

Draft General Scheme of Intoxicating Liquor/Public Order Bill 2008

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Head 1 – Short title, collective citation, construction and commencement.

Provide that:

- (1) This Act may be cited as the Intoxicating Liquor Act 2008.
- (2) The Licensing Acts 1833 to 2004 and Part 2 of this Act, in so far as it amends and extends those Acts, may be cited together as the Licensing Acts 1833 to 2008 and shall be construed together as one.
- (3) The Registration of Clubs Acts 1904 to 2004 and this Act, in so far as it amends and extends those Acts, may be cited together as the Registration of Clubs Acts 1904 to 2008 and shall be construed together as one.
- (4) This Act shall come into operation on such day or days as the Minister may fix by order, either generally or with reference to any particular purpose or provision, and different days may be so fixed for different purposes and different provisions.

Explanatory note

This is a standard provision.

Head 2 – Interpretation

Provide that:

In this Act—

“Act of 1960” means the Intoxicating Liquor Act 1960;

“Act of 1962” means the Intoxicating Liquor Act 1962;

“Act of 1988” means the Intoxicating Liquor Act 1988;

“Act of 2000” means the Intoxicating Liquor Act 2000;

“Act of 2003” means the Intoxicating Liquor Act 2003;

“intoxicating liquor counter” means a counter from or at which products other than intoxicating liquor are not sold or paid for;

“licence” means a licence for the sale of intoxicating liquor, whether granted on production or without production of a certificate of the Circuit Court or District Court;

“licensed premises” means premises in respect of which a licence is in force and, in relation to a licensee, means the licensed premises of the licensee;

“licensee” means the holder of a licence;

“Minister” means the Minister for Justice, equality and Law Reform;

“mixed trading premises” means premises where business other than the sale of intoxicating liquor and ancillary products such as confectionary and beverages other than intoxicating liquor is carried on;

“off-licence” means a licence for the sale of alcohol for consumption of intoxicating liquor off the premises only;

“on-licence” means a licence for the sale of intoxicating liquor for consumption either on or off the premises;

“self-service methods” means any method of sale allowing a customer to supply him or herself with the article sold on or before payment for it;

Explanatory note

This is a standard provision.

Head 3 – Sale of alcohol for consumption off the premises

Provide that:

- Notwithstanding the provisions of section 2 (1) (b) of the Act of 1927 [as substituted by section 3 of the Act of 2000 and subsequently amended by section 10 of the Act of 2003] it shall not be lawful to sell intoxicating liquor for consumption off the premises except between 10.30 a.m. and 10.00 p.m.
- Section 3 of the Act of 1927 is amended by the deletion of subsection (2).

Explanatory note

This section proposes to give effect to recommendations of the Government Alcohol Advisory Group on the hours during which alcohol may be sold for consumption off the premises.

The Government Alcohol Advisory Group has recommended that the sale of intoxicating liquor for consumption off the premises be restricted to the period from 10.30 a.m. (12.30 p.m. on Sundays) to 10.00 p.m. (this will apply both to premises with on-licences and off-licences).

Current legislation permits licensed premises concurrently engaged in non-licensed business, e.g. supermarkets and convenience stores with off-licences, to open for the sale of alcohol for consumption off the premises only between 7.30 a.m. and 10.30 a.m., i.e. when normal trading hours commence. This provision will be repealed.

Head 4 – District Court certificate for wine retailer’s off licence

Provide that:

- The Revenue Commissioners shall not issue a wine retailer’s off licence as authorised by section 49 of the Finance (1909-10) Act 1910 [and referred to in C II of the First Schedule to that Act] without presentation by the applicant of a District Court certificate similar to that already applicable to a spirit retailer’s off licence and a beer retailer’s off licence.

Explanatory note

Currently, a wine retailer’s off-licence may be obtained directly from the Revenue Commissioners on payment of the required excise duty without a District Court certificate (the hearing to grant such certificates provides an opportunity for the Court to hear possible objections to the grant of a licence to the premises concerned).

This section implements the GAAG recommendation that the grant of wine retailer’s off licences be made subject to the rules requiring production of a District Court certificate to the Revenue Commissioners.

Head 5 – Grounds for objection to off licence

Provide that:

- Objection may be made in the District Court to the grant of a certificate in respect of a spirit retailer's off licence, a beer retailer's off licence and a wine retailer's off licence on the ground of—
 - i) the character, misconduct or unfitness of the applicant;
 - ii) the unfitness or inconvenience of the new premises;
 - iii) their unsuitability for the needs of persons residing in the neighbourhood;
and
 - iv) the adequacy of the existing number of licensed premises of the same character in the neighbourhood.

- The court may require an adequate CCTV system as a condition for granting a certificate for such a licence.

Explanatory note

The GAAG expressed concern that the grounds on which objection may be made to the grant of off-licences are unduly narrow and that no provision whatever is currently made for objections to a wine retailer's off-licence. It recommended that the broader objection grounds which currently apply to public house licences should also apply to all applications for off-licences. That is the purpose of this section.

The third of these grounds permits the lodging of objections on the basis that the proposed sale of alcohol is unsuitable for the needs of persons residing in the area, while the fourth permits objections on the ground that the number of licensed outlets of the same character in the neighbourhood is already adequate.

A CCTV requirement is intended to combat the risk of under-age persons coming together in the vicinity of premises with off licences to obtain intoxicating liquor.

Head 6 – Provisions in relation to display and sale of intoxicating liquor in mixed trading premises.

Provide that:

- In premises engaged in mixed trading—
 - i. the display and sale of intoxicating liquor shall be confined to one specified area in the premises and this area shall be separated from the rest of the premises by a solid wall or other similar barrier;
 - ii. movement between the specified area and the rest of the premises shall be possible through a door, gate or turnstile;
 - iii. public access to and from the rest of the premises must be possible without having to pass through the specified area;
 - iv. intoxicating liquor may only be sold at a counter or point of sale within the specified area.
- In premises engaged in mixed trading where such structural separation is not technically feasible within the existing physical boundaries of the premises—
 - i. the display and sale of intoxicating liquor shall be confined to a specified area in the premises where public access is securely prevented, and
 - ii. the sale of intoxicating liquor by self-service shall not be permitted.

Explanatory note

The GAAG is concerned that alcohol products are generally displayed and promoted side-by-side with grocery products and that this tends to convey the impression that alcohol is an ordinary product that is not subject to specific legislative controls. For this reason, it has recommended structural separation of alcohol products from other products within mixed trading premises as outlined above. It appears that similar measures are being contemplated in Northern Ireland and Scotland.

Specific provisions will also be required to ensure that renewal of existing licences will eventually require compliance with these new requirements.

Head 7 – Test purchasing of intoxicating liquor

Provide that:

- Sections 32(3) and 33(1) (a) and (c) of the Act of 1988 [as substituted and amended by sections 13 and 16 of the Act of 2003 respectively] do not apply to a person under the age of 18 years who is sent into licensed premises to purchase intoxicating liquor by a member of the Garda Síochána acting in the course of his or her duty.
- A member of the Garda Síochána may not send a person under the age of 18 years into licensed premises to purchase intoxicating liquor unless—
 - that member is satisfied that all reasonable steps have been or will be taken to avoid harm to the welfare of that person, and
 - the parent or guardian of that person has consented in writing to him or her being sent into those premises for that purpose.

Explanatory note

GAAG has recommended the introduction of test purchasing procedures subject to the implementation of adequate safeguards for the protection of the young people involved in them. Such safeguards should seek to ensure parental consent and the protection as far as possible of the identity and privacy of those involved.

The Group believes that test purchasing would provide the Gardai with a new enforcement mechanism, allowing them to target particular licensed premises (with on-licences or off-licences) where there are suspicions that sales to under-18s are taking place. In order to avoid any legal challenges, the Group has recommended a statutory basis to permit such a procedure.

Head 8 – Special exemption orders

Provide that:

Section 5 of the Act of 1927 (as substituted by section 11 of the Act of 2003) is amended as follows:

- insertion of the following subsection after subsection (4):

“(4A) Notwithstanding subsection (4)(b), the Court shall not grant a special exemption order for a special occasion which is not a private function at which a substantial meal is served to persons attending the function unless an adequate closed circuit television system is in operation in respect of the premises.”.

- substitution of the following subsection for subsection (5):

“(5) A special exemption order shall expire—

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

unless the Court, for stated reasons, **including reasons related to maintaining public order**, considers it expedient to grant the order for a shorter period.”.

- substitution of the following subsection for subsection (6):

“(6) The Court shall not grant a special exemption order in respect of any premises unless it is satisfied that—

- (a) **the premises comply with fire safety standards under the Building Control Act 1990, and**
- (b) the special occasion will be conducted in a manner that will not—

- (i) cause undue inconvenience or nuisance to persons residing in the locality, or
- (ii) **create an undue threat to public order or safety in the locality.”.**

Explanatory note

The amendments to existing special exemption order provisions are designed to give effect to the following GAAG recommendations relating to special exemption orders—

- a) operation of adequate CCTV system for all special occasions to which the public are admitted, i.e. nightclubs and late bars;
- b) inclusion of specific public order objection ground in relation to the granting of special exemption orders; and
- c) compliance in all cases with fire safety standards under the Building Control Act 1990.

Head 9 – Sale of intoxicating liquor in theatres.

Provide that:

The Act of 1927 is amended by the substitution of the following section for section 21 (sale of intoxicating liquor in theatres):

“21.—(1) (a) The provisions of this Act in relation to prohibited hours apply to theatres.

(b) Subject to paragraph (a), in this section “permitted time” means a period beginning half an hour before the commencement of a performance in the theatre in respect of which the expression is used and ending half an hour after the termination of such performance.

(2) It shall not be lawful to sell or expose for sale by retail any intoxicating liquor in any theatre—

(a) at any time other than during a permitted time, or

(b) to any person other than persons who either—

(i) are then employed in the theatre, or

(ii) have engaged or paid for seats in the theatre for the performance taking or which took place during the permitted time or either of the permitted times then current, or

(c) in any part of the theatre which is then accessible to persons other than those persons to whom intoxicating liquor may then be sold in such theatre.

(2) For the purposes of the definition of ‘special exemption order’ in section 5(1) of the Intoxicating Liquor Act 1927 (as substituted in section 11 of the Intoxicating Liquor Act 2003) the term “holder of an on-licence” shall include the holder of a theatre licence.

Explanatory note

GAAG has concluded that theatres operating as late night venues enjoy an unfair advantage over other licensed premises. Firstly, they are not required to apply to the District Court for (and pay for) special exemption orders; and, secondly, they may remain open for longer as a result of the licensing regime applicable to public music and singing licences and the lack of any definition of ‘performance’. Enactment of these reforms will remove the unfair advantage enjoyed by premises with theatre licences.

In the forthcoming sale of Alcohol Bill it is intended to repeal the provisions relating to public music and singing licences under the Public Health Acts Amendment Act 1890 which enable holders of such licences to obtain theatre licences directly from the Revenue Commissioners without a court certificate.

Head 10 – Repeal of general exemption provisions

Provide that:

- Section 4 (general exemption orders) of the Act of 1927 (as amended by section 10 of the Act of 1960) and section 15 (general exemption orders) of the Act of 1962 (as amended by section 11 of the Act of 2000) is repealed.

Explanatory note

Apart from special exemption orders, licensing law makes provision for early opening of licensed premises to cater for situations in which large numbers of people are attending a public market or fair or following a lawful trade or calling. These so-called ‘general exemption orders’ were important for people involved in such activities at a time when there were few restaurants or cafes since one of the principal conditions attaching to the granting of such an order is that the licensee must supply food and non-alcoholic drinks at reasonable prices to people requiring such refreshment.

GAAG has recommended repeal of these provisions on the ground that they have outlived their usefulness.

Head 11 – Temporary closure of premises

Provide that:

- In section 36A of the Act of 1988 (as inserted by section 13 of the Act of 2000), replace paragraph (a) of subsection (2) with the following—

“(a) **not less than 2 days** and not exceeding 7 days for a first offence, or”

- In section 9 of the Act of 2003, replace paragraph (a) of subsection (2) with the following—

“(a) **not less than 2 days** and not exceeding 7 days for a first offence, or”

Explanatory note

It has emerged that certain courts have made closure orders for periods as short as 2 hours. This has reduced the effectiveness of this particular sanction and the GAAG has proposed therefore to make provision for a minimum closure period of at least 2 days.

Head 12 – Power to seize intoxicating liquor

Provide that:

The Act of 1988 is amended by the insertion of the following section after section 37.

“Power to seize intoxicating liquor

37A.—(1) A member of the Garda Síochána may seize, detain and remove, without warrant, any bottle or container which—

(a) is in the possession, in a place other than a place used as an occupied private residence, of a person who appears to the member to be under the age of 18 years, and

(b) the member suspects, with reasonable cause, contains intoxicating liquor,

and

the member reasonably believes that the intoxicating liquor is being consumed by a person under 18 years or is intended to be consumed by a person under 18 years in a place other than in a private residence in which he or she may be present either as of right or with permission.

(2) Where this section applies, the member concerned may request the person, if such person appears to the member to be under 18 years, to provide the member with his or her name, address and [date of birth] [age].

(3) Where any person who is requested under subsection (2) to furnish to him or her a name, address and age fails or refuses to furnish the said details, or furnishes details that the member has reasonable grounds for believing to be false or misleading, the member may arrest such person without warrant and if the person fails or refuses to provide the details requested by the member, or provides details that are false or misleading, the person shall be guilty of an offence and shall on summary conviction be liable to a fine not exceeding €500.

(4) For the purposes of this section a member of the Garda Síochána may enter without warrant a place that is not a public place.

(5) (a) This section applies whether or not the bottle or container referred to in subsection (1) has been opened and whether or not the contents of the bottle or container have been, in whole or in part, consumed or are being consumed.

(b) For the purposes of this section, a person under the age of 18 years may be “in possession” even when accompanied by a person over the age of 18 years who is in possession of the bottle or container and where the Garda has reasonable grounds to believe the intoxicating liquor is being or will be consumed by a person under 18 years of age.

Explanatory note

This new section 37A addresses situations where persons under 18 are found in possession of alcohol in a place other than in an occupied residential dwelling. The definition of 'place' being proposed will include, for example, unoccupied flats and houses and building sites as well as open space. It will permit Gardai to seize bottles containing alcohol in such cases.

The onus with regard to proof of age is placed on the person whom the Garda suspects is under 18 years.

Head 13 – Increase of fines

Provide that:

Each provision mentioned in column (2) of the Schedule to this Act of the enactment mentioned in column (1) of that Schedule opposite the mention of the provision in the said column (2) is hereby amended as specified in column (3) of that Schedule opposite the mention of the provision in the said column (2).

Explanatory note

The Schedule updates the fine levels set out in various licensing statutes relating to the sale and supply of alcohol to under-age persons, and permitting drunkenness and disorderly conduct in licensed premises.

Head 14 – Regulations relating to sale, supply and consumption of intoxicating liquor

Provide that:

15.—(1) Regulations made by the Minister may make provision in relation to the following matters:

(a) prohibiting or restricting a person from advertising or promoting the sale of intoxicating liquor at a reduced price or free of charge on the purchase of any quantity of intoxicating liquor;

(b) prohibiting or restricting a licensee from selling or supplying intoxicating liquor at a reduced price or free of charge to any person on purchase by that person, or any other person, of any quantity of intoxicating liquor or any other product;

(c) prohibiting or restricting a person from doing or permitting, for the purpose of promoting that person's business or any event or activity in a place other than a place used as an occupied private residence, anything that is intended or likely to encourage persons on those premises to consume alcohol to an excessive extent.

(2) In making regulations under this section the Minister shall have regard to reducing the risk of public disorder and health-related risks arising from excessive consumption of intoxicating liquor.

(3) The Regulations may provide that a person who contravenes any of their provisions is guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding €5,000, or

(b) on conviction on indictment, to a fine not exceeding €100,000.

(4) Every regulation under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling it is passed by either House within the next subsequent 21 days on which that House has sat after the regulation is laid before it, it shall be annulled accordingly, but without prejudice to the validity of anything previously done under it.

Explanatory note

This section provides for the making of regulations to give effect to GAAG recommendations relating to alcohol advertising and promotions. It is envisaged that regulations will create new offences of advertising and promoting alcohol at reduced prices or free of charge on purchase of a quantity of alcohol; selling or supplying alcohol at a reduced price or free of charge to any person on purchase by that person, or another person, of intoxicating liquor or any other product; and restricting a person from doing or permitting, for the purpose of promoting that person's business or any event or activity in a place other than a place used as an occupied private residence, anything that is intended or likely to encourage persons on those premises to consume alcohol to an excessive extent.

Head 15 – Power to direct persons in possession of intoxicating substances

Provide that:

The Criminal Justice (Public Order) Act 1994 is amended by inserting the following section after Section 8:

“Power to direct persons who are in possession of intoxicating substances

8A.—(1) Where a member of the Garda Síochána finds a person in a place other than a place that is occupied as a private residence and suspects, with reasonable cause, that such person—

(a) is in the possession of any bottle or container which such member suspects, with reasonable cause, contains an intoxicating substance, and

(c) is acting in a place in circumstances, which may include the company of other persons, that give rise to a reasonable apprehension—

(i) for the safety of persons or the safety of property or for the maintenance of the public peace, or

(ii) that the person is or is likely to cause annoyance and nuisance to another person or persons or interference with that other person’s or persons’ peaceful possession and enjoyment by that other person or persons of their property,

the member may seize, obtain or remove, without warrant, any bottle or container, together with its contents that such member suspects, with reasonable cause, contains an intoxicating substance, and direct the person to leave immediately the place concerned in a peaceable or orderly manner.

(2) It shall be an offence for any person, without lawful authority or reasonable excuse, to fail to comply with a direction given by a member of the Garda Síochána under this section; a person who fails to comply may be arrested.

(3) It shall be an offence for a person who is subject to this section to fail or refuse to give the member details of his or her name, address or to give false or misleading information. A person who gives false or misleading information or who refuses or fails to comply with a request for information may be arrested.

(4) A person who is guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding €1,000.

(5) For the purposes of this section, a member of the Garda Síochána may enter without warrant a place that is not a public place.

Explanatory note

The purpose of section is to provide members of the Gardaí with the power to direct persons in a place other than in an occupied dwelling to “move on”, where the persons

in question are in possession of alcohol and whose presence the Gardaí suspect is creating or is likely to create nuisance, annoyance or a breach of the peace. The Gardaí may also confiscate the alcohol under these circumstances. Under this section, it shall be an offence for a person to fail to comply with any directions a Garda might give under this section.

Head 16 – Increase of fines

Provide that:

Each provision mentioned in column (2) of Schedule 2 to this Act of the enactment mentioned in column (1) of that Schedule opposite the mention of the provision in the said column (2) is hereby amended as specified in column (3) of that Schedule opposite the mention of the provision in the said column (2).

Explanatory note

The Schedule updates the fine levels set out in the Criminal Justice (Public Order) Act 1994.

SCHEDULE 1

Section 13

Increase of fines

| Enactment (1) | Provision (2) | Amendment (3) |
|---------------------------------|--|--|
| Intoxicating Liquor Act 1988 | Section 31 (Sale of intoxicating liquor to under-age person) | The substitution in subsection (3) of “€3,000” for “£1,000” and “€5,000” for “£1,500” |
| | Section 32 (Provision of intoxicating liquor for persons under the age of 18 years) | The substitution in subsection (4) of “€3,000” for “€1,500” and “€5,000” for “€2,000” |
| Intoxicating Liquor Act 2003 | Section 4 (Drunken persons) | The substitution in subsection (2) of “€3,000” for “€1,500” and “€5,000” for “€2,000” |
| | Section 5 (Supply of intoxicating liquor to drunken persons by non- licensees) | The substitution in subsection (2) of “€3,000” for “€1,500” and “€5,000” for “€2,000” |
| | Section 7 (Duty of licensee to preserve order) | The substitution in subsection (2) of “€3,000” for “€1,500” and “€5,000” for “€2,000” |

Schedule 2**Increase of fines**

| Enactment (1) | Provision (2) | Amendment (3) |
|--|---|---|
| Criminal Justice (Public Order) Act 1994 | Section 4 (Intoxication in public place) | In subsection (2) by the substitution of “€500” for “£100”. |
| | Section 5 (Disorderly conduct in public place) | In subsection (2) by the substitution of “€1,000” for “£500”. |
| | Section 6 (Threatening, abusive or insulting behaviour in public place) | In subsection (2) by the substitution of “€1,000” for “£500”. |
| | Section 7 (Distribution or display in public place of material which is threatening, abusive, insulting or obscene) | In subsection (2) by the substitution of “€1,000” for “£500”. |
| | Section 8 (Failure to comply with direction of member of Garda Síochána) | In subsection (3) by the substitution of “€1,000” for “£500”. |
| | Section 9 (Wilful obstruction) | By the substitution of “€400” for “£200”. |
| | Section 11 (Entering building with intent to commit offence) | In subsection (2) by the substitution of “€2,500” for “£1,000”. |
| | Section 13 (Trespass on building, etc.) | In subsection (3)(a) by the substitution of “€2,500” for “£1,000”, and in subsection (3)(b) by the substitution of “€1,000” for “£500”. |
| | Section 16 (Affray) | In subsection (4)(a) by the substitution of “€1,000” for “£500”. |
| | Section 17 (blackmail, extortion and demanding money with menaces) | In subsection (3)(a) by the substitution of “€2,500” for “£1,000”. |

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|--|---|---|
| | Section 18 (Assault with intent to cause harm or commit indictable offence) | In subsection (2)(a) by the substitution of “€2,500” or “£1,000”. |
| | Section 19 (Assault or obstruction of peace) | In subsection (2)(a) by the substitution of “€2,500” for “£1,000”, and in subsection (4) by the substitution of “€1,000” for “£500”. |
| | Section 21 (Control of access to certain events) | In subsection (5) by the substitution of “€1,000” for “£500”. |
| | Section 22 (Surrender and seizure of intoxicating liquor, etc.) | In subsection (4) by the substitution of “€1,000” for “£500”. |
| | Section 23 (Prohibition of advertising of brothels and prostitution) | In subsection (2)(a) by the substitution of “€2,500” for “£1,000”, and in subsection (2)(b) by the substitution of “€25,000” for “£10,000”. |
| | Section 24 (Arrest without warrant) | In subsection (4) by the substitution of “€1,000” for “£500”. |