

ASA system submission to Scottish Government's consultation on restricting alcohol advertising and promotion

1. Background and Introduction

- 1.1. This submission is provided by the Advertising Standards Authority (ASA), the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) – the 'ASA system.'
- 1.2. The ASA is the UK's independent advertising regulator. We have been administering the non-broadcast Advertising Code (written and maintained by CAP) for 60 years and the broadcast Advertising Code (written and maintained by BCAP) for 18, with our remit further extended in 2011 to include companies' advertising claims on their own websites and in social media spaces under their control.
- 1.3. The ASA system is the 'one stop shop' for ensuring that UK advertising is legal, decent, honest, and truthful. Our work includes undertaking proactive projects and acting on complaints to tackle misleading, harmful or offensive advertisements. We are committed to evidence-based regulation, and we continually review new evidence to ensure the rules and our application of them remain fit-for-purpose.
- 1.4. As the frontline advertising regulator in Scotland and elsewhere in the UK, the ASA brings together different statutory, co-regulatory and self-regulatory enforcement mechanisms so they appear seamless to people and businesses. Our system involves the active participation of a range of legal backstops in the consumer protection landscape. We work closely with a network of partner regulators including COSLA, Trading Standards Scotland, Ofcom, the Portman Group, the Gambling Commission, the Information Commissioner's Office, the Medicines and Healthcare products Regulatory Agency, the Financial Conduct Authority and the Competition and Markets Authority.
- 1.5. Through the sharing of information, joined-up enforcement action and referral processes, our partners bolster our regulation and assist us, where necessary, to bring non-compliant advertisers into line. Together, this 'collective regulation' helps to protect people and responsible business from irresponsible ads: ads that mislead, harm or offend their audience.
- 1.6. We also bring together the ad industry and media owners to set, maintain and police high standards. The UK Advertising Codes are drafted and maintained by the industry committees of CAP and BCAP, whose member bodies include STV and the Scottish Newspaper Association, amongst others, supported by experts in our Regulatory Policy team. This means businesses have a direct stake and an enlightened self-interest in adhering to the standards they set and creating a level-playing field amongst them. There are multiple checks and balances in place to ensure the committees' development of rules and guidance is transparent, open to scrutiny and adheres to the principles of good regulation. These include calls for evidence and public consultations; mandatory regard to the advice of an expert [independent consumer panel](#); Ofcom signing off on BCAP rule changes; the ASA system's processes being open to judicial review and more besides. All to ensure the system is wholly accountable to everyone with a stake in advertising.
- 1.7. The UK Advertising Codes include rules reflecting specific legal provisions and rules developed through separate regulatory process, which in combination ensure ads don't mislead, harm or seriously offend their audience. The inclusion of the rules in the UK Advertising Codes has enormous benefits for responsible businesses and for consumers, who benefit from the protection the rules afford.
- 1.8. In addition to investigating ads, we also provide a wealth of training and advice services (most of which are free) for advertisers, agencies and media to help them understand their responsibilities under the Codes and to ensure that fewer problem ads appear in the first place. CAP and BCAP provided over a million pieces of advice and training in 2022.

2. Overall comments on the consultation

- 2.1 The ASA system does not consider that the advertising restrictions proposed in the consultation are warranted. We consider the current alcohol advertising rules and our enforcement of them provide effective protection from potential alcohol advertising related harms.
- 2.2 The ASA is recognised by Government, the courts, statutory regulators and the industry as the established means for regulating UK ads. The ASA system is widely respected both here and internationally. This frontline responsibility for ads across all media and platforms, delivered through the ASA one-stop-shop model, is immensely valuable to both consumers and business including in Scotland, where COSLA agrees for the ASA to be the first line of control for misleading advertising.
- 2.3 Our co-regulatory partner for ads on broadcast services, video-sharing platforms and on-demand programme services is Ofcom. As an independent statutory body, Ofcom has assessed the ASA against statutory criteria and principles for analysing prospective co-regulatory partners and concluded, on all of the occasions it has been required to ask the question, that we are a fit and proper regulator to fulfil our contracted-out functions. In its recent consultation on proposals to designate the ASA as co-regulator for new online restrictions surrounding the advertising of 'Less Healthy Food' products, it states:
- Ofcom's experience of co-regulation with the ASA has been a productive one. We have an established co-regulatory system, which has worked very effectively to date. It is designed to minimise complexity, and to ensure that statutory regulation and the self-regulatory system complement each other. The ASA is widely recognised as a 'one-stop shop' for advertising complaints across all media.*
- And the ASA is wholly independent of the advertising industry it regulates. It is committed to ongoing scrutiny of its governance arrangements to ensure its independence and accountability; working impartially, free from undue influence or vested interests, in pursuit of its ambition to make every UK ad a responsible ad. As part of that, in 2017, the ASA invited Dame Janet Paraskeva to conduct an independent audit of its performance. Dame Janet's findings were that the ASA is "A successful regulator... fit for purpose... and has demonstrated independence from any perception of a conflict of interest from the industry which funds it."
- 2.4 People in Scotland and elsewhere in the UK complain to the ASA about a variety of content and media placement matters and, importantly, about multi-media and multi-nation campaigns (for example, appearing on radio, billboards and newspapers). The one-stop-shop means it is simple and straightforward for people to know where to direct their complaint and all such complaints can be dealt with under one roof so they aren't passed between different organisations.
- 2.5 The ASA is independent, both of the industry it regulates and in its decision-making. It regulates without fear or favour and takes action against ads, by companies large and small, that break the rules. Our weekly published rulings, proactive monitoring and enforcement action provide comprehensive protections, including online; all provided for by an arms-length funding mechanism (at no cost to the taxpayer).
- 2.6 In responding to the Scottish Government's assessment on the impact of alcohol advertising, the ASA's regulation sets out to ensure alcohol marketing is responsible with particular regard to the protection of under 18s and other groups at risk of alcohol harms.
- 2.7 The ASA system places huge value on putting the protection of children at the heart of our regulation. We have strict rules dedicated to protecting young and vulnerable people from potential ad related harms. This includes specific rules for age-restricted products such as alcohol. And it's a driving factor in why we invest in technology to enhance our effectiveness in tackling the minority of ads that fall below the strict standards we set.

2.8 Our alcohol advertising rules prohibit ads from:

- Being directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise alcoholic drinks if more than 25% of its audience is under 18 years of age
- Implying, condoning or encouraging immoderate, irresponsible or anti-social drinking
- Linking alcohol with seduction, sexual activity or sexual success nor imply that alcohol can enhance attractiveness
- Being likely to appeal particularly to people under 18, especially by reflecting or being associated with youth culture
- Featuring or portraying real or fictitious characters who are likely to appeal particularly to people under 18 in a way that might encourage the young to drink
- Showing people who are or seem to be under 25 drinking or playing a significant role in the ad

2.9 It is our view that, in places, the consultation mischaracterises the ASA system as reactive and ineffective (or at least underplays our effectiveness).

- i) "The ASA led system... has a largely complaints-led component... and therefore depends on members of the public seeing and then subsequently knowing how to report marketing which may breach the rules" (Paragraph 4.11)
- ii) "One reason the rules may not be effective is that they are focused on the content of alcohol adverts and entail making subjective judgements. For example, although the current Codes prohibit advertising that is particularly appealing to under 18's... In theory, within this rule, a marketing campaign can appeal to children, but as long as it also appeals to adults it is permitted this is a high threshold to meet. It suggests that adverts are permitted to appeal to children and young people, so long as they don't appeal more to them than they do to over 18's." (Paragraph 4.6)
- iii) "Another reason that the current system may not be effective is that the Codes do not focus on reducing the volume of alcohol marketing that children and young people see... the current CAP Code rule prohibits alcohol advertising in public spaces if 25% or more of the audience are under 18. This does not prevent most, if any, alcohol outdoor advertising on billboards or public transport, because under 18's are less than 25% of the population overall. This means that children and young people are routinely exposed to outdoor alcohol advertising as they journey around their communities to school, swimming pools, shops and to see their friends." (Paragraphs 4.8 and 4.9)
- iv) "The complaints-based system is also by its nature retrospective, meaning that marketing campaigns can continue to run despite being potentially in breach of the rules, until a decision is made... This is in contrast with the Clearcast system for television advertising where adverts must be pre-approved before they are allowed to be shown." (Paragraph 4.12)

2.10 In response, point i) does not recognise the fact that we actively monitor children's exposure to alcohol ads and compliance with the rules. This helps us identify trends and ensure our tough scheduling and targeting restrictions are working to limit appropriately children's exposure to them. For instance, we have published reports over several years that reveal children are seeing fewer ads for alcohol products on TV, in a continuing downward trend. Our monitoring shows that under-16s exposure to TV ads for alcohol has decreased by three quarters since 2010.

- Breaking this down by nation, it reveals that in Scotland children saw a drop in exposure to alcohol ads on TV, from 3.4 on average per week in 2010 to 0.9 per week in 2021

It also reveals that, at a UK level:

- Children's exposure to alcohol ads relative to adults has fallen from a peak of 39.9% in 2010 to 17.1% in 2021. It means children saw, on average, around one alcohol ad on TV for every six seen by adults in 2021

Recognising that children's media habits are shifting online, as part of our five-year strategy [More Impact Online](#) we are harnessing technology – creating [child avatars](#) and working with real children all over the UK ([100 Children Report](#)) – as well as working closely with platforms to ensure we experience ads through their eyes and ears and take action to address any ads that break the rules (a very small minority of alcohol ads do). This is world-leading work that doesn't rely on people complaining, demonstrating our proactivity, and is beginning to be copied by ad regulators around the world. Our 100 Children Report provided us with a fascinating insight into UK children's real-world mobile phone and tablet use, the platforms and sites they visit and the ads they're exposed to. And, where we identified potential problems, we followed-up with advertisers and platforms to secure remedial action and assurances of future compliance. All of this underlines our proactive commitment to minimising children's exposure to alcohol ads.

- 2.11 Point ii) appears not to consider that ads for all different types of products and services can be appealing to children without prompting them to take an active interest in or participate in harmful behaviour. For example, an ad for a specialist holiday firm for over-60s may feature scenes – sunny beaches, jet skiing, sunbathing, swimming etc – that may be of appeal to younger audiences. But the nature of the holiday itself will likely not be of appeal (it's for a specific age-group). Similarly, while some ads for alcohol may have a general appeal to some children, the content restrictions in the Advertising Code prevent them from being likely to appeal particularly, i.e. unduly, to them, and do not encourage them to drink.
- 2.12 Point iii). It is important to note that our rules are designed to appropriately limit children's exposure to alcohol ads rather than to prohibit children from ever seeing them. For example, alcohol ads must not be placed within 100m of primary or secondary schools, because the audience for such ads, at certain times of day and certain periods of the year, is likely to be significantly skewed towards under-18s. Alcohol cannot be advertised on TV in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 18. Channels devoted to children's programmes, or where the generality of the programme content might reasonably be expected to appeal particularly to children, are not at any time allowed to carry alcohol ads.

A policy to prohibit children from seeing any alcohol ads would severely restrict the marketing of alcohol out of proportion to the evidence of alcohol advertising's impact on harm. Where children do see alcohol ads our strict content rules prohibit the ads from containing anything that is likely to inappropriately appeal to under-18s whether through content or context. Those content rules also protect vulnerable adults, for example by banning the condoning or encouragement of immoderate, irresponsible or anti-social drinking. Against that goal, our view is that our regulation is robust and in-line with the evidence-base.

- 2.13 Point iv) presupposes that each ad that prompts a complaint(s) is in breach of the rules when that is clearly not the case. It also ignores fair process, mirrored in other institutions such as courts of law, where an advertiser is given a right to defend itself before a judgement is made. And it ignores the fact that pre-clearance of ads on TV, while an effective mechanism for preventing potentially problem ads from being broadcast does not guarantee that occasionally an alcohol (or other) TV ad might break the rules. Once ads are in the public domain, even when they've been pre-cleared, they can have unforeseen or unintended effects. ASA upheld rulings have problem ads removed but they also prohibit them from appearing again and they set a reminder to operators across a sector about how the rules are applied.
- 2.14 In terms of public concerns about alcohol advertising, complaints to the ASA are low. In 2022, we received 60 complaints from people in Scotland about 29 alcohol ads. At a UK level the ASA received 609 complaints about 257 alcohol ads. In its most recent [Annual Report](#), the ASA reported that it received over 43,000 complaints a year about over 22,000 ads. Of the broadcast and non-broadcast ads and ad campaigns complained about in 2021, 18,891 (86.4%) were found not to have breached the rules. This is important context. We do not intend this to be dismissive of stakeholder concerns about advertising or the good faith with which they report them to the ASA system; we state it only to recognise that concerns about advertising, and evidence presented to substantiate them do not normally equate to breaches of the rules and therefore the extent to which they equate to accepted 'harms' must be in

question.

- 2.15 The ASA System notes the Scottish Government's concerns that alcohol advertising is 'normalising' alcohol. The difference between the normalisation of alcohol and the normalisation of irresponsible alcohol marketing (prohibited by our rules) is important.
- 2.16 As the advertising regulator, our rules must have due regard to the prevailing socio-economic circumstances, public policy and standards in society, as relevant. With regard to alcohol, the prevailing circumstances in Scotland and the rest of the UK allow for the production and sale of alcohol, subject to appropriate safeguards, and the right of alcohol producers, in a competitive marketplace, to differentiate themselves from others through marketing communications. All of these factors and more can be said to 'normalise' alcohol in our society. Our specific role, as the advertising regulator, is to ensure that we do not allow for the normalisation of irresponsible alcohol marketing. Through the setting of advertising rules, the industry's demonstrably high compliance with them and through our independent, proactive enforcement to tackle the minority that fall below the standards we expect, we consider we have been effective in keeping irresponsible alcohol marketing to a minimum.
- 2.17 CAP and BCAP have set out their response, in general terms, to concerns about advertising's role in normalising products, services etc. In our regulatory experience, the broad concern raised is often that advertising normalises (i.e. makes unremarkable) take-up of a particular product category, such as alcohol. We acknowledge that, for some stakeholders and consumers, the very fact of common use of some products is a subject of controversy. For instance, some groups may be of the view that alcohol should not be an unremarkable part of life, for example, because of moral or health reasons, societal impact etc. Such products and services are, however, legitimately and legally available, and can be marketed subjected to restrictions that are evidence-based and necessary. CAP and BCAP acknowledge the place of these products as legitimate and legally-available. Preventing or reversing the normalisation of such products is therefore not a policy objective for the ASA system; as noted, our role is to prevent the normalisation of irresponsible marketing. The evidence of harm arising from alcohol marketing falls considerably short, in our view, of suggesting that alcohol marketing per se is irresponsible.
- 2.18 Given the necessity test we must assign to our regulatory interventions (including setting rules that are necessary, proportionate and targeted on the basis of objective evidence) we've weighed up the relevant evidence in arriving at a position (the alcohol advertising rules and our administration of them) that we consider balances the advertiser's right to freedom of expression subject to standards that we think are necessary to prevent alcohol advertising that has the greatest potential to harm.
- 2.19 We understand the public health imperative behind the proposals in the consultation and recognise the Scottish Government's ambition to address this by introducing advertising restrictions through legislation. The consultation doesn't however, in our view, appear to explain why the 'whole population' approach to tackling rates of alcohol-specific deaths and alcohol-related hospitalisations (which are 8 x higher in the most deprived areas in Scotland versus the least) is the right one. It appears to explore a series of absolute goals like: under-18s never being exposed to alcohol marketing; those in recovery never being triggered by alcohol marketing; and alcohol not being normalised. We would ask Scottish Government to consider whether a more balanced and proportionate set of measures might be found in a more targeted approach.
- 2.20 We hope the Scottish Government recognises the value of the ASA system and we stand ready to work closely with it, and partners, in continuing to be the frontline enforcer of advertising rules in Scotland. We believe that our frontline regulation of UK ads across all media and platforms, delivered through the ASA one-stop-shop system, is valuable to Scottish people and Scottish businesses.

3. Consultation questions

In this submission we speak and respond to the questions relevant to our role and remit. We do not have a view on proposed restrictions on sponsorship arrangements for sporting events, or on the visibility or structural separation of alcohol in retail settings, both of which fall outside of our remit.

Q2. If sports alcohol sponsorship were to be prohibited, what types of marketing do you think should be covered by a prohibition?

Sponsorship is an arrangement or contract between a brand and another party and the Advertising Code does not apply to the arrangements themselves. The Advertising Code does, however, apply to advertising that refers to sponsorship arrangements, e.g. press ads, posters or advertising claims on a marketer's own website and social media.

The consultation provides illustrative examples of what the prohibitions might extend to, including:

- players or staff from featuring in alcohol adverts in print or online, and
- online content... linking the sports team, players or competition to an alcohol brand or vice versa

We do not have a direct role in the arrangements between alcohol brands and sports teams, players or competitions. Our rules prohibit anyone who is or who appears to be under-25 from being shown drinking or playing a significant role in an alcohol ad. This extends to individuals associated with sports teams, be it players or staff. Our rules also prohibit alcohol advertising, even where it is indirect through sponsorship references, from being likely to appeal to or being targeted at under-18s.

Q4. Do you think we should prohibit alcohol events sponsorship in Scotland?

The Advertising Code does not apply to sponsorship arrangements and we therefore offer no response to this question.

Q8. Do you think we should prohibit alcohol marketing outdoors, including on vehicles, and in public spaces in Scotland?

No.

We consider that alcohol advertising in Scotland is subject to strict content, placement, targeting and scheduling rules across media, including online, administered effectively by the ASA. Alcohol ads must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise alcoholic drinks if more than 25% of its audience is under 18 years of age.

We advise marketers to check the audience profiles of any media they plan to advertise in in order to satisfy themselves that they are not at risk of targeting, through their media selection, the wrong age groups. Marketers of alcoholic drinks and other age-restricted ads should take special care. For example, alcohol ads must not be placed within 100m of primary or secondary schools, because the audience for such ads, at certain times of day and certain periods of the year, is likely to be significantly skewed towards under-18s.

Q9. What do you think should be covered by a prohibition on alcohol marketing outdoors, on vehicles and in public spaces?

[Your answer should include: 1) Places where you think alcohol marketing should be prohibited (e.g. on bus shelters, in or near leisure centres or on taxis); and 2) Types of alcohol marketing you think should be prohibited outdoors (e.g. billboards or signage).]

We consider that the current alcohol advertising rules provide effective protection from potential alcohol advertising related harms.

Q18. Do you think that any potential alcohol marketing restrictions should also apply to no-or low drinks products between 0% ABV and 1.2% ABV, where these carry the same brand name, or identifiable brand markings, as alcohol drinks over 1.2% ABV?

No.

For the purposes of the Advertising Code, low alcohol drinks are specifically defined as having an ABV of above 0.5%, up to and including 1.2%. Low alcohol drinks are still subject to every rule in the alcohol section of the Code. Drinks at or below 0.5% are, for the purposes of the Codes, considered to be non-alcoholic.

Up until 2022, ads for low alcohol drinks could not make a preferential feature of the low ABV if the ad also featured a standard strength drink (i.e. one stronger than 1.2%). However, this [restriction has now been lifted](#). For the avoidance of doubt, **only** low alcohol can be marketed as **preferable** because of its lower strength. That means that marketers can include messaging such as “if you like our beer but want to cut down on alcohol, try our 1% version.” We consider this helps alcohol producers seeking to promote their low alcohol versions to consumers who may want to cut down their intake.

Marketers must take care not to mislead consumers by implying that a product contains no alcohol, where, in fact, it contains a small amount.

Q19. Do you think that we should prohibit advertising of alcohol in newspapers and magazines produced in Scotland?

No.

For the reasons set out in Q8, we consider that the existing restrictions on alcohol advertising in the Advertising Code provide effective and proportionate protections for people, of all ages, from potential harms arising from ads.

Alcohol ads must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise alcoholic drinks if more than 25% of its audience is under 18 years of age. For this reason, alcohol ads cannot appear in magazines directed at under-18s including publications where 75% of a readership comprises adults.

Q21. Do you think we should restrict alcohol branded social media channels and websites in Scotland?

No.

We consider that alcohol advertising online is regulated effectively. The advertising rules are largely media neutral and already extend to cover the content and targeting of alcohol ads on companies own websites, branded social media channels as well as third party online space such as influencer posts and ads in online paid-space.

The ASA can and does take action to ban the small minority of alcohol ads that break the rules in these online spaces. While the ASA responds to complaints, in line with our strategy we have been rebalancing our regulation away from reactive complaints casework towards proactive, tech-assisted intelligence-gathering, complaint handling, monitoring and enforcement. As part of that, we are delivering effective regulation, using innovative technology, to help us identify at pace and scale where and when alcohol ads are appearing online and, in particular, if and when they are being targeted inappropriately at children.

In this regard, we believe the consultation mischaracterises the ASA as reactive and underplays our effectiveness.

Using avatar software technology (online profiles which simulate children’s browsing activity), web scraping tools and mobile phone metering software we are monitoring age-restricted ads to identify the minority that, in breach of our rules, are placed on websites disproportionately popular with

children or that are served to the social media accounts of children who are age-registered as 17 or younger. This is backed by effective follow-up enforcement action.

For example, for twelve months between 1 April 2020 and 31 March 2021, we [proactively monitored](#) and tackled instances where age-restricted ads, including for alcohol, appeared on children's websites and YouTube channels. We ran the monitoring across approximately 60 different websites and reported publicly on our findings. Over the twelve months, we identified 101 advertisers whose ads breached the targeting rules. Nine of those were alcohol advertisers. We contacted the advertisers to ensure that the ads were removed. We also advised them to review and, as necessary, amend their online targeting processes to ensure their ads would not be published again on these or other children's sites. All the advertisers gave assurances that they had put in place site-specific block list or inclusion lists to help ensure their ads were targeted appropriately. Of the 101 advertisers, the vast majority 90 (90%) were not found to have breached the rules again in subsequent monitoring periods.

Advertisers are not allowed to serve alcohol ads in children's media (sites commissioned for children, or where children make up 25% or more of the audience), but these ads are allowed in mixed-age media attracting a heavily weighted (75%+) adult audience, so long as they stick to strict rules to ensure the creative content of the ads don't appeal to children or exploit their inexperience. Nevertheless, we consider it is a legitimate regulatory objective to seek to minimise children's exposure to age-restricted ads generally and therefore want to see advertisers of these products use available tools to more effectively target their ads away from children, even where the vast majority of an audience is over 18. Accordingly, we used Avatars for the purpose of identifying trends in how these ads are being delivered to adult, child and/or age-unknown audience groups. Of the 27,395 ads served to our avatars, published on 250 sites, over a three-week [monitoring period](#), none were alcohol ads.

We have worked closely with online platforms to lift the lid on alcohol marketers' audience-targeting selections, to help us understand whether they are taking appropriate steps to target their ads to an adult audience and away from a child audience in logged-in social media environments. In a [landmark project](#), between 1 February 2020 and 31 March 2020, Facebook, Instagram, Snapchat, Twitter and YouTube submitted brand-anonymised targeting data to the ASA relating to over 2,000 alcohol campaigns run on these platforms. This work recognised that platforms, which play an important role in children's lives, are significant repositories of marketing data, including brands' targeting practices, which – for the purpose of the project – they anonymised and shared with us. By sharing the anonymised data with us, the platforms helped us to uncover important insights into the extent to which alcohol brands and their agencies are using the tools available to them (which differ from platform to platform) to target their ads away from children's social media accounts.

In a pioneering piece of work in 2022 ([The 100 Children Report](#)) we directly monitored children's use of their personal devices to gain insights into their online browsing habits and, by extension, the ads that they are exposed to. It is a data rich report, which contributes significantly to societal interest in the prevalence and consequences of children being registered on social media with false dates of birth.

Our research findings suggest that:

- Over 3.6 million accounts owned by young people are misreporting their age when they sign up and
- 1.6 million of these accounts are falsely age-registered as 18 or older. Through these accounts, children were exposed to almost two-thirds more age-restricted ads than children registered with a child's age (17 or younger).

Our study found that of the 11,424 occasions when an online ad was served to the personal devices of our children's panel, 435 (3.8% of the total) related to an alcohol, gambling or other age-restricted ad.

In terms of alcohol ads specifically, we found that:

- 86 alcohol ad impressions (a measure of the number of times an ad is served) were served by 44 advertisers to 19 children
 - 31 impressions were served by 16 advertisers to 5 children registered on social media platforms as under-18
 - 50 impressions were served by 31 advertisers to 12 children registered as over-18 on social media platforms or on non-logged in sites likely to attract an audience where more than 75% are adult.

We've prioritised follow-up action in these cases and contacted advertisers to corroborate our findings and ensure compliance. And we're offering training and guidance.

Q23. Do you think we should restrict paid alcohol advertising online in Scotland? Examples include adverts appearing on websites, via pop ups, on social media platforms, on search engines, or influencer advertising.

No.

The intelligence we gather and our experience informs us that the overwhelming majority of paid alcohol advertising online are compliant with our rules. In the minority of cases where the rules are broken we can and do take quick and effective action.

Q24. What types of paid alcohol advertising do you think should be covered by any restrictions?

We consider that the current alcohol advertising rules provide effective protection from potential alcohol advertising related harms.

Q26. Do you think we should restrict alcohol companies from sharing promotional content on social media (e.g. filters, videos or posts) – whether this is produced by them or by consumers?

No.

We consider the current alcohol advertising rules and our enforcement of them provide effective protection from potential alcohol advertising related harms including around promotional content on social media.

Any advertising content produced by an alcohol company and posted on its social media channels is subject to our rules. Moreover, any posts produced by consumers promoting alcohol, what we call 'user generated content', and that is incorporated/adopted into its marketing by an alcohol brand (including on its social media channels) is subject to the rules.

Q28. Do you think we should explore prohibiting alcohol advertising on television and radio completely (e.g. like Norway or Sweden)?

No.

We consider that the current content and scheduling restrictions for TV alcohol advertising provide effective and proportionate protections from potential alcohol advertising related harms.

Alcohol cannot be advertised on TV in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 18. Channels devoted to children's programmes, or where the generality of the programme content might reasonably be expected to appeal particularly to children, are not at any time allowed to carry alcohol ads. Similarly, alcohol ads on radio must not be targeted at those under 18 years or use a treatment likely to be of particular appeal to them.

The consultation raises concerns about children seeing alcohol ads in peak viewing times such as in and around Saturday evening family entertainment programmes. And, by extension, that this could also be "problematic for those in recovery". For the avoidance of doubt, our rules are designed to

appropriately limit children's exposure to alcohol ads while allowing them to reach a valid adult audience, subject to restrictions on the creative content of the ad. They are not designed to prohibit children from ever seeing an alcohol ad, as such a restriction would entail a level of media restriction out of proportion with the evidence of potential harms arising from alcohol marketing. Where children do see an alcohol ad the content rules prohibit the ad from being likely to appeal to children or featuring potentially harmful content.

Audience Indexing determines what proportion of a particular category of viewers are watching a programme relative to the proportion of the audience as a whole (all viewers aged 4 and over) watching the same programme. The process allows broadcasters to identify programmes that appeal disproportionately to particular groups, either various age groups of children or all children and young people.

We routinely monitor children's exposure to categories of age-restricted TV ads, including alcohol, in order to help identify trends and ensure our tough scheduling restrictions are working to appropriately limit their exposure to them. Our most [recent report](#) reveals that children's exposure to alcohol ads on TV has decreased significantly over the last decade.

- Between 2010 and 2021, children's exposure to alcohol advertising on TV in the UK reduced by three quarters from an average of 3.2 ads per week in 2010 to 0.8 ads per week in 2021. The average number of alcohol ads children saw in 2021 was the lowest in the 12-year period covered.
- Children's exposure to alcohol ads relative to adults in the UK has fallen from a peak of 39.9% in 2010 to 17.1% in 2021. That means children saw, on average, around one alcohol ad on TV for every six seen by adults in 2021.
- Children in Scotland saw a drop in exposure to alcohol ads on TV, from 3.4 on average per week in 2010 to 0.9 per week in 2021.
- In 2021, alcohol ads made up 1.0% of all TV ads seen by children in the UK. Alcohol ads continue to make up less than 1.5% of all TV ads seen by children annually and exposure levels have remained around or below 1.0% since 2015.

Q29. Do you think we should introduce a watershed for alcohol advertising on TV and radio (e.g. like Ireland), and if so how would this work?

No.

For the reasons outlined we consider that the current scheduling rules provide proportionate and effective protections to audiences from potential alcohol advertising related harms and that the audience indexing tool enables broadcasters to appropriately limit children's exposure to them.

Q30. Do you think alcohol advertising should be restricted in cinemas?

No.

We consider that the current advertising rules provide proportionate and effective protections to cinema audiences, including children and vulnerable people, from potential alcohol advertising related harms.

Under our rules, no medium should be used to advertise alcoholic drinks if more than 25% of its audience is under 18 years of age. As the consultation outlines, for cinema, the Cinema Advertising Association (CAA) undertakes a series of measures which include a fortnightly omnibus survey of adults and children aged 7+ (with parents answering on behalf of their children about what films they've seen), that helps them maintain a film monitor database, which they use to administer a predictive system of which films can have age-restricted ads placed around them and which cannot. The data is refreshed every three months.

There are, of course, always films about which the data is considered marginal and does not offer a comfortable safety buffer to assure compliance with our advertising rules. In such cases, the data, together with a brief résumé, comparative films, and links to trailer or teasers, are sent to an internal CAA 'alcohol panel'. That fuller information, together with the panel members' film knowledge, can further indicate the likely audience profile a forthcoming release will secure. A final decision is made by the panel voting on its likely compliance with the Advertising Code.

We note the consultation considers that "the rules on the proportion of under 18's does not allow for consideration of the high volume of under 18's who will still see alcohol adverts" and that "Those in recovery, and those in the general population, are also likely to see alcohol adverts in the cinema often."

Allowing alcohol ads to appear in and around PG, 12A and 15 rated certificate films, as long as children don't comprise 25% of an audience, means that alcohol ads can be shown to a legitimate adult audience. For example, a film adaptation of a classic novel, e.g. Jane Austen's 'Emma', may have a PG rating but it is unlikely to appeal to or attract a significant child audience. While our rules aren't designed to prevent children from ever seeing an alcohol ad (they are designed to minimise their exposure to them), when they do see an alcohol ad in the cinema our content rules kick-in. Alcohol ads should not contain anything that is likely to be of particular appeal to them. Our content rules are designed to protect adult audiences also, including vulnerable people, by preventing ads from depicting alcohol from being handled or consumed irresponsibly, or linking alcohol to personal attributes, self-esteem, increased popularity, confidence, social or sexual success.

Q32. Do you think that the content of alcohol marketing in Scotland should be restricted to more factual elements?

No.

We consider that the content restrictions contained in the existing alcohol advertising rules provide proportionate and effective protections from potential alcohol advertising related harms.

As we have set out, alcohol ads cannot be targeted at under-18s and they should not contain anything that is likely to appeal particularly to them including through the use of imagery or themes associated with youth culture such as, but not limited to, cartoon animals and characters.

In terms of public concerns about alcohol advertising, complaints to the ASA are low. In 2022, we received 60 complaints from people in Scotland about 29 alcohol ads. Across the UK, we received 609 complaints about 257 alcohol ads. For context, in its most recent [Annual Report](#), the ASA reported that it received over 43,000 complaints a year about over 22,000 ads. Of the broadcast and non-broadcast ads and ad campaigns complained about in 2021, 18,891 (86.4%) were found not to have breached the rules.

Q33. Do you think we should only allow alcohol marketing to include elements set out in a list, like in Estonia? This would mean all other elements not on the list would be banned from adverts.

No.

We consider that the content restrictions contained in the existing alcohol advertising rules provide proportionate and effective protections from potential alcohol advertising related harms.

Q34. Do you think that content restrictions like the Estonian model should be applied to all types of alcohol marketing?

See Q33.

ENFORCEMENT:

Q 35. How do you think that any future alcohol marketing restrictions in Scotland should be monitored and enforced?

The ASA is the appropriate body to continue regulating alcohol advertising in Scotland.

The ASA is recognised by Government, the courts, statutory regulators and industry as the established means for regulating UK ads. The ASA system is widely respected both here and internationally. This frontline responsibility for ads across all media and platforms, the one-stop-shop, is immensely valuable to both consumers and business, including in Scotland where [COSLA agrees](#) for the ASA to be the first line of control for misleading advertising.

The ASA is independent, both of the industry it regulates and in its decision making. It regulates without fear or favour and takes action against ads, by companies large and small, that break the rules. Our weekly published rulings, proactive monitoring and enforcement action provide comprehensive protections, including online; all via an arms-length funding mechanism (at no cost to the taxpayer).

The ASA system is proactive and actively monitors children's exposure to age restricted advertising, including alcohol, and compliance with the Advertising Codes. We invest in technology to enhance our effectiveness at tackling the minority of ads that fall below the strict standards we set.

The UK Advertising Codes contain strict content, scheduling, placement and targeting rules surrounding the advertising of alcohol that we are wholly confident provide proportionate and effective protections to people, including children and the vulnerable, from potential alcohol advertising related harms. Through the setting of the Codes, the industry's demonstrably high compliance with them and through our independent, proactive enforcement, we consider we have been effective in keeping irresponsible alcohol marketing to a minimum in Scotland.

We understand the public health imperative of reducing alcohol harms and recognise the Scottish Government's ambition to address this by introducing alcohol advertising restrictions through legislation. We hope the Scottish Government recognises the value of the ASA system and we stand ready to work closely with it and partners in continuing to be the frontline enforcer of advertising rules in Scotland. We believe that our frontline regulation of UK ads across all media and platforms, delivered through the ASA one-stop-shop system, is valuable to Scottish people and Scottish businesses.

Q38. Do you think the Scottish Government should look to introduce a comprehensive package of restrictions across a number of marketing channels? If so, what do you think this package should include?

No.

We consider the current alcohol advertising rules provide proportionate and effective protections to people from potential alcohol advertising related harms.

It is our view that a policy to prohibit children from seeing any alcohol ads would severely restrict the marketing of alcohol out of proportion to the evidence of alcohol advertising's impact on harm. Where children do see alcohol ads our strict content rules prohibit the ads from containing anything that is likely to inappropriately appeal to under-18s whether through content or context. Those content rules also protect vulnerable adults, for example by banning the condoning or encouragement of immoderate, irresponsible or anti-social drinking. Against that goal, our view is that our regulation is robust and in-line with the evidence-base.

The ASA System notes the Scottish Government's concerns that alcohol advertising is 'normalising' alcohol. The difference between the normalisation of alcohol and the normalisation of irresponsible alcohol marketing (prohibited by our rules) is important.

As the advertising regulator, our rules must have due regard to the prevailing socio-economic circumstances, public policy and standards in society, as relevant. With regard to alcohol, the prevailing circumstances in Scotland and the rest of the UK allow for the production and sale of alcohol, subject to appropriate safeguards, and the right of alcohol producers, in a competitive marketplace, to differentiate themselves from others through marketing communications. All of these factors and more can be said to 'normalise' alcohol in our society. Our specific role, as the advertising regulator, is to ensure that we do not allow for the normalisation of irresponsible alcohol marketing. Through the setting of advertising rules, the industry's demonstrably high compliance with them and through our independent, proactive enforcement to tackle the minority that fall below the standards we expect, we consider we have been effective in keeping irresponsible alcohol marketing to a minimum.

CAP and BCAP have set out their response, in general terms, to concerns about advertising's role in normalising products, services etc. In our regulatory experience, the broad concern raised is often that advertising normalises (i.e. makes unremarkable) take-up of a particular product category, such as alcohol. We acknowledge that, for some stakeholders and consumers, the very fact of common use of some products is a subject of controversy. For instance, some groups may be of the view that alcohol should not be an unremarkable part of life, for example, because of moral or health reasons, societal impact etc. Such products and services are, however, legitimately and legally available, and can be marketed subjected to restrictions that are evidence-based and necessary. CAP and BCAP acknowledge the place of these products as legitimate and legally-available. Preventing or reversing the normalisation of such products is therefore not a policy objective for the ASA system; as noted, our role is to prevent the normalisation of irresponsible marketing. The evidence of harm arising from alcohol marketing falls considerably short, in our view, of suggesting that alcohol marketing per se is irresponsible.

Given the necessity test we must assign to our regulatory interventions (including setting rules that are necessary, proportionate and targeted on the basis of objective evidence) we've weighed up the relevant evidence in arriving at a position (the alcohol advertising rules and our administration of them) that we consider balances the advertiser's right to freedom of expression subject to standards that we think are necessary to prevent alcohol advertising that has the greatest potential to harm.