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Ysgrifennydd y Cabinet dros Iechyd a Gwasanaethau
Cymdeithasol
Cabinet Secretary for Health and Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf / Our ref: VG/0157/18

Mick Antoniw AM
Chair of the Constitutional and Legislative Affairs Committee

28 March 2018

Dear Mick,

I would like to thank the Constitutional and Legislative Affairs Committee for its scrutiny of the Public Health (Minimum Price for Alcohol) (Wales) Bill during Stage 1 of the legislative process. In Annex A to this letter, I have set out my response to the six recommendations made in the Committee's Stage 1 scrutiny report on the Bill. This reflects my current view.

I will also be writing to the Chairs of the Health, Social Care and Sport Committee and the Finance Committee with regard to their Stage 1 reports and will copy the letters to all three Committee Chairs.

I look forward to continuing to work with Members as the Bill progresses through the Assembly process.

Yours sincerely,

A handwritten signature in black ink that reads "Vaughan Gething". The signature is written in a cursive style.

Vaughan Gething AC/AM
Ysgrifennydd y Cabinet dros Iechyd a Gwasanaethau Cymdeithasol
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Annex A: Constitutional and Legislation Affairs Committee Recommendations

On 5 March, the Constitutional and Legislation Affairs Committee published their report on the General Principles of the Public Health (Minimum Price for Alcohol) (Wales) Bill. This provides the Welsh Government's response to each of the recommendations included in their report.

The General Principles of the Bill were agreed by the National Assembly on 13 March.

Recommendation 1: We recommend that the Cabinet Secretary should table an amendment to section 16 of the Bill to require the occupier to be informed of the names of persons accompanying an officer when entering premises.

Welsh Government response:

I have considered this issue and the concerns of the committee carefully but remain of the view that it is not necessary to amend section 16 of the Bill. We are satisfied that section 16 is appropriate. This section is consistent with other legislative provisions such as the equivalent enforcement provisions in the Public Health (Wales) Act 2017. Consistency with their existing enforcement powers is something which has been welcomed by local government stakeholders.

During the debate on the general principles of the Bill, the importance of human rights considerations in the context of the powers granted by section 16 were raised. The Welsh Government considers that the enforcement regime proposed by the Bill is either compatible with the European Convention on Human Rights or is capable of being exercised in a manner that is so compatible. We consider that it would achieve a fair and proportionate balance between the protection of the rights of those affected by those powers of entry, and the effectiveness of the enforcement of the proposed regime.

Any decision about what equipment or which persons, if any, to bring along under section 16 would have to be made in a manner consistent with the objectives of sections 13 to 17; section 16(1) is limited in that it is only intended to allow officers to do things which facilitate the exercise of the substantive powers of entry.

In addition to the various safeguards built into the Bill itself, the enforcement powers given to authorised officers of local authorities will operate in the context of various other, existing safeguards such as the Human Rights Act 1998.

Likewise, as was also alluded to in the debate on the general principles of the Bill, the Police and Criminal Evidence Act 1984 Code B, to which those charged with the duty of investigating offences will be required to have regard to. This code also provides well-established general guidance which further places clear emphasis on acting in accordance with the Convention rights. Specifically in relation to the Committee's recommendation, this Code already includes provision governing the provision of the identity of those accompanying officers on searches. The exceptions which exist to this provision reflect in our view the complexity of the situations which those in charge of a search of premises may find themselves in and are we consider, well-tested and appropriate.

For all of these reasons, I am not minded to bring forward an amendment to section 16.

Recommendation 2: We recommend that the Cabinet Secretary should table amendments to the Bill, placing a duty on the Welsh Ministers to issue guidance about the exercise of all powers and duties under the Bill, and to ensure that the Bill includes appropriate duties to have regard to that guidance.

Welsh Government response:

The Welsh Government will be issuing guidance regarding the Bill to assist and promote an understanding of the proposed new regime but no power is set out on the face of the Bill in relation to this because the Welsh Government already has existing powers to issue it.

The development of the guidance will form part of operational work undertaken in the lead up to implementation and the Welsh Government will work closely with stakeholders to ensure that the guidance is a practical and useful tool to help retailers and those enforcing the legislation. This will include working with the Welsh Retail Consortium, the Welsh Government Alcohol Industry Network, with local authorities and with the Welsh Heads of Trading Standards.

We are also planning to engage with the Third Sector on the development of guidance and associated communications. We will do this by working with the Substance Misuse Network – whose members include a range of different stakeholders and service providers.

Recommendation 3: We recommend that an amendment should be tabled to place the minimum unit price of alcohol on the face of the Bill.

Welsh Government response:

The Welsh Government continues to consider it appropriate to delegate the power to specify the Minimum Unit Price (MUP) for the purposes of the Bill to subordinate legislation for reasons of flexibility, timeliness and accuracy. Doing so will ensure that Welsh Ministers are able to review and set the price considered most appropriate at the relevant time – taking into account the most relevant and most up to date data, subject to the approval of the National Assembly. These factors taken into account, I do not consider it appropriate for the MUP to be set on the face of the Bill.

We believe that this strikes a correct and proportionate balance between the acknowledged significance of the issue and the ability to most effectively respond to any relevant change in economic and social circumstances.

Another factor which has been taken into account is the earliest date the policy is likely to be implemented. It is proposed that there will be a period of time before the minimum pricing regime is brought into force which will allow those affected to prepare. We do not want to be specifying a level of MUP on the face of the Bill which may then not be current at the point of implementation. This will also allow us to conduct a consultation on our proposed MUP to invite comments on this proposed level, mirroring the approach taken in Scotland.

Recommendation 4: In conjunction with recommendation 3, we recommend that any future change to the minimum unit price of alcohol in section 1 of the Bill should be achieved by the use of a super-affirmative procedure.

Welsh Government response:

Given its impact on stakeholders and the wider public, we consider it appropriate that the MUP will not be specified or amended without full consideration and the opportunity for debate in the National Assembly. The Welsh Government is content that the affirmative procedure provides that opportunity and is appropriate.

We will be consulting on the initial level of the MUP that Welsh Ministers are minded to specify. This will provide both Assembly Members and external stakeholders with the opportunity to consider the proposed level of the MUP.

Furthermore, the affirmative procedure is not the only safeguard built into the proposed means of specifying the MUP for the purposes of the Bill. The Bill commits

the Welsh Ministers to publishing a report on the operation and effect of the minimum pricing regime after five years. It also provides for the legislation to be repealed after a period of six years unless the Welsh Ministers, with the approval of the Assembly, actively decide to continue it.

Recommendation 5: We recommend that the Cabinet Secretary justifies during the Stage 1 debate: the inclusion of illustrative examples of calculations of the applicable minimum price of alcohol on the face of the Bill, and explains how he will avoid the potential for confusion caused where the figure used in the illustrative example differs from that included either on the face of the Bill (our preference) or in regulations.

Welsh Government response:

I accept this recommendation and am happy to reiterate and add to the points I made during the General Principles debate on 13 March.

The Welsh Government is committed to making legislation user friendly and accessible. The steps that need to be taken in promoting accessibility will vary from Bill to Bill, depending on the subject matter and the intended audience. In this case, the minimum pricing provisions involve mathematical calculations and are a practical issue, affecting everyday life, in which many people will have an interest.

Examples have been inserted into the text of the Bill in order to flesh out what would otherwise be purely technical or mathematical steps, and express them in practical everyday ways that would promote understanding. Multi-buys in particular are a complex area, and it was felt that accessibility would be promoted by inserting examples in the text of the Bill itself. The figures stated in the examples have been selected purely to enable examples to be worked through in a straightforward way.

The Committee Report points out that the figures given in the examples, but not the MUP itself, are capable of being amended as the Bill progresses through the Assembly. The Welsh Government does not consider this to be an inconsistency. In determining what figures are appropriate to use in the examples, we feel that the key consideration should be the accessibility of the examples, and the ease with which members of the public will be able to follow them. They need not reflect the actual minimum price.

The Bill, as well as all supporting documentation, make clear that the MUP for the purposes of the Bill will be whatever price is specified in regulations made by the Welsh Ministers (with the approval of the Assembly.)

Financial implications

There are no financial implications to accepting this recommendation.

Recommendation 6: We recommend that the Cabinet Secretary should table an amendment to the Bill to delete the words “or expedient” from section 22(3).

Welsh Government response:

The Welsh Government considers it to be important that the words “or expedient” remain.

Section 22 of the Bill provides for the repeal of the minimum pricing provisions at the end of a six year period, subject to regulations being made which provide otherwise. If repeal takes place at the end of this period, consequential changes may be required to other legislation to make that repeal work, or to ensure that the legislation works effectively or in the way originally intended. Likewise, transitional, transitory or saving provision may be required. Section 22(3) allows for this.

Some such provision might clearly be “necessary”. But to demonstrate that every single provision is “necessary”, as opposed to beneficial, or expedient, or useful would reduce flexibility and increase the risk of repeal leading to unforeseen adverse results, or an out of date and unhelpful statute book. The word “expedient” has its own meaning and allows for amendments which may be desirable, useful or have a practical benefit, but which may fail a strict “necessity” test.

It must also be remembered that the scope of this power is limited. It would only be exercised if the minimum pricing provisions are repealed with effect from the expiry of the 6 year period and in that event, any provision made under this power would have to be closely connected to the repeal of the Bill.

We therefore consider it to be important that the current wording remains, in order to allow appropriate flexibility for any repeal to be implemented in the most effective way.