

Guidance on the Implementation of Minimum Pricing for Alcohol



For sellers of alcohol and
enforcement authorities in Scotland

April 2018



Scottish Government
Riaghaltas na h-Alba
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Introduction

Overview: implementation of minimum pricing for alcohol

1. Minimum pricing is a key measure in the Scottish Government's alcohol strategy, and will set a price below which alcohol cannot be sold¹. Alcoholic drinks which are priced at less than the minimum price per unit at the date of implementation (1st May 2018) will need to increase. In the UK, a unit is 10 millilitres (8g) of pure alcohol.
2. The Scottish Government is introducing minimum pricing because there is lots of evidence to show that the more we drink, the greater the harm we suffer. The whole of Scotland is affected by harm that results from alcohol. Drinking too much alcohol causes illness, or even early death, affecting both the drinker and their family.
3. There is also lots of evidence to show that, as alcohol becomes more affordable, drinking increases, and as drinking increases so does harm. Alcohol is 60% more affordable than it was in 1980, which is why we need to take action to tackle low cost, strong alcohol. It is this kind of alcohol that tends to be drunk by heavier drinkers. One of the best ways to reduce the amount of low cost, strong alcohol drunk by people in any country is to make it less affordable. Making alcohol less affordable is a key action recommended by the World Health Organization to reduce alcohol-related harm.
4. A public consultation on the draft Scottish Statutory Instrument proposing a minimum unit price of 50p was undertaken from 1st December 2017 to 26th January 2018. Out of the total number of responses of 130, 70 responded to the proposed price directly. Of these 70 (48 organisations; 22 individuals), 52 (74.3%) indicated that they are in favour of the 50p minimum unit price. Scottish Ministers have confirmed that a minimum price of 50p per unit is what they have proposed to the Scottish Parliament be introduced from 1st May 2018.

¹ Alcohol (Minimum Pricing) (Scotland) Act 2012 (2012 Act), <http://www.legislation.gov.uk/asp/2012/4/contents> ; Licensing (Scotland) Act 2005 (2005 Act), <http://www.legislation.gov.uk/asp/2005/16/contents>

Guidance

5. This guidance provides a reference for sellers of alcohol, Licensing Boards and Licensing Standards Officers (LSOs) in Scotland for the calculation, implementation, and enforcement of minimum pricing. Information specifically for convenience store retailers is available from the [Scottish Grocers Federation Guidance on Minimum Unit Pricing for Retailers](#)² and specifically for wholesalers from the [Scottish Wholesale Association Guidance Note on Minimum Unit Pricing and Licensing](#)³.

6. Whilst this guidance deals with many of the more common issues arising, it cannot cover every scenario. 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. It may be that legal advice would need to be sought. It is ultimately the retailer's responsibility to be able to demonstrate that minimum pricing has been complied with.

7. The views expressed in this guidance do not bind Licensing Boards or the courts. The correct interpretation of legislation is, ultimately, a matter for the courts.

8. Following consideration of the Scottish Parliament process, it is intended minimum pricing will come into force on 1st May 2018. There will be no period of grace allowed for the implementation of minimum pricing. Frequently Asked Questions can be found at Annex A.

If you have a query which you consider has not been addressed in this document, please email mup@gov.scot.

Who minimum pricing applies to

9. Minimum pricing is a new mandatory condition of a premises⁴ and occasional⁵ licence in Scotland, so will apply to all businesses, organisations and persons required to hold a premises or occasional licence in Scotland. This includes both licensed premises that sell alcohol for consumption off the premises and consumption on the premises.

² <http://www.scottishshop.org.uk/images/SGF-MUP-Communications.pdf>

³ <http://www.scottishwholesale.co.uk/news/posts/2018/march/scottish-wholesale-association-guidance-note-for-wholesalers-on-minimum-unit-pricing-mup-and-licensing/>

⁴ Schedule 3 to the Licensing (Scotland) Act 2005 (2005 Act), <http://www.legislation.gov.uk/asp/2005/16/schedule/3>

⁵ Schedule 4, 2005 Act, <http://www.legislation.gov.uk/asp/2005/16/schedule/4>

10. A licence is required to sell alcohol⁶ to the public unless the premises are exempt as defined in section 124 of the Licensing (Scotland) Act 2005 (2005 Act). The sale of alcohol to the public without a licence, if the seller is not classed as exempt under section 124, is illegal.

11. Your local Licensing Board or Licensing Standards Officer (LSO) are likely to advise you of the new mandatory condition around the time of implementation. A new licence is not required.

⁶ Section 1, 2005 Act, <http://www.legislation.gov.uk/asp/2005/16/section/1>

Section 1: Implementing Minimum Pricing

Responsibility for ensuring compliance with the mandatory condition of a premises or occasional licence

1. Premises licence holders, premises managers and staff working on licensed premises have a responsibility to ensure the conditions of the premises licence, including minimum pricing, are being complied with at all times.
2. Failure to comply with a licence condition is a serious matter and can lead to a premises licence review; and ultimately to revocation⁷. Minimum pricing is potentially relevant to all five of the licensing objectives⁸.
3. In most cases it is hoped that these cases can be resolved in discussion between the LSO and the licensee without any further action being taken by the Licensing Board. Repeated breaches would be relevant in the LSO's consideration of what further steps to take. However, where the Licensing Board feels that further action is appropriate, it could instigate a review hearing to determine what action, if any, needed to be taken against the licensee concerned.

How to calculate the minimum price of a product

4. Minimum pricing will apply to the price of all alcoholic drinks. Each alcoholic drink will have a minimum price based on the amount of pure alcohol that it contains. All licensed premises will have to ensure that alcoholic drinks are not sold below their minimum price. The minimum price for an alcoholic drink is calculated as follows:

- price per unit of alcohol (£0.50) x strength of alcohol (ABV) x volume in litres⁹

⁷ Section 14 and sections 36-40, 2005 Act, <http://www.legislation.gov.uk/asp/2005/16/section/14> , <http://www.legislation.gov.uk/asp/2005/16/part/3/crossheading/review-of-premises-licence>

⁸ Section 4, 2005 Act, <http://www.legislation.gov.uk/asp/2005/16/section/4>

⁹ This is a simplified calculation to that shown in the 2012 Act. The 2012 Act is in the format it is due to the ABV on the alcoholic container being expressed as a percentage.

5. The ABV to be used to calculate the minimum price is the ABV shown on labels on bottles and containers of alcohol. Most pre-packaged drinks are required to state on the label the drink's alcoholic strength by volume as set out in the Food Information (Scotland) Regulations 2014¹⁰. The guidance¹¹ to these Regulations states that the actual alcoholic strength by volume of beverages containing more than 1.2% by volume of alcohol must be shown on the label (by a figure to not more than one decimal place followed by '% vol'). This is referred to as the "declared ABV". It is this ABV which should be used in calculating the minimum price of the product.

6. 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.

7. The majority of alcoholic products show the number of units in the container on the label. This number is not to be used in the calculation of the minimum price as it may have been rounded. In order to ensure the calculation of the minimum price is accurate, the formula on page 4 should be used.

Worked examples using a minimum unit price of 50 pence:

A 700ml bottle of spirits with an ABV of 37.5% would have a minimum price of:

- $£0.50 \times 37.5 \times 0.7 = \mathbf{£13.13}$

A 500ml super strength can of beer at 9% ABV would have a minimum price of:

- $£0.50 \times 9 \times 0.5 = \mathbf{£2.25}$

¹⁰ http://www.legislation.gov.uk/ssi/2014/312/pdfs/ssi_20140312_en.pdf

¹¹ <https://www.food.gov.uk/sites/default/files/fir-guidance2014.pdf>

A 750ml bottle of wine with an ABV of 12.5% would have a minimum price of:

- $\text{£}0.50 \times 12.5 \times 0.75 = \text{£}4.69$

A 2 litre bottle of strong cider at 6% ABV would have a minimum price of:

- $\text{£}0.50 \times 6 \times 2 = \text{£}6.00$

A 25ml measure of spirits at 37.5% ABV would have a minimum price of:

- $\text{£}0.50 \times 37.5 \times 0.025 = \text{£}0.47$

A 275ml pre-mixed spirit and mixer at 5% ABV would have a minimum price of:

- $\text{£}0.50 \times 5 \times 0.275 = \text{£}0.69$ (note that the addition of a mixer does not affect the minimum price)

A strong pint (568ml) of lager at 5% ABV would have a minimum price of:

- $\text{£}0.50 \times 5 \times 0.568 = \text{£}1.42$

8. Where the minimum price is not a whole number of pence, the price should always be rounded up to the nearest whole number. So, in the first worked example the minimum price of a 700ml bottle of spirits with an ABV of 37.5% is £13.13. The calculation ($\text{£}0.50 \times 37.5 \times 0.7$) actually produces a figure of £13.125. In order to comply with minimum pricing, the price must be rounded up to £13.13. Prices of £13.121, £13.122, £13.123, etc, would similarly all be rounded up to £13.13.

9. It is essential that the price indicated to customers is clear and unambiguous and does not mislead consumers. Trading Standards advise 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.

Online internet sales and telephone sales

10. Minimum pricing will apply to all sales of alcohol that take place within Scotland i.e. where the alcohol is despatched from within Scotland. Businesses will need to ensure that the online and telephone price of all alcoholic products are not sold below the minimum price, if despatched within Scotland.

11. If alcohol is purchased online or by telephone in Scotland and despatched from outwith Scotland (whether that be the rest of the UK or internationally), then minimum pricing will not apply.

12. 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.

Staff discount

13. 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.

Section 2: Implementation Issues

Updating of pricing systems

1. Businesses and others who sell alcohol will need to ensure that their pricing systems are accurate to prevent any sale of alcohol at below the minimum price. This would include ensuring that prices are accurate on shelves, barcodes, menus and price lists, where appropriate.
2. It is therefore recommended that businesses follow a series of steps to successfully implement the mandatory condition on the premises. A recommended series of steps can be found at Annex B.

Staff training

3. It is a mandatory requirement for all persons who are involved in the sale or serving of alcohol to receive staff training. Those providing staff training may wish to include material on minimum pricing within this training.

This guidance may be useful for this.

Changes to the minimum price

4. Any change to the minimum price per unit of alcohol at a future point would require a public consultation and a new Scottish Statutory Instrument to be considered by the Scottish Parliament. The Scottish Government has no current plans to change the minimum price beyond 1st May 2018.

Section 3: Promotions

1. In relation to promotions, the retailer should bear in mind that the mandatory licence conditions prohibit irresponsible drinks promotions for licensed premises. Irresponsible drinks promotions are defined in paragraph 8, Schedule 3 and paragraph 7, Schedule 4 of the 2005 Act¹². A “drinks promotion” means, in relation to any premises, any activity which promotes, or seeks to promote, the buying or consumption of any alcohol on the premises¹³.

2. 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.

3. As previously mentioned, it is ultimately the retailer’s responsibility to be able to demonstrate that minimum pricing has been complied with. Where there is any doubt as to whether a promotion (voucher, coupon) complies with minimum pricing, the safest option would be to not apply the promotion. This should also be considered where numerous vouchers and coupons are offered.

4. 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.

5. In the following example, the purchase relates to 1 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.

¹² <http://www.legislation.gov.uk/asp/2005/16/schedule/3> and <http://www.legislation.gov.uk/asp/2005/16/schedule/4>

¹³ Schedule 3, paragraph 7(5), 2005 Act, <http://www.legislation.gov.uk/asp/2005/16/schedule/3>, Schedule 4, paragraph 8(5), 2005 Act, <http://www.legislation.gov.uk/asp/2005/16/schedule/4>

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.

Reward cards

6. 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.

7. 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.

8. The price of an alcoholic product is considered to be the amount of money paid by the purchaser at the time of sale. Proxy benefits to the customer from the sale, for instance in the form of reward points, should not be considered as a part of the purchase price, as they have a cash value only in respect of subsequent sales, and not the present one. For instance, if a promotional voucher is offered to customers for reward points in exchange for buying a particular alcoholic product, the value of the points shall not be taken into account when calculating whether the minimum price has been charged.

Discount / money off coupons

9. 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.

10. 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.

11. 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.

Multibuy promotions with non-alcoholic products

12. 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", the lowest price of the promotion would be the minimum price that would apply to the alcohol if sold on its own.

Multipack products

13. Businesses can continue to sell bulk items of alcohol, such as multipacks of beer or ready-to-drink products. Businesses will need to ensure that multipacks are not sold below their minimum price. There are two ways of calculating the minimum price of a multipack depending on whether a single can is also sold. This is because there is already legislation which sets out the minimum price of packages containing more than one alcoholic product¹⁴, and where applicable that legislation has to be read alongside minimum unit pricing legislation. In practical terms, there is only a difference in the result of the calculation if the price per can has to be rounded. The following example illustrates this:

A business sells 24 x 440ml cans of **4.1%** ABV lager in one multipack **and also sells the same can individually**, the calculation for minimum pricing purposes is:

Minimum price of 1 can is:

$$£0.50 \times 4.1 \times 0.440 = \mathbf{£0.91}$$
 (price rounded up from £0.902)

So the minimum price for a 24 pack would be:

$$24 \times £0.91 = \mathbf{£21.84.}$$

A business sells 24 x 440ml cans of **4.1%** ABV lager in one multipack **and does not sell the same can individually**, the calculation for minimum pricing purposes is:

$$£0.50 \times 4.1 \times 0.440 \times 24 = \mathbf{£21.65.}$$

¹⁴ Schedule 3, paragraphs 6A and 6B of the 2005 Act; schedule 4, paragraphs 5A and 5B of the 2005 Act.

This next example does not result in a rounding per can:

A business sells 24 x 440ml cans of **4%** ABV lager in one multipack **and also sells the same can individually**, the calculation for minimum pricing purposes is:

Minimum price of 1 can is:

$$£0.50 \times 4 \times 0.440 = \mathbf{£0.88.}$$

So the minimum price for a 24 pack would be:

$$24 \times £0.88 = \mathbf{£21.12.}$$

A business sells 24 x 440ml cans of **4%** ABV lager in one multipack **and does not sell the same can individually**, the calculation for minimum pricing purposes is:

$$£0.50 \times 4 \times 0.440 \times 24 = \mathbf{£21.12.}$$

Inclusive drinks

14. Licensed premises can continue to run promotions in hotels and restaurants (provided they are not classed as irresponsible promotions¹⁵), for example a free bottle of champagne with a hotel room or a drink included in the price of a table meal. However the premises will need to ensure that the minimum price of the alcoholic product in question is included in the overall price of the promotion.

For example, where a pub offers a table meal with a pint (568ml) of 4% beer included in the price, the total cost of the table meal must not be below the minimum price of the beer (i.e. £1.14).

Complimentary drinks

15. 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.

¹⁵ Schedule 3, paragraph 8, <http://www.legislation.gov.uk/asp/2005/16/schedule/3>, schedule 4, paragraph 7, 2005 Act, <http://www.legislation.gov.uk/asp/2005/16/schedule/4>

Section 4: Enforcement

Licensing Standards Officers

1. Across Scotland, Licensing Standards Officers (LSOs) should strive to take a similar approach to the implementation of minimum pricing.
2. Their role is clearly defined in the Licensing (Scotland) Act 2005¹⁶, and is broadly separated into the following parts:
 - Provision of Guidance in relation to Alcohol Licensing to interested parties
and
 - Monitoring compliance with the conditions of a premises licence and other requirements of the Act.
3. The implementation of minimum pricing will result in an additional mandatory condition appearing on every premises licence in Scotland. That new condition will specify that alcohol must not be sold on the premises at a price which is less than the minimum price specified by the Scottish Ministers.
4. LSOs will be available at your Local Authority to explain what this condition will mean for your business, and to assist with guidance in relation to complying with the condition. However, the holders of premises licences should be aware that it is their responsibility to ensure alcohol is only sold on licensed premises in accordance with the terms of a premises licence.
5. LSOs will keep records of compliance and non-compliance in the course of their normal duties (see Annex C).

What to expect

6. It is likely that you may be contacted by your local LSO in the period prior to or shortly after implementation. This may take the form of an inspection visit.

¹⁶ <http://www.legislation.gov.uk/asp/2005/16/part/2/crossheading/licensing-standards-officers>

7. During an inspection visit the LSO 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.

8. You should bear in mind that clear pricing information is required to be provided to customers at all times in compliance with the Price Marking Order 2004¹⁷. Advice on these requirements is available from your local Trading Standards office.

9. LSOs have the power to enter and inspect licensed premises¹⁸ in order to establish compliance with the premises or occasional licence and any other requirements of the 2005 Act. The 2005 Act places a duty on licence holders and those managing and working on premises to co-operate with and assist the LSOs in the performance of their functions and to provide any information or documents requested by the LSO. If the licence holder fails to assist or obstructs the LSO, they would be guilty of an offence and would be liable to a fine not exceeding level 3 on the standard scale.

What do I need to do?

10. As a retailer holding a premises licence, you will have to check alcohol content and prices of each alcoholic product that you sell. You must do this prior to 1st May 2018.

11. 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 and the revised conditions of the premises licence.

There will be no period of grace allowed for the implementation of minimum pricing.

12. If you discover that any alcohol products that you sell are being offered for sale at a price that is less than the minimum price, then you must change the price or remove the product from sale.

¹⁷ <http://www.legislation.gov.uk/ukxi/2004/102/contents/made>

¹⁸ Section 15, 2005 Act, <http://www.legislation.gov.uk/asp/2005/16/section/15>

13. If changing the price, you should bear in mind the requirements of the mandatory condition in relation to “Price Variations”¹⁹ when making changes to the prices of an alcoholic product.

Consequences

14. Premises licence holders, premises managers and staff working on licensed premises have a responsibility to ensure the conditions of the premises licence are being complied with at all times.

15. Failure to comply with the conditions of a premises licence could have serious consequences for those responsible for the failure. Where the LSO considers there has been a breach of licence conditions, the LSO has the power to issue a notice to the licence holder²⁰ and if the notice is not complied with make a referral to the Licensing Board for review of the licence²¹.

16. Although the LSO is there to assist in securing compliance with the conditions, it is ultimately your responsibility to seek professional legal advice if you do not understand what is required.

Police Scotland

17. Police Scotland fully supports the introduction of minimum unit pricing of alcohol, and will continue to work closely with the licensing trade and relevant partners to fully support them throughout this period of implementation.

¹⁹ Schedule 3, paragraph 7 and 7A, <http://www.legislation.gov.uk/asp/2005/16/schedule/3> , Schedule 4, paragraph 6 and 6A, 2005 Act, <http://www.legislation.gov.uk/asp/2005/16/schedule/4>

²⁰ Section 14(2)(a)(i), 2005 Act, <http://www.legislation.gov.uk/asp/2005/16/section/14>

²¹ Section 14(2)(a)(ii), 2005 Act, <http://www.legislation.gov.uk/asp/2005/16/section/14>

Calculation of prices and updating

When will minimum pricing come into effect?

Subject to Parliamentary processes, the Scottish Government intends that minimum pricing will come into effect on 1st May 2018. There will be no period of grace allowed for the implementation of minimum pricing.

How will prices be rounded? For example, if the minimum price of a bottle of spirits (700ml) with an ABV of 37.5% is £13.125, would the price be £13.12, rounding down, even if this is below the minimum price?

No, prices should always be rounded up to the nearest pence, so the minimum price of the bottle of spirits would be £13.13.

What products will minimum pricing apply to?

Minimum pricing will apply to all alcoholic products²² with an ABV above 0.5%.

Labelling provisions only apply to alcoholic drinks with an ABV of over 1.2%. What ABV is to be used for alcoholic drinks at or below 1.2% ABV (and above 0.5% ABV)?

Although labelling provisions do not apply to alcoholic drinks between 0.5% and 1.2% ABV, low alcoholic drinks usually display the ABV, as the low alcoholic content is a key element in the appeal of the product.

Where an ABV is not on a label because the ABV is 1.2% or less, it is the responsibility of the licence holder to check the ABV that should be used in the calculation of the minimum price. This should be available from the producer. Where, in exceptional circumstances, the ABV is at or below 1.2% but the exact ABV is not able to be established, then a prudent approach should be taken and 1.2% should be used as the ABV for the calculation of the minimum price.

All alcohol above 1.2% ABV will show the ABV on the label as per the labelling requirements.

²² Section 2, 2005 Act, <http://www.legislation.gov.uk/asp/2005/16/section/2>

Will there be a change in labelling requirements ?

There is no requirement for producers to amend labels as part of the minimum pricing regulations.

Are retailers still able to sell pre-price marked products / flash packs?

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 the implementation date.

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. Trading Standards advise that any price which no longer applies, including those on pre-priced marked products / 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.

Another option is to stop selling any pre-price marked products / flash packs where the price is currently below the minimum price.

Does a delivery charge applied to an order affect the calculation for minimum pricing purposes?

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 licence holder's responsibility to ensure they are satisfied that the retail selling price of alcoholic products complies with minimum pricing.

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

Duty and VAT levied on alcohol is separate and distinct from minimum pricing. The Minimum Price per Unit Order will state the minimum level at which alcohol can be sold. 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 minimum price.

Does the Home Office ban on selling alcohol below the cost of duty plus VAT²³ apply in Scotland as well as minimum pricing?

No, the ban on selling alcohol below the cost of duty plus VAT does not apply in Scotland.

How might the proposed Deposit Return Scheme affect minimum pricing?

The minimum price is separate and distinct from the Scottish Government's proposals for a Deposit Return Scheme. As the Scheme is currently a proposal, it is not relevant for minimum pricing. The Alcohol (Minimum Pricing) (Scotland) Act 2012 states that alcohol must not be sold at a price below its minimum price.

How will minimum pricing affect retailers' obligations under the Grocery Suppliers' Code of Practice (GSCOP)²⁴?

The price agreed between the supplier and the retailer for products is outside the Code, as is the price which retailers charge consumers. However, if the retailer believes that they need to vary a supply agreement to comply with new legislation, section 3(2)(a) of part 3 of the Code allows retailers to vary supply agreements retroactively to allow for circumstances outside their control.

To comply with section 3(3) of part 3 of the Code, the retailer must give the supplier reasonable notice of any variation. A change in minimum price may be a situation to which this part of the Code could apply.

²³ <https://www.gov.uk/government/publications/banning-the-sale-of-alcohol-below-the-cost-of-duty-plus-vat-march-2015>

²⁴ <https://www.gov.uk/government/publications/groceries-supply-code-of-practice>

Application and enforcement

How will minimum pricing be applied and how will it be enforced?

As a mandatory condition of a premises or occasional licence, minimum pricing is capable of being enforced in the same way as any other mandatory condition of a licence.

LSOs are responsible for ensuring that licence holders comply with the licence conditions and other requirements under the 2005 Act.

What information will LSOs need in order to check that minimum pricing has been complied with?

LSOs will need to know the selling prices of alcoholic products in order to check that the price complies with minimum pricing. Retailers can 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 LSOs in this as the responsibility lies with the licence holder to comply with minimum pricing.

You should bear in mind that clear pricing information is required to be provided to customers at all times in compliance with the Price Marking Order 2004. Advice on these requirements is available from your local Trading Standards office.

Will enforcement be proactive or reactive?

This will be for individual LSOs to decide.

How does minimum pricing affect cross border sales?

Minimum pricing applies to businesses selling alcohol in Scotland i.e. the sellers hold a Scottish premises licence. Minimum pricing does not apply in England. 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 Scotland from licensed premises.

It is illegal, however, to sell alcohol to the public without a premises licence – whether purchased from Scotland or England. This sort of activity will be monitored as part of the impact of minimum pricing. Police Scotland are aware of the potential for illegal activity and will monitor this.

Pricing

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

Free drinks offered on an ad hoc or impromptu basis, for example as compensation for poor service, do not count as sales because the customer has not paid anything for the drink. This is different to, for instance, 'meal deals' where the drink is offered as part of a package of goods.

Where a receipt shows an alcoholic drink at zero pence, does this count as a sale?

On the assumption that the alcohol is part of a sale with other goods (as opposed to being given away free) for example, a free drink with a meal, then paragraph 6A(2) of schedule 3 (and paragraph 5A(2) of schedule 4) of the 2005 Act is relevant: "where alcohol is supplied together with other products or services for a single price, sub paragraph 1 (i.e. cannot sell alcohol below the minimum price) applies as if the alcohol were supplied on its own for that price."²⁵

The total price charged for the other goods / services has to be at least the minimum price of the alcohol provided.

Can gift cards or 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 minimum price.

Does minimum pricing prevent retailers / producers from offering free tasting samples of alcohol?

No, minimum pricing will not apply to alcohol being offered for free as a tasting sample, as the Licensing (Scotland) Act 2005 applies only to the sale of alcohol.

²⁵ 2012 Act, <http://www.legislation.gov.uk/asp/2012/4/section/1>

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

On the assumption that the alcohol is part of a sale with other goods (as opposed to being given away free) for example, a free drink with a meal, then paragraph 6A(2) of schedule 3 (and paragraph 5A(2) of schedule 4) of the 2005 Act is relevant: “where alcohol is supplied together with other products or services for a single price, sub paragraph 1 (i.e. cannot sell alcohol below the minimum price) applies as if the alcohol were supplied on its own for that price.”

The total price charged for the other goods / services has to be at least the minimum price of the alcohol provided.

How does minimum pricing affect retailers’ / producers’ ability to charge for tasting events?

Minimum pricing applies to the sale of alcohol. Whether minimum pricing applies to a tasting event may depend on how the tasting event is set up. If a price is paid for a ticket to attend the tasting event, it is likely that the samples being tasted will be offered free. In this case, minimum pricing will not apply as there is no sale of alcohol. Where there is any doubt as to whether minimum pricing applies, legal advice should be sought.

How does minimum pricing affect producers’ ability to charge for distillery tours?

Minimum pricing applies to the sale of alcohol. Whether minimum pricing applies to alcohol served as part of a distillery tour may depend on how the distillery tour is set up. Distillery tours tend to operate on the basis of a charge for the tour itself with free samples offered. In this case, minimum pricing will not apply as there is no sale of alcohol. Where there is any doubt as to whether minimum pricing applies, legal advice should be sought.

If a retailer raffles a hamper which includes alcohol, does minimum pricing affect the price of the ticket?

If the alcoholic product included in a hamper has been provided free of charge, then it is not a sale and so minimum pricing would not apply. A similar situation would be where alcohol (in a sealed container for consumption off the premises) is offered as a prize.

A retailer operates a savings scheme whereby if a customer saves a certain amount of money, the retailer tops this amount up. So, 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?

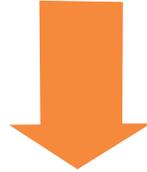
Where a partial refund is made subsequent to the purchase due to faulty goods, the buyer may be entitled to a refund as a matter of law, and this is acceptable as a defence should the refund take the price below the minimum price. If the seller wishes to go beyond the legal requirement for a refund, 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.

How does minimum pricing affect the sale of damaged stock?

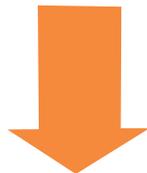
Damaged stock can still be sold at a reduced price provided the reduced price is not below the minimum price. Minimum pricing is a mandatory condition of a premises licence and stipulates that alcohol must not be sold on the premises at a price below its minimum price. There are no exceptions to this.

The following steps are advised in order to ensure that businesses are not selling their alcohol products below the minimum price.

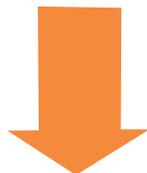
Calculate the minimum price of an alcoholic product



Establish policy as to what (if any) discounts can be applied in store and 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, amend the price on:

- price tags and / or pricing displays on shop shelves
- menus
- promotional posters, flyers and other materials
- websites

Data collected by LSOs will contribute to the evaluation of the impact of minimum pricing for alcohol.

The Scottish Government has tasked NHS Health Scotland, under the Monitoring and Evaluating Scotland's Alcohol Strategy (MESAS) work programme, with leading an independent evaluation of minimum unit pricing and producing the review report. The evaluation will consider the impact of minimum unit pricing on alcohol producers and licence holders and the impact on the licensing objectives in the Licensing (Scotland) Act 2005.

You can read more about the evaluation plan online at:

www.healthscotland.scot/health-topics/alcohol/evaluation-of-minimum-unit-pricing.

Within the suite of studies, to complement analysis of the national licensing statistics, LSO operational data will provide descriptive information on compliance and failures to understand to what extent minimum unit pricing has been implemented successfully in licensed premises. All data will be anonymised.

For further details please contact the Project Lead: Elinor Dickie, Public Health Intelligence Adviser, email: elinor.dickie@nhs.net.



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