



# Commission on Liquor Licensing

## Second Interim Report

**July 2002**

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The Commission is yet again indebted to our Secretary Catherine Sheridan who in so many ways has eased our task and has proved to be quite indispensable to both the Commission and its subcommittees. Our sincere thanks to her. She was most ably assisted in all the tasks she undertook by Antoinette Gavin and Yvonne Nolan whose efforts were of enormous benefit to the Commission. The Commission would like to express its sincere thanks to both.

There is mention in the report of the jungle of the intoxicating liquor laws. The Commission was assisted through this jungle by the legal expertise of its consultant Marc McDonald. Our sincere thanks go to him.

Similarly the Commission is most grateful for the assistance given by Mr. Fergal MacCabe, Planning Consultant.

Finally, the Commission is most grateful to all those who made submissions to us and particularly those who gave us the benefit of their experience. Without those our tasks would have been impossible.



# Introduction

Following our first interim report the Commission is pleased to see that a number of its recommendations are already being carried into effect.

The Minister for Health and Children has appointed a task force in accordance with the recommendation set out on page 9 of our first interim report. The Strategic Task Force on Alcohol appears to include all the specialists that we recommended. The time frame given to them by the Minister for Health and Children is tight but the Commission has every confidence that through the expertise available to the Task Force it will finalise a meaningful report within the time allotted. An Interim Report has already been published in May 2002.

The Department of Education and Science programmes for young people are being more actively promoted. The Commission recognises fully that the curriculum for all school goers is very full and that therefore it is difficult to find time to include health topics. Nonetheless, it would still prefer programmes specifically directed to alcohol abuse prevention. It is clearly desirable that young people should be made aware of the purpose of advertising so that they can judge for themselves the merits or otherwise of a particular product. The Commission acknowledges that the Department of Education and Science is responding to our first interim report.

Our recommendations regarding access to the off-licence trade have not yet come into operation but the purpose of these recommendations was to provide additional competition and it is rewarding to note that the cost of licences being purchased for the purposes of extinguishment has modified since the publication of the interim report and, of course, since the passing of the 2000 Act. The interim report pointed out that a licence was a permission to trade but it had come to be a viable commercial entity often retained for purely commercial purposes. Thus there has been a positive outcome to our interim report. The Commission hopes and trusts that its remaining recommendations will be carried into effect as soon as possible.

The Commission is also very pleased to note that there is large cross-party support for its work. This is shown by the number of T.D.s and public representatives who have been in contact with us and their views on many issues have been made known. The Commission is grateful for this.

In the months since the publication of the first interim report the Commission had many meetings with public representatives, the courts and other organisations (Appendix 5).

The Commission has also met local representatives and has received submissions from members of the public in response to press advertisements (Appendix 4). To all those who helped in its work the Commission is most grateful.

There are so many different aspects to Liquor Licensing that this report, like our previous report, can only deal with some. The fact that major issues are not dealt with in this report merely means that they will be dealt with in subsequent reports.

The Commission, dealt with a number of issues in respect of which it is making specific recommendations in this report. In general, the Commission operated through subcommittees which held meetings, conducted interviews, etc. (Appendix 3). Many hours work went into the preparation of these recommendations and it must be remembered that all of the issues were considered in the light of the recent Intoxicating Liquor Act, 2000. Since this Act only came into force in July 2000 and was largely based on the recommendations of the 1998 report of the Oireachtas Joint Committee on Justice, Equality and Women's Rights on the licensing code it would be presumptuous of the Commission to second guess any decision of the Oireachtas on any issue contained in the Act and therefore the Commission passes no comment on the various hours of opening contained in the Act. Suffice to say that the consequences of the increased opening hours should be reviewed regularly.

Section 37 of the Local Government Act, 1994 enables local authorities to make bye-laws to control the consumption of alcohol in public places. The Commission, having made contact with local authorities is pleased to note that the majority of local authorities with areas, whether urban or otherwise, which experience an influx of people have adopted such bye-laws.

The Commission welcomes the publication of the Criminal Justice (Public Order) Bill, 2002 which addresses many of the public order issues which have given rise to concern.



# 1. Codification of the Law

“The complexity of the present licensing law and the difficulty of its administration is greatly increased by the number of statutes in which it is embodied ..... the licensing law has become a veritable legal jungle in which none but the most intrepid and skilful explorer can find his way.”

The above is a quotation from the Intoxicating Liquor Commission Report of August 1925 made to the President and Members of the Executive Council of the Irish Free State which recommended a codification and consolidation of the law. Now 77 years later, the Commission on Liquor Licensing endorses these views.

This Commission’s terms of reference require it to make recommendations for a liquor licensing code geared to meeting the needs of consumers in a competitive market economy while taking due account of the social, health and economic interests of a modern society (Appendix 2). This task is not made easier by the fact that the current law, a complex mix of statute and case law, has evolved over several centuries and has never been codified.

It is worth noting that the first licensing statute for Ireland – An Act for Keepers of Ale-Houses to be bound by Recognizance – was passed in 1634. While this Act is no longer in force, many of its key provisions remain part of our current licensing system:– the supervision of the licensing system by magistrates (the courts nowadays); the annual licensing session; the granting of licences to proper persons and suitable premises; the prohibition against drunkenness, gambling and unlawful games; the payment by licensees of duty and licence fees.

The current licensing code encompasses the Licensing Acts 1833 to 2000; the Registration of Clubs Acts 1904 to 2000; various Finance Acts and Customs and Excise Acts dating back to the early nineteenth century; numerous other statutes as well as an extensive range of statutory instruments. Case law has also contributed in an important way to the development of the current system.

Unfortunately, the 1925 recommendation was not implemented so when the second Commission of Inquiry into the operation of the Laws relating to the Sale and Supply of Intoxicating Liquor reported to the Minister for Justice in July 1957, it was hardly surprising that the issue was raised again. That Commission drew attention to the number of statutes that made up the licensing code and politely recommended “that the task of consolidation be undertaken as soon as is conveniently possible so that the whole law be readily available in one comprehensive measure”. In May 1967, the then Minister for Justice stated in a Dáil reply that a Bill was being prepared in the Department providing for the

re-enactment in a single Act of the substance of the seventy or so Acts making up the licensing code. Unfortunately, the task was never completed with the result that the measure was never enacted.

Since this problem was first identified almost 80 years ago it is surely now time to overhaul the licensing code to remove the “dead wood” from it and thus enable the recommendations of the Commission to find expression in a codification of the licensing system.

The Commission is aware of the magnitude of the task of codification and is conscious that it will not come to fruition unless adequate resources are allocated to it. Moreover, an exercise of this nature will require a realistic time frame (possibly 3 years) and, in the Commission’s view should be embarked upon without delay.

*The Commission recommends that the staffing and other resources required for a codification of the entire liquor licensing code be made available and that preparatory work for such an exercise be set in train without further delay.*

This would result in a codification of the law, a marked reduction in the different types of licences available and bring into being a licensing system properly attuned to modern standards.

## 2. Licensing System

The first and the most fundamental issue for the Commission was what sort of legal system is best suited to this country to monitor and supervise the administration of our intoxicating liquor code.

We are grateful for the assistance of many members of the courts whom the Commission met. Our recommendations are as follows.

Bearing in mind, that a court – the District Court in particular – is more cognisant of local problems than any authority would be, it is the opinion of the Commission that the best and fairest way of dealing with licensing applications is through a court system. It is transparent, it is fair and it is accessible. In other parts of this report we have emphasised the need and requirement to advertise fully on all licensing matters. The reason for this is so that the public know what is happening and that their objections can be judicially determined. A court system is clearly the best way of dealing with contentious issues involving the common good.

Applications for new licences from the date of the Licensing (Ireland) Act, 1902 were made to the Circuit Court. The reason for this is to be found in the history of our courts. In the 19<sup>th</sup> century and indeed up to the enactment of the Courts of Justice Act, 1924 magistrates in this country were not paid. One has memories of the splendid Somerville and Ross novel “The Irish R.M.” and the role of Major Yeates so well played in the TV series by Peter Bowles. Historically, many licences were permitted in areas most affected by the Famine and the Land Wars where persons were allowed sell intoxicating liquor just to try to keep alive. Sympathetic magistrates permitted this to happen. That is why to this day there is such a proliferation of licences in areas like Mayo. Of course, there had been a dramatic decline in population in these areas caused by the emigration that followed the Famine and Land Wars mentioned above. Ireland peculiarly has a situation where some areas have far too many licences and others have too few. It is against this background that the 1902 Act which effectively governed licensing in this country for decades was passed. The 1924 Act gave jurisdiction to the Circuit Court in respect of new on-licences and to the District Court in relation to off-licences – jurisdictions formerly enjoyed by the magistrates.

Indeed, in introducing the Intoxicating Liquor Bill, 1927 in February 1927, the then Justice Minister, Kevin O’Higgins said: “We know that the honorary magistrates over a long period of years flocked into the annual licensing quarter session and dealt out licences in the most casual and haphazard fashion without any real advertence to the requirements of the public, without any real advertence to the question of whether or not they were

not creating within this trade an excess and redundancy which would have evil social reactions within the country."

Thus the granting of licences was entrusted to the circuit judges but the supervision of those licences, the renewal of those licences, the extension of licensing hours and all the attendant administrative problems of those licences and supervision of those licences were entrusted to the District Court. This can only have been caused by the fact that the authorities of the day did not have sufficient confidence in the District Court to actually grant the licences but recognised that the local magistrate or district judge as he now is was the proper person to respond to any local situation that may develop and therefore they were quite happy to entrust to them all the functions in supervising those licences once they were granted.

The Commission is very grateful for the help afforded to it by the Presidents of the Circuit and District Courts, their colleagues and the Chief Executive of the Courts Service.

District judges can be presumed to know their area. They can be presumed to know and be able to deal with the supervision and administration of licences once granted and if district judges are to be entrusted with the task of supervising such licences then surely the District Court should be the one in which those licences are granted to begin with.

*The Commission therefore recommends that all licensing matters should be entrusted to the District Court.*

The Commission would expect that the District Court, at its regular meetings, would take all steps possible to apply the laws in as uniform a manner as local circumstances would permit. It is this very knowledge of local circumstances that gives the District Court its advantage over the Circuit Court in all licensing matters.

Of course an appeal system on all licensing matters must exist and therefore the courts themselves should be encouraged to set in train a system whereby appeals on licensing matters could be heard in the Circuit Court as soon as possible. This might involve hearing appeals at the next possible sittings of the Circuit Court in the appropriate area even though the venue might not be identical with the District Court area where a licensing decision was first made.

*A fast track system of hearing appeals should be therefore devised by the Circuit Court to enable licensing appeals to be heard quickly.*

The role of planning permission in applications for licences was a matter of which the Commission was very cognisant. Firstly, an applicant for a new licence has to get planning permission for it. Having obtained planning permission he or she has then to apply to the Circuit Court for a new licence where the same issues of planning and whether the premises are appropriate for a licence are aired again. Therefore, planning issues are being dealt with by Circuit Court judges who effectively have the opportunity, in some instances, of second guessing the planning authority.

*The Commission accordingly recommends that, subject to certain conditions, the obtaining of planning permission should be in any subsequent court application prima facie evidence that the premises are satisfactorily designed and that traffic and other such considerations have been taken into account.*<sup>1</sup>

While such a recommendation recognises that planning permission should be *prima facie* evidence as to the design of the premises, the Commission recognises that there may be issues which the planning authorities might not consider – matters relevant to public order or enforcement, for example. That is why the recommendation is that planning permission should represent *prima facie* and not absolute evidence as to suitability. It is not intended that this recommendation should interfere with any other grounds for objection.

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<sup>1</sup> Mr. T. O'Sullivan was unhappy with this recommendation and requested that his position be recorded.



# 3. Hours of Trading

## 1. General Trading Hours

The subcommittee on hours of trading (Appendix 3) was established to review trading hours generally, to assess the adequacy of existing provisions and to report to the Commission. In the light of the conclusions reached by the subcommittee the Commission is pleased to set out the current position and to make recommendations for legislative changes.

The Commission has reviewed the legislative provisions in relation to the permitted hours of sale of intoxicating liquor for public houses, hotels and restaurants, off-licences and clubs. In this context, the Commission notes that the substantial reforms to trading hours introduced in the Intoxicating Liquor Act, 2000 were largely based on the recommendations set out in the agreed report of a Subcommittee of the Oireachtas Joint Committee on Justice, Equality and Women's Rights in June 1998.

The issue of trading hours was mentioned in surprisingly few of the submissions received by the Commission as part of the public consultation exercise. One suggestion was that a system of staggered closing times be introduced in order to reduce noise levels and related inconvenience. However, while the Commission understands the concerns that give rise to this suggestion, it is difficult to see how such a system could be implemented by legislative means. One possible course of action would be to abolish closing times and allow licensed premises to set their own trading hours. While the Commission is aware that the Isle of Man authorities intend to abolish permitted licensing hours in favour of a more flexible system, it believes that public opinion would not favour the introduction of such a system in Ireland at this time.

Another suggestion made was that in order to overcome the confusion caused by different closing times on different nights, particularly for tourists, a standard closing time of midnight be introduced. The Commission accepts that confusion may at times arise but the closing times set out in the 2000 Act are the result of an extensive consultation exercise and represent a balance of the views expressed during this exercise.

The Commission's overall conclusion in relation to trading hours is that since a major reform of licensing hours has been introduced as recently as July 2000, and given the limited number of responses on this issue during the public consultation exercise, it would not be appropriate to make any recommendations for further changes at this stage. The Commission will, however, return to this issue in its final report.

## **2. Exemption Orders and Occasional Licences**

Current licensing legislation makes provision for three types of exemption order – special, general and area – as well as for occasional licences. Exemption orders are court authorisations that permit the sale and consumption of intoxicating liquor during hours when this is otherwise prohibited. They are intended to facilitate the consumption of alcohol in exceptional circumstances or when it is ancillary to some other event or form of entertainment.

The Commission believes that the granting of exemption orders is a valid and integral feature of the liquor licensing code. Its consideration of the existing legislative provisions has enabled it to identify a number of areas where certain reforms would be desirable. There are two levels at which the Commission wishes to comment on exemption orders – the general and the specific.

## **3. General Considerations**

### ***Complexity of Existing Exemptions***

The Commission is mindful of the fact that current legislative provisions in relation to exemptions are complex and are spread across a number of statutes. This causes confusion for the public and creates difficulties for applicants seeking exemptions.

*The Commission recommends that the legislative provisions relating to exemptions be streamlined and brought together in a more accessible and user-friendly format.*

This could be done as part of the codification of the law referred to earlier (p.10).

The complexity of current law stems from the fact that extended hours can be justified on a number of different grounds and specific provision for these diverse situations has been included in licensing legislation. In general, when defining the circumstances in which exemptions may be granted, the legislature has sought to strike a balance between granting discretion to the courts and setting out the criteria under which such exemptions may be granted. Reform could be achieved in a number of ways. In particular, a choice lies between increasing the discretion currently available to the courts or replacing it with greater legislative detail.

Increasing the margin for discretion would involve reducing or eliminating the prescriptive provisions and providing instead for interested parties to apply to the courts for exemptions. In deciding on applications, the courts could then take account of what it regarded as all relevant factors. Such an open-ended discretion appears to be available to licensing boards operating in Scotland.

The Commission is not, however, convinced that radical reform is required in this area. The Commission believes that it is very much in the public interest to set out in legislation the general conditions relating to exemptions while allowing some discretion to the courts



to take account of specific circumstances or local conditions. The Commission notes that this approach is reflected in the reforms enacted in the Intoxicating Liquor Act, 2000.

### ***Exercise of Discretion by Courts***

While the Commission accepts that a certain amount of discretion should be available to the courts, it is aware of criticisms that the practices of the courts in relation to the extended hours permitted under special exemption orders may vary from one area to another. It has been represented to the Commission that in some areas the courts may have a general policy of granting exemptions for shorter periods than those permitted by legislation. The Commission recognises that this creates uncertainty and in certain circumstances, could put licence holders in some areas at a disadvantage.

Without wishing to interfere with the exercise of the discretion available to the courts, the Commission considers that a consistent approach to the granting of special exemption orders would be desirable. On the other hand, the Commission accepts that it is entirely reasonable that account be taken by the courts of non-compliance with previous undertakings on the part of applicants, or non-respect of conditions attached to exemption orders previously granted by the court. Surely, the bodies representing categories of licence holders, e.g. hotels and nightclubs, should develop guidelines or codes of conduct for their members in relation to the management and conduct of events for which special exemption orders are sought. Failure to adhere to such guidelines could then be taken into account by the court.

### ***Restrictions on Persons under 18 during Extended Hours***

Section 35 of the Intoxicating Liquor Act, 1988 provides that licensees shall not allow persons under the age of 18 to be present in any part of a licensed premises covered by an exemption order at any time during the period in respect of which the exemption was granted. It is an offence under the 1988 Act to do so. It is also an offence for any person under 18 years to be present while an exemption order is in operation. The Commission believes that there is wide public support for the retention of this provision.

*The Commission recommends retention of the restriction in section 35 of the 1988 Act which it considers to be in the interests of both licensees and those who are under the age of 18.*

## **4. Specific Considerations**

The proposals for specific reforms are set out under the following headings:

1. special exemption orders;
2. general exemption orders;
3. area exemption orders;
4. occasional licences; and
5. exceptional events.

## **4.1 Special Exemption Orders**

Special exemption orders are granted by the District Court to holders of on-licences (except holders of special restaurant licences) and they permit the sale and consumption of intoxicating liquor in licensed premises beyond normal trading hours.<sup>2</sup> Drinking-up time is now allowed in addition to the extended hours. There is no limit on the number of special exemption orders a licence holder may apply for in respect of a premises in any year.

Significant reform of the special exemption order system was introduced in the Intoxicating Liquor Act, 2000. Longer opening hours were, however, balanced by a new provision which allows local residents – for the first time – to object to the granting of such orders.

The relevant section states that “a court shall not grant a special exemption order in respect of any premises unless it is satisfied that the special occasion ... will be conducted in a manner which will not cause undue inconvenience to persons residing in the vicinity of those premises.” Moreover, courts are not required to grant special exemption orders for the maximum period permitted under the 2000 Act. They may, for stated reasons, grant an order for a shorter period. The Commission is satisfied that this provision seeks to strike an appropriate balance and does not, therefore, recommend any changes in the substance of the law. The recommendations that the Commission is making regarding the advertising of notice of applications will ensure that the public are fully aware of the making of such applications.

### ***Application Procedures***

A procedural issue relating to special exemption orders arises in relation to the duration of exemption orders granted by the courts. The relevant provisions are set out in section 5 of the Intoxicating Liquor Act, 1927, as amended. It appears that while many applicants for exemption orders make individual applications in respect of each night for which extended hours are sought, the courts will entertain what are in effect block applications on a monthly basis from frequent users of special exemption orders. Indeed it has been represented to the Commission that block applications covering a two-month period may also be entertained in certain cases, e.g. nightclubs. Since most applications are granted without difficulty, it has been suggested that the procedure should be reformed to permit the block granting of such orders or even the replacement of the order with a longer exemption, perhaps along the lines of the general exemption order which lasts until the next annual licensing court. This matter is dealt with in more detail elsewhere in this Interim Report.

### ***Substantial Meal Provisions***

When the special occasion for which a special exemption order is sought is a dance to be held on premises licensed for public dancing, a substantial meal need not be served.

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<sup>2</sup> Section 5 of the Intoxicating Liquor Act, 1927 (as amended by section 6 of the Intoxicating Liquor Act, 1943; section 12 of the Intoxicating Liquor Act, 1962; section 5 of the Intoxicating Liquor Act, 2000).

However, if the premises does not have a public dance licence, a special exemption order may be granted for a private function, or a special event organised by a particular organisation, association or similar group, only on condition that a substantial meal is served. The value of this meal is set by ministerial order under section 9 of the Intoxicating Liquor Act, 1962. The current rate of £2 was fixed in 1979 and is clearly no longer appropriate to the changed conditions of 2002.

*The Commission recommends that the value of a substantial meal be revised to take account of changed money values since 1979.*

The Commission has noted that the substantial meal obligation was removed in the 2000 Act in the case of public dances held in premises licensed for public dancing. This would seem to suggest that dancing on its own now provides sufficient justification for extended trading hours. It would appear to be justifiable on consistency grounds that similar provisions should also apply to special events and private functions held in premises licensed for public dancing. In all other cases, the substantial meal requirement should be retained.

*The Commission recommends that the substantial meal requirement be discontinued for special events and private functions involving dancing where the premises in which the event or function is being held is licensed under the Public Dance Halls Act, 1935.*

## **4.2 General Exemption Orders**

These orders may be granted by the District Court to allow early opening of licensed premises in the vicinity of a public market or fair or place where a considerable number of persons are following a lawful trade or calling.<sup>3</sup> This provision was designed to facilitate people who may be out and about in connection with their employment or business during the night and early morning hours, and who may desire either alcoholic or non-alcoholic refreshment including food. Since licensed premises were frequently the only places of refreshment available, provision for the general exemption order was made in the licensing code to cater for this demand.

A general exemption order normally remains in force for the premises concerned until the next annual licensing court but it may be withdrawn, or the terms may be altered, at any time by the District Court.

### ***Retention of General Exemption Order Provision***

The general exemption order provision was originally designed to cater for occupations with non-standard working hours, e.g. fishermen operating in tidal waters, workers at ports, railways, etc., and people attending markets and fairs. The earliest opening time is 5.00 am for people attending public markets or fairs and 7.00 am for people following a lawful trade or calling.

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<sup>3</sup> Section 4 of the Intoxicating Liquor Act, 1927 (as amended by section 10 of the Intoxicating Liquor Act, 1960; section 15 of the Intoxicating Liquor Act, 1962; section 11 of the Intoxicating Liquor Act, 2000).

The Commission has considered the justification for retaining general exemption orders in the changed economic and social conditions of 2002. Clearly, fairs and markets no longer occupy the same place in economic and social life as they did in the past. The numbers employed in many of the traditional sectors where non-standard hours were common have also declined. This would suggest that there are strong grounds for repealing these provisions since they no longer meet the original needs.

The Commission is mindful, however, that new working patterns are emerging in response to the demands of a more globalised market and that the Irish labour force is not immune to these trends. Some production plants, particularly in the high-tech sectors, operate on a 24-hour basis and staff are arriving and departing at times well outside permitted hours of trading. The Commission is aware too that while many workplaces in the services and manufacturing sectors provide their own catering facilities, others do not. Moreover, many workplaces are located in purpose-built zones that are distant from urban centres, thereby reducing the availability of non-licensed outlets to meet any demand.

While the Commission has not received any specific requests or submissions relating to the reform of the law in this area, its terms of reference require it to take account of the needs of a modern economy. The Commission considers that the general exemption order mechanism can continue to serve a useful purpose in changed economic conditions and should be retained. However, some change in the existing legislative provisions are warranted.

*The Commission recommends removal of references to “public market” and “fair” in the relevant legislative provisions and that the references to “lawful trade or calling” be supplemented with a reference to “employment”.*

### ***Retention of the Ban on General Exemption Orders in Dublin***

Section 15 of the Intoxicating Liquor Act, 1962 prohibited the granting of any new general exemption orders within the county borough of Dublin after 19 April, 1962. The justification for this prohibition originated in the increasing use of the facility by persons for whom it was never intended and abuses by late night revellers and others. The Commission acknowledges that there is a good case for extending to Dublin any exemption possibilities granted generally. On the other hand, any removal of the existing prohibition risks a return to earlier undesirable practices. The fact that a number of licensed premises in Dublin continue to benefit from general exemption orders originally granted before April 1962 without apparent public concern might be evidence that the risk is not as great as it once was.

The Commission considers that safeguards could be put in place to guard against abuses and that such safeguards could be extended beyond Dublin to the entire country. This would involve recasting the relevant legislative provisions to include additional criteria to be taken into account by the court in granting a general exemption order. These could include:

- adequacy of the existing number of non-licensed facilities in the neighbourhood;
- likely use by categories of persons not covered by the application;
- undue inconvenience to persons residing in the vicinity of the licensed premises; and
- the likelihood of public disorder or criminal behaviour.

*The Commission recommends removal of the existing prohibition on general exemption orders in Dublin subject to the enactment of additional safeguards in order to limit any potential abuses. Moreover, applicants for general exemption orders should be required to give notice of their intention to seek an order in a local newspaper and on a prominent site notice located at the licensed premises.*

### **4.3 Area Exemption Orders**

The background to this extension to normal trading hours in a geographical area is the existence of exceptional area-based events that attract very large crowds and where catering for such an influx of people during normal trading hours would be difficult and insufficient to meet the needs of such numbers.<sup>4</sup>

The area exemption order may be applied for by one licence holder but only with the approval of the majority of licensees. If granted, the order covers any licensed premises in the locality that wishes to avail of the longer trading hours. An area exemption cannot be granted for more than twelve days in any particular year in respect of the same locality (these may be divided into six periods each of which must relate to consecutive days).

The Commission has not received any submissions in relation to the law in this area and it has no reason to believe, therefore, that the law is in need of major reform. The Commission is, however, aware of a lack of precision in certain areas and greater clarity would be desirable in order to improve the enforcement of such exemption orders.

#### ***Definition of Locality***

At present, premises situated in the 'locality' where the special event will occur can benefit from an area exemption order. An enforcement problem arises because of the inadequate definition of the term 'locality' in the legislation. If the locality is situated in a county borough, town or village, it is deemed to include "the whole of that borough, town or village, as the case may be, and any surrounding built-up area". A number of problems arise in this context:

- firstly, the term 'built-up area' is open to interpretation; it opens up the possibility that premises some distance from the special event in question could benefit from an order; and
- secondly, the inclusion of a whole town within the definition of 'locality' gives a very wide area of application to any general exemption order.

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<sup>4</sup> Section 10 of the Intoxicating Liquor Act, 1962 (as amended by section 9 of the Intoxicating Liquor Act, 2000).

One way of addressing these problems would be to impose a distance limit. This would mean that only premises within the geographical area so defined could benefit from the area exemption order. This distance limit could be introduced in addition to the present locality rules or in substitution for them.

*The Commission recommends that provisions relating to the geographical scope of area exemption orders be more precisely defined in order to improve enforcement of the licensing laws.*

### **Retention of the Ban on Area Exemption Orders in Dublin**

Current legislation imposes a ban on the granting of area exemption orders in respect of premises situated in the county borough of Dublin. Should this prohibition be lifted? The Commission has not received any suggestion that it should. However, the Commission notes that as other cities have grown in size, the retention of the prohibition in the case of Dublin would seem to be somewhat arbitrary and perhaps outdated.

If a distance limitation were to be introduced, i.e. an order would cover all licensed premises within a defined radius of the event in question, it would certainly make it easier to discontinue the current prohibition in respect of Dublin since the danger that all licensed premises in the city would be covered by an area exemption order would not arise. A distance limitation may, however, be unsuitable for cities given the large number of premises likely to be covered.

*The Commission recommends that the possibility of confining the granting of area exemption orders in all cities to the “district” or “neighbourhood” where the event is taking place be explored. Some discretion should remain with the court to take account of particular circumstances of the event in question.*

### **Identifying who is staying open late**

Under current law it is difficult to know which licensed premises are availing of an area exemption order. This arises from the provision that the application to the District Court needs only the support of the majority of licensees in an area. This, together with the difficulties relating to the definition of ‘locality’ already mentioned, creates enforcement difficulties for the Gardaí. The Commission considers that licence holders who are not party to the application should not in future be allowed to benefit from an order granted on foot of such an application.

*The Commission recommends that all licensees intending to avail of an area exemption must be party to the application to the District Court; only applicants may benefit from any order granted.*

#### **4.4 Occasional Licences**

Occasional licences are intended to allow the sale of intoxicating liquor at a special event being held at a place where no licence is attached.<sup>5</sup> An event is considered to be special because of the character of the event itself or because of the place where it is taking place. The Commission fully supports retention of this facility but recommends reforms in relation to two aspects of the current arrangements.

##### ***Eligibility Criteria***

At present, only the holder of an on-licence is eligible to apply for such a licence. This has two particular consequences. Firstly, the operation of temporary bars in connection with local festivals, celebrations, etc., is reserved to existing licensees and, secondly, the capacity of catering and special event companies to serve intoxicating liquor in the course of their commercial activities is restricted. This latter type of business has expanded significantly in the recent past.

The reasons for limiting the granting of occasional licences to existing licensees may be related to a recognition that expertise and legal knowledge are required for the sale of intoxicating liquor, even on a temporary basis. On the other hand, the fact that an applicant for an on-licence who has no direct experience of the licensed trade can cite the employment of an experienced bar manager as evidence of suitability of character for the purposes of obtaining an on-licence is indicative of a certain level of flexibility in this area. There would seem to be no obstacle in principle, therefore, to allowing organisers of festivals, agricultural shows, etc. and companies in the catering or special events sector to obtain an occasional licence where they can demonstrate the availability of the required expertise.

*The Commission recommends that provision be made for granting occasional licences to non-licence holders who can demonstrate, to the satisfaction of the District Court, their suitability to hold such licences and the availability of the necessary expertise.<sup>6</sup>*

##### ***Application of Liquor Licensing Law to Occasional Licensees***

One area of uncertainty in relation to the operation of occasional licences relates to offences committed at the event in respect of which the licence was granted. The Commission considers it desirable to remove this uncertainty.

Moreover, since it may not be possible to enforce certain penalties, e.g. temporary closure orders, in respect of occasional licences, the lodgement of a substantial security or bond with the court as a form of guarantee that the event will operate in accordance with the licensing laws should also be considered.

*The Commission recommends that the relevant legislative provisions be amended to ensure that the licensing laws, so far as is possible, apply in any place licensed for the*

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<sup>5</sup> Section 11 of the Intoxicating Liquor Act, 1962 (as amended by section 1 of the Intoxicating Liquor Act, 1977; section 10 of the Intoxicating Liquor Act, 2000).

<sup>6</sup> Not all Commission members supported this recommendation. They consider that such licences would be open to abuse and difficult to control.

*sale of intoxicating liquor under an occasional licence and the licensee be subject to all applicable penalties.*

### **Holders of Special Restaurant Certificates**

At present, holders of special restaurant certificates are not allowed to apply for occasional licences. Whatever justification there may have been for such a restriction in the past, the Commission considers that this limitation should now be repealed.

*The Commission recommends that holders of special restaurant licences be permitted to apply for occasional licences on the same basis as other holders of on-licences.<sup>7</sup>*

### **4.5 Exceptional Events**

There is currently no provision in the liquor licensing code to extend trading hours on a general basis in order to cater for exceptional events. For example, for the purposes of the Millennium celebrations, it was necessary to enact primary legislation to facilitate extended opening of licensed premises.

*The Commission recommends that legislative provision be made for the making of regulations to extend trading hours in respect of events and circumstances of exceptional interest to the general public.*

## **5. Transport Facilities**

The situation with regard to the licensing of transport facilities for the purposes of the sale and consumption of intoxicating liquor may be examined under two headings:

- fixed premises, i.e. terminals and stations, and
- sale and consumption during travel, i.e. on board trains, planes and ships.

Three factors appear to have contributed to the creation of what is, in effect, a separate licensing system for transport facilities:

- rigidities in the ordinary licensing system, e.g. fixed trading hours,
- the sale and consumption of alcohol as an ancillary activity, and
- the fact that many facilities and services operated within the State system.

While passengers on board aircraft, ferries and trains may be supplied with intoxicating liquor for consumption during travel, there is no uniform and consistent approach to the licensing of transport facilities. Legislative provisions deal differently with the different modes of transport. The rules in relation to airports are different to those applying to railway stations. Ticketed passengers are treated more favourably in airports compared with ferry terminals. The extinguishment of an existing on-licence is not a condition for

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<sup>7</sup> This recommendation was not supported by all members because it would significantly upgrade special restaurant licences.



obtaining a licence for a transport facility but a certificate issued by the Minister for Public Enterprise is required in most cases.

*With a view to improving transparency, the Commission recommends that all licensing provisions relating to transport be streamlined and brought together in a more consistent and user-friendly format.*

### ***Reform of Licensing System relating to Transport Sector***

While it is still broadly true that the sale of intoxicating liquor in transport terminals is a subsidiary service for the benefit of the travelling public, it is also the case that licensed outlets in railway stations or airports can be used by arriving passengers or indeed by people who are not intending to travel. Such a development would not appear to be consistent with the purpose for which the licence was granted. Enforcement problems would also arise.

The Commission supports the continued availability of intoxicating liquor for intending passengers but is conscious that there is no mechanism whereby members of the public can express views or lodge objections to the grant of such licences. The Commission considers that in the interests of transparency and openness, applications for such licences should be made to the courts in the normal way. The current provision whereby the extinguishment of an existing licence is not required in order to obtain a new licence should not, however, be changed. The issue of adequacy of other licensed premises in the area would, in general, not be relevant in such situations.

*The Commission recommends that the normal application rules should apply to the licensing of fixed transport premises, i.e. application should be made in the normal way to the District Court for a certificate which will enable the Office of the Revenue Commissioners to issue the required licence.*

The purpose of this recommendation is to ensure consistent application of all licensing laws and to facilitate proper supervision by the Gardaí. It is fair to say that there has not been any evidence of public concern at the manner in which these premises have been heretofore managed.



# 4. Nightclubs, Theatres and Places of Public Entertainment

## 1. Introduction

In line with the terms of reference of the Commission (Appendix 2) a subcommittee was established to examine the licensing system as regards nightclubs, theatres and places of public entertainment (Appendix 3).

The subcommittee received papers from Mr. Marc McDonald on legal issues and from Mr. Fergal MacCabe on planning issues. The various submissions received by the Commission were considered and specifically so the submissions from the Irish Nightclub Industry Association and the Irish Hotels Federation.

In the light of conclusions reached by the subcommittee, the Commission is pleased to set out the current position and make recommendations in relation to nightclubs, theatres and places of public entertainment.

## 2. Nightclubs

### The current position

While nightclubs are not specifically referred to in the existing liquor licensing legislation they are nevertheless subject to this legislation in the same way as any other licensed premises.

To operate a nightclub a person needs:

- (a) a full on-licence permitting the sale of beer, wine and spirits, a public dance licence under the Public Dance Halls Act, 1930 as amended, or
- (b) a wine retailer's on-licence permitting the sale of wine only, and if necessary a restaurant certificate to allow the sale of beer without a bar, and a public dance licence.

In each case a special exemption order is required which allows nightclubs to sell liquor beyond the normal trading hours.

### Recommendations

As far as nightclubs are concerned there was general agreement that the current on-licence requirement, incorporating the special exemptions procedure for extending the normal hours of trading, are sufficient but should be subject to a number of changes. The Commission does not recommend that existing trading hours provided for by exemption be extended.

The main suggestion for change relates to the need to reduce the requirement for frequent court applications for special exemptions which cover a relatively short period in order to (i) reduce the administrative burden both for operators and the courts, which should have a beneficial effect on the public, and, (ii) remove an element of uncertainty, so that the applicant will know well in advance what exemptions he or she can obtain.

At present, individual applications for exemptions are submitted to the courts for particular nights; in some areas applications are submitted for one month in advance and in others for two months in advance.

*The Commission recommends that applicants should be entitled to apply for exemptions for periods of up to 3, 6 or, if the Government considers it appropriate, 9 months or for such shorter periods as may be required.*

The Gardaí currently have the opportunity to object to the issue of exemptions at the time of applications. As a counter-balance to the Commission's recommendation above it is considered that additional powers should be available to the Garda Síochána to enable them to carry out their duties and responsibilities fully and permit them greater opportunities of monitoring nightclubs.

*The Commission, therefore, recommends that the Gardaí should, at any time, be able to (i) seek the revocation of exemptions, temporary closure or attachment of conditions, if difficulties arise with the operation of specific nightclubs, and (ii) have the power to apply for curtailment of the additional hours granted.<sup>8</sup>*

Currently, there is no requirement to publish notice of exemption applications in the press. The Commission believes that a requirement to publish notices of applications in the press and outside the site in question would bring greater transparency to the procedure.

*The Commission recommends that applicants for exemptions be required to publish notice of their application in the press and outside the site in question indicating the date and hours sought. Applications should be available in both the District Court office and the Garda Station as referred to in the notice. This requirement could be waived in the case of single applications for exemptions for less than one month.*

The fees payable for exemptions are currently charged on a night-by-night basis. Exemptions for longer periods in accordance with the Commission's recommendation above would have financial implications for operators who might find it uneconomic to operate in an environment where sizeable upfront payments were required in advance of future trading. However, this must be balanced against the greater degree of certainty which operators will now be afforded by the issue of exemptions for longer periods.

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<sup>8</sup> Mr. P. Prendergast dissents from this recommendation.

*The Commission recommends that fees chargeable should be on a scaled basis to reflect the number of occasions for which the exemptions are required and the hours sought and should not be set at a prohibitive level.*

A district judge enjoys the discretion to grant an exemption for a period shorter than the maximum provided for in law. This often occurs where a judge is not fully satisfied with a particular nightclub and thus limits the hours of trading of that particular club. However, it has been brought to the attention of the Commission that some judges have applied a blanket policy in their jurisdictions of limiting trading hours of all nightclubs regardless of how they are operated, possibly as a result of the misuse of an exemption by a minority of operators. While not wishing to impinge on judicial discretion, the Commission considers that legitimate operators who comply fully with the law and operate orderly houses should not be penalised as a result of the actions of others.

As regards the activities carried out in nightclubs, the Commission considers that conditions should be set down in legislation to ensure that exemptions are only provided for *bona fide* dancing and not to facilitate late night drinking – in other words that the sale of alcohol is ancillary to the principal activity which is dancing. To provide for this, the legislation could be amended to include specific provisions relating to, for example, the size of dance floor areas compared to the overall size of nightclubs.

*The Commission recommends that legislation should provide that such exemptions are only obtained for bona fide dancing and that the sale of alcohol is ancillary to this activity. The floor area available for such dancing should reflect the number of persons permitted to be present by virtue of the fire regulations. The court should put a limit on the number of people allowed on the premises.*

As regards planning, the construction of a new nightclub or the enlargement of existing premises to facilitate the establishment of a nightclub requires planning permission, giving interested parties an opportunity to object to such a development. However, the conversion of existing licensed premises or part of the premises to a nightclub is often carried out without the need for planning permission, especially if the premises do not have to be extended. In these circumstances, nightclubs can be established without interested parties having any opportunity to object to the development.

The Commission is of the view that in such situations the use of licensed premises to operate nightclubs should require planning permission as it constitutes both an intensification of and material change in the use of these premises and extends the hours during which these premises are allowed to trade.

*The Commission recommends that where licensed premises or part of the premises is being converted to a nightclub, planning permission should be required.<sup>9</sup>*

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<sup>9</sup> Some members of the Commission had reservations about this recommendation insofar as it concerns amendments to the planning code and requested that their reservations be made known.

Nightclubs operating under wine on-licences at present acquire these licences from the Revenue Commissioners without the need for court certificates.

*The Commission recommends that all nightclubs including those currently operating under wine on-licences should be subject to the same procedure and brought into line with procedures pertaining to the on-licence.*

### **3. Theatres and Places of Public Entertainment**

#### **The current position**

Theatres and places of public entertainment are not generally subject to the same liquor licensing laws as other licensed premises.

In order to sell liquor in a theatre or a place of public entertainment, a person must obtain a licence from the Revenue Commissioners under the Excise Act, 1835, as amended but on production of a public music and singing licence under the Public Health Acts Amendment Act, 1890, as amended.<sup>10</sup>

As things stand, in applying to the court for a public music and singing licence, no reference is made to the sale of intoxicating liquor. Therefore, suitability of premises for that purpose is not taken into account. Furthermore, there is no insurance requirement and the position regarding compliance with the appropriate fire regulations is at best uncertain. The issue of a licence by the Revenue Commissioners usually follows the issue of a public music and singing licence. This in the opinion of the Commission is wrong.

The hours during which liquor can be sold in a theatre are usually dependent on the hours stipulated in the music and singing licence but generally are from a half-hour before the commencement of a performance to a half-hour after the ending of a performance. To add to the uncertainty “performance” is not defined.

#### **Views and Recommendations**

As far as theatres and places of public entertainment are concerned, there was general agreement that the current regime is totally unsatisfactory and is open to abuse because of the now much broader view of what constitutes a theatre and the activities which can be carried out in it as a result of a number of recent court cases, in particular the Supreme Court judgement in the RDS case.<sup>11</sup>

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<sup>10</sup> A public music and singing licence is required in an area where an urban authority has adopted Part IV of the Public Health Amendments Act, 1890. The Act provides that any house, room, garden or other place, whether licensed or not for sale of intoxicating liquor, shall not be kept or used for public singing, music or other similar public entertainment without a licence granted for that purpose by a judge of the District Court. The applicant is required to serve notice on the Garda Síochána and the fire authorities. The licence may be granted for public music and singing or other public entertainment subject to such terms and conditions as the court considers appropriate. The display of a notice and the observance of the days and hours of trading is inserted in and made a condition of every such licence. A public music and singing licence is in force for one year or for such shorter period as the court on the granting of the licence determines.

<sup>11</sup> Royal Dublin Society v. Revenue Commissioners (1998) 2 I.L.R.M 487.

The system at present does not give the Gardaí and the general public the right to object to the issue of a licence by the Revenue Commissioners. While a right exists to object to the issue of a public music and singing licence, which is required to obtain a theatre licence, such applications do not always indicate that a theatre licence is also being sought.

*The Commission recommends that a theatre licence should be issued by the Revenue Commissioners only on production of a certificate by the District Court.*

A serious lacuna in the law identified by the Commission was that theatres licensed to sell liquor do not come within the ambit of the licensing code. The provisions of the Licensing Act, 1872 as regards persons found drunk, permitting drunkenness, keeping a disorderly house, permitting a premises to be used as a brothel, permitting gaming and the power to exclude drunkards from licensed premises which currently do not apply to theatres licensed to sell liquor would therefore not apply.

If the licensing code were applied to these premises, there should be no need for a music and singing licence, as the permitted activities would be defined in liquor licensing law. This would ensure that a theatre licence could be obtained in any part of the country in contrast to the current position where public music and singing licences can only be obtained in areas where the relevant local authorities have adopted the appropriate legislation to grant such licences.

The Commission is of the view that detailed plans of the building should be submitted with the application to the court for the licensing certificate. In addition, appropriate planning permission should also have been obtained. Fire regulations should apply to take account of the number of persons present on the premises at any time. Furthermore, public liability insurance should be required as is the case for other properties under the licensing code and evidence of both of these together with the completed application should be required before any licence is granted.

*The Commission recommends that theatre licences be subject to the liquor licensing and planning codes like all other on-licences and that evidence of public liability insurance and compliance with fire regulations be required.<sup>12</sup>*

In order to ensure that only *bona fide* theatres acquire such licences, the Commission considers that there is a need to provide a specific definition for a theatre in law to include the type of structure involved (i.e. a raised stage area and fixed seating for all of the audience) and also the type of activities which can be carried out in such a structure.

The activities could be defined under the heading “performance” and be confined to plays, pantomimes, operas, musicals, concerts, ballet and so on. In other words, it should be a live performance and the audience must be seated and they should not be actively

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<sup>12</sup> Some members of the Commission had reservations about this recommendation insofar as it concerns amendments to the planning code and requested that their reservations be made known.

taking part in the performance. As with nightclubs, the Commission is of the view that the sale of alcohol in theatres should be ancillary to the other activities being carried out there.

*The Commission recommends that a definition of theatre and performance should be set down in legislation to ensure that the sale of alcohol is ancillary to the principal activity.*

The Commission considers that trading hours should generally remain as they are at present, i.e. half-hour before to a half-hour after a performance, but they should be subjected to operating within the normal on-licence 7-day liquor trading hours. In addition, liquor should not be sold during a performance but only at the intervals of such performance, as the sale of liquor in theatres should always be regarded as being ancillary to the actual performances. The issue of special exemption orders to extend trading hours should be allowed at the discretion of the District Court for specific performances and on serving the appropriate notices.

*The Commission recommends that normal on-licence 7-day liquor trading hours should apply to the sale of alcohol in theatres and such sale should only take place during intervals. Extended trading hours should be allowed only on application to the District Court and on notice to the Garda Síochána.*

As provided for currently, entry to a performance must be on payment of a fee.

*The Commission recommends that in all cases the issue of printed tickets with the event name and starting and finishing times, should be provided to patrons on payment of the fee for the performance.*

The licence should also be renewable, unlike at present where a new licence has to be issued each year.

*The Commission recommends that theatre licences should not be available for other activities such as films, disco, lap dancing, etc. the requirements for which could be met under other aspects of the licensing code. As the current licence is not renewable, since a new licence issues each year, this should make it easier to discontinue the issue of theatre licences to such operators.*

The flagrant abuse of the existing system shows the urgency of remedial action in relation to theatre licences. The Commission considers that there should be no delay in rectifying this situation.



# 5. Interpretative Centres/Museums

## 1. Introduction

The subcommittee on interpretative centres/museums (Appendix 3) was established to progress the Commission's work on one aspect of its terms of reference, namely:

“To examine other aspects of the licensing system, such as licences for . . . interpretative centres and other places where the sale of alcohol is ancillary to the main business carried out”.

At its first meeting, the subcommittee adopted the following terms of reference, closely modelled on the above-mentioned extract from the Commission's terms of reference:

“To examine other aspects of the licensing system, in particular, licences for interpretative centres and other places where the sale of alcohol is ancillary to the main business carried out”.

The subcommittee decided to consult relevant bodies in the tourism area<sup>13</sup> in order to assist it in identifying the main issues and arriving at a workable definition of the type of interpretative centre which might be licensed. Schedule 1 outlines the submissions received.

In the light of conclusions reached by the subcommittee, the Commission is pleased to set out the current position and make recommendations in relation to interpretative centres/museums.

## 2. Background

The term “interpretative centre” covers a multitude. At one end of the scale, there are the major national cultural institutions such as the National Museum of Ireland, the National Gallery of Ireland (both in Dublin), the Crawford Gallery in Cork and the Hunt Museum in Limerick. At the other end of the scale, there are some very small interpretative centres and museums which are privately owned and run, some on a voluntary basis and some essentially as an adjunct to another business such as farming.

Dúchas, the Heritage Service, is the State body responsible for the protection and conservation of Ireland's natural and built heritage. Dúchas operates under the aegis of the Department of Arts, Heritage, Gaeltacht and the Islands and is responsible for 79

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<sup>13</sup> The Heritage Council, Dúchas, Association of Regional Tourism Authorities, Irish Museums Association and Heritage Island.

heritage sites, 24 of which have visitor centres. There are also a number of heritage sites (castles, houses and gardens, etc.) which are not managed by Dúchas but which are open to the public.

Section 62 of the National Cultural Institutions Act, 1997 provides that certain key collecting institutions<sup>14</sup> may be granted licences permitting them to sell intoxicating liquor to visitors to the premises.

Licences are granted by the Revenue Commissioners on the presentation of a certificate approved by the Minister for Arts, Heritage, Gaeltacht and the Islands. To date three institutions<sup>15</sup> have been issued with certificates under section 62 of the National Cultural Institutions Act, 1997 and were subsequently granted licences. The Act also provides for procedures for renewing, transferring or extending licences.

Some larger, privately-owned and run interpretative centres, such as the Jameson Whiskey Corner and the Guinness Hop Store, have acquired pub licences in the normal way.

At a level below the national cultural institutions, the Regional Tourism Authorities (Dublin Tourism, the Regional Tourism Authorities for Midlands-East, North West, South East, South West and Western regions, and SFADCo, which has responsibility for Counties Clare, Limerick, North Tipperary, South Offaly and North Kerry) play a role both in operating certain interpretative centres (referred to as “day visitor centres”) and in promoting and marketing others, which they do not own.

For example, Dublin Tourism, the Dublin Regional Tourism Authority, is responsible for seven such attractions.<sup>16</sup>

It also carries out a marketing function for a number of other attractions in the area. The regional tourism bodies also have an inspection role in relation to accommodation, the Tidy Towns competition and touring; they consequently have expertise in undertaking inspection and processing appeals.

These interpretative centres can vary considerably in size, for instance, the Shaw birthplace is a very small location.

Other interpretative centres may have no particular form of recognition, either nationally or locally. Examples would include centres attached to small workshops producing handmade or speciality goods.

Discussions with representatives of the tourism industry indicate that there are two aspects to the type of licences suitable for such places:

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<sup>14</sup> The Chester Beatty Library, the Crawford Gallery, the Hugh Lane Municipal Gallery of Modern Art, the Irish Museum of Modern Art, the National Museum of Ireland, the National Library of Ireland, the National Gallery of Ireland, the Hunt Museum.

<sup>15</sup> The Chester Beatty Library, the Irish Museum of Modern Art, the Hunt Museum.

<sup>16</sup> Dublin Writers’ Museum, Railway Museum, Malahide Castle, Newbridge House, Shaw’s Birthplace, Joyce Museum, Viking Adventure.

1. The demand from visitors during the normal opening hours of an interpretative centre; and
2. The ability to offer “added-value” private functions out of ordinary hours, since there is a demand for upmarket functions in unique settings. This may offer a valuable additional source of revenue, particularly for smaller museums and interpretative centres.

### **3. Major Issues**

The Commission identified the following major issues:

1. How to define “interpretative centres”.
2. How to safeguard a system of licensing interpretative centres against abuse.
3. What “other places where the sale of alcohol is ancillary to the main business carried out” should be considered.

#### **3.1 Definition of Interpretative Centres**

##### ***Museums***

The Heritage Council has arrived at the following definition of a “museum”:<sup>17</sup>

“A museum is a not-for-profit institution that collects, safeguards, holds in trust, researches, develops and interprets collections of original objects and original objects on loan, for the public benefit. It functions publicly as a place where people learn from and find inspiration and enjoyment through the display and research of original objects”.

“For the purposes of this definition, the term ‘museum’ can include historic houses, heritage sites and galleries”.

At present, there is no national standards and accreditation system for museums. The Heritage Council has formulated a pilot accreditation plan, which is currently in its second phase. The Commission concluded that, pending the implementation of such a scheme, it would be inappropriate to make recommendations for the licensing of “museums”, separate from those relating to interpretative centres. In other words, while some museums will come within the definition of “interpretative centres” (below) arrived at, the mere fact that a location is designated, or calls itself, a museum should not make it eligible for a licence.

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<sup>17</sup> “Towards Policies for Ireland’s Heritage: The Introduction of a Standards and Accreditation Scheme for Irish Museums”, the Heritage Council, October 1999.

### ***Interpretative Centres***

The advice of Mr. Frank Magee, Chief Executive, Dublin Tourism, was sought on a definition, who, after consulting colleagues, proposed the following:

“As a basic criterion, all centres should be required to comply with health, fire and planning regulations. All centres should be involved in servicing tourism and as such, in order to qualify for a licence, be required to be a member of their regional tourism authority. In order to renew a licence, the regional tourism authority on an annual basis, following an inspection of the facility, should issue as basis a certificate of suitability. The Centre should be open to the public for a minimum of 160 days a year and a minimum of 6 hours a day”.

“The interpretation should be relative to the building or the locality and should be of significance from a tourism viewpoint. The regional tourism authority should approve such significance”.

Possible additional criteria suggested by Mr. Magee were that permanent and professional staff be employed. A minimum number of visitors – perhaps 30,000 on an annual basis – could be required to pay entrance charges to the centre. This would be validated by the regional tourism authority as part of the annual audit. The number of functions outside of normal hours might be limited, as might the duration of the events.

Mr. Magee confirmed that the regional tourism authorities would be happy to work with the relevant authorities on the implementation of such a scheme.

The Commission considers that, where regional tourism authorities were involved in certifying interpretative centres, a standard charge should be applied nationally.

### **3.2 Safeguards against Abuse**

Irrespective of individual opinions on the general issue of licensing, the Commission was concerned to make recommendations which, if implemented, would operate for the purpose for which they were intended and would not be such as to bring the law into disrepute. The Commission is aware, for instance, of concerns regarding the operation of theatre licences, where in many cases it appears that the *bona fides* of the alleged theatrical performance is questionable. In order to safeguard against possible misuse, the Commission concluded that its recommendations must cover three key points:

- (i) the premises must be a *bona fide* interpretative centre, where the sale of alcohol is secondary. In this regard, the recommendations from Dublin Tourism, above, are highly relevant;
- (ii) a licence should apply only for the normal hours of opening of the interpretative centre (as is the case, for instance, with the National Concert Hall); and
- (iii) where the premises are used for private functions outside normal opening hours, a pay bar should not be in operation.

### 3.3 “Other places where the sale of alcohol is ancillary to the main business carried out”

The Commission considered that many of the issues raised by the Craft Brewers’ Network were outside its terms of reference. However, the fact that craft brewers are not licensed to retail their own product from their own premises raises interesting issues related to the operation of interpretative centres which have liquor as a theme. Many craft breweries are small in scale and supply mainly the off-licensed trade. They operate visitor centres which involve a tour of the brewery and an explanation of the process, and include a “tasting” of the product; however, the product cannot be sold. Where the main business of the company is brewing, then the sale of alcohol on the premises could clearly be regarded as “ancillary”.

The Commission considered that, on the one hand, it seemed invidious for such craft breweries – which tend to be associated with a “continental-style” approach to drinking – not to be able to retail their own products in the way that, for example, a craft baker or cheese-maker could. On the other hand, however, if such a centre were granted a full liquor licence the retail end of the business might eventually overwhelm the brewing end, to the extent that the sale of alcohol was no longer “ancillary” but represented the main business of the premises.

## 4. Recommendations

*The Commission recommends that:*

- 1. A new type of non-transferable licence, to be granted by the courts, should be made available to allow interpretative centres to sell alcohol during normal opening hours.*
- 2. Regional tourism authorities and SFADCo should be responsible for certifying interpretative centres as suitable for a licence, following an inspection, on the basis of clearly defined criteria, and on the basis of an appropriate and agreed index-linked fee applicable nationally.*

*As a basic minimum, these criteria should include:*

- (a) compliance with health, fire and planning regulations;*
- (b) that the interpretative centre must make a bona fide contribution to tourism in the area, and be of relevance to the building or the locality; and*
- (c) that the centre must be open for a minimum of 160 days per year and 6 hours per working day.*

*Other possible criteria would include:*

- (a) adequate staffing; and*
- (b) minimum visitor numbers taking all matters into account.*

3. *The regional tourism authorities should make annual follow-up inspections before renewing the certificate of suitability.*
4. *Insofar as direct purchase of alcohol by consumers is concerned, the licence should apply for the normal opening hours of the centre.*
5. *The licence should also cover private functions outside normal opening hours, but should not cover the operation of a pay bar.*
6. *Notice of private functions should be served on the Garda Síochána.*
7. *Consideration should be given to setting a cut-off time for such functions.*
8. *In relation to craft brewers, a new type of licence should be created to allow them to sell their own products on their premises during normal pub opening hours.*

## 6. The Status of Children in Licensed Premises

A recent Decision by the Office of the Director of Equality Investigations caused considerable concern to the Commission.<sup>18</sup>

The Commission's concerns were directed not on the equality considerations nor indeed on the best interests of the publican or licensee but directed on the issue of whether young people of impressionable age should be permitted in licensed premises and whether a licensee should be entitled to regulate his/her own premises by prohibiting the presence of young people on the premises at all or at certain hours.

The legislature obviously considered this very carefully and section 34(1) of the Intoxicating Liquor Act, 1988 reads: "Subject to subsection (2) of this section, the holder of a licence of any licensed premises shall not allow a child to be at any time in the bar of his licensed premises." This amounts to a prohibition on young persons of impressionable age in licensed premises. They have no right, under that subsection, to be there and to have them on the premises would constitute an offence. Subsection 2 however states that where such a young person is accompanying their parents or guardian it shall not be unlawful. This would appear to give a clear discretion to the licensee.

Two major issues arise and they are both of fundamental importance in the consideration of the excess drinking by young people nowadays.

The Commission is very conscious that the presence of young people on licensed premises exposes them to the example of sometimes errant parents. What they see around them is the consumption of intoxicating liquor. They are young and susceptible to the impressions that such an environment would create. In particular, as has been the case where parents spend long hours in pubs accompanied by their children, this is an environment which could well lead those children to alcohol abuse sooner rather than later.

In all these matters it is the welfare of the child that must be considered. The Commission is strongly of the opinion that where a publican does not want children on his or her premises he or she should not, under any circumstances, be required to permit them to enter.

Similarly, if any publican wishes to impose a time constraint on the entry of children to his or her premises (i.e. no children after 6pm) then he or she should be entitled to regulate his or her premises so as to achieve this.

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<sup>18</sup> Maughan v. Glimmer Man, DEC-S2001 - 020.

It is the opinion of the Commission that subsection 2 mentioned above merely makes it lawful for a child to be on a licensed premises accompanied by its parent or guardian. It does not make it and should not make it mandatory on a publican to permit children's presence if he or she does not wish it.

Similarly, if parents keep the children on a licensed premises for what is in the opinion of the publican or the person in charge an excessive length of time having regard for their age and all the other circumstances, he or she should have it in his or her exclusive discretion so to ordain.

Where the Intoxicating Liquor Licensing laws are concerned children are the most vulnerable part of the community and it is their interests that must be given primary consideration.

Indeed, it would not seem unreasonable for the legislature to limit the length of time that children should remain in pubs even accompanied by their parents. A licensed premises is scarcely a proper environment for a young susceptible person.

*The Commission recommends that in order to clear up any doubts, legislation should be introduced permitting licensees to either not allow children on their premises or to restrict the hours during which children are present. Where children are permitted however licensees should also be entitled to require that a person accompanied by a child who has been on a licensed premises for, what is in the licensees' opinion, an excessively long period, leave the premises concerned.*



## 7. Other Issues

### Garage Forecourts

The Commission indicated in its first interim report that, due to time constraints, the issue of the sale of alcohol at garage forecourts could not be considered at that point. Subsequently a subcommittee was established to address the issue and to report to the Commission (Appendix 3).

Following due consideration the Commission agreed that it would be difficult to make recommendations in the absence of clear evidence on the consequences of the sale of alcohol at garage forecourts.

*The Commission recommends that this matter be kept under constant review.*

### Advertising

A number of submissions made to the Commission emphasised the impact of advertising on young people. To our surprise not many formal complaints are made to the Advertising Standards Authority for Ireland in relation to alcoholic drinks advertising. The publication of a new Code of Advertising Standards for Ireland and Code of Sales Promotion Practice is a welcome development.<sup>19</sup> The Codes came into effect in April 2002 and their impact will be monitored by the Commission.

The Commission is concerned with the operation of a self-regulatory advertising system and believes that it should be kept under constant review.

### Drinking by Young People

A subcommittee dealing with young people issues examined aspects of this issue (Appendix 3). The Commission would like to pay tribute to the various groups and individuals within the education sector which assisted it in its work (Appendix 5).

The question of binge drinking is one which has given rise to a lot of concern. While pricing practices are outside the Commission's terms of reference, the Commission is of the view that pricing and promotion practices by licence holders can serve to encourage excessive drinking among young people and are unacceptable. During its consultations, a particular promotional practice came to the Commission's attention which, in the Commission's view, is likely to encourage excessive consumption of alcohol. This practice,

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<sup>19</sup> Advertising Standards Authority for Ireland, *Code of Advertising Standards for Ireland (5th edition)*, *Code of Sale Promotion Practice (3rd edition)*, 2001, available from the Advertising Standards Authority for Ireland.

which seems to be targeted at young people in particular, involves payment of a cover charge to gain entry to the licensed premises combined with sale of intoxicating liquor at prices well below normal levels. The Commission is concerned that this form of promotion is encouraging excessive drinking, especially among young people, including students and the Commission has written to the Garda Commissioner suggesting that the renewal of licences for premises involved in such practices should be opposed.

*The Commission recommends that a hard-hitting advertising campaign in relation to the effects of excessive drinking and targeted at young people in particular be undertaken.*

This was a point strongly emphasised by student representatives, in particular DIT, whose common sense approach was appreciated by the Commission.

## **ID Card**

The Commission reaffirms the recommendation in the first interim report (p.13) that age card application forms should be widely distributed and the fee of £5 abolished. The Commission is of the view that an effective age card scheme would make a positive contribution to addressing the problem of under-age drinking and welcomes the allocation of €150,000 in Budget 2002 to promote the proof-of-age card scheme.

## **Responsible Serving of Alcohol Programme**

The Commission applauds the introduction of the Responsible Serving of Alcohol Programme developed by the Department of Health and Children, in conjunction with the NASP (National Alcohol Surveillance Project) and the Drinks Industry Group which is designed to ensure that those serving alcohol are fully instructed in all of its many aspects. The Commission is anxious that this programme should be widely utilised.

However, some doubts have been cast on the availability of the Programme in different areas, the extent to which, even in metropolitan areas the system is being invoked and the numbers receiving training.

The Commission is conscious of the need for adequate training of all bar staff and has set up a working group (Appendix 3) to examine the matter and a commentary on the programme will be included in the next report.

## **Access to Licences in Urban and Suburban Centres of Population**

At present a subcommittee of the Commission is considering the best means of dealing with areas of highly increased population which are in fact under pubbed (Appendix 3). In these areas, where for planning or other reasons the number of pubs could not be increased, existing public houses have vastly increased in size in order to keep pace with increased demand, resulting in the "super-pub" phenomenon. This has resulted in the fact that while several areas have sufficiency of pub floor area – they have not enough pubs! It can hardly be said that this development is in the public good but this is the result

of inadequate advance planning and the increased demand that increased population caused.

## **Public Order**

There is significant public disquiet about law and order offences. While in the report we touch upon this subject, nonetheless it will be dealt with in far greater detail in our next report. We are conscious of the problems caused to the public by large numbers of persons congregating in public places at a given time and that however it occurs, a number of these people can, from time to time, be intoxicated. It is disquieting to note that many of the judges with whom we have spoken have no knowledge of licensees ever being prosecuted for selling liquor to persons who had already had enough! Perhaps a greater public will to deal with these issues is required. These are matters which the Commission will address.

The Commission is pleased to note that the National Crime Council is currently undertaking a major research project in relation to public order offences, which should significantly enhance the information available about the nature and patterning of this problem.



# Summary Recommendations

Recommendations	Reasons
<p><b>Codification of the Law</b></p> <p>1. The codification of the licensing laws should be commenced immediately and the required resources made available.</p>	<p>To update the licensing code in accordance with modern standards, thus reducing the various types of licence available and making the code more user-friendly.</p>
<p><b>Licensing System</b></p> <p>2. All licensing matters should be entrusted to the District Court.</p>	<p>To provide for a system which would be accessible, transparent and reflective of local conditions.</p>
<p>3. A fast-track system should be devised by the Circuit Court for licensing appeals.</p>	<p>To enhance the efficiency of the licensing appeals system.</p>
<p>4. Once planning permission has been obtained in respect of a new licence, in any subsequent court application that permission should, subject to certain conditions, be <i>prima facie</i> evidence that the premises themselves are satisfactorily designed.</p>	<p>To ensure that those issues already considered in the planning permission process, and which may not have relevance to a court application, need not be revisited by the courts.</p>
<p><b>Hours of Trading</b></p> <p>5. The legislative provisions relating to exemptions should be streamlined and brought together in a more accessible and user-friendly format.</p>	<p>To simplify legislative provisions in relation to exemptions. This can be done as part of its codification recommendation above.</p>
<p>6. Section 35 of the 1988 Act should be retained.</p>	<p>It is unusual for the Commission to make a recommendation which merely provides for the retention of an existing provision, but this affirms strong support for this provision relating to persons under 18.</p>
<p>7. The value of a substantial meal set by ministerial order under the Intoxicating Liquor Act, 1962 should be revised.</p>	<p>To update the relevant provisions.</p>
<p>8. The substantial meal requirement should be discontinued for special events and private functions involving dancing where the premises in which the event or function is being held is licensed under the Public Dance Halls Act, 1935.</p>	<p>To ensure consistency between legislative provisions relating to all functions held in premises licensed for public dancing.</p>

<b>Recommendations</b>	<b>Reasons</b>
<p><b>Hours of Trading – contd.</b></p> <p>9. References to “public market” and “fair” in relevant legislation should be removed and references to “lawful trade or calling” be supplemented with a reference to “employment”.</p>	<p>To ensure that the law reflects current economic and social conditions.</p>
<p>10. The existing prohibition on general exemption orders in Dublin should be removed subject to the introduction of safeguards to limit any potential abuses.</p>	<p>To ensure that the law reflects current economic and social conditions.</p>
<p>11. Applicants for general exemption orders should be required to publish notice of their intention to seek an order.</p>	<p>To ensure a transparent system in relation to applications for general exemption orders. The public are entitled to notice of matters which affect them and are entitled to be heard should they wish to raise objections.</p>
<p>12. Legislative provisions relating to the geographical scope of area exemption orders should be clarified.</p>	<p>To improve the enforcement of area exemption orders.</p>
<p>13. The possibility of confining area exemption orders to the “district” or “neighbourhood” where the event is taking place should be considered.</p>	<p>To improve the enforcement of area exemption orders and to facilitate the granting of such orders in Dublin.</p>
<p>14. All licensees intending to avail of an area exemption must be party to the application to the District Court; only such applicants should benefit from any order granted.</p>	<p>To improve enforcement.</p>
<p>15. Provision should be made for granting occasional licences to non-licence holders who can demonstrate their suitability to hold such licences and the availability of the necessary expertise.</p>	<p>To enable organisers of local festivals etc. who can avail of persons with the relevant experience and qualifications to obtain a licence for such events.</p>
<p>16. The appropriate licensing laws should apply in any place licensed for the sale of intoxicating liquor under an occasional licence.</p>	<p>To clarify the law in relation to occasional licences and to ensure that if they are abused the proper remedies will apply.</p>
<p>17. Holders of special restaurant licences should be permitted to apply for occasional licences on the same basis as other on-licence holders.</p>	<p>To eliminate disparities between the holders of special restaurant licences and other on-licence holders in connection with applications for occasional licences.</p>
<p>18. Legislative provision should be made for regulations to extend trading hours in respect of events and circumstances of exceptional interest to the general public.</p>	<p>To insert an enabling provision into legislation in relation to events of special or national interest.</p>

<b>Recommendations</b>	<b>Reasons</b>
<p><b>Hours of Trading – contd.</b>  <b>19.</b> All licensing provisions relating to transport facilities should be streamlined and contained in a more consistent and user-friendly format.</p>	<p>To simplify licensing provisions in relation to transport facilities.</p>
<p><b>20.</b> Applications for the licensing of fixed transport premises should be made in the normal way to the District Court for a certificate enabling the Office of the Revenue Commissioners to issue the required licence.</p>	<p>To ensure that all such licences are granted on the same conditions as other on-licences.</p>
<p><b>Nightclubs</b>  <b>21.</b> Retain current licensing procedure but enable the courts to grant exemptions for periods of up to 3, 6, or 9 months.</p>	<p>To streamline the licensing procedure in respect of special exemption orders.</p>
<p><b>22.</b> Allow Gardaí the right, at any time during the licensing year, to seek revocation, temporary closure, etc. in respect of such exemptions.</p>	<p>To increase opportunities for Garda enforcement – a matter of public concern.</p>
<p><b>23.</b> Require applications for exemptions to be published in the press.</p>	<p>To increase transparency and opportunities for public scrutiny and to provide for objections where appropriate.</p>
<p><b>24.</b> Charge fees for exemptions on a scaled basis to reflect the duration of the exemption and the hours of trading.</p>	<p>To ensure that fee structures reflect procedural changes.</p>
<p><b>25.</b> Exemptions to be provided only for <i>bona fide</i> dancing and where the sale of alcohol is ancillary.</p>	<p>To eliminate the misuse of special exemption orders.</p>
<p><b>26.</b> Require planning permission where existing licensed premises are used to operate a nightclub.</p>	<p>To give interested parties an opportunity to raise objections.</p>
<p><b>27.</b> Subject all nightclubs to the same court certification process.</p>	<p>To streamline and regularise licensing procedures.</p>
<p><b>Theatres and Places of Public Entertainment</b>  <b>28.</b> Licences should only issue to <i>bona fide</i> theatres.</p>	<p>To eliminate abuse of theatre licences.</p>
<p><b>29.</b> All applications should be dealt with by the District Court and be subject to liquor licensing and planning legislation. All such licences to be renewed annually.</p>	<p>To streamline licensing procedures.</p>
<p><b>30.</b> Trading hours should remain unchanged but only within standard 7-day on-licence trading hours. Liquor should not be sold during performances.</p>	<p>To ensure that the sale of alcohol in theatres is an ancillary activity.</p>

Recommendations	Reasons
<p><b>Theatres and Places of Public Entertainment – contd.</b></p>	
<p><b>31.</b> Provision for special exemptions to apply for specific performances.</p>	<p>To introduce measures to assist in the enforcement of the law.</p>
<p><b>32.</b> A definition of “theatre” and “performance” should be provided for in law.</p>	<p>To clarify the law and to prevent abuse of the system.</p>
<p><b>33.</b> Entry to theatres should be by way of payment of a fee on receipt of pre-printed tickets for specific performances outlining the times of such performances.</p>	<p>To ensure that the sale of alcohol is ancillary to the main activity of theatres and to introduce measures to assist in the enforcement of the law.</p>
<p><b>Interpretative Centres/Museums</b></p> <p><b>34.</b> A new type of non-transferable licence, granted by the courts, should be made available to allow interpretative centres to sell alcohol during normal opening hours.</p>	<p>To enhance the facilities provided by certain tourist attractions.</p>
<p><b>35.</b> Regional tourism authorities and SFADCo should be responsible for certifying interpretative centres as suitable for a licence, following an inspection, on the basis of clearly defined criteria, and on the basis of an appropriate and agreed index-linked fee applicable nationally.</p>	<p>To ensure that licences are only granted to <i>bona fide</i> centres.</p>
<p><b>36.</b> Regional tourism authorities should make annual inspections before renewing the certificate of suitability.</p>	<p>To put in place a system of control.</p>
<p><b>37.</b> The licence should apply for the normal opening hours of the centre as regards purchase of alcohol by consumers.</p>	<p>To ensure that the sale of alcohol is ancillary to the main activities of the licence holder.</p>
<p><b>38.</b> The licence should also cover private functions outside normal opening hours, but should not cover the operation of a pay bar.</p>	<p>To introduce controls.</p>
<p><b>39.</b> Notice of private functions should be served on the Garda Síochána.</p>	<p>To assist in the enforcement of the law.</p>
<p><b>40.</b> Consideration should be given to setting a cut-off time for such functions.</p>	<p>To assist in the enforcement of the law.</p>
<p><b>41.</b> A new type of licence should be created to enable all craft brewers to sell their own products on their premises during normal on-licence opening hours.</p>	<p>To enable craft breweries with visitor centres to retail their own products.</p>



<b>Recommendations</b>	<b>Reasons</b>
<p><b>Status of Children in Licensed Premises</b></p> <p>42. Legislation should be introduced to give licensees discretion in relation to the presence of children on their premises. Where children are permitted however, licensees should also be entitled to direct that any person accompanied by a child who has been on a licensed premises for, what is in the licensees' opinion, an excessively long period, be required to leave the premises concerned.</p>	<p>To clarify the law in relation to the presence of children on licensed premises and to ensure that the best interests of children are at all times protected.</p>
<p><b>Garage Forecourts</b></p> <p>43. The sale of alcohol at garage forecourts should be kept under review.</p>	<p>To monitor the demand for and consequences of the sale of alcohol at garage forecourts.</p>
<p><b>Advertising</b></p> <p>44. To keep the operation of advertising control under review.</p>	<p>To ensure that an appropriate advertising system is in place and is enforced.</p>
<p><b>Drinking by young people</b></p> <p>45. An advertising campaign dealing with the effects of excessive drinking and targeted at young people in particular should be undertaken.</p>	<p>To actively seek to educate young people on the effects of alcohol and to promote a more responsible approach to its consumption.</p>



# Appendix 1

## **Members of the Commission on Liquor Licensing**

Mr. Gordon A. Holmes, Chairman

Mr. Michael Ahern, Solicitor, Iveragh Road, Killorglin, Co. Kerry

Mr. Seamus Carroll, Principal Officer, Department of Justice, Equality and Law Reform

Mr. Phonsey Croke, Principal Officer, Office of the Revenue Commissioners and  
Department of Finance

Mr. John Douglas, MANDATE and member of ICTU Executive Council

Mr. Frank Fell, Chief Executive, Licensed Vintners' Association

Mr. Chris Fitzgerald, Principal Officer, Department of Health and Children and Mr.  
Christopher McCamley, Assistant Principal, Department of Education and Science

Ms. Carmel Foley, Director of Consumer Affairs

Ms. Ailish Forde, Director General, RGDATA

Ms. Isolde Goggin, Competition Authority

Superintendent John Kelly, An Garda Síochána

Mr. Jim McCabe, National Spokesperson & Executive Member, NOffLA

Mr. Michael Murphy, Irish Business and Employers Confederation (IBEC)

Mr. Colm Ó Mongáin, Press and Information Officer, National Youth Council of Ireland  
(Replaced Mr. Peter Byrne, October 2001)

Mr. Henry O'Neill, Chief Executive, Restaurants Association of Ireland

Mr. Tadg O'Sullivan, Chief Executive, Vintners' Federation of Ireland

Mr. John Power, Chief Executive, Irish Hotels Federation

Mr. Patrick Prendergast, Irish Nightclubs Industry Association

Mr. Eddie Sharkey, Registrar, Bord Fáilte

Mr. Brian Whitney, Assistant Secretary, Department of Enterprise, Trade and Employment

Ms. Catherine Sheridan, Assistant Principal, Department of Justice, Equality and Law  
Reform, Secretary to the Commission

## **Secretariat**

Ms. Antoinette Gavin, Executive Officer

Ms. Yvonne Nolan, Clerical Officer

## **Rapporteur/Consultant**

Mr. Marc McDonald



# Appendix 2

## Terms of Reference

The terms of reference are as follows:

- (1) To review the Liquor Licensing system in the light of all relevant factors, including systems for the licensing of alcohol in other countries, and to make recommendations for a Liquor Licensing system geared to meeting the needs of consumers, in a competitive market environment, while taking due account of the social, health and economic interests of a modern society.
- (2) In particular:
  - to review the scope for a system of additional licences,
  - to examine demand in areas that are under-licensed, new areas of increasing population, and tourist areas,
  - to examine other aspects of the licensing system, such as licences for theatres and places of public entertainment, the licensing of residential accommodation which does not come under the definition of an hotel, interpretative centres and other places where the sale of alcohol is ancillary to the main business carried out.
- (3) To examine the nature of the off-licence and particularly the method of access to the off-licensed trade in the interests of promoting better competition.
- (4) To enquire into other aspects of the Licensing Code, as may be appropriate.
- (5) To make recommendations for any necessary legislative changes to give effect to the recommendations put forward.
- (6) To submit a report within three months of the first meeting on paragraph 3 of its terms of reference and a Final Report within two years of the first meeting on all other matters.
- (7) To examine the rights of licence holders to refuse admission and service in licensed premises and to make recommendations for any necessary legislative changes.<sup>20</sup>

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<sup>20</sup> This term of reference was agreed by the Government in March 2002.



# Appendix 3

## **Membership of Subcommittees**

### **Hours of Trading**

Mr. Seamus Carroll (Chair)  
Mr. John Douglas  
Mr. Frank Fell  
Ms. Carmel Foley

### **Licences for Nightclubs, Theatres and Places of Public Entertainment**

Mr. Phonsey Croke (Chair)  
Mr. Frank Fell  
Superintendent John Kelly  
Mr. John Power  
Mr. Patrick Prendergast

### **Interpretative Centres/Museums**

Ms. Isolde Goggin (Chair)  
Mr. Michael Murphy  
Mr. Henry O'Neill  
Mr. Eddie Sharkey

### **Issues relating to Alcohol Consumption by Young Persons**

Mr. Jim McCabe (Chair)  
Mr. Chris Fitzgerald  
Mr. Michael Murphy  
Mr. Colm Ó Mongáin  
Mr. Tadhg O'Sullivan

### **Garage Forecourts**

Mr. Michael Ahern (Chair)  
Ms. Ailish Forde  
Mr. Christopher McCamley

### **Access to Licences in Urban and Suburban Centres of Population**

Mr. Gordon Holmes (Chair)  
Mr. Seamus Carroll  
Mr. Frank Fell  
Ms. Carmel Foley  
Superintendent John Kelly  
Mr. Henry O'Neill

## **Ad Hoc Working Group on the Responsible Serving of Alcohol Programme**

Mr. Henry O'Neill (Chair)

Mr. John Douglas

Mr. Chris Fitzgerald

Mr. Tadg O'Sullivan



# Appendix 4

## Submissions Received

Mr. Seamus Bowe  
Centre for Adult Education, NUI, Maynooth  
Mr. James Coghlan  
Competition Authority  
Cork G.A.A. Clubs Lobby Group  
Mr. Deryck Fay  
Green Party Comhaontas Glas  
Mr. Maurice Hennessy  
Irish Hotels Federation  
Irish Nightclub Industry Association  
Killarney Drugs Liaison Committee  
Mrs. Emile Lalor  
Ms. Joan Lyons (Petition)  
Mr. Patrick V. McEvoy  
Mid-Western Health Board (Sláinte)  
Mr. Thomas Mulligan  
Mr. Jim Nolan  
Mr. F.X. O'Brien  
Mr. Billy O'Shea  
Mr. Pete Pimlott  
RGDATA  
Mr. Brian Rutledge  
Mr. Richard Slevin  
Tesco Ireland Ltd.  
Vintners' Federation of Ireland  
The Wheel, Community & Voluntary Group



# Appendix 5

## Consultees

### Education

Department of Education and Science

Dr. Brendan Goldsmith, Dublin Institute of Technology

Dr. Don Thornhill, Higher Education Authority

Mr. Paul Hannigan, Letterkenny Institute of Technology

National Association of Principals and Deputy Principals—

Ms. Mary McGlynn, Director

Dr. Austin Corcoran, Vice President

Mr. Gerard Looney, Public Relations Officer

Ms. Marguerite Fitzpatrick, President of the Students Union, Dublin Institute of Technology

Mr. Colm Jordan, Union of Students in Ireland

### Interpretative Centres/Museums

Mr. Frank Magee, Dublin Tourism

Irish Craft Brewers Network—

Mr. Eamon O’Hara

Mr. David Malone

Mr. Dean McGuinness

Ms. Derval O’Carroll, Irish Museums Association

The Heritage Council

Dublin Brewing Company

### Courts

Mr. P. J. Fitzpatrick, Chief Executive, Courts Service

The Hon. Mr. Justice Esmond Smyth — President of the Circuit Court

Judge Michael White — Circuit Court

His Honour Judge Peter A. Smithwick — President of the District Court

Judge John Brophy — District Court

### Public Representatives

Mr. Brendan Howlin, T.D.

Ms. Breda Moynihan-Cronin, T.D.

Mr. Brian O’Shea, T.D.

Ms. Jan O’Sullivan, T.D.

Mr. Dick Roche, T.D.

Mr. Emmet Stagg, T.D.

## **Local Authorities**

Athlone Urban District Council  
Ballinasloe Urban District Council  
Bundoran Urban District Council  
Carlow County Council  
Carlow Urban District Council  
Carrickmacross Urban District Council  
Carrick-on-Suir Urban District Council  
Cashel Urban District Council  
Castleblayney Urban District Council  
Cavan County Council  
Clare County Council  
Clonmel Borough  
Cork County Borough Council  
Cork County Council  
Corporation of Drogheda  
County Borough of Galway  
Donegal County Council  
Droichead Nua Town Commissioners  
Dublin Corporation  
Dundalk Urban District Council  
Dún Laoghaire-Rathdown County Council  
Fingal County Council  
Galway County Council  
Kerry County Council  
Kildare County Council  
Kilkenny Corporation  
Kilkenny County Council  
Killarney Urban District Council  
Kilrush Urban District Council  
Laois County Council  
Leitrim County Council  
Leixlip Town Commissioners  
Limerick County Borough Council  
Limerick County Council  
Listowel Urban District Council  
Longford County Council  
Louth County Council  
Mayo County Council  
Meath County Council  
Monaghan County Council  
Monaghan Urban District Council  
Navan Urban District Council  
Offaly County Council  
Roscommon County Council  
Shannon Town Commissioners

Sligo Borough  
Sligo County Council  
South Dublin County Council  
Tipperary (SR) County Council  
Tipperary (NR) County Council  
Tralee Urban District Council  
Waterford County Borough Council  
Waterford County Council  
Westmeath County Council  
Wexford Borough  
Wexford County Council  
Wicklow County Council

### **Other**

Department of Tourism, Sports and Recreation  
Mr. Edward McCumiskey, Advertising Standards Authority  
Mr. John Coleman, Commercial Director, GuinnessUDV  
Killarney Drug Liaison Subcommittee—  
    Cllr. Sean O’Grady  
    Cllr. Sheila Dixon  
    Mr. Con Cremin, Manager, Drug Treatment Centre  
Dr. James Kiely, Chairman, Strategic Task Force on Alcohol  
Mr. Stephen Rowen, Rutland Centre and Strategic Task Force on Alcohol  
Committee on Liquor Licensing Law in Scotland  
Home Office, London  
Mr. Bruce Driscoll, New Brunswick Liquor Corporation

# Schedule 1

## **Submissions received in relation to Interpretative Centres**

### **The Heritage Council**

In response to a letter inviting their views (see page 33), the Heritage Council stated that it had no objection in principle to the issuing of liquor licences to interpretative/heritage centres. Very often, such centres were not economically viable without an ancillary use, such as a bar or function room, which would provide additional income and extend the use of the building. The Council felt that the multi-use of such buildings should be actively promoted, to ensure that the core function, that of conserving, interpreting and presenting our heritage, was economically sustainable. They pointed to the success of the Tullamore Dew Heritage Centre, Tullamore, Co. Offaly, which in addition to a display area had a bar and conference/meeting facilities within the former distillery building. Without the presence of the bar, it was doubtful whether the heritage centre would be economically viable on its own.

### **Foynes Flying Boat Museum**

Among submissions received by the Commission were those from the Foynes Flying Boat Museum and the Carlow Brewing Company (see below). Ms. Margaret O'Shaughnessy, Curator of the Foynes Flying Boat Museum, stated that the Museum operated from March to November each year and found it difficult to cover their costs, such as staff, insurance, light/heat, etc. It was always necessary to fundraise to keep going. However, they "desperately needed" to be allowed to sell Irish Coffees to visitors, who found it odd that under the present law this was impossible.

The museum had been opened in 1989 to commemorate Foynes' role as the first international airport in Ireland from 1939 to 1945. In 1942 the first Irish Coffee had been made there. Ms. O'Shaughnessy stated that the full story of the "invention" of Irish Coffee at Foynes was part of their Museum Exhibit and created a lot of interest with visitors. Out of this story, the annual Powers Irish Coffee Festival and the World Irish Coffee Championships had been developed. However, most visitors asked to have an Irish Coffee and the museum was unable to serve it as the purchase of a licence would not be viable.

The Museum was a community project attracting valuable business to the town and felt that if it could highlight the Irish Coffee story more, it would certainly increase business. Ms. O'Shaughnessy stated that Shannon Development agreed with this viewpoint.

## Irish Craft Brewers' Network

The submission from the Carlow Brewing Company pointed to the difficulties which small craft brewers experienced in selling their wares. The submission identified a number of factors which, it is claimed, served as barriers to the entry of new players to the Irish market.

These included:

- regulatory control on the number and type of outlets for beer, making it difficult for new breweries to make their product available to consumers;
- high excise rates;
- the high cost of retail outlets resulting in pressure to achieve turnover, encouraging them to stick with big brands;
- the fact that breweries were licensed to wholesale, but could not retail product from their own premises, either for takeaway or for consumption on the premises. This also made it impossible, according to the submission, to justify investment in the Visitor Centre when they could not sell beer; and
- poorly developed distribution channels.

Members of the Commission met representatives of the Irish Craft Brewers' Network in July 2001. The Brewers' Network outlined their views on barriers to entry and competition for small players in the Irish brewing sector at each level of the market. They summarised the initiatives which might be taken to address their problems as:

- The introduction of a staggered excise rate to favour small breweries.
- The provision of a retail licence to enable micro-breweries to serve beer on their premises.
- The extension of wine-only licences to include the sale of beer.

In subsequent correspondence, the Irish Craft Brewers' Network submitted that retail licences should be available to breweries which were *bona fide* commercial operations (i.e. which hold a brewer's manufacturing licence and are approved by the Revenue Commissioners under the deferred duty scheme). A definition could be formulated, if required, by reference to one or other (or a combination) of the brewing capacity and the ratio of the floor area devoted to brewing/warehousing/visitors' centre. The brewery must have dedicated on-site facilities for receiving and entertaining visitors. Hours of operation should be flexible, in order to respond to the needs and schedules of the operators.

The Brewers' Network submitted that the types of alcohol available should include the products produced by the brewery itself, including products produced under licence; and also products from other breweries (which would allow for the holding of craft brewing events). They further suggested that the breweries should be in a position to offer other products, i.e. spirits, wine, etc., as in a visiting group there were always people who did not drink beer. Failing this, the licence could be limited to beer, wine and soft drinks.

They stated that, in reality, retail outlets/visitors' centres adjacent to breweries were not in competition with standard pubs in that they would offer a significantly differentiated product targeted to a niche market not currently well served.

Finally, the Irish Craft Brewers' Network believed that the process of deregulation should be accompanied by education programmes to foster a greater appreciation for the social enjoyment of alcohol and a healthier and more responsible attitude to drinking in this country.