



AN BILLE DEOCHANNA MEISCIULA, 1962 INTOXICATING LIQUOR BILL, 1962

Mar a ritheadh ag Dáil Éireann

As passed by Dáil Éireann

EXPLANATORY MEMORANDUM

Explanation of Terms

1. In this memorandum, references are made to licensed premises, hotels, restaurants, and clubs. These terms are to be understood as follows:

"Licensed premises" refers not only to public houses but also to licensed hotels and restaurants.

"Hotel" refers to an hotel to which an on-licence is attached and which has at least 10 bedrooms set apart for the use of guests. (Where, however, what is in question is an application for a new licence for an hotel, as such, in a County Borough, the minimum legal requirement is 20 bedrooms.)

"Restaurant" refers primarily to a premises to which an on-licence is attached and in respect of which the District Court has granted a certificate to the effect that it is "*bona fide* and mainly" used as a restaurant. A "limited restaurant certificate" may, however, be granted where portion only of a licensed premises is set aside for use as a restaurant. The effect of such a certificate is to apply to that portion of the premises the privileges allowed by law in regard to the serving of drink with meals during certain hours outside the ordinary opening hours.

"Club" refers only to a *bona fide* members' club registered under the Registration of Clubs Acts: it does not refer to proprietary clubs.

Section 2

2. Section 2 of the Bill proposes to make changes in the ordinary hours of opening in licensed premises, as set out in the following paragraphs.

3. Week-day opening:

(a) At present, the closing time on week-days is 11.30 p.m. during the months June to September, inclusive, and 11 p.m. during the rest of the year. The Bill proposes that the 11.30 p.m. closing should apply during the period of official Summer Time, with 11 p.m. closing during the rest of the year. As a rough guide, the normal period of Summer Time may be taken to be from the third Sunday in April to the first Sunday in October but the period may be varied by Order of the Minister for Justice, subject to the approval of the Order by each House of the Oireachtas. Such an Order was made in respect of this year and by virtue of it Summer Time this year extends from 25th March to 28th October.

- (b) At present, public houses in the four County Boroughs of Dublin, Cork, Limerick and Waterford are required to close between 2.30 p.m. and 3.30 p.m. in the afternoon. Off-licensed premises are not required to close during that hour but are forbidden to sell intoxicating liquor. The Bill proposes that these restrictions should in future apply only in Dublin and Cork.

4. Sunday opening:

The present Sunday (and St. Patrick's Day) opening hours are 12.30 p.m. to 2 p.m. and 5 p.m. to 9 p.m. in the months June to September, inclusive, and 12.30 p.m. to 2 p.m. and 5 p.m. to 8 p.m. during the rest of the year. Except as indicated below (paragraph 29) it is not proposed to alter the first period of opening, but it is proposed that the second period of opening should be from 4 p.m. to 10 p.m. throughout the year.

Section 3

5. The general hour of opening for licensed business in the morning on week-days is 10.30 a.m. but, where a "mixed business" is carried on, the law allows a licensed premises to be open for *unlicensed* business from 9 a.m. onwards. Section 3 proposes that such premises should be allowed to be open for *unlicensed* business from 7.30 a.m. onwards. This provision has no relation to hotels and restaurants as these premises, even though licensed, are entitled to remain open for *unlicensed* business at all times.

Section 4

6. Hotels and restaurants are at present permitted to serve drink with a substantial meal during certain hours outside the ordinary opening hours. (As explained in paragraph 1, this privilege extends to premises with "limited restaurant certificates".) Those additional hours are (1) from closing time on week-nights until midnight; (2) in County Boroughs, during the hour 2.30 p.m. to 3.30 p.m., i.e., the hour when the general sale of drink is prohibited in County Boroughs; (3) on Sundays and St. Patrick's Day, during the hour immediately after the first period of general opening, i.e., from 2 p.m. to 3 p.m., and also from the general closing time in the evening (i.e. 9 p.m. from June to September, inclusive, and 8 p.m. during the rest of the year) until 10 p.m.

7. The proposal in section 4 is that the right to serve drink with a substantial meal in hotels and restaurants after the ordinary closing time on week-nights should be extended to 12.30 a.m. and that on Sunday nights it should be extended to 11 p.m. The section does not propose to make any change in relation to the serving of drink with meals during the period 2.30 p.m. to 3.30 p.m. in Dublin and Cork. (Section 2 proposes to abolish entirely the general afternoon closing in the County Boroughs of Limerick and Waterford.) Neither does the section propose any change as regards the serving of drink with meals between 2 p.m. and 3 p.m. in the afternoon on Sundays and St. Patrick's Day.

Section 5

8. Section 14 of the Intoxicating Liquor Act, 1927, allows the sale of drink at any time at a railway station on arrival or departure of trains to passengers who have travelled or hold tickets entitling them to travel on those trains for a distance of ten miles to or from the station. Section 5 of the Bill proposes to allow the same right in respect of persons who have travelled or are about to travel not less than fifty miles by ship.

Section 6

9. Clubs are subject to the same restrictions as licensed premises as regards the hours during which drink may be served and have the same privileges as hotels and restaurants as regards the serving of drink with a substantial meal. Section 6 proposes to continue this position and, accordingly, the changes that it proposes corre-

spond to those proposed in sections 2 and 4 for licensed premises. It is not proposed, however, either in this section or elsewhere in the Bill, to extend to clubs rights corresponding to those which section 16 (referred to in paragraph 29 below) of the Bill proposes to give to licensed premises in certain areas.

Section 7

10. This section proposes to allow, after the ordinary closing-time (as provided for in section 2), a period of ten minutes for the finishing of drinks and the clearing of premises, and it proposes to make a corresponding provision in respect of clubs. The section does not apply after periods during which drink may be served only with a meal in hotels and restaurants or in pursuance of an exemption order of one kind or another granted by the Court.

Section 8

11. This section proposes to increase from twelve to fifteen the number of authorisations that may be granted by the District Court to a club in any year for the supply of intoxicating liquor at times outside the normal hours.

Section 9

12. There is no definition in the present law of the expression "substantial meal". Section 9 proposes to provide what is, in effect, a definition. It provides that the meal must be such as might be expected to be served as a main midday or main evening meal or as a main course at such a meal. Moreover, it proposes to introduce a price-test, the figure proposed being 5/- or such higher sum as the Minister for Justice may, by order, fix from time to time. (The proposal is not that the price of the meal must be at least 5/- but that the meal must be of such a kind that a reasonable charge for the meal, having regard to the general price level in the particular premises, would be at least 5/-. Thus, it would not be sufficient compliance with the section for a licensee to impose or accept what would amount to a cover charge.)

13. This definition would have effect, not only in relation to the serving of drink with meals in hotels and restaurants during certain hours outside the ordinary opening hours, but also in relation to the certifying of premises as restaurants for the purposes of the Licensing Acts (the certificate is granted by the District Court and the question before the Court is whether the premises are *bona fide* and mainly used as a restaurant or other place for supplying substantial meals to the public). The definition would also apply in relation to the granting in certain cases of Occasional Licences (paragraph 17 below) and Special Exemption Orders (paragraph 21 below).

Section 10

14. This section proposes to allow the District Court to grant an exemption to any locality for a period during which special events are to take place. It is subject to the limitation that only three such exemptions may be granted for any locality in the year and that the total period of the exemption or exemptions may not exceed nine days. The procedure proposed is that the application for the exemption may be made by the holder of any licence in the locality concerned but it will be necessary for him to show that his application has the approval of the majority of the licence-holders in the locality. The section proposes that the Court should have power to revoke an exemption on application being made to it. It is not proposed that the provision should apply to Dublin.

Section 11

15. This section proposes to repeal the existing law relating to the grant of Occasional Licences and to re-enact it subject to a number of changes.

16. An Occasional Licence is a licence granted to the holder of an ordinary on-licence to enable him to sell drink at an unlicensed place during such hours as may be specified in the licence. Occasional Licences are granted by the Revenue Commissioners on production of a "consent" from the District Court. The law provides that no such licence may be granted for a period between 10 p.m. and sunrise except for a "public dinner or ball". (In practice, "ball" has been interpreted by the District Court as equivalent to "dance".)

17. Section 11 proposes that Occasional Licences will in future be granted direct by the Court. It proposes to continue the existing restrictions on the granting of Occasional Licences for periods after 10 p.m., that is to say, to allow them to be granted for a period after 10 p.m. only when the event to which they relate is a dinner or a dance, and it proposes that they can be granted for a dance only where the dance is either (a) a special function organised as such for the members of some association, etc., and at which a substantial meal is served, without any charge, other than the admission charge, to the persons attending it, or (b) a dance held on a day which the Court accepts to be a day of special festivity, either generally or in the particular locality, but there is a provision in the section that for this purpose, in respect of any particular premises, the Court may not regard as days of special festivity more than six days in any year. The section also proposes that the sale of drink at the dinner or dance should be confined to the persons attending the function.

18. The section proposes to re-enact the existing prohibition on the granting of Occasional Licences in respect of Sundays, Christmas Day and Good Friday.

Section 12

19. This section proposes to impose certain restrictions on the granting of Special Exemption Orders. A Special Exemption Order is an Order granted by the District Court in respect of an hotel or restaurant on the occasion of a special event in the premises to which it relates. It has been held by the Supreme Court that a "house" dance in a ballroom attached to an hotel or restaurant may be regarded as a special event in the premises. In certain cases, Special Exemption Orders were granted for nightly events such as "sing-songs" in lounges in hotels. One effect of this was to permit the hotels concerned to do a public house trade at times when public houses were closed.

20. The section proposes that the right to grant Special Exemption Orders for dances should be restricted to dances at which a substantial meal is provided, without extra charge, to all the guests. (This condition is not to apply on special festive days, up to a limit of six in the year in respect of any particular premises.) The section proposes, also, that the sale of drink in pursuance of the Order should be confined to persons attending the dance and it proposes that this rule should apply to an event of any kind for which a Special Exemption Order is granted.

21. As regards events other than dances, the section proposes that Special Exemption Orders may be granted for special events organised for the members of a particular association, etc., or in respect of a private function, provided, in each case, that a substantial meal is served, as part of the function, to all the guests (the price, if any, being included in the admission charge, if any).

22. The section further provides that members of the public (apart, of course, from persons attending the function) may not be admitted to any part of the premises in which drink is being served in pursuance of a Special Exemption Order.

Section 13

23. This section proposes to allow an Occasional Licence or a Special Exemption Order, as the case may be, to be granted in respect of a social function held for members of a club organised

in connection with a festival "consisting wholly or mainly of the presentation of performances of music, dancing or plays or showings of films or of any combination of such performances or showings", even if a substantial meal is not served to those attending the function.

Section 14

24. This section proposes to permit the District Court to authorise a sports club on one (but not more than one) occasion in the year, where there is a special event in the club which is likely to attract a considerable number of spectators, to make provision for the serving of drink either in the club premises or in the club grounds to members of the general public attending the event. The section proposes that the period of this exemption may not exceed five days. The exemption would operate during such hours and on such days (within the limit of the maximum five-day period) as the Court directed.

Section 15

25. This section proposes to impose certain restrictions on the granting of General Exemption Orders. A General Exemption Order is an Order granted by the District Court for the accommodation either of persons attending a public market or fair or persons following any lawful trade or calling. Except to the extent specifically mentioned below in regard to Dublin, the restrictions proposed will not interfere with any existing practice with regard to the granting of these Orders: the restrictions are intended, rather, as a safeguard against the possible developments which have been foreshadowed in certain applications that have been made (unsuccessfully, so far) in the District Court.

26. It has been customary for the Courts to grant General Exemption Orders in towns throughout the country for the mornings of days on which fairs or markets are held, and it has also been customary to grant them in certain seaside places for the benefit of persons engaged in sea fishing. In recent times, however, applications have been made to the Court for General Exemption Orders for night-shift workers, and some Orders of this kind were granted, though, because of technical defects, they were later annulled.

27. The proposal is that General Exemption Orders should be restricted to the morning, beginning not earlier than 5 a.m. in the case of persons attending a fair or market and not earlier than 7 a.m. in the case of persons following a lawful trade or calling, but an exception is proposed in the case of persons engaged in fishing in tidal waters, for whose benefit General Exemption Orders may, under the section, continue to be granted for any time of the night except (as at present) the hour between 1 a.m. and 2 a.m.

28. In addition, a further restriction, *applicable to Dublin alone*, is proposed, namely that only those premises which already have General Exemption Orders can qualify for the granting of such Orders in future.

Section 16

29. As indicated in paragraph 4 above, section 2 of the Bill proposes to re-enact the existing law providing that the first period of general opening on Sundays and St. Patrick's Day is from 12.30 p.m. to 2 p.m. Section 16 proposes that, in addition, the District Court may, by Order, authorise general opening, in any particular place, other than a County Borough or a Borough, during the half-hour between noon and 12.30 p.m., but it provides that no such Order may be granted if during this half-hour (or any part of it) "a considerable number of people in the locality to which the Order would relate would be likely to be attending Divine Service".

30. The section provides that an application for an Order of this kind may be made only with the approval of a majority of

the licensee-holders in the place concerned and that any person appearing to the Court to have a *bona fide* interest in the matter may appear and give evidence on the hearing of the application. An Order under the section need not necessarily apply throughout the year.

Section 17

31. This section is similar to the preceding one, except that it relates only to the carrying on of *unlicensed* business in licensed premises. It permits the District Court to authorise the opening of licensed premises for unlicensed business on the mornings of Sundays and St. Patrick's Day for any one period not exceeding 45 minutes. The section, like the preceding one, does not apply to County Boroughs or Boroughs, and the procedure and conditions are the same in both sections.

Section 18

32. This section proposes to permit the granting of a licence to a greyhound race track. The proposal is that the licence should authorise the sale of drink only on the days of race meetings, sales or trials and then only during the period beginning 30 minutes before the commencement of the meeting, sale or trials and ending at the start of the last race or the end of the sale or trials as the case may be. These provisions would apply only to greyhound race tracks licensed as such under the Greyhound Industry Act, 1958.

Section 19

33. Section 4 of the Licensing (Ireland) Act, 1902, provides that a new licence may be granted where there has been a "growth or extension" of any city or town and a 25% increase in population, as compared with the population in 1901, can be shown to have occurred in the parish in which are situated the premises in respect of which the new licence is sought, but only in substitution for an existing licence attached to premises in the city or town (not necessarily in the parish). The parish need not be wholly within the city or town, nor need the premises in respect of which the licence is sought be in the urban section of the parish.

34. Section 19 of the Bill proposes to provide, in addition, that a new licence may be granted in the urban portion of the parish if a 25% increase in population (since 1901) can be shown to have occurred in that portion (even though the population of the parish as a whole has not increased to that extent), but only in substitution for an existing licence attached to premises in that portion.

Section 20

35. Subsections (1) and (3) of this section would not make any change in the law as it has in practice been interpreted so far, and their object is only to close a possible loop-hole. The position is as follows. Several provisions of the Licensing Acts permit the granting of new licences, the conversion of six-day licences, the establishment of public bars in hotels, etc., on prescribed conditions, one of which is the extinguishing of one or more existing licences. Since the restrictions on the granting of new licences do not apply to hotels, it would be anomalous if the conditions mentioned for the extinguishing of existing licences could be satisfied by extinguishing a licence that had been obtained for an hotel as such. This is so, not merely because that licence had been obtained by virtue of a privilege not available in respect of licensed premises generally, but because there is nothing in the law to prohibit an application being made for another licence for the hotel once its former licence had been extinguished; and this process, involving in practice the sale of licences, could go on indefinitely. The same position could arise if licences granted under section 18 of the Bill could be extinguished in this way.

36. Subsection (2) proposes to amend a provision in section 13 of the 1960 Act which allowed (on certain conditions) a new licence to

be granted in a rural area. The proposed amendment is that in future a new licence can be granted under that section only if there is no existing similar licence (granted before the 1960 Act was passed) attached to premises within one mile of the premises for which the new licence is sought.

Section 21

37. This section proposes to give a partial amnesty, as far as the endorsement of licences is concerned, to certain publicans in Swinford who have been or who may hereafter be convicted in respect of offences during the period 19th May to 23rd May, 1961, when there was a large influx of people to the town. Some of those licences might, were it not for this provision, be forfeited.

Section 22

38. This section is to apply outside County Boroughs and Boroughs and its object is to permit animal-drawn vehicles to be left in the yards of licensed premises on a Sunday, St. Patrick's Day, Christmas Day or Good Friday. At present, such a practice would be illegal as the licence extends to the yard in most cases.

Section 23

39. This section has a twofold purpose. First, it is designed to meet a difficulty that has arisen recently in regard to prosecutions for licensing offences. The Courts, in certain cases, have demanded formal proof that a person charged with trading after hours is in fact licensed. What formal proof may be accepted has not yet been clearly established, but it is possible that the attendance of an officer of Customs and Excise would have to be arranged in every single case. Secondly, a practical difficulty can arise during the period immediately after the annual licensing District Court each September. Sometimes, publicans do not obtain their renewals of licence immediately and there may be a period of perhaps some weeks during which they have, in fact, no licence. If, during this period, such a publican was found trading after hours and the Garda Síochána were required to prove the existence of a licence before a conviction could be secured, they would be unable to do so and might therefore be forced to prosecute the publican for trading without a licence, though such a prosecution would not be considered appropriate in the ordinary course in respect of a person who is normally licensed.

Section 24

40. This section is supplementary to the preceding one. In certain circumstances, it might be to the advantage of a publican who is prosecuted for trading after hours to raise, as a defence, that he had not yet renewed his licence for the current year and that therefore his offence was that of trading without a licence. In this way, he could avoid having an endorsement put on the licence and could then proceed to renew the licence, which he could get free from endorsement. The purpose of section 24 is to prevent that.

Section 25

41. A person making application to the Court under certain sections of the Bill will be required to prove that the application has the approval of a majority of the licence holders in a particular locality. The purpose of section 25 is to provide a simple means whereby he can provide proof of the number of licence-holders in the locality, namely, a certificate by the District Court Clerk.

Section 26

42. The purpose of this section is to prohibit the establishment or maintenance of what are popularly known as "locker lounges". The section contains detailed provisions designed to ensure that bona fide private drinking is not affected.

Section 27

43. This section proposes to permit the general sale of liqueur chocolates, subject to the restriction that such chocolates may not be sold to any person under the age of 16 years. The present

position is that such chocolates may be sold only on licensed premises and only at the same times and on the same conditions as intoxicating liquor. The exemption now proposed does not mean an exemption from the obligation to pay duty on the spirit contained in such chocolates.

Section 28

44. This section makes no substantive change and is designed only to remove a doubt that has arisen in the interpretation of certain provisions relating to the granting of certain off-licences. Briefly, the existing law is that the licences affected may be granted only to persons carrying on certain types of business or persons who hold certain other types of licences. These provisions have in practice been interpreted as meaning that the off-licences may be granted only in respect of the premises in which the business concerned is being carried on and not in respect of some other premises that happen to be owned by the same person. The section proposes to make it certain that this is the law.

Section 29

45. This section proposes to make it an offence for a licensee to permit people to be on the premises contrary to law. At present, a publican found trading after hours is usually prosecuted on five counts, namely, selling or exposing for sale, opening or keeping open the premises for sale, and permitting intoxicating liquor to be consumed on the premises. Recently, in certain cases, considerable difficulty has been experienced in satisfying the District Court that the evidence justified a conviction on one or more of these counts. In a recent High Court Judgment it was held that the District Court should convict in a particular case where the evidence was that thirty people were found in a bar nearly half an hour after midnight, that an attendant was serving behind the bar, that there were signs of recent drinking and that no explanation was tendered by any of the persons concerned. It is not certain, however, what the position would be if the evidence were less strong. Another defence that has been raised—it has been rejected by some District Justices but not by others—is that the prosecuting Garda had not produced proof that the drink which he saw being consumed was in fact intoxicating liquor and the suggestion has been made in Court that in certain cases a chemical analysis of the drink might be necessary.

Section 30

46. In certain applications for new licences, one of the matters that requires to be proved is that an increase in population has taken place. This involves the summoning of an officer of the Central Statistics Office as a witness to prove the population figures, with resulting expense to the applicant and inconvenience to the Central Statistics Office. The section proposes to provide for acceptance by the Court of officially-certified figures, without their being vouched for orally.

Section 31

47. Section 15 of the Intoxicating Liquor Act, 1960, enabled the Court to give, on the basis of plans submitted to it, what is in effect an approval in principle to the granting of a new licence. A procedural difficulty arose, however, in that it is not possible, until premises are completed, to obtain in respect of them a certificate of valuation, while, on the other hand, the law provides that a licence may be granted only if the premises are of a prescribed minimum valuation (which differs according to the area in which the premises are). Section 31 of the Bill authorises the Court, at the hearing on the basis of plans, to act on the assumption that the valuation requirements will in due course be fulfilled.

Section 32

48. In applications for new licences it is usually necessary for the applicant to be able to show that, on the granting of the application, he will be able to arrange for the extinguishing of an

existing licence or licences. The purpose of section 32 is to ensure that, where an application is made on the basis of plans and the application is granted, it will not be necessary to renew, in the interval before the new premises are ready and the final application granted, the licence or licences to be extinguished.

Section 33

49. Section 27 of the Intoxicating Liquor Act, 1960, provided that, during a two-year period from the passing of that Act (i.e., up to 3rd July, 1962) the holders of certain "restricted" licences (six-day, early-closing or beerhouse licences) could convert them to full publican's licences by payment of £200 to the Revenue Commissioners. Section 33 of the Bill proposes to extend the period by a further year.

Section 34

50. This section allows a temporary transfer of a licence to be granted, on the death of the holder, to a nominee of an executor or administrator or (where there is no executor or administrator) a nominee of any person having an interest in the premises. The period of the transfer is to be normally limited to the period until the sitting of the next annual licensing District Court or, if that sitting is held within a month of the granting of the transfer, until the following one; but the Court may extend that period for up to two further years.

Section 35

51. Generally, for the purposes of the Intoxicating Liquor Acts, the County Borough of Dublin is deemed to include the whole of the Dublin Metropolitan District. Recently the Supreme Court held that that did not apply to one particular section, namely, section 13 of the 1960 Act. The purpose of section 35 of the Bill is to ensure that in future the County Borough of Dublin will be deemed, for the purposes of all those Acts, to include the Dublin Metropolitan District.

Roinn Dlí agus Cirt,

Iúil, 1962

