The Advertising Association’s submission on the Alcohol ( Licensing, Public Health and Criminal Justice) Scotland Bill (SP Bill 65)

24 June 2015

Introduction

The Advertising Association

The Advertising Association (AA) is the single voice for all sides of advertising in the UK – the agencies that create and buy campaigns, the commercial media that carry them and the brands that use advertising to communicate with customers and drive their businesses (see full list of AA members). We promote the role, rights and responsibilities of advertising for the industry.

Concerns about particular provisions in the Bill

We support reducing alcohol health harms through a pro-active approach, building on current successes, including education and awareness campaigns and public private partnerships. However, we have concerns about the Bill’s proposals on advertising, particularly outdoor. The proposed restrictions would go further than elsewhere in the UK, effectively creating two markets. They would be difficult to implement and in effect mean a complete ban for this medium.

We also question how the event advertising and sponsorship proposals would sit alongside the existing Sponsorship Code by the Portman Group and propose that the Portman Group Code is a very effective route to address the issues raised in the Bill.

General comments

Alcohol consumption in Scotland is of major concern and we welcome the fact that per capita consumption has reduced since 2007. Downward trends in alcohol-related deaths and hospitalisations along with a halving of the proportion of children aged 13 who have ever tried alcohol since 2000 are also key positive developments.

Alcohol advertising is well regulated by the ASA and Portman Group and we ask the Health Committee to consider the current framework of Codes and what they achieve, as part of the holistic approach that Holyrood may take.

Alcohol harms need to be addressed, but it is also important to take into account the importance of the alcohol industry as well as the advertising and creative industries to the

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Scottish economy and jobs, and not to unfairly restrict businesses and add unnecessary administrative burdens in the process.

The drink industry provides significant employment and economic benefits in Scotland. The Scottish beer and pub sector supports over 60,000 jobs and contributes more than £1.5 billion to the Scottish economy. In the Scotch Whisky industry, more than 10,000 are directly employed - many in economically deprived areas.

In 2012 the GVA of the creative industries in Scotland was £5.8 billion\(^2\). They employed 68,000 people in 2013, representing 2.69% of all employment in Scotland. There are 665 registered enterprises listed in the advertising sector.

**Alcohol advertising in the UK**

**The impact of advertising**

Advertising benefits consumers and is crucial to a competitive economy. Next year, advertising spend is expected to exceed £20bn\(^3\). Advertising has an essential role in funding the media and creative industries. Alcohol marketing helps fund investment in original UK content, culture and sport. In a report commissioned by the Advertising Association from Deloitte this year, it was estimated that the gap between what people are willing to pay and the true cost of the advertising-funded media they receive is almost £5 billion, which is equal to £187 per household per year\(^4\).

Advertising is often seen as a “trigger-response” mechanism, directly designed to increase consumption. This can be true, for example, where advertising is used to launch new products, including lower-strength products, onto the market. Equally there are many instances where it is not. Advertising can help new markets increase in size, and encourage consumers to switch within categories or between categories and, by building brand reputation, it can create loyalty or sustain a premium price.

Product advertising aims to appeal to and target certain audiences but is not usually aimed at the whole population. In contrast, governments and other public bodies use advertising in social marketing campaigns, to drive whole population behaviour change.

**Evin Law**

According to paragraph 61 of the Explanatory Document, this Bill’s proposals to limit certain types of advertising draw on the experience of the Loi Evin in France which was introduced in 1991 on health grounds. However, there is evidence that indicates the Loi Evin has not been very effective as a tool for reducing alcohol consumption harms. These have been rising, especially amongst young people, in recent years.

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\(^2\) Scottish Government Growth Sector Statistics (September 2013)


Data from the French government show that the proportion of 18-25s who report drunkenness on 3 or more occasions in that last year nearly doubled between 2005 and 2014. Similarly WHO figures show that in the four years after the law was enacted the proportion of 12-18 year olds drinking alcohol increased from 47% to 65%.

In recent weeks, the Evin Law has been dropped through an amendment to another Bill, though it is still supported by the French Government. It is currently unclear whether it will remain in force.

The Advertising Codes

The alcohol and advertising industries do not want to be associated with alcohol consumption harms. The advertising Codes reflect this and take a precautionary approach, with a general social responsibility clause applying to all advertising, specific content and placement restrictions for alcohol advertising.

The UK has a well-established and respected system of advertising self- and co-regulation which is a gold-standard for the rest of Europe. The rules are written by the Committee of Advertising Practice (CAP) and Broadcast Committee of Advertising Practice (BCAP). These are industry bodies on which sit the different parts of the advertising industry including advertisers, agencies and media in the UK and Scotland. The members of CAP and BCAP help enforce the rules which apply to all advertisements shown in the UK.

The Codes contain specific rules on the content and placement of alcohol advertisements to ensure they do not portray alcohol being served or consumed irresponsibly. These are particularly designed to prevent appeal to under 18s. In outdoor and non-broadcast media, there is a placement restriction preventing alcohol ads appearing in contexts where 25% or more are under 18. Similar restrictions apply to broadcast advertising.

The Advertising Standards Authority (ASA) investigates complaints against the Codes and periodically carries out monitoring surveys to spot-test compliance. If the ASA adjudicates against an ad, it may no longer appear unless it is amended. Alcohol advertising has a 99% rate of compliance5.

Separately, the Portman Group Code6 deals with the wider marketing of alcohol products including packaging, merchandising and sponsorship.

The alcoholic drinks industry recognises its duty to behave responsibly, which is why alcohol companies also fund the independent Drinkaware Trust. There is no commercial value in being associated with encouraging irresponsible drinking. Alcohol misuse carries with it serious societal consequences and it is not in the interest of either the alcoholic drinks industry or the advertising industry to promote or condone it.

Bill’s proposed restrictions on advertising of alcohol

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Advertising near premises used by children (sections 6 and 7)

Sections 6 and 7 of the Bill go further than the already rigorous controls in place throughout the UK and the effect will be tantamount to a complete ban in urban areas. This would limit the effectiveness of nationwide alcohol campaigns in outdoor media and reduce the attractiveness of this medium to advertisers.

The public health justification for this approach is not clear. A recent evidence review by the highly reputed Cochrane Collaboration found that “There is a lack of robust evidence for or against recommending the implementation of alcohol advertising restrictions.”\(^7\) It will also be impractical and difficult to implement.

Proportionate restrictions already operate for outdoor alcohol advertisements which we suggest should be fully taken into account. Alcohol advertisements must adhere to the CAP rules that ensure that the advertising is not targeted at or appealing to children. The 25% placement restriction (explained in the section above) applies to outdoor advertising like other media, meaning that alcohol advertisements should not be shown in areas or environments where children are the predominant group.

In addition, the outdoor media contractors have a self-imposed restriction, coordinated and monitored by the Outdoor Media Centre (a member of the AA), not to advertise on any static sites within 100 metres of the school front gate. This is a commitment made in 2011 by the OMC and the advertisers through the Department of Health’s Responsibility Deal. This has described as “an encouraging example of responsible marketing practice” by Reg Bailey, the Chief Executive of Mothers’ Union, in a review for the UK Government\(^8\).

The OMC has put in place a stringent process to carry out spot checks and monitor compliance. The current UK-wide 100 metre restriction is applied to static sites within 100m of the school based on the postcode of the school front gate, with information sourced from the Department of Education.

We are concerned that this Bill would not only double the restriction to 200 metres, but extend it to include any direction of any boundary of a school, crèche, nursery or outdoor play area. We believe this very wide scope is disproportionate, given the aim is to restrict the viewing of alcohol posters by children who are surely entering and exiting the premises via the school gate.

It would also be difficult to enforce. The Scottish Education Department has information on state schools and state nurseries but not on all private nurseries and creches. We also believe that postcode data on all children’s play areas would not be centrally available (state-funded play areas are listed by Councils but there is no information centrally available that would include all play areas including private ones.

\(^7\) http://www.cochrane.org/CD010704/ADDICTN_does-banning-or-restricting-advertising-for-alcohol-result-in-less-drinking-of-alcohol

\(^8\) Independent Review of the Commercialisation and Sexualisation of Childhood, Reg Bailey 2011
The restrictions are wide-ranging and would apply to advertisements on billboards, hoardings and bus shelters. Bus shelters are funded by advertising and this measure would impact on their provision.

There might be incidental impacts, for example, under the definition of advertising in Section 6(3) of the Bill, where advertising is defined as any word, letter, image, notice, etc, pub umbrellas carrying a beer logo, or beer mats, might be caught within scope.

We are concerned that breaches of the proposed advertising restrictions would be a criminal offence (this is covered in the next section) and this could impact on workers in pubs and elsewhere who might inadvertently be “advertising” as defined by the scope of this Bill.

Advertising within licensed premises (section 8)
Penalties and enforcement (sections 10-12)

In Scotland, the in-store restrictions proposed in this Bill already exist.

However, making breaches of any of the advertising prohibitions a criminal offence is not a proportionate approach. This could mean, for example, that a worker in a pub or a corner shop who inadvertently breaches the rules could be given a criminal record.

Rules and regulations already exist through Acts including the Alcohol (Scotland) 2010 Act and the Licensing (Scotland) Act 2005. Shops and stores are required through their licences to ensure adherence to these laws.

We are concerned that the effect of the in-store advertising restrictions might have other incidental effects. For example, store magazines featuring alcohol promotions on the front cover might not be permitted on shop shelves.

Advertising at sporting and cultural events (section 9)

Section 9 proposes to make restrictions on alcohol advertising and sponsorship at events in Scotland enforceable by law and breaches a criminal offence. We question why this is now necessary since the Portman Group’s Sponsorship Code was published in January 2014 and sets comprehensive standards that now apply to all event sponsorship by alcohol brands in the UK.

This Code contains strict rules preventing alcohol companies from sponsoring individuals, activities, teams, events, tournaments, competitions, bands or celebrities which have a particular appeal to, or are primarily aimed at, under 18s. Events that may be sponsored by drinks companies must be primarily for an over 18 age profile, measured as being over 75% adult. The rules also cover sampling, merchandise, images and message (i.e. not condoning irresponsible drinking behaviour). The Portman Group has arrangements in place to enforce the Code.

http://www.portmangroup.org.uk/docs/default-source/recruitment-jds/alcohol-sponsorship-code.pdf?sfvrsn=0