



NIRC Response to the Committee for Communities Consultation on the Proposed Changes to Alcohol Licensing.

December 2020

1. Introduction

As responsible retailers of alcohol we have worked hard to provide meaningful tangible solutions and to ensure the correct safeguards are in place to prevent underage drinking as well as working with communities, the police and government at all levels to ensure best practice and a joined up approach to problems. We welcome the chance to continue working with government and other agencies to address concerns and provide solutions and safeguards that work for the good of all consumers.

We however do want to prevent unnecessary burdens on responsible consumers and make sure that the retail sector is not unfairly disadvantaged by any regulation. Our sector in Northern Ireland employs over 100,000 and invests millions of pounds every year in our economy. For the sector to continue to deliver for Northern Ireland, we must ensure that any regulation is not an unnecessary burden and will allow us to continue to provide choice and affordability to consumers in a responsible manner.

2. Responsible Retailing

SUMMARY: Retailers are leading the way in the responsible retailing of alcohol

Our members take their responsibilities for selling alcohol extremely seriously. We have worked closely with Government and other agencies to tackle illegal sales of alcohol and promote responsible consumption.

We were the first sector to introduce the Challenge 25 approach to sales, where all those under 25 must provide ID before they are sold alcohol. This has successfully driven down underage sales and we have consistently outperformed other sectors in this area.

To supplement our Challenge 25 work we set up the Community Alcohol Partnership programme, including one in Derry/Londonderry. This brings together schools, local authorities, retailers and police to tackle underage sales and low level disorder.

We have also been at the heart of initiatives to promote responsible drinking. Retailers led the way in putting the updated CMO guidance on our products; it's now on all own brand products in the major retailers. This is supported by shelf edge labelling reinforcing messages on unit labelling. Our Members are major contributors to Drinkaware, the independent Trust that is co-ordinating campaigns aimed at parents and younger drinkers. We believe partnerships involving all the key stakeholders are the best way to tackle both existing issues and educate the next generation to drink responsibly.

Our members invest heavily to ensure compliance with their licensing obligations and to operate as the responsible retailers their customers demand. We have always supported targeting and applying sanctions to irresponsible retailers, but we also support proportionate, evidence based regulation. Poorly targeted measures that place major burdens on retailers regardless of their approach to alcohol will ultimately affect consumers by reducing choice and value.

We ensure that the alcohol we sell is marketed responsibly, adhering to the Portman Group best practice codes for packaging and promotions and the Advertising Standards Agency codes on advertising.

Our members support a clear, consistent and co-ordinated approach to licensing and regulation that encourages growth and investment, reduces the cost of doing business, stimulates job creation and encourages consumer confidence. We welcome the NI government's better regulation ambitions and we are keen to work in partnership to achieve these aims.

We have concerns that some of the proposals will run contrary to these ambitions, serving instead to increase the burden on responsible retailers. The proposals also risk undermining the professionalism of the alcohol retail industry at a time when we are seeking to promote high standards.

We need a licensing system that allows boards to address the adverse consequences of alcohol misuse and irresponsible sales, but we must also allow decent and responsible operators to run their business free of excessive and unnecessary burdens.

3. Restrictions on advertising in supermarkets and off-sales

SUMMARY: Retailers do not believe there is an evidence base for this and it will stifle our promotion of local NI brands

Our members do not believe that there is a clear evidence base in support of this proposal. The licensing regime in NI for the off-trade is already restrictive and the sale and promotion of alcohol is highly regulated, both through legislation and voluntary agreements.

We believe that limiting promotional material to the alcohol areas is unnecessary and ineffective regulation. In Scotland the same measures have failed to make any impact on reducing alcohol harm. They have, however, created the anomalous position whereby it is legal for one retailer to advertise alcohol within the vicinity of another retailer's store and vice versa, but illegal for each retailer to advertise alcohol outside their own stores.

This suggestion proposes no such restrictions for alcohol producers or for pubs, many of which include visible external advertising of alcohol. We can see no reason why this would be allowed to continue outside a pub car park but not a retailer car park.

It is important that any regulations on advertising and marketing in and around stores learn the lessons from the development of the policy in Scotland. The original proposals in Scotland would have inadvertently required retailers selling newspapers which included alcohol advertising to sell these from the alcohol aisle and would have banned free in-store magazines which included alcohol advertising. Care must be taken to ensure this does not happen. It must also be made clear that retailers can only be held responsible for their own advertising in the vicinity of stores and not advertising by a third party over which they have no control. We note the proposed exemption for the promotion of meal deals that include alcohol, which would be a sensible move should this proposal be taken forward.

Further clarity on what constitutes a 'promotion' is key. A large proportion of the issues faced in Scotland are around the lack of clarity as to the definition the phrase, leading to a lack of consistency in approaches from local Licensing Standards Officers. This inconsistency across Scotland creates greater burdens on retailers.

There is also a need for clarity on whether generic unbranded signage stating that a premises sells alcohol be counted as 'promoting' the sale of alcohol. Some of our members operate convenience model stores, some of which have alcohol licences. Convenience model stores which do hold licences

therefore need to be able to communicate to consumers where purchase of alcohol is possible in store.

We do not believe, however, that the proposal would have any impact on patterns of consumption or harmful behaviour related to alcohol, but would increase the burden on responsible retailers.

We also believe that the proposal will have an impact on the growth of indigenous NI products which are often promoted to a local audience. There is a growing number of brewers and distilleries in Northern Ireland and both the Department of the Economy and the Department of Agriculture have highlight agri-food as a key growth area for the Northern Ireland economy in the next five years. Advertising local brands in the local market is a key way of expanding product reach and testing marketing, so any restriction on this will have a negative knock on effect for these producers.

4. Self-Service

SUMMARY: Retailers do not oppose this prohibition as long as it applies to vending machines rather than current click and collect services.

The NIRC has no objection to the prohibition of the sale of alcohol by vending machines. We would wish to ensure, however, that this proposal would not be misapplied to prohibit the sale of alcohol through retailers' 'click and collect' services, whereby customers order their shopping online and collect it from a store or remote location – which can include automated lockers – at a time and date convenient to them. Our members apply strict age restrictions to all our online sales, including click and collect, and we have robust processes in place to require customers to prove their age. Click and collect services are very popular with customers and their use continues to grow across all types of retail. We believe that this service is fundamentally different from a vending machine service and hope that this can be recognised to avoid any unintended consequences.

5. Code of practice

SUMMARY: Retailers already go above and beyond the current voluntary code, have consistently been against paying for self-regulation and are opposed to any code where the secretariat is from another industry.

Our members have serious concerns over the proposal to permit formal approval of codes of practice on responsible retailing. The operation of codes of this type are not subject to Executive scrutiny in the same way that licensing legislation is, and it is appropriate that licensing restrictions are fully considered by the Assembly to ensure their impact is not disproportionate or unnecessary. This provision would effectively delegate responsibility away from the Executive and could allow those that develop codes to amend and extend them as they see fit with no consultation or scrutiny. If administered incorrectly, a code of practice on retailing could cause significant damage to NI's retail sector and would also risk undermining the professionalism of the alcohol retail industry at a time when we are seeking to promote high standards.

We believe that through the already high standards in place by our members that we actually surpass the measures laid down in the current voluntary code and our members have throughout each of the devolved assemblies and Westminster been firmly against paying for self-regulation.

We would be opposed to attempts to apply a code of practice governed by the hospitality sector to the retail sector. An effective code of practice requires an in-depth understanding of the sector it

seeks to govern, and there are fundamental differences between the on- and off-trade that mean that the remit of one code of practice cannot be applied to the other. Alcohol sales in the on-trade are de facto about immediate consumption on those premises, whereas alcohol sales in the off-trade are made by customers who will be consuming the alcohol later on and in a different place, and often with a wider group of family and friends. Indeed, many customers consume the alcohol they have bought in-store over several weeks or months. To avoid any conflicts of interest, or perceptions of such, we would urge the government to ensure that the introduction of any code of practice is taken forward on a sectoral basis to ensure it is fit for purpose for the sector that it intends to govern. This includes the remit of the code, its administration and the handling of rulings and complaints.

We believe that any code panel must be wholly independent including the secretariat. It would not make sense for the agri-food processors to provide support to the Grocery Adjudicator nor would it make sense for a committee such as the Communities Committee to have clerks who were all members of one party. Similarly, the secretariat for the voluntary code must be above possible reproach. Our members are commercial companies and it must be shown that their interests will be impartially protected.

6. Loyalty Schemes.

SUMMARY: Retailers believe this policy unduly penalises responsible drinkers and NI consumers.

We find it hard to understand the evidence base for this policy of removing alcohol from loyalty schemes. There is simply no evidence that loyalty schemes lead to problem drinking. No other UK jurisdiction has taken the same position on loyalty schemes. Under the rules for Minimum Unit Pricing in both Scotland and Wales and the rules for sales of alcohol below the level of duty + VAT in England and Wales explicitly permit the accrual and redemption of loyalty points on sales of alcohol:

- a. The [official guidance](#) for Minimum Unit Pricing in Scotland explicitly permits ‘vouchers and discounts that are clearly linked to a reward scheme’ (point 4), stating that and that ‘Reward points and vouchers can continue to be used to buy alcohol, either in the store where they were earned, or at partner retailers, on the condition that the points redeemed (and additional money paid, where applicable) have an equivalent cash value that is not below the minimum price of the alcoholic product.’ (point 7). It also states that ‘Proxy benefits to the customer from the sale, for instance in the form of reward points, should not be considered as a part of the purchase price’.
- b. The [official guidance](#) for Minimum Unit Pricing in Wales likewise states that ‘vouchers and discounts that are clearly linked to a reward scheme’ do not compromise the MUP and that ‘Reward points and vouchers can continue to be used to buy alcohol, either in the store where they were earned, or at partner retailers, on the condition that the points redeemed (and additional money paid, where applicable) have an equivalent cash value that is not below the minimum price of the alcoholic product.’ (pages 10-11)
- c. The Home Office’s [official guidance](#) to the ban on sale of alcohol below the level of duty plus the VAT payable on that duty in England and Wales likewise states that ‘Reward points and vouchers can continue to be used to buy alcohol, either in the store where they were earned, or at partner retailers, on the condition that the points redeemed (and additional money paid, where applicable) have an equivalent cash value that is not below the permitted price of the product.’ It also states that ‘Proxy benefits to the customer from the sale, for instance in the form of reward points, should not be considered as a part of the purchase price’ (page 10).

With such guidance retailers who operate in both Northern Ireland and Great Britain will clearly wish to continue to provide for accrual and redemption of loyalty points on sale of alcohol.

The trigger for accrual is the link between a customer’s loyalty / membership card and the scanning of a barcode. Barcodes are identical across a retailer’s estate and – at present – so are loyalty / membership cards. It would be relatively simple – if costly – to reissue all cardholders in Northern Ireland new cards that would not permit the accrual or redemption of points on sales of alcohol across a retailer’s entire estate (i.e. a Northern Ireland card holder would not be able to accrue or redeem points on alcohol in any store in Northern Ireland or in Great Britain); it would be much more difficult to restrict the card of a holder based in Great Britain so that they could still accrue and redeem points on purchases of alcohol in GB, as they are legally entitled to do, but not if they were to visit Northern Ireland.

It could in the worst case scenario mean that some loyalty schemes become too complex to operate in Northern Ireland and leads to a paradoxical situation where the following situation occurs:

	Permitted to accrue loyalty points on purchases of alcohol in NI?	Permitted to accrue loyalty points on purchases of alcohol in GB?	Permitted to spend loyalty points on purchases of alcohol in NI?	Permitted to spend loyalty points on purchases of alcohol in GB?	Permitted to earn points to be donated to good causes from purchases of alcohol in NI?	Permitted to earn points to be donated to good causes from purchases of alcohol in GB?
NI-based holder of loyalty card	No	Yes?	No	Yes?	??	Yes?
GB-based holder of loyalty card	No?	Yes	No?	Yes	??	Yes

Where we have one national scheme its quite confusing to understand how we would implement a second-class loyalty scheme just because someone predominantly shops in NI. If this measure did come in (and we are opposed to it coming in), the minimum time needed to unpick loyalty schemes would be over 18 months.

This could have the effect of loyalty schemes not being available to shoppers in Northern Ireland.

We know that the aim of this was to stop irresponsible promotions in the on trade such as a card with 10 shots for £10 etc, but it has the affect of penalising shoppers and retailers.

We would therefore recommend an amendment to the current Bill wording. In essence, we are saying you should go back to the original Licensing Order / legislation and amend it so that

supermarkets and retailers (as a category of licensed premise) are exempted from Clause 17/ the promotional restrictions being put forward in this updated Bill. The wording in yellow below is the full amendment.

The effect of this amendment would be to keep larger chain pubs that would operate loyalty point schemes in scope of the ban.

Clause 17.—(1) After Article 57ZA of the Licensing Order (inserted by section 16(1)) insert—

“Prohibition of loyalty schemes

57ZB.—(1) In the case of licensed premises of a kind mentioned in Article 5(1)(a), the holder of the licence, must not operate a scheme which—

(a) provides awards to a member of the scheme in consequence of the purchase by the member of intoxicating liquor in the premises, and

(b) entitles the member to redeem the awards, in the amount specified in the scheme, in exchange for the opportunity to purchase intoxicating liquor at a reduced price or to receive it free of charge.

(2) A person acting in contravention of paragraph (1) is guilty of an offence and is liable on conviction to a fine not exceeding level 5 on the standard scale.”.

(2) In Part 3 of Schedule 10A to the Licensing Order (penalty points for offences punishable with level 5 fine) insert at the appropriate place—

“57ZB(1)	Operating a loyalty scheme	5-6”
----------	----------------------------	------

Otherwise another option is to remove Clause 17 all together

Minimum Unit Price:

Any changes in alcohol legislation must be taken into consideration with the proposals that are being brought forward by the Minister for Health for a Minimum Unit Price for alcohol. We are not opposed to the principle of a minimum unit price for alcohol in Northern Ireland and we look forward to working with the Executive on this. This measure will have far more effect than the measures currently proposed on Alcohol Licensing.

Conclusion

We are willing to work with Government at all levels to encourage healthy eating and responsible consumption of alcohol as is shown by our track record in this area. However, these proposals could

put an unwelcome burden on both consumers and responsible retailers of alcohol for little if any return.

It must also be noted that given the current issues with both the Covid 19 pandemic and the end of the leaving the EU transition period, retailers have little bandwidth to deal with the proposed changes.

Contact:

For further information, please contact:

Aodhán Connolly, Director. Northern Ireland Retail Consortium

aodhan.connolly@brc.org.uk 07880039744