

# **Commission on Liquor Licensing**

## **Final Report**

**April 2003**

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## **Introduction**

This is the fourth and final report of the Commission on Liquor Licensing. Once again, it deals with many aspects of the liquor licensing system and contains a broad range of recommendations.

It is pleasing to note that the previous reports have been well received and that action is already underway to give effect to the Commission's recommendations across several departments. In this context, it is rewarding to note the Government's commitment to a codification of the entire liquor licensing code.

From the outset, the Commission has been concerned at the extent and range of alcohol-related problems facing this country. These include underage and binge drinking as well as public disorder and violence. These problems must be addressed. A unified and co-ordinated approach across departments and other relevant agencies is an urgent necessity. That is why the Commission is now calling for an updated national alcohol strategy.

This report deals with a number of issues that are central to the liquor licensing system. The Commission's terms of reference required it to review the scope for a system of additional licences. The response to that is contained in this report and it is a response that takes into account the conflicting problems that confront us at this time. This report also deals with proposals for changes in trading hours and provisions relating to registered clubs. In all of these areas - and indeed in all the areas examined in accordance with the Government's terms of reference - the Commission has sought to strike an appropriate balance between competing interests and competing policy objectives. This is reflected in the Commission's recommendations for legislative changes.

Compliance with and enforcement of the licensing laws is vital. The Commission acknowledges the efforts of the licensed trade and the work of the Gardaí. Clearly more needs to be done, and not just in relation to the availability of resources. In this report the Commission recommends that the rules of evidence in relation to underage drinking be clarified and that Garda powers be extended to non-uniformed officers.

Before concluding, I want to thank the members of the Commission for their commitment and hard work over the lifetime of the Commission. Membership of the Commission involved not only attendance at plenary meeting on a monthly basis, but participation in the work and deliberations of subcommittees and working groups. My task as Chairman was made easier by the cohesion and mutual trust that developed within the Commission as its work progressed.

The Commission was most fortunate in having as its Secretary, Ms Catherine Sheridan. Indeed, it is hard to see how the Commission could have completed its work without her organisational skills, her unfailing courtesy and her hard work. She was ably assisted by her backup staff, Ms Antoinette Gavin and Ms Olive Curran.

The Commission wishes to thank Mr Michael McGrath, its Legal Consultant for his assistance.

The Commission is indebted to the very many individuals and organisations who responded to the Commission's calls for submissions and who took the time and made the effort, to communicate their views and suggestions. These written contributions and the oral presentations of various organisations, helped the Commission to identify issues that needed to be addressed and to formulate its recommendations.

Finally, I want to thank the former Minister for Justice, Equality and Law Reform, Mr John O'Donoghue, T.D., and the present Minister, Mr Michael McDowell, T.D., for their unfailing support for, and interest in, the work of the Commission.

Gordon A. Holmes  
Chairman

# **National Alcohol Strategy**

## **Introduction**

Early in the life of the Commission it became clear that many Government departments have sectoral responsibilities which bring them into contact with the intoxicating liquor code. The difficulty that arises, however, is that diverging policy responsibilities inevitably lead to diverging views on the nature of problems and the development of appropriate policy responses to address such problems. For example, a policy of promoting competition within the licensed trade may conflict with public health objectives, while the need to maintain public order may necessitate trading hours that are unsuited to the needs of late night revellers. The task of establishing the required balance between these competing objectives lies with Government. It is not a task for the Commission.

The Commission believes that a comprehensive national alcohol strategy is required in order to provide a coherent framework for relevant Government departments and agencies. This must contain clear policy objectives as a basis for co-ordinated action across such departments and agencies. The national policy which was developed by the Department of Health and Children and adopted by the Government and published in 1996 needs to be updated to take account of more recent developments in relation to alcohol consumption and alcohol-related harm.

## **Co-ordinated Strategy**

The need for a co-ordinated approach to the preparation and implementation of a national alcohol strategy is obvious. Many Government departments and agencies have an involvement in this area and the lack of a unified and co-ordinated approach will inevitably lead to interdepartmental tensions and conflict between competing public policy objectives. The location of the co-ordination function is also important in the Commission's view. The unit with responsibility for co-ordination must be able to take an overview and have the authority needed to ensure compliance. In the United Kingdom, for example, co-ordination is the responsibility of the Cabinet Office Strategy Unit. A similar approach here would see the co-ordination function located in the Department of the Taoiseach.

A national alcohol strategy should contain key and measurable objectives and formal review mechanisms to assess progress and foster accountability for delivering results. Formal external validation of the process might also add value to the overall process. A co-ordinated and directed approach should ensure clarity and consistency, the avoidance of duplication and a careful examination of the relative costs and benefits of interventions to maximise limited resources. Such mechanisms would also contribute to ensuring the continued relevance and effectiveness of a strategy. In this context, the Commission is not aware of any review or progress report of the 1996 National Alcohol Policy.<sup>1</sup>

The Government should embrace and adopt a national alcohol strategy as a matter of priority. Once adopted the strategy should be rigorously adhered to by every Government department.

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<sup>1</sup>

The Strategic Task Force on Alcohol, Interim Report, May, 2002 was brought to Government on 21 January, 2003 and accepted. To implement its provisions the Government has established an interdepartmental committee.

*The Commission recommends adoption and implementation of an updated National Alcohol Strategy which would contain realistic and measurable objectives as well as review mechanisms and provision for the publication of progress reports.*



## **Licences in Areas of High Population that are Under-Pubbed**

The Commission's terms of reference require it 'to review the scope for a system of additional licences' and also 'to examine demand in areas that are under-pubbed, new areas of increasing population, and tourist areas'. It is hardly surprising that discussion of these issues within the Commission was marked by a considerable divergence of views.

The Commission remains acutely aware of concerns for any system that could assist in the creation of further 'super pubs'. The growth of the 'super pub' arose by virtue of the legislation that obtained at the time. Up to the passing of the 2000 Act, in order to obtain a new licence for a previously unlicensed premises in an urban area one had to extinguish a licence in the immediate vicinity of the proposed new licensed premises.

As the population in certain areas increased, demand increased and the publicans responded to that by increasing the size of their public houses to cope with that increased population.

It is therefore, because of the highly restrictive nature of the laws at the time that 'super pubs' came into being.

While the Commission accepts that 'superpubs' are generally well managed, and cater for an important segment of the market, they also create noise and nuisance for local residents and make compliance with, as well as enforcement of, the law more difficult for licensees and the Gardaí respectively. Moreover, when large numbers emerge from these premises at closing there is inevitably an increased risk of public disorder.

It must always be remembered that the problems of excess drinking - particularly among the young grew up under the restrictive system of licensing that operated in the past. The blame for increased drinking habits in Ireland, underage drinking, etc. cannot be laid at the door of the 2000 Act as these problems existed years before that Act was passed.

The Commission however, feels it incumbent upon it to endeavour to lay down some methods whereby that situation can be improved.

The combined floor space of the existing public houses in many areas of increased population are probably in themselves sufficient to supply the reasonable needs of those areas. The difficulty is the available floor space is often made up of a small number of enormous public houses instead of a larger number of small public houses. Also, while supply might be adequate to meet demand,<sup>2</sup> restrictions on entry to a business reduce competition and consumer choice and increase the likelihood of anti-competitive behaviour. A considerable number of submissions made to the Commission suggest that there are sufficient licences already in the country and that no more should be permitted. Others have regretted the demise of the traditional family run public house. Others have encouraged the introduction of measures to facilitate the entry of smaller premises to the market, similar to the continental café bar model.

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Mr. P. Kenny, Competition Authority expressed a view that adequacy should not be a consideration in regulating the market. It involves costly regulatory interference by the State and even if adequacy could be properly demonstrated, incumbents would not be exposed to a credible threat of entry.

On an issue such as this, it is indeed difficult to get a consensus view among any group of people and of course this applies to the Commission.

Any person applying for a licence for a previously unlicensed premises now is required to extinguish an existing licence. If the licensee applicant intends to open a large premises then the cost involved in extinguishing a licence is not significant compared with the overall financial outlay involved. This is not what deters many applicants. What deters them is the difficulty that they have in overcoming planning objections - particularly objections from local residents. However, the Commission recognises that substantial outlays may be prohibiting for some persons intending to open a small café-type bar.

The model of the small café bar in urban and indeed in rural areas is prevalent throughout the continent of Europe. They are pleasant meeting places. They do not appear to cause problems attributed to larger concerns. A person can drink a cup of coffee in such premises alongside other people who are taking alcohol. The Commission believes that the development of the café bar model has much to offer. In particular, it may provide an atmosphere and ambience that encourages moderate social consumption of alcohol instead of the excessive consumption and binge drinking that has become more common in recent times. It is a possible way forward.

Indeed, many of the publicans of the day are changing their attitude to the manner in which they sell alcohol to the public and it is perfectly clear that a café society of some sort is growing up in the urban areas of Ireland.

The Commission thinks that the way forward is to encourage smaller premises preferably owner-owned and run and therefore owner-supervised and run on the model outlined above. It is impossible to see how such outlets would contribute to an increase in the drinking habits of our people. Surely, the contrary is the case. At the formation of the State, Ireland adopted its licensing laws from the United Kingdom and unfortunately at the same time adopted its attitude to hours of trading.

Has the time come to look further for a model for the future?

*The Commission therefore recommends the introduction of a non-transferable on-licence for owner-operators in areas of need, based on population density and that:*

- (a) such licence be only available to a person who is a new entrant to the licensed trade and who does not hold a licence, either directly or indirectly;*
- (b) the current requirement to extinguish an existing on-licence should not apply where the premises for which the licence is sought does not exceed a maximum total floor area of 130 sq. metres;*
- (c) any future extension of the premises to bring the combined floor space to over 130 sq. metres would require the special small premises licence which we are recommending to be forfeited and an application for a standard on-licence to be made;*
- (d) the applicant should pay such meaningful fee as the Minister may, by regulation determine and which might be proportionate to the size of the premises; and*

- (e) *off-sales shall be prohibited and such premises shall not qualify for special exemption orders.*<sup>3</sup>

Consideration should be given to the role of local authorities in connection with this matter.<sup>4</sup> This can be done in two ways. They could be enabled, by resolution (a) to endorse the granting of such licences in all or part of their jurisdiction or (b) to oppose the granting of such licences. Due heed would be paid to such resolution in any court application.

The application for such a small premises licence would be made to the District Court, planning permission should be obtained before such application and presumably planning considerations would prevent the proliferation of such licences in any given area.

If these recommendations lead to small scale family units, they should prove beneficial for the consumer and they would contribute in a meaningful way to a more social and sensible approach to the enjoyment of alcohol. It is difficult to see how they would have any adverse effect and indeed the object of the Commission would be to ensure their effects were all beneficial.

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Mr. C. Ó Mongáin, The National Youth Council of Ireland, Mr. C. McCamley, Department of Education and Science, Mr. C. Fitzgerald, Department of Health and Children and Mr. T. O'Sullivan, Vintners' Federation of Ireland did not support this recommendation because they believe that the proliferation of licences will result in greater availability and consumption of alcohol. Ms. C. Foley, Director of Consumer Affairs, Mr. P. Kenny, Competition Authority and Mr. B. Whitney, Department of Enterprise, Trade and Employment while not dissenting from the recommendation, considered that it did not go far enough, arguing, in particular, that the proposed licence should not be limited to "areas of need based on population density", that the licence fee should be set at a level to cover administrative costs only so as not to create a new barrier to entry and that there were no evident grounds to prohibit off-sales from such premises. In addition, Mr. P. Kenny considered that the proposed new licence should not be restricted to new entrants.

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Mr. B. Whitney expressed concern that this proposal could create difficulties for local authorities in the exercise of their powers as Planning Authorities for their areas.

# Hours of Trading

## Introduction

In its second interim report the Commission indicated that it would return to the issue of trading hours in the final report. With this in mind, in November 2002 the Commission sought submissions from the public and interested parties in newspaper advertisements. A substantial number of responses was received and the Commission would like to thank all those who participated and who submitted personal or representative views on this important subject. A number of organisations also sought an opportunity to make oral presentations and the Commission was happy to accommodate them. The Commission is grateful for the engagement and input of these bodies. The consultation exercise evoked a great variety of responses and diverging views on whether further reform of trading hours was justified, and, if so, on how best to proceed with any such reform.

## Background

Few aspects of the intoxicating liquor code have attracted as much attention and comment over the years, as the permitted hours of trading. The Intoxicating Liquor Commission that reported in 1925 considered “that the hours of opening are of predominant importance as far as drink control is concerned”. Drawing on UK research,<sup>5</sup> the Commission recommended a restrictive approach. The general hours for licensed premises set out subsequently in the Intoxicating Liquor Act, 1927 were as follows:- on weekdays from 10.00am to 10.00pm; on Saturdays from 10.00am to 9.30pm; and on Sundays from 2.00pm to 5.00pm. Special arrangements applied, however, to *bona fide* travellers, i.e. those who travelled a distance to reach the licensed premises for reasons other than evading the prohibited hours provisions of the intoxicating liquor code.<sup>6</sup>

It would appear that by 1943, abuse of the *bona fide* rule had reached such a level that the Government felt that it had no alternative but to prohibit such trading between midnight and 6.00am. The general trading hours were extended to 10.30pm on weekdays during summer time and Sunday opening times were also extended.

The 1957 Commission considered that the abuses of the *bona fide* system had become intolerable and it recommended abolition of the *bona fide* provisions. The Commission said that it would be preferable to increase general hours rather than retain a system “which makes law enforcement difficult, tends to encourage excessive drinking, is responsible for disorder and increases the dangers on the roads”. It recommended the general hours of 10.30am to 11.30pm on weekdays all year round with Sunday opening from 12.30pm to 2.00pm and from 5.00pm to 9.00pm. The subsequent Intoxicating Liquor Act, 1960 made provision for 11.30pm closing for weekdays during the months of June, July, August and September and 11.00pm during the other months.

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<sup>5</sup>

A certain Dr. Shadwell linked a greatly increased number of convictions for drunkenness with the longer opening hours introduced in England in 1921 in a book “Drink in 1914-1922. A Lesson in Control”.

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“For the purposes of this section a person shall not be a *bona fide* traveller unless either the place where he lodged during the previous night is situate in a county borough and is at least five miles (measured by the shortest public thoroughfare) distant from the place where he demands to be supplied with intoxicating liquor, or the place where he lodged during the previous night is situate elsewhere than in a county borough and is at least three miles (similarly measured) distant from the place where he demands to be supplied with intoxicating liquor”. S15(5) of the Intoxicating Liquor Act, 1927.

The most recent change in trading hours are those set out in the Intoxicating Liquor Act, 2000. The trading hours are from 10.30am to 11.30pm on Mondays, Tuesdays and Wednesdays, and from 10.30am to 12.30am on Thursdays, Fridays and Saturdays. The normal Sunday hours are from 12.30pm to 11.00pm.

This short survey of the main changes in the legislative provisions since the foundation of the State demonstrates the manner in which trading hours have been adjusted on a regular basis by the legislature to take account of changed circumstances or new developments. It is notable that none of the legislative changes involved a reduction in trading hours.

### **Submissions**

The Commission received submissions on the trading hours issue from private individuals, individual licence holders, representative bodies in the licensed trade and other organisations, including An Garda Síochána. They fall into two broad categories: those favouring a more restrictive approach - including a return to pre-2000 trading hours and those in favour of retention of the current provisions or extending them further.

#### ***Restrictive approach, including return to pre-2000 Trading Hours***

The submissions received from members of the public in favour of a more restrictive approach drew attention to problems which they perceived as linked to the extended trading hours. These include:

- (a) increased incidence of drunkenness;
- (b) greater public disorder and vandalism; and
- (c) more accidents and injuries.

The consistent theme in many of these submissions is that the scale and extent of these problems has undoubtedly deteriorated since the coming into force of the 2000 Act.

Other submissions from the public drew attention to problems of a more personal nature arising from the greater availability and consumption of intoxicating liquor:

- (a) negative impact on work and training;
- (b) interference with education;
- (c) reduced participation in sporting activities; and
- (d) increased incidence of teenage pregnancies.

Here also, existing problems are seen as having been exacerbated by the longer opening hours provided for in the 2000 Act.

The Commission also received a number of submissions from individual publicans seeking a return to the pre-2000 trading hours on the grounds that the longer hours were leading to:

- (a) increased incidence of violence and unruly behaviour;
- (b) more road accidents involving alcohol; and
- (c) poorer quality of life for publicans and customers.

Another reason put forward was that the longer hours were of no economic benefit since revenues had not increased sufficiently to offset the additional costs associated with the longer opening hours.

A number of nightclub operators also contacted the Commission to state that the longer opening hours at weekends - 12.30am with 30 minutes drinking-up time on Thursdays, Fridays and Saturdays had reduced the incentive for young people to visit their premises, especially where the District Court had determined that a special exemption order should expire before 2.30am (as the court is entitled to do under the 2000 Act).<sup>7</sup> The nightclubs maintain that they require a margin of at least 2 hours between the closure of licensed premises and their premises in order to remain commercially viable. They also point out that the time spent in a nightclub is likely to be divided between drinking and dancing and that the consumption of alcohol by young people is likely to be lower than during an equivalent period of time spent in licensed premises.

A number of organisations outlined their concerns in relation to current levels of alcohol-related harm and argued in favour of restricting availability and returning to pre-2000 trading hours. As far back as February 2001, the Pioneer Total Abstinence Association made a submission to the Commission in which trading hours was mentioned. The Association expressed concerns in relation to a worrying incidence of road traffic fatalities involving young people and alcohol, increased violence on the streets and greater absenteeism on Fridays.

"Dothain" expressed concerns to the Commission in relation to any possible further liberalisation of laws governing the sale of alcohol. "Dothain" considers that with the exception of provisions relation to special exemption orders, the present laws are adequate if they are adhered to and enforced. The number of exemption orders granted annually, some 75,000 are however, a cause for genuine concern to this organisation.

The Commission invited three organisations that had made written submissions to make oral presentations: Barnardos (who supplied a paper entitled 'Families Under The Influence' that has been published); the Royal College of Physicians of Ireland, and the Irish National Alliance for Action on Alcohol. All three organisations argued broadly in favour of a more restrictive approach to availability in order to combat the worrying upward trends in alcohol-related harm.

### ***Retain Current Trading Hours or Extend them Further***

A small number of responses from members of the public supported retention of the current trading hours or favoured longer hours. The reasons outlined included the following:

- (a) trading hour restrictions contribute to unsafe consumption patterns and alcohol abuse;
- (b) rigid closing times promote excessive consumption whereas a more flexible approach might encourage moderation;
- (c) regulation of trading hours by the State is paternalistic and it discourages individual responsibility and decision-making; and

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Commission on Liquor Licensing, Second Interim Report, July 2002, p.17.

- (d) many people now work non-standard hours, e.g. shifts, etc., and may not be in a position to take advantage of standard trading hours.

The notion that restricted trading hours leads to unsafe drinking patterns and alcohol abuse surfaced in a number of submissions. A former US resident argued that the licensing laws in Ireland had been unsuccessful in controlling consumption of alcohol and that much could be learned from systems elsewhere, including the US system. It was suggested that the problem of excessive consumption in the run up to closing time could be addressed, as in the US, by extending the trading hours to 2.00am or 3.00am. This would also permit a more orderly evacuation of licensed premises. The abolition of fixed trading hours as a means of addressing antisocial behaviour and street violence was also suggested. New York and Paris were mentioned as cities where such behaviour is infrequent.

Another interesting argument against maintaining the current system is that neither licence holders nor customers are required to make decisions for themselves, or to take responsibility for their own actions. Premises normally remain open until the legal closing time and customers know that they will be required to leave at closing time. Looked at from this perspective, the licensing system can be seen as paternalistic and a symptom of a 'nanny' State.

The arguments advanced by the licensed trade for retention of the current trading hours include:

- (a) market demand for late opening, especially at weekends;
- (b) longer trading hours are a feature of a modern society; and
- (c) Dublin and other urban centres, are regarded as premier entertainment and tourist destination and any curtailment of opening hours would have a negative impact on these markets.

The representative bodies of the licensed trade are also broadly in favour of retaining current trading hours. The Irish Hotels Federation favours their retention but insists on strict compliance and rigorous enforcement of the law. The Licensed Vintners' Association and the Vintners' Federation of Ireland believe that a return to the pre-2000 trading hours would be a retrograde step and that such a move would not be justified.

The Irish Nightclub Industry Association believes that there is a demand for late night entertainment and that longer opening hours should be allowed in certain metropolitan/urban areas in order to cater for specific needs. A return to pre-2000 trading hours would be a retrograde step. The Association also wants a clearer definition of 'nightclub' in order to distinguish them from late night bars.

### ***Other Relevant Considerations***

The Commission is grateful to the Gardaí for a presentation on enforcement issues arising in both urban and rural areas in the context of the longer trading hours provided for in the 2000 Act. Their annual reports for 2000 and 2001 show that there has been a significant increase in alcohol-related offences and public order offences since 2000.

The number of overall alcohol related offences involving juveniles, i.e. under 18's, increased from 1,793 (12.4% of total number of offences involving juveniles) in 2000 to 3,243 (17%) in

2001. The number of cases involving purchase, possession and consumption of alcohol increased from 783 in 2000 to 1,769 in 2001, while cases of intoxication in a public place increased from 976 to 1418. During the same period, the number of public order offences involving juveniles increased from 990 to 1,558. Very many of these offences were alcohol related.

As regards the overall number of public order offences,<sup>8</sup> the trends are equally worrying. The numbers of cases in which proceedings were taken are as follows:

	<b>2000</b>	<b>2001</b>
Section 4: Intoxication in a Public Place	14,687	17,805
Section 5: Disorderly Conduct in a Public Place	2,341	2,924
Section 6: Threatening, Abusive or Insulting Behaviour	14,251	15,718

According to the Gardaí, many of the public order offences occur after 3.00am when special exemption orders expire. While improved enforcement by the Gardaí has also contributed to the increase in the number of proceedings taken, it seems clear that the longer trading hours have placed an additional strain on Garda manpower and other resources.

The Commission is aware that the closing times of licensed premises have been discussed in both the Dáil and Seanad during 2002. Concerns in relation to public disorder and violence arising in the context of longer trading hours for licensed premises were aired in the Dáil during discussion of the Private Security Services Bill, 2001. Similar concerns were voiced in the Seanad during a debate on crime levels. The possibility of giving local authorities a role in determining trading hours for licensed premises in their respective areas was raised during the Seanad debate.

The Commission is conscious that reforms to the licensing laws are underway in neighbouring jurisdictions. In Autumn 2002, reforms to the licensing laws in England and Wales were unveiled. The package of reforms includes a proposal to abolish existing restrictions on trading hours and to replace them with a system of flexible opening hours, with the potential for up to 24 hour opening, 7 days a week subject to consideration of the impact on local residents and provided that measures are in place to prevent antisocial behaviour and nuisance. New Police powers will be introduced to close down disorderly and excessively noisy public houses and nightclubs instantly for up to 24 hours. It is expected that these reforms will in due course lead to reduced public disorder and antisocial behaviour.

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Offences under the Criminal Justice (Public Order) Act, 1994.





## **Conclusions and Recommendations**

The consumption of alcohol increased significantly in Ireland during the 1990's. According to the Strategic Task Force on Alcohol,<sup>9</sup> alcohol consumption *per capita* increased by 41% over the period 1989-99. The upward trend was, therefore, already well established before the enactment of the Intoxicating Liquor Act, 2000. The Commission has little to add to the reasons advanced by the Task Force for this increased level of consumption, i.e. more disposable income, the lessening of parental control on young people, societal changes, changing lifestyles and expectations and a strong focus on consumerism. In addition, the Commission considers it likely that demographic factors have contributed to the increase while a fall in the numbers abstaining from alcohol has also boosted consumption. Whatever the reasons, the Commission shares the Task Force's serious concerns about the extent of alcohol-related harm resulting from increased consumption of alcohol over the last decade or so.

Since the increase in alcohol consumption over recent years is attributable to a number of inter-linking factors, the Commission believes that simplistic solutions will not prove effective. Elsewhere in this report, the Commission calls for a comprehensive Government policy on alcohol. This policy must contain clear policy objectives, and a framework for co-ordinated action across relevant departments and agencies. The Commission favours a policy built on open dialogue and a partnership approach involving all relevant interests.

The Commission has considered the submissions received in relation to trading hours against this background of a steep increase in alcohol consumption. In spite of the arguments put forward in favour of easing restrictions as a means of combating excessive consumption, the Commission considers that such a move would be unlikely to assist in combating alcohol-related harm and would not be in the public interest. Simply reverting to pre-2000 trading hours will not solve the problems either. Moreover, a balance must be struck between meeting the legitimate needs of those who do not abuse alcohol and protecting vulnerable people and their dependants.

Having considered the submissions received and the oral presentations, the Commission considers that certain changes in current trading hours are warranted in order to address particular difficulties that have arisen. The recommendations that follow are designed to address these difficulties.

### **Drunkenness**

The Commission has already addressed the problem of drunkenness.<sup>10</sup> The position is that it is already an offence under the intoxicating liquor code for a licensee to permit drunkenness in licensed premises or to sell intoxicating liquor to a person who is drunk. Furthermore, a licensee may refuse to admit and may turn out of licensed premises, any such person. The Gardaí are required to assist if called upon. The Commission considers that these provisions must be enforced by licence holders and the Gardaí. The Commission has recommended that penalties for drunken persons refusing to leave licensed premises should be increased and that licence holders should be permitted to refuse admission and

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<sup>9</sup>

Strategic Task Force on Alcohol Interim Report, May 2002.

<sup>10</sup>

Commission on Liquor Licensing, December 2002, Report on Admission and Service in Licensed Premises.

service to persons who have been expelled previously from the premises for reasons of drunkenness.<sup>11</sup>

### **Public Disorder and Violence**

As outlined earlier, a consistent theme in submissions calling for a curtailment of trading hours was the perceived linkage between longer trading hours and increased public disorder and violence. While many of the incidents take place while people are queuing for taxis or at fast-food outlets, the Commission accepts that increased levels of alcohol intoxication and drunkenness contribute in a significant way to antisocial behaviour and violence on the streets.

The Commission considers that the enactment of the Criminal Justice (Public Order) Bill, 2002, which makes provision for 'exclusion orders' in respect of persons engaging in public disorder and 'closure orders' in respect of disorderly premises, will provide the Gardaí with additional means of combating antisocial behaviour and violence.

### **Negative Impact on Work, Training and Education**

The Commission is concerned at reports that later opening on Thursday nights is having an adverse impact on young people reporting for work or training, or turning up for classes or lectures on Friday mornings. While the evidence is mainly anecdotal, the Commission accepts that the longer opening hours on Thursday nights are having an unintended negative impact on the participation of young people in work, training and education. This is a very worrying development and the Commission recommends, therefore, that closing time should revert to 11.30pm on Thursdays.

*The Commission recommends that the normal closing time on Thursday should be set at 11.30pm, i.e. the same as Monday, Tuesday and Wednesday.*

### **Special Exemption Orders**

Special exemption orders are granted by the District Court and they permit the sale and consumption of alcohol on special occasions in licensed premises after normal closing time. Nightclubs normally operate beyond normal closing time on the basis of special exemption orders obtained from the District Court.

The 2000 Act introduced a number of reforms. A special exemption order may now be granted for any day of the week and it expires:

- (a) at 1.00am in any case in which it extends to a Monday that is not a public holiday; and
- (b) in any other case not later than 2.30am.

The District Court may, however, grant the extension for a shorter period if, for stated reasons, it considers it expedient to do so. Moreover, the court may not grant the exemption unless it is satisfied that the special occasion will be conducted in a manner that will not cause undue inconvenience to persons residing in the vicinity of those premises.

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Commission on Liquor Licensing, December 2002, Report on Admission and Service in Licensed Premises, p.24.



The Commission recognises that the longer hours introduced under the 2000 Act were designed to meet market demands and to cater for the needs of particular groups. However, it is clear from the views expressed by the Gardaí that much of the drunkenness, public disorder and violence that has given rise to public disquiet is arising in the context of special exemption orders.

As outlined earlier, the relevant provisions in the 2000 Act allow the District Court 'for stated reasons' to grant a special exemption order for a 'shorter period'. This margin of discretion amounts to a recognition of the need for flexibility at local level in order to take account of local conditions or special circumstances. However, the Act provides no guidance on how this discretion should be exercised by the court. The Commission considers that there is scope for amending the legislation to address this deficit.

The task of striking an appropriate balance between the competing demands of consumers, local residents and the licensed trade, while at the same time taking due account of public order and public health aspects, is a challenging one. Local knowledge and a capacity to respond to, and take account of, local conditions are essential requirements. For these reasons, the Commission considers that local authorities are well placed to contribute to the process of determining trading hours at local level. The Commission notes in passing that the Association of Municipal Authorities of Ireland has indicated a willingness to become involved in this area.

For the purposes of making an informed input into the determination of trading hours at local level, the Commission recommends that each local authority be empowered to consult widely with relevant local interests, taking account, in particular, the views of the Gardaí and to formally adopt a resolution setting out the authority's position. The Commission further recommends that when granting special exemption orders, the District Court shall have regard to any such resolution that has been formally adopted by a local authority for the geographical area in which the licensed premises is located.

*The Commission recommends that:*

- (a) *special exemption orders should continue to be granted by the District Court in accordance with the provisions of the Intoxicating Liquor Act, 2000;*<sup>12</sup>
- (b) *a local authority may formally adopt a resolution concerning the duration of special exemption orders in all or part of its functional area following consultation with all relevant local interests, including the Gardaí; and*
- (c) *where a local authority has formally adopted any such resolution, the District Court shall have regard to its content in granting special exemption orders.*

As already outlined, the District Court must be satisfied that special occasions for which exemption orders are sought should be conducted in a manner which will not cause undue inconvenience to residents in the vicinity. The Commission is satisfied that these grounds should be widened to include the risk of public disorder as well as nuisance and

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Mr. P. Prendergast, Irish Nightclub Industry Association submitted that a separate nightclub licence should be introduced entitling nightclubs to sell alcohol for an additional two hours after public houses and other licensed premises have closed.

inconvenience to persons other than those living in the immediate vicinity of the premises concerned.

*The Commission recommends that the District Court shall not grant a special exemption order unless it is satisfied:*

- (a) *that the event will be conducted in a manner that will not cause undue inconvenience or nuisance to residents in the vicinity of those premises, or to residents elsewhere; and*
- (b) *that there is no undue risk of public disorder in the vicinity of those premises or elsewhere.*<sup>13</sup>

### ***Drinking-up Time***

Under existing legislation, a period of thirty minutes is allowed after normal closing time and after a special exemption order, for finishing drinks and clearing the premises. The sale of alcohol is not permitted during this period. The Commission is aware, however, that entertainment may continue during this period thereby defeating the purpose of clearing the premises. Since existing legislation does not specifically address this matter, the Commission considers that a specific prohibition should be included in future legislation.

*The Commission recommends that entertainment be expressly prohibited during drinking-up time.*<sup>14</sup>

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Mr. P. Prendergast, Irish Nightclub Industry Association indicated that the Association is prepared to put in place a voluntary code of conduct for its members.

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Mr. P. Prendergast, Irish Nightclub Industry Association disagreed with this recommendation.

## **Mixed Trading**

### **Introduction**

Mixed trading is the term used to describe the sale of intoxicating liquor and other non-liquor products or services for which a licence is not required, in the same premises. Prior to the entry into force of the Intoxicating Liquor Act, 2000, restrictions applied not only to the hours during which licensed trade could be conducted but also to the hours during which non-licensed business could be transacted. Sweeping changes were introduced by the 2000 Act: non-licensed business may now be conducted at any time, irrespective of the day of the week.<sup>15</sup> Moreover, intoxicating liquor may be sold for consumption off the premises between 7.30am and 10.30am on weekdays at which time normal trading hours commence. Exceptionally, the sale of intoxicating liquor is not permitted on Sundays before 12.30pm.

Since non-licensed business includes the sale of products such as non-alcoholic drinks, meals, snacks and confectionery, it is likely that almost all licensed premises are nowadays involved to a greater or lesser degree in mixed trading, i.e. from supermarkets where the sale of alcohol is clearly ancillary to the sale of food and other products, to specialised off-licences and on-licences where the opposite applies. For the purposes of assessing whether further reforms are justified, the Commission considers it helpful to distinguish between premises that engage in sales for consumption off the premises and those that are geared to consumption on the premises. Separate arrangements apply to hotels and restaurants.

### **Sale for Consumption off the Premises**

The reforms introduced by the Intoxicating Liquor Act, 2000 mean that supermarkets and other retail outlets engaged in mixed trading are permitted to open around the clock but may only conduct licensed trade during permitted trading hours, i.e. from 7.30am onwards on weekdays and during normal trading hours. This means that while such outlets may remain open for non-licensed business, alcohol may not be sold during the following periods:

- (a) between 11.00pm on Sunday night and 7.30am on Monday morning;
- (b) between 11.30pm on Monday/Tuesday/Wednesday nights and 7.30am on Tuesday/Wednesday/Thursday mornings respectively;
- (c) between 12.30am and 7.30am on Fridays or Saturdays;
- (d) between 12.30am and 12.30pm on Sundays, or
- (e) at any time on Christmas Day and Good Friday.

The penalties for breaching these legislative provisions include a fine and possible endorsement of the licence. Moreover, where breaches relate to underage persons, the

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<sup>15</sup>

The Commission notes in passing that s.17 of the Intoxicating Liquor Act, 1962 which permitted exemptions for the purposes of non-licensed business on the mornings of Sundays and St. Patrick's Day, is now obsolete.

penalty is a mandatory closure order in respect of the premises, or the part of it that is licensed.<sup>16</sup>

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Mr. P. Kenny, Competition Authority suggested that the courts be enabled to administer an equivalent penalty without closure so as not to inconvenience regular shoppers, particularly in rural areas.



Currently, it is not necessary to have any structural separation between those areas of licensed premises where licensed trade is conducted and those parts where non-licensed business is carried out. As a result, many retail premises no longer confine the display and sale of alcohol products to designated areas but offer them for sale throughout the premises. This may assist sales of alcohol but it may also make control of sales to underage persons more difficult. Licence holders need to be aware of the risks involved and the potential consequences. In particular, any closure order imposed by a court for serving underage persons - lasting up to 7 days for a first offence, and from 7 to 30 days for second or subsequent offences would apply to the entire premises and affect all its business. The resulting financial loss for a large supermarket could be considerable. The Commission is aware of only one case where a 1-day closure order resulted in the closure of a supermarket.

The Commission has investigated the policies of supermarket multiples and retail chains in relation to the sale of alcohol. The Commission wishes to thank those who responded<sup>17</sup> and to express regret that others chose not to do so. Many of the supermarkets have written policies, staff training and established procedures but survey evidence presented to the Commission revealed implementation weaknesses and other shortcomings. The Commission recommends that all retail outlets, including small outlets, should adopt a written policy and have clear procedures, e.g. proof of age should be demanded on a routine basis and the sale of alcohol should be supervised by experienced staff at selected checkouts. In a previous report, the Commission recommended that where a full off-licence is sought, the court should be satisfied as to the experience and training of those who serve alcohol.<sup>18</sup> The Commission remains convinced that this recommendation is fully justified.

In its previous report, the Commission made reference to the sale of alcohol in garage forecourts and petrol stations. Many of these outlets now carry a range of food and other products including, in many instances, alcohol products. The Commission is aware from anecdotal evidence that legislative provisions relating to trading hours and underage drinking are not being well understood in this sector. Moreover, it would appear that casual or part-time staff are frequently employed and that they lack appropriate training. Since the closure order penalty is also applicable to these outlets, the licence holders concerned should address these weaknesses as a matter of urgency.

### **Recommendations**

The Commission is broadly satisfied with existing legislative provisions as they apply to supermarkets and other retail outlets. It goes without saying that full compliance with, and enforcement of, these provisions is essential. The Commission considers that the representative bodies in the retail sector have an important role to play in keeping their respective members informed of the relevant legislative provisions, including penalties for breaches of the law relating to underage persons.

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ADM Londis; Aldi; BWG Foods Ltd.; Iceland; Lidl; Mangans Wholesale; Musgrave Supervalu Centra Ltd.; Superquinn; Tesco.

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Commission on Liquor Licensing, Interim Report on Off-Licensing, May 2001, p15.

*Where the sale of alcohol is for consumption off the premises the Commission recommends retention of existing mixed trading provisions subject to strict compliance with, and rigorous enforcement of the law.*

As outlined earlier, the sale of alcohol for consumption off the premises is permitted on Sundays between 12.30pm and 11.00pm.<sup>19</sup> This means that the purchase of wine for Sunday lunch is not permitted on Sunday mornings. The Commission considers that this is unnecessarily restrictive and that the earlier sale of alcohol should be permitted for the convenience of customers and to take account of changed retail practices and shopping patterns.

*The Commission recommends that the sale of alcohol for consumption off the premises be permitted on Sunday mornings.*<sup>20</sup>

As earlier mentioned, the Commission considers that all retail outlets, including small outlets, should adopt a written policy in relation to the sale of alcohol and have clearly defined procedures, e.g. proof of age should be demanded on a routine basis. Appropriate staff training is essential and the sale of alcohol should be supervised at all times by experienced staff at selected checkouts.

*The Commission recommends that retail outlets engaged in mixed trading adopt written policies and procedures in relation to the sale of alcohol and ensure that the sale of alcohol is supervised by trained staff.*

The Commission notes that the relevant legislative provisions state that “... it shall not be lawful to sell or expose for sale any intoxicating liquor...(emphasis added)”. The Commission is satisfied that exposing a product to view is not the same as exposing it to sale.

For the convenience of customers, outlets engaged in mixed trading should clearly indicate the periods during which the sale of alcohol is legal.

*The Commission recommends that premises engaged in mixed trading indicate clearly the periods during which the sale of alcohol is permitted by means of notices prominently exhibited within the premises.*

### **Sale for Consumption on the Premises**

While welcome in many respects, the Commission believes that the mixed trading reforms introduced in 2000 may be having unforeseen and from the enforcement perspective, unwelcome consequences. Firstly, on a positive note, the Commission welcomes the fact that some licensed premises are now opening early to serve breakfast or snacks. Alcohol may not be served for consumption on the premises until 10.30am (on weekdays), but may be sold for consumption off the premises from 7.30am onwards.

The downside is that unforeseen difficulties are beginning to emerge in relation to the enforcement of closing time provisions for such premises. This is a matter of the utmost concern to the Gardaí and the Commission. As outlined earlier, almost all licensed premises can now claim to be engaged in mixed trading. And while they cannot sell alcohol after the prescribed closing time, licence holders may decide to keep premises open for the purposes of engaging in non-licensed business. The practical consequence of this is that the

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<sup>19</sup> Sale from 7.30am is however, permitted on a Sunday that falls on 23 or 24 December in any year.

<sup>20</sup>

<sup>20</sup> Mr. C. McCamley, Department of Education and Science did not support this recommendation.

existing offences under section 17 of the Intoxicating Liquor Act, 1927 and section 29 of the

Intoxicating Liquor Act, 1962 (persons ‘found on’ licensed premises during prohibited hours) became meaningless.

### **Recommendations**

The Commission considers that licensed premises should not be permitted to remain open for non-licensed business after normal trading hours because this makes compliance with and enforcement of the law much more difficult. Moreover, the possibility of remaining open would inevitably result in pressure to sell alcohol during any extended period. The noise, nuisance and general inconvenience for local residents that inevitably accompanies longer trading hours is also a relevant factor. The Commission believes that an urgent response is called for.

*Where the sale of alcohol is for consumption on licensed premises, the Commission recommends that the conduct of non-licensed trade be prohibited between normal closing time, or expiry of a special exemption order, and 7.00am.<sup>21</sup>*

A particular problem arises in relation to what are known as ‘early closing licences’. Under section 9 of the Intoxicating Liquor Act, 1927, premises to which early closing licences are attached are required to close at night one hour earlier than that at which such premises would otherwise have to be closed. Since premises carrying on non-licensed trade are no longer required to close at a particular time, it is not possible to determine the closing time for such premises with early closing licences. The Commission has considered the option of proposing alternative arrangements for early closing licences but it appears to the Commission that this form of licence has outlived its usefulness (only 20 such licences were renewed in 1998) and that it should be discontinued.

*The Commission recommends repeal of existing provisions for early closing licences and the upgrading of existing licences subject to any conditions as may be considered necessary.*

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Separate arrangements apply to hotels and restaurants.

## **Distance Sales and Delivery of Alcohol**

### **Introduction**

In order to address as comprehensively as possible its terms of reference, the Commission established a subcommittee to review distance sales and delivery of alcohol, to evaluate the relevance and adequacy of existing provisions and to report to the Commission with any necessary recommendations for legislative change.

This report is concerned with the sale and purchase of alcohol using the internet or other electronic means, including, but not limited to, the telephone or facsimile and the subsequent delivery of the product. Accordingly, it deals with distance sales defined as sales of alcohol where the seller and the buyer are not located in the same place when the sale is concluded, including sales concluded over the internet, the telephone or by facsimile. This definition does not include other atypical selling methods, for example, door-to-door sales from mobile units. The report examines the current legislative framework within which those activities are undertaken and identifies shortcomings and anachronisms in that framework.

### **The Current Position**

The electronic marketplace offers consumers unprecedented choice and convenience and businesses low-cost access to a broad consumer base. With these benefits, however, come the challenges of ensuring that the appropriate laws are in place and enforceable and that traditional statutory protections are preserved.

Developments in the electronic marketplace have given rise to a number of forms of distance sales of alcohol:- licence holders with retail outlets who engage in distance sales as an extension of the business and retailers who engage in distance sales only.

The current liquor licensing code was framed for a retail model envisaging “bricks and mortar” outlets and face-to-face transactions. The distance sale of alcohol is an entirely different and significantly complex area. Electronic sales can cross national borders with ease. Portable computers and online connections enable retailers to operate anywhere. Sales by such means do not enable licence holders or staff to see the customer and assess important information such as the customer’s age. While distance sales generally require a credit card for purchase, a minor can obtain a card from parents, siblings or some other adult, with or without their knowledge. On the positive side, distance sales of alcohol can reduce public order problems associated with alcohol sales; this is not to ignore other problems associated with excessive alcohol consumption such as impact on health, increased domestic violence, absenteeism, etc..

The Licensing Acts, 1833-2000 and other relevant statutes contain numerous provisions which regulate the operation of licensed premises and the supply and sale of alcohol. Those provisions deal with, *inter alia*, the grant and renewal of licences, unlicensed activities, hours of trading, the sale and supply of alcohol to persons under 18 and the employment of persons under 18. Provision is made in the licensing code for a range of penalties and sanctions for breach of or non-compliance with the code.

Given the context in which the licensing laws were developed, the Commission considered that the key question was whether particular provisions of the licensing code are necessary and/or sufficient to attain the objectives of that code in a distance sales environment. For example, certain provisions relating to public order objectives are premised on the assumption that the business of selling alcohol is transacted in a public place. Where that business is transacted over a telephone line or in cyberspace such provisions may not be appropriate or necessary. On the other hand, provisions relating to the control of underage drinking are premised on the assumption of face-to-face contact between retailers and their customers and additional provisions may be required in a distance sales environment.

### **Distance Sales under Current Law**

Prior to considering what changes in the law may be appropriate, the Commission considered the manner in which the law currently applies to distance sales, in particular, whether licensees who currently engage in distance sales from their licensed premises are in compliance with the law. The key issue seemed to concern where and when a sale is concluded when the parties are not in the same place. Under the current law a licensee is licensed to sell alcohol only on the premises specified. Accordingly, distance sales are illegal unless the sale is concluded on the licensed premises. The legal advice obtained by the Commission indicates that the issue is complex and the law on this question is by no means clear. It appears that where goods are ordered from a distance, the property in the goods does not pass to the buyer and, accordingly, the sale is not concluded, until the goods are appropriated to the contract by one party with the assent, either expressed or implied, of the other party. Whether this occurs where the seller is located or, on delivery of the goods, where the buyer is located, depends on the facts of the case and the courts have developed a number of tests to apply in individual cases, including the following:

- whether the goods were labelled with the purchaser's details on the licensed premises;
- whether the goods were written into an order book on the licensed premises; or
- who will bear the loss if the goods are damaged, destroyed or consumed in transit between the licensed premises and the place to which they are to be delivered.

The Commission considered that the lack of legal certainty on this issue was most unsatisfactory. Licensees should be able to conduct distance sales from their licensed premises without incurring a risk that a court might subsequently find them to have engaged in unlicensed sales. Accordingly, consideration should be given to amending the law to remove the uncertainty on this issue by clearly legitimising distance sales activity engaged in by licensees on their licensed premises. However, it should be said that such provision would not be necessary if the recommendation below concerning the location at which licensees may engage in distance sales is accepted.

## **Conclusions and Recommendations**

### ***Special Provisions for Distance Sales***

As is evident from the above, the Commission believes that holders of on and off-licences should be permitted to engage in distance sales from their licensed premises. The Commission further considers that some additional flexibility should be allowed in relation to distance sales as the risks to public order that certain provisions of the licensing code were intended to avert would not arise in a distance sales environment.

*The Commission recommends that appropriate legislative provision be made:*

- (a) for a customer to place an order with a licensed distance seller from any location;*
- (b) for licensees to receive orders at any location and not only from the premises specified in the licence;*
- (c) for a licensed distance seller to deliver intoxicating liquor from the licensed premises to any location (subject as herein regarding control issues); and*
- (d) to place and receive orders for distance sales outside of normal opening hours but some restriction on the times at which deliveries may be made (not necessarily to normal opening hours) may be warranted.*

### ***A Separate Licence for Distance Sales Only***

The Commission recognises that some retailers may wish to engage in distance sales only and considered that this should be facilitated by the creation of a new licence for distance sales only. Reflecting the special characteristics of the distance sales environment, the provisions relating to such a licence might differ from the standard provisions of the licensing code in certain respects:

*The Commission recommends that a new annual licence should be introduced for retailers engaged in distance sales only, applications for the licence (which may raise jurisdiction issues) to be made to the District Court which would have to satisfy itself as to the suitability of the applicant and any premises specified and the provisions relating to the licence to have the following special characteristics:*

- (a) where distance sellers do not maintain their own stock, it would be necessary to specify a premises where details of transactions are maintained and available for inspection;*
- (b) where distance sellers maintain their own stocks, the licence should specify the premises in which those stocks are stored, given that access by the Revenue Commissioners and An Garda Síochána is an essential feature of the control system.*

*The applicable licence fee should be equivalent to fees for comparable licences e.g. off-licences.*



## **Control Issues**

The Commission considers that the existing system of controls and sanctions continues to be relevant to distance sales and deliveries of alcohol. However, the Commission has identified a number of issues for which actions are required to reflect the particular conditions pertaining to distance sales and to permit enforcement of the licensing code.

*The Commission recommends that advertisements for distance sales, including websites, should include the licensee's licence number and a business address at which records are kept and are available for examination.*

Particular problems arise in relation to underage sales as the control system assumes face-to-face contact between the retailer and customer. Retailers should be aware that they face an increased risk of unwittingly breaching the law regarding underage sales when engaging in distance sales. They would be particularly at risk in distance sales as the only available defence is the production of an official age card.<sup>22</sup> The offence of sale to a person under 18 will in that case be one of absolute liability rather than of strict liability, i.e. it is not open to the accused to exculpate themselves by showing that they are free of fault. The Commission could not identify any suitable or appropriate way to avoid this situation.

To minimise the danger of abuse, in addition to the relevant provisions of the existing licensing code (for example, the prohibition of the sale and supply to an underage person), the Commission considers that provisions, specifically aimed at distance sales, might be appropriate.

*The Commission recommends that:*

- (a) the delivery to persons under the age of 18 years should be prohibited;<sup>23</sup>*
- (b) all advertisements for distance sales, including websites, be required to clearly specify the minimum age provisions in the licensing code, pointing out that a breach of these provisions is an offence by the person who buys, sells, delivers or supplies alcohol to a person under 18; and*
- (c) retailers involved in distance sales be required to maintain appropriate records.*

The Commission considers that the control of advertising, to ensure that advertisements are not aimed at young people, assumes particular importance in distance retailing. In that regard it was agreed that the development of a code of practice on distance sales of alcohol, either self-regulatory or regulatory, might assist in the proper regulation of this business. The ASAI Code of Advertising Standards contains rules applicable to advertisements for alcoholic drinks and separate rules applicable to distance selling.<sup>24</sup> Those rules should be strengthened to specifically address distance sales of alcohol and to constitute appropriate good practice in the area. Furthermore, the licensing code should provide for codes of practice to enable the Minister, if it is deemed necessary, to approve such codes.

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Intoxicating Liquor Act, 1988, s.40.

23

Some doubt exists as to the position in the present law.

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Code of Advertising Standards for Ireland (5th Edition), 2001, pp 44-46 and pp 49-51.

*The Commission recommends that:*

- (a) *the licensing code should enable the Minister to approve codes of practice;<sup>25</sup> and*
- (b) *the ASAI Code of Advertising Standards for Ireland should reflect the nature of distance sales of alcohol.*

Finally, the Commission is of the view that any new legislative provision should not place unnecessary constraints on businesses concerned nor hinder competition and innovation.

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Such codes of practice could apply to various matters.

## **Registered Clubs**

### **Introduction**

In line with its terms of reference the Commission established a subcommittee to examine the licensing system as regards registered clubs. In addition, and at a very early stage in its consultation process, the Commission received written submissions.

The Commission sought submissions from a number of other organisations and heard oral presentations relating to some of the written submissions. The Commission is grateful for the time and input afforded by those organisations to its work.

### **The Current Position**

The Registration of Clubs Acts, 1904 to 2000 constitute the code for regulating the supply of intoxicating liquor for clubs which are registered under those Acts. They provide for the grant, renewal and cancellation of certificates of registration, the supply of intoxicating liquor on or off the premises to members and visitors, provisions relating to underage persons, the requirements in relation to the rules of the club and the conduct of officers in the running of the club and related matters.

### ***Application for Certification as a Registered Club***

**Eligibility for Registration:** To be eligible for registration a club must be a *bona fide* members' club. There is no legal definition of what constitutes a club but it may be regarded as a voluntary association of a number of persons who own the assets of the club. Many such clubs are established for social and/or sporting purposes. A club incorporated under the Companies Acts and limited by guarantee may be registered if the directors of the company constitute the governing body of the club and if the members of the club and the company are identical.<sup>26</sup> A club incorporated under the Companies Acts and limited by shares is not eligible for registration in certain circumstances,<sup>27</sup> neither is a proprietary club.

**Jurisdiction to Grant Certificates:** All applications for the grant of an original certificate of registration are made to the Registrar of Clubs (i.e. the District Court Clerk for the court area where the club premises are situated) and heard and determined by the Circuit Court.<sup>28</sup>

**Procedure for First Registration:** The secretary of the proposed club lodges with the Registrar of Clubs the following documents:

- (a) An application signed by the chairman or secretary of the club, stating the name and object of the club and the address of the premises occupied by the club.
- (b) Two copies of the rules of the club.

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<sup>26</sup> Applications by Parnell GAA Club Ltd. (1984) I.L.R.M. 246.

<sup>27</sup> National Sporting Club v Cope (1900) 82 L.T. 352.

<sup>28</sup> Intoxicating Liquor (General) Act, 1924, s.23.

- (c) A list of the names and addresses of the officials and committee of management or governing body.
- (d) A list of the names of the members of the club.
- (e) The certificate prescribed by rules of court signed by two Peace Commissioners, and where the premises are not owned by the club, by the owner of the premises or where the owner is under any legal disability, by his legal representative.<sup>29</sup>

The applicant is required to publish notice of the intended application once in a daily newspaper circulating in the locality.<sup>30</sup> The applicant is also required to give one month's notice in writing to the fire authority.<sup>31</sup>

On lodgement of the documentation, the Registrar of Clubs is required to give notice of the application to the relevant Superintendent of An Garda Síochána along with a copy of the rules.

Procedure for Renewal of Registration: The procedure for renewal of registration is the same as that for the original grant except that the application is heard and determined by the District Court. The applicant is obliged to give not less than 21 days notice to the Registrar of Clubs and the application is returnable to the Annual Licensing Court.

Objections to Grant or Renewal of Certificate of Registration: A resident of the parish may object to the grant of registration but any person may object to the renewal of a certificate on specified grounds. The Superintendent of An Garda Síochána for the Garda district in which the club, the subject matter of the application is situated may also object. Such objections have to be lodged with the Registrar, in the case of a Garda objection within 10 days of the receipt from the Registrar of the notice of intention to apply for registration, and in the case of other objectors within 10 days of the publication of the notice of application.

Grounds of Objection: The prescribed grounds are comprehensive and include:

- (a) the character of the club officers;
- (b) the suitability of the premises; and
- (c) the manner in which the affairs of the club are conducted particularly in relation to the supply of intoxication liquor and the club rules. The club must be conducted in good faith as a club and not mainly for the supply of intoxicating liquor.

In the case of an application for a first grant of registration the grounds of objection include that:

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<sup>29</sup> Registration of Clubs (Irl.) Act, 1904, s.2(l); O.83, r.4, DCR 1997.

<sup>30</sup> *Ibid.*

<sup>31</sup> Fire Services Act, 1981, s.24.

- (a) the number of registered clubs of the character of the applicant club and having premises in the same district as the applicant club is sufficient to meet the requirements of the district; and
- (b) the club and its premises are likely to be used mainly for the purpose of supplying intoxicating liquor to its members and their visitors.

Club Rules not in compliance with the Act: Registration and renewal of registration of a club may be objected to on the grounds that:

- (a) Any of the club rules are in any respect not in conformity with the provisions of the Acts.
- (b) The supply of intoxicating liquor to the club is not under the control of the members or the committee appointed by the members.
- (c) Any of the rules of the club are habitually broken.
- (d) The rules do not conform with the provisions of section 4 of the 1904 Act.
- (e) The rules for the admission of honorary or temporary members are, in the opinion of the court, unsatisfactory or unsuitable.

Court Fee and Exise Duty payable on Registration and Renewal of Registration: A court fee and excise duty are payable.

Unlike businesses operating under the Intoxicating Liquor Acts, production of a tax clearance certificate is not a requirement for registration or renewal of registration of a club.

Right of Appeal: The decision of the court in dealing with an application for an original certificate, or for the renewal or cancellation of a certificate is subject to appeal.

### **Club Rules**

Statutory Requirements: In order to qualify for registration, club rules must include the provisions of the Acts relating to the management and operation of the club as well as the prohibited hours applicable to club premises.

These requirements may be divided into the following categories:

- (a) Management Control:

- (i) That the business and affairs of the club shall be under the management of a committee or governing body elected for not less than a year by the general body of members and subject to annual re-election, and that no member of the committee or governing body, and no manager or employee of the club, shall have any personal interest in the sale in the club of intoxicating liquor or in the profits arising from such sale.
  - (ii) That the committee or governing body shall hold periodical meetings.
  - (iii) That correct accounts and books shall be kept showing the financial affairs of the club.
- (b) Membership:
- (i) That the names and addresses of persons proposed as ordinary members of the club shall be prominently displayed in the club premises for at least a week before their election, and that an interval of not less than two weeks shall lapse between nomination and election of ordinary members.
  - (ii) That all members shall be elected by the whole body of members or by the committee or governing body, with or without specially added members.
  - (iii) That there shall be a defined subscription payable in advance.
  - (iv) That no persons shall be allowed to become honorary or temporary members of the club or be relieved of the payment of the regular entrance fee or subscription, except those possessing certain qualifications defined in the rules.
  - (v) That no person under the age of 18 shall be admitted as a member of the club unless the club is one primarily devoted to some athletic purpose.
- (c) Supply of Intoxicating Liquor:
- (i) That a visitor shall not be supplied with intoxicating liquor in the club premises unless on the invitation and in the company of a member, and that the member shall, upon admission of such visitor to the club premises, or immediately on his or her being supplied with such liquor, enter his or her own name and the name and address of the visitor in a book which shall be kept for the purpose and which shall show the date of each visit.
  - (ii) That no intoxicating liquor shall be sold or supplied for consumption outside the club, except to members of the club, between 8.00am and 10.00pm.
  - (iii) That no intoxicating liquor shall be sold or supplied in the club premises to any person under the age of 18 years.
  - (iv) The time limits for the supply of intoxicating liquor for consumption on club premises.

## ***Supply of Intoxicating Liquor by Registered Clubs***

**Management of Business:** As previously mentioned, under the Act of 1904, no member of the committee or governing body, and no manager or employee in the club may have any personal interest in the sale of intoxicating liquor, or in the profits arising from such sale.

**Permitted Hours:** The hours during which intoxicating liquor may be supplied for consumption and be consumed on club premises are identical with the permitted hours applying to a public house with a restaurant or limited restaurant certificate attached.

A drinking-up period of 30 minutes is allowed after normal permitted hours in a club and also following a period of extended hours under a club authorisation.

**For Consumption off the Club Premises:** The club rules must provide that no intoxicating liquor may be sold or supplied for consumption outside the club, except to members of the club, between 8.00am and 10.00pm. Every person supplying or selling such liquor, every person who pays for such liquor, and every person authorising the sale or supply of such liquor is liable on summary conviction to a fine unless it is proved to the satisfaction of the court that such liquor was sold or supplied without the person's knowledge or consent.<sup>32</sup>

**To a Club Member:** A member of the club lodging in the club premises may be supplied with intoxicating liquor on any day and at any time. A member not so residing may be supplied with intoxicating liquor at any time when such supply is lawful.

**To a Visitor:** A visitor shall not be supplied with intoxicating liquor in the club premises unless on the invitation and in the company of a member. (Requirements relating to visitors are described at p.29.) A member may call and pay for liquor for consumption by a non-member. However, an offence is committed if a non-member, even though his/her name is entered in the visitors' book, directly or indirectly pays for the liquor.

**To a Visiting Group:** The Intoxicating Liquor Act, 2000 made provision for special arrangements for members of a group who are visiting a registered club for the purpose of (a) taking part in any pastime, sport, game or recreation there or (b) organising or taking part in the organisation of, or arrangements for, any such activity. It is sufficient for a club official to enter the name of the visiting team or organisation and their number in the visitors' book. While these visitors are on the club premises they can be supplied with liquor at the request of, and in the presence of, an official of the club.

**To a Young Person:** The club rules must provide that no alcohol may be sold or supplied in the club premises to any person under the age of 18 years and that no person under that age shall be admitted as a member of the club unless the club is one primarily devoted to

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*Ibid.*, s.8.



some athletic purpose. The provisions of the 1988 Act relating to the sale and supply of alcohol to persons under the age of 18 years, offences by persons under the age of 18 years, exclusion of children from bars of licensed premises, restriction on persons under the age of 18 years being on licensed premises during extended hours and temporary closure of premises apply in relation to a registered club.<sup>33</sup>

### ***Garda Powers of Entry***

The power to enter and search club premises is exercisable only where a Garda has “reasonable grounds for supposing” that the club is being managed in a manner which could give rise to an objection to renewal of registration or that an offence under the Act has been or is being committed. In the absence of “reasonable grounds” a Judge of the District Court has a discretionary power to refuse to admit evidence as being unlawfully obtained.

### ***Offences***

Proceedings and prosecution may be brought against the club in three instances:

- (a) where liquor is supplied for consumption on club premises in contravention of the club rules (i.e. outside permitted hours);
- (b) for a contravention of the restriction on advertisements relating to functions on club premises; and
- (c) for holding an unauthorised function in the club premises.

A club secretary may be prosecuted for knowingly lodging an application for registration which is false in any material particular<sup>34</sup> and for offences relating to underage persons as if such secretary was the holder of a licence to retail intoxicating liquor.<sup>35</sup>

A person entered in the Register of Clubs as an official or a member of the committee of management or governing body of the club may be prosecuted where the club is managed in a manner constituting a ground of objection to renewal,<sup>36</sup> for a contravention of the restriction on advertisements relating to functions on club premises<sup>37</sup> and for holding an unauthorised function in the club premises.<sup>38</sup>

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Intoxicating Liquor Act, 1988, ss.31-35 and s.36(a).

34 Registration of Clubs (Irl.) Act, 1904, s.12.

35 Intoxicating Liquor Act, 2000, s.16.

36 Registration of Clubs (Irl.) Act, 1904, s.10.

37 Intoxicating Liquor Act, 1927, s.58, as amend. by s.51, Intox. Liq. Act, 1988.

38 Intoxicating Liquor Act, 2000, s.29.

Supplying and keeping intoxicating liquor in an unregistered club is an offence by virtue of The Registration of Clubs (Ireland) Act, 1904.<sup>39</sup>

### ***Temporary Closure Orders, Cancellation and Suspension of Registration***

Under the 2000 Act temporary closure orders may be made in respect of registered clubs on conviction for offences relating to underage persons.<sup>40</sup>

The 1904 Act provides for the cancellation of a certificate of registration and for the disqualification of premises from being a registered club. The procedure for seeking cancellation of registration is commenced by way of a summary complaint made to the District Court. The court may make an order on specified grounds that a registered club is being so managed or carried on as to constitute a ground of objection to the renewal of its certificate. Where such an order is made or where a conviction for supplying alcohol for consumption outside of club premises has taken place the Registrar of Clubs is required to make an entry of the order or conviction in the Register of Clubs and lay it before the court.

After such further inquiry as it may think necessary, the court may cancel the certificate of the club for the period for which it may still have to run. However, this does not preclude the club from applying for a renewal of registration at the due date. Where the court has refused an application by a club for the renewal of a certificate, or has cancelled the certificate of a club, it may, make an order that the club premises shall not be used for the purposes of any club which requires registration for a specified period, which may extend to 12 months in case of a first order, or in the case of a second or subsequent order to five years. The court may subsequently cancel or vary any such order.

Where the District Court determines that a club is a discriminating club within the meaning of section 8 of the Equal Status Act, 2000, the court shall order the suspension of the club's certificate of registration for a period not exceeding 30 days and, in the case of a subsequent order under that section, a certificate of registration will neither be granted nor renewed while the order remains in force.

### ***Functions in Registered Clubs***

Permitted Functions: The Act of 2000 clarifies the position in relation to the holding of functions in registered clubs. It sets out what is and is not acceptable use of a club premises, while not disadvantaging the use of the club premises in relation to functions which are of benefit to the community or for charitable or benevolent purposes. It also removes any doubt as to the use of a private club premises, by a member of the club for a private function, such as a member's personal or family celebrations.<sup>41</sup>

Restriction on Advertisements: Advertisement for any function to be held on the premises of a registered club is prohibited.

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s.7.

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See footnote 44.

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Intoxicating Liquor Act, 2000, s.29.

This prohibition does not apply to:

- (a) the publication of a notice inside the premises of the registered club in which the function is to be held, or
- (b) any advertisement in so far as it relates to a function involving any sport, game or physical recreation which does not take place outside the hours during which intoxicating liquor may be supplied or consumed on the club premises in accordance with the club rules, or
- (c) any circular issued by a registered club to its club members, or
- (d) any advertisement in so far as it relates to a function at which intoxicating liquor will not be served or a function where the whole proceeds, after deducting the expenses of the function, are devoted to community, charitable or benevolent purposes.<sup>42</sup>

### **Club Authorisation**

Authorisation for Extension of Club Hours: The District Court may authorise the supply of intoxicating liquor to members of the club during any one period, not exceeding 6 hours in duration, during which such supply of intoxicating liquor would be prohibited by the rules of the club. Not more than 15 such authorisations may be granted to any one club in any year.<sup>43</sup>

Authorisation for Special Events in Sports Clubs: Where there is a special event in a club which is likely to attract a considerable number of people to the club, the District Court may authorise a sports club on no more than one occasion in the year, to make provision for the serving of intoxicating liquor either in the club premises or in the club grounds to members of the general public attending the event.

The period of this exemption may not exceed 5 consecutive days and operates during such hours and on such days as the court directs.<sup>44</sup>

### **Club acquiring New Premises or altering Existing Premises**

A club may apply for a declaration as to the suitability of a proposed club premises. This procedure will enable a court to grant what is, in effect, approval in principle on the basis of plans submitted, that the premises which a club proposes to acquire, construct or alter will be suitable to be registered if constructed or altered in substantial accordance with the plans approved by the court.<sup>45</sup> Furthermore, in the case of an application by a previously unregistered club it removes the possibility that the application will be refused on the ground of the number of existing registered clubs in the area which are of the same character as the applicant club. Where an unregistered club proposes to acquire, construct or alter premises with a view to having the club registered, the application for a declaration

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Intoxicating Liquor Act, 1988, s.45.

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Intoxicating Liquor (General) Act, 1924, s.21 and O.83, r.10, DCR 1997.

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Intoxicating Liquor Act, 1962, s.14.

45

Intoxicating Liquor Act, 1960, s.15 and s.17.

of suitability is made to the Circuit Court. Where an existing registered club proposes to acquire, construct or alter premises the application is made to the District Court.

### ***Discriminating Clubs***

The Equal Status Act, 2000 while not cited together with the Registration of Clubs Acts, 1904 to 2000, contains a provision specifically relating to registered clubs or proposed registered clubs.<sup>46</sup> The Act outlines the criteria and process by which a club is determined to be a discriminating club. A club which has, or has applied for, a certificate of registration is considered to be a discriminating club if it discriminates against a member or an applicant for membership, or if a person involved in its management discriminates against a member or an applicant for membership in relation to the affairs of the club. Any person, including the Equality Authority, may seek a determination of the District Court that the club is a discriminating club.

If the court makes an order that the club is a discriminating club, the club is subject to the penalties set out at p.32.

### **Submissions**

The Commission is grateful to those organisations which made written and oral submissions and appreciates the time given by those organisations to its work. These submissions were concerned in the main with the following:

#### ***Relaxation of Rules***

It was submitted that clubs should be enabled to provide their facilities to non-members, i.e. the public at large.

#### ***Visitors' Book***

It was submitted that the main difficulty with the 1904 Act is contained in section 4(g) which provides "that a visitor shall not be supplied with excisable liquor in the club premises unless on the invitation and in the company of a member, and that the member shall upon the admission of such a visitor to the club premises or immediately on his/her being supplied with such liquor, enter his/her own name and the name and address of the visitor in a book which shall be kept for the purpose, and which shall show the date of each visit".

The organisations said that while clubs keep such a visitors' book it is impractical and "almost impossible to comply with the requirements of the Act at peak periods when a large number of visitors attend a club on the occasion of club matches and functions".

It was acknowledged that section 30 of the 2000 Act goes some way to addressing this problem where a "group" can be signed in without detailing the names of the members of

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<sup>46</sup>  
s.8.

the group. It was argued however that the current definition of a group is not wide enough

to cover members of the public who are not members of the visiting clubs and who attend the match or function because of the entertainment or public interest involved.

The value of the visitors' book to the Garda Authorities was questioned by the sporting organisations.

The organisations suggested that the requirement for a visitors' book should be discarded and the law amended accordingly. A compromise position was also proposed to "recognise and accept the position as presently exists and remove the absurd situation where clubs and members of the public could be in technical breach of the law", i.e. the legislation should be amended to permit members of the public to be served with alcohol where they are attending a match or function of public interest related to the activities of the club. A time limit of one hour prior to such match or function was suggested in that regard.

### ***Section 29 of the Intoxicating Liquor Act, 2000***

Submissions were critical of section 29 of the 2000 Act and its repeal was advocated.

The section prohibits a club from running a function or letting out its premises for the holding of a function unless the function is organised by a member of the club and no stranger or third party can attend unless they are guests of a member. "The whole proceeds, after deducting the expenses of the function, are devoted to charitable or benevolent purposes". This applies whether or not alcohol is available.

It was contended that the section prevents a club from letting out its premises for any purpose to a non-member where the rent or proceeds are for the benefit of the club thereby preventing clubs from using their premises for fund raising and undermining their ability to provide sporting and leisure activities.

It was also contended that the provision is unwarranted as there is no evidence of abuse by clubs of the provisions of the 1904 Act and there are sufficient means of preventing the sale of alcohol to non-members.

### ***Registration of Clubs Acts, 1904 to 2000***

A *bona fide* members' club is eligible for registration which enables the club to provide a bar facility to its members and guests of members. However, the law is quite specific and is geared towards non-profit making organisations or organisations run for the benefit of the members.

It was submitted that the law in this regard should be amended to cater for private sector entities that also have memberships, such as indoor/outdoor sports and leisure facilities, so that members and guests can enjoy a food and bar service that is additional to the main service offered.

### ***Safety and Crowd Control***

The Chief Fire Officers' Association expressed its concern to the Commission in relation to the control of numbers in premises. At present, the only owners/occupiers who are notified as to the safe occupancy levels of their premises are those in possession of a public dance licence issued by the District Court. In such cases, an occupancy level is given as a

condition of the licence. The Chief Fire Officers' Association believes that neither the owners nor the public are aware of the safe occupancy limit for other places of public assembly, including the premises of registered clubs.

### **Conclusions and Recommendations**

In reaching its conclusions and recommendations the Commission was mindful of the special role played by sporting organisations in Irish society and their invaluable contribution to community and sporting activities involving young and old alike. The Commission was also mindful of the changes which have taken place in the operation of clubs throughout the country and which, in some cases have resulted in clubs being involved in quasi-commercial activities centred on the sale of alcohol by way of regular discos or so-called "superclubs" with high turnovers from the sale of alcohol.

The Commission is clearly of the view that the provision of alcohol in clubs should be only for members and visitors accompanying those members. There is no case for relaxing those provisions to enable clubs to provide alcohol to the general public. In reaching these conclusions the Commission was mindful of the findings of the Strategic Task Force on Alcohol in relation to the availability of alcohol. The question of availability of alcohol to the public generally is one which cannot be addressed by the registered clubs system but is one which is more appropriate to the licensing code. The Commission was also mindful of the views expressed by the sporting organisations that they did not want commercialism and were not seeking "complete liberalisation" of the law.

As has been pointed out, the sale of alcohol should not be regarded as the primary activity of registered clubs and legislation has been framed to reflect this position and to treat registered clubs in a manner different from premises operating under the licensing code. The Commission makes recommendations which it considers will address a number of legal anomalies, ensure compliance with the law and the proper conduct of registered clubs.

### ***Charges on Registration and Renewal***

The excise duties chargeable on a publican's licence are based on turnover, while a flat rate applies to registered clubs. The Commission considers that a flat rate should continue to apply to clubs as clubs are not commercial entities and are not competing with licensed premises.

*The Commission recommends that there be no change to the methods for charging excise duties for registered clubs on registration or renewal.*

### ***Notification/Objections***

In the case of the first grant of a club certificate, only a resident of the parish may object, whereas any person may object to the renewal of that registration. The Commission believes that the provision relating to the first grant of a certificate may be a deterrent to some potential objectors. There appears to be no good reason as to why the objection process for grant and renewal of a club certificate should be different.

*The Commission recommends that the law be amended to enable any person to object to the first grant of a club certificate.*

An Garda Síochána are not a notice party for the renewal of a club certificate. The Commission considers that as an enforcing authority they should be a notice party and in a position to scrutinise the rules and activities of a club to ensure compliance with the law.

*The Commission recommends that An Garda Síochána be a notice party for the renewal of a club certificate.*

Currently, the statutory period for service of notice to the fire authority for grant or renewal of a certificate of registration is 1 month. There is no statutory time limit for service of notice to the District Court for the grant of a certificate but on renewal 21 days notice is required. There is no statutory period of notice of publication for grant or renewal of a certificate of registration.

The statutory service of notice period for the grant of an on-licence is 21 days to An Garda Síochána, District Court and County Registrar and 1 month to the fire authority and for renewal 1 month to the fire authority. There is no statutory period applicable in relation to the other parties. The required notice period for publication for the grant of an on-licence is 21 days, while there is no requirement for the renewal.

The Commission is of the opinion that the law pertaining to the grant and renewal of a certificate of registration should be brought into line with the law pertaining to the grant and renewal of on-licences.

*The Commission recommends that the notice period of service and publication for the grant and renewal of a certificate of registration be the same as that applicable to an on-licence.*

### **Management of Clubs**

The Chief Fire Officers' Association expressed concern about the training of employees and the management control of premises and their effect on the safety of premises. The Commission has examined this issue with regard both to door/security staff and bar staff.

The Commission considers that the Private Security Services Bill, 2001 published by the Minister for Justice, Equality and Law Reform will generally improve standards within the private security sector and introduce a system of best practice for all licensed establishments using door/security staff.

*The Commission recommends that the Private Security Services Bill, 2001 and the establishment of the Private Security Authority be given high priority.*

The cost of alcohol-related harm to the community in terms of antisocial behaviour and social problems is significant. Clubs like other premises supplying alcohol are subject to various legislative restrictions. They have an obligation to serve and supply alcohol responsibly, operate their premises in a responsible manner and encourage responsible consumption and behaviour by their patrons. The importance of trained staff was underlined in the Commission's First Interim Report on Off-Licensing (pp.12 and 15). The Commission wishes to reiterate this view in so far as registered clubs involved in the supply and sale of alcohol are concerned. The Responsible Server Programme, already in place for



staff in the on-licensed sector, provides an ideal model of best practice for the introduction and maintenance of good management and effective standards in premises involved in the sale of alcohol.

*The Commission recommends the introduction of a Responsible Server Programme for people involved in the supply and sale of alcohol in registered clubs and the full support and participation of clubs in the Programme.*<sup>47</sup>

### **Purchase of Alcohol by Members**

The Commission agrees with submissions made on this issue, that it is an unnecessary and outdated restriction and that there is no good reason why guests of members or visitors to a club should not be able to purchase alcohol.

*The Commission recommends that the legislation be amended to dispense with the rule requiring the purchase of alcohol by members only.*

### **Signing In Requirement**

The underlying principle by which a club is permitted to supply alcohol is that it is a private institution for the benefit of its members and not a licensed premises. In considering the submissions made in relation to the signing in requirement, the Commission viewed the requirement as a practical means of assisting the Gardaí in ensuring compliance with the law.

*The Commission recommends that the signing in requirement for registered clubs be retained.*

### **Garda Powers of Entry**

The powers of entry to clubs by Gardaí have earlier been referred to. This restricted power can be contrasted with the powers given to Gardaí to inspect licensed premises and premises licensed for public dancing, for example, under the Licensing (Combating Drug Abuse) Act, 1997. In the case of licensed premises any member of An Garda Síochána may, for the purpose of preventing or detecting the violation of any of the provisions of the Intoxicating Liquor Acts which it is his/her duty to enforce, at all times enter on any licensed premises, and on any premises in respect of which an occasional licence is in force.<sup>48</sup> Any member of An Garda Síochána in uniform may enter any place in respect of which a public dancing licence is in force at any time while such place is being used for public dancing or at any other reasonable time and make such inspection, examination and inquiry as he/she thinks proper.<sup>49</sup> Similar provisions apply for the prevention or detection of a drug trafficking offence within the meaning of section 3(1) of the Criminal Justice Act, 1994.<sup>50</sup> During its consultation process, the sporting organisations indicated to the Commission that additional powers of Garda entry to clubs would create no difficulties.

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See recommendation no. 56.

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Licensing (Irl.) Act, 1874, s.23, as applied by the Intoxicating Liquor Act, 1927, s.22.

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Public Dance Halls Act, 1935, s.13.

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*Ibid.*, s.13(a) (inserted by s.9, Criminal Justice (Drug Trafficking) Act, 1996).

*The Commission recommends that the grounds for entry by An Garda Síochána to registered clubs should be the same as for any other premises supplying intoxicating liquor.*

### **Penalties**

The conduct of a licensed premises is regulated by the imposition of penalties where there is a breach of the licensing code. Certain offences can result in the endorsement or forfeiture of the licence. A licence with three current endorsements is forfeit and no new licence can thereafter be granted in respect of that premises. Currently, offences by registered clubs do not incur endorsements.

*The Commission recommends that legislation provide for endorsement of the certificate of registration where convictions take place.*

### **Attendance at Events**

The 2000 Act clarified the law in relation to the holding of functions. It is because of the fundamentally private nature of a club that it is only entitled to supply alcohol to its members and guests of members. A club is not a licensed premises and it should not be seen as such or as setting itself up as such. There needs to be a clear line drawn between the activities of clubs and premises licensed under the licensing code. The Commission considers that any dilution of the current provision would blur the distinction between the two sectors and undermine the very basis of registered clubs. It should be said that where clubs wish to, it is always open to them to purchase a full on-licence and to operate as a commercial entity.

*The Commission recommends that the current provision relating to events be retained.*

It is generally known that a number of registered clubs, particularly those in large urban centres hold dances on a regular basis. The Public Dance Halls Act, 1935 provides for applications to the District Court for a public dancing licence along with notification of such application to An Garda Síochána, the local authority and the fire authority. Furthermore, and most importantly evidence of public liability insurance may be required by the court with such applications. The Commission believes that the Act provides the controls and supervisory mechanisms for the safe conduct of such events. It is considered that in the interests of club members and visitors, dances organised by registered clubs should comply with the conditions laid down in the 1935 Act.

*The Commission recommends that the conditions contained in the Public Dance Halls Act, 1935 should apply to registered clubs.*

### **Extensions and Special Events**

Where clubs apply to the court for authorisation for an extension or for a special event there is no legislative provision for notification of any party nor is there provision for objections to such applications. The Commission considers that this has implications for enforcement and that the law should be amended accordingly.

*The Commission recommends that clubs should be required to give notice of applications for extended hours and special events and that the public and appropriate authorities should be able to object to such applications.*

While the number of authorisations for extending club hours is currently 15, the Commission is concerned that multiple extensions are being obtained for premises in which a number of clubs operate.

*The Commission recommends that where premises are being used by more than one registered club, the number of authorisations for extension of club hours should be limited to 25 for the premises in question.*

### **Fire Safety and Crowd Control**

The Commission acknowledges the concerns of the Chief Fire Officers' Association and welcomes the introduction by the Minister for the Environment and Local Government of the Licensing of Indoor Events Bill, 2001. The Bill provides for the licensing of certain indoor events by local authorities and focuses on issues of crowd control and safety. The duty of care of persons involved in organising an event is to be given a statutory footing. The Commission believes that the enactment of this legislation will ensure as far as possible the safety of those using premises which attract large numbers and will confer wide powers on fire authorities in the interest of safety.

*The Commission recommends that the enactment of the Licensing of Indoor Events Bill, 2001 be given priority and that the statutory thresholds for the licensing of events take cognisance of registered clubs and be introduced as soon after the enactment of the Bill as is possible.*

### **Tax Certificates**

The State permits the sale of alcohol by means of a licence under the licensing code or registration under registered clubs legislation. Persons operating under the licensing code are required to furnish a tax clearance certificate prior to obtaining a licence to sell alcohol. Currently, no such requirement applies in respect of registered clubs. This is clearly an anomaly and one which should be rectified.

*The Commission recommends that clubs be required to provide tax clearance certificates for granting and renewal of registration.*

### **Breaches of Conditions**

As has already been outlined, registered clubs are permitted to supply alcohol in accordance with the provisions laid down in the Registration of Clubs Acts, 1904 to 2000. These Acts clearly specify the conditions that must be met by registered clubs. If these conditions are not being met then it is up to the Gardaí to take the necessary enforcement action to ensure compliance with any such conditions. It is also open to the Gardaí or members of the public generally to object to the renewal of registrations in respect of clubs that are in breach of the conditions.

Of particular note, are the restrictions on who is permitted to carry out the day to day running of bars, restrictions on advertising and the signing in requirement. The latter issue

has already been dealt with in that the Commission recommends that it should be retained.

### **Advertising**

As regards advertising, it would appear from both the national and provincial press, that some clubs are in breach of the restrictions on advertising imposed by the Intoxicating Liquor Act, 2000. In recent times, one well-known club advertised “The Best, Biggest, Most Spectacular Christmas Party Festival in Europe”.

Section 29<sup>51</sup> permits functions of a community, charitable or benevolent nature to be advertised while “designed to curb abuses which had arisen in relation to the holding of discos on club premises”. The Minister for Justice, Equality and Law Reform has said that the provision struck “a balance between the fundamental private nature of a club, in terms of the conditions under which it can supply alcohol to its members and their guests, and the position of a club in the wider community, where its facilities may be made available to groups in that wider community and where the club organises functions that will be of benefit to the community or which will have some other charitable or benevolent purpose”.

The Commission believes that advertising of functions by registered clubs should continue to be restrictive. However, it also believes that where a registered club advertises a function “where the whole proceeds, after deducting the expenses of the function, are devoted to community, charitable or benevolent purposes”, the advertisement should specify the beneficiary organisation(s).

*The Commission recommends that:*

- (a) *legislation require that advertisements for functions in registered clubs, where the whole proceeds are for community, charitable or benevolent purposes, should so indicate; and*
- (b) *the Oireachtas take account of the commercial exploitation by some registered clubs of s.29 of the 2000 Act and introduce the necessary legislative amendments.*

Strict enforcement of advertising laws for registered clubs is required and the Commission recommends that the effectiveness of those laws should be kept under review.

### **Leasing/Franchising etc.**

As regards the running of club bars, it is also quite apparent that the relevant rules are being breached in certain cases, particularly in the larger clubs where bars are often franchised out to commercial operators. This again may be illegal in certain circumstances.

*The Commission recommends that appropriate enforcement action should be taken against registered clubs found to be in breach of the law.*

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51

Intoxicating Liquor Act, 2000.



## **Application for Membership**

The majority of registered clubs do not have a significant membership and can therefore easily comply with rules governing applications for membership as ordinary members.

The position may be quite different in the case of registered clubs in third level institutions where membership figures may run into many thousands with high levels of turnover in membership throughout any given year. In these circumstances, on one interpretation of the law, it can be practically impossible for such clubs to comply strictly with the rules governing the election of ordinary members. The Commission is of the opinion that this matter should be clarified.

*The Commission recommends that persons applying for ordinary membership of registered clubs in third level institutions should be elected en bloc. All such persons should either be employed by such institutions or be attending as students.*

## **Residential Accommodation**

### **Introduction**

In line with its terms of reference the Commission undertook the examination of “the licensing of residential accommodation which does not come under the definition of an hotel” (Appendix 2).

### **Submissions**

Bord Fáilte made a submission in which they stated that the “owners of registered guest houses have the same privileges to serve alcohol to resident guests as hotels by way of a ‘dispense licence’ and with the same statutory restrictions.”

The Tourist Traffic Acts, 1939-1995 prohibits any premises from describing itself as a guesthouse unless it is registered with Bord Fáilte. At present there are 501 registered guesthouses in the country.

Guesthouses have to meet strict registration requirements which include, meeting local authority planning regulations, fire safety, hygiene standards and a minimum of 5 bedrooms available for public letting. They are, in practical terms, private residential hotels that have no obligation to provide lunch or evening meals. Some guesthouses have a wine retailer’s on-licence, sometimes with a restaurant certificate, which allows them to provide alcohol.

### **Conclusion and Recommendation**

The Commission considers that due to the general high standard of registered guesthouses, their professionalism in operation and the expectations of their customers, the present restrictions which prohibit the sale of alcohol to residents should be removed.

The sale of alcohol in these premises would be solely for the convenience of their resident guests and not for members of the public.

*The Commission recommends that:*

- (a) registered guesthouses be allowed to serve intoxicating liquor to their resident guests only, by way of an annual non-transferable licence; and*
- (b) the definition of ‘hotel’ for licensing purposes correspond with the Bord Fáilte register and current tourist legislation.*

## **Restaurants**

### **Introduction**

A subcommittee was set up to review the liquor licensing laws in relation to restaurants, to assess their adequacy and to report to the Commission.

This report outlines the current statutory provisions relating to liquor licences for restaurants and recommendations for legislative change.

### **The Current Position**

There are three types of restaurant certificate/licence:

- (a) Full Restaurant Certificate;
- (b) Limited Restaurant Certificate; and
- (c) Special Restaurant Licence.

A restaurateur who wishes to sell intoxicating liquor on his/her premises may operate under a variety of liquor licences:

- a wine retailer's on-licence;
- a special restaurant licence; or
- a full on-licence.

A restaurant located in an hotel can operate under the hotel's liquor licence.

#### **(i) *Full Restaurant Certificate***

A full restaurant certificate is granted in respect of premises to which an on-licence or a wine retailer's on-licence is attached. It relates to the entire premises and enables a licence holder to serve intoxicating liquor with food after normal closing times.

#### **Grant of a Full Restaurant Certificate in conjunction with an On-Licence**

An application for a full restaurant certificate must be made in conjunction with the grant, renewal or transfer of an on-licence. An application made in conjunction with the grant of an on-licence is made to the Circuit Court.

The court must be satisfied that the premises are:

- structurally adapted for use as a restaurant, refreshment house or other place for supplying substantial meals to the public; and
- *bona fide* and mainly used as a restaurant, refreshment house or other place for supplying substantial meals to the public.<sup>52</sup>

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Intoxicating Liquor Act, 1927, s.12(1).



A restaurant certificate, unless earlier revoked, remains in force until the next Annual Licensing District Court.

An applicant for a restaurant certificate may apply for a Declaratory Order requesting the court to certify that the premises are a restaurant for the purposes of the Intoxicating Liquor Act, 1927.<sup>53</sup> Application is made to the Circuit Court for a Declaratory Order in conjunction with a new on-licence. In all other cases application is made to the District Court. Such a declaration remains in force for two years from the grant of the application or for such longer period as the court decides.<sup>54</sup>

### Alteration of Premises

A restaurant certificate applies to a particular premises. If the premises change in character, i.e. if they are enlarged or made smaller, then where an applicant is seeking a new licence, he/she should also make an application for a new restaurant certificate in respect of the new area to which the licence will attach.

### Grant of Restaurant Certificate in conjunction with Wine Retailer's On-Licence

As already mentioned, a full restaurant certificate may be granted to the holder of a wine retailer's on-licence.<sup>55</sup> An application for a restaurant certificate in conjunction with a wine retailer's on-licence is made to the District Court.

An Garda Síochána must indicate their views to the court in relation to such an application and specifically on whether the premises are structurally adapted for use and *bona fide* and mainly used as a restaurant, refreshment house or other place for supplying meals to the public.<sup>56</sup> Once the premises are certified as a restaurant the exemption regarding prohibited hours in relation to a full restaurant certificate applies.

The holder of a wine retailer's on-licence attaching to a restaurant may offer beer for sale for consumption on his/her premises provided:

- (a) the beer is consumed at the same time as and with the meal and paid for at the same time as the meal is paid for; and
- (b) the restaurant does not contain a bar.<sup>57</sup>

### (ii) **Limited Restaurant Certificate**

A limited restaurant certificate is granted in respect of premises to which an on-licence is attached. It certifies that a specified portion of the premises is a

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Intoxicating Liquor Act, 1960, s.16.

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Intoxicating Liquor Act, 1927, s.16(5).

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Intoxicating Liquor Act, 1943, s.8.

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Intoxicating Liquor Act, 1927, s.12.

57

Intoxicating Liquor Act, 2000, s.26. (The definition of "bar" is discussed at p.50).

restaurant for the purposes of permitting persons to be on or to consume intoxicating liquor in that portion of the premises during specified hours.<sup>58</sup>

#### Grant of a Limited Restaurant Certificate

An application may be made at any time for a limited restaurant certificate to the District Court.

The court must be satisfied that:

- (a) a specified portion of the premises to which the application relates is structurally adapted for use *bona fide* and mainly used as a restaurant, refreshment house or other place for supplying substantial meals to the public. That particular portion must at the time of the grant be mainly so used. An intention of future use is not sufficient;
- (b) the portion to which the application relates does not include a public bar. The definition of “bar” for the purposes of a limited restaurant certificate is “any place exclusively or mainly used for the sale and consumption of intoxicating liquor”;<sup>59</sup> and
- (c) there is public access to the portion of the premises to which the limited restaurant certificate is sought otherwise than through a public bar.

#### Exemptions where a Limited Restaurant Certificate is in Force

The holder of an on-licence may avail of exemptions under the Intoxicating Liquor Act, 1927<sup>60</sup> and may serve intoxicating liquor in conjunction with meals during the specified times. The exemptions apply where the intoxicating liquor is:

- (a) ordered by or on behalf of a person at the same time as a substantial meal is ordered, and
- (b) consumed by that person during or after the meal.

#### (iii) **Special Restaurant Licence**

A special restaurant licence is a retailer’s on-licence which entitles the holder to sell the full range of intoxicating liquor for consumption on those premises in a defined type of premises and in conjunction with a substantial meal during the hours set out in legislation.<sup>61</sup>

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58

Intoxicating Liquor Act, 1927, s.13 as amended by Intoxicating Liquor Act, 2000, s.12A.

59

*Ibid.*, s.12A(7).

60

s.13 as amended by Intoxicating Liquor Act, 1988, s.28; Intoxicating Liquor Act, 1995, s.4 and Intoxicating Liquor Act, 2000, s.6.

61

Intoxicating Liquor Act, 1988.

### Grant of a Special Restaurant Licence

A special restaurant licence is granted by the Revenue Commissioners on production of a court certificate, a tax clearance certificate and a specified fee.

An applicant for the grant and renewal of a special restaurant licence must notify the fire authority one month in advance of the application - a requirement which does not pertain to an application for a restaurant certificate.

The sale of intoxicating liquor for consumption off the premises is not permitted in premises with a special restaurant licence.<sup>62</sup>

The supply and consumption of intoxicating liquor in premises with a special restaurant licence may only take place where it is:

- (a) ordered by or on behalf of a person for whom a substantial meal has been ordered;
- (b) supplied in either the waiting or the dining area of the restaurant; or
- (c) consumed in the waiting area prior to a meal by the person for whom the meal has been ordered, or is consumed by that person in the dining area of the restaurant either during the meal or at any time not later than thirty minutes after the meal has ended; and
- (d) paid for at the same time as the meal is paid for.<sup>63</sup>

Therefore, a person who does not order a substantial meal on the premises cannot be served intoxicating liquor.

Failure to observe the above requirements is a mandatory endorseable offence.<sup>64</sup>

### Alteration of Premises

Where the premises to which a special restaurant licence is attached are extended to include attached or adjoining premises, a certificate from the Circuit Court is required for a new special restaurant licence.

### Special Exemption Orders

The grant of special exemption orders in respect of premises to which a special restaurant licence attaches is prohibited.<sup>65</sup>

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62

Intoxicating Liquor Act, 1988, s.7(2).

63

*Ibid.*, s.7(1).

64

*Ibid.*, s.15.

65

*Ibid.*, s.22.

## Hours of Trading

The sale, supply and consumption of intoxicating liquor on premises to which a special restaurant licence attaches is not permitted during the following times:

Good Friday at any time;

Christmas Day before 12.00 noon and after 10.00pm;

Monday, Tuesday and Wednesday before 12.30pm and after 12.30am on the morning of the following day;

Thursday, Friday and Saturday before 12.30pm and after 1.30am on the morning of the following day;

Sunday before 12.30pm and after 12.00 midnight.

There are also special provisions relating to St. Patrick's Day, the eve of a public holiday and Sundays which fall on December 23 and 24.

## Conclusions and Recommendations

The Commission agreed that there was a need to simplify and streamline the legislation in relation to restaurants and that the introduction of a two-tier, non-transferable annual restaurant licence would be an appropriate and effective response. Such approach has previously been taken by the Commission in relation to off-licences.<sup>66</sup>

It is envisaged that under the proposed system a full restaurant licence would allow the sale of wine, beer and spirits and a limited restaurant licence would allow the sale of wine.

In keeping with earlier recommendations that all licensing matters should be entrusted to the District Court,<sup>67</sup> the Commission is of the view that applications for an annual restaurant licence or for renewal should be to the court and that all other conditions attaching to a special restaurant licence should apply. The payment of a fee on grant and renewal of such a licence would be required.

*The Commission recommends the introduction of a two-tier, non-transferable annual restaurant licence to permit holders to sell either, (i) wine, or (ii) wine, beer, including cider, and spirits, and that:*

- (a) applications and renewals for such a licence be made to the District Court;*
- (b) conditions attaching to a special restaurant licence shall apply; and*
- (c) a fee shall be payable.*

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<sup>66</sup> Commission on Liquor Licensing, Interim Report on Off-Licensing, May 2001, p.14.

<sup>67</sup> Commission on Liquor Licensing, Second Interim Report, July 2002, p.45.



### ***Declaratory Procedure for Special Restaurant Licence***

It was submitted to the Commission that currently there is no facility to enable a person who proposes to acquire, construct or alter a restaurant premises to apply for a Declaratory Order in respect of a special restaurant licence. (Such procedure is available in respect of all other types of intoxicating liquor licences for which a court application is necessary, including a restaurant certificate.)

The purpose of the extension of the Declaratory Order procedure to the prospective applicant for a special restaurant licence would be to enable the applicant to proceed with the acquisition, construction or alteration of a premises in the knowledge that the premises complied with the structural requirements for a special restaurant licence, in accordance with the approved plans.

It was also submitted that any objection by the Gardaí on the grounds of character, misconduct or unfitness of the applicant should be made at the time of application for the Declaratory Order rather than at the time of application for the final licence, as this would prevent the applicant from unnecessary expenditure on the construction or alteration of the premises.

*The Commission recommends that a Declaratory Order procedure should be available for all restaurants.*

### ***Provisional of Temporary Licences for New Restaurants***

At present, restaurants are required to be operating and trading before the owner is entitled to receive a special restaurant licence. The introduction of a provisional or temporary form of the special restaurant licence issued by the Revenue Commissioners to facilitate the opening of a new restaurant or a newly extended restaurant was proposed; such licence to be revoked by the District Court at any time, on application by the Gardaí on the grounds that the premises had ceased to comply with the definition of “restaurant”.

The Commission considered that the courts and not the Revenue Commissioners would be the appropriate licensing authority for such a licence, to be valid for a period of approximately 6 months.

*The Commission recommends that provisional licences for restaurants should be available where meals are provided.*

### ***Restaurants - Mixed Trading***

The definition of “Restaurant”, in respect of a special restaurant licence, provides that premises must be used for supplying substantial meals to the public for consumption on the premises and that “any other business carried on is ancillary and subsidiary to the provision of such meals”.

It was submitted that section 3 of the Intoxicating Liquor Act, 1927 which enables a licensed premises to be open at any time for non-licensed business, should be reflected in the following amended definition of “Restaurant”:

“any premises which are, or any part of any premises which is, structurally adapted and used for the purpose of supplying substantial meals to the public for consumption on the premises.”

The Commission had no difficulty with the proposal and considers that the Gardaí should have access to the entire building, where mixed trading is carried out. The question of mixed trading is addressed elsewhere in this report.

*The Commission recommends that the definition of “Restaurant” for the purpose of a special restaurant licence be amended.*

### **Definition of “Bar”**

The present definition of “bar” is:

“any open bar or any part of a licensed premises exclusively or mainly used for the sale and consumption of intoxicating liquor and shall include any counter or barrier across which drink is or can be served to the public”.

It was submitted that the following definition of “bar” be introduced in relation to special restaurant licences and to wine retailer’s on-licences with a restaurant certificate seeking to avail of the provisions of section 26 of the Intoxicating Liquor Act, 2000:-

“ “bar” means any counter or barrier at which members of the public may be seated and across which intoxicating liquor is served to a person who is not consuming a meal thereat but does not include any counter or barrier contained in a restaurant which is not so used but at which members of the public may be seated for the purpose only of consuming a meal with or without intoxicating liquor.”

The Commission considers that there are two possible ways of dealing with this issue. The definition might be broadened to include members of the public who are about to eat and where the drinks are paid for with the meal. Alternatively, the definition might be removed entirely.

*The Commission recommends that the definition of “bar” must ensure that there is a clear distinction drawn between the services provided at bars and restaurants.*

### **No Drink permitted while considering a Menu**

Section 7 of the Intoxicating Liquor Act 1988, provides that intoxicating liquor must be ordered by or on behalf of a person for whom “a substantial meal has been ordered”. The Commission considers that this provision is unreasonable and should be amended to allow a customer to be offered a drink while considering the menu.

*The Commission recommends that where a customer is considering the menu that intoxicating liquor can be served.*

### **Consumption within Thirty Minutes after Meal ends**

At present, any intoxicating liquor supplied with a meal must be consumed within thirty minutes after the end of the meal.<sup>68</sup> The Commission is of the view that the provision is unduly restrictive.

*The Commission recommends the repeal of the “30 minute rule” which requires that any intoxicating liquor supplied with a meal must be consumed within thirty minutes after the meal has ended.*

### **Time of Payment for Intoxicating Liquor**

Currently, it is not possible for guests to buy intoxicating liquor for their hosts unless they organise to pay for the drinks at the same time as the meal is paid for. The Commission agreed that this provision should be addressed.

*The Commission recommends that the legislation be amended to allow guests to buy intoxicating liquor for their hosts either before or after a meal.*

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68

Intoxicating Liquor Act, 1988, s.7(1).



## **Franchising**

### **Introduction**

On foot of a submission received, the Commission agreed to examine the question of licensing where the licensed premises is operated on a franchise basis, i.e. where the individual operating the outlet has neither a freehold nor a leasehold interest in the property.

The Commission would like to express its appreciation to those who made submissions and those who provided expert opinion and assistance.

### **Term of Reference**

The following term of reference was adopted by the relevant subcommittee:

“To examine the legal obligations of a licence holder and the position of franchising under the liquor licensing code, and make recommendations.”

### **The Current Position**

A “franchise” is an authorisation to sell a company’s goods or services. The term “franchise” is not defined in any Irish legal instrument. However, there is a definition in Article 1 of EU Block Exemption Regulation 4078/88 which defines franchise as “a package of industrial or intellectual property rights relating to trade marks, trade names, shop signs, utility models, designs, copyrights, know-how or patents, to be exploited for the resale of goods or the provisions of services to end users”.

A franchise business must operate from a premises. A franchise agreement itself does not deal with the franchisee’s occupation of the premises. This would normally be dealt with in a separate document. An individual franchisor may grant a lease of the premises to the franchisee, may simply give the franchisee a licence to occupy the premises for the purpose of carrying out the franchise business without any landlord and tenant rights or the franchisee may purchase or lease their own premises from which to carry out the franchise business.

No problem arises where the franchisee holds the property by a lease or tenancy agreement. As the holder of such lease or tenancy agreement he/she will be able to establish to the court that he/she holds the lowest estate in possession of the property and is therefore entitled to hold the licence.

There are three types of lease common in the licensed trade:

#### **(a) “Going-Concern” Lease**

Here, the publican owns the property, fixtures and fittings and the business is up and running. The business would normally be leased out for a maximum of 4 years and 11 months, because after that time the tenant acquires certain rights under landlord and tenant legislation. A publican would lease his/her business in this way if he/she wanted

to take a career break or, more commonly, wanted to sell their business but could not achieve the desired price level. The lease might contain an option to buy after a certain time.

(b) **“Standard” Lease**

This is a lease for 35 years, reviewed every 5 years. The tenant leases the shell of a building and fits it out. The developer charges rent plus a premium for the licence.

(c) **“Hybrid” Lease**

In this situation, the publican leases out the premises, including fixtures and fittings, licence, goodwill, etc. and charges the tenant a percentage of the turnover. This is, in fact, part lease, part management contract. Although there is a high demand for such arrangements, the professional view is that such leases often create problems for both parties, since the long-term objectives of the lessor can clash with the short-term profit maximisation objective of the lessee.

Leasehold is more expensive than freehold to the tenant and banks are only inclined to offer 50% finance to a lessee, whereas a freeholder could obtain 75-80%.

Two similar type licences cannot be attached to one premises. For example, should the owner of a hotel with a nightclub wish to lease it out, the hotel licence will not cover the activities in the nightclub. The nightclub must be in a separate building from the hotel before the lessee can obtain a licence in his/her own name. Under no circumstances can a lessee operate under the protection of the hotel's licence.

As a general rule, whoever owns the intoxicating liquor and is carrying on the business, should be licensed. Therefore, in landlord/tenant agreements involving licensed premises, the tenant should be the licensee. Only the licensee and his/her servants or agents are entitled to carry on the business of selling intoxicating liquor.

In relation to franchise arrangements, the franchisee's level of interest in the property determines whether or not the franchisee can be licensed. While at present a single licence covers the premises and the individual, it is possible to have two names on a licence.

### **Occupiers of Premises**

There are a number of classes of occupiers of premises, which could be classed in descending order as:

- (a) Freehold Owners
- (b) Lessees
- (c) Contractual Licensees
- (d) Permissive Occupants (bare licensees)

A freehold owner of a premises has an interest sufficient to hold a licence for a premises. A lessee's interest has always been considered sufficient to hold a licence. It appears that permissive occupants are not entitled to carry on licensed business. A contractual licensee is permitted to occupy premises under a contract. In the majority of cases, a franchisee

who manages premises owned (in freehold or leasehold) by the franchisor is a contractual licensee (if not a lessee). A contractual licensee does not have an estate in the premises. While case law is inconclusive, legal opinion was that a person who possessed and occupied licensed premises under a contract had sufficient interest in the premises to hold a licence.

The Intoxicating Liquor Act, 1960, expressly refers to the practice of nominees holding licences.<sup>69</sup> Usually, a manager of licensed premises was nominated to hold the licence by the owner of the property. This practice had been established at a time when it was believed that corporations could not hold licences. Notwithstanding the fact that it has since been established that a corporation can hold a licence in its own name, the practice remains common. As a nominee would virtually always be a contractual licensee, the express statutory reference to nominees in the 1960 Act, *inter alia*, shows that a contractual licensee of the premises might have a sufficient interest in the premises to hold a licence for those premises.

In conclusion, assuming that the franchisor owned an estate in the franchised premises and the franchisee occupied under a lease or contractual licence, no legal changes were required to allow a franchisee to hold a licence. Moreover, it was legal for a franchisee to hold a licence as a nominee of the franchisor, a practice with which the courts were more familiar, than with arguments as to contractual licensees holding licences in their own right.

### **Submissions**

The Commission received a submission stating that, under existing law, a franchisee could not hold a licence as he/she did not have an ownership or leasehold interest in the property. It was described as a “major problem” because the law did not cater for a modern style of trading and the significant growth in the franchising sector in recent years.

It was submitted that the courts had traditionally considered that a licence could only be effectuated if the licensee either owned or occupied the licensed premises, or possessed the premises in the sense of having the lowest level of interest in the premises which guaranteed exclusive possession. The licence was inalienable: it must, for so long as it existed, remain attached to the premises.<sup>70</sup> It was submitted that, in the same way as a licence was incapable of separation from the premises, so also must there be a connection between the licence holder and the premises, and the licence holder must be in exclusive possession of the premises, i.e. have the right to exclude all others from the premises. A freeholder, lessee or tenant has such possession, but a person holding under an agreement such as a Caretakers’ Agreement or bare licence to use does not.

It was submitted that most franchise agreements had conditions such as:

“The Franchisee hereby confirms and acknowledges that he has no estate, right title or interest in the premises capable of being assigned, transferred or dealt with in any way whatsoever.”

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<sup>69</sup>

s.28.

<sup>70</sup>

Brennan v. Dorney (1888), 21LRIR.353@361.

It was also submitted that franchising represented an easy way for an individual to set up in business without incurring substantial setting-up costs. However, the present licensing

procedure was not compatible with this relationship. As the franchisee did not have an interest in the property, he/she could not be the beneficial holder of the licence and therefore could not conduct licensed business. The franchisor could not hold the licence as he/she is not conducting the business and in exclusive possession of the premises. The situation at present could only be covered by a franchisor giving a lease of the premises to the franchisee. Franchisors were reluctant to do this as it brought the matter within the scope of the landlord and tenant legislation and presented the franchisor with the risk of losing possession of the premises, and ownership and control of the licence.

In conclusion, it was proposed that the law be changed to allow the franchisee to become a nominee of the franchisor to enable ownership of the licence to be retained and the financial risk minimised. The Commission did not accept this proposal.

### **Conclusions and Recommendations**

The Commission concluded that there are three main areas of interest:

(i) **Public Houses**

Franchising is of limited relevance here as the more usual practice is leasing. This undoubtedly gives the lessee the right to hold a licence if that is considered desirable by the parties. The Commission agrees that the person who owns (and sells) the intoxicating liquor should be licensed. However, this is already feasible under existing legislation as far as lessees are concerned, and it does not appear desirable that landlords should be required to transfer the licence in the case of every lease, regardless of duration.

*The Commission therefore recommends no change to the licensing laws in this respect.*

(ii) **Off-Licences**

This is the main area in which franchising, as the term is generally understood in a commercial context, operates. There appears to be some degree of confusion as to whether or not a franchisee is entitled to hold a licence. Legal advice obtained indicates that there are two possible ways in which this could happen: (a) if the courts accept a franchise agreement as a sufficient basis for the “interest in the premises” test, or (b) as a nominee of the licence holder.

*In the light of this advice, the Commission recommends no change to the licensing laws in this respect.*<sup>71</sup>

(iii) **Nightclubs**

The Commission notes that, in some cases, hotels may be leasing out the nightclubs on their premises to an independent operator, with the result that the nightclub operator is effectively running a licensed premises without his/her suitability ever having been tested. There may be an argument in the future for considering the creation of a

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Ms. A. Forde, RGDATA dissented from this recommendation and was in favour of a change in the law to refer specifically to franchise arrangements.

separate licence for such premises, notwithstanding the fact that the hotel premises as

a whole may be licensed. However, the fact that the licence for the whole hotel premises may be endangered if the running of the nightclub gives rise to offences, may act as an incentive to responsible behaviour.

*The Commission considers that there is insufficient evidence to indicate that any change in the law is required.*

*Overall, the Commission recommends no change in the licensing laws.*

## **Wholesale Licences**

### **Introduction**

On the premise that the review of licensing matters undertaken by the Commission was to be as thorough and as comprehensive as possible it was deemed desirable to undertake a review of licensing legislation relating to the wholesale supply of alcoholic beverages and consider whether adjustment to or an update of legislation was required.

The Commission considered that as the wholesale as defined in the economic sense, supply of alcoholic beverages constituted part of the supply chain moving from manufacturer/ importer through to consumer, it was appropriate that it should be reviewed.

The wholesale dealers' licence has been in existence since at least 1825. By its nature, that licence is intended to provide the basis for bulk sale to the retail trade.

### **Background**

There are four different types of wholesale dealers' licence issued under the Finance (1909-10) Act, 1910 (beer, spirits, wine and sweets). Only the beer licence requires any type of court involvement.

At present, there are 622 wholesale licences in the State. This does not necessarily imply the number of premises, as premises may hold multiple licences for the different licence types.

### **Beer Dealers**

A District Court certificate is required for the grant of a new beer dealer's licence. At least 21 days notice must be given to An Garda Síochána. In the absence of an objection, a court certificate is not required for the renewal of this licence, but the applicant must supply a statutory declaration that the rateable valuation of the premises is £15 (€19.05) or more if situated in a city or town of a population exceeding 10,000, or £8 (€10.16) or more if situated elsewhere.

### **Objections**

The Garda Superintendent appears to be the only competent objector to the grant of a court certificate. The grounds are as stated on the certificate i.e. character and suitability.

### **Quantities which may be Sold**

The licence authorises the sale of beer in any quantity not less than two-and-a-quarter gallons (10.2285 litres) to a person who is licensed to sell beer by retail, and in any quantity not less than four-and-a-half gallons (20.457 litres) or two dozen reputed quart bottles (18.192 litres) to any other person.



## **Spirit, Wine and Sweet Dealers**

A court certificate is not required for the grant or renewal of a licence to sell spirits, wine or sweets in wholesale quantities. A licensed wine dealer is entitled to deal in sweets without taking out a sweet dealer's licence.

### Quantities which may be Sold

A spirit or wine dealer's licence authorises the sale of spirits or wine, as the case may be, to a person who is licensed to sell spirits or wine by retail in any quantity not less than half a gallon (2.273 litres) and to any other person in any quantity not less than two gallons (9.092 litres) or one dozen reputed quart bottles (9.096 litres). In the case of spirits, the minimum quantities may be made up of different denominations of spirits.

A sweet dealer's licence authorises the sale of sweets in any quantity not less than two gallons or one dozen reputed quart bottles.

### **Transfer of Licence**

A beer dealer's licence can only be transferred by the District Court. Spirit and wine dealer's licences may be transferred by endorsement by the Revenue Commissioners without the need for a court certificate.

### **Expiry Date for Licences**

All dealers' licences expire on 30 June each year. Licence duty of €250 and tax clearance is necessary in all cases.

### **Hours of Trading for Licence Holders**

A dealer may sell in wholesale quantities at any hour unless a retail licence is attached to the premises.

### **Supervision**

An Garda Síochána have the right of entry to a premises to which the licence to be taken out by a wholesale dealer in beer is attached at any time during hours of trading under Beerhouses (Irl.) Act, 1864, s.11 and Beer Licence Regulations (Irl.) Act, 1877, s.3. Supervisory powers of Customs & Excise are found with regard to the licence to be taken out by a wholesale dealer in spirits in the Spirits Act, 1880, s.137 and s.141 and, with regard to all licensed premises, in s.136 of the Finance Act, 2001.

### **Recommendations**

*The Commission recommends that :*

- (a) *A new wholesale licence be introduced to cover the wholesaling of beer, wine and spirits, and the existing sub-category licences be terminated. Manufacturers, distributors and importers who sell to retailers should be governed by the requirements of this legislation and should require a wholesale licence.*

- (b) *All wholesale licences should be issued by the District Court and the current system of simple application to the Revenue Commissioners be terminated.*
- (c) *Licences for wholesale trading should relate to a specific fixed premises and should be non-transferable.*
- (d) *Wholesale licences should not be used for any sales direct to the public either on a face-to-face, electronic, postal or telephone ordering systems.<sup>72</sup>*
- (e) *Revenue regulations with which wholesalers are currently obliged to comply should remain in place.*
- (f) *An Garda Síochána should be a notice party for application and renewal of such licences.*

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<sup>72</sup>

Mr. J. McCabe, NOffLA and Mr. T. O'Sullivan, V.F.I. expressed concern about the use of the word "public" in this recommendation because they considered that it may be construed in a number of ways and that a licensed wholesaler should only be able to sell alcohol to a licensed retailer.

## **Children and Young Persons**

### **Introduction**

In its first two reports, the Commission dealt with alcohol abuse by children and young persons and drinking patterns which affect their physical and emotional health, their educational attainments and their general wellbeing. The Commission considers it appropriate to revisit the issue which remains of such national concern.

A recent RTÉ Prime Time programme graphically described the drink culture among young people and generated widespread comment and debate. It is somewhat ironic that the Commission's first report two years ago made reference to a very similar and equally graphic RTÉ programme on the subject.

The problems of alcohol abuse have given rise to debate in policy, academic and research circles. The problems have been identified. However, identifying the means of reducing consumption of alcohol by groups within the population whose drinking gives particular cause for concern (such as underage and young persons) and reducing harmful patterns of consumption is a core issue and more problematic.

A number of factors have given rise to this phenomenon, including increased affluence both of parents and young persons themselves, many of whom are engaged in part-time work. A recent study on part-time employment among post-primary students found that earnings are almost exclusively for recreational uses.<sup>73</sup> Peer pressure and advertising and marketing are further factors.<sup>74</sup>

### **Advertising and Marketing**

Advertising and marketing of alcohol have generated public debate and comment, reflected in many submissions to the Commission.

There have been a number of welcome developments relating to alcohol advertising and marketing since the Commission was set up in 2000.

The Commission wishes to place on record its gratitude to the Advertising Standards Authority for Ireland (ASAI) and its Chief Executive, Mr. Edward McCumiskey for their help in keeping the Commission informed on important developments in this field. The Commission's second interim report referred to the new Code of Advertising Standards for Ireland.

The drinks industry recently set up Central Copy Clearance Ireland to vet beer, wine and spirit advertisements before they are released to ensure they comply with ASAI standards. This initiative should help to improve industry self-regulation and put in place an additional strand of protection for the public.

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<sup>73</sup>

<sup>73</sup> Morgan, M., School and Part-time Work in Dublin, 2000.

<sup>74</sup>

<sup>74</sup> For further discussion of this issue see Strategic Task Force on Alcohol, Interim Report, May 2002, p.6.

MEAS (Mature Enjoyment of Alcohol in Society Limited) was recently established by the principal drinks companies and trade organisations in Ireland:

- (a) to support and promote social responsibility within the drinks industry; and
- (b) in conjunction with the Government and other appropriate agencies, to promote sensible consumption of alcohol amongst consumers in order to reduce alcohol abuse and related harm.

Since these are recent developments the Commission considers that their impact on advertising and marketing practices of the drinks industry be kept under review. The Commission is satisfied that the ASAI is monitoring the situation closely and will be in a good position to judge the effectiveness of the new controls which the industry has introduced.

While there have been some positive developments as outlined, there still remain practices which quite deliberately and disconcertingly focus on the young consumer.

The Commission unreservedly condemns the practice of some companies in the drinks industry of appointing student representatives to work on campus to promote consumption of the company's alcohol products. This practice should be prohibited by law. We are happy that some companies have abandoned the practice but regret that others continue it. How the university or institute authorities permit this is not understood. Under this practice a student is paid by a drinks company to encourage other students to drink a particular brand of product. This is a classic example of peer pressure, actually encouraged and financially supported by the industry itself. That members of the industry should continue in this practice is highly reprehensible.

We have already expressed very firmly our views on licensed premises which charge entrance fees and then sell drink at lower prices than normal. A more recent practice is "a drink all you want" promotion for a fixed charge. Such promotions are clear incentives to binge drinking. They are irresponsible and must be condemned.

*The Commission recommends that promotional practices that are conducive to, or may result in, excessive consumption of alcohol should be prohibited by law; the Gardaí should object to the renewal of licences where such practices are operated.*

### **Advertising to Encourage Sensible Drinking**

Young peoples' objective on a night out can often be to drink themselves senseless. The drinks industry obviously considers advertising to be effective as is evidenced by regular and costly sponsorship and advertising campaigns.

The glamorous and macho perception of drink by young people has not been addressed. An advertising campaign focusing on some of the worrying aspects of young persons' increasingly heavy drinking should be undertaken. Such campaign would need to be credible, evocative and non-preaching. The overall message should be that abuse of alcohol at a young age is dangerous with long-term and destructive effects. Why has this not been

done in relation to underage drinking? We need remedial measures which are appropriate to our culture, values and behaviour and we need them now.<sup>75</sup>

The Commission is encouraged that the Minister for Health and Children has recently announced the proposed introduction of laws to stop drinks companies marketing alcohol to young people.

## **Education**

The Department of Education and Science obviously has a very important role to play in addressing our alcohol problems and effecting change in attitudes.

In our first report, we commended the Department of Education and Science for the introduction of the Social, Personal and Health Education Programme (SPHE). So that the Commission would be independently informed on this issue it carried out its own survey into what was happening in a sample of schools. The survey involved extensive interviewing of schools' principals, SPHE teachers or home-school liaison staff. Some students were also consulted for their view of education around underage drinking in schools.

In the main, the experience of all schools was the same, regardless of ethos, gender mix or socio-economic catchments. All schools said the problem of underage drinking existed to a greater or lesser degree. All schools had in place a pastoral care programme. In the majority of cases, this was the SPHE programme; in some cases it was a programme combining existing pastoral care elements with SPHE-type components.

In all cases where the SPHE programme existed, the programme was spoken of very highly in terms of its content and aims. All teachers involved in the facilitation of such programmes described the experience as rewarding and enjoyable. The atmosphere of the class is not one of the lecture hall or conventional class as general discussion along informal and intuitive lines is encouraged. The aim of the programme is to equip students with vital life skills to enable them to make considered, responsible decisions as individuals. The programme encourages students to consider the consequences of all decisions in the areas of those around them, their own health and their own personal development.

While a portion of the SPHE course is concerned directly with alcohol, other aspects of the course are pertinent to the area of underage drinking as well. These include Relationships and Sexuality Education and the examination of the nature of peer pressure. In other areas of the school curriculum, students examine advertising (English and Business Studies), the effects of alcohol (Science and Home Economics/Social and Scientific). Schools frequently organise outside speakers through the SPHE and Religious Education Programmes from organisations such as Alcoholics Anonymous or former addicts.

When asked if there was room on the curriculum for more alcohol education most teachers answered in the negative for the following reasons:

- Curriculum overload.

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Barnardos are to be complimented for their recent advertising campaign.

- Teachers feel that the subject as it stands is fulfilling what it can. Extra curricular activities also contribute to personal development without explicitly stating that intention.
- Given the age gap, teachers are deemed by students to be out of touch or merely prescribing a lifestyle, which they may have enjoyed in their youth, but which is no longer relevant.
- Teachers can impart information through the classroom but other, more visible forces give conflicting messages - drinks advertising campaigns and the influence of peers and parents were particularly highlighted.

For those involved in the teaching of SPHE, however, the question of training was raised. Schools found it difficult to release teachers during work time for training in SPHE and felt that training run in holiday time would be more appropriate. School authorities felt that this was the course of action that would cause least disruption to teaching. Many teachers are willing to teach the programme but need to be allowed to do so. Schools stressed that younger teachers or teachers who had an established rapport with students were particularly desirable candidates for training.

Support for the SPHE Programme is provided jointly by the Departments of Education and Science and Health and Children, and health boards with two SPHE co-ordinators operating in each area. A website has been set up for support and information purposes ([www.sphe.ie](http://www.sphe.ie)).

In terms of out of school support, many principals highlighted a lack of facilities for young people in their areas. However, insurance and time constraints have impacted on this.

Another significant factor in underage drinking and lack of engagement in extra curricular work was part-time work. All schools cited part-time work as contributing to:

- more disposable income independent of parental monitoring;
- greater independence from parents and the consequent erosion of discipline;
- inappropriate socialising with older adult work colleagues; and
- impact on school work through fatigue and through demotivation (i.e. not seeing the point by virtue of having a comfortable income).

While the extremity of such factors varies (i.e. many teachers saw limited work as a positive thing) there was agreement that pupils were being pressurised into working excessive hours or indeed were willingly doing so. All felt that policing of the hours that young people were working needed to be stepped up by parents and by the State.

In many cases, schools had organised awareness evenings for parents around the areas of drink and drugs, however the parents who they would have liked to have turned up, frequently did not. In some cases, schools felt that while they were in *loco parentis* for the duration of the school day, some parents need support in parenting skills. Parents in many

cases have expressed powerlessness or no interest with regard to underage drinking, feeling that the State and the school should deal with the issue.

Most teachers also felt that enforcement of the existing legislation was desirable with regard to the serving of minors in on and off-licensed premises. Most schools also said that they would report known underage dens in their area if they became aware of problems.

Another problem arising from dealing with problem individuals in schools included the proper resourcing of counsellors. In some cases, schools' guidance counsellors combined the roles of career guidance advisor and therapist. However, once CAO forms had to be filled in pre-Leaving Certificate or subjects had to be chosen around Junior Certificate, the time of counsellors was not available to needy cases.

In terms of gaining access to public houses and nightclubs, most students said they were not asked for identification or would borrow an older sibling's, which in the main was not checked. Girls found it easier to gain access by dressing 'older'. They suggested a greater employment of female door staff who would not be as 'fooled/attracted' by their 'older' attire.

Overall the main areas of concern are:

- (a) Teachers being able to avail of SPHE training that does not coincide with the other subjects they are teaching.
- (b) Making SPHE available to young persons in an out of school setting through youth services.
- (c) Greater monitoring and inspection of the terms and conditions of students engaging in part-time work.
- (d) Parenting supports for those finding it difficult to cope.
- (e) Counselling services in schools for students in difficulty.
- (f) Inspection of identification in public houses and nightclubs.
- (g) Enforcement of the law in relation to premises where underage drinking is known to take place.
- (h) Consultation of educational institutions in towns/areas before decisions on licensing are taken. (This relates in particular to debs and graduation functions involving second level students.)

### **The Role of Parents**

The importance of parental example and guidance cannot be underestimated when dealing with abuse of alcohol by children and young persons.

One very praiseworthy initiative by the Department of Education and Science is the *Home School Community Liaison Scheme*. Central to the Scheme is the fact that it is a preventative

measure and that it zones in on the significant adults in the young person's life, namely parents and teachers. In short, it can be said that the aim of the Home School Community Liaison Scheme is twofold:

- to develop the parent as the prime educator within the home-community context;
- to develop teacher attitudes and behaviours so that the school becomes a place where all young people can reach their potential.

Dr. Mark Morgan of St Patrick's College, Drumcondra recommends in his research "*Underage Drinking in Ireland, A Study of Bray - A Representative Area*" that the most meaningful way of tackling underage drinking must involve a multifaceted community approach involving parents in local initiatives and school programmes. He emphasises the importance of schools having policies on drugs awareness and alcohol abuse in the context of their SPHE Programme. The Home School Community Liaison Co-ordinators encourage and support parents from marginalised communities to become involved in school policy formation in relation to drugs awareness and alcohol abuse.

At present, there are 277 schools in the scheme at primary level served by 170 co-ordinators with 194 schools served by 193 co-ordinators at second level.

*The Commission recommends that:*

- (a) *all schools should have an alcohol policy;*
- (b) *the SPHE Programme be kept under constant review and alcohol related problems be placed at the forefront of the Programme;*
- (c) *teachers participating in SPHE related training be compensated for such training;*
- (d) *the Home School Community Liaison Scheme be continued and expanded to assist in underpinning delivery of education on alcohol abuse;*
- (e) *all steps to moderate the consumption of alcohol be undertaken, including whatever advertising campaigns are necessary;*
- (f) *SPHE be made available to young persons in an out of school setting through youth services; and*
- (g) *greater monitoring and inspection of the terms and conditions of students engaging in part-time work be undertaken.*

### **Young Persons in Licensed Premises**

The Commission has dealt with issues in relation to the presence of children, i.e. persons under the age of 15, in licensed premises in its Second Interim Report and again in its Report on Admission and Service in Licensed Premises. In this final report, the Commission wishes to address issues relating to the presence of 15/16/17 year olds in such premises.

The Intoxicating Liquor Act, 2000 extended trading hours and provided in particular for later closing times. The Commission is surprised that no provision was made in this Act for



the exclusion of 15/16/17 year olds from licensed premises at certain unacceptable hours in the context of these extended closing times. While the Commission recognises that some young people within this age group are allowed to work in licensed premises under certain conditions, it considers it undesirable that young people who are not so employed, and are of impressionable age, may remain in licensed premises for extended periods, and may indeed remain until closing time. Not only is it undesirable, the Commission believes that the presence of 15/16/17 year olds makes compliance with the licensing laws more difficult for licence holders, and enforcement more difficult for the Gardaí. The Commission considers, therefore, that the licensing laws should permit licence holders to exclude persons within this age group from their premises at any or all times.

*The Commission recommends that in order to improve compliance with, and enforcement of the liquor licensing code, licence holders be permitted by law to exclude 15/16/17 year olds from licensed premises or to limit the hours of their admission to the premises.*

### **Alcohol-related Offences by Underage Persons**

Persons under the age of 18 years who commit alcohol-related offences are dealt with under the Garda Juvenile Diversion Programme. Its aim is to divert juvenile offenders from criminal activity. Consequently for this reason the Programme provides that if certain criteria are met, a juvenile offender will be cautioned, and where necessary, supervised by a Juvenile Liaison Officer, as an alternative to prosecution.

In 2001, 3,243 offences involving juvenile offenders were alcohol-related (of those, 1,769 related to the purchase, possession and consumption of alcohol, while 1,418 related to intoxication in a public place). This represented an increase of 81% on figures for 2000. In 2001, 17% of all referrals under the Programme were for alcohol-related offences. From the Commission's perspective these figures are deeply worrying.

The Commission has previously expressed concerns in relation to compliance with and enforcement of the law in relation to underage consumption of alcohol and has made recommendations for improvements in the national age card scheme operated by the Gardaí. Instances of forgery of identification have been reported to the Commission as have cases of persons under the age of 18 using the cards of older siblings. The Commission considers that all such cases should be reported to the Gardaí since forgery or alteration of an age card is in itself a serious offence under the Intoxicating Liquor Act, 1988.

It has also been represented to the Commission that the practices of the courts in relation to the validity of identity documentation and the imposition of temporary closure orders may vary from one area to another. Without wishing to interfere with the exercise of discretion available to the courts, the Commission considers that a consistent approach would be desirable.

While the penalties applicable to licence holders are significant, including temporary closure of premises, the Commission is concerned that the sanctions applied to underage persons breaking the law may not be adequate in that they do not have a sufficient deterrent effect. Moreover, the parents of such young offenders seem to be immune from any sanction. Why is this?

Is it not in the public interest that parents should be made accountable for offences committed by their children? The Commission considers that the issue is a serious one and one which warrants specific investigation by the National Children's Office or the National Children's Advisory Council.

### **The Continuing Role of the Strategic Task Force on Alcohol**

The Strategic Task Force on Alcohol was set up by the Minister for Health and Children on foot of the recommendation by the Commission and its interim report is welcomed by the Commission. However, many public health issues remain for the Task Force to consider.

For example, how should alcohol when sold in bottles be labelled? Should the label contain the alcohol content of the beverage being sold? Should it have health warnings? These are surely matters for constant review and ones which are appropriate to the Task Force.

Problems obviously arise by virtue of the sale of certain spirit based "designer drinks" which are targeted at the young adult market. If any of these are sold on draught (which seems to be the case) what then is the position regarding labelling and health warnings? The Commission has received evidence that in many cases these drinks are used as mixers and strengthened by the addition of spirits. The dangers of such mixtures speak for themselves.<sup>76</sup>

The Commission has previously expressed concern about stimulant non-alcoholic drinks such as Red Bull, and particularly their effect when mixed with spirits.

The Food Safety Promotion Board published its report on stimulant drinks in March 2002 which is awaiting implementation by the Department of Health and Children. Unfortunately, this does not comment on the effect of stimulant drinks when used as a mixer with spirits. This is where the problem lies and it gives rise to the question as to whether such drinks should be available in licensed premises which are also selling spirits. This is a health issue and one issue which the Commission considers the Task Force should address without delay.

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The Commission notes that s.17 of the Intoxicating Liquor Act, 2000 which deals with the identification of suppliers of intoxicating liquor sold for consumption off the premises, has not been brought into force.

## **Powers of the District Court**

The Commission has recommended that all licensing matters be dealt with through the District Court. This recommendation appears to have found general favour and the Commission anticipates its implementation.

The intention behind this recommendation is that all licensing matters should be adjudicated upon in a transparent way and also in the most cost effective way. The District Court is the most available court of all. The Commission believes that a District Judge is the best person to assess public order issues in his/her own area.

The role of a licensee is to be at all times responsible, vigilant and responsive to the common good. Unfortunately, certain practices have been attempted recently by publicans intending clearly to encourage binge drinking. The Commission referred to this in its second report and indicated that Gardaí should oppose the renewal of licences in such cases.

The Garda authorities must be prepared to make such objections and the District Court to give appropriate consideration to them.

On hearing an objection to the renewal of a licence the District Court has the power to either overrule or uphold the objection. The power of the courts to make an order for temporary closure is an enormous disincentive to those breaking the law.

*The Commission recommends that the District Court should have the power on hearing any objections to the renewal of a licence to direct that the premises or part of the premises be closed and remain closed for either a fixed period of up to 14 days or until any nuisance complained of has been abated.*

While the Commission is generally satisfied with the manner in which the vast majority of licensed premises are run, nonetheless, the Commission remains unhappy with the absence of a code of practice for individual publicans. It urges the Licensed Vintners' Association and the Vintners' Federation of Ireland to put such codes of practice in place immediately.

Publicans should be required to keep up-to-date incident books and to produce these when necessary. The Commission endorses the present provisions for the closure of licensed premises convicted of selling drink to underage persons. Providing drink for the underage is something which the courts should view with the greatest severity. The Commission endorses the attitude of many of our Judges in dealing with this problem.

In its first interim report, the Commission recommended the use of a national age card.<sup>77</sup>

As regards proof of age, licence holders should remember that it is only by demanding a Garda ID card and having it produced to them that they can avoid the consequences of closure if convicted of selling to underage persons.

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Commission on Liquor Licensing, Interim Report on Off-Licensing, May 2001.

The Commission does not feel that licensing application should be cluttered up by too many notice parties but clearly the Gardaí who represent the public interest are a vital notice party.

Similarly, on all planning matters, fire matters, etc. the local authority are an essential party.

Obviously, being given authority to deal with all licensing matters is a very serious matter and the Commission has every confidence that the District Court is the proper venue for such proceedings and will deal with them in an impartial and balanced way.

As recommended in the Commission's second report<sup>78</sup> a fast track mechanism for appealing decisions from the District Court to the Circuit Court should be set up. Following enactment of this legislation the Commission expects that the rules making committees will implement the necessary changes without delay.

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Commission on Liquor Licensing, Second Interim Report, July 2002, p.12.

## **Enforcement**

Many of the submissions received by the Commission since its inception have dealt with the difficult issue of the enforcement of the licensing laws. The Commission is conscious of the pressures which enforcement of the liquor licensing laws put on An Garda Síochána.

There are many critical aspects to this. The Commission is concerned to note the paucity of prosecutions for sale and supply of intoxicating liquor in licensed premises or clubs to persons who are already intoxicated. (Many members of the Commission are quite unaware of any such prosecution that has ever been successfully brought in this country since the foundation of the State). The Commission is also very disturbed at the rigorous approach of the courts to proofs in such cases. In one case, the District Judge refused to convict a licence holder for selling alcohol to an underage person because the Garda who made the discovery had not tasted it or sent it for analysis and found it to be alcohol.

*The Commission recommends that the rules of evidence in relation to prosecution for underage drinking be clarified so that the proofs necessary are not unreasonably onerous.*

Where does the enforcement problem lie?

Firstly, one needs only to view the statistics to see that enforcement of the laws prohibiting underage drinking are more rigorously pursued in some Garda regions and divisions. This is not satisfactory. There must be a uniform approach to enforcement throughout the country.

The details of prosecutions, convictions and closure orders obtained since the Intoxicating Liquor Act, 2000 came into force up to December 2002 are set out at the end of this chapter and interesting reading they make. At the bottom of the list for prosecutions come Longford/Westmeath and Clare.

It is also disturbing to note that the Dublin Region had at that time 47 prosecutions which had been initiated, of which 20 were outstanding. Of the 27 cases finalised, in no less than 17 cases the prosecution failed.

In County Mayo there were 103 prosecutions leading to 65 convictions and 44 closure orders. It is remarkable to note that there were over five times more prosecutions in Mayo than in Limerick; over 50 times more prosecutions in Mayo than in Clare which includes busy areas like Shannon and Ennis; and over twice the number of prosecutions in Dublin. These data suggest that where enforcement is prioritised results follow.

Has Mayo a higher number of Gardaí per head of the population than elsewhere? The Commission doubts it. The figures speak for themselves.

Enforcement may involve (as drug enforcement does) undercover operations from time to time. If these operations are necessary then they should be undertaken. Finding out what happens in licensed premises and nightclubs can hardly be achieved without members of the Gardaí whose identity is unknown entering such premises.

*The Commission recommends that Garda powers of entry and search for the purposes of enforcement of the intoxicating liquor code be broadened to include non-uniformed officers.*

Enforcement is necessary in many aspects of the licensing laws. For example, registered clubs need to be regularly surveyed and the law in relation to them enforced. We have highlighted elsewhere the fact that by means of advertising, registered clubs which are primarily there for the benefit of their members and their guests are advertising towards the general public. What happens in clubs and whether or not the sale of alcohol has become the primary objective of clubs or theatres is a matter that can only be discovered by inspection and surveillance.

The Commission has already indicated its strong disapproval of the state of the licensing laws in regard to theatres<sup>79</sup> and hopes for a speedy resolution of this. Again it follows that the enforcement of these laws can only be done by vigilance and surveillance.

The sale of alcohol in supermarkets and in places of mixed trading requires rigorous supervision. A recent survey of retail outlets, carried out for the Commission found that underage persons had no difficulty in obtaining alcohol.

The Garda's task should be simplified as much as possible so that they can embark in this surveillance with the least possible trouble but nonetheless, it is an extremely time consuming and arduous undertaking.

The Commission has the greatest sympathy with the Garda Commissioner who has to utilise his resources for competing priorities. The public order dimension imposes a considerable demand on An Garda Síochána's resources.

Nonetheless, as stated at the outset of this report, if the question of consumption of alcohol by young people and excessive and unlawful consumption of alcohol is not prioritised then the Commissioner will not be given the resources he wants and needs to carry out what is in fact a most important and vital aspect of the enforcement of the intoxicating liquor laws.

Of course, there are many matters that are not yet dealt with in the licensing code. For example, in an earlier report we highlighted drinks companies' and pubs' promotions. If the object of such promotions is to persuade young people to drink more then it is wrong and it is important that the drinks companies themselves realise this.

Almost all publicans intend to obey the law and are responsive to the duties imposed on them. However, where publicans enter into promotions endeavouring to persuade young people to drink to excess then it calls into question that publican's right to hold a licence or indeed be associated with any licence.<sup>80</sup>

The Commission in its second report referred to promotions by publicans involving the payment of an entrance fee followed by an entitlement to buy drink at a substantial discount. The Commission considered that this was an incitement to excessive drinking and had indicated to the Garda Commissioner that the publican's licence should be opposed by

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<sup>79</sup> Commission on Liquor Licensing, Second Interim Report, July 2002, pp27-32.

<sup>80</sup> (See p.61).

the Gardaí on the grounds that a person who behaves like this is not a proper person to

hold a liquor licence. There was no objection from the licensed trade to this proposal. (Their representative bodies adopted a responsible attitude and condemned such promotions.)

The Commission has already made recommendations in this respect (see p.61).



**Prosecutions, Convictions and Closure Orders obtained since the Intoxicating  
Liquor Act, 2000 came into force to 13 December, 2002**

<b>Garda Region &amp; Division</b>	<b>Prosecutions</b>	<b>Convictions</b>	<b>Pending</b>	<b>Dismissed/ Struck Out</b>	<b>Closure Orders</b>	<b>Closure Orders Under Appeal</b>
<b>Eastern Region</b>	<b>34</b>	<b>18</b>	<b>5</b>	<b>11</b>	<b>14</b>	<b>4</b>
Carlow/Kildare	14	3	3	8	3	2
Laois/Offaly	13	11	2	0	8	2
Longford/ Westmeath	3	3	0	0	2	0
Louth/Meath	4	1	0	3	1	0
<b>Dublin Met. Region</b>	<b>47</b>	<b>10</b>	<b>20</b>	<b>17</b>	<b>4</b>	<b>0</b>
Eastern	6	2	1	3	0	0
North Central	7	2	3	2	1	0
Northern	10	2	4	4	1	0
South Central	5	1	2	2	0	0
Southern	12	2	7	3	2	0
Western	7	1	3	3	0	0
<b>Northern Region</b>	<b>59</b>	<b>23</b>	<b>19</b>	<b>17</b>	<b>13</b>	<b>7</b>
Cavan/ Monaghan	32	10	12	10	4	3
Donegal	19	6	7	6	3	3
Sligo/Leitrim	8	7	0	1	6	1
<b>South Eastern Region</b>	<b>33</b>	<b>23</b>	<b>5</b>	<b>5</b>	<b>18</b>	<b>2</b>
Tipperary	13	11	0	2	9	2
Waterford/ Kilkenny	10	7	0	3	7	0
Wexford	10	5	5	0	2	0
<b>Southern Region</b>	<b>119</b>	<b>56</b>	<b>47</b>	<b>16</b>	<b>32</b>	<b>5</b>
Cork City	48	13	30	5	9	2
Cork North	9	3	3	3	1	1
Cork West	20	12	5	3	7	1
Kerry	24	16	4	4	14	0
Limerick	18	12	5	1	1	1
<b>Western Region</b>	<b>146</b>	<b>94</b>	<b>18</b>	<b>34</b>	<b>71</b>	<b>11</b>
Clare	2	2	0	0	2	0
Galway West	26	13	6	7	11	4
Mayo	103	65	12	26	44	6
Roscommon/ Galway East	15	14	0	1	14	1
<b>Total</b>	<b>438</b>	<b>224</b>	<b>114</b>	<b>100</b>	<b>152</b>	<b>29</b>

Source: Dáil Debate, 17 December, 2002, col. 1303-1306

## Miscellaneous

### Planning

In its second interim report the Commission recommended that “subject to certain conditions, the obtaining of planning permission should be in any subsequent court application *prima facie* evidence that the premises are satisfactorily designed and that traffic and other such considerations have been taken into account”.<sup>81</sup>

The Commission is concerned that the Department of the Environment and Local Government appears to regard the sale of alcohol and the sale of other merchandise as similar for planning purposes. Commencement of the sale of alcohol by a person already retailing other merchandise is not considered as a change of use of premises. The Commission finds it quite extraordinary that in spite of the many pronouncements from the Department of Health and Children on alcohol-related issues the planning authorities continue to regard alcohol in the same way as all other merchandise.

To hold such a view is to be blinded from seeing what has grown up in our society over the last ten years. Where any licensee requires a planning permission in connection with his/her premises there are statutory provisions in force and these the planning authorities should take into account.

The Commission believes that the sale of alcohol is a very sensitive matter. Consequently, a message that alcohol is a mere commodity the same as other commodities should neither be endorsed nor conveyed. It is surely contrary to any national alcohol policy that this should be so. The Commission deplors it and recommends immediate change. For the future, therefore, outlets selling alcohol which are in close proximity to schools or sports facilities used by young persons must be discouraged.

Local planning authorities rather than the courts are the appropriate bodies to assess the suitability and location of premises for the sale of alcohol.

*The Commission recommends that any person who wishes to sell alcohol should be required to obtain planning permission for a premises not already licensed before applying to the court to do so and that the Planning Authority in arriving at its decision takes into account all statutory requirements. Such recommendation would not apply to an application for a wine retailer's off-licence, in which case the court shall satisfy itself as to the suitability of the premises.*<sup>82</sup>

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Commission on Liquor Licensing, Second Interim Report, July 2002, p.13.

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This recommendation was not acceptable to Ms. C. Foley, Director of Consumer Affairs, Mr. P. Kenny, Competition Authority and Mr. B. Whitney, Department of Enterprise, Trade and Employment on the grounds that the suitability of premises is already dealt with under the licensing laws and that this proposal presents a new and unwarranted barrier to entry to the business. They also argued that the Commission exceeded its terms of reference in recommending changes to the planning laws noting that the Commission did not include a representative of the Department of the Environment and Local Government among its membership nor did it have the benefit of any expert input from planning specialists. The Chairman saw no merit whatever in the contention that what the Commission recommended under this heading exceeded its terms of reference. The Commission's terms of reference commence as follows: "to review the liquor licensing system in the light of all relevant factors". If this did not include planning regulations for the sale of alcohol then it would undermine a great deal of the Commission's work. Ms. A. Forde, RGDATA did not support this recommendation as she considered the scrutiny of the courts to be sufficient and the involvement of planning authorities inappropriate.

In a similar vein, if a licensed premises wishes to open a nightclub, new planning permission should be required because an additional activity at a venue can have considerable environmental impacts (numbers, noise, fire safety, etc.). While it is likely that many planners would regard the increased volume of use resulting from such change as requiring planning permission, the Commission wishes to identify clearly its position on the issue.

### **Public Order Issues**

The Commission thought it advisable to consult with the National Crime Council on certain aspects of its work. It is not easy for the Commission to address public order issues while a new Bill remains to be passed in the Oireachtas.

The Commission has at all times gone to the greatest pains to ensure that it can never be accused of second guessing the Oireachtas and therefore there are many public order issues which the Commission will not be able to address in this report.

The issue of drunkenness is one which arises in so many criminal matters and which is a major concern for the National Crime Council. It is also a cause of major concern for the Commission. Drunkenness, particularly in public places is to be deplored and whether directly or indirectly should not be countenanced in any civilised society.

Yet drunkenness is advanced frequently in criminal cases as either an excuse for crime or a cause of mitigation of sentence. Were this Commission to make any specific recommendation on how self-induced drunkenness should be regarded by the criminal courts it might be seen as exceeding its terms of reference.

*The Commission therefore recommends that the use of the argument of drunkenness as a defence to a criminal prosecution or as a ground for mitigation of penalty should be considered as a matter of priority by the appropriate body and recommendations made to the Government thereon.*

Whether that appropriate body is the National Crime Council or The Law Reform Commission is a somewhat moot point. The question might be better addressed by The Law Reform Commission because it may involve legislative changes in the criminal law. In any event, whichever body is requested to deal with this matter should be requested to do so urgently, so that the resulting recommendations can be incorporated into legislation at the earliest possible opportunity.

### **Training**

In its first report the Commission recommended measures for the training of those involved in off-licence sales. This is even more important for on-licence sales. The Commission also recommended that an appropriate framework should be put in place, without delay, to permit the national operation of the Responsible Server Programme. Happily, the Department of Health and Children and the licensed trade associations have achieved this and the Responsible Server Programme is now managed by CERT. The Commission is supportive of this development as CERT has the appropriate expertise to manage this training programme.

The Commission considers that if a training programme is available it is up to all licensees - and that includes hotels, clubs, etc. to avail of it and ensure that their staff achieve the full benefits of a training programme which is both effective and user friendly.

*The Commission recommends that the courts should insist that all applicants for licences and special exemption orders provide formal training for their personnel. Furthermore, where any licence holder has been convicted of an offence, the court should enquire into and satisfy itself as to the training of those concerned and make any appropriate order arising from this.*

### **Tax Certificates**

In the Comptroller and Auditor General (C&AG) Report of September 2002, the C&AG cited some examples of deliberate tax default in the liquor licensing sector. The Commission believes that the majority of licence holders are fully compliant with revenue law but the Commission also recognises that those few who fail to comply reflect badly on the trade and have an unfair trading advantage over compliant competitors.

*The Commission accordingly recommends that appropriate measures be taken, including the introduction of new or amending legislation by means of a Finance Bill or other instrument, to address any current shortcomings which exist at present, to ensure a level playing field for all licence holders in relation to revenue law.*

### **Grant of a Wine Retailer's Off-Licence**

During the course of the Commission's work, the Commission was made aware that as a result of section 36 of the Intoxicating Liquor Act, 2000 there is no restriction to the granting of a wine retailer's off-licence and no requirement necessary in relation to suitability of premises, planning permission or rateable valuation.

The Commission has recommended that all licensing matters should be entrusted to the District Court.<sup>83</sup> Implementation of this recommendation will address anomalies brought about by section 36.

### **Rates Relief for Public Houses in Rural Areas**

#### ***Introduction***

The majority (71%) of public houses are located in small towns (with a population of 10,000 or less) or in open country and most of them (95%) are independently owner or family run businesses.

Ireland's rural public houses are not merely drinking establishments. They contribute to the quality of life experience by rural residents by serving as a social focal point in villages; providing an informal meeting place for friends and family and a formal meeting place for community groups and associations. Many double as a post office, grocery shop or small restaurant.

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Commission on Liquor Licensing, Second Interim Report, July, 2002, p.12.

Rural public houses bring direct employment to villages and towns throughout the country and also provide linkage jobs in furniture and refurbishment, entertainment and maintenance trades. They also contribute positively to the important tourism sector. Traditional Irish public houses are significant in perceptions of Ireland as a tourist destination and provide an ambience and social setting for tourists that are often uniquely Irish.

In a submission to the Commission, the Vintners' Federation of Ireland (VFI) stated that many rural public houses barely generate a survivable income, while one in five public houses outside of Dublin have a turnover of less than €32,000 and about one in three less than €64,000. The VFI proposed the introduction of a rates relief scheme for rural public houses, similar to that which was introduced in the UK.

### **UK Experience**

In the UK, the Government recognised the importance of public houses as essential community amenities and granted mandatory rates relief to village public houses. Provision was made under the Local Government Rating Act, 1997 for mandatory and discretionary rate relief for non-domestic rates for certain rural general stores and post offices. The rationale was that these businesses played a special role in the life of the community and their loss would reduce the amenities available to rural communities and change the character of village life.

The 1997 Act retained the right of local authorities to give hardship relief. It also allowed them to grant discretionary relief of up to 100% to any shop, post office or business, including public houses which (i) have a rateable value below a certain amount; (ii) are in a designated rural settlement of 3,000 people or less; or (iii) are of benefit to the community and whose loss would be detrimental to the quality of village life.

### **Conclusion and Recommendation**

The Commission considers that public houses play an important economic and social role in rural villages and that recognition of that role might be given by way of rates relief. Rates relief, of a limited and focused nature, could increase the long-term viability of some rural public houses and facilitate their role in the preservation of rural services.

*The Commission recommends that consideration be given to the introduction of rates relief for rural public houses or other licensed premises within specified turnover limits and in designated areas of low population, particularly where a public house is the only gathering place in the locality and is specifically used in a social context for meetings, etc..<sup>84</sup>*

### **Vending Machines**

The sale of alcohol through vending machines is a reprehensible practice and runs counter to the licensing code. The Commission considers that any change in this position would be inappropriate since the lack of controls associated with such sales facilitates underage drinking, drunkenness etc..

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Ms. C. Foley, Director of Consumer Affairs, Mr. P. Kenny, Competition Authority and Mr. B. Whitney, Department of Enterprise, Trade and Employment opposed this recommendation on the grounds that this matter was not covered by the Commission's terms of reference.

*The Commission recommends that the sale of alcohol through vending machines be expressly prohibited.*

### **Dormant Licences**

The Commission's first report highlighted the fact that a liquor licence was a licence to trade and not a vehicle for speculation. Therefore, renewal of dormant licences should as the Commission recommended be opposed. It is not suggested that any draconian measures be taken but it is perfectly clear that licences are being used for speculative purposes. Advertisements for their sale regularly appear in the newspapers. The Commission did not wish that this would change overnight but wanted a situation whereby the issue would be flagged now and that in say a year's time the renewal of all such dormant licences would be opposed by An Garda Síochána. This will end speculation in licences by bringing the existing dormant licences on to the market and result in more realistic costs for such licences. The Commission repeats this recommendation which will take the speculative element out of licences.

### **Garage Forecourts**

The ongoing development of the roads system in this country is being accompanied by the development of refreshment facilities for road users. This is a welcome development which provides useful and necessary services. The Commission is however, concerned that the sale and supply of alcohol in these outlets could have serious implications for road safety. Without in any way underestimating the difficulty of distinguishing these outlets from retail outlets such as supermarkets, shops and stores which supply petrol and other fuel, the Commission recommends that the Department of Transport give serious consideration to restricting the sale of alcohol in motorway facilities. The Commission notes in this context that both the Netherlands and the UK have restricted the sale of alcohol in such outlets in the interest of road safety.

## **Prioritisation**

In its first three reports the Commission made over 70 recommendations. In this report a similar number of recommendations deal with a range of issues.

Happily, the Government appears to be tuned to responding to the Commission's recommendations and has already taken steps to adopt many of them. However, historically this has not always been the case as recommendations made from time to time on alcohol-related matters have not always been carried into effect. Indeed, there are matters on which the Commission found the response from certain Government departments to be less than wholehearted.

From the early 1990's the problem of excess drinking among young people has grown and grown. It is not a political issue. It is a very serious social issue.

When the Commission was established it was given three months to bring in its first report. This was also the time-frame given to the Strategic Task Force on Alcohol set up under the auspice of the Department of Health and Children to produce a report. The imposition of such demanding deadlines shows that the Government was impatient to get on with the task. The time has come to address in a focused direct manner the problems that have grown before our eyes.

The Commission's final recommendation therefore is that all of the recommendations contained in this report are prioritised and carried into effect with the very impatience that is necessary under the circumstances. If the recommendations in our reports are not to be carried into effect and carried into effect speedily then the setting up of the Commission would have been an exercise in futility.

## Summary Recommendations

Recommendations	Reasons
<p><b>National Alcohol Strategy</b></p> <p>1. Adoption and implementation of an updated National Alcohol Strategy which would contain realistic and measurable objectives, review mechanisms and provision for the publication of progress reports.</p>	<p>To introduce a national alcohol strategy to provide a coherent national framework to deal with alcohol-related issues.</p>
<p><b>Licences in Areas of High Population that are Under-Pubbed</b></p> <p>2. The introduction of a non-transferable on-licence for owner-operators in areas of need, based on population density and that:</p> <ol style="list-style-type: none"> <li>a. such licence be only available to a person who is a new entrant to the licensed trade and who does not hold a licence, either directly or indirectly;</li> <li>b. the current requirement to extinguish an existing on-licence should not apply where the premises for which the licence is sought does not exceed a maximum total floor area of 130 sq. metres;</li> <li>c. any future extension of the premises to bring the combined floor space to over 130 sq. metres would require the special small premises licence to be forfeited and an application for a standard on-licence to be made;</li> <li>d. the applicant should pay such meaningful fee as the Minister may determine and which might be proportionate to the size of the premises; and</li> <li>e. off-sales shall be prohibited and such premises shall not qualify for special exemption orders.</li> </ol>	<p>To introduce a licence in areas of high population to encourage small owner-run premises.</p>



Recommendations	Reasons
<p><b>Hours of Trading</b></p> <p>3. The normal closing time on Thursday should be set at 11.30pm, i.e. the same as Monday, Tuesday and Wednesday.</p>	<p>To address identified problems in relation to attendance at work, college, etc..</p>
<p>4.</p> <ul style="list-style-type: none"> <li>- Special exemption orders should continue to be granted by the District Court;</li> <li>- A local authority may formally adopt a resolution concerning the duration of special exemption orders in all or part of its functional area following consultation with all relevant local interests; and</li> <li>- Where a local authority has formally adopted any such resolution, the District Court shall have regard to its content in granting special exemption orders.</li> </ul>	<p>To enable local authorities to have a role, in consultation with local interests, regarding the grant of special exemption orders.</p>
<p>5. The District Court shall not grant a special exemption order unless it is satisfied that:</p> <ul style="list-style-type: none"> <li>a. the event will be conducted in a manner that will not cause undue inconvenience or nuisance to residents in the vicinity of those premises, or to residents elsewhere; and</li> <li>b. there is no undue risk of public disorder in the vicinity of those premises or elsewhere.</li> </ul>	<p>In the interest of public order.</p>
<p>6. Entertainment should be prohibited during drinking-up time.</p>	<p>To ensure that drinking-up time is specifically for clearing the premises.</p>

<b>Recommendations</b>	<b>Reasons</b>
<p><b>Mixed Trading</b></p> <p>7. Retention of existing mixed trading provisions in relation to the sale of alcohol for consumption off the premises, subject to strict compliance with, and rigorous enforcement of the law.</p>	<p>To ensure that licence holders are fully compliant with the law.</p>
<p>8. That the sale of alcohol for consumption off the premises be permitted on Sunday mornings.</p>	<p>To reflect changing lifestyles.</p>
<p>9. That retail outlets engaged in mixed trading adopt written policies and procedures in relation to the sale of alcohol and ensure that the sale of alcohol is supervised by trained staff.</p>	<p>To ensure that all retail outlets engage in best practices regarding the sale of alcohol.</p>
<p>10. Premises engaged in mixed trading to indicate the periods during which the sale of alcohol is permitted by means of notices prominently exhibited within the premises.</p>	<p>To facilitate the enforcement of the law.</p>
<p>11. Where the sale of alcohol is for consumption on licensed premises, the conduct of non-licensed trade be prohibited between normal closing time, or expiry of a special exemption order, and 7.00am.</p>	<p>To clarify the law and facilitate its enforcement.</p>
<p>12. Repeal existing provisions for early closing licences and upgrade existing licences subject to any conditions as may be considered necessary.</p>	<p>To bring early closing licences into line with full on-licences.</p>

Recommendations	Reasons
<p><b>Distance Sales and Delivery of Alcohol</b></p> <p>13. Appropriate legislative provision be made:</p> <ul style="list-style-type: none"> <li>a. for a customer to place an order with a licensed distance seller from any location;</li> <li>b. for licensees to receive orders at any location, not only from the premises specified in the licence;</li> <li>c. for a licensed distance seller to deliver intoxicating liquor from the licensed premises to any location (subject as herein regarding control issues); and</li> <li>d. to place and receive orders for distance sales outside of normal opening hours but some restriction on the times at which deliveries may be made (not necessarily to normal opening hours) may be warranted.</li> </ul>	<p>To facilitate distance sales and delivery of alcohol, and introduce appropriate controls.</p>

Recommendations	Reasons
<p><b>Distance Sales and Delivery of Alcohol - contd.</b></p> <p>14. A new annual licence to be introduced for retailers engaged in distance sales only, applications for the licence (which may raise jurisdiction issues) to be made to the District Court which would have to satisfy itself as to the suitability of the applicant and any premises specified and the provisions relating to the licence to have the following special characteristics:</p> <ul style="list-style-type: none"> <li>a. where distance sellers do not maintain their own stock, it would be necessary to specify a premises where details of transactions are maintained and available for inspection;</li> <li>b. where distance sellers maintain their own stocks, the licence should specify the premises in which stocks are stored, given that access by the Revenue Commissioners and An Garda Síochána is an essential feature of the control system.</li> </ul> <p>The applicable licence fee should be equivalent to fees for comparable licences e.g. off-licences.</p>	<p>To introduce a new licence for retailers involved in distance sales only and appropriate controls.</p>
<p>15. Advertisements for distance sales, including websites, should include the licensee's licence number and a business address at which records are kept and are available for examination.</p>	<p>To permit enforcement of the licensing code in respect of distance sales.</p>

<b>Recommendations</b>	<b>Reasons</b>
<p><b>Distance Sales and Delivery of Alcohol - contd.</b></p> <p>16. - The delivery to persons under the age of 18 years should be prohibited;</p> <ul style="list-style-type: none"> <li>- All advertisements for distance sales, including websites, be required to clearly specify the minimum age provisions in the licensing code, pointing out that a breach of these provisions is an offence by the person who buys, sells, delivers or supplies alcohol to a person under 18; and</li> <li>- Retailers involved in distance sales be required to maintain appropriate records.</li> </ul>	<p>To introduce safeguards in relation to underage persons.</p>
<p>17. - The licensing code should enable the Minister to approve codes of practice; and</p> <ul style="list-style-type: none"> <li>- The ASAI Code of Advertising Standards for Ireland should reflect the nature of distance sales of alcohol.</li> </ul>	<p>To strengthen the law in relation to the advertisement of distance sales of alcohol.</p>
<p><b>Registered Clubs</b></p> <p>18. That there be no change to the methods for charging excise duties for registered clubs on registration or renewal.</p>	<p>To distinguish between clubs and licensed premises, as clubs are not commercial entities and therefore not competing with licensed premises.</p>
<p>19. The law be amended to enable any person to object to the first grant of a club certificate.</p>	<p>To introduce the same conditions for the grant and renewal of a club certificate.</p>
<p>20. An Garda Síochána to be a notice party for the renewal of a club certificate.</p>	<p>To ensure compliance with the law.</p>

<b>Recommendations</b>	<b>Reasons</b>
<p><b>Registered Clubs - contd.</b></p> <p>21. The notice period of service and publication for the grant and renewal of a certificate of registration to be the same as that applicable to an on-licence.</p>	<p>To bring the law pertaining to the granting and renewal of a club certificate into line with that for on-licences.</p>
<p>22. The Private Security Services Bill, 2001 and the establishment of the Private Security Authority be given high priority.</p>	<p>To improve standards within the private security sector and introduce a system of best practice.</p>
<p>23. The introduction of a Responsible Server Programme for people involved in the supply and sale of alcohol in registered clubs and the full support and participation of clubs in the Programme.</p>	<p>In the interest of the public good.</p>
<p>24. Dispense with the rule requiring the purchase of alcohol by members only.</p>	<p>To update the law.</p>
<p>25. The signing-in requirement for registered clubs to be retained.</p>	<p>To ensure compliance with the law and to reflect that a registered club is a private institution for the benefit of its members.</p>
<p>26. The grounds for entry by An Garda Síochána to registered clubs should be the same as for any other premises supplying intoxicating liquor.</p>	<p>To assist in the enforcement of the law.</p>
<p>27. Legislation provide for endorsement of the certificate of registration where convictions take place.</p>	<p>To introduce stronger sanctions.</p>
<p>28. The current provision relating to events be retained.</p>	<p>To ensure that the distinction between registered clubs and licensed premises is retained.</p>

<b>Recommendations</b>	<b>Reasons</b>
<p><b>Registered Clubs - contd.</b></p> <p>29. The conditions contained in the Public Dance Halls Act, 1935 should apply to registered clubs.</p>	<p>To ensure the safe conduct of events in registered clubs.</p>
<p>30. Clubs should be required to give notice of applications for extended hours and special events and the public and appropriate authorities enabled to object to such applications.</p>	<p>In the interest of the public good.</p>
<p>31. Where premises are being used by more than one registered club, the number of authorisations for extension of club hours to be limited to 25 for the premises in question.</p>	<p>To introduce provisions in respect of premises used by more than one registered club.</p>
<p>32. That enactment of the Licensing of Indoor Events Bill, 2001 be given priority and that the statutory thresholds for the licensing of events take cognisance of registered clubs and be introduced as soon as possible after the enactment of the Bill.</p>	<p>To improve the law in relation to crowd and safety controls.</p>
<p>33. Clubs be required to provide tax clearance certificates for granting and renewal of registration.</p>	<p>To ensure parity between registered clubs and licensed premises for tax clearance purposes.</p>

Recommendations	Reasons
<p><b>Registered Clubs - contd.</b></p> <p>34. - Require that advertisements for functions in registered clubs, where the whole proceeds are for community, charitable or benevolent purposes, should so indicate; and</p> <ul style="list-style-type: none"> <li>- The Oireachtas take account of the commercial exploitation by some registered clubs of s.29 of the 2000 Act and introduce necessary legislative provisions.</li> </ul>	<p>To ensure strict enforcement of the laws relating to the advertising of functions by registered clubs and that these laws are kept under review.</p>
<p>35. Appropriate enforcement action should be taken against registered clubs found to be in breach of the law.</p>	<p>To ensure strict compliance with the law and appropriate sanctions.</p>
<p>36. Persons applying for ordinary membership of registered clubs in third level institutions should be elected <i>en bloc</i>. All such persons should either be employed by such institutions or be attending as students.</p>	<p>To clarify the law in relation to ordinary membership for registered clubs in third level institutions.</p>
<p><b>Residential Accommodation</b></p> <p>37. - Registered guesthouses be allowed to service intoxicating liquor to their resident guests only, by way of an annual non-transferable licence; and</p> <ul style="list-style-type: none"> <li>- The definition of 'hotel' for licensing purposes correspond with the Bord Fáilte register and current tourist legislation.</li> </ul>	<p>To enhance facilities available to guests at registered guesthouses.</p>



Recommendations	Reasons
<p><b>Restaurants</b></p> <p>38. The introduction of a two-tier, non-transferable annual restaurant licence to permit holders to sell either, (i) wine, or (ii) wine, beer, including cider, and spirits, and that:</p> <ol style="list-style-type: none"> <li>a. applications and renewals for such a licence be made to the District Court;</li> <li>b. conditions attaching to a special restaurant licence shall apply; and</li> <li>c. a fee shall be payable.</li> </ol>	<p>To simplify and streamline the legislation in relation to restaurants.</p>
<p>39. A Declaratory Order procedure should be available for all restaurants.</p>	<p>To bring special restaurant licences into line with all other liquor licences in relation to Declaratory Orders.</p>
<p>40. Provisional licences for restaurants should be available where meals are provided.</p>	<p>To allow restaurants to operate under a provisional licence while awaiting their special restaurant licence.</p>
<p>41. Amend the definition of “Restaurant” for the purpose of a special restaurant licence.</p>	<p>To clarify the law in relation to non-licensed business.</p>
<p>42. The definition of “bar” should reflect a clear distinction between the services provided at bars and restaurants.</p>	<p>To clarify the law.</p>
<p>43. To enable intoxicating liquor to be served when a customer is considering the menu.</p>	<p>To update the law.</p>
<p>44. The repeal of the “30 minute rule” which requires that any intoxicating liquor supplied with a meal must be consumed within thirty minutes after the meal has ended.</p>	<p>To amend the provision as it is unduly restrictive.</p>

<b>Recommendations</b>	<b>Reasons</b>
<p><b>Restaurants - contd.</b></p> <p>45. To allow guests to buy intoxicating liquor for their hosts either before or after a meal.</p>	<p>To update the law.</p>
<p><b>Franchising</b></p> <p>46. No change to the licensing laws in respect of franchising.</p>	<p>There is insufficient evidence to indicate that a change in the law is necessary.</p>
<p><b>Wholesale Licences</b></p> <p>47. a. A new wholesale licence be introduced to cover the wholesaling of beer, wine and spirits, and the existing sub-category licences be terminated. Manufacturers, distributors and importers who sell to retailers should be governed by the requirements of this legislation and should require a wholesale licence.</p> <p>b. All wholesale licences should be issued by the District Court and the current system of simple application to the Revenue Commissioners terminated.</p> <p>c. Licences for wholesale trading should relate to a specific fixed premises and should be non-transferable.</p> <p>d. Wholesale licences should not be used for any sales direct to the public either on a face-to-face, electronic, postal or telephone ordering systems.</p> <p>e. Revenue regulations with which wholesalers are currently obliged to comply should remain in place.</p> <p>f. An Garda Síochána should be a notice party for application and renewal of such licences.</p>	<p>To clarify the law in relation to wholesale licences.</p>

Recommendations	Reasons
<p><b>Children and Young Persons</b></p> <p>48. Promotional practices that are conducive to, or may result in, excessive consumption of alcohol should be prohibited by law; the Gardaí should object to the renewal of licences where such practices are operated.</p>	<p>To strengthen the law in relation to promotional practices.</p>
<p>49. - All schools should have an alcohol policy;</p> <ul style="list-style-type: none"> <li>- The SPHE Programme be kept under constant review and alcohol related problems be placed at the forefront of the Programme;</li> <li>- Teachers participating in SPHE related training to be compensated for such training;</li> <li>- The Home School Community Liaison Scheme be continued and expanded to assist in underpinning delivery of education on alcohol abuse;</li> <li>- All steps to moderate the consumption of alcohol be undertaken, including whatever advertising campaigns are necessary;</li> <li>- SPHE be made available to young persons in an out of school setting through youth services; and</li> <li>- Greater monitoring and inspection of the terms and conditions of students engaging in part-time work to be undertaken.</li> </ul>	<p>To address the problems associated with the consumption of alcohol by young persons and increase awareness through education.</p>
<p>50. Permit licence holders by law to exclude 15/16/17 year olds from licensed premises or to limit the hours of their admission to the premises.</p>	<p>To give licence holders discretion regarding the presence of young persons on their premises.</p>

Recommendations	Reasons
<p><b>Powers of the District Court</b></p> <p>51. The District Court should have the power on hearing any objections to the renewal of a licence to direct that the premises or part of the premises be closed and remain closed for either a fixed period of up to 14 days or until any nuisance complained of has been abated.</p>	<p>To enhance the powers of the District Court in relation to licence renewal.</p>
<p><b>Enforcement</b></p> <p>52. The rules of evidence in relation to prosecution for underage drinking be clarified so that the proofs necessary are not unreasonably onerous.</p>	<p>To clarify the law.</p>
<p>53. Garda powers of entry and search for the purposes of enforcement of the intoxicating liquor code be broadened to include non-uniformed officers.</p>	<p>To improve enforcement of the licensing code.</p>
<p><b>Planning</b></p> <p>54. Any person who wishes to sell alcohol should be required to obtain planning permission for a premises not already licensed before applying to the court to do so and that the Planning Authority in arriving at its decision takes into account all statutory requirements. This would not apply to an application for a wine retailer's off-licence, in which case the court shall satisfy itself as to the suitability of the premises.</p>	<p>To ensure that the premises and location are suitable for the sale of alcohol.</p>

<b>Recommendations</b>	<b>Reasons</b>
<p><b>Public Order Issues</b></p> <p>55. The use of the argument of drunkenness as a defence to a criminal prosecution or as a ground for mitigation of penalty should be considered as a matter of priority by the appropriate body and recommendations made to the Government thereon.</p>	<p>In the interest of the public good.</p>
<p><b>Training</b></p> <p>56. The courts should insist that all applicants for licences and special exemption orders provide formal training for their personnel. Furthermore, where any licence holder has been convicted of an offence, the court should enquire into and satisfy itself as to the training of those concerned and make any appropriate order arising from this.</p>	<p>To ensure that management and staff of licensed premises are adequately trained.</p>
<p><b>Tax Certificates</b></p> <p>57. Appropriate measures be taken, including the introduction of new or amending legislation by means of a Finance Bill or other instrument, to address any current shortcomings which exist at present, to ensure a level playing field for all licence holders in relation to revenue law.</p>	<p>To ensure that all licence holders are compliant with revenue law.</p>

<b>Recommendations</b>	<b>Reasons</b>
<p><b>Rates Relief for Public Houses in Rural Areas</b></p> <p>58. Consideration be given to the introduction of rates relief for rural public houses or other licensed premises within specified turnover limits and in designated areas of low population, particularly where a public house is the only gathering place in the locality and is specifically used in a social context for meetings, etc..</p>	<p>To reflect the social and economic role played by public houses or other licensed premises, particularly in rural areas.</p>
<p><b>Vending Machines</b></p> <p>59. The sale of alcohol through vending machines be expressly prohibited.</p>	<p>To ensure that appropriate controls are in place.</p>

## **Appendix I**

### **Members of the Commission on Liquor Licensing**

Mr. Gordon A. Holmes, Chairman  
Mr. Michael Ahern, Solicitor, Killorglin, Co. Kerry  
Mr. Seamus Carroll, Principal, Department of Justice, Equality and Law Reform  
Mr. Phonseý Croke, Principal, Office of the Revenue Commissioners and  
Department of Finance  
Mr. John Douglas, MANDATE and member of ICTU Executive Council  
Mr. Frank Fell, Chief Executive, Licensed Vintners' Association  
Mr. Chris Fitzgerald, Principal, Department of Health and Children and Mr.  
Christopher McCamley, Assistant Principal, Department of Education and Science  
Ms. Carmel Foley, Director of Consumer Affairs  
Ms. Ailish Forde, Director General, RGDATA  
Chief Superintendent John Kelly, An Garda Síochána  
Mr. Patrick Kenny, Competition Authority (Replaced Ms. Isolde Goggin January 2003)  
Mr. Jim McCabe, National Spokesperson & Executive Member, NOffLA  
Mr. Michael Murphy, Irish Business and Employers Confederation (IBEC)  
Mr. Colm Ó Mongáin, Press and Information Officer, National Youth Council of Ireland  
Mr. Henry O'Neill, Chief Executive, Restaurants Association of Ireland  
Mr. Tadg O'Sullivan, Chief Executive, Vintners' Federation of Ireland  
Mr. John Power, Chief Executive, Irish Hotels Federation  
Mr. Patrick Prendergast, Irish Nightclubs Industry Association  
Mr. Eddie Sharkey, Bord Fáilte  
Mr. Brian Whitney, Assistant Secretary, Department of Enterprise, Trade and Employment  
Ms. Catherine Sheridan, Assistant Principal, Department of Justice, Equality and Law Reform,  
Secretary to the Commission

### **Secretariat**

Ms. Antoinette Gavin, Executive Officer  
Ms. Olive Curran, Clerical Officer

### **Consultant**

Mr. Michael McGrath, Barrister

## **Appendix 2**

### **Terms of Reference**

The terms of reference are as follows:

- (1) To review the Liquor Licensing system in the light of all relevant factors, including systems for the licensing of alcohol in other countries, and to make recommendations for a Liquor Licensing system geared to meeting the needs of consumers, in a competitive market environment, while taking due account of the social, health and economic interests of a modern society.
- (2) In particular:
  - to review the scope for a system of additional licences,
  - to examine demand in areas that are under-pubbed, new areas of increasing population, and tourist areas,
  - to examine other aspects of the licensing system, such as licences for theatres and places of public entertainment, the licensing of residential accommodation which does not come under the definition of an hotel, interpretative centres and other places where the sale of alcohol is ancillary to the main business carried out.
- (3) To examine the nature of the off-licence and particularly the method of access to the off-licensed trade in the interests of promoting better competition.
- (4) To enquire into other aspects of the Licensing Code, as may be appropriate.
- (5) To make recommendations for any necessary legislative changes to give effect to the recommendations put forward.
- (6) To submit a report within three months of the first meeting on paragraph 3 of its terms of reference and a Final Report within two years of the first meeting on all other matters.
- (7) To examine the rights of licence holders to refuse admission and service in licensed premises and to make recommendations for any necessary legislative changes.



## **Appendix 3**

### **Submissions Received**

ACRA The National Body for Residents' Associations  
Association of Municipal Authorities of Ireland  
Professor Ivana Bacik  
Barnardos\*  
Bord Fáilte  
Mr. Finbarr Buckley  
Capital Bars Group  
Carrickmacross Pioneer Council  
Chief Fire Officers' Association\*  
Cooley Peninsula Local Issues Committee  
Consumers' Association of Ireland  
Mr. Jim Corcoran  
Cork G.A.A. Club Lobby Group  
Cork Opera House  
Cumann Lúthchleas Gael\*  
Mr. Michael Cummins  
Dothain  
Mr. James F. Dowling  
Ms. Maureen Dromey  
Ms. Mary C. Dunne  
Mr. Deryck Fay  
Film Institute of Ireland  
Ms. Ann Fitzpatrick  
Fitzsimons Hotel  
The Football Association of Ireland\*  
Mr. P. Gaffney  
Ms. Nell Gallagher  
An Garda Síochána  
Golfing Union of Ireland\*  
Green Party  
Ms. Mary Hanafin, T.D., Government Chief Whip and Minister of State at the Department  
of the Taoiseach  
Mr. Paul Hennebry  
Mr. Maurice Hennessy  
The Hibernian Hotel  
Mr. John Higgins  
Mr. Bill Holohan  
Irish Golf Course Owners Association  
Irish Hotels Federation  
Irish National Alliance for Action on Alcohol\*  
Irish Nightclub Industry Association\*  
Irish Rugby Football Union\*  
Mr. Michael Kehoe  
Mrs. Emile Lalor  
Licensed Vintners' Association\*

Longford Slashers G.A.A. Sports Club  
Mr. Tony McCarthy  
Mr. Philip McGarry  
Mountainglade Ltd.\*  
Mr. Sean and Ms. Mary Mulherin  
Mr. Patrick Murphy  
Mrs. Clára Ní Annracháin  
No Name Club\*  
Mr. F.X. O'Brien  
Mr. Declan O'Connor  
Ms. Judy O'Connor  
Mr. Sean O'Doherty  
Mr. Gerard O'Donoghue  
Mr. Paul O'Grady  
Mr. Timothy O'Leary  
Mr. Vincent O'Malley  
Mr. Micheál Ó Scanaill  
Ms. Suzanne O'Sullivan  
Mr. Michael O'Toole  
Mr. John Pearson  
Pioneer Total Abstinence Association  
Mr. Kevin Quinn  
Restaurants Association of Ireland\*  
RGDATA  
Judge David Riordan  
The Royal College of Physicians of Ireland\*  
Safari Nightclub  
M. Sheehan  
Temple Bar Properties\*  
Sgt. Patrick Thornton  
Trinity College, Students Union  
Mr. Edward F. Tucker  
University College Cork, Students Union  
University of Limerick  
Mr. Anthony P. Vesey  
Vintners' Federation of Ireland\*  
Mr. Thomas W. Walsh  
Mr. Brian Whitney  
The Washington Village  
Windmill Lane Ltd.

\* Organisations which made written and oral submissions

## **Appendix 4**

### **Consultees**

#### **Government Departments/Agencies**

Department of the Environment & Local Government  
Department of Health and Children - Dr. Jim Kiely, Chief Medical Officer  
National Crime Council  
Revenue Commissioners - Mr. John Ryan

#### **Public Representatives**

Mr. Seamus Brennan, T.D., Minister for Transport  
Ms. Mary Harney, T.D., Tánaiste and Minister for Enterprise, Trade and Employment  
Mr. Brian Lenihan, T.D., Minister of State, Department of Health and Children  
Mr. Micheál Martin, T.D., Minister for Health and Children  
Mr. Tim O'Malley, T.D., Minister of State, Department of Health and Children  
  
Mr. Joe Costello, T.D., Labour Party Spokesperson on Justice  
Mr. Ciaran Cuffe, T.D.  
Mr. Brendan Howlin, T.D.  
Ms. Breda Moynihan-Cronin, T.D., Labour Party Spokesperson on Equality and Law Reform  
Mr. Brian O'Shea, T.D.  
Ms. Jan O'Sullivan, T.D.  
Mr. Emmet Stagg, T.D.

#### **Education**

Ard Scoil Rís, Limerick  
Castletroy College, Limerick  
Holy Family Secondary School, Newbridge  
Liberties College, Dublin 8  
Loreto College, Dublin 12  
Newbridge College, Newbridge  
Patrician Brothers' School, Newbridge  
St. Conleth's Vocational School, Newbridge

#### **Drinks Industry**

Beamish & Crawford plc  
Mr. Pat Barry, Diageo Ireland (GuinnessUDV)  
Heineken Ireland

#### **Retail Companies**

ADM Londis  
Aldi  
BWG Foods Ltd.

Iceland  
Lidl  
Mangans Wholesale  
Musgrave SuperValu Centra Ltd.  
Superquinn  
Tesco

**Others**

Mr. Edward McCumiskey, Advertising Standards Authority  
Mr. Dermot Jewell, Consumers' Association of Ireland  
Mr. P.J. Fitzpatrick, Chief Executive, Courts Service  
Craincourt Ltd.  
Envision Management & Marketing Consultants  
An Garda Síochána  
Ms. Lorraine Compton, Matheson Ormsby Prentice  
Ms. Fionnuala Sheehan, MEAS  
Mr. Fergal MacCabe  
Mr. Bill Morrissey, Morrissey Auctioneers  
National Youth Council  
Mr. Stephen Rowen, Rutland Centre  
Dr. A.J. Parker and Ms. Sharon Flynn, Centre for Retail Studies, University College Dublin  
Mr. James V. Woods, B.L.

## **Appendix 5**

### **Recommendations from Previous Commission Reports**

#### ***Interim Report on Off-Licensing, May 2001***

##### **Dormant Licences**

1. Gardaí should object to renewal of publicans' licences where they lie dormant and are unused. As stated in this report, a licence is, in effect, a permission from the State and should not be retained merely for speculative purposes. Co-operation between the Revenue Commissioners and the Garda authorities in this regard is very much welcomed. The current 5-year moratorium applying in relation to unrenewed licences should, except in exceptional circumstances, be withdrawn. Death of the licensee, serious illness or a major refurbishment or development plan would be reasons why some small degree of latitude might be granted.

##### **Underage Drinking**

2. The Government should immediately establish a broadly based strategic task force, under the aegis of the Department of Health and Children, at least for the remaining duration of the European Alcohol Action Plan 2000 - 2005 to provide advice to Government and public bodies on best practice in alcohol harm prevention measures. This strategic task force should be set up without delay and its advice and recommendations should be immediately acted on.
3. Age card application forms should be distributed through all appropriate channels; the current processing fee of £5 should be abolished. As the age card will be the only acceptable evidence of age - not just for alcohol but for admission where appropriate to night clubs or discos or even cinemas it is essential that as many young people as possible take it up. Whatever form of advertising is necessary to bring these matters to the attention of young people should be undertaken. The age card should be tamper proof and be made as accessible and user friendly as possible.
4. The Department of Education and Science should give immediate effect to the system of working through individual schools with their parent teacher committees for the purposes of educating such parents to their prime responsibility to looking after their children and seeking the assistance of each school to set up programmes to advise parents accordingly. Each school should in turn be required to produce a statement of its policy on underage drinking and on educating its pupils accordingly.

There does not appear to be a formal policy in this regard and while the Commission is relieved to learn that this is being addressed, it believes that a more urgent programme than "On My Own Two Feet" should be introduced to deal specifically with the problem of underage drinking.

5. The Department of Education and Science should give immediate effect to a system of educating young people in the country on the dangers caused by the excessive consumption of alcohol and introduce this into the curriculum for all young people.

Where teachers give up their time to be taught the skills dealing with this problem they should not have to do so in their own time and should be paid for same.

6. Where additional resources are required to supervise and implement these regulations those should be provided. Highlighted to the Commission in the submissions received was the perception that overall the implementation of underage drinking regulations was not satisfactory.

<b>Recommendations</b>	<b>Reasons</b>
<p><b>Off-Licensing</b></p> <p>7. That a new liquor off-licence be created to permit holders to sell for consumption off the premises either:</p> <p>(a) Wine; or</p> <p>(b) Wine, beer including cider, and spirits.</p>	<p>To codify the laws. The position regarding existing licence holders should not be changed but they will have to apply for renewal to the Courts.</p>
<p>8. On applying for an off-licence it shall not be necessary for the applicant to cause an existing licence to be extinguished.</p>	<p>To liberalise off-licence laws in accordance with our terms of reference and to provide for adequate competition particularly in areas where such competition does not exist. (N.B. The checks and balances come later in these recommendations).</p>
<p>9. Application for such licence or for renewal of existing licences shall be to the Court. On any application for a new licence the requisite notices shall be published in the press and exhibited prominently in the premises to which the application relates. This notice shall identify clearly the procedures to be followed by objectors.</p>	<p>So the public will be aware of what is happening and can be heard if they have any objections.</p>
<p>10. The applicant will have to comply with the usual conditions regarding suitability of premises and the other grounds for objection as contained in section 18 of the 2000 Act.</p>	<p>General conformity with legislation and to give the public and/or the authorities proper grounds for objection.</p>

Recommendations	Reasons
<p><b>Off-Licensing - contd.</b></p> <p>11. Should a full off-licence be required as in recommendation 7(b) then the applicant shall be obliged to obtain planning permission and shall satisfy the Court at the hearing of the application that any conditions attached to such permission have been complied with.</p>	<p>Good planning practice and conformity with general practice to ensure that the layout of premises is suitable.</p>
<p>12. The usual other proofs such as tax clearance certificates to be produced prior to the issue of any licence.</p>	<p>Public policy.</p>
<p>13. That clear physical access to the premises be available to both the Garda Síochána authorities and to the officers of the Customs &amp; Excise. Failure to provide clear evidence of the availability of such access to be a reason for not issuing a licence.</p>	<p>For supervision purposes access by both Gardaí and Customs &amp; Excise is absolutely necessary.</p>
<p>14. On renewal if there is an objection each applicant to satisfy the Court that they continue to comply with planning permissions and that there are not public order offences committed with which the sale of liquor from their premises has been involved.</p>	<p>Common good.</p>

<b>Recommendations</b>	<b>Reasons</b>
<p><b>Off-Licensing - contd.</b></p> <p>15. a. Where an applicant is granted a licence under paragraph 7(b) of these recommendations then in order to reflect the social responsibility involved in selling alcohol he or she shall be required to pay such meaningful fee as the Minister may from time to time by regulation determine.</p> <p>b. The Minister shall determine upon a lesser fee where any of the following conditions apply:</p> <ul style="list-style-type: none"> <li>(i) The applicant's premises is not in an urban area nor in a highly populated area.</li> <li>(ii) The applicant's premises is in a holiday resort area; or</li> <li>(iii) Only a strictly limited amount of floor space is being made available for the display of alcohol.</li> </ul> <p>c. An annual renewal charge to be determined by the Minister in accordance with turnover of alcohol.</p>	<p>a. To reflect the social responsibility involved in selling alcohol and the Commission would recommend that the fee should be sufficient to emphasise to the public the importance of this.</p> <p>b. The Commission is conscious that in some rural areas there is quite inadequate competition and this recommendation is intended to cope with such a situation but they wish to emphasise again the importance of the social responsibilities involved in selling alcohol in any form.</p>
<p>16. Where a full off-licence is applied for the court to be satisfied as to the experience and training of those who will serve alcohol.</p>	<p>Public good.</p>

### **Extraneous Matters**

17. Where a proposed licensed premises does not abut the public roadway the grant of a licence certificate should contain a condition requiring unobstructed entry for the Garda Síochána and Customs and Excise in connection with enforcement of the licensing laws; any impeded entry should constitute grounds for immediately seeking a court order for closure of the premises. This is in accordance with recommendation 13.
18. An appropriate framework should be put in place without delay through agreement between the Department of Health and Children and the licensee trade associations, both on and off, to permit the national operation of responsible server programmes for all liquor sales staff. This is to enable recommendation 16 to be fully implemented and to ensure that those serving alcohol are properly trained.



**Second Interim Report, July 2002**

<b>Recommendations</b>	<b>Reasons</b>
<p><b>Codification of the Law</b></p> <p>1. The codification of the licensing laws should be commenced immediately and the required resources made available.</p>	<p>To update the licensing code in accordance with modern standards, thus reducing the various types of licence available and making the code more user-friendly.</p>
<p><b>Licensing System</b></p> <p>2. All licensing matters should be entrusted to the District Court.</p>	<p>To provide for a system which would be accessible, transparent and reflective of local conditions.</p>
<p>3. A fast-track system should be devised by the Circuit Court for licensing appeals.</p>	<p>To enhance the efficiency of the licensing appeals system.</p>
<p>4. Once planning permission has been obtained in respect of a new licence, in any subsequent court application that permission should, subject to certain conditions, be <i>prima facie</i> evidence that the premises themselves are satisfactorily designed.</p>	<p>To ensure that those issues already considered in the planning permission process, and which may not have relevance to a court application, need not be revisited by the courts.</p>
<p><b>Hours of Trading</b></p> <p>5. The legislative provisions relating to exemptions should be streamlined and brought together in a more accessible and user-friendly format.</p>	<p>To simplify legislative provisions in relation to exemptions. This can be done as part of its codification recommendation above.</p>
<p>6. Section 35 of the 1988 Act should be retained.</p>	<p>It is unusual for the Commission to make a recommendation which merely provides for the retention of an existing provision, but this affirms strong support for this provision relating to persons under 18.</p>

Recommendations	Reasons
<p><b>Hours of Trading - contd.</b></p> <p>7. The value of a substantial meal set by ministerial order under the Intoxicating Liquor Act, 1962 should be revised.</p>	<p>To update the relevant provisions.</p>
<p>8. The substantial meal requirement should be discontinued for special events and private functions involving dancing where the premises in which the event or function is being held is licensed under the Public Dance Halls Act, 1935.</p>	<p>To ensure consistency between legislative provisions relating to all functions held in premises licensed for public dancing.</p>
<p>9. References to “public market” and “fair” in relevant legislation should be removed and references to “lawful trade or calling” be supplemented with a reference to “employment”.</p>	<p>To ensure that the law reflects current economic and social conditions.</p>
<p>10. The existing prohibition on general exemption orders in Dublin should be removed subject to the introduction of safeguards to limit any potential abuses.</p>	<p>To ensure that the law reflects current economic and social conditions.</p>
<p>11. Applicants for general exemption orders should be required to publish notice of their intention to seek an order.</p>	<p>To ensure a transparent system in relation to applications for general exemption orders. The public are entitled to notice of matters which affect them and are entitled to be heard should they wish to raise objections.</p>
<p>12. Legislative provisions relating to the geographical scope of area exemption orders should be clarified.</p>	<p>To improve the enforcement of area exemption orders.</p>

Recommendations	Reasons
<p><b>Hours of Trading - contd.</b></p> <p>13. The possibility of confining area exemption orders to the “district” or “neighbourhood” where the event is taking place should be considered.</p>	<p>To improve the enforcement of area exemption orders and to facilitate the granting of such orders in Dublin.</p>
<p>14. All licensees intending to avail of an area exemption must be party to the application to the District Court; only such applicants should benefit from any order granted.</p>	<p>To improve enforcement.</p>
<p>15. Provision should be made for granting occasional licences to non-licence holders who can demonstrate their suitability to hold such licences and the availability of the necessary expertise.</p>	<p>To enable organisers of local festivals etc. who can avail of persons with the relevant experience and qualifications to obtain a licence for such events.</p>
<p>16. The appropriate licensing laws should apply in any place licensed for the sale of intoxicating liquor under an occasional licence.</p>	<p>To clarify the law in relation to occasional licences and to ensure that if they are abused the proper remedies will apply.</p>
<p>17. Holders of special restaurant licences should be permitted to apply for occasional licences on the same basis as other on-licence holders.</p>	<p>To eliminate disparities between the holders of special restaurant licences and other on-licence holders in connection with applications for occasional licences.</p>
<p>18. Legislative provision should be made for regulations to extend trading hours in respect of events and circumstances of exceptional interest to the general public.</p>	<p>To insert an enabling provision into legislation in relation to events of special or national interest.</p>
<p>19. All licensing provisions relating to transport facilities should be streamlined and contained in a more consistent and user-friendly format.</p>	<p>To simplify licensing provisions in relation to transport facilities.</p>

Recommendations	Reasons
<p><b>Hours of Trading - contd.</b></p> <p>20. Applications for the licensing of fixed transport premises should be made in the normal way to the District Court for a certificate enabling the Office of the Revenue Commissioners to issue the required licence.</p>	<p>To ensure that all such licences are granted on the same conditions as other on-licences.</p>
<p><b>Nightclubs</b></p> <p>21. Retain current licensing procedure but enable the courts to grant exemptions for periods of up to 3, 6, or 9 months.</p>	<p>To streamline the licensing procedure in respect of special exemption orders.</p>
<p>22. Allow Gardaí the right, at any time during the licensing year, to seek revocation, temporary closure, etc. in respect of such exemptions.</p>	<p>To increase opportunities for Garda enforcement - a matter of public concern.</p>
<p>23. Require applications for exemptions to be published in the press.</p>	<p>To increase transparency and opportunities for public scrutiny and to provide for objections where appropriate.</p>
<p>24. Charge fees for exemptions on a scaled basis to reflect the duration of the exemption and the hours of trading.</p>	<p>To ensure that fee structures reflect procedural changes.</p>
<p>25. Exemptions to be provided only for <i>bona fide</i> dancing and where the sale of alcohol is ancillary.</p>	<p>To eliminate the misuse of special exemption orders.</p>
<p>26. Require planning permission where existing licensed premises are used to operate a nightclub.</p>	<p>To give interested parties an opportunity to raise objections.</p>
<p>27. Subject all nightclubs to the same court certification process.</p>	<p>To streamline and regularise licensing procedures.</p>

Recommendations	Reasons
<p><b>Theatres and Places of Public Entertainment</b></p> <p>28. Licences should only issue to <i>bona fide</i> theatres.</p>	<p>To eliminate abuse of theatre licences.</p>
<p>29. All applications should be dealt with by the District Court and be subject to liquor licensing and planning legislation. All such licences to be renewed annually.</p>	<p>To streamline licensing procedures.</p>
<p>30. Trading hours should remain unchanged but only within standard 7-day on-licence trading hours. Liquor should not be sold during performances.</p>	<p>To ensure that the sale of alcohol in theatres is an ancillary activity.</p>
<p>31. Provision for special exemptions to apply for specific performances.</p>	<p>To introduce measures to assist in the enforcement of the law.</p>
<p>32. A definition of “theatre” and “performance” should be provided for in law.</p>	<p>To clarify the law and to prevent abuse of the system.</p>
<p>33. Entry to theatres should be by way of payment of a fee on receipt of pre-printed tickets for specific performances outlining the times of such performances.</p>	<p>To ensure that the sale of alcohol is ancillary to the main activity of theatres and to introduce measures to assist in the enforcement of the law.</p>
<p><b>Interpretative Centres/Museums</b></p> <p>34. A new type of non-transferable licence, granted by the courts, should be made available to allow interpretative centres to sell alcohol during normal opening hours.</p>	<p>To enhance the facilities provided by certain tourist attractions.</p>

Recommendations	Reasons
<p><b>Interpretative Centres/Museums - contd.</b></p> <p>35. Regional tourism authorities and SFADCo should be responsible for certifying interpretative centres as suitable for a licence, following an inspection, on the basis of clearly defined criteria, and on the basis of an appropriate and agreed index-linked fee applicable nationally.</p>	<p>To ensure that licences are only granted to <i>bona fide</i> centres.</p>
<p>36. Regional tourism authorities should make annual inspections before renewing the certificate of suitability.</p>	<p>To put in place a system of control.</p>
<p>37. The licence should apply for the normal opening hours of the centre as regards purchase of alcohol by consumers.</p>	<p>To ensure that the sale of alcohol is ancillary to the main activities of the licence holder.</p>
<p>38. The licence should also cover private functions outside normal opening hours, but should not cover the operation of a pay bar.</p>	<p>To introduce controls.</p>
<p>39. Notice of private functions should be served on the Garda Síochána.</p>	<p>To assist in the enforcement of the law.</p>
<p>40. Consideration should be given to setting a cut-off time for such functions.</p>	<p>To assist in the enforcement of the law.</p>
<p>41. A new type of licence should be created to all craft brewers to sell their own products on their premises during normal on-licence opening hours.</p>	<p>To enable craft breweries with visitor centres to retail their own products.</p>

<b>Recommendations</b>	<b>Reasons</b>
<p><b>Status of Children in Licensed Premises</b></p> <p>42. Legislation should be introduced to give licensees discretion in relation to the presence of children on their premises. Where children are permitted however, licensees should also be entitled to direct that any person accompanied by a child who has been on a licensed premises for, what is in the licensees' opinion, an excessively long period, be required to leave the premises concerned.</p>	<p>To clarify the law in relation to the presence of children on licensed premises and to ensure that the best interests of children are at all times protected.</p>
<p><b>Garage Forecourts</b></p> <p>43. The sale of alcohol at garage forecourts should be kept under review.</p>	<p>To monitor the demand for and consequences of the sale of alcohol at garage forecourts.</p>
<p><b>Advertising</b></p> <p>44. To keep the operation of advertising control under review.</p>	<p>To ensure that an appropriate advertising system is in place and is enforced.</p>
<p><b>Drinking by Young People</b></p> <p>45. An advertising campaign dealing with the effects of excessive drinking and targeted at young people in particular should be undertaken.</p>	<p>To actively seek to educate young people on the effects of alcohol and to promote a more responsible approach to its consumption.</p>

**Report on Admission and Service in Licensed Premises, December 2002**

<b>Recommendations</b>	<b>Reasons</b>
<p><b>Peaceable and Orderly Premises</b></p> <p>1. The circumstances in which admission or service may be refused should be set out clearly in legislation.</p>	<p>To ensure that licensed premises operate in a peaceable and orderly manner in the interest of public order.</p>
<p><b>Drunkenness</b></p> <p>2. Existing legislative provisions should be amended to increase penalties for drunken persons refusing to leave licensed premises and licence holders should be able to refuse admission and service to persons who have been expelled previously from the premises for reasons of drunkenness.</p>	<p>To strengthen the laws in relation to drunken persons.</p>
<p><b>Violent, Quarrelsome and Disorderly Conduct</b></p> <p>3. Section 18 of the Licensing Act, 1872 should be updated and extended to include abusive language, threatening behaviour and intimidation, and licence holders should be allowed to refuse admission and service to persons expelled previously from the premises for any such reason.</p>	<p>To strengthen the law in relation to disorderly conduct in licensed premises.</p>
<p><b>Closure of Premises in the interests of Public Peace and Order</b></p> <p>4. Section 19 of the Intoxicating Liquor Act, 1927 in relation to public peace and order should be maintained.</p>	<p>In the interest of public order.</p>
<p><b>Prostitution</b></p> <p>5. The provisions in the liquor licensing code relating to prostitution should be reviewed and updated to take account of the provisions of the Criminal Law (Sexual Offences) Act, 1993.</p>	<p>To ensure that the provisions in the liquor licensing code relating to prostitution are consistent with those in the 1993 Act.</p>



<b>Recommendations</b>	<b>Reasons</b>
<p><b>Prevention of Crime</b></p> <p>6. The retention of a provision similar to section 10 of the Prevention of Crimes Act, 1871 should be examined.</p>	<p>To ensure the relevance of provisions in the 1871 Act relating to licence holders</p>
<p><b>Children in Licensed Premises</b></p> <p>7. The restrictions on children in licensed premises should be retained and, where children are permitted, licence holders should be entitled to require a person who is accompanied by a child and who, in the opinion of the licence holder, has been on the premises for an excessively long period, to leave the premises together with the child.</p>	<p>To allow licence holders to have discretion in relation to the presence of children on their premises.</p>
<p><b>Sale, Supply and Distribution of Drugs</b></p> <p>8. Provisions of the Licensing (Combating Drug Abuse) Act, 1997 should be retained.</p>	<p>To prevent and curtail the sale, supply and distribution of controlled drugs and to ensure that licence holders are enabled to exercise reasonable control over their premises.</p>
<p><b>Admission of Groups</b></p> <p>9. Licence holders should have enhanced discretion to refuse admission or service in the case of groups of persons where there is any danger of disorderly conduct or harassment or improper behaviour towards staff or towards the safety of the premises generally.</p>	<p>To protect the safety and well-being of staff and customers.</p>
<p><b>Use of Weapons</b></p> <p>10. There should be a clear definition of disorderly conduct to include offences against a person and firearms offences.</p>	<p>To clarify the law to ensure the protection of staff and customers of licensed premises.</p>

<b>Recommendations</b>	<b>Reasons</b>
<p><b>Safety in the Workplace</b></p> <p>11. Legislation should provide that required health and safety standards are in place as a precondition for the renewal of intoxicating liquor licences</p>	<p>To strengthen health and safety legislation in respect of licensed premises</p>
<p>12. A licence holder should be enabled to refuse admission or service to any person who, acting or threatening to act in a violent, aggressive or disorderly manner, poses a risk to the health, safety or welfare of the licence holder or a member of the licence holder's family, employees, customers or members of the public, or require such person to leave the premises. Failure to leave the premises when requested should be an offence</p>	<p>To enable licence holders to refuse admission and service to persons in the interests of the health, safety and welfare of the licence holders themselves, family members, employees, customers or members of the public.</p>
<p><b>Harassment in the Workplace</b></p> <p>13. To permit the licence holders to refuse admission and service to persons who sexually harass or harass the licence holder, members of the licence holder's family, employees or customers.</p>	<p>To ensure that the licensing code reflects provisions in the Employment Equality Act, 1998 in relation to sexual harassment and harassment in the workplace.</p>
<p><b>Fire Safety and Overcrowding</b></p> <p>14. Fire safety provisions for all licensed premises must be improved and every effort taken to establish a proper method of inspection.</p>	<p>To ensure that there are effective and relevant fire safety controls in operation in relation to licensed premises.</p>
<p>15. A licence holder should be enabled to refuse admission or service to any person whose actions have created, or are likely to create, a risk of fire on or near the premises.</p>	<p>To improve fire safety controls for licensed premises.</p>

<p><b>Licensing of Indoor Events</b></p> <p>16. The enactment of the Licensing of Indoor Events Bill should be given priority.</p>	<p>To ensure that an effective statutory framework is in place in relation to crowd control and safety.</p>
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