Th
is document relates to the Alcohol (Minimum Pricing) (Scotland) Bill as amended at Stage 2 (SP Bill 4A)

ALCOHOL (MINIMUM PRICING) (SCOTLAND) BILL

REVISED EXPLANATORY NOTES

CONTENTS
1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Alcohol (Minimum Pricing) (Scotland) Bill (introduced in the Scottish Parliament on 31 October 2011) as amended at Stage 2. Text has been added or amended as necessary to update information previously provided and reflect amendments made to the Bill at Stage 2 and these changes are indicated by sidelined in the right margin.

INTRODUCTION
2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

4. In these Notes “the 2005 Act” means the Licensing (Scotland) Act 2005 (asp 16).

COMMENTS ON SECTIONS

Section 1 – Minimum price of alcohol

5. Section 1(2) inserts new paragraph 6A into schedule 3 to the 2005 Act 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 its minimum price.

6. Inserted paragraph 6A(2) concerns the application of the condition where alcohol is supplied along with other products or services, for example, where a bottle of beer is packaged with and sold with a branded glass or a bottle of wine is sold with food as part of a “meal deal.” In these circumstances the minimum price would be the minimum price that would apply to the alcohol if sold on its own. That is, the package must be sold at (or above) the minimum price and no account is taken of the elements of the package which are not alcohol.
7. Inserted paragraph 6A(3) sets out the formula by which the minimum price is to be calculated as minimum price per unit (MPU) x strength of the alcohol (S) x volume of the alcohol in litres (V) x 100.

8. By way of example, if the minimum price per unit was set at 50p per unit of alcohol:
   (a) the minimum price for a standard sized (700ml) bottle of spirits at 37.5% ABV would be £13.13 (0.50 x 37.5/100 x 0.7 x 100 = £13.13),
   (b) the minimum price for a 500ml super-strength can of beer at 9% ABV would be £2.25 (0.50 x 9/100 x 0.5 x 100 = £2.25),
   (c) the minimum price for a standard size (750ml) bottle of wine at 12.5% ABV would be £4.69 (0.50 x 12.5/100 x 0.75 x 100 = £4.69),
   (d) the minimum price for a case of 24 440ml cans of beer at 4% ABV would be £21.12 (0.50 x 4/100 x 0.440 x 24 x 100 = £21.12),
   (e) the minimum price for a 2 litre bottle of strong cider at 6% ABV would be £6.00 (0.50 x 6/100 x 2 x 100 = £6.00),
   (f) the minimum price for a 25ml measure of spirits at 37.5% ABV would be 47 pence (0.50 x 37.5/100 x 0.025 x 100 = £0.47),
   (g) the minimum price for a 275 ml pre-mixed spirit and mixer at 5% ABV would be 69 pence (0.50 x 5/100 x 0.275 x 100 = £0.69). Note that the addition of a mixer does not affect the minimum price,
   (h) the minimum price for a strong pint (568ml) of lager at 5% ABV would be £1.42 (0.50 x 5/100 x 0.568 x 100 = £1.42).

9. Inserted paragraph 6A(4) means that the Scottish Ministers are to specify the minimum price per unit by order. Section 1(4) amends section 146 of the 2005 Act to provide that any such order is subject to the affirmative procedure.

10. Section 1(3) makes identical provision in respect of conditions in occasional licences granted under the 2005 Act.

11. Inserted paragraph 6A(5) and (6) sets out how the strength of alcohol is to be determined when calculating the minimum price of alcohol. “Strength” is defined in section 147(1) of the 2005 Act and is defined by reference to the Alcoholic Liquor Duties Act 1979 (c 4) which states that the alcoholic strength of any liquor is to be determined as a ratio of the volume of alcohol in the liquor to the volume of the liquor and expressed as a percentage. This is referred to as the ABV.

12. Pre-packaged drinks generally have to state on the label the drink’s alcoholic strength by volume. Various labelling regimes make this a requirement. For example, regulation 30 of the Food Labelling Regulations 1996 (SI 1996/1499) requires pre-packaged alcoholic drinks, other

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1 This term is defined in section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (ILRA). See also paragraph 5 of schedule 3 to the ILRA.
than EU controlled wine\(^2\), that have a strength of more than 1.2% to be marked or labelled with an indication of the drink’s alcoholic strength by volume to no more than one decimal place and expressed as a percentage. This is referred to as the “declared ABV”. Certain positive and negative tolerances are permitted (for example, beers of not more than 5.5% ABV have a tolerance of plus or minus 0.5%) and these are set out in Schedule 5 to the Regulations. These tolerances mean that it is possible for the strength of alcohol to be different to the declared ABV of that product. Where pre-packaged alcohol is required by certain labelling provisions to indicate a declared ABV it is the declared ABV that should be used in calculating the minimum price of the product rather than the actual strength of the product. Inserted paragraph 6A(6) provides that the Scottish Ministers will specify in an order which labelling provisions can be used for this purpose. The order will be subject to negative procedure\(^3\).

13. Where different alcohol drinks are mixed, for example in a cocktail, the declared ABV must be used for any alcohol to which relevant labelling provisions apply and the ABV for any other alcohol. The minimum price for each alcoholic component of the drink will need to be calculated and then added together to provide a minimum price for the whole drink. Any non-alcoholic drink added to the alcoholic products does not require to be included in the calculation as a minimum price does not apply to non-alcoholic drinks.

14. Where pre-mixed alcoholic drinks are sold, for example a gin and tonic, the relevant labelling provisions will apply to these and so they will be marked or labelled with the declared ABV and the declared ABV is to be used in order to determine the minimum price of the drink.

**Section 1A – Duration of minimum pricing provisions**

15. This section allows for minimum pricing to run for 6 years from the date it is commenced and allows for the Scottish Ministers to make an order after the end of 5 years to allow minimum pricing to continue to have effect. The Scottish Ministers cannot make an order extending the effect of the minimum pricing provisions until 5 years from when they are fully in force. The order can only provide that the minimum pricing provisions continue to have effect, and cannot provide that the minimum pricing provisions continue to have effect for a limited period. If no such order is made by the end of year 6 minimum pricing will cease to have effect.

16. The minimum pricing provisions are the provisions in section 1 of the Bill that provide that alcohol must not be sold on licensed premises at a price below its minimum price. This definition also applies to section 1B.

17. Subsection (4) sets out that the order that Scottish Ministers can make after the end of 5 years to allow minimum pricing to continue to have effect has to be approved by the Parliament.

**Section 1B - Report on operation and effect of minimum pricing provisions**

18. This section imposes a requirement on the Scottish Ministers to prepare a report on the impact of the minimum pricing provisions. This report is to be prepared as soon as practicable after the minimum pricing provisions have been fully in force for 5 years. The report must be

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\(^2\) EU controlled wine is defined as wine, grape must, sparkling wine, aerated sparkling wine, liqueur wine, semi-sparkling wine and aerated semi-sparkling wine, Food Labelling Regulations 1996.

\(^3\) Negative procedure is defined in section 28 of ILRA.
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laid before the Scottish Parliament and then published as soon as practicable. In considering the impact of the minimum pricing provisions, the report must include information as to their effect on:

- the licensing objectives as set out in section 4 of the Licensing (Scotland) Act 2005;
- holders of premises licences;
- producers of alcohol.

19. In preparing the report, Ministers must consult persons with functions relating to:

- health;
- prevention of crime;
- education;
- social work;
- children and young people.

20. Ministers must also consult:

- persons representative of the interests of holders of premises licences granted under the 2005 Act;
- persons representative of the interests of producers of alcohol.

20. In addition, Scottish Ministers may consult any other persons they wish.

Section 2 – Repeal of section 1 of Alcohol etc. (Scotland) Act 2010

21. Section 1 of the Alcohol etc. (Scotland) Act 2010 (the “Alcohol Act”) has no practical effect as it makes provision for the expiry of amendments made by a section that is not contained in the Act. Section 2, therefore, repeals section 1 of the Alcohol Act.