

2021-01-12

OBJECTS AND REASONS

This Bill would

- (a) modernize the system for the issuing of liquor licences;
- (b) regulate the sale and supply of alcohol;
- (c) repeal the *Liquor Licences Act*, Cap. 182; and
- (d) provide for related matters.

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SCHEDULE

Liquor Licensing Tribunal

BARBADOS

A Bill entitled

An Act to modernize the system for the issuing of liquor licences, to regulate the sale and supply of alcohol, to repeal the *Liquor Licences Act*, Cap. 182 and provide for related matters.

ENACTED by the Parliament of Barbados as follows:

*Preliminary***Short title**

1. This Act may be cited as the *Liquor Licences Act, 2021*.

Interpretation

2. In this Act,

“administrative penalty” means an administrative monetary penalty imposed by the Liquor Licensing Tribunal in accordance with this Act;

“age of majority” means 18 years of age or over as established by section 3 of the *Minors Act*, Cap. 215;

“approved form” means such form as is approved by the Director in accordance with this Act;

“beer” means any beverage containing alcohol obtained by the fermentation of an infusion or decoction of barley, malt and hops or of any similar products in drinkable water;

“club of employees” includes a canteen or mess of the Defence Force, the Police Force and the Fire Service;

“day” means workday;

“Director” means the chief officer referred to in section 4(2);

“establishment” in relation to liquor licensing means a retail or wholesale business, a hotel, a restaurant, an entertainment business, a betting and gaming business, a club or any other premises;

“event site” in relation to a licence to sell liquor at an event means the place, premises and environs where the event is held;

“former Act” means the *Liquor Licences Act*, Cap. 182;

- “hotel” has the meaning assigned to it under the *Barbados Tourism Product Authority Act, 2014* (Act 2014-2);
- “infringement” means a failure by a licensee to comply with a requirement mentioned in section 40(1);
- “licence” means a licence issued under this Act and “licensed” shall be construed accordingly;
- “licensed premises” means premises which are licensed;
- “licensee” means a person who holds a licence;
- “liquor” means spirits, wine and beer or any combination thereof and includes any alcohol in a form appropriate for human consumption as a beverage;
- “Liquor Licensing Authority” or “Authority” means the body established by the Minister under section 4(1);
- “Liquor Licensing Tribunal” or “Tribunal” means the Tribunal established under section 24;
- “members' club” means any society of persons, whether or not incorporated, whose members are not associated together with a view to profit;
- “minor” means a person under the age of majority;
- “notice of infringement” means a notice that is served on a licensee by the Director under section 40(4);
- “place of public entertainment” means
- (a) any premises or any vessel kept habitually or used for entertainment, whether or not at stated intervals, in which the public may join or at which members of the public may be entertained for payment of money; and
 - (b) any establishment in respect of which the *Betting and Gaming Duties Act, Cap. 60* applies;
- “police officer” means a member of the Police Force;

“premises” means

- (a) an establishment;
- (b) any house, shop, bar, booth, unit, tent or other structure specified in a licence as the premises where the licensee may sell liquor; and
- (c) a service area at an event site;

“restaurant” means a restaurant within the meaning of the *Barbados Tourism Product Authority Act, 2014* (Act 2014-2);

“sealed container” includes a bottle or jar, the aperture of which is covered by a cork or cap;

“service area” means that part of an event site where a licence authorizes liquor to be sold, served or consumed;

“spirits” means any beverage containing alcohol obtained by distillation;

“wine” means any beverage containing alcohol obtained by the fermentation of the natural sugar contents of fruits, whether or not honey and milk is included.

Act not to apply in certain cases

3. This Act does not apply to

- (a) any alcohol used for pharmaceutical or medical purposes;
- (b) the sale of liquor in connection with the administration of estates;
- (c) the sale of liquor by virtue of any legal process or any law authorizing such sale;
- (d) the sale or supply of liquor at a club of employees;
- (e) the supply of liquor to members or other persons at a club if the liquor is supplied free of charge; or
- (f) wine administered to any person by a church for religious purposes.

Administration

Liquor Licensing Authority

- 4.(1) The Minister shall establish a Liquor Licensing Authority for the purposes of this Act.
- (2) The Authority shall consist of a chief officer, to be known as the Director, and such officers to assist the Director as the Minister thinks necessary.
- (3) The Authority shall be responsible for
- (a) administering this Act;
 - (b) issuing licences in accordance with this Act;
 - (c) supervising licensees and the operation of licensed premises; and
 - (d) the general enforcement of this Act.

Protection of staff of Liquor Licensing Authority

5. No action or other proceedings for damages shall be instituted against any member of the Liquor Licensing Authority for anything done or omitted in the discharge or purported discharge of that person's functions under this Act, unless it is shown that the act or omission was in bad faith.

Sale of Liquor

Sale of liquor

6. Subject to this Act, a person shall not
- (a) sell liquor;
 - (b) keep or expose liquor for sale;
 - (c) solicit, receive or take orders for the sale of liquor,

unless a licence, which is appropriate to the establishment, is obtained under this Act.

Classes of licences

7. The following classes of licences may be issued under this Act:
- (a) an export licence applies where liquor is to be exported;
 - (b) a wholesale licence applies where liquor is to be sold on a wholesale basis;
 - (c) a retail licence applies where liquor is to be sold on a retail basis whether or not the liquor is in a sealed container;
 - (d) a hotel licence applies where liquor is to be sold at a hotel;
 - (e) a restaurant licence applies where liquor is to be sold at a restaurant;
 - (f) a seasonal licence applies where liquor is to be sold at events occurring over a period not exceeding 3 months;
 - (g) a special occasion licence applies where liquor is to be sold at an event over a period not exceeding 24 hours;
 - (h) an entertainment licence applies where liquor is to be sold at any place of entertainment;
 - (i) a members' club licence applies where liquor is to be sold at a club to members of the club or to any other person.

Conditions relating to licences

8.(1) Where an export licence or a wholesale licence is issued, the liquor shall be sold in sealed containers and shall not be consumed on the premises.

(2) The Liquor Licensing Authority may in any particular case, for the purposes of the public interest, impose conditions relating to

- (a) the time of serving liquor;

- (b) the alteration of the premises where the liquor is to be sold; or
- (c) any other condition considered necessary,

in respect of any retail licence, a seasonal licence or special occasion licence.

- (3) A manufacturer of liquor shall not be issued with a retail licence in respect of the premises where liquor is being manufactured.
- (4) Where a person holds
 - (a) a retail licence in respect of an establishment, a wholesale licence shall not be issued by the Authority in respect of that establishment;
 - (b) a wholesale licence in respect of an establishment, a retail licence shall not be issued by the Authority in respect of that establishment.
- (5) A retail licence shall not be issued in respect of a hotel, restaurant or place of public entertainment.

Issue of Licences

Application for licence

- 9.** Where a person desires to sell liquor, an application shall be made to the Liquor Licensing Authority in the approved form and the applicant shall
- (a) submit such documents or information as may be required by the Authority; and
 - (b) pay such fees as may be prescribed.

Conditions to be satisfied

- 10.(1)** No licence shall be issued to an applicant unless the Liquor Licensing Authority is satisfied that
- (a) the applicant has attained the age of 18 years;
 - (b) the premises are suitable for the conduct of business under the particular class of licence to which the application relates;

- (c) any objection made under section 12 to an application for the issue of a retail or an entertainment licence has been determined; and
 - (d) the grant of the licence would not be contrary to the public interest.
- (2) Nothing in this Act shall be interpreted as precluding a licensee from the responsibility of complying with any law relating to
- (a) the health conditions to be satisfied by persons serving food and drink to the public; or
 - (b) building standards and facilities relating to sanitation and health to be provided for members of the public at any establishment.

Publication of notice in respect of applications for new retail and entertainment licences

11.(1) On receipt of a new application for a retail licence or an entertainment licence, the Liquor Licensing Authority shall, within 3 days,

- (a) publish a notice of the receipt of the application on the Ministry's website or in such other manner as is approved by the Director;
 - (b) indicate in the notice published under paragraph (a) that an objection may be lodged with the Authority in respect of the application by any person who is of the view that the issue of a licence to the applicant would be prejudicial to his interest; and
 - (c) notify the Commissioner of Police of the application.
- (2) For the purposes of subsection (1)(a) "Ministry's website" means the official website of the Ministry responsible for liquor licensing.

Right to object to application for new retail or entertainment licence

12. A person may, in relation to an application for a new retail or entertainment licence, no later than 7 days after the publication of a notice under section 11, lodge an objection with the Liquor Licensing Authority in respect of the application.

Hearing of objections in relation to new applications for retail and entertainment licences

13.(1) Where an objection under section 12 is received by the Liquor Licensing Authority in relation to an application for a new retail or entertainment licence, the Authority shall hear and determine the objection no later than 7 days after the objection is received.

(2) Where an objection is lodged under section 12, the applicant for the licence, the Commissioner of Police and the person who has lodged the notice of objection, may appear personally or by attorney-at-law on the hearing of the objection under subsection (1).

(3) The Liquor Licensing Authority shall provide the parties referred to in subsection (2) with all necessary information relating to the hearing of the objection, including the time and place of the hearing.

(4) In the hearing and determination of any objections before it, the Liquor Licensing Authority may act without regard to technicalities and legal form, and shall not be bound to follow the rules of evidence stipulated in the *Evidence Act*, Cap. 121.

(5) For the purposes of subsection (4), the Authority may inform itself on any matter in such manner as it thinks just and may take into account opinion evidence and such facts as it considers relevant and material.

Issue of licence generally

14.(1) Subject to section 10, where an applicant for a licence other than a retail, an entertainment, a seasonal or a special occasion licence, has complied with all the requirements set out in this Act for the issue of a licence, the Liquor Licensing Authority shall, within 5 days of the receipt of the application, issue a licence to the applicant in the approved form on payment of the prescribed fee.

(2) All licences issued under this Act, except for a special occasion licence or a seasonal licence, may be issued for a period not exceeding 3 years.

- (3) The date on which a licence expires shall be stated on the licence.

Issue of new retail and entertainment licences

15.(1) Where, in relation to an application for a new retail or an entertainment licence,

- (a) no objections are lodged under section 12; and
- (b) the applicant has complied with all the requirements set out in this Act for the issue of the licence,

the Liquor Licensing Authority shall, within 15 days of the publication of a notice pursuant to section 11, issue a licence to the applicant in the approved form on payment of the prescribed fee.

(2) Where, in relation to an application for a new retail or an entertainment licence,

- (a) an objection is lodged under section 12 and the objection is determined in favour of the applicant; and
- (b) the applicant has complied with all the requirements set out in this Act for the issue of a licence,

the Liquor Licensing Authority shall, within 7 days of the determination of the objection, issue a licence to the applicant in the approved form on payment of the prescribed fee.

Issue of special occasion and seasonal licences

16.(1) Where an application is made for a seasonal or a special occasion licence, the Liquor Licensing Authority shall,

- (a) notify the Commissioner of Police of the application without delay; and
- (b) allow the Commissioner of Police to submit an opposition to the issue of a licence within a period of 24 hours.

(2) Where an application is made for a seasonal or a special occasion licence, the Liquor Licensing Authority shall

- (a) where no opposition is submitted by the Commissioner of Police under subsection (1); or
- (b) where an opposition which is submitted by the Commissioner of Police is determined in favour of the applicant,

issue a licence to the applicant in the approved form, on payment of the prescribed fee, within 2 days of the receipt of the application.

Register

17.(1) The Liquor Licensing Authority shall keep and maintain a register of all licences issued under this Act in such manner as the Director determines.

(2) The Register shall be open to inspection by the members of the public each work day during office hours.

Duty to comply with conditions of licence

18. A licensee

- (a) shall comply with the conditions specified in subsections (1) and (2) of section 8 where those conditions apply to the class of licence issued; and
- (b) shall, where he holds a retail licence, a seasonal licence or a special occasion licence, comply with any conditions imposed by the Liquor Licensing Authority under subsection (2) of section 8.

Change in circumstances after issue of licence

19.(1) A licensee shall notify the Liquor Licensing Authority of any change in the circumstances in relation to which a licence was issued.

(2) Where there is a change of circumstances in relation to which a licence was issued, the Liquor Licensing Authority may vary the conditions of the licence

or may require the licensee to apply for a different class of licence as appropriate to the circumstances.

Suspension, Revocation and Cancellation of Licence

Suspension and revocation of licence

20.(1) The Liquor Licensing Authority may suspend or revoke a licence where

- (a) the licensee fails to comply with a condition of the licence;
- (b) the licensee is in breach of any duty or obligation imposed by this Act;
- (c) the licensee infringes any provision of this Act;
- (d) the licensee fails to pay any administrative penalty imposed under this Act after being given a reasonable opportunity to do so.

(2) Where the Liquor Licensing Authority proposes to suspend or revoke a licence issued under subsection (1), the Authority shall give the licensee notice in writing of its intention to do so and a reasonable opportunity to show cause why the licence should not be suspended or revoked.

(3) The Authority shall, in a notice given under subsection (2),

- (a) inform the licensee of the proposal to suspend or revoke the licence, as the case may be, and the reasons therefor;
- (b) inform the licensee of the right under subsection (2) to show cause why the licence should not be suspended or revoked; and
- (c) give the licensee information as to the place and time where the licensee may be heard.

Cancellation of licence

- 21.** The Liquor Licensing Authority shall cancel a licence
- (a) from such date as a licensee specifies in a notice to the Authority that he intends to surrender his licence; or
 - (b) where the licensee ceases to carry on business under the licence.

Renewal and Interim Conduct of Licensee's Business

Renewal of licences

- 22.** A licensee may, in the approved form, apply to the Liquor Licensing Authority for a licence to be renewed
- (a) on production of such documents or information as may be required by the Authority; and
 - (b) on payment of the prescribed fees.

Conduct of licensee's business on an interim basis

- 23.** Where a licensee has died or is unable to conduct business under a licence issued to him, any person who is in charge of the business, may, after notifying the Authority of the change of circumstance, carry on the business under the licence for a period not exceeding 30 days.

Liquor Licensing Tribunal

Liquor Licensing Tribunal

- 24.(1)** There shall be a Liquor Licensing Tribunal which
- (a) shall hear appeals from the decisions of the Liquor Licensing Authority in accordance with this Act; and

- (b) shall be responsible for the hearing of matters related to any infringement by a licensee mentioned in section 40(1) and the imposition of administrative penalties where appropriate.
- (3) The *Schedule* shall have effect with respect to the jurisdiction and procedure of the Tribunal and otherwise in relation thereto.
- (4) The Minister may by order amend the *Schedule*.

Appeals

Appeals to the Liquor Licensing Tribunal

25.(1) A person who is aggrieved

- (a) by the refusal of the Liquor Licensing Authority to issue a licence under this Act;
- (b) by the suspension or revocation of a licence under this Act; or
- (c) by any other decision of the Liquor Licensing Authority,

may within 14 days of the receipt of notification of the decision, appeal to the Liquor Licensing Tribunal.

- (2) Every hearing and determination by the Tribunal shall be in accordance with the principles of natural justice.
- (3) The Tribunal may make any order, give any decision or take any action which is within the power of the Liquor Licensing Authority and may give any direction to the Liquor Licensing Authority.

Appeals to the High Court

26.(1) A party to an appeal determined by the Tribunal who is dissatisfied with the determination may, within 14 days after that person is notified of the decision, appeal to the High Court against the decision in accordance with the rules of court.

(2) On an appeal under subsection (1), the High Court may make any order or give any decision which might have been made or given by the Tribunal, and may, if it thinks fit, remit the case to the Tribunal with directions as to its determination by the Tribunal.

Minors

Sale or supply of liquor to minors

27.(1) No licensee or any other person shall sell or supply liquor to a minor.

(2) It shall be a defence to any complaint of infringement with respect to the selling or supplying of liquor to a minor under subsection (1), for the defendant to prove that he believed and had reasonable grounds for believing that the minor was 18 years of age or older.

(3) Where a report is made to the Liquor Licensing Authority in relation to the infringement of subsection (1) by a licensee or with the consent of the licensee, the Authority shall revoke the licence where the Authority makes a finding that the provision has been infringed.

Responsibilities of Licensees

Employment of minors

28. No person under the age of 18 years shall be employed in connection with the sale or supply of liquor at any establishment.

Certain persons may be refused admittance or ejected

29. A licensee or any other person who is in charge of licensed premises shall

- (a) refuse to admit to the premises any person who is drunk, violent or disorderly; or

- (b) order a person to leave the premises where that person's conduct is disorderly.

Permitting disorderly conduct

- 30.** A licensee or person in charge of an establishment shall not
- (a) permit drunkenness or any violent or disorderly conduct to take place at the establishment; or
 - (b) sell any liquor to any drunken person at the establishment.

Sale of liquor injurious to health

- 31.** No person shall
- (a) mix or permit any liquor to be mixed with any ingredient or substance so as to render the liquor injurious to health; or
 - (b) sell, supply or expose for sale any liquor referred to in paragraph (a).

Discrimination

- 32.** A licensee or other person in charge of any licensed premises shall not refuse to sell liquor to any person on account of the race, colour, creed or gender of that person.

Enforcement and Compliance Procedures

Entry and inspection of licensed premises

- 33.(1)** A member of the Liquor Licensing Authority, on the production of his identification, or a police officer may at any time enter and inspect any licensed premises for the purpose of ascertaining whether this Act is being complied with.
- (2) A licensee
- (a) shall not refuse or fail to admit; or

(b) obstruct,

a member of the Liquor Licensing Authority or a police officer while carrying out his duties pursuant to subsection (1).

(3) A licensee shall not instruct

(a) a person employed by him; or

(b) a person acting under his direction or control

to obstruct a member of the Liquor Licensing Authority or a police officer from carrying out his duties under subsection (1).

Production of licence and records

34.(1) A member of the Liquor Licensing Authority or a police officer, for the purposes of establishing that this Act is being complied with, may

(a) request any person who appears to be in charge of the establishment to produce the licence for the establishment; or

(b) request any person who appears to be in charge of the establishment to produce any records or information.

(2) A person shall comply with a request given by a member of the Liquor Licensing Authority or a police officer under subsection (1).

Order to vacate premises

35.(1) Where there are reasonable grounds to believe that a disturbance or breach of the peace sufficient to constitute a threat to the public safety is being caused on licensed premises, a police officer, not below the rank of Sergeant, may require that all patrons vacate the premises and not return within a stated period not exceeding 24 hours.

(2) No person shall remain on licensed premises or re-enter the premises contrary to an order given by a police officer under subsection (1).

(3) Where premises are required to be vacated under subsection (1), the licensee shall take all reasonable steps to ensure that the premises are vacated.

Temporary suspension in public interest

36.(1) The Director may, without a hearing and after notifying the licensee, suspend a licence for a period not exceeding 24 hours where the Director is satisfied that

- (a) the conduct of the licensee's patrons or employees is of a riotous, violent, drunken or disorderly nature; or
- (b) the safety of one or more persons at the licensed premises is threatened.

(2) No licensee shall sell or supply liquor at the licensed premises after his licence is suspended under subsection (1).

Complaints by the public

37.(1) A person residing within 300 metres of any licensed premises may make a complaint to the Liquor Licensing Authority against a licensee in respect of the frequent drunkenness of patrons, the disorderly conduct of patrons or the disturbance of the neighbourhood.

(2) Where on the hearing of a complaint, the Liquor Licensing Authority is satisfied

- (a) that the conduct will continue; or
- (b) that the sale of liquor at the establishment would not be in the public interest,

the Authority may suspend or revoke the licence or may permit the licence to be retained subject to such conditions as the Authority may impose.

Director may issue directives

38. Where in the opinion of the Director, any provision of this Act is being infringed or a licensee is in breach of any condition of a licence, the Director may issue directives to require the licensee

- (a) to take corrective action; or
- (b) cease a particular activity, behaviour or practice.

Search and seizure

39.(1) A magistrate having reason to believe, from the information or evidence upon oath of any member of the Liquor Licensing Authority or a police officer, that liquor is being unlawfully sold or kept for sale in any premises which are not licensed, may issue a warrant to a member of the Authority or a police officer, authorizing the member of the Authority or the police officer to enter and search those premises at any hour by day or night, for the purpose of ascertaining whether this Act is being or has been infringed.

(2) Where upon such search, any liquor is found in such quantities or under such circumstances as to satisfy the police officer or member of the Authority that it is kept for the purpose of unlawful sale, then the police officer or member of the Authority shall seize and carry away or otherwise secure the liquor.

(3) Where upon a hearing before the Tribunal it is adjudged and determined that any liquor seized under subsection (2) has been kept for the purpose of unlawful sale, then the Tribunal may adjudge the liquor to be forfeited.

(4) Any liquor adjudged to be forfeited shall be sold in such manner as the Tribunal shall direct and the net proceeds from such sale shall be paid into the Consolidated Fund.

(5) Before a hearing under subsection (3), every person who is or who appears to the police officer or member of the Authority to be the owner of such liquor, shall be summoned to appear at such hearing.

*Administrative Penalties***Imposition of administrative penalties**

40.(1) The Liquor Licensing Tribunal may impose an administrative penalty, not exceeding \$10 000, on a licensee where the Tribunal is satisfied beyond reasonable doubt that the licensee

- (a) has failed to comply with a condition of the licence;
- (b) is in breach of any duty or obligation imposed by this Act;
- (c) has infringed any provision of this Act; or
- (d) has failed to comply with a directive issued by the Director under section 38.

(2) The Tribunal shall, before imposing a penalty under subsection (1), give the licensee an opportunity to make oral or written representations and objections and to show cause why the penalty should not be imposed.

(3) Where the Director is satisfied that an infringement specified under subsection (1) has been committed, the Director shall inform the Tribunal.

(4) Where the Director informs the Tribunal in accordance with subsection (3) that an infringement specified under subsection (1) has been committed, the Tribunal may direct him to serve a notice of infringement on the licensee in accordance with subsection (5).

(5) A notice of infringement shall contain the following information:

- (a) the name of the person by whom the administrative penalty is payable;
- (b) the grounds on which the administrative penalty is being imposed, including where applicable, the provision of the Act which is infringed;
- (c) the right to make oral or written representations and objections and the period within which they may be made;

- (d) the amount of the administrative penalty which is imposed, the period, not exceeding 30 days, within which payment of the penalty may be made and other particulars relating to payment;
- (e) the right of the person to appeal and the provisions of the Act relating to that right.

Appeal of administrative penalty

41.(1) A person who is aggrieved by a decision of Tribunal under section 40(1) may appeal to the High Court on any of the following grounds:

- (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the decision was unreasonable.
- (2) On an appeal under subsection (1), the High Court may confirm, vary or set aside any decision of the Tribunal.

Miscellaneous

Intoxicated persons in public places

42. A police officer may, for a period not exceeding 12 hours, take into custody any person who is intoxicated in a place to which the general public is invited or permitted access, if in the opinion of the police officer, to do so is necessary for the safety of any person.

Collection and recovery of fees and administrative penalties

43.(1) All fees and administrative penalties collected pursuant to this Act shall be paid into the Consolidated Fund.

(2) Any administrative penalty that remains unpaid after the expiration of one month after it becomes due and payable under this Act is a debt due to the Crown and may be recovered as a debt due to the Crown in civil proceedings before a

magistrate for District “A”, notwithstanding that the amount exceeds the monetary limit on the jurisdiction of a magistrate’s court.

(3) In the recovery of unpaid sums in pursuance of subsection (2), the Director may certify, in relation to the person who owes those sums, in a certificate called an unpaid liquor licence certificate, the sums due and payable by that person.

(4) An unpaid liquor licence certificate may be filed by the Director in the High Court or in a magistrate's court for District 'A'; and it shall be registered in the court in which it is filed.

(5) Subject to subsection (8), a certificate referred to in this section has, after the expiration of 7 days from the date on which it is filed, the same force and effect as a judgment of the court in which it is registered in favour of the Liquor Licensing Authority against the person named in the certificate for the sum specified in the certificate and also for all reasonable costs including court costs and charges incurred in recovering the sums owed.

(6) Proceedings may be taken on an unpaid liquor licence certificate as if it were a judgment of the court in which it was registered.

(7) Where an unpaid liquor licence certificate is filed by the Director in the High Court or in a magistrate’s court for District ‘A’, the Director shall, without delay, deliver a copy of the unpaid liquor licence certificate to the person to whom that certificate relates and, if the copy of the certificate is not so delivered within 7 days from the date of the filing, then subsections (5) and (6) cease to have effect with respect to that certificate.

(8) Where a judgment is obtained in any court against a person in respect of sums due, a member of the Liquor Licensing Authority may proceed to execute and enforce that judgment and exercise all the remedies attached thereto for the satisfaction of the judgment.

Forms

44. All forms required for the purposes of this Act shall, with the approval of the Minister, be provided by the Liquor Licensing Authority.

Regulations

- 45.(1)** The Minister may make regulations
- (a) respecting the conditions or restrictions that apply to any class of licence or to permits of any kind;
 - (b) respecting any documents or information that must be supplied with any application under this Act;
 - (c) prescribing the fees in respect of applications, licences, permits or any matter or proceeding under this Act;
 - (d) relating to the hearing of objections by the Liquor Licensing Authority or appeals to the Liquor Licensing Tribunal;
 - (e) prescribing anything that is required to be prescribed under this Act;
 - (f) generally for the purpose of giving effect to this Act.
- (2) Regulations made under subsection (1) are subject to negative resolution.

Transitional and savings re proceedings

- 46.(1)** Where at the commencement of this Act, any proceedings under the former Act relating to the issue of liquor licences and matters related thereto, are in the process of being heard by a magistrate, a licensing authority or any other body, the magistrate, licensing authority or the other body shall continue to hear and determine the proceedings.
- (2) Where at the commencement of this Act, any proceedings under the former Act are awaiting a hearing by a magistrate, a licensing authority or any other body, the proceedings shall be heard and determined by the Liquor Licensing Authority or the Liquor Licence Tribunal as is appropriate.

Savings of licences and permits

- 47.(1)** A licence issued under the former Act shall continue in force until it expires or is sooner revoked.

(2) Any permit or permission issued under the former Act shall continue in force until it expires or is sooner revoked.

Repeal of Cap. 182 and related enactments

48. The *Liquor Licences Act*, Cap. 182 and all enactments made under that Act are repealed.

Commencement

49. This Act shall come into operation on a date to be fixed by Proclamation.

SCHEDULE

(Section 24(3) and (4))

Liquor Licensing Tribunal

1.(1) The Liquor Licensing Tribunal shall consist of not less than 5 members who shall be appointed by the Minister by instrument in writing for a period not exceeding 3 years.

(2) An appeal to the Tribunal shall be heard and determined by not less than 3 members.

(3) The Minister shall appoint as Chairman, a member who is an attorney-at-law who has been in practice for not less than 10 years and such other number of members as the Minister deems appropriate.

(4) The members of the Tribunal are entitled to such remuneration and allowances as the Minister determines.

(5) A member may at any time resign his membership by notice in writing addressed to the Minister.

2.(1) Where the Minister is satisfied that a member

(a) has been incapacitated by physical or mental illness; or

(b) is otherwise unable or unfit to discharge the functions of a member,

the Minister may by notice published in the *Official Gazette* declare the office of the member to be vacant and, thereupon, the office shall become vacant.

(2) In case of the temporary absence or inability of a member to act, the Minister may by notice published in the *Official Gazette*, appoint a suitable person to act in that member's place.

3. The Minister shall publish in the *Official Gazette* notice of the appointment and cessation of appointment of a member.

4. The Tribunal may, at the discretion of the Chairman, sit in private where it appears expedient that the Tribunal should do so.

5. The validity of any proceedings of the Tribunal shall not be affected by any vacancy among the members or by any defect in the appointment of a member.

6.(1) In determining an appeal, the Tribunal may review the whole case in respect of law and fact, and the exercise of any discretion, and shall determine the case in accordance with its own judgment.

(2) In case of a difference of opinion among members sitting together, the opinion of the majority shall prevail, and in case of an equality of numbers, the opinion of the Chairman shall prevail.

(3) Notwithstanding sub-paragraph (2), where the question to be determined is one of law, account shall not be taken of the opinion of a member who is not an attorney-at-law.

7.(1) In the hearing and determination of any matter before it, the Tribunal may act without regard to technicalities and legal form and shall not be bound to follow the rules of evidence stipulated in the *Evidence Act*, Cap. 121.

(2) For the purposes of sub-paragraph (1), the Tribunal may inform itself on any matter in such manner as it thinks just and may take into account opinion evidence and such facts as it considers relevant and material, but in any such case, the parties to the proceedings shall be given the opportunity, if they so desire, of adducing evidence.

(3) The parties to the proceedings shall be entitled to appear in person or may be assisted in the preparation of their respective cases by counsel or by a duly authorized representative, but the Tribunal shall not award costs to any party to

a proceeding before the Tribunal other than sums in respect of the reasonable costs incurred in any one or more of the following:

- (a) the filing of documents;
- (b) the obtaining of any expert report;
- (c) the enforcement of an award of the Tribunal,

and any such award of costs shall be in the discretion of the Tribunal.

8. The Tribunal may, where it determines it to be necessary in any particular case, consult any person having experience in any relevant field to assist it in dealing with a matter.

9. The Tribunal may issue subpoenas, make orders and give directions to such persons and in such manner as it thinks fit for the purpose of summoning witnesses, requiring the disclosure of documents or other evidence, requiring parties or witnesses to answer questions, and for the purpose of conducting its proceedings in a proper and orderly manner.

10. For the purposes of reviewing a decision, the Tribunal may proceed in the absence of a party who has been given reasonable notice in writing to attend.

11.(1) The decisions of the Tribunal shall be in writing and shall include reasons for the decision, a statement of its findings on material questions of fact and a reference to the evidence or other material on which the findings are based.

(2) The Tribunal shall ensure that the decision is served on each party to the proceedings.

12. Subject to this *Schedule*, the Tribunal shall regulate its own procedure and may make rules for that purpose.

13. Without prejudice to the generality of paragraph 10, the Tribunal, as respecting the attendance and examination of witnesses, the production and inspection of documents and all other matters necessary for the exercise of its

jurisdiction, shall have all such powers as are vested in a magistrate's court in an action in that court.

Read three times and passed the House of Assembly this
day of _____, 2021.

Speaker

Read three times and passed the Senate this _____ day of
, 2021.

President

LIQUOR LICENCES, BILL 2021

EXPLANATORY MEMORANDUM

The Bill would modernize the system for the issuing of liquor licences and repeal the *Liquor Licences Act*, Cap. 182.

Preliminary

Clause 1: Short title

This clause provides for the short title.

Clause 2: Interpretation

This clause provides for the interpretation.

Clause 3: Act not to apply in certain cases

This clause provides for special cases where the Act would not apply, such as liquor used for medical or religious purposes.

Administration

Clause 4: Liquor Licensing Authority

This clause vests the new powers of administration and implementation in a civil Liquor Licensing Authority under the Ministry.

Clause 5: Protection of staff of Liquor Licensing Authority

This clause provides the staff of the Authority with immunity.

Sale of Liquor

Clause 6: Sale of Liquor

This clause prohibits the sale and serving of liquor by establishments without the appropriate licence.

Clause 7: Classes of licences

This clause specifies the various classes of licences that may be issued under the Act. These provisions change and clarify the law in relation to clubs, places of entertainment and gaming businesses.

Clause 8: Conditions relating to licences

This clause sets out the general conditions that apply to each class of licence. The provisions prohibit businesses from holding more than one type of licence where the terms and conditions of such licences are incompatible.

Issue of Licences

Clause 9: Application for licence

This clause sets out the procedure to be followed by applicants when applying for a licence.

Clause 10: Conditions to be satisfied

This clause sets out the conditions to be satisfied by applicants, including age and building requirements.

Clause 11: Publication of notice in respect of applications for new retail and entertainment licences

This clause requires the Authority to publish a notice indicating receipt of an application for a new retail licence or an entertainment licence and to facilitate the hearing of objections to such applications.

Clause 12: Right to object to application for new retail or entertainment licence

This clause empowers members of the public to object to an application for a new retail or entertainment licence after the Authority publishes the notice.

Clause 13: Hearing of objections in relation to new applications for retail and entertainment licences

This clause sets out the procedure to be followed by the Authority for the hearing of objections from members of the public in relation to new applications for retail and entertainment licences.

Clause 14: Issue of licence generally

This clause sets out the procedure in relation to the issue of all licences which are not subject to formal objections.

Clause 15: Issue of new retail and entertainment licence

This clause sets out the procedure in relation to the issue of retail and entertainment licences which are subject to objections.

Clause 16: Issue of special occasion and seasonal licences

This clause provides for the issue of seasonal and special occasion licences. Seasonal licences will apply to events which are held over a period of 3 months and special occasion licences will apply to events which are held for a period not exceeding 24 hours. These provisions permit the Police to object to the issue of the licence, but no formal objection procedure applies.

Clause 17: Register

This clause requires the Authority to maintain a register of licences.

Clause 18: Duty to comply with conditions of licence

This clause imposes a responsibility on licensees to comply with the conditions of licences.

Clause 19: Change in circumstances after issue of licence

This clause requires licensees to notify the Authority of any change in circumstance after a licence is issued and gives the Authority power to vary the conditions relating to the licence as it sees fit.

Suspension, Revocation and Cancellation of Licence

Clause 20: Suspension and revocation of licence

This clause sets out the procedure to be followed by the Authority when suspending or revoking a licence.

Clause 21: Cancellation of licence

This clause sets out the circumstances in which a licence can be cancelled.

Renewal and Interim Conduct of Licensee's Business

Clause 22: Renewal of licences

This clause provides for the renewal of licences other than seasonal or special occasion licences.

Clause 23: Conduct of licensee's business on an interim basis

This clause makes provision for a person to carry on a licensee's business for a period of 30 days if a licensee dies or ceases to operate the business.

Liquor Licensing Tribunal

Clause 24: Liquor Licensing Tribunal

This clause establishes the Liquor Licence Tribunal which will hear appeals from the Authority and hear matters relating to the infringement of the Act. The Tribunal will be responsible for the imposition of administrative penalties where the Act is infringed.

Appeals

Clause 25: Appeals to the Liquor Licensing Tribunal

This clause provides for the instances in which an appeal may be made to the Tribunal.

Clause 26: Appeals to the High Court

This clause provides for appeals from decisions of the Tribunal to be heard by the High Court.

Minors

Clause 27: Sale or supply of liquor to minors

These provisions strengthen the protection given to minors not to be sold or supplied liquor by adults.

Responsibilities of Licensees

Clause 28: Employment of minors

This clause restates the responsibility of persons not to employ minors.

Clause 29: Certain persons may be refused admittance or ejected

This clause gives the licensee power to eject persons who are disorderly.

Clause 30: Permitting disorderly conduct

This clause restates the responsibility of licensees not to allow disorderly conduct to take place at their establishment.

Clause 31: Sale of liquor injurious to health

This clause restates the responsibility of persons not to mix or sell adulterated liquor.

Clause 32: Discrimination

This clause restates the responsibility of licensees not to discriminate against persons by denying them the right to purchase liquor on the basis of their colour, race or creed. The provision has been widened to include discrimination on the basis of gender.

Enforcement and Compliance Procedures

Clause 33: Entry and inspection of licensed premises

This clause gives the Authority and the Police power to inspect establishments to ensure that the law is being complied with.

Clause 34: Production of licence and records

This clause gives the Authority and the Police power to request documents and information from establishments in order to ensure that the law is being complied with.

Clause 35: Order to vacate premises

This clause empowers the Police to take quick action and order an evacuation of an establishment for 24 hours where it is necessary to avoid a disturbance of the peace.

Clause 36: Temporary suspension in public interest

This clause empowers the Director to take quick action and suspend the licence of an establishment for 24 hours where it is necessary in the public interest.

Clause 37: Complaints by the public

This clause gives members of the public the right to make a complaint to the Authority if their interests are adversely affected.

Clause 38: Director may issue directives

This clause makes provision for the Director to issue directives to licensees to take corrective action where necessary.

Clause 39: Search and seizure

This clause allows for searches of an establishment to be conducted by the Authority or the Police on the authority of a warrant if it is suspected that the Act is being contravened.

Administrative Penalties

Clause 40: Imposition of administrative penalties

This clause allows for administrative penalties to be imposed by the Tribunal.

Clause 41: Appeal of administrative penalty

This clause gives a right of appeal to persons who are aggrieved by a decision of the Tribunal that imposes an administrative penalty.

Miscellaneous

Clause 42: Intoxicated persons in public places

This clause permits police officers to take persons into custody for their own protection or for the protection of the public.

Clause 43: Collection and recovery of fees and administrative penalties

This clause changes the law by providing that the revenue collected under the Act is to be placed in the Consolidated Fund.

Clause 44: Forms

This clause gives flexibility to the provision of forms by the Authority.

Clause 45: Regulations

This clause provides for the making of regulations by the Minister.

Clause 46: Transitional and savings re proceedings

This clause provides for transitional provisions in relation to proceedings.

Clause 47: Savings of licences and permits

This clause provides for the saving of licences which were issued by the existing Act after that Act is repealed on the commencement of the new Act.

Clause 48: Repeal of Cap. 182 and related enactments

This clause provides for the repeal of the existing Act.

Clause 49: Commencement

This clause provides for commencement by Proclamation to allow for administrative arrangements to be put in place.

2021-03-08