



AN BILLE DEOCHANNA MEISCIÚLA 2008
INTOXICATING LIQUOR BILL 2008

EXPLANATORY MEMORANDUM

General

The purpose of this Bill is to amend the Licensing Acts 1833 to 2004 and the Criminal Justice (Public Order) Act 1994 in order to give effect to reforms recommended by the Government Alcohol Advisory Group as well as proposals in relation to the seizure of alcohol from certain persons.

The Minister for Justice, Equality and Law Reform established the Government Alcohol Advisory Group in January 2008 to examine key aspects of the law governing the sale and consumption of alcohol with particular reference to public order issues. The Group was asked to examine the following areas of concern:

- the increase in the number of supermarkets, convenience stores and petrol stations with off-licences and the manner and conditions of sale of alcohol products in such outlets, including below unit-cost selling and special promotions;
- the increasing number of special exemption orders which permit longer opening hours which are being obtained by licensed premises around the country; and
- the use, adequacy and effectiveness of existing sanctions and penalties, particularly those directed towards combating excessive and under-age alcohol consumption.

The Group submitted its Report to the Minister on 31 March 2008. It contains 31 recommendations for legislative and other reforms in areas covered by its terms of reference. The proposals set out in this Bill seek to give effect to recommended reforms in licensing law and public order legislation. Further reforms of the licensing system will be contained in the forthcoming Sale of Alcohol Bill which will modernise and streamline all the laws relating to the sale and consumption of alcohol.

The main provisions in the present Bill are as follows:

Section 1 contains the short title, collective citations, construction and commencement provisions, while *section 2* contains relevant definitions. These are standard provisions in legislation of this type.

The proposals set out in *Part 2* contain reforms relating to the sale and consumption of alcohol, including measures to improve compliance with and enforcement of licensing law. *Section 4* proposes

generally to restrict off-sales of alcohol to the period between 10.30 a.m. and 10.00 p.m. (12.30 p.m. to 10.00 p.m. on Sundays and Saint Patrick's Day). The existing provision which permits the sale of alcohol from 7.30 a.m. in premises engaged in mixed trading is being repealed. In addition, *section 3* repeals outdated provisions which permit the early opening of licensed premises located in the vicinity of fairs and markets for the purposes of supplying food and refreshments at reasonable prices.

At present, a wine retailer's off-licence may be obtained directly from the Revenue Commissioners without a District Court certificate. Applicants for a spirit retailer's off-licence or a beer retailer's off-licence require such a certificate, however. As recommended by the Advisory Group, *section 5* provides that in future an applicant for a wine retailer's off-licences will also require a District Court certificate. *Section 6* extends the grounds on which the District Court may refuse to grant a certificate for a spirit, beer or wine retailer's off-licence (similar grounds already apply to applications for on-licences under the Intoxicating Liquor Act 2000). Objections may be made at the relevant District Court hearing by the local Garda Superintendent and local residents. When granting a certificate, the District Court may also impose a condition that a CCTV system be installed.

Section 7 is a technical proposal which gives jurisdiction for granting the certificate for a wine retailer's off-licence to the District Court and provides for the giving of advance notice of applications for such licences.

Section 8 provides for the structural separation of alcohol products from other products in premises which are engaging in mixed trading, e.g. supermarkets, convenience stores and petrol stations. It proposes that alcohol be displayed and sold in a separate area of the premises to which access is controlled. Where structural separation is not feasible, e.g. because of the size of the premises, alcohol products must be displayed and sold from a part of the premises where public access is prohibited, e.g. from behind a counter. As implementation of this provision may require structural alterations within premises, it is intended to give licensees an adequate period of time to make the necessary arrangements before bringing it into force. Structural separation will not apply to specialist off-licences and to duty free shops.

Section 9 amends existing statutory provisions under which the District Court may grant "special exemption orders" which permit extended opening hours for special occasions. The conditions under which such orders can be made are being amended to require the operation of a CCTV system at venues where the public are admitted, e.g. nightclubs, late bars. The public order ground on which objection may be made by the Gardaí to the grant of such orders is also being strengthened. Moreover, the District Court may not grant such orders in future unless satisfied that the premises concerned comply with fire safety standards under the Building Control Act 1990.

Section 10 deals with the sale of alcohol in premises with theatre licences. In future, the sale of alcohol before and after performances will only be permitted during normal licensing hours, or during extended opening hours under a special exemption order granted by the District Court. This will ensure equality of treatment for all premises operating as late night venues.

Section 13 adds three new sections to Part IV of the Intoxicating Liquor Act 1988. The new section 37A provides the Gardaí with a

power to seize bottles and containers of alcohol in the possession, in a place other than a place used as a private dwelling, of a person who is under 18 years (or by a person accompanying the person under 18 years) and where the Garda believes with reasonable cause that the alcohol has been, is being or is to be consumed by a person under 18 years. It will be an offence for a person, when requested by a Garda, to refuse to give his or her name, address and age, or to hand over the bottle or container, with a fine of up to €500 on summary conviction. The new section 37B provides for powers of entry for the purposes of section 37A (or, as the case may be, section 8A of the Criminal Justice (Public Order) Act 1994 — see section 18 of this Bill). *Section 11* inserts a definition of “bottle or container” in section 30 of the 1988 Act.

The new section 37C makes provision for test purchasing of alcohol products. Parental or guardian consent in writing will be required in all cases and all reasonable steps must be taken to protect the young person concerned. Test purchasing may be carried out in all types of licensed premises and is intended to assist Gardaí in their enforcement activities.

Section 12 and *section 14* provide for a minimum two day closure period for temporary closure orders made by the District Court on the conviction of licensees for certain licensing offences, e.g. sale of alcohol to a person under 18, or permitting drunkenness or disorderly conduct on the premises. At present, relevant statutory provisions state that the closure period may not exceed 7 days in respect of a first such offence but do not specify any minimum period. *Section 16* provides for increases in fines for certain licensing offences, including the sale of alcohol to a person under 18 and for permitting drunkenness and disorderly conduct on licensed premises.

Section 15 provides for the making of regulations which may prohibit or restrict the advertising, promoting, selling or supplying of alcohol at reduced prices in order to reduce the risk of a threat to public order as well as health-related risks arising from excessive consumption of alcohol. Reduced price in this context will include the award, directly or indirectly, of bonus points, loyalty card points or any similar benefits and the use of such points or benefit to obtain alcohol, or any other product or service, at a reduced price or free of charge.

Part 3 contains amendments to the Criminal Justice (Public Order) Act 1994. *Section 18* inserts two sections into the 1994 Act in order to provide the Gardaí with certain powers in relation to persons that are in the possession of intoxicating substances in a place other than a place used as a private dwelling. This power may be exercised under the new section 8A where a Garda believes with reasonable cause that the person is acting in a manner that gives rise to a reasonable apprehension for the safety of other persons or property or for the maintenance of the public peace, or where the person is causing, or the Garda believes is likely to cause, annoyance and nuisance to others or to the enjoyment and peaceful possession by others of their property. In any of these circumstances, the Garda may seek an explanation and request the hand-over of the intoxicating substance, and where appropriate, may seize it and direct the person (or persons) to desist from acting in the manner referred to and direct the person (or persons) immediately to leave the place in a peaceable and orderly manner and may request the person to give his or her name and address. It will be an offence not to comply with these requests, with a fine on summary conviction of not more than €500. It will also be an offence to fail to comply with a Garda’s direction

under this section, with a penalty of up to €1,000 on summary conviction. The new section 8B provides for powers of entry for the purposes of section 8A (or as the case may be, section 37A of the Intoxicating Liquor Act 1988 — see section 13 of this Bill). *Section 17* amends the definition of “bottle or container” in section 4 of the Criminal Justice (Public Order) Act 1994.

Section 19 amends and increases the fine amounts specified in the Criminal Justice (Public Order) Act 1994. The details of the revised amounts are set out in *Schedule 2*.

Schedule 1 increases certain fines for licensing offences (section 16) while *Schedule 2* increases certain fines in the Criminal Justice (Public Order) Act 1994 (section 19).

There are no significant financial implications for the Exchequer.

An Roinn Dlí and Cirt, Comhionannais agus Athchóirithe Dlí, Bealtaine, 2008.