



**AN BILLE DEOCHANNA MEISCIÚLA, 1988
INTOXICATING LIQUOR BILL, 1988**

EXPLANATORY MEMORANDUM

Introduction

The purpose of the Bill is to amend the Intoxicating Liquor Laws and the Registration of Clubs Acts so as

- (a) to enable the grant of licences allowing the sale of a full range of intoxicating liquor in certain restaurants without the need to extinguish an existing liquor licence,
- (b) to amend the provisions regarding prohibited hours,
- (c) to provide against under-age drinking,
- (d) to amend the provisions regarding registered clubs and
- (e) to increase fines for certain offences relating to licensed premises and registered clubs.

Part I — Preliminary and General

Section 1 contains the short title and *section 3* the usual citation and construction clauses.

Section 2 defines terms which are used throughout the Bill, including “bar”, “licence” and “licensed premises”. These terms are to be understood as follows:

“Bar” means an open bar or any part of a licensed premises exclusively or mainly used for the sale and consumption of intoxicating liquor. It includes any counter or barrier across which drink can be served to the public. Intoxicating liquor can be sold and consumed in waiting areas in restaurants holding special restaurant licences in accordance with the terms of the legislation but such restaurants may not contain bars, so that drink cannot be sold or served across any counter or barrier.

“Licence” covers any licence for the sale of intoxicating liquor, including licences granted without the production of a court certificate.

“Licensed premises” covers any premises in respect of which a liquor licence is in force and would therefore cover not only public houses but also other licensed premises such as licensed hotels.

Section 4 provides for the repeal of *section 120* of the Children

Act, 1908 and sections 10, 11, 12 and 25 of the Intoxicating Liquor (General) Act, 1924. The provisions of these sections are reenacted, with amendments, at sections 28, 31, 35 and 41 of the Bill.

Part II — Special Restaurant Licences

Section 5: This will enable the Minister for Justice to bring the provisions regarding special restaurant licences into operation by way of commencement order. It is intended that the Minister for Tourism and Transport will make regulations prescribing the standards to be complied with by restaurants qualifying for these licences, before this Part is brought into operation.

Section 6: This defines terms for the purposes of *Part II*. The terms defined include that of "restaurant". This definition is intended to exclude cafe type premises in which only light meals or snacks are served and to ensure that only premises which are primarily restaurants will be eligible to receive special restaurant licences.

Section 7: The effect of this section will be that special restaurant licences will be full retailers' on-licences, renewable annually but not allowing the sale of intoxicating liquor for consumption off the premises. The licences will be subject to restrictions in that they will enable intoxicating liquor to be supplied only in connection with the ordering and consumption of a substantial meal, the intoxicating liquor to be consumed either before the meal, during the meal, or up to thirty minutes after the meal has ended.

Section 8: This provides for the grant by the Circuit Court of certificates entitling applicants to obtain special restaurant licences from the Revenue Commissioners. A Bord Fáilte certificate as to standards in the restaurant must be produced to the Court. Objection to the grant of the Court certificate may be made in the same way as in relation to the grant of Court certificates for other liquor licences. The certificate issued by Bord Fáilte will be as to compliance in the restaurant with standards prescribed in regulations to be made by the Minister for Tourism and Transport.

Section 9: This provides for the grant of special restaurant licences by the Revenue Commissioners on production of the Circuit Court certificate referred to in *section 8* and on payment to the Commissioners of a fee of £3,000. The Minister for Justice will have power to vary that amount by regulation. When a special restaurant licence has been granted, no other licence or certificate under the Licensing Acts may be held in respect of the same premises.

Section 10: It is intended that special restaurant licences will be annually renewable and that the ordinary renewal procedure for liquor licences must be followed, including the procedure whereby objection may be made to the District Court against the grant of the Court certificate which is a prerequisite to renewal. The local Garda superintendent may, in addition to any other ground of objection available to him, object to renewal on the ground that the premises have not been *bona fide* and solely used as a restaurant.

Section 11: This gives Bord Fáilte power to inspect restaurants.

Section 12: This empowers the Minister for Tourism and Transport to prescribe by regulation the standards to be met in restaurants qualifying for special restaurant licences. The consent of the Minister for Justice will be necessary for the making of such regulations. The effect of these regulations will be to ensure that only restaurants of good standard will qualify for the licences.

Section 13: This provides for the cancellation of restaurant certificates by Bord Fáilte where the restaurants concerned no longer meet the requisite standards.

Section 14: This provides that intoxicating liquor may be supplied in premises having special restaurant licences only during the following hours:

On week-days from 12.30 p.m. to 3.00 p.m. and from 6.00 p.m. to 12.30 a.m.

On St. Patrick's Day and Sundays from 12.30 p.m. to 3.00 p.m., and from 6.00 p.m. to 11.00 p.m.

On Christmas Day from 1.00 p.m. to 3.00 p.m. and from 7.00 p.m. to 10.00 p.m.

The supply of intoxicating liquor will not be permitted on Good Friday.

The enforcement provisions relating to prohibited hours which apply in licensed premises generally will apply also in premises having special restaurant licences.

Section 15: This provides a maximum fine of £500 for contravening the terms of a special restaurant licence; the provisions in the Licensing Acts as to endorsement of licences will apply in relation to convictions for such offences.

Section 16: This provides that a restaurant holding a special restaurant licence may not contain a bar. For contraventions of this provision, a maximum fine of £150 is provided for a first offence, with a maximum fine of £350 for a second or any subsequent offence. The offence will be endorseable for the purposes of the Licensing Acts.

Section 17: This provides for the display of special restaurant licences and Bord Fáilte Certificates in the premises to which they apply.

Section 18: This amends section 4 of the Courts (No. 2) Act, 1986 by requiring the production to the Revenue Commissioners of a Bord Fáilte Certificate when a special restaurant licence is being renewed under the procedure for "automatic" renewal of licences provided for in section 4 of that Act. It also makes it mandatory for the applicant for the renewal of a licence to inform the Revenue Commissioners that the licence is a special restaurant licence, if that is the case.

Section 19: The effect of this section will be that sections 15 and 17 of the Intoxicating Liquor Act 1960 will not apply in relation to applications for special restaurant licences. This means that it will not be possible to obtain a Court declaration on the basis of plans to acquire, construct or alter premises, which would ensure in advance that a Circuit Court certificate could be obtained, entitling the holder to receive a special restaurant licence. The reason for this is that some of the standards which will be set out in the Standards Regulations will require inspection that can only be made on the basis of actual operation of the restaurant in question.

Section 20: The effect of this provision is that the local fire authority must be notified in advance of every application for the grant or renewal of a special restaurant licence.

Section 21: The effect of this section is that special restaurant licences will not entitle the holders to obtain occasional licences

enabling them to sell intoxicating liquor at special events held in places to which no liquor licence is attached.

Section 22: The effect of this section is that holders of special restaurant licences will not be able to obtain special exemptions from the permitted hours on "special occasions" in respect of premises for which such special licences are held, as is the case in relation to licensed hotels and other licensed restaurants.

Section 23: This amends section 20 of the Intoxicating Liquor Act, 1962, so as to ensure that it will not be possible to obtain liquor licences through the extinguishment of special restaurant licences.

Section 24: The effect of this is that regulations under *section 12* prescribing standards to be met by restaurants qualifying for special restaurant licences, as well as regulations under *section 9* varying the amount of the fee for such licences, must be laid before each House of the Oireachtas and that such regulations may be annulled by a resolution of either House.

Part III — Prohibited hours

Section 25: This proposes changes in the ordinary hours of opening in licensed premises on Sundays, the abolition of the weekday afternoon closing of licensed premises in the county boroughs of Dublin and Cork and increased fines for prohibited hours offences.

Sunday: The present Sunday (and St. Patrick's Day) opening hours are 12.30 p.m. to 2.00 p.m. and 4.00 p.m. to 10.00 p.m. This section proposes that Sunday evening closing time will be 11.00 p.m. throughout the year.

Afternoon closing in Dublin and Cork: Public houses in the county boroughs of Dublin and Cork are required to close between 2.30 p.m. and 3.30 p.m. on weekdays. Off-licensed premises in those county boroughs are not required to close, but are not allowed to sell intoxicating liquor, during that hour. *Section 25* proposes that public houses and off-licensed premises in those areas may remain open for the sale of intoxicating liquor between 2.30 p.m. and 3.30 p.m. on weekdays.

Fines for prohibited hours offences: Since 1927 the fines for prohibited hours offences by licensees have been: a maximum of £20 for a first offence and a maximum of £40 for a second or any subsequent offence. *Section 25* proposes to increase these fines to a maximum of £400 and £800 respectively.

Section 26: Since 1960, the prohibited hours for the supply of intoxicating liquor in registered clubs have been on the same basis as for licensed premises generally. *Section 26* continues this situation by providing that the changes in prohibited hours applying to licensed premises under *section 25* will apply also in registered clubs. Registered clubs will continue to enjoy their existing exemptions in relation to the supply of intoxicating liquor with substantial meals.

Section 27: Existing legislation provides for a ten minutes "drinking-up time" after closing time in licensed premises. *Section 27* increases the "drinking-up" time from 10 minutes to 30 minutes.

Section 28: The new opening hours provided by *section 25* will apply

in licensed hotels and licensed restaurants and such premises, also, will continue to enjoy their existing exemptions in relation to the supply of intoxicating liquor with substantial meals.

Section 29: Licensed hotels and licensed restaurants can obtain special exemptions to enable them to supply intoxicating liquor on "special occasions" after the ordinary permitted hours. The District Court decides the time limit for each special exemption. *Section 29* now provides that special exemptions cannot be granted in respect of any time after 1 a.m. on Monday mornings.

Part IV — Persons under the age of 18 years

Section 30 defines "child" for the purposes of this Part of the Bill as meaning a person under the age of fifteen years.

Section 31: Under sections 10 and 11 of the Intoxicating Liquor (General) Act, 1924 it is an offence for the holder of an intoxicating liquor licence to knowingly supply intoxicating liquor for consumption by a person under the age of 18 years either on or off his licensed premises. These provisions are being repealed (*section 4* of the Bill) and are being replaced by those in *section 31*. This section provides that it will be an offence for a licence-holder to sell intoxicating liquor to a person under the age of 18 years or to sell intoxicating liquor to any person for consumption on his licensed premises by a person under 18. It will be an offence for the licence-holder to permit a person under 18 to consume intoxicating liquor on his licensed premises. It will also be an offence for a licence-holder to sell intoxicating liquor for consumption off his licensed premises by a person under the age of 18 years in any place except a private residence. The word "knowingly" is not included in these provisions (as it was in the 1924 Act) but it will be a defence for the licence-holder to prove that he had reasonable grounds for believing that the person concerned was over the age of 18 years.

Section 32: This is a new provision making it an offence for any person to purchase intoxicating liquor for consumption by persons under the age of 18 years in any place except a private residence, or to deliver intoxicating liquor to a person under that age except at a private residence. It will also be an offence to send a person under the age of 18 years for the purpose of obtaining intoxicating liquor.

Section 33: This is a new provision making it an offence for a person under the age of 18 years to purchase intoxicating liquor or to consume it in any place other than a private residence, or to represent himself as being over 18 years of age for such a purpose.

Section 34: Section 120 of the Children Act, 1908 makes it an offence (subject to certain exceptions) for a licence-holder to allow a child (that is, a person under the age of 15 years) to be in the bar of his licensed premises except during the hours of closing. This provision is being repealed (*section 4* of the Bill) and replaced, in an amended form, by this section. Under *section 34* it will continue to be an offence for a licence-holder to allow a person under 15 to be in the bar of his licensed premises but this prohibition will not apply if the child is in the bar during the ordinary permitted hours and is accompanied by his parent or guardian. Exceptions are also provided for children of the licence-holder and for children who are resident in the licensed premises or simply passing through the bar.

Section 35: Under the present law, it is not an offence for any person over the age of 15 years to be present in licensed premises. Under *section 35* it will be an offence for a licence-holder to allow

any person under the age of 18 years to be present in his licensed premises when an exemption order is in force and it will also be an offence for a person under 18 years of age to be so present. The section includes a provision similar to that at present contained in section 120 of the Children Act, 1908 whereby the holder of the licence will be deemed to have committed an offence under the section unless he proves that he used all due diligence to prevent the person under the age of 18 years being admitted to the premises or that he had reasonable grounds for believing that that person was over the age of 18 years.

Section 36: This provides that it shall be an offence for a licence-holder to allow a person under the age of 18 years who is not accompanied by his parent or guardian to be in his licensed premises, or in a structurally separate part of his licensed premises, where the premises or the structurally separate part is used exclusively or mainly as an off-licence. It will also be an offence for a person under the age of 18 years to be so present without his parent or guardian.

Section 37: This enables members of the Garda Síochána to seize bottles or containers suspected to contain intoxicating liquor from persons under the age of 18 years where the Garda member concerned suspects that an offence under *section 31, 32 or 33* of the Bill has been committed. *Section 37* also provides that a Garda may request the person who appears to be under the age of 18 years, or the parent or guardian of such person, to supply his name, address and age where the member suspects that an offence under *section 31, 32 or 33* has been committed.

Section 38: Under section 12 of the Intoxicating Liquor (General) Act, 1924 it is an offence for a licence-holder to employ any female under the age of 18 years (subject to certain exceptions) or any male under the age of 16 years, to sell intoxicating liquor. This provision is being repealed (*section 4* of the Bill) but *section 38* reenacts it with a common minimum age-limit of 18 years (for males and females), with exceptions for persons aged between 16 years and 18 years who are related to the licence-holder in certain degrees or who are apprenticed to the licence-holder.

Section 39: This gives a presumption whereby in prosecutions for offences under *Part IV* of the Bill a person who appears to the Court to have been under the age of 18 years, or under the age of 15 years, as the case may be, at the date of the commission of the offence, will be presumed to have been under that age at that date, unless the contrary is proved. This is based on an existing provision in the Children Act, 1908.

Part V — Registered Clubs

Section 40: This amends *section 4* of the Registration of Clubs (Ireland) Act, 1904 to make it clear that the rules of registered clubs must forbid the supply of intoxicating liquor to persons under the age of 18 years.

Section 41: The effect of this section is to put registered clubs on the same footing as licensed premises, as regards inspection by the Garda Síochána. *Section 25* of the Intoxicating Liquor (General) Act, 1924 which required an order from a member of the Garda Síochána not below the rank of Inspector, before inspection, is now being repealed (*section 4*).

Section 42: The effect of this provision is that any person may object to the renewal of the certificate of registration of a registered club

and that the right to object is not confined to residents of the parish in which the club is situated, thus placing registered clubs and licensed premises on the same footing in this respect.

Part VI — Miscellaneous

Section 43: The District Court has jurisdiction to grant a restaurant certificate on the occasion of the grant of a court certificate for the renewal of a liquor on-licence. Under section 4 of the Courts (No. 2) Act, 1986 it will no longer be necessary, save in exceptional circumstances, to obtain a court certificate as a prerequisite to the renewal of such a licence. This section fills a procedural gap which otherwise might arise, so that the Court can grant restaurant certificates to applicants in cases where the new procedures for the automatic renewal of licences by the Revenue Commissioners apply.

Section 44: This provides for an increase in fines for a number of offences under the Licensing Acts and the Registration of Clubs Acts. These include: (a) a minimum fine of £25 and a maximum fine of £50 for being "found-on" in licensed premises during prohibited hours; (b) an increase in fines for permitting drunkenness or violent conduct in licensed premises and for obstructing Gardai from entering such premises; (c) an increase in fines for aiding and abetting a drunken person, and (d) increased fines for offences by officials of registered clubs.

*An Roinn Dli agus Cirt,
Aibreán, 1988.*

