



Number 14 of 2021

Civil Law (Miscellaneous Provisions) Act 2021



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ACTS REFERRED TO

Courts (No. 2) Act 1986 (No. 26)
Courts (Supplemental Provisions) Acts 1961 to 2019
Courts Act 2015 (No. 51)
Courts and Court Officers Act 1995 (No. 31)
Criminal Justice (Enforcement Powers) (Covid-19) Act 2020 (No. 14)
Criminal Justice (Public Order) Act 1994 (No. 2)
Health Act 1947 (No. 28)
Health and Criminal Justice (Covid-19) (Amendment) Act 2021 (No. 12)
Interpretation Act 2005 (No. 23)
Licensing Acts 1833 to 2018
Planning and Development Act 2000 (No. 30)
Planning and Development Acts 2000 to 2021
Registration of Clubs (Ireland) Act 1904 (4 Edw. 7, c. 9)
Registration of Clubs Acts 1904 to 2008
Roads Act 1993 (No. 14)
State Property Act 1954 (No. 25)



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CIVIL LAW (MISCELLANEOUS PROVISIONS) ACT 2021

An Act to—

- A. make provision, on a temporary basis, for the sale or supply of intoxicating liquor in certain circumstances in seating areas located outside licensed premises in order to allow, in the public interest and having regard to the manifest and grave risk to human life and public health posed by the spread of the disease known as Covid-19, the businesses of licensees of such premises to operate in a manner that mitigates the spread of that disease; to provide for the application of certain enactments to those outdoor seating areas; to provide for additional enforcement measures in respect of those outdoor seating areas to ensure compliance with those enactments; to provide for additional bases for objection to renewal of licences and, in the case of clubs, certificates of registration, in respect of such premises, and provide for related matters, and
- B. provide for an increase in the number of ordinary judges of the High Court and, for that purpose, to amend the Courts and Court Officers Act 1995, and provide for related matters.

In relation to paragraph A of the foregoing:

WHEREAS an emergency has arisen and continues in the State by virtue of the spread of the disease known as Covid-19;

AND WHEREAS the State and its citizens are, in significant respects, highly exposed to the effect of the spread of that disease;

AND WHEREAS the State, having regard to the need to preserve and protect public health, has introduced a range of extraordinary measures and safeguards to prevent, minimise, limit or reduce the risk of persons being infected with that disease;

AND WHEREAS the emergency that has arisen and continues is of such a character that for compelling reasons of public interest and for the common good, to assist and support

the State's efforts to promote and maintain the normal functioning of society, to protect the gradual reopening of society and, to the greatest extent possible, to avoid the imposition or re-imposition of restrictions thereon, it is necessary, in order to allow the businesses of licensees of licensed premises to operate in a manner that mitigates the spread of that disease, to provide in this Act for the sale or supply of intoxicating liquor, subject to the application of certain enactments to such areas and additional powers of enforcement of those enactments, in certain circumstances in seating areas located outside such premises; [2nd July, 2021]

Be it enacted by the Oireachtas as follows:

Definitions

1. In this Act—

“Act of 1904” means the Registration of Clubs (Ireland) Act 1904;

“Act of 2020” means the Criminal Justice (Enforcement Powers) (Covid-19) Act 2020;

“authorisation” means an authorisation given by a statutory authority in the form of a licence, permit, consent, approval or permission or any other form and includes a licence granted under section 254 of the Planning and Development Act 2000 and a consent given under section 71 of the Roads Act 1993;

“club” means a club registered under the Registration of Clubs Acts;

“enactment” has the same meaning as it has in the Interpretation Act 2005;

“licence” means a licence for the sale by retail of intoxicating liquor whether granted on production or without production of a certificate of the Circuit Court or the District Court;

“licensed premises” means a premises in relation to which—

- (a) a licence is in force,
- (b) a certificate of registration under the Act of 1904 is applicable and in force and which supplies intoxicating liquor;

“licensee” means—

- (a) the holder of a licence, and
- (b) in relation to a club registered under the Registration of Clubs Acts, every person entered in the register of clubs (kept under those Acts) as an official or member of its committee of management or governing body at the material time;

“Licensing Acts” means the Licensing Acts 1833 to 2018;

“Minister” means the Minister for Justice;

“normal business” means, in relation to a licensed premises, the business that would be, or might reasonably be expected to be, lawfully carried on on the premises but for any

regulations made under section 31A of the Health Act 1947;

“outdoor seating area” means, in relation to a licensed premises, an outdoor seating area—

- (a) lawfully used by a licensee of that premises pursuant to an authorisation, or
- (b) on private land abutting the premises where—
 - (i) the land is owned, or occupied by way of a lease or licence, by the licensee of the premises,
 - (ii) a licence is not in force, or a certificate of registration under the Act of 1904 is not applicable and in force, in respect of the area,
 - (iii) the number of seated patrons who can be accommodated in the area does not exceed the number of patrons who may be accommodated in the licensed premises,
 - (iv) the area contains sufficient seating to accommodate the number of seated patrons referred to in *subparagraph (iii)*,
 - (v) the area does not contain any counter or barrier across which intoxicating liquor can be served to the public, and
 - (vi) the sale or supply of intoxicating liquor by the licensee to patrons in the area is an ancillary part of the normal business carried on on that premises;

“private land” means land other than State land (within the meaning of the State Property Act 1954);

“Registration of Clubs Acts” means the Registration of Clubs Acts 1904 to 2008.

Temporary licensing of outdoor seating area

2. (1) Subject to this Act and notwithstanding any other enactment, an outdoor seating area of a licensed premises shall, for the period during which this section continues in operation, be deemed to be part of the premises concerned and the Licensing Acts and, where the premises is a club, the Registration of Clubs Acts, shall apply to that area as they apply to the premises and, without prejudice to the generality of the foregoing—
- (a) it shall be lawful for the licensee of that licensed premises to sell or supply intoxicating liquor in the outdoor seating area on the same basis that it is lawful to sell or supply intoxicating liquor under the licence, or, in respect of a club, the certificate of registration under the Act of 1904 in force, attaching to that premises, and
 - (b) for the purposes of the renewal—
 - (i) of the licence concerned under section 4 of the Courts (No. 2) Act 1986, failure to operate the outdoor seating area in accordance with this Act or the

Licensing Acts shall be grounds for objection to the renewal of the licence, or

- (ii) of the certificate of registration concerned under section 3 of the Act of 1904, failure to operate the outdoor seating area in accordance with this Act, the Licensing Acts or the Registration of Clubs Acts shall be a basis for objection to the renewal of the certificate under section 5 of the Act of 1904.
- (2) *Subsection (1)(b)* shall apply to the renewal of the licence or certificate of registration, as the case may be, referred to in that provision irrespective of whether, at the time of such renewal, the licensee has ceased to operate the outdoor seating area concerned.
- (3) Notwithstanding the type of licence held by a licensee, or, in respect of a club, that a certificate of registration under the Act of 1904 is in force, in respect of a licensed premises, the sale or supply of intoxicating liquor in an outdoor seating area shall not be lawful where the intoxicating liquor is sold or supplied for consumption off the premises or outdoor seating area.
- (4) Notwithstanding the type of licence held by a licensee, or, in respect of a club, that a certificate of registration under the Act of 1904 is in force, in respect of a licensed premises, the sale or supply of intoxicating liquor in an outdoor seating area shall be lawful only—
 - (a) subject to *paragraph (b)*, within the times permitted by the Licensing Acts and, where the licensed premises is a club, the Registration of Clubs Acts, in respect of the licence or the certificate of registration, or
 - (b) where any one or more than one of such times has been restricted by or under any enactment (including regulations made under *section 7*) or by an authorisation, within the time or times concerned as so restricted.
- (5) *Subsection (1)* shall not be taken to authorise—
 - (a) the use of an outdoor seating area for a use which is not authorised by or under the Planning and Development Acts 2000 to 2021, which Acts shall continue to have full force and effect in respect of that area, or
 - (b) any activity in an outdoor seating area which is otherwise unlawful.

Direction of member of Garda Síochána

3. (1) A member who suspects, with reasonable cause, that a specified person is not complying with—
- (a) a provision of the Licensing Acts, the Registration of Clubs Acts or this Act applicable to an outdoor seating area, or
 - (b) an authorisation,

may, for the purposes of ensuring compliance, direct the specified person to take such steps as the member considers necessary to comply with the provision or the authorisation, as the case may be.

- (2) A person who, without reasonable excuse, fails or refuses to comply with a direction under *subsection (1)* shall be guilty of an offence.
- (3) A member may request a licensee to produce the authorisation, or proof of the authorisation, in force in respect of an outdoor seating area and to produce satisfactory proof, in relation to an outdoor seating area on private land, that the area concerned is owned, or occupied by way of a lease or licence, by the licensee.
- (4) A person who, without reasonable excuse, fails or refuses to produce the authorisation or proof when requested to do so under *subsection (3)* is guilty of an offence.
- (5) A member who has reasonable grounds for believing that a person is committing or has committed an offence under this section may require the person to state his or her name and address.
- (6) A person who fails or refuses to state his or her name and address in compliance with a requirement under *subsection (5)*, or who, in purported compliance with such a requirement, states a name or address that is false or misleading, shall be guilty of an offence.
- (7) A member may arrest without warrant any person whom the member has reasonable cause for believing has committed an offence under this section.
- (8) A person who is guilty of an offence under this section is liable on summary conviction to a class C fine or to imprisonment for a term not exceeding 6 months, or both.
- (9) For the avoidance of doubt, the powers of a member under this section are in addition to any other powers a member has in relation to an outdoor seating area by or under the Licensing Acts or the Registration of Clubs Acts (by virtue of the operation of *section 2*) or any other enactment.
- (10) In this section—
 - “member” means a member of the Garda Síochána;
 - “specified person”, in relation to a licensed premises, means—
 - (a) the licensee of the premises,
 - (b) the occupier of the premises,
 - (c) the manager of the premises, or
 - (d) any other person for the time being in charge of the premises.

Application of Act of 2020 to outdoor seating area in respect of certain enactments and authorisation

4. (1) The Act of 2020 shall apply to an outdoor seating area in respect of a provision of an enactment or an authorisation referred to in *section 3(1)* as the Act applies to a relevant premises in respect of a relevant provision subject to the following modifications—
- (a) a reference in that Act to a direction given under section 31A(7) of the Health Act 1947 (howsoever expressed) in respect of a relevant premises shall be construed as a reference to direction given under *section 3* in respect of an outdoor seating area,
 - (b) a reference in that Act to a relevant premises shall be construed as a reference to an outdoor seating area save that the requirement in section 8 of that Act to affix a notice to the exterior of a premises shall remain in so far as the notice relates to an outdoor seating area,
 - (c) a reference in that Act to a relevant provision shall be construed as a reference to a provision of the enactment or authorisation concerned, and
 - (d) a reference in that Act to the relevant period shall, in relation to an outdoor seating area, be taken to be the period of the day during which the sale or supply of intoxicating liquor in that area is lawful in accordance with *section 2(4)*.
- (2) The Act of 2020 shall continue to apply for the purposes of *subsection (1)* notwithstanding that the Act—
- (a) ceases to be in operation in accordance with section 17 (as amended by section 3 of the Health and Criminal Justice (Covid-19) (Amendment) Act 2021) of that Act, or
 - (b) is repealed,
- whichever first occurs.

Extension of application of Act of 2020 to outdoor seating area

5. The Act of 2020 shall apply to an outdoor seating area as it applies to a relevant premises (within the meaning of that Act) and a reference in that Act to a relevant premises shall be taken to include a reference to an outdoor seating area which relates to the relevant premises.

Application of Criminal Justice (Public Order) Act 1994

6. For the avoidance of doubt, an outdoor seating area on private land is a public place for the purposes of the Criminal Justice (Public Order) Act 1994.

Regulations

7. (1) The Minister may by regulations restrict the time during which a licensee of a licensed premises is permitted to sell or supply intoxicating liquor in an outdoor seating area.
- (2) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.
- (3) Every regulation made by the Minister under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Number of ordinary judges of High Court

8. The Courts and Court Officers Act 1995 is amended by the substitution of the following section for section 9 (inserted by section 1 of the Courts Act 2015):

- “9. (1) Subject to subsection (2), the number of ordinary judges of the High Court shall not be more than 42.
- (2) The Government, on the request of the Minister made after consultation with the Minister for Public Expenditure and Reform, and where they are of the opinion that, having regard to the volume of business to be transacted in the High Court or to any other reason arising from the state of business in that Court, and to the need to ensure the efficient transaction of business in that Court, it is necessary in the interests of the administration of justice to do so, may by order provide that the number of ordinary judges of the High Court otherwise provided for under any enactment for the time being in force may be exceeded by one.”.

Short title, collective citation, commencement and operation

9. (1) This Act may be cited as the Civil Law (Miscellaneous Provisions) Act 2021.
- (2) The Courts (Supplemental Provisions) Acts 1961 to 2019 and *section 8* may be cited together as the Courts (Supplemental Provisions) Acts 1961 to 2021.
- (3) This Act shall come into operation the day following its passing.
- (4) This Act, other than *section 8*, shall remain in operation for the period beginning on the day following its passing and ending on the 30th day of November 2021 (in this subsection referred to as the “relevant period”) and that period of operation may be extended for such further period or periods, each not exceeding 6 months, as is specified in a resolution passed by each House of the Oireachtas—

- (a) in the case of the first period of extension, before the expiry of the relevant period, or
 - (b) where the relevant period stands extended or further extended by a resolution under this subsection, before the expiry, in accordance with the resolution, of the relevant period as so extended or further extended.
- (5) Where, in accordance with *subsection (4)*, *subsections (1)(b)* and *(2)* of *section 2* cease to be in operation on a particular day, those provisions shall continue in operation in all respects for the purposes of the renewal of a licence or a certificate of registration, as the case may be, referred to in *section 2(1)(b)*.