Uncertainty Looms over Proposed Reform for Advertising of Alcohol Products

If enacted, the Public Health (Alcohol) Bill 2015 (the “Bill”) will result in a complete overhaul of the rules that regulate the pricing and sale of alcohol in Ireland as well as provide for restrictions in relation to the advertising and sponsorship of alcohol products.

The Bill most recently passed the Seanad (the Irish Senate) in December 2017 and has now been put before the Dáil (the main Irish legislative body) for debate and vote. It was introduced to the Dáil by the Minister for Health in February 2018. However, the Bill recently received a set-back following objections raised at the EU level, most notably to the requirement to label alcohol products with warnings as to the links between alcohol and cancer. The Bill will be delayed until at least July to give Member States and the Commission time to assess its compatibility with EU laws.

The Bill will include a number of reform packages which can be broadly summarised into four main areas:

a. Mandatory health labelling on all alcohol products;
b. The regulation of advertising, marketing and sponsorship of alcohol products and brands;
c. The introduction of minimum unit pricing (MUP) for alcohol products; and
d. The introduction of structural separation of alcohol products in trading outlets.

MANDATORY HEALTH LABELLING

Of considerable significance, the Bill sets out certain warnings that must be contained on alcohol products, whether sold in a shop, pub or online. The warnings include public health warnings as to the dangers of alcohol consumption, the direct links between alcohol and cancer. The Bill will be delayed until at least July to give Member States and the Commission time to assess its compatibility with EU laws.

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sold in an on-license premises).

The specific form (i.e., size, colour and font) of the health warnings and the manner in which details of the HSE website must be displayed are not yet clear, nor is it clear when this information will be available. It is expected that the Minister for Health will adopt secondary legislation on these aspects and that the rules may differ depending on the type of advertising in question (e.g. print, broadcast etc.).

**ADVERTISING AND MARKETING**

Advertising is provided a broad definition under the Bill and will include any form of communication with the aim of, or direct or indirect effect of, promoting an alcohol product and includes:

a. a statement of the name of a manufacturer or importer of an alcohol product;

b. the name of any brand of alcohol product; a statement of any trade description or designation, or a display or other publication of a trademark, emblem, marketing image or logo which may reasonably be regarded as a recommendation of the product to the public; and

c. a statement of the properties of the product on a label, container, wrapper or package used for the product or in a leaflet, circular, pamphlet or brochure issued to the public or given to a purchaser of the product.

As currently drafted, adverts cannot contain anything other than the warnings and the website details above and “any or all” of the following information:

a. an image of, or reference to, one or more alcohol products (whether of the same or different kinds) either in a container or containers (which may be opened or unopened) or in a glass or glasses;

b. details of whether the product concerned is intended to be diluted with a non-alcoholic beverage and where it is intended to so be diluted, an image of or reference to the non-alcoholic beverage;

c. an image of, or reference to, the country and region of origin of the product concerned;

d. an image of, or reference to, the method of production of the product concerned;

e. an image of, or reference to, the premises where the alcohol product concerned was manufactured;

f. the price of the product concerned;

g. a brand name or variant thereof, trade mark and brand emblem of the product concerned;

h. a corporate name and corporate emblem of the product concerned;

i. an objective description of the flavour, colour and smell of the product concerned;

j. the name and address of the manufacturer (or his or her agent) of the product concerned;

k. the alcoholic strength by volume of the product concerned;

l. the quantity in grams of alcohol contained in the product concerned; and

m. the energy value expressed in kilojoules and kilocalories of the product concerned.

It is likely the intention here is that the above list is an exhaustive list of what can be included in an advert (i.e. no other information can be included that doesn’t fit within those criteria) but not all adverts have to include all of the information in the list. While on a first reading the permitted content may seem overly restrictive, the language itself is quite broadly worded which, arguably, leaves some flexibility in interpretation.

**PUBLICATIONS AND PRINT MEDIA**

The marketing and advertising of alcohol in print media (both domestic and foreign publications) will be restricted in relation to volume and type of publication. Publications intended to be distributed in Ireland are subject to the following restrictions:

a. No more than 20% of the advertising space of 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; and

c. Alcohol adverts are not permitted in publications that are aimed at children or are intended/likely to include a readership more than 20% of which are children.

**ALCOHOL AND SPORTS**

The Bill, if enacted, will also have significant consequences for the sports industry and sponsorship of sports events by alcohol companies. The Bill prohibits advertising of an alcohol product in or on a sports area during a sports event.

Sponsorship of sports events by alcohol companies is also prohibited where the majority of those taking part are children, or the event is primarily aimed at children, or is an event involving driving or racing cars or bikes.

**MINIMUM UNIT PRICING AND DISPLAY IN RETAIL STORES**

The Bill introduces a minimum price per gram of alcohol of €0.10 which may be increased by the Minister for Health at set statutory periods. In addition, the Bill requires alcohol to be structurally separate from other products in retail units and the Bill contains a number of options for retail outlets as to how alcohol products may be segregated from the rest of the products available in the store, so as not to put too much of a burden on smaller outlets.

The Bill also allows the Minister to prohibit sales promotions that encourage consumption of alcohol.

**SUMMARY**

The alcohol industry codes in Ireland (e.g., ABFI Code) already impose some
of the above requirements, particularly with regards to sponsorship and advertising. However, the Bill will now put these on statutory footing, breaches of which would constitute an offence under the Bill punishable by a fine of up to €250,000 and/or imprisonment of up to 3 years. The Bill also allows the HSE to establish and maintain an “alcohol non-compliance” list of the persons on whom a fine or other penalty was imposed under the Bill.

It was expected that the Bill would be adopted by the end of the summer but as it is facing steep opposition from the drinks industry, and from Member States at the EU level, this looks less likely.