



Home Office

Guidance on banning the sale of alcohol below the cost of duty plus VAT

For suppliers of alcohol and enforcement authorities in England and Wales

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Introduction

Overview: banning the sale of alcohol below the cost of duty plus VAT

On 23 March 2012 the Government launched its Alcohol Strategy, which aims to radically reshape the approach to alcohol and reduce the number of people drinking to excess. The Alcohol Strategy is targeted at harmful and hazardous consumers and aims to limit the impact on responsible consumers. The Government's response to the Alcohol Strategy consultation, published on 17 July 2013, set out the Government's intention to ban below cost selling to tackle the availability of below cost alcohol.

The Government has established 'cost' as the amount of 'duty plus VAT', defined as the level of alcohol duty ('duty') for a product plus value added tax ('VAT') payable on the duty element of the product price.

This guidance provides a single point of reference for suppliers of alcohol and local authorities in England and Wales for banning the sale of alcohol below the cost of duty plus VAT.

This guidance document provides comprehensive information regarding implementation of the relevant legislation, methods of calculating the amount of duty plus VAT (referred to in legislation as "the permitted price") and effective enforcement of the ban. The content of this guidance relates to proposals to be introduced as draft legislation in early 2014. Therefore the content is subject to parliamentary approval of legislation; if approval is obtained, the legislation will come into force in April 2014.

The ban will prevent businesses from selling alcohol at heavily discounted prices and aims to reduce excessive alcohol consumption and its associated impact on alcohol related crime and health harms.

Who the ban applies to

The ban is a new licensing condition of the Mandatory Code of Practice. The Mandatory Code of Practice applies to all licensed premises, including those with club premises certificates, in England and Wales.

Section 1: Implementing the ban

Responsibility for ensuring compliance of the mandatory condition at premises

Responsibility for ensuring compliance with the mandatory condition setting out the permitted price is the responsibility of a “relevant person”. We have defined “relevant person” (in relation to premises licences) as the premises licence holder, designated premises supervisor or personal licence holder and (in relation to club premises certificates) a member or officer of a club who is present and able to prevent a supply of alcohol.

The premises licence holder, designated premises supervisor or personal licence holder is responsible for ensuring that any person (if different from the licence holder) responsible for amending prices on the premises is aware of the legal requirement to sell alcohol at or above the cost of duty plus VAT on that premises.

In circumstances where local store managers are not responsible for amending the prices in-store, responsibility is applicable to the company headquarters and the person, or persons, who are a “relevant person” under the mandatory condition.

How to calculate the permitted price of duty plus VAT

The level of duty plus VAT is calculated by taking the relevant excise duty figure for a particular product and then applying the current rate of VAT to this amount.

Duty rates differ in accordance with the type of alcohol and often the strength of the product. There are three categories for calculating the permitted price of duty plus VAT. The three categories are:

- 1) Beer
- 2) Spirits, spirit-based ready-to-drinks, wine and made-wine (exceeding 22% ABV)
- 3) Wine, made-wine and cider (not exceeding 22% ABV)

We use the following calculations to determine the permitted price for each product:

Beer permitted price = Duty + VAT

Where Duty (pence) = volume (litres) x strength (% ABV) x duty rate

Spirits, spirit-based ready-to-drinks, wine and made-wine (exceeding 22%) permitted price = Duty + VAT

Where Duty (pence) = volume (litres) x strength (% ABV) x duty rate

Wine, made-wine and cider (not exceeding 22% ABV) permitted price = Duty + VAT

Where Duty (pence) = volume (litres) x duty rate

(Note: duty rates for beer, wine, made-wine and cider are given in pounds per hectolitre. For clarity of calculation, and because of the small quantities involved, this has been translated into pence per litre, which is an identical figure. Duty rates for spirits and other products over 22% ABV are given in pounds per litre of pure alcohol. For clarity of calculation, and because of the small quantities involved, this has been translated into pence per centilitre (i.e. 10ml) of pure alcohol, which is also an identical figure.)

Where a retailer wishes to sell drinks that are mixed, for example, in a cocktail, they should calculate the permitted price using the alcohol contained in the drink.

Where permitted prices are not a whole number of pennies, the price should be rounded up to the nearest whole number.

The duty rates are set out in [Annex A](#).

Worked examples:

440ml can of 4% ABV lager

Beer permitted price = (volume (litres) x strength (% ABV) x duty rate) + VAT
= (0.44 x 4 x 19.12) x 1.2
= 40.38144, rounded up to 41 pence

440ml can of 9% ABV lager

Beer permitted price = (volume (litres) x strength (% ABV) x duty rate) + VAT
= (0.44 x 9 x (19.12 + 5.09)) x 1.2
= 115.04592, rounded up to £1.16

70cl bottle of 37.5% ABV vodka

Spirits permitted price = (volume (litres) x strength (% ABV) x duty rate) + VAT
= (0.7 x 37.5 x 28.22) x 1.2
= 888.93, rounded up to £8.89

500ml bottle of 4.5% ABV sparkling cider

Cider permitted price = (volume (litres) x duty rate) + VAT
= (0.5 x 39.66) x 1.2
= 23.796, rounded up to 24 pence

500ml bottle of 4.5% ABV made-wine

Made-wine permitted price = (volume (litres) x duty rate) + VAT
= (0.5 x 113.01) x 1.2
= 67.806, rounded up to 68 pence

750ml bottle of 12.5% ABV wine

Wine permitted price = (volume (litres) x duty rate) + VAT
= (0.75 x 266.72) x 1.2
= 240.048, rounded up to £2.41

Cocktail containing 50ml 19% ABV port and 275ml 4% ready-to-drink (RTD)

Wine permitted price = (volume (litres) x duty rate) + VAT
= (0.05 x 355.59) x 1.2
= 21.3354

RTD permitted price = (volume (litres) x strength (% ABV) x duty rate) + VAT

$$= (0.275 \times 4 \times 28.22) \times 1.2$$

$$= 37.2504$$

Total permitted price = 21.3354 + 37.2504
= 58.5858, rounded up to 59 pence

It should be noted that there are different duty rates within each of the categories of beer and wine and cider, and that the appropriate rate should be used. See [Annex A](#) for details of the duty rates for each category.

Product	Description	Exceptions	Notable products
Beer	In the Alcoholic Liquor Duties Act 1979, beer is defined as including ale, porter, stout and any other description of beer, and any liquor which is made or sold as a description of beer or as a substitute for beer, whose alcoholic strength exceeds 0.5% ABV. This includes mixtures of beer with non-alcoholic drinks, (for example, with lemonade to produce shandy). Also classified as beer for duty purposes are certain mixtures of beer with alcoholic liquors or substances where the final product strength does not exceed 5.5% ABV	Beer below 1.2% ABV is not subject to duty. Lower-strength beer (2.8% and below) pays the reduced rate. Higher-strength beer (over 7.5% ABV) pays the general beer duty rate plus the higher-strength duty rate. Beer mixed with spirits will be liable to the spirits rate of duty.	Barley wine
Wine and made-wine	Wine is defined as a drink produced by fermentation of fresh grapes or grape must. Made-wine is any other drink - apart from beer or cider - containing alcohol that is made by fermentation, rather than by distillation or any other process.	Still wine and sparkling wine are in different duty brackets. Wine is liable to the sparkling rates of duty if it has an actual alcoholic strength by volume exceeding 5.5 per cent but not exceeding 15 per cent ABV and: in a closed bottle with excess pressure, due to carbon dioxide, of three bars or more at 20°Centigrade, or regardless of pressure, is contained in a closed bottle with a 'mushroom	Wine: Port Sherry Madeira Vermouth Cinzano Mulled wine Made-wine: Mead Sake Ginger wine Fruit-flavoured cider (flavoured with anything except apple juice)

		shaped stopper' held in place by a tie or fastening.	
Cider and perry	<p>For a drink to be classed as cider or perry for duty purposes, the following apply:</p> <p>A pre-fermentation juice requirement. At least 35 per cent apple or pear juice must be included in any mixture from which fermentation takes place.</p> <p>A final product juice requirement. A minimum of 35 per cent apple or pear juice must be included overall in making the final product.</p>	<p>For duty purposes, the following may not be added to cider:</p> <p>(i) any alcoholic liquor, or</p> <p>(ii) any liquor or substance which communicates colour or flavour,</p> <p>other than such as the Commissioners may allow as appearing to them to be necessary to make cider (or perry).</p> <p>The following are classed as made-wine or spirits:</p> <p>cider of 8.5% ABV or more, or labelled or described as 8.5% ABV or more</p> <p>cider including anything other than certain permitted ingredients, or ingredients in more than specific quantities</p>	
Spirits and ready-to-drink spirit based products	There is one duty band for spirits and ready-to-drink products where the alcohol content comes from spirits.	Fortified wines, including sherry and port, should be classed as wines.	

Where a retailer is uncertain about the category to which a product should belong, the retailer should calculate the permitted price using both categories, and use the higher of the duties.

HMRC have published [detailed guidance](#) on the categories of duty payable, and its [guide to alcoholic duties and procedures](#) gives further detail on types of alcoholic drinks.

See [Annex B](#) for a list of the permitted prices of the most common type of alcohol products. We have also provided a link to an online permitted price calculator at [Annex C](#) which can be used to calculate the permitted prices of those products that are not listed in [Annex B](#).

The duty rate that applies on the day of sale to the customer will be the duty rate that should apply for the calculation of the permitted price.

Changes to excise duty and VAT

Duty rates may change each year, typically following the Chancellor's Budget. Therefore, those who supply alcohol will need to ensure the new duty rates are applied to the three formulae in the preceding section when duty rates change.

Revised duty rates usually take effect a short time (usually around five days) after the Budget is announced by the Chancellor. It is required that businesses implement changes to their pricing systems within fourteen calendar days of implementation of the new rate to ensure compliance with the mandatory condition.

The same rule will apply to any change in the rate of VAT.

Updating of pricing systems

Businesses and others who supply alcohol will need to ensure that their pricing systems are accurate to prevent any sale of alcohol below the cost of duty plus VAT. This includes ensuring that prices are accurate on shelves, barcodes, menus and price lists, where appropriate.

It is therefore recommended that businesses follow a series of steps to successfully implement the regulation on the premises. A recommended series of steps can be found at [Annex D](#).

Multibuy promotions

Businesses can continue to sell alcohol as part of buy one get one free promotions. However, businesses will need to ensure that the total purchase price for the package of products is not below the aggregate of the duty plus VAT permitted price for each product comprised in the package. To achieve this, businesses will need to calculate the total of the combined permitted price of each alcoholic product in the promotion.

For example, if a business runs a promotion for the sale of a bottle of whisky with a free bottle of wine then the business will need to combine the permitted price for each of the bottle of whisky (£9.49 for 700ml bottle of whisky with a strength of 40%) and the bottle of wine (£2.41 for 750ml bottle of wine with a strength of 11.5%). $£9.49 + £2.41 = £11.90$ permitted price for both items as part of a buy one get free promotion.

Multibuy promotions on non-alcoholic products

In instances where businesses run a promotion for the sale of an alcoholic product and a free non-alcoholic product (such as chocolates, flowers etc.) and vice-versa, businesses will need to ensure that the total purchase price of the promotion is not below the permitted price of the alcohol product comprised in it (or aggregate of the permitted prices if there is more than one alcohol product) as detailed above.

For example, if a retailer runs a promotion for a meal deal that includes a free bottle of wine then the retailer will need to ensure that the selling price of the meal deal is not below the permitted price of the wine.

Multipack products

Businesses can continue to sell bulk items of alcohol, such as multipacks of beer or ready-to-drink products. Businesses will need to ensure that each multipack is sold above the aggregate of the permitted price of each product in it.

For example, if a business runs a promotion to sell a pack with 24 440ml cans of 4% ABV lager in one multi-pack they will need to calculate the total volume of lager in order to calculate the permitted price.

$24 \times 440\text{ml} = 10.560 \text{ litres}$

Beer permitted price = (volume (litres) x strength (% ABV) x duty rate) + VAT
= $(10.560 \times 4 \times 19.12) \times 1.2$
= 969.15456, rounded up to £9.70

Inclusive drinks

Many businesses run promotions in hotels and restaurants, for example, a free bottle of champagne with a hotel room or a drink included in the price of a table meal. Businesses can continue to run these types of special promotions but will need to ensure that the permitted price of the alcoholic product in question is included in the overall price of the promotion.

For example, where a pub offers a table meal with a pint of 4% beer included in the price, the total cost of the table meal must be at or above the permitted price of the beer (ie 53p).

Complementary drinks

Free drinks provided an ad hoc basis, for instance those offered as compensation for late food service, do not count as sales because the customer has not paid anything for the drink.

Discount coupons

Businesses may continue to offer discount coupons for alcoholic drinks, but must ensure that the price of the product after all applicable discounts are applied is above the permitted price of the product.

Where a coupon is offered by a producer for a discount on alcohol, retailers should ensure that the price of the drink does not fall below the floor price as a result of that coupon being applied.

Where 'threshold spend' coupons are offered to customers (e.g. save £2 when you spend £15), they may be used to purchase alcohol as long as the total cost of the sale is not below the permitted price for the alcoholic products.

Reward cards

Reward points and vouchers can continue to be used to buy alcohol, either in the store where they were earned, or at partner retailers, on the condition that the points redeemed have an equivalent cash value that is not below the permitted price of the product. Where retailers offer a promotion on reward points or vouchers, the original value of the voucher shall be taken into account.

The price of an alcoholic product is considered to be the amount of money paid by the purchaser at the time of sale. Proxy benefits to the customer from the sale, for instance in the form of reward points, should not be considered as a part of the purchase price, as they have a cash value only in respect of subsequent sales, and not the present one. For instance, if a promotional voucher is offered to customers for reward points in exchange for buying a particular alcoholic product, the value of the points shall not be taken into account when calculating whether the permitted price has been charged.

Staff discount

Companies can offer staff discount, as long as the price after all discounts are applied is above the permitted price.

Online internet sales

The ban will apply to all sales of alcohol that take place (i.e. the alcohol is despatched) within England and Wales.

As detailed above, businesses will need to ensure that the online price of all alcohol products are sold above the duty plus VAT permitted prices.

Section 2: Exemptions

The following are exempt from the ban:

- Activities carried on at or from one of the locations described in section 173 of the Licensing Act 2003
- Alcohol offered as a prize in an incidental non-commercial lottery under section 175 of the Licensing Act 2003
- Low strength beer and other drinks of 1.2% ABV or less

Activities carried on at or from one of the locations described in section 173 of the Licensing Act 2003

Section 173 of the Licensing Act 2003 states that:

(1) An activity is not a licensable activity if it is carried on— .

- (a) aboard an aircraft, hovercraft or railway vehicle engaged on a journey,
- (b) aboard a vessel engaged on an international journey,
- (c) at an approved wharf at a designated port or hoverport,
- (d) at an examination station at a designated airport,
- (e) at a royal palace,
- (f) at premises which, at the time when the activity is carried on, are permanently or temporarily occupied for the purposes of the armed forces of the Crown,
- (g) at premises in respect of which a certificate issued under section 174 (exemption for national security) has effect, or
- (h) at such other place as may be prescribed.

This would include sales at airside bars and shops at international airports and seaside at international ferry terminals.

Therefore, a ban on below cost sales will not apply to any alcoholic products sold at these locations.

Alcohol offered as a prize in an incidental non-commercial lottery under section 175 of the Licensing Act 2003

The supply of alcohol in sealed containers as a prize is exempt from the condition under existing provision about incidental non-commercial lotteries in section 175 of the Licensing Act 2003 (an incidental non-commercial lottery is defined in Part 1 of Schedule 11 to the Gambling Act 2005).

This will therefore ensure that free alcohol (in sealed containers) can continue to be awarded as prizes in competitions and raffles in, for instance, community charity events, without being subject to a ban on below cost sales.

Low strength drinks of 1.2% ABV or less

There is currently no duty paid on alcoholic drinks of 1.2% ABV or less. Therefore, any drink that has a strength of 1.2% ABV or less will be exempt from the condition.

Under section 191(1)(a) of the Licensing Act 2003, the definition of alcohol does not include alcohol which is of a strength not exceeding 0.5% at the time of the sale or supply in question.

Section 3: Enforcement

Responsibility for enforcement

The ban will be enforced by local authorities including licensing authorities, Trading Standards and the police.

It is recommended that enforcement officers only check the prices of heavily discounted alcohol products as these products are most likely to pose a risk of breaching the new mandatory condition. We do not expect enforcement officers to check the price of all alcohol products on the premises unless they feel it is appropriate to do so.

Where necessary, enforcement officers may request a copy of the premises pricing lists and take away for analysis to compare against the duty plus VAT permitted prices. This will ensure that enforcement officers do not spend a substantial amount of time calculating the permitted prices of products on the premises where conditions may be challenging.

Breach of the ban under the Mandatory Code of Practice

Businesses are required by law to comply with the licensing conditions of the Mandatory Code.

Failure to comply with the permitted price condition may be an offence under section 136 of the Licensing Act 2003. This may also result in a review of the licence, or the service on the premises of a closure notice under section 19 of the Criminal Justice and Police Act 2001.

Annex A

Alcohol duty rates (2013)

Alcohol type	Rate from 25/03/2013
Rate £ per litre of pure alcohol	
Spirits	28.22
Spirits-based: Ready-to-drinks	28.22
Wine and made-wine: Exceeding 22% ABV	28.22
Rate £ per hectolitre per cent of alcohol in the beer	
Beer - General Beer Duty	19.12
Beer - High Strength: Exceeding 7.5%ABV - in addition to the General Beer Duty	5.09
Beer - Lower Strength: Exceeding 1.2% - not exceeding 2.8% ABV	9.17
Rate £ per hectolitre of product	
Still cider and perry: Exceeding 1.2% - not exceeding 7.5% ABV.	39.66
Still cider and perry: Exceeding 7.5% - less than 8.5% ABV.	59.52
Sparkling cider and perry: Exceeding 1.2% - not exceeding 5.5% ABV.	39.66
Sparkling cider and perry: Exceeding 5.5% - less than 8.5% ABV.	258.23
Wine and made-wine: Exceeding 1.2% - not exceeding 4% ABV	82.18
Wine and made-wine: Exceeding 4% - not exceeding 5.5% ABV.	113.01
Still wine and made-wine: Exceeding 5.5% - not exceeding 15% ABV.	266.72
Wine and made-wine: Exceeding 15% - not exceeding 22% ABV.	355.59
Sparkling wine and made-wine: Exceeding 5.5% - less than 8.5% ABV.	258.23
Sparkling wine and made-wine: 8.5% and above - not exceeding 15% ABV	341.63

Annex B

Duty plus VAT permitted prices (2013)

Based on the 2013 duty rates, examples of an approximate permitted price after a ban on sales below duty plus VAT would be as follows:

Product	Size	ABV (%)	Permitted price
Beer/Lager	275ml	5.0	32p
	300ml	2.0	7p
	300ml	5.0	35p
	330ml	4.5	35p
		5.0	38p
		6.0	46p
	440ml	4.0	41p
		4.5	46p
		5.0	51p
		9.0	£1.16
	500ml	4.0	46p
		4.5	52p
		5.0	58p
	568ml	4.0	53p
		4.5	59p
		5.0	66p
		8.5	£1.41
	Sparkling cider and perry	330ml	4.5
440ml		5.0	21p
568ml		4.5	28p
750ml		7.5	£2.33
2 litre		7.5	£6.20

Still cider and perry	568ml	4.5	28p
		7.0	28p
		8.0	41p
Wine and made-wine	750ml	4.0	74p
		5.5	£1.02
Still wine and made-wine	750ml	11.5	£2.41
		20	£3.21
Sparkling wine and made-wine	750ml	8.0	£2.33
		11.5	£3.08
Spirits	70cl	17	£4.03
		23	£5.46
		37.5	£8.89
		40	£9.49
	1 litre	17	£5.76
		23	£7.79
		37.5	£12.70
		40	£13.55
Spirit-based ready-to-drinks	250ml	6.4	55p
	275ml	4.0	38p
		4.5	42p
	330ml	6.0	68p
	700ml	4.0	95p

Annex C

Duty plus VAT permitted price calculator (2013)

Beer			
Insert volume (in ml) i.e. 440ml can - insert 440	<input type="text"/>	Insert abv (in %) i.e. 4.4% abv - insert '4.4'	<input type="text"/>
Duty + VAT floor price: £0.00		< this is a result. Do not enter a value.	
High Strength Beer (exceeding 7.5% abv)			
Insert volume (in ml) i.e. 440ml can - insert 440	<input type="text"/>	Insert abv (in %) i.e. 4.4% abv - insert '4.4'	<input type="text"/>
Duty + VAT floor price: £0.00		< this is a result. Do not enter a value.	
Low Strength Beer (exceeding 1.2% abv, not exceeding 2.8% abv)			
Insert volume (in ml) i.e. 440ml can - insert 440	<input type="text"/>	Insert abv (in %) i.e. 4.4% abv - insert '4.4'	<input type="text"/>
Duty + VAT floor price: £0.00		< this is a result. Do not enter a value.	
Still cider and perry			
Insert volume (in ml) i.e. 1l bottle - insert 1000	<input type="text"/>	Insert abv (in %) i.e. 5.5% abv - insert '5.5'	<input type="text"/>
Duty + VAT floor price: £0.00		< this is a result. Do not enter a value.	
Sparkling cider and perry			
Insert volume (in ml) i.e. 1l bottle - insert 1000	<input type="text"/>	Insert abv (in %) i.e. 5.5% abv - insert '5.5'	<input type="text"/>
Duty + VAT floor price: £0.00		< this is a result. Do not enter a value.	
Wine and made-wine			
Insert volume (in ml) i.e. 70cl bottle - insert 700	<input type="text"/>	Insert abv (in %) i.e. 13.5% abv - insert '13.5'	<input type="text"/>
Duty + VAT floor price: £0.00		< this is a result. Do not enter a value.	
Sparkling wine and made-wine			
Insert volume (in ml) i.e. 70cl bottle - insert 700	<input type="text"/>	Insert abv (in %) i.e. 13.5% abv - insert '13.5'	<input type="text"/>
Duty + VAT floor price: £0.00		< this is a result. Do not enter a value.	
Spirits			
Insert volume (in ml) i.e. 70cl bottle - insert 700	<input type="text"/>	Insert abv (in %) i.e. 37.5% abv - insert '37.5'	<input type="text"/>
Duty + VAT floor price: £0.00		< this is a result. Do not enter a value.	

Annex D

Implementation checklist

The following steps are advised in order to ensure that businesses are selling their alcohol products above the permitted prices for duty plus VAT.

Calculate the duty plus VAT permitted price of an alcohol product



Amend the price (if required) on Central Pricing systems to ensure that the correct price is associated with the barcode on the product



Amend the price on price tags/and or pricing displays on shop shelves



Amend the price on menus



Amend the price on promotional posters, flyers and other materials



Amend the price on websites

Annex E

Frequently asked questions

When will the ban come into effect?

The condition providing for a ban on below cost sales would “go live” when the order is brought into force. This is expected to be 6 April 2014.

On and after this date, the mandatory condition would apply to licensed premises and they would be required to comply with it.

Calculation of prices and updating

What if duty is paid on the alcohol at one rate, but then the duty that applies at the point of sale is different (e.g. following a change in duty at the Budget)?

The duty that applies at the time that the sale is made is the duty to be used in the calculation of the permitted price.

How will prices be rounded? For example, if the duty plus VAT on a can of beer is 49.3p, would shops be able to charge at 49p, rounding down, even if this is below the permitted price?

Consistent with the provision in the Alcoholic Liquor Duties Act 1979, prices should be rounded up to the nearest penny.

How will retailers know which products attract which rate of duty (for instance, products such as alcoholic ginger beer)?

HMRC produces notices which define the products which are included within the duty categories. If a retailer is in doubt about the category of duty rate payable for a particular product, they should use the higher of the possible permitted prices. For instance, if unsure if a product is a cider or a made-wine, prices for both categories should be calculated:

A 500ml bottle of 4.5% ABV product

Cider = $39.66 \times 0.5 \times 1.2$

= 23.796

= 24p permitted price

Made-wine = $113.01 \times 0.5 \times 1.2$

= 67.806

= 68p permitted price

In this example, the permitted price for the product would be 68p.

What about small brewers that pay reduced duty?

Where retailers sell alcohol which is produced by breweries subject to reduced rates of duty under the Small Breweries' Relief scheme, the permitted price for that alcohol may reflect the reduced duty rate. However, retailers should be able to demonstrate that they have taken reasonable steps to satisfy themselves that the reduced rate of duty applies, and where there is doubt, retailers should consider applying the higher duty rate to determine the permitted price.

How will this affect retailers' obligations under the Grocery Suppliers' Code of Practice (GSCOP)?

The price agreed between the supplier and retailer for products is outside the Code, as is the price the retailers charge consumers. However, if the retailer believes that they need to vary a supply agreement to comply with new legislation, section 3(2)(a) of part 3 of Code allows retailers to vary supply agreements retroactively to allow for circumstances outside their control.

To comply with section 3(3) of part 3 of the Code, the retailer must give the supplier reasonable notice of any variation. A rise in duty rates may be a situation to which this part of the Code could apply.

Application and enforcement

How will this be applied and how will it be enforced?

As a mandatory condition, the measure is capable of being enforced in the same way as any other condition in a licence.

This provides that a 'relevant person' shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price. The relevant person is defined as the premises licence holder, designated premises supervisor (where there is one in relation to the licence) or personal licence holder (there is also provision specifically in respect of clubs).

The prohibition on sales below the prescribed permitted price is a condition. As such, the provisions in the Licensing Act 2003 which apply to conditions (e.g. sections 136 and 139) also apply to this condition. It is an offence by a person to carry on or attempt to carry on a licensable activity on or from any premises otherwise than under or in accordance with an authorisation (the reference to authorisation includes a condition).

However, it is a defence if the person's act was due to a mistake, or to reliance on information given to him, or to an act or omission by another person, or to some other cause beyond his control, and he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

What are the penalties for a breach?

Non-compliance with the condition is likely to mean that the person who made the sale would commit an offence under section 136 of the Licensing Act 2003.

This carries a penalty (on conviction) of up to 6 months' imprisonment and/or a £20,000 fine. It may also result in the licence being reviewed (on the basis of the crime prevention objective).

What if retailers do not have an up to date product price list that enforcement officers can take away from the shop floor?

The production of a price list on request is optional, as enforcement officers can check prices while on the shop floor.

What if the price list that has been produced does not take all promotions into account?

Enforcement officers should be made aware of any known discrepancies

Will the enforcement officer come back at a later time to check prices if some on the list that they have taken away are found to be below permitted price?

This will be for the enforcement authority to decide.

Will enforcement be proactive or reactive?

This is for individual authorities to decide.

Saving schemes and other promotions

How does this deal with the issues of money off vouchers?

The retailer would be unable to sell alcohol below the permitted price on the basis of any discount arising by virtue of a voucher.

Consumers may still be able to benefit from a discount voucher or other promotion if either the price payable for the alcohol remains above the permitted price after the discount is applied or if they purchase non-alcoholic products with the alcohol (as the prohibition doesn't apply to those products).

When alcohol is only part of a basket of goods and a discount or voucher is applied, how should that discount be considered when calculating the permitted price?

The sale would not breach the condition provided that the aggregate price paid is not less than the permitted price of the alcohol comprised in the sale.

In relation to a sale of two or more alcoholic products, this is the aggregate of the permitted price for each alcoholic product comprised in the sale.

What if a supplier voucher takes a price below the permitted price?

Retailers should be able to show that they have taken all reasonable steps to ensure that discounts applied by supplier vouchers do not take the price of a product below the permitted price.

What about loyalty schemes where customers can collect vouchers as a reward for continued custom over a period of time?

Where the effect of the scheme is to give a person something which in fact has a cash value in a sale of alcohol, its value is taken into account in determining whether its value means that the alcohol was sold below the permitted price.

Can retailers still offer staff discount?

Yes, as long as the price after all discounts are applied is above the permitted price.

Do free drinks offered as compensation (e.g. for a delayed meal) count as sales?

Free drinks offered on ad hoc or impromptu basis, for example as compensation for poor service, do not count as sales because the customer has not paid anything for the drink. This is different to, for instance, 'meal deals' where the drink is offered as part of a package of goods.

Where a receipt shows a drink at zero pence, does this count as a sale?

This does not count as a sale as it has no monetary value.