

# Purpose of this consultation

While the results of independent monitoring based on samples taken at April 2009 are disappointing, the UK Government acknowledges the real efforts by some parts of the alcohol industry to implement the voluntary agreement. The disappointing results overall mean that there may rightly be some scepticism on how far any agreement could enable the majority of off-trade consumers consistently to see the unit and health information they need. We are nevertheless open to further discussions on how partnership with industry could deliver this information.

Should the Government find that it is not possible to enter a credible, voluntary agreement on alcohol labelling with the alcohol industry, we would consider a mandatory requirement through notifying draft regulations to the EU. It is a particular concern that a future EU requirement for calorie labelling on alcohol labels, which the UK Government supports, should be complemented by alcohol unit and health information being also widely available on labels.

The progress to date suggests there are four key issues any option would need to address:

1. How to ensure those companies who are currently not participating do so
2. How to improve awareness of the UK CMOs' drinking guidelines with consumers, with improved uptake of this on labels playing an important part
3. How to ensure the majority (at least 50%) of the market is covered in the near term (2012) and that this progress is continued to cover the vast majority (at least 75%) by 2014
4. How to ensure consistency and clarity in labelling to provide useful information to consumers

The Government now needs to come to a conclusion on which of the options presented will be the most targeted and proportionate way of delivering the Government's objective of ensuring that unit and health information is carried on a majority (at least 50%) of labels in the UK in the short term, and a vast majority (at least 75%) of labels in the medium term.

- Whether we should allow the current voluntary agreement to continue (**Option 1**). As already noted, information on amended labels 'in the pipeline' suggests that 19% may be acceptable during 2010. Diageo has recently announced that it intends to support the 2007 voluntary agreement. This may take labels deemed acceptable up to about 28%. Further roll-out of labels by larger producers and the large supermarkets (for their 'own label' brands) already supporting the agreement could take off-trade market coverage towards 35%-40% by the end of 2011 or early 2012. This takes no account of the need to improve clarity and legibility for some labels. Prospects for further improvement would be unclear, given that two of the biggest producers on the UK market have refused to implement the agreement.
- Whether there is any real prospect for a targeted and *strengthened* self-regulatory agreement with the alcohol industry to improve the coverage and consistency of unit and health information on labels. Whilst this would be less burdensome on industry (particularly smaller companies) this would need to include specific commitments by individual major producers and retailers with specific agreed timescales. It is unclear yet whether such an option (**Option 2**) has support from enough major players in the industry, including all members of the Portman Group. Option 2 is therefore framed as an invitation and a challenge to the industry to make clear whether such an option is realistically available and whether the Government's minimum requirements for market coverage can be met.

- Whether a mandatory requirement (**Option 3**) with its associated costs, including those for small producers, is required to deliver the wide and consistent coverage needed for labelling information to play its necessary part in informing the public. Government is clear that the limited and variable market coverage achieved to date, three years after a voluntary agreement was agreed, is not adequate. An outline of content for possible regulations is set out and comments are sought on this. Should the Government choose Option 3, it would not need to consult again before taking the next steps towards making regulations.

This consultation includes the above three possible options, on which comments are now sought. If the Government does conclude that legislation is the best option, taking account of responses to this consultation, it would expect to notify draft regulations to the EU Commission in Summer 2010.

### **Scottish Government views:**

In *Changing Scotland's relationship with Alcohol: A Framework for Action*, the Scottish Government stated that "we continue to believe that alcohol labelling could be significantly improved and that it would be desirable to introduce mandatory product labelling in line with the voluntary agreement on labelling currently operating across the UK".

Findings from the monitoring of the voluntary agreement show that industry has not been able to deliver with only 10% of labels fully complying with all five elements of the agreement. Even if a wider interpretation of the criteria is used i.e. labels that are 'acceptable' or within the "spirit" of the 2007 MoU, this only brings compliance up to 15%.

In light of the low level of compliance with the voluntary agreement, Scottish Government would need to be persuaded of the willingness and ability of the industry to deliver an acceptable level of compliance to a reasonable timescale in order for options 1 and 2, outlined below, to be considered.

We see clear advantages for both consumers and the industry from a UK-wide approach to labelling of alcohol products, hence our participation in this joint consultation. However, any decision as regards labelling in Scotland ultimately rests with the Scottish Ministers and the Scottish Parliament.

### **Views of the Welsh Assembly Government**

As noted above, improving information to consumers about unit content and sensible drinking levels is consistent with the second key action area in the Welsh Assembly Government's substance misuse strategy, '*Working Together to Reduce Harm*', which is to prevent harm by providing information about the harms associated with drug and alcohol misuse.

The Welsh Assembly Government's view is that voluntary, industry led initiatives are not an alternative to firm Government action in tackling alcohol related harms. Further, we have noted the very disappointing levels of compliance with the voluntary agreement. On that basis, the Welsh Assembly Government has very significant doubts about the credibility and viability of pursuing a renewed voluntary agreement. Like the Scottish Government, we would need to be persuaded of the willingness and ability of the industry to deliver a very significantly improved level of compliance within a reasonable timescale in order for options 1 and 2, outlined below, to be considered.

The Welsh Assembly Government does recognise the advantages of a consistent approach to alcohol labelling across the UK, and for this reason has agreed to participate in this single, UK-wide consultation. Subject to the outcome of this consultation, our preference is for a co-ordinated UK approach towards legislating for health and unit information on alcohol labels.

However, the relevant powers to introduce legislation are devolved to Welsh Ministers insofar as they are applicable in Wales, and the Welsh Assembly Government reserves the right to consider legislation for Wales, even if this is not the outcome in other parts of the UK, following consultation.

**Department of Health, Social Services, and Public Safety Northern Ireland (DHSSPS) views:**

In *Addressing Young People's Drinking in Northern Ireland*, DHSSPS commits to working with the other UK jurisdictions and key stakeholders to consider how the current agreement on labelling can be strengthened.

We too see clear advantages for both consumers and the industry from a UK-wide approach to labelling of alcohol products, hence our participation in this joint consultation. However, any decision as regards labelling in Northern Ireland rest with the Northern Ireland Assembly.

## The Options

### Option 1 (“Do Nothing”)

This would continue the voluntary agreement as set out in the 2007 MoU. Content of the MoU is set out at Annex A.

Given the progress so far of industry in complying with the voluntary labelling agreement and the opposition of some major producers, there is no clear, early prospect that the majority (at least 50%) of products on the market will carry all five elements and it seems unlikely that compliance would progress much beyond 35%-40% coverage in the short to medium term. Unless there is a credible expression of determination by all alcohol producers and ‘own label’ retailers to implement a renewed voluntary agreement, there must be doubt on how far Option 1 would contribute to the Government’s policy of informing and supporting people to make healthier and more responsible choices in the near future.

As described in the findings of the second stage monitoring, information on labels ‘in the pipeline’ suggests that 19% will be ‘acceptable’ by mid-2010. Diageo’s decision to support the voluntary agreement would raise this by about 9%. Other producers and supermarkets currently partly compliant may become fully compliant by the end of 2010 or later, which should raise the ‘acceptable’ level towards 35%-40% by the end of 2011 or early 2012. However, without some further commitment, government has no assurance that adequate standards of clarity and legibility will be delivered – this has been a problem for a substantial minority of labels.

The 2007 MoU was a compromise in respect of advice on alcohol and pregnancy. Some producers did not support this part of the Government’s requirement. The MoU included encouragement to include this element for those producers willing to do so. The Department made clear in the MoU that it would not treat labels without advice on alcohol and pregnancy as acceptable.

It could be possible to give further guidance on clarity, legibility and format to improve consistency. This is an issue of concern with some of the alternative logos for advice on alcohol and pregnancy and more broadly. The evidence is that information on labels can only be effective if consumers stand a chance of seeing it.

Independent monitoring of compliance would continue.

#### Questions relating to Option 1.

**Q1:** Do you support a continuation of the current voluntary agreement with the alcohol industry? Please give reasons for your answer. You will need to also consider the questions relating to the other options, the Impact Assessment and the background information.

## Option 2 (“Self-regulation”)

This would be a renewed and strengthened self-regulatory agreement with the alcohol industry, to improve both coverage and consistency of the expected unit and health information on labels. It would include specific commitments by individual major producers and retailers with specific agreed timescales.

The UK Government has undertaken an assessment of the potential for market coverage if around 40 major companies complied attached at Annex B. It is estimated that nearly 60% off-trade market coverage could be achieved if the five major beer producers, seven major spirits producers, five major wine producers, and three cider and perry producers not implementing the 2007 agreement in full at April 2009, when samples were taken for monitoring by Campden BRI, would be willing to change their stance. The UK Government believes this is a realistic assessment of potential delivery in the near term (taken to be 2012).

Of the companies who were not fully compliant, at February 2010, one beer producer, three spirits producers, one wine producer, and one cider producer, all of whom are in the top ten producers by market share for their sector, have indicated their intention to support the 2007 agreement. Producers already partially complying would need to comply fully. We have also assumed that major UK supermarket ‘own label’ alcohol would comply fully by the end of 2010. The British Retail Consortium commitment to the European Alcohol and Health Forum was for 50% compliance at the end of 2008 and 100% at the end of 2009. Campden BRI findings for April 2009 were below the commitment for end of 2008, but at February 2010, the BRC states that it believes compliance is over 90%.

At least a 50% level of overall delivery is around the minimum Government could accept in the near term, as the minimum market coverage that would allow the majority of consumers to have a chance to see unit and health information on labels regularly. Delivery to this level within a reasonable timescale, such as the end of 2012 at the latest, depends on the willingness of major producers to make a commitment to this. There is reason for some scepticism inasmuch as some major producers in particular did not in practice support the 2007 voluntary agreement and some still oppose this. Nevertheless, the Government would welcome discussions with alcohol producers and retailers on the potential for any renewed and strengthened agreement of this nature. In the medium term (2014) Government would expect to see the vast majority (at least 75%) compliant.

Some industry comments on the Department’s July 2008 consultation ‘*Safe.Sensible.Social – Consultation on further action*’, suggested that consideration should be given to ‘innovative, co-regulatory options’ including in the area of information on labels. The main potential vehicle for such options would be the Portman Group of alcohol producers and its code of practice. Government believes it could help to give confidence that future producer commitments on labelling would be delivered, if the Portman Group code supported this. Guidance associated with the code has supported the inclusion of unit content on labels of alcohol bottles and containers since an agreement with the Department of Health in 1998.

Government would propose to focus any strengthened agreement on its core requirements:

- Unit content for the bottle or container – this may be supplemented by unit content of a specified glass for wine and spirits
- UK Chief Medical Officers' guidelines on daily limits for lower risk regular consumption
- UK Chief Medical Officers' advice on alcohol and pregnancy; an alternative logo is acceptable

A responsibility message, with acceptable variants, and a website address for the Drinkaware Trust would be optional elements; both might be grouped with the core information.

The reasons for focussing more clearly on the Government's core requirements are:

- Priority and clarity – advice to consumers on unit content and guidelines for regular daily consumption, along with a warning on alcohol and pregnancy are seen by Government as the priority needs for information to consumers. While responsibility messages and the Drinkaware address are helpful, Government would not see a need to be prescriptive on whether and how those are shown. Consumer research during the consultation will test what consumers see as their priority.
- Most forms of current responsibility messages and the Drinkaware weblink were already in use before the 2007 agreement and were included in the agreement at industry's request.
- Reducing burden on industry – the tighter core requirements also help to ensure that any strengthened voluntary agreement, or legislation (Option 3), minimises the numbers of labels that may need to be changed.

Any strengthened agreement, to be viable, would need to continue to be United Kingdom wide. Devolved Administrations for Scotland, Wales, and Northern Ireland have their own legislative powers on food and drinks labelling. They will each take account of the responses to this consultation, both from across the UK and particularly from within their respective countries, before deciding their support for this option.

Guidance on clarity, legibility and format, to improve consistency, should be part of any new agreement.

Government would also welcome any specific additional commitments to the above that could further enhance consumer awareness of these core requirements, especially the CMO guidelines on regular daily consumption, through, for example point-of-sale displays, in-store magazine communications or other means such as "bottle collars".

Independent monitoring of compliance would continue.

## Questions relating to Option 2.

- Q1:** Do you support a strengthened self-regulatory agreement with the alcohol industry (Option 2)? Please explain (a) how this could improve coverage to inform consumers and (b) how the consistency and accuracy of unit and health information on labels could be improved for consumers, as compared with the findings on the current voluntary agreement. If you are an industry body, please provide evidence for any strengthened industry body commitment to a renewed agreement. You will need also to consider the questions below, the Impact Assessment and the background information.
- Q2:** Are there any changes to the current option content that will improve understanding of this information.
- Q3:** Do you think that there should be criteria set to improve the visibility of the proposed information and ensure that it is readable? If so, what should this be?
- Q4:** Would there be any one-off costs for your business or those that you represent as a result of Option 2? If so, how much? Will these be costs from changing labelling or new labels and if so, could you please quantify them? Please state whether you are a micro, small, medium or large business.
- Q5:** Would the proposed content of the Government's requirement for the labelling of alcoholic drinks under Options 2 result in ongoing costs or benefits to your business or the businesses you represent? If so, could you please quantify them?
- Q6:** Would there be any other effects of the proposed requirements under Options 2 on the labelling of alcoholic drinks for your business or those that you represent? If so, could you please quantify them?
- Q7:** Are you content with the period proposed for the introduction of Option 2 (end 2012)? If not, please explain what difficulties may arise from this length of time for implementation.
- Q8:** Are any exemptions or modifications needed for labels on particular classes of alcohol product or for particular alcohol businesses such as small producers? If so, please explain how these should operate.
- Q9:** Are any sanctions you anticipate could apply to individual companies or brands which do not abide by the self-regulatory agreement?
- Q10:** Given the apparent difficulty for some businesses in using the CMO guidelines in their current format on labels, do you have alternative suggestions on how those companies could best communicate the guidelines to consumers?
- Q11:** If you are a consumer or a group representing the interests of public health or consumers, would there be any benefits or disadvantages to you or the people you represent as a result of the proposed requirements under Option 2 on the labelling of alcoholic drinks? Please provide details.

## Option 3 ("Mandatory")

This would be a mandatory requirement through regulations made under the Food Safety Act 1990.

Respondents to the UK Government's 2008 consultation were strongly in favour of the introduction of legislation making unit and health information mandatory, if there continues to be slow progress in implementing the voluntary labelling scheme. Several industry bodies stated that most of their members already provide unit information. Others suggested unit information was already currently available through a company website.

Government is clear that the limited and variable market coverage achieved at April 2009, three years after a voluntary agreement was concluded, is not adequate to meet the needs of consumers for unit and health information on alcohol.

Government would propose to focus any regulations on three core requirements:

- Unit content for the bottle or container – this may be supplemented by unit content of a specified glass for wine and spirits
- UK Chief Medical Officers' guidelines on daily limits for lower risk regular consumption
- UK Chief Medical Officers' advice on alcohol and pregnancy; an alternative logo is acceptable

A responsibility message, with acceptable variants, and a website address for the Drinkaware Trust would be accepted as optional elements; and both may be grouped with the core information.

The reasons for focussing more clearly on the Government's core requirements are:

- Priority and clarity – advice to consumers on unit content and guidelines for regular daily consumption, along with a warning on alcohol and pregnancy are seen by Government as the priority needs for information to consumers. While responsibility messages and the Drinkaware address are helpful, Government would not see a need to be prescriptive on whether and how those are shown. Consumer research during the consultation will test what consumers see as their priority.
- Most forms of current responsibility messages and the Drinkaware weblink were already in use before the 2007 agreement and were included in the agreement at industry's request.
- Reducing burden on industry – the tighter core requirements also help to ensure that any strengthened voluntary agreement, or legislation (Option 3), minimises the numbers of labels that may need to be changed.

An outline of content for possible regulations is set out at **Annex C** and comments are sought on this. We are inviting views as to whether the proposed content seems reasonable and proportionate and whether there are any issues that have not been addressed. A more detailed list of questions can be found below. This is not a proposal for detailed regulation text but is intended to give an outline of the possible substantive content of a regulation. Respondents should not try to draft their own regulations but we would welcome comments regarding the content.

Should Government choose Option 3, it would not need to consult again before taking the next steps towards making regulations and we would, therefore, encourage all stakeholders to consider and comment on these proposed regulations, even if they do not agree with them in principle.

Any regulations would need to be notified to the EU under Directive 2000/13 on Food Labelling. Before coming into force, the regulations would need to be approved by the European Commission, after taking account of comments from Member States and others.



Subject to this consultation, it would be possible for the UK Government to notify draft regulations for England to the EU in the Summer of 2010, with a 3-month notification period ending in Autumn 2010. Regulations could be brought into force subsequently.

Domestic provisions for labelling alcohol are devolved under the Scotland Act, the Government of Wales Act 2006 and the National Assembly of Wales (Transfer of Functions) Order 1999/672 and the Northern Ireland Act 1998. The Devolved Administrations will each take account of the responses to this consultation, particularly those from within their respective countries, before deciding on their support for this option.

The UK administrations would need to demonstrate to the EU why a new barrier to trade would be justified on public health grounds, as required by Article 30 of the Treaty of Rome. We are confident of being able to show such a justification. This has been accepted for other notifications on alcohol labelling, such as French legislation in 2006 for a warning on alcohol and pregnancy.

Mutual recognition is the principle in EU law under which Member States must allow goods legally sold in another Member State to be sold in their own territory. This principle applies to non-harmonised goods, i.e. those not already covered by EU-wide legislation setting common requirements that all products of a particular type placed on the EU market must meet. Directive 2000/13 on Food Labelling provides for a framework of harmonised requirements, but with very limited requirements for labelling of alcohol. The Directive allows Member States to impose specific requirements of their own, if justified on public health grounds and subject to EU approval.

If such a requirement were agreed for a UK notification of regulations on unit and health information, the principle of mutual recognition is likely to mean that the UK must accept equivalent information on labels originating from other Member States. In the case of French legislation already mentioned, the EU decided that other Member States' products must comply by including an equivalent pregnancy warning in order to trade within France.

There are also precedents for UK legislation on food labelling, which do not apply to other EU Member States' products. In general, these lack the strong public health grounds which would justify a UK requirement for unit and health information applied to all labels of alcohol products marketed in the UK off-licensed trade. The draft Impact Assessment assumes that all other EU Member States alcohol products would be required to comply.

A mandatory requirement could have drawbacks in a number of areas. These could include:

- A reduction of consumer choice, through smaller companies in particular deciding not to supply particular products to the UK market; for some producers which currently supply common labels to a number of EU countries, there could be continuing costs in setting up labelling lines for the UK only. For others, the costs would be 'one-off' in creating a new label design.
- the creation of a disproportionate burden on smaller businesses, including those outside the UK
- decreased flexibility to evolve labels on products through a requirement to notify the EU each time and
- the imposition of monitoring and enforcement costs on the public purse.

### Questions relating to Option 3.

- Q1:** Do you support legislating for a mandatory requirement on labelling (Option 3)?
- Q2:** Are there any changes to the proposed option content that improve understanding of this information?
- Q3:** Do you think that there should be criteria set to ensure the visibility of the proposed information and ensure that it is readable? If so, what should this be?
- Q4:** Whether or not you support a mandatory requirement, are you content that the content of possible regulations on the labelling of alcoholic drinks outlined below is both reasonable and proportionate? If not, what amendments would you like to see made and why?
- Q5:** Are there any other additions, amendments or deletions you would like to see made to the proposed content? If so, what changes would you like to be made and why?
- Q6:** Will there be any one-off costs for your business or those that you represent as a result of the outlined content for possible regulations on the labelling of alcoholic drinks under Option 3? If so, how much? Will these be costs from changing labelling or new labels and if so, could you please quantify them?
- Q7:** Will the proposed content of the regulations under Option 3 result in ongoing costs or benefits to your business or the businesses you represent? If so, could you please quantify them?
- Q8:** Will there be any other effects of the proposed requirements under Option 3 on the labelling of alcoholic drinks for your business or those that you represent? If so, could you please quantify them?
- Q9:** Are you content with the suggested implementation period for Option 3 (two years from making regulations)? If not, please explain what difficulties may arise from this length of transitional period.
- Q10:** Are any exemptions or modifications needed for labels on particular classes of alcohol product or for particular alcohol businesses such as small producers (e.g. for small packages or specific products)? If so, please explain how these should operate.
- Q11:** For enforcement agencies, what costs or benefits would you incur as a result of the proposed content of the regulations for Option 3 on the labelling of alcoholic drinks? Please quantify these costs or benefits if you can.
- Q12:** If you are a consumer or a group representing the interests of public health or consumers, would there be any benefits or disadvantages to you or the people you represent as a result of the proposed requirements under Option 3 on the labelling of alcoholic drinks? Please provide details.
- Q13:** If you are a small business or their representative organisation, to what extent would you or the businesses you represent be particularly affected by the regulations on the labelling of alcoholic drinks? Please provide details of benefits and costs if you can.
- Q14:** If you are a business particularly serving minority ethnic communities, or their representative organisation, to what extent would you/the businesses you represent be affected by the proposed content of the regulations on the labelling of alcoholic drinks?

Please provide details of benefits and costs if you can.

**Q15:** For all businesses, would the proposed content of the possible regulation of labelling alcoholic drinks have any effect, whether beneficial or detrimental, on competition between you and other businesses? If so, please specify.

**Q16:** For all businesses, would the proposed content of the regulations on the labelling of alcoholic drinks have any effect on your trade across the EU or/and beyond? If so, please specify and/or suggest any modifications.

## General Questions

- Q1:** Considering all options presented, which do you believe would be the most proportionate way of the Government achieving its objective of ensuring that a majority (at least 50%) of labels carry unit and health information in the near term (2012) and a vast majority (at least 75%) in the medium term (2014)?
- Q2;** Are there any further costs and benefits to identify for any of the options?