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Licensing and Registration of Clubs (Amendment) Bill

NIAR 340-16

This Bill Paper provides an overview of the Licensing of Clubs (Amendment) Bill, as introduced to the Assembly on 19th September 2016. The paper identifies areas within the Bill which may benefit from further scrutiny.

Members may also wish to refer to a separate paper, Licensing and Registration of Clubs (Amendment) Bill – Assessing the Costs (NIAR 372-16) which provides a framework for financial scrutiny of the Bill.

Summary

The following is a brief summary of the main components of the Bill along with some suggested areas for further scrutiny. For a more detailed description of the clauses within the Bill, please refer to the main body of the paper.

Clauses 1 and 16: Additional hours at Easter

These clauses extend opening hours for licensed premises and clubs by one hour on the Thursday before Easter Friday. The **Republic of Ireland** also has legislation which restricts Easter opening hours, but **England, Scotland and Wales** do not.

One of the main considerations here may be whether the proposal provides sufficient balance between support for the economic contribution made by the hospitality industry and the protection of a traditional religious holiday.

Clauses 2, 3 and 4: Additional hours

Clause 2 proposes to give courts the power to grant an order for occasional additional hours of late opening. This would allow licensed premises to open to 2am instead of 1am on weekdays and 1am instead of 12am on Sundays, for 12 occasions per year. Clause 3 sets out the penalties for contravention. Clause 4 allows for the police to authorise additional later opening hours similar to those under Clause 2, up to 85 times per year.

In **Scotland**, as well as **England and Wales**, premises may in theory open for 24 hours. On-sale premises determine their normal opening hours in their operating plan as part of their premises licence, which is then subject to approval by the relevant authority.

Evidence of the impact of extending opening hours on factors such as alcohol consumption patterns and alcohol-related violence is mixed. Studies from **Iceland** and the **USA** suggest that incidents of anti-social behaviour and drink-driving increased, but some evidence from **England** suggests a limited impact on drinking patterns and no significant change in the overall volume of crime and disorder. Some alcohol-related demands on accident and emergency departments appear to have seen increased demand, while others a fall.

It may be pertinent to consider how much of a negative impact one extra hour of drinking may have on health and anti-social behaviour, versus the scale of potential positive impact on the local economy?

Clauses 5 and 17: Extension of ‘drinking-up time’

These clauses increase drinking-up time from 30 minutes to 60 minutes for both on-sale licensed premises and registered clubs.

In **England and Wales**, the Licensing Act 2003 makes drinking-up time obsolete, though the ‘operating schedule’ must contain its licensed hours and ‘any other times during which it is proposed that the premises are to be open to the public’. Councils may also impose drinking-up time conditions within the requirement of an individual licence. By contrast, in **Scotland** drinking-up time is generally 15 minutes at the end of licensed hours, or 30 minutes with a meal. In the **Republic of Ireland**, a 30 minute drinking-up period is allowed.

Would an increase in 30 minutes of drinking-up time encourage a more gradual departure from licensed premises, or will customers stockpile drinks, stay on for 60 minutes and displace any potential problems to a later time?

Clause 6: Alignment of liquor, entertainment and refreshment provision

It is proposed here that any grant of late opening hours, or the proposed occasional additional opening hour (as in Clause 2), will require that an associated entertainment licence, granted by the council, will not extend beyond the latest time alcohol can be consumed on the premises. According to the consultation document, the proposal to align entertainment and alcohol licences is intended to address the concern that under the current system entertainment licences may be granted by councils beyond the late opening hours available under an alcohol licence.

It may be relevant to consider how the Department proposes to liaise with all departments and agencies with related responsibilities during the granting of applications. This could include (but is not limited to) the Department for Health, PSNI, planning, building control and environmental health within local councils.

Clauses 7 and 18: Removal of requirement for children’s certificates

In Northern Ireland, young people under the age of 18 are not permitted to be in any bar area of a licensed premises or registered club unless the premises have been granted a ‘Children’s Certificate’ by a county court. The Bill contains provisions to repeal the requirement for licensed premises and registered clubs to hold a Children’s Certificate, though a number of conditions would remain (under 18s could only be present until 9pm; they must be in the company of a person aged 18 or over; they must be seated at a table away from a bar etc).

In the **Republic of Ireland, England, Wales or Scotland**, there is no requirement to obtain a Children’s Certificate from a court. In these other jurisdictions, the admission

of children to licensed premises is largely administered through legislation, the discretion of the premises themselves and through regulation by licensing authorities (in the case of **Scotland, England and Wales**).

In **England and Wales**, further conditions may be imposed by Local Licensing Authorities, and the Home Office has issued guidance on what those conditions could contain and in what circumstances.

What risks may be associated with the removal of the requirement for a Children’s Certificate and are such risks sufficiently mitigated by the conditions currently stated in the Bill?

Clauses 8 and 19: Underage functions

At present, the conditions in which under 18s are permitted to be on licensed premises and registered clubs are significantly more restrictive in Northern Ireland than in Great Britain. In many circumstances, it is currently illegal here for under 18s to attend events and functions on licensed premises such as underage discos, school formals, concerts and after-wedding parties. The Bill contains provisions to relax restrictions on underage functions in licensed premises and registered clubs, providing the court is satisfied that appropriate steps have been taken to secure the safety of people under the age of 18.

Will there be guidance or a code of practice setting out further conditions on underage functions? What arrangements will be put in place to monitor events to ensure that they are in compliance with the legislation? In the case of larger scale events, would arrangements need to be put in place to ensure that the PSNI and public transport providers are aware of the event in advance?

Clause 9: Delivery of intoxicating liquor to young persons

This Bill contains two safeguards intended to regulate the delivery of alcohol: prohibiting people under 18 from receiving a delivery of alcohol and placing a requirement in the legislation for identification to be shown and recorded on delivery.

There appears to be an absence of research and information on the availability and impact of access to alcohol via delivery services in Northern Ireland. In **England**, it is legal for under 18s to take a delivery of alcohol at a place in which the purchaser or person supplied lives or works, though a House of Lords Select Committee is currently looking at whether there is a case for reform of the licensing regime applying to off-trade. The Bill here would bring Northern Ireland into line with Scotland in relation to the delivery of alcohol to children and young people. However, in **Scotland** it is also an offence to deliver alcohol between midnight and 6am.

The Bill does not contain explicit provisions to prevent third parties such as taxi drivers from profiting from alcohol sales – why is this? Could the PSNI provide an assessment of the scale and nature of the delivery of alcohol to under 18s?

Would it be feasible to follow Scotland's model in making it illegal to deliver alcohol during certain hours?

Clause 10: Restaurants and guest houses: notice displaying licence conditions

The Bill aims to reinforce the conditions placed on licensed restaurants by compelling the holder of the licence to display a notice detailing the conditions under which alcohol may be sold on the premises.

Is this measure sufficient to prevent problems associated with restaurants operating as bars and providing entertainment?

Clauses 11 and 21: Prohibition on self-service and sales vending machines

Current law in Northern Ireland is silent on the issue of alcohol self-service facilities and vending machines. The Bill would prohibit the self-service of alcohol and would make it an offence for a licensed premises or a registered club to sell alcohol in a form that enables a person to operate the dispenser of the liquor.

Clause 12: Restrictions on off-sales drinks promotions in supermarkets etc.

Clause 12 of the Bill contains provisions restricting the advertising of drink promotions in supermarkets to the designated area in which alcohol may be displayed. Additionally, supermarkets and other licensed premises that sell alcohol for consumption at home will not be permitted to advertise alcohol promotions within the vicinity of the premises (extending to 200 metres from the boundary of the premises).

Scotland introduced similar restrictions in 2010, though this legislation differs from the Bill in Northern Ireland in a number of ways. The Scottish legislation also sets out other types of non-alcohol products that must be located in the designated alcohol display (such as items associated, or branded, with alcohol products). The Department's consultation contained a proposal to include similar provisions restricting the location of such products but these have not been specifically included in the Bill. The Scottish legislation also includes measures to restrict 'irresponsible promotions' in off-sales premises (including offers such as 'buy one get one free').

The Public Health (Alcohol) Bill in the **Republic of Ireland** also contains provisions to prohibit advertising in or near schools, playgrounds and in sports grounds for events where children are in the majority.

Why does the Bill here in Northern Ireland not contain the previously proposed provisions relating to the location of certain non-alcoholic products? Should off-sales drinks promotions also be banned? What about the advertising of alcohol

near schools and at children's events? What are the potential financial impacts of the proposed restrictions on drinks advertising?

Clauses 13 and 23: Code of practice

The main code of practice for the licensing trade in Northern Ireland is the 'Responsible Retailing Code NI'. This is a voluntary self-regulatory code with an independent Complaints Panel charged with investigating all complaints that fall within the remit of that Code. However, codes of practice are currently not mandatory and are not mentioned in liquor licensing legislation in Northern Ireland.

Clause 13 of the Bill would introduce a new Article into the Licensing (Northern Ireland) Order 1996 to approve a 'relevant code of practice' that is produced by a person or group of persons with a 'relevant interest in the Code'. Under the Licensing (Northern Ireland) Order 1996, a court can refuse to grant, transfer or renew a licence if it is not satisfied that, for example, the applicant is a fit and proper person. Clause 13 of the Bill introduces a further condition, that is, a court can refuse to grant, transfer or renew a licence if it is '*not satisfied that the applicant is aware of his responsibilities under a code of practice approved by the Department*'.

The proposals in the Bill for approval of codes of practice are quite similar to the current legislative arrangements in the **Republic of Ireland**. There, Section 17 of the Civil Law (Miscellaneous Provisions) Act 2011 provides for statutory support for codes of practice in relation to licensing matters with a view to promoting and supporting compliance by licensees.

There is some indication that the government in the Republic of Ireland is, via the Public Health (Alcohol) Bill, seeking to move away from voluntary and self-regulatory alcohol-related retail, advertising and sponsorship codes of practice, towards statutory regulation.

What existing voluntary or potential codes of practice would the Department consider approving? In relation to renewals, how will the court assess that an applicant has been complying with the code? Should details of irresponsible drinks promotions be included in legislation rather than a code? Overall, are mandatory licensing conditions with an accompanying mandatory code of practice an acceptable and effective alternative to approved codes of practice?

Clause 14: Removal of exemption for Angostura bitters

The Bill contains provisions to remove the exemption of Angostura bitters from the definition of 'intoxicating liquor'. This would mean that they could only be sold in licensed premises.

Clause 15: Sporting clubs: extension of premises

This clause would enable sporting clubs to apply to the PSNI for an 'extension of the area of the premises in respect of which the club is registered'. The number of days for which such an extension can apply must not be greater than five, and no more than six extensions can be applied for in one year by a club. It is stated in the Bill's Explanatory Memorandum that the intention of this clause is to allow 'a sporting club to extend the area of its premises which is registered to supply intoxicating liquor for the purpose of holding a function'.

This change does not appear to have been consulted on.

While sporting clubs may play a positive role in society in creating diversionary activities for young people and thus potentially reducing anti-social behaviour, a further question is whether the consumption of alcohol within sports clubs contributes to higher levels of drinking among participants of team sports.

Studies in Ireland, USA and France suggest that members of sports teams drink more than the general population of the same age.

Is the appropriate balance being struck in the Bill between, on the one hand, supporting clubs in seeking to attract members, be financially viable and distract young people from the potential of anti-social behaviour, and, on the other, risking an increase in alcohol consumption by members of sports teams?

Clause 20: Young people in sporting club premises

Clause 20 of the Bill amends the 1996 Clubs Order to further extend the latest time in which young people are permitted to be in the bar area of a sporting club premises from up until 10pm to 11pm during the summer months.

In addition to summer, the Bill also contains provisions to allow a young person under the age of 18 to remain in the bar area until 11pm to attend one prize giving ceremony at any other time in the calendar year.

The Department states that this provision is intended to support the valuable contribution that clubs make in encouraging young people to get involved in sporting activities during the summer months.

Similar to Clause 15, is there an appropriate balance here between supporting sports clubs and encouraging young people into sport, but also seeking not to increase the exposure of young people to alcohol?

Clause 22: Restrictions relating to advertisements

This Bill contains provisions to lift the advertising restrictions on clubs, enabling them to advertise in the media functions held on their premises. However, the advertisement

must include a clear statement to the effect that a function may only be attended by members of the club and guests of members of the club.

Would such a change encourage registered clubs to compete with the hospitality industry?

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1 Introduction

This Bill Paper provides an overview of the Licensing of Clubs (Amendment) Bill, as introduced to the Assembly on 19th September 2016 by the Minister for Communities. The paper provides an overview of the Bill and identifies areas which may benefit from further scrutiny.

2 An overview of the Bill

2.1 What does it include?

The Explanatory and Financial Memorandum states that the intention of this Bill is 'to help address concerns about excessive consumption of alcohol, and to support the hospitality sector'.¹

A consultation document published in 2012 stated that the intention behind a review of alcohol licensing legislation was 'to introduce further measures to help address some of the concerns surrounding alcohol misuse in Northern Ireland'².

In summary, the Bill as introduced includes the following provisions:

Clauses	Summary
1,16	Additional hours at Easter
2,3,4	Extensions and other additional hours (including revocations etc)
5,17	Extension of drinking-up time
6	Alignment of liquor, entertainment and refreshment provision
7,8,9,18,19,20	Young people: licensed premises and deliveries
10	Restaurants and guest houses displaying licence conditions
11,21	Prohibition of self-service and vending machines
12	Restrictions on off-sales drinks promotions
13,23	Code of practice
14	Removal of exemption for Angostura bitters
15	Sporting clubs – extension of premises
22	Advertising restrictions for registered clubs

2.2 What does it not include?

There are a number of issues which were raised in the consultation document but which are not present in the current Bill.

¹ Department for Communities. 2016. *Licensing and Registration of Clubs (Amendment) Bill - Explanatory and Financial Memorandum*: <http://nia1.me/3fu>

² Department for Social Development. 2012. *Proposed Changes to the Law Regulating the Sale and Supply of Alcohol in Northern Ireland*: <https://www.communities-ni.gov.uk/consultations/proposed-changes-law-regulating-sale-and-supply-alcohol-northern-ireland>

Conditions for extended licences

The consultation document asked whether conditions should be imposed on late opening hours. The conditions posed in the consultation document but dropped from the bill include:

- Entrance not permitted after a specified time;
- Alcohol may not be sold for consumption off the premises;
- Mandatory provision of door supervisor;
- CCTV must operate on the premises and footage must be made available to police within 4 hours of a request being made;
- Implementation of a Challenge 21 policy;
- Premises would be subject to a late-night levy to help contribute towards additional costs incurred by the emergency services. Options in relation to the amount payable, could be:
 - imposing a fixed charge, for example £1000, for each occasion there is additional late opening in a licensed premises;
 - full cost recovery for the additional period that policing and emergency services are provided; or
 - dependent on the rateable value of the premises.

Alcohol Deliveries: Preventing third parties from profiting

The consultation document proposes ‘amending the legislation to prevent third parties from profiting from alcohol sales, e.g. taxi drivers. The Department is mindful however that any proposed changes in this area will have to comply with EU Competition law’.

The bill only outlines provisions for the delivery of alcohol to under 18s.

Increased separation between off licence sections in supermarkets

The consultation document put forward two proposals which would cordon off sections of supermarkets which contain alcohol. The proposals included:

- Increasing the degree of separation required between alcohol and other goods: for example, by a wall or solid door which must remain closed when not in use as an entrance to any area where alcohol is displayed; and,
- Prohibiting all persons under 18 from entering any area in supermarkets where alcohol is displayed (currently no person under 18 is permitted to enter this area unless accompanied by an adult). This would prevent parents from bringing their children into this area.

Neither of these proposals are present in the current Bill.

The consultation document also proposed the implementation of alcohol only checkouts. This proposal would mean alcohol could only be purchased at a specific checkout and that no other products could be processed through this checkout. If alcohol was being purchased as part of a weekly shop, this would require customers to queue up twice and the store to process two separate transactions.

3 Clauses of the Bill

The following sections will describe aspects of the Bill provisions in further detail, highlighting matters which Members may wish to scrutinise or consider further.

3.1 Clause 1 and Clause 16: Additional hours at Easter

What is the current law?

Under the Licensing Order (Northern Ireland) 1996 and the Registration of Clubs Order 1996, the sale and/or consumption of alcohol in a licensed premises or registered clubs is only allowed during permitted hours. Contravention of this is liable on summary conviction to a fine up to level 5 (£5,000). Permitted hours under the Licensing Order apply to both 'on sale' (e.g. pubs) and 'off sale' licensed premises that sell alcohol for consumption either in or off the premises, and include:

- Hotels;
- Guest houses;
- Restaurants;
- Conference centres;
- Higher education institution;
- A refreshment room in public transport premises; and,
- A seaman's canteen.

However, they do not apply to a service station/garage, international airports, or a place of public entertainment for which different hours apply under an entertainment licence.

Late opening (or additional) hours may be applied for through a court to allow premises to extend opening. However, the premises must be providing food and/or entertainment during this period. Late opening may not be applied for on Christmas Day, Easter Day or Good Friday.

Permitted hours under the Registration of Clubs Order apply to registered clubs. The legislation does not provide a definition for a club, but according to guidance:

*A club is basically a voluntary association of people who wish to promote some common object, such as social intercourse, sport, hobby or pastime.*³

The Licensing and Registration of Clubs (Amendment) Bill deals with changes to opening hours for 'on sale' licensed premises and registered clubs over the Easter period. Current permitted opening hours for 'on sale' licensed premises and clubs are summarised in Table 1, and current closing times over the Easter period are provided in Table 2.

	Normal hours (including clubs)	Late opening
Weekdays (Monday- Saturday)	11.30am – 11pm	11pm – 1am
Sunday	12.30pm – 10pm	10pm – 12am (1am if New Year's Eve)
Christmas Day	12.30pm – 10pm	none
Easter Sunday	12.30pm – 10pm	none
Good Friday	5pm – 11pm	none

Table 1: On- sale licensed premises and registered clubs opening hours

Day	Closing time
Thursday	Midnight
Good Friday	11pm
Easter Saturday	Midnight
Easter Sunday	10pm

Table 2: Current Easter closing times for on-sale licensed premises and registered clubs

What provisions are in the Bill?

Clause 1 of the Bill amends Articles 30, 44, 45 and 47 of the Licensing Order (Northern Ireland) 1996 to extend opening by one hour on the Thursday before Good Friday. This means licensed premises can open to 1.00am on the following day being Good Friday.

Clause 16 amends the Registration of Clubs Order in relation to late opening hours for registered clubs over Easter. Similar to Clause 1, it allows for registered clubs to open to 1.00am the day following the Thursday before Good Friday.

What was the outcome of the public consultation?

The Department for Social Development issued a public consultation in July 2012⁴. The consultation stated that the main purpose of this proposal is to recognise the

³ Guide to the Registration of Clubs (Northern Ireland) Order 1996 <https://www.communities-ni.gov.uk/publications/registration-clubs-guide>

⁴ Department for Social Development. 2012. *Proposed Changes to the Law Regulating the Sale and Supply of Alcohol in Northern Ireland*: <https://www.communities-ni.gov.uk/consultations/proposed-changes-law-regulating-sale-and-supply-alcohol-northern-ireland>

importance of the Easter period in terms of generating revenue from visitors and tourists, and to facilitate local licensed on-sale premises to benefit from this.

In relation to this, the consultation asked ***'To what extent do you agree that public houses/bars are important to the Northern Ireland economy, including the tourism industry?'***, to which 1,576 responses were received. 98% of respondents agreed that public houses and bars are important to the Northern Ireland economy, including the tourism industry, with 87% strongly agreeing. Conversely, just 2% of respondents disagreed and 1% of respondents neither agreed nor disagreed.

Respondents also made the following main points:

- The importance of clubs, bars and the on-trade at generating employment opportunities and contributing to the local economy and social fabric;
- Any changes to the current legislation aimed at curbing harmful drinking must be balanced to ensure that employment levels within the sector are maintained; and,
- Existing opening hours for bars and clubs are too restrictive and discourage tourists from visiting Northern Ireland; it was suggested that opening hours should be brought into line with other European jurisdictions.

1,504 responses were received to the Department's question ***'To what extent do you agree with permitting late opening hours on the Thursday and Saturday before Easter Sunday?'***. 83% agreed/strongly agreed with the proposal, 9% disagreed/strongly disagreed and the remaining 9% neither agreed nor disagreed.

In general, there was very strong support for late opening over Easter. According to the Outcome Report of the consultation, two main points were highlighted by the vast majority of responses:

- That religious beliefs should remain separate from legislation, and it was felt there is little justification for having different opening hours for the mentioned days; and,
- It was felt that the economy, and the tourism industry specifically, would benefit from increased trading on these days. Some respondents felt that the proposals do not go far enough to address the issue of enabling businesses to benefit over this period.

Discussion Points

Other Jurisdictions

Across the rest of the **UK** as well as the **Republic of Ireland (RoI)**, RoI is the only other jurisdiction with legislation restricting Easter licensing hours. However, the restrictions in RoI under the Intoxicating Liquor Act (as amended) go further than current restrictions in Northern Ireland by having a complete ban on the sale and

consumption of alcohol on any licensed premises on Good Friday and Christmas Day. However, exceptions to the ban include the following:

- Restaurants and hotels may serve alcohol on these days as long as it is served with a 'substantial meal';
- Bona fide travellers (with a valid ticket) can purchase drinks at train stations, airports and ferry terminals;
- Sporting locations such as football stadiums and race tracks are exempt from the ban.

In **England and Wales** there are no general restrictions for on sale premises over the Easter period. Under the Licensing Act 2003, on sale premises can set their own opening times under their premises licence which is approved by the local Council.

In **Scotland** under the Licensing (Scotland) Act 2005, there are no additional restrictions on alcohol licensing over the Easter or Christmas holidays; restrictions are based on the individual licence that has been applied for.

Impact of tourism

According to the public consultation, restrictions on opening hours over Easter have been in place in Northern Ireland since 1983. The changes have been described in the consultation as modest and have been constructed in order to continue to respect the importance of Easter, while at the same time allowing for licensed premises to benefit from any increase in visitors to Northern Ireland over this period.

According to a study commissioned by the Drinks Industry Group of Ireland (DIGI), and produced by Dublin City University Business School, in relation to the impact of the drinks industry and tourism in the **Republic of Ireland**, it is difficult to make an exact quantitative link between licensed premises such as pubs, bars, restaurants etc and tourism activity, due to insufficient data. However, in the absence of this quantitative link, the study states that it is clear from empirical data gathered during the study that the drinks industry is associated with a substantial contribution to tourism activity as:⁵

- Food and drinks expenditure is a substantial part of tourism direct expenditure. Overseas visitors spent 21% of their total holiday expenditure on food and drinks in 2013.
- The pub is mentioned by 22% of all visitors and by 21% of German visitors (Germany is the largest mainland European market for Irish overseas tourism) as a positive distinguishing feature of Ireland.
- 80% of overseas visitors in 2013 mentioned the pub as one of the potential experiences influencing them to choose Ireland.

⁵ Drinks Industry Group of Ireland, 2014, The Contribution of the Drinks Industry to Tourism Ireland Report 2013. Available at <http://www.lva.ie/research/digi-reports/>

Hospitality Ulster has tried to quantify the loss to the Northern Ireland economy due to the current restrictions on opening hours for licensed premises over Easter. They have estimated that pubs, hotels and restaurants in Northern Ireland stand to lose around £16m over the four days of Easter.⁶ Acknowledging that the study was industry-led by Hospitality Ulster (in partnership with accountancy firm BDO), further elucidation of how this figure was established may be of interest.

One of the main considerations surrounding this proposal may be whether the proposal gives enough of a balance between the promotion of a growing industry and the protection of a traditional religious holiday.

3.2 Clauses 2, 3 and 4: Additional hours

What is the current law?

As mentioned under the previous section for Clauses 1 and 16, late or additional opening hours can be applied for to a court to allow a licensed 'on sale' premises to open to 1.00am during the week and 12.00am on Sundays (excluding New Year's Eve where hours can be extended to 1am). However, these premises must be providing food and/or entertainment during this time and late hours currently cannot apply to Christmas Day or Easter.

Under the current Licensing Order 1996, small pubs not able to provide food and/or entertainment may not apply to a court for late opening hours. However, permission may be granted by the police in these premises for a maximum of 20 occasions in a year, where alcohol may be sold to 1.00am during the week and 12.00 midnight on Sundays.

What provisions are in the Bill?

According to the consultation document, changes are proposed to the late opening of pubs and other on sales premises over the Easter period due to concerns that existing restrictions may be detrimental to attracting tourists and contributing to the night time economy.

Therefore, Clause 2 proposes to give courts the power to grant occasional additional hours of late opening. This allows licensed premises to open to 2am instead of 1am on weekdays and 1am instead of 12am on Sundays, for 12 occasions per year. However, additional hours may not be granted for Christmas Day, Easter Sunday or Good Friday. Premises must be providing food and/or entertainment during this period; entertainment includes that which is provided by persons present and performing.

⁶ See Hospitality Ulster Policy Paper: Liquor Licensing Appendix 2 <http://hospitalityulster.org/voice/Policy-Papers>

Under Clause 3 a holder of a licence in contravention of additional hours under Clause 2 may be subject to a fine not exceeding level 3 (£1,000) and may face penalty points. The system of penalty points for licensed premises was introduced via the Licensing and Registration of Clubs (Amendment) Act (Northern Ireland) 2011. Further information on this is available to download [here](#)⁷.

Clause 4 allows for the police to authorise additional later opening hours similar to those under Clause 2. It also extends the number of occasions this may apply to a premises from 20 to 85 per year. However, premises already granted an order under Clause 2 may only get police authorisation for 20 occasions per year, provided they do not clash with the 12 occasions already granted under the order in Clause 2. Such premises must still provide food and/or entertainment during any extension of opening granted by the police under Clause 4.

What was the outcome of the public consultation?

There were 1,565 responses to the Department for Social Development's question '**To what extent do you agree with the introduction of occasional additional late opening hours for certain licensed premises?**'. 91% of respondents agreed/strongly agreed to the introduction of occasional additional late opening hours, 5% disagreed and 4% neither agreed nor disagreed.

While the majority of respondents were in favour of the proposal and cited benefits such as growth in tourism revenue and increased management of closing time, the following points were made by some respondents:

- Potential risks of further noise complaints and health risks;
- Extended opening hours should be accompanied by conditions to reduce irresponsible drinking; careful monitoring of the impacts was also emphasised;
- Extended opening hours should not be limited to a particular number, but rather should be based on consumer demand and business need. It was also noted that licensing hours should be judged on a case by case basis; and,
- Additional conditions for extended opening may penalise medium sized bars and clubs. It was noted that conditions should be applied on a case by case basis.

The increase in occasions for extended opening hours for small pubs was largely met with agreement (82%) due to the opinion that this would give small pubs a chance to compete on a more level playing field. In relation to the number of occasions proposed (85 per year):

- 49% of respondents felt occasions should be increased to 104; and,

⁷ Licensing and Registration of Clubs (Amendment) Act (Northern Ireland) 2011.
www.legislation.gov.uk/niar/2011/18/section/2/2011-03-29

- 38% of respondents answered with a different response than that offered by the consultation paper. A large majority of these answers suggested that there should be no limit on the number of extended opening hours licences.

Some respondents were also of the opinion that:

- This could cause noise and disturbance issues for local communities;
- Police should 'consult with the relevant local council prior to granting such occasional licences to ensure no noise and disturbance problems have arisen, and to enable the police to use their discretion and withdraw the licence if deemed necessary'.
- If the number of late opening authorisations are increased, additional licensing enforcement visits should be carried out later in the evening.

Discussion Points

In **Scotland**, under the Licensing (Scotland) Act 2005, on-sale premises determine their normal opening hours in their operating plan as part of their premises licence. This is approved by the Licensing Board of the local Council. On-sale premises may apply to the local Licensing Board for an extended hours licence in connection with a special event/occasion on the premises, or an event of local or national significance. The hours are determined within the application and approved for a period specified by the Licensing Board (which is to be no longer than a month). Similar to **England**, on-sale premises may apply for a 24 hour but only for exceptional circumstances as satisfied by the Licensing Board.

In the **Republic of Ireland**, under the Intoxicating Liquor Act (as amended), on-sales premises can apply for a special exemption order for late opening to 2.30am weekdays and 1.30am Sundays including public and Catholic Holidays. Special conditions must be met, such as compliance with health and safety standards, and there is a requirement that a closed circuit television system is in place.

In **England and Wales** the Licensing Act 2003, which came into force in November 2005, theoretically permits 24 hour drinking as standard opening hours. The Act does not prescribe the hours within which alcohol can be sold. The hours a premises can open or sell alcohol are laid down in the premises licence. A daily schedule as part of the operating schedule is submitted with the premises licence and this includes the hours a pub or on-sales premises wishes to open and perform the activities identified. Local businesses, residents and the police can object to the opening hours which can subsequently be amended at the discretion of the Local Authority.

Figures provided by the UK Department for Culture, Media and Sport detail that in 2007/08 there were approximately 6,300 premises licensed for the sale or supply of alcohol for 24 hours (this had increased to 8,200 premises by March 2014). However, the possession of a 24 hour licence does not necessarily mean that a premises will

open for 24 hours. According to a study by Kings College London and published by the Home Office, the Department for Culture, Media and Sport found in 2007 that the scale of change of late opening hours had been modest, with closing times across all types of establishments extended on average by only 21 minutes.⁸

What are the impacts?

The consultation document describes 'the role played by the hospitality trade in driving tourism and the significant contribution it makes to the local economy'. Reference is made in the document to a figure used by the Northern Ireland Tourist Board in 2010 that '*almost 80% of visitors to NI visit a pub during their stay here*'.

The majority of responses to the consultation recognised the potential benefits by agreeing that public houses/bars are important to the Northern Ireland economy, including tourism, and stressed that the restrictive nature of current opening hours was discouraging visitors. A number of studies have also considered the relationship between pubs and other on-sale premises and tourism; this has been discussed in more detail in the previous section for Clauses 1 and 16 on Easter opening hours.

Concerns were also raised in relation to the effects of increased opening hours such as noise complaints, health risks and irresponsible drinking. For example, a Belfast nightclub risked losing its licence earlier this year due to noise and anti-social behaviour complaints from local residents. However, following discussions between the club and a residents group, the licence was renewed by Belfast City Council on the basis that it would close an hour earlier.⁹

The Licensing Act 2003

While the impacts of 24 hour alcohol licensing under the Licensing Act 2003 may not appear to be directly comparable to the one-hour extension under the current Bill, the average extended opening of 21 minutes, experienced in 2008 across premises in **England and Wales**, may make it more so.

The introduction of the Licensing Act in 2005 received widespread criticism from clinicians and the police regarding the social and health impacts of extended opening hours. In fact, the Royal College of Physicians suggested that extended hours may increase overall alcohol consumption having detrimental impacts on public health.¹⁰

The Kings College London impact report for the year after implementation found that the Act had had a limited impact on drinking patterns and on reducing crime and

⁸ Hough, Hunter et al Kings College London (2008) *The impact of the Licensing Act 2003 on levels of crime and disorder: an evaluation*. <http://modgov.sefton.gov.uk/moderngov/documents/s539/Government%20evaluation%20of%20LA03%20Report%20Annex%202.pdf>

⁹ <http://www.belfasttelegraph.co.uk/news/northern-ireland/belfasts-el-divino-nightclub-licence-renewed-despite-residents-protests-34646004.html>

¹⁰ <http://www.parliament.uk/documents/post/postpn244.pdf>

disorder. According to the report, the limited evidence suggested that alcohol consumption had fallen slightly, although some people were drinking until later into the night.¹¹ More recent figures suggest that drinking and binge drinking have decreased further from 2005 to 2013. A report by the Office for National Statistics on *Adult Drinking Habits in Great Britain 2013* found that:¹²

- More than one in five adults (21%) said that they do not drink alcohol at all. This has increased slightly since 2005 (19%). Young adults (aged 16 to 24) were primarily responsible for this change, with the proportion of young adults who reported that they do not drink alcohol at all increasing by over 40% between 2005 and 2013.
- The proportion of adults who binged at least once in the week decreased from 18% in 2005 to 15% in 2013. Young adults were mainly responsible for the decrease in binge drinking, with the proportion who had binged falling by more than a third since 2005, from 29% to 18%.

Further findings in relation to crime and disorder include:

- The overall volume of incidents of crime and disorder remained unchanged, and there were signs that serious violence crimes may have reduced. However, there is evidence of temporal displacement, in that the small proportion of violent crime occurring in the small hours of the morning has grown.
- Alcohol-related demands on Accident & Emergency (A&E) departments appear to have been stable in general, though some hospital services have seen increased demand; while others a fall.

Further to this, El Maytaah and Smith et al (2008)¹³ examined the effect of the 2003 Act on levels of facial trauma in London. The study found that when comparing the six month period before the introduction of the Act and the six month period after it was introduced, A&E admissions for alcohol related traumas to the head and neck were reduced by 34%.

However, linking all of these findings directly to the effects of the Licensing Act 2003 may be problematic. A study by the University of Cambridge on violent crime and flexible alcohol licensing in Manchester, comparing the two years before and after the Licensing Act 2003, found no evidence that the changes had any effect on levels of violence. The study found a lack of evidence to support either side of the debate when the Act was being introduced, i.e. that the changes would either increase violence due to longer drinking hours, or decrease violence due to staggered closing times.

¹¹ Hough, Hunter et al Kings College London (2008) *The impact of the Licensing Act 2003 on levels of crime and disorder: an evaluation*. <http://modgov.sefton.gov.uk/moderngov/documents/s539/Government%20evaluation%20of%20LA03%20Report%20Annex%202.pdf>

¹² ONS (2013) <http://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandlifeexpectancies/compendium/opinionsandlifestylesurvey/2015-03-19/aduldrinkinghabitsingreatbritain2013#key-points-in-2013>

¹³ El Maytaah and Smith et al (2008) *The effect of the new "24 hour alcohol licensing law" on the incidence of facial trauma in London*. Available at <http://www.sciencedirect.com/science/article/pii/S0266435608000454>.

The study highlighted that:

Over the past decade, England and Wales have witnessed a series of political prevention initiatives for alcohol-related harm that have been implemented largely without evaluation or systematic appraisal... This has resulted in missed opportunities to generate evidence, and a missed opportunity to learn, both of and from, any mistakes¹⁴.

Stating that an examination of the changes under the 2003 Act is 'long overdue', the House of Lords launched an inquiry in July 2016 into the effectiveness of the Act and the liberalisation of opening hours.¹⁵ Some of the main areas of focus for the inquiry include:

- The impact that any greater availability of alcohol has had on the health of the population;
- Whether the Act has made it easier or harder for communities to enjoy activities that have to be licensed under the Act; and,
- The role of licensing in shaping local areas, for the benefit of the economy and the local community.

The call for evidence closed on 2nd September 2016 with a Committee report due in March 2017.

In 2011, councils in **England** were given the power to introduce late night levies (LNLs) and Early Morning Restriction Orders (EMROs) under the Police Reform and Social Responsibility Act 2011. A late night levy is an annual charge paid by licensed premises selling alcohol between 12.01am and 6am, as a contribution towards the cost of late night policing, anti-social behaviour and street cleansing. EMROs enable a licensing authority to prohibit the sale of alcohol for a specified time between 12am and 6am in the whole or part of its area.¹⁶ The introduction of both is left to the discretion of all licensing authorities.

According to the Institute of Alcohol studies, these measures were introduced to counter the potential social and health problems arising from the 24 hour sale of alcohol. However, the institute informs that, to date, 'no *ERMOS and a handful of LNLs have been approved*'.

Impacts Elsewhere

A systematic review of 44 studies examining the impact of extended trading hours and alcohol outlet density on drink driving and alcohol related violence in a wide range of

¹⁴ University of Cambridge <http://www.cam.ac.uk/research/news/violence-rates-unaffected-by-24-hour-licensing-laws> and Journal of Social Science and Medicine (2013) <http://www.sciencedirect.com/science/article/pii/S0277953613006503>

¹⁵ Lords Select Committee on Licensing Act 2003 <https://www.parliament.uk/business/committees/committees-a-z/lords-select/licensing-act-2003/news-parliament-2015/call-for-evidence/>

¹⁶ www.gov.uk (March 2013), 'Alcohol licensing: early morning alcohol restriction orders (EMROs)', Home Office

countries was published in 2009¹⁷. Having examined studies in the USA, Iceland, Canada, Norway, New Zealand, Australia, Switzerland and the UK, the study concluded that there is a relationship between changes to the density of outlets and the hours in which alcohol is sold, and levels of drink driving and alcohol related violence. However, the breadth of this review means that the precise effects of a change in hours or density vary a great deal across the many examples cited.

In terms of more specific studies, in July 2003, the state of Minnesota in the **USA** extended licensing hours by one hour. A study by Bouffard and Bergeren et al (2007) assessed the impact of the extension on the number of drink driving stops made by police by comparing figures six months before and after the introduction of the legislation in 2003.¹⁸ The study found that:

- Extended opening hours led to a significant increase of 51% in the number of driving under the influence (DUI) stops made by police in Minnesota;
- This in fact represented a 28% increase in figures for the same time in the previous year (2002);
- There was also no significant difference in blood alcohol levels, suggesting no change in levels of drunkenness of impaired drivers as detected by police.

However, the report could not statistically link the increase in DUI stops to the extended hours intervention. It was suggested that other factors may have been at play such as a possible increase in police stops in general throughout the time period, due to more proactive police action after the legislation was enforced.

According to the Kings College London report published by the Home Office in 2008, other countries such as **Australia, New Zealand, Scotland and Iceland** found that their relaxed opening hour regimes tended to result in higher levels of consumption and more alcohol-related problems of crime and disorder.

A study in 1999/2000 on the impacts of extended licensing hours in Reykjavik found associated negative social and health impacts. Prior to 1999, Reykjavik on-sale opening hours were restricted to 2am at weekends and 11.30pm on weekdays. A pilot was run by the city council to allow for unrestricted alcohol serving hours for pubs and restaurants for one year in the city.¹⁹ Results from the study found that:

- The number of police calls and work tasks in the city centre increased by 14%;
- The total number of cases admitted to A&E during the weekend-nights increased by 31%; and,

¹⁷ Popova, S, Giesbrecht, N, Bekmuradov, D & Patra, J. 2009. 'Hours and days of sale and density of alcohol outlets: Impacts on alcohol consumption and damage: A systematic review', *Alcohol and Alcoholism*, 500–516: DOI: <http://dx.doi.org/10.1093/alcalc/agg054>

¹⁸ Bouffard and Bergeren et al. 2007. *Investigating the impact of extended bar closing times on police stops for DUI*. Available at <http://www.sciencedirect.com/science/article/pii/S0047235207000839>.

¹⁹ The Effects of Nordic Alcohol Policies (2002). Edited by Robin Room. Chapter 8 <http://www.dldocs.stir.ac.uk/documents/nad42.pdf> Chapter 8

- The number of cases of suspected drunk driving increased from 29 in 1999 to 52 in 2000 (an 80% increase).

After the pilot, in 2001 the city council decided not to allow for completely unrestricted opening but to restrict the serving hours to 5.30am weekends, 2am Thursdays and 1am other days.

It may be pertinent to consider how much of a negative impact one extra hour of drinking may have on health and anti-social behaviour, versus how much of a positive impact it could potentially have on the local economy?

3.3 Clause 5 and Clause 17: Extension of 'drinking-up time'

What is the current law?

Under the Licensing Order 1996 and the Registration of Clubs Order, registered clubs, pubs and bars and other on-sale premises with a licence have a 30 minute 'drinking-up time'. This means that alcohol may be consumed for 30 minutes after the end of the permitted hours for selling alcohol, whether these are normal hours or extended late opening hours.

What are the provisions of the Bill?

The Bill proposes to increase the drinking-up time from 30 minutes to 60 minutes for on-sale licensed premises (Clause 5) and registered clubs (Clause 17).

What was the outcome of the public consultation?

There were 1,507 responses to the Department for Social Development's question '**To what extent would you agree that the current 'drinking-up' time should be extended from 30 minutes to 1 hour?**'. 78% of respondents either agreed or strongly agreed, 9% disagreed/strongly disagreed and the remaining 13% neither agreed nor disagreed.

A popular reason for agreement was the potential to reduce 'spill out time'. This could allow for more controlled dispersal, potentially reducing pressure on taxis and the degree of alcohol-related violence.

Those who disagreed noted that extended drinking up time could potentially encourage the stockpiling of drinks. Concerns were also raised over the potential impact which extended drinking-up time could have on local residents.

Discussion Points

In **England and Wales**, the Licensing Act 2003 made no reference to drinking-up time. The Act does state that an 'operating schedule' must accompany an application for a premises licence. This 'operating schedule' must contain its licensed hours and 'any other times during which it is proposed that the premises are to be open to the public'. If the establishment chooses to stay open beyond its licenced hours, this will constitute drinking-up time. In effect then, the provision of drinking-up time became irrelevant with the end of standard permitted hours. Councils may impose drinking-up time conditions within the requirement of an individual licence. Councils may also recommend a period of drinking-up time. For example, Leeds Council guidance recommends that on-sale premises should consider a 30 minute drinking-up/cooling down period to allow music to die down and customers to finish drinks and disperse more gradually.²⁰

In **Scotland**, under the Licensing Act 2005 the drinking-up time is 15 minutes at the end of licensed hours, providing the alcohol was sold within those licensed hours. However, if alcohol is being consumed with a meal, then the drinking-up time is extended to 30 minutes.

In the **Republic of Ireland**, the Intoxicating Liquor Act (as amended) allows for a 30 minute drinking-up period. It also requires that entertainment must not be provided during this period. Contravention of this is liable to a fine on summary conviction of €1,500 on first offence, and €2,000 for any subsequent offences.²¹

According to the consultation in Northern Ireland, the increase in drinking-up time is intended to discourage customers from drinking too quickly and stockpiling drinks, which may be regarded as a precursor to binge drinking. It is also intended to assist the orderly closure of a place by allowing for the gradual departure of customers so as to protect public safety and manage the impact on neighbours at closing time. While drinking-up time was not included in the Licensing Act 2003 in **England and Wales**, its purpose of extending drinking hours was in part intended to allow for the more gradual and staggered departure of customers from licensed premises at night. It was felt this would help reduce binge drinking which may in turn help reduce alcohol-related violence and anti-social behaviour. This issue is discussed in more detail in the previous section for 'Additional hours' under Clause 2,3 and 4.

This discussion prompts the question of whether an increase in 30 minutes of drinking-up time would encourage a more gradual departure from licensed premises, or will customers just stay on and displace any problems to a later time?

²⁰ Leeds City Council *Council Licensing Act 2003 Statement of Licensing Policy 2014-2018*

<http://www.leeds.gov.uk/docs/Statement%20of%20Licensing%20Policy%202014-2018.pdf>

²¹ Intoxicating Liquor Act 2003 <http://www.irishstatutebook.ie/eli/2003/act/31/section/12/enacted/en/html#sec12>

3.4 Clause 6: Alignment of liquor, entertainment and refreshment provision

What is the current law?

The entertainment licensing regime in Northern Ireland is administered by local councils in accordance with the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985. A person providing, or seeking to provide, certain types of entertainment must have a valid entertainment licence issued by the local council in which the event is to be held²². Entertainment licences are required for *certain* indoor and outdoor events where there is any form of charge (e.g. by cash payments or tickets)²³. For example, the Belfast City Council website provides the following information on the types of entertainment and licence required²⁴:

Type of Entertainment	Licence Needed
Theatrical performances Dancing Singing Music or other similar entertainment Circuses Public contests, matches or exhibitions or displays of boxing, wrestling, judo or karate (or similar sport) Billiards, pool, snooker or darts (or other similar game)	Indoor licence
Any public musical entertainment held entirely or mainly in the open air on private land	Outdoor licence
Garden fetes or bazaars Religious meetings or services Exhibitions or sales of work Sporting or athletics events Other functions or events of a similar nature (limited to one day or extended over two or more days)	No licence needed

The purpose of the entertainments licensing regime is to ensure the safety of individuals attending the entertainment and to avoid the entertainment causing undue disturbance to people in the surrounding area.

However, the granting of an alcohol licence is currently made through the courts under the Licensing Order 1996. The Licensing Order applies to both 'on sale' (e.g. pubs) and 'off sale' licensed premises that sell alcohol for consumption either in or off the premises. They do not apply to a service station/garage, international airports, or a place of public entertainment for which different hours apply.

²² See for example Belfast City Council: <http://www.belfastcity.gov.uk/buildingcontrol-environment/licences-permits/entertainmentlicence.aspx>

²³ Department of the Environment. Entertainment Licensing Review: Report by the Entertainment Licensing Review Group. February 2015.

²⁴ Belfast City Council website www.belfastcity.gov.uk/buildingcontrol-environment/licences-permits/entertainmentlicence.aspx [accessed 17 October 2016].

A premises may apply for both licences, however, and currently the hours permitted under each licence do not need to correlate. This means that under an entertainment licence, a place may remain open and provide entertainment after the bar is closed.

What are the provisions in the Bill?

According to the consultation document, the proposal to align entertainment and alcohol licences is intended to address the concern that under the current system entertainment licences may be granted by councils beyond the late opening hours available under an alcohol licence. Minister McCausland stated a concern in the consultation document that this situation has led to illegal sales of alcohol beyond permitted hours. He stated the intention that these new provisions will make it easier for the PSNI to police and enforce alcohol licensing law.

Under Clause 6, it is proposed that any grant of late opening hours, or the proposed occasional additional opening hour (Clause 2), will require that an associated entertainment licence, granted by the council, will not extend beyond the latest time alcohol can be consumed on the premises (including the drinking-up period). This would mean that entertainment must cease at:

- 2am on weekdays where late opening for the sale of alcohol ends at 1am with the proposed drinking-up time of 60 minutes;
- 1am on Sundays where late opening for the sale of alcohol ends at 12am with the proposed drinking-up time of 60 minutes;
- 3am on weekdays where occasional additional late opening ends at 2am with the proposed drinking-up time of 60 minutes;
- 2am on Sundays where occasional additional late opening ends at 1am with the proposed drinking-up time of 60 minutes.

What was the outcome of the public consultation?

There were 1,488 responses to the Department's question '***To what extent would you agree with the alignment of alcohol and entertainment licences?***'.

This proposal was generally met with agreement with 53% of respondents agreeing/strongly agreeing that licences should be aligned. 16% of respondents stated that they disagreed/strongly disagreed and almost 31% neither agreed nor disagreed.

Those in agreement, including the PSNI, noted that this proposal could help to dispel ambiguity surrounding entertainment and alcohol licensing, making it easier to enforce.

Those disagreeing felt that licences should be kept separate as alcohol and entertainment should not be a prerequisite for each other.

The consultation document also asked two questions which are related indirectly to this issue:

1. ***'To what extent do you agree that the person providing the entertainment must be present and performing in the licensed premises?'***

This proposal aimed to clarify what is meant by the term 'entertainment'. Current legislation requires performers to be 'present and performing' as a condition of an extended licence. This means that entertainment such as football matches or community dancing would not qualify.

The response to this proposal was mainly neutral. However, the following points were made by respondents:

- The purpose of the venue or the definition of entertainment should not be as strictly controlled by government;
- The current definition of entertainment is inadequate, very incomplete and subject to interpretation and should be changed to reflect the different forms of entertainment available now; and,
- Many forms of modern entertainment do not require a performer to be present in person.

2. ***'To what extent would you agree that the Department should change the law to ensure that entertainment provided in restaurants is ancillary to the business of providing food?'***

This proposal aimed to stop instances of restaurants operating into the early hours through the provision of entertainment, sometimes charging an entrance fee. Current legislation ensures that alcohol is consumed ancillary to a main meal. This proposal intends to mirror this requirement for entertainment.

Again, response to this proposal was mainly neutral. However, the following points were made by respondents:

- Those who agreed felt the law should be changed to reinforce the distinction between restaurant and public house licences and that the sale and consumption of food should always be the primary business carried out in a restaurant;
- PSNI and councils stressed that there are significant problems associated with restaurants operating as bars and providing entertainment, and welcomed measures to prevent this.

However, these two additional proposals, on the definition of entertainment and entertainment provided in restaurants, do not appear to be included in the draft Bill.

Discussion Points

The Licensing Act 2003 in **England and Wales** introduced a single integrated scheme for licensed premises wishing to sell/supply alcohol, provide regulated entertainment²⁵, and/or to provide late night refreshment²⁶. Permission to carry on some or all of these licensable activities is now contained in a single licence, known as the premises licence, which replaces several different and complex schemes. Responsibility for issuing licences now rests with local authorities, which took over this power from the Justice of Peace.

An application for a premises licence is to be accompanied by an operating schedule defining the activities to take place and the times during which they will operate. The operating schedule must contain its licensed hours and 'any other times during which it is proposed that the premises are to be open to the public'. According to guidance from Leeds City Council, opening hours and licensed hours need not be the same.²⁷

In **Scotland**, a separate Public Entertainment Licence is only required if the premises do not already have a licence to supply alcohol. Usually in Scotland the provision of entertainment is authorised by a Public Entertainment Licence. These licences are issued by local government authorities as outlined in the Civic Government (Scotland) Act 1982²⁸. The 'premises licence' as outlined in the Licensing (Scotland) Act 2005 only explicitly authorises the supply of alcohol. However, the 2005 Act also amends the Civic Government (Scotland) Act to exempt premises from having to apply for a Public Entertainment Licence if they hold a 'premises licence'.²⁹

In the **Republic of Ireland**, the situation is somewhat different to **England and Wales**, and **Scotland**. Licensing for alcohol and entertainment remain somewhat separate with alcohol licences required under the Intoxicating Liquor Act and entertainment (including, music, singing and dancing) licences required under the Public Health Acts Amendment Act 1890 and Public Dance Hall Act 1935. However, under the Intoxicating Liquor Act, premises also with a Public Dance Hall licence may apply for a special exemption order (SEO) to be exempt from the permitted licensing hours under the Intoxicating Liquor Act. This would allow the sale of alcohol until 1am on Mondays and 2:30am on any other days. Applications for SEOs go through the courts.

Similar to the current Bill proposals in Northern Ireland, the **Republic of Ireland** stipulates that entertainment must cease when alcohol ceases to be served. The Intoxicating Liquor Act (as amended) requires that entertainment must not be provided

²⁵ Regulated entertainment is defined as performance of a play, an exhibition of a film, an indoor sporting event, a boxing or wrestling entertainment (indoors or outdoors), a performance of live music, any play of recorded music, or a performance of dance.

²⁶ Late night refreshment is defined as the supply of hot food or drink (that is either served at, or has been heated on the premises to a point above ambient temperature) to the public for consumption, both on or off the premises, between 11pm and 5am.

²⁷ Leeds City Council Licensing Act 2013 Statement of Licensing Policy 2014-2018
<http://www.leeds.gov.uk/docs/Statement%20of%20Licensing%20Policy%202014-2018.pdf>

²⁸ <http://www.legislation.gov.uk/ukpga/1982/45/section/41>

²⁹ <http://www.legislation.gov.uk/asp/2005/16/schedule/6>

during the 30 minute drinking-up period. In contrast, the Bill in Northern Ireland would allow for entertainment to continue to the end of the proposed 60 minute drinking-up period. Contravention of this in the Republic of Ireland is liable to a fine on summary conviction of €1,500 on first offence, and €2,000 for any subsequent offences.³⁰

It may be relevant to consider how the Department proposes to liaise with all departments and agencies with related responsibilities during the granting of applications? This includes, and is not limited to, the Department for Health, PSNI, Planning (the use of premises for the sale or provision of alcohol, regulated entertainment or late night refreshment is subject to planning control), building control and environmental health within local councils.

3.5 Clauses 7 and 18: Removal of requirement for children's certificates

What is the current law?

Regulating children and young people's access to licensed premises and registered clubs is one of a number of ways in which government tries to protect children from alcohol-related harm. In Northern Ireland, young people under the age of 18 are not permitted to be in any bar area of a licensed premises or registered club unless the premises have been granted a 'Children's Certificate' by a county court.

A Children's Certificate allows young people under the age of 18 to be present in the bar area of a licensed premises or registered club until 9.00pm providing the following conditions are met³¹:

- The person under the age of 18 must be accompanied by a person aged 18 or over;
- The person under the age of 18 must not go to, or be at, the bar but instead must be seated at a table away from the bar; and,
- Any person under the age of 18 must leave before the certificate ceases to be operational.

Courts currently have the power to revoke a Children's Certificate or modify the time it ceases to be operational if the licensed premises or registered club is not compliant. A court will not grant a Children's Certificate unless the part of the premises for which the certificate is being sought is a suitable environment for a person under the age of 18 (the court may consider issues such as the physical or structural condition of the premises)³².

³⁰ Intoxicating Liquor Act 2003 <http://www.irishstatutebook.ie/eli/2003/act/31/section/12/enacted/en/html#sec12>

³¹ Children are currently permitted to be in sporting clubs up until 10.00pm. Children's certificates are not operational beyond 9:00pm unless a meal purchased prior to that time is being consumed, in this case a 9.30pm deadline applies.

³² Department for Social Development. *Registration of Clubs' Guide*. www.communities-ni.gov.uk/publications/registration-clubs-guide

What provisions are in the Bill?

The Bill contains provisions to repeal the requirement for licensed premises and registered clubs to hold a Children's Certificate (Clause 7 refers to repeals to a requirement in licensed premises and Clause 18 a repeal of the requirement for registered clubs). In other words, licensed premises and registered clubs would no longer be required to obtain a Children's Certificate in order for persons under the age of 18 to be present on those premises. However, it should be noted that a number of conditions would remain i.e. young people under the age of 18 could only be present until 9pm; they must be in the company of a person aged 18 or over; they must be seated at a table away from a bar etc.

The Department for Social Development's consultation document states that the proposal in relation to Children's Certificates is aimed at reducing some of the bureaucracy associated with such certificates.

What was the outcome of the public consultation?

There were 1,466 responses to the Department's question, '**To what extent would you agree with removing Children's Certificates and allowing young people under 18 years of age to be present in licensed premises until 9:00pm (subject to conditions)**'. 56% of respondents indicated that they agreed/strongly agreed with their removal; 26% disagreed/strongly disagreed and 18% neither agreed nor disagreed.

Comments from those in agreement with removing the requirement for Children's Certificates included suggestions that it would benefit families and tourists and that it should be up to parents to decide whether it is appropriate for their children to be present in licensed premises. A number of respondents agreed with the proposal on the basis that the conditions of Children's Certificates should remain in force. Many respondents also welcomed a reduction in the level of bureaucracy in what was perceived to be an already complex area of legislation.

Other themes emerging from the responses to this question included the suggestion that the removal of the requirement for a Children's Certificate should operate on a case by case basis, depending on the type of premises (e.g. bars, restaurants) and function (e.g. weddings). A number of respondents also stated that the removal of the requirement would remove the mystique surrounding alcohol.

Discussion Points

There is no requirement to obtain a Children's Certificate from a court in the **Republic of Ireland, England, Wales or Scotland**. As this section highlights, the admission of children to licensed premises in other jurisdictions is largely administered through legislation, the discretion of the premises themselves and through regulation by licensing authorities (in the case of **Scotland, England and Wales**).

In the **Republic of Ireland**, persons under the age of 18 are only permitted to be in licensed premises if they are accompanied by a parent or guardian. They may remain on the premises up until 9.00pm from October to April (and 10.00pm May to September) unless the licence holder feels this is injurious to the child's health, safety and welfare. Young persons aged between 15-17 years may remain on the premises after 9.00pm where they are attending a private function at which a substantial meal is served. All licensed premises must display a sign to this effect in a prominent place at all times and failure to do so can result in a fine³³.

In **England and Wales**, the Licensing Act 2003 relaxed many restrictions on the presence of young people under the age of 18 in licensed premises and premises that hold a club's certificate. Under current legislation, if the licensed premises are used 'primarily or exclusively' for the supply and consumption of alcohol on the premises a child or young person under the age of 16 is not permitted on these premises unless they are accompanied by a person aged 18 or over. Although it can often be difficult for licensees or certificate holders to determine whether their premises are used 'primarily or exclusively' for the supply and consumption of alcohol.

Generally, children and young people under the age of 18 are permitted to be on other licensed premises and certified clubs (that are not primarily or exclusively for the supply and consumption of alcohol e.g. hotels, restaurants, pubs providing food etc.) unless that premises have a particular licensing condition that places restrictions on this. However, it is an offence to allow an *unaccompanied* child under 16 to be present in any licensed premises or certified club between the hours of midnight and 5.00am.

Local Licensing Authorities have the power to impose licensing conditions on a premises including times in which children can be admitted. Each application and the circumstances at each premises are considered by the licensing authority on its own merits.

However, [Home Office Guidance](#) states that conditions restricting the access of children to premises should be strongly considered in the following circumstances³⁴:

- Where adult entertainment is provided;
- Where a member or members of the current management have been convicted for serving alcohol to minors or with a reputation for allowing illegal underage drinking;
- Where it is known that unaccompanied children have been allowed access;
- There is a known association with drug taking or dealing.

When applicants are applying for a licence or club certificate for their premises, or a variation of the licence or certificate, they must prepare an 'operating schedule' which

³³ Information extracted from the Citizens Information website [access 12 October 2016] www.citizensinformation.ie/en/justice/criminal_law/criminal_offences/alcohol_and_the_law.html

³⁴ Home Office (2015) Revised Guidance issued under section 182 of the Licensing Act 2003.

should include details such as the type of business to be conducted on the premises, seating arrangements, opening hours, types of entertainment to be provided etc.

The Home Office Guidance states that the operating schedules should also set out conditions relating the protection of children including details of the restrictions on the hours when children may be present; age restrictions; restriction or exclusions on the presence of children under certain ages when particular activities are taking place; and requirements for the age in which children must be accompanied by an adult.

Under existing licensing and clubs' law in **Scotland**, access to a licensed premises or a private members' club by persons under the age of 18 is to a large degree influenced by the discretion of the premises and the opinion of their local Licensing Board. The Scottish system is similar in many respects to that operating in **England and Wales** whereby premises must have an operating plan that includes a statement detailing whether children and young people are to be allowed entry to the premises; the ages of the children permitted to enter; and the times and parts of the premises where children are permitted. Licensing Boards in Scotland will assess the operating plan for suitability and may add additional conditions with regards to access to the premises by children. On-sales premises must display a statutory notice on the premises which is visible to customers, which details whether children are admitted, ages for admittance, and times and parts of the premises applicable.

In considering issues relating to the protection of children from harm, Licensing Boards can seek the views of relevant bodies such as child protection committees and local licensing forums (whose membership includes councillors, residents, licensees, police, persons having functions relating to health, education or social work)³⁵. Licensing Boards can also carry out on-site visits to assess suitability. The City of Edinburgh Licensing Board, for example, has agreed that where licence holders and applicants make applications seeking access to increased access to premises by children and young people it will (where necessary) carry out site visits to the premises to assess their suitability prior to considering applications³⁶. Licensing Boards will also take into consideration factors similar to those in the Home Office Guidance for **England and Wales** e.g. whether members of staff at the premises have previously been convicted for serving persons under the age of 18.

3.6 Clauses 8 and 19: Underage Functions

Well-structured and supervised recreational and social activities could be said to be advantageous to the mental, physical and social wellbeing of children and young people. They are often used as diversionary tools to distract young people away from damaging behaviours (e.g. alcohol and drug misuse, crime and anti-social behaviour) and negative peer groups. Alcohol-free discos for the under 18s (typically targeted at young people of secondary school age) are an example of a type of diversionary and

³⁵ Section 10 of the Licensing (Scotland) Act requires every local authority to establish a Local Licensing Forum

³⁶ City of Edinburgh Licensing Board (2013). Licensing (Scotland) Act 2005. Statement of Licensing Policy.

social activity that is popular with young people. In Great Britain, it is legal for such underage functions to be held in licensed premises and certified private members' clubs providing that certain conditions are met (e.g. the premises provide adequate supervision by trained staff).

In Northern Ireland, the conditions in which people under the age of 18 are permitted to be on licensed premises and registered clubs are significantly more restrictive, often and in many circumstances making it illegal for the under 18s to attend events and functions on licensed premises such as underage discos, school formals, concerts and sporting events and even after-Wedding parties. The Bill contains provisions to relax restrictions on underage functions in licensed premises and registered clubs.

What is the current law on underage functions?

Under Article 58 of the Licensing (Northern Ireland) Order 1996 a person under the age of 18 should not be in a part of a licensed premises during permitted opening hours which (a) contains a bar or (b) is used exclusively or mainly for the sale and consumption of intoxicating liquor. The exception is where a licensed premises (or registered club) *holds a Children's Certificate*.

However, even where a Children's Certificate is held there are still significant restrictions, for example:

- a) a person under the age of 18 can only be on the premises up until 9pm;³⁷
- b) they must be accompanied by an adult;
- c) they must be seated away from the bar;
- d) they, or a person accompanying them, must be consuming a meal.

The Department for Social Development's consultation stated that a number of public houses and hotels are keen to allow their function rooms to be used for events attended by young people under the age of 18 such as school formals and discos and that these types of venues appeal to young people because of the comfortable surroundings and music and lighting systems.

However, under current law those that seek to provide such events are likely to be breach the law, as in the case of Glenavon House Hotel in Cookstown. The directors of the hotel were found guilty in 2014 of permitting persons under the age of 18 to be in licensed premises during the permitted hours. The offences related to a popular teenage disco held at 'Sense Nightclub' (part of the hotel complex). The hotel had been running the disco (advertised as Club 13-17) since 1994 and could attract upwards of 1,000 people. The judgment stated that considerable effort had gone in to ensuring that

³⁷ Or up to 9.30pm where a meal has been purchased before 9.00pm.

no alcohol was consumed at the event and that when police attended to inspect the event in June and August 2013 they found that³⁸:

- No alcohol was on display and that optics had been removed and refrigerators covered;
- The bar was closed for the sale of alcohol and only soft drinks were served in plastic cups;
- No person on the premises was observed consuming alcohol and there was no suspicion of any alcohol consumption;
- Youths present were well behaved; and,
- There was a high level of supervision by adults.

Despite this, the judgment (which was upheld at a subsequent appeal) found the hotel to be in breach of current licensing laws.

Following this ruling, the PSNI wrote to the Minister for Social Development advising that it was reviewing the consequences of the ruling for both the PSNI and the wider community and that there was an urgent need to address the licensing legislation as it relates to children on licensed premises. In a written submission to the Committee for Social Development's consideration of the Licensing Bill (relating to outdoor stadia) the PSNI made the Committee aware that current legislation relating to under 18s in licensed premises creates difficulties for them³⁹:

'...this places the Police Service into a very difficult position if we rigidly enforce the legislation, with the result that on every occasion the police become aware of these functions including those listed above [i.e. school formals, concerns/supports events where alcohol is being served and consumed, an after-wedding party, family birthday party] we must submit a file to the Public Prosecution Service (PPS) in every case as it is for the PPS to decide whether to prosecute.'

In response to a previous consultation on licensing laws, the Police Service had at that time supported a proposal to allow young people under 18 years of age to attend functions in licensed premises provided the bar is closed and other strict measures were put in place⁴⁰.

What provisions are in the Bill?

Clause 9 of the Bill inserts a new Article in the Licensing (NI) (Order) 1996 (suitability of certain premises for underage functions). The new Article will permit courts to make an order specifying any part of certain licensed premises as suitable to hold underage

³⁸ Morris v The Director of Public Prosecutions [2015] NICA. 2 July 2015.

³⁹ PSNI. Written submission to the Committee for Social Development: <http://nia1.me/3eu>

⁴⁰ Ibid

functions. An underage function is defined as ‘a function designed so as to appeal to persons under the age of 18 in particular’. A court or clerk of petty sessions can authorise an underage function in an approved part of licensed premises up to 1.00am.

The premises to which this new Article applies includes hotels; restaurants; conference centres; higher education institutes; indoor arena; and outdoor stadia. Although eligible premises must be structurally adapted and used (or intended to be used) for the provision of main table meals, table meals do not need to be provided to run an underage function.

However, the court must not make an order unless it is satisfied that:

- The part of the premises specified is structurally adapted for the purpose of having functions held on it;
- The appropriate steps have been taken to secure the safety of persons under the age of 18 while attending the underage function in that part of the premises and that it is suitable for underage functions; and,
- That suitable arrangements are in place for securing that persons under the age of 18 attending the function do not have access to any other part of the premises that is used for the sale of alcohol.

In addition to this:

- Alcohol must not be made available for purchase by a person over the age of 18 or over the part of the premises specified in that part of the premises authorised to hold the function;
- Each alcohol dispenser in that part of the premises must be incapable of operation; and,
- Access to any other container of alcohol in that part of the premises must be prevented.
- The holder of a licence (or a person working for the licensee) must not sell, or make available for sale, alcohol in that part of the premises. They must also not permit those aged 18 or over to consume alcohol in that part of the premises.

Where objections to the application to hold underage functions are served upon the clerk of petty sessions, the clerk will not make the decision to grant an application but will require the application to be made to the court. The clerk must notify the applicant and the objector of the time and place of the hearing.

New offences are created for non-compliance with the requirements to (a) prevent access to alcohol (b) prevent the sale, supply and consumption of alcohol to a person aged 18 or over is prevented; and (c) ensure that alcohol dispensers are inoperable and access to containers of alcohol is prevented.

The Betting, Gaming, Lotteries and Amusements (NI) Order 1985 will also be amended to make it an offence for gaming machines to be made available in any part of a licensed premises in which an underage function is being held.

Clause 19 of the Bill inserts a new Article in the Registration of Clubs (NI) Order 1996 which would create similar provisions in relation to underage functions. However, authorisation must be given by the PSNI district commander in which the club is situated.

What was the outcome of the public consultation?

There were 1,459 responses to the question ***‘To what extent would you agree with allowing young people under the age of 18 years of age to attend functions in licensed premises (provided the bar is closed)?’***. A significant majority of respondents (76%) agreed/strongly agreed, 9% disagreed/strongly disagreed and 15% neither agreed nor disagreed.

Those who agreed with the proposals stated that there is a lack of existing venues for young people to socialise and that current legislation prevents pubs from making their premises available for local community events due to the measures that exclude young people from licensed premises.

A dominant theme from the responses was one of disagreement with the proposal to close the bar. The Department’s consultation outcomes report states that a large number of respondents felt that children should be allowed into an area where alcohol is being served on the understanding that parents or other responsible adults will ensure that alcohol is not being consumed. These comments may relate to the presence of under 18s in licensed premises at after-wedding parties, birthday parties etc. rather than events such as teenage discos.

The consultation also invited respondents to comment on measures that would ensure that access to alcohol was not sold, supplied or consumed at functions organised for young people under 18 years of age. Suggestions included:

- Increased security at events where under 18s are present;
- Systems of identification (ID) such as checks and wristbands;
- A completely locked bar;
- Removal of all visible promotional material during the event; and
- Some suggestion that there should be more stringent penalties for premises and licence holders found to be in breach of guidelines.

Examples of specific conditions suggested by trade bodies, councils and the PSNI included:

- Bar must be locked shut;
- Alcohol search and seize policy in place for the event;

- Individuals showing signs of intoxication should not be admitted;
- Adequate supervision with trained security staff; and,
- Arrangements to remove anyone found to be intoxicated safely and placed in the custody of a parent.

Discussion Points

Under 18s functions in licensed premises and private members' clubs are common and popular permissible events in **Scotland, England and Wales**. However, licensing law in Great Britain is different to that in operation in Northern Ireland. Generally speaking, the licensing laws in **England, Scotland and Wales** do not place specific restrictions on the times in which young people can be present on licensed premises and registered clubs. However, that does not mean that persons under the age of 18 have unlimited and unrestricted access to such premises. Often licensed premises and clubs will themselves place restrictions on the age, times and parts of the premises in which persons under the age of 18 are permitted.

However, Licensing Authorities in **England and Wales** and Licensing Bodies in **Scotland** can have considerable influence over whether events attended by under 18s will be permitted. Every application or variation of a premises licence or club premises certificate must be accompanied by an operating schedule (or operating plan in Scotland) outlining the measures the licensee proposes to put in place to protect children from harm (protecting children from harm is a mandatory licensing condition). The Licensing Authority (in **England and Wales**) or Licensing Board (in **Scotland**) may place conditions on the licence relating to the times, ages of the children, or any other measure they deem necessary to protect those under the age of 18.

With regards to events targeted at the under 18s, the Licensing Authority or Licensing Board rather than the police or courts, will make the decision as to whether the event, premises and admittance criteria etc. set out in the operating schedule/plan are suitable. However, advice can be sought from the police, child protection services and other relevant individuals and bodies when assessing an application for a licence or variation of a licence. Decisions on such events are usually taken on a case by case basis and it is possible that there may not be standardisation across licensing bodies as to the conditions it places upon premises holding such events, and on monitoring or enforcement measures.

Under 18 events – conditions

Licensed premises, private members' clubs and companies that have been set up to run under 18s events across various premises in different locations, will often put in place a range of measures to safeguard young people attending such events. Often Safeguarding Children Boards (e.g. those in local authority areas in **England**) will provide guidance on safeguarding measures for under 18s events. The table below provides a summary of measures collated from a range of different sources. It should

be noted that many venues already have a number of these conditions in place (e.g. Security Industry Authority [SIA] registered security staff)⁴¹.

Overarching aim	Safeguarding Measure
Event is suitability age restricted	<ul style="list-style-type: none"> • Minimum age for restriction (e.g. 12, 13, 14 years old) • Customers aged 18 years or over are not permitted • Proof of age (ID) requested, photographic ID such as a passport.
Responsible promotion and ticketing	<ul style="list-style-type: none"> • If an event is organised by a third party promoter/organiser, the premises management should impose a condition that all promotional material must be approved by the premises management (e.g. including social media e.g. Facebook/websites etc.). • Events promoted as pre-purchased tickets with a reserved number sold on the door to prevent over-attendance and ensure compliance with capacity. • Tickets for each event must be numbered, dated or otherwise coded to ensure control and an audited account of ticket sales should be maintained. • Police or venue to contact (e.g. via letter) off-licensed premises advising them of the date and time of event and public transport providers advising them of the date and time of event.
External Environment remains safe and appropriate	<ul style="list-style-type: none"> • All security staff to the SIA registered, uniformed and easily identifiable (although this may differ for registered clubs in which club officials or other relevant persons may provide supervision depending on the size of the event) • Gender appropriate bag searches/pat downs a condition of entry • Confiscation of alcohol, tobacco, drugs, weapons and reported to police • Alcohol testing on condition of entry or if a person is suspected of being intoxicated e.g. a Breathalyzer • Refusal of entry for young people who are, or are suspected to be intoxicated or who are behaving in an anti-social manner. • Doors to open 30 minutes prior to advertised time. • Queue barriers in place to maintain order • Security staff to monitor external areas in the proximity of the premises to prevent unsafe, illegal or anti-social activity • Suspicious activity (e.g. loitering of adults/cars) to be recorded in an incident book (including vehicle registration details) and reported to police • The premises management should liaise with local youth services and police to determine whether a youth service/charity presence is required outside the event to assist vulnerable young people.
Internal Environment remains safe and appropriate	<ul style="list-style-type: none"> • No alcohol on sale or display • No alcohol branding is displayed • Free tap water available on request • There will be regular patrols and floor walks by designated staff to monitor the activity inside the premises (toilets and other areas) • The premises management/event organiser should liaise with the police to check that the promoter/DJ/entertainer is reputable • Ensure the music policy for the event is appropriate • There will be appropriately qualified First Aiders with a designated First Aid areas

⁴¹ Primarily extracted from the Sheffield Safeguarding Board's 'Under 18s Events – Risk Assessment Guidance: Measures for Safeguarding Children and Young People'.

	<ul style="list-style-type: none"> • For those refused entry or removed from the venue, parents/responsible adult will be contacted (either by the young person or the venue) if the person is intoxicated or has taken drugs • If the young person has not taken alcohol or drugs and but has been refused entry or removed from the venue the use of a telephone to contact parents/responsible adult will be made available.
After-event safety measures are put in place	<ul style="list-style-type: none"> • Event will finish in time for children and young people to access public transport for travel home • A pick-up point in proximity to the premises will be identified and promoted for parents/carers to collect children and young people. This area must be well-lit and monitored by security staff/CCTV for up to 30 minutes after the event has closed.
Protecting vulnerable children and young people	<ul style="list-style-type: none"> • A suitable member of staff will be assigned as the lead for safeguarding at each event. They will be responsible for producing a written risk assessment prior to the event; liaise with relevant authorities where necessary e.g. the police; providing briefing and training prior to the event; ensure that there is a procedure and that the procedure is followed when young people are ejected from the venue and who are in a vulnerable state (this process must be recorded in writing and auditable); • A secure and appropriate child welfare area within the premises should be provided.

The Bill outlines a number of conditions attached to the granting of authorisation to hold underage functions e.g. each dispenser of alcohol at the bar in the part of premises the function is held must be incapable of operation. However, it is evident from the table above that there are many other conditions that *could* be attached to authorisation.

Alternative views on such events

It is important to recognise that a minority of people may either not support, or have reservations, about underage functions. In Great Britain, these concerns primarily relate to large-scale events held in nightclubs. A judge in **England**, commenting on a case involving a teenage girl who attended such an event stated⁴²:

'I want to say something about [the nightclub] and its so-called kids' night. That a nightclub should advertise and seek to attract children between the ages of 13 to 16 is in my view regrettable.

The club's closing time of 11pm inevitably means that those attending will probably not be home until midnight or later.

It is naïve to assume that these youngsters will not drink alcohol even if it is not provided by the club...

It is naïve to assume that they will not be tempted by other and more pernicious substances...'

⁴² Bristol Post. 'Judge condemns "kids" club nights at Bristol's Oceana'. 24 July 2012.

While these may indeed be quite legitimate concerns, it could be the case that such large scale events on licensed premises can potentially be well organised and supervised and could be beneficial to the needs of young people in the area. Many issues identified by the judge in **England** are outside the control of the licensed premises e.g. the pre-loading of drinks and other substances before reaching the event. Clear guidelines for licensed premises and registered clubs seeking to hold events targeted at the under 18s may be beneficial. Although an extreme case, events at the DJ Hardwell gig at the Odyssey Arena in 2014 demonstrate the need to enforce a strict no admittance policy for those who are intoxicated and/or have consumed other substances, and have adequate support and guidelines in place on assisting them⁴³.

This discussion prompts a number of questions:

Will there be guidance or a code of practice setting out further conditions on underage functions? Who would produce such guidance or a code, the Department or the licensing trade? To what extent would the PSNI, emergency services and organisations (e.g. SOS NI) who provide support during the night time economy be involved in devising guidelines or a code? Could such guidelines be incorporated into an existing code?

To what extent would such guidelines or a code reflect the scale and nature of events e.g. large scale events held in nightclubs in comparison to small events held in a registered club?

What arrangements will be put in place to monitor events to ensure that they are in compliance with the legislation? In the case of larger scale events, would arrangements need to be put in place to ensure that the PSNI and public transport providers (e.g. Translink, NI Railways) are aware of the event in advance?

3.7 Clause 9: Delivery of intoxicating liquor to young persons

What is the current law?

The Department for Social Development's consultation paper on 'proposed changes to the law regulating the sale and supply of alcohol' stated that there had been ongoing concerns that the current law is not sufficiently robust in ensuring that young people under the age of 18 years are unable to avail of home deliveries of alcohol.

Furthermore, it stated that there were also concerns surrounding the delivery of alcohol by taxis. However, the Department states that this is a somewhat difficult issue and that any proposed changes to the law in this area would have to comply at present with EU competition law.

⁴³ BBC News NI. 'Belfast's Odyssey: 'Disaster zone' outside DJ Hardwell gig'. 7 February 2014.

The consultation highlighted that there are some safeguards in place in current legislation regulating the delivery of alcohol whereby details of alcohol purchased and delivery locations must be entered into a day book held in the premises. However, current law does *not* prevent a young person under the age of 18 accepting a delivery of alcohol made to the residence or work place of the purchaser.

What did the Department's consultation propose?

The consultation proposed three additional safeguards to regulate the delivery of alcohol:

- Prohibiting persons under 18 from receiving a delivery of alcohol;
- Placing a requirement in the legislation for identification to be shown and recorded upon delivery of alcohol; and,
- Amending the legislation to prevent third parties from profiting from alcohol sales, e.g. taxi drivers.

The Bill contains provisions in relation to the first two safeguards. It does not contain explicit provisions to amend the law to prevent third parties from profiting from alcohol sales.

What provisions are in the Bill?

Clause 9 amends [Article 60](#) of the Licensing (Northern Ireland) Order 1996 (this Article deals with the sale of intoxicating liquor to young persons). Currently, the Article explicitly states that there is no prohibition or restriction on the delivery of alcohol to a person under the age of 18 where the delivery is made to the residence or work place of the purchaser.

The Bill amends Article 60 so that a young person under the age of 18 shall not 'knowingly accept a delivery of intoxicating liquor made at the residence or working place of the purchaser', though it is not clear what happens if the alcohol is delivered to an address which is not the purchaser's own address. There will be a new offence (a fine of up to £1,000) for 'any person' who contravenes the prohibition on the delivery of alcohol to a person under the age of 18.

Clause 9 further provides that in court proceedings licensees or the staff or agents, who are charged with an offence under Article 60(1) e.g. the selling or delivery of alcohol to a person under the age of 18 may rely on a defence that they demonstrated due diligence by recording **details of any proof of age document** they have requested in a delivery book or an invoice he/she is carrying.

Article 67(9) and Article 68(5) of the 1996 Licensing Order currently permits the delivery of alcohol by the person in the premises to which he is residing. Clause 9 of the Bill contains a provision to ensure that the delivery of alcohol to persons residing in

an unlicensed premises where entertainment is being held or which is used by a club do not extend to any persons under 18 years of age in that premises.

What was the outcome of the public consultation?

The Department's consultation exercise asked three questions in relation to the delivery of alcohol:

- *To what extent would you agree with the proposal that young people under 18 years of age should not be allowed to accept a delivery of alcohol?* There were 1,601 responses to this question, the proposal met with strong agreement. **70% of respondents agreed/strongly agreed**; 27% disagreed or strongly disagreed; and 13% neither agreed nor disagreed.
- *To what extent do you agree with the proposal for identification to be shown and recorded on delivery of alcohol?* There were 1,600 responses to this question, again a significant majority were in favour of the proposal. **67% of respondents agreed/strongly agreed**; 19% disagreed/strongly disagreed; and 15% neither agreed nor disagreed.
- *To what extent do you agree with the proposal to prevent third parties from profiting from alcohol sales?* There were 1,584 responses to this question, there was rather less consensus in this particular proposal. 33% of respondents agreed/strongly agreed; 27% disagreed/strongly disagreed; and 40% neither agreed nor disagreed.

What about alcohol delivery services in Northern Ireland?

The issue of legitimate delivery services was an issue raised in 2011 with the launch of an off-licence which was reported to be the first online off-licence delivery service. Two members of the Social Development committee expressed their concern over the move. However, Pubs of Ulster stated that supermarkets already offer a delivery service; it was meeting the demands of the market; and had measures in place to ensure that the delivery was ordered and received by an adult (e.g. customers would be asked to pay by credit card and asked for ID on delivery to ensure that they were over the age of 18). Additionally, delivery would be up until 10.30pm, and 9.30pm on Sundays⁴⁴.

A report by the University of Plymouth '[Checked Out: The role of ID checks in controlled underage drinking](#)' emphasised the growing problem of young people accessing alcohol via the internet⁴⁵:

⁴⁴ Belfast Telegraph. "New off-licence delivery service 'a danger'". 21 June 2011.

⁴⁵ Barton, A (2012). 'Checked Out: The role of ID checks in controlling under-age drinking. University of Plymouth on behalf of Serve Legal.

“Most underage drinkers realise that it’s now not that easy to walk into a shop to buy alcohol. This factor, added to more relaxed attitudes toward alcohol consumption by parents and relatives, added to the growth of the internet, is creating a perfect storm in the battle against underage drinking.

...The battleground is changing in the fight against underage drinking – online retailers need to take heed of the warnings in this report and improve their age-checking procedures. Meanwhile parents and friends also need to understand the harm their proxy purchasing is doing”.

There appears to be an absence of research and information on the availability and impact of access to alcohol via delivery services in Northern Ireland. There are of course legitimate delivery services (e.g. those offered by supermarkets) but, probably unsurprisingly, the extent of illicit delivery groups and individuals operating in Northern Ireland is difficult to determine. Illicit delivery services tend to use social media/social networking and word of mouth to advertise their services, thus making regulation and enforcement difficult.

The approach in Scotland to illicit ‘Dial a Drink’ Services

The availability of alcohol via “dial a drink” services is reported to be an emerging issue in **Scotland**, particularly Glasgow. A news article in 2016 reported that⁴⁶:

‘A growing number of illegal alcohol delivery services linked to organised crime gangs are operating in Scotland, police have warned.

Chief inspector David Pettigrew, based at London Road Police Office in Glasgow, told STV News; “Dial a booze is essentially a trade name for a large number of these groups...It is the provision of alcohol to people out with legal licensing hours and conditions, may that be by phone or online contact, through for example, social media or through back door purchases at shop premises.

...You only have to look online to see how many outlets there are. It is a widespread problem and there are different levels of offender. You have your entrepreneur who will purchase large amounts of alcohol from a supermarket and sell it on at an inflated price...Then there are organised crime groups who buy large quantities of alcohol in bulk from cash and carries, and sometimes abroad, to sell on’.

⁴⁶ STV News. ‘Illegal ‘dial a booze’ alcohol delivery services growing in Scotland’. 6 January 2016. <http://stv.tv/news/west-central/1338103-illegal-dial-a-booze-alcohol-delivery-services-spreading-in-scotland/>

A further article in the 'Daily Record' reports that Scottish police are aware that social media is being used to promote 'dial a drink' services to young people in Glasgow⁴⁷:

'Senior officers say social media is being used to push alcohol – including Buckfast, Mad Dog 20/20, vodka and cider – to youngsters.

...Superintendent Thom McLoughlin today warned anyone flouting the law would be prosecuted.

'We are aware of alcohol delivery services who deliver to underage children,' he told the Evening Times.

'The people behind these websites don't care about who they are selling to, All they care about is profit'.

Discussion Points

In **England**, [Article 151](#) of the Licensing Act 2003 continues to permit under 18s to take a delivery of alcohol at a place in which the purchaser or person supplied lives or works. A [House of Lords Select Committee](#) has recently been tasked with reviewing the Licensing Act 2003. One of the issues under consideration is the increase in online sales of alcohol for consumption at home and whether there is a case for reform of the licensing regime applying to off-trade. It will also explore how effectively the current licensing regime in **England** regulates supermarkets and large retailers; underage sales; and delivery services⁴⁸.

The Northern Ireland Licensing and Registration of Clubs (Amendment) Bill moves into alignment with **Scotland** in relation to the delivery of alcohol to children and young people. In **Scotland**, Section 108 of the Licensing (Scotland) Act 2005 makes it an offence for any 'responsible person' working in licensed premises to allow someone under the age of 18 to (a) deliver alcohol from an off-sales premises or (b) to deliver alcohol, or allow alcohol to be delivered to someone under 18⁴⁹⁵⁰. Similar to proposals in the Bill here in Northern Ireland, in considering prosecution for non-compliance, it will be a defence to show that the person making or allowing the delivery has been shown documents bearing the proof of age of the child or young person (e.g. a passport, European Union driving licence).

However, unlike Northern Ireland, in **Scotland** Section 120 of the 2005 Act makes it an offence for anyone who works on a licensed premises which sells alcohol for

⁴⁷ Daily Record. 'Dial-a-drink' services selling alcohol to underagers in Glasgow say police targeting illegal trade'. 6 November 2015. www.dailyrecord.co.uk/news/scottish-news/dial-drink-services-selling-alcohol-6781346

⁴⁸ House of Lords Select Committee – Licensing 2003 Committee - <http://www.parliament.uk/business/committees/committees-a-z/lords-select/licensing-act-2003/>

⁴⁹ Licensing (Scotland) Act 2005. Explanatory Notes. Section 108.

⁵⁰ There is an exemption for a young person to deliver or take delivery of alcohol if they work at the relevant premises (e.g. a family business).

consumption off the premises to deliver alcohol between midnight and 6am. It is also an offence for any person to allow such a delivery.

Issues to consider further:

The Committee may wish to request that the Department provide further information as to why the Bill does not contain explicit provisions to prevent third parties such as taxi drivers from profiting from alcohol sales. The Department's consultation indicated that there were issues around EU competition law. The Committee may wish to seek further clarification from the Department on this point.

The Committee may wish to consider the issue of illicit delivery services in Northern Ireland; requesting that the PSNI provide its assessment of the scale and nature of the problem in Northern Ireland; and explore whether it is appropriate or feasible to address this issue through liquor licensing legislation. Has the PSNI conducted any 'test-purchasing' exercising similar to those being conducted in Scotland?

The Committee may wish to consider whether the regulation of the sale of alcohol in party vehicles (e.g. stretched limousines, decommissioned fire engines) is an issue in Northern Ireland. Under Scottish legislation, it is an offence for any person to knowingly sell alcohol on any such vehicle unless authorised to do so by a premises licence or occasional licence. The Committee may wish to seek information on whether this is an issue in Northern Ireland, and if so, whether the law is being enforced; and whether providers of such services are aware of the law in relation to the sale of alcohol.

In Scotland, it is an offence for anyone who works on a licensed premises which sells alcohol for consumption off the premises to deliver alcohol between midnight and 6am. It is also an offence for any responsible person to allow such a delivery. The Committee may wish to consider the merits of introducing similar legislation and whether it would be proportional to the scale of the issue in Northern Ireland. Bearing in mind the legislation relates to the delivery of alcohol from licensed premises and does not directly address the issue of illicit delivery services.

3.8 Clause 10: Restaurants and guest houses: notice displaying licence conditions

What is the current law?

Under [Article 51](#) of the Licensing (Northern Ireland) Order 1996 a licensed restaurant is not permitted to sell alcohol, or allow alcohol to be purchased or consumed, unless certain conditions are met. For example:

- The alcohol must be consumed as ancillary to a main table meal;
- The alcohol must be paid for at the same time, and on the same bill as the meal; and,
- There must be no payment by way of an entrance fee to the premises containing the restaurant.

What are the proposed changes?

The Department states that it has become aware that some restaurants in Northern Ireland are operating into the early hours and providing entertainment, sometimes charging an entrance fee.

The Licensing and Registration of Clubs (Amendment) Bill aims to reinforce the conditions placed on licensed restaurants. The Bill contains provisions to compel the holder of the licence to display (at all times) a notice detailing the conditions under which alcohol may be sold on the premises. The notice must be in a position where it is visible to any person seeking to purchase alcohol.

A holder of a licence acting in contravention of this provision may be liable on summary conviction to a fine not exceeding £1,000. Failure to comply may also attract 3-4 penalty points on the licence. The system of penalty points for licensed premises was introduced via the Licensing and Registration of Clubs (Amendment) Act (Northern Ireland) 2011. Further information on this is available to download [here](#)⁵¹.

What was the outcome of the public consultation?

The Department's consultation posed the question '*to what extent would you agree that the Department should change the law to ensure that entertainment provided in restaurants is ancillary to the business of providing food?*'

There were 1,469 responses to the question; 48% of respondents neither agreed nor disagreed, 25% agreed/strongly agreed and 26% disagreed/strongly disagreed.

Those who agreed stated that current law should be amended to reinforce the distinction between restaurant and public house licences and that the sale and

⁵¹ Licensing and Registration of Clubs (Amendment) Act (Northern Ireland) 2011.
www.legislation.gov.uk/niar/2011/18/section/2/2011-03-29

consumption of food should always be the primary business carried out in a restaurant. The consultation outcome document further states that it was felt that there were significant problems associated with restaurants operating as bars and providing entertainment and that the responses received from councils and the PSNI welcomed measures to prevent this.

Will this measure be sufficient to prevent such problems?

3.9 Clauses 11 and 21: Prohibition on self-service and sales vending machines

What is the current law?

Current law in Northern Ireland is silent on the issue of alcohol self-service facilities and vending machines in licensed premises and registered clubs.

What are the proposed changes?

Clause 11 introduces a new Article to the Licensing (Northern Ireland) Order 1996 to prohibit the self-service of alcohol (e.g. 'Pour Your Own Pint' tables) in a licensed premises. The new Article states that a holder of a licence, or a member of staff, must not sell alcohol (for consumption on or off the premises) in a form that enables a person to operate the dispenser of the liquor.

Additionally, the licensee or a member of staff must not sell alcohol via vending machines in the licensed premises. However, the Article provides the Department with the power to make regulations that will permit (where certain conditions are satisfied) the sale of alcohol via vending machines to residents in hotels, guest houses and pubs that provide accommodation.

Clause 21 of the Bill inserts a similar Article into the Registration of Clubs (Northern Ireland) Order 1996. Under the new Article a registered club must not supply alcohol for consumption in the club premises in a form which enables a member or guest (or a member or guest they are with) to operate the dispenser of the alcohol. Additionally, a registered club must not supply alcohol via a vending machine.

A holder of a licence or a registered club who contravenes the prohibition of self-service and alcohol vending machines will be guilty of an offence and liable on summary conviction to a fine of up to £1,000. This contravention could also attract three to four penalty points on the licence.

What was the outcome of the public consultation?

There were 1,449 responses to the question ***‘To what extent would you agree with preventing the sale of alcohol via Pour Your Own Pint tables?’***. A majority of respondents (54%) disagreed/strongly disagreed with a prohibition on Pour Your Own Pint tables; 20% agreed/strongly agreed that they should be banned; and 26% neither agreed nor disagreed with this proposal.

There were 1,451 responses to the ***question ‘To what extent would you agree with preventing the sale of alcohol via Vending Machines?’***. 44% of respondents disagreed/strongly disagreed with a prohibition of the sale of alcohol via vending machines; 36% agreed/strongly agreed with preventing the sale of alcohol via vending machines; and 20% neither agreed nor disagreed.

Those who disagreed with the proposals to prevent the sale of alcohol through ‘Pour Your Own Pint’ tables and Vending Machines stated that they had not objected to such facilities providing a number of conditions were met:

- There was regulation of the quality and quantity of the product;
- Suitable ID checks were conducted; and,
- Adequate supervision was provided to ensure access by young people under the age of 18, and intoxicated people, was restricted.

Those in support of the proposal to prohibit Pour Your Own Pint tables and alcohol-dispensing vending machines expressed concern that these facilities do not promote responsible drinking. There were also concerns over the potential lack of supervision and the impact such services may have on binge drinking.

Discussion Points

Pour-Your-Own Pint/Beer facilities are said to be a growing trend in the licensing trade. Although the extent to which they are available in Northern Ireland is difficult to quantify. It has been argued that such facilities offer⁵²:

‘...the thrill of pulling the perfect pint of Guinness, beer or lager creates a fun and engaging experience for patrons while it can also be an extremely efficient & highly profitable source of revenue for pub owners and managers as it would automatically reduce the amount of bar staff required.’

Arguably, the purpose behind Pour Your Own pint facilities can range from the responsible to the irresponsible promotion of alcohol. On the one hand a licensed premises may offer an experience that would appeal to tourists for example, e.g. pouring one or two pints of Guinness under the supervision/instruction of a staff member. One bar in Belfast, for example offers customers the opportunity to ‘Pour

⁵² Irish Pubs Blog. ‘Pour your own beer a new trend in Irish Pubs.’

Your Own' pint of Guinness, with the customer testing their skills against experienced bar staff. The cost is £5 plus a souvenir t-shirt and is available Monday-Thursday from 12 noon to 6:00pm. Another illustration could be, for example, a brewery tour that provides customers, under instruction by a member of staff, with a demonstration on pouring their own pint or bottle of craft beer.

At the other end of the spectrum a licensed premises, with the aim of maximising profits, could offer vast quantities of alcohol via self-service facilities with inadequate control and supervision. Such irresponsible promotions may go against the ethos of the [Joint Industry Code for the Responsible Promotion and Retail of Alcohol](#) for Northern Ireland which states that *'irresponsible promotions and sales practices may encourage or incite an individual to drink to excess, and fuel drunkenness or anti-social behaviour'*. The Code further states that promotions should not encourage:

- a person to consume a larger measure of alcohol than the person had otherwise intended to consume;
- a person to consume large quantities of alcohol in a single session; and,
- involve the supply of unlimited amounts of alcohol for a fixed charge⁵³.

It may be important, therefore, to consider two issues in relation to self-service facilities such as 'Pour Your Own' Pint. That is, the amount of alcohol that is available to pour and consume (e.g. one pint as part of a brewery tour) and the motivation behind providing such a facility (e.g. maximising profits by providing copious amounts of cheap alcohol in a poorly controlled environment). The current Bill as drafted may impact on responsible premises offering a limited pour your own experience in order to restrict those who may offer such facilities in an irresponsible manner.

Alcohol vending machines are technological developments that have outpaced liquor licensing law in Northern Ireland. They are popular features in countries with somewhat more relaxed alcohol licensing laws such as Japan and in certain states in the USA (although many other states have prohibited them). However, a common concern with alcohol dispensing machines is the ease with which young people can access the alcohol. A number of safeguards have been put in place in order to prevent this e.g. fitting machines with ID readers; ensuring that they are switched off during non-licensing hours; and making payment by pre-paid card only (e.g. no cash). Many of these features can, of course, be easily circumvented by children and young people.

The purpose of prohibiting alcohol vending machines in certain licensed premises in Northern Ireland could be described as similar in nature to that on the ban on cigarette vending machines⁵⁴, i.e. to tackle the issue of underage drinking by restricting young people's access to facilities that could be unsupervised.

⁵³ Joint Industry Code for the Responsible Promotion and Retail of Alcohol in Northern Ireland (2012). www.responsibleetailingcodeni.org/The-Code

⁵⁴ Department of Health, Social Services and Public Safety. 'Northern Ireland bans sales of tobacco from vending machines'. 1 March 2012.

3.10 Clause 12: Restrictions on off-sales drinks promotions in supermarkets etc.

What is the current law?

Alcohol advertising in the **UK** is regulated by the Advertising Standards Authority (ASA), Ofcom and through industry-led self-regulation. Much of the debate on alcohol advertising relates to its impact on children and young people. According to the Advertising Standards Authority, the UK's advertising rules for alcohol 'are amongst the strictest in the world' and are based upon evidence that indicates that there is a link between alcohol advertising and people's awareness and attitudes to drinking⁵⁵. However, others have expressed the view that restrictions on alcohol advertising in the UK are 'woefully inadequate' and that 'current restrictions...do nothing to limit the total volume of alcohol advertising to which the public is exposed'⁵⁶.

It is important to note that the ability of the devolved administrations to directly legislate to control the advertising of alcoholic products is somewhat restricted given that the regulatory framework for broadcasting is a reserved matter and therefore outside the legislative competence of the devolved administrations. However, devolved powers over liquor licensing can be used to control, for example, the location and types of alcohol drinks promotions, as is currently the case in **Scotland**.

Northern Ireland liquor licensing law is currently silent on the advertising of alcohol by supermarkets and off-sales premises. The Licensing and Registration of Clubs (Amendment) Bill contains provisions to place a number of restrictions on the advertising of alcohol in supermarkets and off-sales premises. The Minister for Communities has stated that the policy intention behind these advertising restrictions is to reduce the instances of impulse buys of alcoholic drinks, particularly in supermarkets⁵⁷.

What are the proposed changes?

Clause 12 of the Bill contains provisions restricting the advertising of drink promotions in supermarkets to the designated area in which alcohol may be displayed. A drink promotion is defined as 'an activity which promotes, or seeks to promote, in relation to those premises specifically the purchase on the premises of intoxicating liquor for consumption off the premises'. However, activities that promote the purchase of alcohol as part of a 'meal deal' are exempt.

Additionally, supermarkets and other licensed premises that sell alcohol for consumption at home will not be permitted to advertise alcohol promotions within the

⁵⁵ Advertising Standards Authority www.asa.org.uk/News-resources/Hot-Topics/Alcohol.aspx#.V_dfaORlhaQ

⁵⁶ University of Stirling. (2013) Health First: An evidence-based alcohol strategy for the UK. www.stir.ac.uk/news/2013/03/alcohol-pricing/

⁵⁷ Northern Ireland Assembly Official Report. Licensing and Registration of Clubs (Amendment) Bill: Second Stage. 27 September 2016.

vicinity of the premises. The vicinity is defined as the area that extends 200 metres from the boundary of the premises. The Department is provided with a power to make regulations amending the definition of vicinity but the regulations cannot come into operation until approved by the Assembly.

Contravention of these restrictions on drinks promotions may be liable on summary conviction of a fine of up to £1,000 and 3-4 penalty points could be placed on the licence.

What was the outcome of the public consultation?

The Department's consultation contained three questions relating to the advertising of alcohol in supermarkets and off-sales premises:

- There were 1,626 responses to the question '**to what extent would you agree with restrictions on the advertising of alcohol in supermarkets and off-sales premises?**'. A majority of respondents (56%) disagreed/strongly disagreed with restrictions on advertising; 19% agreed/strongly agreed with restrictions on advertising; and 25% neither agreed nor disagreed.
- There were 1,626 responses to the question '**to what extent would you agree with prohibiting the advertising from taking place within the vicinity of the premises?**'. A majority of respondents (62%) disagreed/strongly disagreed; 15% agreed/strongly agreed; and 24% neither agreed nor disagreed.
- There were 1,626 responses to the question '**to what extent would you agree with restricting the display of branded non-alcohol products to the licensed area in supermarkets?**'. A majority of respondents (56%) disagreed/strongly disagreed with such restrictions; 10% agreed/strongly agreed; and 34% neither agreed nor disagreed.

The consultation responses revealed a number of arguments and comments for and against restrictions on advertising in supermarkets and off-sales. For example, some of those in favour felt that reducing exposure to alcohol advertising may help change attitudes towards consumption and in turn influence a reduction in incidents of alcohol-related violence and anti-social behaviour. Others felt that it may encourage supermarkets to focus their promotions on discounting other non-alcoholic household products.

Some of those not in favour of the restrictions highlighted that it could have a negative impact on retailers and that retailers should have the freedom to choose where to advertise their products and promotions. Others felt that consumers should be allowed to make up their own mind about purchasing alcohol and some felt that limiting promotional activity to the alcohol display area was unnecessary, ineffective and could be difficult to enforce. Some respondents felt that should the advertising restrictions become law, there was a need for detailed information on the restrictions and that any measures introduced should be brought forward in consultation with the licensing trade.

Discussion Points

Off-sales drinks promotion restrictions in Scotland – similarities and differences

Section 5 of the [Alcohol etc. \(Scotland\) Act 2010](#) introduced similar restrictions on the location and advertising of drinks promotions in off-licence premises in **Scotland**. The term 'promotion' can be far reaching as a guide on promotions from the Scottish Wholesale Association and the Scottish Grocers' Federation explains:

'A promotion can be anything that encourages people to buy alcohol. So in your store it could include; posters; displays and leaflets; advertising; special offers and discounts. Promotion also includes: 'A boards' on the street; window graphics; flyers and in-store magazines. Even in-store tannoy announcements referring to alcohol promotions are covered..'⁵⁸

The purpose of restricting the use of marketing material in off-licensed premises was to prevent the customer from being encouraged to impulse buy or to buy more alcohol than they had originally intended. In **Scotland**, similar to the proposals contained in the Bill, promotional material or any other activity relating to the promotion of alcohol in off-sales premises is restricted to designated 'alcohol display areas'. Secondly, an alcohol drinks promotion that is related to the premises cannot take place within the vicinity of the premises (vicinity meaning the area extending 200 metres from the boundary of the premises).

The Scottish legislation does differ to the Bill in Northern Ireland in a number of ways:

Firstly, unlike the present Bill, the Scottish legislation sets out other types of non-alcohol products that must be located in the designated alcohol display area, i.e.:

- Branded non-alcoholic products, that is, products that bear a name or image of an alcohol product such as football tops, slippers, tea towels etc. which are not for sale and which could be deemed to be a drinks promotion; and
- Newspapers, magazines and other publications that are not for sale and which relate only or primarily to alcohol (e.g. in-store magazines or leaflets). However, if newspapers, magazines and other publications that are for sale, or do not only or primarily relate to alcohol, may be displayed anywhere in the premises.

The Department's consultation contained a proposal to include similar provisions restricting the location of such products but these have not been specifically included in the Bill.

Why does the Bill not contain the previously proposed provisions relating to the location of certain non-alcoholic products?

Secondly, the Scottish legislation, in line with the Scottish Government's 'public health agenda', included other measures to restrict 'irresponsible promotions' in off-sales

⁵⁸ Scottish Wholesale Association & Scottish Grocers' Federation. 'The New Alcohol Act Explained: A Guide to the Legislation'.

premises. An ‘irresponsible promotion’ in Scottish legislation includes those promotions that ‘involve the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not they are alcohol drinks)’. The Alcohol etc. (Scotland) Act 2010 extends the application of this to off-sales premises thereby prohibiting offers such as⁵⁹⁶⁰:

- Buy one, get one free
- Three for the price of two
- Five for the price of hour, cheapest free
- Three bottles of wine for £10
- Buy six, get 20% off.

However, it should be noted that issues relating to alcohol pricing and quantity control were not issues subject to consultation in the Department for Social Development’s 2012 consultation paper on ‘Proposed changes to the law regulating the sale and supply of alcohol in Northern Ireland’.

What are the potential financial impacts of the restrictions on drinks promotions?

The Licensing and Registration of Clubs (Amendment) Bill’s Explanatory and Financial Memorandum states that the Bill’s provisions relating to advertising restrictions on supermarkets and off-sales premises may lead to a reduction in the sale of alcohol but that it is unlikely to have significant implications for these premises.

The [Explanatory Notes](#) accompanying similar advertising and drinks promotions provisions in the Alcohol etc. (Scotland) Bill highlight that these provisions were anticipated to have the following impact⁶¹:

- **Costs to public finance:** no anticipated costs to the Scottish Administration and marginal costs to local authorities in terms of ensuring compliance with the restrictions.
- **Costs to the individual:** not possible to provide an estimate in financial terms on the individual. However, the Scottish Government believed that restricting the use of marketing material in off-licensed premises will be of benefit to the customer by not encouraging the customer to impulse buy or purchase more alcohol than they had originally intended.
- **Cost to businesses:** the restrictions in marketing material may result in decreased sales of alcohol products in off-sales premises given that customers are not being encouraged to buy alcohol as they shop for non-alcoholic products. However, the

⁵⁹ Scottish Government. Alcohol etc. (Scotland) Act. Guidance for Licensing Boards.

⁶⁰ The Alcohol etc. (Scotland) Act 2010 also introduced a range of pricing and other measures, i.e. packs of alcohol containing two or more alcoholic products would be subject to minimum pricing (e.g. where one bottle of wine costs £10, a pack of two bottles must be sold for at least £20); the price of each individual alcohol product may not be varied before the expiry of 72 hours since the price was last varied; and all premises must have an age verification policy set at a minimum of 25 years old (i.e. a Challenge 25 policy);

⁶¹ Alcohol etc. (Scotland) Act 2010. Explanatory Notes and other accompanying documents.
<http://archive.scottish.parliament.uk/s3/bills/34-AlcoholEtc/index.htm>

Bill's Explanatory Notes state that it has not been possible to quantify the likely financial impact of the policy. It further stated that given a restriction on marketing material to a specific area will only affect one aspect of a business's total marketing strategy it considered the effect would be minimal.

The Scottish Government sought the opinion of groups representing retailers of alcohol in **Scotland** on the provisions. The Scottish Grocers Federation (SGF) stated that retailers with no budgets for radio and TV advertising rely on window bills as their only form of external advertising and that to prohibit this would have an adverse effect on their business.

When asked what lead-in time would be required to implement restrictions on promotional and marketing material, the SGF considered that 12 months would be required.

Research published in 2013 by NHS Health Scotland maintained that the Alcohol etc. (Scotland) Act 2010 was associated with a 2.6% decrease in per adult off-sales trade in Scotland (driven in particular by a 4% decline in off-trade wine sales)^{62 63}. However, it is difficult to quantify what impact the restrictions on the location of drinks promotions and market materials contributed to this and the Act also included other significant provisions such as a ban on 'multi-buy' discounts etc.

Other proposals relating to alcohol promotions and advertising restrictions

There have been various other proposals in other jurisdictions in respect of alcohol advertising, some of which are outside the legislative competence of the devolved administrations and are thus outside the scope of the current Bill. Nonetheless, some of these proposals may be interesting to note in terms of background context:

- (i) **Alcohol advertising near schools and sporting events:** The [Alcohol \(Licensing, Public Health and Criminal Justice\) \(Scotland\) Bill](#), a Private Members' Bill in **Scotland** (introduced by Dr Richard Simpson MSP in 2015) contained (amongst many other provisions) proposals to ban alcohol advertising within 200 metres of school premises (including playgrounds, school buildings, premises used principally as a nursery or crèche, and outdoor premises designed or adapted for use as a children's play area). It further proposed to ban alcohol advertising within premises used as the venue for a cultural event or a sporting event where the majority of participants are under age 18 or the intended audience consists mostly of those under 18.

The Bill fell after the general principles of the Bill were not agreed by the Scottish Parliament at its Stage 1 debate in February 2016. Further details on the Bill and the Health and Sport Committee Report on it are available [here](#).

⁶²Robinson, M.; Geue, C.; Lewsley, J.; Mackay, D; McCartney, G.; Curnock, E.; and Beeston, C. (2013) 'Monitoring and Evaluating Scotland's Alcohol Strategy: the impact of the Alcohol Act on off-trade sales in Scotland. www.healthscotland.com/documents/21101.aspx

⁶³ This report assessed whether there were any changes in off-trade alcohol sales in Scotland after the introduction of the Alcohol etc. (Scotland) Act by using time-series analyses of data for a 52-week period post-implementation and a comparison with England & Wales.

The [Public Health \(Alcohol\) Bill](#)⁶⁴ in the **Republic of Ireland** also contains similar provisions not only to prohibit advertising in or near schools, early years' services or a playground owned or maintained by a local authority (within 200 metres of the boundary), but also public service vehicles; a train or bus station; and a designated stopping place at which passengers may board or alight from buses. The Bill also contains provisions prohibiting alcohol advertising in sports grounds for events where the majority of competitors or participants are children or an event in which the majority of participants are children.

- (ii) **Sponsorship of Events:** The Public Health (Alcohol) Bill also contains provisions prohibiting the sponsorship by the holder of a liquor licence where the majority of participants are children, or where an event is aimed at children if that sponsorship includes the advertising or promotion of alcohol products or brands; and,
- (iii) **Advertising and Children's clothing and footwear:** The Public Health (Alcohol) Bill would make it an offence for a person to manufacture (for sale in the **Republic of Ireland**); import for sale or sell (to a person in the Republic of Ireland), an article of clothing or footwear intended to be worn by a child where that article promotes alcohol consumption or bears the name of the alcohol product or trade mark⁶⁵.
- (iv) **A ban on alcohol advertising before 9pm:** Although this issue is outside the legislative competence of the devolved administrations, in March 2015 the then Scottish Government Minister for Public Health, supported by a range of health bodies, called for alcohol (and junk food) advertising to be prohibited before 9pm and has written to UK Government ministers arguing that the move would protect children from exposure to marketing and branding⁶⁶.

3.11 Clause 13 and Clause 23: Code of Practice

What is the current law?

A code of practice can be defined as a set of written guidance, regulations and/or standards issued by a professional association or an official body that explains how people working in a particular profession or business sector should behave and conduct their business⁶⁷. Violation of a code of practice can have many consequences both legal (e.g. prosecution) or other (e.g. expulsion from membership of a professional body). However, often the severity of the penalties associated with a violation are

⁶⁴ The Public Health (Alcohol) Bill was introduced in the Houses of the Oireachtas in December 2015, it was then delayed due to the general election in the Republic of Ireland but has been placed Seanad Order Paper for the new mandate.

⁶⁵ Department of Health Press Release. 'Govt approves ground breaking legislation to tackle alcohol misuse – Varadkar'. 9 December 2015.

⁶⁶ Scottish Government News Release. 'Alcohol and junk food: end advertising before 9pm to protect children'. 8 March 2015. <http://news.scotland.gov.uk/News/Alcohol-and-junk-food-16f3.aspx>

⁶⁷ Definition extracted from www.reference.com/business-finance/meaning-code-practice-785df7315aefb2df#

dependent upon whether the code of practice is statutory, approved by a statutory body or self-regulatory.

Liquor licensing law in Northern Ireland is currently silent on either mandatory codes of practice or statutory approval of industry codes of practice relating to liquor licensing.

The main code of practice for the licensing trade in Northern Ireland is the '[Responsible Retailing Code NI](#)' which is the 'Joint Industry Code for the Responsible Promotion and Retail of Alcohol in Northern Ireland'. It is a voluntary, self-regulatory code that applies to both on and off sales premises. An independent [Complaints Panel](#) is charged with investigating all complaints that fall within the remit of the Code.

*The Code 'outlines the basic standards expected of those involved in the production, promotion, retail and service of alcohol in Northern Ireland. It looks to promote best practice, to prevent alcohol being irresponsibly promoted or sold, and offers clear and measurable standards'*⁶⁸.

The Responsible Retailing Code NI is an example of a type of code that could potentially be formally approved by the Department. In support of placing this code on a statutory basis, the Chairman of the Code's Complaints Panel, Duncan McCausland, has stated⁶⁹:

'The role of the Responsible Retailing Code NI...is recognised by the current Communities Minister Paul Givan, and previous Ministers since its inception in 2012. But it is still a voluntary Code. The opportunity for the Code to be placed on a statutory footing, will give the Code real teeth and further deter any rogue licencees/retailers from undertaking any irresponsible promotions of alcohol.

...Since 2012, the Code has been accepted by the industry as the standard to which responsible retailers of alcohol should adhere. The work that we have carried out to date, and continue to push forward, on the responsible retailing and promotion of alcohol, is focussed on making irresponsible consumption of alcohol a thing of the past...

...Placing the voluntary Code on a statutory footing is vital and will help add weight to the Panel's decisions on the application of the Code. We encourage the Communities Minister, the Committee and our wider elected representatives to grasp this opportunity now to ensure that this safeguarding is in place before the problem potentially spirals out of control.'

⁶⁸ The first edition of the Responsible Retailing Code NI was published in 2012. www.responsibleetailingcodeni.org/Industry-Guidance

⁶⁹ 'Statutory footing required for industry code on irresponsible drinking to make alcohol problem thing of the past says Panel Chair'. Press release from the Independent Complaints Panel of the Joint Industry Code on Responsible Promotion and Retail of Alcohol in Northern Ireland. 26 September 2016. www.responsibleetailingcodeni.org/News-and-Complaints-Upheld

How did the Responsible Retailing Code come about?

In recognition of the problems associated with irresponsible alcohol promotions and cheap alcohol, Articles 4 and 10 of [the Licensing and Registration of Clubs \(Amendment\) Act \(NI\) 2011](#) provides the Department for Communities with a power to make regulations to prohibit or restrict irresponsible drinks promotions being held on or in connection with a licensed premises or a registered club. The Department may by regulations add, modify, or extend the list of irresponsible alcohol promotions it deems to be irresponsible.

The [Licensing \(Irresponsible Drinks Promotions\) Regulations \(Northern Ireland\) 2012](#) and the [Registration of Clubs \(Irresponsible Drinks Promotions\) Regulations \(Northern Ireland\) 2012](#) explicitly set out for the first time the type of promotion that the Department deemed to be irresponsible. The Regulations prohibited a licence holder (or an agent or employee of the licence holder) from conducting a promotion that involved the supply of unlimited amounts of alcohol for a fixed charge (including any charge for the entry of the premises) on, or in connection with, the licensed premises. The prohibition applied only to a drinks promotion relating to alcohol sold for consumption on the premises.

The former Minister for Social Development, Nelson McCausland, agreed that rather than legislating to prohibit individual irresponsible promotional practices, the Responsible Retailing Code NI' should be the primary vehicle for tackling certain irresponsible promotions⁷⁰.

What types of promotional or sales practices does the Code disapprove?

The Code's principles identify promotions and sales practices that should be avoided as they carry high risk and may lead to alcohol misuse or abuse, and anti-social behaviour. A few illustrative examples of irresponsible promotions outlined in the code include those that:

- involve drinking games or speed incentives that require excessive quantities of alcohol to be consumed within a short time or to be "downed in one";
- involve the supply of unlimited amounts of alcohol for a fixed charge (including a charge or entry onto premises);
- encourage a person to consume a larger measure of alcohol than the person had otherwise intended to consume;
- offer alcohol as a reward or prize (unless it is a single standard drink or is in a sealed container for consumption off the premises);
- encourage an excessive drinking session or pub crawl; and

⁷⁰ Department for Social Development (2012). Proposed changes to the law regulating the sale and supply of alcohol in Northern Ireland. Consultation document.

- are dispensed in a manner that the customer cannot regulate the amount consumed (e.g. where alcohol is dispensed directly into the person's mouth e.g. the 'dentist's chair').

Additionally, the Code further states that no promotion should (for example):

- use promotional images, symbols, motifs or characters that have a particular appeal to those under the age of 18;
- not be linked or have promotional material that is positioned near products that appeal to children;
- incorporate the images of people who are, or look, as though they are under 25 years of age;
- combine alcohol with a gift that would appeal to under 18s;
- be linked with bravado, violence, anti-social or criminal behaviour nor make direct or indirect references to drug culture or illegal drugs in promotional material;
- be demeaning to any gender, race, religion, age or minority group; and
- be advertised on outdoor poster sites that are within 100m of schools (all posters must adhere to the Drinkaware brand guidelines).

The Code also contains a number of commitments, for example:

- To support and adhere to the mandatory UK Advertising Code administered by the Advertising Standards Authority;
- Support and adhere to the Portman Group Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks;
- Include signage in any premises where alcohol is sold to state that persons must be 18 to purchase alcohol;
- Refuse to sell alcohol to anyone suspected of buying for people under the age of 18; and,
- Ensure that all retailers have in place a policy to prevent online sales of alcohol to those under the age of 18 including requiring a purchaser to confirm that they are over 18.

How does the Code work?

An independent [Complaints Panel](#) is charged with investigating all complaints that fall within the remit of the Code. If a person feels that an alcoholic drinks promotion or sales practice is in breach of the code they can complain to the Complaints Panel. Information on the complaints process is available [here](#)⁷¹. If the Panel concludes that a complaint is to be upheld (after consideration of representations from the individual or company involved), the decision will be notified to the press; the PSNI and relevant local council. The decision is also published on the Responsible Retailing Code

⁷¹ Responsible Retailing Code NI – Making a complaint. www.responsibleetailingcodeni.org/Making-a-Complaint

website and in the Responsible Retailing Code Annual Report⁷². Examples of complaints upheld by the Panel are available [here](#)⁷³.

What are the proposed changes?

Clause 13 would introduce a new Article into the Licensing (Northern Ireland) Order 1996 to approve a 'relevant code of practice' that is produced by a person or group of persons with a 'relevant interest in the Code'. A person or group has a 'relevant interest' if they are:

- representative of persons whose business involves the sale, manufacturing or wholesale of alcohol; or
- engaged in research into, or has an interest in, the effects of the consumption of alcohol on personal or public health, or public order.

A code of practice is relevant if it relates to:

- the display or sale of alcohol in a licensed premises; or
- activities designed to promote the sale of alcohol in licensed premises whether for consumption in or off the premises.

Before deciding whether to approve a code of practice, the Department must consult the Police Service of Northern Ireland (PSNI).

Where the Department approves a relevant code of practice, it must give notice of this approval in the Belfast Gazette.

The Department may approve any subsequent amendments to a code or withdraw approval of the code or an amendment to it.

Under the Licensing (Northern Ireland) Order 1996, a court can refuse to grant or transfer, or renew a licence if it is not satisfied that, for example, the applicant is a fit and proper person. Clause 13 of the Bill introduces a further condition, that is, a court can refuse, grant, transfer or renew a licence if it is '*not satisfied that the applicant is aware of his responsibilities under a code of practice approved by the Department*'.

There is a further condition on the '*renewal of a licence*' (licences must be renewed every five years), that is the court can refuse to renew a licence if it is '*not satisfied that the applicant has been complying with an approved code of practice*'.

Clause 23 of the Bill introduces a similar new Article on codes of practice in the Registration of Clubs (Northern Ireland) Order 1996. The code of practice should be relevant to the display or supply of alcohol, or activities designed to promote the supply or consumption of alcohol in registered clubs. In the case of clubs, a court can refuse to '*grant registration*' to a club if it is not satisfied that each official of the club is aware of

⁷² Responsible Retailing Code NI – Making a complaint <http://www.responsibleetailingcodeni.org/Making-a-Complaint>

⁷³ www.responsibleetailingcodeni.org/News-and-Complaints-Upheld

their responsibilities under an approved code of practice. Furthermore, a court may not 'renew' registration if it is not satisfied that each official is aware of their responsibilities under an approved code or has not complied with their responsibilities under an approved code.

What was the outcome of the public consultation?

There were 1,411 responses to the consultation question '***To what extent would you agree that licensing and clubs' law should be amended to allow statutory approval for industry codes of practice?***'. A majority of respondents (54%) stated that they neither agreed nor disagreed; 38% agreed/strongly agreed that the law should be amended to allow for the statutory approval of codes of practice; 8% of respondents disagreed/strongly disagreed.

Those who supported self-regulation in general stated that it was a welcome alternative to legislation as it can be more easily adapted to take account of prevailing changes in circumstances. Those who did not support self-regulation in general viewed voluntary codes as an ineffective means of regulation and tended to be in favour of stricter, clearer regulation via legislation.

With regards to the specific proposal to amend the law to allow for statutory approval of codes, it was felt that formal approval would enhance and support the code of practice and would encourage licensees to adopt and comply with its rules. However, many highlighted the need for appropriate stakeholders to be involved in the design of industry codes of practice.

Other respondents suggested that there should be more stringent monitoring and imposition of the current 'Responsible Retailing Code for Northern Ireland'. Other respondents stated that they lacked sufficient knowledge of codes of practice and therefore found it difficult to provide an informed opinion.

Discussion Points

Do other jurisdictions use approved codes of practice in relation to the regulation of licensed premises and clubs?

Republic of Ireland

The proposals in the Licensing and Registration of Clubs (Amendment) Bill for approval of codes of practice are in many respects quite similar to the current legislative arrangements in the Republic of Ireland. Section 17 of the Civil Law (Miscellaneous Provisions) Act 2011 provides for statutory support for codes of practice in relation to licensing matters with a view to promoting and supporting compliance by licensees. Such a code may be prepared and published by the Minister (for Justice and Equality), or if the code has been drawn up by some other body (e.g. an industry body), it can be

approved by the Minister. Before publishing or approving a code there must be a consultation on the draft code. Section 17 provides the Minister with the power to amend or revoke a code of practice that either has been published or approved by the Minister.

In publishing or approving a code the Minister should have regard to:

- Reducing the risk of a threat to public disorder arising from the excessive consumption of intoxicating liquor.
- The health-related risks arising from the consumption of alcohol to an excessive extent.
- In the case of advertising, the promotion or marketing of intoxicating liquor and to what extent such advertising, promotion or marketing is intended or likely to encourage the consumption of alcohol.

A failure on the part of a licensee to observe any provision of a code of practice will not in itself render the licensee liable to any civil or criminal proceedings, but such failure '*shall be considered as relating to the good character of the licensee for the purposes of the renewal...of the licence in respect of the licensed premises concerned*'. Unlike the proposals in the Bill in Northern Ireland, it does not appear that the 2011 Act contains provisions to refuse the *granting* of a licence if the licensing body is not satisfied that the applicant is not aware of their responsibilities under a code published or approved by the Minister.

There is some indication that the government in the **Republic of Ireland** is, via the Public Health (Alcohol) Bill, seeking to move away from voluntary and self-regulatory alcohol-related retail, advertising and sponsorship codes of practice towards statutory regulation.

England and Wales

A mandatory 'alcohol retailing code' was one of a number of options considered by the UK Department of Health in the 2008 consultation 'Safe, Sensible, Social – consultation on further action'. At that time the UK Government believed that the existing voluntary industry led Code of Practice '*Social Responsibility Standards for the Promotion and Sale of Alcoholic Drinks in the UK*' should become a mandatory code and should cover issues such as alcohol social responsibility principles, the marketing of alcoholic drinks and irresponsible promotions for both on-sale and off-sale premises.

The government outlined three options in respect of the existing code in order that it could be adopted 'more widely, effectively and visibly by those within the alcohol industry'⁷⁴:

⁷⁴ Department of Health (2008) Safe, Sensible, Social – Consultation on further action.

Option	Anticipated Outcome
<p>Option 1: Government works with the licensed trade and alcohol producers to draw up and publish a revised standards code. It makes no statutory changes but encourages enforcement agencies to take adoption of the code into account when assessing premises during inspection and review.</p>	<p>The UK Government believed that with this option it would expect to see a modest increase in compliance. It expected understanding and adherence to the Code to improve but there was no strong evidence to suggest a voluntary code would be likely to have a significant impact on alcohol related harm or crime and disorder. Furthermore, it stated that a large minority of those who sell or produce alcohol are signatories to the existing voluntary code? As such there was little incentive to comply even for those who do belong to a trade association.</p>
<p>Option 2: As option 1 but additionally, through statute, Government would allow local authorities to agree mandatory restrictions or requirements on certain types of promotions and other activities. These would apply to all licensed premises in local areas that are experiencing problems.</p>	<p>The Government stated that it would expect there to be a legal requirement that certain licensed premises (as determined by the licensing authority in conjunction with the police) do not engage in certain types of promotion or activity. It was believed that this option would target those areas experiencing higher levels of alcohol-related crime and disorder by allowing mandatory conditions to be set for a number of premises simultaneously. These could apply to a number (or all) licensed premises in a local area experiencing problems.</p>
<p>Option 3: Legislate to create a stand-alone mandatory code for all or some of those selling alcohol or create a set of mandatory licensing conditions for all or new existing licences.</p>	<p>Under this option the Government would legislate to create a set of mandatory licensing conditions or a mandatory code setting out a range of activities that are and are not permitted. Breach of the code would be an offence which could lead to prosecution and a licence review and would be dealt with by enforcement authorities (i.e. police, trading standards) or the licensing authority. The Government believed that this option would create a set of minimum standards which the Government would expect alcohol retailers to adhere to and would ensure that best practice is shared and implemented consistently.</p>

The UK Government opted for a '[Mandatory Code for Alcohol Retailers in England and Wales](#)' and mandatory licensing conditions⁷⁵. The Mandatory Code was published by the Home Office in 2010 and outlines the new mandatory licensing conditions placed on licensed premises and certified clubs, one of these conditions is a ban on irresponsible promotions. The mandatory code is designed to accompany the legislation and to help licensees understand the types of alcohol promotions that are prohibited. The Mandatory conditions are within the [Licensing Act 2003 \(Mandatory Licensing Conditions\) \(Amendment\) Order 2010](#) and the [Licensing \(Mandatory Licensing Conditions\) \(Amendment\) 2014](#). The types of activities that are defined as 'irresponsible promotions' are set out in the schedule to the 2010 Order⁷⁶.

However, a number of issues with the mandatory licensing conditions approach was identified in a consultation by the Home Office published in 2013. A majority of respondents believed that the mandatory conditions were, in general, effectively promoting the licensing objectives in pubs and clubs. However, 58% of respondents did

⁷⁵ Mandatory Code for Alcohol Retailers in England and Wales. www.alcoholpolicy.net/2010/04/mandatory-code-comes-in-banning-irresponsible-promotions.html

⁷⁶ Woodhouse, J. (2015) Mandatory conditions for the sale of alcohol. House of Commons Library. <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN05351>

not believe that the mandatory licensing conditions did enough to target irresponsible promotions within the on-trade. Conversely, 56% of businesses who responded stated that they thought the mandatory conditions were doing enough to address irresponsible promotions⁷⁷.

In addition to the mandatory code and mandatory licensing conditions, there are industry-led codes of practice that seek to ensure that alcohol is promoted in a socially responsible manner. For example, the Portman Group's '[Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks](#)'⁷⁸. Similar to the Responsible Retailing Code NI, complaints about breaches in the Code are considered by an Independent Complaints Panel. However, it is a self-regulatory code and has not been formally approved by Government (using statutory powers of approval). However, the code has been recognised by Government, for example, the Alcohol Strategy for England and Wales gave a commitment to work with the Portman Group to ensure their Code of Practice is robust and actively encourages a positive promotion of alcohol as a social activity. The Strategy further states that the Government will work with the Portman Group to ensure that where unacceptable marketing does occur, it will result in the removal of the offending brands from retailers⁷⁹.

Scotland

In comparison to regulatory arrangements in Northern Ireland whereby examples of irresponsible promotions and advertising are outlined in a voluntary code, these are explicitly enshrined in Scottish legislation rather than in a voluntary or approved code of practice. [Schedule 3](#) of the Licensing (Scotland) Act 2005 contains a list of illegal irresponsible drinks promotions. Scottish Ministers may, via regulations, modify or add to the list. Additionally, [Section 5](#) of the Alcohol etc. (Scotland) Act 2010 contains further restrictions on promotions in off-licence premises (e.g. buy one get one free).

Premises licenses and occasional licences in Scotland also contain a mandatory licence condition restricting irresponsible promotions. Breaches in respect of the law on irresponsible promotions and licensing conditions are investigated by Licensing Boards (namely by Licensing Standards Officers). Licensing Boards are statutory bodies established under the Licensing (Scotland) Act 2005.

An [evaluation](#) of the 2005 Act published in 2013 reported there was a clear perception that the regulation of irresponsible promotions was limited to the on-sales sector (there were perceptions at the time the evaluation was conducted that the legislation was having a lesser effect on the off-sales trade). It was felt that the role of Licensing Standards Officers (LSOs), the police, Boards and licensing trade staff were thought to

⁷⁷ Home Office (2013) Analysis of responses to the consultation on delivering the Government's policies to cut alcohol fuelled crime and anti-social behaviour.

⁷⁸ Portman Group. Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks. www.portmangroup.org.uk/codes/alcohol-marketing/code-of-practice/code-of-practice

⁷⁹ HM Government (2012) The Government's Alcohol Strategy.

have contributed to the success in dealing with and preventing irresponsible promotions in on-trade premises.

Where LSOs had to deal with irresponsible promotions these had been resolved with relative ease with only the occasional breach arising, LSOs reported that licensing trade members had ‘raised their game’ and improved their practices in order to adhere to the legislation. It was suggested that there were several factors behind this, e.g. the legislation itself; the work of LSOs in proactively offering guidance and support and in supervising compliance, and members of the trade did not want their licences to come under review by the Licensing Board for their area⁸⁰.

What form of regulation will be the most effective?

A good regulatory regime should follow the five ‘Principles of Good Regulation, i.e. regulation should be⁸¹:

- *Proportional*: regulators should only intervene when necessary and enforcement regimes should be proportionate to the perceived problem or risk.
- *Accountable*: regulators must be able to justify decisions and be subject to public scrutiny; all those affected should be consulted before decisions are taken, clear standards should be set; there should be an accessible, fair and effective complaints and appeals procedure; and there should be clear lines of accountability to the relevant Ministers, to the Parliament/Assemblies and to the public.
- *Consistent*: regulators should be consistent and predictable in order to give stability and certainty to those being regulated and enforcement should be consistent.
- *Transparent*: regulators should be open, policy objectives should be clearly defined, effective consultation must take place before policy proposals are developed; regulations should be clear and simple; those being regulated should be made aware of their obligations; those being regulated should be given the time and support to comply; and the consequences of non-compliance should be made clear.
- *Targeted*: regulation should be focused on the problem and side effects should be minimised; enforcers should focus primarily on those whose activities give rise to the most serious risks; and regulation should be systematically reviewed to test whether they are still necessary and effective.

The current Responsible Retail Code NI is largely a self-regulatory code. A key question is *how well the current regulatory regime follows the principles of good regulation*. There are arguably a number of advantages to good self-regulation or a co-regulatory model (i.e. where public bodies and industry jointly regulate)⁸²:

⁸⁰ McGregor, A.; Sharp, C.; Mabelis, J. & Corbett, J. (2013) An evaluation of the implementation of, and compliance with, the objectives of the Licensing (Scotland) Act 2005. Evaluation commissioned by NHS Health Scotland. www.healthscotland.com/documents/21321.aspx

⁸¹ Better Regulation Taskforce. Principles of Good Regulation.

⁸² Bartle, I. & Vass, P. Self-regulation and the regulatory state – A survey of policy and practice. University of Bath.

- The knowledge and expertise of the industry can be used more effectively;
- It can be flexible and adaptable;
- There is a lower regulatory burden on business and thus the market can operate more freely;
- It can involve lower costs; and
- It encourages commitment, pride and loyalty within a profession or industry.

However, it is argued that it is necessary to ensure that self-regulatory schemes⁸³:

- Act in the public and not just private interests;
- Meet and be seen to meet statutory objectives; and,
- Have effective systems and processes of transparency and public accountability.

The current Responsible Retailing Code NI appears to be a comprehensive code and there may well be aspects of self-regulation that are working well. For example, when the Complaints Panel upholds a complaint, many licensed premises appear to be co-operative and reportedly cease the promotion immediately⁸⁴.

However, the strength of the current enforcement powers associated with the code may be less than ideal, given that it is voluntary and businesses are not compelled to comply with it (except those aspects that are enshrined in legislation). The Complaints Panel cannot, for example, impose direct financial penalties for non-compliance. However, upheld complaints are publicised in the media which may inflict a certain amount of injury to the reputation of the business involved. Additionally, upholding a complaint may raise awareness in the licensed premises involved, and amongst other licensed premises, that such promotions are not acceptable practices.

The proposals in the Bill to approve a code may lend more weight to such a code as, if it is effectively applied, there will be serious consequences set out in statute for applicants seeking the granting, transferring or renewal of a licence. For applicants seeking the *grant, transfer or renewal of a licence* there is an obligation to have an *awareness of their responsibilities* under an approved code. For those applicants seeking a *renewal*, the court must be also satisfied that the applicant has been *complying with a code of practice*.

However, there are perhaps a number of issues to consider in relation to the proposals for approved codes as currently set out in the Bill. For example:

⁸³ Ibid.

⁸⁴ Responsible Retailing Code NI website, News and complaints upheld. www.responsibleetailingcodeni.org/News-and-Complaints-Upheld

What existing voluntary or potential codes of practice would the Department consider approving?

By what process will the court assess that an applicant (or each club official in the case of registered clubs) is aware of their responsibilities under an approved code?

In relation to renewals, how will the court assess that an applicant has been complying with the code? To what degree will it take into consideration the seriousness of any breaches; repeat offences; and the time elapsed between breach and renewal application?

How, or to what extent, will the views of the code's complaints panel (or similar investigatory body) be taken into account in relation to a court's decision that an applicant is aware of their responsibilities under the approved code (and complied with the code in relation to applications for renewal licences)?

What is the rationale for not imposing financial penalties on licenced premises which have actually carried out and profited from an irresponsible promotion (aside from penalties for those irresponsible promotions currently outlined in legislation)?

If the proposals under Clause 13 become law, will the Department carry out an evaluation/review of the effectiveness of the approved code arrangements? If so, how long after the approval of the code should this happen? Should it be reviewed on a regular basis?

If a serious breach is identified is it possible to carry out an immediate review of the premises licence or a club's registration?

Should there be a statutory requirement for a formal annual report of such a code to be presented to the Department?

Should a licensee be required to display a copy of an approved code in the licensed premises?

By what means will the Department or industry bodies promote/raise awareness of an approved code (i.e. amongst licensed premises, registered clubs, the general public) and the consequences attached to non-compliance with an approved code?

Should details of irresponsible drinks promotions be included in legislation rather than a code? Would this be more or less effective in reducing alcohol-related harm and/or crime and disorder? Would it be a cost effective approach to the regulation of irresponsible promotions?

Are mandatory licensing conditions with an accompanying mandatory code of practice an acceptable and effective alternative to approved codes of practice? If not, why not?

3.12 Clause 14: Removal of Exemption for Angostura Bitters

What is the current law?

Angosturas bitters are a type of flavouring made in Trinidad and Tobago by Angostura Limited. It is typically used as a low volume ingredient (i.e. applied as a 'dash'/or a few drops) in the preparation of both food and drink, particularly cocktails. Angostura Bitters is highly concentrated with an alcohol content of 44.7%. However, despite this it is currently (under the Licensing (Northern Ireland) Order 1996) exempt from the definition of 'intoxicating liquor'⁸⁵. This is because Angostura bitters were previously exempt from excise duty and thus could be sold without a licence.

The UK Government announced in Budget 2011 its intention to repeal a number of excise duty exemptions including the excise duty on Angostura bitters. Its rationale for this was twofold:

- (i) the excise exemption was granted in 1970 in order to support Trinidad's economy at that time and there is no evidence to suggest that continued support is required; and,
- (ii) the exemption is distortive because it applies to only one brand of bitters rather than all similar products⁸⁶.

Angostura bitters are now subject to excise duty, and as a result they can no longer be exempt from the definition of 'intoxicating liquor' and should only be sold by licensed premises.

What are the proposed changes?

Clause 14 of the Licensing and Registration of Clubs (Amendment) Bill contains provisions to amend the Licensing (Northern Ireland) Order 1996 to remove the exemption of Angostura bitters from the definition of 'intoxicating liquor'. In other words, they will now be classified as intoxicating liquor and can only be sold by licensed premises. This part of the Bill brings Northern Ireland into line with the rest of the UK. **Scotland**, for example, has put in place the same provision in [section 54](#) of the Air Weapons and Licensing (Scotland) Act 2015.

⁸⁵ The 1996 Order defines "intoxicating liquor" as "spirits, wine, beer, cider and any other fermented distilled or spirituous liquor".

⁸⁶ HM Revenue & Customs. Angostura Bitters: Repeal of Relief.
www.gov.uk/government/uploads/system/...data/.../ots_angostura_bitters.pdf

What was the outcome of the public consultation?

There were 1,400 responses to the question ‘*To what extent do you agree that the Department should change the law to ensure Angostura Bitters can only be sold in licensed premises?*’ 19% of respondents agreed/strongly agreed; 28% disagreed/strongly disagreed; and 52% neither agreed nor disagreed.

There were several themes emerging from the responses. For example:

- Angostura bitters was a substance not likely to be abused or consumed on its own;
- Angostura bitters should be treated as any other alcohol product and only sold in licensed premises where consumption can be monitored;
- It made sense to harmonise the law throughout the UK;
- Such a change would not have an onerous impact.

Discussion Points

HM Revenue & Customs has stated that the exemption from excise duty and the reclassification of Angostura bitters was expected to have a negligible impact on the Exchequer. Importation of the product to the UK is relatively limited (an estimated 240,000 bottles per year). It could have very small negative impact on individuals and households who consume Angostura bitters (e.g. may increase the price of a 200ml bottle by between £2-£3 but was not deemed to be a major issue by HMRC as the product is typically consumed as a ‘dash’ (only a few drops at a time)⁸⁷.

3.13 Clause 15: Sporting clubs: extension of premises

What is the current law?

At present, sporting clubs may apply for a special occasion authorisation under Article 26 of the Registration of Clubs (Northern Ireland) Order 1996. This can include, for example, an extension of the hours during which it is permitted to supply alcohol from 11pm to 1am on weekdays or from 10pm to 12am on Sundays. Clubs can apply for up to 52 extensions per year.

However, while under this article clubs can apply for an extension in hours, they cannot apply for an extension to the area of the premises covered by their licence.

What are the proposed changes?

Clause 15 of the Bill would enable sporting clubs to apply to the PSNI for an ‘extension of the area of the premises in respect of which the club is registered’. The number of days for which such an extension can apply must not be greater than five. The club

⁸⁷ HM Revenue & Customs. Angostura Bitters: Repeal of Relief.

must submit a plan indicating 'the area of the proposed extension'. No more than six extensions can be applied for in one year by a club.

It is stated in the Bill's Explanatory Memorandum that the intention of this clause is to allow 'a sporting club to extend the area of its premises which is registered to supply intoxicating liquor for the purpose of holding a function'.

This would mean, for example, that a club could serve alcohol on the whole of its premises, or apply for a temporary marquee on its property, on certain occasions throughout the year, such as at awards ceremonies or end-of-season dinners.

What was the outcome of the public consultation?

The public consultation, 'Proposed changes to the law regulating the sale and supply of alcohol in Northern Ireland', did not ask a specific question about the extension of licensed premises for sporting clubs. However, some of the other questions asked are related to this issue. For example, in response to a question about 'the types of arrangements that may be put in place to ensure that alcohol is sold, supplied or consumed on the premises at any event organised for young people under 18 years of age', suggestions were submitted about increased security at such events where under 18s are present, and identification checks to ensure that under 18s are not served alcohol⁸⁸.

Elsewhere in the consultation, the issue of a relaxation in regulation for clubs was raised. Some expressed concerns that private member clubs could compete directly with the hospitality industry.

Some positive views were expressed in response to the consultation about the broader role which clubs play in society. For example, in response to a question about sporting clubs remaining open until 11pm in the summer months, views were expressed about the role which clubs play in society, and specifically about the 'diversionary activities to young people over the summer period which may reduce complaints of anti-social behaviour'.

Discussion

A further question is whether the consumption of alcohol within sports clubs contributes to higher levels of drinking among participants of team sports. A study of almost a thousand players of Gaelic Athletic Association (GAA) sports in the **Republic of Ireland** found that participants drank more than the general population of the same age⁸⁹. The average annual alcohol consumption among GAA players was 12.5 litres; almost one third of drinkers within that cohort reported drinking over the recommended

⁸⁸ Department for Social Development. 2013. Proposed changes to the law regulating the sale and supply of alcohol in Northern Ireland: Outcome report: <http://nia1.me/3dy>

⁸⁹ O'Farrell, AM, Allwright, SPA, Kenny, SC, Roddy, G & Eldin, N. 2010. 'Alcohol use among amateur sportsmen in Ireland', *BioMed Central Research Notes* 3:313.

limit of 21 standard drinks per week; and almost all of the sample reported at least one event of alcohol-related harm. While these conclusions are based on a study of GAA players only, similar levels of alcohol misuse and alcohol-related harm have been found in other regular participants in sport elsewhere in the world, particular in cases of team sport⁹⁰.

If clubs are able to temporarily extend the bounds of the premises on which they are able to supply alcohol, and therefore potentially increase the numbers of people able to consume alcohol within a sports club setting, is there a risk that alcohol-related harm and alcohol misuse among participants in sport may increase?

Is it the case that measures which may support sports clubs in seeking to attract members and to be financially viable may serve to attract young people into sport and distract them from the potential of anti-social behaviour?

3.14 Clause 20: Young people in sporting club premises

What is the current law?

The Licensing and Registration of Clubs (Amendment) Act (Northern Ireland) 2011 amended the 1996 Clubs Order to extend the latest time in which young people under the age of 18 were permitted to be present in the bar area of a sporting club⁹¹ from up until 9pm to up until 10pm. The 2011 Act also increased the number of occasions each year (from 52 to 85) on which registered clubs may keep their bars open to 1am rather than the earlier closing time of 11pm. The Minister for Social Development at that time stated that these flexibilities were provided to help clubs, and in particular sporting clubs, to '*maintain profitability and continue the valuable contributions they make to their communities*'⁹².

What is a 'sporting club'?

The Guide to the Registration of Clubs (NI) Order 1996 provides the following commentary on the definition of a 'sporting club':

'Under the [1996 Order], sporting clubs are defined as those occupying a hereditament to which Article 31 of the Rates (Northern Ireland) 1977

⁹⁰ See, for example: Sønderlund, AL, O'Brien, K, Kremer, P, Rowland, B, De Groot, F, Staiger, P, Zinkiewicz, L & Miller, PG. 2013. 'The association between sports participation, alcohol use and aggression and violence: A systematic review', *Journal of Science and Medicine in Sport* 17: 2–7; Wechsler, H. et al. 1997. 'Binge drinking, tobacco, and illicit drug use and involvement in college athletics', *Journal of American College Health* 45: 195–200; Leichter, J. et al. 1998. 'Alcohol use and related consequences among students with varying levels of involvement in college athletics', *Journal of American College Health* 46(6): 257–262; Lorente, FO. Et al. 2004. 'Participation in sports and alcohol consumption among French adolescents', *Addictive Behaviors* 29(5): 941–946.

⁹¹ Or any other area used exclusively or mainly for the supply, consumption or storage of alcohol.

⁹² Northern Ireland Assembly Official Report. Licensing and Registration of Clubs (Amendment) Bill: Final Stage. 22 February 2011.

applies (rates relief) being a hereditament which is used solely or mainly for the purposes of physical recreation.

The phrase “solely or mainly” is particularly important here. It means that clubs with a room set aside for darts or snooker or which have football teams cannot necessarily regard themselves as sporting clubs. Many clubs indulge in sporting activities as a sideline or even support particular sporting teams, but as they do not exist solely or mainly to actively participate in one or more physical recreations, they are unlikely to be regarded as sporting clubs for the purposes of the Order.’

What are the proposed changes?

Clause 20 of the Bill amends the 1996 Clubs Order to further extend the latest time in which young people are permitted to be in the bar area of a sporting club premises from up until 10pm to up until 11pm during summer months (i.e. 1 June to 31 August).

The Department states that this provision is intended to support the valuable contribution that clubs make in encouraging young people to get involved in sporting activities during the summer months.

The Bill also contains provisions to allow a young person under the age of 18 to remain in the bar area until 11pm to attend one prize giving ceremony at any other time in the calendar year.

The Department highlights that clubs tend to hold awards ceremonies celebrating sporting achievements in the evening and that these can include presentations to young people. The provisions of the Bill relating to awards ceremonies are intended to celebrate and reward the participation of young people in sporting activities⁹³.

What was the outcome of the public consultation?

There were 1,422 responses to the question, ***‘To what extent would you agree that young persons under 18 years of age should be permitted to be in a sporting club until 11pm during the summer months?’***. A majority of respondents (56%) agreed/strongly agreed; 16% disagreed/strongly disagreed; and 28% neither agreed nor disagreed.

Those who agreed expressed support for the role which clubs have in society and acknowledged that sporting activities run later during the summer months. They also saw the proposal as an opportunity to provide diversionary activities to young people over the summer period potentially reducing complaints of anti-social behaviour.

⁹³ Department for Communities. Summary of the Liquor Licensing and Registration of Clubs (Amendment) Bill. www.communities-ni.gov.uk/publications/licensing-and-registration-clubs-amendment-bill

Those not in support of the proposal were concerned about young people's exposure to, and consumption of, alcohol.

There were 1,422 responses to the question, '**What in your view, constitutes 'summer months'?**'. The highest proportion of respondents (36%) felt that summer months were June, July and August; 25% of respondents defined summer months as April through to September.

3.15 Clause 22: Restrictions relating to advertisements

What is the current law?

Private members' clubs that hold a certificate of registration may supply alcohol to members and guests. Under current legislation, the advertising of club functions is significantly restricted in that clubs cannot advertise functions in the media (unless the function involves a sport, game or recreational activity). The '[Guide](#) to the Registration of Clubs (Northern Ireland) Order 1996 explains⁹⁴:

'Registered clubs are members' clubs and as such, are not allowed to be run as commercial enterprises. A club cannot legally open club events to all and sundry and advertise the fact in a local newspaper. To do so would imply that the club is not operating as a bone fide members' club, with admission strictly limited.'

Advertising club facilities suggests that the facilities are for hire or for use by members of the public and this is not permitted. The Order provides that advertising a function on club premises is illegal unless it takes the form of notices displayed inside club premises or relates to a function involving any sport, game or physical recreation.

Where these provisions are not adhered to, the club, every official at the time of the issue of the advertisement and the person involved in issuing the advertisement may be guilty of an offence and liable to a fine of up to level 4 on the standard scale (currently £2,500).'

What are the proposed changes?

The Bill contains provisions to lift the advertising restrictions on clubs. It is proposed that clubs will be permitted to advertise functions (that are being held in their premises) in the media (e.g. newspapers). However, the advertisement must include a clear statement to the effect that a function may only be attended by members of the club and guests of members of the club. Such a statement is not necessary if the

⁹⁴ Department for Social Development. Guide to the Registration of Clubs (Northern Ireland) Order 1996. www.communities-ni.gov.uk/publications/registration-clubs-guide

advertisement relates to a function in which the whole proceeds are (after deduction of the expenses of the function) to be devoted to charitable or benevolent purposes.

The Department is of the view that lifting the advertising restrictions in relation to functions may assist clubs in financing the sporting, recreational and social activities that they make available to local communities.

What was the outcome of the public consultation?

There were 1,432 responses to the question '**To what extent would you agree to the removal of advertising restrictions in relation to functions held on private member club premises?**'. A significant proportion of respondents held no particular view on the issue with 46% neither agreeing nor disagreeing; 27% agreed/strongly agreed with removing the restrictions; and 27% disagreed/strongly disagreed that the advertising restriction should be removed.

Those who agreed with the removal of the restrictions emphasised that the advertisements should clearly state that the function is for members and guests only. Those not in support of the proposals believed that it would encourage registered clubs to compete with the hospitality industry and this was unfair to licensed premises who are subjected to greater regulation and commercial rates.