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**AN BILLE DEOCHANNA MEISCIÚLA 2008  
INTOXICATING LIQUOR BILL 2008**

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*Mar a tionscnaíodh  
As initiated*

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[No. 32 of 2008]

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### SCHEDULE 1

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#### INCREASE OF CERTAIN FINES IN CRIMINAL JUSTICE (PUBLIC ORDER) ACT 1994



#### ACTS REFERRED TO

Building Control Act 1990	1990, No. 3
Courts (No. 2) Act 1986	1986, No. 26
Courts of Justice Act 1924	1924, No. 10
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Finance (1909-10) Act 1910	10 Edw. 7, c.21
Housing (Miscellaneous Provisions) Act 2002	2002, No. 9
Intoxicating Liquor Act 1927	1927, No. 15
Intoxicating Liquor Act 1943	1943, No. 7
Intoxicating Liquor Act 1960	1960, No. 18
Intoxicating Liquor Act 1962	1962, No. 21
Intoxicating Liquor Act 1988	1988, No. 16
Intoxicating Liquor Act 2000	2000, No. 17
Intoxicating Liquor Act 2003	2003, No. 31
Licensing Act (Ireland) 1874	1874, c.69
Licensing Acts 1833 to 2004	37 & 38 Vict., c.69
Registration of Clubs Acts 1904 to 2004	



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AN BILLE DEOCHANNA MEISCIÚLA 2008  
INTOXICATING LIQUOR BILL 2008

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# BILL

*entitled*

5 AN ACT TO AMEND AND EXTEND THE LICENSING ACTS  
1833 TO 2004, THE COURTS OF JUSTICE ACTS 1924 TO  
1961, THE REGISTRATION OF CLUBS ACTS 1904 TO 2004  
AND THE CRIMINAL JUSTICE (PUBLIC ORDER) ACT  
1994, AND TO PROVIDE FOR RELATED MATTERS.

10 BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

## PART 1

### PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Intoxicating Liquor Act 2008. Short title,  
collective citations,  
construction and  
commencement.

15 (2) The Licensing Acts 1833 to 2004 and *section 3, Part 2* and  
*Schedule 1*, in so far as they amend and extend those Acts, may be  
cited together as the Licensing Acts 1833 to 2008 and shall be con-  
strued together as one.

20 (3) The Courts of Justice Acts 1924 to 1961 and *section 7(a)*, to  
the extent that it extends those Acts, may be cited together as the  
Courts of Justice Acts 1924 to 2008 and shall be construed together  
as one.

25 (4) The Registration of Clubs Acts 1904 to 2004 and *sections 13*  
and *15*, in so far as they amend and extend those Acts, may be cited  
together as the Registration of Clubs Acts 1904 to 2008 and shall be  
construed together as one.

(5) This Act shall come into operation on such day or days as the  
Minister may fix by order, either generally or with reference to any  
particular purpose or provision, and different days may be so fixed  
for different purposes and different provisions.

30 2.—In this Act, unless the context otherwise requires— Interpretation.

“Act of 1910” means the Finance (1909-10) Act 1910;

“Act of 1927” means the Intoxicating Liquor Act 1927;

“Act of 1960” means the Intoxicating Liquor Act 1960;

“Act of 1962” means the Intoxicating Liquor Act 1962;

“Act of 1986” means the Courts (No. 2) Act 1986;

“Act of 1988” means the Intoxicating Liquor Act 1988;

“Act of 1994” means the Criminal Justice (Public Order) Act 1994; 5

“Act of 2000” means the Intoxicating Liquor Act 2000;

“Act of 2003” means the Intoxicating Liquor Act 2003;

“beer retailer’s off-licence” has the meaning assigned to it by the Act of 1910;

“licence” means a licence for the sale of intoxicating liquor, whether 10 granted on production or without production of a certificate of the Circuit Court or District Court;

“licensed premises” means premises in respect of which a licence is in force and, in relation to a licensee, means the licensed premises of the licensee; 15

“licensee” means the holder of a licence;

“Minister” means the Minister for Justice, Equality and Law Reform;

“off-licence” means a licence for the sale of intoxicating liquor for consumption off the premises;

“on-licence” means a licence for the sale of intoxicating liquor for 20 consumption either on or off the premises;

“spirit retailer’s off-licence” has the meaning assigned to it by the Act of 1910;

“wine retailer’s off-licence” has the meaning assigned to it by the Act of 1910. 25

Repeals.

3.—The following enactments are repealed:

- (a) section 4 (as amended by section 10 of the Act of 1960) of the Act of 1927; and
- (b) section 15 (as amended by section 11 of the Act of 2000) of the Act of 1962. 30

## PART 2

### SALE AND CONSUMPTION OF INTOXICATING LIQUOR

Amendment of section 2 of Act of 1927.

4.—Section 2 (inserted by section 25 of the Act of 1988 and as amended by section 3 of the Act of 2000 and section 10 of the Act of 2003) of the Act of 1927 is amended— 35

- (a) in subsection (1)(b), by inserting “subject to subsection (1C),” before “on any other day”,
- (b) in subsection (1A), by substituting “Without prejudice to subsection (1C), the” for “The”, and

(c) by inserting the following subsection after subsection (1B):

5 “(1C) Without prejudice to subsection (1)(a), it shall not be lawful for any person to sell any intoxicating liquor, for consumption off the premises concerned (whether or not it is an on-licence or an off-licence attached to the premises), on any day, as specified hereunder, outside the times so specified in respect of it—

(a) Saint Patrick’s Day: between 12.30 p.m. and 10.00 p.m.,

10 (b) any Sunday: between 12.30 p.m. and 10.00 p.m., and

(c) any day other than Saint Patrick’s Day or a Sunday: between 10.30 a.m. and 10.00 p.m.”.

15 5.—The Revenue Commissioners shall not grant a new wine retailer’s off-licence to a person unless a certificate is presented to them which has been received by the person from the District Court and which entitles the person to a wine retailer’s off-licence.

New wine retailer’s off-licence shall not be granted except pursuant to certificate issued by District Court.

20 6.—(1) The District Court may refuse to give to a person a certificate entitling him or her to receive a new relevant off-licence in respect of premises on the grounds of—

Grounds on which District Court may refuse to give certificate in respect of new relevant off-licences.

(a) the character, misconduct or unfitness of the person,

(b) the unfitness or inconvenience of the premises,

(c) the unsuitability of the premises for the needs of persons residing in the neighbourhood, or

25 (d) the adequacy of the existing number of licensed premises of the same character in the neighbourhood.

30 (2) The District Court may impose a condition, on giving a certificate referred to in *subsection (1)*, relating to the installation, use or operation, or any combination thereof, of a closed circuit television system in respect of the premises concerned and, accordingly, if there is any failure to comply with such condition, such failure shall relate to the good character of the licensee for the purposes of the renewal under the Act of 1986 of the relevant off-licence concerned.

35 (3) At the hearing by the District Court of an application by a person to give to the person a certificate entitling him or her to receive a new relevant off-licence in respect of premises—

(a) the Superintendent of the Garda Síochána within whose district the premises are situate, and

(b) any person who resides in the neighbourhood,

40 may object to the application and, for that purpose, may appear and give evidence.

(4) Notwithstanding the Licensing Acts 1833 to 2004—

(a) the District Court may not refuse to give a certificate referred to in *subsection (1)* on grounds where it has a

discretion to so refuse except on the grounds specified in that subsection, and

- (b) only a person who falls within *paragraph (a) or (b) of subsection (3)* in respect of the application concerned may object to the application. 5

(5) For the purposes of the application of section 4 of the Act of 1986 to any renewal of a wine retailer's off-licence, the Superintendent of the Garda Síochána within whose district the licensed premises concerned are situate shall be deemed to be a person who, pursuant to subsection (6) of that section, may object to the renewal of such licence. 10

(6) This section shall not apply to an application, made by a person to give to the person a certificate entitling him or her to receive a new relevant off-licence in respect of premises, in respect of which service of the notice of the application has been effected in accordance with the District Court Rules 1997 (S.I. No. 93 of 1997) before the commencement of this section. 15

(7) In this section, "relevant off-licence" means—

- (a) a spirit retailer's off-licence,  
(b) a beer retailer's off-licence, and 20  
(c) a wine retailer's off-licence.

Provisions supplementary to sections 5 and 6.

7.—For the purposes of *sections 5 and 6*—

- (a) the District Court shall have and may exercise, in relation to a wine retailer's off-licence and with any necessary modifications, all the powers, jurisdictions and authorities which the District Court has and may exercise, in relation to a spirit retailer's off-licence, pursuant to section 77 of the Courts of Justice Act 1924 except any such powers, jurisdictions and authorities to the extent that they are applicable to the transfer of a spirit retailer's off-licence, and 25 30  
(b) section 10 (inserted by section 9 of the Act of 1986) of the Licensing Act (Ireland) 1874 shall apply, in relation to a new wine retailer's off-licence and with any necessary modifications, as such section 10 applies to a new spirit retailer's off-licence. 35

Amendment of section 3 of Act of 1927.

8.—Section 3 (as amended by section 4 of the Act of 2000) of the Act of 1927 is amended by substituting the following subsections for subsection (2):

"(2) Subject to subsection (3), where non-licensed business is carried on in any premises to which an off-licence is attached, the holder of the licence shall ensure that either— 40

- (a) not later than the first anniversary of the commencement of *section 8* of the *Intoxicating Liquor Act 2008*— 45

(i) the exposure for sale and the sale of intoxicating liquor is exclusively confined to a part of the licensed premises—

(I) which is structurally separate from the remainder of the premises by means of a wall or similar barrier,

(II) to which access from the remainder of the premises by members of the public may only be obtained by means of a door, gate or turnstile or similar means of access,

(III) which members of the public do not have to pass through in order to obtain access to the remainder of the premises, and

(IV) in which none of the non-licensed business is carried on except the exposure for sale and the sale of any non-alcoholic beverage (including the payment for any article of such beverage) which is also, and at the same times, exposed for sale and sold in the remainder of the premises,

and

(ii) the only place within the premises at which members of the public may pay for intoxicating liquor is at a counter or point of sale situated within the part referred to in subparagraph (i),

or

(b) not later than the first anniversary of the commencement of *section 8* of the *Intoxicating Liquor Act 2008*, the exposure for sale and the sale of intoxicating liquor is exclusively confined to a part of the premises to which access by members of the public is prevented in such a manner that the sale of intoxicating liquor to members of the public by means of self-service cannot be effected.

(3) Subsection (2) shall not apply in relation to—

(a) any premises the subject of a licence granted under Part IV of the *Intoxicating Liquor Act 1943*, or

(b) any premises where the only non-licensed business carried on is the exposure for sale and the sale of—

(i) non-alcoholic beverages,

(ii) ice,

(iii) confectionery, and

(iv) such other commodities (other than cigarettes, tobacco, cigars and matches), if any, as may be prescribed in regulations made under subsection (4) for the purposes of this subparagraph.

(4) Subject to subsection (5), the Minister may make regulations to prescribe commodities for the purposes of subparagraph (iv) of paragraph (b) of subsection (3).

(5) The Minister shall not prescribe a commodity under regulations made under subsection (4) unless the Minister is satisfied that the commodity is ancillary to, and connected with, the exposure for sale and the sale of intoxicating liquor. 5

(6) Every regulation made under subsection (4) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling it is passed by either House within the next subsequent 21 days on which that House has sat after the regulation is laid before it, it shall be annulled accordingly, but without prejudice to the validity of anything previously done under it. 10

(7) A person who contravenes subsection (2) is guilty of an offence and liable— 15

(a) on summary conviction, to a fine not exceeding €5,000, or

(b) on conviction on indictment, to a fine not exceeding €100,000. 20

(8) A person guilty of an offence under subsection (7) shall, on each day after having been convicted of such offence on which he or she continues to contravene subsection (2) in relation to the premises to which that offence relates, be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €2,000. 25

(9) In this section, ‘self-service’, in relation to intoxicating liquor exposed for sale or sold in any premises, means any method of sale which permits a member of the public to supply himself or herself with an article of intoxicating liquor so exposed or sold before payment for the article.”. 30

Amendment of section 5 of Act of 1927.

9.—Section 5 (inserted by section 11 of the Act of 2003) of the Act of 1927 is amended—

(a) in subsection (1), in the definition of “special exemption order”, by inserting “, or the holder of a theatre licence,” after “on-licence”, 35

(b) by substituting the following subsections for subsection (4):

“(4) A special exemption order—

(a) shall contain the following conditions: 40

(i) that intoxicating liquor shall not be sold at the event, function or dance to which the order relates during the hours specified in the order to persons other than those attending the event; 45

(ii) that members of the public, other than persons so attending, shall not be admitted to



the part of the premises in which intoxicating liquor is being supplied or consumed pursuant to the order;

5 (iii) that the event, function or dance is held in compliance with the relevant provisions of the definition of ‘special occasion’ in subsection (1);

10 (iv) that, in the case of a special occasion which does not fall within paragraph (a)(ii) of the definition of ‘special occasion’ in subsection (1), a closed circuit television system be in operation on the premises concerned during the course of the special occasion; and

15 (v) if subparagraph (iv) is applicable but the premises concerned do not have a closed circuit television system installed in them, that a closed circuit television system be installed in them for the purposes of that  
20 subparagraph;

and

(b) may contain such other conditions as the Court thinks proper.

25 (4A) Nothing in subparagraphs (i) to (v) of paragraph (a) of section (4) shall prejudice the generality of paragraph (b) of that subsection.”,

(c) in subsection (5), by inserting “(including reasons related to maintaining public order)” after “reasons”, and

(d) by substituting the following subsection for subsection (6):

30 “(6) The Court shall not grant a special exemption order in respect of any premises unless it is satisfied that—

(a) the premises comply with the fire safety standards under the Building Control Act 1990 applicable to such premises, and

35 (b) the special occasion will be conducted in a manner that will not—

(i) cause undue inconvenience or nuisance to persons residing in the locality, or

40 (ii) create an undue threat to public order or public safety in the locality.”.

**10.**—Section 21 of the Act of 1927 is amended—

(a) in subsection (1), by deleting “not”, and

(b) in subsection (2), by substituting “Subject to subsection (1), in” for “In”.

Amendment of section 21 of Act of 1927.

Amendment of section 30 of Act of 1988.

**11.**—Section 30 of the Act of 1988 is amended by inserting the following definition after the definition of “age card”:

“ ‘bottle or container’ means a bottle or container irrespective of whether—

(a) the bottle or container is opened or unopened, and 5

(b) any or all of the contents of the bottle or container have been or are being consumed,

and includes the contents of the bottle or container;”.

Amendment of section 36A of Act of 1988.

**12.**—Section 36A (inserted by section 13 of the Act of 2000) of the Act of 1988 is amended, in subsection (2), in paragraph (a), by substituting “of not less than 2 and not more than” for “not exceeding”. 10

Insertion of new sections 37A, 37B and 37C into Act of 1988.

**13.**—The Act of 1988 is amended by inserting the following sections after section 37:

“Power to seize intoxicating liquor in possession of person under age of 18 years, etc.

37A.—(1) This section applies where a member of the Garda Síochána believes with reasonable cause that— 15

(a) a person under the age of 18 years is in a relevant place alone or accompanied by another person, 20

(b) a bottle or container which contains intoxicating liquor is in the possession of the relevant person or the accompanying person, and

(c) such intoxicating liquor (whether in whole or in part) has been, is being, or is intended to be, consumed by the relevant person in such relevant place or another relevant place. 25

(2) Where this section applies, the member may— 30

(a) seek an explanation from the relevant person or, as appropriate, the accompanying person, as to all or any of the matters to which the relevant belief relates, and 35

(b) do one or more of the following, if such person fails or refuses to give such an explanation or if such an explanation is given, and in either case the member remains of the relevant belief: 40

(i) request such person in possession of the bottle or container to immediately give it to the member (or to another member of the Garda Síochána accompanying the member) and at the same time as the request is made give to such 45

5 person a warning in ordinary language that a failure or refusal to comply with the request may lead to the seizure of the bottle or container or to his or her arrest or to both (or words to the like effect);

10 (ii) if such person fails or refuses to comply with the request, seize, detain and remove, without warrant, the bottle or container with the use, if necessary, of such force as is reasonable in the circumstances;

15 (iii) request the relevant person to provide the member with his or her name, address and age.

(3) Where—

20 (a) a person fails or refuses to comply with a request made by the member under subparagraph (i) or (iii) of paragraph (b) of subsection (2), or

25 (b) the member has reasonable grounds for believing that the name, address or age provided to the member, in compliance with a request made by the member under subparagraph (iii) of paragraph (b) of subsection (2), is false or misleading,

30 the member may arrest such person without warrant.

(4) A person who—

35 (a) fails or refuses to comply with a request made by the member under subparagraph (i) or (iii) of paragraph (b) of subsection (2), or

40 (b) in purported compliance with a request made by the member under subparagraph (iii) of paragraph (b) of subsection (2), provides to the member a name, address or age which is false or misleading,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €500.

45 (5) Where the member or another member of the Garda Síochána has been given, or has seized, detained and removed, a bottle or container pursuant to this section, the member shall—

50 (a) dispose of the bottle or container in such manner as he or she considers appropriate, and

(b) make and retain, or cause to be made and retained, a record in writing of the manner, date and place of such disposal.

(6) Nothing in this section shall prejudice the operation of the other provisions of this Act or of the Criminal Justice (Public Order) Acts 1994 and 2003. 5

(7) In this section—

‘relevant belief’, in relation to a member of the Garda Síochána, means the belief referred to in subsection (1) of the member; 10

‘relevant person’ means the person first-mentioned in paragraph (a) of subsection (1);

‘relevant place’ means a place other than a place used as a private dwelling. 15

Power of entry for purposes of section 37A, etc.

37B.—A member of the Garda Síochána may enter without warrant a place other than a place used as a private dwelling if the member has reasonable grounds for believing that— 20

(a) the matters specified in paragraphs (a), (b) and (c) of subsection (1) of section 37A, or

(b) the matters specified in paragraphs (a), (b) and (c) of subsection (1) of section 8A (inserted by section 18 of the *Intoxicating Liquor Act 2008*) of the Criminal Justice (Public Order) Act 1994, 25

are occurring in such place. 30

Test purchasing of intoxicating liquor.

37C.—(1) A member of the Garda Síochána may, in the course of his or her duty as such member, send a person who is at least 15 years of age but under the age of 18 years into licensed premises for the purpose of the person purchasing intoxicating liquor therein if but only if— 35

(a) the parent or guardian of the person has consented, in writing, to him or her being sent into those premises for that purpose, and 40

(b) the member is satisfied that all reasonable steps have been or will be taken to avoid harm to the welfare of the person.

(2) Section 32(3) (inserted by section 13 of the *Intoxicating Liquor Act 2003*) shall not apply to a member of the Garda Síochána in any case where the member sends a person into licensed premises in accordance with subsection (1). 45

5 (3) Paragraphs (a) and (c) of section 33(1) shall not apply to a person in any case where a member of the Garda Síochána sends the person into licensed premises in accordance with subsection (1) and the person, whilst in those premises—

- (a) purchases intoxicating liquor, or
- (b) represents himself or herself for the purpose of obtaining, or being permitted to consume, intoxicating liquor, to be over the age of 18 years,

as the case requires.

15 (4) This section shall also apply in relation to a club registered under the *Registration of Clubs Acts 1904 to 2008* as if references in this section to licensed premises were references to such a club and with any other necessary modifications.”.

14.—Section 9(2)(a) of the Act of 2003 is amended by substituting “of not less than 2 and not more than” for “not exceeding”. Amendment of section 9 of Act of 2003.

20 15.—(1) Subject to *subsection (2)*, the Minister may make regulations— Regulations relating to sale, supply and consumption of intoxicating liquor.

- 25 (a) prohibiting or restricting a person from advertising or promoting the sale or supply of intoxicating liquor at a reduced price or free of charge on the purchase of any quantity of intoxicating liquor or of any other product or service,
- (b) prohibiting or restricting a licensee from selling or supplying intoxicating liquor at a reduced price or free of charge to any person on the purchase by that person, or by any other person, of any quantity of intoxicating liquor or of any other product or service,
- 35 (c) prohibiting or restricting a person from doing or permitting, for the purposes of promoting that person’s business or any event or activity taking place in a place other than a place used as an occupied private residence, anything that is intended or likely to encourage persons in that place to consume intoxicating liquor to an excessive extent.

40 (2) In making regulations under this section, the Minister shall have regard to the need to reduce the consumption by persons of intoxicating liquor to an excessive extent and, without prejudice to the generality of that need, in particular have regard to—

- 45 (a) the need to reduce the risk of a threat to public order arising from the consumption of intoxicating liquor to an excessive extent,
- (b) the health-related risks arising from the consumption of intoxicating liquor to an excessive extent, and
- (c) in the case of advertising referred to in *subsection (1)* where the Minister is satisfied that the medium used for

the advertising, or the nature of the advertising, or both, is intended or likely to encourage the consumption of intoxicating liquor to an excessive extent, the need to prohibit or restrict such advertising.

(3) Regulations made under this section may be expressed to apply by reference to one or more of the following: 5

- (a) a class or classes of licensed premises;
- (b) a class or classes of non-licensed premises (other than occupied private residences);
- (c) a class or classes of intoxicating liquor; and 10
- (d) a class or classes of advertising.

(4) Regulations made under this section may provide that a person who contravenes any of their provisions is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding €5,000, or 15
- (b) on conviction on indictment, to a fine not exceeding €100,000.

(5) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling it is passed by either House within the next subsequent 21 days on which that House has sat after the regulation is laid before it, it shall be annulled accordingly, but without prejudice to the validity of anything previously done under it. 20

(6) For the purposes of this section, the sale or supply of intoxicating liquor at a reduced price or free of charge includes— 25

- (a) the award, whether directly or indirectly, of bonus points, loyalty card points, or any similar benefit, to any person arising from the purchase by that person, or by any other person, of any intoxicating liquor, and
- (b) the use of any such points or benefit, whether directly or indirectly, to obtain intoxicating liquor, or any other product or service, at a reduced price or free of charge. 30

(7) This section shall also apply in relation to a club registered under the Registration of Clubs Acts 1904 to 2008 as if references in this section to a licensee were references to the secretary of such a club and with any other necessary modifications. 35

**16.**—Each provision mentioned in *column (2)* of *Schedule 1* of an enactment mentioned in *column (1)* of that Schedule opposite the mention of that provision is amended as specified in *column (3)* of that Schedule opposite the mention of that provision. 40

Increase of certain fines in Licensing Acts 1833 to 2004.

PART 3

AMENDMENT OF CRIMINAL JUSTICE (PUBLIC ORDER) ACT 1994

17.—Section 4(4) of the Act of 1994 is amended by substituting the following definition for the definition of “bottle or container”:

Amendment of section 4 of Act of 1994.

5 “ ‘bottle or container’ means a bottle or container irrespective of whether—

(a) the bottle or container is opened or unopened, and

(b) any or all of the contents of the bottle or container have been or are being consumed,

10 and includes the contents of the bottle or container, but does not include a bottle or container for a substance which is in the possession of the person concerned for a purpose other than the intoxication of that or any other person;”.

15 18.—The Act of 1994 is amended by inserting the following sections after section 8:

Insertion of new sections 8A and 8B into Act of 1994.

“Power to direct persons who are in possession of intoxicating substances, etc.

8A.—(1) This section applies where a member of the Garda Síochána believes with reasonable cause that—

20 (a) a person is in a relevant place alone or accompanied by other persons,

(b) a bottle or container which contains an intoxicating substance is in the possession of the relevant person, and

25 (c) the relevant person is acting in that place, or the relevant person and some or all of the accompanying persons are acting in that place, in a manner that—

(i) gives rise to a reasonable apprehension for the safety of persons or the safety of property or for the maintenance of the public peace, or

(ii) is causing, or gives rise to a reasonable apprehension is likely to cause, annoyance and nuisance to another person or persons or interference with that other person’s or persons’ peaceful possession and enjoyment by that other person or persons of his or her, or their, as the case may be, property.

(2) Where this section applies, the member may—

45 (a) seek an explanation from the relevant person as to all or any of the matters to which the relevant belief relates, and

(b) do one or more of the following, if the relevant person fails or refuses to give such an explanation or if such an explanation is given, and in either case the member remains of the relevant belief: 5

(i) request the relevant person to immediately give the bottle or container to the member (or to another member of the Garda Síochána accompanying the member) and at the same time as the request is made give to the relevant person a warning in ordinary language that a failure or refusal to comply with the request may lead to the seizure of the bottle or container or to his or her arrest or to both (or words to the like effect); 10 15 20

(ii) if the relevant person fails or refuses to comply with the request, seize, obtain and remove, without warrant, the bottle or container with the use, if necessary, of such force as is reasonable in the circumstances; 25

(iii) direct the relevant person and, if appropriate, some or all of the accompanying persons, to desist from acting in the manner referred to in paragraph (c) of subsection (1); 30

(iv) direct the relevant person and, if appropriate, some or all of the accompanying persons, to leave immediately the place in a peaceable or orderly manner; 35

(v) request the relevant person to provide the member with his or her name and address. 40

(3) Where—

(a) a person fails or refuses to comply with a request made by the member under subparagraph (i) or (v) of paragraph (b) of subsection (2), 45

(b) a person fails or refuses to comply with a direction given by the member under subparagraph (iii) or (iv) of paragraph (b) of subsection (2), or 50

(c) the member has reasonable grounds for believing that the name or address provided to the member, in compliance with a request made by the member



under subparagraph (v) of paragraph (b) of subsection (2), is false or misleading,

5 the member may arrest such person without warrant.

(4) A person who—

10 (a) fails or refuses to comply with a request made by the member under subparagraph (i) or (v) of paragraph (b) of subsection (2), or

15 (b) in purported compliance with a request made by the member under subparagraph (v) of paragraph (b) of subsection (2), provides to the member a name or address which is false or misleading,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €500.

20 (5) It shall be an offence for any person, without lawful authority or reasonable excuse, to fail to comply with a direction given by the member under subparagraph (iii) or (iv) of paragraph (b) of subsection (2).

25 (6) A person who is guilty of an offence under subsection (5) shall be liable on summary conviction to a fine not exceeding €1,000.

30 (7) Where the member or another member of the Garda Síochána has been given, or has seized, detained and removed, a bottle or container pursuant to this section, the member shall—

(a) dispose of the bottle or container in such manner as he or she considers appropriate, and

35 (b) make and retain, or cause to be made and retained, a record in writing of the manner, date and place of such disposal.

40 (8) Nothing in this section shall prejudice the operation of the other provisions of this Act or of the Criminal Justice (Public Order) Act 2003.

(9) In this section—

‘bottle or container’ means a bottle or container irrespective of whether—

45 (a) the bottle or container is opened or unopened, and

(b) any or all of the contents of the bottle or container have been or are being consumed,

and includes the contents of the bottle or container;

‘relevant belief’, in relation to a member of the Garda Síochána, means the belief referred to in subsection (1) of the member; 5

‘relevant person’ means the person first-mentioned in paragraph (a) of subsection (1);

‘relevant place’ means a place other than a place used as a private dwelling.

Power of entry for purposes of section 8A, etc. 8B.—A member of the Garda Síochána may enter without warrant a place other than a place used as a private dwelling if the member has reasonable grounds for believing that— 10

(a) the matters specified in paragraphs (a), (b) and (c) of subsection (1) of section 8A, or 15

(b) the matters specified in paragraphs (a), (b) and (c) of subsection (1) of section 37A (inserted by section 13 of the *Intoxicating Liquor Act 2008*), 20

are occurring in such place.”.

Increase of certain fines in Act of 1994.

19.—Each provision of the Act of 1994 mentioned in *column (1)* of *Schedule 2* is amended as specified in *column (2)* of that Schedule opposite the mention of that provision.

SCHEDULE 1

Section 16.

INCREASE OF CERTAIN FINES IN LICENSING ACTS 1833 TO 2004

	Enactment (1)	Provision (2)	Amendment (3)
5	Intoxicating Liquor Act 1988	Section 31 (sale of intoxicating liquor to under-age person) (as amended by section 25 of the Act of 2000)	In subsection (3), by substituting “€3,000” for “£1,000” and “€5,000” for “£1,500”
10	Intoxicating Liquor Act 1988	Section 32 (provision of intoxicating liquor for persons under the age of 18 years) (inserted by section 13 of the Act of 2003)	In subsection (4), by substituting “€3,000” for “€1,500” and “€5,000” for “€2,000”
15	Intoxicating Liquor Act 2003	Section 4 (drunken persons)	In subsection (2), by substituting “€3,000” for “€1,500” and “€5,000” for “€2,000”
20	Intoxicating Liquor Act 2003	Section 5 (supply of intoxicating liquor to drunken persons by non-licensees)	In subsection (2), by substituting “€3,000” for “€1,500” and “€5,000” for “€2,000”
25	Intoxicating Liquor Act 2003	Section 7 (duty of licensee to preserve order)	In subsection (2), by substituting “€3,000” for “€1,500” and “€5,000” for “€2,000”

## SCHEDULE 2

INCREASE OF CERTAIN FINES IN CRIMINAL JUSTICE (PUBLIC ORDER)  
ACT 1994

Provision (1)	Amendment (2)	
Section 4 (intoxication in public place)	In subsection (2), by substituting “€500” for “£100”	5
Section 5 (disorderly conduct in public place)	In subsection (2), by substituting “€1,000” for “£500”	
Section 6 (threatening, abusive or insulting behaviour in public place)	In subsection (2), by substituting “€1,000” for “£500”	10
Section 7 (distribution or display in public place of material which is threatening, abusive, insulting or obscene)	In subsection (2), by substituting “€1,000” for “£500”	15
Section 8 (failure to comply with direction of member of Garda Síochána)	In subsection (3), by substituting “€1,000” for “£500”	
Section 9 (wilful obstruction)	By substituting “€400” for “£200”	
Section 11 (entering building with intent to commit offence)	In subsection (2), by substituting “€2,500” for “£1,000”	20
Section 13 (trespass on building, etc.)	In subsection (3), by substituting “€2,500” for “£1,000” and “€1,000” for “£500”	
Section 16 (affray)	In subsection (4)(a), by substituting “€1,000” for “£500”	25
Section 17 (blackmail, extortion and demanding money with menaces)	In subsection (3)(a), by substituting “€2,500” for “£1,000”	
Section 18 (assault with intent to cause bodily harm or commit indictable offence)	In subsection (2)(a), by substituting “€2,500” for “£1,000”	30
Section 19 (assault or obstruction of peace officer)	In subsection (2)(a), by substituting “€2,500” for “£1,000” and, in subsection (4), by substituting “€1,000” for “£500”	
Section 19G (penalties and proceedings) (inserted by section 24 of the Housing (Miscellaneous Provisions) Act 2002)	In subsection (1), by substituting “€4,000” for “€3,000”	35
Section 21 (control of access to certain events, etc.)	In subsection (5), by substituting “€1,000” for “£500”	40
Section 22 (surrender and seizure of intoxicating liquor, etc.)	In subsection (4), by substituting “€1,000” for “£500”	
Section 23 (prohibition of advertising of brothels and prostitution)	In subsection (2), by substituting “€2,500” for “£1,000” and “€25,000” for “£10,000”	45
Section 24 (arrest without warrant)	In subsection (4), by substituting “€1,000” for “£500”	



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**AN BILLE DEOCHANNA MEISCIÚLA 2008  
INTOXICATING LIQUOR BILL 2008**

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**EXPLANATORY MEMORANDUM**

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*General*

The purpose of this Bill is to amend the Licensing Acts 1833 to 2004 and the Criminal Justice (Public Order) Act 1994 in order to give effect to reforms recommended by the Government Alcohol Advisory Group as well as proposals in relation to the seizure of alcohol from certain persons.

The Minister for Justice, Equality and Law Reform established the Government Alcohol Advisory Group in January 2008 to examine key aspects of the law governing the sale and consumption of alcohol with particular reference to public order issues. The Group was asked to examine the following areas of concern:

- the increase in the number of supermarkets, convenience stores and petrol stations with off-licences and the manner and conditions of sale of alcohol products in such outlets, including below unit-cost selling and special promotions;
- the increasing number of special exemption orders which permit longer opening hours which are being obtained by licensed premises around the country; and
- the use, adequacy and effectiveness of existing sanctions and penalties, particularly those directed towards combating excessive and under-age alcohol consumption.

The Group submitted its Report to the Minister on 31 March 2008. It contains 31 recommendations for legislative and other reforms in areas covered by its terms of reference. The proposals set out in this Bill seek to give effect to recommended reforms in licensing law and public order legislation. Further reforms of the licensing system will be contained in the forthcoming Sale of Alcohol Bill which will modernise and streamline all the laws relating to the sale and consumption of alcohol.

The main provisions in the present Bill are as follows:

*Section 1* contains the short title, collective citations, construction and commencement provisions, while *section 2* contains relevant definitions. These are standard provisions in legislation of this type.

The proposals set out in *Part 2* contain reforms relating to the sale and consumption of alcohol, including measures to improve compliance with and enforcement of licensing law. *Section 4* proposes

generally to restrict off-sales of alcohol to the period between 10.30 a.m. and 10.00 p.m. (12.30 p.m. to 10.00 p.m. on Sundays and Saint Patrick's Day). The existing provision which permits the sale of alcohol from 7.30 a.m. in premises engaged in mixed trading is being repealed. In addition, *section 3* repeals outdated provisions which permit the early opening of licensed premises located in the vicinity of fairs and markets for the purposes of supplying food and refreshments at reasonable prices.

At present, a wine retailer's off-licence may be obtained directly from the Revenue Commissioners without a District Court certificate. Applicants for a spirit retailer's off-licence or a beer retailer's off-licence require such a certificate, however. As recommended by the Advisory Group, *section 5* provides that in future an applicant for a wine retailer's off-licences will also require a District Court certificate. *Section 6* extends the grounds on which the District Court may refuse to grant a certificate for a spirit, beer or wine retailer's off-licence (similar grounds already apply to applications for on-licences under the Intoxicating Liquor Act 2000). Objections may be made at the relevant District Court hearing by the local Garda Superintendent and local residents. When granting a certificate, the District Court may also impose a condition that a CCTV system be installed.

*Section 7* is a technical proposal which gives jurisdiction for granting the certificate for a wine retailer's off-licence to the District Court and provides for the giving of advance notice of applications for such licences.

*Section 8* provides for the structural separation of alcohol products from other products in premises which are engaging in mixed trading, e.g. supermarkets, convenience stores and petrol stations. It proposes that alcohol be displayed and sold in a separate area of the premises to which access is controlled. Where structural separation is not feasible, e.g. because of the size of the premises, alcohol products must be displayed and sold from a part of the premises where public access is prohibited, e.g. from behind a counter. As implementation of this provision may require structural alterations within premises, it is intended to give licensees an adequate period of time to make the necessary arrangements before bringing it into force. Structural separation will not apply to specialist off-licences and to duty free shops.

*Section 9* amends existing statutory provisions under which the District Court may grant "special exemption orders" which permit extended opening hours for special occasions. The conditions under which such orders can be made are being amended to require the operation of a CCTV system at venues where the public are admitted, e.g. nightclubs, late bars. The public order ground on which objection may be made by the Gardaí to the grant of such orders is also being strengthened. Moreover, the District Court may not grant such orders in future unless satisfied that the premises concerned comply with fire safety standards under the Building Control Act 1990.

*Section 10* deals with the sale of alcohol in premises with theatre licences. In future, the sale of alcohol before and after performances will only be permitted during normal licensing hours, or during extended opening hours under a special exemption order granted by the District Court. This will ensure equality of treatment for all premises operating as late night venues.

*Section 13* adds three new sections to Part IV of the Intoxicating Liquor Act 1988. The new section 37A provides the Gardaí with a

power to seize bottles and containers of alcohol in the possession, in a place other than a place used as a private dwelling, of a person who is under 18 years (or by a person accompanying the person under 18 years) and where the Garda believes with reasonable cause that the alcohol has been, is being or is to be consumed by a person under 18 years. It will be an offence for a person, when requested by a Garda, to refuse to give his or her name, address and age, or to hand over the bottle or container, with a fine of up to €500 on summary conviction. The new section 37B provides for powers of entry for the purposes of section 37A (or, as the case may be, section 8A of the Criminal Justice (Public Order) Act 1994 — see section 18 of this Bill). *Section 11* inserts a definition of “bottle or container” in section 30 of the 1988 Act.

The new section 37C makes provision for test purchasing of alcohol products. Parental or guardian consent in writing will be required in all cases and all reasonable steps must be taken to protect the young person concerned. Test purchasing may be carried out in all types of licensed premises and is intended to assist Gardaí in their enforcement activities.

*Section 12* and *section 14* provide for a minimum two day closure period for temporary closure orders made by the District Court on the conviction of licensees for certain licensing offences, e.g. sale of alcohol to a person under 18, or permitting drunkenness or disorderly conduct on the premises. At present, relevant statutory provisions state that the closure period may not exceed 7 days in respect of a first such offence but do not specify any minimum period. *Section 16* provides for increases in fines for certain licensing offences, including the sale of alcohol to a person under 18 and for permitting drunkenness and disorderly conduct on licensed premises.

*Section 15* provides for the making of regulations which may prohibit or restrict the advertising, promoting, selling or supplying of alcohol at reduced prices in order to reduce the risk of a threat to public order as well as health-related risks arising from excessive consumption of alcohol. Reduced price in this context will include the award, directly or indirectly, of bonus points, loyalty card points or any similar benefits and the use of such points or benefit to obtain alcohol, or any other product or service, at a reduced price or free of charge.

*Part 3* contains amendments to the Criminal Justice (Public Order) Act 1994. *Section 18* inserts two sections into the 1994 Act in order to provide the Gardaí with certain powers in relation to persons that are in the possession of intoxicating substances in a place other than a place used as a private dwelling. This power may be exercised under the new section 8A where a Garda believes with reasonable cause that the person is acting in a manner that gives rise to a reasonable apprehension for the safety of other persons or property or for the maintenance of the public peace, or where the person is causing, or the Garda believes is likely to cause, annoyance and nuisance to others or to the enjoyment and peaceful possession by others of their property. In any of these circumstances, the Garda may seek an explanation and request the hand-over of the intoxicating substance, and where appropriate, may seize it and direct the person (or persons) to desist from acting in the manner referred to and direct the person (or persons) immediately to leave the place in a peaceable and orderly manner and may request the person to give his or her name and address. It will be an offence not to comply with these requests, with a fine on summary conviction of not more than €500. It will also be an offence to fail to comply with a Garda’s direction

under this section, with a penalty of up to €1,000 on summary conviction. The new section 8B provides for powers of entry for the purposes of section 8A (or as the case may be, section 37A of the Intoxicating Liquor Act 1988 — see section 13 of this Bill). *Section 17* amends the definition of “bottle or container” in section 4 of the Criminal Justice (Public Order) Act 1994.

*Section 19* amends and increases the fine amounts specified in the Criminal Justice (Public Order) Act 1994. The details of the revised amounts are set out in *Schedule 2*.

*Schedule 1* increases certain fines for licensing offences (section 16) while *Schedule 2* increases certain fines in the Criminal Justice (Public Order) Act 1994 (section 19).

There are no significant financial implications for the Exchequer.

*An Roinn Dlí and Cirt, Comhionannais agus Athchóirithe Dlí, Bealtaine, 2008.*