



# Summary of consultation responses

Code of Practice on the Naming,  
Packaging and Promotion of Alcoholic  
Drinks: Sixth Edition

4 March 2019

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## Foreword

**Our [Code of Practice](#) sets the standard for responsible alcohol marketing in the UK. We review the Code every five years to ensure that the rules keep pace with changes within the industry and wider society. In this way, we're able to make sure our regulation continues to keep standards high.**

Our fifth review was our most ambitious and wide ranging yet. We consulted on several key issues including how we should extend and strengthen certain rules including having a definition of immoderate consumption following changes to CMO guidelines and the introduction of a new rule around serious and widespread offence.

Our consultation was open to anyone with an interest in alcohol marketing and we received a range of responses from across the industry and beyond. As transparency is an important principle of good regulation, we will be publishing all consultation responses received together with detailed analysis of these replies.

We continue to provide one of the strongest and most effective systems of industry self-regulation anywhere in the world and we are determined to keep it that way.

Through asking challenging questions and thinking openly about our role, we ensure the Code provides the right balance between maintaining the highest standards of responsible marketing and allowing producers the freedom to create the great brands and campaigns that are so important to the UK's economy.

If you would like to discuss the process or find out more about the regulation of alcohol marketing, please do get in touch.

**John Timothy**  
**Chief Executive, Portman Group**

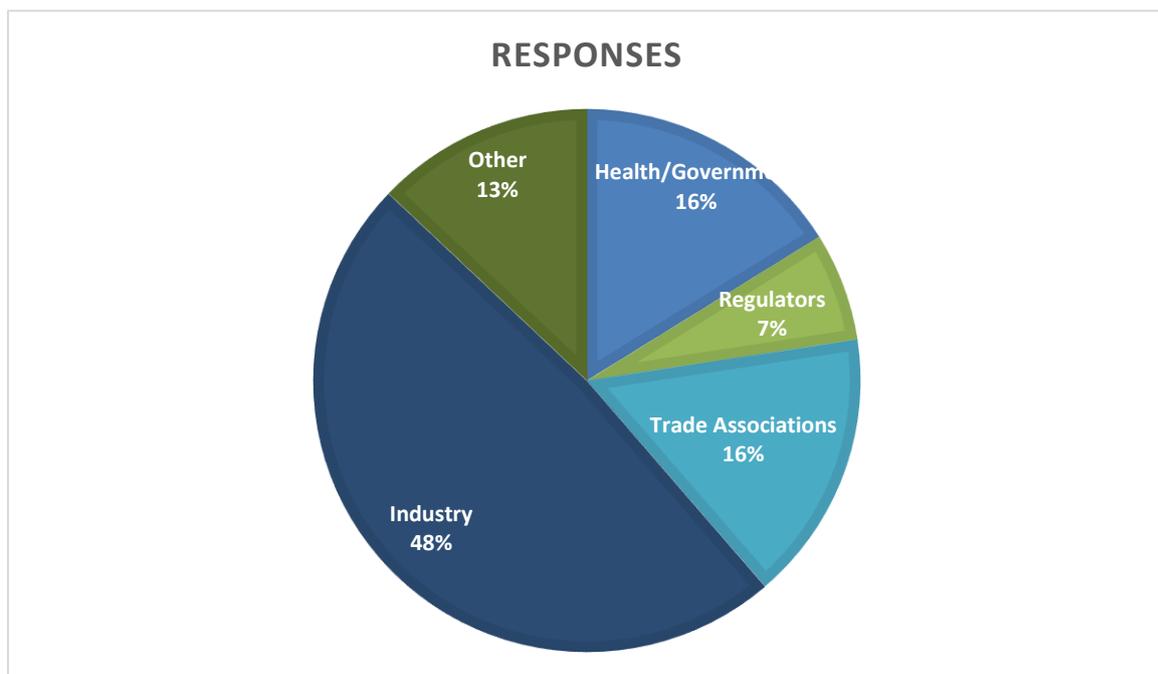
## 1. Background

Regular review is a critical feature 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?

This review of the Portman Group's Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks was launched to ensure that the rules that govern alcohol marketing are up-to-date and fit for purpose. The formal consultation closed on 6 July following a ten-week period during which responses were received and collated. This review will result in the introduction of the sixth edition of the Code in early 2019.

We received 31 written submissions from a wide range of stakeholders including government departments and agencies, trade associations, other regulators, retailers, charities and producers. These can be found on our website.

Responses can be broken down as follows:



## 2. Key Findings

We were seeking views on five key areas - four would necessitate a change to the Code and one would require an update to guidance (with no change to the corresponding Code rule).

The areas were as follows:

- Illegal behaviour
- Immoderate consumption
- Change in mood or behaviour
- Serious or widespread offence
- Protecting vulnerable individuals

At the same time, we asked if there were any other areas of the Code that would benefit from review or ways in which the Code could be made to operate more effectively. We therefore took the opportunity to improve the layout of the Code, update all guidance documents and change the way they are presented. Guidance is now specific to each Code rule rather than by topic, although for the more complex areas topic-specific guidance is also provided.

The responses covered all aspects of the Code and represented a good balance of views. It was clear from the responses that producers are keen, wherever possible and appropriate, for close alignment and consistency with existing advertising rules in the Committee of Advertising Practice's Codes<sup>1</sup>.

In updating guidance and creating new documents it should be clear that 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. Further clarification will be provided in guidance.

Further details on the outcome for each of these areas and improvements to layout are summarised below. All guidance can be found in the appendices.

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<sup>1</sup> The UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP Code) and the UK Code of Broadcast Advertising (BCAP Code)

## Illegal behaviour

Current Rule 3.2(b) of the Code prohibits “*any association with bravado, or with violent, aggressive, dangerous or anti-social behaviour*”.

The Advisory Service has seen an increasing number of cases linking alcohol, either directly or indirectly, to illegal behaviour and criminality. It was proposed that the Code should be amended to specifically prevent any such link.

There was majority support for amending the Code in line with the Portman Group’s proposal. A number of respondents asked for the scope of the rule to distinguish between marketing activity which glamorises criminality, and historical illegal activity related to a brand’s heritage (i.e. prohibition).

It is the view of the Advisory Service that heritage/historical context and stories of brands are likely to be acceptable. The Panel will make decisions on a case-by-case basis, while having regard to all the information before them, and the context in which the claims are being made. Associations with historic illegal behaviour will be reviewed in context and their contemporary relevance will also be considered when determining compliance under the Code. The new rule will not prevent marketing based on brand heritage, but such marketing should be contextualised.

### **Outcome: Rule 3.2(b) revised as follows and guidance updated**

**3.2(b)** - *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**.*

[Guidance](#) has been updated to provide clarity on the interpretation of the new element of this rule. For more information, please visit [www.portmangroup.org.uk](http://www.portmangroup.org.uk).

## Immoderate consumption

The fifth edition of the Code was published when the Chief Medical Officers’ drinking guidelines included advice on a daily limit for alcohol consumption. In the CMOs’ guidelines, published in 2016, advice on a daily limit was removed. With that change, the industry, and the Independent Complaints Panel, lost one of its long-established reference points for measuring immoderate consumption. This change from daily to weekly units has impacted Panel rulings where previously complaints had been upheld. 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 container indirectly encouraged immoderate consumption of alcohol, contrary to rule 3.2(f). The change also impacted the Advisory Service’s ability to provide guidance on undertaking responsible on-trade promotions where alcohol is purchased for immediate consumption.

We therefore sought views on whether it was possible to develop guidance which would define immoderate consumption by reference to a daily threshold of four units; using as the basis for its justification scientific evidence available at the time, previous Panel decisions, current definitions/measures of single episodic heavy-drinking, and comparison with other country guidelines. From the outset, we recognised this was a complex and difficult proposition for some producers and therefore wanted an outcome that was

reasonable, credible and proportionate. We were also clear that we were not proposing to change the wording of the rule; our aim was to provide direction for the Panel, who remain the final arbiters of the Code.

There was a fairly even split in responses for those in favour and those against a unit-based definition of immoderate consumption, although there was broader agreement that if other factors could be considered in combination with packaging (such as accompanying promotional materials and other mitigating factors) then four units may be an appropriate threshold. We considered comments at length and have developed guidance which encourages the Panel to consider other factors when determining whether a single-serve, non-resealable container encourages immoderate consumption if it contains upwards of four units. Therefore, containing more than four units becomes a contributory rather than an absolute factor if the producer is able to demonstrate that mitigating factors should be taken into account – for instance, premium quality of the product, whether the product is typically decanted/shared, price at which it is typically sold, accompanying promotional material, etc.

Whilst the Panel is likely to consider mitigating factors for single-serve containers that contain more than four-units, it is the view of the Advisory Service that single-serve, non-resealable containers that contain upwards of six units will be difficult to justify, even with mitigating factors. The Advisory Service has recommended this as the upper limit, in line with UK binge drinking measure which is currently set at six units of alcohol in a single session for men and women<sup>2</sup>.

[Guidance](#) has been updated to provide clarity on the interpretation of this rule; the rule remains unchanged. For more information, please visit [www.portmangroup.org.uk](http://www.portmangroup.org.uk).

### **Change in mood or behaviour**

Current rule 3.2(j): *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.*

We were seeking views on amending the rule so that alcohol could not be promoted on the basis that it could change mood or behaviour in either a positive or negative way; this would prohibit any suggestions that a drink can be mind-altering and help the consumer to see things differently.

There was clear support for the rule to be broadened as proposed and beneficial to align with the wording of the CAP advertising Codes.

Some respondents highlighted concerns that the proposed revision would prevent the portrayal of alcohol as a legitimate accompaniment to a social setting, or alcohol being consumed in a lively setting. Another concern was raised about product names which might imply 'happy' or 'giddy' by, for instance, playing on the product ingredients. It is the view of the Advisory Service that the revised rule will continue to allow situations which depict alcohol consumption as a pleasurable experience and within a responsible social setting or in a positive, lively and upbeat setting.

Guidance will also continue to allow depictions of people who are already relaxed and having a drink (rather than relaxing because of drink). However, claims that suggest the

consumer should use the alcohol to stress-relieve, self-medicate, or to bolster confidence will not be permitted.

### **Outcome: Rule 3.2(j) revised as follows and guidance to be updated**

**3.2(j)** - *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.*

[Guidance](#) has been updated to provide clarity on the interpretation of the new element of this rule. For more information, please visit [www.portmangroup.org.uk](http://www.portmangroup.org.uk).

### **Serious or widespread offence**

As part of previous Code reviews, we had sought views on introducing a taste and decency rule but the proposal was not progressed. However, this review has taken place at a time when there is real industry concern that a small number of producers continue to use sexist or demeaning depictions of women to market their products.

Given that prevailing standards in society have changed apace, this review felt like the right time to ask the question again. This demonstrates that the Code is able to adapt to changing social norms and attitudes in order to retain its relevance and credibility.

Therefore, we asked if we should introduce a new Code rule which would prohibit marketing which could cause serious or widespread offence. Such a requirement has existed for quite some time in the CAP Codes and its absence from the Portman Group Code felt out of touch with prevailing public sentiment.

**Proposed new rule 3.3:** *A drink's name, 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.*

There was overwhelming support for the introduction of a new Code rule, but less consensus over the proposed draft (as above). Comments included that the rule should be serious 'and' widespread offence, that the rule should include all the protected characteristics, or that the rule should not be so prescriptive in setting out the protected characteristics and instead should be a 'broad principles' rule consistent with the other PG Code rules.

The strong message from respondents was that, where it was possible, they would like us to seek consistency with B/CAP rules; the B/CAP Codes both refer to serious 'or' widespread offence and either include some of the protected characteristics (CAP Code) or do not mention them (BCAP Code). If the PG Code referred to 'and' it would set the bar higher than the requirement under the B/CAP Codes, so even if marketing material was seriously offensive, it would only be deemed problematic if it also caused widespread offence.

We also saw merit in explaining the protected characteristics in guidance rather than include them in the rule; this way the rule remains broad and principles-based which is consistent with the rest of the Code. The rule is not overly prescriptive and allows the Panel to interpret and apply it on a case by case basis, taking multiple factors into account

(such as but not limited to the overall impression conveyed, producer response, relevant research etc). This ensures that the Code is flexible to different scenarios, fit for purpose and responsive to innovation in the market (for more information please see our guidance document 'How the Code Works').

**Outcome: new rule 3.3 drafted as follows and guidance produced to support the new rule:**

*3.3: A drink's name, its packaging and any promotional material or activity should not cause serious or widespread offence.*

[Guidance](#) has been produced to provide clarity on the interpretation of this new rule. For more information, please visit [www.portmangroup.org.uk](http://www.portmangroup.org.uk).

**Vulnerable individuals**

We sought views on broadening the scope of the Code to offer protection to vulnerable individuals, a protection already offered under legislative provisions and other regulatory regimes, including under the CAP Code. Nearly all respondents supported an amendment to the Code, and for it to be an overarching principle, not a Code rule. The majority of respondents agreed that it is not the Portman Group's role to define 'vulnerability' given that it is not defined in legislation or by other regulators.

The inclusion of 'vulnerability' in the Code as an overarching principle now sits alongside the other fundamental principles of the Code: social responsibility and protection of under-18s. It further strengthens the industry's commitment to minimising risk and supporting social responsibility.

The rules in section 3, written as broad principles, set out how we ensure alcohol is marketed in a socially responsible way, only to those aged 18 and over, and how we protect vulnerable consumers, all through the application of the Code, and thereby fulfil these fundamental principles.

When considering a complaint, the Panel may have regard to how the overarching principles frame the context in which each of the Code rules apply in any given scenario.

**Outcome: Paragraph 1.1 revised as follows and new guidance produced Para 1.1:**

*The Code seeks to ensure that alcohol is promoted in a socially responsible way, only to those 18 and over; and does not appeal particularly to those who are vulnerable.*

A new guidance document ['How the Code Works'](#) has been produced which sets out industry's commitment to social responsibility and protecting vulnerable consumers; and how these are achieved through the application of the Code rules.

### 3. Next Steps

The new Code was published in March 2019. A six-month grace period has now begun during which time producers and marketers should familiarise themselves with the amendments to the Code, make changes to products or promotions where necessary and arrange training for staff on the new rules and guidance.

The existing Code, the fifth edition, will continue to apply during this time. During this six-month period, the Portman Group will engage an independent contractor to initiate a proactive audit of the market to identify any products that may be in breach of the sixth edition of the Code; working with producers to ensure their products are compliant.

We will also be embarking on a comprehensive training and awareness programme to bring the industry and their agencies up to speed with any significant changes which may affect them.

### 4. Further Information

Further information can be found in the Code Consultation section on the Portman Group's website [www.portmangroup.org.uk](http://www.portmangroup.org.uk).

**Portman Group  
March 2019**