

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

A response from CAMRA, the Campaign for Real Ale

July 2018



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## 1. Introduction

- 1.1. Thank you for the opportunity to respond to this consultation. CAMRA, the Campaign for Real Ale is a UK consumer group that acts as the independent voice for real ale, cider and perry drinkers and pub goers. Our vision is to have quality real ale and thriving pubs in every community.
- 1.2. Our response will focus on questions related to parts of the Code that are of key interest to CAMRA.
- 1.3. CAMRA promotes responsible drinking and recognises the harmful effects of high levels of alcohol consumption. We support the use of the Code of Practice to ensure that marketing of alcoholic drinks is responsible and want to enable consumers to make informed choices about responsible drinking and safe levels of alcohol consumption.
- 1.4. However, CAMRA has serious concerns that the current proposals in relation to defining immoderate consumption oversteps the remit of the Code, and would have damaging effects for the brewing sector and consumer choice and risk undermining the credibility of the Portman Group and the Code. The proposals as set out discriminate against beer and cider drinkers, discriminate against speciality beer and cider types and will potentially have an anti-competitive effect by encouraging retailers and producers to drop speciality beer types from smaller producers.

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

- 2.1. The adoption of an arbitrary definition of “immoderate consumption” that only applies to carbonated products is indirect discrimination against beer drinkers and fundamentally irrational. Such discrimination is not justified by evidence. The proposal appears to be based on an unfounded assumption that wine and spirit drinkers can be trusted to make responsible judgements whereas beer drinkers cannot.
- 2.2. The unintended impact of an arbitrary definition might also bring the Portman Group into conflict with European Union competition law by discouraging retailers from importing stronger speciality beers.
- 2.3. It is our belief that consumers of higher ABV speciality beers will often drink the product over several occasions or will drink on a single occasion but share with friends.
- 2.4. A uniform definition of “immoderate consumption” is required that applies to all forms of alcohol, and not just beer. The Advertising Standards Authority and Committee of Advertising Practice codes are correct to take a holistic approach which considers whether or not a product’s packaging and marketing encourages excessive consumption with reference to the alcohol content, whether or not it is suitable to be shared and the period of time over which it might be consumed.



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3. **Do you agree that 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?**
  - 3.1. CAMRA campaigns for the availability of high quality real ales, cider and perries, which can be found in a variety of different serving containers, including but not limited to: glass bottles, cans, plastic or cardboard 'carry out' containers, and directly from a cask or keg into a serving glass.
  - 3.2. CAMRA is concerned that the current proposal to allow no more than 4 units of alcohol per single serve non-resealable container could have unintended consequences for many brewers producing high quality, high price point beers which are an important contributor to consumer choice in the beer market and are promoted in a responsible way.
  - 3.3. For many traditional and speciality beer and cider styles, both in the UK and abroad, a higher abv content is integral to the character of that style. Such styles include but are not limited to:
    - IPA - usual range from 4.5- 7.5% ABV
    - Barley Wine - usual range 8-12% ABV
    - Russian Stout - usual range 7-13% ABV
    - Baltic Porter - usual range 5.5-10.5% ABV
    - Belgian IPA - usual range 6-10.5% ABV
    - Saison - usual range 4.5-8% ABV
    - Double IPA - usual range 7.5%-10% ABV
    - Black IPA - usual range 6-9% ABV
    - American Stout - usual range 5-12% ABV
    - Dubbel - usual range 6-7.8% ABV
    - Weizenbock - usual range 6-8.5% ABV
    - American IPA - usual range 5.5-7.5% ABV
    - Strong Scotch Ale - usual range 6.5-10% ABV
    - Farmhouse cider – usual range 6-8% ABV
  - 3.4. Furthermore, traditional cider in the UK is made from 100% fruit juice, from apples that typically ferment to a natural alcohol level of between 6-8% ABV, but, depending on the apples (which are affected by many factors such as soil and level of rainfall), can ferment naturally at up to 10% ABV. Excessive watering down of traditional cider to reduce the ABV level in order to comply with the new Code guidance would fundamentally alter the traditional nature of the cider, which is meant to have a high juice content.
  - 3.5. Speciality beers attract a higher price point and are often shared between two or more people, especially when bought in bottles, rather like wine. To suggest that the marketing and packaging of these beers are promoting irresponsible consumption on the basis of their strength alone is an unfair contention which could have a chilling impact on the diversity of the brewing sector, consumer choice and will also bring the current system of self regulation into serious disrepute.
  - 3.6. Under the draft guidance, the following strengths and serving sizes for non-resealable containers would potentially constitute promoting immoderate consumption:

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- 660ml - 6.0% ABV or higher
  - Pint - 7.04% ABV or higher
  - 500ml - 8% ABV or higher
  - 440ml - 9.09% ABV or higher
  - 330ml - 12.1% ABV or higher
4. There is currently no reference in either the consultation document or the existing Code as to what types of packing and product dispense constitute a 'single serve non-resealable container'. Therefore, further clarification is needed on the definition of a non resealable container. Under the current proposals a carry out carton container could possibly be classed as a non-resealable container, despite the clear intention to take the product home and consume it just as bottle of wine would be.
- 4.1. The rationality of the current proposed definition is also unclear. For example, the proposed definition would apply to a 6.5% ABV speciality beer at sold in a 750 ml bottle yet would not apply to a 14% ABV wine sold in exactly the same bottle and quantity. Such an outcome is entirely illogical.
- 4.2. The new proposed Code rule also fails to take into account the personal and community benefits of responsible alcohol consumption in a regulated environment, such as a community pub. In 2016 Oxford University published research which found that people who identify as having a 'local pub' are likely to have more friends and feel more engaged with their local community. Nearly half of all beer sold in consumed in the on trade, as opposed to wine and spirits which are mostly bought through the off trade. Under the current proposal, beer will be disproportionately impacted and therefore there may be unintended impacts in terms of actually encouraging the consumption of alcohol sold a much lower unit cost price, for consumption in an unregulated environment
- 4.3. CAMRA notes that reference is made in the consultation document to the production of further guidance to support the implementation of the definition. CAMRA would welcome guidance which includes a clear definition of a non-resealable container, and seeks to mitigate potential impacts on high quality, high price point real ales, ciders and perries, and specialty beers.
- 4.4. Furthermore, CAMRA contends that it is not within the Code's remit to discourage a product from being sold to the public based solely on alcoholic strength. The Code governs the advertising and labelling of products, and there is a risk that the proposed definition of "immoderate consumption" will lead to retailers acting in concert and removing higher strength beer from sale.
- 4.5. As stated at other points in the consultation document, each complaint must be investigated on a 'case by case' basis, therefore it is not compatible with the application of the Code to force a blanket approach on the matter and the strength of a product should not be considered unless there is concern that this have been used to the market the product in a way which breaks the rules or spirit of the Code.

- 4.6. The purpose of the Code is to regulate the naming, packaging and promotion of alcoholic drinks and the Portman Group's stated aims are to promote responsible drinking; to help prevent alcohol misuse; and to foster a balanced understanding of alcohol-related issues, rather than to regulate the wider production of alcoholic products. It is unacceptable that the current proposals could result in the Code being unintentionally responsible for damaging the viability of some of the small UK brewers who are producing interesting and diverse, but higher ABV beers which are vital to their businesses. Higher duty rates are already levied on beers with a greater ABV content, therefore there is already a reasonable limit to the appeal that higher ABV beers have to those seeking to drink immoderately at a cheap cost.
- 4.7. Furthermore, should a complaint be brought against a small brewer in relation to a beer due to a high ABV content, the legal fees required could be enough to materially affect the viability of the brewery before the costs of changing the packaging or removal of the product from sale are considered. Following the upholding of a complaint against them, Tiny Rebel Brewery published costs figures relating to the case, including for overall staff time, legal fees, can stock loss and new design work, totalling over £30,000.
5. **Do you agree that the Code should be amended to protect individuals and/or groups from serious or widespread offence?**
- 5.1. CAMRA fully supports the proposal that the Code should be amended to protect individuals and/or groups from serious or widespread offence. CAMRA condemns any behaviour that discriminates against individuals because of their gender, race, ethnic origin, disability, age, nationality, national origin, sexuality, religion or belief, marital status and social class.
- 5.2. CAMRA condemns those who use sexist images or slogans to market their products and will not condone them being stocked at our beer festivals, promoted in our competitions, or featured in our publications. We would therefore not expect to see similar products allowed under the revised version of the Code, and applaud the efforts that the Portman Group is taking to combat discriminatory advertising.
- 5.3. As leading organisations within the beer and pub sector, it is right that the Portman Group and CAMRA are aligned on this issue, especially in light of increased debate and discussion over the last 12 months on discrimination within the sector. The alignment of the Code with the Committee of Advertising Practice Code is a proportionate step which will enshrine the appropriate principles within the Code and show the Portman Group's commitment to the responsible advertising of alcoholic drinks.
- 5.4. When applying the new rule, CAMRA supports the statement that it would be inappropriate to have a prescriptive definition of 'serious or widespread offence' set out within the Code. CAMRA supports the already established principle that the Code is applied on a case by case basis, but we would ask that a proportionate and considered approach is used, and that consideration is also given to cases where a very serious amount of offence may be caused to a small group of people as well as where offence could be more widespread.

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

6.1. CAMRA supports the proposed wording of the new rule as it aligns with established protected characteristics as set out in the Equality Act 2010 and also enshrined within the Committee of Advertising Practice Code.

## 7. Contact

7.1. If you have any questions on points raised in this submission, please do not hesitate to contact CAMRA:

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