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Consultation Document

Draft Public Health (Minimum Price for Alcohol) (Wales) Bill and Explanatory Memorandum



Date of issue: **15 July 2015**

Action required: Responses by **11 December 2015**

Overview

This consultation sets out the Welsh Government's draft legislative proposals to introduce a mandatory minimum unit price for alcohol sold or supplied in Wales. The draft **Public Health (Minimum Price for Alcohol) (Wales) Bill** proposes setting a floor price for a unit of alcohol.

How to respond

You can respond to this consultation by completing, the consultation response form/survey available on our website (<http://wales.gov.uk/consultations/?lang=en>). Forms can be returned to us by e-mail to: MUPBill@wales.gsi.gov.uk before the 11th December 2015.

Alternatively, the consultation response form at the back of this document and returning it to us by post to:

Public Health (Minimum Price for Alcohol)
(Wales) Bill Team
Public Health Division
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact details

For further information, please contact:
The Public Health (Minimum Price for Alcohol)
(Wales) Bill Team
Public Health Division
Fourth Floor
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Email: MUPBill@wales.gsi.gov.uk

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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Foreword by the Deputy Minister for Health

Alcohol remains a major cause of death and illness in Wales; it can lead to a number of health and social harms, particularly for a significant minority of people who drink to excess.

Whilst consuming alcohol at low levels may have some health benefits for certain specific medical conditions, we know there is compelling evidence, built up over many decades of research, that excessive intake of alcohol causes harm.

Alcohol contributes to more than sixty health conditions and many people who suffer from conditions such as stroke, heart disease and hypertension are at substantially higher risks of further damage to their health as a result of excessive alcohol consumption. Alcohol also accounts for many other premature deaths, including suicide.

Although alcohol related deaths fell in 2013 from the 2012 figure, there were still 467 alcohol-related deaths in Wales, all of which were preventable. Overall, alcohol misuse in Wales is estimated to cost the health service around £109 million¹ each year in hospital admissions alone.

The damage alcohol can cause not only affects the individuals concerned but also their families, public services and the communities in which they live. By working with our partners and stakeholders, the Welsh Government has put in place a series of actions and initiatives to tackle the vast and varied problems associated with alcohol misuse but it is clear that more needs to be done.

The affordability of alcohol has increased significantly over the past two decades. An independent study prepared for the European Commission² found that evidence in Europe supports the link between alcohol price, income, affordability and consumption, and the direct link between alcohol price/income and harms. Furthermore, it demonstrated that alcohol became 50% more affordable in the UK between 1996-2004, largely as a result of growth in disposable incomes.³

One of the most effective actions available to governments is to control the price and affordability of alcohol and therefore the Welsh Government is clear that a pricing intervention must be a key component of any comprehensive strategy to tackle alcohol misuse.

¹ Please see explanation for this figure on para 119, p37 of the Explanatory Memorandum

² Rabinovich, L et al., *The affordability of alcoholic beverages in the European Union: Understanding the link between alcohol affordability, consumption and harms* (conducted by RAND Europe)

³ Ibid, p27

There is particularly good evidence that minimum unit pricing for alcohol impacts positively on health and social harms, and it is those individuals who drink alcohol to harmful or hazardous levels that would benefit the most from such a measure.

As Deputy Minister for Health with specific responsibility for substance misuse I am committed to reducing alcohol related harm in the context of improving the health and well-being of people in Wales. The misuse of alcohol is still one of the most devastating ways in which individuals can harm themselves, their families and the communities in which they live. Supporting people to reduce this harm, and ultimately enabling them to return to a life free from dependence or the harmful use of alcohol is a key aim of our Substance Misuse Strategy, "*Working Together to Reduce Harm*".

Building on our earlier consultation on this issue as part of the Public Health White Paper, I would like to hear your views on our intention to introduce a minimum unit price for alcohol and the specific legislative proposals outlined in the draft Public Health (Minimum Price for Alcohol) (Wales) Bill, together with the evidence and impact assessments set out in the accompanying Explanatory Memorandum.

Vaughan Gething AM
Deputy Minister for Health

Introduction – what is the consultation about?

1. The Welsh Government is consulting on a draft Bill, which proposes setting a minimum unit price (MUP) for alcohol in Wales.
2. The draft Bill proposes to make it an offence for an alcohol retailer to sell or supply alcohol at a price below the set minimum unit price in Wales. The level of the minimum unit price will be set by the Welsh Ministers in regulations. The proposals will put in place a series of offences and penalties and provide additional powers and duties for local authorities to enable them to implement and enforce the proposed MUP system.
3. This consultation seeks your views on the rationale for and evidence supporting the introduction of new legislation into the National Assembly for Wales.
4. This document should be read in conjunction with the draft Bill and the accompanying Explanatory Memorandum, including the Regulatory Impact Assessment. We would also welcome views on the draft statutory impact assessments on equality, children's rights and the Welsh language which form part of the suite of documents that comprise this consultation.

Working to deliver health improvements

5. The Welsh Government continually aims to improve the health and well-being of people in Wales and in doing so seeks the views of members of the public, key partners and stakeholders in order to achieve the most efficient and effective ways of delivering those improvements.
6. While most people who enjoy drinking alcohol do so responsibly and within safe limits, there are a significant number who do not.
7. To reduce the harm to those that drink alcohol to excess and to lessen the impact on their families and wider community, we have been working to deliver a range of non legislative actions which have concentrated on better education, prevention and treatment. Some examples of the type of policies and programmes that the Welsh Government has in place are set out in paragraphs 32-51 of the accompanying Explanatory Memorandum.
8. These actions form part of the Welsh Government's 10 year substance misuse strategy for tackling harms associated with the misuse of alcohol, drugs and other substances – '*Working Together to Reduce Harm*'. This

strategy was launched in 2008 ⁴, and is underpinned by an associated Substance Misuse Delivery Plan 2013 -15. ⁵

9. However, despite progress being made to reduce overall levels of alcohol consumption as a result of actions taken by the Welsh Government, its partners (including the UK Government) and the industry, excessive alcohol consumption continues to cause significant problems across Wales.

10. Data compiled by the Welsh Health Survey in 2014 showed that 40% of adults reported drinking above safe guidelines on at least one day a week and 24% reported binge drinking – drinking more than twice the daily guidelines.

11. The Public Health Wales Observatory, Alcohol and Health in Wales 2014 profile confirms that drinking in children and young people remains a concern with 17% of males and 14% of females aged 11-16 in Wales drinking alcohol at least once a week (higher than in Scotland, Ireland and England).

12. Alcohol specific hospital admission rates (i.e., those that are wholly related to alcohol such as alcohol-related liver disease or alcohol overdose) generally increased from around 400 per 100,000 population in 2001-2002 to around 500 per 100,000 population in 2006-2007. There were also 15,100 alcohol specific hospital admissions in Wales in 2012/13 ⁶

13. On 12 May 2015 the Organisation for Economic Co-operation and Development (OECD) published an extensive report entitled “*Tackling Harmful Alcohol Use*”⁷. Chapter 4 of that report states that the targeted approach of minimum unit pricing policies has been at the centre of the alcohol debate in several OECD countries and evidence suggests that minimum unit pricing has greater potential to deter harmful and hazardous drinkers than taxation because it specifically targets those groups. The report also claims that harmful drinking is on the increase among young people and women in OECD countries.

14. This latest OECD report adds to a growing body of national and international evidence base relating to minimum unit pricing which includes modelling as well as experiential evidence from countries where the

⁴ <http://www.substancemisuseworkforcewales.org/resources/publications/workingtogether/?lang=en>

⁵ <http://www.ccinform.co.uk/key-documents/working-together-to-reduce-harm-substance-misuse-delivery-plan-2013-2015/>

⁶ Substance Misuse Programme. Reading between the lines: the annual profile of substance misuse in wales 2013-14. Welsh Government; 2014.

⁷ http://www.keepeek.com/Digital-Asset-Management/oecd/social-issues-migration-health/tackling-harmful-alcohol-use_9789264181069-en#page1

introduction of measures controlling affordability have been shown to have a positive effect on alcohol related harm and mortality.

Background to MUP

15. The Welsh Government first consulted on the principle of introducing a minimum unit price for alcohol in Wales as part of its Public Health White Paper consultation, “*Listening to you: Your health matters*”⁸ which was published on 2 April 2014. Of the 145 responses relating to the MUP proposal, the vast majority were in favour of introducing legislation. A White Paper consultation summary report was published in November 2014.⁹

16. In 2014, in order to secure Wales specific evidence and a greater understanding of the potential impact of a MUP for alcohol in Wales, the Welsh Government commissioned the Sheffield Alcohol Research Group at Sheffield University to report on the potential impact of a range of alcohol pricing policies.

17. On 8 December 2014 the Sheffield Alcohol Research Group published the “*Model-based appraisal of minimum unit pricing for alcohol in Wales*”¹⁰ (The Sheffield model). This study concluded that there were a number of key benefits to introducing a MUP for alcohol in Wales including:

- MUP policies would be effective in reducing alcohol consumption, alcohol-related harm (including alcohol-related deaths, hospitalisations, crimes and workplace absences), and the costs associated with those harms. MUP policies would only have a small impact on ‘moderate drinkers’, larger impacts would be experienced by ‘increasing risk drinkers’, with the most substantial effects being experienced by ‘high risk drinkers’ (particularly as these drinkers are more likely to consume the types of alcohol affected by MUP); and
- Introducing a MUP of 50p for alcohol is estimated to be worth £882m to the Welsh economy in terms of reductions in illness, crime and workplace absence over a 20 year period. This is an aggregate effect, driven by the greater effect on those drinking at harmful and hazardous levels, whose consumption will fall the most in absolute terms.

⁸ <http://wales.gov.uk/consultations/healthsocialcare/white-paper/?lang=en>

⁹ <http://wales.gov.uk/consultations/healthsocialcare/white-paper/?lang=en>

¹⁰ <http://wales.gov.uk/statistics-and-research/research-likely-impact-public-attitudes-towards-minimum-unit-price-alcohol/?lang=en>

18. Minimum unit pricing is not a tax. It would not affect every drink – only those which are sold at below the set MUP, such as cheap lagers, ciders and spirits with high alcohol content. The formula for calculating the MUP along with an example can be found in section 1 of the draft Bill.

Why we think introducing a minimum unit price for alcohol in Wales will make a difference

19. The Explanatory Memorandum provides evidence from several countries demonstrating that in response to alcohol price increases, there is a decrease in alcohol consumption and – crucially - a decrease in alcohol related harm and deaths. Given the strong link between consumption and harm, and the evidence that affordability is one of the key factors of increased consumption,¹¹ the Welsh Government's view is that legislation to introduce a minimum unit price for alcohol should form part of the next Assembly's legislative programme.

20. The *Sheffield model* estimates that introducing a MUP for alcohol in Wales would result in a reduction of 53 deaths and 1,400 fewer hospital admissions per year with a 50p MUP. It also estimates that introducing a MUP for alcohol of 50p would be worth £882m to the Welsh economy in terms of reductions in illness, crime and workplace absences over 20 years.

21. More evidence and statistics on the patterns of alcohol consumption and examples of the effect of alcohol products can be found in the Explanatory Memorandum, Part 2 – the Regulatory Impact Assessment.

22. Last year the Welsh Government asked its independent Advisory Panel on Substance Misuse to review the evidence surrounding minimum unit pricing. The Panel carefully considered a number of studies on MUP as well as taking evidence from various experts in this field. The Panel's report, published in July 2014,¹² concluded that the evidence base is extensive and reliable.

23. The Panel also advised that *“The effects of Minimum Unit Price would be different for different subgroups of the population: therefore Minimum Unit Price enables those drinking alcohol more harmfully or hazardously to be targeted, with smaller effects on moderate drinkers, particularly those with low incomes. Taking into account all the circumstances and evidence before the*

¹¹ 'Independent Review of the Effects of Alcohol Pricing and Promotion, part A', http://www.dh.gov.uk/en/Publichealth/Healthimprovement/Alcoholmisuse/DH_4001740.

¹² Advisory Panel on Substance Misuse, 'Minimum Unit Pricing: A Review of its Potential in a Welsh Context' 2014; p10

panel, minimum unit pricing is an effective mechanism through which alcohol-related harm can be addressed”.

24. Minimum unit pricing has been successfully introduced in Canada and is being adopted as a policy option in other countries. Minimum unit pricing would, according to both the Welsh Government’s Advisory Panel on Substance Misuse and the modelling work of Sheffield University’s Alcohol Research Group, bring vital health benefits to Wales.

The proposed new legislation

25. The proposals contained within the draft Public Health (Minimum Price for Alcohol) (Wales) Bill make it an offence for an alcohol retailer to supply, or authorise the supply of, a serving of alcohol for a selling price below the set MUP for alcohol in Wales.

26. MUP will apply to businesses in Wales when selling to a person in Wales, including those which operate online or telephone sales of alcohol. Where alcohol is ordered online or over the telephone from a retailer in Wales and delivered to a person **outside** Wales, MUP will not apply.

Provisions within the draft Bill also include:

- powers of inspection for local authority Authorised Officers (AOs) to enforce the MUP for alcohol, with powers to issue fixed penalty notices and where necessary, to prosecute offenders;
- powers of entry for AOs with offences relating to intentionally obstructing an AO in the exercise of his/her functions under the Bill; and
- powers for Welsh Ministers to make regulations to set the minimum unit price for alcohol.

27. The purpose and intended effect of the provisions outlined in the draft Bill can be found at Chapter 3 of the Explanatory Memorandum. Detailed Explanatory Notes for each section of the Bill can also be found at Annex A to the Explanatory Memorandum.

28. This consultation document provides some questions on the general policy, questions around the issue of children and young people in relation to alcohol and this proposed legislation, and a section containing detailed questions on the specific sections within the draft Bill.

Consultation Questions

These questions should be read in conjunction with the Explanatory Memorandum and the separate impact assessments which consider children's rights, equality and Welsh language issues.

General Policy

Question 1

What do you think of the proposal to introduce legislation that would introduce a minimum unit price for alcohol in Wales?

Answer: *(please delete as appropriate * and give reasons below)*

In favour (Yes / No *)

Don't know *(please tick if appropriate)*

(i) Do you think this proposed legislation will help strengthen the existing actions being undertaken by the Welsh Government to reduce alcohol consumption and alcohol related harm?

Answer: *(please give reasons)*

Explanatory Memorandum

The Welsh Government are of the view that MUP will be an essential component in its strategy to reduce alcohol related harm due to its ability to target the habits of individuals who are most likely to suffer illness and death whilst minimising the impact on moderate drinkers.

Question 2

What is your view on the evidence presented within the Explanatory Memorandum? For example,

(a) that the affordability of alcohol is a key driver in relation to the amount of alcohol consumed and the effects on alcohol related harms?

(b) that MUP is primarily aimed at harmful and hazardous drinkers and would only have a small impact on 'moderate drinkers'?

(c) that MUP would help save lives, reduce costs to our NHS and other public services and over time, make a significant contribution to the overall well-being and economy of Wales?

(d) that MUP would not increase the price of every drink, only those that were being sold at a rate below the set minimum unit price for alcohol (for example, 50p)?

(See Part 2 - the Regulatory Impact Assessment).

Answer: *(please give reasons)*

MUP will apply to businesses in Wales when selling to a person in Wales, including those which operate online or telephone sales of alcohol. In practice this would mean:

- MUP would apply to alcohol purchases made at any store in Wales, in person.
- Where alcohol purchases are delivered to a customer and the licence for the warehouse/store is held in Wales, MUP would apply to all sales delivered to Wales, but would not apply to sales delivered to an address in England.

Currently, most of the alcohol purchased online is not the type targeted by the policy, and would mainly be unaffected, since it is sold above a 50p per unit price point. However, Welsh Government acknowledges this could pose an implementation challenge for certain retailers in Wales.

Question 3

Considering the evidence in the Explanatory Memorandum, what are your views on the likely impacts including, the costs and benefits that introducing a MUP for alcohol might have on:

- (a) consumers;
- (b) retailers;
- (c) drinks manufacturers;
- (d) those who buy or sell using online or telephone delivery services;
- (e) local authorities;
- (f) the health service in Wales; and
- (g) other groups; including other public services in Wales?

Answer: *(please give reasons)*

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Equalities – impacts on different groups within society

Question 4

Considering the evidence in the Explanatory memorandum, Equalities Impact assessment and the Welsh Language impact assessment, what are your views on the likely impact including the costs and benefits of introducing a MUP for alcohol in Wales on people on low incomes?

Answer: *(please give reasons)*

Children and Young People

Question 5

What effects do you think MUP for alcohol would have on children and young people in Wales generally?

(i) Would these be positive or negative impacts or both, if so, what are they?

(ii) Is there additional evidence on the impacts of introducing MUP for alcohol on children and young people that you would like to tell us about?

(For further information see pages 86-89 of the Explanatory Memorandum and the Children's Rights Impact Assessment).

Answer: *(please give reasons)*

Question 6

Do you agree the Welsh Government should review the initial level of minimum unit price (i.e.50p) to maintain its effectiveness?

If so, how frequently?

Answer: *(please give reasons)*

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

The following consultation questions relate to the specific sections within the draft Bill.

Please note, in order to fully understand the draft Bill, you may wish to read these questions in conjunction with the Explanatory Notes which explain in detail what each section of the Bill means.

Section 1– MUP for alcohol

This section sets out the formula that is applied to calculate the minimum selling price for alcohol if that price is 50p per unit and provides an example of how that price is calculated. The minimum unit price would be reviewed and if necessary amended by regulations.

The formula is $M \times S \times V$ (Minimum price x Strength x Volume).

- (a) M is the minimum unit price (to be specified in regulations)
- (b) S is the strength of the alcohol in a percentage format
- (c) V is the volume of alcohol in litres

The section also provides an example calculation.

Question 7 (Section 1)

Is the formula and the example for calculating the MUP for alcohol set out in section 1 of the draft Bill clear and easy to understand?

Answer: *(please give reasons)*

Section 2 – Offences

This section makes it an offence for an alcohol retailer to supply, or authorise the supply, of alcohol from qualifying premises in Wales at a selling price below the minimum price for that serving. It also explains what a 'serving' is, and the possible defence.

Question 8 (Section 2)

What are your views on the proposed offences that apply to alcohol retailer's who supply or authorise the supply of alcohol at a price below the MUP?

(i) Do you agree that retailers selling from a shop in Wales at a price below the MUP should be guilty of committing an offence?

(ii) What are your views on subsections (3) and (4) which provide for a person charged with an offence to demonstrate a defence by showing that they have taken reasonable steps to avoid committing an offence?

Answer: *(please give reasons)*

Sections 3 and 4 – Meaning of supply of alcohol and qualifying premises and meaning of alcohol retailer

Section 3 defines the supply of alcohol as being the sale by retail or the supply by or on behalf of a club to, or to the order of, a member of a club and defines “qualifying premises” under the UK Licensing Act 2003.

Question 9 (Sections 3 & 4)

What is your view on sections 3 and 4 – are there any other premises for which alcohol is sold that would not be covered by sections 3 or 4?

Answer: *(please give detail)*

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

This section applies to alcohol supplied with other goods (excluding alcohol) or services for a single price. If alcohol and other goods or services are supplied for a single price, the alcohol is to be treated as being supplied at that price; for example, if a three course meal and a bottle of wine are sold for a total of price of £10.00, the selling price of the wine is taken to be £10.00.

Section 5 also provides that if the alcohol is supplied free of charge, the alcohol is treated as though the alcohol is supplied at the same price as the other goods or services; for example, if a person buys a three course meal for £10.00 and gets a free bottle of wine, the selling price of the wine is taken to be £10.00.

Question 10 (Section 5)

Do you believe this section covers such transactions sufficiently to ensure that alcohol is not supplied at a price below the MUP?

(a) If not, what other examples or situations should be covered?

Answer: *(please give details)*

Sections 6 & 7 – Penalties and Fixed Penalties

Section 6 states that an alcohol retailer guilty of an offence under section 2 of this Bill is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Section 7 allows authorised officers (*see section 11*) to issue fixed penalty notices (FPNs) to persons believed to have committed offences under section 2 in the local authority's area.

Question 11 (Sections 6 & 7)

What are your views on the penalties and fixed penalty notices provided for within sections 6 & 7 and the Schedule to the Bill?

For example, (a) the level 3 penalties and (b) the fixed penalty of £200 and the discounted amount of £150 if paid within 15 days as well as the payment periods ?

Answer: *(please give details)*

Sections 8 & 9 – Enforcement action by local authorities and Authorised Officers

Section 8(1) provides that local authorities may bring prosecutions in respect of offences under section 2 in its area; may investigate complaints in respect of alleged section 2 offences in its area and may take other steps with a view to reducing the incidence of such offences in its area.

Subsection (2) provides that a local authority must consider, at least once every year, the extent to which it is appropriate to carry out a programme of enforcement in its area, and to the extent that it considers appropriate, carry out such a programme.

In complying with subsection (2), local authorities must have particular regard to improving public health and protecting children from harm.

Section 9 clarifies that any reference to authorised officers in the Bill are to any person authorised to exercise functions of a local authority.

Question 12 (Sections 8 & 9)

Do you think that the enforcement provisions in section 8 would ensure that the MUP for alcohol is effectively enforced in Wales?

(i) Do you think that MUP should be enforced by local authorities in Wales?

(ii) What are your views on section 8(3)(a) and (b) which prescribes that an authorised officer of a local authority must in particular, have regard to two objectives, improving public health and protecting children from harm in the exercise of his/her duties?

(iii) What is your view on authorised officers of local authorities having the power to conduct test purchases?

Answer: *(please give reasons)*

Sections 11, 12 & 13 – Powers of entry, warrant to enter dwellings, warrant to enter other premises.

These sections relate to powers of entry of an authorised officer for the purpose of ascertaining whether such an offence has been committed.

Section 12 enables a justice of the peace to sign a warrant, thereby authorising an authorised officer to enter the dwelling, if needs be by force, if an authorised officer has reasonable grounds to believe an offence under section 2 has been committed.

If access to premises that are not only used wholly or mainly as a dwelling is necessary, this section enables a justice of the peace to sign a warrant authorising any authorised officer to enter the premises, if needs be by force.

Question 13 (sections 11-13)

What are your views on sections 11 – 13, which provide local authority authorised officers with the powers to enter premises at any reasonable time and where necessary by warrant, for the purposes of enforcing the MUP?

Answer: *(please give details)*

Section 15 & 16 – Powers of inspection, etc. and Obstruction etc. of officers

Once an authorised officer has gained entry to premises, they may undertake inspections and examinations to ascertain whether an offence under section 2 has been committed. This may include inspecting and examining the premises and obtaining copies of documents, such as records of stock and sales.

Question 14 (sections 15 & 16)

Do you think section 15 provides authorised officers with appropriate powers to enter premises for the purposes of ascertaining whether an offence has taken place?

(a) What are your views on section 16 – which outlines the conditions for an offence of intentionally obstructing an authorised officer in carrying out his/her duties?

Answer: *(please give details)*

Schedule – Fixed Penalties

Question 15 – the Schedule to the Bill

The Schedule to this Bill contains details of the fixed penalties, including the period for payment, the discounted amount as well as trial and withdrawal of notices. What are your views on the contents of the Schedule?

Answer: *(please give details)*

Any other comments relating to the draft Bill

Question 16

Do you have any other comments on any sections within the draft Bill or any further views on the provisions within the Bill generally?

Answer: *(please give details)*

**Consultation
Response Form**

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:
