



# FIFTH COMPLIANCE REPORT

TO THE MINISTER FOR JUSTICE AND EQUALITY  
MR. ALAN SHATTER, T.D.

In accordance with the Code of Practice  
on the Display and Sale of Alcohol-Products  
in Mixed Trading Premises  
*for the Year to End of September 2013*

**Padraic White, *Independent Chairperson***  
Responsible Retailing of Alcohol in Ireland Ltd ("RRAI")  
*30 September 2013*



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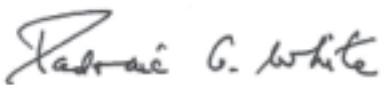
## 1. INTRODUCTION FROM THE RRAI'S INDEPENDENT CHAIRPERSON

This is my fifth annual compliance-report to the Minister for Justice and Equality, Mr Alan Shatter T.D., on the operation of the Code of Practice on the Display and Sale of Alcohol Products in Mixed Trading Premises in accordance with Section 7 of the Explanatory Guidelines of the Code.

Regarding the operations of the RRAI over the past twelve months, the key points to note (and which are set out in more detail in the body of this report) are as follows:

- The RRAI's Membership has increased significantly, as five mixed trading retail-groups joined the RRAI in the first six months of 2013 - namely Applegreen, Checkout (under the umbrella of Gala), Daybreak (under the umbrella of Musgrave), and Fresh and XL (both under the umbrella of BWG Foods). The addition of these new Members brings the total number of RRAI-stores to approximately 2,594, compared to 2,315 in 2012. The new Members are in a process of transition to implement the full requirements of the RRAI Code of Practice.
- As in previous years, the RRAI has continued to implement and monitor its Code of Practice, primarily through the annual independent audit of compliance, and the continued operation of the RRAI's complaint-mechanisms, particularly the RRAI's telephone hotline. The number of upheld complaints regarding breaches of the RRAI Code has fallen sharply over the past twelve months when compared to previous years. In the great majority of complaints brought to my attention, the Members immediately rectify the cause of the complaint, which is generally a one-off inadvertent breach at store-level. The RRAI Board remain ready to apply the RRAI's sanctions-policy (see Annex 4) in case of persistent non-compliance by any Member.
- One of the most visible manifestations of the Code-restraints is the rule on newspaper-advertisements for Members, whereby a maximum of 25% of the core advertising-space can be allocated to alcohol-products within any single advertisement. There is now almost universal compliance by RRAI-Members with this restriction.
- The RRAI has continued to seek to engage with independent mixed traders who are not Members, with a view to such retailers joining the RRAI and/or complying with the RRAI Code of Practice, in the interests of adhering to good practice in the display, advertising and promotion of alcohol-products. In addition, in September 2013, in the interests of upholding good practice in the entire mixed trading sector, the RRAI Board issued a notice of objection to the renewal of the liquor licences attaching to a non-affiliated mixed trading store.

- The anchor-point of the RRAI Code compliance-mechanism is the annual independent national audit carried out by a professional retail-audit company. Due to the increase in the number of Member-stores, the annual audit covered 400 stores in 2013, compared to 361 stores in 2012.
- The results of this year's annual independent audit of compliance (as set out in Part 4 of this report) show an overall compliance-rate of 83.50%. Although this is lower than in previous years, it remains a high level of compliance and I consider it to be acceptable. The multiple-supermarket sector had a compliance-rate of 95.08%, and the convenience-store sector compliance-rate was 73.73%.
- There are three core questions in the audit regarding the in-store physical display of alcohol-products. In this year's audit, the overall compliance-rate for each of these three questions ranged from 95.25% to 99.50%.
- The most prominent reasons why stores failed the 2013 annual audit relate to in-store Code-documentation, namely not properly displaying the A3 Code-poster, and being unable to produce a copy of the in-store briefing document for staff-members. I have requested that Members place a renewed focus on ensuring that these documentation-issues are resolved.
- The RRAI has continued its detailed discussions with Mr. Alan Shatter T.D., Minister for Justice and Equality, and his Departmental officials. The RRAI has re-iterated its firm support for the introduction of a strengthened RRAI Code of Practice on a statutory footing under Section 17 of the Civil Law (Miscellaneous Provisions) Act 2011, and awaits a Government-decision in this regard.



**Padraic A. White**

Independent Chairperson

Responsible Retailing of Alcohol in Ireland Limited ("RRAI")

30 September 2013

## 2. BACKGROUND SUMMARY OF THE RRAI AND ITS APPARATUS

The RRAI and its Code of Practice were established as an alternative to Section 9 of the Intoxicating Liquor Act 2008, which has not been commenced. Section 9 provides for the structural separation of alcohol-products from other retail-items in mixed trading premises.

In essence, mixed trading premises are supermarkets, convenience-stores, service-stations, newsagents and grocery-stores that sell intoxicating liquor.

The RRAI Code comprises the following two elements, which taken together, form the full official Code:

- i) the Code of Practice document, which is to be conspicuously displayed in all participating mixed trading stores; and
- ii) Explanatory Guidelines, which elaborate on the contents of the publicly displayed Code, and which contain additional provisions such as restrictions on the advertising of alcohol-products in the print and broadcast media by RRAI-members.

The RRAI Code of Practice and the Explanatory Guidelines to the Code are both contained in Annex 1 to this Report. The RRAI Code has also been strengthened since its introduction, in particular through an expansion of the RRAI's advertising rules. The RRAI Board took the initiative of extending the scope of the advertising rules to ensure compliance with the spirit of the Code. The extended advertising rules are set out in Annex 2 to this Report.

It is important to note that the organisational apparatus of the RRAI is more transparent and more accountable than normal self-regulation or voluntary codes, in the following ways:

- (1) The Code is subject to independent monitoring. An annual independent audit of compliance is carried out nationwide by recognised experts in retail-auditing.
- (2) The operation of the Code is formally subject to Ministerial review on an annual basis, in that I submit an independent annual compliance-report to the Minister for Justice and Equality on foot of the annual audit.

- (3) The annual compliance-report is independent and is not subject to approval by the Board of the RRAI. This is in keeping with the Memorandum of Association of the RRAI, which states that one of the Chairman's principal responsibilities is to generate the annual compliance-report, "the content of which is at the discretion of the independent Chairman"; and
- (4) Based on his assessment of compliance with the Code, and taking into account the annual compliance-report submitted to him, the Minister can decide to commence Section 9 or not as he sees fit.

Further information on the RRAI can be seen on its website, [www.rrai.ie](http://www.rrai.ie).

## 3. MEMBERSHIP OF THE RRAI

### 3.1 LIST OF MEMBERS:

In early-2013, five retail-chains joined the RRAI as new Members. The new Members account for approximately 300 mixed trading stores, bringing the total number of RRAI-affiliated stores to approximately 2,594. The new Members are:

- Applegreen;
- Checkout (under the umbrella of Gala);
- Daybreak (under the umbrella of Musgrave);
- Fresh (under the umbrella of BWG Foods); and
- XL (under the umbrella of BWG Foods).

The addition of these new Members represents an important step in the evolution of the RRAI. It illustrates that the RRAI Code has gained further traction and credibility within the mixed trading sector, whereby the overwhelming majority of mixed traders are now signed up to the RRAI Code of Practice.

A full list of participating Members in the RRAI, and their approximate number of licensed stores, is set out in Table 1 opposite. Due to various factors, such as store-closures and store-openings, the precise number of stores in each Member-Group may fluctuate during the course of the year.

The 14 full Members of the RRAI comprise 21 retail-groups. All 21 of these retail-groups were included in the 2013 independent audit of compliance. Between them, the 21 groups account for approximately 2,594 mixed trading stores, which represent the overwhelming majority of the mixed trading stores in Ireland.

The RRAI's Members fund the operation of the company, including the cost of the annual independent audit and the telephone hotline, by way of contributions agreed by the RRAI Board.



**Table 1: RRAI-Members and their approximate number of licensed stores**

Member	Full off-licences*	Wine-only off-licences	Total No. of licensed stores
<b>ADM Londis</b>	86	64	150
<b>Aldi</b>	101	0	101
<b>Applegreen</b>	5	33	38
<b>BWG Foods</b> (Eurospar, Fresh, Mace, Spar, and XL)	274	411	685
<b>Costcutter</b>	40	52	92
<b>Dunnes Stores</b>	93	8	101
<b>Esso</b>	30	5	35
<b>Gala</b> (Gala and Checkout)	19	139	158
<b>Lidl</b>	135	0	135
<b>Marks &amp; Spencer</b>	7	10	17
<b>Musgrave</b> (Centra, Daybreak and SuperValu)	558	245	803
<b>Superquinn</b>	24	0	24
<b>Tesco</b>	145	4	149
<b>Topaz</b>	14	92	106
<b>TOTAL</b>	<b>1,531</b>	<b>1,063</b>	<b>2,594</b>

\*A full off-licence is a licence for the sale of beers, spirits and wines for consumption off the premises. A very small number of RRAI-stores hold a wine-licence and a wholesale beer-licence - for the purposes of this table, such stores are included under the heading of "Full off-licences".

### 3.2 ASSOCIATE-MEMBERSHIP OF THE RRAI:

The RRAI has a number of associate-members, which are independent mixed trading stores that have signed up to the RRAI Code of Practice. The associate-members are currently as follows:

- Giles Brothers, Longwood, Co Meath;
- Letterfrack Country Shop, Connemara, Co Galway;
- Quality Foods Limited, trading as Egans' Fine Foods, Egans' Business Centre, Dargle Road, Bray, Co. Wicklow; and
- Tempside Limited, which operates five stores in the Polonez retail-group, as follows - Athlone, Co. Westmeath; Sligo Town, Co. Sligo; Dundrum, Dublin; Mary Street, Dublin; and Moore Street, Dublin.

Whilst the vast bulk of mixed traders in Ireland are now signed up to the RRAI Code, some independent mixed traders have remained beyond the RRAI's scope. The RRAI continues to seek to engage with such non-affiliated mixed traders, with a view to such retailers joining the RRAI and/or complying with the RRAI Code of Practice. If a strengthened RRAI Code is put on a statutory footing under Section 17 of the Civil Law (Miscellaneous Provisions) Act 2011, then the case for non-affiliated mixed traders to join the RRAI and the ability of the RRAI to encourage greater participation will both be strengthened considerably.

## 4. FIFTH ANNUAL INDEPENDENT AUDIT OF COMPLIANCE

The fifth annual independent audit of compliance was carried out from 22 July to 2 August 2013.

### 4.1 AUDIT METHODOLOGY:

In part 2 of the Explanatory Guidelines of the Code, it is clearly stated that *“the display provisions are the cornerstone of the Code and for this reason, the independent audit and verification system will focus in particular on whether or not the licence-holder is complying with them.”* This emphasis is fully reflected in the design and implementation of the annual independent audit.

The audit has been carried out each year by FMI Ltd., who are specialists in surveys of the retail-trade and were appointed following a tender-process.

I have emphasized both to FMI themselves and to the RRAI Board the independence of FMI in any judgments they make as auditors. However, in any case where a dispute arises between the auditors and a retailer concerning the result of a store in the audit of compliance, I make an independent and objective assessment based on the specific facts of the case.

Eleven questions are measured in the audit of compliance. Question 1 contains four elements, all relating to the in-store display of the A3 Code-poster. A store must pass all of Questions 1 to 7, and at least two out of the remaining four (Questions 8 to 11), in order to pass the audit. If a store fails any single element of Question 1, or any single question among Questions 2 to 7, it automatically fails the audit.

For ease of reference, the audit-form used by FMI in the 2013 audit, and which sets out the eleven variables measured, is illustrated in Table 2 overleaf.

**Table 2: Audit-form used by the auditors in the annual independent audit of compliance, 2013**

Call Information		
Client Ref:	FMIACOP _ _ _ _	
Store Name and Address:	_____	
	_____	
	_____	
Store Contact Name:		
Store Contact Position:		
Date of Visit:		
Time of Visit:		
Tick appropriate size of store before commencing audit:		
Net retail area of over 4,000 Sq Feet / 372 Sq Metres	<input type="checkbox"/>	
Net retail area of up to 4,000 Sq Feet / 372 Sq Metres	<input type="checkbox"/>	
7 Redline Areas for Immediate Pass/Fail		
<b>Q1</b>	(a) Is the <b>Code of Practice document</b> on conspicuous display within the store in A3-size?;	Yes <input type="checkbox"/> No <input type="checkbox"/>
	(b) If the store has a net retail area of over 4,000 square feet / 372 square metres, is there more than one A3 copy of the Code on display?;	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
	(c) Does each copy of the Code display the name and address of the licence-holder?; and	Yes <input type="checkbox"/> No <input type="checkbox"/>
	(d) Does each copy of the Code display the RRAI telephone hotline information? <i>(Parts (a), (c), and (d) must <b>all</b> be scored positively for a store to pass Question 1, along with part (b) where applicable.)</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>Q2</b>	Is the <b>in-store advertising of alcohol-products</b> confined to the area in which alcohol-products are displayed, and <b>not</b> in windows or at other locations where it is intended to be seen from outside the premises?	Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>Q3</b>	Is the <b>display of alcohol-products</b> confined to one part of the premises whereby there is only one alcohol display-area in the premises? <i>(In addition to the main alcohol display-area, alcohol can also be displayed behind the counter for security reasons, but <b>not</b> in a shop-window.)</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>

**Q4** Is the **position of alcohol-products on display**, as far as possible, only in a part of the premises which customers do not have to pass through or by, in order to obtain access to other beverages and food products? Yes  No

*Please tick one of the following options that best describes where the alcohol-products are displayed within the store: (for explanatory purposes)*

- 1. At the entrance to the store
- 2. Directly opposite or facing food or beverage products primarily consumed by children
- 3. Directly opposite or facing fresh food or beverage products (fruit/veg, dairy, meat) or preserved/packaged/frozen food or beverage products
- 4. Towards the middle of the premises
- 5. On a perimeter wall and late in the customer's journey through the store
- 6. At the rear of the premises

**Q5** As far as possible, are **alcohol-products separated** from other beverages and food products? Yes  No

**Q6** Is a copy of the **in-store briefing document for staff-members** held in-store? Yes  No

**Q7** Have all staff-members engaged in the sale and display of alcohol been **briefed on the Code of Practice**? Yes  No

**Remaining 4 Retail Audit Questions**  
*2 of these 4 questions Must be answered Yes to pass overall audit*

**Q8** Can you confirm that alcohol-related advertising materials produced by the retailer and displayed in-store are **not** aimed at minors, do **not** in any way glamorise the consumption of alcohol, and do **not** encourage the excessive consumption of alcohol? Yes  No

**Q9** Are alcohol-products only sold at clearly designated check-out points? Yes  No

**Q10** Are these check-out points or the alcohol display-area monitored by CCTV? Yes  No

**Q11** Is the purchase of alcohol-products at unsupervised self-service checkouts **not** permitted? (*Tick "yes" if the purchase of alcohol at unsupervised self-service check-outs is **not** permitted.*) Yes  No

**Photographs and Comments**

**R** Did you take a photograph of any non-compliance? Yes  No

**Audit Comments:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

## 4.2 AUDIT SAMPLE AND SIZE:

The national sample of audited stores was proportionately allocated to reflect regional, store-category and Member weightings. Within these parameters, FMI selected the stores to be visited at random from their national database of stores.

The practice in the annual audit in recent years has been to audit approximately 15% of the RRAI’s overall number of stores. Given the addition of new Members in 2013, and to maintain this coverage-rate of approximately 15%, a national audit universe of 400 stores was selected in 2013, increased from 361 stores in the 2012 audit. The audit of 400 stores represents 15.42% of the RRAI’s total universe of 2,594 stores.

Of the 400 stores included in the 2013 audit, 183 were multiple-supermarkets (representing 23.40% of Member-stores in that sector), and 217 were convenience-stores (representing 11.98% of Member-stores in that sector).

## 4.3 OUTCOMES OF THE 2013 INDEPENDENT AUDIT OF COMPLIANCE:

The top-line result of the 2013 audit is that 334 stores passed the audit out of 400, and 66 failed, resulting in an overall compliance-rate of 83.50%.

In the multiple-supermarket sector, 174 stores passed out of 183, and 9 failed, giving a compliance-rate of 95.08% in that sector.

In the convenience-store sector, 160 stores passed out of 217, and 57 failed, giving a compliance-rate of 73.73% in that sector.

**Table 3: Overall results in the Annual Independent Audit of Compliance, 2013**

Mixed Trading Sector	No. of Licensed stores of RRAI-Members	No. of stores audited	No. of stores passed	No. of stores failed	Compliance-rate
Multiple-supermarkets	782	183	174	9	95.08%
Convenience-Stores	1,812	217	160	57	73.73%
<b>OVERALL TOTALS</b>	<b>2,594</b>	<b>400</b>	<b>334</b>	<b>66</b>	<b>83.50%</b>

In the multiple-supermarket sector, those scoring 100% compliance were Aldi, Lidl, Marks & Spencer and Fresh. In the convenience-store sector, where management-control can be less direct, particularly good compliance-rates were achieved by Topaz and Applegreen with 100%, Centra with 87.27%, and Londis with 85%. The 2013 overall compliance-rate of 83.50% is lower than the rates of 90.30% scored in 2012, and 85.56% scored in 2011.

The most prominent reasons for stores failing the 2013 annual audit relate to in-store Code-documentation - 25 stores out of 400 (i.e. 6.25%) failed to properly display the in-store A3 Code-poster, whilst 40 out of 400 (i.e. 10%) failed to produce a copy of the in-store briefing document for staff-members. I have asked the Members to place a renewed focus on ensuring that these documentation-issues are resolved.

The provisions that govern the physical display of alcohol-products in-store remain the cornerstone of the RRAI Code. There are three separate but inter-related Code-provisions that govern the physical in-store display of alcohol-products, as follows:

- a) Alcohol-products will be confined to one part of the premises, whereby there can only be one alcohol display-area on the shop-floor (although alcohol-products can also be displayed behind the counter for security reasons, but not in a shop-window). This variable is measured by Q.3 of the annual audit, and 99.50% of the audited stores passed this question;
- b) Alcohol-products will, as far as possible, be displayed only in a part of the premises which customers do not have to pass through or by in order to obtain access to other beverages and food-products. This variable is measured by Q.4 of the annual audit, and 96.25% of the audited stores passed this question;
- c) Alcohol-products will, as far as possible, be separated from other beverages and food-products. This variable is measured by Q.5 of the annual audit, and 95.25% of the audited stores passed this question.

**Table 4: Results re. the physical in-store display of alcohol-products - Questions 3 to 5 of the Annual Independent Audit of Compliance, 2013**

Audit-question	No. of stores passed	No. of stores failed	Compliance-rate
<b>Q3</b> Is the <b>display of alcohol-products</b> confined to one part of the premises whereby there is only one alcohol display-area in the premises? (In addition to the main alcohol display-area, alcohol can also be displayed behind the counter for security reasons, but not in a shop-window.)	398 out of 400	2 out of 400	99.50%
<b>Q4</b> Is the <b>position of alcohol-products on display</b> , as far as possible, only in a part of the premises which customers do not <b>have</b> to pass through or by, in order to obtain access to other beverages and food products?	385 out of 400	15 out of 400	96.25%
<b>Q5</b> As far as possible, are <b>alcohol-products separated</b> from other beverages and food products?	381 out of 400	19 out of 400	95.25%

More detailed outcomes of the annual independent audit of compliance are shown in Annex 3 for each of the eleven variables in respect of (a) the multiple-supermarket sector and (b) the convenience-store sector.

## 5. OTHER ASPECTS OF THE IMPLEMENTATION OF THE RRAI CODE OF PRACTICE

### 5.1 COMPLAINTS RECEIVED DURING THE 12-MONTH PERIOD FROM OCTOBER 2012 TO END-SEPTEMBER 2013:

During the period the subject of this compliance-report, 50 complaints were processed by the RRAI. Just over half of the processed complaints came from RRAI-members or internal RRAI-sources, and the remainder came from external sources.

Of the 50 complaints processed, 47 related to alleged breaches of the Code, and 3 related to licensing law issues, namely proof of age, the permitted trading hours for the sale of alcohol, and the alleged sale of alcohol without a licence. Complaints regarding licensing law issues were handled by the RRAI Executive. It is important to stress that in the case of any complaint alleging a licensing law offence, the RRAI Executive informed the complainant that this is a legal matter which falls outside the RRAI's remit, and that the appropriate authority to investigate any such alleged incident is An Garda Síochána.

The 47 Code-related complaints were considered by me and in the vast majority of instances, the Member involved swiftly agreed to rectify the relevant breach of the Code and/or to prevent a recurrence. Following examination of the relevant facts, 7 of the 47 Code-related complaints were not upheld.

It is worth noting that the number of complaints made (both internal and external) and upheld has fallen sharply over the past twelve months compared with previous twelve-month periods.

Further details on the complaints that were processed can be seen in Tables 5 and 6 opposite.



Table 5: Statistics on complaints processed, broken down by source of complaint

Source of Complaint	No. of complaints / October '09 to September '10	No. of complaints / October '10 to September '11	No. of complaints / October '11 to September '12	No. of complaints / October '12 to September '13
<b>External</b>	28	36	35	22
<b>Internal</b> (from within the RRAI)	30	91	57	28
<b>Total</b>	<b>58</b>	<b>127</b>	<b>92</b>	<b>50</b>

Table 6: Statistics on complaints processed, broken down by nature of complaint

Nature of Complaint	No. of complaints / October '09 to September '10	No. of complaints / October '10 to September '11	No. of complaints / October '11 to September '12	No. of complaints / October '12 to September '13
<b>Merchandising</b> (i.e. in-store display of alcohol)	24	82	58	29
<b>In-store display of the Code document</b>	3	1	1	1
<b>In-store signage at tills</b>	-	1	-	-
<b>Advertising/ marketing of alcohol</b>	32	36	28	17
<b>Total Code-related Complaints</b> (one complaint covered 2 items)	<b>58</b>	<b>120</b>	<b>87</b>	<b>47</b>
<b>Complaints re. licensing law issues</b>	-	7	5	3
<b>TOTAL</b>	<b>58</b>	<b>127</b>	<b>92</b>	<b>50</b>

## 5.2 STATISTICS ON GENERAL ENQUIRIES RECEIVED THROUGH THE TELEPHONE HOTLINE:

The RRAI telephone hotline is also used to receive general enquiries both from members of the public and from RRAI-affiliated retailers, and it has proven to be a useful tool in that regard. In the 12-month period the subject of this report, as well as receiving a number of complaints through its hotline (which are incorporated within the aforementioned complaints-statistics), the RRAI also received and processed 45 hotline-queries.

## 5.3 INTERNAL RRAI SANCTIONS-POLICY:

Pending the enactment of a statutory Code of Practice under Section 17 of the Civil Law (Miscellaneous Provisions) Act 2011, the RRAI Board sought to put additional mechanisms in place in 2012, to provide for effective and proportionate sanctions against any individual Member-stores or Member-Groups that repeatedly breach the best practice inherent in the Code.

Accordingly, in 2012, the RRAI Board introduced an internal sanctions-policy that could be feasible under existing legislation. The potential sanctions agreed upon include the expulsion of a Member-Group or an individual store from the RRAI, objections to the renewal of a liquor licence or to the granting of a new licence using the legal mechanisms currently available, and the public naming and shaming of those deemed culpable of persistent, repeated, or systemic serious breaches of the RRAI Code.

The RRAI's sanctions-policy has been made available to the public and can be seen in full on the RRAI's website at [http://www.rrai.ie/RRAI\\_Sanctionspolicy/Default.120.html](http://www.rrai.ie/RRAI_Sanctionspolicy/Default.120.html). It is also included herein as Annex 4 to this Report.

## 5.4 OBJECTING TO LICENCE-RENEWALS:

The RRAI has continued to seek to engage with independent mixed traders who are not Members, with a view to such retailers joining the RRAI and/or complying with the RRAI Code of Practice.

In the absence of a statutory Code for the time being, the RRAI Board has considered what action it can take under the existing legal framework, in circumstances where non-affiliated retailers decline to engage with the RRAI and persistently commit serious breaches of good practice in the display and promotion of alcohol-products.

In one particular case in September 2013, due to the seriousness of the matter, the RRAI Board issued a notice of objection to the renewal of the liquor licences attaching to an independent mixed trading store that is not affiliated to the RRAI.

## 6. OVERALL JUDGEMENT ON COMPLIANCE

The overall compliance-rate of 83.50% in this year's audit is lower than the rate of 90.30% achieved in 2012, and the rate of 85.56% achieved in 2011. In the 2013 audit, the multiple-supermarket sector had a compliance rate of 95.08%, and the convenience-store sector compliance-rate was 73.73%.

The most prominent causes of failure in this year's audit relate to in-store Code-documentation, particularly in the convenience-store sector. It is worth bearing in mind that the RRAI Member-Groups have far less direct control over the management and operation of convenience-stores, which are independently owned for the most part. Nevertheless, these documentation-issues are a matter of concern. I have raised this with the RRAI Board, and have formally requested that relevant Members take corrective action to address the issue.

Whilst the RRAI Code of Practice has many different components, the provisions on the physical display of alcohol-products form the cornerstone of the Code. In the 2013 audit, the compliance-rates for those provisions were extremely high in both the multiple-supermarket and convenience-store sectors. The audit contains three key questions on the physical display of alcohol-products, and in this year's audit, the overall compliance-rate for each of these three questions ranged from 95.25% to 99.50%.

Taking the above into account, my assessment as Independent Chairperson is that the overall compliance-rate of 83.50% in this year's audit is acceptable and that overall, the RRAI's Members continue to be firmly committed to the Code.

As a whole, the complaint-mechanisms operated effectively during the past year. In most cases, where issues were raised regarding specific stores or advertisements, the relevant RRAI-member responded promptly and in a positive manner. As alluded to earlier, it is also noteworthy that the number of complaints dropped significantly over the past year.

In addition, it is worth noting that one of the most visible manifestations of the Code-restraints is the rule on newspaper-advertisements for Members, whereby a maximum of 25% of the core advertising-space can be allocated to alcohol-products within any single advertisement. There is now almost universal compliance by RRAI-Members with this restriction.

The RRAI's telephone hotline also continued to provide a useful channel of communication for members of the public and retailers alike, both for lodging complaints and for submitting enquiries about the Code.

My overall conclusion is that the RRAI's Members have continued to implement the key components of the Code in a satisfactory manner over the past year.

## 7. OBSERVATIONS ON POLICY-RELATED MATTERS

### 7.1 PROPOSALS FOR A STRENGTHENED AND STATUTORY RRAI CODE OF PRACTICE UNDER SECTION 17 OF THE CIVIL LAW (MISCELLANEOUS PROVISIONS) ACT 2011:

#### 7.1.1 Dialogue with the Minister for Justice and Equality and his Department -

During the course of 2012 and 2013, the RRAI has engaged in constructive and detailed dialogue with the Minister for Justice and Equality and his Department regarding the RRAI's proposals for the strengthening of its Code, which would form the basis for a statutory Code of Practice under Section 17 of the Civil Law (Miscellaneous Provisions) Act 2011.

Section 17 provides a mechanism to give statutory backing to a code of practice, whereby non-compliance by a retailer with an approved Code could provide grounds on which the Gardaí would object to the renewal of that retailer's liquor licence. The RRAI is firmly committed to co-operating with An Garda Síochána in respect of objections to licence-renewals under any such statutory Code. I note that the drafting of any such statutory Code would be subject to a consultation-process, at the discretion of the Minister for Justice and Equality.

The RRAI attended meetings with Minister Alan Shatter T.D. and representatives from the Department of Justice and Equality in June 2012 and again in February 2013, to discuss the RRAI's proposals for a strengthened Code of Practice with statutory backing under Section 17. A decision by the Minister and Government is awaited.

#### 7.1.2 RRAI-Members' position on a strengthened statutory Code of Practice -

The RRAI-Members' position is that a statutory Code under Section 17 is required to act as a deterrent against non-compliance, to provide a greater incentive to all mixed traders to sign up to the Code, and to punish the few who commit persistent serious breaches of the Code. The RRAI firmly welcomed the enactment of Section 17, and had in fact canvassed for the introduction of such legislation for a number of years.

The RRAI's Members are opposed to the commencement of Section 9 of the Intoxicating Liquor Act, 2008. They view it as a blunt instrument which should not be used to address the low levels of non-compliance with the RRAI Code. Their belief is that a statutory Code would be the most effective and proportionate mechanism for penalising the rare individual outlets or Members who might persistently - and possibly blatantly - commit serious breaches of the best practice inherent in the RRAI Code.

In addition, the RRAI's members would re-iterate that it is a major strength of the RRAI Code that stores with wine-only licences are included within its Code-structure. Out of the RRAI's total number of approximately 2,594 mixed trading stores, an estimated 1,063 stores hold wine-only licences. Under the wording of Section 9 of the 2008 Act, such stores effectively have a dispensation from the requirements of structural separation. The RRAI's members argue that a statutory Code under Section 17 of the 2011 Act would actually deliver more than the commencement of Section 9, in that a statutory Code would include stores with wine-only licences within its remit, whereas such stores would not be bound by any legal restriction under Section 9.

If a decision is made to implement a strengthened and statutory RRAI Code of Practice, it is desirable that mixed traders be afforded a transitional period to enable them to undertake any necessary re-formatting of their stores before the new regime comes into effect.

## 7.2 STATUTORY CODE OF PRACTICE FOR THE STAND-ALONE OFF-LICENCE SECTOR:

In its Report published in February 2012, the Steering Group on a National Substance Misuse Strategy recommended that a statutory code of practice on the sale of alcohol be introduced in the off-licence sector (i.e. specialist or stand-alone off-licences). The Group recommended that the Department of Health should have responsibility for implementing such a Code. The RRAI Board would urge the Department of Health to introduce a Code for the stand-alone off-licence sector and for that Code to be put on a statutory footing.

Over the past number of years, the RRAI has received a number of queries from members of the public about alcohol-advertising by stand-alone off-licences. As stand-alone off-licences are not Members of the RRAI, they are not subject to the RRAI Code. For example, whilst the RRAI Code prohibits the advertising of alcohol-products in shop-windows or internal locations intended to be seen from outside the premises, there is currently no such restriction placed on stand-alone off-licences.

In July 2013, I received correspondence from a member of the public raising concerns about the advertising of alcohol-products in the shop-window of a particular stand-alone off-licence premises. Given the Steering Group's recommendation, and with the consent of the citizen in question, I have copied the correspondence to the Minister of State at the Department of Health, Mr. Alex White T.D., for his consideration. Minister White's Office has acknowledged receipt of this correspondence.

### 7.3 PROOF OF AGE:

As highlighted in previous compliance-reports, a Garda Age Card is the only identification accepted in law as a defence where a licence-holder is prosecuted for the sale of alcohol to a person under the age of 18 years.

The RRAI Board remains concerned that a statutory anomaly continues to exist, whereby other forms of identification are acceptable under licensing law as proof of age in one instance (i.e. where 18-21 year-olds need to prove their age when in the bar of a licensed premises after 9.00pm), yet they are not acceptable in law as proof of age regarding the purchase of alcohol.

The RRAI's Members re-iterate that this continues to cause them difficulties in-store, particularly when foreign tourists seek to buy alcohol, that the current law is discriminatory towards foreign tourists, that there is inconsistency within the current law on proof of age, and that this needs to be addressed as a matter of urgency.

## ANNEX 1: THE VOLUNTARY CODE AND EXPLANATORY GUIDELINES

### RRAI CODE OF PRACTICE:

#### **Display of Alcohol**

Alcohol products will, as far as possible, be displayed only in a part of the premises through which customers do not have to pass in order to obtain access to other beverages and food products (except where, for security reasons, such products are displayed behind the counter but not in a window).

Alcohol products will be confined to that one part of the premises and will, as far as possible, be separated from other beverages and food products.

#### **Advertising**

In-store advertising of alcohol products is confined to the area in which they are displayed and will not be placed in windows or at internal locations where it is intended to be seen from outside the premises.

Advertising materials produced by retailers will not be aimed at minors and will not seek to glamorise alcohol consumption or encourage excessive consumption.

#### **Sale of Alcohol**

The sale of alcohol products is permitted only between 10.30am and 10.00pm on weekdays & Saturdays and between 12.30pm and 10.00pm on any Sunday or St. Patrick's Day (sales are not permitted on Christmas Day and Good Friday). Alcohol products will be sold only at clearly designated check-out points by persons over the age of 18 years. Check-out points at which alcohol products are sold, or alternatively the display area, will be monitored by CCTV. The sale of alcohol products by unsupervised self-service means is not permitted. The sale of alcohol products on a "pay-on-delivery" basis is not permitted.

#### **Proof of Age**

Production of a proof-of-age document will be demanded in all cases where the customer appears to be under the age of 21 years or otherwise where there is a doubt about his or her age.

The Garda Age Card is the preferred proof-of-age document.

#### **Staff Training**

Licence holders will ensure adequate training of staff members engaged in the sale of alcohol products and, in particular, that such staff members have an adequate knowledge and understanding of relevant areas of licensing law.

#### **Independent Audit**

Compliance with this Code of Practice is subject to independent audit and verification on an annual basis. The Code will be up-dated from time to time.

### Complaints Procedure

Complaints regarding implementation of this Code should, in the first instance be made to the licence holder named below, or to the Store Manager and if this does not result in a successful resolution, then to:

The Chairman

Responsible Retailing of Alcohol in Ireland (RRAI)

84-86 Lower Baggot Street, Dublin 2

or by email to: [chairman@rrai.ie](mailto:chairman@rrai.ie)

or call the RRAI's 24-hour telephone hotline on **free-phone 1800 84 80 80**.

Name and address of licence holder: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### EXPLANATORY GUIDELINES OF THE RRAI CODE OF PRACTICE:

#### Background

Section 9 of the Intoxicating Liquor Act 2008 provides for the structural separation of alcohol products from other beverages and food products in premises which are engaged in mixed trading, such as supermarkets, convenience stores and petrol stations. This Code of Practice for the display and sale of alcohol products in mixed trading premises is intended to achieve the policy objectives of section 9 of the 2008 Act on a voluntary basis. The Code provides for an independent audit and verification mechanism to oversee compliance and the provision of an annual report on its implementation to the Minister for Justice, Equality and Law Reform.

This Code of Practice has been drawn up by Retail Ireland, the Convenience Stores and Newsagents Association (CSNA) and RGDATA representing the mixed trading sector and the Departments of Justice, Equality and Law Reform, and Health and Children. It represents a commitment by the mixed trading sector to adhere on a voluntary basis to the standards and procedures set out in the Code.

The credibility of the Code depends on the effectiveness of the independent audit and verification system set up to oversee its implementation. If the audit and verification process reveals that implementation of the Code is achieving the goal of structural separation, it may not be necessary to bring section 9 of the 2008 Act into operation. However, if voluntary measures are not successful, the Minister for Justice, Equality and Law Reform has stated that the statutory provisions will be activated.

The basic principle underpinning this Code of Practice is that alcohol is not an ordinary household product despite being sold in many supermarkets, convenience stores and petrol stations. The sale of alcohol products requires a District Court certificate and a licence issued by the Revenue Commissioners. Renewal of the licence is also subject to District Court supervision. Moreover, the conditions of sale and consumption of alcohol is governed by extensive statutory provisions set out in the Licensing Acts 1833 to 2008.



## Contents Of The Code

### 1. DISPLAY OF CODE

All mixed trading premises involved in the display and sale of alcohol must display a laminated copy of the Code in a conspicuous place in the premises. It must contain the name and address of the licence holder of the premises concerned. Display of the Code represents the commitment of the licence holder to implement and abide by its provisions. It also alerts customers to the standards which they are entitled to expect.

### 2. DISPLAY OF ALCOHOL

Under the Code, licence holders commit to displaying alcohol products, (including spirits and spirit based beverages; beer; cider; wine and wine based products), separately from other beverages and food products in one part of the premises. The part of the premises chosen for the display of alcohol should, as far as possible, be such that customers do not have to pass through or by it unless they intend purchasing alcohol products. Ideally, it should be at the rear of the premises. Separate display need not, of necessity, involve a physical wall or other such physical barrier. Cross-merchandising of alcohol with other food products is precluded.

However, while the Code provides that alcohol products must be located in a separate area away from other beverages and food products, it is recognised that certain mixed trading premises specialise exclusively in beverages and food products. For this reason the words 'as far as possible' have been included; in such cases, the licence holder is expected to comply as far as possible with the display provisions. It is also recognised that separation of alcohol products from other beverages and food products may present insuperable difficulties for small premises. Here also, the commitment of the licence holder is to ensure compliance as far as possible with the separation provisions.

In short, it is expected that all mixed trading premises, irrespective of size or level of specialisation, will endeavour as far as possible to implement the separation provisions.

The Code permits the display of alcohol products behind the counter in the interest of security. Alcohol products may not, however, be displayed in the windows of the premises.

The display provisions are the cornerstone of the Code and for this reason, the independent audit and verification system will focus in particular on whether or not the licence holder is complying with them. A failure to implement and abide by these standards may result in activation of section 9 of the 2008 Act.

### **3. ADVERTISING**

The Code provides that in-store advertising of alcohol products is confined to the area in which such products are displayed. Advertising materials should not, therefore, be placed in windows or at internal locations where they are intended to be seen from outside the premises. Moreover, advertising materials produced by retailers should not seek to glamorise alcohol, or encourage excessive consumption, and should not be directed at minors.

As a complementary measure, the mixed trading sector has given a commitment that any advertisement published in newspapers or magazines must devote at least 75% of any such advertisement to products other than alcohol. This commitment does not apply to a retailer's own publications or to trade magazines. In addition, the sector undertakes not to commission any alcohol-only radio or television advertising.

### **4. SALE OF ALCOHOL**

The law specifies that off-sales of alcohol are permitted only between 10.30a.m. and 10.00p.m. from Monday to Saturday and between 12.30p.m. and 10.00p.m. on any Sunday or St Patrick's Day (such sales are not permitted at all on Christmas Day and Good Friday). These details are included in the Code for the information of the public and for the convenience of sales staff in dealing with customers. It is advisable to block alcohol sales at cash registers outside of these times.

Alcohol products may be sold only at clearly designated check-out points by persons over the age of 18 years. Check-out points at which alcohol products are sold, or the display area, will be monitored by CCTV as an aid to enforcement of the statutory provisions prohibiting the sale of alcohol to persons under 18 years of age.

Unsupervised self-service purchases of alcohol are not to be permitted. In the case of 'on-line' purchases of alcohol products, it is a requirement that the customer pays for alcohol at the time of placing the order. Payment on delivery of alcohol products is an offence under licensing law. Moreover, the control systems in place for delivering alcohol products purchased and paid for in advance must include a verification mechanism to ensure that alcohol is not being sold and delivered to persons under 18 years of age.

The inclusion of these provisions regarding the sale and delivery of alcohol are intended to assist licence holders to comply with existing law.

### **5. PROOF OF AGE**

It is an offence to sell or deliver alcohol to a person under 18 years of age. Where a customer appears to be under the age of 21 years, or where there is a doubt about his or her age, staff members should seek confirmation of the customer's age. The Garda Age Card is the preferred proof-of-age document for this purpose.

## 6. STAFF TRAINING

It is important that staff involved in the sale of alcohol products have an adequate knowledge and understanding of relevant areas of licensing law, particularly those relating to the sale and delivery of alcohol to persons under 18 years. The Code commits licence holders to ensuring that staff members are adequately trained in these matters. A training manual has been prepared by the mixed trading sector to assist licence holders in this regard. Compliance with the training commitments in the Code reflects good practice in the sector.

## 7. INDEPENDENT AUDIT

An independent body selected by the representative bodies of the mixed trading sector will monitor implementation of the Code and report to a Director appointed by the sector with the agreement of the Minister for Justice, Equality and Law Reform. The Director will submit an annual compliance report to the Minister.

## 8. COMPLAINTS MECHANISM

The Code contains provision for a complaints mechanism which will permit customers to lodge complaints where it appears that the Code's provisions are not being implemented. It is envisaged that complaints may be resolved locally in consultation with the licence holder or be submitted to the Director. For this reason, the copy of the Code on display must contain contact details of the licence holder and the body responsible for monitoring the implementation of the Code.

### **Implementation**

The Code is effective 1 December 2008 and applies to all premises with off-licences which are engaged in mixed trading. These guidelines expand on some of the standards which are set out in the Code and are intended to give practical guidance for their application. They should be read in conjunction with the Code of Practice for the Sale and Display of Alcohol Products in Mixed Trading Premises.

## ANNEX 2: CONSOLIDATED VERSION OF THE RRAI'S EXTENDED ADVERTISING RULES

### RRAI ADVERTISING RULES

#### 1. EXTRACT FROM THE RRAI CODE OF PRACTICE:

**"Advertising:** In-store advertising of alcohol products is confined to the area in which they are displayed and will not be placed in windows or at internal locations where it is intended to be seen from outside the premises. Advertising materials produced by retailers will not be aimed at minors and will not seek to glamorise alcohol consumption or encourage excessive consumption."

#### 2. EXTRACT FROM THE EXPLANATORY GUIDELINES OF THE RRAI CODE OF PRACTICE:

**"Advertising:** The Code provides that in-store advertising of alcohol products is confined to the area in which such products are displayed. Advertising materials should not, therefore, be placed in windows or at internal locations where they are intended to be seen from outside the premises. Moreover, advertising materials produced by retailers should not seek to glamorise alcohol, or encourage excessive consumption, and should not be directed at minors.

As a complementary measure, the mixed trading sector has given a commitment that any advertisement published in newspapers or magazines must devote at least 75% of any such advertisement to products other than alcohol. This commitment does not apply to a retailer's own publications or to trade magazines. In addition, the sector undertakes not to commission any alcohol-only radio or television advertising."

#### 3. MEMBERS' DECISIONS TO TOUGHEN CODE-PROVISIONS ON ADVERTISING AND MARKETING:

*(as set out on pages 16 and 17 of the RRAI Independent Chairperson's Third Annual Compliance Report, 30 September 2011).*

Over time, in the course of implementing the Code, and as certain practical queries on compliance arose, the RRAI Board took a series of decisions to toughen its advertising rules. These decisions were taken in the interests of consistency with the letter and spirit of the original Code, as follows:

##### **(a) Revised Print-Advertising Commitments:**

In respect of advertisements which members place in newspapers and magazines, the Code commits members to devoting at least 75% of any such advertising space to products other than alcohol.

Alternatively, alcohol products should not constitute over 25% of any such advertisement. (This can be summarised as the "25% alcohol/75% non-alcohol" advertising rule.)

Over time, certain ambiguities emerged in the practical application of these provisions. As a result, the RRAI's members decided to adopt a more detailed formulation in respect of print advertising in the interests of uniform compliance. The detailed formulation is as follows:

*“Any advertisement published in newspapers and magazines must devote at least 75% of any such core advertising space, exclusive of corporate borders, to products other than alcohol, with no more than 25% of such relevant core advertising space exclusive of corporate borders, being allocated to alcohol products. In any spacing calculation, products have to be allocated their full and proper proportion of space.”*

The Code specifically excludes retailers' own publications or trade magazines from this restriction. The Code also prohibits mixed trading retailers from commissioning any alcohol-only radio or TV advertising. As mentioned in my Compliance-Report last year (i.e. 2010), the Board of the RRAI took the initiative of extending the scope of these advertising restrictions in the interest of enhancing the effectiveness and credibility of the Code. The RRAI Board decided to extend the “25% alcohol/75% non-alcohol” advertising rule to other media such as newspaper inserts, outdoor advertising billboards, bus advertisements and bus shelter advertising, as set out below.

#### **(b) Newspaper Inserts, Supplements, Flyers and Mail-Shots:**

The RRAI agreed that all inserts and supplements should allocate no more than 25% of space to alcohol products and that at least 75% of space be devoted to products other than alcohol. These spacing provisions apply to the entirety of the insert or supplement. The RRAI also agreed that all flyers and mail-shots produced by members should allocate no more than 25% of space to alcohol products and that at least 75% of space be devoted to products other than alcohol. These spacing provisions apply to the entirety of the flyer or mail-shot.

#### **(c) Outdoor Advertising:**

The RRAI agreed the following commitments regarding outdoor advertising:

- Any advertisement on billboards, buses or in bus shelters must devote at least 75% of any such core advertising space, exclusive of corporate borders, to products other than alcohol, with no more than 25% of such relevant core advertising space, exclusive of corporate borders, being allocated to alcohol products. In any spacing calculation products have to be allocated their full and proper proportion of space.
- No billboard or bus shelter advertising featuring alcohol will be placed within 100 metres of a primary or secondary school or a premises that is on the list of designated youth sites drawn up by the Department of Health & Children. This is consistent with agreements made between the outdoor media association and the Department of Health & Children and is the current practice of providers used by the RRAI's member-groups.

#### (d) Broadcast-Advertising:

The Code stipulates that the RRAI's members undertake not to commission any alcohol-only radio or television advertising. To avoid ambiguity, the RRAI Board agreed that any advertisements featuring alcohol products commissioned by its members and broadcast on radio or television would apply the following principles:

- Exclusive of corporate introductions, the alcohol products should not exceed 25% of the net time available for products featured. It was also agreed that 75% of the net time available for featured products would feature product(s) other than alcohol.
- For example, in a standard 20 second radio advertising slot where 5 seconds was used at the beginning or end of the advert for corporate content leaving 15 seconds net time available for product advertising, the time allocated to alcohol products should not exceed 25% of that 15 second period, equivalent to a maximum duration of 3.75 seconds.
- As the minimum practical advertising slot for alcohol within an advert is three seconds, the timing restrictions do not apply below this three-second threshold.
- In 2011, in consultation with the Alcohol Marketing Communications Monitoring Body, the RRAI Board agreed that alcohol-related advertising for RRAI-members should not be broadcast during "family breakfast time", which runs from 6:00am to 10:00am daily. This mirrors the existing broadcasting industry codes, which already prohibit the broadcast-advertising of alcohol during family breakfast time. As RRAI-members do not have direct control over broadcasters' advertising schedules, the onus is on the broadcasters themselves to ensure that this rule is adhered to, but RRAI-members nonetheless support the principle that alcohol-related advertising should not be broadcast during family breakfast time.

## ANNEX 3: RESULTS OF THE RRAI ANNUAL INDEPENDENT AUDIT OF COMPLIANCE 2013 BY MULTIPLE-SUPERMARKET SECTOR AND CONVENIENCE-STORE SECTOR

Retail Audit Question/Variable Measured	Multiple-supermarket Compliance	Convenience-store Compliance
<p><b>Q1</b> (a) Is the Code of Practice document on conspicuous display within the store (in A3 size)?</p> <p>(b) If the store has a net retail area of over 4,000 sq feet, is there more than one A3 copy of the Code on display?</p> <p>(c) Does each copy of the Code display the name and address of the licence-holder?</p> <p>(d) Does each copy of the Code display the RRAI telephone hotline information?</p>	<p>98.91%</p> <p>99.45%</p> <p>100%</p> <p>99.45%</p>	<p>94.01%</p> <p>100%</p> <p>93.55%</p> <p>92.17%</p>
<p><b>Q2</b> Is the in-store advertising of alcohol-products confined to the area in which alcohol products are displayed, and not in windows or at other locations where it is intended to be seen from outside the premises?</p>	<p>100%</p>	<p>99.08%</p>
<p><b>Q3</b> Is the display of alcohol-products confined to one part of the premises whereby there is only one alcohol display-area in the premises? <i>(In addition to the main alcohol display-area, alcohol can also be displayed behind the counter for security reasons, but <b>not</b> in a shop-window.)</i></p>	<p>100%</p>	<p>99.08%</p>
<p><b>Q4</b> Is the position of alcohol-products on display, as far as possible, only in a part of the premises which customers do not have to pass through or by, in order to obtain access to other beverages and food products?</p>	<p>97.81%</p>	<p>94.93%</p>
<p><b>Q5</b> As far as possible, are alcohol-products separated from other beverages and food products?</p>	<p>98.91%</p>	<p>92.17%</p>
<p><b>Q6</b> Is a copy of the in-store briefing document for staff-members held in-store?</p>	<p>99.45%</p>	<p>82.03%</p>
<p><b>Q7</b> Have all staff-members engaged in the sale and display of alcohol been briefed on the Code of Practice?</p>	<p>100%</p>	<p>97.70%</p>

Retail Audit Question/Variable Measured - <i>continued</i>	Multiple- supermarket Compliance	Convenience- store Compliance
<b>Q8</b> Can you confirm that alcohol-related advertising materials produced by the retailer and displayed in-store are not aimed at minors, do not in any way glamorise the consumption of alcohol, and do not encourage the excessive consumption of alcohol?	100%	100%
<b>Q9</b> Are alcohol-products only sold at clearly designated check-out points?	86.89%	75.12%
<b>Q10</b> Are these check-out points or the alcohol display-area monitored by CCTV?	100%	100%
<b>Q11</b> Is the purchase of alcohol-products at unsupervised self-service checkouts not permitted? <i>(Tick “yes” if the purchase of alcohol at unsupervised self-service check-outs is <b>not</b> permitted).</i>	100%	100%

If a member-store failed any part of Question 1, or any of Questions 2 to 7, the store failed the audit.

In relation to the remaining four variables (Questions 8-11 inclusive), where compliance required satisfying at least two of the four questions, there was no instance of failing the audit on these four questions.



## ANNEX 4: RRAI SANCTIONS-POLICY

### SANCTIONS-POLICY AGAINST MEMBER GROUPS OR MEMBER-STORES THAT ARE IN BREACH OF THE RRAI CODE OF PRACTICE

#### 1. DEFINITIONS:

In this document:

The term “**Code of Practice**” shall encompass the RRAI code of practice and its explanatory guidelines, and the RRAI’s advertising rules (which extend beyond the literal wording of the code and its explanatory guidelines); and

The term “**serious breach**” is restricted to breaches relating to:

- (a) the in-store merchandising or display of alcohol-products, and
- (b) the advertising of alcohol-products,

and excludes breaches relating to in-store code-documentation.

Examples of what constitutes a “**serious breach**” include but are not limited to the following:

- (a) having more than one display-area for alcohol-products on the shop-floor (although alcohol-products can in addition be displayed behind the shop-counter, for security reasons, but not in a shop-window);
- (b) displaying alcohol-products directly opposite or facing other beverages or food-products, whereby customers cannot get access to those other beverages or food-products without passing through or by alcohol-products (*although the “as far as possible” qualification may apply in limited circumstances*);
- (c) displaying alcohol-products directly adjacent to other beverages or food-products (*again, the “as far as possible” qualification may apply in limited circumstances. In addition, the display of alcohol-products back-to-back with other beverages or food-products, or at ninety degrees to other beverages or food-products, can be acceptable*);
- (d) in larger stores with a net retail area of over 4,000 square feet / 372 square metres, displaying alcohol-products within 0.8m of other beverages or food products along a wall, aisle, or row of shelving (*once again, the “as far as possible” qualification may apply in limited circumstances, and the display of alcohol-products back-to-back with other beverages or food-products, or at ninety degrees to other beverages or food-products, can be acceptable*);

- (e) the cross-merchandising of alcohol-products with other beverages or with food-products;
- (f) displaying an advertisement for any alcohol-products in the shop-window or at an internal location whereby it is intended to be seen from outside the store;
- (g) placing an advertisement in a newspaper, where the amount of space allocated to alcohol-products represents more than twenty-five per cent of the total core-advertising space allocated to products within that advertisement - e.g. placing an alcohol-only advertisement in a newspaper; and
- (h) placing an advertisement on radio or television, where the amount of time allocated to alcohol-products represents more than twenty-five per cent of the net time available for products featured within that advertisement - e.g. placing an alcohol-only advertisement with a radio station. As the minimum practical advertising slot for alcohol-products within a broadcast-advertisement is three seconds, the timing restrictions will not apply below this three-second threshold.

## **2. UPON WHOM MAY SANCTIONS BE IMPOSED, AND IN WHAT CIRCUMSTANCES?**

### **2.1 DISTINCTION BETWEEN DIFFERENT TYPES OF MEMBER:**

A distinction is to be drawn between:

- (a) Member Groups with direct managerial control over their mixed trading stores; and
- (b) Member Groups made up of independently-operated mixed trading stores, where the Member Groups in question do not have direct managerial control over the stores concerned.

### **2.2 MEMBER GROUPS WITH DIRECT MANAGERIAL CONTROL OVER THEIR MIXED TRADING STORES:**

The policy is to impose sanctions against any Member Group with direct managerial control over their mixed trading stores in any of the following cases:

- (a) Where a Member Group (or any of its stores) commits persistent and/or repeated serious breaches of the Code of Practice over a period of time. The bona fides of the Member Group or store(s) in question will be taken into account; or
- (b) Where a Member Group engages in a systemic serious breach of the Code of Practice across a significant number of its stores in a concentrated period, typically during a holiday-weekend or holiday-period; or
- (c) Where a Member Group fails to pay its subscription due to the RRAI in full by the absolute cut-off date agreed by the Board in any given year.

### 2.3 MEMBER GROUPS MADE UP OF INDEPENDENTLY OPERATED MIXED TRADING STORES:

#### 2.3.1 Sanctions against an individual mixed trading store

Where an independently-operated mixed trading store (within a Member Group) commits persistent and/or repeated serious breaches of the Code of Practice over a period of time, the policy is to impose sanctions against the store itself. The bona fides of the store in question will be taken into account.

#### 2.3.2 Sanctions against a Member Group

The policy is to impose sanctions against a Member Group made up of independently-operated mixed trading stores in any of the following cases:

- (a) Where the number of stores, within a Member Group, that commit persistent and/or repeated serious breaches of the Code of Practice over a period of time represents two per cent (2%) or more of that Member Group's total number of mixed trading stores. The bona fides of the Member Group in question will be taken into account; or
- (b) Where a systemic serious breach of the Code of Practice occurs across a significant number of a Member Group's mixed trading stores in a concentrated period, typically during a holiday-weekend or holiday-period; or
- (c) Where a Member Group fails to pay its subscription due to the RRAI in full by the absolute cut-off date agreed by the Board in any given year.

### 3. WHAT SANCTIONS MAY BE IMPOSED?

#### 3.1 DEBT-RECOVERY PROCEEDINGS:

Where a Member Group fails to pay its due subscription in full by the absolute cut-off date agreed by the Board in any given year, the Chairperson may write a formal letter to that member indicating that legal proceedings will commence if full payment is not received by the RRAI within a certain time-frame.

Should the subscription or any portion thereof remain unpaid after the deadline set out in the Chairperson's letter, legal proceedings may be instigated against the Member Group concerned for the recovery of the lawful debt due to the RRAI.

The RRAI may also seek to recover its costs for any such legal proceedings from the Member Group against whom the proceedings are taken.

### **3.2 EXPULSION OF A NON-COMPLIANT MEMBER GROUP, AND REMOVAL OF THEIR REPRESENTATIVE(S) FROM THE BOARD OF DIRECTORS:**

The RRAI Board may consider expelling any Member Group for serious breaches of the Code of Practice under headings 2.2 and 2.3.2 above.

Under Article 5 of the Articles of Association of Responsible Retailing of Alcohol in Ireland Limited (“the Company”, and/or “the RRAI”), the membership of any Member may be terminated at the Directors’ discretion. Any decision to terminate a membership is subject to the voting requirements set out in Article 61 of the Articles of Association.

Article 61 sets out the Company’s internal rules on voting at board meetings, whereby any questions voted upon require a two-thirds majority in order to be passed.

In addition, Articles 50 and 55 provide the mechanisms for removing a Director of an expelled Member from office. Under Article 50.7, the office of Director shall be vacated if a Director is required in writing by all his co-Directors to resign. Under Article 55, the Company may remove a Director by way of ordinary resolution (provided extended notice of that resolution has been given). Any appointment of an alternate Director automatically comes to an end once the appointer ceases to be a Director.

### **3.3 OBJECTIONS TO THE RENEWAL OF THE LICENCES AND/OR TO THE LICENCE-APPLICATIONS OF NON-COMPLIANT MEMBERS:**

Objections to the granting of new licences or to the renewal of existing licences are heard in the District Court.

The main objects clause in the Memorandum of Association of the RRAI is to encourage, oversee, promote and verify compliance with the Code of Practice. In addition, there is a specific provision within the objects clause to permit, enable and empower the RRAI to formally object, either through the relevant department of Customs and Excise or the relevant Court, to the renewal and/or granting of any intoxicating liquor licence attaching to or to attach to any premises of any Member of the RRAI and/or of any non-member.

Furthermore, again under its objects clause, the RRAI may, at its discretion, involve, notify, co-operate with and/or assist the relevant Superintendent of An Garda Síochána (or such other competent authority) in any objections to the renewal or granting of any intoxicating liquor licence.

**(a) Objection to the renewal of an existing off-licence of a non-compliant member -**

Under the District Court Rules, an objection to the renewal of an off-licence must be made at the Annual Licensing Court for the Court area that the relevant off-licence is situated in. Annual Licensing Courts take place in September in District Courts nationwide.

The Civil Law (Miscellaneous Provisions) Act 2011 became law on 17 June 2011. Section 17 thereof provides for formal approval by the Minister for Justice and Equality of a code or codes of practice to regulate the display, sale, supply, advertising, promotion and marketing of alcohol. Any code of practice that is formally adopted can apply to a chosen class or classes of intoxicating liquor, class or classes of licensed premises, or type of licence. A licence-holder who is not compliant with an applicable approved code may face objections to the renewal of their liquor licence on the grounds of character. The RRAI is engaging with the Department of Justice and Equality on the inclusion of the key elements of its voluntary code within any formally approved code that would apply to mixed trading off-licences.

Under statute-law, including the Civil Law (Miscellaneous Provisions) Act 2011, the Superintendent of the Garda Síochána for the licensing area in which an off-licence is located is the only statutory objector to the renewal of that licence. The RRAI has engaged positively with the Gardai in the past regarding objections on the grounds of character. It will renew its previous contacts at Commissioner-level, with a view to full co-operation by the Gardai in any such objections-process.

The RRAI may also send a warning letter to any mixed trading store that persistently or repeatedly commits serious breaches of the Code of Practice. The warning letter will advise the store in question that unless it rectifies existing serious breaches and refrains from further serious breaches, the RRAI may formally recommend to the Gardai that an objection to the renewal of the store's licence(s) be lodged in Court on the grounds of character.

**(b) Objection to any application by a non-compliant Member for a new off-licence -**

The grounds of objection will depend upon the statutory provision under which an application is made for a new off-licence.

In any application for a full new off-licence, objection can be made on the grounds of the character of the applicant and the suitability of the premises. Moreover, the vast majority of applications for new off-licences are made under section 18 of the Intoxicating Liquor Act 2000, where the grounds of objection are wider again, as follows - the character, misconduct or unfitness of the applicant; the unfitness or inconvenience of the premises; the unsuitability of the premises for the needs of persons residing in the neighbourhood; and/or the adequacy of the existing number of licensed premises of the same character in the neighbourhood.

Likewise, the list of competent objectors is wider in applications for a new off-licence than for the renewal of an existing licence. The following persons can object to an application for a new off-licence:

- Any resident or owner of property in the parish in which the proposed off-licence is located;
- The Garda Superintendent for the area in which the proposed off-licence is located; and
- Any person who would be affected by the decision to grant the licence - the RRAI would presumably fall under this category.

Where serious breaches of the Code of Practice are committed by a Member Group under headings 2.2 or 2.3.2 above, or by an individual store/retailer under heading 2.3.1 above, the RRAI may consider:

- (a) formally objecting to any Court-application for a new off-licence by the Member Group or individual retailer in question; and/or
- (b) formally recommending to the Gardai that an objection to the renewal of the licence(s) attaching to the store in question be lodged in Court on the grounds of character.

### 3.4 “NAMING AND SHAMING”:

With a view to publicly "naming and shaming" any persistently non-compliant Members, the RRAI may:

- Publish details on its website of any finding made by the Board of persistent, repeated, or systemic serious breaches by any of the RRAI's Members; and
- Issue press releases to the same effect.

The Mature Enjoyment of Alcohol in Society (MEAS) adopts this practice in respect of breaches of its code of practice, and we understand that this garners a certain amount of media coverage, thereby generating negative publicity for the non-compliant Member in question.





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