

GENERAL SCHEME OF THE PUBLIC HEALTH (ALCOHOL) BILL 2015

A Bill to provide for:

- 1) *Health labelling of alcohol products which will see*
 - a) Health warnings and advice (including for pregnancy) on all alcoholic products containers (bottles, cans etc.) and on promotional materials;
 - b) The amount of pure alcohol as measured in grams and the calorie count contained in each container/measure on the label/container.

- 2) *Minimum unit pricing for retailing of alcohol products*

- 3) *Regulation of marketing and advertising of alcohol, specifically to*
 - a) limit marketing and advertising of alcohol on television and radio from 2016 to evening hours
 - 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) restrict sponsorship by alcohol companies
 - f) set limits on how alcohol is portrayed in advertisements

- 4) *Enforcement powers for Environmental Health 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

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PART I PRELIMINARY AND GENERAL

Head 1 – Short Title and Commencement

This Head provides that:

(1) This Bill may be cited as the Public Health (Alcohol) Bill 2015.

(2) This Bill comes into operation on such day or such days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes and different provisions.

Explanatory Note

This is a standard provision containing the title and commencement date.

Head 2 – Interpretation

This Head provides that:

(1) In this Bill -

Advertisement includes any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting an alcohol product or alcohol use either directly or indirectly.

Alcohol means pure ethyl alcohol;

Alcohol product means intoxicating liquor under the *Licensing Acts 1833 to 2011*;

Authorised officer means a person under Head 10;

Child means a person who has not attained the age of 18;

Employee means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and includes a fixed-term employee, temporary employee, a person who is training for employment or receiving work experience and a member of the family of an employer and references, in relation to an employer, to an employee shall be construed as references to an employee employed by that employer;

Employer, in relation to an employee –

- (a) means the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment,
- (b) includes a person (other than an employee of that person) under whose control and direction an employee works, and
- (c) includes, where appropriate, the successor of the employer or an associated employer of the employer.

Executive means the Health Service Executive;

Intoxicating Liquor means any alcohol product which is chargeable to alcohol products tax under section 75 of the *Finance Act 2003* and is not relieved from such tax by section 77 of that Act;

Licence means a licence for the sale of intoxicating liquor, whether granted on production or without production of a certificate of the Circuit Court or District Court;

Licensed premises means premises for which a licence is in force and, in relation to a licensee, means the licensed premises of the licensee;

Licensee means the holder of a licence;

Mark includes any line, letter, number, symbol, graphic or image, other than a trademark;

Marketing means any form of commercial communication or message that is designed to increase or has the effect of increasing, the recognition, appeal and/or consumption of particular products and services;

Minister means the Minister for Health;

Minimum Unit Price means the minimum price per 10 grams of alcohol;

Minimum price means the minimum price for alcohol products as prescribed in Head 7;

Off-licence means a licence for the sale of intoxicating liquor for consumption off the premises and has the same meaning as that prescribed to it under the Licensing Acts ;

On-licence means a licence for the sale of intoxicating liquor for consumption either on or off the premises.

Premises includes a building, a dwelling or other structure, or part of a building, dwelling or other structure, a vessel, a vehicle, a tent, caravan or other temporary or movable structure.

Publication means a newspaper, magazine, journal, or any other periodical;

Sponsorship means any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting an alcohol product or alcohol use either directly or indirectly;

Trademark has the meaning assigned to it by section 6 of the *Trade Marks Act, 1996*.

Explanatory Note

This head provides for the definition of certain terms used in the Bill.

The definition of alcohol referred to in this Bill is taken from the section 73 of the *Finance Act, 2003*. The definition of alcohol products is taken from the Draft Statutory Code of practice on the display and sale of alcohol products in mixed trading outlets.

The definition of *off-licence* and *on-licence* comes from section 2 of the *Intoxicating Liquor Act, 2008*; all other definitions above are taken from section 2 of the *Intoxicating Liquor Act 2003*.

The definition of advertisement has been adapted from Article 1 of the WHO *Framework Convention on Tobacco Control*.

The definition of sponsorship has been adapted from Article 1 of the WHO *Framework Convention on Tobacco Control*.

The definition of marketing comes from the WHO *Global Strategy to Reduce the Harmful Use of Alcohol 2010*.

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Definitions of 'employee', 'employer' and 'premises' come from section 1 of the *Public Health (Sunbed) Act 2014*.

Head 3 Regulations

This Head provides that:

- (1) The Minister may by regulation provide -
 - (a) for any matter referred to in this Bill as prescribed or to be prescribed, or
 - (b) for any matter that appears to the Minister to be necessary or expedient for bringing this Bill into operation.

- (2) Without prejudice to any provision of this Bill, regulations under this head may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

- (3) Every regulation under this Bill shall be laid by the Minister before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House sits after the order or regulation is laid before it, the order or regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Explanatory Note

This is a standard provision in regard to Ministerial powers to make regulations.

Head 4 Expenses

This Head provides that:

(1) The expenses incurred by the Minister in the administration of the Bill shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of monies provided by the Oireachtas.

Explanatory Note

This is a standard provision in regard to the cost of the administration of the Act.

PART II LABELLING AND MINIMUM UNIT PRICING

Head 5 Labelling of Alcohol Products

Without any prejudice to existing labelling requirements under Food legislation, this Head provides:

- (1) It shall be an offence for a person to –
- (a) Manufacture
 - (b) Import
 - (c) Sell (by retail or otherwise)
 - (d) Offer or expose for sale
 - (e) Invite the making by a person of an offer to purchase
 - (f) Distribute free of charge, or
 - (g) Supply for any of those purposes (whether or not for profit),

any alcohol product container that does not bear:

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

- (2) It shall be an offence for a person to -
- (a) publish
 - (b) display
 - (c) distribute free of charge, or
 - (d) supply

any advertisement on alcohol products that does not bear:

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

(3) For the purposes of the information at *subheads (1) and (2)*, the Minister may prescribe its:

- (i) manner and form; or
- (ii) any marks, tags and labels for use on the alcohol product and the manner of their use.

In prescribing matters referred to above, the Minister shall have regard to the need to increase the effectiveness of health warnings on alcohol products.

(4) A licensee with an on-licence shall 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:

- (i) the quantity in grams of alcohol;
- (ii) energy value;
- (iii) a warning about the danger of consuming alcohol

- (iv) a warning about the danger of consuming alcohol when pregnant.
 - (5) A licensee with an on-licence shall supply upon request a document providing for any quantity, measure, or unit of alcohol being supplied or sold:
 - (i) the quantity in grams of alcohol;
 - (ii) energy value;
 - (iii) a warning about the danger of consuming alcohol
 - (iv) a warning about the danger of consuming alcohol when pregnant.
 - (6) The requirements in *subheads 4 and 5* shall not apply to any quantity, measure or unit of alcohol product being sold in a container.
 - (7) For the purposes of the information at *subhead (4)* the Minister may make regulations prescribing its:
 - (i) manner and form;
 - (ii) any marks, tags and labels for use on the notice and the manner of their use; or
 - (iii) any information to accompany the alcohol product when it is supplied by a licensee.
- In prescribing matters referred to above, the Minister shall have regard to the need to ensure the effectiveness of health warnings on alcohol products and accompanying information.
- (8) The requirements of this Bill shall only apply to alcohol products for sale in the State.
 - (9) In proceedings for an offence under this head, an alcohol product container that purports to bear the name of the manufacturer or importer of that product shall, unless the contrary is proved, be evidence that the alcohol product was manufactured or imported, as the case may be, by the person concerned.

Explanatory Note

The National Substance Misuse Strategy Steering Group recommended that:

“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.” (page 22)

Research shows that accurate information on the alcohol content of specific beverages is essential to promote drinker’s tracking of alcohol intake. However, ‘standard drink’ or units are widely misunderstood by the general public (Kerr and Stockwell, 2012). In Ireland, a survey conducted in 2012 by Ipsos MRBI on behalf of the Health Research Board, showed that very few people understand what a standard drink is. In addition, the majority supported labelling alcohol containers to include calories (82%), alcoholic strength (98%), ingredients (91%) and health warnings (95%).

For the purpose of this Bill, the display of grams of alcohol is inextricably linked to the provision for a minimum price per gram of alcohol at *heads 6 and 7*. Therefore having

grams of alcohol on the label will facilitate the monitoring and enforcement of this pricing measure.

Subhead (1) is modelled on section 15 of the *Public Health (Standardised Packaging of Tobacco) Bill 2014*.

Subhead (2) aims to implement the government decision that health labelling will also apply to promotional materials.

The purpose of *subhead (4)* is to oblige on-licenses selling intoxicating liquor in draught form or in glasses or any other container for consumption on the premises to display relevant information about such intoxicating liquor – given that such intoxicating liquor is poured for the purpose of consumption on the premises.

The purpose of *subhead (5)* is to oblige on-licenses selling intoxicating liquor in draught form or in glasses or any other container for consumption on the premises to be able to provide relevant information about such intoxicating liquor – given that such intoxicating liquor is poured for the purpose of consumption on the premises.

The purpose of *subhead (6)* is to exempt an on-licence from having to display on the notice relevant information about intoxicating liquor products that are not sold on draught or supplied at the bar poured in a glass or other container. The rationale for this is simply that such information is already covered by *subhead (2)*; and hence, bottles, cans and other closed containers sold in any outlet will already have this information displayed on the bottle, can or container. In the absence of this provision, it could be interpreted that the notice for display in the on-licence must include information already contained on bottles and cans of intoxicating liquor that are already covered in *subhead (2)*.

In relation to requirements at *subheads (3)* and *(7)*, these will be finalised following planned research on labelling. A mixed methodology research project will be carried out to design a selection of ‘mock labels’ and then test them through focus groups on targeted groups to ascertain the best design to provide clarity and fulfil the objectives of the legislative proposals.

Subhead (8) indicates that the provisions of the Bill relate to alcohol products which are placed on the market for sale within Ireland only. Alcohol products for export are not covered by this Bill. Products that are purchased by a person in another jurisdiction for his/her personal use are not covered by this Bill. This subhead is modelled on section 7 (12) of the *Public Health (Standardised Packaging of Tobacco) Bill 2014*.

Subhead (9) is modelled on section 19 of the *Public Health (Standardised Packaging of Tobacco) Bill 2014*.

Head 6 Minimum Price of Alcohol Products

This Head provides that:

(1) It shall be an offence to:

- (a) Sell or supply alcohol products on the licensed premises at a price that is below the minimum price of that product concerned;
- (b) advertise or promote the sale or supply of alcohol products at a price that is below the minimum price of that product concerned;
- (c) sell or supply alcohol product at a price that is below the minimum price of that alcohol product concerned on the purchase of any quantity of alcohol product;
- (d) advertise or promote the sale or supply of alcohol product at a price that is below the minimum price of that alcohol product concerned on the purchase of any quantity of alcohol product.
- (e) where an alcohol product is supplied together with other products or services for a single price, sub-paragraph (a) and (b) shall apply as if the alcohol product were supplied on its own for that price.

Explanatory Note

This section provides for Minimum Unit Pricing of alcohol products. Minimum Unit Pricing sets a minimum price for alcoholic drinks, (based on the number of grams in the drink), below which alcohol cannot be sold. 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 have a marginal effect on moderate drinkers. 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 an alcohol product.

Minimum Unit Pricing has been found to be an effective and proportionate policy measure to tackle the misuse of alcohol. There is strong and clear scientific evidence that an increase in alcohol prices reduces hazardous drinking and serious alcohol related problems.

In Ireland, the *Steering Group Report on a National Substance Misuse Strategy, 2012* recommends the introduction of a minimum pricing regime on alcohol products, based on the number of grams of alcohol in the drink.

Head 6 makes it illegal to sell or advertise for sale an alcohol product at a price below its minimum price.

Subhead 1(a) refers to section 20 of the *Intoxicating Liquor Act 2003* and section 2(6A)(1) of the *Alcohol (Minimum Pricing) (Scotland) Act 2012*.

The purpose of *subheads 1(c)* and *1(d)* is to ensure that alcohol is not sold at a price below its minimum price as a result of applying discounts for bulk buying. Section 1(2)(6A)(2) of the *Alcohol (Minimum Pricing) (Scotland) Act 2012*; section 16(1) of the *Intoxicating Liquor Act 2008*; and section 20 of the *Intoxicating Liquor Act 2008* are relevant to this section.

The purpose of *subhead 1(e)* is to ensure that alcohol is not sold at a price below its minimum price when supplied with other products or services, for example, where a bottle of beer is packaged with and sold with a branded glass or a bottle of wine is sold with food as part of a “meal deal”. In these cases the minimum price would be the minimum price that would apply to the alcohol if sold on its own. The package must be sold at (or above) the minimum price and no account is taken of the elements of the package which are not alcohol. This subhead is modelled on section 1(2)(6A)(2) of the *Alcohol (Minimum Pricing)(Scotland) Act 2012*.

Head 7 Calculation of Minimum Unit Price of Alcohol Products

This Head provides that:

(1) The minimum unit price of an alcohol product is to be calculated using the following formula:

$$\text{Minimum unit price} \times \text{No of grams of alcohol} = \text{minimum price of alcohol product.}$$

(2) The Minister may make regulations for the purpose of prescribing the minimum unit price per gram of alcohol.

In prescribing matters referred to above, 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.

(3) For the purposes of determining the number of grams of alcohol in a container at *subhead (1)*, the number of grams of alcohol specified on the container shall be taken.

Explanatory Note

The setting of a minimum price will be done by way of regulations. 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 on consumption, related harms and cost to society.

Head 5 outlines labelling requirements for all alcoholic products, that is, that all alcoholic products must include information on the quantity of grams of alcohol in the product, the quantity of calories in the product and specified warnings.

Therefore, all containers in which alcohol is sold must display the weight of alcohol in that container measured according to grams.

The specific g/ml density of ethyl alcohol is 0.789

$$\begin{aligned} 0.789 \text{ grams of alcohol} &= 1 \text{ ml} \\ 1 \text{ gram of alcohol} &= 1/0.789 = 1.267\text{ml} \end{aligned}$$

The amount of grams of alcohol in a drink is calculated as follows:

$$\frac{\text{Volume of liquid} \times \% \text{ ABV (Per Cent Alcohol by Volume)}}{1.267 \text{ (Specific density of ethyl alcohol)}}$$

E.g. 500ml can of full strength beer at 5% alcohol by volume

$$500\text{ml} \times 5/100 \times 0.789\text{g/ml}$$

$$500\text{ml} \times 0.05 \times 0.789\text{g/ml} = 19.72 \text{ grams}$$

Minimum Pricing is calculated as follows:

Minimum Unit = 10grams

Minimum Unit Price = (€ for 1 gram of Alcohol) x (number of grams) = Minimum Price

Subhead (1) explains how Minimum Unit Pricing is calculated.

Subhead (2) is an enabling provision that gives the Minister the power to prescribe the minimum unit price per gram of alcohol; and to adjust it without recourse to primary legislation if circumstances warrant it.

On *subhead (3)*, the EU Commission Directive 87/250/EEC and Directive No 2000/13/ED of the European Parliament and the Council of 20th of March, 2000 refer to the labelling, presentation and advertising of foodstuffs. The latter Directive was transposed by the European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulation 2002, SI No 484 of 2002. Article 13(3) of this regulation stipulates that it shall be obligatory to indicate the alcoholic strength by volume in the labelling of certain alcoholic beverages that are intended for use by consumers; in addition, it stipulates that this labelling shall be in accordance with Commission Directive 87/250/EEC of the 15th of April, 1987. This allows for specific tolerances for the declared Alcohol strength By Volume (ABV).

So for example, in accordance with Article 3(1)(b) of 87/250/EEC, beers having an alcohol strength not exceeding 5.5% volume are permitted to have a + or – 0.5% variation in their declared strength; and thus this tolerance inevitably means that the actual strength of the alcohol may differ from the declared strength on the label.

This subhead takes account of this by opting for the declared strength on the label (converted into grams of pure alcohol, which shall equally be declared on the label as provided for in Head 5) when calculating the minimum price of the alcohol serving.

The minimum price for alcohol drinks mixed together, such as for a cocktail, must be calculated by reference to the total number of grams of pure alcohol in the cocktail. Thus the minimum price for each alcoholic drink would be calculated by reference to *subhead (8)(3)* as if it were being sold on its own, and then aggregated with the similarly calculated minimum price of each additional alcoholic drink in the cocktail.

Since a minimum price does not apply to non-alcoholic drinks, then mixing them with alcoholic drinks has no impact on the minimum price of the cocktail.

Subhead (3) is adapted from section 1(2)(6A(5)) of the *Alcohol (Minimum Pricing) (Scotland) Act 2012*.

Head 8 Application of the Act to registered clubs

This head provides that:

(1) All of the provisions of this General Scheme of a Bill shall apply in relation to a club registered under the *Registration of Clubs Act 1904 to 2008*, as if references in those provisions to a licensee and to licensed premises were references to the secretary of such a club and to that club's premises and with any other necessary modifications.

Explanatory Note

The purposes of this head is to ensure that all of the provisions in the Bill that apply to licensed premises and licensees, as defined in the interpretation head, are equally applied to registered clubs under the *Registration of Clubs Act 1904 to 2008*. By its nature, a club is owned by its members and technically, a member receiving intoxicating liquor in a club is serving intoxicating liquor to him/herself given that the intoxicating liquor is bought by the members for their consumption. This provision ensures that minimum unit pricing and labelling, along with other relevant provisions applicable to licensees, are applied to registered clubs. It is based on section 23(1) of the *Intoxicating Liquor Act 2003*.

PART III CONTROL OF MARKETING AND ADVERTISING OF ALCOHOL

Head 9 Control of marketing and advertising of alcohol

This Head provides that:

(1) It shall be prohibited to market or advertise alcohol in a manner that is intended or is likely to appeal to children.

(2) The Minister may make regulations for the control and regulation of alcohol in the following manner:

- a) marketing and advertising of alcohol;
- b) any other activities which are intended or are likely to promote the sales of alcohol; and
- c) any other marketing activities, sales promotion or practices which are intended or are likely to appeal to children.

(3) Without prejudice to the generality of subhead (1), regulations under this section may provide for all or any of the following –

- a) The restriction of the broadcasting of marketing and advertising of alcohol to certain times of the day, and in relation to volume, frequency and placement;
- b) The limiting of marketing and advertising of alcohol in cinema to films classified as over 18s;
- c) The restriction of marketing and advertising of alcohol in outdoor spaces in relation to volume and locations;
- d) The restriction of marketing and advertising of alcohol products in print media in relation to volume and type of publication;
- e) The regulation of 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;
- f) The control of the content of marketing and advertisements of alcohol, meaning that only certain types of information will be allowed for this purpose;
- g) A requirement that an advertisement for an alcohol product shall include a notice or statement containing health information;
- h) A requirement that any person engaged in the importation, manufacture, sale, promotion or distribution of alcohol products shall furnish to the Minister such information as the Minister considers necessary for the purposes of this Act;
- i) The restriction of particular kinds of marketing practices to ensure that alcohol products are not produced, designed or promoted to appeal to children;
- j) The enforcement of regulations under this head by a particular body or person(s).

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

Explanatory Note

Protecting children from exposure to alcohol marketing is an important public health goal. The *Steering Group Report on the National Substance Misuse Strategy* recommended that the marketing and advertising of alcohol should be regulated. Together with pricing, the control of advertising has been identified as an effective method to reduce harmful use of alcohol.

These provisions are modelled on section 2 of the *Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Act 1978*, and loosely based on the *Loi Evin* of 1991 in France.

In relation to TV and radio, the Department of Communications, Energy and Natural Resources has advised that the Broadcasting Authority of Ireland will incorporate into their Code the necessary requirements for the implementation of the Bill. The Department of Health will continue to consult with the Department of Communications, Energy and Natural Resources to ensure that this subhead is in full compliance with the *Broadcasting Act 2009*.

The *Broadcasting Act 2009* (section 42) provides for the development of statutory advertising codes to address a range of matters. The Broadcasting Authority of Ireland (BAI) has responsibility for the development and implementation of these codes. Section 42 (2g) provides for statutory broadcast codes to regulate 'in particular advertising and other such activities which relate to matters likely to be of direct or indirect interest to children, protect the interests of children having particular regard to the general public health interests of children ..'.

Subhead (4) provides for a review of the effectiveness of the operation of head 9 after 3 years.

PART IV ENFORCEMENT

Head 10 Authorised officers

This Head provides that:

(1) The Executive may appoint in writing such and so many persons, including members of the staff of the Executive, to be authorised officer or authorised officers for the purposes of this Bill and such appointment may be specified to be for a fixed period.

(2) Every authorised officer appointed under this head shall be furnished with a warrant of his or her appointment and shall, when exercising a power conferred on him or her by this Bill, if requested by a person affected, produce the warrant of appointment or copy of it to that person.

(3) An appointment under this head as an authorised officer shall cease –

- (a) If the Executive revokes the appointment,
- (b) If the appointment is for a fixed period, on the expiry of that period, or
- (c) In the case of a person who is a member of staff of the Executive, if he or she ceases to be a member of staff.

Explanatory Note

This Head establishes who has responsibility for the enforcement of the Bill.

Subhead (1) obliges the Executive to appoint authorised officers for the enforcement of the Bill.

Subhead (2) requires the Executive to issue an authorised officer with a warrant of appointment which can be produced at the request of a person affected by the implementation of the Bill.

Subhead (3) states that an appointment as an authorised officer may be terminated when it is rescinded by the Executive, where the appointment is for a specified period at the end of the period or when the person is no longer a member of staff of the Executive.

These provisions are modelled on section 16 of the *Public Health (Sunbeds) Act 2014*.

Head 11 Powers of authorised officers

This Head provides that:

- (1) An authorised officer may, for the purpose of obtaining information which may be required in relation to a matter under investigation under this Bill -
 - (a) subject to *subhead* (3), at all reasonable times enter (if need be by reasonable force) any premises on, at or in which there are reasonable grounds to believe that any trade, business or activity associated with alcohol products including manufacture, import, sale, supply, marketing and advertising has or is being carried on, or that records in relation to that trade, business or activity are kept, and search and inspect the premises and any records that are on, at or in that premises,
 - (b) secure for later inspection any, or any part of any, premises on, at or in which such documents or records are kept or there are reasonable grounds believing that records are kept,
 - (c) require any person who carries on such trade, business or activity or any person employed in respect of such trade, business or activity to produce to the authorised officer such records and where such records are kept in non-legible form to reproduce in a legible form and to give him or her any information as the officer may reasonably require in relation to such records,
 - (d) inspect and take copies of or extracts from any such records on, at or in the premises, including information in non-legible form, copies of or extracts from such information in a permanent legible form,
 - (e) make a record whether in writing, by photography or otherwise of any record or thing on, at or in the premises,
 - (f) remove and retain such records for such periods as may be reasonable for further investigation,
 - (g) require any such person to give to the authorised officer any information which the authorised officer may reasonably require regarding such trade, business or activity or in respect of the persons carrying on such trade, business or activity or employed in connection with such trade, business or activity;
 - (h) require any such person to give to the authorised officer any other assistance or information which the authorised officer may reasonably require in respect of such trade, business or activity,
 - (i) require any person by or on whose behalf data equipment is or has been or any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to afford the authorised officer all reasonable assistance in relation to it and assist in the retrieval of information connected with the operation of such data equipment, apparatus or material,
 - (j) summon, at any reasonable time, any other person employed in connection with such trade, business or activity to give the authorised officer any information which the authorised officer may reasonable require in relation to such trade, business or activity and to produce to the authorised officer any records which are in control of that other person,

- (k) carry out, or have carried out, inspections and checks of the licensed premises or premises as he or she reasonably considers to be necessary for the purposes of his or her functions this Bill,
 - (l) without payment, take for analysis and examination samples of alcohol products, labels or marketing/advertising materials as he or she considers necessary for the purposes of this Bill,
 - (m) carry out, or arrange to have carried out such examinations and tests on samples taken under *paragraph (l)* as he or she considers necessary,
 - (n) an authorised officer may, for the purpose of obtaining any information which may be required in relation to a matter under investigation under this Bill, at all reasonable times enter any premises, at which there are reasonable grounds to believe that any trade or business or any activity in connection with alcohol is, or has been, carried on and may—
 - (a) pay or make tender of payment, for the purchase of alcohol, or
 - (b) confirm the price at which alcohol is on offer or any other information relating to the sunbeds for the purpose of the investigation.
- (2) An authorised officer may implement enforcement measures which are proportionate to address contraventions of this Bill including provisions to-
- (a) seize, remove or detain products which are suspected by him or her as failing to comply with the provisions of this Bill,
 - (b) with the consent of the licensee or owner of the business or in accordance with an order of a Judge of the District Court dispose or destroy products referred to in *subparagraph (a)*,
 - (c) direct that such alcohol found at the licensed premises or premises as he or she, upon reasonable grounds, believes contravenes any provisions of this Bill not be sold or distributed or moved from the licensed premises or premises, without his or her consent,
 - (d) secure for later inspection any licensed premises or premises or part of any licensed premises or premises in which alcohol is found or ordinarily kept, or records, books or documents are found or ordinarily kept, for such period as may reasonably be necessary for the purposes of his or her functions under this Bill,
 - (e) serve compliance notices, prohibition orders or closure orders.
- (3) An authorised officer shall not, without the consent of the occupier, enter a private dwelling, unless a District Court warrant has been obtained under *subhead (6)* allowing such entry.
- (4) Where an authorised officer is in the exercise of his or her powers under this head is prevented from entering any premises an application may be made under *subhead (6)* authorising such entry.

- (5) An authorised officer, when exercising any powers conferred on an authorised officer by this Head, may, subject to any warrant issued under *subhead (6)*, be accompanied by any such authorised officers or members of the Garda Síochána or both as he or she considers necessary.
- (6) Without prejudice to the powers conferred on an authorised officer under this head, where a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds to suspect that –
- (a) there is information required by an authorised officer under this Bill on or at any, or any part of any, premises;
 - (b) books, records or other documents (including documents stored in non-legible form) referred to in *subhead 1(a)* above are being stored or kept in any dwelling;
 - (c) a dwelling is occupied in whole or in part by an undertaking engaged in any trade, business or activity referred to in *subhead 1(a)*,

the judge may issue a warrant authorising an authorised officer (accompanied, where appropriate, by such other authorised officers or members of the Garda Síochána or both) at any time or times within one month of the date of issue of the warrant, on production if so requested of the warrant, to enter the premise or dwelling as the case may be, using reasonable force where necessary, and exercise all or any of the powers conferred on an authorised officer under this head.

- (7) A person who falsely represents himself or herself as an authorised commits an offence.
- (8) A person who -
- a. obstructs or impedes an authorised officer or a member of the Garda Síochána in the exercise a power under this head,
 - b. without reasonable excuse, does not comply with a request or requirement of an authorised officer under this head, or
 - c. in purported compliance with such a requirement gives information that is false or misleading in a material respect,
- commits an offence.
- (9) Where an authorised officer, upon reasonable grounds, believes that a person has committed an offence under this Bill he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides.
- (10) Where the Executive is satisfied that an authorised officer appointed by it, or any other member of the staff of the Executive has discharged his or her duties in relation to the enforcement of the provisions of this Bill in a bona fide manner, the Executive shall indemnify the authorised officer, or such member of the staff of the Executive against all actions or claims howsoever arising in respect of the discharge by him or her of his or her duties.

- (11) Where an advertisement in relation to alcohol is published and does not include the name and address of the person who procured such publication or his or her agent, the publisher of the advertisement shall, if the Executive or an authorised officer so requests within 12 months of the publication of the advertisement, give to the Executive or the authorised officer, the name and address of such person or his or her agent.
- (12) A person who fails to comply with a request under *subhead (11)* or, gives information that is false or misleading in a material respect, commits an offence and is liable on summary conviction to a Class A fine.
- (13) The Executive may charge the licensee or owner of a business, for all expenditure incurred, where enforcement actions are carried out by the Executive pursuant to this Bill.
- (14) In proceedings for an offence under this Bill, alcohol, or a package containing alcohol, that purports to bear the name of the manufacturer or importer of that alcohol, shall unless the contrary is proved be evidence that the alcohol was manufactured or imported, as the case may be, by the person concerned.
- (15) In proceedings for an offence under this Bill, alcohol, or a package containing alcohol, that bears a trademark shall unless the contrary is proved be evidence that the alcohol was manufactured by the person who at the time of the alleged commission of the offence owned that trademark.

Explanatory Note

The Bill sets out enforcement provisions and gives authorised officers powers of entry, inspection, the taking of records and samples and the carrying out of examinations. These provisions are modelled on section 17 of the *Public Health (Sunbeds) Act 2014* and sections (48) to (50) of the *Public Health (Tobacco) Act, 2002*.

The powers will support the enforcement of the Bill and regulations by officers appointed under Head 10. Authorised officers will be empowered to enter relevant premises at all reasonable times, with the exception of a private dwelling. Where access is required to a private dwelling a warrant from the District Court will be required. A range of powers are required to facilitate inspections including requesting information/assistance and documentary/record checks. Offence provisions include obstruction, failure to comply with a request from an authorised officer and/or providing false or misleading information.

Subheads (11) and *(12)* are modelled on Section 30 (14) and (15) of the *Consumer Protection Act 2007* (Number 19 of 2007). This provision is required to avoid a potential gap in enforcement powers.

Subhead (14) provides for the recovery of costs by the Health Service Executive, in cases where contraventions are detected and enforcement action is taken under this Bill.

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These provisions may need to be amended or expanded to ensure that Authorised Officers have all the powers reasonably necessary to enforce this Bill.

Head 12 Service of documents

- (1) A notice or other document under this Bill shall be addressed to the person concerned by name, and may be served on or given to the person in one of the following ways:
- (a) by delivering it to the person;
 - (b) by leaving it at the address where the person ordinarily resides or, in a case in which an address for service has been furnished, at that address; or
 - (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address.

Explanatory Note

This is a standard provision for the service of documents, modelled on Section 19 of the *Public Health (Sunbeds) Act 2014*.

Head 13 Fixed Payment Notice for Offences

- (1) This head applies in respect to certain offences (in this head referred to as a “relevant offence”) and provides that:
- (2) An authorised officer who has reasonable grounds for believing that a person is committing, or has committed, a relevant offence may serve the notice referred to in *subhead (3)* on the person.
- (3) A notice in writing (in this section referred to as a “fixed payment notice”), served under *subhead (2)*, shall be in the prescribed form, stating -
- (a) that the person on whom it is served is alleged to have committed the relevant offence concerned,
 - (b) when and where it is alleged to have been committed,
 - (c) that the prosecution for it will not be instituted if, during the period of 28 days beginning on the date of the fixed payment notice, the person pays the prescribed amount to the Executive (at the address stated in the notice) and submits the fixed payment notice or a copy thereof together with that payment, and
 - (d) that in default of such payment, the person shall be prosecuted for the alleged relevant offence.
- (4) A payment referred to in *subhead (3)* shall be accompanied by the fixed payment notice served under *subhead (2)* or a copy thereof.
- (5) If a fixed payment notice is served on a person –
- (a) the person may make a payment in accordance with *subhead (3)(c)*,
 - (b) the Executive shall receive and retain the payment (subject to *subhead (8)*) and issue a receipt for it,
 - (c) any payment received shall not be recoverable by the person who made it, and
 - (d) a prosecution in respect of the alleged relevant offence to which the notice relates shall not be instituted during the period specified in *subhead (3)(c)* and, if payment is made during that period, no prosecution in respect of the alleged relevant offence will be instituted.
- (6) In proceedings against a person for a relevant offence it shall be presumed, until the contrary is shown, that the person did not make payment in accordance with *subhead (3)(c)* and (4).
- (7) The Minister may prescribe the amount of a fixed payment and may prescribe different amounts for different offences.
- (8) Payments received by the Executive under this head shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Public Expenditure and Reform directs.

Explanatory Note

The Fixed Payment Notices (FPN) provision will give an authorised officer an alternative to initiating legal proceedings against a person who has or is committing specific offences under the Bill. FPN may be issued where they are determined to be an appropriate sanction, proportionate to the nature of the non-compliance. The FPN is served on an offender who is then required to pay the specified fine within the prescribed timeframe. A prosecution will not be taken for relevant offences where a person pays the fine within the specified period. Conversely, legal proceedings will be initiated in cases where the offender fails to pay within the prescribed timeframe.

This measure is modelled on section 20 of the *Public Health (Sunbeds) Bill Act 2014*.

Head 14 Executive may publish information respecting certain persons

This Head will provide that:

- (1) The Executive shall keep and maintain a list (the “Alcohol Non-Compliance List”) of the names and addresses of the following persons and the particulars specified in specified in *subhead (2)*:
 - a) A person on whom a fine or other penalty was imposed by a court under this Act;
 - b) A person who made a payment to the Executive pursuant to a fixed payment notice under head 13.
- (2) The Alcohol Non-Compliance List shall specify, in relation to each person named in the list, such particulars as the Executive considers appropriate in respect of the following:
 - a) The matter occasioning any fine or penalty imposed on the person by the court and the amount or nature of that fine or penalty;
 - b) The matter occasioning any fixed payment notice under this Bill and the amount of that payment.
- (3) The Executive may, at any time and in any form or manner the Executive considers appropriate, publish or cause to be published all or any part of the Alcohol Non-Compliance List.

Explanatory Notes

The purpose of this head is to inform the public of persons who have contravened the provisions of the Bill by a ‘name and shame’ policy. Information relating to persons who have committed offences under the Bill and/or served with a fixed penalty notice by the Executive or convicted by the court will be published by the Executive.

Subhead (1) provides that the Executive may keep and maintain a list of names, addresses and trade, business or professional information in respect of persons who have been fined or penalised by the court for a conviction under the Bill, or persons who have paid an on-the-spot fine to the Executive pursuant to Head 13.

Subhead (2) provides that the Alcohol Non-Compliance List may contain information relating to offences, fines and penalties.

Subhead (3) allows the Executive to publish the consumer protection list.

This head is modelled on section 21 of the *Public Health (Sunbeds) Act 2014*.

Head 15 Amendment of Section 9 of the Intoxicating Liquor Act 2008

This Head provides that:

(1) Section 9 of the *Intoxicating Liquor Act 2008* be amended to provide that officers of the Executive may enforce its provisions.

(2) For the purpose of enforcing Section 9 of the *Intoxicating Liquor Act*, the powers provided to authorised officers under head 11, 12, 13, and 14 will apply.

Explanatory Note

Section 9 of the *Intoxicating Liquor Act 2008* provides for the structural separation of alcohol products from other products in mixed trading outlets such as supermarkets, convenience stores and petrol stations. The aim of this provision, which has not been commenced to date, is to tackle the increased visibility of alcohol products in such outlets by providing that alcohol products may only be displayed and sold in a separate area of the premises to which access is controlled

Therefore, structural separation as envisaged under section 9 of the *2008 Act* would achieve the following objectives:

- Access to alcohol products would be controlled in premises to which it applies;
- Alcohol products could not be displayed near grocery products, thereby discouraging the purchase of alcohol products as part of everyday household grocery shopping; and
- Separate display of alcohol products would make them less visible to children.

The Departments of Justice and Equality committed to discontinue the current voluntary code operated and monitored by RRAI (Responsible Retailing of Alcohol Ireland) and replace it with a statutory code of practice under section 17 of the *Civil Law (Miscellaneous Provisions) Act 2011*. This section empowers the Minister for Justice and Equality to prepare and publish or approve codes of practice for the purpose of setting standards for the display, sale, supply, advertising, promotion or marketing of alcohol. The statutory code will apply for a 2-year period.

At the end of a 2-year period, the Departments of Justice and Equality and Health will review the effectiveness of the statutory code in achieving the policy objectives of section 9 of the *Intoxicating Liquor Act 2008*, namely, the separation of alcohol from other non-alcoholic products and control of access to alcohol in supermarkets and other mixed trading outlets in order to deal with the increased visibility of alcohol in these outlets. The results and findings of this review will inform the Government's decision on whether or not to proceed at that time with commencement of section 9.

In the meantime, the Public Health (Alcohol) Bill amends section 9 of the *Intoxicating Liquor Act 2008* by inserting a new statutory provision which will empower Environmental Health Officers (EHOs) employed by the Health Service Executive to enforce the provisions of section 9 in the event of its commencement.

Head 16 Amendment of Section 16 of the Intoxicating Liquor Act 2008

This head provides that:

(1) Section 16 of the *Intoxicating Liquor Act 2008* be amended to provide that regulations made under that section may be enforced by authorised officers under head 10.

(2) For the purpose of enforcing regulations made under section 16 of the *Intoxicating Liquor Act*, the powers provided to authorised officers under head 11, 12, 13 and 14 will apply.

Explanatory Note

Head 16 provides that the minimum pricing provision would be complemented by the implementation of the recommendation in the National Substance Misuse Strategy to the effect that an enforcement mechanism and regulations under section 16 of the *Intoxicating Liquor Act 2008* be developed. Section 16 provides for the making of regulations which 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. No such regulations have been made to date, partly due to the lack of any enforcement mechanism. An Garda Síochána is currently responsible for enforcement in principle though this presents a challenge from a resource perspective.

Regulations under section 16 can now be developed by the Department of Justice and Equality, so that they can be ready if and when this Bill is enacted.

PART V OFFENCES AND PENALTIES

Head 17 Offences

This Head provides that:

1) It shall be an offence for a person not to comply with the requirements set out in this Bill, and in regulations made under this Bill.

(2) In proceedings for an offence under this Bill, or regulations made under this Bill, it shall be a defence for the person against whom proceedings are brought to show that he or she made all reasonable efforts to ensure compliance with such provisions of this Bill as are alleged to have been contravened.

Explanatory Note

This Head provides that it shall be an offence not to comply with the requirements outlined in this Bill, and in regulations made under this Bill.

Subhead (2) provides a defence from prosecution of reasonable efforts to comply with the provisions of the Bill. This subhead is modelled on section 15(4) of the *Public Health (Standardised Packaging) Bill 2014*.

Head 18 Offences by bodies corporate

(1) Where an offence under this Bill is committed by a body corporate and is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect of any person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person, as well as the body corporate, shall be guilty of an offence and may be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, *subhead (1)* applies to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

Explanatory Note

This head provides for an offence by a body corporate or company and is modelled on section 17 of the *Public Health (Standardised Packaging) Bill 2014*.

Head 19 Penalties

This Head provides that:

- (1) A person who contravenes a provision under this Bill shall be liable-
 - (a) on a first summary conviction to a class B fine, or imprisonment for a term not exceeding 6 months or both;
 - (b) on any subsequent summary conviction to class A fine, or imprisonment for a term not exceeding 12 months or both; or
 - (c) on conviction on indictment to a fine or imprisonment for a term not exceeding 8 years or to both.
- (2) Unless it is satisfied that there are special and substantial reasons for not so doing, the court shall, where the person is convicted of an offence, order a person to pay to the prosecution the costs and expenses, measured by the court, incurred by the prosecution in relation to the investigation, detection or prosecution of the offence.
- (3) The costs and expenses referred to in *subhead (2)* are exclusive of any other fine or penalty set by the Court.
- (4) 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*.

Explanatory Note:

This head sets out the penalties and fines for a first offence and subsequent offences under the Bill and it is based on the *Public Health (Standardised Packaging of Tobacco) Bill 2014* and the *Public Health (Sunbeds) Act 2014*.

It is proposed that a lower fine for the first offence with an increase for subsequent offences is appropriate.

Subheads (1) and (2) are modelled on section 16 of the *Public Health (Standardised Packaging of Tobacco) Bill 2014*.

Subhead (2) obliges the Court to order any person convicted under the Bill to pay the Executive the costs and expenses incurred by the Executive in relation to the investigation and the prosecution of the offence, unless there are particular reasons for not doing so.

Subhead (3) provides that any expenses and costs to be paid under *subhead (2)* are in addition to any fine or penalty set by the Court. This subhead is modelled on section 80 of the *Consumer Protection Act 2007*.

Subhead (4) 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.

Head 20 Proceedings

(1) Summary proceedings for an offence under this Bill may be brought and prosecuted by the Executive

(2) Notwithstanding section 10(4) of the *Petty Sessions (Ireland) Act 1851*, summary proceedings for any offence under this Bill may be commenced at any time within the 12 months from the date on which the offence was committed.

Explanatory Notes

This head is modelled on section 18 of the *Public Health (Standardised Packaging of Tobacco) Bill 2014* and section 22 of the *Public Health (Sunbeds) Act 2014*.