



Number 14 of 2020

Criminal Justice (Enforcement Powers) (Covid-19) Act 2020



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CRIMINAL JUSTICE (ENFORCEMENT POWERS) (COVID-19) ACT 2020

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ACTS REFERRED TO

Courts (No. 2) Act 1986 (No. 26)

Health Act 1947 (No. 28)

Legal Services Regulation Act 2015 (No. 65)

Registration of Clubs (Ireland) Act 1904 (4 Edw. 7, c. 9)

Registration of Clubs Acts 1904 to 2008



Number 14 of 2020

CRIMINAL JUSTICE (ENFORCEMENT POWERS) (COVID-19) ACT 2020

An Act to make exceptional provision, in the public interest and having regard to the manifest and grave risk to human life and public health posed by the spread of the disease known as Covid-19 and in order to mitigate, where practicable, the effect of the spread of that disease, to provide for additional enforcement measures in respect of certain premises where intoxicating liquor is sold or supplied for consumption on the premises to ensure compliance with certain requirements, imposed by or under the Health Act 1947, breaches of which constitute criminal offences; to provide for additional bases for objection on the ground of good character to renewal of licences for certain premises; to provide for additional bases for objection on the ground of character to renewal of certificates of registration for clubs; to amend the Health Act 1947; and to provide for related matters. [11th September, 2020]

WHEREAS an emergency has arisen and continues in the State by virtue of the spread of the disease known as Covid-19;

AND WHEREAS the State is and its citizens are, in significant respects, highly exposed to the effect of the spread of that disease;

AND WHEREAS the State, having regard to the need to preserve and protect public health, has introduced a range of extraordinary measures and safeguards to prevent, minimise, limit or reduce the risk of persons being infected with that disease;

AND WHEREAS the emergency that has arisen and continues is of such a character that it is necessary for compelling reasons of public interest and for the common good to provide in this Act for additional powers of enforcement of certain of those extraordinary measures and safeguards in relation to certain premises where intoxicating liquor is sold or supplied for consumption on the premises;

AND WHEREAS it is necessary to provide for those additional powers of enforcement in relation to such premises in order to assist and support the State's efforts to promote and maintain the normal functioning of society, to protect the gradual re-opening of

society and, to the greatest extent possible, to avoid the imposition or re-imposition of restrictions thereon.

Be it enacted by the Oireachtas as follows:

Interpretation

1. (1) In this Act—

“Act of 1904” means the Registration of Clubs (Ireland) Act 1904;

“Act of 1947” means the Health Act 1947;

“club” means a club registered under the Registration of Clubs Acts 1904 to 2008;

“compliance notice” has the meaning assigned to it by *section 6(1)*;

“direction” means a direction given under section 31A(7) of the Act of 1947 in relation to a relevant provision;

“emergency closure order” has the meaning assigned to it by *section 5(1)*;

“immediate closure order” has the meaning assigned to it by *section 4(1)*;

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

“licensee” means—

(a) the holder of a licence, and

(b) in relation to a club, every person entered in the register of clubs as an official or member of its committee of management or governing body at the material time;

“member” means a member of the Garda Síochána;

“register of clubs” means the register of clubs kept under the Act of 1904;

“relevant premises” has the meaning assigned to it by *section 2*;

“relevant provision” shall be construed in accordance with *subsection (2)*;

“specified person”, in relation to a relevant premises, means—

(a) the licensee of the premises,

(b) the occupier of the premises,

(c) the manager of the premises, or

(d) any other person for the time being in charge of the premises;

“temporary closure order” has the meaning assigned to it by *section 7(1)* and includes such an order as affirmed or varied under this Act.

- (2) In this Act, “relevant provision” means a provision of a regulation prescribed by regulations made under section 31A(6A) (inserted by *section 13*) of the Act of 1947 to be a relevant provision for the purposes of this Act.

Application of Act

2. This Act applies to any premises (in this Act called a “relevant premises”) where intoxicating liquor is sold or supplied for consumption on the premises—
- (a) under a licence, or
 - (b) of a club.

Entry, inspection, etc., of relevant premises by member

3. (1) Any member, whether in uniform or not, may enter without a warrant any relevant premises at any time and there make such inspection, examination, observation and enquiry as he or she may think proper for—
- (a) the purposes of giving a direction under section 31A(7) of the Act of 1947, whether in relation to a relevant provision or otherwise,
 - (b) the purposes of issuing an immediate closure order,
 - (c) the prevention or detection of offences under a relevant provision, under this Act or under section 31A of the Act of 1947, or
 - (d) an assessment of compliance with a relevant provision, a direction referred to in *paragraph (a)*, an undertaking referred to in *section 5(10)(a)* or *section 7(8)*, an immediate closure order, an emergency closure order, a compliance notice or a temporary closure order.
- (2) Any person who—
- (a) prevents or attempts to prevent a member from exercising the power conferred by *subsection (1)*, or
 - (b) obstructs or attempts to obstruct any such member in the exercise of that power,
- is guilty of an offence and is liable on summary conviction to a class C fine.

Immediate closure order for failure or refusal to comply with direction

4. (1) Where a specified person fails or refuses to comply with a direction of a member given in respect of a relevant premises, that member may request another member not below the rank of superintendent to authorise the first-mentioned member to issue an order (in this Act referred to as an “immediate closure order”) directing the specified person to close the premises for the remainder of the relevant period.
- (2) The member to whom a request is made under *subsection (1)* may authorise, orally or in writing, the issuing of an immediate closure order in accordance with that subsection where, having considered any information or report received (whether in

person, in writing, on the telephone or otherwise) from the member who made the request, he or she is satisfied on the basis of that information or report that—

- (a) a relevant provision is not being complied with,
 - (b) a direction referred to in that subsection is not being complied with, and
 - (c) the giving of the authorisation is appropriate in the circumstances.
- (3) Where a member to whom a request is made under *subsection (1)* authorises the issuing of an immediate closure order, the member so authorising shall ensure that—
- (a) if given orally, the authorisation is recorded in writing as soon as practicable, and
 - (b) the authorisation (if given in writing) or the record of the authorisation (if given orally) is signed and dated by the member and states—
 - (i) the request made, the date and time the request was made and by whom, and
 - (ii) the reason the authorisation was given by that member.
- (4) A specified person who fails without reasonable excuse to comply with an immediate closure order is guilty of an offence and is liable on summary conviction to a class C fine or to imprisonment for a term not exceeding 6 months, or both.
- (5) In this section, “relevant period”, in relation to a relevant premises that is the subject of an immediate closure order, means where intoxicating liquor is sold or supplied for consumption on the premises—
- (a) under a licence—
 - (i) the period on the day the order is issued during which access by members of the public to the premises may be lawfully permitted, and
 - (ii) where such access is lawfully permitted to continue for any period after 12 midnight on that day, that period also,
- and
- (b) of a club—
 - (i) the period on the day the order is issued during which such sale or supply to members of, and visitors to, the club may be lawfully permitted, and
 - (ii) where such sale or supply is lawfully permitted to continue for any period after 12 midnight on that day, that period also.

Application for emergency closure order for failure or refusal to comply with more than one direction

5. (1) A member not below the rank of superintendent may apply *ex parte* to the District Court, at the next available sitting of that Court, for an order (in this Act referred to as an “emergency closure order”) for the temporary closure of a relevant premises, for a period not exceeding 72 hours, where—

- (a) one, or more than one, specified person fails or refuses to comply with a direction given during 2 or more separate relevant periods in respect of the premises, and
 - (b) in light of such failure or refusal, the member is of the opinion that such failure or refusal is continuing or is likely to recur.
- (2) An application under *subsection (1)* shall be made on the sworn information of the member concerned and shall state the basis on which the application is made.
- (3) The District Court may, in any case where it considers it appropriate to do so, adjourn the hearing of an application made under *subsection (1)* and direct that the licensee be notified of the date of the adjourned hearing and served with a copy of the sworn information.
- (4) The District Court may make an emergency closure order where the Court is satisfied that, in relation to a particular relevant premises—
 - (a) there has been a failure or refusal by one, or more than one, specified person to comply with a direction given during 2 or more separate relevant periods in respect of the premises,
 - (b) such failure or refusal is continuing or is likely to recur, and
 - (c) the making of the order is appropriate in the circumstances.
- (5) An emergency closure order—
 - (a) may apply to the whole or part of a relevant premises,
 - (b) shall specify the ground or grounds for making it, and
 - (c) shall specify the date on which, and the time on that date from which, the order is to take effect.
- (6) Where an application is heard *ex parte*, a member shall notify the licensee concerned forthwith of the making of an emergency closure order and shall, at the same time, provide a copy of the sworn information to the licensee.
- (7) Subject to *subsection (8)*, where an emergency closure order has been made *ex parte*, the licensee may apply to the District Court to have the order discharged.
- (8) An application under *subsection (7)* may only be made where the licensee has notified the member in charge for the licensing area in which the relevant premises are situated of the making of the application not less than 6 hours prior to the sitting of the District Court at which the application is to be made and such notification shall be in writing.
- (9) The District Court shall, on application to it under *subsection (7)*, discharge the order where the licensee proves to the satisfaction of the Court that any directions given to any specified person in respect of the relevant premises have and continue to be complied with.
- (10) The District Court may, on application to it under *subsection (7)*, discharge the order where—

- (a) the licensee gives an undertaking to the Court that the relevant provisions will be complied with in respect of the premises, and
 - (b) the Court is satisfied that the discharge of the order is appropriate in the circumstances.
- (11) This section applies whether or not a compliance notice has been issued in respect of the relevant premises concerned.
- (12) In this section, “relevant period”, in relation to a relevant premises, means where intoxicating liquor is sold or supplied for consumption on the premises—
- (a) under a licence—
 - (i) the period of a day during which access by members of the public to the premises may be lawfully permitted, and
 - (ii) where such access is lawfully permitted to continue for any period after 12 midnight on that day, that period also,
 - and
 - (b) of a club—
 - (i) the period of a day during which such sale or supply to members of, and visitors to, the club may be lawfully permitted, and
 - (ii) where such sale or supply is lawfully permitted to continue for any period after 12 midnight on that day, that period also.

Compliance notice

6. (1) A member not below the rank of superintendent may—
- (a) where an immediate closure order has been made in respect of a relevant premises, or
 - (b) where a specified person fails or refuses to comply with a direction given in respect of a relevant premises but no immediate closure order was made in respect of such failure or refusal,
- issue a notice (in this Act referred to as a “compliance notice”) in writing to the licensee of the premises setting out the matters specified in *subsection (3)*.
- (2) A compliance notice—
- (a) where *subsection (1)(a)* applies, shall be issued within 5 days from the making of the immediate closure order concerned, and
 - (b) where *subsection (1)(b)* applies, shall be issued within 5 days from the giving of the direction concerned.
- (3) A compliance notice shall—

- (a) identify the relevant provisions that have not been or are not being complied with in respect of the relevant premises,
 - (b) state the grounds upon which any direction, given to any specified person in respect of the premises prior to the issuing of the notice, was made,
 - (c) require the licensee to comply with any such direction given to any specified person in respect of the premises forthwith and to comply with the relevant provisions,
 - (d) inform the licensee that, if he or she continues to fail or refuse to comply with any such direction given or fails to comply with any of the relevant provisions, an application may be made, without further notice to him or her, to the District Court for a temporary closure order, and
 - (e) inform the licensee of the bases for objection set out in *paragraphs (c) and (d)* (in so far as it relates to a temporary closure order) of *section 11(1)*, to the renewal of a licence at the sitting of the Annual Licensing Court or of the bases for objection set out in *paragraphs (c) and (d)* (in so far as it relates to a temporary closure order) in *section 12*, to the renewal of a certificate of registration under section 3 of the Act of 1904, as the case may be.
- (4) A compliance notice shall take effect immediately upon service on the licensee.
- (5) A licensee may appeal a compliance notice under *section 9* but the lodging of an appeal shall not, pending the outcome of the appeal, affect the operation of the notice.

Application to District Court for temporary closure order for failure or refusal to comply with compliance notice

7. (1) A member not below the rank of superintendent may apply to the District Court for an order (in this Act called a “temporary closure order”) for the temporary closure of a relevant premises where he or she is of the opinion that—
- (a) there has been a failure to comply with a compliance notice, and
 - (b) that such failure to comply is continuing or is likely to recur.
- (2) An application under *subsection (1)* shall be made on not less than 5 days notice to the licensee of the relevant premises.
- (3) Notwithstanding anything contained in the Rules of Court, not less than 7 days notice of an application under *subsection (1)* shall be given to the District Court.
- (4) The District Court shall give such priority to an application under *subsection (1)* as is necessary in the circumstances and may give such directions with regard to the hearing of the application as it considers appropriate in the circumstances.
- (5) Upon the hearing of an application under *subsection (1)*, the District Court may make a temporary closure order where the Court is satisfied that—
- (a) there has been a failure by a licensee to comply with a compliance notice in respect of a relevant premises,

- (b) that failure is continuing or is likely to recur in respect of the relevant premises concerned, and
 - (c) the making of the order is appropriate in the circumstances.
- (6) In determining whether to make a temporary closure order under this section, the District Court may take into account the conduct of any specified person regarding the operation of the relevant premises in response to any direction, immediate closure order, emergency closure order or compliance notice in respect of the premises.
- (7) Subject to *subsection (8)*, a temporary closure order shall have effect to order the closure of the relevant premises for such period—
 - (a) not exceeding 7 days in the case of the first such order made in respect of that premises, and
 - (b) not exceeding 30 days in the case of the second or subsequent such order made in respect of that premises.
- (8) The court may, if it considers appropriate to do so, having regard to any mitigating circumstances and any undertaking given to the court in relation to future compliance with the relevant provisions, suspend, for such period as it considers appropriate, the operation of the order.
- (9) During any period that the operation of a temporary closure order stands suspended in accordance with *subsection (8)*, a member not below the rank of superintendent may, on notice to the licensee, make an application to the District Court to revoke the suspension where he or she is of the opinion that—
 - (a) an undertaking, given in accordance with that subsection, is not being complied with, or
 - (b) there has been a change in the mitigating circumstances referred to in that subsection and some or all of those circumstances no longer apply.
- (10) The Court shall, where it is satisfied that either of the matters set out in *paragraph (a)* or *(b)* of *subsection (9)* apply, revoke the suspension unless the court considers it would be unjust in all the circumstances to do so.
- (11) A temporary closure order—
 - (a) may apply to the whole or a part of a relevant premises,
 - (b) shall specify the ground or grounds for making it, and
 - (c) shall specify the date on which, and the time on that date from which, the order is to take effect.
- (12) A member shall notify the licensee concerned of the making of a temporary closure order but, if the licensee (which in the case of a club, means one of the people referred to in *paragraph (b)* of the definition of “licensee”) or a legal representative (being a practising barrister or practising solicitor, both within the meaning of the Legal Services Regulation Act 2015) of the licensee is present at the sitting of the

District Court at which that order is made, the licensee shall be taken to have been notified of its making for the purposes of this subsection.

Emergency closure order and temporary closure order: applicable provisions

8. (1) While a relevant premises or any part thereof is closed in compliance with an emergency closure order or a temporary closure order, the licensee concerned shall affix to the exterior of the premises, in a conspicuous place, a notice specifying the period of closure, whether the order applies to the whole or a part of the premises and stating that the closure is in compliance with the order concerned.
- (2) A person who fails to affix a notice in accordance with *subsection (1)* is guilty of an offence and is liable on summary conviction to a class C fine.
- (3) A person who permits a relevant premises to be open for business in contravention of an emergency closure order or a temporary closure order is guilty of an offence and is liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months, or both.

Appeal against compliance notice

9. (1) A person aggrieved by a compliance notice may appeal against the notice to the District Court.
- (2) An appeal under *subsection (1)* may be made not later than 7 days from the date on which the compliance notice was served.
- (3) The District Court shall give such priority to an appeal under *subsection (1)* as is necessary in the circumstances and may give such directions with regard to the hearing of the application as it considers appropriate in the circumstances.
- (4) On the hearing of an appeal under *subsection (1)*, the District Court may confirm, vary or revoke the compliance notice.
- (5) A decision of the District Court under this section may be appealed to the Circuit Court and the Circuit Court may, on the hearing of the appeal, confirm, vary or revoke the compliance order.

Appeal against temporary closure order

10. (1) An appeal to the Circuit Court against a temporary closure order shall not have the effect of suspending the operation of the order unless the Circuit Court, on application made to it by the appellant, suspends the operation of the order pending the determination of the appeal.
- (2) The Circuit Court shall give such priority to an appeal referred to in *subsection (1)* or an application under that subsection as is necessary in the circumstances and may give such directions with regard to the hearing of the appeal or the application as it considers appropriate in the circumstances.
- (3) On the hearing of the appeal, the Circuit Court may—

- (a) affirm, revoke or vary the temporary closure order concerned, and
- (b) make such other order (if any) in relation to the relevant premises as it considers appropriate.

Grounds for objection to renewal of licences

11. (1) For the purposes of the renewal of a licence under section 4 of the Courts (No. 2) Act 1986—

- (a) a conviction of a specified person for an offence of not complying with a relevant provision relating to a relevant premises,
- (b) a conviction of a specified person for an offence under this Act,
- (c) an opinion referred to in *section 7(1)* of a member not below the rank of superintendent, or
- (d) the making of an immediate closure order, an emergency closure order or a temporary closure order,

shall be a basis for a notice of objection under that section as to the good character of the licensee concerned.

- (2) A notice of objection referred to in *subsection (1)* shall be served upon the licensee concerned not later than 10 days before the date of sitting of the Annual Licensing Court or other sitting of the District Court before which the objection has been listed for hearing.
- (3) If a notice of objection referred to in *subsection (1)* has been made to the renewal of a licence, the District Court may adjourn the proceedings and give such directions as the Court considers appropriate.
- (4) A licence, the subject of a notice of objection referred to in *subsection (1)*, shall remain in force until the determination of the proceedings before the District Court.

Grounds for objection to renewal of certificates under Act of 1904

12. For the purposes of the renewal of a certificate of registration under section 3 of the Act of 1904—

- (a) a conviction of a specified person for an offence of not complying with a relevant provision relating to a relevant premises,
- (b) a conviction of a specified person for an offence under this Act,
- (c) an opinion referred to in *section 7(1)* of a member not below the rank of superintendent, or
- (d) the making of an immediate closure order, an emergency closure order or a temporary closure order,

shall be a basis for an objection under the grounds contained in section 5(a) of the Act of 1904 as to the character of the chairman or secretary or of any official or member of the

committee of management or governing body of the club concerned.

Amendment of section 31A of Health Act 1947

13. Section 31A of the Act of 1947 is amended by the insertion of the following subsections after subsection (6):

“(6A) (a) Without prejudice to the generality of this section and of sections 95 and 96 but subject to paragraphs (b) and (c), the Minister may, in respect of a provision of a regulation made under subsection (1) that is stated to be a penal provision, prescribe such provision to be a relevant provision for the purposes of the *Criminal Justice (Enforcement Powers) (Covid-19) Act 2020* and, where he or she does so, the provision so prescribed shall be enforceable under and in accordance with that Act.

(b) When prescribing a provision of a regulation for the purposes of this subsection, the Minister shall, in addition to the matters specified in subsection (2), have regard to—

(i) the risks with regard to the spread of Covid-19 associated with gatherings of persons and, in particular, where such gatherings are connected with the consumption of intoxicating liquor,

(ii) the need to take such additional protective measures as are practicable in order to mitigate those risks and to prevent, limit, minimise or slow the spread of Covid-19 in an effective manner,

(iii) the extent to which the additional enforcement measures provided for in the *Criminal Justice (Enforcement Powers) (Covid-19) Act 2020* could assist in mitigating those risks and preventing, limiting, minimising or slowing the spread of Covid-19 in an effective manner, and

(iv) the need to take additional protective measures to assist and support the State’s efforts to promote and maintain the normal functioning of society, to protect the gradual re-opening of society and, to the greatest extent possible, to avoid the imposition or re-imposition of restrictions thereon.

(c) Before prescribing regulations under this subsection, the Minister shall consult the Minister for Justice and Equality and any other Minister of the Government as the Minister considers appropriate having regard to the functions of that other Minister of the Government.

(6B) Subsection (6A) is in addition to and not in substitution for any powers of enforcement conferred on a member of the Garda Síochána by or under this section or any other provision of this Act, or any other enactment.”.

Liability for offences by bodies corporate**14.** (1) Where—

- (a) an offence under this Act has been committed by a body corporate, and
- (b) the offence is proved to have been so committed with the consent or connivance of, or to have been attributable to any neglect on the part of, a person who was either—
 - (i) a director, manager, secretary or other officer of the body corporate, or
 - (ii) purporting to act in any such capacity,

that person, as well as the body corporate, is guilty of an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

- (2) Where the affairs of a body corporate are managed by its members, *subsection (1)* applies in relation to the acts and defaults of a member in connection with the member's functions of management as if he or she were a director or manager of the body corporate.

Exercise of jurisdiction by District Court and Circuit Court

- 15.** (1) The jurisdiction of the District Court under this Act shall be exercised by a judge of the District Court for the time being assigned to the District Court district in which the relevant premises are situate.
- (2) The jurisdiction of the Circuit Court under this Act shall be exercised by a judge of the Circuit Court for the time being assigned to the circuit in which the relevant premises are situate.

Service of documents

- 16.** (1) A notice or other document that is required to be served on or given to a person by this Act shall be addressed to the person by name and may be so served on or given to the person in one of the following ways:
 - (a) by delivering it to the person;
 - (b) by leaving it at the address at which the person ordinarily resides or carries on business or, in a case in which an address for service has been given, at that address;
 - (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or carries on business or, in a case in which an address for service has been given, to that address;
 - (d) by electronic means, in a case in which the person has given notice in writing to the person serving or giving the notice or document concerned of his or her consent to the notice or document (or documents of a class to which the notice or document belongs) being served on, or given to, him or her in that manner.

- (2) A notice or other document that is required to be served on or given to a licensee by this Act shall, where the licensee concerned is such within the meaning of *paragraph (b)* of the definition of “licensee”, be addressed to every person entered in the register of clubs as an official or member of its committee of management or governing body at the material time by name and may be so served or given by leaving the notice or other document at the address of the premises to which the certificate of registration under that Act applies as entered in that register.
- (3) For the purpose of this Act, a company registered under the Companies Acts is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

Short title and operation

17. (1) This Act may be cited as the Criminal Justice (Enforcement Powers) (Covid-19) Act 2020.
- (2) This Act shall come into operation on the day following its passing.
- (3) This Act shall continue in operation until the 9th day of November 2020, unless a resolution approving the continuation of this Act has been passed by both Houses of the Oireachtas before that date and, in that event, this Act shall continue in operation until such date as is specified in the resolution.