

# **PUBLIC HEALTH (MINIMUM PRICE FOR ALCOHOL) (WALES) ACT 2018**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes are for the Public Health (Minimum Price for Alcohol) (Wales) Act 2018 which was passed by the National Assembly for Wales on 19 June 2018 and received Royal Assent on 9 August 2018.
2. They have been prepared by the Welsh Government's Department for Health and Social Services in order to assist the reader of the Act.
3. The Explanatory Notes should be read in conjunction with the Act but are not part of it. They are not meant to be a comprehensive description of the Act. Where a provision of the Act does not seem to require any explanation or comment, none is given.

### **SUMMARY AND BACKGROUND**

4. The aim of the Act is to address the Welsh Government's concerns around the health and social harms that can be caused by the effects of excess alcohol consumption.
5. This Act has been developed following consultation on the Public Health White Paper 'Listening to you: Your health matters' in 2014, which included a series of legislative proposals to address a number of public health issues in Wales. One of these was a proposal to introduce a minimum unit price for alcohol. Subsequently, a draft Public Health (Minimum Price for Alcohol) (Wales) Bill was issued by the Welsh Government for a five month period of public consultation in July 2015.
6. The Act makes provision about the minimum price for which alcohol is to be supplied in Wales to a person in Wales and establishes a local authority led enforcement regime.
7. The Act is comprised of 30 sections and a Schedule.

### **COMMENTARY ON SECTIONS**

#### **Section 1: Minimum price for alcohol**

8. This section sets out the formula to calculate the minimum selling price for alcohol.
9. The formula is  $M \times S \times V$ , where -
  - (a) M is the minimum unit price (to be specified in regulations);
  - (b) S is the percentage strength of the alcohol, expressed as a cardinal number (so for instance if the strength is 5%, the relevant cardinal number will be 5);
  - (c) V is the volume of alcohol in litres.

10. Subsection (2) provides that where the minimum selling price for the alcohol calculated according to this formula would not be a whole number in pennies, it is to be rounded to the nearest penny taking a half penny as being nearest to the whole penny above.
11. The section provides a practical example of a calculation relating to a bottle of wine and how the minimum price is to be rounded. That is, where the minimum selling price for the bottle of wine is calculated according to the formula as £4.6875, this would be rounded up to £4.69.
12. To give another practical example of how the formula would work if the minimum unit price (M) was specified in regulations as being 50 pence, a 7.5% strength (S), 3 Litre (V) bottle of cider would have a minimum selling price of £11.25 ( $0.5 \times 7.5 \times 3$ ) being the aggregate of the three components of the formula.
13. For further practical examples of how the formula would work where alcohol is supplied as part of a special offer, please see the notes to accompany sections 5-7.

## **Section 2: Offences**

14. This section makes it an offence for a person who is an alcohol retailer to supply alcohol, or to authorise the supply of alcohol, from qualifying premises in Wales, to a person in Wales, at a selling price below the applicable minimum price. The terms "alcohol retailer", "supply of alcohol" and "qualifying premises" have a particular meaning for this purpose as set out in sections 3 and 4.
15. Subsection (2) provides a defence for a person charged with the offence to show that they took reasonable steps and exercised due diligence to avoid committing it. If the defence is relied on, subsection (3) clarifies where the burden of proof lies. If sufficient evidence is raised, the burden of disproving the defence beyond reasonable doubt rests with the prosecution.
16. Subsection (4) provides that it does not matter for the purposes of the offence, whether the authorisation of the supply of alcohol takes place in Wales or elsewhere. So, for instance, if an alcohol retailer is in England when he or she authorises a supply of alcohol below the applicable minimum price from qualifying premises in Wales, and to a person in Wales, that retailer will (subject to any available defence) commit an offence.
17. This section also amends Schedule 4 to the Licensing Act 2003 so as to add an offence committed under the Act to the list of "relevant offences" contained in that Schedule.
18. The significance of inclusion within the list of "relevant offences" is that conviction for such an offence, unless spent under the terms of the Rehabilitation of Offenders Act 1974 can be taken into consideration by a licensing authority when making decisions on granting, revoking or suspending personal licences under the Licensing Act 2003. In Wales, a licensing authority is the council of a county or county borough.

19. The Licensing Act 2003 also places certain duties on persons convicted of a “relevant offence” to notify the relevant licensing authority of such a conviction as soon as reasonably practicable (and provides that a person commits an offence if they fail without reasonable excuse to comply with these requirements). Likewise, the Licensing Act 2003 places certain obligations on the court in relation to “relevant offences” and provides that a court may also order the forfeiture of a personal licence or its suspension for a period not exceeding six months.

### **Section 3: Meaning of “supply of alcohol” and “qualifying premises”**

20. This section defines the “supply of alcohol” as being the sale by retail of alcohol to a person in Wales, or the supply by or on behalf of a club to one of its members in Wales, or to a person in Wales on behalf of a member of the club. (An example of a club for this purpose could be a rugby club or another club where members have joined together for a particular purpose.)
21. “Sale by retail” for this purpose has the same meaning as in the Licensing Act 2003. Whether a particular transaction involving alcohol is a “sale by retail” will depend on the facts of each case.
22. “Qualifying premises” are also defined in this section. Subsection (2) provides that premises are “qualifying premises” if:-
- (a) a premises licence under Part 3 of the Licensing Act 2003 authorises the premises to be used for the supply of alcohol (for instance, premises where alcohol is sold to the public such as pubs or supermarkets);
  - (b) a club premises certificate under Part 4 of the Licensing Act 2003 certifies that the premises may be used to supply alcohol (for instance, this could be a rugby club); or
  - (c) the supply of alcohol on or from the premises is a permitted temporary activity under Part 5 of the Licensing Act 2003. For instance, this could be where alcohol is supplied in a small festival or street fair.

### **Section 4: Meaning of “alcohol retailer”**

23. This section defines “alcohol retailer” in relation to each of the different types of qualifying premises.
24. Where alcohol is supplied from premises in respect of which a licence has been granted under Part 3 of the Licensing Act 2003 (for instance, a pub or supermarket), each of the following is an alcohol retailer for the purpose of the Act:
- (a) a personal licence holder under Part 6 of the Licensing Act 2003;
  - (b) the designated premises supervisor for the premises under the Licensing Act 2003.
25. In relation to clubs, the alcohol retailer is the holder of the club premises certificate (for instance, the club).

26. In relation to temporary activities, the alcohol retailer is the premises user for the purpose of Part 5 of the Licensing Act 2003. For instance, the person who has organised the street fair, if they gave the temporary event notice under Part 5.

**Sections 5 to 7: Supply of alcohol as part of a special offer**

27. These three sections set out rules relevant to determining the applicable minimum price in relation to alcohol supplied through a variety of special offers, for the purpose of ascertaining whether an offence has been committed under section 2.
28. The special offers captured by these sections fall into two broad categories: multi-buy alcohol transactions (section 5) and alcohol supplied together with other goods and services (section 6). Section 7 makes supplementary provision about both of these.

*Multi-buy alcohol transactions (section 5)*

29. The first category is the “multi-buy alcohol transactions” defined by section 5; these are transactions which may offer customers incentives to purchase higher volumes of alcohol than might otherwise be the case. These kinds of deals are commonly known as multi-buy deals, including “buy one, get one free” offers.
30. This section applies where some of the alcohol supplied in a transaction was described as being supplied free of charge where other alcohol was supplied; and where alcohol was supplied at a discounted or fixed price when purchased with other alcohol, or where other alcohol had already been supplied. It is likely that most multi-buy alcohol transactions would involve a single exchange of cash between supplier and customer, but this won’t always be the case. For instance, the price of a subsequently purchased drink might be reduced by reference to earlier purchases of drinks. The effect of this section is that in these circumstances the subsequently purchased drink and the earlier drinks will all need to be treated as a single transaction and the applicable minimum price calculated as set out in the section.
31. Section 5 requires all of the alcohol supplied in a multi-buy alcohol transaction to be taken into account when determining the applicable minimum price. This requirement avoids doubt about how the offence in section 2 affects cases where a portion of the alcohol being supplied in a transaction has no identifiable selling price, or a selling price which has been distorted by the operation of a discount.

*Alcohol supplied together with other goods and services (section 6)*

32. The second of the two categories of special offers involves deals where alcohol is supplied together with goods other than alcohol, or services; either where the other goods or services and the alcohol are supplied at a single, fixed, price, or where alcohol is supplied at a discounted price if other goods or services are supplied.
33. Section 6(2) would, for example, apply where a cocktail was supplied, with mixer, for a fixed price (the non-alcoholic portion of the cocktail constituting a good other than alcohol).

34. Many of the offers to which this section will apply are likely to be offers involving the supply of alcohol together with food, but it is not limited to such cases.

*Special offers: supplementary (section 7)*

35. Where the alcohol being supplied in a special offer is of different strengths, section 7(2) requires separate calculations to be made to determine the applicable minimum price in relation to the different strengths of alcohol. The aggregate of those calculations provides the applicable minimum price
36. Section 7(3) ensures that the requirements of section 6 apply where the alcohol supplied with other goods or services is described as supplied free of charge. For example, an offer where the purchase of a particular combination of food included a “free” bottle of wine.

*Practical examples of how sections 5 – 7 apply*

37. Sections 5 and 6 of the Act include examples of how the applicable minimum price would operate in relation to special offers. But additional examples have been provided below.
38. An applicable minimum price of £0.50 is to be assumed for the purposes of what follows.

*Multi-buy alcohol transactions*

*Example 1*

39. In the case of a “buy one, get one free” offer where two boxes of 4% lager are described as being supplied for the price of one box, and assuming each box includes 10 cans at a volume of 330 ml for each can, the two boxes would be treated as having been supplied at the price paid for the single box.
40. Taking the selling price at which a single box was supplied as £14, the applicable minimum price in relation to the lager would be calculated as follows:
41. M is £0.50; S is 4 (the strength by volume of the lager); V is 6.6 litres (the total volume of the 20 cans).
42.  $0.5 \times 4 \times 6.6 = £13.20$
43. In this example, the selling price of £14 for the two boxes would be above the applicable minimum price for the alcohol supplied, and no offence under section 2 would have been committed.

*Example 2*

44. Where 3 boxes of beer, lager or cider were available for purchase at a single selling price of £30, the minimum price for each box would need to be calculated in order to work out whether the selling price of £30 was lower than the applicable minimum price for the different combinations of alcohol which could be supplied.

45. Assuming the box of beer comprised 10 440 ml cans of 6% strength by volume; the box of lager comprised 12 440 ml cans of 4% strength; and the box of cider comprised 12 330 ml bottles of 5% strength:
46. The minimum price for the box of beer would be £13.20 (£0.50 X 6 X 4.4 litres, the aggregate volume for the box).
47. The minimum price for the box of lager would be £10.56 (£0.50 X 4 X 5.28 litres).
48. The minimum price for the box of cider would be £9.90 (£0.50 X 5 X 3.96 litres).
49. Where a customer chose to purchase two boxes of beer and a box of cider, the applicable minimum price for the alcohol supplied would be £36.30 (that sum being the aggregate of the £26.40 minimum price for the two boxes of beer and the £9.90 for the cider).
50. So, in this example, the selling price would have been £6.30 below the applicable minimum price for the alcohol being supplied, and, assuming the absence of a defence, the retailer would be liable to prosecution for committing the offence under section 2.
51. But the purchase of 3 boxes of cider by the same customer would not give rise to the offence under section 2, since the applicable minimum price for the alcohol being supplied would be £29.70 (the aggregate of the minimum price of £9.90 for each box of cider).

*Offers involving alcohol together with other goods or services*

*Example*

52. Where three food items and a bottle of wine are supplied at a single price of £10, the selling price for the wine would be treated as being £10.
53. If the volume of the wine was 0.75 litres and its strength by volume 14%, the applicable minimum price for the wine would be £5.25 (£0.50 X 14 X 0.75).
54. In this example, the selling price of £10 would be above the applicable minimum price for the wine, and the retailer would not have committed the offence in section 2.

**Section 8: Penalties**

55. This section provides that a person guilty of an offence under section 2 of this Act is liable on summary conviction to a fine not exceeding level 3 on the standard scale. The levels on the standard scale are set out in section 37 of the Criminal Justice Act 1982.

**Section 9: Fixed penalties**

56. This section allows an authorised officer of a local authority to issue a fixed penalty notice (FPN) to a person that that officer has reason to believe has committed an offence under section 2 in the local authority's area.

57. Payment of the FPN discharges the person believed to have committed an offence from being convicted for the offence in court.
58. The section also introduces Schedule 1 to the Act, which makes further provision about the content and procedure relating to FPNs.

### **Section 10: Enforcement action by local authorities**

59. Subsection (1) provides that a local authority may bring prosecutions in respect of offences under the Act in its area, may investigate complaints in respect of alleged offences in its area, and may take other steps with a view to reducing the incidence of such offences in its area.
60. Subsection (2) provides that a local authority must consider, at least once every year, the extent to which it is appropriate to carry out a programme of enforcement in its area, and to the extent that it considers appropriate, carry out such a programme.
61. Subsection (3) provides that in complying with this requirement, local authorities must in particular have regard to improving public health and protecting children from harm.

### **Section 11: Authorised officers**

62. This section explains that any reference in the Act to an authorised officer of a local authority is to any person authorised by the local authority.

### **Section 12: Power to make test purchases**

63. This section enables an authorised officer to make purchases and arrangements, and secure the provision of services if the officer considers it necessary for the purpose of the local authority's functions under this Act. This permits test purchases for example, to take place.

### **Section 13: Powers of entry**

64. Section 13 enables an authorised officer to enter, at any reasonable time, premises (excluding premises used wholly or mainly as a dwelling) in Wales if the officer has reasonable grounds to believe that an offence under section 2 has been committed in the area of the local authority, and the officer considers it necessary to enter the premises for the purpose of finding out whether such an offence has been committed.
65. This power to enter premises does not enable the authorised officer to enter by force.
66. If required, an authorised officer must, before entering the premises, show evidence of their authorisation.

#### **Section 14: Warrant to enter a dwelling**

67. This section provides that a justice of the peace may issue a warrant to enable an authorised officer to enter a premises in Wales used wholly or mainly as a dwelling in certain circumstances.
68. A warrant may be issued only where the justice of the peace is satisfied on sworn information in writing that there are reasonable grounds to believe that an offence under section 2 has been committed in the area of the local authority, and that it is necessary to enter the premises for the purpose of establishing whether such an offence has been committed. Entry may be obtained by force if need be.
69. Any such warrant will be in force for the period of 28 days beginning with the date it was issued.

#### **Section 15: Warrant to enter other premises**

70. This section provides that a justice of the peace may issue a warrant to enable an authorised officer to enter any premises in Wales (other than premises used wholly or mainly as dwellings which are already dealt with under section 14), in certain circumstances. The section sets out the circumstances in which a warrant may be issued. Entry may be obtained by force if need be.

#### **Section 16: Supplementary provision about powers of entry**

71. This section enables authorised officers entering premises under sections 13, 14 and 15, to take with them any other persons or equipment as the officer considers appropriate. It requires that if the occupier of premises is present at the time when the authorised officer seeks to execute the warrant, the occupier must be told the officer's name, the officer must produce documentary evidence that the officer is an authorised officer and the officer must produce the warrant and supply the occupier with a copy of it. The section also requires that if the premises are unoccupied or the occupier is temporarily absent, the authorised officer must leave them as effectively secured against unauthorised entry as the officer found them.

#### **Section 17: Powers of inspection, etc.**

72. This section confers powers on authorised officers entering premises under sections 13, 14 and 15 to do various things so as to find out whether an offence under section 2 has been committed. Officers may carry out inspections and examinations of premises. Officers may also request items, inspect them, take samples from them and/or take the item(s) and/or samples from the premises. For example, officers may wish to review CCTV footage of the premises, retain alcoholic products or take samples or extracts of these, or likewise take documents or copies of documents. The authorised officer may analyse any samples taken.
73. The officer may also require information and help from any person, but that person is not required to answer any questions or produce any document which they would be entitled to refuse to answer or produce in the course of court proceedings in England and Wales.



74. The authorised officer must leave on the premises a statement detailing any items that have been taken, and identifying the person to whom a request for the return of property may be made.

### **Section 18: Obstruction etc. of officers**

75. This section provides that a person commits an offence if they intentionally obstruct an authorised officer from exercising their functions under sections 13 to 17.
76. A person commits an offence if, without reasonable cause, they fail to provide an authorised officer with facilities that are reasonably required under section 17(1) or they fail to comply with a requirement under section 17(1)(b) or (d) such as providing information relating to matters within that person's control.
77. A person found guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale. The levels on the standard scale are set out in section 37 of the Criminal Justice Act 1982.

### **Section 19: Retained property: appeals**

78. This section enables a person with an interest in anything taken away from the premises by an authorised officer under section 17(1)(c) to apply to a magistrates' court for an order requesting the release of the property. Depending on the court's consideration of an application, it may make an order requiring the release of the retained property.

### **Section 20: Appropriated property: compensation**

79. This section provides a right for a person with an interest in anything which has been taken possession of under section 17(1)(c) to apply to a magistrates' court for compensation. Where the circumstances set out in subsection (2) are satisfied, the court may order the local authority to pay compensation to the applicant. The circumstances are that property has been taken; that it was not necessary to take the property to discover whether an offence under section 2 had been committed; that the applicant has suffered loss or damage as a result; and that the loss or damage was not due to the applicant's own neglect or default.

### **Section 21: Report on operation and effect of this Act**

80. This section places a duty on the Welsh Ministers, as soon as practicable after the end of 5 years beginning with the day on which section 2 comes into force, to lay before the Assembly a report on the operation and effect of this Act during that period. After the report has been laid before the Assembly, it must also be published.
81. In the preparation of their report, the Welsh Ministers must consult the National Assembly for Wales and those persons they consider appropriate.

## **Section 22: Duration of minimum pricing provisions**

82. This section provides for the minimum pricing regime established by the Act to cease to have effect after 6 years from the date on which section 2 comes into force, unless the Welsh Ministers make regulations, before the regime ceases to have effect, providing otherwise. The Welsh Ministers cannot make regulations to this effect until at least 5 years after section 2 comes into force. The report referred to in section 21 will feed into the decision whether to make such regulations.
83. If no such regulations are made by the end of 6 years, the minimum pricing provisions are repealed.
84. If the minimum pricing provisions are repealed after 6 years, subsection (3) provides that the Welsh Ministers may, by regulations, make any necessary or expedient provision as a result of that fact. This would include any transitional, transitory or saving provision. So for instance, if before the repeal of the minimum pricing provisions another Act cross-referred to them, this power could be used to remove that reference.
85. Subsection (4) defines what is meant by the minimum pricing provisions for these purposes.

## **Section 23: Crown application**

86. This section provides that the Crown is bound by the provisions of the Act in the same way as it is bound under section 195 of the Licensing Act 2003 by the provisions of that Act.
87. This means that the provisions of the Act will apply to the Crown and to Crown property subject to certain exceptions.

## **Section 24: Offences committed by partnerships and other unincorporated associations**

88. Section 24 makes provision about and in connection with bringing proceedings for an offence under the Act alleged to have been committed by partnerships or other unincorporated associations.

## **Section 25: Liability of senior officers etc.**

89. Where an offence under the Act is committed by a body corporate, partnership or an unincorporated association other than a partnership this section makes it possible, in the circumstances described in subsection (2), for individuals holding positions of responsibility within the relevant body, partnership or association (the “senior officers” defined by the section) to also be criminally liable for an offence.

## **Section 26: Regulations**

90. This section explains how powers to make regulations under this Act are to be exercised and sets out the applicable procedure to be followed in making those regulations.

**Section 27: Interpretation**

91. This section defines what is meant by “alcohol”, for the purposes of the Act. It also defines other key terms used in the Act, including “local authority”, “premises”, “sale by retail” and “strength” of alcohol.

**Section 28: Coming into force**

92. This section sets out the provisions of the Act that will come into effect on the day after the date of Royal Assent (being sections 26 - 30); and those that will come into force in accordance with a commencement order made by the Welsh Ministers (being the remainder).

**Section 29: Promoting public awareness of minimum pricing for alcohol**

93. This section places a duty on Welsh Ministers to take steps to promote awareness of the commencement of the minimum pricing regime introduced by the Act, ahead of that commencement. It specifies that the steps taken in this regard must include promoting awareness of the health risks of excessive alcohol consumption and of how the introduction of minimum pricing in Wales is intended to reduce alcohol consumption.

### **Schedule 1: Fixed Penalties**

94. Schedule 1 to this Act contains provisions relating to fixed penalties.
95. These include the required contents of the penalty notice and the specified periods for payment. The Schedule provides that the amount of a fixed penalty is £200 but this can be reduced to £150 if paid within 15 days of when the fixed penalty notice is given. It also contains provision enabling the Welsh Ministers to amend those penalty amounts by regulations.
96. Paragraphs 15 and 16 enable a person to request to be tried for the offence in court instead of paying the fixed penalty. Paragraph 17 permits authorised officers of the issuing local authority to withdraw a fixed penalty notice. Paragraph 18 prevents a local authority from using amounts received from fixed penalty notices otherwise than for the purpose of its enforcement functions under this Act and any regulations made under it.

### **RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES**

97. The following table sets out the dates for each stage of the Act's passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales' website at: <http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=20029>

<b>Stage</b>	<b>Date</b>
Introduced	23 October 2017
Stage 1 - Debate	13 March 2018
Stage 2 Scrutiny Committee - consideration of amendments	3 May 2018
Stage 3 Plenary - consideration of amendments	12 June 2018
Stage 4 Approved by the Assembly	19 June 2018
Royal Assent	9 August 2018

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