

STATES OF JERSEY



MINIMUM PRICING OF ALCOHOL AND DRINKS PROMOTIONS

Lodged au Greffe on 2nd July 2020
by Deputy L.B.E. Ash of St. Clement

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) that there should be no minimum pricing of alcohol in Jersey;
- (b) that bars and pubs should be permitted to offer and advertise promotions on drinks; and
- (c) to request the Minister for Economic Development, Tourism, Sport and Culture to take the necessary steps to ensure the Licensing Assembly is informed of the States Assembly's decision, and to bring forward such legislative changes as are required, to implement paragraphs (a) and (b).

DEPUTY L.B.E. ASH OF ST. CLEMENT

REPORT

Minimum Pricing

The matter of whether a jurisdiction decides to introduce minimum pricing of alcohol is a political one. As such, it is a matter which will attract arguments in favour and arguments against. It is one which would, and *should*, be decided after political debate and, preferably, with evidence provided by the one who wishes to introduce such a new measure.

In Jersey, there has been no States debate surrounding the minimum pricing of alcohol. There has been no public consultation paper put forward on the subject. There has been no evidence presented to the Assembly to say that, on balance, minimum pricing is the right policy to pursue, for x or y reason. And there has been no opportunity for the Scrutiny function to scrutinise such evidence or the decision-making process.

Whether minimum alcohol pricing is a good thing or not, I do not know. I am open minded to it. Other members I have spoken to feel the same, but they have told me they would need to be convinced of the merits of such a policy after a period of consultation and reflection.

Despite some interest in the subject, particularly from a health perspective, no ministerial propositions in this area have been forthcoming.

I would suggest that until such a time as the case for minimum pricing has been presented, the default position should be that there be no minimum pricing for alcohol. Incidentally, it is not incumbent upon me or any other member to make the case for *not* having minimum pricing of alcohol. It is the case for the proponents of it, if there are any, to make their case for it.

Promotions on Drinks

At a time when hospitality and tourism is looking to try and make a come-back after the shut-down of businesses during the pandemic, the question of *why* promotions on drinks (such as 'Happy Hours' or 'Buy one get one free' or similar) are not permitted in Jersey has been put back into sharp focus.

I would ask, is this quasi-governmental interference in how someone chooses to run their business – what offers they wish to make to their clients – a *proportionate way of achieving a legitimate aim*?

What *is* the reason 'Happy Hours' are not allowed in Jersey? Has it succeeded in curbing excess drinking in Jersey? Whose policy was it and how did it come about?

Even now, under the minimum pricing of alcohol policy, supermarkets are still able to offer promotions, which pubs and bars are not.



Taken at an Alliance Tesco, Jersey, 15th June 2020.

So, whilst the retailer can sell drinks at '3 for £5' or 'buy 2 get 3rd free', the pubs cannot. Why is this?

Is it because we want people drinking in their homes, not in the controlled environment of pubs and bars?

The research has uncovered a number of references on this matter that may be of interest to Members and I have added them as an **Appendix** to this Report.

Financial and manpower implications

There are no additional financial and manpower implications arising from the adoption of this proposition.

Research: Licensing

1. Legislation

- a) [Licensing \(Jersey\) Law 1974](#)
- b) [Licensing \(Licence Fees\) \(Jersey\) Regulations 2007](#)
- c) [Licensing \(Prescribed Forms\)\(Jersey\) Order 1974](#)

2. Propositions

- a) Draft Liquor Licensing (Jersey) Law 201- lodged 7th June 2017 by Minister for EDTSC [P.54/2017](#)
- b) Draft Liquor Licensing (Jersey) Law 201- [P.54/2017: Amendment](#)
- c) Draft Liquor Licensing (Jersey) Law 201- lodged 24th October 2017 [P.103/2017](#)

The draft Law was withdrawn and re-lodged unamended – with an unamended accompanying report – so as to give the Economic Affairs Scrutiny Panel the additional time it needed to complete the review it began in January 2017.

- d) Draft Liquor Licensing (Jersey) Law 201- [P.103/2017: Amendment](#)
- e) Government Plan 2020-2023 (P.71/2019): Thirteenth Amendment [\(P.71/2019 Amd 13\) – Comments](#)

“The Government Plan 2020–2023 acknowledges that reform of the Licensing (Jersey) Law 1974 has taken longer than originally anticipated, and committed to examining the potential lodging of a suitable in-principle proposition or inviting the Assembly to hold an in-committee debate on liquor and alcohol licensing in either 2019 or 2020. An initial review has been undertaken, and will be considered by the Council of Ministers by the end of the year.

The Council of Ministers also remains interested in minimum pricing policy for alcohol, and is following developments on the Scottish model of a statutory minimum price.”

3. Statements

- a) [Statement](#) made by the Assistant Minister for Economic Development, Tourism, Sport And Culture Tuesday 6th March 2018 – Withdrawal of the Draft Liquor Licensing (Jersey) Law 201- giving his reasons for the withdrawal.

4. Questions in the States Assembly

- a) The Deputy of St. Mary asked of the Minister for Economic Development, Tourism, Sport and Culture regarding the preparation of a new Liquor Licensing Law ([OO.81/2020](#)):

“Will the Minister advise what progress, if any, has been made in the preparation of a new draft Liquor Licensing Law and, given that it is now 2 years since the Minister withdrew P.103/2017, which itself was intended to replace the existing law of 1974, what does he consider are the fundamental issues causing any delay in bringing forward a new Proposition?”

Excerpt from answer:

“A paper was produced for the Council of Ministers late last year, looking to form a task and finish working group to move matters forward. This was prompted by the Licensing Bench decision to implement a minimum pricing policy for off-licences. Unfortunately, the paper was not progressed to the Council of Ministers.

Last month I was asked by the Chief Minister and Deputy Chief Minister to accompany them to a meeting with the Bailiff and newly appointed Attorney General to discuss a way forward. At that meeting, it was agreed to form a joint working party to consider options.”

- b) [WQ.123/2020](#) Question by Deputy K.G Pamplin of St. Saviour to Minister for Economic Development, Tourism, Sport and Culture answered to be tabled by 9th March 2020:

“Will the Minister provide an update on the work to review and replace the Licensing (Jersey) Law 1974?”. The response is given in full below.

“This issue is being led by Senator Steve Pallett, the Assistant Minister with responsibility for liquor licensing matters. On 5th February 2020 he, I and the Chief Minister met the Bailiff and other Crown Officers to discuss the next steps.

It was agreed that a joint working party will be formed to consider options to update the Licensing (Jersey) Law 1974 and the associated system of licensing administration. It is envisaged that the group will be chaired by Senator Pallett with membership including representatives of the Licensing Bench.

In addition to the legislative issues, the group will consider preparing a licensing policy statement for the Government. It is intended that this will sit alongside the law and will set out the policies the Government wishes to pursue in relation to alcohol licensing. A paper will be prepared for consideration by the Council of Ministers to this effect. The proposal is subject to their support and is conditional on the identification of the necessary policy officer resource, which will enable it to proceed.

The ultimate aim is to update and streamline existing practices and policies to better reflect the needs of Islanders and the industry.”

5. Attorney General Guidance

In relation to offering and advertising promotions on drinks H.M. Attorney General produced [Guidelines](#) on Drinks pricing and promotions dated 19th December 2019 which confirms the position of the Licensing Assembly.

6. Reports

- a) Alcohol and Licensing Strategy for Jersey 2014 ([R.139/2014](#)):

Reference at 12.3 to Control of drinks promotions and pricing review and at 12.4 Minimum pricing review (Timeframe for this was dependent on when the Scottish/EU minimum pricing legal review has been undertaken and implemented) this is not anticipated before 2018.

- b) A New Liquor Licensing Law for Jersey – [Consultation Response Survey](#) 31st May 2016

Part 4 deals with Restricting Alcohol Price Promotions and the views expressed.

- c) [Corporate Services Scrutiny Panel: Draft Budget 2018 Interim Report \(Impots Duties\)](#) S.R.10/2017

- d) [Economic Affairs Scrutiny Panel: Legacy Report for Session 2014-2018](#) S.R.9/2018

Licensing Law: The Panel undertook a review of the Draft Liquor Licensing Jersey Law 201- ([P.103/2017](#)). However, before it had finalised its draft report and amendment, the Assistant Minister for Economic Development, Tourism, Sport and Culture withdrew the Proposition. The Panel would therefore recommend its successors to follow-up on the work which had been undertaken with regard to this matter and to keep abreast of any further developments.

7. Publications

- a) Article “[The Assembly of Governor, Bailiff and Jurats: Rise \(and Near Demise\)](#)” – Jersey and Guernsey Law Review 2018 Issue (covers the history of the Licensing Assembly with excerpt below)

“[36] The possibility emerged in 2017 of the Assemblée’s final abolition. A draft Liquor Licensing (Jersey) Law 201- (P.54/2017) was lodged au Greffe on 7 June 2017 by the Minister for Economic

Development, Tourism, Sport and Culture. This Projet de Loi was withdrawn and replaced on 24 October 2017 by P.103/2017 under the same title.

[37] Among the proposed reforms was the establishment of “a new States-appointed Licensing Authority to determine liquor licence applications, thereby replacing the Assembly of Lieutenant-Governor, Bailiff and Jurats”. An amendment to P.103/2017 was lodged on 9 January 2018[38] with a counterproposal to establish a Licensing Authority composed of a legally qualified person as chairperson, and two or more independent lay members, all to be appointed by the Minister on the recommendation of the Alcohol and Licensing Policy Group. Under either proposal the Assembly of Lieutenant-Governor, Bailiff and Jurats, as such, would be abolished. The Minister’s proposition was, however, withdrawn, and it is not clear whether and in what form such proposals might be pursued in the re-constituted States Assembly following the general elections in May 2018.

[38] For the time being at least, therefore, L’Assemblée des Gouverneur, Bailli et Jurés lives on.”

- b) [Minimum pricing ‘serious ammunition’ in fight against alcohol-related harm](#) (UK News | Published: November 19, 2018)
- c) [Minimum alcohol prices for off-licences and other shops come into force](#) (News | Published: April 20, 2020).
- d) [Supreme Court rejects legal challenge against minimum alcohol pricing policy in Scotland](#) November 15th 2017.
- e) [What is the Minimum pricing for alcohol? All you need to know about the legislation](#) by the Sunday Post November 15th 2017.

“SCOTLAND will become the first country in the world to introduce minimum pricing on alcohol after the Supreme Court rejected an appeal against the Scottish Government’s proposals.”

- f) [Minimum unit pricing on booze is a win for Jersey Hospitality](#) 7th January 2020 in Travel Eye CI

‘But we finally feel like our concerns have been heard thanks to a decision by the licensing assembly, who has passed minimum unit pricing (MUP) as a condition of licensing for off-trade markets.

‘Minimum pricing was something we lobbied the States to introduce not only because it has it been effective in reducing alcohol consumption in other jurisdictions, but it evens the playing field between on and off-trade sellers.’