



**Portman
Group**

Portman Group Consultation

Code of Practice on the Naming, Packaging and
Promotion of Alcoholic Drinks (fifth edition)

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CHAIRMAN'S FOREWORD

Responsible drinks producers are serious about tackling alcohol misuse. It is not remotely in their business interests for alcohol to cause harm. Instead, they are anxious to ensure that their products are marketed and sold responsibly.

Responsible producers demonstrate this by their membership of the Portman Group and their support of an independent complaints process, which is at the heart of an effective self-regulatory process. Decisions made by the Independent Complaints Panel, on a large number of products, have demonstrated that the Code is a serious document. Our members support the Code even when it challenges them and, sometimes, requires them to adjust their own marketing.

I have chaired the Portman Group for five years and have been proud to do so. In that time, I have been delighted at the way the Code has worked and I've warmly welcomed the decisions of the Independent Complaints Panel. But one of the characteristics of effective regulation is regular review. Any set of rules must remain fit for purpose. Accordingly, we are now seeking views on whether and how the Code should change. We will welcome comments on any aspect of the Code, but this consultation document highlights some of the areas which we think justifies further thought.

The key issue for me is how we define immoderate consumption. The current Code was published when the Chief Medical Officer's drinking guidelines included advice on a daily limit for alcohol consumption. In the new guidelines, published in 2016, advice on a daily limit has been removed – a significant misjudgement in my view.

With that loss, the industry, and the Independent Panel, lost one of its long-established reference points for measuring immoderate consumption. Since the replacement of the old guidelines, products which I believe the Independent Panel would certainly have removed from the market have remained for sale. Products that in my view have the capacity to cause harm to vulnerable people. Therefore, we are anxious to receive views on if and how we can establish a new and credible definition of immoderate consumption, which would help inform the Independent Panel's decisions.

Another contentious area is whether the scope of the Code should be widened to offer additional protection to vulnerable individuals and, if so, how this can be achieved in a balanced but meaningful manner. Long-term alcohol misuse can cause serious problems for individuals, communities, and society. Those people who become addicted to alcohol find themselves, by definition, unable to make balanced and informed decisions about how much they consume. We want views on whether, and how, the Code should be amended to provide that protection.

These are just two of the issues - from a much longer list - on which we are seeking views. I encourage all stakeholders to engage with this process as we seek to ensure the Code of Practice is revised to ensure, as far as possible, that marketing practices do not encourage alcohol misuse.



Sir Martin Narey
Chairman

CHIEF EXECUTIVE'S INTRODUCTION

The primary purpose of the Portman Group is to ensure that producers do not overstep the line as they seek to differentiate their brands from the array of competition that exists in the market. Yet, at the same time, we also need to be mindful of the need not to discourage creativity, stifle competition or impinge too heavily on the design freedoms that have enabled UK businesses to create much-loved, and in some cases iconic, brands and products. As I reflect on my first year in post, that critical balance is at the forefront of my mind and will remain a key question for the Portman Group under my direction.

For our regulation to be effective, it must be kept up-to-date to ensure it reflects inevitable shifts in public opinion. The Code of Practice which sets the parameters for socially responsible alcohol marketing must remain a live document – open to challenge and debate and regularly reviewed to ensure it remains relevant. That's why I am delighted to launch this review and why I am keen to hear from as many people as possible on what should be amended, or added to the Code, to make it stronger and more effective.

I know some people are sceptical about the value of industry self-regulation. There are some who argue that such regulation should be on a statutory footing, independent of industry. But the reality is that such an approach would discourage creativity and damage UK businesses. It would almost certainly reduce the scope of what is covered by our Code, slowing the speed and efficiency with which we are able to act and reducing buy-in and support from producers.

Far better that we have a system of self-regulation, funded solely by Portman Group member companies for the benefit of the whole industry, and supported by the majority of the industry, setting high standards around what is acceptable and seeking to push them higher. To those that remain sceptical, I encourage you to participate in this consultation, get involved in the process to strengthen the Code, and, once we have revised it to create a sixth edition, to test it. We welcome complaints from the public where there is genuine concern that standards are not being met. Likewise, for producers, we continue to offer free, confidential and impartial advice to help avoid complaints and the negative consequences that inevitably follow an upheld ruling.

As the Chairman has already outlined, there is much for us to consider in this consultation. Alongside the critical question of defining immoderate consumption, and what more we can do to strengthen the protection offered to those who are vulnerable, we are also seeking views on whether the scope of the Code should be extended to capture serious or widespread offence. There can be no doubt that attitudes towards this issue have shifted considerably since our previous consultation five years ago.

I would also encourage people to raise new issues or concerns, looking particularly to changes in technology and the evolving landscape around marketing and consumer engagement. Even where these are not obviously problematic, early identification can help us to think about how we future-proof the Code and stay ahead of key issues.

We are grateful to those people who have already expressed an interest in responding to this important consultation. Please don't hesitate to share your views freely and openly so that we can strike the right balance between protecting consumers and supporting responsible producers.

A handwritten signature in blue ink, appearing to read "John Timothy". The signature is fluid and cursive, with the first letter of each word being capitalized and prominent.

John Timothy
Chief Executive

SECTION 1 – INTRODUCTION AND BACKGROUND

1.1 The Portman Group

1. The Portman Group is the social responsibility organisation for UK drinks producers¹. Our role is to:
 - Encourage and challenge 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 and the Alcohol Sponsorship Code;
 - Bring together drinks producers, leading sports, music and venue organisations to promote responsible drinking through sponsorships under the UK-wide Portman Group Alcohol Sponsorship Code ;
 - Demonstrate leadership on best practice on alcohol social responsibility through the actions of member companies;
 - Speak on behalf of members on these issues to inform public opinion and policy.

1.2 The Code of Practice and the need for review

2. The Code of Practice on Naming and Packaging (the “Code”) has been in operation since 1996 and is designed to ensure that alcohol marketing is responsible. It applies to the naming, packaging, marketing and promotional activity undertaken by a drinks producer for an alcoholic drink which is marketed for sale and consumption in the UK, where such activity is primarily UK-targeted, and is not already subject to regulation through the Advertising Standards Authority (“ASA”) or Ofcom.
3. The Code does not duplicate regulation by the ASA or Ofcom; instead it complements and is consistent with the UK Code of Broadcast Advertising (BCAP Code) and the British Code of Advertising, Sales Promotion and Direct Marketing (CAP Code), which are independently administered by the ASA². This remit ensures consistent and seamless regulation across the alcohol industry.
4. The Code now sits alongside the Portman Group’s Alcohol Sponsorship Code; in January 2014, the Portman Group launched the first ever UK-wide Sponsorship Code, which commits producers to promote responsible drinking and/or support diversionary activities as part of their sponsorship agreement. The focus of this review is the Naming and Packaging Code; while the rules in the Sponsorship Code do not form part of this review if there is any fundamental rule or process change to the Code this will be reflected in the Sponsorship Code in due course.

¹ The Portman Group member companies are: AB InBev, Bacardi Brown-Forman Brands, Carlsberg UK, Diageo Great Britain, Heineken UK, Mast-Jägermeister, Molson Coors UK and Pernod Ricard UK.

² Ofcom contracted out day-to-day responsibility for broadcast (TV and radio) advertising to the ASA and BCAP in November 2004. Ofcom acts as a backstop regulator to the ASA for TV and radio advertising and retains responsibility for regulating TV programme sponsorship.

5. Regular review is one of the features of good self-regulation. A review allows us to check whether the existing rules are working as intended: are the rules still relevant; do they need to be strengthened; do new rules need to be introduced?
6. Since its introduction, the Code has undergone four major revisions following public consultation exercises; the last was in 2012. These reviews have enabled the Code to adapt in response to public opinion, cultural change and industry innovation. We are satisfied that the current Code has struck the right balance between adequate public protection and the freedom of all drinks producers, not just those who are members of the Portman Group, to market their products creatively. However, this review allows us the opportunity fully to engage with the public and be sure this view is shared.
7. This review will result in the introduction of the sixth edition of the Code in 2019.

1.3 How the Code works

8. The Code is approved by the Portman Group Board³ following consultation; including this public consultation.
9. The Code is administered, not by the Portman Group or its Board, but by an Independent Complaints Panel (“Panel”). The Panel is currently chaired by Jenny Watson CBE. There are six other members of the Panel; these are appointed by the Chair of the Panel. Vacancies are advertised publicly through appropriate media channels. Details of the Panel membership can be found on our website (www.portmangroup.org.uk). The Panel has its own constitution which requires that the membership represents a diversity of backgrounds and experience. The Panel’s decisions are published on our website and in an annual Code report.
10. The Code has an open and accessible complaints system allowing anyone to make a complaint against a product or promotion that they consider is in breach of the Code. Complaints are ruled on by the Independent Complaints Panel.
11. If a complaint is upheld and a product or promotion is found in breach of the Code, the producer is asked to take remedial action. In the event of a breach concerning the naming, packaging or point-of-sale advertising material of a drink, we may also issue a Retailer Alert Bulletin (RAB) asking licensed retailers not to stock the offending product, or display the offending point-of-sale material, until the company has taken appropriate remedial action. Retailers play a vital role in ensuring that irresponsible products are removed from the market. The RAB is published in the trade press and also distributed to Code signatories, trade associations, police licensing officers and local authority licensing officers.
12. In the event of a retailer ignoring a RAB and continuing to stock a product or display point-of-sale material that has been found in breach of the Code, we

³ The Portman Group Board consists of Portman Group members, which is independently chaired by Sir Martin Narey. (see footnote 1 above for full list of Portman Group members).

may report that retailer to their local licensing authority for it to take whatever action it deems appropriate. We have not yet had to report any retailer in this way and all Panel decisions have been complied with.

13. To assist companies in complying with the Code, we offer a free Advisory Service. Companies can approach the Advisory Service for confidential guidance in advance of launching a product. Portman Group staff, who provide the Advisory Service, will give their opinion on whether the proposed product or activity raises any potential problem under the Code. However, the Advisory Service's opinion is not binding on the Panel. Nevertheless, the service has become increasingly popular and has helped to ensure that producers do not unintentionally fall in breach of the Code.
14. A Code can never be written to cover every eventuality or circumstance and is always going to be open to subjective interpretation. Broad rules and a principles-based Code allow the Panel greater flexibility in interpretation. It is also worth noting that the Code seeks to impose a minimum marketing standard with which all companies across the industry are expected to comply to ensure that the public is adequately protected. While it sets a solid foundation for responsible practice there are many drinks producers that choose to go further than the Code's requirements. Indeed, the Portman Group's member companies have their own marketing codes to demonstrate their commitment to social responsibility, and this is to be welcomed.

SECTION 2 – ISSUES FOR REVIEW

15. This section outlines various issues which potentially might warrant a change in the Code and on which specific response is sought. In addition, there are several ways in which the structure and wording of the Code might be amended for the sake of greater clarity or consistency.

2.1 Changes in mood or behaviour

16. Rule 3.2(j) disallows *“any suggestion that a product has therapeutic qualities, or can enhance mental or physical capabilities”*.
17. The Advisory Service occasionally comes across marketing communications which imply that alcohol can alter the consumer's mood, or their perception of a situation. While consuming too much alcohol can and *does* change mood or behaviour to some extent, the effects differ for individuals. Therefore it is right that such suggestions are prohibited under the Code.
18. At present, the Advisory Service advises against marketing of this nature under Code rule 3.2(j), and the Panel already has interpretive power to deal with this. We are not satisfied, however, that this quite captures the issue because this rule, as currently drafted, implies consumption of alcohol will 'improve' (enhance) mental/physical capabilities. We therefore propose to amend the Code to state that alcohol should not be offered on the basis that it can change mood or behaviour, either positively or negatively.

19. We therefore propose to amend rule 3.2(j) to state that alcohol should not be offered on the basis that it can change mood or behaviour. This will also ensure the rule is consistent with the rules in the CAP Codes.
20. In the event that the rule is revised Code Guidance will be produced to support and clarify the new rule (drafting to take place post consultation).

Proposed amendment to rule 3.2(j) in bold italics:

A drink, its packaging and any promotional material or activity should not in any direct or indirect way suggest that the product has therapeutic qualities, ~~or~~ can enhance mental or physical capabilities, ***or change mood or behaviour.***

Questions 1 & 2

1. **Do you agree that the Code should be amended to prevent alcohol being offered on the basis that it can change mood or behaviour?**
2. **Do you agree with the proposed drafting of the Code rule?**

2.2 Defining immoderate consumption

21. The first edition of the Code was launched in 1996. In all editions of the Code a key requirement has been that alcohol products and promotions should not encourage immoderate [illegal] or irresponsible consumption. Rule 3.2(f) has been largely unchanged over the years and currently reads:

A drink, its packaging and any promotional material or activity should not in any direct or indirect way encourage illegal, irresponsible or immoderate consumption, such as drink-driving, binge-drinking or drunkenness.

22. Over the last 20 plus years the Panel has considered many complaints under this rule. Some in relation to product names and imagery which either directly or indirectly encouraged immoderate consumption; some about on-trade promotions where a consumer is incentivised to purchase alcohol to receive more free alcohol for immediate consumption; and, more recently, in relation to product packaging containing more than four units of alcohol⁴. In most of these cases, and certainly the cases about packaging and on-trade promotions, either the producer in its defence, or the Panel in its consideration of the case, used the upper limit of the Chief Medical Officer's 'Sensible Drinking' Guidelines⁵ (which were current between 1995 and 2016) as the main reference point for determining whether something encouraged immoderate consumption. These guidelines recommended that '*men should not regularly drink more than 3–4 units of alcohol a day and women should not regularly drink more than 2–3 units a day*'.

⁴ Panel decisions are available on the Portman Group's website www.portmangroup.org.uk/complaints

⁵ Department of Health Sensible Drinking: the Report of an inter-departmental working Group; 1995. http://webarchive.nationalarchives.gov.uk/20130105043158/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4084702.pdf

23. The Code was launched the year after the *Sensible Drinking Guidelines*. All Portman Group industry guidance supporting this rule has been written with reference to those daily guidelines⁶.
24. In August 2016, the Chief Medical Officers' (CMOs') Guidelines on Low Risk Drinking⁷ were published, with recommendations that men's or women's consumption should not regularly exceed 14 units per week. The guidelines advise "*if you regularly drink as much as 14 units per week, it is best to spread your drinking evenly over 3 or more days*". The guidelines no longer provide guidance on a daily threshold above which risk is estimated to increase.
25. Without a daily threshold the Panel has lost one of its critical reference points. This change from daily to weekly units has impacted Panel rulings where previously complaints had been upheld.⁸ The Panel had to abandon a line of decisions to the effect that putting in excess of four units in a non-resealable single-serve can indirectly encouraged immoderate consumption of alcohol, contrary to rule 3.2(f).⁹
26. As a result of the move from daily to weekly guidelines, and the loss of a specific threshold for daily units, the Advisory Service has also found it difficult to provide guidance on undertaking responsible on-trade promotions where alcohol is purchased for immediate consumption, and guidance for other areas covered by the Code, such as sampling activity. For example, when as part of a daily offer a consumer is required to purchase a stated number of drinks/units of alcohol to redeem a free drink, the Advisory Service had always recommended that the consumer should not be required or encouraged to consume more than four units in one drinking occasion, because that is how most on-trade promotions work in practice. To suggest the consumer should spread their consumption over a week, or at least three days, does not correspond with the way on-trade promotions or sampling activity is undertaken.
27. In trying to address this issue we have considered whether it is possible to develop guidance on immoderate consumption which seeks to extrapolate from the weekly guidelines: by dividing 14 units over three days¹⁰.
28. So an immoderate drinking level per day or drinking occasion might be above 4.67 units (i.e. 14 units / 3 days). However this is only an extrapolation - the wording ("*it is best*") does not suggest precision. Furthermore, for over 20

⁶ Our guidance on Product Sampling⁶ advises that sampling activity '*should not involve giving away individual samples of greater volume than [the sensible drinking guidelines]*'. Our Sponsorship Code references the same Sampling Guidelines. Similarly, our advice for on-trade drinks promotions is that they should be in line with these daily guidelines and should not encourage consumption of more than four units by one person in one drinking occasion.

⁷ UK Chief Medical Officers' Low Risk Drinking Guidelines August 2016 available from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/545937/UK_CMOs__report.pdf

⁸ See Panel decisions on www.portmangroup.org.uk/complaints

⁹ While these Panel decisions were in relation to product packaging, the Code's remit is broader than packaging and therefore the impact of the change in guidelines is wider than just product packaging. The Code applies to all producer-led promotional activity which is not already subject to regulation through the ASA or Ofcom. This effectively covers a broad range of promotional devices including sponsorship, sampling, press releases, branded merchandise, advertorials, point-of-sale material and activity, co-promotional material and activity.

¹⁰ The GDG recommended a weekly alcohol guideline rather than a daily one because, in its view, most people do not drink every day. The Group further recommended that if you do drink as much as 14 units per week, it is best to spread this evenly over 3 or more days. Alcohol Guidelines Review – Report from the Guidelines Development Group to the UK Chief Medical Officers https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/545739/GDG_report-Jan2016.pdf

years industry ‘best practice’ has been established as ‘no more than four units in a day’; and 4.67 would undermine this responsible established approach.

29. We have also consulted the ASA to understand if we can learn from its approach to defining immoderate consumption. The CAP Codes do not define immoderate consumption by reference to a specific threshold, daily or otherwise. Much of the ASA’s consideration in this area relates to the number of people that an advertisement suggests might consume the quantity of alcohol shown and over what period; and this still appears to be the deciding factor¹¹.
30. None of the above routes provide the guidance needed and, in one instance, the threshold is higher than what had become industry standard. So we propose to define immoderate consumption by reference to a daily threshold of 4 units which we believe is reasonable, credible and desirable and below we set out how we have come to this conclusion. It would apply to all marketing covered by the Code: including packaging (carbonated products with more than 4 units of alcohol in a single-serve non-resealable container) and promotions.

i. Available scientific and medical studies

31. If we want to explore whether a four-unit threshold can be reasonably justified we need to review evidence that looks at alcohol consumption per day.
32. There are several independent studies¹² from across the medical and scientific field which investigate the relationship between regular daily alcohol consumption and risk of death from all causes for various classifications of drinkers. While the studies do vary in terms of study type, population size and methodologies, and there is a variation in the results, analysed collectively they indicate there is increased risk of all-cause mortality associated with regular daily alcohol consumption above 3-5 units per day. Whilst acknowledging the results of these studies vary, between them they appear to provide a reasonable and credible basis on which to justify a 4 unit-threshold, are consistent with the CMO’s previous daily guidelines in relation to low-risk drinking, and compatible with the current low-risk guidelines.
33. The scientific evidence on which the 1995 daily guidelines were based still exists and is still credible. Since the 1995 review, the evidence on alcohol and all-cause mortality risk that has emerged is still largely consistent with previous daily guidelines, and therefore with the setting of a 4-unit threshold as an ‘immoderate consumption’ level. Furthermore, in correspondence between the Portman Group and the England CMO in July 2016, she expressed her informal support for a four unit guideline recognising “...*the importance of limiting to four the number of units in single-serve cans for those drinking at high risk levels*”.

¹¹ Epic Pub Company Ltd: <https://www.asa.org.uk/rulings/epic-pub-company-ltd-a17-400670.html>

¹² See Appendix 2 on page XX for a list of the studies included in this analysis.

ii. Current definition/measure of single episodic heavy-drinking

34. The Office for National Statistics (ONS) provides trend data on alcohol consumption for adults aged 16 and over in Great Britain based on information from the Opinions and Lifestyle Survey¹³. The data includes information on the proportion of adult drinkers who “binged” on their heaviest drinking day. It defines binge-drinking as *‘males who exceeded 8 units of alcohol on their heaviest drinking day, and females who exceeded 6 units on their heaviest drinking day’*.¹⁴ This definition continues to be based on the daily guidelines for men and women respectively (being twice the daily units for both men and women); and harmful drinking is defined as drinking more than 9/12 units on your heaviest drinking day in the last week (again based on daily units). The ONS continues to use these thresholds as we understand it is not easy to extrapolate the weekly guidelines, (or use 4.67 which is based on three days of drinking) to a daily consumption level.

iii. Portman Group Guidance

35. Guidance on immoderate consumption formulated over the last 20 years (sampling, one-day promotions, free offers) has been in line with the daily guidelines. We understand that this continues to be the advice our member companies, and some non-members, encourage their own marketing teams to abide by despite the change to weekly guidelines.

iv. Previous Panel decisions

36. Under the Department of Health’s Public Health Responsibility Deal some producers voluntarily pledged not to produce or sell any carbonated product with more than 4 units in a single-serve container¹⁵¹⁶. The Panel also upheld complaints against several single-serve cans because they contained more than four units in a single-serve container containing a carbonated product which was to be consumed by one person in one sitting.

v. Comparison with other country guidelines

37. Currently there are 41 countries with quantitative alcohol guidelines which offer daily guidelines; only six countries recommend a weekly limit. Of the countries with daily alcohol guidelines the recommended daily limit is between 10 and 30g of alcohol (equivalent to 1.25 – 3.75 UK units); only 4 countries set limits higher than 31g. Therefore, the vast majority of countries which set daily guidelines recommend levels at or below 3.75 units per day, indicating that a 4 unit threshold would not only be supported by the scientific evidence (above) but would be consistent with the upper threshold of the majority of daily guidelines set around the world.

¹³<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandlifeexpectancies/methodologies/opinionandsurveyqmi>

¹⁴ May 2017 Statistical Bulletin: Adult drinking habits in Great Britain: 2005 to 2016

¹⁵ Department of Health Public Health Responsibility Deal: Alcohol Pledges; 2011

¹⁶ This was as part of action to reduce the number of people drinking above the guidelines. “To support our pledge to remove a billion units of alcohol sold annually from the market, we will carry out a review of the alcohol content and container sizes of all alcohol products in our portfolio. By December 2014 we will not produce or sell any carbonated product with more than (4) units of alcohol in a single-serve can.”

Code or Guidance

38. The Code rules are principles-based to allow the Panel greater flexibility in interpretation; Guidance supporting the Code can help alleviate confusion about interpretation of a rule. To include a reference to four units in a Code rule would be too specific. Our view therefore, is that we produce guidance (based on the above evidence) to support the four unit threshold to be applied through Code rule 3.2(f) as it currently reads (guidance will be drafted post consultation).

Questions 3 & 4

3. Do you agree that it is important to have a unit-based definition for immoderate consumption?

4. Do you agree there is enough evidence, as set out in the section above, to introduce a definition of immoderate consumption based on a daily threshold of 4 units?

2.3. Associations with illegal behaviour

39. Rule 3.2(b) of the Code prohibits “*any association with bravado, or with violent, aggressive, dangerous or anti-social behaviour*”.
40. There have been situations where the Advisory Service is commenting on marketing where producers have sought to link, either directly or indirectly, alcohol marketing to illegal behaviour and criminality. Examples include glamorising gang culture, and the illicit production of alcohol. The Code already prohibits any association with illegal consumption in relation to drink-driving, but not illegality and illegal behaviour more broadly. The Panel has interpretive power to deal with inappropriate marketing, but without a specific prohibition against illegal behaviour, marketers have no explicit signal not to do this. Therefore, the Advisory Service has had to advise that such activity breaches the *spirit* of the Code.
41. As the Advisory Service is seeing increasing numbers of cases linking alcohol, directly and indirectly, to illegal behaviour, we recommend that we amend the Code to specifically prohibit any such link.
42. In the event that the rule is revised Code Guidance will be produced to support and clarify the new rule (drafting will take place post consultation).

Proposed amendment to rule 3.2(b) shown in bold italics:

A drink, its packaging and any promotional material or activity should not in any direct or indirect way suggest any association with bravado, or with violent, aggressive, dangerous, anti-social ***or illegal*** behaviour.

Questions 5 & 6

5. Do you agree that the Code should be amended to prevent any associations with illegal behaviour?

6. Do you agree with the proposed drafting of the Code rule?

2.4 Protecting vulnerable individuals

43. All regulators share a common primary purpose – to regulate for the protection of the vulnerable – and the Portman Group shares this purpose. When the Code was first introduced it was to ensure that alcohol was promoted in a socially responsible manner and only to those aged 18 or over¹⁷. These continue to be the fundamental principles of the Code.
44. Under-18s are afforded special protection under the Code, and rightly so. For example, the Code disallows any product or promotion from having a particular appeal to under-18s; care should be taken when using cartoon-style imagery, childish fonts, bright colouring, or personalities that are particularly admired by under-18s. The Portman Group’s Alcohol Sponsorship Code goes further in that it contains six explicit rules protecting under-18s.
45. Age, however, is not the only characteristic that makes an individual vulnerable, there can be many reasons, including but not limited to, learning or physical disability, inexperience, mental health problems, or a combination of any of these characteristics.
46. Links between mental and physical health, and the misuse of alcohol, are well documented. The NHS estimates that in the UK around 9% of men and 3% of women show signs of alcohol dependence¹⁸. People who are alcohol dependent have higher rates of other psychiatric disorders than people in the general population – particularly depression, anxiety, post-traumatic stress disorder, psychosis and drug misuse¹⁹. Long term alcohol misuse can cause serious problems for individuals, communities, and society, make the individual more vulnerable by reason of their addiction and find they are unable to make informed decisions.
47. We know that the vast majority of people enjoy drinking socially and responsibly, without causing harm to themselves or to others. Official statistics

¹⁷ Code paragraph 1.1 reads: This Code seeks to ensure that alcohol is promoted in a socially responsible manner and only to those aged over 18.

¹⁸ NHS Statistics on Alcohol: England, 2015 <http://www.hscic.gov.uk/catalogue/PUB17712>

¹⁹ www.drinkaware.co.uk: *alcohol dependence and withdrawal*

show that 77% of the UK population drink within the CMO's Low Risk Drinking Guidelines or do not drink at all²⁰. Binge-drinking among young adults is at an all-time low, and fewer children are drinking alcohol. However, given there are individuals who have an entirely different relationship with alcohol which can make them vulnerable, we are considering whether the Code should explicitly highlight them as a 'group', much like under-18s, that require special protection.

48. The Code already offers some protection to these individuals. For instance, the Code disallows any direct or indirect suggestion that alcohol can be used as a coping mechanism to deal with stress, boredom or loneliness. It also prevents alcohol being promoted on the basis of its high-strength. So we are content that, the majority of the time, the Code achieves the right balance and adequately protects the public from irresponsible marketing, and protects under-18s. However, we have identified other characteristics and factors which can make a person vulnerable.
49. Other legislative provisions and self-regulatory rules have requirements which seek to protect vulnerable consumers; for example the licensing objectives set out in the Gambling Act 2005 include "*protect(ing) children and other vulnerable people from being harmed or exploited by gambling*"²¹. "Vulnerable persons" are not defined in the Act, but the Gambling Commission's Guidance for Licensing Authorities²² does offer some clarification. The clarification in the GA's guidance could just as easily apply to people with an addiction to alcohol: people who drink more than they want to, people who drink beyond their means and people who may not be able to make informed or balanced decisions about drinking due to, for example, mental health, a learning disability or substance misuse relating to alcohol or drugs.
50. The alcohol rules in the CAP Non-broadcast Advertising Code also contains a specific requirement that "*...care should be taken not to exploit those that are mentally or socially vulnerable*"²³.
51. As drinks marketers are already subject to this requirement under the CAP alcohol rules, and other regulatory instruments offer vulnerable individuals protection, we are seeking views on whether to broaden the scope of the Portman Group Code. This will allow it to continue to ensure that alcohol is marketed in a socially responsible manner and only to those aged over 18, and also protect those that are socially or mentally vulnerable. This would also further align the Portman Group Code with the CAP alcohol rules.
52. We considered whether we should seek to define *vulnerable*. Given that no other organisation has defined vulnerability for the purposes of its regulatory instruments and instead will judge on a case-by-case basis, we would seek to do the same. In any event, if the scope of the Code is broadened to cover vulnerable individuals Code Guidance will be produced to support and clarify the amendment (drafting will take place post consultation).

²⁰ Health Survey of England; data from NHS Digital (2016)

²¹ Gambling Act 2005: Chapter 19; Part I. http://www.legislation.gov.uk/ukpga/2005/19/pdfs/ukpga_20050019_en.pdf

²² "The Act does not seek to prohibit particular groups of adults from gambling in the same way that it prohibits children. The Commission does not seek to define 'vulnerable persons' but it does, for regulatory purposes, assume that this group includes people who gamble more than they want to, people who gamble beyond their means and people who may not be able to make informed or balanced decisions about gambling due to, for example, mental health, a learning disability or substance misuse relating to alcohol or drugs". <http://www.gamblingcommission.gov.uk/PDF/GLA5-updated-September-2016.pdf>

²³ Code Rule 18.1 CAP Code: https://www.asa.org.uk/type/non_broadcast/code_section/18.html

We propose the following amendment to paragraph 1.1:

This Code seeks to ensure that alcohol is promoted in a socially responsible manner, and only to those aged over 18; ***care should be taken not exploit those who are mentally or socially vulnerable.***

Questions 7 & 8

7. Should the Code be amended to offer protection to vulnerable individuals?

8. If so, do you agree this should be an overarching principle of the Code, and as drafted?

2.5 Serious or widespread offence

53. As part of the 2001 Code consultation views were sought on introducing a rule relating to taste and decency; but, at the time opinion was divided and this did not progress. The issue was again raised as part of the 2006 and 2011 Code consultations but excluded because products and promotions that were potentially offensive were likely to be captured by existing Code provisions. A further point raised was that taste and decency are not alcohol specific issues and do not have any relevance to the issue of alcohol and/or its misuse. For example, the use of a swear word on a drink's packaging is equally offensive regardless of whether it is a soft drink or an alcoholic drink.
54. We last sought views on taste and decency five years ago and we now feel the time is right to ask the question again. The Code must be able to adapt to changing social norms and attitudes if it is to retain its credibility; and, it is fair to state that prevailing standards in society have changed apace, even since the last review.
55. Within the alcohol industry, some stakeholders, and public commentators, have raised concerns about alcoholic drinks labels using images and text which they consider to be offensive because they are sexist and demeaning. While we recognise that the significant majority of producers market their products responsibly with due regard to prevailing standards of decency there are some that do not; and while not reflective of the majority they manage to draw attention to the industry for the wrong reasons.
56. Some marketing materials have the potential to cause offence, whether it is personal offence or the expression of offence on behalf of others. As a basic definition, offence can be categorised as "*behaviour which causes people to be upset or embarrassed*"²⁴. It is important to recognise that marketers also have the right to freedom of expression, which does include the right to cause

²⁴ Collins dictionary

occasional (although not widespread or serious) offence. This means that any proposal to introduce a rule relating to offence must strike the right balance between public protection from serious and widespread offence whilst also acknowledging that a certain level of offence is likely to be acceptable. Furthermore, what one, or even several, individuals find seriously offensive will not generate the same strength of feeling in others.

57. The Committee of Advertising Practice (CAP) Code prohibits any marketing communications which could cause serious or widespread offence²⁵. So it could be argued that as producers cannot cause serious or widespread offence in advertising it is appropriate to apply the same principle to areas of marketing within the Portman Group's remit. In any issue that we seek to address, regulatory action must be proportionate and necessary.
58. Products and promotions that are potentially offensive may still be subject to other Code provisions, such as the rule disallowing any suggestion of an association with sexual success. Furthermore, the Code requires that alcohol is promoted in a socially responsible manner²⁶. However, as an overarching principle rather than a Code rule, this is clearly broad and it may be worthwhile to explicitly state that it is not acceptable to cause serious or widespread offence in alcohol marketing on the grounds of race, religion, gender, sexual orientation, disability or age. This would also further align the Code's requirements with the CAP Code.
59. Alcohol marketing below the line, such as packaging and promotional materials, are carefully designed to be adult appropriate given their wide visibility. However, unlike some advertising, such as television ads and online videos, the medium cannot pre-warn individuals if the material is potentially offensive. This means that while the ASA judges compliance on the context, medium, audience and reach of an advertising piece, the Portman Group's application of such a rule would be slightly different with medium, audience and context being less of a consideration.
60. As always, marketing would be assessed on a case by case basis. The Code is principles-based and it would therefore be inappropriate for us to prescribe a threshold for 'serious or widespread offence'. Any consideration under this rule would take into account the type of offence (personal or on behalf of others) and severity of offence.
61. In the event that a new rule is introduced Code Guidance will be produced to support and clarify the new rule (drafting will take place post consultation).

²⁵ CAP Code Rule 4.1 reads: Marketing communications must not contain anything that is likely to cause serious or widespread offence. Particular care must be taken to avoid causing offence on the grounds of race, religion, gender, sexual orientation, disability or age.

²⁶ Code paragraph 1.1

Proposed new Code rule 3.3:

A drink, its packaging and any promotional material or activity should not cause serious or widespread offence. Particular care must be taken to avoid causing offence on the grounds of race, religion, gender, sexual orientation, disability or age.

Questions 9 & 10

9. Do you agree that the Code should be amended to protect individuals and/or groups from serious or widespread offence?

10. Do you agree with the proposed wording of the new rule?

2.6 Any other issues

62. In drafting this consultation paper, we have identified a number of areas where the Code might benefit from revision. We have sought to make this a comprehensive review. You may, however, have comments or concerns relating to our Code of Practice which have not been covered in this consultation. If this is the case, we would invite you to share them with us.

Question 11

11. Are there any other areas in which you think the Code might benefit from revision or ways in which you think it could be made to operate more effectively?

SECTION 3 – THE CONSULTATION PROCESS

3.1 How to respond

Thank you for taking the time to read this document. We will consider all responses carefully and with an open mind. We are committed to maintaining a strong and effective Code of Practice for the responsible marketing of alcoholic drinks. If you share these aims then please let us have your views.

We prefer to receive responses as a PDF e-mail attachment. Please send your response to consultation@portmangroup.org.uk.

If you are unable to reply by e-mail, you may submit your response by post to:

**Code Consultation Team
Portman Group
4th Floor
20 Conduit Street
London
W1S 2XW**

When responding, please state if you are doing so as an individual or a representative of an organisation. It will be helpful if you explain fully and clearly why you hold your opinion.

We are conducting this consultation in accordance with the principles of effective consultation developed by the Better Regulation Executive²⁷. In the interests of transparency, all responses and comments will be treated as non-confidential and we intend to publish all consultation responses on our website, www.portmangroup.org.uk. If all or any specified part of your response is confidential and should not be disclosed, please state this clearly at the beginning of your response document. If part of a response is confidential, please put that in a separate annex so that non-confidential parts may be published with your identity. Confidential responses will be included in any statistical summary.

The consultation ends on **06 July 2018**.

In light of the comments received, the Portman Group will prepare a revised Code of Practice. It is hoped that the sixth edition of the Code will be published Spring 2019.

Whenever the new edition of the Code is published, there will be a grace period of at least six months before products and promotions are required to comply with the new Code.

If you have any questions about this consultation or need advice on the form of the response please contact us on 020 7290 1460.

²⁷ Better Regulation Executive: Code of Practice on Consultation, July 2008

A1 CONSULTATION QUESTIONS

In summary, the consultation questions are:

1. Do you agree that the Code should be amended to prevent alcohol being offered on the basis that it can change mood or behaviour?
2. Do you agree with the proposed drafting of the Code rule?
3. Do you agree that it is important to have a unit-based definition for immoderate consumption?
4. Do you agree there is enough evidence, as set out in the section above, to introduce a definition of immoderate consumption based on a daily threshold of 4 units?
5. Do you agree that the Code should be amended to prevent any associations with illegal behaviour?
6. Do you agree with the proposed drafting of the Code rule?
7. Should the Code be amended to offer protection to vulnerable individuals?
8. If so, do you agree this should be an over-arching principle of the Code, and as drafted?
9. Do you agree that the Code should be amended to protect individuals and/or groups from serious or widespread offence?
10. Do you agree with the proposed wording of the new rule?
11. Are there any other areas in which you think the Code might benefit from revision or ways in which you think it could be made to operate more effectively?

A2: REFERENCES FOR SECTION 2.2

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