The Institute of Practitioners in Advertising

Alcohol (Licensing, Public health and Criminal Justice) (Scotland) Bill

Introduction
The IPA¹ is the professional body for advertising, media and marketing communications agencies based in the United Kingdom. We have approximately 300 agency brands within our membership.

The IPA maintains and funds an office in Scotland and has approximately 20 member agencies that are Scottish businesses or that have offices in Scotland. The IPA for Scotland organises skills and training, events and talks, and collaborates with other advertising and marketing communications trade associations and organisations.

The IPA for Scotland and its members support the post graduate MSc in Creative Advertising at Edinburgh Napier University, offering placements, visiting lecturers and encouraging talent in the sector in Scotland and also support the Marketing Prize at the University of Strathclyde.

As a not-for-profit membership body, the IPA’s role is two-fold: (i) to provide essential core support services to its corporate members who are key players in the industry; and (ii) to act as the industry spokesman.

The IPA is a member of the Advertising Association and supports its response to the call for views on the Bill. The comments in this letter are in addition to those made by the Advertising Association.

Effect of the Bill on the Scottish Marketing Communications Sector
Scotland is renowned as a source of creative talent – especially in marketing and advertising. However, Scottish agencies are finding it harder to compete in the UK and in the global market. This is due, not least, to the increasing trend for larger advertising clients to centralise their advertising budgets, making it even more challenging for Scottish agencies despite their undoubted skills. Scottish Enterprise (SE), together with the Scottish branch of the IPA, the Direct Marketing Association, the Marketing Society of Scotland and various marketing communications companies, commissioned a report published in 2005 entitled: “Overview of the Marketing Communications Industries in Scotland” (the “2005 Report”).

The conclusions to the 2005 Report found that the creative industries, including marketing communications, were a key growth sector for Scotland. In particular:

- the creative industries make an economic contribution in their own right (jobs, turnover and GVA);
- effective marketing communications contribute to wider business success, and the marketing industries are often seen as a barometer of general economic competitiveness; and

¹http://www.ipa.co.uk/
• the marketing communications industries have important impacts on other parts of the creative industries sector through supply chain links and dependencies. In particular, they create downstream economic opportunity for production services and freelance talent, and remain an important driver of revenue in related industries (particularly the media industries).

The conclusions to the 2005 Report also provide some broad estimates of the scale of the marketing communications industries in Scotland at the time. Although the authors of the 2005 Report emphasise that they are estimates only, they also explain that they believe that the estimates do offer reasonable guidance. The estimates include:

• the industries accounted for an estimated 7,400 jobs in 2002, with the largest sectors in employment terms being design and advertising (including direct marketing, media agencies and advertising);

• estimated turnover in 2002 was £700-£800m, and again design and advertising were the largest sectors;

• the industries made an estimated £332m contribution to Scotland’s GVA in 2002, and showed high levels of productivity (GVA per employee), in particular in advertising; and

• there were an estimated 1,108 marketing communications businesses in Scotland in 2004.

More recently, the latest Scottish Government Growth Sector Statistics (updated in September 2013) detail the size and shape of the creative industries in Scotland. Their GVA in 2012 (the most recent year for which figures are available) was £5.8 billion. They employed 68,000 people in 2013, representing 2.69% of all employment in Scotland. The creative industries in Scotland are, then, larger than life sciences in terms of GVA (£3.3 billion) and employ more people than the energy sector (68,000 compared with 66,000). And there are 665 registered enterprises listed in the advertising sector.

Clearly, the advertising and marketing communications sector has an important contribution to make to the overall economic success of Scotland. The IPA would ask that proposals seeking to restrict advertising of any product or service, including alcohol, should not only be made in consideration of whether such restrictions would actually achieve the purposes intended – in this case, protecting the health of children - but also in consideration of the damaging impact such restrictions are likely to have on the advertising and marketing communications industry.

Support for Particular Provisions in the Bill
The IPA supports the role and responsibility of governments in striving to achieve continuous improvements in public health. We, therefore, support the

aims of the Bill in, for example, providing public information and education about alcohol consumption and dealing with underage sales.

**Do you have concerns about particular provisions in the Bill?**

We have concerns about sections 6 to 13 of the Bill which contain provisions restricting alcohol advertising and which we believe would have damaging, unintended consequences on the advertising and marketing communications sector, are disproportionate and could prove difficult to implement in practice. We deal with each of our key concerns below.

**Ban on alcohol advertising near schools**

Section 6 of the Bill creates an offence knowingly to cause or permit the display of an alcohol advertisement within 200 metres in any direction of any boundary of a school, or premises used principally as a nursery or crèche, or any outdoor children’s play area.

The definition of an “advertisement” in the Bill is very broad, as is the scope of this section itself. Presumably, the purpose of the section is to limit the number of alcohol advertisements that children are likely to see on their way to and from school. If so, children would only be entering and leaving their schools at the school gates. Imposing this prohibition to within 200 metres in any direction of any boundary seems unnecessary and disproportionate. It could also, effectively, ban outdoor alcohol advertising in built-up areas which would have a serious impact on the sector.

There are already advertising rules in place that prohibit the placement of advertising around schools.

The Outdoor Media Centre (the “OMC”) is the trade association for outdoor media owners. The OMC’s charter, with which its members must comply, contains a series of best practices “in order to enhance the effectiveness and wider reputation of the outdoor advertising medium in the UK”.³ Section 7.1 contains a restriction on advertising of alcohol within 100 metres of schools:

*In the interests of responsible advertising to protect minors from undue exposure to alcohol advertising, Outdoor Media Centre members shall commit to not displaying alcohol advertising on static panels located within a 100 metre radius of school gates.*

This restriction forms part of the Department of Health’s Responsibility Deal pledge on advertising and marketing alcohol⁴.

Further, the UK’s non-broadcast, mandatory advertising code (the “CAP Code”), written and maintained by the Committee of Advertising Practice (“CAP”), also contains a number of rules designed to protect children with regard to alcohol advertising⁵. The key principle of Rule 18 of the CAP Code says:

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⁴ [https://responsibilitydeal.dh.gov.uk/pledges/pledge/?pl=6](https://responsibilitydeal.dh.gov.uk/pledges/pledge/?pl=6)

⁵ [https://www.cap.org.uk/Advertising-Codes/Non-Broadcast.aspx](https://www.cap.org.uk/Advertising-Codes/Non-Broadcast.aspx)
Marketing communications for alcoholic drinks should not be targeted at people under 18 and should not imply, condone or encourage immoderate, irresponsible or anti-social drinking.

And Rule 18 contains rules specifically intended to deal with targeting of alcohol advertising, for example:

Rule 18.14 – “Marketing communications must not be likely to appeal particularly to people under 18…..”

Rule 18.15 – “Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise alcoholic drinks if more than 25% of its audience is under 18 years of age.”

The CAP Code is regulated and strictly enforced by the Advertising Standards Authority (the “ASA”).

As noted above, section 6 not only applies to schools, but to premises used principally as a nursery or crèche, or any outdoor children’s play area. Such a restriction would have a dramatic effect on the outdoor advertising industry whilst, we would suggest, having little impact on children’s health. Further, we would question whether information is available as to how many of these types of premises exist in Scotland and what are their precise locations.

Advertising within Licensed Premises
Section 8 of the Bill creates an offence of knowingly causing or permitting the display of an alcohol advertisement in retail premises containing an area which is licensed to sell alcohol for consumption off the premises, except inside that area.

Our understanding is that the Alcohol etc. (Scotland) Act 2010\(^6\) (the “2010 Act”) already contains provisions restricting the promotion of alcohol within premises used for the sale of alcohol off the premises. Paragraph 13 of Schedule 3 to the 2010 Act provides that any drinks promotion undertaken in connection with the premises in respect of off-sales of alcohol on the premises may take place only in the alcohol display areas or in a tasting room.

Advertising at Sporting and Cultural Events
Section 9 of the Bill creates an offence of knowingly causing or permitting the display of an alcohol advertisement within premises being used as the venue for a cultural event (other than a film-show) or sporting event where either the majority of participants are under 18, or the intended audience consists mostly of those under 18.

Again, we are concerned that this section is disproportionate and would be difficult to implement. It would also have unintended, damaging consequences. We wonder how section 9 would affect, for example, the Edinburgh Festival or rugby union internationals, both of which attract large

numbers of people. Sport, in particular, depends on funding from sponsorship. Restricting sponsorship would deprive various sports of vital support.

In addition to the CAP Code rules referred to above, the Portman Group Alcohol Sponsorship Code7 (the “Sponsorship Code”), which came into force on 31 January 2014, promotes responsible drinking through sponsorships. The Sponsorship Code seeks to ensure that alcohol is promoted in a socially responsible manner and only to those over 18. It is consistent with the CAP Codes (both broadcasting and non-broadcasting) and applies to all companies owning or representing alcohol brands or products.

The Sponsorship Code goes further than section 9 of the Bill, and already contains provisions designed to protect people under the age of 18. For example:

3.3- Drinks companies must not sponsor individuals, activities, teams, events, tournaments, competitions, bands or celebrities which have a particular appeal to, or are primarily aimed at, under-18s.

3.5 - Prior to sponsoring an event, team or activity, drinks companies must use their reasonable endeavours to obtain data on the expected participants, audience or spectator profile to ensure that at least the aggregate of 75% are aged over 18.

Similarly, the Portman Group’s Code of Practice on Naming, Packaging and Promotion of Alcoholic Drinks8 contains provisions including:

3.2 - A drink, its packaging and any promotional material or activity should not in any direct or indirect way:

(h) have a particular appeal to under-18s (in the case of sponsorship, those under 18 years of age should not comprise more than 25% of the participants, audience or spectators).

The self-regulatory system, then, already protects children from irresponsible alcohol advertising, including – but not limited to - the sponsorship of events.

Conclusion

As noted above, the IPA supports government initiatives to promote public health, including provisions in the Bill intended, for example, to provide education on alcohol consumption and deal with underage alcohol sales. However, we do not believe that the restrictions on alcohol advertising proposed by the Bill would protect children’s health. Further, we believe that the restrictions are disproportionate, impractical and could have a very damaging effect on the advertising and marketing communications industry, with the loss of jobs, skills and a depletion in the creative excellence for which Scotland is famous.

7 http://www.portmangroup.org.uk/docs/default-source/recruitment-jds/alcohol-sponsorship-code.pdf?sfvrsn=0
That each of the proposed restrictions would amount to a criminal offence for which liability would be imposed not just on businesses, but on “relevant individuals” within those businesses, seems draconian. The potential for individuals doing their jobs to be criminally liable as a result of advertising seems wholly unreasonable.

Despite the very positive contribution of the advertising and marketing communications industry to the Scottish economy, the industry is struggling. The proposed restrictions contained in the Bill would result in less work for Scottish agencies that benefit from promotional work by Scottish-based whisky, beer and other alcohol producers. Alcoholic drinks – particularly whisky, beer and craft beers - are one of Scotland’s biggest industries and the restrictions in the Bill will inevitably reduce the marketing budgets available to advertisers which sustain jobs, employment, skills development and corporate success for Scottish agencies.

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