

**A consultation on delivering the Government's policies to cut alcohol fuelled crime and anti-social
behaviour**

Response from Marks & Spencer Plc

February 2013

Introduction

Marks & Spencer is one of the UK's most well known retailers. We sell food and general merchandise in over 730 stores across the UK and operate approximately 400 stores internationally, as well as trading on the internet and by phone. As part of our food business, M&S has a comprehensive alcohol offer, comprising wine, spirits, beer and cider.

In addition to our retailing business, many M&S stores also include a hospitality offer, such as a cafe, restaurant or deli bar. A small number (approximately 5%) of these sell alcohol.

M&S is committed to selling high quality goods, and that relates to our alcoholic products just as much as our food, clothing and homeware. The vast majority of the alcohol we sell is exclusive to M&S, as we are overwhelmingly an own brand retailer. We sell a small selection of branded alcohol, for example well known Champagne labels or the leading branded spirits to ensure we remain convenient for our customers. Our focus on own brand allows us the flexibility to source and develop new or innovative products, and to respond quickly to our customers' expectations.

M&S is a member of the Wine & Spirit Trade Association and the British Retail Consortium. We have fed in to their responses, and this consultation response should be read in conjunction with the submissions made by these trade associations.

M&S approach to alcohol retailing

M&S recognises that with an alcohol licence comes significant responsibilities. Our training material for store colleagues includes comprehensive information regarding the legalities surrounding alcohol sales and this is supplemented by our robust internal policies, which often go above and beyond the legal requirements.

M&S operates a strict 'Challenge 25' approach to underage sales. As one of the founding members of the Retail of Alcohol Standards Group (RASG) we have worked with other retailers to understand the best way to support our staff as they serve our customers. Challenge 25 forms a core part of our in-store training and staff feel confident in challenging age and checking identification. Staff are re-assessed every six months to ensure they understand the operation of Challenge 25 and we undertake our own test purchasing across our stores to make sure the policy is working well.

M&S believes in partnership working to address issues associated with alcohol related anti-social behaviour and we support the Community Alcohol Partnership (CAP) approach to local issues. CAPs are evidence-based, tailored partnerships that bring all stakeholders together to resolve issues. Small and large retailers, trading standards, schools, the police and the licensing authority can make a real difference when working together, tackling the local and cultural issues associated with anti-social behaviour.

M&S is a supporter of the Government's Public Health Responsibility Deal and we have signed up to all the relevant alcohol pledges. Over 90% of our products include the Government's health warning and unit information label and we have rolled out awareness-raising material across our on-trade settings, and at key points in the alcohol aisles in our stores. The industry pledge to cut one billion alcohol units is particularly innovative. One of the key ways we are fulfilling this pledge is through

introducing low alcohol or alcohol free products. Just last month we introduced a new range of wine at the lower level of 9.5% abv.

M&S is also a supporter of Drinkaware both through funding and via prolific use of its logo and website. We direct customers to the Drinkaware website if they have questions regarding alcohol. We also adhere to the Portman Group's code of practice on the Naming, Packaging and Promotion of Alcoholic Drinks and believe this approach works very effectively.

M&S also communicates extensively with our customers regarding responsible alcohol consumption. Our consumer-facing website <http://health.marksandspencer.com/healthy-eating/alcohol> includes advice on moderate drinking, explains what alcohol units are, and talks about the effects of drinking too much. Health and Wellbeing is a key pillar of our eco-ethical programme, Plan A and we are committed to helping our customers lead healthy lives.

M&S is of the view that a cultural change is required to tackle effectively issues associated with alcohol-fuelled harm and anti-social behaviour, and the minority of consumers that consume alcohol irresponsibly. Fostering a different relationship with alcohol, such as encouraging the enjoyment of alcohol as part of an eating occasion, or increasing awareness of lower alcohol products are valid ways in which to do this. We know our customers are concerned that the Government's current proposals will impact on responsible drinkers which, whilst not the Government's intention, may well be an unintended consequence of some of the proposals suggested in the strategy and this consultation.

Government's Alcohol Strategy

M&S values the opportunity to comment on the Government's proposals for delivering its alcohol strategy. We agree with the objectives of the strategy; alcohol fuelled crime and anti-social behaviour impacts on both the public and the businesses operating in our towns and cities.

Alcohol fuelled behaviour is a complex public policy issue with many associated factors. The cultural issues associated with alcohol are just as important as the regulatory framework affecting its sale. We would urge the Government to ensure an evidence-based approach to the delivery of the strategy's objectives, which favours targeted interventions aimed at problem premises and problem behaviour, and appropriate and cost-effective enforcement.

We have limited our consultation response to only deal with those issues of direct relevant and, therefore, we have omitted some of the questions asked.

Question 1 Do you agree that this MUP level would achieve these aims?

M&S remains to be convinced that the introduction of a 45p MUP for alcohol will bring about the behaviour change the Government seeks, although we do accept the Government's stated commitment to its introduction.

A minimum unit price for alcohol is an untargeted approach to the issues identified in the consultation and, as the measure is untested, there is not the evidence to suggest it will change the public's purchasing or consumption habits. M&S suggests, should the Government go ahead with its introduction, that a comprehensive review of the policy takes place after perhaps two years, and a sunset clause, as is the case in Scotland, is included in the legislation, to ensure its effectiveness is evaluated.

Question 2 Should other factors or evidence be considered when setting a minimum unit price for alcohol

Yes. In particular, it is important to consider the regulatory burdens brought in to ensure compliance, which will impact on all retailers of alcohol. Likewise, this policy could potentially place considerable burdens on the enforcement agencies, which should be considered, and a proportionate approach should be followed.

Question 3 How do you think the level of minimum unit price set by the Government should be adjusted over time?

A robust framework to review the price should be set in legislation, which requires full and proper consultation with industry and other stakeholders and a full vote in Parliament, and pays adequate attention to the economic factors of the time. Any future change in the level of the minimum unit price should also provide adequate notice, so industry has sufficient time to implement it.

It would be wrong for the minimum unit price to be adjusted without sound justification for doing so. If the price increased significantly, its impact on moderate, responsible drinkers and premium products could be considerable, which could further distort the market. It is therefore essential that a sound framework is introduced to mitigate against unintended consequences.

Question 4 Do you think that there are any other people, organisations or groups that could be particularly affected by a minimum unit price for alcohol

Yes. As indicated above, it is important that the impact on responsible businesses and responsible consumers is taken into account. All retailers of alcohol will need to introduce new systems to comply with the regulations, whether the alcohol they sell is affected or not. This could be a costly investment and it is important the regulations are proportionate so as to minimise the costs as much as possible.

Likewise, the introduction of a MUP will add to the workload of the enforcement community. At a time when budgets are stretched it is important not to place undue burdens on trading standards, not least as this could reduce their ability to tackle rogue businesses.

Question 5 Do you think there should be a ban on multi-buy promotions involving alcohol in the off-trade

No. M&S does not support a ban on multibuy promotions. Multibuy promotions offer customers value for money, allowing them to take advantage of buying at scale, in the same way as businesses benefit when placing larger orders.

The link between a multibuy promotion, purchase and consumption is not proven and it is therefore impossible to link multibuy promotions in the off trade with alcohol fuelled harm or disorder.

M&S runs a number of promotions likely to be affected by any proposed ban. For example, we often offer a discount if a customer buys six or more bottles of wine, and we regularly invite customers to save money on celebration drinks, such as sparkling wine or buck fizz, particularly during the festive season. We also run a well respected wine club online, which enables customers to try high quality wine and new varieties at a discount.

There is no evidence to suggest that multibuy promotions such as these contribute to an increase in consumption, or alcohol fuelled disorder. Customers often stock up during a promotional period, and enjoy these products over a longer period of time, or with friends. We fear a ban on these types of promotions will radically change the market, signalling the end of wine clubs, for example, whilst not affecting consumption, crime or disorder.

There is considerable difference between a multibuy discount in the on-trade and the off-trade. In the on-trade the alcohol purchased is consumed at the same time as the transaction, whereas alcohol bought in the off-trade may be consumed over several weeks, months, or even years. M&S does not run multibuy alcohol promotions in our on-trade premises.

We would urge the Government to consider very carefully whether a ban on multibuy promotions is a proportionate response to the issues outlined in the alcohol strategy, and whether there is the evidence to support this approach. Moreover, if it is the Government's view that a minimum unit price will set an appropriate price for alcohol, there should be no need to also introduce a ban on multibuy promotions, as the alcohol sold on promotion will not be able to be lower than that price, regardless of the multibuy deal. The unintended consequence of also introducing a multibuy promotions ban could be the reduction of choice and innovation, as customers can no longer try different wines as part of a promotional case.

Question 6 Are there any further offers which should be included in a ban on multi-buy promotions?

No.

Question 7 Should other factors or evidence be considered when considering a ban on multibuy promotions?

Yes. As with minimum unit pricing, it is important to factor in the compliance costs of this measure. Depending on how a multibuy promotions ban was regulated, these costs could be significant for trading standards and retailers alike.

It is important to have a firm understanding of customer behaviour. If the intention of a possible ban is to reduce incidences of people buying more alcohol than they intended (remembering purchase is different to consumption), it is important to understand how customers might react to a ban. Evidence from Scotland suggests the promotions ban has had limited impact on overall alcohol sales. Given alcohol consumption is already falling across the UK, before any of these measures

progress, it is important to be sure of the evidential need for a policy that will impact on a number of business models.

It is also important to consider the wider alcohol industry. Multibuy promotions are a useful way for new, innovative products to come to market, and a ban may reduce their ability to enter the UK market. For example, a multibuy deal on low alcohol wines may help introduce customers to these alternatives to traditional varieties. Stifling our ability to promote and market these products would be disappointing, especially given the commitment made under the Responsibility Deal.

Question 9 Do you think each of the mandatory licensing conditions is effective in promoting the licensing objectives?

Yes. The code sets a basic standard for licensed premises and M&S believes this is valuable.

Question 12 Do you think the current approach, with five mandatory licensing conditions applying to the on-trade and only one of those to the off-trade, is appropriate?

M&S does not believe that the effectiveness of regulation should be measured by the number of conditions affecting different types of premises. Yes, the current code is workable and the current balance is appropriate, but it would be misleading to suggest the current approach means the on-trade is more heavily regulated than the off-trade. There are a number of other regulatory requirements impacting on the off trade, outside the mandatory code.

The mandatory code is a useful tool in setting basic standards, but it not an appropriate mechanism for further regulation that goes further than these standards. Any significant changes to alcohol legislation should be subject to full parliamentary scrutiny, and public consultation.

Question 13 What sources of evidence on alcohol-related health harm could be used to support the introduction of a Cumulative Impact Policy (CIP) if it were possible for a CIP to include consideration of health?

M&S is not as yet convinced that the introduction of a CIP prevents consumers that want to consume alcohol irresponsibly from doing so, and we do not believe that health should be a licensing objective for CIPs. Proving the link between health harm and the density of premises selling alcohol would be particularly complex and we do not believe this can be done robustly. Referring specifically to the off trade, where an alcohol purchase took place may bear no significance to where the alcohol is consumed, or how much is consumed at once, and therefore the impact on the consumer's health and its relation to their locality is very difficult to determine.

The impact of introducing health as a CIP objective could be numerous, not least causing issues regarding interpretation across each licensing authority. The Government should be mindful of the burdens this could place on local authorities as they seek to include health as an objective to factor in, but without a robust statistical mechanism on which to rely.

Question 15 what impact do you think allowing consideration of data on alcohol-related harms when introducing CIP would have if it were used in your local area?

M&S would be concerned that this could lead to less responsible alcohol retailers being granted licences in some areas of the UK. The vast majority of our new stores are likely to include an alcohol licence application, as our alcohol offer is an important element of our grocery mix.

We are concerned that responsible consumers could therefore be disadvantaged by not being able to buy alcohol from a responsible retailer that was unable to obtain a licence, or could restrict retail choice and competition, as new entrants are prevented from entering a local area because they were unable to obtain a licence, regardless of the type of retailer they were.

It is imperative that licensing authorities consider the implications of each application it receives and M&S is always keen to work with the local authority wherever our stores are located. However, once implemented, CIPs are blanket measures operating across a specified area, that do not take into account the types of alcohol retailers in the area, or the types of businesses that may be applying for a licence.

This could have significant implications for the local economy. We would be unlikely to open a new store in an area where we could not get an alcohol licence, meaning less investment in these areas, and fewer new employment opportunities. Moreover, this could restrict consumer choice, as we sell more than just alcohol and the wider retail offer of that locality would be affected. Given the Government's commitment to high street and town centre regeneration, altering CIPs policy in this way may well be at odds with the wider priorities of the BIS and CLG departments.

Question 30 Do you agree with each of the following proposals?

A (advertising in newspapers)

Yes. Communicating licensing applications can be done more effectively in other ways.

B (removing the centrally imposed prohibition on the sale of alcohol at MSAs for the on and off trade)

Yes. Currently, M&S has a presence at over 30 Motorway Service Areas. These 'Simply Food' branches provide road users with a limited but varied grocery offer, ideal for a short refreshment stop or to buy last-minute grocery-related gifts.

In a number of these Simply Foods, where the centrally imposed prohibitions do not apply, we currently offer a limited amount of alcohol as part of this grocery offer. We have not seen any detrimental impact as a consequence of this and customers appreciate the opportunity to, for example, pick up, a bottle of wine on their way to dinner with family or friends.

From this experience we see no reason for the continuation of the centrally imposed prohibition on alcohol sales at the other MSAs. We believe that local Licensing Authorities are best placed to decide whether or not an alcohol licence should be granted.

D (remove or simplify requirements to renew personal licences)

Yes. The requirement to renew personal licenses every 10 years is a costly bureaucratic burden. We support the continued requirement to update licences to ensure the information they contain is accurate, but if no changes are required, renewal is unnecessary.

Question 31 Do you think that each of the following would reduce the overall burdens on business?

Yes, to some degree all these suggestions will reduce the burdens associated with selling alcohol. However, it is important to recognise that the proposals contained within the consultation have the potential to significantly increase the regulatory burden. Whilst the suggestions in section 9 are a good start, are not equitable with the regulatory burden the measures included in the wider consultation could impose.

Question 33 What other sections or processes under the 2003 Act could be removed or simplified to impact favourably on businesses without undermining the statutory licensing objectives or significantly increasing burdens on licensing authorities?

Extending the Primary Authority Scheme. M&S understands a pilot has taken place regarding Age Related Sales. We are of the view that there is merit in giving due consideration to further extending the Primary Authority scheme to these matters. As we have seen in other areas of regulation the Primary Authority scheme does not reduce a local authority's ability to take action on local issues, but it does bring about greater consistency on issues common across England and Wales, as well as reduce the cost and time pressures faced by local authorities, enabling them to more efficiently manage their resources. For a multiple retailer, it has the potential to save a considerable amount of time.

Licence Fee Discounts. Responsible retailers with robust policies in place are subject to the same cost burdens as irresponsible premises. We believe there should be a mechanism for recognising a responsible alcohol retailer in the fees system. With the introduction of full cost recovery, the trade will shoulder more of the costs of administering the licensing regime. Responsible retailers cost the system less due to the need for less enforcement activity yet, currently this is not recognised in the system. A discount could ensure best practice is rewarded, and could also further incentivise responsibility across the licensed trade.