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**AN BILLE UM CHEARTAS COIRIÚIL (ORD POIBLÍ), 2002  
CRIMINAL JUSTICE (PUBLIC ORDER) BILL, 2002**

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**EXPLANATORY MEMORANDUM**

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*Purpose of the Bill*

The purpose of the Bill is to strengthen the law in order to deal more effectively with late night public disorder and disturbance which mainly has its origins in alcohol abuse. It does so in two main respects. Firstly, insofar as a person who is facing a conviction for a public order offence under certain provisions of the Criminal Justice (Public Order) Act, 1994 is concerned, the Bill provides for the making of an exclusion order as an additional penalty. This order will prohibit such person from entering or being in the vicinity of the types of premises covered by the Bill. These premises include those licensed under Intoxicating liquor legislation, the Public Dance Halls Act, the Gaming and Lotteries Acts, the Registration of Clubs Acts, as well as premises providing food, whether they are fixed or mobile. The term of the order may be for a period of up to 12 months. Secondly, the Bill allows the Gardaí to apply to the District Court for a closure order which will have the effect of limiting the hours of opening of these premises. Under a closure order, the premises in question may be restricted from opening for business for certain times and periods as the Court may determine, for the purposes of avoiding disorder either on the premises or in the vicinity of, and involving persons who were on, the premises. A closure order may also be made if there has been loud or persistent noise from the premises, or its vicinity, and caused by persons who were on the premises.

*Provisions of the Bill*

*Section 1*

This is a standard provision which sets out the short title of the Act and provides for the collective citations of the Act and the Criminal Justice (Public Order) Act, 1994, as well as the other Acts whose provisions are affected by it. It also provides for the Act to come into operation one month after the date of its passing.

*Section 2*

This Section is concerned with interpretation and defines certain terms which are used in the Bill. The provisions of the Bill apply to “catering premises” which term includes any premises licensed under the Intoxicating Liquor Acts, 1883 to 2000; the Registration of Clubs Acts, 1908 to 2000; the Public Dance Halls Act, 1935; the Gaming and Lotteries Acts, 1956 to 1986; and to any food outlet used for the sale of food, including take aways, whether fixed or mobile. Thus, the Bill will apply to pubs, off-licences, night clubs, dance venues of all types, amusement arcades, chip shops, take-aways and mobile food vans. It may be noticed in passing that the terms “licensed

premises” and “licensee” have particular meanings for the purposes of the Bill, and that they are somewhat wider in scope than those terms are generally understood in the context of the liquor licensing code.

### *Section 3*

*Subsection (1)* provides that, on conviction of a person for certain offences under the Criminal Justice (Public Order) Act, 1994, viz., section 4 (intoxication in a public place); section 5 (disorderly conduct); section 6 (threatening, abusive, insulting behaviour); section 7 (distribution or display of offensive material); section 8 (failure to comply with a Garda direction); or section 9 (wilful obstruction), the District Court may, in addition to any other penalty, also prohibit that person by means of an exclusion order from entering or being in the vicinity of premises covered by the terms of the Bill.

*Subsection (2)* provides that an exclusion order can be for a period of up to 12 months. Its provisions will come into effect immediately following a person’s release from prison if the Court has imposed such a penalty, as for instance in the case of offences under sections 6, 7 and 8 of the 1994 Act, or in any other case, on the date the order is made by the Court. *Subsection (5)* makes it clear that such an order may only be imposed for offences which are committed after the commencement of the Act; in other words, the new sanction cannot be imposed retrospectively.

*Subsection (3)* provides that where a person is imprisoned or detained for an offence under the 1994 Act, the Governor or person in charge of a place of detention shall notify the Garda Commissioner when the person is to be released, so that the terms of the exclusion order can be applied from that date.

*Subsection (4)* provides that a breach of an exclusion order will be punishable by a fine not exceeding €650 or imprisonment for a period not exceeding 3 months or both.

### *Section 4*

This section outlines the circumstances which must exist before an application for a closure order is made and the conditions which have to be satisfied before the Garda Síochána can apply to the Court for the order.

*Subsection (1)* provides that there must either have been disorder on the premises or in its vicinity, or there must have been excessive noise emanating from the premises or its vicinity and that such disorder is likely to recur. The disorder/noise must involve persons who were on the premises. The noise criterion has been drafted to ensure that it exceeds what would normally be regarded as acceptable or reasonable in the circumstances. The term “in the vicinity” is defined as not exceeding a distance of 100 metres from the premises involved. The subsection provides that a member of the Garda Síochána, not below the rank of Inspector, can make an application for a closure order to the District Court when in his opinion the circumstances outlined above exist.

*Subsection (2)* provides in addition that before making the application, the Garda Síochána must have informed the licensee (as defined) of the premises that disorder or excessive noise has occurred and requested that he take such action within his control to prevent a recurrence. A maximum of 7 days is allowed for the licensee to rectify the problem. *Subsection (3)* specifies that the

owner of the premises or the operator will be notified of the intention to apply for a closure order.

#### *Section 5*

This section deals with the grounds on which closure orders may be made, their application and related provisions.

*Subsection (1)* provides that the Court must be satisfied that disorder or noise has occurred and that the making of the closure order is necessary to prevent a recurrence.

*Subsection (2)* provides for a range of closure orders, i.e. those which would require a premises to close earlier than would otherwise be permitted on a particular day or days; or for a certain period; or full closure for periods not exceeding 7 days, or, in the case of a subsequent order having to be made, not exceeding 30 days. The terms of the closure order may vary according to the circumstances and the severity of the problem.

*Subsection (3)* provides that, when making the order, the Court may also specify that prior to the annual renewal of the licence or certificate applicable to the particular premises, certain requirements would have to be fulfilled, for example, the installation of a CCTV system, or restrictions on the type of substances to be sold, or limits placed on the numbers of persons which may be admitted to the premises in question.

*Subsection (4)* enables the Court to take into account the conduct of the licensee, manager or employee in relation to the operation of the premises when the making of the order is being considered.

*Subsection (5)* provides that the order may apply to the whole or part of the premises, shall specify the ground or grounds on which it was made and that it shall come into effect when written notice of it has been served on the licensee or manager of the premises.

*Subsection (6)* provides that a notice specifying the closure times must be affixed to the premises in a prominent position. *Subsection (9)* makes it an offence not to display such a notice with a fine of €300 for a first offence and €600 for each subsequent offence.

*Subsection (7)* provides that employees of the premises will not be disadvantaged during the period of closure.

#### *Section 6*

Provides for the right of appeal to the Circuit Court against the making of a closure order. To ensure the overall effectiveness of a closure order, the lodgement of an appeal of itself will not affect the coming into operation of the order, unless the Circuit Court decides accordingly within 7 days from the date the closure order was made. This will then suspend the order pending the hearing of the appeal.

#### *Section 7*

Provides for the making of an extension of a closure order. The court may extend the order with any such variation as it sees fit.

#### *Section 8*

*Subsection (1)* provides that a person who permits his premises to be open in breach of a closure order will incur a fine of €3,000 or imprisonment for a term not exceeding 6 months or both.

*Subsection (2)* provides that it shall be an offence for a person (customer) to be found on catering premises in breach of a closure

order unless he can show that the requisite notice was not affixed to the exterior of the premises.

*Subsection (3)* makes it an offence for failing to leave a premises when requested by a member of the Garda Síochána.

*Subsection (4)* provides that a person guilty of an offence under *Subsection (2) or (3)* shall be guilty of an offence and liable to a fine between €70 and €125.

*Section 9 and Section 10*  
These are standard technical provisions.

*An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí, Aibreán, 2002.*