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**AN BILLE UM ÁITRIBH CHEADÚNAITHE (TRÁTHANNA
OSCAILTE), 1998**

LICENSED PREMISES (OPENING HOURS) BILL, 1998

*Mar a tionscnaíodh
As initiated*

ARRANGEMENT OF SECTIONS

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Enactments Repealed

Acts Referred to

Civil Service Regulation Act, 1956	1956, No. 46
Industrial Relations Acts, 1946 to 1991	
Intoxicating Liquor Act, 1927	1927, No. 15
Intoxicating Liquor Act, 1960	1960, No. 18
Intoxicating Liquor Act, 1962	1962, No. 21
Intoxicating Liquor Act, 1988	1988, No. 16
Intoxicating Liquor Act, 1995	1995, No. 33
Licensing Acts, 1833 to 1997	
Local Government Act, 1941	1941, No. 23
Petty Sessions (Ireland) Act, 1851	1851, c. 93
Registration of Clubs Acts, 1904 to 1995	
Terms of Employment (Information) Act, 1994	1994, No. 5
Workers Protection (Regular Part-Time Employees) Act, 1991	1991, No. 5



AN BILLE UM ÁITRIBH CHEADÚNAITHE (TRÁTHANNA
OSCAILTE), 1998
LICENSED PREMISES (OPENING HOURS) BILL, 1998

BILL

5 *entitled*

AN ACT TO PROVIDE FOR HOURS OF TRADING FOR
LICENSED PREMISES AND REGISTERED CLUBS AND
TO AMEND FOR THOSE AND OTHER PURPOSES THE
10 LICENSING ACTS, 1833 TO 1997 AND THE REGIS-
TRATION OF CLUBS ACTS, 1904 TO 1995 AND TO PRO-
VIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

Opening Hours

15 **1.**—Section 2(1) of the Act of 1927 (as substituted by section 25
of the Act of 1988 and as amended by section 2 of the Act of 1995)
is hereby amended by the deletion of the words from “licensed
premises—” to the end of the subsection and the substitution of the
words “licensed premises during the period between 12.30 a.m. and
20 10.30 a.m. on any day, and the period between 10.30 a.m. on
December 25th and 12.30 a.m. on December 26th (“prohibited
hours”).”

Opening hours of
licensed premises.

2.—(1) Section 56 of the Act of 1927 (as substituted by section 26
of the Act of 1988 and as amended by section 5 of the Act of 1995)
25 is hereby amended by—

Opening hours of
registered clubs.

(a) the deletion of the words from “premises—” to the end of
subsection (1) and the substitution of the words
“premises) during prohibited hours within the meaning
of section 2 of this Act.”; and

30 (b) the repeal of subsection (1A), paragraphs (a) to (c) of and
the proviso to subsection (2) and subsection (3).

(2) Section 26(2) of the Act of 1988 shall apply with any necessary
modifications to the amendment effected by this section.

35 **3.**—Section 13 of the Act of 1927 (as substituted by section 28 of
the Act of 1988 and as amended by section 4 of the Act of 1995) is
hereby amended by the repeal of paragraphs (a) to (c) of, and the
provisio to, the section.

Opening hours of
hotels and
restaurants.

Opening hours of licensed premises for mixed trading

4.—Section 3(1) of the Act of 1927 (as amended by section 8 of the Act of 1960, section 3 of the Act of 1962 and section 3 of the Act of 1995) is hereby amended by the deletion of the words from “except—” to the end of the subsection and the substitution of the words “except between the hours of 7.30 a.m. and 10.30 a.m. on any day other than December 25th.”. 5

Opening hours of premises having special restaurant licence.

5.—Section 14(1) of the Act of 1988 is hereby amended by—

- (a) the substitution for subparagraphs (i) and (ii) of: “(i) on any day other than December 25th, during prohibited hours within the meaning of section 2 of the Intoxicating Liquor Act, 1927,”. 10
- (b) in subparagraph (iii), the substitution of “10.30 a.m.” for “half-past twelve o’clock in the afternoon”, and
- (c) the deletion of subparagraph (iv).

Drinking-up time and exemptions to apply generally.

6.—(1) Section 7 of the Act of 1962 shall apply following the end of any period of time for trading permitted by the Acts. 15

(2) The provisions of the Acts regarding the grant of exemptions from prohibited hours shall apply in respect of any licence or registration under those Acts to which, but for this section, such provision would not apply. 20

Saver.

7.—Subject to *section 6(1)* and to section 7 of the Act of 1962, a person who is permitted by the Acts to trade after 11.30 p.m. shall not be taken to be obliged to trade after that hour.

General power to attach conditions authorising trading at different times.

8.—(1) A court may, on making an order in relation to a licence or registration (or proposed licence or registration) under the Acts, by order attach conditions to the licence or registration (or proposed licence or registration) as to hours of trading. 25

(2) An order under this section may attach conditions authorising trading at times which would otherwise be prohibited, and such conditions shall have effect notwithstanding anything in the Acts. 30

(3) An order under this section may attach conditions prohibiting trading at times which would otherwise be permitted, and such conditions shall have effect notwithstanding anything in the Acts.

(4) In making an order under this section the court shall have regard to all the circumstances, including in particular the benefit to the public, the geographical location of the premises, the nature of the clientele using the premises, the extent of tourist trade in the premises, and the views of the applicant and any lawful objectors. 35

(5) The power conferred by this section is in addition to and not in substitution for any power conferred by the Acts to grant exemptions. 40

(6) The court may by order amend or revoke a condition attached by order under this section.

PART II

Rights of Employees in respect of new Opening Hours 45

Interpretation (*Part II*).

9.—In this Part—

“added time work” means for the purpose of this Act, any work carried out in licensed premises by an employee between the hours of 12 a.m. and 10.30 a.m.;

“the Court” means the Labour Court;

“employee” means any person who works under a contract of employment with an employer or is defined as a “regular part-time” employee in section 1 of the Workers Protection (Regular Part-Time Employees) Act, 1991 and for the purposes of this Act is a person working in a licensed premises (including a club);

“the Minister” means the Minister for Enterprise, Trade and Employment;

“owner” means a proprietor or owner, and his or her servants or agents;

“relative” when used in relation to the owner means a person who—

(a) is the wife, husband, father, mother, grandfather, grandmother, step-father, step-mother, of such proprietor or owner, or is the son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother, half-sister of such proprietor or owner, and

(b) is maintained by or dwells in the house of such proprietor or owner;

“the Tribunal” means the Employment Appeals Tribunal;

“working day” means for the purposes of this Act any day in the week not including time during which added time work is carried out.

10.—This Part shall not apply in respect of— Non-application of (Part II).

- (a) a relative of the proprietor or owner,
- (b) an employee who is normally expected to work for the employer for less than 8 hours in a week, or
- (c) an employee who has been in the continuous service of the employer for less than one month.

11.—(1) An employee shall not be obliged to do added time work without his or her consent and it shall be unlawful for the owner of the licensed premises to require an employee to do such work without the consent of the employee. Added time work.

(2) The consent referred to in *subsection (1)* shall not be a precondition of employment.

12.—An employee who is not available for added time work or who does not undertake such work, when requested by the owner, for religious, family or other reasons, shall not be discriminated against in terms of— Prohibition of discrimination.

- (a) salary or wages,
- (b) rotation of overtime other than during added time,
- (c) promotion, or
- (d) any other conditions of employment;

and it shall be unlawful for the owner so to discriminate.

Entitlements for added time work.

13.—(1) An employee who performs added time work shall be entitled to holiday time within the week following in accordance with the following provisions—

(a) where the employee performs added time work for more than five hours, he or she shall be entitled to a whole day holiday, or 5

(b) where the employee performs such work for a period of more than three hours but not more than five hours, he or she shall be entitled to a half day holiday.

(2) An employee who engages in added time work shall be entitled to be paid overtime pay at a rate per hour which represents the normal weekly rate reckoned in terms of hours increased by not less than 50 per cent. 10

Notification of added time work.

14.—(1) An employer who requests an employee to perform added time work shall inform each employee and shall specify in a notice, which shall be displayed in a place in the premises where it can be conveniently read by each employee, the hours to be worked on the next occasion for such work. 15

(2) A notice referred to in *subsection (1)* shall be posted not less than 4 working days before such work. 20

(3) An employee who is unavailable to perform such work shall inform the employer of this not less than 3 working days before such work is due to be performed; otherwise, consent to perform the work may be assumed by the employer.

(4) At the commencement of the employment the employer must notify the employee in writing of the duties that are incumbent on the employer by virtue of the provisions of this section and the duties that are incumbent on the employee by virtue of the provisions of this section. 25

Contracts of employment.

15.—It shall be unlawful for an employer and an employee to contract out of the provisions of this Act, the terms of which are deemed to be implied terms of a contract of employment. 30

Rights commissioner.

16.—(1) An employee may present a complaint to a rights commissioner that his or her employer has contravened this Part in relation to him or her within 6 weeks from the last preceding contravention. 35

(2) If the employee concerned presents a complaint pursuant to *subsection (1)*, the rights commissioner shall give the parties an opportunity to be heard by him or her and to present to him or her any evidence relevant to the complaint and shall give a recommendation to the parties. 40

(3) A recommendation of a rights commissioner shall be binding on both parties.

(4) A recommendation of a rights commissioner under *subsection (1)* shall do one or more of the following: 45

(a) declare that the complaint was or was not well founded;

(b) require the employer to furnish particulars in accordance with section 7(2)(b) or (d) of the Terms of Employment (Information) Act, 1994;

5 (c) order the employer to pay the employee compensation of not less than one week's salary but not more than ten week's salary.

(5) A party concerned may appeal from the recommendation of the rights commissioner to the Tribunal within 6 weeks of the date on which the recommendation was communicated to him or her.

10 (6) A party to an appeal to the tribunal may appeal to the High Court from determination of the Tribunal on a point of law.

(7) Where more than one employee wishes to present the same or similar complaint against an employer, the employees concerned or their trade union, may refer the dispute to the Court in which case
15 the dispute shall be dealt with as if it had been referred under the provisions of the Industrial Relations Acts, 1946 to 1991 and not under any other provision.

17.—Where a contravention of this Part is committed by a body corporate and is proved to have been so committed with the consent
20 or approval of any director, manager, secretary or other officer of such a body corporate, such a director, manager, secretary or officer shall be liable to provide the remedies specified in the case under section 16 of this Act.

Liability to provide remedies of bodies corporate.

18.—The Minister may make regulations to give full effect to this
25 Part.

Regulations.

19.—(1) An employer shall keep such records of hours worked as are necessary to show whether the provisions of this Part are being
30 complied with in relation to his or her employees and such records shall be retained by the Minister, who shall have the right to inspect such records for that purpose.

Compliance with provisions of Part II.

(2) An employer who contravenes subsection (1) shall be subject to the proceedings for redress as provided in this Part at the suit of any of the employees concerned.

PART III

35 General

20.—(1) It shall be lawful for the Revenue Commissioners, notwithstanding anything contained in the Licensing Acts, 1833 to 1997, on the application of the owner of an authorised heritage centre, to grant to the owner, or a person nominated by him or her—

Provision for certain heritage centres

40 (a) a licence for the sale of intoxicating liquor at the authorised heritage centre for consumption at the centre;

(b) a licence for the sale of relevant intoxicating liquor at the authorised heritage centre for consumption off the premises of the centre; and

45 (c) a renewal of a licence granted under this section.

(2) A licence granted under this section shall be in force for the period specified therein and shall operate to authorise during the period beginning from the time the public are permitted admission by the owner of the centre concerned (but not before 10.30 a.m.) and ending not later than 9 p.m., but during no other period, the sale of intoxicating liquor in accordance with the licence to persons visiting the centre. 5

(3) Upon the grant of a licence under this section, any licence under the Licensing Acts, 1833 to 1997, relating to a centre shall cease to have effect during the hours which a licence granted under this section operates. 10

(4) A licence granted under this section shall cease to have effect should the centre to which it relates cease for whatever reason to be an authorised heritage centre.

(5) The holder of a licence under this section shall comply with the provisions of this section relating to the licence. 15

Restriction of certain provisions of Licensing Acts, 1833 to 1997.

21.—Sections 4 and 5 and Part III of the Act of 1927 and the provisions in relation to prohibited hours of the Licensing Acts, 1833 to 1997, shall not apply to an authorised heritage centre in relation to which a licence has been granted under *section 20*. 20

Powers of Garda Síochána.

22.—(1) If a member of the Garda Síochána is of the opinion that there are reasonable grounds for supposing, or a complaint has been made to such a member, that the holder of a licence granted under *section 20* is not complying with the provisions of that section, the member may, without warrant, enter into and search the centre concerned and request and take the names and addresses of any persons found therein in connection with the non-compliance. 25

(2) A person shall not—

- (a) refuse to give his or her name or address, or
- (b) give a false name or address, 30

when so requested under *subsection (1)*.

(3) A person shall not by himself or herself, or by any person in his or her employment or acting by his or her direction or with his or her consent, refuse or fail to admit any member of the Garda Síochána in the execution of his or her duty requiring to enter a centre (or any part thereof) in pursuance of this section. 35

(4) A person who contravenes this section or *section 21* shall be guilty of an offence.

Offences.

23.—(1) Summary proceedings for an offence under this Part may be instituted by the Minister for Tourism, Sport and Recreation. 40

(2) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Part may be instituted within 12 months from the date of the offence.

(3) Where an offence under this Part which is committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, 45

any person who, when the offence was committed, was a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, that person (as well as the body corporate) shall be guilty of an offence and shall be liable to be proceeded against and punished as if guilty of the offence committed by the body corporate.

(4) In relation to a body corporate whose affairs are managed by its members, *subsection (3)* shall have effect as if “director” included a member of the body corporate.

24.—(1) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as practicable 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 has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to anything previously done thereunder.

(2) Any regulation made under this Act may contain such consequential, supplementary and ancillary provisions as are considered necessary or expedient.

25.—Each enactment mentioned in the second column of the *Schedule* is hereby repealed to the extent mentioned in the third column of that *Schedule* opposite the mention of that enactment.

26.—(1) In this Act—

“Act of 1927” means the Intoxicating Liquor Act, 1927;

“Act of 1960” means the Intoxicating Liquor Act, 1960;

“Act of 1962” means the Intoxicating Liquor Act, 1962;

“Act of 1988” means the Intoxicating Liquor Act, 1988;

“Act of 1995” means the Intoxicating Liquor Act, 1995;

“the Acts” means the Licensing Acts, 1833 to 1997 and the Registration of Clubs Acts, 1904 to 1995, as the context may require;

“authorised heritage centre” means a centre authorised by the Minister for Tourism, Sport and Recreation as suitable to be authorised for the purposes of this Act;

“centre” means a heritage centre relating to any site or premises of national or local historical significance relating to the manufacture or distilling of any intoxicating liquor;

“relevant intoxicating liquor” means such limited kind or kinds of intoxicating liquor as are relevant to the historical significance of the particular centre concerned.

(2) For the purposes of this Act—

(a) a person holding office under, or in the service of, the State or otherwise as a civil servant, within the meaning of the Civil Service Regulation Act, 1956, shall be deemed to be an employee employed by the State or Government, as the case may be, under a contract of service;

- (b) an officer or servant of a local authority for the purposes of the Local Government Act, 1941, a harbour authority, a health board or a vocational education committee shall be deemed to be an employee employed by the authority, board or committee, as the case may be, under a contract of service; and 5
- (c) in relation to an agency worker, the person who is liable for the pay of the agency worker shall be deemed to be the employer.
- (3) In this Act— 10
 - (a) a reference to a section is a reference to a section of this Act, unless it is indicated that reference to some other enactment is indicated;
 - (b) a reference to a subsection is a reference to the subsection of the provision in which the reference occurs, unless it is indicated that reference to some other provision is indicated; 15
 - (c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment including this Act). 20

Short title,
collective citation,
construction and
commencement.

27.—(1) This Act may be cited as the Licensed Premises (Opening Hours) Act, 1998.

(2) This Act, except in so far as it relates to registered clubs, and the Licensing Acts, 1833 to 1997, may be cited together as the Licensing Acts, 1833 to 1998 and this Act and those Acts shall be construed together as one Act. 25

(3) This Act, in so far as it relates to registered clubs, and the Registration of Clubs Acts, 1904 to 1995, may be cited together as the Registration of Clubs Acts, 1904 to 1998 and this Act and those Acts shall be construed together as one Act. 30

(4) This Act shall come into operation on the day that is 1 month after the passing of this Act.

SCHEDULE

Enactments Repealed 35

Number and Year (1)	Short Title (2)	Extent of Repeal (3)	
No. 15 of 1927	Intoxicating Liquor Act, 1927	In section 14(e), from “, save that” to the end of the paragraph.	40
No. 18 of 1960	Intoxicating Liquor Act, 1960	Sections 4 to 6 and 7(2)(b)(i) and (iii).	
No. 21 of 1962	Intoxicating Liquor Act, 1962	Sections 2 to 4, 6, 7(1)(b) and (2)(b) and 16.	
No. 33 of 1995	Intoxicating Liquor Act, 1995	The whole Act.	45



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**AN BILLE ÁITRIBH CHEADÚNAITHE (TRÁTHANNA
OSCAILTE), 1998
LICENSED PREMISES (OPENING HOURS) BILL, 1998**

EXPLANATORY MEMORANDUM

Background

The last general review of opening times for licensed premises was 10 years ago, and the hours currently fixed have become outdated and inappropriate. There is a clear public wish for a further modest relaxation of opening times and this Bill proposes to provide such a relaxation.

General

Its key features are—

- to extend pub opening hours by 1 hour in summer, and 1 hour 30 minutes in winter, thus giving a year round closing time of 12.30 a.m.;
- to make other changes in opening times, detailed in *section 1*;
- to allow off-licences to open for the sale of products other than alcohol at the same time as pubs (i.e. 7.30 a.m.);
- to give all licensed premises and clubs the same facility as pubs in relation to drinking-up time and exemptions.

In general apart from these changes the Bill does not affect the system for exemptions or alter the current 30-minute drinking-up time.

Part 1 (sections 1 to 8) provides for the new opening hours.

Section 1 provides for the new permitted hours of trading. The changes as compared with existing law are as follows:

- normal opening time of 10.30 a.m. at present is retained;
- closing time will be 12.30 a.m. instead of 11.30 p.m. (summer) and 11 p.m. (winter);
- “holy hour” on Sunday from 2 p.m. to 4 p.m. is abolished;
- Sunday opening at 12.30 p.m. and closing at 11 p.m. will be replaced with normal opening hours;
- St. Patrick’s Day, which is at present (apart from holy hour) treated like Sunday will instead have normal hours;
- mandatory closing all day on Good Friday is abolished — in any event hotels and restaurants are allowed to open on that day at present;
- Christmas day closing will remain.

Section 2 applies these hours to clubs. Restricted club opening on Christmas day which features in existing law will be retained. *Subsection (2)* is a transitional provision to enable clubs to bring their rules in line with the Bill. *Section 3* is similar to *section 2(1)* and applies to hotels and restaurants.

Section 4 would allow off-licences to open for the sale of products other than alcohol at the same time as pubs (i.e. 7.30 a.m.). *Section 5* provides for premises having special restaurant licences. *Section 6* gives a “level playing field” to all premises regarding exemptions and drinking-up time, which are not currently universally available.

Section 7 is a saver and provides that a person who is permitted to trade after 11.30 p.m. shall not be taken to be obliged to trade after that hour.

Section 8 allows the court to vary these new general hours in the case of a particular premises if it is appropriate to do so. The court must take into account all the circumstances, including in particular the benefit to the public, the geographical location of the premises, the nature of the clientele using the premises, the extent of tourist trade in the premises, and the views of the applicant and any lawful objectors.

Part II (sections 9 to 19) are based on the Protection of Workers (Shops) Bill, 1996 (No. 56 of 1996), the Protection of Workers (Shops) Bill, 1997 (No. 56 of 1997) and the Protection of Workers (Shops) (No. 2) Bill, 1997 (No. 63 of 1997). They provide protections for workers in licensed premises in relation to the main new opening hours (i.e. between 12 a.m. and 10.30 a.m. referred to as “added hours”) similar to those proposed for Sunday work in shops under the 1996 Bill and its successors.

The main provisions of *Part II* are as follows:

- an employee shall not be obliged to work on added hours without his or her consent;
- if an employee does not wish to work on such hours he or she shall not be discriminated against;
- an employee who works such hours shall be paid not less than time and a half;
- an employer shall give an employee notice of the option to work not less than four days before such work is due to be performed;
- an employee shall give an employer not less than three days notice of his or her non-availability to do such work, otherwise the employer may assume consent is being freely given;
- an aggrieved employee may apply to the rights commissioner if he or she believes his or her rights under this Act have been breached and the rights commissioner may order the offending employer to pay the employee a maximum of ten weeks' salary.

Part III (sections 20 to 27) deals with general matters. *Section 20* makes provision for licences for certain heritage centres, approved by the Minister for Tourism, Sport and Recreation, which relate to sites of national or local significance relating to the manufacture or distilling of intoxicating liquor. *Sections 21* and *22* are consequential, dealing with restriction of certain provisions of Licensing Acts, 1833 to 1997, and powers of the Garda Síochána. *Sections 20* to *23* are based on sections 65 to 67 of the Irish Horseracing Industry Act, 1994.

Section 23 makes general provision for offences and *section 24* provides for regulations. *Section 25* and the *Schedule* repeal enactments made unnecessary or inappropriate by *Part I*. *Section 26* provides necessary definitions and *section 27* provides the short title and related matters.

An Teachta Pádraig Upton,
Máta, 1998.