

# Alcohol Marketing Bill

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**B I L L**

TO

Introduce measures to reduce the exposure of children to the marketing of alcohol products; to make provision to establish the permitted content of marketing of alcohol products; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**1 Meaning of “alcohol marketing” and “alcohol product”**

In this Act—

“alcohol marketing” includes activities by any business, individual or vendor—

- (a) the purpose of which is to promote or sell an alcohol product, or  
(b) the effect of which is to do so; 5

“alcohol product” means a product consisting wholly or partly of alcohol which is over 1.2% alcohol by volume or equivalent and is intended to be ingested; including but not limited to drinking, sucking, sniffing or chewing. 10

**2 Prohibition of alcohol marketing**

- (1) A person who in the course of a business markets an alcohol product, or causes the marketing of an alcohol product, in England and Wales is guilty of an offence unless one of the exclusions in section 4 applies.
- (2) A person who in the course of a business prints, devises or distributes in England and Wales alcohol marketing which is published in England and Wales, or causes such alcohol marketing to be printed, devised or distributed, is guilty of an offence unless one of the exclusions in section 4 applies. 15
- (3) Distributing alcohol marketing material includes transmitting it in electronic form, participating in doing so, and providing the means of transmission. 20
- (4) It is not an offence under subsection (1) for a person who does not carry on business in England and Wales to publish or cause to be published alcohol marketing material by means of a website which is accessed in England and

Wales; and, in that case, devising the advertisement or causing it to be devised is not an offence under subsection (2).

### 3 Marketing: newspapers, periodicals etc

If a newspaper, periodical or other publication (“the publication”) containing alcohol marketing material is in the course of a business published in England and Wales – 5

- (a) any proprietor or editor of the publication is guilty of an offence,
- (b) any person who (directly or indirectly) procured the inclusion of the marketing material in the publication is guilty of an offence, and
- (c) any person who sells the publication, or offers it for sale, or otherwise makes it available to the public, is guilty of an offence, 10

unless one of the exclusions in section 4 applies.

### 4 Marketing: exclusions

- (1) No offence is committed under section 2 or 3 in relation to alcohol marketing if the conditions in subsection (2) are met and if – 15
  - (a) an advertisement is placed in a print medium and 90% of the audience or readership of that print medium is aged eighteen or over,
  - (b) an advertisement is being shown in a cinema and the film which is the main part of the programme has an eighteen certificate,
  - (c) the marketing is taking place at the point of sale in licensed premises, 20
  - (d) the marketing is taking place at a local producer event being held by a local alcoholic drinks producer, and all those attending the event are aged eighteen or over, or
  - (e) an advertisement is broadcast on radio between 9.00pm and 6.00am.
- (2) The conditions are – 25
  - (a) an advisory message about responsible drinking, or the adverse effects of excessive alcohol on health, must be broadcast or printed with the advertisement or other marketing material, and
  - (b) the advertisement or other marketing material must include only factual and verifiable statements about the product such as alcoholic strength, composition and place of origin. 30
- (3) The Secretary of State must, by regulations, establish how compliance with the criteria in subsection (1) and the conditions in subsection (2) shall be determined.
- (4) The regulations must include a definition of “local” in subsection (1)(d) which must provide for permitted events only to be of a small scale and must also provide for them to require approval by the local licensing authority. 35
- (5) No offence is committed under section 2 or 3 in relation to alcohol marketing –
  - (a) if it is, or is contained in, a communication made in the course of a business which is part of the alcohol trade, and for the purposes of that trade, and directed solely at persons who – 40
    - (i) are engaged in, or employed by, a business which is also part of that trade, and
    - (ii) fall within subsection (6), 45

in their capacity as such persons,

- (b) if it is, or is contained in, the communication made in reply to a particular request by an individual (who is aged eighteen or over) for information about an alcohol product, or
  - (c) if it is contained in a publication (other than an in-flight magazine) whose principal market is not England and Wales (or any part of it), or if it is contained in any internet version of such a publication. 5
- (6) A person falls within this subsection if that person –
- (a) is responsible for making decisions on behalf of the business referred to in subsection (5)(a)(i) about the purchase of alcohol products which are to be sold in the course of that business, 10
  - (b) occupies a position in the management structure of the business in question which is equivalent in seniority to, or of greater seniority than, that of any such person, or
  - (c) is the person who, or is a member of the board of directors or other body of persons (however described) which, is responsible for the conduct of the business in question. 15
- (7) The Secretary of State may provide in regulations that no offence is committed under section 2 in relation to alcohol marketing material which –
- (a) is in a place or on a website where an alcohol product is offered for sale, and
  - (b) complies with requirements specified in the regulations. 20
- (8) The regulations may, in particular, provide for the meaning of “place” in subsection (7)(a).

## 5 Marketing: defences

- (1) A person does not commit an offence under this Act if that person did not know, and had no reason to suspect, that the purpose of the advertisement or other marketing material in question was to promote an alcoholic product. 25
- (2) A person does not commit such an offence in connection with an advertisement or other marketing material the effect of which is to promote an alcoholic product if that person could not reasonably have foreseen that that would be the effect of the advertisement or other marketing material. 30
- (3) A person does not commit an offence under section 2(2) or 3(a) or (b) if that person did not know, and had no reason to suspect, that the advertisement or other marketing material would be published in England and Wales.
- (4) A person does not commit an offence under section 2(2) of distributing or causing the distribution of alcohol marketing material, otherwise than as mentioned in section 2(3), if that person did not know, and had no reason to suspect, that what he or she distributed or caused to be distributed was, or contained, alcohol marketing material. 35
- (5) In relation to alcohol marketing material which is distributed as mentioned in section 2(3), a person does not commit an offence under section 2(2) of distributing it or causing its distribution if –
- (a) that person was unaware that what he or she distributed or caused to be distributed was, or contained, alcohol marketing material,
  - (b) having become aware of it, it was not reasonably practicable for that person to prevent its further distribution, or 45

(c) that person did not carry on business in England and Wales at the relevant time.

- (6) A person does not commit an offence under section 3(c) if he or she did not know, and had no reason to suspect, that the publication contained alcohol marketing material.

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## 6 Developments in technology

The Secretary of State may by order amend any provision of this Act if he or she considers it appropriate to do so in consequence of any developments in technology relating to publishing or distributing by electronic means.

## 7 Displays

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- (1) A person who in the course of a business displays or causes to be displayed alcohol products or their prices in a place or on a website where alcohol products are offered for sale is guilty of an offence if the display does not comply with such requirements (if any) as may be specified by the Secretary of State in regulations.

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- (2) It is not an offence under subsection (1) for a person who does not carry on business in England and Wales to display or cause to be displayed alcohol products or their prices by means of a website which is accessed in England and Wales.

- (3) The regulations may, in particular, provide for the meaning of “place” in subsection (1).

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- (4) The regulations must make provision for a display which also amounts to the marketing of alcohol products to be treated for the purpose of offences under this Act—

- (a) as alcohol marketing and not as a display, or  
(b) as a display and not as alcohol marketing.

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## 8 Prohibition of free distributions

- (1) A person is guilty of an offence if in the course of a business that person—  
(a) gives any product or coupon away to the public in England and Wales, or  
(b) causes or permits that to happen,  
and the purpose or effect of giving the product or coupon away is to promote a alcohol product.

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- (2) It does not matter whether the product or coupon accompanies something else, or is given away separately.

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- (3) No offence is committed under subsection (1) if—

- (a) the business referred to in subsection (1) is part of the alcohol trade, and  
(b) the product or coupon is given away for the purposes of that trade, and  
(c) each person to whom it is given—  
(i) is engaged in, or employed by, a business which is also part of the alcohol trade, and  
(ii) falls within subsection (4), and

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- (d) the product or coupon is given to each such person in his capacity as such a person.
- (4) A person falls within this subsection if that person—
- (a) is responsible for making decisions on behalf of the business referred to in subsection (8)(c)(i) about the purchase of alcohol products which are to be sold in the course of that business, 5
  - (b) occupies a position in the management structure of the business in question which is equivalent in seniority to, or of greater seniority than, that of any such person, or
  - (c) is the person who, or is a member of the board of directors or other body of persons (however described) which, is responsible for the conduct of the business in question. 10
- (5) A person does not commit an offence under this section—
- (a) where it is alleged that the purpose of giving the product or coupon away was to promote an alcohol product, if he or she did not know and had no reason to suspect that that was its purpose, or 15
  - (b) where it is alleged that the effect of giving the product or coupon away was to promote an alcohol product, if he or she could not reasonably have foreseen that that would be its effect.
- (6) “Coupon” means a document or other thing which (whether by itself or not) can be redeemed for a product or service or for cash or any other benefit. 20
- (7) The Secretary of State may make regulations providing for this section to apply to making products or coupons available for a nominal sum or at a substantial discount as it applies to giving them away.
- (8) If regulations under subsection (7) provide for this section to apply to making products or coupons available at a substantial discount, the regulations must provide for the meaning of “substantial discount”. 25
- (9) The regulations may provide that this section is to apply in that case with such modifications (if any) specified in the regulations as the Secretary of State considers appropriate. 30
- 9 Prohibition of sponsorship**
- (1) A person who is party to a sponsorship agreement is guilty of an offence if the purpose or effect of anything done as a result of the agreement is to promote an alcohol product in England and Wales.
- (2) A sponsorship agreement is an agreement under which, in the course of a business, a party to it makes a contribution towards something, whether the contribution is in money or takes any other form (for example, the provision of services or of contributions in kind). 35
- (3) A person does not commit an offence under this section where—
- (a) it is alleged that the purpose of what was done as a result of the agreement was to promote an alcohol product in England and Wales, if he or she did not know, and had no reason to suspect, that that was its purpose, or 40
  - (b) it is alleged that the effect of what was done as a result of the agreement was to promote an alcohol product in England and Wales, if he or she could not reasonably have foreseen that that would be its effect. 45

- (4) A person does not commit an offence under this section if –
- (a) he or she did not know and had no reason to suspect that the contribution referred to in subsection (2) was made in the course of a business, or
  - (b) where it is alleged that the effect of what was done as a result of the agreement was to promote an alcohol product in England and Wales, if he or she could not reasonably have foreseen that that would be its effect. 5

## 10 Brand sharing

- (1) The Secretary of State may by regulations make provision prohibiting or restricting, in such circumstances and subject to such exceptions as may be specified in the regulations, the use – 10
- (a) in connection with any service or product (other than an alcohol product), of any name, emblem or other feature of a description specified in the regulations which is the same as, or similar to, a name, emblem or other feature so specified which is connected with an alcohol product, or 15
  - (b) in connection with any alcohol product, of any name, emblem or other feature of a description specified in the regulations which is the same as, or similar to, a name, emblem or other feature so specified which is connected with any service or product other than an alcohol product. 20
- (2) Provision made by virtue of subsection (1) may prohibit or restrict only that use whose purpose is to promote an alcohol product, or whose effect is to do so.
- (3) If regulations under this section provide for a prohibition or restriction to be subject to an exception, the regulations may also make such provision as the Secretary of State considers appropriate for a corresponding exception to have effect for the purposes of offences under section 2, 3, 7, 8 or 9. 25
- (4) A person who contravenes a prohibition or restriction contained in regulations made under this section is guilty of an offence.

## 11 Enforcement

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The Secretary of State must make regulations within six months of this Act coming into force to make provision with regard to enforcement, including powers of entry and powers of relevant officers.

## 12 Penalties

- A person guilty of an offence under this Act is liable – 35
- (a) on summary conviction to imprisonment for a term not exceeding six months, or a unlimited fine or both, or
  - (b) on conviction on indictment to imprisonment for a term not exceeding 2 years, or a unlimited fine, or both.

## 13 Offences by bodies corporate

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- (1) If an offence under any provision of this Act committed by a body corporate is proved –
- (a) to have been committed with the consent or connivance of an officer, or

- (b) to be attributable to any neglect on his or her part, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) In subsection (1) “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity. 5
- (3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he or she were a director of the body corporate.
- 14 Regulations** 10
- (1) Powers to make regulations and orders under this Act are exercisable by statutory instrument.
- (2) Regulations may make –
- (a) different provision for different cases or circumstances, and
- (b) any supplementary, consequential or transitional provision which the Secretary of State considers necessary or desirable. 15
- (3) No statutory instrument containing an order under section 6 or regulations under section 7 or 10 is to be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House of Parliament. 20
- (4) A statutory instrument containing regulations under any other provision of this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- 15 Interpretation**
- In this Act – 25
- “purpose” includes one of a number of purposes, and
- “alcohol marketing” and “alcohol product” have the meaning given in section 1,
- and references to publishing include any means of publishing (and include, in particular, publishing by any electronic means, for example by means of the internet). 30
- 16 Short title, commencement and extent**
- (1) This Act may be cited as the Alcohol Marketing Act 2011.
- (2) This Act comes into force after a period of 6 months beginning with the day on which it is passed. 35
- (3) This Act extends to England and Wales only.

# Alcohol Marketing Bill

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## B I L L

To introduce measures to reduce the exposure of children to the marketing of alcohol products; to make provision to establish the permitted content of marketing of alcohol products; and for connected purposes.

*Ordered to be brought in by Dr Sarah Wollaston,  
Mr Kevin Barron, Tracey Crouch, John Pugh,  
Stephen Gilbert, Paul Flynn, Mr David Amess,  
Chris Bryant, Kelvin Hopkins, Mike Wood,  
Anne Marie Morris and John McDonnell.*

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*Ordered, by The House of Commons,  
to be Printed, 30 March 2011.*

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