

# **ALCOHOL (MINIMUM PRICING) (SCOTLAND) ACT 2012**

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## **EXPLANATORY NOTES**

### **COMMENTS ON SECTIONS**

#### ***Section 1 – Minimum price of alcohol***

4. **Section 1(2)** inserts new paragraph 6A into schedule 3 to the 2005 Act and introduces a further mandatory condition of premises licences granted under that Act. The condition is that alcohol must not be sold on the premises at a price below its minimum price.
5. Inserted paragraph 6A(2) concerns the application of the condition where alcohol is supplied along with other products or services, for example, where a bottle of beer is packaged with and sold with a branded glass or a bottle of wine is sold with food as part of a “meal deal.” In these circumstances the minimum price would be the minimum price that would apply to the alcohol if sold on its own. That is, the package must be sold at (or above) the minimum price and no account is taken of the elements of the package which are not alcohol.
6. Inserted paragraph 6A(3) sets out the formula by which the minimum price is to be calculated as minimum price per unit (MPU) x strength of the alcohol (S) x volume of the alcohol in litres (V) x 100.
7. By way of example, if the minimum price per unit was set at 50p per unit of alcohol:
  - (a) the minimum price for a standard sized (700ml) bottle of spirits at 37.5% ABV would be £13.13 ( $0.50 \times 37.5/100 \times 0.7 \times 100 = £13.13$ ),
  - (b) the minimum price for a 500ml super-strength can of beer at 9% ABV would be £2.25 ( $0.50 \times 9/100 \times 0.5 \times 100 = £2.25$ ),
  - (c) the minimum price for a standard size (750ml) bottle of wine at 12.5% ABV would be £4.69 ( $0.50 \times 12.5/100 \times 0.75 \times 100 = £4.69$ ),
  - (d) the minimum price for a case of 24 440ml cans of beer at 4% ABV would be £21.12 ( $0.50 \times 4/100 \times 0.440 \times 24 \times 100 = £21.12$ ),
  - (e) the minimum price for a 2 litre bottle of strong cider at 6% ABV would be £6.00 ( $0.50 \times 6/100 \times 2 \times 100 = £6.00$ ),
  - (f) the minimum price for a 25ml measure of spirits at 37.5% ABV would be 47 pence ( $0.50 \times 37.5/100 \times 0.025 \times 100 = £0.47$ ),
  - (g) the minimum price for a 275 ml pre-mixed spirit and mixer at 5% ABV would be 69 pence ( $0.50 \times 5/100 \times 0.275 \times 100 = £0.69$ ). Note that the addition of a mixer does not affect the minimum price,
  - (h) the minimum price for a strong pint (568ml) of lager at 5% ABV would be £1.42 ( $0.50 \times 5/100 \times 0.568 \times 100 = £1.42$ ).

8. Inserted paragraph 6A(4) means that the Scottish Ministers are to specify the minimum price per unit by order. Section 1(4) amends section 146 of the 2005 Act to provide that any such order is subject to the affirmative procedure<sup>1</sup>.
9. [Section 1\(3\)](#) makes identical provision in respect of conditions in occasional licences granted under the 2005 Act.
10. Inserted paragraph 6A(5) and (6) sets out how the strength of alcohol is to be determined when calculating the minimum price of alcohol. “Strength” is defined in section 147(1) of the 2005 Act and is defined by reference to the [Alcoholic Liquor Duties Act 1979 \(c 4\)](#) which states that the alcoholic strength of any liquor is to be determined as a ratio of the volume of alcohol in the liquor to the volume of the liquor and expressed as a percentage. This is referred to as the ABV.
11. Pre-packaged drinks generally have to state on the label the drink’s alcoholic strength by volume. Various labelling regimes make this a requirement. For example, regulation 30 of the Food Labelling Regulations 1996 ([SI 1996/1499](#)) requires pre-packaged alcoholic drinks, other than EU controlled wine<sup>2</sup>, that have a strength of more than 1.2% to be marked or labelled with an indication of the drink’s alcoholic strength by volume to no more than one decimal place and expressed as a percentage. This is referred to as the “declared ABV”. Certain positive and negative tolerances are permitted (for example, beers of not more than 5.5% ABV have a tolerance of plus or minus 0.5%) and these are set out in Schedule 5 to the Regulations. These tolerances mean that it is possible for the strength of alcohol to be different to the declared ABV of that product. Where pre-packaged alcohol is required by certain labelling provisions to indicate a declared ABV it is the declared ABV that should be used in calculating the minimum price of the product rather than the actual strength of the product. Inserted paragraph 6A(6) provides that the Scottish Ministers will specify in an order which labelling provisions can be used for this purpose. The order will be subject to negative procedure<sup>3</sup>.
12. Where different alcohol drinks are mixed, for example in a cocktail, the declared ABV must be used for any alcohol to which relevant labelling provisions apply and the ABV for any other alcohol. The minimum price for each alcoholic component of the drink will need to be calculated and then added together to provide a minimum price for the whole drink. Any non-alcoholic drink added to the alcoholic products does not require to be included in the calculation as a minimum price does not apply to non-alcoholic drinks.
13. Where pre-mixed alcoholic drinks are sold, for example a gin and tonic, the relevant labelling provisions will apply to these and so they will be marked or labelled with the declared ABV and the declared ABV is to be used in order to determine the minimum price of the drink.

## ***Section 2 – Duration of minimum pricing provisions***

14. This section allows for minimum pricing to run for 6 years from the date it is commenced and allows for the Scottish Ministers to make an order after the end of 5 years to allow minimum pricing to continue to have effect. The Scottish Ministers cannot make an order extending the effect of the minimum pricing provisions until 5 years from when they are fully in force. If no such order is made by the end of year 6 minimum pricing will cease to have effect.

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<sup>1</sup> This term is defined in section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (ILRA). See also paragraph 5 of schedule 3 to the ILRA.

<sup>2</sup> EU controlled wine is defined as wine, grape must, sparkling wine, aerated sparkling wine, liqueur wine, semi-sparkling wine and aerated semi-sparkling wine, Food Labelling Regulations 1996.

<sup>3</sup> Negative procedure is defined in section 28 of ILRA.

15. The minimum pricing provisions are the provisions in section 1 of the Act that provide that alcohol must not be sold on licensed premises at a price below its minimum price. This definition also applies to section 3.
16. Subsection (4) sets out that the order that the Scottish Ministers can make after the end of 5 years to allow minimum pricing to continue to have effect is subject to the affirmative procedure.

### ***Section 3 - Report on operation and effect of minimum pricing provisions***

17. This section imposes a requirement on the Scottish Ministers to prepare a report on the impact of the minimum pricing provisions. This report is to be prepared as soon as practicable after the minimum pricing provisions have been fully in force for 5 years. The report must be laid before the Scottish Parliament and then published as soon as practicable. In considering the impact of the minimum pricing provisions, the report must include information as to their effect on:
  - the licensing objectives as set out in section 4 of the Licensing (Scotland) Act 2005:
    - preventing crime and disorder,
    - securing public safety,
    - preventing public nuisance,
    - protecting and improving public health, and
    - protecting children from harm;
  - specific groups of people selected by the Scottish Ministers;
  - holders of premises licences;
  - producers of alcohol.
18. The Scottish Ministers may refer to a list of characteristics when determining which specific groups should be focused on in the report. The list, as follows, is not exhaustive
  - age;
  - gender;
  - social and economic deprivation; and
  - alcohol consumption.
19. In preparing the report, the Scottish Ministers must consult persons with functions relating to:
  - health;
  - prevention of crime;
  - education;
  - social work;
  - children and young people.
20. The Scottish Ministers must also consult:
  - persons representative of the interests of the interests of holders of premises licences granted under the 2005 Act;
  - persons representative of the interests of producers of alcohol.

*These notes relate to the Alcohol (Minimum Pricing) (Scotland) Act 2012 (asp 4) which received Royal Assent on 29 June 2012*

21. In addition, the Scottish Ministers may consult any other persons they consider appropriate.

***Section 4 – Repeal of section 1 of Alcohol etc. (Scotland) Act 2010***

22. Section 1 of the Alcohol etc. (Scotland) Act 2010 (the “Alcohol Act”) has no practical effect as it makes provision for the expiry of amendments made by a section that is not contained in the Act. Section 4, therefore, repeals section 1 of the Alcohol Act.