

*These notes refer to the Licensing and Registration of Clubs (Amendment) Act (Northern Ireland) 2011 (c.18) which received Royal Assent on 29 March 2011*

# Licensing and Registration of Clubs (Amendment) Act (Northern Ireland) 2011

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

**Section 1** of the Act inserts a new Part 4A into the Licensing Order containing Articles 69A to 69J in relation to the closure of licensed premises.

Article 69A (orders to close licensed premises in district experiencing disorder) empowers a court of summary jurisdiction acting for a district that is experiencing or is expected to experience disorder to make an order requiring licensed premises at or near the place where the disorder is occurring or expected to be closed for a period. An application for such an order must be made by a police officer of the rank of superintendent or above and the order must not exceed a period of 24 hours. The Article also introduces a new offence (maximum fine £1000) for knowingly keeping any licensed premises open during the period of such an order.

Article 69B (closure orders for identified licensed premises) allows a police officer of the rank of inspector or above to make a closure order in relation to identified licensed premises if it is believed that there is public disorder on or near and related to the premises and closure of the licensed premises would be in the interest of public safety. Any such closure order must not exceed 24 hours.

Article 69C (extension of closure order) allows for a police officer of the rank of inspector or above to extend a closure order prior to the court hearing under new Article 69F if it is believed that this is necessary in the interests of public safety. The extension of the closure period must not exceed 24 hours, beginning with the end of the previous closure period.

Article 69D (cancellation of closure order) provides that a police officer of the rank of inspector or above may cancel a closure order or any extension of it before a court hearing under new Article 69F takes place and must cancel an order or any extension if it is not believed that closure is necessary in the interests of public safety because of disorder. The licence holder must be notified of any such decision as soon as reasonably practicable.

Article 69E (application to court of summary jurisdiction by police) requires a police officer of the rank of inspector or above to apply to the relevant court of

summary jurisdiction for it to consider a closure order and any extension of it as soon as possible after the order comes into force.

Article 69F (consideration of closure order by court of summary jurisdiction) requires a court of summary jurisdiction, on receipt of an application from the police, to hold a hearing as soon as practicable. The court may revoke a closure order and extension, order premises to close or remain closed for a maximum of 28 days, revoke, modify or make the continuance of an order for additional permitted hours (later opening) subject to such terms as the court thinks fit, revoke any occasional licences already granted or order that no further occasional licences be granted to the premises. A licence holder may make representations to the court at the hearing. The Article also introduces a new offence of keeping premises open in contravention of a court order, which will attract a fine not exceeding £5000 and/or up to 6 months imprisonment.

Article 69G (appeal from decision of court of summary jurisdiction) allows for a person to appeal to a county court against a court of summary jurisdiction's decision under Article 69F within 21 days. Any order made by a court under Article 69F will cease to be effective from the time an appeal has been lodged until the appeal has been determined or abandoned.

Article 69H (enforcement of closure order) empowers a constable to use all necessary force in order to close premises that are subject to a closure order.

Article 69I (exemption of police from liability for damages) provides that in performing their functions in relation to a closure order or any extension of it, a police constable or a Chief Constable is not liable for relevant damages such as damages awarded in proceedings for judicial review, negligence or inappropriate performance in public office. This is the case unless the action or lack of action by the police is shown to have been in bad faith or was incompatible with section 6(1) of the Human Rights Act 1998.

Article 69J (interpretation of Part 4A) describes the circumstances in which premises are deemed to be open under new Part 4A of the Licensing Order. This will assist the police in determining whether premises which should be closed, are in fact trading illegally. The Article also defines certain other words and phrases used within Part 4A and repeals Article 49 of the Licensing Order which made provision for the closure of premises or the curtailment of opening hours for the preservation of public order.

**Section 2** of the Act inserts new Articles 71A to 71C and Schedule 10A into the Licensing Order in relation to a penalty points system and repeals those existing provisions on suspension of licences which are no longer necessary as a result of the new provisions.

Article 71A (penalty points to be attributed to an offence) provides for penalty points to be attributed to certain offences. The points attributable to the offences specified in column 1 of Schedule 1 to the Act (to be inserted as Schedule 10A to the Licensing Order) are set out in column 3 of that Schedule. Where a licence holder is convicted of two or more offences committed on the same

occasion, the points attributable are restricted to the highest number due in respect of one of the offences, but a court may, if it thinks fit, determine that that restriction is not to apply and give reasons for such determination. The Article also empowers the Department to amend the penalty points attributable by affirmative resolution procedure whereby the amendment cannot take effect unless the order is affirmed by the Assembly.

Article 71B (endorsement of licences) makes provision for the endorsement of penalty points on a licence where the holder is convicted of certain offences. Where a licence holder is convicted of an offence liable to a fine not exceeding £1000 specified in Part 1 of new Schedule 10A to the Licensing Order, a court may order penalty points attributed to the offence to be endorsed on the licence. Upon conviction for the same offence within 3 years a court must order the points to be endorsed on the licence. Where a licence holder is convicted of an offence liable to a fine not exceeding £2500 specified in Part 2 of Schedule 10A to the Licensing Order, a court must order penalty points attributed to the offence to be endorsed on the licence unless for special reasons it thinks fit not to. Upon conviction for a further offence under Part 2 of that Schedule within 3 years a court must order the points to be endorsed on the licence. Where a licence holder is convicted of an offence liable to a fine not exceeding £5000 specified in Part 3 of Schedule 10A to the Licensing Order, a court must order penalty points attributable to the offence to be endorsed on the licence. In addition, it will be an offence liable to a fine not exceeding £2500 and/or up to 3 months imprisonment if a licence holder fails to hand the licence into the court for endorsement.

Article 71C (suspension of licence for repeated offences) requires a court of summary jurisdiction to suspend a licence for not less than 1 week or more than 3 months where the licence holder has accumulated 10 or more penalty points within a 3 year period. A suspended licence remains valid for the purposes of surrender, renewal, transfer and a protection order. The Article inserts Schedule 10A to the Licensing Order to show which offences attract the various levels of penalty points and also repeals some existing suspension provisions in Article 73 of the Licensing Order which are superseded by the Act.

**Section 3** of the Act introduces a statutory proof-of-age scheme by amending Articles 58 and 60 of the Licensing Order which deal with the prohibition of young people under 18 from certain premises and the sale or delivery of alcohol to them.

New paragraphs (11A) and (11B) are added to Article 58 and new paragraphs (7A) and (7B) are added to Article 60 of the Licensing Order. These provide that, in court proceedings for certain underage offences, “all due diligence” may be demonstrated by a licence holder or member of staff being shown any of the documents specified for the purpose of proof of age by a customer. The documents are a passport, photocard driving licence, electoral identity card and a Proof of Age Standards Scheme (PASS) card. The Department is also given the power to prescribe by regulations such other proof of age documents as may be considered necessary.

The section also inserts a new Article 60B into the Licensing Order (duty to display notice relating to age) which introduces a requirement for all licensed premises to display a notice in such form and containing such information as the Department may prescribe. The notice must contain prescribed information in relation to offences concerning the sale of alcohol to a person under 18 or the purchase of alcohol by any person under 18 and must describe documents acceptable as proof of age. It will be an offence (fine up to £1000) for a licence holder to fail to display a notice as required on the premises.

**Section 4** of the Act inserts new Article 57A into the Licensing Order which relates to the prohibition or restriction of irresponsible drinks promotions. Article 57A provides a power for the Department to make regulations to prohibit or restrict irresponsible drinks promotions being held on or in connection with a licensed premises. It defines what is meant by a “drinks promotion” and also specifies types of drinks promotions which will be regarded as irresponsible.

The Department may by regulations add to the list of categories of irresponsible promotions, modify them, or extend or restrict their application. Regulations made under Article 57A must be approved in draft by a resolution of the Assembly before being made. It will be an offence liable to a fine not exceeding £5000 for a person to contravene the provisions of such regulations.

**Section 5** inserts a new Article 57B into the Licensing Order which relates to the pricing of intoxicating liquor. Article 57B provides a power for the Department to make regulations to prohibit or restrict the varying of the price at which intoxicating liquor is sold on licensed premises for specified periods. It also provides for the Department to restrict, by regulations, price discounts where two or more intoxicating liquor products are sold as a package on licensed premises.

The regulations must be approved in draft by a resolution of the Assembly before being made. It will be an offence liable to a fine not exceeding £5000 for a person to contravene the provisions of the regulations.

**Section 6** inserts a new Article 2B in the Licensing Order clarifying how the Order applies to limited liability partnerships. The Article provides that a reference to a director of a body corporate is a reference to a member of a limited liability partnership and a reference to the secretary of a body corporate is a reference to any designated member of a limited liability partnership.

**Section 7** of the Act inserts a new Part 4A into the Clubs Order containing Articles 41A to 41J relating to the closure of registered clubs. These provisions are virtually identical to the closure provisions for licensed premises in section 1. The only exception relates to Article 41F to be inserted into the Clubs Order (consideration of closure order by court of summary jurisdiction) under which a court of summary jurisdiction may only revoke a closure order and any extension to that order or order a registered club to close or remain closed for a maximum of 28 days.

**Section 8** of the Act amends Articles 43 and 44 and replaces Article 45 and Schedule 6 of the Clubs Order which currently provide for a system of

penalty points for clubs convicted of accounting offences. The system will now encompass many more offences and is similar to the provisions in section 2 of the Act for licensed premises.

Subsection (1) amends Article 43 of the Clubs Order to create similar provisions to those set out in section 2 of the Act (Article 71A of the Licensing Order) with regard to the penalty points attributable to certain offences. The points attributable are set out in column 3 of Schedule 2 to the Act (which is to be substituted for Schedule 6 to the Clubs Order).

Subsection (2) amends Article 44 of the Clubs Order to create similar provisions to those set out in section 2 of the Act (Article 71B of the Licensing Order) in relation to the endorsement of penalty points on conviction of an offence. However, under these provisions, unlike under the provisions in section 2, a court must order points to be endorsed on a certificate of registration where a further conviction for the same offence specified in Part 1 or a further conviction for any offence specified in Part 2 of Schedule 6 to the Clubs Order occurs within 2 years.

Subsection (3) replaces the existing Article 45 of the Clubs Order with a new Article 45 to create similar provisions to those set out in section 2 of the Act (Article 71C of the Licensing Order) in relation to the suspension of registration where a registered club has accumulated 10 or more penalty points within a 2 year period.

**Section 9** of the Act amends Articles 32 and 34 of the Clubs Order and inserts a new Article 34A into that Order to introduce a statutory proof-of-age scheme. These mirror the provisions set out in section 3 of the Act in relation to licensed premises.

**Section 10** of the Act inserts new Article 31A into the Clubs Order which relates to the prohibition or restriction of irresponsible drinks promotions. Article 31A provides a power for the Department to make regulations to prohibit or restrict a registered club from carrying on an irresponsible drinks promotion on or in connection with the premises of the club. It defines what is meant by a “drinks promotion” and also specifies types of drinks promotions which will be regarded as irresponsible.

The Department may by regulations add to the list of categories of irresponsible promotions, modify them, or extend or restrict their application. Regulations made under Article 31A must be approved in draft by a resolution of the Assembly before being made. If the provisions of the regulations are contravened, the registered club, every official of the club at the time and any other person permitting the contravention will be guilty of an offence liable to a fine not exceeding £5000.

**Section 11** inserts new Article 31B into the Clubs Order which relates to the pricing of intoxicating liquor. Article 31B provides a power for the Department to make regulations to prohibit or restrict the varying of the price at which intoxicating liquor is sold for limited periods. The regulations must be approved

in draft by a resolution of the Assembly before being made. If the provisions of the regulations are contravened, the registered club, every official of the club at the time and any other person permitting the contravention will be guilty of an offence liable to a fine not exceeding £5000.

**Section 12** amends Article 40 of the Clubs Order to pave the way for regulations and guidance which will make the accounting requirements for registered clubs more flexible.

Subsection (2) amends sub-paragraph (b) of Article 40(1) to remove the requirement to prescribe by regulations the manner in which clubs maintain a system of control of accounts. It also removes the requirement to send a copy of accounts and auditor's report to the police (in future, the police must ask for the papers) and to notify the police of the address at which accounts-related papers are held. In addition it gives clubs the option to have their accounts audited by an auditor or examined by an independent examiner.

Subsection (3) inserts a new paragraph (1A) into Article 40 to provide for directions to be given by the Department regarding the system of control for accounts and the selection of an independent examiner. Subsection (4) inserts a new paragraph (2A) into Article 40 which makes contravention of regulations under paragraph (1A) an offence which attracts a fine of up to £1000.

**Section 13** amends Article 26 of the Clubs Order to increase the number of occasions on which a registered club may apply to the police for later opening to 1.00am (midnight on Sunday) from 52 to 85 in any year. A club must give police at least 7 days notice of the event and may, at the discretion of the police, include a number of occasions on the one application.

**Section 14** amends paragraphs (13) and (14) of Article 32 of the Clubs Order to allow certain persons under 18 to remain in any part of a sporting club premises which contains a bar or is used exclusively or mainly for the supply, consumption or storage of alcohol to 10.00pm in the evening.

**Section 15** (ancillary provision) provides a power for the Department to make any orders necessary to give full effect to the Act. **Section 16** (Interpretation) provides for the definition of "statutory provision" in the Interpretation Act (Northern Ireland) 1954 to apply to the Act. **Section 17** (minor and consequential amendments and repeals) introduces Schedules 3 and 4 which set out the provisions to be amended or repealed. **Section 18** (commencement) empowers the Department to make a commencement order naming the day or days on which certain provisions of the Act will come into operation and **Section 19** (short title) gives a title to the Act.

There are **4 Schedules** to the Act containing tables of penalty point offences to be inserted into, miscellaneous amendments of and repeals to the Licensing Order and Clubs Order.