

**“SAFE, SENSIBLE, SOCIAL –
CONSULTATION ON FURTHER
ACTION”**

PORTMAN GROUP RESPONSE

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PORTMAN GROUP RESPONSE TO “SAFE, SENSIBLE, SOCIAL – CONSULTATION ON FURTHER ACTION”

1. INTRODUCTION

- 1.1 The Portman Group (TPG) was set up in 1989 by the UK’s leading alcohol producers¹. Its purpose was to promote sensible drinking; to help prevent alcohol misuse; to encourage responsible marketing; and to foster a balanced understanding of alcohol-related issues.
- 1.2 In 2006, the Portman Group’s remit for consumer education transferred to the independent charity, the Drinkaware Trust, to which the Group is committed to providing with over £6 million of funding during its first three years. Since then, our revised role has involved:
- Encouraging and challenging the industry to promote its products responsibly, mainly through the operation of the Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks;
 - Demonstrating leadership on best practice on alcohol social responsibility through the actions of member companies;
 - Speaking on behalf of members on these issues to inform public opinion and policy.
- 1.3 Our members have long recognised the importance of the alcohol misuse issue and their responsibilities in helping Government to tackle it, which is why they set up TPG in the first place in 1989. TPG remains at the forefront of industry initiatives to change the drinking culture, such as the establishment of the Drinkaware Trust, or more recently the inception of the industry’s proposed new social marketing initiative known as Project 10.
- 1.4 We have always been ready to innovate in pursuit of our goal of promoting the responsible enjoyment of alcoholic drinks and the reduction of alcohol misuse – as the above two examples illustrate – and show leadership within the industry in setting new standards of social responsibility. This is evidenced by the implementation of our internationally-acclaimed self-regulatory Code; our members’ ground-breaking introduction of voluntary unit labelling; and our members’ massive promotion of the drinkaware.co.uk website. We look forward to continuing to play a leading role in the forefront of voluntary industry social responsibility initiatives in the UK.
- 1.5 The evidence clearly shows that, in collaboration with Government and other parties, we are collectively beginning to make progress in tackling alcohol misuse in the UK. Whilst this is very encouraging, we fully agree with the Government that there is no room for complacency: more still needs to be done, and we are ready to play our part.
- 1.6 We believe, however, the crucial fact that progress is being made goes largely unrecognised in the Government’s consultation paper. Whilst this is in itself disappointing for us and others in industry who have worked hard to help bring about that progress, there is a far more important implication which will be a recurring theme of our response. If we are making progress – and we are – then logically this means we should build on those things that appear or are proven to be working, rather than discard them.
- 1.7 In our opinion, there are several ideas in the consultation paper that, if the Government were to implement them, would amount to discarding the hard-learned lessons and

¹ Current member companies are Bacardi-Martini, Beverage Brands, Brown-Forman Brands, Carlsberg, Coors, Diageo, Inbev, Pernod Ricard, Scottish & Newcastle

hard-earned achievements of the past. In particular, we believe we have demonstrated through our track record that - on the whole - industry is more part of the solution, than it is the problem. If Government decides to treat the whole of industry as the problem, then it is unrealistic to expect that the spirit of collaboration which gave birth to such initiatives as the Portman Group's Code of Practice, the Drinkaware Trust, unit labelling, Challenge 21, and most recently Project 10, will not be adversely impacted. This would be very disappointing after the good progress beginning to be made in recent years.

- 1.8 The facts are clear that alcohol misuse remains a minority issue – a minority of consumers – and a minority of irresponsible participants in the industry. The majority of consumers and industry participants will support reasonable and well designed measures targeted at this minority. We believe that success will be greater, faster and less costly for the Government if it continues to enjoy the support of the responsible majority of the public and the industry.
- 1.9 Despite our concerns, we remain determined to be positive and constructive in our response. We will therefore spell out as clearly as possible in the remainder of this document what we believe would constitute a positive way forward, building on both achievements and the lessons of the past.

2. EXECUTIVE SUMMARY

- 2.1 TPG fully recognises the importance of tackling alcohol misuse in our society, and we stand ready to play a leading role in this alongside Government in the future as we have in the past
- 2.2 The focus of policy should be on targeting the decreasing minority that misuse alcohol, not the majority who enjoy alcohol responsibly without causing harm to themselves or others
- 2.3 Since the numbers who misuse alcohol have started to decline in recent years, it is imperative that successful future policy seeks to build on those activities that are already working well.
- 2.4 Self regulation can be effective and play a positive role. In particular, the Portman Group code is working as recognised by KPMG in its recent review of the industry's social responsibility standards, in which they report "a considerable improvement [in alcohol marketing] supported by the enforcement levers of the Portman Code and the Committee of Advertising Practice."
- 2.5 While we are proud of our track record, we have always recognised the need for continual improvement. We are by no means defending the status quo in its entirety, but are willing and able to play a leading and constructive role with Government and other parties in developing an improved collaborative approach to strengthen industry regulation.
- 2.6 However, new policies should be based on sound evidence, not unproven assumptions or questionable data. We have concerns regarding the evidence base underpinning some of the ideas in Safe, Sensible, Social, in particular with regard to labelling and advertising end-frames.
- 2.7 Effective regulation is not the whole answer to addressing alcohol misuse. Social marketing is already contributing to recent positive trends in the nation's drinking behaviours. Sustained education and campaigning can achieve far more.
- 2.8 The industry's proposed new Project 10 social marketing campaign is designed to work alongside and reinforce existing social marketing initiatives from both Government and industry, most notably 'Know Your Limits' and the existing work of the Drinkaware Trust. Project 10 would target misuse with a particular focus on younger adults, leveraging industry insights into how to influence attitudes of these consumers.
- 2.9 Despite this, a small minority of the population will never be persuaded by information and education. Existing laws on alcohol misuse need to be more rigorously enforced to address this minority. Alongside social marketing, greater levels of police enforcement are essential to challenge the culture of social acceptability surrounding drunkenness in a similar way to the historical success of anti drink-drive campaigns.

3. FOCUS ON TARGETING ALCOHOL MISUSE

3.1 The majority drink responsibly, the issue is with the minority

3.1.1 The statistic in the consultation that 7% of the population account for 33% of all alcohol consumption is startling. It is, therefore, this seven percent of the population that we most need to identify and help.

3.1.2 Attempting to tackle problems through reducing per capita consumption (e.g. through taxation or restrictions on availability) is untargeted, unfair and likely to be ineffective and unpopular.

3.1.3 Total consumption in the UK has fallen from 9.4 litres of pure alcohol per head in 2004, to 8.9 litres in 2006, a drop of over 5%. There was a slight increase in consumption levels between 2006 and 2007 but the forecast from HMRC data is that the downward trend in overall consumption will continue during 2008.

3.1.4 Targeting misuse will retain public support for alcohol laws and policies.

3.2 Targeting the misusing minority is beginning to work - an increasing majority of the drinking population are doing so in moderation.

3.2.1 The male population drinking more than 21 units a week has fallen from 29% in 2000 to 23% in 2006. The female population drinking more than 14 units per week has decreased from 17 % in 2000 to 12% in 2006².

3.2.2 These positive trends are being reflected among young adults, an age group which typically drinks the most. Young men (16-24) drinking more than four and more than eight units on at least one day fell in 2004 and again in 2005 and in 2006.

3.2.3 "On the face of it, data for 2006 support previous indications that the recent upward trend in heavy drinking among young women may have peaked. The proportion of 16-24 year old women who had drunk more than six units on at least one day in the previous week increased from 24% to 28% between 1998 and 2002 but had fallen to 20% in 2006."

3.2.4 For individuals to make healthy drinking choices they need to have access to reliable information about alcohol and its effect. When equipped with such knowledge, the overwhelming majority of the population will make healthy, responsible drinking decisions. Problems of misuse are not new in the UK. Changing the culture will take time but there are positive signs of progress. Everyone needs to continue to play their part if these positive trends are to continue. Government alone cannot succeed.

3.3 There is a greater need for enforcement of existing laws.

3.3.1 A greater level of police activity would challenge the culture of social acceptability surrounding drunkenness which is at the heart of the problem with alcohol and society in the UK. Enforcement alone will not bring about the desired reductions in alcohol-related harm but, in combination with other measures, it will undoubtedly help to achieve this.

3.3.2 Many police forces are failing to enforce the current laws on alcohol misuse:

- In England and Wales, the number of people proceeded against in magistrates' courts for being drunk and disorderly has been halved over the last ten years – from 31,891 in 1997 to 16,143 in 2006³.

² *Smoking and drinking among adults 2006, Office for National Statistics*

³ *Home Office parliamentary answer, 17 July 2008*

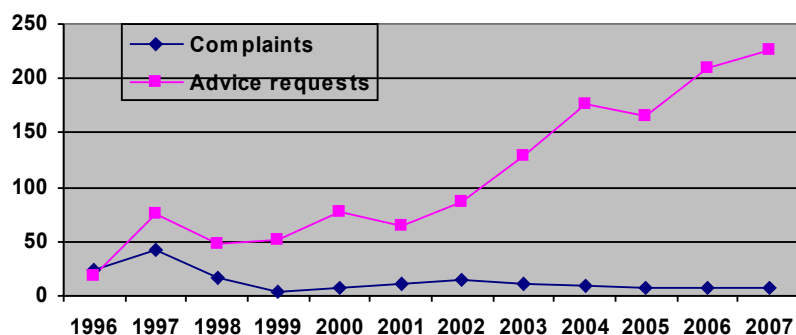
- Only ten defendants aged 10 to 17 were proceeded against at magistrates courts for purchasing alcohol illegally in England and Wales during 2006⁴.
- 3.3.3 Many of the failings identified by KPMG relate to irresponsible retailer practices which are illegal; in these cases, the extensive range of existing laws governing retailers should be enforced more vigorously.
- Only two people have been prosecuted and one found guilty of selling alcohol to a drunken person since the 2003 Licensing Act was introduced⁵
- 3.3.4 Better education has contributed to the positive trends in the nation's drinking behaviours. Education and campaigning can achieve far more. Despite this, we have to recognise that a very small minority of the population will never be persuaded by information and education.

4. A POSITIVE ROLE FOR EFFECTIVE SELF-REGULATION

4.1 The Portman Group's Code is working

- 4.1.1 The Portman Group's Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks applies to pre-packaged alcoholic drinks and the promotional activities of drinks producers. The Code covers a drink's name and packaging, press releases, websites, sponsorship, sampling, branded merchandise, advertorials and all other promotional material. It does not apply to alcohol advertising which is regulated by the Advertising Standards Authority. Interpretation of the Code is provided by an Independent Complaints Panel. Fuller information on the Code and its operation is provided in Appendix 1.
- 4.1.2 Since the Code and the Independent Complaints Panel were introduced in 1996, over 70 drinks have been found to be in breach of the Code. Failure to comply with our Code results in a drink being removed from sale. The Portman Group Code is mandatory for all UK drinks producers.
- 4.1.3 We also take a pro-active approach to identifying potential drinks producer non-compliance with our Code. Our Code Advisory Service offers fast, free and confidential advice to marketers enabling them to stay on the right side of the Code. Last year, this Service gave advice on 220 different products. We also offer unsolicited advice to producers when we come across products or promotions which, in our view, may breach the Code of Practice.

Figure 1: Code complaints versus Code advice requests, 1996-2007



⁴ Home Office parliamentary answer, 12 December 2007

⁵ Parliamentary Written Answer 180410 19/03/08

4.1.4 Figure 1, above, shows the effectiveness of this approach over time. The number of complaints has steadily fallen since the Code's inception whereas the number of occasions on which the Code Advisory Service issues guidance has risen sharply. This shows how the system is working to prevent problem products or promotions making it to market in the first place.

4.1.5 An independent survey in 2008 shows we are now achieving 98% compliance. Management consultants PIPC conducted an independent audit of drinks producer compliance with the rules, assessing a random sample of 485 drinks against the Code. 453 were compliant (93%). Of the 32 that were not, 21 have since voluntarily amended their packaging. This means only 11 products (2%), have had to be referred to the Independent Complaints Panel for adjudication. If complaints are upheld, they will be removed from sale.

4.1.6 We are committed to carrying out regular monitoring programmes of this type to check producers' compliance with our Code. We are also committed to regularly reviewing our Code rules through public consultation involving key stakeholders to ensure that the Code evolves and that it is indeed offering a proper balance between protecting the public from irresponsible drinks producer marketing while at the same time allowing companies reasonable commercial marketing freedoms.

4.2 Independent endorsement of the Code

4.2.1 The work of the Portman Group and the effectiveness of our Code have been recognised by the Better Regulation Taskforce, the International Harm Reduction Association, the Secretary of State for Culture, Media and Sport, and KPMG.

4.2.2 The Better Regulation Taskforce has described our Code as a good example of a Code that works well, demonstrating how effective self-regulation can be⁶.

4.2.3 The International Harm Reduction Association (IHRA) included the latest edition of the Code in its "50 Best Collection on Alcohol Harm Reduction", published in May 2008⁷. The Collection contains project reports, documents and research papers from around the world, chosen by an international panel of experts for their evidence-base, reasoning, justification and contribution to alcohol harm reduction.

4.2.4 The Secretary of State's Guidance on the Licensing Act states: "The Code is an important weapon in protecting children from harm because it addresses the naming, marketing and promotion of alcohol products sold in licensed premises in a manner which may appeal to or attract minors. The Secretary of State commends the Code to licensing authorities and recommends that they should commend it in their statements of licensing policy."⁸

4.2.5 Our Code exhibits the features of good regulation identified by the National Consumer Council in 2005: clear objectives; rules, monitoring, enforcement and redress; wide consultation about design and operation; a dedicated, independent structure; public accountability; good publicity about the scheme; adequate resources; effective sanctions and performance indicators.

4.2.6 In its recent review of the industry's social responsibility standards, KPMG found that the work of the Portman Group was "highly respected" and there has been "a considerable improvement [in alcohol marketing] supported by the enforcement levers of the Portman Code and the Committee of Advertising Practice."⁹

⁶ *Thinking for Better Regulation, Better Regulation Taskforce 2003*

⁷ <http://www.ihra.net/AlcoholHarmReduction>

⁸ *Guidance issued under section 182 of the Licensing Act 2003, Secretary of State for Culture, Media and Sport, July 2004*

⁹ *Review of the social responsibility standards for the production and sale of alcoholic drinks, KPMG LLP, 11 April 2008*

4.2.7 In the Impact Assessment, issued alongside the consultation (p30), the effectiveness of the Advertising Standards Authority and Portman Group's Code are recognised as part of the "strict regulatory framework."

4.2.8 Alcohol advertising is also rigorously monitored and regulated. The most recent ASA review (July 2008) found that alcohol advertising was 97% compliant with the Code in 2007¹⁰.

4.3 Self-regulation can offer clear advantages over legislation

4.3.1 In the right circumstances, self-regulation offers distinct advantages over legislation. Self-regulation is particularly appropriate when dealing with subjective issues and with regulation that is to be applied 'in the spirit'; legislation can deal only with 'black and white.'

4.3.2 Additionally, self-regulatory structures can respond quicker to emerging issues and public opinion because drafting and passing legislation can be cumbersome and may take many months.

4.3.3 Furthermore, self-regulation is funded by industry, not the public purse.

4.4 As with consumers, the issue is with an irresponsible minority of the industry

4.4.1 Our experience of regulating producers shows that the overwhelming majority of want to do the right thing and usually do. 98% compliance in the 2008 PIPC survey speaks for itself (see paragraph 4.1.5).

4.4.2 Our dealings with retailers have been more limited, but their support has been excellent in removing products from sale where complaints have been upheld under the Portman Code. In our experience, the vast majority are fully supportive of corporate social responsibility and are making a positive contribution to society. They have been responsible for a number of excellent initiatives including Challenge 21, Best Bar None and community partnerships to tackle alcohol-related harm, for example, the St Neots' partnership.

4.4.3 This is supported by the findings of the KPMG report. The British Beer and Pub Association (BBPA) has done a thorough analysis of the evidence which KPMG used to form their conclusions over the perceived effectiveness of the industry's social responsibility standards. The BBPA's analysis of the data in Volume Three of the KPMG report bears out the fact that the industry is generally in line with the Standards, and the bad practice highlighted in Volume One is more the exception to the rule than the norm across the whole of the on-trade.

4.4.4 This suggests that any new regulatory measures for producers or retailers should leverage the support of the responsible majority to identify and target the irresponsible minority. The minority of companies in breach of any regulatory code should first be offered help to address the issues. However, there should be no hiding place for the small minority of irresponsible companies, who persist in flouting their regulatory Codes or their conditions of licensing.

4.5 TPG views on the way forward for industry regulation

4.5.1 Whilst we are proud of our track record, we have always recognised the need for continual improvement. We are therefore willing and able to play a leading and constructive role with Government and other parties in designing any improved industry solution, including strengthening drinks producer self-regulation and the potential consideration of innovative co-regulation options. While recognising that we are not

¹⁰ <http://www.asa.org.uk/asa/news/news/2008/Alcohol+Advertising+Compliance+Survey+2007.htm>

retailers, we are experts in regulation with the experience and determination to help provide better industry regulation.

4.5.2 We have given considerable thought to how a regulatory framework could operate effectively and efficiently; Appendix 2 lays out the breakdown in detail.

4.5.3 An additional safeguard to ensure compliance by all retailers of the decisions of the Independent Complaints Panel and the Portman Group's Retailer Alert Bulletins (which already receive an excellent level of support from retailers) could be to stipulate that retailer compliance with the decisions of the Independent Complaints Panel should be one of the conditions of a licence. This would build on the recognition that the Code already enjoys in the Secretary of State's Guidance under the Licensing Act (see paragraph 4.2.4).

4.5.4 We would also encourage the Government, rather than impose legislation, to consider an innovative co-regulatory solution whereby it works in collaboration with industry to address those areas of activity where regulation is currently perceived to be lacking or ineffective. We believe the ASA, in relation to broadcast advertising, represents a good co-regulatory model from which lessons could be learned and applied to the drinks industry. We do recognise that there are different approaches to co-regulation and that more work would need to be done to define an effective approach, but we believe this is a dialogue worth pursuing and stand ready to play our part in it if Government and other parties agree it is worthy of exploration.

5. SOCIAL MARKETING WORKS AND MUST BE PART OF THE SOLUTION

5.1 Sustained campaigning works, combined with proper law enforcement.

5.1.1 This is why the Government's Know Your Limits campaign, the Drinkaware Trust and the industry's own social marketing together is starting to have a positive effect and can have an even greater impact in the future.

5.1.2 The Government itself has been instrumental in achieving social change through sustained campaigning and education across a range of social issues. Anti drink-driving, road safety and FRANK campaigns delivered real and positive cultural shifts.

5.1.3 Education has made a huge difference to drink driving in the UK, for example, changing both attitudes and behaviour significantly over the last 30 years. Sustained education campaigns and high-profile advertisements, combined with robust enforcement of the law, changed perception of the offence and the culture. Consequently, the number of people killed annually in drink-drive accidents has fallen by over 60%.

5.1.4 Education can have a similar impact on our drinking culture. This is why the Government launched its Know Your Limits campaign. It is why the Portman Group and its member companies have played a pivotal role in consumer alcohol education initiatives in the UK since 1989, including the establishment of the Drinkaware Trust. They are also providing core funding to the Drinkaware Trust of £6.3million between 2007 and 2009.

5.1.5 Drinkaware is now the leading source of consumer information on responsible drinking in the UK, at no cost to the taxpayer. It has built impressive levels of consumer awareness in a very short space of time.

5.1.6 The high level awareness has been driven by industry-wide promotion of the Drinkaware website, www.drinkaware.co.uk, on over 3 billion drinks containers every year, and in virtually all industry advertising.

5.1.7 As a direct result of the industry's strong support and promotion, the Drinkaware website already attracts over 100,000 unique visitors per month. This trend is

increasing and means that over 1 million UK drinkers are voluntarily accessing information to help them learn how they can enjoy alcohol sensibly and responsibly.

5.1.8 Additionally, TPG member companies have extensive marketing expertise and many have their own successful social marketing campaigns which span a number of social issues including the importance of personal responsibility, young adults' attitudes to alcohol and tackling drink-driving.¹¹

5.1.9 The actions and ground-breaking initiatives pioneered by TPG and its members, in collaboration with Government and other industry initiatives such as Challenge 21, are already making a positive difference to drinking trends with an increasing majority of the population drinking responsibly (see 3.2). We are confident that a collaborative approach with Government will continue to raise levels of consumer awareness and change attitudes to alcohol which will lead to reductions in misuse.

5.2 Insights into the language that consumers will listen to

5.2.1 TPG and our member companies have conducted significant research in recent years into consumer attitudes to alcohol misuse and how to influence them effectively. Many of our findings were shared with Government representatives in a seminar hosted by Portman Group in April 2008 under the title 'Common Goals, Complementary Roles'.

5.2.2 The most critical and yet challenging group to influence regarding alcohol misuse are younger adults (18-34).

5.2.3 A key insight into these consumers is that most of them do not respond well to being told what is good and bad for them and being told what to do and what not to do. What works is to engage with them in a dialogue which challenges their attitudes and gets them to think differently for themselves.

5.2.4 We are concerned that some of the proposals envisaged in Safe, Sensible, Social would be perceived by these consumers as 'authoritarian' and therefore rejected, making the task of future social marketing that much harder.

5.2.5 In particular we strongly believe that forcing Government sensible drinking messages into advertising and other consumer communications would be a blunt instrument, unproven and quite likely to prove counterproductive. We explore this issue in more detail in section 8, with particular reference to 'end frames'.

5.2.6 In addition, we are concerned that if the Government chose to impose significant new requirements on the industry's communication with consumers, then support for voluntary initiatives such as Drinkaware could be jeopardised.

5.3 Project 10 is a positive way forward

5.3.1 The purpose of Project 10 would be to deliver a new, voluntary industry-wide consumer education campaign designed to help tackle alcohol misuse in our society by changing attitudes towards the social acceptability of drunkenness.

5.3.2 At the Prime Minister's summit on alcohol misuse, industry representatives expressed their willingness to do more to tackle excessive drinking. In fact, the Prime Minister wrote to industry leaders and trade associations in March 2008 stating: *'I am sure you will agree that Govt and industry both face a challenge from the public to reduce the harm that alcohol does to our society. Recognising the importance of the contribution the industry already makes, but mindful of the ongoing challenges we jointly face, I should be grateful if, in discussion with Departments, the industry could work constructively together, using their considerable expertise in Marketing to devise a way forward.'*

¹¹ <http://www.portman-group.org.uk/assets/documents/Web%20PDF%20Brochure%20Portman.pdf>

- 5.3.3 Project 10 is the industry's response to that challenge. It has been developed to this point by a voluntary alliance of producers and on and off trade retailers who believe it is in the interests of both our society and our industry that we make a positive response. We know how to talk to our consumers and we believe that we can make a difference to attitudes to alcohol misuse.
- 5.3.4 Project 10 now has the support in-principle of at least 40 major companies and we continue to enrol more companies week-by-week.
- 5.3.5 The proposed Project 10 campaign is designed to work alongside and reinforce existing initiatives from both Government and industry, most notably 'Know Your Limits' and the existing work of the Drinkaware Trust.
- 5.3.6 It would represent a sustained multimedia campaign conservatively valued at over £100 million over 5 years
- 5.3.7 It would target misuse (those who drink to excess on any given occasion), with a particular focus on younger adults (18-34 year olds), leveraging industry insights into how to influence attitudes of these consumers – i.e. talk with them not at them, emphasising the benefits of responsible enjoyment.
- 5.3.8 It would use a paid media campaign to connect consumers with the core idea, then amplify the message on pack and through point-of-sale, emphasising practical advice and help to enjoy drinking responsibly. It has a variety of on-trade, off-trade and producer executions.
- 5.3.9 The campaign tagline agreed with the Drinkaware Trust is '*Why let good times go bad?*'

6. SPECIFIC CONSULTATION QUESTIONS – RETAILER CODE

- *How might a new Code be made effective in stopping licensed premises from engaging in practices that encourage people to drink excessively and irresponsibly?*
 - *What are the most important issues that need to be addressed in an alcohol retailing code?*
 - *Should the same restrictions be applied to:*
 - *all premises selling alcohol; all premises with some exemptions;*
 - *only certain types of premises;*
 - *all premises within an area experiencing problems; or*
 - *a combination of these?*
 - *Should an alcohol retailing code be made mandatory through further legislation? If so, how should it be applied?*
 - *Should a mandatory Code, if introduced, cover proportionate and necessary actions to prevent health harm as well as crime and disorder?*
- 6.1 TPG is a producer organisation and its scope is limited to regulation of producers. While producers have some influence over the way in which their products are promoted at point-of-sale (for example, they control their packaging and may additionally offer point-of-sale display material, etc), this influence is limited. Producers are nonetheless interested in the way in which their products are presented for sale and we do have considerable positive experience of self-regulation. It is in this context that we make our response.
- 6.2 Indeed, our first comment is that the consultation is unclear on the distinction between retailer and producer activities. The proposal appears to be for a new retailing code although many of the activities under consideration for inclusion within this retailing code are the preserve of drinks producers. We can see no justification for extending the retailing code to drinks producers because effective, independent controls already exist for producers in the form of the Advertising Standards Authority and Portman

Group Codes. Furthermore, these are funded entirely by the advertising and drinks producer industries, not taxpayers.

- 6.3 Further, the Government is seeking to introduce a mandatory Code for industry, but the above Codes are already mandatory for all UK drinks producers. We therefore strongly dispute that drinks producer marketing activity needs to be regulated through a new mandatory code aimed at retailers.
- 6.4 The requirement for the proposed retailing code follows the KPMG report into the industry's social responsibility standards. The Portman Group fully supports initiatives to crackdown on the irresponsible business practices identified by KPMG. Its report, however, provides no evidence of the need for Government intervention in drinks producer regulation. In fact, as previously noted, KPMG praised the effectiveness of the Portman Group's Code.
- 6.5 The views of TPG's Independent Complaints Panel provide a UK-wide, consistent approach to marketing standards. It is difficult to see how producer activities could be regulated fairly, efficiently and effectively at a local level. Local enforcement by trading standards would create a patchwork of different standards which would create an unworkable regulatory framework. What may be deemed irresponsible to one trading standards authority could be acceptable to others.
- 6.6 Using the list on page 19 of the consultation of possible activities to be regulated, we consider the only activities where there may be a case for switching regulatory responsibility from Portman Group to a new retailer code are point-of-sale materials and sampling within retail outlets; this is because responsibility for these two activities is shared between the producer and the retailer.
- Many drinks companies produce point-of-sale materials for retail outlets although, ultimately, control over the use of these point-of-sale materials rests with retailers. Drinks producer generated point-of-sale materials (POS) are already regulated by the Portman Group. If it is deemed necessary to regulate point-of-sale material through the new retailing Code, we should urge that this regulation be confined to retailer-generated POS and that the new Code complement and mirror the restrictions already applying through the Portman Group Code.
 - Sampling is generally conducted by drinks producers, very often within licensed premises, and regulated by the Portman Group. For sampling to take place within licensed premises, however, the retailer must grant their permission. We believe there should be no need to duplicate the Portman Group's regulations on sampling. If, though, it is deemed necessary to regulate sampling on licensed venues through any new retailer Code, we urge that this to mirror the guidelines issued by the Portman Group in respect of its Code so that sampling is regulated to the same high level regardless of whether or not it is taking place in a licensed venue.
- 6.7 While we recognise there is a degree of understandable public concern over the possible impact of price-based and volume-related discounts on harm, these practices relate to the sale of alcohol which is the responsibility of retailers and therefore outside the scope of our Code. Competition concerns mean that any action on this issue will almost certainly have to be legislative rather than self-regulatory as any collusion by retailers on price and volume-related discounting would appear to breach competition law.
- 6.8 Many of the failings identified by KPMG relate to irresponsible retailer practices which are illegal; in these cases, the extensive range of existing laws governing retailers should be enforced more vigorously. Any new regulations on retailers should be evidence-based, proportionate and create a level-playing field for retailers
- 6.9 The Better Regulation Executive, part of the Department for Business, Enterprise and Regulatory Reform, has identified the five principles of good regulation which are now a

cornerstone of the better regulation strategy and implementation¹². These state that any regulation should be: transparent; accountable; proportionate; consistent and targeted only at cases where action is needed. Any moves to create any new regulatory framework for drinks producers would fail to satisfy at least two of these five principles. The evidence provided by KPMG indicates that any erosion of drinks producer self-regulation would be a disproportionate policy measure which would not be targeted where action is needed.

- 6.10 It should be noted that the Government cannot, as things stand, create an overall regulator for all alcohol industry marketing activity. This is because the Advertising Standards Authority has a statutory obligation to regulate all broadcast advertising, including alcohol advertising. Furthermore, any attempt by the Government to switch responsibility for regulation of non-broadcast advertising from the ASA to a new alcohol regulatory body will create confusion because it will undermine the ASA's standing as a "one-stop shop" for advertising regulation.
- 6.11 The above points notwithstanding, we stand willing and able to play a leading and constructive role with Government and other parties in developing an improved collaborative approach to strengthen industry regulation, capable of addressing the concerns we have raised.

7. SPECIFIC CONSULTATION QUESTION – VOLUNTARY LABELLING SCHEME

- *If there continues to be slow progress in implementing a voluntary labelling scheme, should the Government take the next steps to make it a legal requirement to include health and unit information on all bottles and cans?*

- 7.1 In view of the considerable progress that has already been made by the industry in voluntarily including educational information on labels, and the lack of current evidence to suggest that mandatory health-information labels of the type proposed by the Department of Health would significantly impact on knowledge or behaviour, we disagree that there is a need to make it a legal requirement for companies to carry health and unit information on all bottles and cans.
- 7.2 We question the benefit of implementing the Department of Health's labelling scheme. The Impact Assessment acknowledges (page 62) that there is no direct evidence to demonstrate that additional information on labels will have a beneficial effect. In fact, research evidence indicates that warning labels of this nature are not very effective at influencing behaviour¹³¹⁴.
- 7.3 We also question the premise on which the consultation question is based. The first survey by CCFRA was fundamentally flawed because it focused on secondary rather than primary packaging and furthermore did not take proper account of product market share. The revised re-calculation shows that unit labelling of products surveyed is actually 70% rather than the published 57%.
- 7.4 Any move to make the standard label mandatory through legislation should be based on a full and accurate evaluation of levels of industry adoption of the voluntary agreement. Unless the evaluation is to take account of labels in the production pipeline, it should not take place before January 2009. This date is important because the industry was given until the end of this year to change its labels. There is a significant replenishment of stock between November (when the monitoring survey is planned to take place) and January.

¹² <http://www.berr.gov.uk/whatwedo/bre/>

¹³ Stockley, CS, The effectiveness of strategies such as health warning labels to reduce alcohol-related harms – an Australian perspective. *International Journal of Drug Policy* 2001; 12: 153-166

¹⁴ MacKinnon DP, Nohre L, Cheong J, Stacy AW, Pentz MA, Longitudinal relationship between the alcohol warning label and alcohol consumption. *J. Stud. Alcohol* 2001; 62: 221-227

- 7.5 The industry nonetheless recognises that labels provide an opportunity to educate the consumer through succinct messaging. To this end, all Portman Group's member companies voluntarily unit label their drinks, include messages about drinking responsibly on their labels and promote the Drinkaware website (www.drinkaware.co.uk); these represent three of the five elements in the Department of Health's labelling format.
- 7.6 Furthermore, some of our members have also implemented the other two elements of the Department of Health's labelling format. Others, however, have concerns over the provision of such detailed information on the side of drinks containers. For example, the lack of evidence means that some have not yet been convinced that the voluntary labelling initiative will make a meaningful impact on consumer knowledge and behaviour.
- 7.7 Government should be aware that the introduction of legislation to require mandatory labelling of alcoholic products is actually likely to slow down the process. This is because as soon as the Government indicates the intention to legislate companies are likely to put decisions on hold and wait to see the outcome of the legislation. In particular they will want to find out whether there are differences between the legislative requirements and the current voluntary agreement so they avoid implementing two costly label changes.
- 7.8 Legislation would also have to be referred to the European Commission for consultation with other member states.
- 7.9 It is also likely that labelling legislation would recognise the industry's legitimate request for a period of 12 to 18 months for transition period to permit existing non-complying packaging to be sold through.

8. SPECIFIC CONSULTATION QUESTION - ADVERTISING

- *Should alcohol advertising include health and unit information? How could this be achieved?*
- 8.1 Drinks companies already voluntarily indirectly promote health and unit information through their brand advertising. We disagree with the idea that drinks companies should be forced to include health information in their brand advertising through, for example, end-frames attached to television advertisements. We consider that there are better ways that the industry can build on their existing initiatives to educate consumers.
- 8.2 Portman Group member companies already promote the Drinkaware website address, www.drinkaware.co.uk, and a message about drinking responsibly on their advertising. This is a subtle, yet highly visible, reminder to consumers prompting them to think about their drinking, signposting the Drinkaware website which contains full information on responsible drinking. As a result, this website has become the most popular source of consumer information on alcohol and its effects.
- 8.3 End-frames, in contrast, would be blunt, make poor viewing and could result in many people 'switching-off' when they appear. The implication in the consultation paper that exposure to health warnings in brand advertising would actually directly lead to a change in attitudes and behaviours is supported by no evidence whatsoever
- 8.4 The consultation and impact assessment provides no supporting evidence that health warning end-frames would have a positive effect. In fact, there is a significant body of research on counter-advertising and warnings that shows that mandatory health messages or warnings in advertising can create a "boomerang effect". In other words, some consumers do the opposite of what the message advises. This means the

warnings fail to deliver the desired public health objectives and may aggravate, not alleviate, social problems¹⁵.

- 8.5 The impact assessment of the end-frame in the consultation paper acknowledges that the justification for this proposal is based on “a number of assumptions” all of which relate to reducing the alleged ‘negative’ effect of brand advertising rather than any positive effect of the end-frame itself. In other words, the impact assessment suggests that the proposed end-frame would be no more effective in delivering attitudinal and behavioural change than would running a 5 second blank screen following each televised alcohol advertisement.
- 8.6 A crucial assumption in the Impact Assessment is that advertising impacts on harm and that a reduction in advertising would mean less harm. Earlier this year, a comprehensive review of the literature on the impact of advertising on alcohol use found that the evidence is mixed and that there is a lack of conclusive evidence regarding a causal link¹⁶:
- “There is an ongoing methodological debate on how advertising effects can and should be investigated and further research and methodological developments for establishing a definite causal relationship is required”* [evidence statement 6]
- 8.7 If the correlation between advertising and harm were true, it is difficult to explain why levels of alcohol-related deaths in the UK between 1992 and 2004 almost doubled¹⁷ while expenditure on alcohol advertising in real terms decreased by nearly 20%¹⁸.
- 8.8 This proposal appears to be primarily a levy on advertisers designed to reduce the overall volume of advertising, rather than a means of educating consumers. Since alcohol advertising complies with strict ASA regulations, there should be no need to tax responsible advertising.
- 8.9 Any end-frame requirement would have to apply to all alcohol advertisers, retailers as well as producers. It could cause many companies to switch investment away from traditional advertising into other promotional activities, such as viral marketing or price-based promotions.
- 8.10 Rather than end-frames on brand advertising, we consider that a co-ordinated, dedicated campaign as proposed in Project 10 offers a far more positive and effective way of engaging with and educating consumers.

¹⁵ *Boomerang Effects in Response to Public Health Interventions: Some Unintended Consequences in the Alcoholic Beverage Market*, by Debra Jones Ringold, published in the *Journal of Consumer Policy* 25: 27-63, 2002

¹⁶ *The independent review of the effects of alcohol pricing and promotion – summary of evidence to accompany report on phase 1: systematic reviews*, School of Health and Related Research, University of Sheffield, June 2008

¹⁷ *Trends and geographical variations in alcohol-related deaths in the United Kingdom, 1991-2004*, Office for National Statistics

¹⁸ *Drink Pocket Book 2006*, AC Nielson

9. CONCLUSIONS AND THOUGHTS ON WAY FORWARD

- 9.1 As explained in our introduction, we believe the fundamental policy choice before Government is whether or not to work in collaboration with the responsible majority in industry to build on what is already working, whilst addressing policy gaps. Collaboration has in the past delivered many constructive initiatives such as producer self-regulation, the Drinkaware Trust, Challenge 21, voluntary labelling, and looking forward, Project 10, at no cost to the taxpayer.
- 9.2 We have made clear our readiness to engage in constructive dialogue and continue to work alongside Government in a collaborative way as we have in the past, and our sincere hope that Government will respond in the same spirit of constructive dialogue and collaboration.
- 9.3 We have also made clear that whilst we are pleased to see progress being made on alcohol misuse and proud of our contribution to this, we agree that there is no room for complacency, and that more still needs to be done. We are therefore not arguing for the status quo, but considered evolution that builds on the achievements and lessons of the past.
- 9.4 What we have argued is that such evolution should continue to target the minority who misuse alcohol, whether consumers or industry participants, maintaining and using the support of the responsible majority. And it should be based on sound evidence-based policies.
- 9.5 In particular, we have examined what we believe to be two of the most potent tools in the policy armoury – self-regulation and social marketing. We believe there is scope for both to build on the foundations of what is already in place.
- 9.6 On social marketing, Government has already seen new industry proposals (Project 10) that respond to the PM's challenge, build on Drinkaware and complement Know Your Limits.
- 9.7 On regulation, we recognise the debate on the way forward is less advanced today. TPG believes that there is scope for industry and Government to collaborate more effectively in this arena too, as with social marketing. The concept of co-regulation may potentially offer the best of self-regulation with the added enforcement provided by additional legislative authority. If the Government and other parties in industry wish to explore this concept further, TPG would be pleased to be part of that discussion and would indeed encourage it.

October 2008

The operation of the Portman Group Code

Drinks producers are regulated by the Advertising Standards Authority (ASA) and the Portman Group. The BCAP/CAP Advertising Codes and Portman Group Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks cover all drinks producer marketing activities within the UK. The impact assessment which accompanies the consultation, describes the Portman Group Code as “voluntary.” It is voluntary in so far as the industry has volunteered to impose the restrictions on itself; compliance with the code, however, and compliance with the BCAP/CAP codes, is mandatory; there is no opt-out for any drinks manufacturer.

The Portman Group’s Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks applies to pre-packaged alcoholic drinks and the promotional activities of drinks producers. The Code covers a drink’s name and packaging, press releases, websites, sponsorship, sampling, branded merchandise, advertorials and all other promotional material. It does not apply to alcohol advertising which is regulated by the Advertising Standards Authority.

Our Code prohibits the marketing of alcoholic drinks to under-18s; the alcohol content of a drink must be made absolutely clear; its alcoholic strength should not be dominant; it must not encourage rapid or down-in-one drinking; there must be no association with illegal drugs, bravado, aggression or anti-social behaviour and any suggestion that the drink will lead to sexual success or increased popularity is also banned.

All complaints made under our Code are heard by The Independent Complaints Panel. This Panel is chaired by Sir Richard Tilt, former Director General of the Prison Service. The other members of the Panel are Morven Proctor, Callum Jacobs, Angela Sarkis CBE, Nigel Long, Jon Eggleton, Revd. Canon Professor Martyn Percy and Barbara O'Donnell, none of whom work in the alcohol industry.

Since the Code and the Independent Complaints Panel were introduced in 1996, over 70 drinks have been found to be in breach of the Code. Failure to comply with our Code results in a drink being removed from sale.

Enforcement of the Independent Complaints Panel’s decisions is provided by retailers who do not sell any drink found to be in breach of the Code until that drink’s marketing has been altered to comply with the Code. This sanction provides a strong commercial threat to companies, encouraging them to ensure that their marketing is responsible. Not only is this an effective deterrent but, arguably, it is a far tougher penalty for drinks companies than any disciplinary procedure or fine would be, which has been mooted by some stakeholders.

When a product is found in breach of the Code by the Independent Complaints Panel, a Retailer Alert Bulletin is issued by the Portman Group to retailers urging them not to continue selling the product until the drink’s marketing is altered to comply with the Code.

If a retailer continues to stock a product which has been found in breach of the Code by the Independent Complaints Panel, the Code Secretariat may notify the retailer’s licensing authority. We may also notify an interested party or responsible authority such as the police or trading standards, who may make representations about the impact of such a breach upon one or more of the licensing objectives set out in the Licensing Act 2003. These bodies also have the power to apply for a review of an existing licence, which can result in the licence being modified, suspended or revoked.

The decisions of the Independent Complaints Panel and the Portman Group’s Retailer Alert Bulletins receive an excellent level of support from the retail industry to such an extent that we have not yet had to report any retailers to their licensing authority for failing to abide by the Panel’s decisions

We also take a pro-active approach to identifying potential drinks producer non-compliance with our Code. Our Code Advisory Service offers fast, free and confidential advice to marketers enabling them to stay on the right side of the Code. Last year, this Service gave advice on 220 different products. We also offer unsolicited advice to producers when we come across products or promotions which, in our view, may breach the Code of Practice.

Furthermore, earlier this year we commissioned management consultants, PIPC, to conduct an independent audit of drinks producer compliance with the rules. PIPC devised and implemented a rigorous process to collect a random sample of 485 drinks before assessing their packaging against the Code. PIPC expressed concerns over the packaging of 32 brands. Most of these producers have since voluntarily amended their packaging while eleven products have been referred to the Independent Complaints Panel for adjudication.

We are committed to carrying out regular monitoring programmes of this type to check producers' compliance with our Code. We are also committed to regularly reviewing our Code rules through public consultation involving key stakeholders to ensure that the Code evolves and that it is indeed offering a proper balance between protecting the public from irresponsible drinks producer marketing while at the same time allowing companies reasonable commercial marketing freedoms.

ALCOHOL REGULATORY RESPONSIBILITIES

Regulator	Advertising Standards Authority	Portman Group	Retailing Code
Remit:	<p>All advertising, e.g.:</p> <ul style="list-style-type: none"> • television • radio • press • poster • cinema • direct mail <p>[Note: Non-broadcast advertising is entirely self-regulated. Broadcast advertising is co-regulated with ASA acting under delegated authority from Ofcom]</p>	<p>All non-advertising alcohol producer activities, e.g.:</p> <ul style="list-style-type: none"> • naming • packaging • sponsorship • sampling* • press releases • brand websites • producer generated point-of-sale materials* <p>*could be dealt with under retailing code</p>	<p>All non-advertising alcohol retailer activities, e.g.:</p> <ul style="list-style-type: none"> • point-of-sale materials • price-based promotions • prevention of underage purchases • serving intoxicated consumers • training of staff • controlled exit and dispersal policies in on-trade • siting of alcohol in store • other matters relating to management and design of outlets
Monitoring/complaints handling through:	ASA Council	Independent Complaints Panel	To be decided
Rules agreed by:	Committee of Advertising Practice following full public consultation	Portman Group Council following full public consultation	To be decided
Enforcement by:	Media owners	Retailers	To be decided
Funded by:	Advertising industry	Drinks producers	To be decided