



**Tithe an  
Oireachtais  
Houses of the  
Oireachtas**

## **Tithe an Oireachtais**

### **An Comhchoiste um Shláinte agus Leanaí**

**Tuarascáil ar an Iniúchadh Réamh-reachtaíochta ar  
Scéim Ghinearálta an Bhille Sláinte Poiblí (Alcól), 2015**

**Meitheamh 2015**

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## **Houses of the Oireachtas**

### **Joint Committee on Health and Children**

**Report on the Pre-Legislative Scrutiny of the  
General Scheme of the Public Health (Alcohol) Bill 2015**

**June 2015**





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**Joint Committee on Health and Children**

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**Joint Committee on Health and Children**

## CHAIRMAN'S PREFACE



Following publication of the General Heads of the Public Health (Alcohol) Bill 2015 the Joint Committee on Health and Children undertook to carry out pre-legislative scrutiny (PLS) on these proposals. PLS can enhance the legislative process by allowing Committees' to identify and explore significant issues at an early stage, with the aim of producing better regulations.

The Oireachtas Committee on Health and Children has a long-standing commitment to support for health prevention measures which will make a meaningful difference to life expectancy.

The Committee's Report on the Misuse of Alcohol and Drugs, published in 2012, recommended measures to reduce the harmful impact of alcohol and drug abuse. More recently, the Committee strongly supported plain packaging legislation to reduce tobacco consumption.

These priorities are perfectly aligned with key health priorities set at European level which focus on tackling obesity, and reducing the consumption of alcohol and tobacco. As the EU Commissioner for Health and Food Safety, Mr. Andriukaitis stated when he met with the Committee in January 2015:

*"If we invest in prevention today, we will save on the money we spend on the consequences of alcohol abuse tomorrow."*

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The Committee held 5 public sessions and engaged with a wide range of stakeholders to consider the Heads of the Bill. It also received a substantial number of submissions which reflected the strong interest in the proposed legislation (Appendices 4 and 5 contain the links to submissions from stakeholders and witnesses to Committee sessions).

This Report sets out a number of recommendations for consideration by the Minister, where appropriate. In general, the Committee is supportive of the proposed measures in respect of product labelling, including support for the introduction of health warnings on alcohol products.

Based on the weight of evidence and broad support from health professionals, the Committee is also generally supportive of the proposed introduction of Minimum Unit Pricing, although the Committee did outline some concerns about implementation issues, and the potential impact of MUP on lower income households.

With regard to marketing and advertising regulations, the Committee supports proposals to put the regulation of alcohol advertising on a statutory basis. However, it does not believe that a weak voluntary code will translate into an effective statutory code. On this basis, the Minister may wish to consider developing updated regulations, with input from health professionals.

I would like to sincerely thank all of the stakeholders, groups and experts who provided the Committee with submissions and evidence during the Committee's sessions. I also wish to acknowledge the co-operation and assistance of the Minister for Health and his officials in engaging with the Committee during its deliberations.

I would also like to express my appreciation to the Members of the Joint Committee, and for the support of the Oireachtas Library and Research Service, and the Committee Secretariat for their ongoing assistance.



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**Jerry Buttimer, T.D.**  
**Chairman**  
**Joint Committee on Health and Children**

## Joint Committee on Health and Children

### 31<sup>st</sup> Dáil Members of the Joint Committee on Health and Children

			
<b>Catherine Byrne TD</b> (Fine Gael)	<b>Ciara Conway TD</b> VICE CHAIR (Labour)	<b>Regina Doherty TD</b> (Fine Gael)	<b>Clare Daly TD</b> (Independent)
			
<b>Peter Fitzpatrick TD</b> (Fine Gael)	<b>Seamus Healy TD</b> (Independent-WUAG)	<b>Billy Kelleher TD</b> (Fianna Fáil)	<b>Eamonn Maloney TD</b> (Labour)
			
<b>Sandra McLellan TD</b> (Sinn Féin)		<b>Michael McNamara TD</b> (Labour)	
			
<b>Mary Mitchell O'Connor TD</b> (Fine Gael)	<b>Dan Neville TD</b> (Fine Gael)	<b>Caoimhghín Ó Caoláin TD</b> (Sinn Féin)	<b>Robert Troy TD</b> (Fianna Fáil)

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<b>Senator Colm Burke (Fine Gael)</b>	<b>Senator Thomas Byrne (Fianna Fáil)</b>	<b>Senator John Crown (Independent)</b>	<b>Senator John Gilroy (Labour)</b>

	
<b>Senator Imelda Henry (Fine Gael)</b>	<b>Senator Jillian Van Turnhout (Independent)</b>

## Introduction

On 3 February 2015, the Government published the General Scheme of the Public Health (Alcohol) Bill 2015 (hereafter, the General Scheme).<sup>1</sup> It was decided that the Joint Oireachtas Committee on Health and Children would subject it to pre-legislative scrutiny.

The proposed Bill is intended to form part of a ‘*suite of measures*’ to reduce alcohol consumption and limit the damage to the nation’s health, society and economy. On publication of the General Scheme, Minister for Health, Leo Varadkar, TD stated:

*“For the first time alcohol is being addressed as a public health measure which makes this a legislative milestone. It [the General Scheme] deals with all the important aspects that must be addressed including price, availability, information and marketing.”<sup>2</sup>*

It should be noted that the General Scheme has no legal effect and its proposals may change as the legislative process progresses.

The Pre-Legislative Scrutiny Report of the General Scheme of the Public Health (Alcohol) Bill 2015 was informed by analysis from the Oireachtas Library & Research Service (L&RS).

The Committee also sought submissions from a wide range of stakeholders, and following consultation with L&RS, held hearings in April and May 2015. The hearings concluded with a message from the 2015 Young Scientist winners, Ian O’ Sullivan and Eimear Murphy, who emphasised the importance of the proposed legislation:

*“ Over the previous number of decades alcohol consumption has continued to increase despite public health efforts. Education campaigns were regularly favoured when tackling alcohol consumption. However, these campaigns have been shown to be ineffective. Currently, the cost of hazardous alcohol consumption in Ireland to the taxpayer is €3.7 billion annually.*

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<sup>1</sup> <http://health.gov.ie/wp-content/uploads/2015/02/General-Scheme-of-the-Public-Health-Alcohol-Bill-2015.pdf>

<sup>2</sup> Department of Health (2015) Press release: Government publishes far-reaching measures to tackle alcohol misuse. 3 February 2015.

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*“By introducing this current bill you have the opportunity to improve the lives of Irish people. You have the opportunity to save 88 lives every month which are currently lost to an alcohol related disease. You have the opportunity to protect vulnerable children affected by their parent’s alcohol consumption seen in every community across this country. You have the opportunity to make a difference.”*

## Key Issues and Recommendations

### **Pre-Legislative Scrutiny:**

The Pre-Legislative Scrutiny (elsewhere referred to as PLS) process allows parliamentary committees to scrutinise the Heads of proposed legislation. It should be noted that the form which PLS takes differs from legislature to legislature. The ultimate aim of PLS is to enhance the quality of regulation and to improve how legislation is framed.<sup>3</sup>

### **General Approach:**

During the hearings on the General Scheme of the Public Health (Alcohol) Bill 2015, the Joint Committee benefited from positive interaction with the Department of Health. The Minister also briefed the Committee on the intent and scope of the legislation.

The Committee adopted a practical approach in carrying out PLS, having regard to the relatively short timeframes involved: it identified priority themes and made recommendations in these key areas.

The identification of key issues is based on analysis of published secondary sources and stakeholders' evidence at a number of detailed Committee sessions (see hyperlinks to transcripts in Appendix 3).

### **Monitoring and Review of proposed legislation**

1. Under Head 9 of the General Scheme, it is proposed that measures related to marketing and advertising will be reviewed *no more than three years* after commencement.

In order to ensure the effective implementation, the Committee recommends that consideration be given to inclusion of a **sunset clause** requiring the re-evaluation of the legislation *in its entirety* no longer than three years after the Bill's commencement.

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<sup>3</sup> For a recent discussion (published December 2014) of some of the approaches taken to PLS, see the L&RS Spotlight available [here](#).

### **Alcohol product labelling**

2. The Committee supports Head 5 of the General Scheme. Alcohol labelling should be treated in a similar fashion to tobacco legislation, to include the following:
  - Clear health warnings to be included on alcohol products, indicating that alcohol causes disease;
  - the Minister should also consider ensuring that warnings be given prominence with an emphasis on visual, graphic designs for maximum effect;
  - labelling should be standardised, taking into account best practice on design guidelines;<sup>4</sup>
  - labelling should include sufficient information on alcohol content in grams, standard drink size, and relate this to recommended maximum weekly consumption;
  - a complementary public awareness campaign should be run to clearly explain labelling to the public.

In addition, consideration should be given to ensuring that:

- Retailers are not made responsible for breaches of labelling regulations, provided that the product has been purchased within the State.
- There is active engagement with retailers and producers in advance of the commencement of labelling requirement.
- The Duty Free and Travel Retail trade should be subject to the same labelling requirements as the on-trade.

### **Minimum Unit Pricing (MUP) of Alcohol**

3. Head 6 of the General Scheme provides for a new system of Minimum Unit Pricing for alcohol. In its 2012 report – the *Misuse of Alcohol and Other Drugs* – a majority of the Joint Oireachtas Committee on Health and Children recommended the introduction of such a policy.

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<sup>4</sup> These are discussed in Eurocare's submission, p. 3 – 4.

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As part of its 2015 PLS process, the weight of evidence presented to the Committee supported the introduction of a MUP for alcohol, as an effective means to reduce and disrupt harmful alcohol consumption patterns.

In particular, the Committee noted evidence-based research presented by the Sheffield Alcohol Research Group which highlighted Minimum Unit Pricing (MUP) as a targeted and proportionate response to alcohol misuse.

4. On this basis, the Committee recommends that consideration be given to introduce MUP, as outlined in the General Heads of the Scheme. This recommendation is entirely consistent with the Committee's previous (majority) recommendation.
5. The Committee also acknowledges dissenting views by Committee Members with concerns that measures as envisaged could disproportionately impact on lower income households.
6. The Committee acknowledges the possible risk that the outcome of the legal case involving MUP in Scotland, currently before the European Court of Justice (see 7 below), will affect implementation of MUP in an adjacent jurisdiction.
7. The Committee recommends that the Minister for Health make contingency plans taking the possible judgment in this case into account. However, as a matter of principle, the Committee does not consider this legal case a sufficient reason to suspend or delay the introduction of MUP in an Irish context.
8. The Heads of the Bill exclude export products from Minimum Unit Pricing, but no reference is made to products sold in Duty Free. Consideration should be given to clarifying the position, and to the possibility of excluding products sold in Duty Free from the provisions of the Bill.

### **Level of MUP**

9. A review of evidence provided to the Committee confirms the importance of setting the Minimum Unit Price *at a level high enough* to be effective in targeting high-risk drinking behaviour.
10. It is further understood that the Department of Health may be examining models using MUP structures between 0.60 and €1.10 cent. Given that the evidence strongly suggests that a higher MUP offers the best opportunity to reduce harmful drinking

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and associated social impacts, the Committee recommends considering setting the price per unit at the upper end of this range.

11. The Committee re-iterates the need for close collaboration between counterparts in the Republic of Ireland and Northern Ireland so that there is a co-ordinated approach to the implementation of MUP policy.
12. The absence of draft regulations detailing the level of MUP restricts the Committee's ability to fully evaluate the effectiveness of the Bill. In future, the Committee recommends that the Minister consider publishing draft Regulations *alongside* the General Scheme of the Bill to enhance the effectiveness of pre-legislative scrutiny. The precedent for this is pre-legislative scrutiny carried out by the Joint Committee on Education and Social Protection on the General Scheme of the Education (Admission to Schools) Bill, and two sets of associated Regulations.

### **Revenue-raising if MUP is introduced – a social responsibility levy**

13. If Minimum Unit Pricing is introduced, and has the effect of reducing overall consumption levels, then excise duty revenue could be expected to drop. However, an increase in revenue from VAT is also likely, given the higher prices that would be paid for some alcoholic products by consumers.
14. The Steering Group on a National Substance Misuse Strategy (2012) recommended that the government impose a "*social responsibility levy*" on the drinks industry.<sup>5</sup>
15. Consideration could be given to the introduction of a social responsibility levy on aspects of the alcohol / drinks industry to capture some of the profit which may arise from introducing a MUP. Any additional revenue generated for the Exchequer could be ring-fenced to fund health sector social marketing initiatives, and addiction

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<sup>5</sup> [http://www.drugsandalcohol.ie/16908/2/Steering\\_Group\\_Report\\_on\\_a\\_National\\_Substance\\_Misuse\\_Strategy\\_-\\_7\\_Feb\\_11.pdf](http://www.drugsandalcohol.ie/16908/2/Steering_Group_Report_on_a_National_Substance_Misuse_Strategy_-_7_Feb_11.pdf)

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16. treatment and rehabilitation services. Such a levy has been legislated for (though not implemented) in Scotland and this model should be explored.<sup>6</sup>

### **North/South Co-ordination on MUP**

17. The impact of changes in prices of goods, including alcohol, between the North and South, and the impact on cross-border trade, has been a long-standing concern. There is strong recognition of the need for cross-border co-operation on the regulation and pricing of alcohol.
18. The Minister has stated that there is an agreement with the Northern Ireland Executive that there will be co-ordination on the implementation, and on levels of MUP in the two jurisdictions, so that a cross-border trade in cheap alcohol would not develop. The Committee is generally supportive of this approach and wishes to emphasise the importance of co-ordination in relation to Minimum Unit Pricing, especially in the context of regular reviews of minimum prices, to ensure that there are no unintended consequences of changes in regulations.
19. However, the Committee is also conscious of the possibility that a delay could arise in the implementation of a MUP in Northern Ireland. In such a scenario, the Committee recommend that consideration be given to proceeding with implementing MUP in the Republic of Ireland.

### **Regulations on Marketing and Advertising**

20. Head 9 of the General Scheme provides that the Minister may make regulations in relation to various aspects of marketing and advertising of alcohol. At present, the sector is subject to voluntary codes and practices.
21. The current system requires that all advertising across all media is vetted through a Copy Clear clearing house system to ensure compliance with a voluntary code.

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6. See pg. 19 of briefing by Scottish Parliament Information Centre (SPICe): [Alcohol \(Minimum Pricing\) Scotland Bill](#) – 5 January 2012.

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Although this process has benefits, it is a form of regulation largely designed by industry, with no input from health professionals, and with limited measures to address issues of non-compliance with the codes.

22. The Committee noted positive examples of self-regulation by industry. However, it also received evidence highlighting instances where the current Code is open to interpretation, and examples of high profile advertising campaigns which clearly contravene the spirit of the voluntary code.
23. The Committee supports proposals to put regulations on a statutory basis, but it does not believe that a weak voluntary code can translate into an effective statutory code. Therefore, the Committee is of the view that the Minister should consider starting afresh with updated regulations underpinning a robust regulatory framework. The advice of health professionals and experts independent of the alcohol and advertising industry should be taken into account in its redesign.
24. Under current guidelines, alcohol advertising is limited to no more than 25% of available space across all media and sponsorship on any occasion. The Committee recommends that the Minister considers reducing the overall amount of space given to alcohol advertising at any one time to 20%. In addition, the Committee recommends that the Minister considers restricting the overall amount of outdoor advertising space given to alcohol advertising at any one time to 20%.

### **Ban on Marketing to Children**

Head 9 of the General Scheme provides that:

*“It shall be prohibited to market or advertise alcohol in a manner that is intended or is likely to appeal to children.”*

25. There is clear evidence that alcohol marketing increases the likelihood that adolescents will start to drink alcohol and to drink more if they are already consuming alcohol. On this basis, although the Committee acknowledges that there are a number of practical challenges with implementation, the Committee full supports the thrust of this provision.

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26. The current voluntary advertising code includes provision that *“alcohol marketing communications should not be placed in media primarily intended for children. Advertisers should take into account the age profile so that marketing communications are communicated, as far as possible, to adults.”*

The current audience profiling system permits advertising during programming where no more than 25% of the audience are children. However, in practice, this framework can allow the marketing of alcohol products during events or programmes which are viewed by a significant number of children and adolescents.

For this reason, the Committee recommends further safeguards, so that advertising of alcohol is only permitted where no more than 10% of the audience are children.

27. As traditional advertising and promotional channels face increased regulation, it is apparent that a higher proportion of the budget for alcohol advertising will focus on online social media channels, and the ‘gamification’ of branding and advertising. An emerging challenge, therefore, is to find ways to effectively regulate the promotion of alcohol and alcohol branding to young people via social media channels.
28. To meet this challenge, the Committee recommends that the Minister explores possible measures to counter these trends, including:
- the use of a social levy on alcohol producers / retailers to develop new social media health promotion strategies;
  - the introduction of mandatory age authentication controls on the advertising of alcohol on websites hosted in Ireland;
  - The banning of interactive competitions / games by alcohol brands and companies;
  - Possible measures to control the volume, content and placement of all alcohol marketing in digital media;

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- Innovative measures, recently introduced in Finland to counter social media advertising of alcohol<sup>7</sup>, should also be explored with regard to their application in an Irish context.

### **9pm watershed for television and radio advertising**

29. The General Scheme indicates that the Bill will provide for regulations specifically to: “limit marketing and advertising on television and radio from 2016 to evening hours.”

And Head 9 (3) of the General Scheme provides that the Minister may regulate to restrict broadcasting of marketing and advertising of alcohol to certain times of day, and in relation to volume, frequency and placement’.

The Committee wishes to re-state its 2012 recommendation that a ban on alcohol advertising on television before 9 pm should be introduced.

The Committee recognises that various television playback / “on demand” systems mean that audiences can increasingly view programmes at a time of their choosing, rendering the concept of a “watershed” less effective.

Nevertheless, such a policy would ‘*do no harm*’ (from a public health perspective) and the Committee believes that this measure would act as a signal around the influence of alcohol advertising and its appropriateness for a younger audience. It could also work in tandem with other proposed additional restrictions on child viewing through the audience profiles measure set out above.

### **Advertising near schools**

30. Head 9 of the General Scheme also provides that regulations may be made to restrict marketing of alcohol in outdoor spaces in relation to volume and locations.

The influence of alcohol marketing on children and young people is a particular concern raised in the PLS hearings on the General Scheme. The Committee

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<sup>7</sup> [http://www.oecd-ilibrary.org/social-issues-migration-health/tackling-harmful-alcohol-use\\_9789264181069-en](http://www.oecd-ilibrary.org/social-issues-migration-health/tackling-harmful-alcohol-use_9789264181069-en).

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generally feels that it is desirable to consider the means by which outdoor marketing of alcohol could be banned or restricted close to schools.

Existing voluntary codes includes provisions restricting alcohol advertising within 100 metres of a school entrance. According to some stakeholders, these regulations are generally seen as difficult to enforce from the point of view of accurately identifying, or defining the entrance to a school.

However, the Committee believes that it should be technically feasible to use basic geo-mapping data on the location of schools to restrict outdoor advertising of alcohol from the vicinity of primary and secondary schools.

On this basis, the Committee recommends that the Minister consider introducing regulations to enforce a ban on the outdoor advertising (e.g. on bus shelters, hoardings and banners) of alcohol within a 250m distance of schools.

### **Advertising of retail discounting**

31. There is a body of evidence indicating that advertising and promotions affect alcohol consumption patterns. In its 2012 report on the *Misuse of Alcohol and other Drugs* this Committee recommended that the Government explore the option of banning all retail advertising relating to the discounting of alcohol products.

The Health Committee concerns in relation to the volume discounting of alcohol products, and special offers (for bulk or multiple purchases, advertised online, or in promotional leaflets) remain.

The Committee wishes to re-state its recommendation that the Minister should consider measures to ban online, leaflet or media advertising of the volume discounting of alcohol in a retail setting. The Committee also recommends that the Minister consider including a ban on multi-buy promotions, and a ban on any promotional discounts (i.e. money back vouchers, loyalty points etc.) linked to the purchase of alcohol.

### **Marketing of alcohol and sports sponsorship (Key issue no.5 also refers)**

32. The issue of whether sports sponsorship by alcohol companies should be ended or gradually phased out, is one that remains prominent in public debate.

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The Committee notes that Head 9, Part 3 (Section e) of the General Scheme permits the Minister to regulate the sponsorship of *events* by any person engaged in the importation, manufacture, sale, promotion and distribution of alcohol products. .

As a matter of principle, and in line with its 2012 Report on this matter, the Committee is supportive of a move to ban sports sponsorship by alcohol companies. However, in discussion with the Committee, the Minister has indicated that, in the medium term, a ban on alcohol sponsorship is not realistic.

### **Structural Separation of alcohol**

33. The structural separation of alcohol in mixed trading premises was legislated for in section 9 of the *Intoxicating Liquor Act 2008*. However, these provisions of the legislation have not been commenced. The Committee also notes that wine was excluded from the provisions of the legislation.  
At present a voluntary code is in operation around mixed retailing that provides for a degree of separation. However, the Code sets out that the guidance on the display and placement of alcohol shall be met “as far as possible”. The PLS hearings on the General Scheme highlighted evidence to the effect that the voluntary code is weak and ineffective because of this.
34. The Committee recommends that the Minister consider making a statutory code in this area more restrictive, by excluding the wording “as far as possible”, and by including wine among the categories encompassed by a statutory code.
35. The Committee supports the structural separation of alcohol products from other products in mixed trading environments. The current voluntary code is not sufficient to implement this, as the Committee is aware of instances in which it has been flouted, with a negative impact on consumer behaviour. As stated by the Royal College of Physicians of Ireland, “the placement of alcohol in mixed retail outlets alongside groceries gives the impression that alcohol is an ordinary commodity, and normalises alcohol as part of a weekly shopping list...”
36. However the Committee is also aware of the need to minimise the regulatory burden on the retail sector. Therefore it does not support calls by some stakeholders for

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structural separation to be accompanied by additional requirements, such as fixed walls, separate staff and cash tills to be provided for the sale of alcohol products.

37. The Committee is generally supportive of the Minister's position in this regard which is "to ensure that alcohol products cannot be displayed like ordinary grocery products, but will be subject to strict merchandising requirements... in a manner that is not too onerous on retailers and that will not impose excessive costs on them in order to comply..."

### **Environmental Health Officers - resources for enforcement (Sections 8.5 and 8.6 refer)**

38. Head 15 of the General Scheme of the Bill would amend Section 9 of the *Intoxicating Liquor Act 2008* to give enforcement powers to 'authorised officers'. The Department of Justice and Equality is to replace the voluntary code with a statutory code. The operation of this code will be monitored for a two-year period. A review will then inform a Government decision whether or not to commence section 9 of the 2008 Act.

The Department has indicated that it is intended that environmental health officers (EHOs) will act as the 'authorised officers' for enforcement purposes under the proposed legislation, i.e. the new measures on: minimum pricing, labelling, alcohol advertising, and two parts of the *Intoxicating Liquor Act 2008* regarding sale, supply and consumption and structural separation of alcohol from other products in retail outlets, and any other measures requiring enforcement that may arise.

Environmental Health Officers have been effective in implementing other new regulations, and recently became the authorised officers under new sunbed legislation, and they are also required to enforce the new standardised packaging of tobacco legislation.

The Committee supports the proposal to give EHOs appropriate powers to police new alcohol regulations. Given the additional powers and duties to be assigned to EHOs under this legislation, and in the context of further additional duties regarding other public health legislation, the Committee strongly recommends that

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environmental health officers be fully resourced in order to ensure effective enforcement of its provisions.

### **Enforcement and Penalties**

39. The Minister should consider whether or not the level of financial penalties should relate to the level of turnover of the business. Such an approach, if found practical, would mean that, rather than fixed penalties for breaches of the legislation, which would have a disproportionate impact on small businesses, the impact of the penalties would be more equitable.

## 1. Outline of the General Scheme

The General Scheme is composed of five parts:

- Part 1 is composed of four Heads concerning the short title, commencement, interpretation, regulation provisions and expenses.
- Part 2 is composed of four Heads; the first concerns the labelling of alcohol products, the second provides for a minimum unit price for alcohol products, with the following Head detailing how this minimum unit price is to be calculated. The final Head ensures that all provisions apply to registered clubs as well as licensed premises.
- Part 3 is composed of one Head and deals with the control of marketing and advertising of alcohol.
- Part 4 is composed of seven Heads. The first two deal with the appointment and powers of the authorised officers who will be responsible for the enforcement of the Bill. The third is a standard Head providing for the service of documents, with the fourth allowing for fixed payment notices as an alternative penalty for certain offences under the Bill. The fifth (Head 13) allows the Health Service Executive (HSE) to maintain an Alcohol Non-Compliance List, details of which can be published by the HSE at any time. The final two Heads in this Part deal with amendments of the *Intoxicating Liquor Act 2008*.
- Part 5 is composed of four Heads. The first three deal with offences and penalties under the Bill, with the final Head allowing for proceedings to be brought by the HSE for offences under the Bill.

## 2. Approach to Review of Legislation

As part of the General Scheme, Part III of Head 9 provides that:

“The Minister shall, not later than 3 years after the commencement of this head carry out a review of the operation of this head.”

This approach is similar to provisions contained in Scottish legislation (*the Scottish Alcohol (Minimum Pricing) (Scotland) Act 2012*).<sup>8</sup> The Scottish legislation includes a sunset clause<sup>9</sup>. This stipulates that the legislation for minimum unit pricing would expire after 6 years of operation unless a legislative order is made to continue it. Section 3 provides that the Scottish Ministers must “*lay before the Scottish Parliament a report on the operation and effect of the minimum pricing provisions during that period [first five years of operation]*”.<sup>10</sup>

### 4.1 Stakeholder comment

Beoir, an independent group which supports microbreweries, opposed the introduction of minimum unit pricing. On the issue of review, Beoir’s submission cited the example of the Scottish legislation, which included a ‘sunset clause’, and called for similar reviews to be incorporated into the Public Health (Alcohol) Bill 2015. The group argued: “...if this is to be implemented, *show us that it is working*.”<sup>11</sup>

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8 Act available here: <http://www.legislation.gov.uk/asp/2012/4/section/3/enacted>

9 A sunset clause sets a fixed date for termination of a particular law – though generally the law may be continued if there is specific legislative re-authorisation. (Jantz and Veit (2010) [Sunset legislation and better regulation – empirical evidence from four countries](#))

10 <http://www.legislation.gov.uk/asp/2012/4/section/3/enacted> - section 3.

11 Beoir – Submission on the General Scheme of the Public Health (Alcohol) Bill 2015

### 3. Labelling of alcohol – alcohol levels, health warnings and calorie count

A number of other jurisdictions have mandatory or voluntary requirements to include health advice or warnings on alcohol products. In Ireland, guidelines issued by the HSE define alcohol amounts in terms of standard drinks, with recommended maximum weekly amounts for men and women – known as ‘*low-risk drinking guidelines*’.<sup>12</sup> There are poor levels of awareness amongst the public of current alcohol consumption guidelines.<sup>13</sup>

Overall, the international literature indicates that alcohol health warning labels may be effective in helping to raise awareness of the risks associated with excessive drinking. However, increased awareness does not necessarily translate into behaviour change in at-risk groups (i.e. those who drink the most / or in ways most likely to damage their health).

At present, there are no health warnings on alcohol packaging in Ireland. However, container labels must indicate the strength of an alcohol product.

The introduction of health labelling on alcohol products was recommended by the Steering Group on a National Substance Misuse Strategy:<sup>14</sup>

“Labels on alcohol products sold in Ireland should include the number of grams of alcohol per container, along with calorific content and health warnings in relation to consuming alcohol including during pregnancy,”

Head 5 of the General Scheme would make it mandatory for all alcohol product labels to include:

- (a) the quantity in grams of alcohol;
- (b) energy value; (i.e. calories)
- (c) a warning about the danger of consuming alcohol; and
- (d) a warning about the danger of consuming alcohol when pregnant.

Head 5 (2) of the General Scheme seeks to create an offence to advertise (i.e. publish, display, distribute or supply an advertisement) any alcohol product without:

- (a) a warning about the danger of consuming alcohol;
- (b) a warning about the danger of consuming alcohol when pregnant.

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<sup>12</sup>See details here: <http://www.hse.ie/go/alcohol/>

<sup>13</sup> Health Research Board (2012) *Alcohol: Public knowledge, attitudes and behaviours*; [http://www.drugs.ie/resourcesfiles/reports/Alcohol\\_Public\\_Knowledge\\_Attitudes\\_and\\_Behaviours\\_Report.pdf](http://www.drugs.ie/resourcesfiles/reports/Alcohol_Public_Knowledge_Attitudes_and_Behaviours_Report.pdf)

<sup>14</sup> Ibid.

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The General Scheme would provide the Minister with powers to determine the manner and form of such labelling / warnings in order to improve their effectiveness. It also provides that the same information would have to be exhibited in licensed premises – by requiring a licensee with an on-license to “*display a notice prominently inside the premises where the business is carried on as prescribed for any quantity, measure or unit of alcohol being supplied or sold*”. This is to ensure that consumers are provided with the same information on alcohol sold on draught or in spirit measures as they receive from containers.

The licensee would also be required to provide a document, upon request, setting out the same information. The requirements would apply only to products for sale in the State, i.e. those produced for export trade would be exempt.

### 5.1 Stakeholder Comment

#### 5.1.1 General commentary on labelling

Alcohol Action Ireland called for the research, design and selection of labels and health warnings to be “*carried out independently of the alcohol industry.*”<sup>15</sup>

The Irish Heart Foundation recommended that labels should include graphic illustrations of detrimental health effects arising from alcohol use.

The Irish Cancer Society called for the health warning labels to include specific statements that drinking alcohol causes cancer.

St. Patrick’s Institution recommended that the warnings should encompass mental health concerns, as well as the physical health effects of alcohol. Similarly, the Samaritans stated that the organisation:

“...would like to see labelling which clearly warns people of the health consequences of alcohol misuse and the impact which alcohol can have on mood and mental health.”<sup>16</sup>

Two submissions from individuals indicated problems with some current or common language around risky drinking. Mr Gerry Hickey, counsellor / psychotherapist, argued that

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<sup>15</sup> Alcohol Action Ireland’s submission to the Joint Oireachtas Committee on Health and Children on the Public Health (Alcohol) Bill 2015.

<sup>16</sup> Submission by the Samaritans, March 2015.

“soft labels enable the problem.” And Ian McCabe, clinical psychologist, suggested that “bland statements” such as “drink responsibly” would be better replaced with a brief questionnaire aimed at identifying problem drinking.

The Alcohol Beverage Federation of Ireland (ABFI) “...welcomes appropriate labelling which enables the consumer to make informed decisions when purchasing alcohol.”<sup>17</sup> The ABFI supports the inclusion of calorie information, though it called on Government to seek standardisation across the EU in relation to this information.

Although the ABFI claims that there is a lack of evidence on the efficacy of health warning labels, it should be noted that the Committee received a significant number of submissions from healthcare professionals supporting measures including health warning labelling.

The Convenience and Newsagents Association (CSNA) emphasised the need for a practical approach to such measures, to take account of the cost of regulation on small and medium enterprises. The CSNA also called for allowances to be made for ‘sell through’ of existing stock, when labelling measures are introduced.<sup>18</sup> The Association also recommended that account be taken of potential bi-lingual requirements before specifying regulations. Finally, the CSNA recommended that:

“...retailers not be held responsible for labelling breaches once the product has been purchased within the state.”<sup>19</sup>

### 5.1.2 Alcohol content - Grams or standard drinks?

The Licensed Vintners Association (LVA) said in evidence before the Committee that:<sup>20</sup>

“...we believe that the information about quantity in grams of alcohol will be of no benefit to consumers as they will not understand it.”

Alcohol Action Ireland called for more comprehensive labelling than set out in the General Scheme of the Bill. It recommended that:<sup>21</sup>

“Labels should contain details of the number of grams that alcohol products contain, the liquid volume in terms of a standard drink of that beverage (i.e. drink size) and

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<sup>17</sup> ABFI submission to the Joint Oireachtas Committee on Health and Children on the Public Health (Alcohol) Bill 2015.

<sup>18</sup> CSNA – Submission to the Joint Oireachtas Committee on Health and Children, March 2015.

<sup>19</sup> ABFI Submission.

<sup>20</sup> Mr Donall O’Keeffe, LVA, to the Joint Oireachtas Committee on Health and Children, 26 March 2015.

<sup>21</sup> Alcohol Action Ireland’s submission to the Joint Oireachtas Committee on Health and Children on the Public Health (Alcohol) Bill 2015.

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the low-risk weekly guidelines for alcohol consumption for women and men, as expressed in grams.”

In his evidence to the Committee, Professor Joe Barry, Chair of Population Health Medicine, TCD supported the use of grams in labelling, stating that:<sup>22</sup>

“Grams are used to label foods all over Europe and represent the same thing in Ireland, the United Kingdom and continental Europe. Grams are understandable in many languages. Importantly, there is a direct dose response effect between daily intake of grams of alcohol and a variety of alcohol induced health harms.”

### 5.1.3 EU level work on alcohol labelling

ABFI stated that there is ongoing work at European level around labelling requirements for alcohol products, and questioned the wisdom of proceeding with standalone measures outlined in the General Scheme in this context.<sup>23</sup> However, it should be noted that labelling requirements already exist in France.

### 5.1.4 Labelling / information and the on-license trade

The Licensed Vintners Association was supportive of the provision in subhead 5(4) that licensees (on-licence) display a notice prominently inside the premises setting out the required information, stating:<sup>24</sup>

“We believe this is the most appropriate and feasible means for publicans to comply with the labelling requirements.”

The LVA recommended that a standard template be developed and that information be provided by category rather than brand as this would “*be an administrative nightmare and prove overwhelming for consumers.*”

Similarly, the Vintners’ Federation of Ireland (VFI) stated:<sup>25</sup>

“It is imperative that a standardised format be agreed for this notification. We need to avoid different administrative officers having different impressions of what is required.”

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22 As before.

23 ABFI Submission.

24 Mr Donall O’Keeffe, LVA, to the Joint Oireachtas Committee on Health and Children, 26 March 2015.

25 Mr. Pdraig Cribbin, CEO, The Vintners Federation of Ireland in evidence to the Joint Oireachtas Committee on Health and Children, 12 March 2015.

## 6.1 The role of pricing in alcohol policy

The role of the effect of price on consumption is strong and related to this there is a substantial evidence base that shows that increasing price reduces consumption. Health Research Board (HRB) researcher, Deidre Mongan, highlights that:<sup>26</sup>

“Alcohol is price sensitive – increasing the cost of alcohol reduces consumption and decreasing the cost of alcohol increases its consumption. Price is therefore often used as a policy lever to reduce alcohol consumption and its related health and social harms.”

It has also been observed that, while an increase in prices, has positive health benefits at population level, drinkers may change to cheaper products to offset price increases. Canadian researchers stated that:

“There is strong evidence that hazardous and problem drinkers seek out the most inexpensive alcohol in order to maximize ethanol intake per dollar spent.”<sup>27</sup>

However, the effect of price on alcohol misuse is disputed, with its impact disputed at the Committee sessions by Ms Kathryn D’Arcy of the Alcohol Beverage Federation of Ireland:<sup>28</sup>

“...it is overly simplistic to cite price as the key driver of alcohol misuse. According to many studies, a young person’s attitude to alcohol is formed by his or her peers, parents and culture rather than price alone.”

## 6.2 What is minimum unit pricing (MUP) and how is it provided for in the General Scheme?

Minimum unit pricing (MUP) is setting a ‘floor price’ beneath which alcohol cannot be sold. This price is calculated according to the amount of alcohol in each product, measured in units or grams. The policy of MUP aims to take a more targeted approach to consumption than changes to tax and excise duty – in that it is designed to affect only the price of cheaper alcohol.

Head 6 of the General Scheme would make it illegal to sell or advertise for sale an alcohol product at a price below its ‘minimum price’. The text is designed to ensure that minimum pricing cannot be contravened by bulk sales or when alcohol is packaged together with other goods and services (e.g. a ‘meal deal’ from a supermarket).

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26 Mongan, D (2012) ‘Alcohol: increasing price can reduce harm and contribute to revenue collection’, *Drugnet Ireland*, Issue 44, Winter 2012 . pp. 7-9 [http://www.drugsandalcohol.ie/19131/1/Drugnet\\_44\\_-\\_Web.pdf](http://www.drugsandalcohol.ie/19131/1/Drugnet_44_-_Web.pdf)

27 Stockwell, T. *et al* (2012) ‘Does minimum pricing reduce alcohol consumption? The experience of a Canadian province’, *Addiction*, Volume 107, Issue 5, pages 912–920, May 2012

28 Joint Oireachtas Committee on Health and Children (2012) *Report on the Misuse of Alcohol and Other Drugs*.

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The explanatory notes to the General Scheme state that:

“The aim is to prevent the sale of alcohol products at very cheap prices. The measure is targeted at those who have a harmful alcohol consumption pattern and should therefore only marginally effect moderate drinkers.”

The explanatory notes further point out that the effect on moderate drinkers will depend upon the level at which the minimum price is set:

“Hazardous and harmful drinkers drink proportionately more alcohol which is cheaper relative to its strength. The measure is able to target cheaper alcohol relative to its strength because the minimum price is determined by and is directly proportionate to the amount of pure alcohol in the alcohol product”

Additionally, minimum unit pricing has been found to be an “effective and proportionate” policy response to alcohol misuse:

“There is strong and clear scientific evidence that an increase in alcohol prices reduces hazardous drinking and serious alcohol related problems.”

The present Committee, in its report '[Report on the Misuse of Alcohol and Other Drugs](#)' (2012) stated that:<sup>29</sup>

“The majority of the members of the Committee support the Government’s recently announced decision to introduce minimum pricing in respect of alcoholic drinks in a forthcoming public health bill. However, there was divergence of views within the committee on this matter with a minority supporting, as an alternative, an increase in either or both alcohol expenditure taxes (with the additional revenue generated being ring-fenced for preventative education and provision of alcohol addiction services).”

### 6.3 Predicting the impact of Minimum Unit Pricing in Ireland

Dr John Holmes and Mr Colin Angus appeared before the Committee as part of its hearings on the General Scheme. The authors are leading international researchers on the issue of minimum unit pricing, having carried out similar studies in other jurisdictions. The authors presented recent research undertaken to model or estimate the effects of minimum unit pricing in Ireland, and key findings are set out below:

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<sup>29</sup> As before.

**Box 1: Findings of study estimating the impact of Impact of Minimum Unit Pricing in Ireland.**

**MAIN CONCLUSIONS**

**Estimates from Irish adaptation of Sheffield Alcohol Policy Model version 3 suggest:**

1. Minimum unit pricing policies (MUP) would be effective in reducing alcohol consumption, alcohol-related harms (including alcohol-related deaths, hospitalisations, crimes and workplace absences) and the costs associated with those harms.
2. A ban on below-cost selling (implemented as a ban on selling alcohol for below the cost of duty plus the VAT payable on that duty) would have a negligible impact on alcohol consumption or related harms.
3. A ban on price-based promotions in the off-trade, either alone or in tandem with an MUP policy would be effective in reducing alcohol consumption, related harms and associated costs.
4. MUP and promotion ban policies would only have a small impact on low risk drinkers. Somewhat larger impacts would be experienced by increasing risk drinkers, with the most substantial effects being experienced by high risk drinkers.

*Conclusions (Contd.) – estimating impact of MUP in Ireland*

5. MUP and promotion ban policies would have larger impacts on those in poverty, particularly high risk drinkers in poverty, than on those not in poverty. However; those in poverty also experience larger relative gains in health and are estimated to very marginally save money due to their reduced drinking under the majority of policies.

**Source:** Colin Angus, Yang Meng, Abdallah Ally, John Holmes, Alan Brennan (2014) *Model-based appraisal of minimum unit pricing for alcohol in the Republic of Ireland - An adaptation of the Sheffield Alcohol Policy Model version 3*; <http://health.gov.ie/wp-content/uploads/2015/03/xMUP-FINAL-Report-2014.pdf>

**6.4 Stakeholder Comment – General minimum unit price**

The impact of minimum unit pricing of alcohol in Ireland was estimated in a study by academics from the University of Sheffield, including Dr John Holmes and Mr Colin Angus,

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who presented their findings to the Committee. In relation to impact on consumption, Dr Holmes stated:<sup>30</sup>

“...we estimate that a €1 minimum unit price introduced in Ireland would reduce total alcohol consumption by around 8.8%.”

He noted that:<sup>31</sup>

“By the 20<sup>th</sup> year after introduction of this policy, when we would expect to see the full effects, that reduction of 8.8% would result in around 100, or 16% fewer deaths per year and around 6,000, or 10%, fewer alcohol-related hospital admissions. From year one of the policy, and every year thereafter, we would expect to see around 1,500 fewer alcohol-related crimes and over 100,000 fewer days absent from work due to alcohol.”

In terms of cost reduction, their study estimated that MUP would save €1.7 billion over 20 years. They estimated that the impact on retailers “*is likely to be positive*”, with the off-trade receiving approximately €69 million extra per year from alcohol sales (due to higher prices despite lower overall volume). They considered a slight increase in on-trade may also result as people change their habits to drink in pubs / restaurants when the price differential with the off-trade is reduced.

In relation to who is affected by an MUP policy, Dr. Holmes stated:<sup>32</sup>

“A key feature of the policy of minimum unit pricing is that it does not affect all drinkers equally.”

The model shows that MUP would have a “*much greater impact on high-risk drinkers.*”<sup>33</sup>

Minimum unit pricing (MUP) of alcohol as provided for in the General Scheme was generally supported in the submissions and evidence of health-promoting and community organisations such as the Irish College of General Practitioners, Irish Heart Foundation, Rape Crisis Network of Ireland (RCNI), and St. Patrick’s Institution, the Children’s Rights Alliance and the ISPCC.

Appearing before the Committee, Prof. Joe Barry, Chair of Population Health Medicine, TCD, stated that MUP:<sup>34</sup>

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30 Dr John Holmes in evidence to the Joint Oireachtas Committee on Health and Children, 12 March 2015.  
<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/HEJ2015031200002?openDocument#P00150>

31 as before.

32 Dr John Holmes, as before.

33 as before.

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“...is a proven effective measure with gains in the short-term.”

The Royal College of Physicians of Ireland stated it was “*strongly in favour*” of MUP.

Professor Frank Murray, RCPI in evidence to the Committee stated:

“Minimum unit pricing is the single most important aspect of this legislation. It will reduce the flood of cheap alcohol that tends to be disproportionately consumed by young drinkers as well as problem drinkers.”<sup>35</sup>

The Institute of Public Health in Ireland stated “*introduction of minimum unit pricing is critical in terms of reducing the stark inequalities in alcohol-related harm.*”

There was support too for MUP from other sectors, such as representatives of the retail alcohol trade – off and on-license sectors, including the LVF and the VFI. The Vintners’ Federation of Ireland (VFI) stated that:<sup>36</sup>

“We fully support the principle of minimum unit pricing. To be effective it needs to be set at a rate that will achieve the stated objective.”

RGDATA, representing the independent retail grocery sector, stated that it “*supports the introduction of minimum pricing of alcohol.*”<sup>37</sup>

Ms Evelyn Jones, Chairperson, of the NOFLA (the National Off-Licence Association) stated at the Committee hearing:

“We support the introduction of minimum unit pricing, MUP, and see it working at approximately €1 or more. Some might wish it to be higher but we must be conscious of the proportionality of the measure on health grounds versus the freedom of movement of goods under EU law for it to have any chance of approval.”<sup>38</sup>

NOFLA would like to see a re-introduction of a ban on below-cost selling alongside the MUP. The Association argues this would act as both a back-up to MUP (if it is not possible to implement following the ECJ ruling), and a way of addressing the discounting of expensive premium brand products which will not be affected by MUP.

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34 Joint Oireachtas Committee on Health and Children, 26 March 2015.

35 Joint Oireachtas Committee on Health and Children, 10 March 2015.

36 Mr. Pádraig Cribbin, CEO, the Vintners Federation of Ireland in evidence to the Joint Oireachtas Committee on Health and Children, 12 March 2015.

37 RGDATA Submission on the General Scheme of the Public Health (Alcohol) Bill

38 Ms Evelyn Jones, in evidence to the Joint Oireachtas Committee on Health and Children, 12 March 2015.

RGDATA stated that *“it is also vital that alcohol is not sold below cost and the legislation should make this clear.”*<sup>39</sup>

The Alcohol Beverage Federation of Ireland also favours a ban on below-costs selling, but instead of, rather than in tandem with MUP. The ABFI stated:<sup>40</sup>

“The ABFI supports Government’s intention to address the sale of cheap alcohol but feels that MUP will be ineffective as a measure to address this. Therefore ABFI does not support MUP.”

The return of the Groceries Order banning below cost selling was also favoured by the Barry Group.

### **6.5. How the General Scheme provides for setting the level of minimum unit pricing**

The General Scheme includes the general formula for how the price will be determined and provides that it will be set by way of regulation.

Head 7 (1) of the General Scheme sets out that the minimum unit price to be applied will be calculated as follows:

**“Minimum unit price x No. of grams of alcohol  
= minimum price of alcohol product.”**

This design means that:<sup>41</sup>

“...the minimum price is determined by and is directly proportional to the amount of pure alcohol in the drink”.

Head 7 (2) seeks to give the Minister power to set the minimum unit price per gram of alcohol in secondary legislation. In doing so (p. 14):

“...the Minister shall have regard to the aim of minimum unit price to prevent the sale of alcohol at very cheap prices and the effectiveness of minimum unit price at targeting those who have a harmful alcohol consumption pattern.”

The explanatory note to this Head states that:

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39 RGDATA Submission on the General Scheme of the Public Health (Alcohol) Bill

40 ABFI Submission.

41 Department of Health’s press release published with the General Scheme, as before.

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“It is the intention to publish the proposed minimum unit price in tandem with the Bill to enable a fully informed debate on the impact of minimum price consumption, related harms and cost to society.”

The accompanying press release also stated that the minimum price would be set “in consultation with relevant Government Departments.”

### 6.5.1 Stakeholder Comment –VAT / Excise interaction with MUP

There was some stakeholder commentary about the level of MUP and how the final sales price will be arrived at. Issues around the application of VAT and excise duty and how these related to the final sales price were also raised. The Convenience Stores and Newsagents Association (CSNA) argued:

“We are concerned that there does not seem to have been any consideration for the application of VAT at Standard Rate, and where this application will be accommodated within the formula [for calculating minimum unit pricing].”<sup>42</sup>

Specifically, the CSNA was concerned about what would occur when VAT rates are adjusted.<sup>43</sup>

“CSNA recommends that the Minister sets out specifically how changes in VAT rate will be accommodated to ensure that offences are not created inadvertently by retailers’ observing their obligations to apply VAT correctly.”

The CSNA made similar recommendations regarding excise duty – that any excise duty change be communicated appropriately.

The VFI stated:<sup>44</sup>

“The Department of Health has indicated that the minimum unit price will be exclusive of VAT and excise. We fail to see how this can operate. If the minimum price is exclusive of VAT and excise, it will be meaningless unless it is pitched at an enormously high level. It will be meaningless in that supermarkets may decide, when it suits them, to absorb the excise and they will continue to use alcohol as a loss leader.”

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42 CSNA submission, March 2015.

43 CSNA submission, March 2015.

44 Mr. Pádraig Cribbin, CEO, the Vintners Federation of Ireland in evidence to the Joint Oireachtas Committee on Health and Children, 12 March 2015.

### 6.6 North/South cross border trade and other sources of alcohol

Cross-border trade in alcohol has been a long-running issue. Cross-border purchases are influenced by price differentials affected by taxes as well as the current exchange rate.<sup>45</sup> Proximity to the border is also a consideration, with those living closer to the border more likely to shop in Northern Ireland.<sup>46</sup>

The latest figures (October 2014) from the Revenue Commissioners show that prices for alcohol products surveyed are higher in this jurisdiction.<sup>47</sup> As Power and Johns argue:

“The fear that any further widening of tax differentials between the UK and Ireland could lead to a further diversion of sales and tax revenues to Northern Ireland in particular is a very real one.”<sup>48</sup>

It has been reported that the Minister for Health has said there was an agreement with the Northern Ireland Executive that similar measures would be introduced at the same time so that a cross-Border trade in cheap alcohol would not develop.<sup>49</sup> In January 2015, the then Northern Ireland Health Minister, Jim Wells, MLA, also emphasised the importance of co-ordination in this matter.<sup>50</sup>

Arguments against minimum unit pricing include warnings that unintended consequences may arise in relation to smuggling or illicit alcohol as a way of evading the minimum prices.<sup>51</sup>

### 6.7 Raising revenue – the issue of a levy

The Steering Group Report on a National Substance Misuse Strategy (2012) recommended that the government impose a “social responsibility levy” on the drinks industry – to be used by the health sector for (1) its own social marketing and (2) as an alternative means to

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45 Power, Jim and Chris Johns (2013) [The efficacy of minimum unit pricing, fiscal and other pricing public policies for alcohol](#). CJP Consulting.

46 Power & Johns (2013) as before.

47 <http://www.revenue.ie/en/about/publications/cross-border-surveys/cross-border-comp-oct14.html>

48 Power & Johns (2013) as before.

49 Collins, S (2015) 'Government to clamp down on sale of cheap drink', *Irish Times*, 4 February 2015

<http://www.irishtimes.com/news/politics/government-to-clamp-down-on-sale-of-cheap-drink-1.2090204>

50 <http://www.bbc.co.uk/democracylive/northern-ireland-30796868>

51 See analysis of responses to Northern Ireland consultation on minimum unit pricing for alcohol; Also Hilton, S. *et al* (2014) 'Implications for minimum unit pricing advocacy: What can we learn for public health from UK newsprint coverage of key claim-makers in the policy debate?', *Social Science and Medicine*, Feb 2014: 102(100); 157-164

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support the sports bodies should they suffer financially as a result of a ban on sports sponsorship. However, it should be noted that there is no provision for such a levy in the General Scheme.

### 6.8 Stakeholder comment – a levy

Some stakeholder submissions called for the introduction of a levy on the drinks / alcohol industry or parts thereof. However, none argued against this measure. This is perhaps understandable as it was not included in the General Scheme of the Bill.

The Irish Heart Foundation submission stated:<sup>52</sup>

“The IHF calls on Government to reconsider the approach to alcohol sponsorship of sport and to ban such sponsorship in tandem with the introduction of a social responsibility levy on the alcohol industry.”

In its submission, the Citywide Drugs Crisis Campaign argued that significant investment was needed in prevention, treatment and rehabilitation around alcohol. It argued:<sup>53</sup>

“It is appropriate that the drinks industry, which amasses significant profits from the sale of alcohol, should contribute to this investment. The recommendation of the NSMS [National Substance Misuse Strategy Group] for the introduction of a Social Responsibility Levy on the drinks industry...provides a tool through which essential additional resources could be provided to the State for investment in these services.”

The Campaign group stated that the absence of such a levy from the General Scheme, particularly in a time of constrained public finances, was a “significant blow”.

Alcohol Forum’s submission recommended:<sup>54</sup>

“...the introduction of a ‘social responsibility’ levy’ on the drinks industry. A levy would go a long way to addressing child maltreatment as a result of our alcohol culture.”

The Forum suggested that the funds collected could be used to provide family support services.

The Royal College of Physicians in Ireland’s (RCPI) submission stated that:<sup>55</sup>

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<sup>52</sup> Irish Heart Foundation, Submission on the General Scheme.

<sup>53</sup> Citywide Drugs Crisis Campaign – Comments on the General Scheme of the Public Health (Alcohol) Bill 2015.

<sup>54</sup> Alcohol Forum, Submission on the General Scheme of the Public Health (Alcohol) Bill 2015.

<sup>55</sup> RCPI Policy Group on Alcohol, as before.

“We...call on Government to allocate specific funding for research into alcohol-related harms. We propose that a proportion of the revenue generated through MUP and increased excise duty be allocated to research bodies to help offset the cost of alcohol harm. Based on the polluter-pays principle, the Government should also use social responsibility levies on the alcohol industry to support this research.”

### 6.9 Other jurisdictions - Scotland

The Scottish Parliament has legislated for minimum unit pricing; however this is subject to legal proceedings, described below.

In 2012, the Scottish Parliament passed the *Alcohol (Minimum Pricing)(Scotland) Act 2012*.<sup>56</sup> This Act was the second attempt to legislate for minimum unit pricing of alcohol in Scotland. Although the exact minimum price per unit of alcohol is not specified in the Act itself, it has been set by order at 50p.<sup>57</sup> This legislation is not yet in force.

The situation in Scotland has particular relevance for Ireland for 3 main reasons:

1. Scotland has experienced a similar problem with hazardous and harmful drinking to Ireland, and so the purpose of their legislation is broadly similar to that proposed here;
2. The notes to the General Scheme indicate that minimum pricing provisions in the General Scheme before the Committee are modelled on the Scottish legislation; and,
3. That legislation is currently the subject of a challenge in the European Court of Justice by the Scotch Whisky Association and others on the basis that they believe it is incompatible with European law. The ECJ has yet to deliver its judgment in this case and it is understood that the decision is due on 3 September 2015.
4. Given the broad similarities between the Scottish and Irish legislation, as well as the almost identical public policy grounds advanced in justification for such a measure, in the event that the ECJ does determine that minimum pricing would contravene EU law, this would likely have a significant impact on policy in Ireland.

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56 The Act can be viewed at: [http://www.legislation.gov.uk/asp/2012/4/pdfs/asp\\_20120004\\_en.pdf](http://www.legislation.gov.uk/asp/2012/4/pdfs/asp_20120004_en.pdf)

57 BBC News Scotland – *Scottish government seeks minimum alcohol price of 50p per unit*, 14 May 2012  
<http://www.bbc.com/news/uk-scotland-18052849>

## 4. Control of marketing and advertising of alcohol

Part III of the General Scheme contains Head 9 on the regulation of marketing and advertising of alcohol, specifically to:

- a) restrict the broadcasting of, marketing and advertising of alcohol to certain times of the day and in relation to volume, frequency and placement;
- b) limit marketing and advertising of alcohol in cinemas to films classified as over 18s;
- c) restrict marketing and advertising of alcohol in outdoor media from 2018;
- d) restrict marketing and advertising of alcohol in print media;
- e) regulation of sponsorship of events by alcohol companies;
- f) set limits on how alcohol is portrayed in advertisement;
- g) require health information be provided in alcohol advertisements;
- h) require alcohol companies to provide the Minister with any information considered necessary for the purposes of the Act;
- i) restrict particular kinds of marketing practices to ensure alcohol products are not designed, produced, or promoted to appeal to children;
- j) enforce regulations under this head.

The proposed restrictions would apply, amongst others, to: Broadcast marketing and advertising, cinema advertising, outdoor advertising, print media and the regulation and sponsorship of events by alcohol companies.

According to the explanatory notes to the General Scheme, implementation of the provisions of Head 9 would be done in concert with the Broadcasting Authority of Ireland (which has statutory responsibility to develop and implement advertising codes).

### 7.1 Evidence of the influence of marketing

There is a strong, consistent body of research showing that alcohol advertising is effective in changing consumption patterns. A report on the Science Group to European Alcohol and Health Forum reviewed the research in this area, finding that:

“...it can be concluded from the studies reviewed that alcohol marketing increases the likelihood that adolescents will start to use alcohol and to drink more if they are already using alcohol.”<sup>58</sup>

The Steering Group Report on the National Substance Abuse Strategy recommended that marketing and advertising of alcohol be brought under legislative control.

The present Committee in its 2012 report on the ‘*Misuse of Alcohol and Other Drugs*’ recommended:

“That the Government explore the option of a ban on all retail advertising relating to the discounting of alcohol products, a ban on the advertisement of alcoholic products on television before 9pm, and any advertisement of alcohol products on social networking websites (these bans to be given legislative standing).”<sup>59</sup>

### 7.2 Sports sponsorship

There has been a long-running debate about the pros and cons of banning alcohol sponsorship of sports in Ireland. The main arguments in favour of a ban have centred around concerns about patterns of alcohol consumption and related harms and the ‘normalising’ of drinking that this sponsorship purportedly brings about. The arguments against such a ban being that the funding gap left by this move would be extremely difficult to bridge, affecting all levels of sports including grass roots levels for young people, and that there is a lack of specific evidence that the ban would be effective.

Different groups have made opposing recommendations in this regard. The Steering Group on a National Substance Misuse Strategy (2012) recommended that alcohol funding of sports be phased out by 2016. In 2013, the Joint Oireachtas Committee on Transport and Communications recommended against such a ban.<sup>60</sup> In contrast, in 2007, the Joint Oireachtas Committee on Arts, Tourism, Community, Rural and Gaeltacht Affairs recommended “*the sourcing of sponsorship for sport outside of the alcohol industry*”.<sup>61</sup>

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58 The Forum is a broad based, pan-European Forum of organisation committed to reducing alcohol based harm. It includes health advocacy groups and industry bodies. For more on this Forum see:

[http://ec.europa.eu/health/ph\\_determinants/life\\_style/alcohol/documents/Alcohol\\_charter2007.pdf](http://ec.europa.eu/health/ph_determinants/life_style/alcohol/documents/Alcohol_charter2007.pdf)

59 as before.

60 <http://www.oireachtas.ie/parliament/media/committees/transportandcommunications/JCTC-Report-on-Sponsorship-of-Sports-by-the-Alcohol-Industry-July-2013.pdf>

61 <http://www.oireachtas.ie/documents/committees29thdail/committeereports2007/alchol-misuse.pdf>

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The General Scheme does not include a ban on alcohol sponsorship of sports. Rather Head 9 provides that the Minister may regulate the sponsorship of events by any person engaged in the importation, manufacture, sale, promotion and distribution of alcohol products in relation to events, volume, placement and other relevant factors.

### 7.3 Current voluntary oversight of marketing and advertising

At present there are non-regulatory advertising standards in place relating to alcohol. These are overseen by a self-regulatory body – the Advertising Standards Authority for Ireland – which is set up and funded by the advertising industry.

The ASAI describes self-regulation “...the adoption by the advertising industry of standards drawn up by and on behalf of all advertising interests. It involves the enforcement of those standards through the commitment and cooperation of advertisers, agencies and media.”<sup>62</sup>

In addition to general advertising standards, there are standards specific to alcohol.<sup>63</sup> A voluntary code – the *Alcohol Marketing, Communications and Sponsorship Codes of Practice*<sup>64</sup> – is also in place that seeks to limit the exposure of young people to alcohol advertising. In order to help monitor compliance with the code, the Alcohol Beverage Federation of Ireland established an [Alcohol Marketing Communications Monitoring Body](#). Since 2005, this has [reported six](#) times to the Minister of Health regarding compliance on a [voluntary code of practice](#) for the industry. For a number of years an industry organization, Copy Clear,<sup>65</sup> has vetted all alcohol advertising copy. Their remit is to ensure that all alcohol consumer brand advertising and digital engagement comply with both the letter and the spirit of the current voluntary codes. In order to be published / broadcast, ads must have a “Copy Clear Certificate”.

## 7.4 Stakeholder commentary

### 7.4.1 Voluntary code

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<sup>62</sup><http://www.asai.ie/about.asp>

<sup>63</sup> [http://www.asai.ie/entiresection.asp?Section\\_Num=7&Section\\_Desc=Alcoholic Drinks](http://www.asai.ie/entiresection.asp?Section_Num=7&Section_Desc=Alcoholic%20Drinks)

<sup>64</sup> <http://www.aai.ie/resources/uploads/1232368309.pdf?phpMyAdmin=53yr8Ej-y2jMMsxiB1sDXHs6wC0>

<sup>65</sup><http://copyclear.ie/>

## Joint Committee on Health and Children

There was disagreement during the Committee pre-legislative (PLS) process between stakeholders as to the effectiveness of the current voluntary codes on marketing and advertising.

The Samaritans stated:<sup>66</sup>

“The voluntary codes and industry regulation of advertising have not been effective and we welcome the move from the current system of voluntary codes to statutory regulation.”

Appearing before the Committee, Mr James Doorley of the National Youth Council of Ireland, argued that:<sup>67</sup>

“The current voluntary codes were agreed with the drinks industry with the advertisers and, in our view, are designed to be ineffective and, in many cases, unworkable.”

He went on to state that: “*We...are opposed to suggestions the current flawed codes [are to be] enshrined in law.*”

The Outdoor Media Association supports the current codes, stating:<sup>68</sup>

“...all alcohol advertisements must be pre-vetted and carry the Central Copy Clearance Ireland stamp of approval to ensure that alcohol is advertised responsibly and in accordance with the Advertising Standards Authority of Ireland code.”

The Association also stated:<sup>69</sup>

“OMA companies have taken a responsible and constructive approach to the codes and our members’ adherence to them has been confirmed by independent monitoring.”

The Advertising Standards Authority of Ireland (ASAI) notes high levels of compliance in general with codes. The ASAI conducted a review of alcohol related advertising in 2014, stating that:<sup>70</sup>

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<sup>66</sup>The Samaritans Submission, March 2015.

<sup>67</sup>Mr James Doorley, in evidence to the Joint Oireachtas Committee on Health and Children, 24 March 2015. <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/HEJ2015032400002?openDocument#A00200>

<sup>68</sup> Outdoor Media Association Submission to the Joint Oireachtas Committee on Health and Children on the General Scheme of the Public Health (Alcohol) Bill.

<sup>69</sup> Ibid

<sup>70</sup> ASAI submission on the General Scheme of the Public Health (Alcohol) Bill 2015.

## Joint Committee on Health and Children

“Our main focus on this occasion was on online advertising and again we received a high level of co-operation with the small number of advertisements that required amendment or withdrawal.”

Appearing before the Committee, Mr Barry Dooley, Chief Executive of the Association of Advertisers in Ireland (AAI) emphasised the need for clear policies and codes to underpin compliance. The AAI also believes in “...*the freedom to advertise within a clear and responsible framework is good for people, business and the economy.*” Mr Dooley stated that:<sup>71</sup>

“We are potentially concerned that plans to impose further restrictions [on alcohol advertising] could be counter-productive.”

Mr Ross Mac Mathúna, of the alcohol industry group, the ABFI, claimed that the voluntary codes were effective, and that the current codes need to be put on a statutory basis.<sup>72</sup> However, it should be noted that in his engagement with the Committee, the Minister for Health indicated his intention to introduce a revised statutory code.

### 7.4.2 Sports sponsorship

Opinion was divided amongst stakeholders regarding the merits of banning sponsorship of sports in general or sporting events by alcohol companies / brands.

Appearing before the Committee, Prof. Frank Murray, of the Royal College of Physicians of Ireland stated “*we strongly recommend that a commencement date be set for the phasing out of alcohol sponsorship of sport.*”<sup>73</sup> Professor Frank Murray, RCPI, stated:<sup>74</sup>

“The tobacco industry opposed the move to ban advertising of its products in 2003, claiming it would result in damage to sport. Clearly that did not happen, but this argument is again being rolled out to protect lucrative campaigns that are enormously effective in terms of recruiting the next generation of drinkers. It is disappointing that the public health (alcohol) Bill will not contain a ban on sports sponsorship.”

Also before the Committee, Dr. Patrick Kenny, Lecturer in Strategic Marketing and Management, DIT, argued that young people are more susceptible to marketing than other

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71 Mr Barry Dooley, AAI, before the Committee, 24 March 2015.

72 Committee meeting, 26 March 2015.

73 Prof. Frank Murray, RCPI, to the Committee, 10 March 2015.

74 In evidence to the Committee, 10 March 2015.

groups. He said that the following were among the policies that should be put in place to protect children:<sup>75</sup>

“...implementing the proposed ban on outdoor alcohol advertising, and initiating a ban on the sponsorship of sport by alcohol brands. These...are especially important because they are indiscriminate in nature and, in the absence of a ban, it is not easy to protect minors from exposure to marketing.”

The Irish Cancer Society stated that it was “*very disappointing*” that such provision was not made in the General Scheme.

St. Patrick’s Institution argued:<sup>76</sup>

“To remove alcohol from this [sports] setting would represent a meaningful step away from our drink culture and towards redefining the structures and nature of leisure activity in Ireland.”

Mr Ross Mac Mathúna, Director of the Alcohol Beverage Federation of Ireland, questioned the rationale for proposals to ban sports sponsorship:<sup>77</sup>

“...sponsorship comes within the advertising piece. Brands sponsoring sports events is a particularly emotive topic for obvious reasons. The market in the consumption of alcohol has declined a great deal in the past 15 years. The companies that sponsor sports events are typically beer companies, but the level of consumption of their product has declined probably faster than the market has. It is interesting to look at the consumption figures for various product categories.

The level of wine consumption is increasing, yet the spend on advertising by wine companies is probably lower than for the rest of the companies and they do not sponsor sports events. We need to be very careful in drawing conclusions about what may seem at first glance like something that is logical but on which the evidence does not stack up.”<sup>78</sup>

### 7.4.3 Online marketing, digital and social media

Many of the submissions addressed the issue of online, digital marketing and the use of social media.

Dr Patrick Kenny, DIT argued that “*Marketing is changing as technology offers new communications channels.*” He stated that the interactive nature of social media may make

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75 Dr. Patrick Kenny in evidence to the Joint Oireachtas Committee on Health and Children, 24 March 2015.

76 Submission on the General Scheme of the Public Health (Alcohol) Bill 2015.

77 Appearing before the Joint Committee on 26 March 2015.

78 26 March 2015.

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it a more effective marketing channel than traditional media and websites. He discussed the growing role of interaction and the use of geo-tagging to help people locate their nearest bar / alcohol sales point and to play alcohol sponsored games. Dr Kenny highlighted:<sup>79</sup>

“...the case of Finland where legislation has been introduced to restrict aspects of social media and online marketing. For example, it has outlawed games which are a highly effective means of getting people to engage with marketing.”

The Galway Health Cities Project similarly raised concerns about social media promotions of alcohol, which directly linked alcohol to ‘student life’. The Project recommended:<sup>80</sup>

“The scope of the restrictions...needs to include social media which is very often hidden. We have substantial evidence gathered locally of where young people are being targeted with various offers of cheap alcohol.”

The ABFI supports the provision of a digital age verification system to block alcohol advertising to children online, pointing out that:<sup>81</sup>

“...it is not beyond the bounds of possibility that there is a system of age verification that is robust which we could use to prevent children from having access to advertising or information that may not be appropriate to them.”

### 7.4.4 Possible introduction of a broadcasting watershed

The General Scheme indicates that the proposed legislation will provide that regulations may be made specifically to: *“limit marketing and advertising on television and radio from 2016 to evening hours.”* Head 9 (3) of the General Scheme provides that the Minister may regulate to restrict broadcasting of marketing and advertising of alcohol to certain times of day, and in relation to volume, frequency and placement.

Appearing before the Committee, Mr Barry Dooley, Chief Executive, Association of Advertisers in Ireland, stated:<sup>82</sup>

“...legislation imposing watersheds will result in a loss to Irish broadcast stations only and ignores the reality that many children watch television after 9 p.m. There are five

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79 appearing before the Joint Oireachtas Committee, 24 March 2015.

80 Galway Health Cities Project - Submission on the General Scheme of the Public Health (Alcohol) Bill 2015.

81 Mr Ross MacMathúna, ABFI appearing before the Joint Oireachtas Committee on 26 March 2015.

82 As before.

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Irish television stations that are likely to be affected and we query the effectiveness of this measure, particularly among younger audiences.”

The ABFI was also opposed to the introduction of a watershed, claiming that:<sup>83</sup>

“A watershed will only apply to domestic broadcasters...A watershed will not apply to programming that is viewed on-demand or online. The ABFI restates its view that the best way to limit exposure of those under 18 to alcohol advertising is through audience profiling.”

The Institute of Advertising Practitioners in Ireland (IAPI) argued that “*A watershed would be less effective than the existing code.*”<sup>84</sup> They claimed, amongst other things, that the time-shifting viewing (recording / on-demand etc.) undermines watersheds, and that many programmes with young audience profiles are scheduled for after 9pm, e.g. the ‘Xtra Factor’ and ‘Damo & Ivor’. They further argued that for people aged 15-18 years of age 60% of their viewing is on stations that operate outside of this jurisdiction and as a result would not be subject to a watershed.

The National Youth Council of Ireland (NYCI) is strongly in favour of introducing an advertising watershed.<sup>85</sup>

“The national substance misuse strategy steering group recommended a 9 p.m. watershed for alcohol advertising on television, and we are disappointed this is not in the legislation.”

A significant number of submissions were received by the Committee from health professionals who were supportive of this position, including the Royal College of Physicians.

The Rape Crisis Network of Ireland called for strict controls on specific messages in marketing and promotional campaigns which link alcohol with sexual success.

### **7.4.5 Audience profiling**

At present, the voluntary code around marketing and advertising uses an audience profiling system to determine the proportion of children that will be exposed to a particular advertisement – for instance the proportion of children likely to be watching a specific

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83 26 March 2015.

84 Submission on the General Scheme.

85 Mr James Doorley, NYCI appearing before the Joint Oireachtas Committee on Health and Children, [24 March 2015](#).

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television programme on a given channel at a given time. The code allows advertising where the proportion of children viewing would be less than 25% of the audience.

Dr Patrick Kenny, Lecturer in Strategic Marketing and Management in Dublin Institute of Technology (DIT), told the Committee:<sup>86</sup>

“Young people are especially susceptible to the influence of marketing. More needs to be done to protect children from the influence of marketing in general. This is an important children’s rights issue. Specific steps that can be taken in the alcohol field include lowering the advertising audience profile threshold for under 18s to less than 10%”

As noted above, the Alcohol Beverage Federation of Ireland expressed support for the current voluntary codes and stated:<sup>87</sup>

“The ABFI restates its view that the best way to limit the exposure of those under 18 to alcohol advertising is through audience profiling.”

### 7.4.6 Outdoor advertising

There were calls from the National Youth Council of Ireland and the Samaritans to ban all outdoor advertising of alcohol.

The Outdoor Media Association (OMA) representing groups that account for 95% of “mainstream outdoor advertising” in Ireland, stated that outdoor advertising is different to other forms of advertising in the context of the General Scheme. According to the OMI, outdoor advertising “*is used for brand-awareness and differentiation*” rather than a ‘call to action’. The OMA state that all such advertising messages pass through copy clearance, and cannot be seen as a request/direction to ‘do something’. Furthermore, the OMA stated that “*there are no complex messages that could be misconstrued by minors.*”

Specifically on the provisions in the General Scheme, Mr Barry Dooley, Chief Executive, Association of Advertisers in Ireland, appearing before the Committee, stated that:

“In response to subhead (3)(c), the imposition of restrictions in outdoor spaces, will have an impact on spirit brands which are already banned from Irish television stations. These restrictions could also have a very serious impact on the outdoor media and creative sector.”

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86 24 March 2015.

87. 26 March 2015.

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/HEJ2015032600002?open&document#M00100>

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The VFI expressed concern that the legislation would require all outdoor advertisements to include the health warnings / other information stipulated. In particular they were concerned about the effect this may have on external pub signage – much of which has been in place for many years.

## 5. Enforcement and Penalties

Head 10-19 of the General Scheme relate to enforcement powers, offences, and penalties. Specifically the General Scheme provides for enforcement powers for authorised officers in relation to:

- a) provisions on minimum unit pricing for retailing of alcohol products;
- b) provisions on health labelling;
- a) regulations relating to the control of marketing and advertising of alcohol products;
- b) regulations relating to the sale, supply and consumption of alcohol products under section 16 of the *Intoxicating Liquor Act 2008*;
- c) structural separation of alcohol from other products under section 9 of the *Intoxicating Liquor Act 2008* which may be commenced;
- d) any other provision(s) which require enforcement measures.

### 8.1 Environmental Health Officers (EHOs) and enforcement

The Department has indicated that EHOs will be designated as the authorised officers to enforce the provisions in the General Scheme.

### 8.2 Penalties and Offences

The penalties and offences are modelled on those in the *Public Health (Standardised Packaging of Tobacco) Bill 2014* and the *Public Health (Sunbeds) Act 2014*. Environmental Health Officers are also the authorised officers under the sunbed legislation.

### 8.3 The *Intoxicating Liquor Act 2008* and structural separation of alcohol

The structural separation of alcohol products in retail outlets was provided for in the *Intoxicating Liquor Act 2008*. However, this section (section 9) of the legislation has not been commenced.<sup>88</sup>

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<sup>88</sup> For background and the debate on the related Bill see the Library and Research Service's Debate Pack on the *Intoxicating Liquor Bill 2008* here: [http://vhlms-a01/AWDData/Library2/Intox\\_Liquor\\_Bill\\_June\\_2008.pdf](http://vhlms-a01/AWDData/Library2/Intox_Liquor_Bill_June_2008.pdf)

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The notes to the General Scheme of the Bill recognise that there were challenges in terms of resources in having An Garda Síochána enforce measures under the Intoxicating Liquor legislation (p. 30), in relation to making regulations that:

“...may prohibit or restrict advertising, promoting, selling or supplying of alcohol at reduced prices or free of charge in order to reduce the risk of a threat to public order and health risks from the misuse of alcohol.”

The notes state that:

“No such regulations have been made to date, partly due to the lack of any enforcement mechanism.”

Under the General Scheme it is proposed that the authorised officers would enforce these provisions if and when these measures are commenced.

### 8.4 Stakeholder comment – structural separation

There were mixed opinions among the stakeholders on the merit of commencing section 9 of the *Intoxicating Liquor Act 2008* – to implement structural separation of alcohol products from other products in mixed retail settings.

Representing the independent retail grocery sector, RGDATA stated that.<sup>89</sup>

“Obliging all shops to introduce physical separation would penalise the smaller shops...who did not initiate and are not engaged in the irresponsible marketing and sale of cheap alcohol or below cost alcohol.”

The Convenience Stores and Newsagents Association, CSNA, highlighted issues around the monitoring of the proposed new statutory code (to be put in place by the Department of Justice and Equality) that is to replace the current voluntary code. The CSNA stated:<sup>90</sup>

“We are not aware, and request...that the Committee seek clarification from the Department of Justice on who will be monitoring the Statutory Code, how such monitoring will be carried out, what level of interaction with retailers and their representative organisations will be carried out and what, if any, statutory functions to monitor, observe or intervene will both the HSE and EHO’s be permitted to carry out.”

Mr Padraic White of Responsible Retailing of Alcohol Ireland (RRAI), the organisation that currently monitors compliance with the voluntary code, appeared before the Committee. He outlined the arguments made by retailers against the introduction of structural separation:<sup>91</sup>

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89 RGDATA submission.  
90 CSNA submission.

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“The case the retailers made...was that the cost of physical separation and the ensuing operation costs were prohibitively expensive and that the measure would be impractical to implement.”

The Barry Group (wholesalers and retailers of alcohol), argued that treating small and large retailers the same in terms of structural separation was “*not equitable*”. They argued that many convenience stores, “*especially outside largely populated areas, are struggling to survive*” and that structural separation would “*add unnecessary cost to an already challenged business sector.*”<sup>92</sup>

Mr White noted that more than 2,600 stores operate the voluntary code of practice and they:

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“demonstrate a high overall level of compliance. The overall rates of compliance with the agreed criteria have averaged 86.6%”

RRAI supports the approach outlined in the explanatory note to the General Scheme – that the Department of Justice and Equality will replace the voluntary code with a statutory code and that this will be reviewed after two years of operation. The outcome of the review will inform Government’s decision whether or not to commence section 9 of the *Intoxicating Liquor Act 2008*.<sup>94</sup>

“We support the two-year trial period as an appropriate timeframe to determine the effectiveness of the statutory code.”

Mr White also highlighted the fact that stand-alone off-licenses are not subject to the current voluntary code of practice. On the other hand a number of stakeholders argued for the immediate introduction of structural separation.

The NOffLA (representing off-licenses) said that implementation was “realistically inevitable” so there was no need to delay.

The Irish Medical Organisation called for “the commencement of this section [of the *Intoxicating Liquor Act 2008*] within a set timeframe.”

Children’s Rights Alliance considered that the introduction of the proposed statutory code represented an “unnecessary delay” in introducing structural separation.

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91 Oireachtas debates, 24 March 2015.

92 Barry Group Submission.

93 Oireachtas debates, 24 March 2015.

94 Oireachtas debates, 24 March 2015.

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The General Scheme would give enforcement powers to Environmental Health Officers, should section 9 be commenced. The representative group for Environmental Health Officers (the Environmental Health Association Ireland) were in favour of commencement. They recommended that section 9 be amended to include wine [currently exempted]. The Association also recommended that the existing code of practice be rescinded and replaced with statutory guidance to supplement the legislation.

The Licensed Vintners Association (LVA) stated:<sup>95</sup>

“There appears to be no clarity on which state organisation / officers are responsible for enforcing the proposed statutory code...This needs to be made explicit.”

The LVA argued that the existing voluntary code is “completely ineffective”, and stated “*there is no scenario where a statutory code would prove more effective than structural separation.*”<sup>96</sup>

The VFI argued that there “*are four words...which render it [the voluntary code on separating alcohol] absolutely meaningless. They are “as far as possible.”*”<sup>97</sup> The VFI indicated that this means in some stores alcohol is not separated as this is not considered possible given the current store configuration.

The VFI, therefore, recommended the removal of the words “*as far as possible*” from the code and that legislative provision be made for Environmental Health Officers to “*monitor the workings of the statutory code of practice.*”

### 8.5 Fixed Payment Notices (FPNs)

Head 13 of the General Scheme provides for Fixed Payment Notices in respect of certain offences. Head 19 provides that a person who contravenes a provision of the legislation shall be liable:

- “On a first summary conviction to a class B fine, or imprisonment for a term not exceeding 6 months, or both;
- On any subsequent summary conviction to a class A fine, or imprisonment for a term not exceeding 12 months or both; or
- On conviction on indictment to a fine or imprisonment for a term not exceeding 8 years, or both.”

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<sup>95</sup> LVA submission, p.5.

<sup>96</sup> LVA submission, p.5.

<sup>97</sup> Mr Pdraig Cribbin, VFI, before the Joint Oireachtas Committee on Health and Children, 26 March 2015.

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Fixed payment notices (FPNs) or ‘on-the-spot fines’ are intended to provide an effective deterrent as well as an alternative, more cost effective method of enforcing the law. If the offender pays the fine in respect of the relevant offence, he/she will not face prosecution.

### 8.6 Stakeholder comment – penalties and enforcement

The Environmental Health Service of the HSE called for a number of measures to be taken to ensure smooth introduction and implementation of the proposed legislation, including:<sup>98</sup>

“...ensuring that compliance building guidance documentation/advice is produced and issued to the industry and to authorised officers in a timely manner before commencement.”

The Service also called for a “resource *needs assessment*” to ensure sufficient resources are in place to provide for “*the continued and sustained enforcement of this very important public health measure.*”

The Convenience Stores and Newsagents Association (CSNA) recommended that the ‘name and shame’ lists proposed in the General Scheme be time limited and enforcement include a facility to remove names on the transfer of ownership / change of licensee.

Regarding the amount of fixed notice penalties, the CSNA stated:<sup>99</sup>

“CSNA recommends that where the Minister is empowered to prescribe different amounts for different offences that may be disposed of by way of Fixed Notice Penalties, consideration should be given to developing a tariff based upon the severity of the offence vis-à-vis other offences contained in the Bill. We consider that a FPN of €300 is far too high a penalty for some of the offences created within the Bill.”

The CSNA also highlighted what it viewed as a discrepancy between the General Scheme and its explanatory notes in relation to Head 19 (4). The draft Head states that:<sup>100</sup>

“Any contraventions of this Bill or regulations under this Bill may reflect on the character of a licensee for the purposes of the renewal of the licence under the Courts No. 2 Act 1986.”

While the accompanying explanatory note states that this subhead:

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98 HSE Environmental Health Service, Submission on the General Scheme of the Public Health (Alcohol) Bill 2015.

99 CSNA Submission on the General Scheme.

100 General Scheme of the Public Health (Alcohol) Bill 2015, as before.

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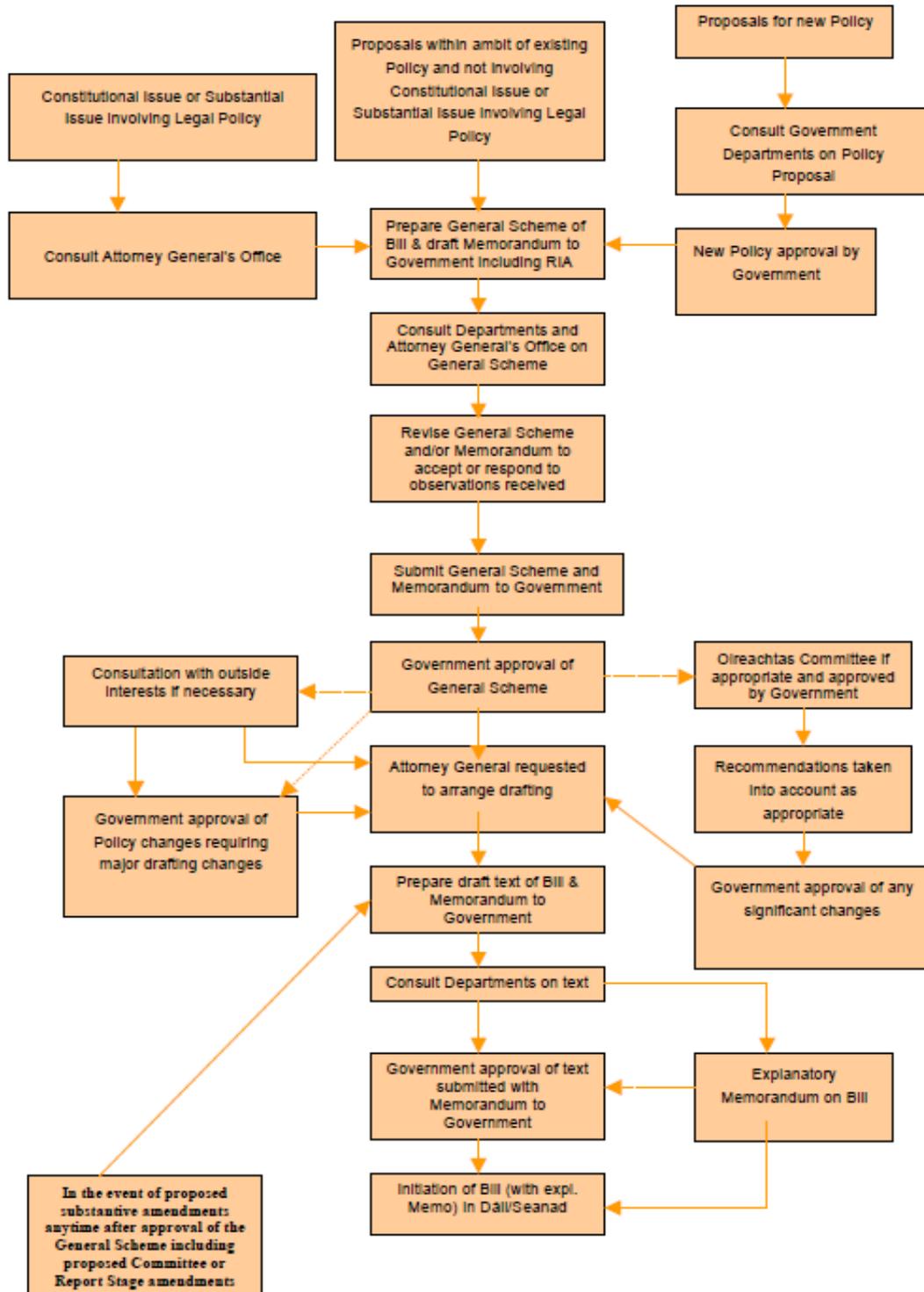
“...aims to ensure that persistent lack of compliance with the provisions of this Bill by a licensee may provide grounds on which to object before the District Court to renewal of the licensee’s licence for the following year.”<sup>101</sup>

The CSNA recommends that “persistent contravention” be substituted for “any contravention” in subhead (4).

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<sup>101</sup> General Scheme, as before.

Appendix 1: Preparation of Legislation



**SoSource:** Department of the Taoiseach Cabinet Handbook. Available at [http://www.taoiseach.gov.ie/eng/Publications/Publications\\_Archive/Publications\\_2007/CABINET\\_HANDBOOK2007.pdf](http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2007/CABINET_HANDBOOK2007.pdf)

## Appendix 2: The General Scheme of a Bill and pre-legislative scrutiny

It is important to draw the distinction between the General Scheme of a Bill and the Bill as it will be presented at first stage in the parliamentary legislative process (which is known as “initiation”, i.e. publication). Most Government departments have their legislation drafted by the Office of the Parliamentary Counsel (OPC)<sup>102</sup> by supplying Heads of a Bill which broadly set out policy objectives. Typically, a General Scheme can be considered to be in draft format and as such is still subject to the legal advice of the Office of the Attorney General. It may include an explanatory note to accompany each Head, unless the Heads are self-explanatory (see Appendix 1 for further details on the preparation of legislation).

It is important to note that the General Scheme has no legal effect and the proposals it contains may well evolve over time as the legislative process progresses. Draft legislation (i.e. a Bill) will be prepared on the basis of these proposals, for presentation to the Houses of the Oireachtas and, ultimately, enactment (if approved).

The publication of the General Scheme presents an important opportunity for interested stakeholders to comment on the general principles and themes at an early stage in the Bill’s development. In this case, the Joint Committee have requested secondary research from the Oireachtas Library & Research Service (L&RS) to assist them in their pre-legislative scrutiny (PLS) of the General Scheme.

The process which has been followed in Ireland, to date, in respect of pre-legislative scrutiny (PLS) can be summarised as being composed of the following steps:

- The relevant Minister may write to the Joint Committee requesting that it undertake PLS of the General Scheme;
- The Committee will then decide whether or not to carry out PLS;
- The Committee will decide how PLS will be carried out - whether submissions will be sought; whether public hearings will be held etc.;
- The Committee will publish a PLS report or otherwise convey the result of their scrutiny to the Minister;
- **If there has been a pre-legislative stage, the Chairman, Vice Chairman or a member of the relevant Committee will have a right equal to that of the Minister**

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<sup>102</sup> The Office of Parliamentary Counsel to the Government is one of three offices that make up the Office of the Attorney General. The OPC comprises the Parliamentary Counsel who draft legislation and have responsibilities in the area of statute law revision.

## Joint Committee on Health and Children

**and the Opposition spokespersons to speak in the Dáil (at second stage) to outline the Committee's work.**<sup>103</sup>

An essential component of the work of Oireachtas Committees is the opportunity their hearings, and/or a review of written submissions made to them, give to stakeholders to provide Members with the benefit of their experience and to bring what they believe to be the most pertinent issues to the attention of Members – in this case in order to assist in the process of pre-legislative scrutiny.<sup>104</sup>

A comprehensive discussion of pre-legislative scrutiny in a national and international context is available to Members in the L&RS December 2014 [Spotlight](#) entitled *Pre-legislative Scrutiny by Parliament*.

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103 The Government Chief Whip speaking in a Dáil debate on 11 March 2014:  
<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2014031100021?opendocument#T00200>

104 Public Affairs Ireland, Issue 85 of June 2012 (Ó Cléirigh, Niall), Supporting the Oireachtas Committees: The role of the Oireachtas Library & Research Service available online at <http://www.publicaffairsireland.com/journal/archive/92-issue-85-june-2012/articles/1234-supporting-the-oireachtas-committees-the-role-of-the-oireachtas-library-research-service>

**Appendix 3: Links to the transcripts of Committee Meetings**

**Links to Transcripts of Committee Meetings**

[Meeting held on Tuesday 10<sup>th</sup> March 2015](#)

[Meeting held on Thursday 12<sup>th</sup> March 2015](#)

[Meeting held on Tuesday 24<sup>th</sup> of March 2015](#)

[Meeting held on Thursday 26<sup>th</sup> of March 2015](#)

[Meeting held on Tuesday 23<sup>rd</sup> of April 2015](#)

**Appendix 4: Links to the Opening Statements made at the Committee Meetings**

**23 April 2015 – Meeting of the Joint Committee on Health and Children**

[Opening Statement by Leo Varadkar T.D., Minister for Health](#)

**23 April 2015 – Meeting of the Joint Committee on Health and Children**

[BT Young Scientist Winners, 2015, Mr. Ian O'Sullivan and Ms. Eimear Murphy](#)

**26 March 2015 - Meeting of the Joint Committee on Health and Children**

[Professor Joe Barry Opening Statement](#)

[Alcohol Action Ireland Opening Statement](#)

[Vintners' Federation of Ireland Opening Statement](#)

[National Off-Licence Association Opening Statement](#)

[Alcohol Beverage Federation of Ireland Opening Statement](#)

[Licensed Vintners' Association Opening Statement](#)

**24 March 2015 - Meeting of the Joint Committee on Health and Children**

[Dr. Patrick Kenny, School of Marketing DIT Opening Statement](#)

[Association of Advertisers in Ireland Opening Statement](#)

[Responsible Retailing of Alcohol in Ireland Opening Statement](#)

[National Youth Council of Ireland Opening Statement](#)

**12 March 2015 - Meeting of the Joint Committee on Health and Children**

[Alcohol Research Group, Sheffield University, Opening Statement](#)

**10 March 2015 - Meeting of the Joint Committee on Health and Children**

[Professor Frank Murray, President, RCPI, Opening Statement](#)

**Appendix 5: Links to those who made a submission to the Committee**

[Link to the submissions received by the Committee from the following organisations, associations and members of the public](#)

- Advertising Standards Authority of Ireland
- Aer Rianta
- Alcohol Beverage Federation of Ireland
- Alcohol Action Ireland
- Alcohol Forum
- Association of Advertisers in Ireland
- Barnardos
- Barry Group
- Beoir
- Children's Rights Alliance
- City Wide Drug Crisis Campaign
- Convenience Stores and Newsagents Association
- Dr. Ian McCabe, Clinical Psychologist
- Dermot Ryan, Kinsale
- Dr. Emer O'Connell
- Environmental Health Association Ireland
- Environmental Health Service, Health Service Executive
- European Alcohol Policy Alliance
- Finglas Cabra Drug and Alcohol Task Force
- Galway and Roscommon Education and Training Board
- Galway Healthy Cities Project

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- Gerry Hickey, Psychotherapist
- Institute of Public Health in Ireland
- Irish Cancer Society
- Irish College of General Practitioners
- Irish Heart Foundation
- Irish Medical Organisation
- Joe O'Neill, Galway Alcohol Strategy Implementation Group
- Laurence McCabe, Dublin
- Michelle O'Driscoll, Killarney
- National Newspapers of Ireland
- National Off-Licence Association
- National Youth Council of Ireland
- NUI Galway
- Ógra Fianna Fáil
- Outdoor Media Association
- Paul Barry, Cork
- Rape Crisis Network Ireland
- Responsible Serving of Alcohol
- Rolande J. Anderson
- 10 International Ireland
- The Irish Society for the Prevention of Cruelty to Children
- The Licensed Vintners Association
- The Royal College of Physicians of Ireland Policy Group on Alcohol

## Appendix 6: Other References

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