



SUBMISSION REGARDING

REVIEW OF THE CODE OF PRACTICE ON THE SALE AND DISPLAY OF ALCOHOL IN MIXED TRADING PREMISES

Introduction and Background

Alcohol Action Ireland is the national charity for alcohol-related issues. We work to raise awareness of alcohol-related harm and the solutions needed to tackle that harm. It is for that reason that we are making the following submission to the Department of Justice.

Alcohol is a licensed product due to its harmful properties. The World Health Organisation states that alcohol is a factor in more than 60 diseases and conditions; it is the third most significant risk factor for premature death and ill health in the EU, behind tobacco and high blood pressure. This year the British Medical Journal published research demonstrating that alcohol causes one in ten cancers in men and one in 33 in women. In addition to the physical costs, there are the associated social and economic costs. In a survey commissioned by Alcohol Action Ireland – one in 11 people say they, or a member of their family was assaulted by someone under the influence of alcohol. The Garda PULSE system recorded alcohol as a factor in 97% of public order crimes, while it is estimated that alcohol costs the justice system in Ireland €1.2 billion a year, one third of the €3.7 billion annual bill the Exchequer pays out for alcohol-related harm.

Alcohol is a drug with toxic and intoxicating effects, as well as a drug of dependence for many. Culturally, we still have the view that alcohol is only harmful to the “heavy drinker” or the alcoholic. The fact is a drinker doesn’t need to be dependent on alcohol for it to cause harm - over half of all Irish drinkers reported a harmful pattern of drinking in the most recent SLAN survey (Department of Health and Children, 2009).

Alcohol is not an ordinary consumer product and this is recognised by the State by the fact it needs a license to be sold and is subject to specific excise duty. The State, however, appears to have a

schismatic view in relation to alcohol. Despite the fact that it is a licensed product and recognised as a drug, when it comes to selling alcohol, it is for all intents and purposes treated like a regular grocery. Alcohol is sold alongside food and other everyday goods, which has the effect of normalising alcohol as just another commodity, another item in the family shopping basket.

Alcohol is sold to consumers by utilising what is termed the “marketing mix”: product, price, place and promotion. When discussing the RRAI Codes we are effectively talking about the latter: place and promotion. The actual number of places where people can buy alcohol has increased dramatically in the past 20 years and is now available from almost every supermarket, convenience store and petrol station. Between 1990 and 2006, the number of off-licences increased five-fold (Butler and Hope, 2010).

Retailers also create opportunities for impulse purchases through placement of alcohol opposite or near checkouts rather than create conditions whereby the purchase of alcohol is a more conscious and planned decision, similar to the conditions detailed in Section 9 of the Intoxicating Liquor Act 2008. This product placement reinforces idea that alcohol is a normal and benign consumer good.

It was for this very reason that tobacco marketing through point of sale display has been banned. On July 1, 2009 all advertising of tobacco products was banned in retail shops in Ireland and tobacco products are now stored in closed contained units. Ireland is the first country in the EU to introduce a complete ban on retail tobacco advertising and display. The measures adopted by the State in relation to tobacco are designed to protect the public from exposure to advertising promotion that serves to normalise tobacco products, particularly among young people. Removing advertising will also support adults who are trying to quit.

It has been recognised that the location of prominent tobacco displays in retail outlets, in itself, plays a role in promoting tobacco consumption. This placement of tobacco in close proximity to everyday consumer goods, such as newspapers and sweets, helps tobacco to be seen as another benign consumer product (Office of Tobacco Control, 2009). Independent research carried out by the University of Nottingham, found that recall of tobacco displays among young people fell from 81% before the measure to 22% afterwards (OTC website, 19.11.10). Recall is often used in the type of research to indicate a person’s intention to purchase and/or consume the product.

The question has to be asked: if the role of placement and promotion in relation to tobacco is recognised – then why are the rules around alcohol placement, promotion and accessibility and availability so different for alcohol? After all, alcohol kills more people than all other drugs combined and one person dies every seven hours in Ireland from an alcohol-related illness.

Policies that regulate the market in which alcohol is marketed and sold are considered internationally to be the most effective in reducing alcohol-related harms. Government has options around licensing that could reduce alcohol-related harm, as outlined by the World Health Organisation: government can restrict the physical availability of alcohol by restricting the number of licences; government can require licence-holders to meet certain standards; government can revoke the licences of those who infringe the law. These are all evidence-based actions a government can take to reduce the harms and costs of our alcohol use (WHO, 2009). It is worth noting that Scotland, one of our closest neighbours both physically and culturally, is already implementing some of the above.

In Ireland, the government has already enacted legislation in the form of Section 9 of the Intoxicating Liquor Act 2008 which creates the conditions and standards that licence-holders in mixed trade premises need to operate within if they wish to display and sell alcohol as a licensed product and in a way that does not market alcohol alongside food and other products. To commence this legislation would entail the use of few resources and its commencement is timely as the voluntary RRAI Code

has not achieved its aim of structural separation of alcohol from other beverages and food; it has not worked (this assertion will be outlined further).

Alcohol Action Ireland calls for the immediate commencement of Section 9 of the Intoxicating Liquor Act 2008 as the voluntary approach has not achieved the same effect the commencement of Section 9 would have achieved.¹ Section 9 is a fair and proportionate response to regulating the marketing of alcohol through product placement/promotion and preventing the normalisation of alcohol as an ordinary product in the shopping basket. Furthermore, Alcohol Action Ireland recommends that following its commencement, Section 9 be amended so as to include wine, which is currently excluded from its provisions.

¹ In the press release announcing the commencement of the Intoxicating Liquor Act it was stated that the Minister had agreed to the introduction of a Voluntary Code of Practice to achieve the same effect as Section 9 but has reserved the option of commencing this section if voluntary approach is not effective.

Views on the findings of the 3rd Compliance Report on implementation of the RRAI Code of Practice on the Sale and Display of Alcohol in Mixed Trading Premises

The overall conclusion of the Report on page 28 is that “the key components of the Code have been and continue to be implemented by the RRAI’s members in an acceptable manner”. The response to the conclusion is set out under the headings of effectiveness and of compliance.

Effectiveness

The RRAI Code, as an alternative to the statutory provisions in section 9 is not, and cannot, be effective in achieving the separation of alcohol, structural or otherwise, from other beverages and food in mixed retail premises. The key reason for its incapacity to effect separation is due, in the main, to the use of the term ‘as far as possible’ - this means mixed retailers simply do not have to display alcohol in a separate part of the premises from other beverages and food products. The RRAI Code states that

- Alcohol products will, as far as possible, be displayed only in a part of the premises through which customers do not have to pass in order to obtain access to other beverages and food products (except where, for security reasons, such products are displayed behind the counter but not in the window)
- Alcohol products will be confined to that one part of the premises and will, as far as possible, be separated from other beverages and food products

The use of this term provides retailers with an easy opt out which many chose to take. As a result alcohol in mixed trade premises is frequently displayed alongside food and other beverages. Some examples seen by staff of Alcohol Action Ireland include

- Beer boxes stacked at end of aisle opposite end of alcohol aisle
- Alcohol displayed in cooler section at end of freezer aisle
- Alcohol displayed opposite checkouts
- Boxes of beer used to create a ‘wall’ separating alcohol from food, e.g., breakfast cereals from beer

Mixed traders operate in a highly competitive environment and need to use the opportunities they are presented with to maximise sales and increase profits. The RRAI Codes provide plenty of leeway to market alcohol as ‘an ordinary product’ through its prominent placement in stores (opposite checkouts, for example) as well as its display alongside food and other products (see photos for examples).

Compliance

The RRAI was established by the mixed trading sector to oversee implementation of the Code. An independent Chairperson has submitted Compliance Reports in 2009 and 2010 - on foot of these reports, section 9 has not been brought into operation. According to the 3rd Report, the Code has been implemented effectively in the supermarket sector at 95%, and to a lesser degree in the convenience

store sector at 79%. However, measuring compliance is very different to measuring effectiveness. The RRAI has not evaluated whether the Code has achieved the objective of structural separation in mixed trading premises. Even full compliance with a weak and ineffectual Code cannot fulfil the aim the Code was charged with achieving, i.e., same effect as section 9.

The second point made in the conclusion to the 3rd Report is that it considers the enactment of the Civil Law (Miscellaneous Provisions) Act 2011 as highly relevant in that it provides a tangible means of sanction of non-compliant licence-holders. Under Section 17 of the Civil Law (Miscellaneous Provisions) Act 2011, non-compliance by licence holders with a Code of Practice formally adopted by the Minister, constitutes a ground of objection to the renewal of their licence. Such an objection can only proceed with the involvement of the Gardai. The Report states that the “new legislation provides a mechanism to discipline non-compliant licence-holders” and takes the view that the commencement of section 9 would “unjustly penalise the overwhelming majority that comply with the RRAI Code of practice”.

This view fails to acknowledge that the stated intention in setting up the Code according the then Minister for Justice, was “to achieve the same effect as Section 9”. The mixed retail sector has been given a number of years to draw up and implement a voluntary Code to achieve the above and they have not managed to do so. Furthermore, the Intoxicating Liquor Act 2008 does provide a mechanism to discipline non-compliant licence-holders. Section 9 states that a person who contravenes its provisions is guilty of an offence and liable on summary conviction to a fine not exceeding €5,000 or on conviction on indictment, to a fine not exceeding €100,000. A further fine applies where, after conviction, a person continues to contravene the provisions set out in section 9. By contrast, the Civil Law (Miscellaneous Provisions) Act 2011 states that a licensee who does not observe any provision of a Code of practice published or approved under the Act is not liable to any civil or criminal proceedings. Rather, their failure to comply with the Code “shall be considered as relating to the good character of the licensee for the purpose of renewal under the Act of 1986 of the licence in respect of the licensed premises concerned.”

The third key point in the conclusion relates to one-off breaches of the Code. Alcohol Action Ireland is concerned that this statement does not acknowledge that the Code is consistently breached in numerous mixed trade outlets – breaches of the Code would appear to be the norm. However, it is difficult to assess the degree to which what seems to be a breach is a breach due to the use of the term ‘as far as possible’ – what is the process for deciding whether the ‘structural separation’ has been effected ‘as far as possible’?

A number of photos attached in an appendix to this submission clearly demonstrate that alcohol is not separated from other beverages and food ‘as far as possible’ (i.e., the Code is breached). This was observed in numerous mixed trade premises. All of the photos were taken on the premises of large multiple retailers rather than in individual small stores who may have constraints of space impacting on how they can separate out alcohol.

And finally, the two sanctions for non-compliant groups or individuals being examined by the Group are very weak in comparison to those proposed under section 9, namely expulsion from the RRAI and objections to the renewal or granting of a new liquor licence using the mechanisms available.

The effectiveness of the voluntary approach to implementing structural separation in mixed trading premises (supermarkets, convenience stores and similar outlets)

The voluntary Code has failed for a number of reasons.

Firstly, the Code is not written and designed to achieve structural separation. The Code was agreed between bodies representing the mixed trading sector and the Department of Justice subject to four conditions, one of which is the ‘achievement of the structural separation objectives’. The Code has failed in this regard. Indeed, the case could be made that the Code, as written, cannot satisfy this condition.

The concept of structural separation is weak in the Code due largely to the inclusion of the term ‘as far as possible’. This allows mixed retailers to comply with Code while displaying alcohol alongside food and other non-licensed products – the inclusion of the term effectively provides an opt out clause.

While the Code has been implemented effectively in the supermarket sector at 95%, and to a lesser degree in the convenience store sector at 79%, the Code is wholly ineffective in achieving the objective of through structural separation. The Code not evaluated for its effectiveness in implementing and achieving the objective of structural separation in mixed trading premises, rather the application of the Code is evaluated. Compliance is not a measure of effectiveness and even full implementation of a weak and ineffectual Code cannot fulfil the aim the Code was charged with achieving, i.e., same effect as section 9.

The voluntary Code is a much weakened and vastly different version of the statutory provisions set out in section 9 – it is unfit for purpose as evidenced by the lack of separation seen throughout mixed trade stores.

Conclusion

The voluntary RRAI Code has not achieved its aim of structural separation of alcohol from other beverages and food; it has not worked.

Alcohol Action Ireland calls for the immediate commencement of Section 9 of the Intoxicating Liquor Act 2008 which we consider to be a fair and proportionate response to regulating the marketing of alcohol through product placement and preventing the normalisation of alcohol as an ordinary product. Furthermore, Alcohol Action Ireland recommends that following its commencement, Section 9 be amended so as to include wine, which is currently excluded from its provisions.

APPENDIX ONE: PHOTOGRAPHS

Photo 1: Vodka placed beside men's deodorant and hair products

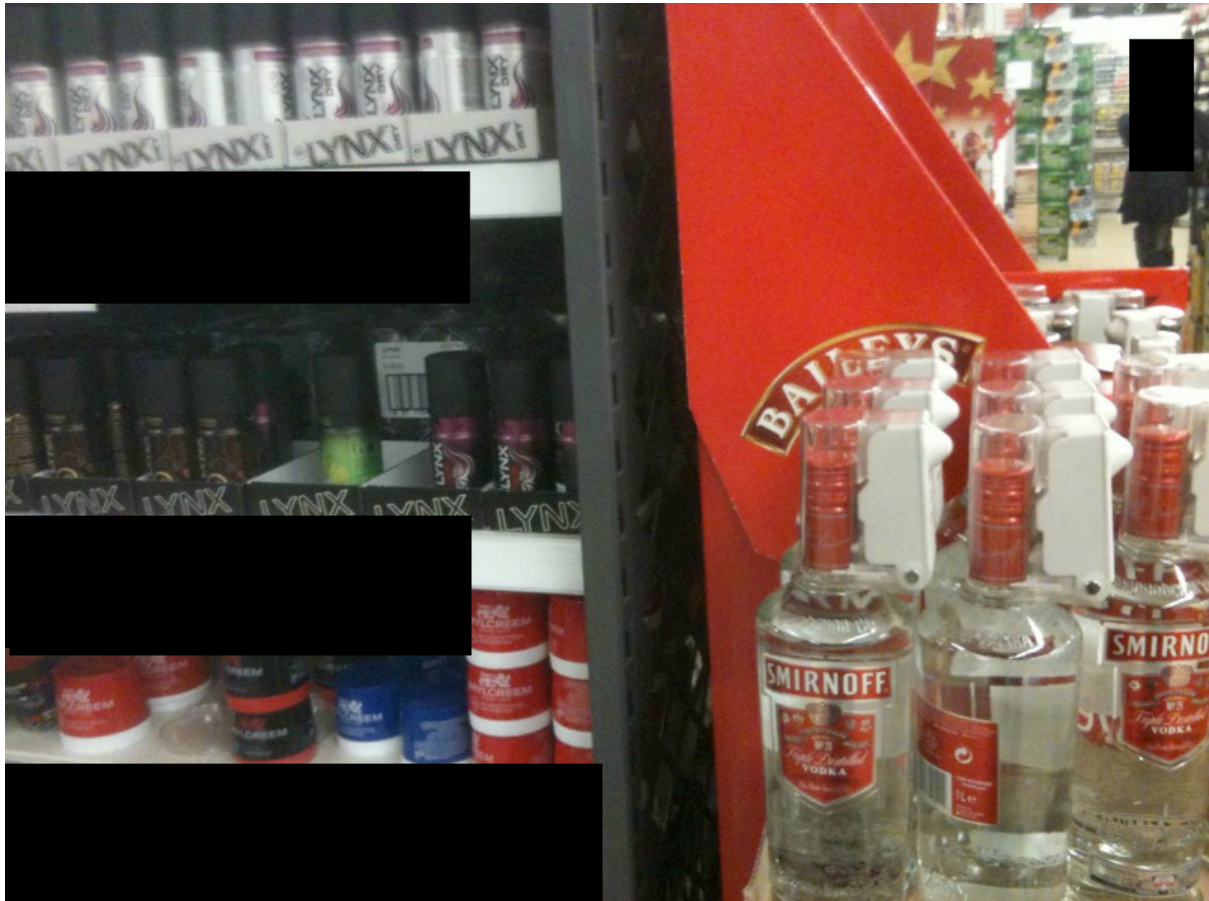


Photo 2: Back to school products placed against boxes of cider bottles



Photo 3: Trays of beer stacked in front of margarine in a cooler and alongside a stack and shelves of nappies



Photo 4: Freestanding display of boxes of beer in the foreground with a freestanding display of wine in the background. The alcohol aisle is one aisle across to the left.



Photo 5: Boxes of beer (in green) displayed opposite end of drinks aisle and beside a display of non-alcoholic beverages (in blue)



Photo 6: Freestanding display of wine in front of display of minerals

