

Tougher measures

An update on the Public Health (Alcohol) Act 2018 (the "Act")



On 17 October 2018, legislation designed to heighten awareness of the risks associated with alcohol, and reduce the negative health and anti-social effects of alcohol in Ireland, passed after more than 1,000 days of debate. It is the first piece of Irish legislation to address alcohol as a public health matter.

Once a Commencement Order is signed to give legal effect to the Act, there will be reform in four key areas:

- mandatory health labelling;
- advertising and sponsorship;
- minimum unit pricing ("MUP"); and
- structural separation of alcohol products in mixed trading outlets.

1. Mandatory health labelling

The Act sets out that certain warnings must be labelled on alcohol products, including:

- the dangers of alcohol consumption;
- the dangers of alcohol consumption during pregnancy;
- the direct link between alcohol and fatal cancers;
- the quantity in grams of alcohol contained in the product; and
- the energy value expressed in kilojoules and kilocalories.

Alcohol products must also contain a reference to the dedicated public health website which has been established by the HSE.

As well as the labels on alcohol products, those selling alcohol, in pubs or the off-trade, must display a notice containing the health warnings mentioned above, the link to the public health website, and indicate to the customer the alcohol and calorie content on the products themselves or, for all 'poured drinks', can be found in a document, which must be made available upon request.

An exemption exists for alcohol products being sold in tax-free shops and airports. However, these exempted retailers are still obliged to keep a notice

containing health warnings and information, which should be available on a separate document for customers.

2. Advertising and sponsorship

Advertising is broadly defined in the Act and includes any form of communication with the aim of, or direct/indirect effect of, promoting an alcoholic product. Such communications are now explicitly prohibited in certain places, including local authority parks, open spaces, playgrounds, public service vehicles, train and bus stations, schools and crèches. Advertising will also be prohibited in cinemas, except where it is before or during an interval of a screening of a film rated 18 or over.

In addition, there will be a broadcasting watershed on advertisements of alcoholic products on television between the hours of 3am and 9pm and on weekday radio between midnight and 10am and 3pm to midnight.

Publications and Print Media

The marketing and advertising of alcohol in print media for both domestic and foreign publications will now also be restricted. Publications intended to be distributed in Ireland will be subject to the following restrictions:

- (a) No more than 20% of the advertising space in a publication may be taken up with adverts for alcohol products
- (b) Alcohol adverts are not permitted on the front or back cover of a publication or on any wrapper, envelope or covering of a publication
- (c) Alcohol adverts are not permitted in children's publications or publications that are intended/likely to include a readership of more than 20% of which are children

Alcohol, sports and children

The Act will have a significant impact on the sports industry and sponsorship of sporting events by alcohol companies. It explicitly prohibits the advertising of alcohol in a sports area during a sports event. 'Sports area' is broadly defined as a space where sporting activities are directed, played or participated in.

Sponsorship of sporting events by alcohol companies will also be prohibited where the majority of those taking part are children, or where the event is primarily aimed at children. The promotion of alcohol products and/or alcohol consumption on children's clothing will also be an offence under the Act.

3. Minimum unit pricing and display in retail stores

MUP is a mechanism to establish a 'floor price' beneath which alcohol cannot legally be sold and is based on the amount of pure alcohol in a product, measured in grams. The Act introduces a minimum price per gram of alcohol of €0.10 which may be increased at set statutory periods.

4. Structural separation

The Act contains a provision for structural separation of alcohol products in mixed retail outlets, such as supermarkets and convenience stores, which will mean that they will no longer be displayed like 'every day' or routine grocery products.

Retailers will have three options in relation how they present/segregate alcohol in-store:

- store alcohol in a separate area;
- store alcohol in a closed storage unit or cabinet which contains only alcohol products; or
- store alcohol in open storage units, not more than three (adjacent to each other).

Point of sale advertising of alcohol products will also be confined to the designated display area or the inside of the storage cabinet. Alcohol products behind check-out points will also need to be concealed.

Offences

Breaches of certain provisions, including those in relation to advertising, sponsorship and minimum pricing, constitutes an offence under the Act which is punishable by a fine of up to €250,000 and/or imprisonment of up to 3 years. The Act also allows the Health Service Executive ("HSE") to establish and maintain an 'alcohol non-compliance' list of the persons on whom a fine or other penalty was imposed under the Act.

For corporate offences and, where a corporate offence has been committed or where senior officer liability arises, with the consent or connivance of a director or senior officer of a body corporate, that person as well as the body corporate shall be guilty of an offence.

It may be a defence under the Act for those facing prosecution to claim that they have made 'reasonable efforts' to comply with the provisions of the Act.

Conclusion

The Act has replaced a self-regulatory, voluntary code established in Ireland known as 'Responsible Retailers of Alcohol in Ireland'. Whilst the voluntary code contained some similar provisions in relation to advertising and sponsorship, the Act will now put these on statutory footing.

In addition to the Act, a broad range of measures are being introduced across many sectors to reduce alcohol consumption and the related harms. This includes the HSE's National Alcohol Programme as well as other national strategies and plans such as Healthy Ireland (the national framework for health and wellbeing), Connecting for Life (the national suicide prevention strategy) and Better Outcomes, Brighter Futures (for children and young people). It is hoped that the amount of alcohol consumed by people over the age of 15 will be reduced to annual per capita consumption of 9.2 litres of pure alcohol.

It remains to be seen what, if any, impact the Act will have on alcohol consumption in Ireland. What is certain, however, is that the Act will have a considerable impact on the alcohol industry in Ireland going forward.

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