

LICENSING (AMENDMENT) ACT 2001

Chapter 17

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Signed in Tynwald: 19th June 2001
Received Royal Assent: 19th June 2001
Announced to Tynwald: 19th June 2001
Passed: 19th June 2001

AN ACT

to amend the Licensing Act 1995; and for connected purposes.

WE, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):—

Opening hours

1. Notification of opening hours

(1) For section 16 of the Licensing Act 1995¹ ("the 1995 Act") (permitted hours in licensed premises) substitute —

"16. Notification of opening hours

(1) The Department may by regulations require the holder of any on-licence to give notice in writing to the Chief Constable of the hours between which he intends to sell or supply liquor for consumption on the licensed premises.

(2) Regulations under this section may provide for non-compliance with any provision of the regulations to be an offence punishable on summary conviction by a fine not exceeding £500."

(2) Sections 17 to 19, 51 and 52 of that Act shall cease to have effect.

(3) In section 32(1) of that Act (display of notices), for paragraph (c) substitute —

"(c) any opening hours notified pursuant to regulations under section 16(1);".

¹ 1995 c.8

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- (4) Where —
 - (a) on the coming into operation of this section an on-licence contains a provision mentioned in section 28 of the 1995 Act (music and dancing), and
 - (b) no restriction on the times at which music may be played on the licensed premises is included in that provision,

the provision shall (subject to subsection (6)) be deemed to be subject to the condition that music may not be played on the premises between the hours of 12 midnight and 7.00 am.

- (5) Where —
 - (a) on the coming into operation of this section an order under section 55 of the 1995 Act (music and dancing) is in force in relation to any club premises, and
 - (b) no restriction on the times at which music may be played on the premises is included in the order,

the order shall (subject to subsection (6)) be deemed to be subject to a condition that music may not be played on the premises between the hours of 12 midnight and 7.00 am.

(6) A condition imposed by subsection (4) or (5) shall have effect as if imposed by the Licensing Court under subsection (1) of the said section 28 or 55, as the case may be, and accordingly may be modified or removed by that Court under subsection (2) of that section.

Licensed premises

2. Children and young persons

(1) Sections 20 and 21 of the 1995 Act (presence of persons under 16 in bars) shall cease to have effect.

(2) In section 9 of that Act, after subsection (5) insert —

"(5A) When granting an on-licence the court shall consider whether it should impose a condition prohibiting or restricting the presence in any specified room in the premises of persons below the age of 16.

(5B) Nothing in any condition prohibiting or restricting the presence in any specified room in the premises of persons below a specified age applies to —

- (a) a child of the holder of the licence or of the designated official;
- (b) a person who resides in the licensed premises but is not employed there; or
- (c) a person who is the room solely for the purpose of passing to or from some other part of the premises to or from which there is no other convenient means of access or egress."

(3) In the said section 9, after subsection (7) insert —

"(7A) If any person aged 18 or over (other than a person responsible under section 25 for the conduct of the premises) knowingly causes or permits a person under 18 to be present in licensed premises or in any room in licensed premises in contravention of a condition under subsection (5)(d) or (5A), he is guilty of an offence and liable on summary conviction to a fine not exceeding £500."

(4) Not later than 6 months after the coming into operation of this section the Licensing Court shall, in relation to every on-licence —

- (a) consider whether it ought to impose a condition prohibiting or restricting the presence in any specified room in the licensed premises of persons below the age of 16; and
- (b) if, after giving the holder of the licence an opportunity to make representations on the matter, it determines that it ought to do so, impose such a condition pursuant to section 9(4)(c) of the 1995 Act.

3. Cancellation of licence

(1) In section 12 of the 1995 Act (cancellation of licence), after subsection (2) insert —

"(2A) The court, on an application by the Chief Constable, may by order cancel a licence if it is satisfied that, having regard to the fitness and character of the holder of the licence (including any convictions, whether or not under the enactments relating to licensing), he has ceased to be a suitable person to hold a licence."

(2) In subsection (3) of that section, after "subsection (2)" insert "or (2A)".

4. Responsibility for conduct of premises

(1) For section 25 of the 1995 Act (absence of licensee) substitute

"25. Responsibility for conduct of premises

(1) In relation to any licensed premises, each of the following persons —

- (a) where the holder of the licence is an individual or individuals, the holder of the licence;
- (b) where the holder of the licence is a company, the designated official,
- (c) where the person mentioned in paragraph (a) or (b) is absent from the premises, an individual approved for the purpose by the court,

is personally responsible for the conduct of the premises.

(2) If, at any time when the premises are open for the sale or supply of liquor, none of the persons mentioned in subsection (1) is present on the premises, then (unless such absence is unavoidable) —

- (a) the holder of the licence is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000, and
- (b) whether or not the holder of the licence is convicted of an offence under paragraph (a), the court may by order suspend the licence for such period, or until the happening of such event, as may be specified in the order.

(3) Where the court has power under subsection (2)(b) to suspend a licence, and has already suspended the licence under any provision of this Act at least twice in the previous 5 years, it may by order cancel the licence.

(4) Before suspending or cancelling a licence under this section the court shall, unless it determines that it is not practicable to do so, give the holder of the licence an opportunity to make representations as to why the licence should not be suspended or cancelled, as the case may be."

(2) In section 35 of that Act (expulsion of persons from licensed premises), for subsection (7) substitute —

"(7) In this section "the responsible person", in relation to licensed premises, means the person responsible for the conduct of the premises under section 25(1)."

(3) In section 68 of that Act (liability of persons other than licensee), for the words from "a person who" onwards substitute "any other person who is or was at the material time responsible for the conduct of the premises under section 25(1)".

5. Sale on credit

In section 27 of the 1995 Act (sale on credit), for subsection (3) substitute —

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- "(3) Subsections (1) and (2) are not contravened if the liquor
- (a) is sold or supplied for consumption at a meal supplied at the same time, is consumed with the meal, and is paid for together with the meal;
 - (b) is sold or supplied to a person who resides on the premises; or
 - (c) is paid for, at the time it is sold or supplied, by means of a credit card, charge card or similar payment card."

6. Music and dancing

In section 28 of the 1995 Act (music and dancing), at the end insert —

"(6) In any proceedings relating to the inclusion in a licence of a provision referred to in subsection (1), or the variation or revocation of such a provision, the court may request the Department of Local Government and the Environment to arrange for an officer of that Department to make to the court a report, orally or in writing, with respect to —

- (a) levels of noise which are or may be emitted from the licensed premises, and
- (b) measures to reduce such noise,

and that Department shall comply with the request."

7. Misbehaviour on licensed premises and elsewhere

(1) In section 33(2) of the 1995 Act (misbehaviour on licensed premises), for "to a fine not exceeding £1,000" substitute "to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both".

(2) For section 33(4) to (6) of that Act substitute —

"(4) On the conviction of a person of an offence to which this subsection applies the court by which he is convicted may make either or both of the following orders —

- (a) an order that he shall not purchase liquor from the holder of any licence for such period (not exceeding 5 years) from the date of the order as may be specified in the order;
- (b) an order that he shall not enter any on-licensed premises (other than premises on which he resides) for such period (not exceeding 5 years) from the date of the order as may be specified in the order.

(4A) Where the court makes an order under subsection (4)(a) against any person, it may also order that no holder of a licence shall supply liquor to him during the period specified under subsection (4)(a).

(4B) Where the court makes an order under subsection (4)(a) or (b) against any person, it may also issue a warrant —

- (a) authorising any person directed to do so by the Chief Constable to take a photograph of him and to distribute copies of the photograph to the holders of licences, and
- (b) authorising any constable to arrest and detain him for that purpose.

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- (4C) Subsection (4) applies to —
- (a) an offence under subsection (1) or (2);
 - (b) an offence under section 18, 20, 23, 33 or 60 of the Criminal Code 1872² (homicide, assault etc.);
 - (c) an offence under section 56 of the Petty Sessions and Summary Jurisdiction Act 1927³ (assault, provoking behaviour etc.) committed on any licensed premises;
 - (d) an offence under section 1 of the Criminal Damage Act 1981⁴ (criminal damage);
 - (e) an offence under Part I of the Public Order Act 1998⁵ committed on any licensed premises.

(5) If a person against whom an order under subsection (4)(a) or (b) is in force contravenes the order, he is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

(6) If the holder of a licence knowingly contravenes an order under subsection (4A), he is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000."

(3) In section 75 of that Act (public drunkenness), for subsections (5) to (7) substitute —

"(5) On the conviction of a person of an offence under subsection (1) or (2)(a) or (b) the court by which he is convicted may make either or both of the following orders —

- (a) an order that he shall not purchase liquor from the holder of any licence for such period (not exceeding 5 years) from the date of the order as may be specified in the order;
- (b) an order that he shall not enter any on-licensed premises (other than premises on which he resides) for such period (not exceeding 5 years) from the date of the order as may be specified in the order.

(5A) Where the court makes an order under subsection (5)(a) against any person, it may also order that no holder of a licence shall supply liquor to him for that period.

(5B) Section 33(4B) applies where an order is made under subsection (5)(a) or (b) as it applies where an order is made under section 33(4)(a) or (b).

(6) If a person against whom an order under subsection (5)(a) or (b) is in force contravenes the order, he is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

² IV p.160

³ XII p.291

⁴ 1981 c.19

⁵ 1998 c.11

(7) If the holder of a licence knowingly contravenes an order under subsection (5A), he is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000."

8. Security staff

(1) For section 40 of the 1995 Act (employment of security staff) substitute —

"40. Employment of security staff

(1) The Department shall by regulations make provision for —

- (a) the establishment and maintenance, by such person or authority as is specified in the regulations, of a register of persons who may be employed as a guard or doorkeeper on or with respect to any on-licensed premises;
- (b) the conditions for registration;
- (c) applications for registration;
- (d) the duration of registration;
- (e) removal from the register;
- (f) appeals against decisions relating to applications for registration and removal from the register;
- (g) fees for applications for, and continuance of, registration;
- (h) the admissibility of statements as to entries on the register.

(2) Where any person who is not entered in the register is employed as a guard or doorkeeper on or with respect to any on-licensed premises, the holder of the licence is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

(3) In proceedings for an offence under subsection (2) it is a defence for the holder of the licence to show that he —

- (a) reasonably believed that the person was entered in the register, and
- (b) had taken all reasonable steps to ascertain that he was so entered.

(4) If any person —

- (a) makes a statement which is false in a material particular, or recklessly makes a statement which he knows to be false in a material particular, or withholds any material information, for the purpose of securing

the making or retention of any entry on, or the removal of any entry from, the register; or

(b) falsely represents himself to be entered in the register;

he is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

(5) Regulations under section 9(1) and conditions and undertakings under section 9(3) or (4) may not make any provision which may be made by regulations under subsection (1).

(6) In this section —

"doorkeeper", in relation to on-licensed premises, means any person whose duties are, or a substantial part of whose duties is, the control of admission to, or the removal of persons from, the premises;

"guard", in relation to on-licensed premises, means any person whose duties are, or a substantial part of whose duties is, the maintenance of order on the premises;

"the register" means the register maintained pursuant to regulations under subsection (1)."

(2) In section 9(5) of the 1995 Act (conditions), at the end insert —

"(f) in the case of on-licensed premises, require such numbers of guards or doorkeepers (within the meaning of section 40) or both to be provided at the premises, at such times and on such days, as are specified in the condition."

9. Closure of premises

For section 45 of the 1995 Act (closure of premises in case of riot) substitute —

"45. Closure of premises in case of riot or violence

(1) If a riot or tumult happens or is expected to happen at any place, a justice, or a police officer of the rank of inspector or above, may in writing direct every holder of a licence for premises in or near that place to close his premises for such period as is specified in the direction.

(2) If any violent behaviour happens on any on-licensed premises a justice, or a police officer of the rank of inspector or above, may in writing direct the holder of the licence to close the premises for such period as is specified in the direction.

(3) The period specified in a direction under subsection (1) or (2) shall not exceed the following period after the giving of the direction —

(a) 60 hours at a time, in the case of a direction by a justice;

- (b) 6 hours at a time, or 12 hours in the aggregate in any period of 3 days, in the case of a direction by a police officer.

(4) Before giving a direction under subsection (1) or (2) the justice shall, unless he determines that it is not practicable to do so, give the holder of the licence an opportunity to make representations as to why the direction should not be given.

(5) If any person knowingly keeps premises open for the sale of liquor during the time that they are directed to be closed under subsection (1) or (2), he is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.

(4) Any person acting by the order of a justice, or of a police officer of the rank of inspector or above, as the case may be, may use such force as is necessary for the purpose of closing premises directed to be closed under subsection (1) or (2)."

10. Suspension etc. of licence

In section 66 of the 1995 Act (suspension or cancellation of licence), after subsection (2) insert —

"(2A) Where under subsection (1) or (2) a court may suspend a licence, it may instead order that, for such period (not exceeding 4 weeks) as is specified in the order, liquor may not be sold, supplied or consumed on the licensed premises except during such hours as are so specified.

(2B) Where an order under subsection (2A) is in force and the holder of a licence, except during the hours specified in the order,

- (a) sells or supplies liquor to any person in the licensed premises, whether for consumption on or off the premises;
- (b) permits any person to sell or supply liquor to any person in the premises, whether for consumption on or off the premises; or
- (c) permits any person (other than a person residing on the premises) to consume liquor on the premises or to take liquor from the premises,

he is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500."

11. Disqualification

In section 65(1) of the 1995 Act (disqualification on 2 or more convictions on information), the words "on 2 or more occasions" shall cease to have effect.

Registered clubs

12. Fire precautions in club premises

In section 2 of the Fire Precautions Act 1975⁶ (exemption from requirement for fire certificate) —

- (a) at the beginning insert "(1)", and
- (b) at the end insert —

"(2) An order under section 1 may designate the use of premises by a club for the purposes of the club; but where that use, as such, would not be a designated use apart from the order, no fire certificate shall be required in respect of the premises unless the club is registered in respect of them under Part 4 of the Licensing Act 1995."

13. Duration of club registration

In section 49 of the 1995 Act (duration of club registration), for subsection (2) substitute —

"(2) The registration, unless previously cancelled, ceases to have effect on 31st March in the next year in which a triennial session of the court is held."

Miscellaneous and supplemental

14. Procuring drink for certain persons

After section 75 of the 1995 Act insert —

"75A. Procuring drink for person subject to ban

- (1) This section applies to a person against whom an order under section 33(4)(a) or 75(5)(a) is in force.
- (2) If any person knowingly —
 - (a) acts as an agent for a person to whom this section applies in buying any liquor for consumption in a highway or other public place;
 - (b) acts as an agent for a person to whom this section applies in procuring the supply to that person of any liquor for consumption in a highway or other public place; or
 - (c) supplies liquor to a person to whom this section applies for consumption in a highway or other public place,

⁶ 1975 c.18

he is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000."

15. Drinking in public places

In section 76 of the 1995 Act (drinking in public places) —

(a) after subsection (2) insert —

"(2A) Any person who —

- (a) is carrying in a designated place an open bottle, flask, can, glass, cup or other vessel which contains or has contained liquor, and
- (b) refuses to comply with a request by a police officer immediately to deposit the vessel in a receptacle for the deposit of litter or to deliver it to the officer,

is guilty of an offence and liable on summary conviction to a fine not exceeding £500.

(2B) Where an offence under subsection (2A) is committed, a police officer may seize the vessel and may dispose of it as he thinks fit.

(2C) Nothing in subsections (2A) and (2B) applies to —

- (a) a flask designed to hold not more than 0.2 litres of spirits and to be carried on the person; or
 - (b) a chalice or other vessel used in the course of a religious service.";
- (b) in subsection (3), for "(1) or (2)" substitute "(1), (2) or (2A)".

16. Supply of liquor otherwise than by way of sale

In section 80(3) of the 1995 Act (definition of "sale"), after "means the sale of any such liquor" insert ", or the supply of any such liquor (otherwise than on sale) in the course of a business,".

17. Consequential amendments and repeals

(1) The enactments specified in Schedule 1 are amended in accordance with that Schedule.

(2) The enactments specified in Schedule 2 are repealed to the extent specified in column 3 of that Schedule.

18. Short title etc.

(1) This Act may be cited as the Licensing (Amendment) Act 2001.

(2) This Act shall come into operation on such day or days as the Department of Home Affairs may by order appoint.

(3) In this Act "the 1995 Act" means the Licensing Act 1995.

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Section 17(1).

SCHEDULE 1

CONSEQUENTIAL AMENDMENTS

The Licensing Act 1995 (c.8)

1. In section 9 —
 - (a) after subsection (3) insert —

"(3A) Regulations under subsection (1) and conditions and undertakings under subsection (3) or (4) may not restrict the hours during which liquor may be sold, supplied or consumed on licensed premises.";
 - (b) for subsection (4) substitute —

"(4) In relation to any licence the court, of its own motion or on an application by any person, may by order do all or any of the following —

 - (a) vary or remove any condition imposed under subsection (3)(b) or this subsection;
 - (b) waive, wholly or in part, any undertaking previously given and accepted; or
 - (c) impose a further condition or accept a further undertaking by the holder of the licence.";
 - (c) in subsection (5) —
 - (i) omit paragraph (a);
 - (ii) in paragraph (d), after "on the premises" insert ", or in any specified room in the premises,".
2. In section 22(1), for "in a bar of on-licensed premises" substitute "in a room in on-licensed premises in respect of which a condition referred to in section 9(5)(d) or (5A) is in force".
3. In section 23, after subsection (5) insert —

"(5A) Subsection (1)(e) or (2)(a) is not contravened by the consumption, or sale for consumption, of liquor in a room in the licensed premises in respect of which a condition referred to in section 9(5)(d) or (5A) is in force.".
4. In section 24 —
 - (a) in subsection (1), for "section 20, 21 or 22" substitute "section 22";
 - (b) in subsection (2), for "section 20, 21, 22 or 23" substitute "section 22 or 23";
 - (c) for subsection (3) substitute —

"(3) In section 23 and this section —

"licence" includes an occasional licence;

"licensed premises" and "on-licensed premises" include premises in respect of which an occasional licence is in force.".

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Section 17(2).

SCHEDULE 2

ENACTMENTS REPEALED

<i>Reference</i>	<i>Short title</i>	<i>Extent of repeal</i>
1986 c.16	The Casino Act 1986.	In Schedule 1, paragraphs 2 and 3.
1995 c.8	The Licensing Act 1995.	In section 9(5), paragraph (a). In section 15(1), the words "(which shall not include any period outside the ordinary permitted hours for on-licensed premises)". Sections 17 to 21. Section 22(2) and (3). In section 23, in subsection (1)(e), the words "in any bar"; and, in subsection (2)(a), the words "in a bar". In section 28(4), the words from "in any case" onwards. In section 32(1), paragraph (f). In section 50(2), paragraph (i). Sections 51 and 52. In section 55(4), the words from "in any case" onwards. Section 61. In section 65(1), the words "on 2 or more occasions". In section 80(1), the definitions of "bar", "the ordinary permitted hours", "the permitted hours" and "table meal". Section 82(4). In Schedule 2, paragraphs 1 to 4 and 7 to 11. Schedule 4.