

Guidance Note

Product Sampling

March 2019



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This help note is intended to help drinks producers comply with The Portman Group's (TPG's) Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks. The help note represents the opinion of TPG's Advisory Service. Please note that the Independent Complaints Panel (ICP) is the final arbiter on how the Code should be interpreted and applied. Following the advice in this document is no guarantee that your product's packaging or promotion will not be found in breach of the Code of a complaint is received.

Introduction

Sampling can be defined as the unconditional giving away of alcohol to the general public in a public place, including licensed premises (unless the premises are being used for a private function). It allows consumers to assess free of charge the taste and quality of a product while allowing producers to test a new product or create brand awareness for an established product. These guidelines have been produced by The Portman Group as a checklist of things to consider before embarking on sampling activity.

Legal Position

Unlike the sale of alcohol, sampling alcohol in public areas does not require any sort of licence, but it is advisable to seek written permission from the relevant Local Authority that no other formal agreement is required. The Criminal Justice and Police Act 2001 enables Local Authorities in England and Wales to designate any public place as a non-drinking area if satisfied that consumption of intoxicating liquor in that place has caused nuisance, annoyance or disorder.

The area would be covered by an Alcohol Designation Order which replaces any existing alcohol bylaws. The Act provides the Police with the power to enforce this restriction by requiring a person not to consume alcohol in the named public place and, if required, to confiscate the alcohol. Local Councils in Scotland have similar powers under the Local Government (Scotland) Act 1973. If you are contemplating sampling activity in any public area then check with the relevant Local Authority that it is not covered by a Designation Order, or its equivalent in Scotland.

Please note that there may be other legal issues to be considered when undertaking sampling activity. The help note is not intended to be a comprehensive guide to the law and companies are therefore urged to obtain their own legal advice before embarking on any activity.

Requirements under the Code

All elements of sampling activity (including, for example, supporting materials and script for sampling staff) are required to comply with all of the Code's provisions in both the spirit and the letter. There are two Code rules, however, that have particular relevance to sampling activity. They are as follows:

3.2(f) [Sampling should not] encourage illegal, irresponsible or immoderate consumption, such as binge-drinking, drunkenness or drink driving.

3.2(h) [Sampling should not] have a particular appeal to under 18s. Below, we consider various issues arising under these two rules, and offer advice on how best to avoid problems under the Code and achieve best practice.



Appeal to under-18s

In order to avoid your sampling activity having a particular appeal to under 18s:

- Only offer samples to people who are over the age of 18. If in doubt ask for proof of age (driving licence, passport or PASS-accredited proof of age card like The Portman Group's Proof of Age card). If proof of age cannot be supplied and you have any doubts as to whether the person is over 18 then you should politely refuse to offer them a sample.
- Sampling should not occur in or near areas that attract or appeal predominantly to children and young people (e.g. youth clubs, schools, bowling alleys).
- Ensure the sample is to be consumed by the person receiving it, i.e., it should not be obtained for someone else's consumption.
- If the activity is to take place in a public area, avoid using promotional equipment, materials or themes that are likely to have a particular appeal to under-18s (e.g. a birthday party themed stand with balloons and clowns). Where sampling will only take place in the controlled environment of the on-trade, allowances may be made for elements that would otherwise have an under 18 appeal.
- While rule 3.2(i) of the Code requires that marketing materials should not feature images of drinkers who are, or look, under 25 years of age, this is not relevant to sampling staff. Such staff, however, should be, and look, over 18 years of age.

Sampling in locations where people are likely to be driving

In order to avoid encouraging drink-driving, one should clearly avoid deliberately targeting sampling activity at drivers. This would normally rule out sampling in stand-alone car-parks. It may be considered acceptable under the Code, however, to conduct sampling immediately outside a licensed premise (e.g. a pub or supermarket) in which the sampled product is on sale.

This might involve sampling in an area which is on the fringe of a car-park serving those premises.

If contemplating sampling in this type of location:

- It would be advisable to keep sample sizes small, for example no more than 0.5 of a unit¹, just enough for the consumer to assess the taste and quality of the product.
- Restrict samples to one per person.
- Restrict samples only to people entering premises; that way you can ensure that those people that are in charge of a vehicle will not resume driving immediately.
- It would be good practice to have on display anti drink-drive messages and material. The Portman Group may be able to provide such material.

Other potentially dangerous locations and activities

Apart from driving, there may be other locations or activities that are unsuitable to be associated with alcohol consumption:

- Do not provide samples in or near premises where it would be inadvisable to consume alcohol (e.g. building and industrial sites, go-kart arenas, swimming pools).

¹ Units can be calculated by multiplying the volume of the drink (in ml) by its alcoholic strength (in ABV%) and dividing by 1000. For more details, visit drinkaware.co.uk



Immoderate consumption

The Government's guidelines on sensible drinking state that provided men drink no more than 3-4 units of alcohol a day, and women no more than 2-3 units, there is unlikely to be a significant risk to their health. Sampling activity should not involve giving away individual samples of greater volume than this (and note the advice above in respect of locations where people may be driving).

To be as safe as possible, however, under the Code:

- Consider individual sample sizes of no more than 1.5 units (on-trade) and 0.5 units (off-trade), just enough for consumers to assess the taste and quality of the product. The reason for the difference is that most people visiting the on-trade will be there to consume alcohol.
- Do not provide samples to anyone who appears to be intoxicated or under the influence of drugs. Avoid delivering the sample in an irresponsible manner (for example, allowing the sampling staff to pour or squirt alcohol down the throat of the member of the public).
- Ensure sampling staff are able to offer information about the ABV of, and the number of units in, the product sample. This could be done either orally or by having leaflets readily available on site.
- It would be good practice to have on display responsible drinking messages or materials, including a reference to The Portman Group's Drinkaware website (www.drinkaware.co.uk). The Portman Group may be able to provide such materials.

The Portman Group is a responsibility body and regulator of the naming, packaging, promotion and sponsorship of alcohol. The above guidance should help you to avoid problems under the Portman Group's Code of Practice.

The Portman Group's Advisory Service

If you are in any doubt as to whether your proposed activity conforms to the Code you can seek free, fast and confidential advice from the Portman Group's Advisory Service. To obtain advice, please telephone the Portman Group on 020 3295 5704 and ask for the Advisory Service. Alternatively email your request to advice@portmangroup.org.uk, with full details of the proposed activity.

The Portman Group's Code Training Programme

We also provide free CPD accredited training to ensure that the Code is widely understood and applied; as well as providing details on the wider regulatory landscape. Should you wish the Portman Group's training sessions can be tailored to suit your organisation or individual needs. To book a training session or to find out more, please telephone the Portman Group on 020 3925 5704 and ask for the Training Manager. Alternatively, email your booking request or query to training@portmangroup.org.uk.

