for gaming machines to be made available in any part of licensed premises in which an underage function is being held.

Clause 9: Delivery of intoxicating liquor to young persons

Subsections (1) and (3) amend Article 60 of the Licensing Order (Sale, etc, of intoxicating liquor to young people) to make it an offence for a licensee or a member of staff to make a home delivery of intoxicating liquor to any person under 18 years of age (fine up to £5000 and/or to imprisonment up to 6 months and associated penalty points).

Subsection (2) adds a new offence (fine up to £1000) for a person under 18 years of age to knowingly accept a home delivery of intoxicating liquor.

Subsection (4) adds new subparagraph (ii) to Article 60(7A) so that in court proceedings licensees or members of staff who are charged with an offence under Article 60(1) may rely on a defence of due diligence by demonstrating that, when delivering intoxicating liquor, they recorded details of any proof of age document they had requested in the delivery book or on an invoice.

Subsection (5) ensures that certain exemptions in the Licensing Order, which allow intoxicating liquor to be delivered to a person who is residing in unlicensed premises where an entertainment is being held or which is used by a club, do not extend to any person under 18 years of age residing in such premises.

Clause 10: Restaurants and guest houses: notice displaying licence conditions

Clause 10 amends Article 51 of the Licensing Order (Conditions as to sale, etc., in guest houses and restaurants). It adds a new Article 51(4A) which requires a restaurant, and a guest house which also has a restaurant, to display a notice detailing the conditions in relation to the sale and consumption of intoxicating liquor in the premises.

Clause 11: Prohibition on self-service and sales by vending machines

Clause 11 introduces new Article 54A in the Licensing Order (Prohibition on self service and sales by vending machines). It prevents the supply of alcohol not made under the direct supervision of a licensee or a member of staff.

The Department is given a power to make regulations permitting, where certain conditions are satisfied, the sale of intoxicating liquor by way of a vending machine to residents in hotels, guest houses and pubs which provide accommodation.

Clause 12: Restrictions on off-sales drinks promotions in supermarkets etc.

Clause 12 introduces new Article 57ZA in the Licensing Order (Restrictions on off-sales drink promotions in supermarkets etc.). Article 57ZA restricts the advertising of drinks promotions in supermarkets to the area in which intoxicating liquor may be displayed in such premises. Supermarkets and other licensed premises which sell intoxicating liquor for consumption at home will also not be allowed to advertise drink promotions available in the premises within the vicinity of the premises which is defined in subsection (3).

The Department is given a power to make regulations to amend the definition of vicinity. The regulations cannot come into operation unless and until approved by the Assembly.

Clause 13: Code of practice

Clause 13 introduces new Article 76A in the Licensing Order (Code of Practice) which allows the Department to approve a relevant code of practice produced by a person or group of persons who have a relevant interest in matters surrounding intoxicating liquor.

Before approving a code of practice, which is defined in subsection (3) of the new Article 76A, the Department must consult the Police Service of Northern Ireland.

The Department may approve any subsequent amendments to a code or withdraw approval of the code.

When granting or transferring a licence a court must be satisfied that an applicant is aware of their responsibilities under an approved code of practice.

When renewing a licence for a new 5 year licensing period a court must also be satisfied that the licensee has been complying with the code.

Clause 14: Removal of exemption for angostura bitters

Clause 14 omits angostura bitters (a product of high alcohol content which is used to flavour a wide variety of drinks and food) from the list of products which are not included in the definition of intoxicating liquor in Article 2(2) of the Licensing Order (Interpretation). The omission has the effect that angostura bitters will be categorised as intoxicating liquor and therefore may only be sold in licensed premises.

PART 2 –REGISTRATION OF CLUBS

Clause 15: Sporting clubs: extension of premises

Clause 15 introduces new Article 15A in the Clubs Order (Extension authorisations for sporting clubs) to allow the police to authorise a sporting club to extend the area of its premises which is registered to supply intoxicating liquor for the purpose of holding a function.

The extended area will be treated as part of the registered premises and therefore the function will be subject to the conditions set out in Article 30. A sporting club will be able to apply for a police authorisation up to 6 times in any year. Only in exceptional circumstances should an authorisation last for more than 1 day.

The Department has a power to make regulations to change the number of authorisations the police may make in any year. The regulations cannot come into operation unless and until approved by the Assembly.

Clause 16: Additional hours at Easter

Clause 16 adds new Article 26(3A) in the Clubs Order (Authorisations for special occasions). Later opening for the Thursday before Good Friday now mirrors the duration of later opening available under a police authorisation for any other weekday in the year (11.00pm to 1.00am the following day). This corresponds with changes made for licensed premises in Clause 1 of the Bill.

Clause 17: Extension of “drinking-up time”

Clause 17 amends Article 25 of the Clubs Order (consumption after permitted hours of liquor supplied during those hours) to create similar provisions for the duration of the “drinking-up time” in private member clubs to those set out in Clause 5 of the Bill in relation to licensed premises.

Clause 18: Removal of requirement for children’s certificate, etc.

Clause 18 repeals Article 33 of and Schedule 5 to the Clubs Order (Children’s certificates) and amends Article 32 of the Clubs Order (Young persons prohibited from bars) to create similar provisions for safeguarding young people who are present in club premises from the dangers of intoxicating liquor to those provided in Clause 7 of the Bill.

Clause 19: Underage functions

Clause 19 introduces new Article 32A in the Clubs Order (Authorisations for underage functions). The provisions in Article 32A for a police authorisation of an underage function in club premises mirror those set out for a court authorisation in Clause 8 of the Bill.

Subsection (4) inserts paragraph 7A in Article 106 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (use of gaming machines in registered clubs).

This paragraph makes it an offence for gaming machines to be made available in any part of club premises in which an underage function is being held.

Clause 20: Young people in sporting club premises

Clause 20 amends Article 32 of the Clubs Order (Young persons prohibited from bars). It extends the last time that young people under 18 years of age may be in the bar area of sporting club premises from 10pm to 11.00pm during the summer months (1 June - 31 August).

It also introduces a new Article 32(13A) to allow a young person to remain in the bar area until 11.00pm to attend one prize giving ceremony in a calendar year.

Clause 21: Prohibition on self-service and sales by vending machines

Clause 21 introduces new Article 31C in the Clubs Order (Prohibition on self service and sales by vending machines). It prevents the supply of alcohol not made under the direct supervision of a registered club.

Clause 22: Restrictions relating to advertisement

Clause 22 amends Article 38(1) and (2) of the Clubs Order (Restrictions on advertisements relating to functions in clubs) by removing current advertising restrictions (where, unless it involves a sport, game or physical recreation, a function may only be advertised within club premises).

It permits a club to advertise any function outside of club premises where the advertisement clearly states that only members of the club and their guests may attend the function. However, advertisements relating to functions where the proceeds are devoted to charitable or benevolent purposes will not be subject to such restrictions.

Clause 23: Code of practice

Clause 23 introduces new Article 41K in the Clubs Order (Code of Practice) to create similar provisions to Clause 13 (which introduces new Article 76A in the Licensing Order) in relation to allowing the Department to approve a code of practice.

Clause 26: Ancillary provision

This clause provides a power for the Department to make any orders necessary to give full effect to the Bill. Orders which amend primary legislation cannot come into operation unless and until approved by the Assembly.

FINANCIAL EFFECTS OF THE BILL

15. The Bill introduces a modest amendment to opening hours at Easter and further later opening on 12 occasions in any year to assist the licensing trade and the hospitality

industry. Allowing underage functions in licensed premises and private member clubs under strict conditions is also intended to provide a further income source for these premises.

16. The removal of the requirement to hold a children's certificate will more than offset any cost incurred by licensed premises and private member clubs having to display a notice in relation to offences to young people under 18 years of age. The requirement for restaurants and guest houses having to display a notice regarding conditions under which alcohol may be sold in such premises is likely to be negligible.
17. The advertising restrictions on supermarkets and off sales premises may lead to a reduction in the sale of alcohol but this intended consequence is unlikely to have significant implications for these premises. Conversely the lifting of advertising restrictions on functions held in private member clubs is intended to assist clubs in financing the sporting, recreational and social activities which they make available in their local communities and which might not otherwise be provided.

HUMAN RIGHTS ISSUES

18. The proposals have been screened for compatibility with the European Convention on Human Rights. No human rights implications were identified.

EQUALITY IMPACT ASSESSMENT

19. In accordance with its duty under section 75 of the Northern Ireland Act 1998 to have due regard to the need to promote equality of opportunity, the Department conducted a screening exercise on the proposals, concluding that they did not have significant implications for equality of opportunity and that an equality impact assessment was therefore not necessary.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

20. The Department included its consideration of the potential regulatory impacts as part of the public consultation. It concluded that no Regulatory Impact Assessment was required.

LEGISLATIVE COMPETENCE

21. The Minister for Communities has made the following statement under section 9 of the Northern Ireland Act 1998:

"In my opinion the Licensing and Registration of Clubs (Amendment) Bill would be within the legislative competence of the Northern Ireland Assembly."