
In response to growing concerns about Ireland’s booze culture, the Intoxicating Liquor Act 2008 (“the Act”) was signed into law on 21st July 2008. The reforms introduced by the Act are a direct reaction to a number of factors:

- the increase in the number of supermarkets, convenience stores and petrol stations with off-licences;
- the manner which liquor is promoted;
- the increase of the number of special exemption orders permitting extended opening hours across the country;
- the ineffectiveness of current sanctions designed to prevent excessive and underage alcohol consumption.
- the use of theatre licence to allow for later drinking in late night venues.

The Act will introduce numerous changes, the main ones being:

1. The sale of liquor for consumption off the premises, whether those premises benefit from an off-licence or on-licence, shall no longer be permissible on any day outside the hours of 10.30am and 10.00pm (except for Sunday and St. Patrick’s Day where liquor may only be sold between 12.30pm and 10.00pm).

   The result of this provision will be that off-licences must now close earlier than the average closing time of 10.30pm or 11.00pm previously permitted.

2. Theatre licences will now be subject to the normal prohibited hours applicable to the sale of liquor.

   This change eliminates the previous exemption which theatre licences benefited from and will prevent venues with such licences from selling alcohol in conjunction with events unless such sale is within the normal hours of 10.30am to 11.30pm Monday to Thursday; 10.30am to 12.30pm Friday & Saturday; and 12.30pm to 11pm on Sunday.

3. Where non-licensed business is being conducted in premises which benefit from an off-licence, the area in which liquor is sold must be confined to an area which is structurally separate from the rest of the premises by way of wall or barrier and the public may only enter that area from a separate door or turnstile. In addition, members of the public should not have to pass through the area selling liquor to get to other areas and they must also pay for the liquor in the area selling the liquor.

   This provision has not yet commenced and therefore is not yet enforceable in law. Once commenced, it will require numerous off-licences across the country to undergo structural alterations to their premises. There are however certain exemptions available to premises where the only non-licensed business involves confectionary, ice, cigarettes, tobacco, non-alcoholic beverages or any other commodities as prescribed.

   The Minister proposes to introduce a voluntary Code of Practice shortly to allow licence holders the opportunity to voluntarily comply with this provision of the Act. A recent press release of the Department of Justice has stated the Minister has reserved the option to commence this provision if the voluntary approach is not effective.
Any person found to be in breach of this provision will be guilty of an offence and liable to pay a fine of up to €5,000 on summary conviction or €100,000 on indictment. There will also be a further fine of €2,000 payable for each subsequent day of non-compliance.

4. A member of An Garda Síochána may now send a person between 15 and 18 years of age into licensed premises for the purpose of purchasing intoxicating liquor. This can only be done if their parent or guardian has consented and the Garda is satisfied the persons welfare is not at risk.

This is a novel provision which enables Gardai to test whether a licensed premises will sell alcohol to an underage person. This is the first time a provision of this nature has been introduced and it may prove controversial over time. Similar to the above, this provision has yet to be commenced and is therefore, not yet law. The Department of Justice press release mentioned above states that guidelines on the practical operation of test purchasing will be released shortly.

5. The Minister can make Regulations restricting a person or licensee from advertising, promoting or selling liquor at a reduced price or free of charge if purchased in conjunction with another quantity of liquor or product or service and may also restrict or prohibit any event or promotion which is likely to encourage people to drink liquor excessively.

Any person found to contravene any such regulation may be found guilty of an offence and liable to a fine of up to €5,000 on summary conviction or up to €100,000 on indictment.

6. The District Court may now refuse to grant a certificate entitling the applicant to a new off-licence on one of the following grounds:

   (i) character, misconduct of unfitness of the applicant;
   (ii) unfitness or inconvenience of the premises;
   (iii) unsuitability of the premises for the needs of persons residing in the neighbourhood;
   (iv) the adequacy of the existing number of licensed premises of the same character in the neighbourhood.

This provision, along with new provisions allowing the Garda Superintendent or any other person living in the neighbourhood to object to an application for a licence, is designed to allow the Court refuse an application and thereby curtail the number of off-licences being granted. Alternatively, the Court may grant the off-licence subject to conditions; failure to comply with these will prevent the applicant from renewing the off-licence in the future. Such conditions may include the requirement that a closed circuit television system be installed on the premises.

7. Special Exemption Orders may now contain conditions whereby:

   (i) if the event is not a private function then a closed circuit television must be in operation on the premises;
   (ii) the Court will not grant a Special Exemption Order if premises are not in compliance with fire safety standards under the Building Control Act 1990 or if the event will threaten public order or public safety in the locality.
This places further obligations on persons seeking to obtain Special Exemption Orders. It also strengthens the ability of the Gardaí to object to the Order being granted based on public order considerations. Licensees will have to maintain compliance with Building Regulations and the Building Control Act. From a practical point of view, this may require the engagement of a fire consultant or architect to certify compliance.

8. The Act also sets out a schedule of increased fines under the existing Licensing Acts.

Of particular note is the increase in the fines relevant to the sale or provision of alcohol to underage persons. This has now been increased to €3,000 if convicted for a first offence and €5,000 if convicted of a second or subsequent offence. These fines were previously between €1,000 and €2,000.

The fine related to the offence of supplying alcohol to a drunken person on the licensed premises has also increased. If convicted, a licensee will be liable to pay a fine of €3,000 for a first offence and €5,000 for a second or subsequent offence. Again, these fines were originally between €1,000 and €2,000.

Furthermore, where a licensee is convicted of an offence for the first time under the Licensing Acts and the District Court has granted a temporary closure order, the premises shall now be closed for a minimum of 2 days and shall not exceed 7 days.

The schedule is available online at www.oireachtas.ie.

In conclusion, this Act has introduced new constraints on off-licence holders, in terms of earlier closing hours and structural alterations, with a view to encouraging the drinking population to return to the pubs and to discourage the ever-increasing number of off-licences attached to newsagents and corner shops which are sprouting up across the country.

Off-licence owners may now have to spend serious amounts of money on altering their premises structurally to comply with this Act and face increased fines and penalties in particular for the sale of alcohol to minors. Profits will also drop as a result in shorter opening hours.

The fact this Act has been commenced save for the provisions relating to test-purchasing and structural alterations to off-licences, may indicate that the Minister may have some doubts as to the efficacy of these provisions and is waiting to get feed back from his introduction of a voluntary Code of Practice.

This Act could have taken a different approach which might have allowed more control over the number of off-licences being granted without punishing the existing off-licence holders. Furthermore, once in force, it is expected that issues will arise out of the test-purchasing provisions which may prove controversial over time.

The Department of Justice have confirmed that a comprehensive Sale of Alcohol Bill will be published later this year. It may well be the case that this Act is merely a precursor for some more substantive changes.

In any case, this Act was an opportunity to bring in changes to legislation designed to limit the problem of excessive drinking and the increasing number of off-licences. Let us hope that it was merely a stepping stone for future measures which will effectively balance the needs of licence holders and the public and address these issues positively.
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