

**PRELIMINARY COMMENTS ON DRAFT GENERAL SCHEME OF
INTOXICATING LIQUOR/PUBLIC ORDER BILL 2008**

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THE new draft general scheme of Intoxicating Liquor/Public Order Bill 2008 announced by An Taoiseach and the Minister for Justice is in general a measured, though in parts draconian, attempt to address the nationwide epidemic of public disorder resulting from binge and underage drinking. The government treads a delicate balance between commercial reality and remedying the social evils of underage and binge drinking with consequent public disorder.

The proposals are innovative and far reaching, but they put a heavy financial burden on off licence proprietors at a time of economic downturn for a probable minimal result. The reality is that if people, young or old, want alcohol they will get it, whatever the price. Long years of heavy taxation of alcohol have proved this beyond any doubt.

The draft scheme aims to remedy the problems caused by the ready availability of cheap alcohol. That remedy may well reduce sales, and will certainly increase staff, structural and planning costs for supermarkets and convenience stores.

The powers of the Gardaí are extended. The general proposals include powers to ‘move on’ drunken persons from a public place (although they have long had the power to deal with drunk and disorderly loitering). What is new is the power to detain a person under the age of 18 years, and/or to seize and remove intoxicating liquor in his or her possession.

What is dramatically new is the extraordinary and innovative scheme allowing members of the Gardaí to “test purchase” alcohol, using underage decoys, from licensed premises under ‘suspicion’. This is a first in our licensing and probably criminal jurisprudence.

Whilst the scheme may have been prompted by the public outrage following the killing of two Polish men outside a licensed premises in Dublin in February, it may well be vulnerable to constitutional challenge, although one suspects that public policy arguments will prevail.

PUBS AND THEATRES

Further measures affecting public houses and theatres do not escape the ministerial net:

- late night premises in Dublin holding theatre licences will lose an hour's night time trading (the most valuable), and must close at 2.30 am;
- 'early house' licences (allowing pubs to open from 5am to accommodate a market or fair) are to be abolished;
- 'special exemption orders', granted monthly by the District Court, will now be subject to the following conditions every single time the publican seeks a late opening licence:
 - (i) adequate CCTV operation;
 - (ii) compliance with building regulations;
 - (iii) proof that public order will not be compromised.

It may not look much on paper, but in practice these requirements are likely to involve architects, fire safety consultants, licensed security personnel and the approval of the local dedicated licensing officer to give evidence on every such application, and not just annually as at present. The involvement of local residents in support of each application may well be required. All of which adds up to a significant increase in the cost for publicans.

OFFENCES

The minimum duration of a temporary closure order is now two days and the District Court has no discretion to reduce this time.

There is also a substantial increase in fines in respect of certain offences and a prohibition on the promotion and supply of drink at a reduced price.

OFF SALES HAMMERED

The hammer, however, falls heaviest on off licence sales, which affects supermarkets, convenience stores and petrol forecourt sales.

WINE OFF LICENCE

At present the small convenience store, the grocery shop and the petrol station can apply direct to the Revenue Commissioners for a licence to sell wine for consumption off the premises. The Minister's proposal will require the processing of this application through the District Court as in the case of a spirit and beer off licence. The court will have power to refuse the application where there is evidence that there is a sufficiency of similar premises in the neighbourhood; or where the evidence demonstrates that the premises are unsuitable for the needs of neighbourhood residents.

Other grounds of objection relate to the character of the applicant and/or the unfitness of the premises. This gives a voice to objectors who have an issue with the sale of wine in their local convenience store or petrol station. It also creates a significant financial cost for the licensee.

OFF SALES: TIME RESTRICTIONS

The proposal to restrict the time for the sale of intoxicating liquor for consumption off the premises from 10.30 am to 10 pm in both pubs and off licences seems sensible and probably reflects the closing times of most major supermarket chains in the State.

DISPLAY AND SALE

The main concern for supermarket and convenience store chains will be the implementation of head six of the Bill which introduces provisions concerning the display and sale of intoxicating liquor in licensed premises. In preparing its report the Government Alcohol Advisory Group focused in particular on the greatly increased visibility and availability of alcohol, especially in off licensed premises.

If these proposals are to receive legislative approval, the supermarkets and convenience stores – but not, note, the dedicated off-licences – will have to engineer substantial structural changes to their premises, with planning and fire safety (not to mention financial) implications.

The display and sale of intoxicating liquor in such premises must be confined to a dedicated area, separated from the remainder of the premises by a wall or similar barrier; and this area must be manned by a separate till operator, as intoxicating liquor can only be sold within this area.

Public access to the premises must be possible without customers having to pass through this separate drinks area. The drinks area may only be accessed by customers by a door, gate or turnstile.

In a premises where the structural separation is not ‘technically feasible’, the display and sale of intoxicating liquor can only take place in an area where public access is securely prevented. One assumes that the minister has in mind a barrier such as a counter, and in fact he defines a counter as ‘counter from or at which products other than intoxicating liquor are not sold or paid for’. In such a case the sale of intoxicating liquor by self service is not permitted. All of which will increase costs for the licensees.

This provision may also affect the serious wine buff’s desire to browse before making his or her choice.

The Government's present proposal to restrict the sale times and the display of alcohol in off licensed premises is certainly a more practical solution to the social problems caused by alcohol abuse than the multiplication of licensed premises proposed in the Café Bar scheme some years ago. However the financial and commercial consequences of Minister Lenihan's draft scheme are potentially high for the owners of licensed premises, particularly as we move into an economic downturn. Nonetheless it is an excellent first step, and must be recognised as a valuable contribution to remedying the social evils of alcohol abuse. The real test will come with enforcement.