



Law Society
of Scotland

Consultation Response

Minimum Unit Pricing of Alcohol

26 January 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society's Licensing Law sub-committee welcomes the opportunity to consider and respond to the Scottish Government's consultation: Minimum Unit of Pricing of Alcohol.

General

Our members represent the interests of the industry and are involved in advising individuals and organisations in relation to making licensing applications. Moreover, our members include those working in-house with local authorities in relation to the grant, management and enforcement of such licences.

The Society has therefore followed the debate surrounding the minimum pricing of alcohol with interest. That has now culminated in the Supreme Court decision in the *Scotch Whisky Association and others v The Lord Advocate and another*¹ case that confirmed the legislation did not infringe EU law. That has allowed the Scottish Government to:

*'...proceed with plans to introduce minimum unit pricing as quickly as possible... intend to make a statement to Parliament shortly setting out our next steps, including our preferred implementation timetable and how we will engage with retailers and industry to make this a success.'*²

We note that this consultation is being held to provide people, businesses, public bodies and interested parties with the opportunity to comment on the proposed legislation and its impact. The consultation invites

¹ <https://www.supremecourt.uk/cases/uksc-2017-0025.html>

² Scottish Health Secretary Shona Robison <https://www.supremecourt.uk/cases/uksc-2017-0025.html>

comments on the proposed minimum unit price of 50 pence per unit which has been set out in the draft Scottish Statutory Instrument - The Alcohol (Minimum Price per Unit) (Scotland) Order 2018 at Annex A (Regulations).

We would offer the following comments:

Minimum Unit Price:

The Society has no observation to make in relation to actual minimum unit price of 50 pence which is proposed to be set. The question of actual unit price is entirely a matter for the Scottish Ministers to determine. We do welcome the commitment of the various parties, including the Scottish Government and the industry, to work together after the Supreme Court decision to '*promote responsible drinking and to tackle alcohol-related harm*'.³

Date of Implementation:

We note that the proposed date for the Regulations to come into effect is 1 May 2018. That is not a long period of time when considering all those involved with the commencement of such regulations such as retailers, licence holders and the public. All of whom will need to be aware of what is required and the effect of the Regulations in respect of their duties, responsibilities and enforcement requirements. The Scottish Government should ensure that all the information or guidance required to support the Regulations is issued in time for the appropriate training to be put in place and undertaken by relevant organisations. Such information and guidance should be easily located, preferably in one place and in suitable formats for all to understand. We look forward to receiving more details about the information and guidance in due course.

We note that there is a reference within the Regulations to the Food Information (Scotland) Regulations 2014 which regulate indications of the alcoholic strength of beverages set out on marks or labels on bottles or containers of alcohol. Food labelling lies out with the remit of the Licensing Law sub-committee. We would however urge working with the relevant Scottish organisations such as the Grocers' Federation so that they can ensure compliance with labelling on the commencement date. Again, the intention of the

³ Karen Betts, Scotch Whisky Association chief executive,

Scottish Government, which we welcome, has been expressed as working with local authorities and the licensed trade to assist implementation of the policy.⁴

Regulations:

We query whether there is an intention to make a further commencement order in relation to the implementation of section 1 of the 2012 Act to take effect on 1 May 2018. As far as we understand, the mandatory conditions 6 A (1) of Schedule 3 and 5 A (1) of schedule 4 to the effect that *'alcohol must not be sold on the premises at a price below its minimum price'* have not yet been commenced nor the subject of a commencement order.

By explanation, the Alcohol (Minimum Pricing)(Scotland) Act 2012 (2012 Act) section 1 refers to amending the Licensing (Scotland) Act 2005 by inserting new mandatory conditions into schedule 3 (as condition 6A) and schedule 4 (as condition 5A). The Alcohol (Minimum Pricing) (Scotland) Act 2012 Commencement Order 2017 (2017 Order) regulation 2 appointed 6 December 2017 as the day on which section 1 of the 2012 Act came into force but *'so far as necessary for the purpose of enabling the Scottish Ministers to make orders under paragraph 6A of schedule 3 and paragraph 5A of schedule 4 of the Licensing (Scotland) Act 2005'*. Such orders are only for the purpose of setting the minimum price and labelling provisions. That does not cover enforcement.

The regulations, being the subject of this consultation, refer to using powers under the Licensing (Scotland) Act 2005 schedule 3 paragraph 6A and schedule 4 paragraph 5A.

The 2017 Order would seem to imply that the mandatory conditions 6A and 5A are fully in force. That appears not to be the case since these conditions have not been fully commenced.

Section 1 of the 2012 Act has only been brought into force for the limited purpose of setting the minimum unit price and the labelling provisions. The mandatory conditions 6A of schedule 3 and 5A of schedule 4 have not been brought into force to apply to premises licences on 1 May 2018.

This may well have been envisaged since another commencement order would seem to be required as Section 5 of the 2012 Act refers to Sections 5 and 6 coming into force on the date of Royal Assent. The other provisions of the 2012 Act sections 2 – 4 that include the 'sunset clause' will still need to be brought in by commencement order.

⁴ Paragraph 10.1 <http://www.gov.scot/Resource/0039/00395549.pdf>

Monitoring/Report:

We note that the Scottish Government must report to the Scottish Parliament after the minimum unit pricing has been in place for five years. That report will then consider the impact of minimum unit pricing.

Information must be included in that report in relation to the effect that the operation of minimum pricing provision has had on:

- the licensing objectives⁵
- categories of persons as Scottish Ministers consider appropriate having regard to characteristics such as alcohol consumption, social and economic deprivation, age, gender etc.
- the businesses of holders of premises license in terms of the Licensing (Scotland) Act 2005.

We recognise that it takes time for evidence to be collated to cover such a complex number of factors. The Scottish Government needs to consider how and when such evidence is to be obtained given the reference to the 'sunset clause.' The scope, range and scale of that evidence could be affected, for instance, if there are differing minimum unit prices in force from time to time during the critical five year operation of the regulations. Statistics on which such evidence is produced can, from experience, be some years out of date by the date when it is obtained (e.g. medical information from NHS Scotland). It is also essential for scrutiny purposes that the evidence is both independent and robust.

Terminology:

We note that there are a number of terms used in relation to explaining the policy intentions behind the introduction of the minimum unit pricing. These include '*alcohol related deaths*⁶', '*alcohol related*⁷ illness and '*alcohol related*⁸ harm. There needs to be care taken to ensure that these terms are defined and to

⁵ Section 4 of the Licensing (Scotland) Act 2005

⁶ alcohol-related deaths according to National Statistics to include underlying causes of death regarded as those being most directly due to alcohol consumption. The definition is primarily based on chronic conditions associated with long-term abuse of alcohol and, to a lesser extent, acute conditions. Apart from poisoning with alcohol (accidental, intentional or undetermined), the definition excludes other external causes of death, such as road traffic and other accidents. The definition was developed for the purposes of monitoring alcohol-related deaths across all the constituent countries of the UK, using consistent methodology based solely on the information collected at death registration. (<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/causesofdeath/bulletins/alcoholrelateddeathsintheunitedkingdom/registered2015>)

⁷ Alcohol related illness means that the underlying cause of death is alcohol recorded. http://www.healthscotland.scot/media/1449/mesas-final-report_english1.pdf Alcohol related admissions means acute inpatient stays with an alcohol-related diagnosis.

⁸ The model also includes Scottish data on the prevalence of alcohol-related diseases, alcohol-attributable fractions for acute conditions, the prevalence of alcohol-related crime, and levels of absenteeism and unemployment. https://www.sheffield.ac.uk/polopoly_fs/1.956081/file/scottishadaptation.pdf

allow for meaningful comparisons to be made.

We trust that this response is helpful. We would be available to answer any further questions.

For further information, please contact:

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