

MPA 40

Bil Iechyd y Cyhoedd (Isafbris am Alcohol) (Cymru)  
Public Health (Minimum Price for Alcohol) (Wales) Bill  
Ymateb gan Y Gymdeithas Fasnach Gwin a Gwirodydd  
Response from Wine and Spirit Trade Association



# Public Health (Minimum Price for Alcohol) (Wales) Bill Consultation

Health, Social Care and Sport Committee

National Assembly for Wales

December 2019

**Response from the Wine and Spirit Trade Association**

## **Introduction**

The Wine and Spirit Trade Association (WSTA) is the UK organisation for the wine and spirit industry representing over 300 companies from major retailers, brand owners and wholesalers to fine wine and spirit specialists, logistics and bottling companies.

We campaign for a vibrant and sustainable wine and spirit industry, across the UK, helping to build a future in which alcohol is produced, sold and enjoyed responsibly.

The wine and spirit industry's contribution to the UK is often underestimated. Over 550,000 jobs are supported in the UK directly and through the wider supply chain. It contributes £50bn in economic activity and pays more than £17.5bn in tax.

The industry's contribution to the Welsh economy is significant too. Wine and spirit sales are worth around £1bn to Welsh shops, supermarkets, pubs and restaurants. In addition there has also been a resurgence in Welsh whisky and gin production. Wales now has 13 distilleries, up from just 1 in 2010, many of which are producing award winning products. There are even over a dozen Welsh vineyards producing wine.

## **Consultation response**

- **General Principles of the Public Health (Minimum Price for Alcohol) Bill**

The WSTA set out its position on the principles of Minimum Unit Pricing during the Welsh Assembly Government's initial consultation on the subject in 2014, a copy of which is available here: <http://www.wsta.co.uk/images/PAN/2014/WalesConsultationResponse.pdf>

With regards to this specific consultation the WSTA would make the following observations regarding the principle of the policy:

- This approach to Minimum Unit Pricing has not been implemented anywhere else previously and therefore the exact impact and consequences are unknown. The implementation of the policy in Scotland is going ahead on the 1<sup>st</sup> May 2018, however, and this will give the Welsh Assembly the ability to learn about the actual impact of Minimum Unit Pricing before committing itself to the policy. Therefore, before proceeding with the implementation of this legislation, the Welsh Assembly should first monitor and evaluate the impact of Minimum Unit Pricing in practice.
- Should the Welsh Assembly decide move ahead with Minimum Unit Pricing, then this should be on the basis of as close as possible regulatory alignment with the model adopted in Scotland. Multiple regulatory systems operating across the UK place an additional cost burden on national retailers and producers. The Welsh Assembly approach to Minimum Pricing, including the price at which it is set and the specifics of the regulations that cover it, should therefore be aligned with the Scottish model in order to help reduce this burden. Given the impact of Minimum Pricing in Wales and Scotland have been calculated using the same modelling, and in light of the Supreme Court view that the Scottish Government's preferred price of 50p per unit was proportionate, this alignment would be both reasonable and practical.
- It is right that the draft Bill contains a sunset clause, however it is important that there is a full evaluation of the impact of Minimum Unit Pricing, covering every aspect of its operation, before the clause period ends. While the Bill contains provision for Ministers to report on its effectiveness, this provision should be strengthened to mandate the Minister to commission and submit a full and wide-ranging evaluation of

the policy for consideration to the Assembly. The Welsh Assembly should also follow the example of the Scottish Government and establish an Evaluation Advisory Group which includes representations from key stakeholders, including from across the industry, to shape and commission that evaluation.

- **Whether there are any unintended consequences arising from the Bill;**

The exact impact of Minimum Unit Pricing will not be known until the policy is in operation. However, there are a number of potentially significant unintended consequences that may result in the implementation of the draft Bill. Evidence from the Measuring and Evaluating Scotland's Alcohol Strategy<sup>1</sup> shows that around half of all products on shops and supermarket shelves will be impacted by the regulations at a Minimum Unit Price of 50p. This will inevitably have an impact on the market and examples of potential unintended consequence include:

**Loss of value and non-branded products** - Minimum Unit Pricing is a distortion of the market that will increase the price of around half the products on the shelf. The impact of this will increase the average price of alcohol products and reduce the price differential between branded products and value or non-branded products. The likely to result in the loss of a number of these products from the market and significantly reducing consumer choice and impacting on jobs where those products are produced. There will therefore be a knock-on effect to the wider supply chain in those areas where those businesses are located.

**Increase in illicit or black-market trade** – There is a real concern that the implementation of a Minimum Unit Price provides a significant incentive to trade alcohol illicitly. Minimum Unit Pricing will create a price differential between the production cost of a product and its retail price well in excess of the retailer margin. For example, a 3 litre bottle of high strength cider that currently retails for £3.99 would retail for no less than £11.25 under the Minimum Unit Pricing regulations at 50p. This therefore creates an incentive to sell products that will be available at wholesale, or from other parts of the UK where the regulations do not apply, outside of legitimate retailing channels to profit from this while still under cutting legitimate retailers. This is not an incentive that currently exists. Should the sale of alcohol outside of legitimate channels increase, it may appear through retail data that alcohol consumption or sales are declining, when in fact consumption remains the same.

**Loss of economic activity in border towns** – There is evidence to suggest a price differential across a border could lead to consumers shifting their purchases out of Wales. Welsh border towns that sell alcohol may lose custom to those across the border as they seek to either purchase products that are no longer available in Wales or reduced the cost of their shop. This could lead to a decline in economic activity in those border towns.

**Impact on the low income** – By its nature Minimum Unit Pricing is regressive and will impact those on low incomes the most. Alcohol consumed by those on higher incomes is more likely to be above a Minimum Unit Price level and therefore the impact will be most felt by those on low income who purchase alcohol at the lower price level. The consequence is making a regular shop for people on low incomes more expensive which will impact on their standards of living. This is particularly the case at a time when inflation is over 3% and it continues to outpace wage inflation.

**Retaliatory trade barriers for exports** – The WSTA is working to promote the export of British wine and spirits abroad, including Welsh Gin and Whisky. However, as a barrier to

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<sup>1</sup> MESAS

trade, Minimum Unit Pricing could potentially result in retaliatory measures that restrict access for Welsh wine and spirit producers making it hard for them to export.

- **Potential barriers to the implementation**

### **Section 5, 6 and 7 – Special Offers**

As outlined above, the Welsh Assembly should choose as close as possible regulatory alignment with the provisions in Scotland. However, the Scottish Government have not yet brought forward their regulations on how special offers will apply to the Minimum Unit Pricing provision. It is recommended the detail of Section 5,6 and 7 is amended to follow that of the Scottish Regulations which will be published on the 1<sup>st</sup> March and be implemented by the 1<sup>st</sup> May.

### **Section 9 - Fixed Penalty Notices**

(a) Questions over the powers to grant fixed penalty notices

It is not clear from the draft Bill under what legislation the Welsh Assembly will grant local authorities power to issue fixed penalty notices for this offence. An offence of this type cannot be regarded as a low level environmental crime, under which local authorities have powers, as the relevant Acts contain definitions for offences such as littering or flytipping etc.

Penalty notices of this kind are issued by enforcement officers for a range of licensing offences. However, the powers to issue Penalty Notices for Disorder were introduced under the Criminal Justice and Policing Act and apply only to specific offences. Additionally, should the draft Bill be seeking to create powers under this act there are number of issues:

- The Act is very specific about the offences that a penalty notice can be issue and these emanate from the Licensing Act 2003 – of which Minimum Unit Pricing is not a part.
- Chapter 1 of Part 4 of the Police Reform Act 2002 only permits a chief officer of police to grant accreditation to a weights and measures inspector (commonly known as Trading Standards Officer (TSO) so that they may give a PND for certain offences. However, the Act does not allow local authorities to grant this power as the draft Bill sets out.
- The upper limit for penalty notices under this Act is £90, which is lower than the £200 outlined in the draft Bill.

Given that Crime and Policing are not matters devolved to the Welsh Assembly, meaning it does not have the powers to create new criminal offences, and that there are no provisions on Public Health Grounds, that we are aware of, for local authority officers to issue fixed penalty notices, further clarity on the legislation from which these fixed penalties derive would be welcome.

(b)

There is concern with Section 9 of the Bill which outlines powers on Fixed Penalties. The wording of this section states:

*Where an authorised officer of a local authority has reason to believe that a person has committed an offence under section 2 in the local authority's area, the officer may give that person a fixed penalty notice in respect of that offence.*

Issuing a fixed penalty notice simply on the basis of have “a reason to believe” an offence has been committed appears to contradict the Code of Practice on age restricted products

developed by Regulatory Delivery<sup>2</sup> which states that response to complaints or intelligence received about a specific business in relation to age related sales should be proportionate. More specifically, Section 12 of this Code sets out that enforcement officers should consider (a) the credibility, quality and quantity of information about possible breaches, (b) their understanding of the business approach to compliance, (c) whether it is in a Primary Authority relationship and (d) whether it is appropriate to first discuss the intelligence received with the business.

The Welsh Assembly Government's own guidance on Penalty Notices states *"It is essential, therefore, that they are only issued where **there is adequate evidence** to support a prosecution if a notice is not paid, and that unpaid notices are followed up. Failure to pursue unpaid notices through the courts will discredit the use of fixed penalties in the locality, and will lead to declining rates of payment"*<sup>3</sup>. guidance on Fixed Penalty Notices for Disorder states that A PND may only be given where a constable has reason to believe that a person aged 18 or over has committed a penalty offence and **they have sufficient evidence to support a successful prosecution**<sup>4</sup>.

The WSTA would urge the Welsh Assembly to reconsider these provisions so that the mechanism for dealing with a potential breach of the code is proportionate and promotes constructive dialogue between the trade and enforcement agencies which are the guiding principles of this code. This would require an amendment to ensure that fixed penalty notices could only be issued where there is evidence, and not simply a reason to believe, an offence has been committed.

There is a broader question as to whether the powers in Section 9 are required. Either products are being offered for sale, or have been sold, for below the level allowed in the regulations. Should an enforcement officer receive information on this, they have the power to investigate this in the manner outlined above, the power to undertake a test purchase to see if an offence is committed and has penalties available should a breach have occurred.

### **Section 10 (2) (a)**

This section appears to be overly prescriptive and burdensome for the local authority. Additionally, as outlined above, enforcement action taken by local authority officers should always be evidence-based and operations should seek to establish constructive relationships between enforcement agencies and retailers. The powers that the draft Bill creates should be used only as and when evidence suggests they are required and programmes of enforcement should be based on this evidence, as well as interaction with premises, and not simply because of a legislative requirement. A licensing policy statement, for example, is reviewed every 5 years and there is no reason that a local authority should not reconsider its overall approach to enforcement of the regulations over the same time period.

### **Section 10 (3) (a)**

This section sets out two areas in which officers must have due regard when considering the provision in 10 (2).

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<sup>2</sup> Full details of the code are available here:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/299373/13-537-code-of-practice-age-restricted-products.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/299373/13-537-code-of-practice-age-restricted-products.pdf)

<sup>3</sup> Full guidance available at:

<http://gov.wales/desh/publications/enviroprotect/cleanneighbours/fixedenalty/fixedenaltye.pdf?lang=en>

<sup>4</sup> Full guidance available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/403812/penalty-notice-disorder-police-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/403812/penalty-notice-disorder-police-guidance.pdf)

In relation to Protecting Children from Harm. Any enforcement action should be considered on an evidential basis and if there are circumstances where there is any evidence that underage sales, proxy sales or the unlawful supply of alcohol to children is taking place then this should be dealt with by appropriate officers under the provisions of the Licensing Act 2003 which set out the relevant offences and provide officers with requisite powers. It is more appropriate that matters relating to underage sales and the protection of children from harm, and consideration of any enforcement action taken on this basis, are by officers that may be delegated authority under the Licensing Act and not this draft Bill. We cannot envisage any circumstances when the provisions under this draft Bill would be more appropriate than those under the Licensing Act 2003 in relation to protecting Children from Harm.

With regard to Protection of Public Health. The Welsh Assembly should be aware of the potential difficulties in the application of this provision. Even in Scotland, where protection of public health is a full licensing objective and has full implications for the granting of licenses, the outlet density of an area, the timing of licenses and so on, questions remain over its effectiveness<sup>5</sup>. Given the provision of this draft Bill is in relation to the enforcement of this one regulation on the sale of alcohol below a certain price, and cannot be applied more widely, and that the focus of draft Bill is reducing consumption of hazardous and harmful drinkers over the longer term, it is difficult to see how this measure could work practically.

### **Section 11**

Wording in this section gives the local authority power to appoint relevant officers in relation to enforcing this provision. We would recommend that the powers for the purposes of this bill are only given to those that are trained in, and understand, the provision of the Licensing Act 2003. The nature of the enforcement action suggest that this should be taken by an officer with appropriate training and standing, and any enforcement action taking place in relation to the sale of alcohol should be done by those regularly involved so that they will be aware of any intelligence or information that may exist regarding particular licences.

- **The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum);**

The regulatory compliance cost for businesses in Wales appears low at just £800,000, given the cost of changing systems for all alcohol retailers including staff training cost, reworking pricing and promotion policies and technological changes to accompany this. But it is important to note that the actual cost of compliance for retailers will depend on the final regulations. As outlined above, should the regulations follow those of Scotland, including price and approach, then compliance costs will be reduced for national retailers.

It is concerning that no estimated cost has been made on the impact of a reduction of consumption of particular products which may become financially unviable under the new regulations. This could have a direct effect on those businesses and the local supply chain. Additionally, limited assessment appears to have been made on the impact of black market and cross border sales. The modelling simplistically assumes a direct link between increasing price and increasing sales through legitimate retail channels, and that cross border and black-market impacts will be limited.

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<sup>5</sup> Further information available at: <http://alcoholresearchuk.org/alcohol-insights/using-licensing-to-protect-public-health-from-evidence-to-practice-2/>