

These notes refer to the Licensing and Registration of Clubs (Amendment) Act (Northern Ireland) 2021 (c.7) which received Royal Assent on 26 August 2021

Licensing and Registration of Clubs (Amendment) Act (Northern Ireland) 2021

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1

Licensing

Section 1: Removal of additional restrictions at Easter

This section amends Article 30 of the Licensing Order (Occasional licences), Article 42 (General permitted hours), Article 44 (Additional permitted hours), Article 45 (Authorisations for additional permitted hours), Article 47 (Extension licences) and Article 50 (Restrictions as to sales for consumption off premises) by removing all references to Good Friday and Easter Sunday.

The above Articles relate to the permitted hours for the sale of intoxicating liquor in licensed premises or under the authority of an occasional licence (both on and off-sales). Easter weekend permitted hours now mirror what is available for any other weekend during the rest of the year.

Section 2: Removal of restrictions on late opening for on-sales on Sunday

This section amends Article 30 of the Licensing Order (Occasional licences), Article 42 (General permitted hours), Article 44 (Additional permitted hours), Article 45 (Authorisations for additional permitted hours) and Article 47 (Extension licences) and removes the restrictions on late night permitted hours on a Sunday (currently restricted to 10pm with general permitted hours or 12 midnight with additional hours) for premises licensed for the sale and consumption of intoxicating liquor on the premises. This brings the general and additional permitted hours on any Sunday (not including Christmas Day) into line with those permitted on any other day.

Section 3: Public houses and hotels: further additional hours

This section introduces new Articles 44A and 44B in the Licensing Order in relation to further later opening for public houses and hotels.

Article 44A (Order for further additional permitted hours) gives a court or clerk of petty sessions a power, in certain circumstances, to extend later opening by one hour in public houses or hotels which are structurally adapted to provide entertainment and/or substantial refreshment and which hold a court order for later opening under Article 44.

An order under Article 44A permits later opening for an additional one hour on any day to which an order under Article 44 applies (1.00am – 2.00am).

An order under Article 44A also permits later opening for three hours in premises which hold an order for later opening under Article 44, on a day which is not covered in that order (11.00pm – 2.00am). Entertainment and/or substantial refreshment must be provided throughout the later opening just as if an order under Article 44 applied to that day.

An order under Article 44A may be made for a maximum of 104 days in any year but may not be made for Christmas Day.

The Department may make regulations to change the number of days for which orders under Article 44A may be made. The regulations cannot come into operation unless and until approved by the Assembly.

Article 44B (Orders under Article 44A: revocation, modification etc.) provides powers for a court of summary jurisdiction to revoke or modify an order for further later opening. These powers mirror the powers a court has to revoke or modify an order for later opening made under Article 44.

Subsection (2) amends Schedule 9 to the Licensing Order (procedure for certain applications) to require a licence holder applying to a court of summary jurisdiction for an order under Article 44 or 44A, to place a notice of the application in local newspapers and display the notice on or near the premises.

Section 4: Alignment of closing time for liquor and entertainment

This section adds a new Article 44C in the Licensing Order (Alignment of closing time for liquor and entertainment) to ensure that the entertainment provided during later opening under Article 44, or further later opening under Article 44A, is not allowed to continue after the end of “drinking-up time”. This ensures that entertainment must end at the latest at 2.00am when an Article 44 order applies and 3.00am when an Article 44A order applies.

New Article 44C(2) and (3) provides that where entertainment continues to be provided beyond the latest time for consumption of intoxicating liquor, the order for additional (or further) additional permitted hours is invalidated, and the sale of intoxicating liquor must cease at 11pm.

Section 5: Police authorisations for additional hours

This section amends Article 45 of the Licensing Order (authorisations for additional permitted hours).

Subsection (1) amends Article 45(1) to allow police to authorise later opening (11.00pm- 1.00am), in pubs which have a court order for later opening under Article 44, on a day that is not specified in the Article 44 order.

Subsection (2) inserts a new Article 45(1A) detailing the conditions which must be satisfied before an authorisation can be made for pubs holding an order under Article 44.

Subsection (3) substitutes Article 45(2) to allow the police to authorise later opening in pubs holding an order under Article 44 for a maximum of 20 days in any year; introduces Article 45(2A) to increase the number of authorisations to pubs not holding an order for later opening under Article 44 from 20 days to 104 days in any year; and introduces Article 45(2B) to provide the Department with a power to make regulations to change the number of days for which orders under Article 45(2) or (2A) may be made. The regulations cannot come into operation unless and until approved by the Assembly.

Subsection (4) inserts new paragraphs (4) to (8) in Article 45 to require a licence holder applying for an authorisation under this Article, to display a notice of the application on or near the relevant premises during the three weeks before the first occasion to which the application relates. A copy of the notice must also be served on the district council. There is provision for complaints to be made to the courts where undue inconvenience is caused to local residents as a result of a late night authorisation. Courts are given the power to revoke an authorisation, modify the hours of an authorisation, or make an authorisation subject to such terms and conditions as it thinks fit, including those requested by the district commander of the police of the district in which the premises are situated.

Section 6: Extension of “drinking-up time”

This section amends Article 46 of the Licensing Order (Exceptions from prohibition of sale etc., of intoxicating liquor outside permitted hours).

Subsection (1) amends Article 46(1) which provides for the duration of the “drinking-up time” at the end of normal opening hours or later opening in licensed premises, substituting the current “30 minutes” with “60 minutes”.

Subsection (2) provides the Department with a power to make regulations to allow “drinking-up time” to revert to 30 minutes. The regulations cannot come into operation unless and until approved by the Assembly.

Section 7: Major events

This section introduces new Articles 48A and 48B in the Licensing Order in relation to major event orders.

Article 48A (Extension of permitted hours for major events) gives the Department a power to designate an event which will attract significant interest as a major event.

The Department is required to consult appropriate persons and, having done so, has the power to vary permitted hours for the event, for specified premises, outside of what is currently available under the Licensing Order.

Article 48B (Major event order: conditions) gives the Department a power to impose or vary conditions for on or off-sales in any major event order, and adds an offence (punishable by a fine up to £1,000) for failing to comply with those conditions. It allows the Department to permit off-sales, only from the place or premises at which the event is taking place (provided that is not where an occasional licence is in force which was granted to the holder of a restaurant licence).

Sixty minutes “drinking-up time” is permitted under a major event order, as is the removal of off-sales following the end of permitted hours. The regulation making power in section 6 which allows drinking-up time to revert to 30 minutes is extended to Article 48B.

Subsection (2) makes a consequential amendment to Part 1 of Schedule 10A to the Licensing Order (penalty points for offences punishable with level 3 fine), to include the offence under the new Article 48B.

Section 8: Licensed race tracks: Sunday sales

This section amends Article 42 of the Licensing Order (General permitted hours) to permit licensed race tracks, which are within the “place of public entertainment” category of premises which may be granted a liquor licence, to sell intoxicating liquor on Sundays (not including Christmas Day) from 30 minutes before the entertainment and up to 30 minutes after, between the hours of 12.30pm and 11.00pm.

Section 9: Places of public entertainment: inclusion of cinemas

This section amends Article 2 of the Licensing Order (Interpretation) to add cinemas to the list of premises which are defined as a “place of public entertainment” and therefore eligible to apply for a licence to sell intoxicating liquor on the premises. It also amends Article 42(3) of the Licensing Order (general permitted hours) to include cinemas.

Cinemas will be permitted to sell intoxicating liquor between 11.30am and 11pm on Mondays to Saturdays between 12.30pm and 11pm on Sundays and between 12.30pm and 10pm on Christmas Day.

Sales are restricted during these hours to the period of the entertainment and 30 minutes immediately before and immediately after the entertainment.

Section 10: Licence for off-sales

This section amends Article 5 of the Licensing Order (premises for which licences may be granted) in relation to local producers of intoxicating liquor.

Subsections (1) and (2) add premises which are used for the production of intoxicating liquor, by a business carried on wholly or mainly in Northern Ireland, to the categories of premises which may be granted a liquor licence.

Subsection (3) introduces new Article 52B (Local producer's licence: sales on own premises), Article 52C (Local producer's licence: sale on other licensed premises) and Article 52D (Local producer's licence: sales not on licensed premises) in the Licensing Order.

Article 52B (Local producer's licence: sales on own premises) permits a local producer of intoxicating liquor to apply for a licence which would permit them to sell their own products, from their own premises, for consumption on and off the premises. Other than where it is permitted by Articles 52E and 52F, consumption on the premises is restricted to samples, as part of an organised tour on their own premises. The holder of the licence is required to display a notice containing relevant information in the premises at all times.

Article 52B(4) adds a new offence (punishable by a fine up to £2,500 or imprisonment up to 3 months, or both) for selling intoxicating liquor which was not produced in the premises or for selling for consumption on the premises.

Article 52B(5) to (7) add new offences (punishable by a fine up to £1,000) for providing samples in excess of the specified amount for consumption on the premises; not displaying the relevant notice; or for consuming the liquor in the premises or in premises adjoining or near, which belong to or are under the control of the licence holder.

Article 52C (Local producer's licence: sale on other licensed premises) permits local alcohol producers to sell their own products, for consumption off the premises, ancillary to certain events. The Department has the power to add or remove categories of premises from which local producers may sell their products from other specified licensed premises.

Article 52C(5) adds an offence (punishable by a fine up to £2,500 or imprisonment up to 3 months, or both) for selling for consumption on the premises or not ancillary to a relevant event.

Article 52C(6) adds an offence (punishable by a fine up to £1,000) for not displaying a notice, at the point of sale, containing relevant information in the premises at all times.

Article 52D (Local producer's licence: sales not on licensed premises) permits local producers of intoxicating liquor to sell their own products from unlicensed premises, ancillary to certain events, for consumption off the premises.

Article 52D(2) to (6) detail the conditions which must be satisfied before an authorisation under Article 52D can be made.

Article 52D(7) permits local producers of intoxicating liquor to provide any person at the event in question with a sample for consumption at the event.

Article 52D(8) adds an offence (punishable by a fine up to £2,500 or imprisonment up to 3 months, or both) for selling for consumption on the premises or not ancillary to a relevant event.

Articles 52D(9) to (11) add offences (punishable by a fine up to £1,000) for providing samples in excess of the specified amount for consumption on the premises; not displaying the relevant notice; and consuming and allowing consumption on the premises.

Subsection (5) amends Article 42 of the Licensing Order (General permitted hours) to include premises for the production of intoxicating liquor in the hours for off-sales.

Subsection (6) makes consequential amendments to Article 46 (exception for sales outside permitted hours), Article 56 (penalty for permitting consumption in unlicensed part of premises) and Article 58 (prohibition on young persons) to ensure references are made to local producer's licences.

Subsections (7) and (8) amend Part 1 of Schedule 1 (application for grant of licence) and Part 1 of Schedule 4 (application for the renewal of a licence) to the Licensing Order to require premises for the production of intoxicating liquor to attach a copy of any certificate of registration, licence or other authorisation which is required by a statutory provision for the production of intoxicating liquor in the premises to any such application.

Subsections (9) and (10) make consequential amendments to Part 1 of Schedule 10A to the Licensing Order (penalty points for offences punishable with level 3 fine), and Part 2 of Schedule 10A to that Order (penalty points for offences punishable with a level 4 fine) to take account of the introduction of new Articles 52B, 52C and 52D.

Section 11: Sales and consumption of liquor in local producer's premises

This section introduces a new Article 52E to the Licensing Order which will allow a local producer to apply to the court for an order to specify any part of the premises as suitable for the sale and consumption of intoxicating liquor produced in the premises. Subject to the grant of such an order, a local producer may also apply to the court for an authorisation under a new Article 52F to sell intoxicating liquor for consumption on the premises between the permitted hours of 4pm and 10pm. Not more than 104 such authorisations can be granted to a licence holder in any year and an authorisation cannot authorise the sale of intoxicating liquor on Christmas Day.

Article 30 of the Licensing Order (occasional licences) is also amended to prohibit the granting of an occasional licence for local production premises which have a suitability order under Article 52E.

Section 12: Requirement for off-licence

Subsection (1) introduces a new Article 5A in the Licensing Order (Remote sales: requirement for off-licence). Where a sale takes place in any way other than in person, the place of despatch in Northern Ireland must be licensed to sell intoxicating liquor for consumption off the premises.

Subsection (2) inserts a new paragraph (1A) in Article 66 of the Licensing Order (conditions as to delivery of intoxicating liquor), requiring any person, who is not a servant or agent of the licence holder, and who is delivering intoxicating liquor to the purchaser, to make the delivery without unreasonable delay, and to have with them a receipt from the holder of the licence for the purchase of intoxicating liquor.

Subsection (3) adds an offence (punishable by a fine up to £1,000) for not complying with the requirements specified in the new paragraph (1A).

Section 13: Removal of requirement for children's certificate, etc.

Subsection (1) repeals Article 59 of the Licensing Order (children's certificates) which required licensees to hold a children's certificate if they wished young people under 18 years of age to be allowed in areas of the premises which contained a bar or were used mainly or exclusively for the consumption of intoxicating liquor.

Subsections (2) and (3) amend Article 58 of the Licensing Order (prohibition of young persons from certain premises) to put safeguards in place before young people under 18 years of age are allowed in areas of the premises which contain a bar or are used mainly or exclusively for the consumption of intoxicating liquor. Meals must be available, a young person must be accompanied by an adult and sit away from the bar, and must leave the premises by 9.00pm (9.30pm if consuming a meal purchased before 9.00pm).

Subsections (4) to (7) make consequential amendments to Article 58 of the Licensing Order (prohibition of young people from certain premises), and to Article 60B (duty to display notice relating to age) to take account of the removal of the requirement for children's certificates.

Section 14: Underage functions

Subsection (1) introduces new Articles 58A and 58B in the Licensing Order in relation to the suitability of certain premises and authorisations for underage functions.

Article 58A (Suitability of certain premises for underage functions) permits a court, provided it is satisfied that a number of conditions have been met, to make an order specifying a part of certain licensed premises as suitable to hold underage functions.

Article 58B permits a court of summary jurisdiction or the clerk of petty sessions in certain circumstances, to authorise underage functions in certain licensed

premises, up to 1.00am in a part of licensed premises to which an order under Article 58A applies. It is a condition of an authorisation that, in the part of the premises for which the authorisation is in force, each dispenser of intoxicating liquor is incapable of operation and access to any other container of intoxicating liquor is prevented. The court may attach to the authorisation such other conditions as it thinks fit.

An offence is added (punishable by a fine up to £1,000) for contravention of any of the conditions.

Subsections (2) to (6) make consequential amendments to Article 58 of the Licensing Order (young persons prohibited from certain premises), Part 1 of Schedule 1 to the Licensing Order (application for grant of licence), Schedule 9 (applications to courts), Schedule 10 (applications for extension licences etc.) and Part 1 of Schedule 10A (penalty points for offences punishable with level 3 fine) to include the offences under the new Articles 58A and 58B.

Subsection (7) inserts paragraph (4ZA) in Article 108 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (use of gaming machines on other premises). This paragraph makes it an offence for gaming machines to be made available in any part of licensed premises in which an underage function is being held.

Section 15: Private functions

This section adds new paragraph (4A) to Article 58 of the Licensing Order (young persons prohibited from certain premises) to allow young people to remain on certain licensed premises, to attend a private function, provided certain conditions are met.

The conditions are, that the function is held in a part of the premises where the public do not have access to for the duration of the function; the person under 18 is in the company either of a parent or of a parent of another person who is under 18 and attending the function; at least a main meal is being served; and the person under 18 does not consume any part of that meal at a counter or structure that is being used wholly or mainly as a bar.

Section 16: Delivery of intoxicating liquor to young persons

Subsections (1) and (2) amend Article 60 of the Licensing Order (sale, etc., of intoxicating liquor to young persons) to make it an offence for a licensee or member of staff to make a home delivery of intoxicating liquor to any person under 18 years of age (punishable by a fine up to £5000 and/or to imprisonment up to 6 months and associated penalty points).

Subsection (3) adds new paragraph (ii) to Article 60(7A) so that in court proceedings licensees or members of staff who are charged with an offence under Article 60(1) may rely on a defence of due diligence by demonstrating that, when delivering intoxicating liquor, they recorded details of any proof of age document they had requested in the delivery book or on an invoice.

Subsection (4) ensures that intoxicating liquor cannot be delivered to a person under 18 years who is residing in unlicensed premises where an entertainment is being held or which are used by a club.

Section 17: Restaurants and guest houses: notice displaying licence conditions

This section amends Article 51 of the Licensing Order (conditions as to sale etc. in guest houses and restaurants). It adds a new Article 51(4A) which requires a restaurant, and a guest house which also has a restaurant, to display a notice detailing the conditions in relation to the sale and consumption of intoxicating liquor in the premises.

Subsection (3) adds an offence (punishable by a fine up to £1,000) for not displaying a notice and (4) makes consequential amendments to Part 1 of Schedule 10A (penalty points for offences punishable with level 3 fine) to take account of the introduction of the new paragraph.

Section 18: Prohibition on self-service and sales by vending machines

This section introduces a new Article 54A in the Licensing Order (Prohibition on self-service and sales by vending machines). It prevents the supply of intoxicating liquor not made under the direct supervision of a licensee or a member of staff.

Article 54A gives the Department a power to make regulations permitting, where certain conditions are satisfied, the sale of intoxicating liquor by way of a vending machine to residents in hotels, guest houses and pubs which provide accommodation. It also adds a new offence (punishable by a fine up to £1,000) for selling intoxicating liquor by self-service or via vending machines.

Paragraph (3) extends the prohibition to the use of an “honesty box” whereby, in the absence of the licence holder or any other member of staff, persons are trusted to pay for intoxicating liquor by placing money in a container provided for that purpose, or agree to pay for by recording the intoxicating liquor appropriated by a process provided by the licence holder.

Subsection (2) makes a consequential amendment to Part 1 of Schedule 10A (penalty points for offences punishable with level 3 fine) to take account of the introduction of new Article 54A.

Section 19: Restrictions on off-sales drinks promotions in supermarkets etc.

This section introduces new Article 57ZA in the Licensing Order (Restrictions on off-sales drink promotions in supermarkets etc.). Article 57ZA restricts the advertising of drinks promotions in supermarkets to the area in which intoxicating liquor may be displayed in such premises. Supermarkets and other licensed premises which sell intoxicating liquor for consumption at home will also not be allowed to advertise drinks promotions available in the premises

within the vicinity of the premises, or any other premises licensed to sell for consumption off the premises.

Article 57ZA gives the Department a power to make regulations to amend the definition of vicinity. The regulations cannot come into operation unless and until approved by the Assembly. It also adds an offence (punishable by a fine up to £1,000) for carrying on a drinks promotion outside of the licensed area or anywhere in the vicinity of any premises licensed for the sale for consumption off the premises.

Subsection (2) makes a consequential amendment to Part 1 of Schedule 10A (penalty points for offences punishable with level 3 fine) to take account of the introduction of new Article 57ZA.

Section 20: Prohibition of loyalty schemes

This section introduces new Article 57ZB in the Licensing Order (Prohibition of loyalty schemes). Article 57ZB prohibits the award or redemption of loyalty or bonus points for the purchase of intoxicating liquor in all licensed premises.

Article 57ZB adds an offence (punishable by a fine up to £5,000) for a licence holder to operate a loyalty reward or bonus scheme.

Subsection (2) makes a consequential amendment to Part 3 of Schedule 10A (penalty points for offences punishable with level 5 fine) to take account of the introduction of new Article 57ZB.

Section 21: Minimum price for alcohol

This section places a duty on the Department of Health, within 3 years of the whole Act coming into operation, to bring forward to the Assembly legislation introducing minimum pricing for the sale and supply of intoxicating liquor and to prohibit its sale or supply below that price. If it is not reasonably practicable to comply with this requirement, that Department must make a statement to the Assembly as to why this is so.

Section 22: Occasional licences: conditions

Subsection (1) adds new paragraph 4A in Schedule 7 to the Licensing Order (application for occasional licence) which permits a court, when determining an application for an occasional licence, to impose terms and conditions on the licence.

Subsection (2) makes a consequential amendment to Article 30 of the Licensing Order (occasional licences) to take account of new paragraph 4A of Schedule 7.

Subsections (3) to (5) amend Article 30 of the Licensing Order to make it an offence (punishable by a fine up to £1,000) for a licence holder not to comply with these conditions; and Part 1 of Schedule 10A (penalty point for offences punishable with level 3 fine).

Section 23: Independent review of licensing system including surrender principle

This section places a duty on the Department for Communities to appoint an independent person, within one year of this Act receiving Royal Assent, to undertake a review of the licensing system.

Subsections (2) and (3) set out the areas to be covered by the review and stipulate that the appointed person must report and make recommendations within two years of their appointment.

Subsections (4) to (6) require the Department to lay the report of the review before the Assembly, publish the report and, within six months of publication, produce and publish an action plan to address the recommendations of the review report.

Subsections (7) and (8) give the Department the power, subject to the approval of the Assembly, to modify by regulations the time periods by which the review and the Department's response must be completed.

Section 24: Annual publication of the number of licences

This section requires the Department to publish an annual statement of the number of liquor licences in force for public houses and off-licences and any trends which may be observed from these numbers. The numbers for public houses are to be set out by district electoral area or, where feasible, by reference to smaller areas within each of those areas.

Section 25: Code of practice

This section introduces a new Article 76F in the Licensing Order (Code of practice) which allows the Department to approve a relevant code of practice produced by a person or group of persons who have a relevant interest in matters surrounding intoxicating liquor. Before approving a code of practice relating to the matters referred to in paragraph (3) of the new Article 76F, the Department must consult the PSNI. The Department may approve any subsequent amendments to a code or withdraw approval of the code.

When granting or transferring a licence a court must be satisfied that an applicant is aware of their responsibilities under an approved code of practice. Where a renewal of a licence has been submitted to the clerk of petty sessions, they must be satisfied that an applicant for renewal of a licence has been complying with the code.

Section 26: Body corporate: change of directors

This section amends Article 4 of the Licensing Order (persons to whom licences may be granted) to require a body corporate (licensee) to notify the courts and police of any change of directorship within 28 days. It adds an offence (punishable by a fine up to £5,000) for not making such a notification.

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Subsection (2) amends Article 72 of the Licensing Order (suspension of licence) to allow the suspension of a licence on the grounds that the body corporate is no longer fit to hold a licence, having not informed the courts and police of a change in directorship.

Subsection (3) makes a consequential amendment to Part 3 of Schedule 10A (penalty points for offences punishable with level 5 fine).

Section 27: Removal of exemption for angostura bitters

This section omits angostura bitters (a product of high alcohol content which is used to flavour a wide variety of drinks and food) from the list of products which are not included in the definition of intoxicating liquor in Article 2(2) of the Licensing Order (interpretation). The omission has the effect that angostura bitters will be categorised as intoxicating liquor and therefore may only be sold in licensed premises.