

**7(v) Report on Consultation on Wholesalers and Minimum Unit Pricing,
August 2018**

ABERDEENSHIRE LICENSING BOARDS
***South, Central and North Divisional Licensing
Boards***

**REPORT TO LICENSING BOARDS – 15th August, 22nd August and 29th August
2018**

LICENSING (SCOTLAND) ACT 2005

THE ALCOHOL (MINIMUM PRICE PER UNIT)(SCOTLAND) ORDER 2018

**CONSULTATION ON GUIDANCE: WHOLESALERS: MINIMUM UNIT PRICING OF
ALCOHOL AND TRADE SALES**

1. Recommendations

1.1. It is recommended that the Boards:

- (a) Discuss, comment and make recommendations on the attached
consultation document;**
- (b) Authorise the Clerk to the Board to submit a response on behalf of
the Aberdeenshire Licensing Boards following consultation with the
Board Convenors by the deadline of 26th October 2018**

2. Background

2.1 The Alcohol (Minimum Price per Unit)(Scotland) Order 2018 came into force on
1st May 2018 and set the minimum price at 50 pence per unit of alcohol.

2.2 Minimum Unit Pricing is a mandatory condition of a premises and occasional
licence. This means that, in order to comply with a premises and occasional
licence, alcohol cannot be sold on those premises below the Minimum Unit
Price.

2.3 The Scottish Government is aware that there are differing views within the
licensing community on whether a wholesaler with a premises licence should

apply Minimum Unit Pricing to Trade Sales or whether trade sales from those licensed premises are exempt from Minimum Unit Pricing.

- 2.4 The Scottish Government considers a legislative change is required to clarify the position for certain wholesalers as regards compliance with Minimum Unit Pricing and so is seeking views on the legislative change proposed in the consultation.
- 2.5 The Scottish Government has now published a consultation document relating to this matter, which is attached as Appendix 1 to this report.
- 2.6 The Scottish Government is seeking views on the terms of the draft Statutory Instrument which forms Annex A of the consultation document. If implemented, this means that Wholesalers who sell to trade will continue to be exempt from Minimum Unit Pricing. However, where a Wholesaler also does retail sales, they will require to operate a dual pricing system as the retail sales will be subject to Minimum Unit Pricing.
- 2.7 The consultation responses will be used to inform the legislative change required to clarify the position as regards Minimum Unit Pricing for certain wholesalers.

3. Governance

- 3.1. The Boards are able to consider this matter as they are the Licensing Authority for the purposes of administering the system of applications for premises licences

4. Implications and Risk

- 4.1. An Equality Impact Assessment has not been carried out as responding to the consultation document will not have a detrimental impact on any person with protected characteristics.
- 4.2. There are no staffing or financial implications within this report.

4.3. The Council's Corporate Risk Register and Directorate Risk Registers do not apply as this report relates to the administration of a system operated by the Licensing Boards and not Aberdeenshire Council

4.4. The Town Centre Principle does not apply to the subject matter of this report.

**Geraldine Fraser
Clerk to the Board**

**Report Prepared by Fiona M. Stewart, Depute Clerk, Senior Solicitor
(Democratic Services)**

Date: 6th August 2018

**File Reference: FMS/Consultation on Wholesalers and Minimum Unit
Pricing.Aug2018**

APPENDIX 1

IMPROVING
SCOTLAND'S
HEALTH



Wholesalers: Minimum Unit Pricing of Alcohol and Trade Sales

Consultation Document



Scottish Government
Riaghaltas na h-Alba
gov.scot

Summary

Minimum Unit Pricing was introduced on 1st May 2018. The relevant legislation is the Alcohol (Minimum Pricing) (Scotland) Act 2012 which makes Minimum Unit Pricing a mandatory condition of a premises and occasional licence. This means that, in order to comply with a premises and occasional licence, alcohol cannot be sold on those premises below the Minimum Unit Price. The Alcohol (Minimum Price per Unit) (Scotland) Order 2018 came into force on 1st May 2018 and set the minimum price at 50 pence per unit of alcohol.

Prior to the implementation of Minimum Unit Pricing, the Scottish Government held discussions with various representatives in the alcohol industry on the process of implementation. During some of these discussions a very specific issue relating to wholesalers and the operation of the Licensing (Scotland) Act 2005 came to light. It was also raised at the Cabinet Secretary for Health and Sport's appearance at the Health and Sport Committee on 17th April 2018¹⁰ in connection with the scrutiny of the Order proposing to set the minimum price at 50 pence per unit.

The issue which has arisen is that there are differing views within the licensing community on whether a wholesaler with a premises licence should apply Minimum Unit Pricing to trade sales or whether trade sales from those licensed premises are exempt from Minimum Unit Pricing.

The Scottish Government considers a legislative change is required to clarify the position for certain wholesalers as regards compliance with Minimum Unit Pricing.

This paper provides some background for people who wish to take part in the consultation.

¹⁰ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11472>

WHO will be affected?

Wholesalers holding a premises licence and making both sales to trade and sales to the public will be affected.

Wholesalers selling to the public (as well as to trade) require a premises licence. All sales to the public must comply with all mandatory licensing conditions, including Minimum Unit Pricing.

Wholesalers selling alcohol to trade only are not required to hold a premises licence and so Minimum Unit Pricing does not apply.

Sales to trade means the selling of alcohol to trade to a person for the purposes of the person's trade¹¹.

WHAT is the issue?

It has become apparent that there are differing views held within the licensing community on the application of the new mandatory condition of Minimum Unit Pricing to premises licences as regards wholesalers and trade sales.

Essentially, the differing views focus on, in those circumstances where a licence is held by a wholesaler, whether trade sales from those licensed premises should be subject to Minimum Unit Pricing, or whether they are exempt from Minimum Unit Pricing.

There is no intention, and there never has been any intention, by the Scottish Government that Minimum Unit Pricing would apply to trade sales. The policy is that only sales of alcohol which are not trade sales should be subject to the minimum price. Minimum Unit Pricing has been introduced by the Scottish Government to reduce the level of alcohol-related harm we experience in Scotland. There is lots of evidence to show that, as alcohol becomes more affordable, drinking increases, and as drinking increases so does harm. Affordability is directly relevant to the consumer and this is why Minimum Unit Pricing is applied to the retail price of alcohol.

¹¹ Licensing Scotland Act 2005, section 147 *Interpretation*:
http://www.legislation.gov.uk/asp/2005/16/pdfs/asp_20050016_en.pdf

WHY are the Scottish Government introducing this?

The Scottish Government considers that a legislative change is required in order to clarify the situation for wholesalers holding a premises licence. This would be achieved by bringing forward an affirmative Scottish Statutory Instrument.

The clarification to be achieved by the Scottish Statutory Instrument is to make clear that the minimum price per unit does not apply for the purposes of sales to trade.

This consultation is issued to satisfy the terms of regulation 9 of EU Regulation No. 178/2002. This is a rule of EU law which requires that there should be open and transparent public consultation where food law (like the policy in connection to Minimum Unit Pricing) is being prepared or changed.

The Scottish Wholesale Association has provided guidance for wholesalers on how to apply Minimum Unit Pricing, and a link to this guidance is on the Scottish Government website ([Guidance for wholesalers](#)). The Scottish Statutory Instrument being consulted upon is consistent with this guidance. In particular, to note that where a wholesaler holds a licence and sells alcohol to both the trade and the public, and where the price of alcoholic products may differ due to Minimum Unit Pricing being applied, the wholesaler will need to operate a dual pricing system.

CONSULTATION

A consultation is being held to provide people, businesses, public bodies and interested parties with the opportunity to comment on the proposed legislation and its associated impacts.

Consultation:

We invite comments on the draft Scottish Statutory Instrument at Annex A.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2019 No.**PUBLIC HEALTH****FOOD****The Alcohol (Minimum Price per Unit) (Scotland) Amendment Order
2019**

<i>Made</i>	- - - -	2019
<i>Coming into force</i>	- -	2019

The Scottish Ministers make the following Order in exercise of the powers conferred by section 146(2), paragraph 6A(4) of schedule 3 and paragraph 5A(4) of schedule 4 of the Licensing (Scotland) Act 2005⁽¹²⁾ (“the 2005 Act”) and all other powers enabling them to do so.

There has been a consultation as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety⁽⁴¹³⁾.

In accordance with section 146(5)(a) of the 2005 Act⁽¹⁴⁾, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Alcohol (Minimum Price per Unit) (Scotland) Amendment Order 2019 and comes into force on 2019.

¹² 2005 asp 16. Paragraph 6A of schedule 3 and paragraph 5A of schedule 4 were inserted by section 1 of the Alcohol (Minimum Pricing) (Scotland) Act 2012 (asp 4) (“the 2012 Act”).

¹³ OJ L 31, 1.2.2002, p.1, last amended by Regulation (EU) No 652/2014 (OJ L 189, 27.6.2014, p.1).

¹⁴ Section 146(5)(a) has been modified by paragraph 5 of schedule 3 of the Interpretation and Legislative Reform (Scotland) Act 2010 and was amended by section 1(4) of the 2012 Act

Sales to Trade

- 2.— (1) The Alcohol Minimum Price per Unit (Scotland) Order 2018⁽¹⁵⁾ is amended in accordance with this article.
- (2) In article 1(2) (interpretation), before the definition of “schedule 3”, insert—
- ““sales to trade” means the selling of alcohol to trade to a person for the purposes of the person’s trade;”.

After article 2 insert the following article—

“Sales to trade

- 2A. The minimum price per unit specified in article 2 does not apply for the purpose of sales to trade.”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 146(2), paragraph 6A(4) of schedule 3 and paragraph 5A(4) of schedule 4 of the Licensing (Scotland) Act 2005 (“the 2005 Act”). It comes into force on (date tbc) 2019.

The Order amends the Alcohol (Minimum Price per Unit) (Scotland) Order 2018 (“the 2018 Order”) which specifies the minimum price per unit for alcohol (50 pence).

Article 2(3) of the Order inserts a new article 2A into the 2018 Order. The new article 2A provides that the minimum price per unit specified in article 2 of the 2018 Order does not apply to sales of alcohol to trade.

Article 2(2) of the Order inserts a definition of “sales to trade” into article 1 of the 2018 Order.

A full Business and Regulatory Impact Assessment of the effect of the 2018 Order on the costs and benefit to business, public sector and consumers was prepared by the Scottish Government and a copy of it was placed in the Scottish Parliament Information Centre. Copies may be obtained from the Scottish Government Directorate for Population Health, St Andrew’s House, Edinburgh EH1 3DG and online at www.legislation.gov.uk.

¹⁵ S.S.I. 2018/135.

Annex B

Responding to this Consultation

We are inviting responses to this consultation by 26 October 2018.

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You can view and respond to this consultation online at <https://consult.gov.scot/beer-policy/wholesalers-minimum-unit-pricing>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 26 October 2018.

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) to: MUPandtradesalesconsultation@gov.scot

Handling your response

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to MUPandtradesalesconsultation@gov.scot.

Scottish Government consultation process

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

Annex B

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



Respondent Information Form

Improving Scotland's Health: Wholesalers: Minimum Unit Pricing of Alcohol and Trade Sales – Consultation Document

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

If you are responding on behalf of an organisation, please tell us the type of organisation for which you are providing a response.

- Alcohol Industry Representative Body
- Alcohol Retail Representative Body
- Producer
- Retailer – off-trade
- Retailer – on-trade
- Public Sector Health Organisation
- Third Sector Health organisation
- Local Government body
- Other (please note in the text box provided above)

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

Consultation

Consultation:

We invite comments on the draft Scottish Statutory Instrument at Annex A.

Related documents

- [The relevant primary legislation is the Alcohol \(Minimum Pricing\) \(Scotland\) Act 2012](#)
- [Explanatory notes](#)
- [Policy Memorandum](#)
- [Licensing \(Scotland\) Act 2005](#)
- [Explanatory notes](#)
- [Alcohol \(Minimum Price per Unit\) \(Scotland\) Order 2018](#)
- [Consultation paper on gov.scot \(HTML version\)](#)



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