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

[DRAFT]

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

[DRAFT]

An Act of the National Assembly for Wales to make provision about the minimum price for which alcohol is to be supplied in Wales by certain persons; and for connected purposes.

Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:

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Minimum price for alcohol

1 Minimum price for alcohol

- (1) The applicable minimum price for alcohol is to be calculated, for the purposes of section 2 of this Act, by applying the following formula –

$$M \times S \times V$$

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where –

- (a) M is whatever price is specified in regulations as being the minimum unit price for the purposes of this Act, expressed in pounds sterling,
- (b) S is the percentage strength of the alcohol, expressed as a cardinal number,
- (c) V is the volume of the alcohol, expressed in litres.

15

- (2) Where but for this subsection the applicable minimum price for alcohol, as calculated by applying the formula above, would not be a whole number of pennies, it is to be rounded up to the nearest whole penny.

- (3) For example, in the case of a bottle of wine, where –

(a) S (percentage strength of the wine) is 12.5%, and

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(b) V (volume of the wine) is 75 centilitres,

and taking M (specified minimum unit price) for the purposes of this example to be £0.50, the applicable minimum price for the wine would be calculated as –

$$£0.50 \times 12.5 \times 0.75 = £4.69.$$

Offences

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2 Offences

- (1) It is an offence for a person who is an alcohol retailer –

(a) to supply a serving of alcohol from qualifying premises in Wales, or

(b) to authorise the supply of a serving of alcohol from qualifying premises in Wales,

at a selling price below the applicable minimum price for the alcohol in that serving.

- (2) A serving of alcohol, for the purposes of subsection (1), is the amount of alcohol that is contained in any receptacle.
- (3) It is a defence for a person charged with an offence under this section to show that the person took reasonable steps and exercised due diligence to avoid committing it.
- 5 (4) If a person charged with an offence under this section relies on the defence in subsection (3), and evidence is adduced that is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- 10 (5) It is immaterial for the purposes of subsection (1)(b) whether the authorisation takes place in Wales or elsewhere.
- (6) For the purposes of this section, “selling price”, in relation to alcohol, means its price including VAT and all other taxes.

3 Meaning of supply of alcohol and qualifying premises

- (1) In this Act, the supply of alcohol means –
- 15 (a) the sale by retail of alcohol to a person in Wales, or
- (b) the supply of alcohol by or on behalf of a club to a member of the club who is in Wales, or to a person in Wales to the order of a member of the club,
- and related expressions are to be construed accordingly.
- (2) Premises are qualifying premises for the purposes of this Act if –
- 20 (a) a premises licence granted under Part 3 of the Licensing Act 2003 (c.17) authorises the premises to be used for the supply of alcohol,
- (b) a club premises certificate granted under Part 4 of the Licensing Act 2003 (c.17) certifies that the premises may be used for the supply of alcohol, or
- 25 (c) the supply of alcohol on or from the premises is a permitted temporary activity for the purposes of Part 5 of the Licensing Act 2003 (c.17).

4 Meaning of alcohol retailer

- (1) In relation to the supply of alcohol from premises that are qualifying premises by virtue of section 3(2)(a), each of the following is to be treated as an alcohol retailer for the purposes of this Act –
- 30 (a) an individual to whom a personal licence has been granted under Part 6 of the Licensing Act 2003 (c.17) that authorises the individual to supply alcohol, or authorise the supply of alcohol, in accordance with the premises licence concerned;
- (b) the individual who is the designated premises supervisor for the purposes of the
- 35 Licensing Act 2003 (c.17).
- (2) In relation to the supply of alcohol from premises that are qualifying premises by virtue of section 3(2)(b), the person who is the holder of the club premises certificate concerned is to be treated as an alcohol retailer for the purposes of this Act.

- (3) In relation to the supply of alcohol from premises that are qualifying premises by virtue of section 3(2)(c), the individual who is the premises user for the purposes of Part 5 of the Licensing Act 2003 (c.17) is to be treated as an alcohol retailer for the purposes of this Act.

5 Supply of alcohol and other goods and services for a single price

- 5 (1) Where alcohol is supplied together with goods other than alcohol, or services, for a single price –
- (a) if, but for this subsection, the alcohol supplied would be treated as being more than one serving, it is to be treated for the purposes of this Act as being one serving;
- 10 (b) the alcohol is to be treated for the purposes of this Act as being supplied at that single price.
- (2) Where alcohol is supplied for a price fixed by reference to the supply of goods other than alcohol, or services (a “fixed price”) –
- 15 (a) if, but for this subsection, the alcohol supplied would be treated as being more than one serving, it is to be treated for the purposes of this Act as being one serving;
- (b) the alcohol is to be treated for the purposes of this Act as being supplied at a price that is equal to the aggregate of both the fixed price, and the price (if any) for which the other goods and services are supplied.
- 20 (3) Where alcohol is supplied in a composite alcohol transaction, for the purposes of this Act –
- (a) the aggregate amount of all of the alcohol supplied in that transaction is to be treated as being a serving of alcohol, and
- (b) the price at which the aggregate amount of all the alcohol supplied in that transaction is supplied is to be treated as being its selling price.
- 25 (4) Alcohol is supplied in a composite alcohol transaction, for the purposes of this section, if –
- (a) it is supplied free of charge by reference to the supply of alcohol, or other alcohol is supplied free of charge by reference to its supply,
- 30 (b) it is supplied at a price fixed by reference to the supply of other alcohol, or other alcohol is supplied at a price fixed by reference to its supply, or
- (c) it is supplied, together with other alcohol, for a fixed price.
- (5) The references in subsection (1) and (2) to alcohol being supplied together with other goods and services for a single price include references to transactions where alcohol is provided together with other goods and services, and –
- 35 (a) the other goods or services are supplied at a price, but
- (b) the alcohol is described as being supplied free of charge.

*Penalties***6 Penalties**

A person guilty of an offence under section 2 is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

7 Fixed penalties

- (1) 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.
- (2) A fixed penalty notice is a notice offering a person the opportunity to discharge any liability to conviction for the offence by paying a fixed penalty.
- (3) In the case of an offence that an authorised officer has reason to believe has been committed by an unincorporated association, the reference in subsection (1) to the person to whom a fixed penalty notice may be given is to be treated as a reference to the association.
- (4) For further provision about fixed penalties, see the Schedule.
- (5) For the meaning of "authorised officer", see section 9.

*Enforcement***8 Enforcement action by local authorities**

- (1) A local authority may –
 - (a) bring prosecutions in respect of offences in its area under section 2;
 - (b) investigate complaints in respect of alleged offences in its area under section 2;
 - (c) take any other steps with a view to reducing the incidence in its area of offences under section 2.
- (2) A local authority must –
 - (a) consider, at least once in every period of twelve months, the extent to which it is appropriate for the authority to carry out in its area a programme of enforcement action in relation to section 2, and
 - (b) to the extent that it considers it appropriate to do so, carry out such a programme.
- (3) In complying with subsection (2), an authority must in particular have regard to the following objectives –
 - (a) improving public health;
 - (b) protecting children from harm.
- (4) For the purposes of subsection (2), a programme of enforcement action in relation to section 2 is a programme involving the taking of all or any of the steps referred to in subsection (1).

9 Authorised officers

References in this Act to an authorised officer of a local authority are to any person authorised by the authority for the purposes of this Act.

10 Power to make test purchases

An authorised officer of a local authority may make such purchases and arrangements, and secure the provision of such services, as the officer considers necessary for the purpose of the exercise of the local authority's functions under or by virtue of this Act.

11 Powers of entry

(1) An authorised officer of a local authority may enter premises in Wales at any reasonable time if the officer –

- (a) has reasonable grounds for believing that an offence under section 2 has been committed in the area of the local authority, and
- (b) considers it necessary to enter the premises for the purpose of ascertaining whether such an offence has been committed.

(2) But this does not apply in relation to premises used wholly or mainly as a dwelling.

(3) An authorised officer may not enter premises by force under this section.

(4) An authorised officer must, if asked to do so, before entering premises under this section show evidence of the authorisation referred to in section 9.

12 Warrant to enter a dwelling

(1) A justice of the peace may exercise the power in subsection (2) in relation to premises in Wales used wholly or mainly as a dwelling if satisfied on sworn information in writing –

- (a) that there are reasonable grounds for believing that an offence under section 2 has been committed in the area of a local authority, and
- (b) that it is necessary to enter the premises for the purpose of ascertaining whether such an offence has been committed.

(2) The justice may by warrant signed by the justice authorise an authorised officer of the local authority to enter the premises, if need be by force.

(3) The warrant continues in force until the end of the period of 28 days beginning with the date on which the justice signs it.

13 Warrant to enter other premises

(1) A justice of the peace may exercise the power in subsection (4) in relation to premises in Wales other than premises used wholly or mainly as a dwelling if satisfied on sworn information in writing –

- (a) that there are reasonable grounds for believing that an offence under section 2 has been committed in the area of a local authority,
- (b) that it is necessary to enter the premises for the purpose of ascertaining whether such an offence has been committed, and
- (c) that a requirement set out in subsection (2) or (3) is met.

(2) The requirement is that –

- (a) a request to enter the premises has been, or is likely to be, refused, and
- (b) notice of intention to apply for a warrant under this section has been given to the occupier or a person who reasonably appears to the local authority to be concerned in the management of the premises.

(3) The requirement is that requesting to enter the premises, or the giving of notice of intention to apply for a warrant under this section, is likely to defeat the purpose of the entry.

(4) The justice may by warrant signed by the justice authorise an authorised officer of the local authority to enter the premises, if need be by force.

(5) The warrant continues in force until the end of the period of 28 days beginning with the date on which the justice signs it.

14 Supplementary provision about powers of entry

(1) An authorised officer of a local authority entering premises under section 11, or by virtue of a warrant issued under section 12 or 13, may take such other persons and such equipment as the officer considers appropriate.

(2) If premises that an authorised officer is authorised to enter by a warrant under section 12 or 13 are unoccupied, or if the occupier is temporarily absent, then on leaving the premises the officer must leave them as effectively secured against unauthorised entry as the officer found them.

15 Powers of inspection, etc.

(1) An authorised officer of a local authority entering premises under section 11 or by virtue of a warrant issued under section 12 or 13 may do any of the following if the officer considers it necessary for the purpose of ascertaining whether an offence under section 2 has been committed –

- (a) carry out inspections and examinations on the premises;
- (b) require the production of anything on the premises, inspect it, and take and retain samples of or extracts from it;
- (c) take possession of anything on the premises, and retain it for as long as the officer considers necessary for that purpose;
- (d) require any person to give information, or afford facilities and assistance with respect to matters within the person's control.

- (2) If the authorised officer considers it necessary for the purpose of ascertaining whether an offence under section 2 has been committed, the officer may arrange for anything produced under subsection (1)(b), or of which the officer has taken possession under subsection (1)(c), to be analysed.
- 5 (3) If by virtue of subsection (1)(c) an authorised officer takes possession of anything, the officer must leave on the premises from which it was taken a statement giving particulars of what has been taken and stating that the officer has taken possession of it.
- (4) The powers conferred by this section include the power –
- (a) to copy documents found on the premises;
- 10 (b) to impose requirements as to how documents are provided (which may include requirements to provide legible copies of documents found on the premises that are stored electronically).
- (5) For this purpose, “documents” includes information recorded in any form; and references to documents found on the premises include –
- 15 (a) documents stored on computers or other electronic devices on the premises, and
- (b) documents stored elsewhere that can be accessed by computers or other electronic devices on the premises.
- (6) A person is not required by this section to answer any question or produce any document which the person would be entitled to refuse to answer or produce in or for the purposes
- 20 of proceedings in a court in England and Wales.

16 Obstruction etc. of officers

- (1) A person who intentionally obstructs an authorised officer of a local authority exercising functions under sections 11 to 15 commits an offence.
- (2) Any person who without reasonable cause fails –
- 25 (a) to provide an authorised officer with facilities that the authorised officer reasonably requires for the purpose of a requirement under section 15(1), or
- (b) to comply with a requirement under section 15(1)(b) or (d),
- commits an offence.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine
- 30 not exceeding level 3 on the standard scale.
- (4) This section is subject to section 15(6).

*Miscellaneous***17 Amendment to the Licensing Act 2003**

In Schedule 4 (personal licences: relevant offences) to the Licensing Act 2003 (c.17), after paragraph 2 insert –

“2A

An offence under the Public Health (Minimum Price for Alcohol) (Wales) Act 2016.”

*General***18 Offences by bodies corporate etc.**

(1) This section applies where an offence under this Act is committed by –

- (a) a body corporate;
- (b) a partnership;
- (c) an unincorporated association other than a partnership.

(2) If the offence is proved to have been committed by, or with the consent or connivance of, or to be attributable to neglect on the part of –

- (a) a senior officer of the body corporate or partnership or unincorporated association, or
- (b) any person purporting to act in a capacity mentioned in paragraph (a),

that senior officer or person (as well as the body corporate, partnership, or association) is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) In this section, “senior officer” means –

- (a) in relation to a body corporate, a director, manager, secretary or other similar officer of the body corporate;
- (b) in relation to a partnership, a partner in the partnership;
- (c) in relation to an unincorporated association, any officer of the association or any member of its governing body.

(4) In subsection (3), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(5) In this section and section 19, “partnership” means –

- (a) a partnership within the Partnership Act 1890 (c.69), or
- (b) a limited partnership registered under the Limited Partnerships Act 1907 (c.24).

19 Offences committed by partnerships and other unincorporated associations

- (1) Proceedings for an offence under this Act alleged to have been committed by a partnership are to be brought in the name of the partnership (and not in that of any of the partners).
- 5 (2) Proceedings for an offence under this Act alleged to have been committed by an unincorporated association other than a partnership are to be brought in the name of the association (and not in that of any of its members).
- (3) Rules of court relating to the service of documents have effect as if the partnership or unincorporated association were a body corporate.
- 10 (4) Section 33 of the Criminal Justice Act 1925 (c.86) and Schedule 3 to the Magistrates' Courts Act 1980 (c.43) apply in proceedings for an offence brought against a partnership or an incorporated association as they apply in relation to a body corporate.
- (5) A fine imposed on a partnership on its conviction for an offence under this Act is to be paid out of the partnership assets.
- 15 (6) A fine imposed on an unincorporated association other than a partnership on its conviction for an offence under this Act is to be paid out of the funds of the association.

20 Regulations

- (1) A power to make regulations under this Act—
 - 20 (a) is exercisable by statutory instrument;
 - (b) includes power to make different provision for different purposes;
 - (c) includes power to make supplementary, incidental, consequential, transitional, transitory and saving provision.
- (2) A statutory instrument containing regulations made under the following provisions may not be made unless a draft of the instrument has been laid before, and approved by
25 resolution of, the National Assembly for Wales—
 - (a) section 1;
 - (b) paragraph 5(2) of the Schedule;
 - (c) paragraph 9 of the Schedule.
- 30 (3) Any other statutory instrument containing regulations made under this Act is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

21 Interpretation

- (1) In this Act, "alcohol" means spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor, but does not include any of the following—
 - 35 (a) alcohol which is of a strength not exceeding 1.2% when supplied;
 - (b) perfume;

- (c) flavouring essences recognised by the Commissioners of Revenue and Customs as not being intended for consumption as or with dutiable alcoholic liquor;
- (d) the aromatic flavouring essence commonly known as Angostura bitters;
- (e) alcohol which is, or is included in, a medicinal product or a veterinary medicinal product;
- (f) denatured alcohol;
- (g) methyl alcohol;
- (h) naphtha;
- (i) alcohol contained in liqueur confectionery.

(2) For the purposes of subsection (1)–

“denatured alcohol” has the same meaning as in section 5 of the Finance Act 1995 (c.4);

“dutiable alcoholic liquor” has the same meaning as in the Alcoholic Liquor Duties Act 1979 (c.4);

“liqueur confectionery” means confectionery which–

- (a) contains alcohol in a proportion not greater than 0.2 litres of alcohol (of a strength not exceeding 57%) per kilogram of the confectionery, and
- (b) either consists of separate pieces weighing not more than 42g or is designed to be broken into such pieces for the purpose of consumption;

“medicinal product” has the same meaning as in section 130 of the Medicines Act 1968 (c.67);

“veterinary medicinal product” has the same meaning as in regulation 2 of the Veterinary Medicines Regulations 2006.

(3) For the purposes of this Act–

“club premises certificate” has the same meaning as in the Licensing Act 2003 (c.17);

“local authority” means the council of a county or county borough in Wales;

“premises” has the same meaning as in the Licensing Act 2003 (c.17);

“premises licence” has the same meaning as in the Licensing Act 2003 (c.17);

“qualifying premises” has the meaning given in section 3;

“regulations” means regulations made by the Welsh Ministers;

“sale by retail” has the same meaning as in the Licensing Act 2003 (c.17);

the “strength” of alcohol means its alcoholic strength, which –

5 (a) in relation to alcohol contained in a bottle or other container that is marked or labelled in accordance with requirements imposed by or under any enactment or rule of law, is to be taken as being the alcoholic strength by volume as indicated by the mark or the label on the bottle or container;

10 (b) otherwise, is to be computed in accordance with section 2 of the Alcoholic Liquor Duties Act 1979 (c.4).

(4) In subsection (3), “enactment” means an enactment (whenever enacted or made) comprised in, or in an instrument made under –

(a) an Act of Parliament;

(b) a Measure or an Act of the National Assembly for Wales.

15 **22 Coming into force**

(1) The following sections come into force on the day on which this Act receives Royal Assent –

(a) sections 18 to 21;

(b) this section;

20 (c) section 23.

(2) The other provisions of this Act come into force on such day as the Welsh Ministers may appoint by order made by statutory instrument.

(3) An order under subsection (2) may –

(a) appoint different days for different purposes;

25 (b) make transitional, transitory or saving provision in connection with the coming into force of a provision of this Act.

23 Short title

The short title of this Act is the Public Health (Minimum Price for Alcohol) (Wales) Act 2016.

SCHEDULE
(introduced by section 7)

FIXED PENALTIES

Contents of fixed penalty notice

- 5 1 A fixed penalty notice must –
- (a) state the alleged offence, and
 - (b) give particulars of the circumstances alleged to constitute it.
- 2 A fixed penalty notice must also state –
- (a) the name and address of the local authority on whose behalf the notice is given;
 - 10 (b) the amount of the penalty and the period for its payment;
 - (c) the discounted amount and the period for its payment;
 - (d) the effect of paying the penalty or the discounted amount before the end of the period mentioned in paragraph (b) or (c);
 - 15 (e) the consequences of not paying the penalty or the discounted amount before the end of the period mentioned in paragraph (b) or (c);
 - (f) the person to whom and the address at which payment may be made;
 - (g) the method by which payment may be made;
 - (h) the person to whom and the address at which any representations relating to the notice may be made.
- 20 3 A fixed penalty notice must also –
- (a) inform the person to whom it is given of that person's right to ask to be tried for the alleged offence, and
 - (b) explain how that right may be exercised.
- 4 Regulations may make further provision as to the content and form of a fixed penalty notice.
- 25

Amount of penalty and period for payment

- 5 (1) The amount of the penalty is £200.
- (2) Regulations may amend the amount of the penalty.
- 6 The period for payment of the penalty is the period of 29 days beginning with the day on
- 30 which the notice is given.

Discounted amount and period for payment

- 7 (1) The discounted amount is payable, instead of the amount of the penalty, if payment is made before the end of the period for payment of the discounted amount.

(2) That period is the period of 15 days beginning with the day on which the notice is given, unless the 15th day is not a working day.

(3) If the 15th day is not a working day, that period is the period beginning with the day on which the notice is given and ending with the expiry of the first working day following the 15th day.

(4) In this paragraph, “working day” means any day which is not Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971 (c.80).

8 The discounted amount is £150.

10 9 Regulations may amend the discounted amount.

Effect of notice and payment

10 (1) Proceedings for the offence in respect of which a fixed penalty notice was given may not be brought before the end of the period for payment of the penalty.

15 (2) Sub-paragraph (1) does not apply if the person to whom the notice was given has asked in accordance with paragraphs 15 and 16 to be tried for the alleged offence.

11 If the penalty is paid in accordance with the penalty notice before the end of the period mentioned in paragraph 10(1), no proceedings for the offence may be brought, and paragraph 15 does not apply.

12 If the discounted amount is paid in accordance with the penalty notice before the end of the period for payment of the discounted amount, no proceedings for the offence may be brought, and paragraph 15 does not apply.

13 If proceedings have been brought pursuant to a request under paragraph 15, but then the penalty or discounted amount is paid as mentioned in paragraph 11 or 12, those proceedings must not be continued.

25 14 In any proceedings, a certificate documenting payment of a penalty or discounted amount is evidence of the facts which it states if it—

(a) purports to be signed by or on behalf of the person responsible for the financial affairs of the local authority on behalf of which the authorised officer who gave a penalty notice was acting, and

30 (b) states that payment of the fixed penalty or discounted amount in pursuance of the notice was or was not received by a date specified in the certificate.

Trial

15 If the person to whom a penalty notice has been given asks to be tried for the alleged offence, proceedings may be brought against the person.

35 16 Any request to be tried must be made—

(a) by notice given to the local authority in question before the end of the period for payment of the penalty;

(b) in the manner specified in the fixed penalty notice.

Withdrawal of notices

- 17 (1) This paragraph applies if a local authority considers that a fixed penalty notice which an authorised officer acting on its behalf has given to a person (“P”) ought not to have been given.
- 5 (2) The local authority may give notice to P withdrawing the fixed penalty notice.
- (3) If it does so—
- (a) it must repay any amount which has been paid by way of penalty in pursuance of the fixed penalty notice, and
 - (b) no proceedings may be brought or continued against P for the offence in question.

10 *Fixed penalty receipts*

- 18 A local authority may use amounts received by it in pursuance of notices under section 7 only for the purpose of its functions relating to the enforcement of provisions of this Act and regulations made under it.