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Llywodraeth Cymru  
Welsh Government

# **Guidance on the Implementation of Minimum Pricing for Alcohol in Wales**

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## Introduction

A Minimum Unit Price (which is referred to as MUP for the remainder of this document) of 50p for alcohol will be introduced in Wales from 2 March 2020.

Licensed premises of alcohol will be required to ensure they comply with minimum unit pricing. **It will be an offence to sell or supply, or authorise the sale or supply of alcohol below the applicable minimum price.**

A minimum price will set a floor price, meaning that alcohol cannot be sold or supplied below that price. It will not increase the price of every drink, only those that are currently sold or supplied at below the MUP of 50p. In Wales, under the Public Health (Minimum Price for Alcohol) (Wales) Act 2018, the applicable minimum price will be calculated by combining the MUP, the strength of the alcohol and its volume.

### **Aim of the guidance**

This guidance is primarily aimed at supporting retailers and local authorities in relation to the calculation, implementation and enforcement of minimum pricing for alcohol – but it also includes information on the Act relevant to other stakeholders.

In addition to this guidance, additional materials and supporting documentation on MUP will also be available, including an ‘MUP Calculator’ app, infographics, posters, and information leaflets which will be made available on the Welsh Government website:

<https://gov.wales/minimum-pricing-alcohol-guidance-retailers>

This guidance does not constitute legal advice and any person, where uncertain about the law and its application, should seek their own legal advice. Whilst the correct interpretation of legislation is ultimately a matter for the courts, this guidance explains the effects that the legislation is intended to deliver.

Minimum pricing for alcohol will come into force on 2 March 2020. There will be no period of grace allowed for the implementation of minimum pricing. Frequently Asked Questions to assist you can be found in Annex A.

If you have a query which you consider has not been addressed in this document, please contact: [Deddf1aA.MUPAct@gov.wales](mailto:Deddf1aA.MUPAct@gov.wales)

### **Overview: Public Health (Minimum Price for Alcohol) (Wales) Act 2018 and the implementation of minimum pricing for alcohol**

The Public Health (Minimum Price for Alcohol) (Wales) Act 2018 received Royal Assent on 9 August 2018 (the Act). It forms part of the Welsh Government’s wider and continuing approach to reducing hazardous and harmful drinking in Wales.

The Act aims to address some of the longstanding and specific health concerns around the effect of excess alcohol consumption in Wales. It signifies a firm commitment to further improving and protecting the health of the population of Wales – and is specifically targeted at protecting the health of hazardous and harmful drinkers who tend to consume greater amounts of low-cost and high-alcohol content products.

The Welsh Government consulted on its proposed level of the MUP for the purposes of the Act and concluded that a 50p (£0.50) MUP is a proportionate response to tackling the health risks of excessive alcohol consumption.

Consequently, the Public Health (Minimum Price for Alcohol) (Minimum Unit Price) (Wales) Regulations 2019 laid on 15 October 2019 specified an MUP of 50p. These were agreed by the National Assembly for Wales on the 12 November 2019.

In this guidance, we set out a number of examples of how the minimum price formula will work using the agreed MUP of 50p (£0.50).

### **Who minimum pricing applies to**

The Act makes it an offence for alcohol retailers to supply alcohol from qualifying premises in Wales or to authorise the supply of alcohol from qualifying premises in Wales at a selling price below the applicable minimum price for the alcohol.

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 of the Act. Section 3 of the Act 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. “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.

Section 3 also defines “Qualifying Premises” and 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.

Ultimately, it will be the responsibility of these alcohol retailers to ensure compliance with the Act. Where there is a situation where a retailer is in doubt about whether

minimum pricing has been complied with, the safest option would be to err on the side of caution and to seek legal advice, if required.

### **What we mean by alcohol**

Alcohol means spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor, but does not include any of the following:

- (a) alcohol which is of a strength not exceeding 1.2% when supplied;
- (b) perfume;
- (c) flavouring essences recognised by Her Majesty's Commissioners for Revenue and Customs as not being intended for consumption as or with dutiable alcoholic Liquor;
- (d) the aromatic flavouring essence commonly known as Angostura bitters;
- (e) alcohol which is, or is included in, a medicinal product or a veterinary medicinal product;
- (f) denatured alcohol;
- (g) methyl alcohol;
- (h) naphtha; and
- (i) alcohol contained in liqueur confectionary.

### **Who is liable in terms of committing the offence of selling below the minimum price**

Where alcohol is sold or supplied from a licensed premises 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.

In relation to clubs, the alcohol retailer is the holder of the club premises certificate (for instance, the club). 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.

### **Minimum pricing for alcohol and wholesalers**

Wholesale sales are excluded. Therefore, wholesalers will not be subject to any minimum pricing requirement due to their trade-to-trade sales. Where a retailer trades as both a retail and wholesale business, there will be a need to implement a dual pricing system with one price regime for consumers (subject to the MUP of 50p) and one for trade.

## Section 1: Implementing Minimum Pricing

### **How to calculate the applicable minimum price for alcoholic products, including worked examples.**

The Act includes a formula for how the applicable minimum price must be calculated. This formula is made up of the MUP of 50p, the percentage strength of the alcohol and its volume. This formula has been deliberately chosen so strong, cheap alcohol can be targeted because these drinks tend to be drunk by people who are more at risk of harm due to their drinking.

If an alcoholic drink is being sold at a price higher than its applicable minimum price, there will be no need for that price to change. If the product is currently being sold for less than the applicable minimum price, then that price will need to increase accordingly.

#### **FORMULA FOR CALCULATING THE APPLICABLE MINIMUM PRICE: $M \times S \times V$ where:**

- (a) **M** is the MUP (50p / £0.50) as specified in the Public Health (Minimum Price for Alcohol) (Minimum Unit Price) (Wales) Regulations 2019.
- (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.

**Where the minimum selling price for the alcohol calculated is not 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.**

### **Worked examples using a minimum unit price of 50p**

#### **EXAMPLE OF HOW THE FORMULA WILL WORK**

##### **CALCULATING THE APPLICABLE MINIMUM PRICE FOR A BOTTLE OF CIDER**

##### **$M \times S \times V$**

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.

$$0.5 \times 7.5 \times 3$$

**APPLICABLE MINIMUM PRICE = £11.25**

**EXAMPLE OF HOW THE FORMULA WILL WORK**

**CALCULATING THE APPLICABLE MINIMUM PRICE FOR A BOTTLE OF WINE**

**M x S x V**

A 12.5% ABV strength (S), 75cl bottle of wine (V) would have a minimum selling price of £4.69 (0.5 X 12.5 X 0.75) being the aggregate of the three components of the formula.

**0.5 X 12.5 X 0.75 = £4.6875 which will be *rounded up* to £4.69.**

**APPLICABLE MINIMUM PRICE = £4.69**

**EXAMPLE OF HOW THE FORMULA WILL WORK**

**CALCULATING THE APPLICABLE MINIMUM PRICE OF A CAN OF LAGER**

**M x S x V**

A can of lager at 4.3% ABV strength (S), in a pint can of 568ml (V) would have a minimum selling price of £1.22 (0.5 X 4.3 (%) x 0.568) being the aggregate of the three components of the formula.

**0.5 x 4.3 x 0.568 = £1.2212 which will be *rounded down* to £1.22.**

**APPLICABLE MINIMUM PRICE = £1.22**

**EXAMPLE OF HOW THE FORMULA WILL WORK**

**CALCULATING THE APPLICABLE MINIMUM PRICE FOR A BOTTLE OF VODKA**

**M x S x V**

A 40% ABV strength (S), 70cl bottle of vodka (V) would have a minimum selling price of £14 (0.5 X 40 X 0.7) being the aggregate of the three components of the formula.

**0.5 X 40 X 0.7**

**APPLICABLE MINIMUM PRICE = £14.00**

## **Special offers involving alcohol**

Sections 5 to 7 of the Act set out rules relevant to determining the applicable minimum price in relation to alcohol supplied through a variety of special offers.

- *Multi-buy alcohol transactions such as “buy one get one free”.* Section 5 of the Act 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 of the Act 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. Where the alcohol being supplied is of different strengths, section 7(2) of the Act 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 for the transaction. While it is likely that most multi-buy alcohol transactions will involve a single exchange of cash between supplier and customer, 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. 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 accordingly.
- *Alcohol supplied together with other goods and services.* Another category of “special offer” 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. 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. It 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). As with multi-buy alcohol transactions, the legislation requires separate calculations to be conducted for the purpose of determining the applicable minimum price for alcohol of different strengths supplied alongside other goods or services. The legislation will also 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.

## **Multi-buy alcohol transactions – how to calculate the applicable minimum price**

### Example 1

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 330ml for each can), the two boxes would be treated as having been supplied at the price paid for the single box.

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:

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).

$0.5 \times 4 \times 6.6 = \text{£}13.20$  – **this is the minimum price at which this alcohol can be sold.** 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 of the Act would have been committed.

### Example 2

Where three boxes of beer, lager or cider were available for purchase at a single selling price of, for example £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.

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:

**The minimum price for the box of beer would be £13.20** ( $\text{£}0.50 \times 6 \times 4.4$  litres (the aggregate volume for the box)).

**The minimum price for the box of lager would be £10.56** ( $\text{£}0.50 \times 4 \times 5.28$  litres).

**The minimum price for the box of cider would be £9.90** ( $\text{£}0.50 \times 5 \times 3.96$  litres).

Where a customer chooses 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).

Therefore, in this example, the selling price would have been £6.30 below the applicable minimum price for the alcohol supplied and, assuming the absence of a defence, the retailer would be liable to prosecution for committing the offence under section 2 of the Act.

But the purchase of three boxes of cider by the same customer would not give rise to the offence under section 2 of the Act, 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 1

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.

If the volume of the wine was 0.75 litre and its strength by volume 14%, the applicable minimum price for the wine would be £5.25 ( $\text{£}0.50 \times 14 \times 0.75$ ).

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 of the Act.

### Example 2

In a case where a wine tasting evening can be arranged by a customer at a wine shop for a price of £25, and 3 bottles of wine, described as being supplied free of charge, are supplied to the customer, the selling price for the wine supplied with the service would be treated as being £25.

If the wine comprised a 0.75 litre bottle of Pinot Grigio of 12.5% strength by volume; a bottle of 0.75 litre bottle of Merlot of 14.5% strength; and a 0.75 litre bottle of Shiraz of 13.5% strength; the applicable minimum price for the alcohol being supplied would be aggregate of the minimum price for each bottle.

For the Pinot Grigio, the minimum price would be £4.69 ( $£0.50 \times 12.5 \times 0.75$ ).

For the Merlot, the minimum price would be £5.44 ( $£0.50 \times 14.5 \times 0.75$ ).

For the Shiraz, the minimum price would be £5.06 ( $£0.50 \times 13.5 \times 0.75$ ).

The applicable minimum price for the alcohol being supplied would be £15.19.

In this example, the selling price of £25 would be above the applicable minimum price for the wine being supplied, and the retailer would not have committed the offence in section 2 of the Act.

## Section 2: Implementation

### ➤ **Online internet sales and telephone sales**

The applicable minimum price will apply to supplies of alcohol that take place from qualifying premises in Wales to a person in Wales. Businesses will need to ensure that the online and telephone price of all alcoholic products are not sold below the minimum price, if despatched in Wales and to a person in Wales. If the alcohol is purchased online or by telephone in Wales and despatched from outside of Wales or to a person outside Wales, minimum pricing will not apply. In relation to 'click and collect' facilities, these facilities are acting as a post box / collection point rather than a despatch point. The point of despatch would be where the goods have been despatched from to the 'click and collect' facilities.

**Alcohol despatched in Wales but delivered or collected outside of Wales – MUP will not apply.**

**Alcohol despatched outside of Wales but delivered or collected in Wales – MUP will not apply.**

### ➤ **Staff discounts**

Businesses can still offer staff discount, as long as the price after all discounts are applied is not below the minimum price. This applies to vouchers provided to staff as part of their benefits / remuneration package.

### ➤ **Discounts / money off coupons / reward cards / vouchers etc.**

Retailers run a variety of promotional, loyalty and discounting programmes and it would be impossible to account for all of these within this guidance. Retailers should use their discretion when deciding whether a promotion that is not listed within this guidance is permitted and seek legal advice, where appropriate.

### ➤ **Loyalty points**

Where a loyalty scheme means customers can collect vouchers as a reward for continued custom over a period of time and those vouchers have a cash value, they will be considered as a cash payment. For example, if a supermarket runs a campaign where customers can exchange a series of receipts showing a minimum spend for a £10 voucher, that £10 voucher can be used to buy alcohol, in the same way that loyalty points and gift cards can be used. The price of the alcohol being purchased must not be below the minimum price.

### ➤ **Reward cards**

Reward points and vouchers can continue to be used to buy alcohol, either in the store where they were earned, or at partner retailers, on the condition that the points redeemed (and additional money paid, where applicable) have an equivalent cash value that is not below the minimum price of the alcoholic product. For example, where a retailer sells a bottle of wine for £4.50 (minimum price for a 12% ABV, 750ml bottle of wine), it is permitted for a customer to pay for that wine either using points with a value of £4.50, or points with a value of up to £4.50 with the balance paid in cash.

### ➤ **Discount / Money off coupons**

Businesses may continue to offer discount coupons for alcoholic drinks, but must ensure that the price of the product, after all applicable discounts are applied, does not fall below the minimum price of the product.

Where a coupon is offered to the public for a discount on alcohol alone or on a specific alcoholic product, retailers should ensure that the price of the alcoholic drink does not fall below the minimum price of the product after the discount has been applied. This applies whether the discount is offered by the retailer or the producer. Where 'threshold spend' coupons are offered to customers (e.g. save £2 when you spend £15), they may be used to purchase alcohol as long as the total cost of the sale is not below the minimum price for the alcoholic products. Where the basket of goods being purchased contains both alcoholic and non-alcoholic products, the discount coupon will be applied to the total cost of the basket. The discount coupon must not take the price of the alcoholic goods below the minimum price.

#### **VOUCHERS AND DISCOUNTS**

Generally, vouchers and discounts that are clearly linked to a reward scheme or a refund are classed as cash equivalents so may be used as part (or full) payment for the alcoholic product. Vouchers and discounts which are not clearly linked to a reward scheme or a refund may not be used where the voucher or discount would take the cost of the alcoholic product below the minimum price. In the following example, the purchase relates to one bottle of vodka and not a basket of goods:

Minimum unit price of a 700ml bottle of 37.5% vodka = £13.13

Price of vodka in store = £15

**Scenario 1:** Customer buys vodka and uses 400 loyalty points (equivalent to £2) to take the price down to £13. This is permitted because loyalty points are 'earned' by spending a prescribed amount.

**Scenario 2:** Customer buys vodka and uses a 'Brand Match' coupon to reduce the price. In principle a refund coupon being used against the purchase of alcohol which reduces the price is permitted. The minimum price of the vodka is £13.13, so no retailer can sell the vodka at less than this price. So, in this example where the selling price is £15, the maximum the 'Brand Match' coupon can be is £1.87 (£15 less £13.13) as the alcohol cannot be sold for less than £13.13.

**Scenario 3:** Customer buys vodka and uses '£2 off when you spend £15' coupon to take the price down to £13. This is not permitted as the coupon is not directly linked to points accrual, and consumers cannot be reasonably expected to predict when those coupons would be available.

➤ **Inclusive drinks**

Qualifying premises can continue to run promotions subject to these being compatible with the requirements of the Act and any other relevant legal obligation (such as the restriction on irresponsible promotions under the Licensing Act 2003). For example, under the Act, in any offer of involving a bottle of wine with a meal, then retailers would need to ensure that overall price of the promotion is not lower than the applicable minimum price of the alcohol.

## Section 3: Enforcement

### **What retailers should expect**

The Act establishes a local authority led enforcement regime. The intention is that local authorities in Wales will enforce the new regime utilising existing arrangements to inspect and regulate premises selling alcohol. It is likely that retailers may be contacted by their local authority in the period prior to, or shortly after, implementation. This may take the form of an inspection visit.

Retailers will have to check the prices of each alcoholic product being sold to ensure they will be compliant when the legislation comes into force on 2 March 2020. This should be done ahead of implementation.

If a retailer discovers that any alcohol products are being offered for sale at a price that is less than the minimum price, then the price must change or the product must be removed from sale.

Additional staff training may be useful to ensure that all members of staff authorised to make sales of alcohol are familiar with the new law.

During an inspection visit by local authorities, it is likely that the local authority will expect to see clear pricing information for every alcoholic product offered for sale on the premises. This information should include both multipack and single article prices where a multipack product can be split for individual sale on the premises. This information can be provided in whatever format suits the retailer – price lists, shelf prices, till prices etc.

### **The consequences of failing to comply with the legislation**

Alcohol retailers supplying alcohol from qualifying premises in Wales or authorising the supply of alcohol from qualifying premises in Wales have a responsibility to comply with the legislation and to not sell alcohol below the applicable minimum price.

If an alcohol retailer is found to be selling, or authorising the sale of, alcohol below the 50p MUP, they can be issued with a Fixed Penalty Notice (FPN). The FPN amount will be £200 if payment is made within 29 days or £150 if payment is made within 15 days.

A person found guilty of the offence of supplying alcohol in Wales below the applicable minimum price will be liable to a fine of up to Level 3 (currently £1,000).

Local authority authorised officers will be encouraged to promote compliance by raising awareness of relevant standards and legal requirements in a variety of ways, including by means of face-to-face contact. When an alcohol retailer is found to be selling alcohol at less than the applicable minimum price, local authority authorised officers will have the discretion to prosecute as they currently do within their other enforcement policies. The Welsh Government anticipates that local authorities may,

in appropriate cases, wish to exercise their discretion and work with retailers to resolve issues voluntarily.

### **Information on Fixed Penalty Notices (FPNs)**

Under the Act, authorised officers may give a person an FPN, offering that person the opportunity to discharge any liability to conviction for an offence under section 2 of the Act by paying the fixed penalty. Any FPN served in relation to an MUP offence must set out the particulars of the alleged offence. It must also inform the person to whom it is given of his or her right to attend court in relation to the alleged offence and explain how that right may be exercised.

As highlighted, the FPN amount will be £200 if payment is made within 29 days or £150 if payment is made within 15 days. Local authorities will be able to retain the FPN receipts and use the amounts received to exercise their functions under the Act.

The Act permits local authorities to withdraw an FPN which has been issued. If an alcohol retailer is issued an FPN and does not agree with its issue, it is proposed that he or she will be able to request the local authority consider its withdrawal. A local authority will be able to withdraw an FPN if it is clear that it should not have been issued, for example: if it was issued to the wrong person; issued in error or the circumstances of the case warrant its withdrawal. This should be a relatively straightforward judgement based on the calculation of the minimum price for the product in question i.e.  $M \times S \times V$  (MUP  $\times$  strength of alcohol  $\times$  volume).

If the FPN is not withdrawn and the applicable penalty is not paid, then in line with the provision made by the Public Health (Minimum Price for Alcohol) (Wales) Act 2018, after the 29-day period has expired the local authority may bring a prosecution for the offence (unless a person to whom the FPN was given asked to be tried for the alleged offence). It is anticipated there will be general compliance in the industry.

### **FPN and appeals**

Arrangements for payments will be detailed on the FPN along with details of where representations relating to the notice may be made. Any representations made will be considered by the Local Authority.

### **Information on offences**

A person found guilty of the offence of supplying alcohol in Wales below the applicable minimum price will be liable to a fine of up to Level 3 (currently £1,000) on the standard scale of fines for summary offences under the Criminal Justice Act 1982 (section 8). It will be a defence for a person charged with an offence under the Act if that person demonstrates that reasonable steps were taken and due diligence exercised to avoid committing it.

It will also be an offence to intentionally obstruct an authorised officer from exercising their enforcement functions under the Act. A person guilty of such an offence will also be liable to a fine not exceeding Level 3 on the standard scale of fines for summary offences under the Criminal Justice Act 1982.

An offence under the Act will be included as a relevant offence in schedule 4 to the 2003 Act (personal licences: relevant offences). A relevant offence is an offence which can be taken into consideration by a licensing authority when making decisions on granting, revoking or suspending personal licences. Where the holder of a personal licence is convicted of a relevant offence by or before a court in England and Wales, the court may also order the forfeiture of the licence or its suspension for a period not exceeding six months.

A licence holder is under a duty to notify their licensing authority of convictions as soon as reasonably practicable (and commits an offence if they fail to do so without reasonable excuse). In addition, any licence holder charged with an offence has a duty to notify the court that he holds a personal licence and the court, in turn, must notify the relevant licensing authority of any conviction and sentence incurred by the licence holder.

### **Updating of pricing systems – for retailers**

Businesses and others who sell alcohol will need to ensure their pricing systems are up to date and accurate to ensure that alcohol will not be sold below the applicable minimum price. For example, making sure that prices are accurate on shelves / barcodes / menus / price lists. **It is essential that the price indicated to customers is clear and unambiguous and does not mislead consumers.** It is advised that any price which no longer applies, including those on flash packs, is completely removed or covered. The retailer will also need to ensure that all prices are changed e.g. shelf price, till price, so the consumer is not misled as regards the price of a product.

## Section 4: Communications and supporting materials

### ➤ **Communications**

The Welsh Government will continue to communicate with retailers, local authorities and other key stakeholders regarding the legislation and its implementation.

**Communication with retailers** - the communications activity with the retailers will commence before the implementation date of 2 March 2020 to allow retailers to prepare. Information packs and materials developed will be distributed to all retailers in Wales, this pack will include:

- A4 letter
- A3 posters x 2
- A5 leaflet 8 page
- 1 shelf barker - 190x80mm,
- 2 shelf edges - 108x80mm and 80x34mm

The Welsh Government recognises that retailers will require more than one of each of the shelf edges/barkers and possibly other materials. Therefore, printable downloads will be available on our website, at:

[www.gov.wales/minimum-pricing-alcohol-guidance-retailers](http://www.gov.wales/minimum-pricing-alcohol-guidance-retailers)

**Communication with the public** – a three-month communications campaign will begin in January 2020. This will be the Welsh Government's public facing campaign and will include a Media and PR programme, digital advertising, trade magazine ads, radio adverts, trolley advertising and social media content.

## ANNEX A: FAQs

### **When will minimum pricing come into effect in Wales?**

Minimum pricing for alcohol will come into effect on 2 March 2020.

### **What products will the applicable minimum price apply to?**

Minimum pricing will apply to all alcoholic products with an ABV above 1.2%.

### **How will the legislation be enforced?**

The Act establishes a local authority-led enforcement regime. It will provide local authorities with the power to bring prosecutions in respect of offences in its area under the Act; investigate complaints in respect of alleged offences in its area; and take any other steps with a view to reducing the occurrence of such offences in its area.

### **What are the consequences of failing to comply with the requirements of it for retailers?**

When an alcohol retailer is found to be selling alcohol at less than the applicable MUP of 50p, local authority authorised officers will have the discretion to prosecute as they currently do within their other enforcement policies.

The Act provides that authorised officers may give a person a Fixed Penalty Notice, offering that person the opportunity to discharge any liability to conviction for an offence under section 2 of the Act, by paying the fixed penalty. A person found guilty of the offence of supplying alcohol in Wales below the applicable minimum price will be liable to a fine of up to Level 3 (currently £1,000).

### **What information will local authorities need in order to check that minimum pricing has been complied with?**

Inspection and enforcement activities will be led by authorised officers in local authorities. Authorised officers will need to know the selling prices of alcoholic products in order to check that the price complies with minimum pricing. Retailers could assist with this by having prices of products currently on sale to hand in whatever format is most convenient for the retailer. It is in the interests of retailers to assist local authorities in this, as the responsibility lies with those selling alcohol to comply with minimum pricing.

### **Will enforcement be proactive or reactive?**

This will be for individual local authorities to decide.

### **How will prices be rounded under the Act?**

Where the minimum selling price for the alcohol calculated is not 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 (see example at page 5).

### **Will a delivery charge applied to an order affect the minimum pricing calculation?**

No. It is the retail selling price of the alcoholic product being delivered that has to comply with minimum pricing. Any delivery charge is not relevant to the retail selling price of the alcoholic product. It is the alcohol retailer's responsibility to ensure they

are satisfied that the retail selling price of alcoholic products complies with minimum pricing.

**What impact would any duty and VAT rises have on the applicable minimum price?**

Duty and VAT levied on alcohol is separate and distinct from minimum pricing. The MUP is 50p as specified in the Public Health (Minimum Price for Alcohol) (Minimum Unit Price) (Wales) Regulations 2019 laid on 15 October 2019 and agreed by the National Assembly for Wales on the 12<sup>th</sup> November 2019. By applying the formula set out in the Act, this will state the minimum level at which alcohol can be sold, namely the applicable minimum price. The calculation of duty and VAT should be calculated separately and will inform the final retail price. The final retail price must not be below the applicable minimum price.

**Does the Home Office place a ban on selling alcohol below the cost of duty plus VAT apply in Wales as well as minimum pricing?**

Yes, the ban on selling alcohol below the cost of duty plus VAT does apply in Wales, as well as minimum pricing.

**How will minimum pricing affect cross border sales?**

The Public Health (Minimum Price for Alcohol) (Wales) Act 2018 applies only to Wales.

It is not illegal to purchase alcohol in England from licensed premises if this alcohol is for personal consumption. It is not illegal to purchase alcohol in England from licensed premises and then to sell this alcohol in Wales from licensed premises. However, alcohol retailers who then subsequently supply alcohol from qualifying premises in Wales or who authorise the supply of alcohol from qualifying premises in Wales will not be able to sell at a price below the applicable minimum price for the alcohol.

**Are retailers still able to sell pre-price marked products?**

Where licensed premises sell pre-price marked products / flash packs where the price is currently below the minimum price, they will need to decide how to deal with this stock before minimum pricing is implemented.

If the price is changed on the pack (to be at least the minimum price), then it is essential that the price indicated to customers is clear and unambiguous and does not mislead consumers.

The retailer will also need to ensure that all prices are changed e.g. shelf price, till price, so the consumer is not misled as regards the price of a product. It is advised that any price which no longer applies, including those on pre-price marked products / flash packs, is completely removed or covered. Another option is to stop selling any pre-price marked products / flash packs where the price is currently below the minimum price.

**Do free drinks offered as compensation (e.g. for a delayed meal) count as sales?**

Free drinks provided on an ad hoc basis, for instance those offered as compensation for late food service or offered as part of in-store sampling, do not count as sales because the customer has not paid anything for the drink.

### **Can gift vouchers be used to buy alcohol?**

Yes, this is permitted, because they are treated as cash equivalents. The price of the alcohol being purchased must not be below the applicable minimum price.

### **How will minimum pricing affect customers who buy a ticket which includes the price of a meal and drink?**

Retailers will need to ensure that overall price of the promotion is not lower than the applicable minimum price of the alcohol.

### **How will minimum pricing affect the sale of damaged stock?**

Damaged stock can still be sold at a reduced price provided the reduced price is not below the minimum price.

### **A retailer operates a savings scheme whereby if a customer saves a certain amount of money, the retailer tops this amount up. For example, throughout the year the customer saves £28 in a savings scheme with the retailer and, at a point in the year, the retailer makes this up to £30. Can this be used to pay for alcohol that has a minimum price of £30?**

This is a similar scenario to a reward scheme. The additional £2 is classed as a cash equivalent so may be used as part (or full) payment for the alcoholic product.

### **Can retailers still offer partial refunds for faults that are not apparent at the time of sale?**

Where a partial refund is made subsequent to the purchase due to faulty goods, the buyer may be entitled to a refund in line with statutory rights and this may be acceptable as a defence should the refund take the price below the minimum price. If the seller wishes to go beyond the legal requirement for a refund and if the refund would take the price below the minimum price, it should be clear on the facts of the case that the refund is for poor service or damaged stock, and the reason for the refund must have only become apparent after the sale took place.

#### **Next Steps Check List for Retailers**

The following steps are advised in order to ensure retailers are not selling their alcohol products below the MUP of 50p.

- Calculate the applicable minimum price of an alcoholic product.
- Establish policy as to what (if any) discounts can be applied in store and the process to prevent those discounts from reducing retail price below the minimum price.
- Amend the price (if required) on central pricing systems to ensure that the correct price is associated with the barcode on the product.
- Before any price changes are put in place, consider amending the price on:
  - o price tags and / or pricing displays on shop shelves
  - o menus

- o promotional posters, flyers and other materials
- o websites

**It is essential that the price indicated to customers is clear and unambiguous and does not mislead consumers.**

### **CONVERTING IMPERIAL MEASURES TO LITRES:**

Some alcohol is sold in imperial measures. For the purposes of calculating the applicable minimum price, the following information may be of use:

Imperial gallon	4.546L
Imperial pint	0.568L
Imperial half pint	0.284L
Imperial ounce	0.028L