

ALCOHOL (MINIMUM PRICING) (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Alcohol (Minimum Pricing) (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed delegated powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.
2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

OUTLINE OF BILL PROVISION

3. The Bill contains a provision to introduce a minimum price of alcohol from licensed premises. The Scottish Ministers consider that the effect of this provision will be to help reduce alcohol consumption in Scotland, in particular the consumption of alcohol sold cheaply relative to its strength, and reduce the impact that alcohol misuse and overconsumption has on public health, public services, society, productivity and the economy as a whole. The provision of the Bill should be considered as part of the Government's wider strategic approach to tackling alcohol misuse set out in *Changing Scotland's Relationship with Alcohol: A Framework for Action*¹.
4. Further information about the Bill's provision is contained in the Explanatory Notes and Financial Memorandum published separately as SP Bill 4–EN, and in the Policy Memorandum published separately as SP Bill 4–PM.

SUBORDINATE LEGISLATION POWERS - DETAIL

Section 1(2) and (3) – Power to specify the minimum price per unit of alcohol (inserted paragraph 6A(4) and paragraph 5A(4))

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument

¹ *Changing Scotland's Relationship with Alcohol: A Framework for Action*, Scottish Government, 2009
<http://www.scotland.gov.uk/Publications/2009/03/04144703/0>

Parliamentary procedure: affirmative procedure

Provision

5. Section 1(2) inserts a new paragraph 6A into schedule 3 to the Licensing (Scotland) Act 2005 and introduces a further mandatory condition of premises licences granted under that Act. The condition is that alcohol must not be sold on the premises at a price below the minimum price. New paragraph 6A(4) provides that the Scottish Ministers will make an order specifying the minimum price per unit. The minimum price per unit is used to calculate the minimum price of alcohol. Section 1(3) makes the same provision in respect of occasional licences by inserting a new paragraph 5A into schedule 4 to the Licensing (Scotland) Act 2005 and new paragraph 5A(4) provides that the Scottish Ministers will make an order specifying the minimum price per unit.

Reason for taking power

6. A minimum price for alcohol (based on volume, strength and a minimum price per unit) is provided for in the Bill, with the price per unit to be specified by the Scottish Ministers by order subject to affirmative procedure. This allows the Scottish Ministers to review in future and vary the price per unit, subject to the approval of Parliament. This strikes a balance between the importance of the issue and providing flexibility to respond to changing circumstances, making proper use of Parliamentary time and scrutiny. Flexibility is required because it is likely that the minimum price per unit will need to be varied in future given that inflation may otherwise erode the benefits of the measure. The Bill provides for what the Scottish Ministers consider to be the best pricing mechanism to achieve the policy objective, which is minimum pricing. There is evidence that supports tackling alcohol-related harm through pricing mechanisms, which can be considered without the price per unit having been specified. Further evidence and research into pricing will be considered before the Scottish Ministers exercise their judgement and specify a price per unit

Choice of procedure

7. Where subordinate legislation is provided for, the appropriate level of parliamentary scrutiny must be considered. The Bill provides for the parliamentary procedure that the Scottish Ministers consider most appropriate. The affirmative procedure is appropriate so that Parliament is able to take evidence from the Scottish Ministers on the rationale for the particular minimum price per unit proposed.

Section 1(2) and (3) – Power to specify the relevant labelling provisions (inserted paragraph 6A(6) and paragraph 5A(6))

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

8. Section 1(2) inserts a new paragraph 6A into schedule 3 to the Licensing (Scotland) Act 2005 and introduces a further mandatory condition of premises licences granted under that Act. The condition is that alcohol must not be sold on the premises at a price below the minimum

price. New paragraph 6A(3) sets out a formula to calculate the minimum price. The formula comprises the minimum price per unit, the volume of the alcohol and the strength of the alcohol. New paragraph 6A(5) provides that where alcohol is contained in a bottle or other container and this is marked or labelled in accordance with relevant labelling provisions, then for the purposes of the formula, strength is to be taken as the alcoholic strength by volume indicated on the mark or label. New paragraph 6A(6) provides that the Scottish Ministers will make an order specifying the enactments which are relevant labelling provisions. Section 1(3) makes the same provision in respect of occasional licences by inserting a new paragraph 5A into schedule 4 to the Licensing (Scotland) Act 2005 and new paragraph 5A(6) provides that the Scottish Ministers will make an order specifying the enactments which are relevant labelling provisions.

Reason for taking power

9. The formula used to calculate the minimum price includes the strength of the alcohol and in terms of section 147 of the Licensing (Scotland) Act 2005, strength is to be determined in accordance with section 2 of the Alcoholic Liquor Duties Act 1979 (which provides a ratio for calculating alcoholic strength by volume). However, that notwithstanding, where alcohol is contained in a bottle or other container and this is marked or labelled with an alcoholic strength by volume in accordance with relevant legislation on labelling (e.g. regulation 30 of the Food Labelling Regulations 1996), then for the purposes of the formula, strength is to be taken as the alcoholic strength by volume indicated on the mark or label. Under EU law, the strength indicated on a mark or label is afforded certain tolerances and may be rounded up or down, meaning that this figure (known as “declared ABV”) is not necessarily the same as that which may be arrived at by applying the ratio in section 2 of the Alcoholic Liquor Duties Act 1979 (the actual strength of the alcohol). Being able to rely upon strength as indicated on the mark or label is more straight-forward for industry. Furthermore, the relevant labelling provisions are found in secondary legislation. These provisions may change over time. Rather than refer in primary legislation to these provisions (as they stand at this time), providing that the Scottish Ministers will specify by order (subject to scrutiny by Parliament) what these provisions are allows a flexibility to update these provisions in future without having to amend primary legislation.

Choice of procedure

10. Negative procedure is considered the appropriate level of scrutiny because this order would simply specify relevant labelling provisions found in other legislation; it would be a short and purely technical order.

Section 3(1) – Power to commence provisions of the Bill

Power conferred on: The Scottish Ministers

Power exercisable by: Order made by Scottish statutory instrument

Parliamentary procedure: The order must be laid before Parliament under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

This document relates to the Alcohol (Minimum Pricing) (Scotland) Bill (SP Bill 4) as introduced in the Scottish Parliament on 31 October 2011

Provision

11. Section 3(1) of the Bill provides that Scottish Ministers may by order bring the provision of the Bill into force. Section 3(3) provides that the commencement order may make transitional, transitory or saving provision.

Reason for taking this power

12. It is appropriate for the Bill to be commenced at such a time as the Scottish Ministers consider suitable. It is standard procedure for such commencement provisions to be dealt with by subordinate legislation.

Choice of procedure

13. As is now usual for commencement orders, the default laying requirement applies (as provided for by section 30 of the Interpretation and legislative Reform (Scotland) Act 2010).

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