General

The primary purpose of the Bill is to amend the Licensing Acts 1833 to 2003 in order to respond to certain recommendations of the Commission on Liquor Licensing set out in the Report on Admission and Service in Licensed Premises (December 2002) and the Final Report (April 2003), and to concerns outlined in the Interim Report of the Strategic Task Force on Alcohol (May 2002). Also relevant in this context is the special initiative on tackling alcohol misuse set out in chapter 2 of Sustaining Progress (Social Partnership Agreement 2003-2005).

On 11 June 2003, the Minister for Justice, Equality and Law Reform discussed the General Scheme of the Bill with the Joint Committee on Justice, Equality, Defence and Women’s Rights. The content of the Bill has been adapted to take account of a number of concerns raised by members of the Joint Committee (see sections 17 and 21(1)(b) in particular).

The Commission on Liquor Licensing, which was established in late 2000 and completed its work in March 2003, was charged with reviewing the liquor licensing system. It submitted four reports containing over 130 recommendations:

(a) Interim Report on Off-Licensing (May 2001);

(b) Second Interim Report (July 2002);

(c) Report on Admission and Service in Licensed Premises (December 2002);


This Bill is mainly concerned with combating drunkenness and disorderly conduct as well as addressing the problems of underage and binge drinking. This package of urgent reforms is intended to improve compliance with, and enforcement of, the intoxicating liquor code. Other reforms recommended by the Commission on Liquor Licensing, including far-reaching structural reform of the licensing system, will be addressed in the codification of the entire liquor licensing code which has already been announced. Preparatory work on codifying the licensing laws has already commenced and it is intended that an outline of the codification Bill will be available by mid-2004.
The main provisions of the Bill are as follows:

- Sections 4 to 6: Provisions relating to the sale and supply of intoxicating liquor to drunken persons and drunkenness on licensed premises.

- Sections 7 to 8: Duty on licensees to preserve order and prevention of disorderly conduct on licensed premises.

- Section 9: Temporary closure of premises in relation to certain offences.

- Section 10: Amendment of prohibited hours on Thursdays.

- Section 11: Revised provisions relating to special exemption orders, including a role for local authorities in determining the duration of such orders in their areas.

- Section 12: Prohibition of entertainment during drinking-up time.

- Sections 13 to 16: Provision of intoxicating liquor to persons under 18; restrictions on persons under 18 in bars of licensed premises; production of evidence of age by persons under 21; further consequential amendments of 1988 Act.

- Section 17: Consumption of intoxicating liquor in the vicinity of licensed premises.

- Section 18: Entry, inspection, etc., of licensed premises by members of Garda Síochána.

- Section 19: Jurisdiction of the District Court in cases of prohibited conduct on licensed premises. This involves a transfer of jurisdiction from the Equality Tribunal (ODEI) in such cases.

- Section 20: Prohibition on supply of intoxicating liquor at reduced price.

- Section 21: Provision for ministerial regulations in relation to prohibiting or restricting practices likely to encourage excessive consumption of alcohol, and the particulars to be affixed to containers in which intoxicating liquor is sold for consumption off the premises.

- Section 22: Application of the Act to registered clubs.

- Section 23: Exercise of jurisdiction (determined by location of the licensed premises).

- Section 24: Amendment of section 15 of Equal Status Act 2000.

Preliminary and general

Section 1 contains the short title, collective citations, construction and commencement provisions. These are standard provisions in legislation of this type.

Section 2 contains relevant definitions. The definition of “bar” is similar to that in the Intoxicating Liquor Act 1988. The definition is important because a distinction is made in sections of the Bill between licensed premises and the bar of licensed premises. Admission to the bar may be prohibited but access to other parts of the premises is not affected, e.g. function room or dining room.
The section also contains important definitions of “drunken person” and “disorderly conduct”. The former is in line with section 4(1) of the Criminal Justice (Public Order) Act 1994 which provides that it shall be an offence for any person to be present in any public place while intoxicated to such an extent as would give rise to a reasonable apprehension that the person might endanger themselves or any other person in the vicinity. The broad definition of “disorderly conduct” takes account of recommendations of the Commission on Liquor Licensing in its “Report on Admission and Service in Licensed Premises”.

Section 3 repeals a number of provisions that are being replaced in the Bill.

Conduct on licensed premises

The provisions set out in Part 2 of the Bill update the law in relation to conduct on licensed premises. Sections 4, 5 and 6 deal with drunken persons and drunkenness, while sections 7 and 8 deal with disorderly conduct. They replace provisions in the Refreshment Houses (Ireland) Act 1860 and the Licensing Act 1872 which have fallen into disuse.

Section 4 prohibits the supply of intoxicating liquor to drunken persons by licensees, as well as drunkenness in the bar of licensed premises. It provides that a licensee shall not admit a drunken person to the bar, and that where a person is drunk on leaving licensed premises, it shall be presumed that the person was drunk while on the premises until the contrary is proved. This section replaces and expands on provisions in sections 13 and 18 of the Licensing Act 1872 which are being repealed.

Section 5 prohibits the supply of intoxicating liquor to drunken persons in licensed premises by a person other than the licensee.

Offences by drunken persons are set out in section 6. A drunken person shall leave licensed premises on being requested to do so by the licensee or by a Garda. Moreover, such a person shall not seek entry to the bar of any licensed premises (access to a restaurant or other facilities within a hotel will not be affected). A Garda power of arrest is also included.

Section 7 places a duty on licensees to preserve order on licensed premises, while section 8 prohibits disorderly conduct on such premises. A person engaging in disorderly conduct must leave the premises on being requested to do so by the licensee or a member of the Garda and shall not re-enter the bar of the premises within a period of 24 hours. A Garda power of arrest is included. The section also provides that a licensee may refuse admission to a person convicted of an offence under the section where such admission could reasonably be regarded as involving a substantial risk that the person would engage in disorderly conduct.

Section 9 extends the temporary closure of premises penalty to include offences under several sections, including section 4 (supplying drunken persons and permitting drunkenness) and section 7 (duty of licensee to preserve order). While temporary closure will be mandatory in cases of conviction, the District Court will retain a margin of discretion with regard to the duration of the closure period. This penalty is confined under existing legislative provisions to convictions for underage drinking.
Other amendments of Intoxicating Liquor Acts

Part 3 contains amendments to existing legislative provisions, including in particular those relating to persons under the age of 18 years set out in Part IV of the Intoxicating Liquor Act 1988.

Section 10 provides that Thursday night closing time will revert to 11.30 p.m. (instead of 12.30 a.m.). The Commission on Liquor Licensing has recommended this change and it is also in line with the recommendations of the Strategic Task Force on Alcohol.

Section 11 replaces section 5 of the Act of 1927 which makes provision for the grant of special exemption orders. It provides for a local authority role in determining the duration of special exemption orders in its administrative area. The District Court will retain discretion in granting such orders but shall have regard to any resolution adopted by a local authority in the area in which the premises are located. The local authority must consult with the Gardai and consider the views submitted by the Gardai and any other person, including views on health aspects, in advance of adopting any resolution. It is further proposed that the grounds on which objections to the grant of such orders may be made be extended to include undue inconvenience or nuisance to persons residing in the locality or an undue risk to public order in the locality. These changes are entirely in line with the views of the Commission on Liquor Licensing and the Strategic Task Force on Alcohol. Since parts of this section have been amended on a number of occasions, it is proposed to replace the section in its entirety.

Section 12 seeks to prohibit the provision of entertainment during the 30 minutes drinking-up time that is permitted under existing provisions. Section 4(2) of the Public Dance Halls Act 1935 which permits dancing during the 30 minute period following expiry of a special exemption order is being repealed. The Commission on Liquor Licensing has recommended this change in order to ensure that the original purpose of allowing an orderly clearing of premises is not defeated.

Section 13 substitutes a new section for section 32 of the 1988 Act. It prohibits the purchase of alcohol for, or delivery to, persons under the age of 18. However, the purchase or delivery of intoxicating liquor for consumption by a person under 18 in a private residence where a parent or guardian has given explicit consent shall not be unlawful. The provision that is being replaced permits the delivery of intoxicating liquor to persons under 18 in a private residence.

Section 14 substitutes a new section for section 34 of the 1988 Act. It prohibits persons under 18 from bars of licensed premises. Under subsection (2), a licensee may, however, permit a child (under 15) to be present if accompanied by a parent or guardian but not after 8.00 p.m. This discretion does not apply where it appears to the licensee that the child’s presence in the bar could reasonably be regarded as injurious to the child’s health, safety or welfare. Under subsection (3), a licensee may permit a person aged 15 to 17 to be present in the bar unaccompanied by a parent or guardian but not after 8.00 p.m. Subsection (4) contains a number of exemptions to the general prohibition. The remaining subsections are broadly similar to existing provisions in section 34 of the 1988 Act.

Section 15 introduces an entirely new provision in the form of a new section to be inserted in the 1988 Act (a new section 34A). It requires that persons under 21 (apart from those in the company of a parent or guardian) carry an “age document” in order to enter and remain in the bar of licensed premises. An age document may be
one of the following: a Garda age card; passport; identity card of a member state of the European Communities; driver’s licence; a document prescribed in regulations to be made by the Minister. An age document is not required in order to gain access to other parts of the premises. This new obligation to produce an age document in order to gain admission to bars is intended to assist licensees in complying with provisions relating to underage consumption of alcohol and to assist Gardaí in enforcing the law.

A rising from the preceding changes, section 16 contains a number of further amendments to the 1988 Act. It amends sections 31(2) and 33(1) to make it clear that the consumption of intoxicating liquor by a person under 18 is conditional on the explicit consent of that person’s parent or guardian. Secondly, it makes it an offence for a person aged 15 to 17 to be present in bars of licensed premises after 8.00 p.m. Finally, it amends the existing temporary closure order provision (section 36A of the 1988 Act as inserted by the Intoxicating Liquor Act 2000) in order to make it an offence not to affix a conspicuous notice giving details of the closure order as required by that provision.

Section 17 has been introduced following discussions with the Joint Committee on Justice, Equality, Defence and Women’s Rights on 11 June 2003. It contains provisions dealing with the consumption of intoxicating liquor purchased for consumption off the premises and, for this purpose, updates and replaces section 13 of the Intoxicating Liquor (General) Act 1924.

This section provides that a licensee shall be guilty of an offence if, with the licensee's knowledge or consent, intoxicating liquor supplied by the licensee in a closed container for consumption off the premises is consumed in another premises owned or controlled by the licensee or in a public place within 100 metres of the licensed premises (this limit of 100 metres is also referred to in the Criminal Justice (Public Order) Act 2003). The person who consumes such intoxicating liquor shall also be guilty of an offence. The section also restates the existing prohibition on the consumption of intoxicating liquor in an off-licence.

Section 18 is intended to permit any member of the Gardaí, whether in uniform or not, to enforce the licensing laws. This has been recommended by the Commission on Liquor Licensing. At present, the powers of non-uniformed officers appear to be restricted to drugs-related offences under the Licensing (Combating Drug Abuse) Act 1997.

Miscellaneous

Part 4 deals with a number of miscellaneous matters, including a transfer of jurisdiction from the Equality Tribunal to the District Court and a prohibition on the supply of intoxicating liquor at reduced prices.

Section 19 provides that a person who claims that prohibited conduct has been directed against him or her on, or at the point of entry to, licensed premises may seek redress before the District Court. For this purpose, prohibited conduct is defined as discrimination against, or sexual harassment or harassment, of a person contrary to Part II of the Equal Status Act 2000 on, or at the point of entry to, licensed premises. The means of redress currently available under the Equal Status Act are being extended to include temporary closure of the premises concerned. Where the District Court is satisfied that a person is entitled to redress and makes such an order, a person may object to the renewal of the licence of the premises concerned.
Provision is made in section 19 for the Equality Authority to apply to the District Court for redress in certain cases (subsection (6)), and the Authority may also provide assistance to persons applying to the courts for redress (subsection (7)).

Section 20 prohibits the supply of intoxicating liquor at a reduced price during a limited period during any day, e.g. “happy hours”. This is intended to discourage practices which may lead to excessive consumption of intoxicating liquor. It is not intended to prohibit retail practices such as “sales” or product promotions over a number of days.

Section 21 provides for the making of regulations to prohibit or restrict licensees from engaging in promotional practices that are intended or likely to encourage persons to consume alcohol to an excessive extent and, secondly, to specify particulars to be affixed to any container in which intoxicating liquor is sold for consumption off the premises which enable the identity of the licensee and the licensed premises concerned to be identified.

As regards the former, the Commission on Liquor Licensing recommended that promotional practices that are conducive to or likely to result in excessive consumption of alcohol should be prohibited by law. This view is supported by the Strategic Task Force on Alcohol.

As regards labelling requirements, section 17 of the Intoxicating Liquor Act 2000 provides that the name of the owner, and the address, of premises shall be clearly indicated on a label to be affixed to any container in which intoxicating liquor is sold for consumption off the premises. This section has not been commenced and is now being repealed. The new provision follows concerns expressed by the Joint Committee on Justice, Equality, Defence and Women’s Rights on 11 June 2003.

Implementation of these provisions by means of regulations is intended to avoid any later challenge to the legislation on the grounds that proper procedures had not been followed. It is intended to notify the European Commission of proposed regulations under this section in accordance with the so-called Technical Standards or Transparency Directives (Directives 98/34/EC and 98/48/EC). These Directives are intended to enable the European Commission and the member states to examine in advance proposed national technical rules in the interests of transparency and the smooth functioning of the internal market.

Section 22 deals with the application of the Act’s provisions to registered clubs. Sections that amend, or replace, existing sections in the Intoxicating Liquor Act 1988 already apply to registered clubs by virtue of section 16 of the Intoxicating Liquor Act 2000.

Section 23 determines the exercise of jurisdiction by the courts in relation to sections 9 and 19.

Section 24 contains two amendments to the Equal Status Act 2000. The first amendment is intended to safeguard the discretion of licensees in relation to the presence of children in bars of licensed premises (section 34 of the Intoxicating Liquor Act 1988 as substituted by section 14 of this Bill). The proposal is in line with recommendations of the Commission on Liquor Licensing and the Strategic Task Force on Alcohol. The second amendment provides that a licensee may set a minimum age for the sale and consumption of alcohol which is above the statutory minimum of 18 as long as the
policy is publicly displayed and is implemented in a non-discriminatory manner.

Financial implications
The proposals set out in the Bill are intended to improve compliance with the licensing laws by licensees, and their enforcement by the Gardaí. The provisions in section 15 in relation to production of evidence of age by persons under 21 may lead to increased demand for the Garda age card and may have resource implications. The transfer of jurisdiction from the Equality Tribunal to the District Court will reduce and increase their casework respectively.