



PORTMAN GROUP RESPONSE TO

Department of Health & Social Care: Low Alcohol Descriptors Consultation

Executive Summary

- The current low alcohol descriptors are confusing for industry and consumers. We encourage Government to take this opportunity to simplify the terms and provide some much-needed clarity and consistency across the regulatory framework to facilitate innovation and growth in this important category.
- The Portman Group supports the Government's preferred method of producing guidance in partnership with industry and other stakeholders.
- While there is scope to introduce new descriptors above 1.2% ABV, this is a category-specific issue and therefore we have not provided a view on this.
- The descriptor 'low alcohol' should be retained, but at a revised threshold to describe products over 0.5% ABV and up to, and including, 1.2% ABV.
- The descriptor de-alcoholised should be removed, but products should still inform consumers in some way if alcohol has been extracted from the final product.
- The term non-alcoholic is already widely used and should be permitted broader use than currently allowed (for products of $\leq 0.5\%$ ABV).
- The descriptor alcohol-free should be retained, but at a revised threshold of $\leq 0.5\%$ ABV, to align with the definition of 'alcohol' in the Licensing Act 2003 and be consistent with other European Members States definitions of alcohol-free.
- We recommend that all products below 1.2% ABV should indicate their ABV and include the relevant descriptor.

The Portman Group

The Portman Group (PG) is the responsibility body for drinks producers in the UK. Our role is to:

- **Lead** on best practice on alcohol social responsibility through the actions of our member companies;
- **Regulate** the promotion and packaging of alcoholic drinks sold or marketed in the UK through our Code of Practice (the 'Code');
- **Challenge** and encourage the industry to market its products responsibly.

The Portman Group is a not-for-profit organisation funded by eight member companies¹ who represent every sector of drinks production and collectively account for more than half the UK alcohol market.

The Portman Group welcomes and fully supports the Department of Health and Social Care's ("DHSC") aim to enable consumers to make informed choices when they purchase drinks, including alcohol; and, its commitment to the principle of increasing consumer choice in the alcohol-free and low alcohol category. The Portman Group agrees these aims can be achieved by simplifying the current low alcohol descriptors to encourage the purchase of these drinks to help promote responsible drinking².

Question 1: Do you agree with the Government's preferred option of providing guidance working with industry and other stakeholders to describe low alcohol descriptors rather than legislate after 13 December 2016?

1. The Portman Group is supportive of the Government's preferred option of providing guidance, working with industry and other stakeholders to describe low alcohol descriptors, when the sunset clause takes effect in December 2018. We welcome Government's positive recognition of self-regulation and its ability to be as effective as legislation. Through the work of the Portman Group and its Codes of Practice³, the industry has a strong track record of self-regulation: removing from the market products and promotions that are found by the Independent Complaints Panel to breach the Code; and, encouraging industry to market its products responsibly by offering free advice and guidance.
2. The Portman Group, through its free Advisory Service, already provides guidance to the industry on naming, packaging and promotion, and would welcome further discussion with officials on how we can best support the development and implementation of new guidance.
3. The Portman Group supports the principle that the relevant enforcement authorities would still be expected to have regard to the guidance when assessing whether a descriptor was misleading; this will provide the necessary 'regulatory' framework. Misleading descriptors have the potential to cause harm to consumers and the relevant enforcement authorities would need the power and resource to deal with such products quickly and consistently.
4. In 2017 the Portman Group produced new guidance for industry on how to communicate alcohol and health-related information to consumers, across multiple channels including on-pack. As part of this, the Department of Health and the Food Standards Agency agreed a two year timetable for removing out-of-date information; this allowed producers to continue to sell-through stock before the deadline. We

¹ AB InBev, Bacardi Brown-Forman Brands, Carlsberg, Diageo, Heineken, Mast-Jagermeister UK Ltd, Molson Coors, Pernod Ricard,

² Polling conducted by Club Soda showed that 83% of consumers questioned were trying to reduce their overall alcohol consumption when purchasing low and no alcohol products (data excludes ARUK recipient answers)

³ Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks; Code of Practice on Alcohol Sponsorship

believe that a similar grace period should be put in place for industry to comply with new guidance.

5. We agree that it is sensible to keep the proposed guidance under review and to assess its effectiveness in three years' time. After a two year grace period it would be imperative to audit the market in order to determine the success of guidance.

Question 2: Do you have any evidence to support the case for introducing new alcoholic drink descriptors above 1.2% ABV?

6. The Portman Group believes that there is scope to explore this area but as this is a sector-specific issue, and we are a cross-sector organisation we have no evidence or particular view to support the case for introducing new alcoholic drink descriptors above 1.2% ABV. Nonetheless, we would ask Government to consider the impact of new definitions on all categories of alcohol; and, should Ministers be minded to replace the industry-used definition of 'lower' we would be keen to see these changes introduced in a way that ensured we first had the opportunity to review our Code and guidance to ensure clarity and consistency for producers.
7. In response to the Government's Alcohol Strategy in 2012 we amended our Code to allow greater flexibility for marketing of products with a relatively lower alcoholic strength within their category. At the time, we recognised that it was not our role to define strength categories or create new ones. We therefore took a pragmatic approach and used existing terms set within legislation and, where they existed, the UK average strengths by category of drink⁴. Code rule 3.2(a) requires that a drink's naming, packaging and promotion should not in any direct or indirect way:
 - (a) *give the higher alcoholic strength, or intoxicating effect, undue emphasis. A product's lower alcoholic strength may be emphasised proportionately when it is below the average strength for similar beverages. Factual information about alcoholic strength may be given*⁵
8. The rule effectively allows for two types of claim to be made:
 - i. Products which are below average strength (within category), or existing products which have been reformulated to below average strength, may make a virtue of their strength providing this is done in a manner which is proportionate to the product's strength relative to the category average;
 - ii. Products of above average strength for a category can make factual statements about strength, or factual statements about the reduction in strength, following any reformulation.

⁴ Information supplied by the Department of Health

⁵ Under the UK Food Labelling Regulations 1996, Regulation 42(1) and Schedule 8 Part I, the description 'low alcohol' or any other word or description which implies that the drink being described is 'low' in alcohol shall not be applied to any alcoholic drink unless the drink is no more than 1.2% abv.

9. The rule requires that the 'lower' strength must be emphasised proportionately when it is below the average strength for its category i.e. the greater the ABV difference between the product being presented and its predecessor (reformulated products) or the greater the difference between the product being presented and the average strength for its category, the more emphasis that can be placed on the lower strength product. In practice, the Advisory Service looks for reductions of around 30% (similar to reductions required under the Nutrition and Health Claims Regulations 2006) for a product to place greater emphasis on the lower strength of the product. For instance, the average strength of beer is 4.2% ABV, any beer below this and above 1.2% ABV could be classified as 'lower', with more emphasis permitted for those products at 1.3% - 2.9% ABV.
10. The aim of the revision was to enable producers to present consumers with clear information without breaching the Code, on product labelling and at point-of-sale, to allow them to make sensible drinking choices.
11. In practice, the rule impacts on the marketing of beer, ciders and wines more so than spirits because of the greater strength variations permitted within these sectors, and because the legal minimum strength for some spirits is set at 37.5% ABV (40% for whisky and brandy/cognac). In the Portman Group's Advisory Service, we have seen examples of producers expressing an interest in promoting what they consider to be 'lower-strength' spirits (spirit-based drinks between 20% and 37.5% ABV) as an alternative and we are pleased to see the consultation document acknowledges this category as 'mixed spirits'.

Question 3: For something to be 'low alcohol' the amount of alcohol needs to be 1.2% or less. Do you think the Government should keep this guideline?

12. We believe it is desirable to keep 1.2% ABV as the upper limit for low alcohol but that a new lower threshold starting at above 0.5% ABV should be introduced to be consistent with the Licensing Act 2003 definition of alcohol and existing practice in the majority of European Countries. Introducing a minimum strength of above 0.5% ABV to the category of 'low alcohol' would introduce consistency with legislation, regulations and the UK marketing regulatory framework:
 - Section 191(1)(a) of the Licensing Act 2003 defines alcohol as a product which exceeds 0.5% ABV and it therefore seems practical and logical to describe products which are 0.5% or below by a term(s) other than low-alcohol (such as alcohol-free or non-alcoholic; for further information please see response to questions 5 and 6).
 - The Nutrition and Health Claims Regulations 2006 (NHRC) use 1.2% ABV as a threshold above which health and nutrition claims cannot be made (with limited exceptions).
 - The Portman Group's Codes of Practice, and the UK Broadcast and Non-broadcast Advertising Codes (BCAP and CAP Codes) define an 'alcoholic drink' as any alcoholic drink above 0.5% ABV.
 - The consultation document states that most products on shelves described as 'low alcohol' tend to be in the range of 0.5% to 1.2% ABV anyway. Therefore, it would be

rational to formalise this range to provide a distinction between other non-alcoholic/alcohol free products at or below 0.5% ABV which, at the moment, can also be described as low alcohol.

Question 4: Should the Government keep the existing descriptor de-alcoholised?

13. The Portman Group believes that the term de-alcoholised is best suited to describing a manufacturing process rather than being useful as a descriptor. In recent YouGov polling, commissioned by the Portman Group, 84% of consumers polled were not familiar with the descriptor de-alcoholised, and 75% found the term confusing⁶; therefore we recommend removal of the descriptor. The polling also showed, however, that consumers think it is important to know if a product once contained alcohol, even if the final product no longer does⁷. Therefore, consumers should still be able to locate this information on the product, and producers can use text to describe the process by which alcohol is extracted rather than using the descriptor de-alcoholised; which consumers do not understand. As explained further in our response to questions 5 and 6, the descriptor alcohol-free or non-alcoholic could then apply to this category.

Question 5: Do you agree that the term non-alcoholic should be permitted to be used otherwise than in connection with sacramental and communion wines?

14. The Portman Group agrees that the term non-alcoholic should be permitted a broader use than is currently permitted in legislation. The term non-alcoholic is already being widely used on products other than sacramental and communion wines and is the low alcohol descriptor that consumers are most familiar with (in terms of recognition as a phrase)⁸.
15. There are a number of definitions - alcohol-free (if imported), de-alcoholised (as above) and low alcohol - in use for products of 0.5% ABV and below, whether permitted under legislation or not, which are being used inconsistently according to product strength. This exacerbates consumer confusion. The term non-alcoholic has also become common parlance to indicate a strength up to and including 0.5% ABV and this adds another layer of confusion for consumers to navigate when trying to make informed decisions about their alcohol intake.
16. In our YouGov polling, consumers were asked if it would be clearer to have one term to define a category containing no more than 0.5% ABV: 68% answered that one term would be clearer⁹; Portman Group's preference is also for one term.
17. However, we also acknowledge that some of the current definitions (alcohol free and non-alcoholic) are already widely in use, even if they are not the meanings set in

⁶YouGov polling: All figures, unless otherwise stated, are from YouGov Plc. Total sample size was 2048 adults. Fieldwork was undertaken between 24th - 25th April 2018. The survey was carried out online. The figures have been weighted and are representative of all GB adults (aged 18+).

⁷ 65% think it is important that consumers are made aware if a product had once contained alcohol, even if it had been removed from the final product

⁸ YouGov polling - 91% of consumers polled were familiar with the term non-alcoholic

⁹ YouGov polling

legislation, and it is important to align consumers' perceptions of the terms with any proposed amendments. 79% of consumers thought that the term non-alcoholic meant that a product contained no alcohol; and 84% of GB adults thought the same of the term alcohol-free, with consumers being marginally more familiar with the term non-alcoholic (91%) compared to alcohol-free (88%)¹⁰. This could suggest that both alcohol-free and non-alcoholic could be used interchangeably to describe $\leq 0.5\%$ ABV; this would reflect the current market-use and consumer perceptions.

Question 6: Do you agree that Government should maintain the descriptor alcohol-free, and for this to continue at 0.05% ABV?

18. The Portman Group believes that the descriptors alcohol-free and non-alcoholic are useful and known to consumers in the UK and globally; we would therefore agree that alcohol-free should be retained¹¹. However, as set in our response to question 3, if products above 0.5% but not more than 1.2% ABV are defined as low alcohol, then the threshold for alcohol-free should be amended to fill the gap and include products of no more than 0.5% ABV.
19. The Portman Group agrees that it is important that descriptors meet public expectations and such descriptors need to be fit for purpose if they are to gain public acceptance. Currently, alcohol-free is only permitted for products with an ABV of no more than 0.05%. The UK is the only European country with this threshold; the majority of Europe consider alcohol-free as no more than 0.5% ABV¹².
20. As the UK definitions are only considered national measures there are no requirements for imported alcoholic drinks to comply with these standards. UK consumers could therefore see products side-by-side on a shelf with a range of strengths up to 0.5% described as alcohol-free.
21. In support of raising the alcohol-free threshold to 0.5% it is worth understanding how alcohol is metabolised. It is well documented¹³ that the average person breaks down alcohol at a rate of approximately one unit per hour¹⁴. At 0.5% ABV, it would be necessary to consume two litres of liquid within an hour (i.e. six standard beer bottles or 2.66 bottles of wine) to reach a total intake of one UK unit of alcohol; and, by the time enough liquid had been consumed to equate to one unit, the process of metabolising the alcohol already consumed would be underway. Drinking any liquid at this rate or faster would be physically difficult and potentially dangerous. The Government's Eatwell Guide¹⁵ recommends drinking 6-8 glasses of liquid a day, equivalent to just 1.2 litres. It is therefore reasonable to assume that an average individual would not, and could not, consume two litres of liquid per hour, which is what would be required for the alcohol to stay in the bloodstream.

¹⁰ YouGov polling

¹¹ For the purposes of this question we will continue to refer to the potential category of 0-0.5% as alcohol-free but as previously stated we are also agreeable for the term non-alcoholic to be used

¹² In the EU an alcoholic beverage must be above 0.5% ABV for duty to be payable

¹³ <https://www.drinkaware.co.uk/alcohol-facts/alcoholic-drinks-units/what-is-an-alcohol-unit/>

¹⁴ Subject to several factors such as height, weight, gender and overall health

¹⁵ <https://www.gov.uk/government/publications/the-eatwell-guide>

22. The proposed definition of alcohol-free should also be considered in context of other specific groups who may be actively seeking to avoid alcohol such as pregnant women, recovering alcoholics, religious groups who cannot consume alcohol, and drivers. Any product that can ferment produces alcohol as it ripens/matures. Therefore, products like fruit juices, botanically brewed beverages, vinegar and leavened bread can contain a higher ABV than 0.05% - the current alcohol-free descriptor. The inconsistency applied to alcohol-free products in comparison to soft drinks and food stuffs demonstrates that there is a case for the definition threshold to be raised. There are botanically brewed products, such as lemonades, containing up to 0.5% ABV, and yet they do not have to describe themselves as an alcohol product. If the alcohol content of the lemonade in this scenario is deemed to be safe and/or suitable for certain groups, then it should follow that any product of no more than 0.5% ABV should be considered suitable and safe, including those described as alcohol-free at 0.5%.
23. Most products in this potential alcohol-free category, including soft drinks and foods stuffs, can never be entirely free of all alcohol but in light of the way trace alcohol is metabolised, as outlined above, we consider that most consumers would consider this a reasonable definition if presented with all the information in context. We believe there exists a deep issue with public understanding of the current alcohol descriptors; we suggest qualitative survey polling be carried out to gauge public understanding. We believe that consumers would be receptive to the 'up to and including 0.5% ABV' alcohol-free definition if this were presented alongside the alcohol content of every day food stuffs, soft drinks, hygiene products and information on the rate at which the body metabolises alcohol at this level.
24. By condensing the terms alcohol-free and non-alcoholic and removing the term de-alcoholised the categories will be easier to understand and will create consistency across most of Europe and with our own Licensing Act 2003. Both consumers and producers have demonstrated a preference for this and we would encourage Government to carefully consider this proposal.

Question 7: Do you have any other comments

YES

25. Although the current descriptors are in legislation, the use of the terms on packaging is not compulsory, nor is the labelling of the alcoholic strength by volume (ABV) of products below 1.2% ABV (although most voluntarily include the ABV). If Government's ultimate aim is to improve consumer understanding we would suggest that guidance recommends that all products up to and including 1.2% ABV should specify the ABV alongside the agreed descriptor. This will enable all consumers to make informed responsible drinking choices. Retailers will also be better informed when categorising these products, particularly in an online retail space. It will enable those groups outlined above to see exactly what trace levels of alcohol are contained in any products.

26. Research commissioned from Britain Thinks and Populus by the Royal Society of Public Health (RSPH) and the Portman Group indicates that consumers would welcome this: 81% of respondents felt it was important to include the ABV on labels¹⁶.
27. We would also advise that regard needs to be given to the terms permitted under the NHRC. Under the NHRC, certain terms are also permitted which allow products with reduced alcohol content to be labelled as 'light' or 'lite'. It would therefore seem practical to limit the number of descriptors in guidance while other terms from the NHRC can be applied to the same lower strength products¹⁷. For instance, if a beer had reduced its alcohol content by 30% to a strength of 1.2% this could be called 'low', 'light', 'lite' or 'lower' beer.
28. The Portman Group is concerned that different low alcohol descriptors in devolved administrations will only lead to more confusion and inconsistency in the application of terms. We would encourage Government to seek UK-wide agreement on such terms to deliver clarity and consistency for both consumers and the industry.
29. The Portman Group would like to offer its support in convening a working group to assist in the development and implementation of guidance.

**Portman Group
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¹⁶ http://britainthinks.com/pdfs/RSPH-Portman_Alcohol-labelling-research_Combined-Report_FINAL.pdf

¹⁷ Article 4(3) of EU Regulation No. 1924/2006 prohibits health claims on or about drinks containing more than 1.2% ABV and all nutrition claims other than 'reduced alcohol', 'low alcohol', and 'reduced energy (calorie) claims'.