



Northern Ireland  
Assembly

Committee for Communities

# OFFICIAL REPORT (Hansard)

Licensing and Registration of Clubs  
(Amendment) Bill: Law Society of Northern  
Ireland

11 February 2021



have concerns about controls over licensed areas, to whom the alcohol would be sold, the people selling it and the levels of training.

There are also concerns about what a major event is and whether there is a definition of that. Again, it would be for the Department to determine on whom that application was served. With the current legislation, statutory agencies have to be served for events. Therefore, we are looking for clarification on all of those points.

Another issue with regard to major events, which has been discussed before, is the selling of off-sales products. Again, what can be done to provide clarity on the position and concerns about off-sales licences as they currently stand? Is it fair that you can sell products like that without having an off-sales licence? Currently, such licences are restrictively granted through the courts?

The other matter that I want to touch on, which has been very topical and discussed at length — again, we are looking at it in a different way — is the producer's licence and the proposed new category for that. I have read a lot of the submissions from other organisations. I know that there is the issue with whether they could sell just their own produce or other items as well, and whether it would be more like a taproom. In our discussions, we wondered whether that is to include a subsisting licence. This morning, I mentioned the cost of the application for that, given that there is, of course, a Courts Service fee. Will producers have to submit an application and hand over a licence to be able to sell their own produce, or is it intended that that will not be the case? Certainly, if they were operating as a taproom, which we are concerned might be more like a pub situation, again, would they have to hand in a licence? What products would they be allowed to sell? We would like clarity on that.

I will hand over to Colin, who wanted to address a couple of other points.

**The Chairperson (Ms P Bradley):** Thank you. *[Pause.]* Colin, we cannot hear you. Will you double-check your sound? *[Pause.]* I still cannot hear Colin. This happens occasionally. Oh dear. Colin, I take it that your volume and everything else is OK and that you are doing all the right things, but we do not happen to be able to hear you. Try again, Colin. No. We still do not have Colin. We still have Maeve with us. Do you want to leave the meeting, Colin, and come back in again? Would that help? When I see your name come up, I will bring you back in again. Thank you.

Maeve, you are here, and Colin probably has more to say, but I will start our question session, and Colin can come in if he wants to say anything. My question may relate to what Colin was going to talk about, and that is the issue of the reform of article 31 of the Licensing Order.

**Ms Fisher:** Yes, Colin wanted to address that matter.

**The Chairperson (Ms P Bradley):** That is OK. We will wait to see whether Colin comes back in, and I can ask him for a bit more detail on that.

The other issue that you highlighted is the problem with smaller stores and the limited advertising that is allowed. Retail NI also raised that concern with us last week. Do you think that that clause needs to be amended for smaller stores in particular?

**Ms Fisher:** Yes, Chair, that was our concern when we reviewed it. We are trying to look at this neutrally on behalf of the Law Society and at the legal element of it, but we were concerned about competition. The larger stores will, as you know, have that offering, and they will probably not be as negatively affected by advertising restrictions, but it would be more difficult for the smaller stores or smaller licence holders whom we act for. They may not be aware that that offer is there, and, therefore, the restriction to allow advertising only in-store may damage them and raise competition issues.

**The Chairperson (Ms P Bradley):** It has been raised with us before. This witness session is interesting because you are coming at this from a position of making no financial gain from any changes that might take place, so it is good to get that balanced view. I read in your submission that you want the regulations to be unambiguous and definite. We heard earlier from Roger or Michele — I think that it was Roger — that, in the Republic of Ireland, there has been only one application for a producer's licence because it has been so difficult to navigate the bureaucracy and red tape. How do you balance that?

**Ms Fisher:** We do not want that either, because we are trying to provide advice to clients and let them know that there is a process that can be followed through. We would have clients expressing their frustration to us if it was very difficult to achieve, so we want the law to be clear on, for example, some of the issues that we raised. We want the Bill to be clear on what can be achieved. Then, it is about working with everyone else, everyone else going along with that, such as those who are served with the application, and providing support and clarity. The police are usually served, and the councils are served, and it is important that all those groups work together to achieve a result.

**Mr Colin Mitchell (Law Society of Northern Ireland):** Chair, can you hear me now?

**The Chairperson (Ms P Bradley):** We cannot see you, but we can certainly hear you.

**Mr Mitchell:** That is no loss, I can assure you.

**The Chairperson (Ms P Bradley):** Maeve said that you would deal with article 31 and that you are disappointed with that.

**Mr Mitchell:** One issue that came up in the meeting was occasional licences, and we can assist with that.

**The Chairperson (Ms P Bradley):** OK. That is another question that I have, so, yes, go ahead.

**Mr Mitchell:** When you apply for a licence, the court has to approve your premises as suitable. That means looking at your premises, having a plan and making sure that they have the various statutory approvals, such as from Building Control etc. In your ownership of those premises, if you wish to deviate from what has been approved, you must notify and get approval from the court. If the deviation is large, you need a whole new licence and a whole new grant. If it is small, you go to a County Court, under article 31, with your amended plans, which will, hopefully, approve them. However, over time, there have been some issues with that.

The first issue is that there is a difference in judicial interpretation of "minor". Is it a percentage of area? Is it going outside or staying inside? There are a number of things. The second thing is that it is not entirely clear whether such an approval has to be done before or after the work is carried out. In other words, is it retrospective? The key point is that, if licensees unknowingly make alterations to their premises, they go to a solicitor later and the solicitor finds out that they have made those alterations and that they are not approved by the court, we would have to go back to court to get those alterations retrospectively approved. Hopefully, a court will allow it, but sometimes they do not. The difficulty is that, if that happens, a licence can become void because unauthorised alterations have been made.

In a similar vein, renewals are done in five-year blocks. The last one was 2017, and the next one will be 2022. If you miss your renewal, you have a year's grace period to go with it with a fine. If you do not get in after that year, you lose your licence and have to apply for a whole new one. Apart from the cost of that, the difficulty is that you then have to close. You could be closed for months while you get your new licence, and there is a knock-on effect for employees, let alone the business owner and everything else. We suggest that there should be a longer grace period. Fines are there already. You could increase those fines and make sure that there is compliance.

The last one is something that has been raised by other people who have been before the Committee. Article 44 is to do with late licences. You apply for a licence at the court. You also apply for a number of late licences per week. Traditionally, you applied for every night of the week because you did not quite know when your licensee was going to need it. Maybe they want to do occasional quiz nights on Tuesdays and things such as that. Recently, in certain areas, the argument was made that, if you have an article 44 for every night of the week, you have to use it every night of the week; it is a sort of "use it or lose it" scenario. That is fine; people can then deal with having fewer article 44 nights a week. However, the problem is that, if you have, say, a Friday and a Saturday but maybe have a charity opportunity or another opportunity on a Monday or Tuesday, you cannot apply for an article 45, which is the occasional late licence. The days are being increased for that in the legislation. If you have an article 44, you cannot apply for an article 45. It is a lacuna in the law that needs to be addressed.

Those are some things that are not in the legislation but should be dealt with. You may also have some questions about occasional licences.

**The Chairperson (Ms P Bradley):** Thank you for that; it just highlighted more issues. I remember dealing with a case in my constituency around the grace period on the renewal of a licence. There were issues around antisocial behaviour and various other things. What exactly do you want to see when it comes to the grace period? What would you like to see written down?

**Mr Mitchell:** It should be extended. I do not want to get too technical, but, even if you miss one renewal, you can still apply for a new grant of a licence using your subsisting licence, which does not become void for five years. I am not going to get too much into the weeds of it. If, say, you miss the one-year grace period by two or three months, all of a sudden, you are applying for a new grant of a licence. If you miss the grace period by five years, you are applying for a new grant of a licence anyway. We do not see why the grace period could not be for a longer period, with suitable fines attached. It would not pick up all of them, but it would pick up a number of the licensees who make that mistake. It happens to not only licensees who just miss it. Somebody might have taken over a licence in 2019. They hear that it is a five-year renewal, but they may not realise that the renewal period is 2022. Wee mistakes such as that can be made. It is not intentional; nobody is intending not to renew their licence, but the consequences for the business, the employees and the business owner are quite draconian if they miss it. We have suggested moving the grace period back to even five years. At the end of the day, it is within that five-year period for the renewal of the licence, and that is still a subsisting licence for anything after that five years as well. You can have fines to make sure that there is a suitable punishment. One of the things is that, when you go back for a new licence, you have to advertise that new licence. That allows people to object to your licence. That is inviting local competitors to come in and make mischief, if you like, which, again, is perhaps slightly unfair.

**The Chairperson (Ms P Bradley):** Could that be used the other way? If there were a case where the location of the premises was problematic among the community or the premises were problematic because of reports from the PSNI or whatever else, this would give the licensee a longer period without renewing their licence because they would know about the objections, albeit many of them may be well founded. Could that be used on the other hand as well?

**Mr Mitchell:** That is a very good point, Chair. I am not aware of how often that has occurred. Obviously, the police have powers to intervene in licensed premises and things of that nature. The only time that I have seen the renewal process used for that purpose was recently, when some objections were taken by bookmakers to what they called illegal gambling in certain areas of the Province. It involved taking bets over the phone and things like that, and the bookmakers used the renewal process to come in there. On other times that the renewal process has been used, I am not really aware, apart from that example, that it is a regular process.

**Ms Fisher:** I think that there is still the safeguard that the out-of-time renewals go to the court. A renewal process can be purely an administrative procedure and can be done in the papers up until it is out of time. When it is an out-of-time renewal, it is before a judge, so there will still be that element where someone will be checking it and the police will be asked to comment. If there is an issue with the premises, that will certainly be brought before the court in any event, even if it is slightly out of time and the licence holder has paid a penalty.

**The Chairperson (Ms P Bradley):** I have another question on where you have had issues to do with licensing. We are all constituency representatives, and issues arise from time to time, although not very often, to do with specific licensed premises where there have been reports to the PSNI and where the issue has gone to court and whatever else. The licence then gets moved into another name, and the licensee continues doing exactly the same thing until they are brought back to court. We know that that takes a very long time. We know that the police powers, the powers of environmental health and the powers of the council take a long time, and you must have actual evidence that a licence holder has done something wrong. Is there anything on that issue that we need to look at?

**Mr Mitchell:** When a licence changes names, it has to go through a formal process known as a transfer before the court. So, if I go from Colin Mitchell to Maeve Fisher on a licence, it has to go by way of transfer. That transfer gets advertised, and, as I recall and if I am correct, one of the tests is that the person to whom the licence is being transferred is or is not a fit person to hold a licence. That transfer application is served to the police and is advertised in local newspapers, so there is the opportunity to say that you are going to object to this transfer on these grounds. The process is already there to control that behaviour.

**The Chairperson (Ms P Bradley):** It goes back to the comment that you made in your submission about ambiguity. We need to be very careful, in everything that we do in the Bill, that it is not open for interpretation by others. I think that you are absolutely right. I do not know whether you heard the point that was made by the representative from Copeland Distillery last week about its occasional licences and how each jurisdiction is open to its own understanding of things. You are absolutely right that it needs to be across the board, and we need to be careful in our wording.

**Mr Mitchell:** Chair, can I come in on occasional licences?

**The Chairperson (Ms P Bradley):** Yes, go ahead.

**Mr Mitchell:** It seems like a good opportunity to bring it in. I was interested to hear that. Occasional licences can be used only for certain purposes. They are organised by bodies created for social, charitable, benevolent or sporting occasions. Therefore, a farmers' market or a Christmas market, for example, would be covered by that. Dinners by various societies would be covered by that. Things that do not fall into those categories are not covered by occasional licences. For example, weddings are not covered by occasional licences. Also, I do not know but I suspect that some breweries are applying for occasional licences and are not getting them because they are not bodies that are organised for charitable, benevolent or sporting purposes. That is being picked up in some police and council jurisdictions but not in others. I strongly suspect that that is what is going on. Even though weddings are not covered, some licensees will chuck the application for a wedding into their local County Court or the clerk of petty sessions and it will be granted, but not in others. I would suggest that that is what is going on.

The other problem with occasional licences, which is being solved by the legislation, is that, when you get an occasional licence now, if you want children to be at the event, in many circumstances, you need to get a children's certificate, which requires a plan setting out where children can and cannot be. People have not been able to get occasional licences for that reason for markets and festivals, so occasional licences have been problematic. That will be solved in the legislation by getting rid of the need for a children's certificate.

**The Chairperson (Ms P Bradley):** That is all very interesting, and I might come back to you.

**Ms Armstrong:** Thank you, Maeve and Colin. You mentioned a number of legal pieces. Harmonising the definition of "entertainment" was an interesting one. Do you believe that we should be thinking back to that 1996 order?

**Mr Mitchell:** If you want to provide entertainment at your licensed premises, you need, of course, an entertainments licence under the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985, along with a liquor licence. However, the liquor licence states that entertainment has to be:

*"by persons actually present and performing".*

The entertainments licence definition of "entertainment" is a lot wider than that. That has come to create problems for DJs, for example, pub quizzes and things of that nature. What is actually covered by "entertainment" is a long-standing issue. An entertainments licence covers all sorts of entertainment, so that is OK, but the Licensing (Northern Ireland) Order 1996 is a lot more restrictive in what entertainment should actually be.

**Ms Fisher:** The issue of entertainments came into play with COVID and the regulations, too, and there was a bit of confusion over what would be entertainment and what could be in premises. It would be really helpful for that to be clarified.

**Ms Armstrong:** That is useful because it gives us something legally. People are often concerned that legislators do not tie up ends together, so that is particularly useful.

In your submission, under section 2, paragraph (2c) states that it should be a judicial function and not for the police, or the Department, I take it, to make decisions. The Bill refers to the police and the Department, and not the judiciary. Do you think that that is wrong?

**Ms Fisher:** That is a real departure from the current position, and that is what we were trying to gauge it from. For anyone who made applications or anything they applied for being granted under the Licensing Order, it was always through the courts. That is the system in Northern Ireland, and it keeps the system well regulated and *[Inaudible]* Our concern about *[Inaudible]* someone else having those powers *[Inaudible]* not sure about that going forward *[Inaudible]* useful as well.

**Ms Armstrong:** That is really useful. I do not have any other questions about the rest of it because I can completely understand it. It is a very well written submission.

**Mr Mitchell:** Ms Armstrong, may I come in there a second to speak to you? I do not know whether this point was dealt with by Maeve when I was not online but you made a comment in response to a previous submission about whether a brewery licence could just go through the courts on the simple process as opposed to the subsisting licence, and it would be cheaper. I do not know whether Maeve dealt with it, but any licensing application, whether for a restaurant, conference centre, hotel or pub, is a very complicated court process. It requires architects and plans, advertising in the papers, and expensive court fees, and, every time you make an application, you open yourself up to a possible objection. An unobjected application without a subsisting licence for a restaurant can cost between £5,000 and £10,000. If it is objected to, all bets are off. I do not know whether Maeve dealt with that, but I wanted to clarify that point.

**Ms Armstrong:** It was not the simplicity. It is not simple. It is the fact that that legal cost should be the same for all licensing applications and that nobody should have a different version. The difference comes when you get into those who have pub licences, where there are costs that are outside of the courts' control, and the negotiations between sellers and buyers can push the cost of those licences to extraordinary levels. We can only consider licences and people apply for licences through the courts. You are absolutely right: there are fees, but, to be honest, when compared with £100,000, £5,000 is quite small. We have to be clear that the cost of a licence should be the same across the whole of the industry, but the variance and the negotiated costs are outside of our control because of the surrender principle.

**Ms Fisher:** Yes. We asked for clarity on the subsisting licence principle. If we are discussing the fact that a taproom that people put forward would be a likeness to a pub and a subsisting licence would be necessary, that is where the cost would come in. On the other types of licensing and new categories of licences, the court costs should be similar, as you said. If it is £568 to make an application for a pub, it should be the same court fee for a producer's licence, and they should maybe have the same requirements to advertise in the same way so that people could object on the basis of fitness, premises and things like that. They should have similar costs in making an application.

**Ms Armstrong:** I absolutely agree with that. I can completely understand the concerns of pubs and hotels, but my only concern is that a taproom that is attached to a producer's licence, or whatever way it would work, would be at a fixed premises because it has to be where the produce is made. Therefore, it would not be as flexible as the others. We cannot have different fees. They have to be the same across the board.

Thank you very much for that, folks. That was really useful.

**Mr Newton:** I thank Maeve and Colin for coming in. As you said, Chair, the Law Society has no commercial interest in the Bill, so it is very useful information. I want to ask you a fairly simple question on clauses 6 and 25. The society supports the approach taken in clause 18. I think that you suggested that taking powers away from the courts and giving them to the Department through clauses 6 and 25 might not be the best way of doing things but that you support the courts taking action in clause 18. Could you maybe say a wee bit more about what your concerns are?

**Ms Fisher:** The system that we are used to is very much court-based and has judicial restrictions. That helps because you know what you need to put forward, what can be approved and what is allowed. There is real clarity. Our concern is that, without that clarity, without it being listed very carefully in the legislation and with the Department having separate controls, we *[Inaudible]* is not following the process so far. We are not entirely sure how it would work. I know that people call the system restrictive, but that is what is in place. It has to be followed, there are very clear sanctions and you can follow it clearly. We are concerned as we cannot see how it would be approved, what the Department would consider and what additional powers it would have. It is not what existing licence holders have had to go through. They have gone through a much stricter process. That opens up a bit of ambiguity.

**Mr Mitchell:** The other thing — it may not be such a legal point — is that the use of courts in these circumstances is a very solemn process. It is a very sobering process for anyone who wants to enter the licensed trade. When you are dealing with a regulated substance such as alcohol and selling to the public, the courts, apart from anything else, give it a very high level of scrutiny. It also emphasises to anyone entering the trade the importance of the role and the licence for which they are applying.

**Mr Newton:** That is fine. Thank you, Maeve and Colin.

**Mr Durkan:** Thank you, Colin and Maeve. I have a couple of questions. Kellie touched on the definition of entertainment, and you mentioned how difficult that is. Are there any statutory definitions of entertainment from other jurisdictions that it could be helpful for us to consider?

**Mr Mitchell:** I am not particularly aware of any. I am used to the Northern Ireland ones. I have not looked at definitions elsewhere, Mr Durkan, to be able to give you any guidance on that. The two that I am used to working with are the two local ones.

**Ms Fisher:** I am the same, unfortunately. We could certainly look it up. There needs to be clarity here, because there is certainly a difference at the minute. We could look at other jurisdictions.

**Mr Mitchell:** You have a definition of entertainment in the entertainment licence legislation. What we are really saying now is this: given the way in which entertainment has moved on and how things are done, is there really any need for the restriction in the 1996 order?

**Ms Fisher:** Yes. It is too restrictive.

**Mr Durkan:** Yes. I suppose that any definition that you take will have to be flexible because new entertainments crop up all the time.

**Mr Mitchell:** Yes.

**Mr Durkan:** My other question is around employment law. I know that you have been watching some of the evidence sessions. You might have seen that we had a representative in from Unite, the Union. How would the changes to opening hours interact with employment law in respect of staff working later and even more unsocial hours?

**Mr Mitchell:** Neither of us is an employment lawyer, but that issue will have to be looked at. There is the working time directive and everything like that. I suppose that we are all discovering where we stand with Brexit, the protocol and everything else and what applies and what does not. Any employer, when looking at their employment contracts and how they interact with their employees, has to be cognisant of what they are allowed to do by law in respect of hours and so on. The later hours themselves would not necessarily be the issue. I presume that the issue would be the total number of hours that they are working under contract per week. It may be that employers have to employ more people to work different shift patterns to cover this.

**Mr Durkan:** Yes. I know that we have sought a bit of clarity from the Department for the Economy on this as well. You are not employment law specialists, so I am sorry to put you on the spot. I was just wondering where workers would stand in relation to declining to work later hours or what entitlements they might have to claim the cost of a taxi home after a certain hour or whatever. We will drill further down into that when we get things back from DFE. Thank you.

**The Chairperson (Ms P Bradley):** No other members have indicated that they want to ask anything further. A big thank-you to Maeve and Colin. The briefing and submission were really very interesting because you are coming from a different angle than many of our other witnesses. Thank you very much for joining us and for answering all our questions.

**Mr Mitchell:** Thank you very much, Chair.

**Ms Fisher:** Thank you, everyone.