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Ysgrifennydd y Cabinet dros Iechyd a Gwasanaethau
Cymdeithasol
Cabinet Secretary for Health and Social Services



Llywodraeth Cymru
Welsh Government

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Dr Dai Lloyd AM
Chair
Health, Social Care and Sport Committee

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11 June 2018

Dear Dai,

On 3 May, I appeared before the Health, Social Care and Sport Committee for stage 2 of the Public Health (Minimum Price for Alcohol) (Wales) Bill. During these stage 2 proceedings, I gave a commitment to share an outline of the guidance we are planning to develop to accompany the introduction of a minimum price for alcohol – should the National Assembly for Wales agree to pass the Public Health (Minimum Price for Alcohol) (Wales) Bill.

As I set out in my response to the report on the Bill published by the Health, Social Care and Sport Committee on 5 March, the Welsh Government will be issuing guidance regarding the Bill to assist and promote an understanding of the proposed new regime. The development of this guidance will form part of operational work undertaken in the lead up to implementation. An initial outline of this guidance is included in Annex 1 to this letter. It is currently intended that this guidance would be supplemented by additional communications and materials for retailers, local authorities and organisations which support those with substance misuse issues, including Area Planning Boards, and service and treatment providers. Consideration is being given to how others have provided guidance and supporting communications materials in relation to the requirements of other comparable legislation – and we will look to learn from their good practice.

The outline has taken account of some of the issues raised during scrutiny of the Bill so far. Should the legislation be passed by the National Assembly for Wales, the Welsh Government will also continue to work closely with stakeholders to ensure that the guidance and any further materials we intend to develop are practical and useful tools to help both retailers and those enforcing the legislation. This will include working with the Welsh Retail Consortium, the Welsh Government Alcohol Industry Network, with Local Authorities, Area Planning Boards and with the Welsh Heads of Trading Standards, where appropriate.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The Welsh Government is also planning to engage with the Third Sector on the development of additional materials on minimum pricing for alcohol and associated communications, by working with the Substance Misuse Network, whose members include a range of stakeholders and service and treatment providers.

Yours sincerely,

A handwritten signature in black ink that reads "Vaughan Gething". The signature is written in a cursive, flowing style.

Vaughan Gething AC/AM

Ysgrifennydd y Cabinet dros Iechyd a Gwasanaethau Cymdeithasol
Cabinet Secretary for Health and Social Services



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OUTLINE

Guidance on the Implementation of Minimum Pricing for Alcohol in Wales

DRAFT

- **Introduction**

This section would provide an overview of the legislation and how it is intended that it will form part of the Welsh Government's wider and continuing approach to reducing hazardous and harmful drinking in Wales.

It could provide a short explanation as to why the legislation is being introduced, its anticipated public health outcomes. Namely, that the legislation aims to address some of the longstanding and specific health concerns around the effect of excess alcohol consumption in Wales. The legislation 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.

This section could also set out the Minimum Unit Price (which we will refer to as MUP for the remainder of this document) which will have been specified in regulations, as well as the key provisions of the legislation. These provisions (based on the Bill currently before the National Assembly) are:

- The formula for calculating the applicable minimum price for alcohol by multiplying the percentage strength of the alcohol, its volume and the MUP;
- Powers for Welsh Ministers to make subordinate legislation to specify the MUP;
- The establishment of a local authority-led enforcement regime with powers to bring prosecutions;
- Powers of entry for authorised officers of a local authority, offences relating to the obstruction of an authorised officer and the power to issue fixed penalty notices (FPNs);
- That a report on the operation and effect of the legislation must be laid before the National Assembly for Wales and then published at the end of a five-year review period (beginning with the day on which the offence of supplying alcohol below the applicable minimum price comes into force); and
- That the relevant provisions of the Act (and any consequential amendments made by it) will be repealed at the end of a six-year period, unless regulations are made by the Welsh Ministers providing for their continuation.

- **Aim of the guidance**

This section would explain who the guidance is aimed at supporting – which would include alcohol retailers and local authorities.

It would highlight that to assist further, it is intended that additional materials and supporting documentation on MUP will be available. These could include infographics / posters / information leaflets / a Minimum Price Calculator – which are all materials that the Welsh Government is currently considering developing and which would be prepared in consultation with retailers and stakeholders, as relevant.

This section would explain that whilst the correct interpretation of legislation is ultimately a matter for the courts, the guidance will explain the effects that the legislation is intended to deliver.

- **Who minimum pricing applies to**

The Bill, if passed in its current form, would make 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.

This section would set out who the legislation will apply to and explain key definitions - i.e. who will be alcohol retailers and which premises will be caught by the requirement, for these purposes.

It will explain that it will ultimately be the responsibility of these retailers to ensure compliance with the proposed regime.

Therefore, 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 or to seek legal advice.

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

This would set out how the applicable minimum price for alcohol will be calculated.

If the Bill is passed in its current form, it includes a formula for how the applicable minimum price must be calculated. This formula will be made up of the MUP (which will be specified by the Welsh Government in regulations) the percentage strength of the alcohol and its volume.

This formula would be explained and this section would also include a number of worked examples of how to calculate the applicable minimum price in relation to specific example products, such as a:

- 440ml can of 4% ABV lager
- 500ml bottle of 4.5% ABV sparkling cider
- 750ml bottle of 12.5% ABV wine
- 70cl bottle of 37.5% ABV vodka

- **Special offers involving alcohol**

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

It is intended that common examples of special offers and how it is intended that the minimum pricing regime would interact with these would be included within this section of the guidance. It would include specific guidance on calculating the minimum price of alcohol being sold as part of the following:

- *Multi-buy alcohol transactions such as “buy one get one free”.* Section 5 of the Bill as it currently stands, 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 Bill 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 Bill 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.

- *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 (as it currently stands) would 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.

This section would include practical examples of how to calculate the application minimum price, where special offers apply. The MUP has not yet been specified – and so the calculations below are based on an example MUP of 50p – for illustrative purposes only:

Multi-buy alcohol transactions

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 330 ml 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).

$$0.5 \times 4 \times 6.6 = £13.20$$

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

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.

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 ($£0.50 \times 6 \times 4.4$ litres (the aggregate volume for the box)).

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

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

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.

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 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 ($£0.50 \times 14 \times 0.75$).

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.

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.

- **Discounts / money off coupons / reward cards / vouchers etc.**

This section would include information on how discounts / money off coupons can be used to buy alcohol and what this means in terms of the proposed introduction of the applicable minimum price for alcohol. It is currently proposed that it would include general information – as well as specific common examples and scenarios such as:

- Staff discounts
- Loyalty points
- Brand match coupons / vouchers
- Reward cards
- Money off coupons / vouchers
- Discount coupons / vouchers

- **Inclusive drinks**

This section would explain that qualifying premises can continue to run promotions subject to these being compatible with the requirements of the Bill and any other relevant legal obligation (such as the restriction on irresponsible promotions under the Licensing Act 2003). For example, under the Bill, 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.

- **Online and telephone supplies of alcohol**

The applicable minimum price will apply to supplies of alcohol that take place from qualifying premises in Wales to a person in Wales.

This section would explain how the legislation will apply to internet and telephone sales.

Business 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 the minimum pricing proposed by the Bill will not apply.

- **Enforcement**

This section would summarise the relevant provisions of the Bill which establish a local authority led enforcement regime.

It would also detail the different offences which exist under the legislation and consequences of a conviction for these.

This section could include information on the following:

- what retailers should expect;;
- the consequences of failing to comply with the legislation; and
- information on FPNs.

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

This section would highlight that businesses and others who sell alcohol would 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.

- **Communications**

This would provide information on how the Welsh Government proposes to continue to communicate with retailers, local authorities and other key stakeholders regarding the legislation. This might include, for example, communications around any changes to the level of the MUP in the future and what this would mean in terms of calculating the applicable minimum price.

- **Other useful materials on MUP**

This section would explain that it is intended that a range of Welsh Government communications, guidance and training materials will be available on MUP (e.g. on-line). These documents would look to provide a comprehensive range of documents to support different groups and organisations to understand the requirements of the legislation and the public health aims of introducing an MUP – including materials for retailers, local authorities, Area Planning Boards, service providers and the public.

This section would provide links to these documents.

- **FAQs**

It is proposed that this section would set out a series of anticipated common questions and answers regarding the legislation and the introduction of a minimum price for alcohol. Discussions with stakeholders so far has revealed that they have found the format of guidance issued by the Scottish Government in relation to the implementation of minimum pricing there and the format of guidance issued by the UK Government in relation to the banning of the sale of alcohol below the cost of duty plus VAT helpful. Based on the format of those documents therefore, this section could include questions along the following lines:

- When will minimum pricing come into effect in Wales?
- What products will the applicable minimum price apply to?
- Are retailers still able to sell pre-price marked products?
- How will prices be rounded under the Bill?
- Will a delivery charge applied to an order affect the minimum pricing calculation?
- What impact would any duty and VAT rises have on the applicable minimum price?
- How will the legislation be enforced?
- What are the consequences of failing to comply with the requirements of it for retailers?
- How will minimum pricing affect cross border sales?
- Do free drinks offered as compensation (e.g. for a delayed meal) count as sales?
- Can gift vouchers be used to buy alcohol?
- How will minimum pricing affect customers who buy a ticket which includes the price of a meal and drink?
- How will minimum pricing affect the sale of damaged stock?

- **Useful steps Check List**

This final section of the guidance could set out the some practical steps that businesses may wish to take ahead of the introduction of a minimum price for alcohol.