

IMPROVING
SCOTLAND'S
HEALTH



Wholesalers: Minimum Unit Pricing of Alcohol and Sales to Trade

Consultation Report: Analysis of responses



Scottish Government
Riaghaltas na h-Alba
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1. Executive summary

1.1 The purpose of this report is to provide a summary to the analysis of the responses to the Scottish Government's consultation on clarifying the position for certain wholesalers as regards compliance with Minimum Unit Pricing, and to provide a response from the Scottish Government. The consultation and responses can be accessed on the Scottish Government Citizen Space portal – see paragraph 3.4.

1.2 A total of 11 responses were received – five from organisations and six from individuals. Of the 11 responses, 10 (91%) commented on the Scottish Government's proposed clarification for wholesalers. Of these 10, five were responses from organisations and five were from individuals.

2. Introduction

2.1 Minimum Unit Pricing was introduced on 1st May 2018. The relevant legislation is the Alcohol (Minimum Pricing) (Scotland) Act 2012 (“the 2012 Act”) which amended the Licensing (Scotland) Act 2005 (“the 2005 Act”), and 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 2012 Act also mentioned the 2005 Act to give the Scottish Ministers the power to specify by order the minimum price per unit. The Alcohol (Minimum Price per Unit) (Scotland) Order 2018 (“the 2018 Order”) came into force on 1st May 2018 and set the minimum price at 50 pence per unit of alcohol.

2.2 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 2005 Act 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 2018¹ in connection with the scrutiny of the 2018 Order.

2.3 The issue which arose is that there are differing views within the licensing community on whether a wholesaler with a premises licence should apply Minimum Unit Pricing to sales to trade or whether sales to trade from those licensed premises 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 sales to trade. The policy is that only sales of alcohol which are not sales to trade should be subject to the minimum price.

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

2.4 The Scottish Government considers a legislative change is helpful to clarify the position for certain wholesalers as regards compliance with Minimum Unit Pricing. The Scottish Ministers ran a public consultation from 3 August to 26 October 2018 on the text of the proposed draft amendment contained in a draft amending instrument. The consultation asked for comments on the proposed draft amendment to the 2018 Order which set the Minimum Unit Price at 50 pence. The consultation was carried out through the Citizen Space online portal with one response received separately by email.

2.5 This report sets out a summary of the responses received to the consultation and provides an analysis of these. The findings presented summarise the views of those who participated in the consultation. Given that this was a self-selected group, these findings should not be seen as representing the views of the wider population. This report aims to provide a balanced account of the views submitted by respondents. However, the findings only provide a relatively high-level summary of a range of more detailed responses.

3. Analysis

3.1 There was only one open ended question in this consultation. Quantitative analysis of the responses was undertaken using frequency analysis. This categorised participants by sector/individual and their support of the suggested change. The results are presented in the report. Qualitative, thematic analysis was used on all responses to identify key themes in response to the question.

Demographics

3.2 A total of 11 written responses were received as part of the consultation. Of these 11 responses, five (45%) were from organisations and six (55%) were from individuals. The respondents were asked to comment on the proposed draft amendments to the 2018 Order. The 2018 Order set the Minimum Unit Price at 50 pence. Article 2 of the draft amending instrument proposes to amend the 2018 Order as follows:

“(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;”.

(3) 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.”.

3.3 The table below summarises the type of respondent to the consultation.

Table 1.1 Type of respondent to the consultation

Type of response	Number	Percentage (%)
Third Sector Health Body	1	9
Public Sector Body (non-Health)	1	9
Retailer	2	18
Other	1	9
Individual	6	55
Total	11	100

Responses to the proposed method

- Eight (73%) of the respondents who commented on the proposed clarification for wholesalers were in agreement with the proposed method.
- One (9%) of the respondents who commented on the proposed clarification for wholesalers was not in agreement with the proposed method, and considered the method should be more restrictive in terms of the definition of sales to trade.
- One (9%) of the respondents who commented on the proposed clarification for wholesalers did not consider the method proposed would achieve the required clarification and that this would only be achieved through primary legislation.
- One (9%) of the respondents did not directly address the question asked, but commented on Minimum Unit Pricing.

Other comments

3.4 Some of the respondents to the consultation mentioned specific queries, issues or concerns that they had with the proposed method of clarifying Minimum Unit Pricing and sales to trade. These were not directly related to the proposed Scottish Statutory Instrument but are reported on below for completeness.

- One respondent welcomed confirmation of dual pricing being permissible within the licensing regime set out by the 2005 Act.
- One respondent approved the requirement for dual pricing.
- Two respondents called for a clarification of the definition of 'sales to trade'.
- One respondent considered that the 2005 Act does not provide powers under which the proposed secondary legislation can be made, and that the best way to resolve the issue is to make a change to relevant primary legislation.

- One respondent called for the consolidation of the 2005 Act.
- One respondent commented that increasing the price would not help those with an addiction.
- One respondent called for Minimum Unit Pricing to be abolished.
- One respondent queried how a wholesaler would know they were selling to trade.
- One respondent commented that they considered the timescale for implementation of Minimum Unit Pricing was too short.

How to access background or source data

The data collected for this social research publication:

are available via the Citizen Space online portal at:

<https://consult.gov.scot/alcohol-policy/wholesalers-minimum-unit-pricing/>

4. Conclusion and Scottish Government response

4.1 The consultation invited comments on the Scottish Government's proposed method of clarifying the position for certain wholesalers as regards compliance with Minimum Unit Pricing. A total of 11 responses were received – five from organisations and six from individuals. Of the 11 responses, 10 (91%) commented on the Scottish Government's proposed clarification for wholesalers. Of these 10, five were responses from organisations and five were from individuals.

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

4.3 The Scottish Government considers a legislative change is helpful to clarify the position for certain wholesalers as regards compliance with Minimum Unit Pricing. The consultation asked for comments on the draft amendment to the 2018 Order which set the Minimum Unit Price at 50 pence.

4.4 Taking into account the preference to clarify the legislation, the method of achieving this, and the responses to this consultation, the Scottish Government concludes that the proposed method of clarifying the position for certain wholesalers as regards compliance with Minimum Unit Pricing is appropriate and is justified in order to achieve the necessary clarification. This includes using an order (secondary legislation) to achieve this rather than primary legislation, and also including the definition of "sales to trade" in the order rather than referencing the definition of "selling alcohol or other goods to trade" in section 147(2) of the 2005 Act.

4.5 One respondent made some technical suggestions in relation to the drafting of the draft amending Order. The Scottish Government has considered these suggestions and concluded that these are not required.

4.6 The Scottish Government proposes a minor adjustment to the wording of the draft Order consulted on, in order to more closely mirror the definition in the 2005 Act. The relevant text of the draft amending Order consulted on is Article 2, which stated:

“(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;”.

4.7 The proposed minor adjustment removes the second reference to 'to trade'. The minor adjustment means that the text becomes:

“(2) In article 1(2) (interpretation), before the definition of “schedule 3”, insert—

““sales to trade” means the selling of alcohol to a person for the purposes of the person's trade;”.



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This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
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ISBN: 978-1-83960-160-6 (web only)

Published by The Scottish Government, January 2020

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS635022 (01/20)

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