

Alcohol (Minimum Pricing) (Scotland) Bill

Scotch Whisky Association

Introduction

1. The Scotch Whisky Association (SWA) is the industry's representative organisation. Its 56 member companies – Scotch Whisky distillers, blenders, and bottlers – account for over 90% of the industry. We welcome the opportunity to make this submission to the Committee.
2. The SWA agrees that attitudes in Scotland to alcohol misuse must change and alcohol-related harm must be reduced. The Association and its members actively promote responsible drinking. The Association operates a strict Code of Practice on responsible marketing and was a founding member of the Scottish Government Alcohol Industry Partnership. This has delivered a number of tangible outcomes including the delivery of four national Alcohol Awareness Week campaigns, sponsorship guidelines and a model employee alcohol policy. It also established the Fife Alcohol Partnership Project that is piloting a multi-component approach to tackling alcohol-related harms.
3. We are committed to playing our part to reduce alcohol-related harm and promoting a culture where responsible alcohol consumption is the accepted norm and misuse is minimised.

The advantages and disadvantages of establishing a minimum alcohol sales price based on a unit of alcohol

4. The Scottish Government has in place a comprehensive strategy to reduce alcohol-related harm, the key pillars of which are the 'Framework for Action', the Licensing (Scotland) Act 2005 and the Alcohol Etc (Scotland) Act 2010, the latter only coming into force on 1 October 2010.
5. We note the Scottish Government wishes to proceed with minimum pricing at a time when alcohol sales in Scotland have been stable for 6 years¹ and indicators of health harm show a decline:
 - a. Alcohol-related deaths have declined 15% in the last 5 years and deaths in 2010 were the second lowest in the last decade².
 - b. Deaths from alcoholic liver disease have also declined since 2006³.
 - c. Alcohol-related hospital discharges have declined over the past two years (2007/08 -2009/10) from 43,054 to 39,278, a reduction of 8.8%⁴

¹ MESAS: An update of alcohol sales and price band analyses. August 2011

² Alcohol-Related Deaths, GROS 5 August 2011

³ MESAS Setting the Scene. Theory of change and baseline picture. March 2011

⁴ Alcohol Statistics Scotland Report 2011, February 2011.

6. This suggests that the measures already put in place are having a positive impact. More importantly these measures have only been in place for a relatively short period of time. They have not yet been fully assessed, far less the effect of the measures under the Alcohol etc (Scotland) Act 2010. It is premature to introduce yet further measures and restrictions.
7. The SWA remains opposed to minimum pricing. We are unconvinced it will effectively tackle alcohol misuse. Minimum pricing will fundamentally damage the Scotch Whisky industry at home and abroad with negative consequences for the wider economy. The industry believes minimum pricing to be the most serious threat to its future international competitiveness.
8. EU jurisprudence is clear. The ECJ has invariably ruled that minimum pricing is illegal. Its effectiveness is also questionable and it will cause a number of negative unintended consequences.

Legality

9. Concerns over the legality of introducing a Scottish minimum pricing regime have never been addressed publicly by the Government, despite the clear jurisprudence of the European Court of Justice.
10. The Scottish Government believes a case can be made for Minimum Unit Pricing (MUP) on public health grounds. Evidence from Anne Milton, the UK Public Health Minister, to the Commons Science and Technology Committee stated that the UK Government has contrary legal advice which indicates that MUP is 'probably illegal'.
11. The Swiss Government has also obtained a legal opinion on minimum pricing⁵. It clearly states that minimum pricing would breach its EU/EEA obligations and that a health exemption would not be likely to succeed.
12. Even campaigners for minimum pricing in papers published by them are not convinced of the legality⁶.
13. To address this legal uncertainty, the SWA believes the Scottish Government should notify the Bill to the European Commission through the technical notification procedure (Directive 98/34). The Government has refused to do so to date claiming the Bill does not require a change to the product.
14. Notification of the Bill would allow for full scrutiny by EU Member States and by the Commission itself. If the Scottish Government is confident in their legal advice, it is surprising they are reluctant to open up the Bill to

⁵ Prof Dr A. Epiney et al, On the Compatibility of a Legal Minimum Price for Alcohol with the Free Trade Agreement Switzerland-EU and Economic Freedom. Legal Opinion on Behalf of the Swiss Alcohol Board, October 2009

⁶ B Baumberg, P Anderson, Health, Alcohol and EU law. European Journal of Public Health, Vol. 18, No. 4, 392 -298

this scrutiny when they have said they want MSPs to be allowed full scrutiny of the principle and price.

15. Minimum pricing is a barrier to the free movement of goods. It is likely to be found illegal under the EU Treaty (Article 34), and likely to be in breach of World Trade Organisation rules (GATT Art.III). These rules have allowed the Scotch Whisky industry to challenge successfully protectionism in global markets with a resultant increase in exports underpinning future industry success. Scotch Whisky accounts for around 80% of Scottish food and drink exports. If Government action in Scotland undermined EU and WTO rules, the precedent set would be used by third country administrations to protect their local alcohol industry. The knock-on effect would be hugely damaging for Scotch Whisky and the wider Scottish economy, reducing exports by as much as a half a billion pounds a year.
16. Exports of premium brands would be adversely affected overseas by a Scottish initiated trade barrier. Attempts to open up new markets would be stalled. Econometric analysis suggests that 14.5% of Scotch Whisky exports could be put at risk. At home, value brands and supermarket own label products favoured by those on lower incomes would see immediate price rises. Companies specialising in this sector, which represent 26% of Scotch Whisky sales in Scotland, fear a significant loss of business, leading to job losses and closures. At a 50p a unit price, an average priced bottle of Scotch would increase by 18.6%.

Effectiveness

17. The case for minimum pricing relies heavily on the Government commissioned 'Sheffield' modelling. The updated Sheffield report⁷ commissioned by the Scottish Government showed those drinking most heavily will have to spend less than the price of one pint of beer a week more when MUP is introduced and will be the least likely to change their drinking patterns and behaviour.
18. The Sheffield report has three categories of drinker - moderate, hazardous and harmful. The report assesses moderate consumers as drinking on average 6 units per week. This does not reflect government weekly drinking guidelines, which are 21 units for men, 14 units for women. Also, all drinkers within a category are assumed to hold the same characteristics. No assessment is made for age, gender, ethnicity, social grouping or different drinking patterns. For example, it is assumed that all hazardous and harmful drinkers buy on price alone, which is clearly not the case.

⁷ University of Sheffield,: Model-Based Appraisal of Alcohol Minimum Pricing and Off-Licensed Trade Discount Bans in Scotland Using the Sheffield Alcohol Policy Model (v2): An Update Based on Newly Available Data. April 2010

19. There is no strong evidence as to the effectiveness of minimum pricing as a policy to reduce alcohol-related harm⁸. It is often portrayed as a targeted measure having greatest impact on problem drinkers with limited impact on moderate drinkers. A recent report from the Institute for Fiscal Studies⁹ rejected these assertions finding that MUP will hit responsible drinkers and, in particular, those on lower incomes at a time when household budgets are already under extreme pressure. The Scottish Government should concentrate on the target group of some 30% of drinkers who consume 80% of alcohol sold (see para. 21 below).
20. Although the Sheffield modelling work shows precise numbers on a range of potential impacts, nowhere does it state the reduction in the actual number of hazardous and harmful drinkers that would be achieved. In fact the proportion of hazardous and harmful drinkers remains unchanged.
21. Tackling alcohol misuse will take concerted effort over many years. It should be based on a multi-component approach, involving all relevant stakeholders targeting those drinking heavily and inappropriately. Targeting hazardous and harmful drinkers offers the greatest opportunity to reduce harm. Reducing the number of hazardous and harmful drinkers will reduce per capita consumption; we have no issue with that outcome. Reducing consumption without significantly reducing the number of heavy drinkers, while undermining a major Scottish industry and its contribution to the economy, is a policy option that undermines the national economic interest.

Unintended consequences

22. All price fixing measures distort the market. MUP will significantly distort the Scottish market. It is apparent from the Business and Regulatory Impact Assessment the Scottish Government is unclear how consumers and retailers will react. Any additional profits that may result from any increase in prices due to MUP will be retained by retailers, and not passed back to producers.
23. There is no consideration of the impact of minimum pricing on cross border sales, illicit supply, organised crime and fraud in the Sheffield Report.
24. Our experience shows those markets which deploy over stringent control policies see a greater incidence of fraud with alcohol supplied through grey and black markets. We would expect greater cross-border shopping with England where consumers will be able to source their preferred brands not only cheaper, but will also have access to quantity discounts.
25. Internet shopping is increasing for all types of goods. As Internet sales for alcohol products sourced from outwith Scotland are not subject to the

⁸ Babor et al, Alcohol: No Ordinary Commodity, 2nd Edition, Oxford University Press 2010.

⁹ Alcohol Pricing and taxation policies, IFS Briefing Note NB 124, 2011

Scottish licensing provisions and therefore MUP we expect to see increased alcohol Internet sales.

26. A key objective of the Government's alcohol strategy is reduced consumption. An increase in cross border purchases, Internet and illegal sales of alcohol as a result of the introduction of MUP could see the Government's goal being significantly undermined.
27. The Scottish Government should set out how it proposes to monitor and assess the impact of MUP on Internet sales, cross-border purchasing and illegal sales. Without this it will not be able to calculate Scottish consumption of alcohol when it is bought outside Scotland.

The level at which such a proposed minimum price should be set and the justification for that level

28. It is not the place of government to set prices and distort markets. Alcohol would become the only food and drink product where minimum retail prices are set by government – a policy long since discredited by bodies such as the Competition Commission and the OFT.
29. We are opposed to the introduction of MUP. If approved by Parliament and passed into law the scheme's effectiveness should be subject to annual review, against clearly understood, transparent and objectively evidenced criteria, and the scheme should be discontinued should the review demonstrate its ineffectiveness or its introduction leading to undesirable consequences, viz illegal activity/illicit market.
30. The Committee may also wish to refer to the longer submission on MUP from the SWA to the Finance Committee.

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