

Joint Committee on Culture, Heritage and the Gaeltacht

Meeting to discuss “how to protect and promote vibrant nightlife, economy and culture in our major cities” on 13 November 2019

Opening statement

1. My name is Martina Colville and I am Head of the legislative function in the Civil Justice and Equality pillar of the Department of Justice and Equality. I want to thank the Committee for the invitation to this meeting and for the opportunity to address certain issues relating to the subject matter of today’s discussions.
2. While my Department does not have any direct role in protecting and promoting “vibrant nightlife, economy and culture”, the manner in which the licensing laws complement or facilitate such activity will undoubtedly be of interest to the Committee.

Licensing Acts 1833 to 2019

3. Statutory provisions relating to the sale, supply and consumption of intoxicating liquor in licensed premises are set out in the Licensing Acts 1833 to 2018. This body of legislation specifies the opening and closing hours of licensed premises – including public houses, hotels, restaurants and theatres – and prohibits the sale and consumption of intoxicating liquor by underage persons (i.e. those under 18 years). It also contains mechanisms for the obtaining of District Court exemption orders permitting longer opening hours for various purposes.
4. There are no specific provisions for the operation of nightclubs, late bars or other late-night entertainment outlets in the Licensing Acts 1833 to 2018. This means, for example, that in the absence of a specific nightclub licence or nightclub permit, nightclubs and late bars operate on the basis of the “special exemption order” mechanism (see below),

which allow, subject to conditions, longer opening hours for licensed premises with on-licences, e.g. a public house licence or hotel licence.

Special exemption orders

5. Section 5 of Intoxicating Liquor Act 1927 – as amended in several subsequent Intoxicating Liquor Acts – defines “special exemption order” as an order of the District Court exempting the holder of an on-licence from general licensing hour restrictions on “special occasions”. These occasions include dances held in a ballroom licensed under the Public Dance Halls Acts 1935 to 2003 and forming part of the licensed premises in respect of which the special exemption order is being sought.
6. The applicant for a special exemption order must serve on the Garda Síochána, not less than forty-eight hours before making the application, a notice of intention to apply for the order, setting out the applicant's name and address and the special occasion, the premises and the extended hours in respect of which the order is being sought.
7. The District Court may make a special exemption order if it thinks fit to do so, having heard the officer of the Garda Síochána for the licensing area concerned and having taken account of other relevant conditions. While the licensing code foresees individual applications for special exemption orders (on the basis that each event is a special occasion), the practice has developed, at least in some of the District Courts, of block applications and block approvals, e.g. monthly applications and approvals.
8. The court fee for each application for a special exemption order is €300, as prescribed in the District Court (Fees) Order; excise duty of €110 per application is also payable to the Revenue Commissioners. In 2018, about 42,000 licensing applications were made to the District Court, and over 80% of these were applications for special exemption orders. The revenues obtained are used to defray the costs of operating the system and

contribute to the funding of Garda policing activity associated with the prevention of public disorder and related anti-social activity following late-night events.

9. Under current law, a special exemption order expires—

- in case it extends to any Monday that is not a public holiday, at 1.00 a.m., or
- in any other case, at 2.30 a.m.,

unless the District Court, for stated reasons – including any reasons related to the need to maintain public order – considers it expedient to grant the order for a shorter period. Drinking-up time of 30 minutes is permitted on expiry of the special exemption order at 2.30 (or earlier time if the Court has exercised its discretion) but no dancing or entertainment is permitted during this further 30-minute period. It appears that in the great majority of cases, premises are due to close at 3.00 a.m.

10. The granting of discretion to the District Court in relation to the expiry times of special exemption orders is a necessary safeguard that allows the Court to take account of any Garda objections arising from previous instances of disorder or disturbances in or at the premises concerned. It also allows the court to take due account of any objections from local residents arising from instances of undue inconvenience or nuisance, such as noise or car parking on private property, in the area. The task of the Court in such cases is to seek the balance the respective rights of all the concerned parties.

Recent changes

11. The expiry times for special exemption orders were last adjusted in the Intoxicating Liquor Act 2000. Many of the reforms enacted at that time were based on recommendations made by a sub-committee of the then Joint Committee on Justice, Equality and Women's Rights in its report entitled "A Review of Liquor Licensing". As regards the shorter duration of special exemption orders for Sunday night/Monday morning, the sub-committee recommended that there should be no change to the

existing law, i.e. Sunday night special exemptions orders should expire at 1.00 a.m. on Monday mornings. That remains the law.

12. The Intoxicating Liquor Act 2003 introduced a new provision that confers a role on local authorities concerning the expiry time of special exemption orders. It provides that a local authority may, following consultations with the Gardaí and other relevant persons, adopt a resolution concerning earlier expiry times for special exemption orders within the whole or a specified part of its administrative area and the District Court is required to have regard to any such resolution before making a special exemption order for any premises within the area concerned. A resolution to extend expiry times beyond the statutory limits is not permitted. While this provision was intended primarily to empower local authorities to take account of the concerns of local residents in areas that might be adversely affected by inconvenience or nuisance, or increased risks to public order, the extent to which local authorities have used it is unknown to the Department.

13. Further statutory changes were introduced in the Intoxicating Liquor Act 2008 in order to improve safety and security standards. In response to public concerns, this Act introduced a requirement for a closed circuit television system in certain cases and a requirement that persons providing a security service as a door supervisor be the holder of a current licence issued by the Private Security Authority under the Private Security Services Act 2004. The District Court must also be satisfied that the premises concerned comply with fire safety standards under the Building Control Act 1990.

Future changes

14. As regards any future reforms, including any changes that this Joint Committee may consider desirable in the context of protecting and promoting vibrant nightlife, economy and culture, Minister Flanagan has outlined his views on such a possibility in response to a number of Parliamentary Question on the subject earlier this year. While stating that

he is in principle in favour of enhancements to current arrangements, he does not have immediate plans to amend the law in this area. Indeed any such changes to the law would require proper consultation with relevant stakeholders, including representative bodies, groups representing local residents, the local authorities and the Garda Síochána.

15. The Minister said that he is mindful that any change would need to be organised and managed in a manner that will not cause undue inconvenience or nuisance to local residents nor create an undue risk to public order. Moreover, any proposed changes would also need to have regard to the preservation of a fair competitive environment for competing businesses.

November 2019