

Civil Law (Miscellaneous Provisions) Bill 2021

Bill No. 95 of 2021

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29 June 2021

Abstract

The [Civil Law \(Miscellaneous Provisions\) Bill 2021](#) provides for the regulation and licensing of the sale and consumption of alcohol in outdoor seating areas, where those outdoor seating areas have been permitted by the local authorities on public land, or where those outdoor seating areas are on private land abutting the licensed premises. The Bill also provides for an increase in the maximum number of ordinary judges of the High Court.



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This L&RS Bill Digest may be cited as:

Oireachtas Library & Research Service, 2021, *L&RS Bill Digest: Civil Law (Miscellaneous Provisions) Bill 2021*

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Glossary

Terminology	Description
The 1904 Act	The Registration of Clubs (Ireland) Act 1904 .
The 2020 Act	The Criminal Justice (Enforcement Powers) (Covid-19) Act 2020 .
Authorisation	An authorisation given by a statutory authority in the form of a licence, permit, consent, approval or permission or any other form and includes a licence granted under section 254 of the Planning and Development Act 2000 and a consent given under section 71 of the Roads Act 1993 .
Club	A club registered under the <i>Registration of Clubs Acts</i> .
Licence	A licence for the sale by retail of intoxicating liquor whether granted on production or without production of a certificate of the Circuit Court or the District Court.
Licensed premises	A premises in relation to which— (a) a licence is in force, (b) a certificate of registration under the 1904 Act is applicable and in force and which supplies intoxicating liquor.
Licensee	The holder of a licence, and in relation to a club registered under the <i>Registration of Clubs Acts</i> , every person entered in the register of clubs (kept under those Acts) as an official or member of its committee of management or governing body at the material time.
<i>Licensing Acts</i>	The <i>Licensing Acts 1833 to 2018</i> .
Liquor licence	gov.ie - Alcohol Licence for a Cafe/Restaurant (www.gov.ie) or equivalent
Minister	The Minister for Justice.
Normal business	In relation to a licensed premises, the business that would be, or might reasonably be expected to be, lawfully carried on on the premises but for any regulations made under section 31A of the <i>Health Act 1947</i> .
Outdoor seating area	In relation to a licensed premises, an outdoor seating area— (a) lawfully used by a licensee of that premises pursuant to an authorisation, or (b) on private land abutting the premises where— (i) the land is owned, or occupied by way of a lease or licence, by the licensee of the premises, (ii) a licence is not in force, or a certificate of registration under 1904 Act is not applicable and in force, in respect of the area,

	<p>(iii) the number of seated patrons who can be accommodated in the area does not exceed the number of patrons who may be accommodated in the licensed premises,</p> <p>(iv) the area contains sufficient seating to accommodate the number of seated patrons referred to in subparagraph (iii),</p> <p>(v) the area does not contain any counter or barrier across which intoxicating liquor can be served to the public, and</p> <p>(vi) the sale or supply of intoxicating liquor by the licensee to patrons in the area is an ancillary part of the normal business carried on on that premises.</p>
Private land	Land other than State land (within the meaning of the State Property Act 1954).
<i>Registration of Clubs Acts</i>	The <i>Registration of Clubs Acts 1904 to 2008</i> .

Source: Section 1 of the Bill

Table of provisions

Section	Title	Effect
1.	Definitions	Standard provision that provides for the definitions of various terms within this Bill.
2.	Temporary licensing of outdoor seating area	<p>Section 2(1) provides for an outdoor seating area of a licensed premises to be treated as part of the premises concerned insofar as the <i>Licensing Acts</i> and, where the premises is a club, the <i>Registration of Clubs Acts</i>, apply to the premises.</p> <p>Section 2(1)(a) provides that it shall be lawful to sell or supply alcohol in the outdoor seating area on the same basis that it is lawful to sell or supply alcohol under the licence or certificate of registration attaching to that premises.</p> <p>Section 2(1)(b) provides that a failure to operate the outdoor seating area in accordance with the Bill, the <i>Licensing Acts</i> or, in the case of a club, the <i>Registration of Clubs Acts</i> shall be grounds for objection to the renewal of a licence or a certificate of registration under the 1904 Act.</p> <p>Section 2(3) provides that irrespective of the type of licence held by a licensee, or that certificate of registration under the 1904 Act is in force in respect of a club, in respect of a licensed premises, the sale or supply of alcohol in an outdoor seating area shall not be lawful where it is sold or supplied for consumption off the premises or outdoor seating area.</p> <p>Section 2(4) provides that irrespective of the type of licence held by a licensee, or that certificate of registration under the 1904 Act is in force in respect of a club, in respect of a licensed premises, the sale or supply of alcohol in an outdoor seating area shall only be lawful within the times permitted by the <i>Licensing Acts</i>, the <i>Registrations of Clubs Acts</i> or where any one or more than one of such times has been restricted by or under any enactment (including regulations made under section 7) or by an authorisation, within the time or times concerned as so restricted.</p> <p>Section 2(5) provides that section 2(1) of the Bill shall not be taken to authorise the use of an outdoor seating area for a use which is not authorised by or under the <i>Planning and Development Acts 2000 to 2021</i>, or any activity in an outdoor seating area which is otherwise unlawful.</p>

Section	Title	Effect
3.	Direction of member of Garda Síochána	<p>Section 3(1) provides that where a member of An Garda Síochána suspects that a specified person is not complying with a provision of the Licensing Acts, the Registration of Clubs Acts or this Bill (if enacted), applicable to an outdoor seating area, or an authorisation, the Member may issue a direction to the specified person to take such steps as the member deems necessary to ensure compliance with the provision or authorisation.</p> <p>Section 3(2) provides that a person who fails or refuses to comply with a direction shall be guilty of an offence.</p> <p>Section 3(3) provides that a member may request a licensee to produce the authorisation, or proof of the authorisation, in respect of an outdoor seating area, and to produce satisfactory proof, in relation to an outdoor seating area on private land, that the area is owned, or occupied by way of a lease, by the licensee.</p> <p>Section 3(4) provides that a person who fails or refuses to produce an authorisation or proof when requested shall be guilty of an offence.</p> <p>Section 3(5) provides that a member who has reasonable grounds for believing an offence is being committed or has been committed under section 3, may require the offending person to state their name and address.</p> <p>Section 3(6) provides that a person who fails or refuses to state their name and address or states a name or address that is false or misleading, shall be guilty of an offence.</p> <p>Section 3(7) provides that a member with a power to arrest any person without a warrant whom the member has reasonable cause to believe has committed an offence under section 3.</p> <p>Section 3(8) provides that a person guilty of an offence under section 3 shall be liable on summary conviction to a class C fine (a maximum fine of €2,500) or to imprisonment for up to 6 months, or both.</p> <p>Section 3(9) provides that the powers of member of An Garda Síochána under section 3 are in addition to any powers a member has in relation to an outdoor seating area under the Licensing Acts, the Registration of Clubs Acts or any other enactment.</p> <p>Section 3(10) defines a specified person under section 3 as the licensee of the premises, the occupier of the</p>

Section	Title	Effect
		premises, the manager of the premises, or any other person for the time being in charge of the premises.
4.	Application of Act of 2020 to outdoor seating area in respect of certain enactments and authorisation	<p>Section 4(1) provides that the 2020 Act shall apply to an outdoor seating area in respect of a provision of an enactment or an authorisation as the 2020 Act applies to relevant premises subject to the following modifications:</p> <ul style="list-style-type: none"> • a reference in the 2020 Act to a direction given under section 31A(7) of the <i>Health Act 1947</i> in respect of a relevant premises to be construed as a reference to a direction under section 3 of the Bill in respect of an outdoor seating area; • a reference in the 2020 Act to a relevant premises to be construed as a reference to an outdoor seating area save that the requirement in section 8 of the 2020 Act to affix a notice to the exterior of a premises shall remain insofar as the notice relates to an outdoor seating area; • a reference in the 2020 Act to a relevant provision shall be construed as a reference to a provision of the enactment or authorisation concerned; and • a reference in the 2020 Act to the relevant period shall, in relation to an outdoor seating area, be taken to be the period of the day during which the sale or supply of intoxicating liquor in that area is lawful in accordance with section 2(4) of the Bill. <p>Section 4(2) provides that the 2020 Act shall continue to apply for the purposes of section 4(1) of the Bill notwithstanding that the 2020 Act ceases to be in operation or is repealed.</p>
5.	Extension of application of Act of 2020 to outdoor seating area	Section 5 provides for an outdoor seating area to come within the meaning of a relevant premises for the purposes of the 2020 Act, with references to a relevant premises in the 2020 Act to be construed as including a reference to an outdoor seating area which relates to the relevant premises.
6.	Application of <i>Criminal Justice (Public Order) Act 1994</i>	Provides for an outdoor seating area on private land to come within the meaning of a public place for the purposes of the <i>Criminal Justice (Public Order) Act 1994</i> .
7.	Regulations	<p>Standard provision that provides for the making of regulations by the Minister.</p> <p>Section 7(1) provides that such regulations may restrict the time during which a licensee of a licensed premises is</p>

Section	Title	Effect
		<p>permitted to sell or supply alcohol in an outdoor seating area.</p> <p>Regulations made under this Bill are required to be laid before each House of the Oireachtas as soon as possible after it is made and may be subject to a resolution in either House annulling the regulation, if passed within 21 days of the laying of the regulation.</p>
8.	Number of ordinary judges of High Court	<p>Section 8 provides for an amendment to section 9 of the <i>Courts and Court Officers Act 1995</i>.</p> <p>Section 9(1), as amended, would provide for an increase in the number of ordinary judges of the High Court to “not more than 42.”</p> <p>Section 9(2), as amended, would allow the Government to provide, by way of an order, that the number of ordinary judges of the High Court be exceeded by one.</p>
9.	Short title, collective citation, commencement and operation	<p>Standard provision that defines the short title of the Bill and provides that the Bill will come into operation the day following its passing.</p> <p>Section 9(4) provides that the Bill (other than section 8), if enacted shall remain in operation until the 30 November 2021. The period of operation may be extended for a further period or periods, each not exceeding 6 months, where an extension is set out in a resolution passed by each House of the Oireachtas, prior to the expiry of the period of operation or period of subsequent extension of the Act.</p>

Source: L&RS Analysis of the Bill

Background

The [Civil Law \(Miscellaneous Provisions\) Bill 2021](#) [the Bill] was published by the Minister for Justice [the Minister], Heather Humphreys TD, on 28 June 2021. No pre-legislative scrutiny was carried out in relation to the Bill. Announcing the Cabinet approval of the publication of the Bill, a spokesperson for the Minister stated that:

“The overwhelming majority of pubs and restaurants are operating successfully and the Government is determined to support the industry throughout this challenging period.

Minister Humphreys, following consultation with the Attorney General, felt that a short piece of time-bound primary legislation would provide absolute clarity to businesses, local authorities and An Garda Síochána.

It will allow for the sale and consumption of alcohol in seated outdoor areas, including those authorised by local authorities or those privately owned adjacent to the licensed premises but not currently subject to a licence, subject to a number of conditions.”¹

The Explanatory Memorandum for the Bill notes:

“The primary purpose of this Bill is to remove the uncertainty that has arisen during the Covid-19 pandemic regarding the lawful sale and consumption of alcohol in outdoor seating areas, where those outdoor seating areas have been permitted by the local authorities on public land, or where those outdoor seating areas are on private land abutting the licensed premises. The Bill will ensure that obligations on licence holders, including those to maintain good order in those areas, are preserved.

The Bill also provides for an increase in the maximum number of ordinary judges of the High Court and provides that the Government may, by order, allow for an additional judge of the High Court over the maximum number permitted in certain circumstances. These measures are required to assist the Court in addressing the significant increase in its workload and backlog of cases caused by the Covid-19 pandemic.”²

The Explanatory Memorandum also notes that there are “no financial implications for the Exchequer.”³

Liquor licensing and outdoor seating areas

An issue has recently arisen in relation to liquor licensing and outdoor seating areas which have been established in many premises in response to the Covid-19 pandemic, and the legality of the sale and supply of alcohol in such outdoor seating areas. A spokesperson for An Garda Síochána noted that:

¹ Cormac McQuinn, “Outdoor drinking to be allowed in authorised areas under newly proposed law” *Irish Times* (28 June 2021). Available at <https://www.irishtimes.com/news/politics/outdoor-drinking-to-be-allowed-in-authorised-areas-under-newly-proposed-law-1.4605998>.

² Explanatory Memorandum for the Civil Law (Miscellaneous Provisions) Bill 2021, at p. 1. Available at <https://data.oireachtas.ie/ie/oireachtas/bill/2021/95/eng/memo/b9521d-memo.pdf>.

³ *Ibid*, at p. 3.

“Outlets selling food or beverages are currently restricted to business on a takeaway basis or for consumption off the premises.

The application for a licence to sell alcohol is accompanied by the lodgement of inter alia a site plan highlighting the specified area to which the licence will apply.

The licensee is licensed to sell intoxicating liquor to a person to consume the alcohol within that highlighted area only, any other sales are on a take away basis only.”⁴

The issue was raised in the Seanad by a number of Senators on 21 June 2021, with Senator Mark Wall stating that:

“Over the past days I received a number of representations about the possibility of fines being handed out by An Garda Síochána to those who are enjoying or about to enjoy our outdoor summer. The Garda have said that pubs and restaurants are not legally permitted to serve alcohol in temporary, outdoor seating areas. Licensed premises across the State have been given permission to set up outdoor seating by the local councils. Section 254 licences have been applied for and issued throughout the country, with many licensed premises setting up on footpaths or in areas in front of their business premises as a solution until indoor dining is allowed. The Garda has said, however, that these areas are not covered by alcohol licences originally issued by the District Courts. Until indoor dining and drinking return on 5 July under the Government's reopening plan, we need clarity.”⁵

This was responded to by Senator Micheál Carrigy, who noted that:

“In response to the matter raised by Senator Wall, the Minister, Deputy Humphreys, has given a commitment in regard to the licensing laws and to the introduction of whatever legislation is needed to ensure there is no issue with regard to outdoor hospitality for the summer ahead.”⁶

The matter was also raised in the Dáil, with Deputy Louise O'Reilly TD, noting that:

“In the past hour and a half, the Irish Independent has reported that ‘Justice Minister Heather Humphreys will bring legislative changes on pubs and restaurants selling alcohol in their outdoor seating areas’ in the coming days. That is the message that people who are fighting really hard to save their businesses and workers who want their jobs to survive this, are getting. They are getting mixed messages. They deserve some clarity, as do members of An Garda Síochána who are being asked to police this. They are not being given sufficient guidance by the Government on the issue.”⁷

⁴ As reported by Conor Gallagher & Olivia Kelly, “Gardaí say outdoor drinking in temporary seating areas illegal” *Irish Times* (20 June 2021). Available at <https://www.irishtimes.com/news/crime-and-law/garda%C3%AD-say-outdoor-drinking-in-temporary-seating-areas-illegal-1.4598659>.

⁵ Seanad Éireann debate - Monday, 21 Jun 2021 (Vol. 277 No. 4). Available at <https://www.oireachtas.ie/en/debates/debate/seanad/2021-06-21/11/>.

⁶ Ibid.

⁷ Dáil Éireann debate - Tuesday, 22 Jun 2021 (Vol. 1009 No. 1). Available at <https://www.oireachtas.ie/en/debates/debate/dail/2021-06-22/27/>.

This was responded to by Deputy Malcolm Noonan TD, who stated that:

“An Garda Síochána has made clear that the overwhelming majority of owners of licensed premises have behaved responsibly and those who continue to behave responsibly in controlling their premises should have nothing to worry about. A tiny minority of pubs have been serving alcohol to those seated outside agreed areas, and clearly that will be the focus of any Garda action in the first instance.

Many cities have by-laws in place. Local authorities have facilitated pubs with permissions for outdoor seating and grants have been made available to many businesses. We want this to work but gardaí need to be able to control matters as needed and prevent them from getting out of hand. Gardaí across the country use their discretion every day to police as the circumstances require, as they have done throughout the pandemic, and work closely with restaurants and pubs to ensure the safety of the public. I trust that Garda members will act in accordance with the Garda Commissioner's instruction and will continue to adopt a graduated approach to the public health guidelines, in the interests of public safety and order. However, the Government is clear that if we need to take further action, we will do so. The Minister for Justice, Deputy Humphreys, is discussing what further measures may be needed with the Attorney General and Government colleagues.”⁸

⁸ Ibid.

Principal provisions of the Bill

This section of the Digest examines the main provisions of the Bill. The Bill comprises 9 sections. Section 1 of the Bill relates to the definition of various terms in the Bill. Section 7 of the Bill relates to the making of regulations by the Minister. Sections 1 and 7 are standard provisions and for that reason are not discussed below. A short synopsis of each provision is given in the Table of Provisions (above).

Temporary licensing of outdoor seating areas

Section 2 of the Bill provides for arrangements relating to the licensing of outdoor seating areas and the sale and supply of alcohol.

Section 2(1) provides for an outdoor seating area of a licensed premises to be treated as part of the premises concerned insofar as the *Licensing Acts* and, where the premises is a club, the *Registration of Clubs Acts*, apply to the premises.

Section 2(1)(a) provides that it shall be lawful to sell or supply alcohol in the outdoor seating area on the same basis that it is lawful to sell or supply alcohol under the licence or certificate of registration attaching to that premises.

Section 2(1)(b) provides that a failure to operate the outdoor seating area in accordance with the Bill, the *Licensing Acts* or, in the case of a club, the *Registration of Clubs Acts* shall be grounds for objection to the renewal of a licence or a certificate of registration under the 1904 Act.

Section 2(3) provides that irrespective of the type of licence held by a licensee, or that certificate of registration under the 1904 Act is in force in respect of a club, in respect of a licensed premises, the sale or supply of alcohol in an outdoor seating area shall not be lawful where it is sold or supplied for consumption off the premises or outdoor seating area.

Section 2(4) provides that irrespective of the type of licence held by a licensee, or that certificate of registration under the 1904 Act is in force in respect of a club, in respect of a licensed premises, the sale or supply of alcohol in an outdoor seating area shall only be lawful within the times permitted by the *Licensing Acts*, the *Registrations of Clubs Acts* or where any one or more than one of such times has been restricted by or under any enactment (including regulations made under section 7) or by an authorisation, within the time or times concerned as so restricted.

Section 2(5) provides that section 2(1) of the Bill shall not be taken to authorise the use of an outdoor seating area for a use which is not authorised by or under the *Planning and Development Acts 2000 to 2021*, or any activity in an outdoor seating area which is otherwise unlawful.

Direction of a member of An Garda Síochána

Section 3 provides for enforcement powers of An Garda Síochána.

Section 3(1) provides that where a member of An Garda Síochána suspects that a specified person is not complying with a provision of the *Licensing Acts*, the *Registration of Clubs Acts* or this Bill (if enacted), applicable to an outdoor seating area, or an authorisation, the Member may issue a direction to the specified person to take such steps as the member deems necessary to ensure compliance with the provision or authorisation.

Section 3(2) provides that a person who fails or refuses to comply with a direction shall be guilty of an offence.

Section 3(3) provides that a member may request a licensee to produce the authorisation, or proof of the authorisation, in respect of an outdoor seating area, and to produce satisfactory proof, in relation to an outdoor seating area on private land, that the area is owned, or occupied by way of a lease, by the licensee.

Section 3(4) provides that a person who fails or refuses to produce an authorisation or proof when requested shall be guilty of an offence.

Section 3(5) provides that a member who has reasonable grounds for believing an offence is being committed or has been committed under section 3, may require the offending person to state their name and address.

Section 3(6) provides that a person who fails or refuses to state their name and address or states a name or address that is false or misleading, shall be guilty of an offence.

Section 3(7) provides that a member with a power to arrest any person without a warrant whom the member has reasonable cause to believe has committed an offence under section 3.

Section 3(8) provides that a person guilty of an offence under section 3 shall be liable on summary conviction to a class C fine or to imprisonment for up to 6 months, or both.⁹

Section 3(9) provides that the powers of member of An Garda Síochána under section 3 are in addition to any powers a member has in relation to an outdoor seating area under the Licensing Acts, the Registration of Clubs Acts or any other enactment.

Section 3(10) defines a “specified person” under section 3 as the licensee of the premises, the occupier of the premises, the manager of the premises, or any other person for the time being in charge of the premises. It also defines a “member” as a member of An Garda Síochána.

Application of the 2020 Act to outdoor seating areas in respect of certain enactments and authorisations

Section 4(1) provides that the [Criminal Justice \(Enforcement Powers\) \(Covid-19\) Act 2020](#) shall apply to an outdoor seating area in respect of a provision of an enactment or an authorisation as the 2020 Act applies to relevant premises subject to the following modifications:

- a reference in the 2020 Act to a direction given under [section 31A\(7\) of the Health Act 1947](#) in respect of a relevant premises is to be construed as a reference to a direction under section 3 of the Bill in respect of an outdoor seating area;
- a reference in the 2020 Act to a relevant premises is to be construed as a reference to an outdoor seating area save that the requirement in [section 8](#) of the 2020 Act to affix a notice to the exterior of a premises shall remain insofar as the notice relates to an outdoor seating area;
- a reference in the 2020 Act to a relevant provision shall be construed as a reference to a provision of the enactment or authorisation concerned; and

⁹ A summary conviction relates to a conviction for an offence in the District Court before a Judge without a jury. A class C fine refers to a maximum fine of €2,500.

- a reference in the 2020 Act to the relevant period shall, in relation to an outdoor seating area, be taken to be the period of the day during which the sale or supply of intoxicating liquor in that area is lawful in accordance with section 2(4) of the Bill.

Section 4(2) provides that the 2020 Act shall continue to apply for the purposes of section 4(1) of the Bill notwithstanding that the 2020 Act ceases to be in operation in accordance with section 17 (as amended by [section 3 of the Health and Criminal Justice \(Covid-19\) \(Amendment\) Act 2021](#)) of the 2020 Act, or is repealed.

Extension of the application of 2020 Act to outdoor seating areas

Section 5 provides for an outdoor seating area to come within the meaning of a relevant premises for the purposes of the 2020 Act, with references to a relevant premises in the 2020 Act to be construed as including a reference to an outdoor seating area which relates to the relevant premises.

Application of the *Criminal Justice (Public Order) Act 1994*

Section 6 provides for an outdoor seating area on private land to come within the meaning of a public place for the purposes of the [Criminal Justice \(Public Order\) Act 1994](#). A “public place” is defined in [section 3](#) of the *Criminal Justice (Public Order) Act 1994* as:

- “(a) any highway,
- (b) any outdoor area to which at the material time members of the public have or are permitted to have access, whether as of right or as a trespasser or otherwise, and which is used for public recreational purposes,
- (c) any cemetery or churchyard,
- (d) any premises or other place to which at the material time members of the public have or are permitted to have access, whether as of right or by express or implied permission, or whether on payment or otherwise, and
- (e) any train, vessel or vehicle used for the carriage of persons for reward.”

Number of ordinary judges of the High Court

Section 8 of the Bill provides for an amendment to [section 9 of the Courts and Court Officers Act 1995](#).

Section 9(1), as amended, would provide for an increase in the number of ordinary judges of the High Court to “not more than 42.” Currently the maximum number of ordinary judges of the High Court is set at 37.¹⁰

Section 9(2), as amended, would allow the Government to provide, by way of an order, that the number of ordinary judges of the High Court be exceeded by one.

¹⁰ As provided for under section 9 of the *Courts and Court Officers Act 1995*, as amended by [section 1 of the Courts Act 2015](#).

Section 9(2) as amended, would require a request to the Government by the Minister following consultation with the Minister for Public Expenditure and Reform, and where they are of the opinion that such an increase is necessary in the interests of the administration of justice, having regard to the volume of business, or any other reason arising from the state of business before the High Court and the need to ensure the efficient transaction of business in the High Court.

The explanatory memorandum notes that:

“This increase is requested as the Court is described as facing an unprecedented period in its workload due to the Covid-19 pandemic and the time it takes to hear cases remotely, which has resulted in the Court’s backlog of cases increasing. This Bill provides an opportunity to expedite this provision as it is considered urgent.”

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