



BRIEFING

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Minimum alcohol pricing planned in Wales

Introduction

The Welsh Government has announced that it will introduce a new law that will help set a minimum price for selling alcohol in Wales. The Public Health (Minimum Price for Alcohol) (Wales) Bill (“the Bill”) was introduced before the Welsh assembly on 23 October 2017 by the Public Health Minister, Rebecca Evans.

The Bill will introduce a minimum price for alcohol and make it an offence for alcohol to be supplied below that price. In particular, the Bill will make it an offence for retailers to sell strong alcohol at low prices, by proposing a formula for calculating the minimum price using the percentage strength of the alcohol and its volume. The Welsh Government has not confirmed what the new pricing will be, but the level of the minimum unit price (“MUP”) would be specified in regulations produced by Welsh Ministers.

The Welsh Government has explained its reasoning for this Bill. It says that in 2013, there were 467 alcohol-related deaths in Wales, and the estimated cost to the NHS in Wales was £109 million a year just for hospital admissions. It is intended that this legislation will help the Welsh Government to improve public health, reduce the amount of people accessing health services due to alcohol-related incidents, and tackle extreme drinking behaviour.

What is proposed by the Bill?

The Bill proposes:

- The formula for calculating the MUP using the Alcohol by Volume measure;
- Powers for Welsh Ministers to make subordinate legislation to set the MUP for alcohol sold or supplied in Wales; and
- A duty on local authorities to enforce the MUP and powers to prosecute; and provision for powers of entry for Authorised Officer (AO), an offence of obstructing an AO, and the power to issue Fixed Penalty Notices.

Offences under the Bill

Under the Bill:

- It will be an offence for a person who is an alcohol retailer of a qualifying premise in Wales to (a) supply a serving of alcohol, or (b) authorise the supply of a serving of alcohol, at a selling price below the relevant minimum price.
- A possible defence for a person charged with this offence would be to show that they took reasonable steps and exercised due diligence to avoid committing the offence.

- A person guilty of the offence will be liable on summary conviction to a fine not exceeding £1,000.

Research behind the Bill

The Welsh Government commissioned the Sheffield Alcohol Research Group at Sheffield University (the "SAR Group") to study the potential impact to Wales of a range of alcohol pricing policies. A report called, 'Model-based appraisal of minimum unit pricing for alcohol in Wales' was published on 8 December 2014.

The MUP formula has been developed based on the research conducted by the SAR Group. In summary, the research showed the benefits of introducing a MUP for alcohol, including:

- MUP policies would be effective in reducing consumption, alcohol-related harms including deaths, hospital admissions, crimes and workplace absences and associated costs.
- MUP would have a small impact on 'moderate drinkers', with the most substantial effects being experienced by 'high-risk drinkers'.
- MUP policies would have a larger impact on those in poverty, particularly 'high risk drinkers', than those not in poverty. However, those in poverty also experience larger relative gains in health and the 'high risk drinkers' are estimated to marginally reduce their spending due to their reduced drinking under higher MUP levels.
- Introducing an MUP of 50p (for example) is estimated at being worth £882m to the Welsh economy in reductions in illness, crime and workplace absence over 20 years.

Could there be potential issues enforcing the new law?

The draft Bill was published for consultation on 15 July 2015, and the process closed on 11 December 2015. The consultation results showed that:

- **68% of respondents were for the MUP proposals.** This included respondents from health related organisations, universities and academics, charities and the voluntary sector.
- **20% of respondents were not supportive of the MUP proposals.** The respondents who opposed mainly came from the alcohol and manufacturing industry.
- **12% of respondents were not for or against the proposals.** Respondents in this category felt further research was needed or that the MUP could work in connection with other steps.

The Welsh Government is optimistic and hopes that the new legislation on alcohol pricing will become law by summer 2018. However, there could be an issue bringing the legislation to pass.

The Scottish Parliament has been attempting to introduce similar legislation on minimum alcohol pricing since 2009. The relevant legislation was passed by Scottish Parliament on 24 May 2012. However, the law is still not in force pending the outcome of litigation.

The new Scottish Bill stated that retailers could not sell alcohol below a minimum price of 50p per unit. Under the plans, the cheapest bottle of wine would be £4.69, a 4 cans pack of beer (each can of 500ml) would cost at least £4 and a bottle of whisky could not be sold for less than £14. The proposals came under attack from five wine producing nations: France, Italy, Spain, Bulgaria and Portugal. These countries were concerned about the increase of the cost of producing their

products in Scotland. Moreover, they were concerned that if the Scottish Government successfully passed the legislation, then it would set a precedent that the rest of the UK would follow.

However, it was the Scotch Whisky Association (SWA), which successfully launched a legal challenge to the new law in the Scottish Courts. The SWA says that minimum pricing would breach EU trade laws, be ineffective in tackling alcohol abuse, penalise responsible and less affluent drinkers, and negatively impact the export industry in Scotland.

Status of the minimum alcohol price case in Scotland

In the case of Scotch Whisky Association v Lord Advocate ("the SWA Case"), at the Court of Session (the Supreme Civil Court in Scotland) entered judgement on the case on 21 October 2016. The Court of Session backed the Scottish Government's plans to introduce a minimum price for alcohol in Scotland and ruled against the Scotch Whisky Association.

The SWA requested leave to appeal to the Supreme Court in September 2016 and permission was granted in December 2016. The Supreme Court hearing took place on 24 and 25 July 2017. The seven justices (court president Lord Neuberger, Lady Hale, Lord Mance, Lord Kerr, Lord Sumption, Lord Reed and Lord Hodge) are expected to take time to consider their decision and will give their judgment at a later date. This is the final stage of the appeal process for the SWA.

As of the date of this Briefing, 5 years after the legislation passed in Scotland, the minimum alcohol legislation in Scotland is still not in force, and no policy has been implemented in Scotland in relation to minimum alcohol levels.

What happens next?

- The Welsh Bill has been laid before the Welsh Parliament on 23 October 2017 and is currently at stage 1 out of 4 stages.
- The Supreme Court will enter judgment on the SWA case in relation to whether the Scottish Government's plan to introduce a minimum price for alcohol in Scotland is a breach of EU law. This is the final stage of appeal for the Scottish alcohol retailers who challenge the proposal.

Conclusion

Based on how challenging it has been for the Scottish Government to enforce the MUP law in Scotland, it will be interesting to see if any similar challenges are raised by the alcohol manufacturing industry in Wales. It is clear from the Welsh consultation on the new law that 20% of respondents, mainly from the alcohol sector oppose the introduction of the new law. So it would not be surprising if the Welsh and Scottish Governments, and the Welsh and Scottish alcohol retailers are all eagerly awaiting the Supreme Court's judgment in the SWA case.

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