



Northern Ireland  
Assembly

## Research and Information Service Review of Bill Costs

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**Public Finance and Scrutiny Unit**

# Licensing and Registration of Clubs (Amendment) Bill – Assessing the Costs

On 19 September 2016 the Licensing and Registration of Clubs (Amendment) Bill (the Bill) was introduced in the Assembly by the Minister of the Department for the Communities. This 'Review of Bill Costs' aims to facilitate financial scrutiny of the Bill, as undertaken by the Assembly's Committee for Communities and individual Members. The Review should be read in conjunction with RaISe Bill Paper NIAR 340-16 (14 November 2016), wherein policy issues are addressed.

This information is provided to MLAs in support of their Assembly duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as professional legal advice or as a substitute for it.

## Introduction

On 19 September 2016 the Licensing and Registration of Clubs (Amendment) Bill was introduced in the Assembly by the Minister for Communities; throughout it is called ‘the Bill’. This ‘Review of Bill Costs’ (Review) is prepared by the Public Finance Scrutiny Unit (PFSU) within the Assembly’s Research and Information Service (RaISe). It seeks to facilitate Assembly scrutiny of the Bill’s financial implications, if enacted as introduced, in particular scrutiny undertaken by the Committee for Communities (CfC). It considers the financial implications identified by the Department for Communities (DfC) in the Bill’s accompanying ‘Explanatory and Financial Memorandum’ (EFM), at paragraphs 15 to 17. This Review should be read in conjunction with Bill Paper NIAR 340-16 (dated 11 November 2016), wherein another Research Team within RaISe addresses key policy implications arising from the Bill.

Providing a framework to orientate and support financial scrutiny of this Bill, the Review is set out as follows:

- Section 1 reviews the DfC’s estimated costs for implementing the Bill, relying on relevant paragraphs within the Bill’s EFM and findings noted at the conclusion of the former Department for Social Development’s (DSD) 2012 consultation (2012 DSD consultation).
- Section 2 provides concluding remarks, highlighting key observations.

Scrutiny points are stated throughout the Review.

## 1. DfC identified costs

For context, this section initially sets out the legislative intent of the Bill (as introduced). Thereafter it outlines cost-related information stated in the EFM and at the conclusion of the 2012 DSD consultation, which is relevant here.

### 1.1 Legislative Intent

As stated in the EFM, the Bill’s primary objective is to:

*...build on measures in the current law to help address concerns about excessive consumption of alcohol, and to support the hospitality sector.<sup>1</sup>*

It is anticipated that the provisions will:

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<sup>1</sup> DfC (2016) Licensing and Registration of Clubs (Amendment) Bill - Explanatory and Financial Memorandum Page 1 available online at: <http://www.niassembly.gov.uk/assembly-business/legislation/2016-2021-mandate/primary-legislation---current-bills/licensing-and-registration-bill/> accessed on 29 September 2016.

*...develop a more balanced relationship between responsible drinking and the economic realities of the sector, which the PSNI will be able to enforce.<sup>2</sup>*

A consultation exercise on the content of the Bill was conducted in 2012 by the former DSD which:

*...worked closely with the Department of Health, Social Services and Public Safety (DHSSPS) when developing the proposals.*

## 1.2 EFM and Individual Bill Clauses

### 1.2.1 EFM

At the outset it is important to highlight that the 'Financial Implications' paragraphs 15-17 of the EFM, concern costs that may be incurred by the private sector only. In addition, the EFM does not quantify those costs in respect of either their extent or their drivers. Instead the EFM states:

*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.<sup>3</sup>*

It goes on to state that:

*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.<sup>4</sup>*

To probe other costs that may be incurred, RaISe's PFSU requested information from the DfC on the potential costs to public sector bodies. In its response the DfC stated that:

*There was no full assessment done. The view of officials at the time was that the impact of the implementation of the Bill would be minimal.<sup>5</sup>*

<sup>2</sup> DfC (2016) Licensing and Registration of Clubs (Amendment) Bill - Explanatory and Financial Memorandum Page 3 available online at: <http://www.niassembly.gov.uk/assembly-business/legislation/2016-2021-mandate/primary-legislation---current-bills/licensing-and-registration-bill/> accessed on 29 September 2016

<sup>3</sup> DfC (2016) Licensing and Registration of Clubs (Amendment) Bill - Explanatory and Financial Memorandum Page 11 available online at: <http://www.niassembly.gov.uk/assembly-business/legislation/2016-2021-mandate/primary-legislation---current-bills/licensing-and-registration-bill/> accessed on 29 September 2016

<sup>4</sup> DfC (2016) Licensing and Registration of Clubs (Amendment) Bill - Explanatory and Financial Memorandum Page 11 available online at: <http://www.niassembly.gov.uk/assembly-business/legislation/2016-2021-mandate/primary-legislation---current-bills/licensing-and-registration-bill/> accessed on 29 September 2016

<sup>5</sup> Email to PFSU from DfC dated 13 October 2016

It appears therefore from the information currently available that the DfC has not identified potential costs that could be incurred by public sector bodies due to the Bill. implementation, recurrent or operating costs.

In this context, it is noteworthy that the Assembly's Standing Orders (SO), specifically SO 41 concerning requirements when introducing Executive bills, requires the EFM accompanying a departmental Bill to detail the Bill's cost implications as appropriate. SO 41 states:

*Under Standing Order 41 - Public Bills on introduction shall be accompanied, inter alia, by an Explanatory and Financial Memorandum detailing as appropriate:*

- a) the nature of the issue the Bill is intended to address;*
- b) the consultative process undertaken;*
- c) the main options considered;*
- d) the options selected and why;*
- e) the cost implications of the proposal/s.<sup>6</sup>*

#### **Scrutiny points:**

1. In light of the Assembly's SO 41, the Assembly may wish to ask the DfC to fully detail its rationale when estimating costs for the Bill, including the range of costs it considered.

### 1.3 Individual Bill Clauses

The following sub-section reviews key potential costs relating to Clauses 2, 4, 5, 8, 9, 13, 15, 17, 19 and 23 of the Bill, and as appropriate highlights potential costs not identified by the DfC, which also merit consideration. It relies on information provided in the 'Commentary on Clauses' section of the EFM, and considers 'cost drivers'<sup>7</sup> and related underlying assumptions.

A number of the stated clauses have implications for more than one of these themes. So for ease of reference, this sub-section is presented thematically:

- Licensing;
- Public Order; and,
- Miscellaneous.

<sup>6</sup>NI Assembly Standing Order 41

<sup>7</sup> A cost driver is any factor that causes costs to occur - CIPFA (2003) Financial and Performance Reporting

### 1.3.1 Licensing

Several Bill clauses relate to a licensing role in respect of both licensed premises and sporting clubs. Those clauses are:

- Clause 2: Additional hours: applications to court;
- Clause 4: Additional hours: police authorisations;
- Clause 8: Underage functions;
- Clause 13: Code of practice;
- Clause 15: Sporting Clubs: extension of premises;
- Clause 19: Underage function; and,
- Clause 23: Code of practice.

The Bill (as introduced) outlines a licensing role in respect of three separate public sector bodies, namely:

- The Northern Ireland Courts and Tribunals Service (NICTS);
- The Police Service of Northern Ireland (PSNI); and,
- The DfC.

Note: while the responses to the 2012 DSD consultation identified the PSNI as a respondent, the NICTS were not separately identified as a respondent. It is not clear therefore whether the views of the NICTS were taken into consideration by the DfC when drafting the Bill.

#### **Clause 2**

Clause 2 concerns the extension of opening hours of licensed premises by a court or a clerk of petty sessions, up to a maximum of 12 additional days per year.

Under existing legislation, a fee is charged by the NICTS for submitting an application for an extension to opening hours. However, it is not clear from the information in the EFM whether the fees currently charged will be extended to the new legislation, or if the fees will be revised to accommodate the additional workload.

#### **Scrutiny points:**

2. Has the NICTS been consulted by the former DSD or the DfC in relation to the fee-setting for extending opening hours under Clause 2?
3. In light of the above reply, what fees have been set in respect of applications for extensions of opening hours for licensed premises?
4. Have the NICTS ensured that the fees set will cover **all** costs associated with the additional workload?

The final paragraph in this Clause gives the DfC the power to change the number of days for which an additional extension may be granted. It states:

*The regulation cannot come into operation unless and until approved by the Assembly.<sup>8</sup>*

It is not clear from the EFM whether the NICTS will be consulted in relation to potential changes to the number of days where licensed premises may apply to extend their opening hours.

This Clause will therefore empower the DfC to make subordinate legislation, following the enactment of this Bill.

The secondary legislation will be subject to a draft affirmative resolution, which requires any proposed statutory rule to be approved in draft by resolution of the Assembly.

In other words, the law cannot come into operation until the Assembly has expressly voted to say that it can. This means that the level of Assembly scrutiny may be greater than under the negative resolution procedure.

Having said this, *Deconstructing Legislation* explains that:

*A debate on a draft affirmative motion is significantly less effective as a method of scrutiny than consideration of the provisions of a Bill.<sup>9</sup>*

#### **Scrutiny point:**

5. The Assembly, in particular the CfC, may wish to seek assurances from the DfC that: (a) it will consult with **all** public bodies affected by potential changes to the regulations prior to their introduction in the Assembly, and (b) it will advise the CfC of responses received prior to the regulations' introduction.

#### **Clause 4**

Clause 4 concerns the extension of opening hours of licensed premises by the police from a maximum of 20 days, to 85 days in any year.

The 2012 DSD consultation outcomes did not identify a response from the PSNI in relation to the extension of opening hours for licensed premises.

The PFSU sought information from the PSNI in respect of charging for this service. It was informed that the PSNI does not currently charge for this service, and further that it does not have the power to introduce charges.<sup>9</sup>

<sup>8</sup> DfC (2016) Licensing and Registration of Clubs (Amendment) Bill - Explanatory and Financial Memorandum Page 5 available online at: <http://www.niassembly.gov.uk/assembly-business/legislation/2016-2021-mandate/primary-legislation---current-bills/licensing-and-registration-bill/> accessed on 29 September 2016

<sup>9</sup> Email to PFSU from PSNI dated 6 October 2016.

**Scrutiny points:**

6. Has the PSNI been consulted in relation to the administration costs that it is likely to incur due to as an increase in the number of days that opening hours may be extended?
7. In light of the above reply, what implications will these increased costs (if any) have on other areas of the PSNI budget and community policing?

Similar to Clause 2, the final paragraph in this Clause gives the DfC the power to change the number of days for which an additional extension may be granted. It states:

*The regulation cannot come into operation unless and until approved by the Assembly.<sup>10</sup>*

It is not clear from the information provided whether the PSNI will be consulted about potential changes to the number of days when licensed premises may apply to extend their opening hours.

**Clauses 8 and 19**

Clause 8 concerns the *Licensing (Northern Ireland) Order 1996* and Clause 19 relates to the *Registration of Clubs (Northern Ireland) Order 1996*. Both Clauses introduce a new Article to the relevant prevailing legislation, which if enacted, will permit:

- courts to specify any part of certain licensed premises as suitable to hold underage functions; and,
- a court of summary jurisdiction or the clerk of petty sessions to authorise underage functions in certain licensed premises up to 1:00a.m.<sup>11</sup>

The available information does not state whether there will be a charge levied by the NICTS for its consideration of these applications.

**Scrutiny points:**

8. Has the NICTS been consulted in relation to the fee-setting for underage function applications under either Clause 8 or Clause 19?
9. In light of the above reply, what fees have been set in respect of underage function applications under either Clause 8 or Clause 19?

<sup>10</sup> DfC (2016) Licensing and Registration of Clubs (Amendment) Bill - Explanatory and Financial Memorandum Page 5 available online at: <http://www.niassembly.gov.uk/assembly-business/legislation/2016-2021-mandate/primary-legislation---current-bills/licensing-and-registration-bill/> accessed on 29 September 2016

<sup>11</sup> DfC (2016) Licensing and Registration of Clubs (Amendment) Bill - Explanatory and Financial Memorandum Page 7 available online at: <http://www.niassembly.gov.uk/assembly-business/legislation/2016-2021-mandate/primary-legislation---current-bills/licensing-and-registration-bill/> accessed on 29 September 2016

10. Have the NICTS provided the DfC with an assurance that the fees set will cover **all** costs associated with this new function? If not, will the DfC seek such an assurance?

### **Clause 15**

Clause 15 allows:

*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. [ ] A sporting club will be able to apply for a police authorisation up to 6 times in any year.<sup>12</sup>*

The 2012 DSD consultation outcomes did not identify a response from the PSNI in relation to the extension of opening hours for licensed premises.

The PFSU sought information from the PSNI in respect of charging for this service. It was informed that the PSNI does not currently charge for this service, and further that it does not have the power to introduce charges.<sup>13</sup>

### **Scrutiny point:**

11. The Assembly, in particular the CfC, may wish to enquire whether consideration has been given by either the DfC or the PSNI into the issue of charging for this service. If so could this information be shared with the CfC

## **1.3.2 Public Order**

While the Bill does not directly reference an enforcement or security role in connection with the regulations, it is reasonably foreseeable that the implementation of the regulations will impact on the PSNI, and ultimately the NICTS. Those Clauses that are most likely to concern enforcement or impact safety are:

- Clause 2: Additional hours: applications to court;
- Clause 4: Additional hours: police authorisations;
- Clause 5: Extension of 'drinking-up' time; and,
- Clause 17: Extension of 'drinking-up' time.

The following sub-section provides additional information on potential costs that may materialise if implementing the Bill (as introduced).

### **Clauses 2 and 4**

Clauses 2 and 4 both concern additional opening hours for licensed premises as discussed in sub-section 1.3.1. While the direct costs relating to the introduction of

<sup>12</sup> DfC (2016) Licensing and Registration of Clubs (Amendment) Bill - Explanatory and Financial Memorandum Page 8 available online at: <http://www.niassembly.gov.uk/assembly-business/legislation/2016-2021-mandate/primary-legislation---current-bills/licensing-and-registration-bill/> accessed on 29 September 2016

<sup>13</sup> Email to PFSU from PSNI dated 6 October 2016.



these Clauses has been discussed earlier in terms of additional administration costs due to increased applications, other reasonably foreseeable indirect costs may arise in respect of additional policing needed to ensure public safety for patrons exiting licensed premises at a later time.

### **Clauses 5 and 17**

Clause 5 concerns the *Licensing (Northern Ireland) Order 1996* and Clause 17 relates to the *Registration of Clubs (Northern Ireland) Order 1996*. Both Clauses are concerned with the extension of 'drinking-up' time from half an hour to one hour. The extended 'drinking-up' time will result in some patrons delaying their departure time from the licensed premises by half an hour. While it is unlikely that there will be any direct costs associated with the implementation of these Clauses, there may be indirect costs arising from policing needed to ensure public safety when patrons exit licensed premises at a later time.

From the information currently available, it is not clear whether the DfC discussed the impact that later closing times of licensed premises or the extension of 'drinking-up' times would have on the PSNI's staff and staffing levels.

#### **Scrutiny points:**

12. Has the PSNI identified any additional costs in relation to policing the night time economy that they might incur as a result of changes to licensed premises opening hours? If so, please detail.
13. In light of the above response has the PSNI conducted sensitivity analysis on the costs to take account of late licence patterns?
14. Dependent on above responses, what implications will these increased costs have on other areas of the PSNI budget?
15. Has the DoH identified any potential additional costs for treating people caught up in public order issues that may arise due as a change in licensed premises' opening hours?
16. In light of the above reply, what implications will those increased costs, if any, have on other areas of the DoH budget and waiting times?

### **1.3.3 Miscellaneous**

A number of clauses within the Bill relate to the other miscellaneous issues. Those Clauses are:

- Clause 2: Additional hours: applications to court;
- Clause 4: Additional hours: police authorisations;
- Clause 5: Extension of "drinking-up time;"

- Clause 9: Delivery of intoxicating liquor to young persons;
- Clause 12: Restrictions on off-sales drinks promotions in supermarkets etc; and,
- Clause 17: Extension of 'drinking-up' time.

Below provides information on these Clauses and key costs related to them that merit consideration.

### **Clauses 2, 4, 5 and 17**

As previously identified each of these Clauses (2,4,5 and 17) relates to increased opening times of licensed premises and clubs, either in terms of additional hours or extended 'drinking-up' times. In addition to the potential public order costs detailed within sub-section 1.3.2, there are also potential costs related to health. In this context, of note is the large number of studies examining the impact of extended licences in England. In 2016 one such academic study stated that it has:

*...led to more heavy drinking and a greater toll on the physical and mental health of drinkers.<sup>14</sup>*

Deteriorating health outcomes, as identified in the above study, could ultimately have an effect on the costs to the DoH.

#### **Scrutiny point:**

17. In light of this research, has the DoH quantified potential additional costs associated with increased heavy drinking?

### **Clauses 9 and 12**

Clause 9 relates to the delivery of intoxicating liquor to young people and Clause 12 relates to restrictions in respect of off sales drinks promotions. While there is unlikely to be any direct costs to the public sector for the implementation of these Clauses under the Bill (as introduced), it is not clear from the information currently available where responsibility for the enforcement of these Clauses would lie.

In the 2012 DSD consultation the PSNI has:

*...expressed concern on who would enforce proposed restrictions on the availability of alcohol in supermarkets and off sales premises.<sup>15</sup>*

And:

<sup>14</sup> Green & Paniagua (2016) Longer Opening Hours, alcohol consumption and health Page 1 available online at:

<http://www.lancaster.ac.uk/news/articles/2016/longer-opening-hours-lead-to-heavier-drinking/> accessed on 30 September 2016

<sup>15</sup> DfC (2013) Department for Social Development (DSD) Consultation on Proposed Changes to the Law Regulating the Sale and Supply of Alcohol in Northern Ireland Outcome Report Page 79 available online at: <https://www.communities-ni.gov.uk/consultations/proposed-changes-law-regulating-sale-and-supply-alcohol-northern-ireland> accessed on 30 September 2016

*...PSNI consider that they have a public safety role and enforcement of the above issues are proper to other agencies.<sup>16</sup>*

**Scrutiny points:**

18. Has a decision been made about where enforcement responsibility lies for delivering intoxicating liquor to young persons and restrictions on the sale of alcohol in and off sales premises?
19. In light of the response to the above, will the organisation which is deemed responsible for enforcement receive additional funding for undertaking these additional responsibilities?
20. If no additional funding is available to undertake this enforcement role, what impact will this additional expenditure have on other areas of the relevant public sector body's budget (as identified at question 20 under sub-section 1.3.2)?

## 2 Conclusion

The EFM does not provide an estimate for costs associated with the implementation of the Bill (as introduced). It states that:

*...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.<sup>17</sup>*

A further two paragraphs are concerned with potential costs to the private sector. However, costs relating to the public sector were not identified. This raises a host of questions, as highlighted in Section 1 of this Review.

Additional information from the DfC and the other public bodies highlighted within Section 1, i.e. the PSNI, the NICTS and the DoH, would enable better assessment of the likelihood and extent of costs that are anticipated to incur if the Bill is enacted as introduced. This would allow the Assembly to assure itself that the DfC robustly considered the financial impact of the Bill across the public sector.

<sup>16</sup> DfC (2013) Department for Social Development (DSD) Consultation on Proposed Changes to the Law Regulating the Sale and Supply of Alcohol in Northern Ireland Outcome Report Page 79 available online at: <https://www.communities-ni.gov.uk/consultations/proposed-changes-law-regulating-sale-and-supply-alcohol-northern-ireland> accessed on 30 September 2016

<sup>17</sup> DfC (2016) Licensing and Registration of Clubs (Amendment) Bill - Explanatory and Financial Memorandum Page 5 available online at: <http://www.niassembly.gov.uk/assembly-business/legislation/2016-2021-mandate/primary-legislation---current-bills/licensing-and-registration-bill/> accessed on 29 September 2016