



Minimum Unit Pricing - Scotland

December 2015

The Scotch Whisky Association is opposed to minimum unit pricing (MUP) because:

- MUP will not tackle alcohol misuse effectively. Research for the Scottish Government shows it will not reduce the number of people drinking at hazardous and harmful levels.
- The Scottish Government's own data demonstrates that alcohol sales have been falling in Scotland since 2009.
- Minimum pricing was first ruled illegal as a barrier to trade by the Court of Justice of the European Union (CJEU) more than 30 years ago. The Court has consistently ruled against minimum pricing since.
- MUP will set a precedent for equally ineffective and illegal measures by other countries which could severely damage the Scotch Whisky industry's export markets and the Scottish economy.

MUP - the evidence

There is no evidence¹ that MUP is effective in reducing alcohol-related harm. The Sheffield modelling work² showed that the number of hazardous and harmful drinkers would not fall with the introduction of MUP.

It is a regressive policy that hits responsible drinkers, in particular, those with the lowest incomes. According to data relied on by the Scottish Government, 33% of the alcohol purchased by responsible drinkers "in poverty" is below 50 pence per unit, as is 22% of the alcohol purchased by responsible drinkers who are not "in poverty"³. There is no justification for requiring responsible drinkers to pay more, and those "in poverty" are hardest hit. Conversely, the majority of hazardous and harmful drinkers are in the top three income quintiles⁴. According to modelling by Sheffield University, most of the alcohol purchased by these wealthy hazardous and harmful drinkers will not increase in price⁵. A recent OECD study⁶ acknowledged that high income heavy drinkers may not be impacted by MUP. The measure is therefore ineffective.

After considering all the evidence, the UK Government decided not to proceed with MUP for England and Wales, noting that its Alcohol Strategy Consultation "has not provided evidence that conclusively demonstrates that MUP will actually do what it is meant to: reduce problem drinking without penalising all those who drink responsibly. In the **absence of that empirical evidence**, we have decided that it would be a mistake to implement MUP at this stage"⁷. (emphasis added).

Alcohol misuse

There is a problem with alcohol misuse. However, alcohol-related harms in Scotland have declined in recent years as shown by the most recent statistics:

¹ Babor et al, Alcohol: No Ordinary Commodity, second edition, Oxford University Press 2010.

² Model-Based appraisal of alcohol minimum pricing and off-licensed trade discount bans in Scotland using the Sheffield alcohol policy model (v2): Second update based on newly available data. January 2012.

³ <https://www.shef.ac.uk/scharr/sections/ph/research/alpol/faq>

⁴ Scottish Health Survey 2012

⁵ Ibid 3

⁶ A. Ludbrook, How does minimum unit pricing for alcohol affect different types of drinkers. Tackling Harmful Alcohol Use: Economics and Public Health Policy OECD 2015

⁷ Home Office: Next Steps following the Government's Alcohol Strategy Consultation July 2013. Paragraph 5 of Ministerial Foreword.

- Alcohol-related death rates have declined 32% from a peak in 2003⁸. Death rates from alcoholic liver disease have declined by 32% since 2006⁹.
- The rates of stays i.e. admissions to hospitals with alcohol-related conditions peaked in 2007/2008 and have since declined by 22%.¹⁰
- The proportion of men and women aged 16-24 ‘binge drinking’ declined 11% between 2003 and 2013¹¹.
- Since 2000 the proportion of 13 year olds drinking once a week or more has decreased from 13% to 2% and for 15 year olds from 30% to 12%¹².
- The number of convictions for drink driving has declined 55% since 2006/07¹³.

Targeted interventions have been effective, but existing laws on underage sales and sales to the intoxicated are not fully and effectively applied.

MUP is likely to be illegal

The SWA is not alone in believing that the measure contravenes EU trading rules. In September 2012, the European Commission, Bulgaria, Italy, Portugal, France and Spain all submitted ‘detailed opinions’ opposing the proposals. It was only *after* those opinions had been submitted that the Scottish Government commissioned a report into the impact of MUP on off-trade sales of imported wine. A report by NHS Scotland in December 2014 shows that, based on 2013 figures, 37% of wine was sold in the off-trade at below 50p per unit (50ppu), (97% of Bulgarian wine was below 50ppu, 31% of Italian wine, 39% of Portuguese wine, 25% of French wine, 56% of Spanish wine)¹⁴. The NHS Scotland report also demonstrates that many “New World” wines were also sold below 50ppu.

The SWA lodged a formal complaint against the legislation with the European Commission in Brussels and, along with Comite Vins and spiritsEUROPE, filed a petition for Judicial Review of the legislation in the Scottish Courts. The Outer House of the Court of Session ruled in favour of the Scottish Government. The SWA appealed this decision to the Inner House. The Opinion of the Inner House of the Court of Session was published on 30 April 2014, see link: <http://www.scotcourts.gov.uk/search-judgments/judgment?id=482a86a6-8980-69d2-b500-ff0000d74aa7>.

The Court decided to make a reference to the CJEU to seek clarification on six aspects of EU law. The CJEU acknowledged receipt of the reference on 9 July 2014. The full text of the reference has not yet been made public. Following translation it was served on the parties to the case, the Commission and the Member States. A total of 12 written submissions were made in response to the reference. In addition to making written submissions, the parties and a number of Member States plus one EFTA state also requested an oral hearing. This took place on 6 May 2015 and involved the Scottish and UK Governments, Bulgaria, Ireland, Spain, Poland, Portugal, Sweden, Norway, the EU Commission and the SWA. At the oral hearing it was announced the Advocate General would issue his opinion on 3 September.

The CJEU has consistently found minimum pricing to be an illegal barrier to trade. It discriminates against more efficient producers in other Member States by removing the competitive advantage conferred by their lower cost base.

⁸ Age-standardised death rates calculated using the European Standard Population, National Records of Scotland, 27 August 2015

⁹ Monitoring and Evaluating Scotland’s Alcohol Strategy. Fourth Annual Report December 2014

¹⁰ Alcohol-related Hospital Statistics Scotland 2014/15.

¹¹ Scottish Health Survey 2014

¹² Scottish Schools Adolescent Lifestyles and Substance Use Survey

¹³ Recorded Crime in Scotland, 2014/15

¹⁴ NHS Scotland: The price distribution of wine from different countries of origin sold in Scotland’s off-trade. December 2014.

If it is proved that there is a justification for raising prices, the CJEU has indicated that there are other less trade restrictive means of doing so, including tax or duty. Indeed, the UK Government has introduced a ban on the sale of alcohol in England and Wales below duty plus VAT¹⁵ in order to tackle the most egregious examples of cheap alcohol.

On 3 September 2015, the Advocate General published his opinion which we welcomed, see link:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=166846&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=209625>

David Frost, Scotch Whisky Association chief executive, said: “We welcome the Advocate General’s opinion on minimum unit pricing (MUP) of alcohol. The opinion encourages us in our long-held view that MUP is illegal when there are less trade restrictive measures available.

“We await the Court of Justice’s final ruling.

“It remains important to address alcohol misuse with a range of other measures of proven effectiveness. We will continue to work closely with the Scottish Government and other stakeholders on this. There is a long-term trend of falling alcohol-related deaths and harms in Scotland which suggests that measures in place are working.”

We await the CJEU decision on 23 December.

MUP - damaging for Scotch, damaging for Scotland

Claims that as a ‘premium product’ Scotch has nothing to fear are wrong¹⁶.

If the Scottish Government is allowed to breach international free movement trade rules, this precedent would give comfort to governments abroad seeking to apply discriminatory measures against Scotch. Spurious ‘health justified’ trade barriers need not be in the guise of MUP, but they would undermine decades of improving market access for Scotch, leading to reduced export sales. This would affect suppliers and communities across the wider Scottish economy and harm the UK balance of trade.

In the domestic off trade, the Scottish Government’s own figures say 85% of Blended Scotch will be hit, harming producers and threatening jobs¹⁷.

Conclusion - Tackle alcohol misuse, but not with MUP

Scotland needs to address alcohol harm and attitudes to alcohol and drunkenness in Scotland need to change. We also need to acknowledge that progress is being made with regard to inappropriate consumption and that policies need to be targeted where the problem lies. The BMA highlights that 30% of those who drink consume 80% of the alcohol sold. We should tackle that problem first with targeted measures.

For more information please email rgallagher@swa.org.uk or call 0131 222 9230

¹⁵ The Licensing Act 2003 (Mandatory Conditions) Order 2014, SI 1252.

¹⁶ Nicola Sturgeon, Scottish Parliament, Plenary Session 5th November 2009, Columns 20911 & 20912

¹⁷ Scottish Government: Final Business and Regulatory Impact Assessment 2012 paragraph 5.120 and Table 16.