



Consumer Affairs Directorate

STRENGTHENING CONSUMERS AND BUSINESS

# Price Marking

PUBLIC CONSULTATION  
ON PROPOSED CHANGES  
TO THE PRICE MARKING  
(FOOD AND DRINK ON  
PREMISES) ORDER 1979

**No: CA 010/01**

December 2001

# **Public consultation on proposed changes to The Price Marking (Food and Drink on Premises) Order 1979**

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# 1. INTRODUCTION

## PURPOSE OF CONSULTATION

This consultation document seeks your views on proposed changes to the legislation that deals with price marking of food and drink served in bars, restaurants, cafes and similar establishments.

## RESPONSES

How to respond to this consultation:

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Any additional information that you can provide for the Regulatory Impact Assessment (see below) and any comments you have on it would be particularly welcome.

Responses must be received by Friday 8 March 2002.

We aim to publish the outcome of this consultation.

## CONFIDENTIALITY

Your response to this consultation document may be made publicly available in whole or in part at the Department's discretion. If you do not wish all or part of your response (including your identity) to be made public, you must state in the response which parts you wish us to keep confidential. Where confidentiality is not requested, responses may be made available to any enquirer, including enquirers outside the UK, or published by any means, including on the Internet.

## **CONSULTEES**

We are sending this document to the consultees listed at (6) below. Please tell us if you know of others who would be interested in this consultation. It is also available by request from the source listed above or on the Department's website at <http://www.dti.gov.uk/cacp/ca/consulta.htm>

## **HELP WITH QUERIES**

If you would like help with queries or further information about this consultation please contact official named above.

## 2. SUMMARY

This is the second consultation on this Order, the first having taken place in 2000. There were 34 responses to the first consultation from consumer, trade and enforcement interests. A summary of those responses and the revisions proposed to the Order is set out below. A full set of the responses, other than those that requested confidentiality, can be read on appointment in the Information Centre of the Department of Trade and Industry, 1 Victoria Street, London, SW1H 0ET. Those interested should contact John Gillam (020 7215 6226).

There was general agreement amongst respondents that there was scope to clarify and simplify the existing Order. However, there was also broad consensus that much of it could usefully be retained because its provisions were well known and understood and, overall, appeared to work reasonably well. It was suggested that trade best practice guidance might usefully supplement the legislative requirements of the Order and the Department has been working with the trade and other interests to develop guidance to complement the legislative requirements. That guidance has been finalised and is available on-line at the British Beer and Pub Association's website <http://www.beerandpub.com>

The proposals that are now made in this consultative document reflect the responses to the earlier consultation and subsequent developments. Proposed amendments are restricted to those which will clarify and/or simplify the text and/or deal with specific areas of complaint. These have primarily centred on the pricing of cold soft drinks and a specific proposal on pricing these products is set out in the attached documents.

### 3. MAIN CONSULTATION TEXT

#### ARTICLE 1

1 Defines the terms used in the Order. In particular, “food” includes drink so that, unless otherwise specified, the need to display prices for food covers both food and drink. The article roughly differentiates between establishments with waiter service (restaurants etc) and those which are non-waiter service (self-service counters, bars etc) – called respectively “eating area” and “supply area”. The distinction between eating and supply area has an important effect on where prices must be displayed (see article 7).

- i. An “eating area” is defined as the part of a premises specifically set aside and equipped for the consumption of food and drink but excluding a supply area.
- ii. A “supply area” is defined as any part of a premises specifically set aside and equipped for the supply of food where the purchaser:-
  - a) pays for the food for consumption on the premises where it is sold before it is consumed, and
  - b) himself carries the food to the place where it is to be consumed.

2 **Responses** Twenty-four respondents commented on this article. There were mixed views on whether the current definition of “food”, which includes drink should remain with a small majority taking the view that it should, primarily because they considered it worked well in practice. It was also pointed out that a change in the definition could cause confusion because other food legislation also includes “drink” in its definition of “food”. Those who wanted change tended to do so because they thought the Order should specify that a set number of drink prices must be displayed in addition to food – or, indeed, all prices (Article 4 below deals with the number of items that must be displayed).

3 There were also mixed views on whether the current distinction between waiter service and self-service establishments should remain with the trade more supportive than enforcers or consumer bodies. Overall, a small majority thought it should not be retained, on the grounds of the complexity it introduced into the Order and the difficulty of applying it to establishments that had part self and part-waiter service. Generally, those who wanted common requirements also wanted more stringent ones – such as outside menus in all cases and/or all products to be price listed. Those respondents that supported continuation of the distinction took the view that the current system had worked reasonably well and was well known and understood. The practical difficulties of common requirements were also noted – particularly for large pubs with many entrances, separate rooms, outside areas etc. It was thought that the problems would be increased if different prices were charged in different bars – with the possibility of prices becoming misleading, which is an offence under the Consumer Protection Act 1987. Two respondents suggested that the siting of price lists at entrance

points was problematic for drive-through outlets where it could cause congestion and be dangerous. They suggested instead that price displays should be anywhere within the drive through lane provided it was before or at the ordering point. Comments are particularly invited on this suggestion.

4 It was pointed out that the current Order depends on purchasers not only paying for food before consuming it in “supply areas” but on their also carrying the food to their own table. It was felt that some outlets that had more characteristics of “supply areas” (pub grub counters, for instance) than “eating areas” would fail this test because their staff delivered counter ordered food which had been paid for in advance to the table rather than keep the customer waiting at the bar while it was prepared. It was suggested that the removal of this requirement would not detract from the purpose of the regulation but would be both practical and useful in clarifying the position. Views on this point are particularly sought.

5 **Proposal** That the current definitions be retained.

- In the case of “food” any advantage of increased clarity in altering the definition is likely to be outweighed by possible confusion caused by introducing a different definition from that in other consumer legislation. Its retention does not, of course, prevent the imposition of a requirement to display a specified number of drink prices, if this can be justified.
- A removal of the distinction between waiter and self-service establishments could necessitate the imposition of entrance menus on all establishments or the removal of the current requirement on waiter service outlets alone. There are good consumer arguments in favour of entrance menus for restaurants, where the financial outlay tends to be higher and the embarrassment of leaving without making a purchase greater, but there are also good grounds for avoiding imposing the costs involved in mandatory entrance displays more widely. There are some practical difficulties with the current regime but those highlighted by respondents as arising from common requirements are likely to prove even more problematic. Improved guidance addresses the question of how to deal with outlets that are both self and waiter service.
- That the current qualifying requirement for “supply areas” that purchasers must carry the food to their table, in addition to paying for it in advance, should be removed.

## **ARTICLE 2**

6 Sets out the scope of the Order and provides exemption from the requirement to display prices for bona fide clubs and staff canteens; educational establishments; and others, such as hotels and boarding houses where food is normally supplied only to residents. Exemption is also provided for food that is not normally available but supplied at the consumer’s particular request and for food provided at a price agreed in advance, eg a wedding breakfast.

7 **Responses** Twenty-one respondents commented on this article. There were split views on whether all the current exemptions should be retained with trade respondents more supportive than enforcers or consumer bodies. In total, half of respondents considered that exemptions should not apply to clubs when they are open to the public for paying functions or to canteens, particularly when the food is unsubsidised. No additional exemptions were suggested.

8 There was overwhelming support from all interest groupings for the proposal that take-away food, where an element of individual service to the consumer is involved, should be included in the coverage of this Order rather than the Price Marking Order 1999. Supporters welcomed improved legislative clarity between the two Orders although a number noted that guidance would be needed to ensure that there was consistency in enforcement (guidance will be provided).

9 **Proposals** It is proposed that:

- the exemptions for clubs, when they are open to the public for paying functions, eg a paying bar at a wedding, and for canteens, other than those that operate on a non-profit making basis, be removed;
- that take-away food should be covered by this Order rather than the Price Marking Order.

### **ARTICLE 3**

10 Requires, amongst other things, that food prices must be indicated plus any additional charges (eg service charges). Additional charges must be as prominent as the price of the food (see Article 7). In the case of food, which is sold by reference to quantity, an indication should be given of the price for the sale of each quantity in which the product is sold.

11 **Responses** Of the 23 respondents, 13 thought that additional charges that were not optional should be inclusive where possible, with enforcers particularly supportive, and 10 thought that exclusive prices were acceptable as long as they were clear, with most trade respondents falling within this category. There are respectable arguments for requiring all service charges etc to be inclusive where possible but, as the earlier consultation made clear, there are a number of practical problems with it. VAT is chargeable on inclusive but not optional service charges, so requiring them to be inclusive would impose an additional VAT burden which might impact adversely on the amount staff receive and/or consumers pay. It could also conceivably impact on employees' salaries if it encouraged employers to include service charges, gratuities etc in payments paid to them through the payroll, because then such charges would count towards the national minimum wage.

12 Eleven respondents commented on whether bills should be required to indicate clearly and prominently that service and other charges had already been included where this was the case with 9 (mainly enforcement interests) thinking they should and 2 (one trade and one enforcement interest) considering the requirement unnecessary. Of those who thought they should, one suggested that it should be illegal to include an “optional” service charge on a bill without the customers express agreement, another that no space should be left for service on bills being paid by credit card if service had already been included and another that information about additional charges should be more prominent on bills than other information. (A number of these points are addressed in the “Code of Practice for Traders on Price Indications” which is issued under the misleading price provisions of the Consumer Protection Act 1987.)

13 **Proposals** It is proposed that:-

- the existing requirements be retained. The best practice guidance prepared by the trade summarises the requirements and suggests practical ways in which pricing transparency of these charges can be ensured. This complements the advice already available in the Code of Practice for Traders on Price Indications, which is issued under the misleading price provisions of the Consumer Protection Act 1987.

## **ARTICLE 4**

14 Sets out the requirements on what prices must be displayed. There is, of course, nothing in the Order which prevents more prices or, indeed, all prices from being displayed. The Order requires that:-

- i. prices must be given for at least one item of food and drink, if both are supplied;
- ii. if there are fewer than 30 items available (other than table wine – see Article 5) prices for all must be displayed;
- iii. if there are more than 30 items available (other than table wine), prices of at least 30 must be displayed;
- iv. if there are more than 30 items available (other than table wine) and the price display is sub-divided into particular categories (such as soups, fish, entrees, drinks)(other than table wine), either all the items in a particular category (if there are less than five items in that category) or at least five items in a category (if there are more than five items in that category) must be shown. For example, if the price display categorises soups, and four soups are available, then prices for all must be indicated; if nine soups are available, prices need only be indicated for five;
- v. the price of any table d’hôte (fixed price) menu - though not necessarily the contents - must be given.

15 Advertised food should be available when the indication is first given or at the beginning of each period in any day if it is only sold at lunchtime, for

instance. If it becomes unavailable during the period then the indication of availability must be removed as soon as is reasonably practicable after the food becomes unavailable.

**16 Responses** Twenty respondents commented on whether the requirement to display a minimum of 30 prices (excluding wine, see below) was sufficient with half considering that it was and half not. The majority of the latter group (mainly enforcement interests) supported the display of more items (often all products sold). Those that thought a minimum of 30 items was sufficient generally (and most trade respondents considered this to be the case) did so on the grounds that the current system worked reasonably well and generated few complaints (although there have been complaints to DTI Ministers about soft drink pricing, see below). They also tended to the view that there was a trade-off between price transparency and over-large confusing lists of products – particularly in the case of drinks, where combinations could substantially increase the number of product variations on offer and thus the scope for confusion.

**17** Eleven respondents commented on the suggestion that any selection of prices should be “representative” of the goods sold with 7 in favour and 4 against, and no consensus amongst enforcement or trade interests. Those against took the view that it would be problematic to define what was “representative” (eg by reference to volume or cash sales or by listing the cheapest and most expensive items in a category) and to enforce it. It was also thought unnecessary since it was in the interests of business to indicate the prices of most commonly requested lines. It was noted that to require price lists which were “representative” of the goods sold in the particular outlet would be likely to considerably reduce the possibility of centrally produced display material – which could increase business costs. In addition, it might lead to undesirable practice, for instance discouraging outlets from stocking quality products if the “cheapest and most expensive” route was taken.

**18** Fourteen respondents commented on whether the selection of items to be price marked should be at the discretion of the trader or whether some/all of them, - eg some cold soft drinks, where complaints have arisen – should be compulsory, where sold. Seven of the respondents were broadly in favour of more prescription (mainly enforcement interests) and 7 against (mainly traders), although 2 of the latter noted that they would not object to increased compulsion if it was confined to a soft drink category. Of those in favour generally, the majority supported limited, rather than total, prescription – the most frequent suggestion being cold soft drinks, to address the complaints that have arisen. Those against prescription, thought it could be problematic, particularly if specific products were identified, since it could rapidly become out of date as new products were developed.

**19** Twenty-four respondents commented on whether quantities should be required to be displayed for soft drinks with 17 against and 7 in favour. Respondents from the enforcement and trading communities were mainly opposed, with consumer bodies in favour. Those who supported quantity marking did so on the grounds of increased price transparency for consumers.

Those opposed, acknowledged that price transparency would be improved but thought that the benefits would be outweighed by the additional expense, particularly for smaller outlets. The additional costs of enforcement were also noted.

20 The current Order leaves it to the discretion of traders whether or not to sort their price lists into categories (eg soups, fish, entrees, drinks) with the exception of table wine – see below. Fifteen respondents commented on whether or not categorisation should continue to be discretionary or whether some should be prescribed. Eight of the respondents were broadly in favour of some categories being prescribed (many supporting a soft drinks category – to address the complaints that had been received by the Department about those products) with 7 against. Broadly, prescription was supported by enforcement interests and opposed by traders. Those who thought that traders should continue to be allowed discretion about whether or not to use categories argued that too much prescription would be problematic in such a diverse market. Those in favour of a legal requirement to include some categories thought there was value in specifically addressing consumer complaints about cold soft drinks and/or in increasing the degree of pricing comparability between establishments.

21 The current Order allows establishments to sort price lists into categories but requires that at least 5 items be shown in each category if 5 or more are sold. Six respondents commented on the question of whether the 5 item rule was useful with 5 considering it useful (all enforcement interests) and 1 not (a trader).

22 **Proposals** It is proposed that:-

- the requirement to display a minimum of 30 prices (excluding wine, see below) be retained;
- the item prices should not be required to be “representative” (although ways in which this might be done voluntarily are considered in the best practice trade guidance which has been produced);
- mandatory prescription of the items to be price listed should be confined to the existing category of wine (see below) and a new category of cold soft drinks, where sold;
- quantity marking should not be imposed on soft drinks (guidance on how the quantity sold might voluntarily be made more transparent to consumers is contained in the best practice trade guidance);
- other than for cold soft drinks (see above) and wine (see below) categorisation should continue to be at the discretion of the trader;

- the current requirement to list 5 items (if 5 or more are sold) in each category on a price list be retained.

23 Complementing these regulations, trade best practice guidance is available on price display practices and traders are strongly advised to follow that guidance, which is available online at the British Beer and Pub Association's website <http://www.beerandpub.com>

## ARTICLE 5

24 Sets out the obligation to display prices for table wines. The price of at least six table wines – if this number is available – must be indicated. If there are no more than two types of red, white or rosé wine available, the price must be shown for each of them. If more than two types of red, white or rosé wine are available, a price indication must be given for at least two of each of them.

25 Thus, in addition to certain other requirements, Articles 4 and 5 together require an establishment with a long a la carte menu and extensive wine list to display, in addition to the price of any table d'hôte menu (see paragraph 14v. above), the prices of at least 30 items of food and drink and of at least six table wines (where available), ie 36 items.

26 **Responses** The current Order refers to “table wine” and 12 respondents (all enforcement or trade interests) commented on whether or not the term was clearly defined and understood. All but 2 thought it was but one of the dissenters, an enforcement body, suggested that “wine” would be sufficient and noted that “table wine” has other meanings in food law.

27 The current Order requires a separate wine category with 6 wine prices, 2 each of red, white and rosé, to be displayed where sold. Eleven respondents commented on whether a separate wine category should continue to be mandatory, where sold, with 9 in favour and 2 against. The reason given for retention of the category was that wine is often the most expensive item on the menu and the category is useful on that basis.

28 Twelve respondents commented on whether the requirement that 6 wine prices should be displayed should continue and 10 on whether the selection of wines should continue to be prescribed or left to traders' discretion. Views varied widely, with traders generally most supportive of increased flexibility. No convincing reasons were given for requiring this category alone to contain 6 items – whilst all others were 5 – or for the prescription of particular types of wines, including rosé wine, which is less commonly sold.

29 **Proposals** It is proposed that:-

- in the interests of simplicity and clarity, the reference to “table wine” in the current Order be altered to “wine”;

- that the wine category be retained but that the minimum number to be listed be reduced from 6 items to 5 (to conform with other categories) and that the selection of wines be left to the discretion of the trader.

## ARTICLE 6

30 Requires that prices must be inclusive of value added tax. The earlier consultation made it clear that the Government did not intend to change this requirement, which conforms with other price marking legislation and aids price transparency for consumers. All of the 11 respondents (comprising trade, enforcement and consumer interests) who commented on this article supported the Government's intention. It should, however, be noted that different VAT requirements may apply to some eat-in and take-away foods. If you consider that this is likely to prove problematic in pricing these products inclusively then please let us know of it.

## ARTICLE 7

31 Describes how prices must be displayed. The basic principle is that they should be "clear and legible and easily read by an intending purchaser". Any additional charge, including a minimum or service charge, must be indicated as prominently as the price of food.

32 The place at which prices must be indicated depends on whether an eating or a supply area (see Article 1) is in question. For an eating area, prices must be shown at or near the entrance so that the price indication is readily discernible by the prospective customer before he enters. A restaurant with direct access to the street will therefore be required to show prices so that they are visible from the street. A restaurant in a larger building (eg in a hotel) will meet the requirements of the Article by displaying the prices at the entrance to the actual eating area. Special provision is made for railway dining cars, where the Order requires prices to be shown at the table when the customer is served.

33 For a supply area, the price indication must be "readily discernible" by a consumer at the place where he chooses the food. If the price indication is not also readily discernible before the consumer enters the supply area, a further indication must be given at the entrance. Choice is therefore given of either separate notices or a single notice suitably placed to be visible from both the entrance to the supply area and the place where the food is chosen.

34 **Responses** Twenty-three respondents commented on the proposal that the current requirement that prices should be "clear and legible and easily read by an intending purchaser" be altered to "unambiguous, easily identifiable and clearly legible" to conform with other price marking legislation, with 19 supporting the change. A number of respondents queried what the wording would mean in practice – particularly in the case of long pub bars –

and asked that this be addressed in guidance. Best practice guidance, which has been prepared by the trade and other stakeholders, provides advice on this specific issue and on visibility of prices generally.

35 Six respondents commented on whether there was difficulty in interpreting the Order for establishments with both waiter and self-service areas with 5 of them thinking that there was difficulty. (This issue is addressed in the best practice trade guidance.)

36 Seventeen respondents commented on whether waiter service establishments should be required to ensure that any inside menu conformed with their entrance menu with the majority thinking that they should be so required but some noting that it may be unnecessary since it tended to be done anyway. Opposition to the proposal came solely from traders. The misleading price provisions of the Consumer Protection Act 1987 would, of course, impact on any discrepancy between outside and inside menus pricing which was misleading.

37 Seventeen respondents commented on whether it would aid pricing transparency for consumers if the Order specified that prices must be in sterling and that transparent information on conversion/commission rates must be provided if the establishment advertised that other currencies were also accepted. This would broadly correspond with the existing requirement on retailers in the Price Marking Order. Thirteen of the respondents thought it would usefully aid price transparency and 4 did not (mainly trade interests). One of the respondents, an enforcement body, noted that “there is currently a problem with takeaways at airports and there seems no reason since retailers there have to give the information why service outlets should not”.

38 **Proposals** It is proposed that:-

- the wording of the Order be altered to require prices to be “unambiguous, easily identifiable and clearly legible”.
- guidance be clarified on how establishments that have both waiter and self-service areas should comply with the Order (this has been done in the recently produced best practice guidance prepared by the trade and other stakeholders);
- no new requirement to be imposed on waiter service establishments as regards inside menus;
- the Order be amended to conform as far as is possible with other price marking legislation by specifying that prices should be in sterling with clear information about exchange/commission rates if other currencies are advertised as being accepted. Traders will, of course, have flexibility to provide dual prices (ie additional to sterling) if they wish.

## ARTICLE 8

39 Provides an exemption from the provisions of the previous Article if meeting them would be contrary to regulations made under or having effect as if made under sections 63 or 109 of the Town and Country Planning Act 1971 (now consolidated into sections 220, 221 and 224 of the Town and Country Planning Act 1990). The regulations cover matters such as dimensions, appearance, position, site and manner of fixing of advertisements.

40 **Responses** The consultation asked whether any difficulties had arisen with this provision. There were 11 responses and no difficulties were identified. It is therefore **proposed** that the current exemption be retained.

## TIMING

41 Views were invited on whether a hiatus period between the laying of any new Order before Parliament and its taking effect would be helpful for businesses and whether a period of 4-6 months would be sufficient. If a longer period was proposed, then reasons were also sought.

42 **Responses** There were 11 responses. All broadly supported a lead-in period with the majority proposing 6 months.

43 **Proposal** A hiatus period of at least 6 months between laying the Order and its implementation is proposed.

#### 4. DRAFT ORDER

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### STATUTORY INSTRUMENTS

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**2002 No.**

## **PRICES**

### Price Marking (Food And Drink Services) Order 2002

*Made - - - - -* 2002

*Laid before Parliament* 2002

*Coming into force* [6 months after laying] 2002

Whereas the Secretary of State, in accordance with the provisions of section 2(6) applied by section 4(3) of the Prices Act 1974<sup>(1)</sup> has consulted, in such manner as appeared to her to be appropriate having regard to the subject-matter and urgency of this Order with such organisations representative of interests substantially affected by this Order as appeared to her, having regard to those matters, to be appropriate:

Now, therefore, the Secretary of State in exercise of the powers under the said section 4, hereby makes the following Order:—

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<sup>(1)</sup> 1974 c.24; section 4 was amended by section 16 of the Price Commission Act 1977 (c.33).

## **Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Price Marking (Food and Drink Services) Order 2002 and shall come into force on [...] 2002.

(2) In this Order—

“eating area” means any part of any premises specifically set aside and equipped for the consumption of food, notwithstanding that some other activity may be carried on in the area in question, but does not include a supply area;

“food” means food and drink for human consumption; but does not include food which is supplied□

(a) at the express request of a purchaser in a case where the seller has not otherwise indicated that food of the same description is or may be for sale by him; or

(b) at a price agreed in advance pursuant to an order made before an intending purchaser enters the eating area, supply area or take-away area in question to obtain or consume the food;

“premises” includes any vehicle or vessel;

“soft drinks” means any cold non-alcoholic drink;

“supply area” means any part of any premises specifically set aside and equipped for the supply of food in a case where an intending purchaser pays for food for consumption on the premises where it is sold before it is consumed, notwithstanding that some other activity may be carried on in the area in question;

“take-away area” means any part of any premises specifically set aside and equipped for the supply of food in the course of the provision of a service for consumption off the premises where it is sold; and

“wine” means any drink obtained from the alcoholic fermentation of fresh grapes or the must of fresh grapes other than drink fortified with spirits or flavoured with aromatic extracts.

### **Revocation**

2.—(1) The Price Marking (Food and Drink on Premises) Order 1979<sup>(2)</sup> (“the 1979 Order”) is hereby revoked.

(2) Notwithstanding paragraph (1), the 1979 Order shall continue to apply after the commencement of this Order in relation to any act done or omission made prior to the commencement of this Order.

### **Scope of the Order**

3.—(1) Subject to paragraph (2), this Order applies where a person indicates that food is or may be for sale by him by retail in the course of the provision of a “take away” service or for consumption on any premises, other than premises to which paragraph (3) applies.

(2) This Order does not apply in so far as the indication that food is or may be for sale is given—

- (a) only to members of a bona fide club or their guests; or

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<sup>(2)</sup> S.I. 1979/361.

(b) only to persons for whom sleeping accommodation on those premises is provided.

(3) This paragraph applies to premises on which food is supplied on a non-commercial basis only or mainly to members of a group determined by reference to

(a) their employment, or the employment of a spouse or parent of theirs, in the service of a particular person or of one of a number of particular persons; or

(b) their membership of, or regular attendance at, an educational establishment.

#### **Obligation to indicate prices for food**

4.—(1) Where this Order applies, a person who indicates that food is or may be for sale by him—

(a) shall give an indication of the price of that food; and

(b) where any charge is payable in addition to the price of any food, shall give an indication of that charge,

in accordance with the following provisions of this Order.

(2) An indication of price

(a) in the case of food other than food which is sold by reference to quantity, shall be of a price for the sale of that food; or

(b) in the case of food which is sold by reference to quantity, subject to paragraph (3) below, shall be of a price for the sale of each quantity in which it is for sale.

(3) Where food is or may be for sale in more than one quantity at prices which are in the same proportion to each other as the quantities, an indication of only one price is required if the quantity for which that price is appropriate is also indicated.

(4) Where foods of different descriptions are or may be for sale together (other than food supplied as a table d'hôte meal) and the total price for the foods is the same as the sum of the prices of the individual foods, only an indication of the price of the individual foods is required.

### **General obligations**

5.—(1) Where this Order applies and—

(a) not more than thirty descriptions of food (other than wine and soft drinks) are supplied, an indication of price shall be given for food of each description; or

(b) more than thirty descriptions of food (other than wine and soft drinks) are supplied, subject to paragraphs (2) and (3) below, an indication of price shall be given for not fewer than thirty of those descriptions.

(2) Where this Order applies and an indication of price relating to food (other than wine and soft drinks) is divided (in whatever manner) into parts determined by reference to the categories of food supplied—

(a) if food of not more than five descriptions within any such category is supplied, an indication of price shall be given for food of each description; or

(b) if food of more than five descriptions within any such category is supplied, an indication of price shall be given for not fewer than five of those descriptions.

(3) Where an indication is given that food of a particular description is or may be for sale, whether generally or in any indicated period in any day, for the purposes of paragraphs (1) and (2) food of that description shall be taken to be supplied when the indication is first given or at the beginning of each such period, as the case may be, notwithstanding that it ceases to be available for supply, until the expiry of a period in which it would have been reasonably practicable to withdraw the indication.

(4) Where food is or may be for sale in any eating area or supply area as a table d'hôte meal, an indication of price shall be given for each such meal and paragraphs (1) to (3) above shall not apply to the food comprised in it.

#### **Obligation relating to soft drinks**

6. Where this Order applies and soft drinks are supplied and—

(a) not more than five descriptions of soft drinks are supplied, an indication of price shall be given for each description; or

(b) more than five descriptions of soft drinks are supplied, an indication of price shall be given for not fewer than five of those descriptions.

#### **Obligation relating to wine**

7. Where in any eating area or supply area wine is supplied for consumption with any other food and—

- (a) not more than five descriptions of wine are supplied, an indication of price shall be given for each description; or
- (b) more than five descriptions of wine are supplied, an indication of price shall be given for not fewer than five of those descriptions.

### **Value added tax**

8. In the case of food, or of a service relating to the supply of food, the supply of which is subject to value added tax, the price or charge indicated shall be inclusive of the tax.

### **Manner of indication of prices and charges**

9.—(1) An indication of a price required by the foregoing provisions of this Order shall be unambiguous, easily identifiable and clearly legible by an intending purchaser and shall comply with such of the following provisions of this article as may be applicable.

(2) In the case of an eating area, the indication shall be given at or near the entrance to the eating area and be readily discernible by an intending purchaser before entering that area or, in the case of an eating area in a railway passenger vehicle where an intending purchaser requests the supply of food at the place at which it is to be consumed, it shall be given at that place.

(3) In the case of a supply area, the indication shall be given at the place where an intending purchaser chooses the food; and, if that indication is not also readily discernible by an intending purchaser before entering the supply area, a further indication shall be given at or near the entrance to the supply area.

(4) In the case of a take-away area, the indication shall be given at the place where an intending purchaser chooses the food; and, if that indication is not also readily discernible by

the intending purchaser before entering the take-away area, a further indication shall be given at or near the entrance to the take-away area.

(5) Where—

(a) any charge is payable in addition to the price of any food, the charge (expressed either as an amount or as a percentage of the price); or

(b) a minimum price or charge is payable in respect of any food sold or service provided relating to the supply of food, the amount of the minimum price or charge,

shall be indicated at least as prominently as the price of any food to which it relates.

(6) The indication of a price required by the foregoing provisions of this Order shall be in sterling.

(7) If a person indicates his willingness to accept foreign currency for the sale of the food, he shall, in addition to the price indication in sterling, either—

(a) give an indication of the price of that food in the foreign currency in question together with any commission to be charged; or

(b) shall clearly identify the conversion rate on the basis of which the foreign currency prices will be calculated together with any commission to be charged.

(8) Where a person gives an indication of price in a foreign currency or identifies the conversion rate on the basis of which the foreign currency prices will be calculated, he shall also indicate that such price or conversion rate will not necessarily be an accurate indication in respect of transactions (via payment card) to be applied to accounts denominated in

currencies other than sterling, and that the exchange rate will be that applied by the relevant payment scheme which processes the transaction.

### **Savings for other enactments**

**10.** Nothing in article 9 above shall have effect to require anything to be done if the doing of it would be a contravention by any person of regulations<sup>(3)</sup> made under, or having effect as if made under, sections 220, 221 or 224 of the Town and Country Planning Act 1990<sup>(4)</sup>.

[Parliamentary Under Secretary of State for Competition, Consumers and Markets,]

2002

Department of Trade and Industry

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<sup>(3)</sup> S.I. 1992/666 as amended by S.I.s 1994/2351, 1996/396 and 1999/1810.

<sup>(4)</sup> 1990 c.8.

## **5. REGULATORY IMPACT ASSESSMENT**

### **1. (i) Issue and Objective**

Price is key to purchasing decisions, especially for those on low incomes. Prices are, however, not always easy to compare in a meaningful way, particularly when the quantity to which they relate is not clear. In the White Paper "Modern Markets: Confident Consumers", the Government announced a series of measures to make prices clearer for consumers. A review of the Price Marking (Food and Drink on Premises) Order 1979 is part of that process.

The Order is made under the Prices Act 1974 and sets out the price display requirements for food and drink served in bars, restaurants, cafes and similar establishments – broadly, that prices should be clear and legible. The Order is being reviewed as part of a review of all price marking legislation to ensure that it fully meets current needs. In preparation for the review, and in response to complaints from consumers about pricing practices in some outlets, the Government commissioned a survey on the pricing of drinks in pubs, restaurants and other establishments. Although the survey was looking particularly at soft drinks, it found a widespread lack of transparency in drink prices across establishments. In informal discussions with interested parties, it has been suggested that the Order may be contributing to this and could be simplified and improved. The review of the Order addresses these matters and has the objective of improving price transparency for consumers and making the legislation more effective.

### **(ii) Risk Assessment**

Prices play a key role in the efficient functioning of markets. Where price information is distorted, or incomplete, the market can fail to arrive at the most efficient outcome. This can mean a misallocation of resources, with resources not being put to the highest value use. It could mean inefficiency, as price competition is subdued and inefficient producers escape pressure from efficient rivals. And it could also mean sub-optimal consumption, as consumers are led by incorrect price signals to consume either too much or too little of a particular good. This outcome reduces consumer welfare.

### **2. (i) Options**

**Option 1** - do nothing, ie continue to rely on the 1979 Order (seeking to improve guidance and enforcement if necessary);

**Option 2** - revoke the Order and ask the trade to regulate itself;

**Option 3** - improve/change the Order by simplifying and clarifying it and improving price transparency for soft drinks, where complaints have arisen.

## **(ii) Issues of Equity or Fairness**

Is it fair on consumers to allow pricing practices that are not transparent, leaving consumers open to the embarrassment of having to leave an establishment or pay more than they really want because the prices have proved more expensive than anticipated?

Is it fair on traders who are providing transparent pricing information if competing establishments do not do so and thus prevent consumers from making value for money comparisons between them?

### **3. (i) Benefits**

This is a diverse industry comprising hotels (11,400)<sup>5</sup>, restaurants, cafes and take-away outlets (46,800) and licensed clubs, pubs and wine bars (43,900) and with a turnover in 2000 of the order of £30bn<sup>6</sup>. The benefits of improved practice in this area are increased clarity and certainty for business and increased transparency and confidence for consumers in the information provided which should assist consumers in making optimal purchasing decisions. It may also feed through to increased competitiveness at the retailing and manufacturing level (see paragraph 1(ii) above).

#### **Option 1**

This option would not address consumer concerns about soft drinks prices since, under the current Order, the prices to be displayed are largely left to the discretion of the trader. However, there would be scope to clarify guidance if appropriate and to explore the possibility of improved enforcement, which may well have transparency benefits.

#### **Option 2**

There may be more commitment from the trade to ensure the system works well if it devises and polices it. However, clarity of price marking information for consumers is an important principle and it would be necessary to devise a system for organising and funding a self-regulation system in what is a diverse and fragmented industry.

#### **Option 3**

The benefits are clarity, a level playing field for traders and transparency of pricing information for consumers.

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<sup>5</sup> Catering & Allied Trade Business Monitors SDA28, 1997.

<sup>6</sup> Keynote Market Information

#### **4. Compliance Costs for Business**

**Option 1** should not impose additional compliance costs for businesses that comply with the current legislation but would involve some fairly minimal expenditure on price lists (chalkboards or similar) for those that do not.

**Option 2** would require the trade to organise a system to regulate price transparency. This raises a number of difficult questions, in particular, who would undertake the enforcement (trade associations cover only part of the trade), how it would be done, ie what sanctions could be used, and how it might be funded.

**Option 3** involves changing/improving the Order. The changes that are proposed where an impact might occur are set out below and the costs involved are considered in (ii) below.

- a) removing the exemption from pricing display for private clubs and canteens when they are open to the public for paying functions;
- b) that take-away food where an element of individual service to the consumer is involved should be covered by this Order rather than the Price Marking Order (which should result in savings rather than costs for affected business);
- c) that the mandatory prescription of items to be priced should be confined to a reduced wine category (reduced from 6 to 5 and the selection to be left to the discretion of the trader rather than compulsory, as at present) and a new category of 5 cold soft drinks (where sold);
- d) that traders who indicate that they will accept foreign currency in addition to sterling should be required to show exchange rates, commission charges etc so that consumers are aware of the total price.

##### **(i) Business sectors which will be affected**

The main sectors affected are restaurants, fast-food outlets, cafes, pubs, take-away food outlets, travel and leisure facilities with eating/drinking areas hotels with restaurants open to non-residents and private canteens/clubs when they are opened to the public for paying functions. Numbers of outlets are shown at Paragraph 3(i) above.

##### **(ii) Compliance costs for a "Typical" business**

**It should be noted that in the earlier consultation on the revision of this Order 13 consultees commented on the 3 options identified in the draft RIA with 10 supporting Option 3.**

**Option 1:** None for many businesses, de minimis for those that are currently failing to provide price indications – ie the cost of a chalkboard or some other price listing mechanism.

**Option 2:** A contribution towards the costs of organising and maintaining an effective trade watchdog on price transparency matters. No attempt has been made to quantify these costs but they would be likely to be affected by the difficulty of collection and monitoring in a diverse and fragmented market.

**Option 3:** De minimis.

- Removing the exemption from pricing display for private clubs and canteens when they are open to the public for paying functions is unlikely to involve a major change of practice since many establishments will already provide price information for their members. For those that do not, the requirements could most easily be met by a relatively small one-off outlay for chalk boards or similar display material.
- The proposal that take-away foods where an element of individual service to the consumer is involved should be covered by this Order rather than the Price Marking Order 1999. The Price Marking Order governs price indications in shops and other retail outlets. Broadly, it requires that all goods must be priced. Thus, allowing take-away food outlets to be covered by this Order rather than the Price Marking Order would produce a saving rather than additional expenditure for relevant outlets since this Order limits the number of products for which price marking is required whilst the PMO requires universal pricing.
- The reduction in the wine category from 6 to 5 items to be displayed and the proposal that the selection should be left to the trader rather than prescribed will not increase costs on business. Neither should the proposal that prices be displayed for a new category of 5 cold soft drinks (where sold) within the total of 30 products (excluding wine) that the existing legislation requires to be displayed as long as a sufficiently long hiatus period is allowed before the legislation takes effect in order to allow new price list/menu changes to be introduced in the normal course of business. An earlier consultation on this issue produced a wide consensus that 6 months would be sufficient and it is proposed that at least this period be allowed between laying a revised Order before Parliament and its implementation.
- There is no compunction on traders to accept foreign currency. For those that do not indicate their willingness to accept it, but will do so on request, no additional information will be required. Those who do so indicate, will need to display the same pricing information as is required from retailers (ie exchange rates for the currency accepted and any additional charges) but this need not be particularly burdensome. It might most simply be met by a relatively small one-off outlay for chalk boards or similar display material.

If any consultees disagree with this analysis of costs their views are particularly sought.

### **(iii) Total Compliance Costs**

On the basis of the present proposals the total compliance costs are considered to be de minimis. However, the views of consultees on this matter are particularly sought.

## **5. Consultation with Small Business: "The Litmus Test"**

All of the major trade associations within the industry, were consulted during the original consultation exercise and are being consulted again. In addition, the views of small business on the impact of any of the proposals under discussion were particularly sought. No significant impact has so far been identified [but comments will, again, be particularly sought during the new consultation period].

## **6. Other Costs**

No other costs have been identified. Local Weights and Measures Authorities are already responsible for enforcing the existing legislation and the proposals are not expected to add to the work involved. Indeed, the simplification and clarification of the legislation should make monitoring and enforcement considerably easier.

## **7. Results of Consultation**

Thirteen consultees to the first consultation commented on the draft RIA with 10 supporting Option 3. Of the rest, 2 supported voluntary measures alone and 1, whilst not specifically supporting any of the options, was wholly opposed to replacing a mandatory system with a voluntary one. [Results of second consultation awaited.]

## **8. Summary and Recommendations**

[To await the results of second consultation.]

## **9. Enforcement, Sanctions, Monitoring and Review**

The revised Price Marking (Food and Drinks on Premises) Order 1979 [assuming that legislation is continued] will be enforced by local Weights and Measures Authorities. The existing penalties for failing to comply with price marking legislation - and which it is proposed will be continued - are those prescribed under the Prices Act 1974. They are:- on conviction on indictment, an unspecified fine or, on summary conviction, a fine not exceeding £5,000.

**Declaration:**

**I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.**

**Signed by the Minister responsible**

..... (Parliamentary  
**Under Secretary of State for Consumers and Corporate Affairs)**

**Date** .....

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**Date**  
.....

## **6. LIST OF CONSULTEES**

ADNAMS & CO PLC  
ALLIED BRITISH CLUBS  
ALLIED DOMECC  
ASSOCIATION OF CIVIC HOSTS  
ASSOCIATION OF INTER-VARSITY CLUBS  
ASSOCIATION OF LEADING VISITOR ATTRACTIONS  
ASSOCIATION OF LICENSED & MULTIPLE RETAILERS  
ASSOCIATION OF LONDON CLUBS  
BLUE BOAR MOTORWAYS LTD  
BREWERS ASSOCIATION OF SCOTLAND  
BRITISH ASSOCIATION OF LEISURE PARKS, PIERS AND  
ATTRACTIONS  
BRITISH BEER AND PUB ASSOCIATION  
BRITISH CASINOS ASSOCIATION  
BRITISH CHAMBER OF COMMERCE  
BRITISH ENTERTAINMENT AND DISCOTHEQUE ASSOCIATION  
BRITISH HOSPITALITY ASSOCIATION  
BRITISH INSTITUTE OF INNKEEPING  
BRITISH RESORTS ASSOCIATION  
BRITISH RETAIL CONSORTIUM  
BRITISH SANDWICH ASSOCIATION  
BRITISH SOFT DRINKS ASSOCIATION  
BRITVIC PLC  
BURGER KING  
BURTONWOOD BREWERY PLC  
BUSINESS IN SPORT AND LEISURE  
CABINET OFFICE - BETTER REGULATION UNIT  
CAMPAIGN FOR REAL ALE LTD  
CARLSBERG-TETLEY BREWING LTD  
CATERER & HOUSEKEEPER  
CATERING MANAGERS ASSOCIATION OF GB & THE CHANNEL ISLANDS  
CBI SMALL & MEDIUM ENTERPRISE COUNCIL  
CITIZENS ADVICE SCOTLAND  
COLLEGE CATERERS ASSOCIATION  
COMMITTEE OF REGISTERED CLUBS ASSOCIATIONS  
CONFEDERATION OF BRITISH INDUSTRY  
CONSUMERS ASSOCIATION  
CORPORATION HOSPITALITY & EVENT ASSOCIATION  
COUNCIL FOR TRAVEL AND TOURISM  
CUSTOMS AND EXCISE  
DEPARTMENT OF CULTURE, MEDIA AND SPORT - TOURISM DIVISION  
DEPARTMENT OF ENTERPRISE, TRADE AND INDUSTRY (NI)  
DEPARTMENT OF ENVIRONMENT, FOOD AND RURAL AFFAIRS  
DINE OUT  
DOMINO'S PIZZA GROUP  
ENGLISH TOURISM COUNCIL  
ENTERPRISE INNS  
EUROPEAN CATERING ASSOCIATION

EUROPEAN FEDERATION OF CONTRACT CATERING ORGANISATIONS  
EUROPEAN MODERN RESTAURANT ASSOCIATION  
FEDERATION OF LICENSED VICTUALLERS ASSOCIATION  
FEDERATION OF SMALL BUSINESSES  
FORUM OF PRIVATE BUSINESS  
GLENOLA LEISURE  
GRANADA HOSPITALITY LTD  
GREENE KING PLC  
HISTORIC HOUSES ASSOCIATION  
HOSPITAL CATERERS ASSOCIATION  
HOSPITALITY  
HOTEL AND CATERING INTERNATIONAL MANAGEMENT  
INSTITUTE OF DIRECTORS  
INSTITUTE OF LEISURE AND AMENITY MANAGEMENT  
INSTITUTE OF TRAVEL AND TOURISM  
J D WETHERSPOONS PLC  
JOINT HOSPITALITY INDUSTRY CONGRESS  
LOCAL AUTHORITY CATERERS ASSOCIATION  
LOCAL AUTHORITY CO-ORDINATING BODY ON FOOD AND TRADING  
STANDARDS  
MANSFIELD BREWERY PLC  
MARSTON, THOMPSON & EVERSHED PLC  
MCDONALDS RESTAURANTS  
MOBILE & OUTSIDE CATERERS ASSOCIATION (GB) LTD  
MORLAND PLC  
NATIONAL ASSEMBLY FOR WALES  
NATIONAL ASSOCIATION OF CITIZENS ADVICE BUREAUX  
NATIONAL CONSUMER COUNCIL  
NATIONAL COUNCIL OF HOTEL ASSOCIATIONS  
NATIONAL DAIRYMEN'S ASSOCIATION  
NATIONAL FEDERATION OF CONSUMER GROUPS  
NATIONAL FEDERATION OF FISH FRIERS LTD  
NEW INNKEEPER  
OFFICE OF FAIR TRADING  
PIZZA & PASTA ASSOCIATION  
PIZZA HUT (UK) LTD  
PIZZAEXPRESS (RESTAURANTS) LTD  
PUB FOOD  
RANK LEISURE  
RESTAURANT ASSOCIATION  
ROADCHEF  
ROYAL NATIONAL INSTITUTE FOR THE BLIND  
SCOTLAND OFFICE  
SCOTTISH CONSUMER COUNCIL  
SCOTTISH LICENSED TRADE ASSOCIATION  
SCOTTISH TOURIST BOARD  
SMALL BUSINESS BUREAU  
SMALL INDEPENDENT BREWERS ASSOCIATION  
THORLEY TAVERNS  
TOURISM SOCIETY

TRADING STANDARDS INSTITUTE  
UNION OF INDEPENDENT COMPANIES  
WALES TOURIST BOARD  
WELCOME BREAK (MOTORWAY SERVICES)  
WELSH CONSUMER COUNCIL  
WENDY'S  
WHITBREAD PLC  
WHITBREAD RESTAURANTS  
WIMPY INTERNATIONAL  
WOLVERHAMPTON & DUDLEY BREWERIES PLC  
WORKING MEN'S CLUB & INSTITUTE UNION LTD  
WYCHWOOD BREWERY CO LTD  
YATES BROTHERS WINE LODGES  
YOUNGS BREWERY & CO PLC

## **7. OTHER CURRENT CONSULTATIONS FROM CONSUMER AFFAIRS DIRECTORATE**

**Transposing the revised General Product Safety Directive.**

**The Consumer Provisions of the Brussels Regulation on  
Jurisdiction: Consultation on Draft Guidance Note.**

**Jacking up standards in car servicing – consultation on the  
report on the Task Force on Car Servicing and Repair.**

## 8.

### **THE CONSULTATION CRITERIA**

- 1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.*
- 2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.*
- 3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.*
- 4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others) and effectively drawn to the attention of all interested groups and individuals.*
- 5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation*
- 6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and the reasons for decisions finally taken.*
- 7. Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated. The complete code is available on the Cabinet Office's web site, address <http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm>.*

### **COMMENTS OR COMPLAINTS**

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to Mr A Dobbie, DTI Consultation Co-ordinator, Room 550, 1 Victoria Street, London SW1H 0ET or telephone him on 020 7215 6509 or email [andrew.dobbie@dti.gov.uk](mailto:andrew.dobbie@dti.gov.uk).