

# Annex 6



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## BRIEFING PAPER

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# Alcohol: minimum pricing

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**Inside:**

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## Summary

The debate about a minimum price for alcohol has been prompted by concerns about high levels of drinking, its effect on public health and public order, and a widespread belief that most of the alcohol which contributes to drunken behaviour is irresponsibly priced and sold. One policy option is to set a minimum price *per unit* of alcohol. Another is to ban the sale of alcohol below *cost price* (the level of alcohol duty plus VAT).

Alcohol licensing is a devolved matter. In May 2012 the Scottish Government passed legislation which would enable it to introduce a minimum unit price for alcohol in Scotland. The intended price is 50p per unit. The Scottish Whisky Association has been challenging the legislation in the courts. On 3 September 2015, the Advocate General to the European Court of Justice said that prescribing a minimum price for alcoholic drinks could only be justified to protect public health if no alternative measure could be found. The case will eventually return to the Scottish Court of Session. Scottish First Minister Nicola Sturgeon has said she will continue to “vigorously make the case” for a minimum unit price.

The Coalition Government’s alcohol strategy of March 2012 included a commitment to introduce a minimum unit price for alcohol. A consultation on the strategy recommended a price of 45p per unit. In July 2013, following its analysis of the consultation’s responses, the Coalition said that it would *not* be proceeding with a minimum unit price, claiming there was not enough “concrete evidence” that this would be effective in reducing the harms associated with problem drinking without penalising responsible drinkers. There would instead be a ban on the sale of alcohol below *cost price*. This came into force on 28 May 2014 and is one of the licensing conditions of the mandatory code of practice that applies to licensed premises.

Alcohol charities and public health groups continue to argue for the introduction of a minimum unit price, claiming that this would have more of an impact on alcohol-related harm than the ban on below cost selling.

# 1. Introduction

The debate about a minimum price for alcohol has been prompted by concerns about high levels of drinking, its effect on public health and public order, and a widespread belief that most of the alcohol which contributes to drunken behaviour is irresponsibly priced and sold.<sup>1</sup>

One policy option is to set a minimum price *per unit* of alcohol. Another is to ban the sale of alcohol below *cost price* (the level of alcohol duty plus VAT).

Calls for a minimum *unit price* have been made for some time. In his 2008 [annual report](#) on the state of the nation's health, the then Chief Medical Officer (CMO) for England, Sir Liam Donaldson, recommended setting a minimum price for alcohol at 50p per unit. The CMO's report argued that the policy would target harmful "binge drinking", while leaving the more moderate drinker unaffected.<sup>2</sup>

In its January 2010 report, [Alcohol](#), the Health Select Committee looked at the use of pricing to help curb alcohol consumption and whether the cost of alcohol should rise – either through the introduction of a minimum unit price, by raising the level of duty, or a combination of the two.<sup>3</sup> The Committee's report recommended the use of a minimum unit price and, in the longer term, a significant increase in duty rates – facilitated by an increase in the minimum alcohol duty rates set across the EU.<sup>4</sup>

Alcohol licensing is a devolved matter. The Labour Government introduced a code of practice containing mandatory conditions for the sale of alcohol in April 2010.<sup>5</sup> Although the code banned irresponsible promotions, it said nothing on minimum pricing. This may be because the then Government was less than enthusiastic about the idea.<sup>6</sup>

The Coalition Government's [alcohol strategy](#) of March 2012 included a commitment to introduce a minimum unit price for alcohol. A [consultation](#) on the strategy recommended a price of 45p per unit. In July 2013, following its analysis of the consultation's responses, the Coalition said that it would not be proceeding with a minimum unit price.<sup>7</sup> There would instead be a ban on the sale of alcohol below cost price. This came into force on 28 May 2014.

<sup>1</sup> See, for example, Home Office, [Rebalancing the Licensing Act: a consultation on empowering individuals, families and local communities to shape and determine local licensing](#), July 2010, p20

<sup>2</sup> Department of Health, [150 years of the Chief Medical Officer: on the state of public health 2008](#), March 2009, p22

<sup>3</sup> Health Select Committee, [Alcohol](#), HC 151 2009-10, January 2010, section 10

<sup>4</sup> Ibid, paras 328-331

<sup>5</sup> See Library Standard Note SN/HA/5351, [Mandatory conditions for alcohol sale](#)

<sup>6</sup> According to press reports, Andy Burnham, former Health Secretary, was in favour while Lord Mandelson was not: see ["Cost of cheap alcohol will double to curb binge drinking"](#), *Daily Telegraph*, 14 January 2010; See also "Brown won't buy 50p-a-unit alcohol plan", *Times*, 16 March 2009, p3

<sup>7</sup> Home Office, [Next steps following the consultation on delivering the Government's alcohol strategy](#), July 2013, p3

In May 2012 the Scottish Government passed legislation which would enable it to introduce a minimum unit price for alcohol in Scotland. The intended price is 50p per unit. The Scottish Whisky Association has been challenging the legislation in the courts. On 3 September 2015, the Advocate General to the European Court of Justice said that prescribing a minimum price for alcoholic drinks could only be justified to protect public health if no alternative measure could be found.<sup>8</sup> The case will eventually return to the Scottish Court of Session.

Further detail on policy under the Coalition Government and in Scotland is set out below.

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<sup>8</sup> Europa website, [Opinion of Advocate General Bot](#), delivered 3 September 2015 (1), Case C-333/14, The Scotch Whisky Association and Others v The Lord Advocate & The Advocate General for Scotland



## 2. Policy under the Coalition Government

### Proposed ban on sales below cost price

The Coalition Agreement of May 2010 said the Government would ban the sale of alcohol below cost price.<sup>9</sup> A July 2010 [consultation](#) on "rebalancing" the *Licensing Act 2003* sought views on how to define the cost of alcohol; effective ways to enforce a ban; and the feasibility of using the mandatory code of practice to set a licence condition that no sale could be below cost price.<sup>10</sup>

Responses to the consultation "indicated a wide range of views...with no overall consensus".<sup>11</sup>

Government plans to ban the sale of alcohol below the rate of duty plus VAT were set out in a written statement of 18 January 2011:

(...) Banning the sale of alcohol below the rate of duty plus VAT is the best starting point for tackling the availability of cheap alcohol and will send a clear signal to retailers and the public that Government take this issue seriously. They will effectively set a minimum level below which alcoholic products cannot be sold and will stop the worst instances of deep discounting which result in alcohol being sold both cheaply and harmfully. Importantly this system will have a limited burden on business and can be delivered at low cost to the taxpayer.<sup>12</sup>

It was intended that the ban would come into force from 6 April 2012 and would be a new condition of the mandatory code of practice.<sup>13</sup>

### Alcohol strategy (March 2012) - a minimum unit price?

The Government's [Alcohol Strategy](#), published in March 2012, set out a range of proposals to address binge drinking, alcohol-fuelled violence and disorder, and the health problems associated with excessive drinking. One of the strategy's commitments was to introduce a minimum unit price for alcohol - rather than implementing the proposed ban on below cost sales.<sup>14</sup> The Prime Minister's foreword to the strategy claimed a minimum unit price would reduce both crime and alcohol-related deaths:

(...) we are going to introduce a new minimum unit price. For the first time it will be illegal for shops to sell alcohol for less than this set price per unit. We are consulting on the actual price, but if it is 40p that could mean 50,000 fewer crimes each year and 900 fewer alcohol-related deaths a year by the end of the decade.

<sup>9</sup> HM Government, [The Coalition: our programme for government](#), May 2010, p13

<sup>10</sup> Home Office, [Rebalancing the Licensing Act: a consultation on empowering individuals, families and local communities to shape and determine local licensing](#), July 2010, consultation question 24 on p20

<sup>11</sup> Home Office, [Responses to consultation: Rebalancing the Licensing Act](#), 2010, p11

<sup>12</sup> [HC Deb 18 January 2011 c34WS](#)

<sup>13</sup> [HC Deb 27 October 2011 c312W](#)

<sup>14</sup> [The Government's Alcohol Strategy](#), Cm 8336, March 2012, p7

This isn't about stopping responsible drinking, adding burdens on business or some new kind of stealth tax - it's about fast, immediate action where universal change is needed.

And let's be clear. This will not hurt pubs. A pint is around two units. If the minimum price is 40p a unit, it won't affect the price of a pint in a pub. In fact, pubs may benefit by making the cheap alternatives in supermarkets more expensive...<sup>15</sup>

In a statement to the House, the Home Secretary said that a minimum price per unit would stop "the deep discounting and bargain basement sales that drive binge drinking... Most drinks will not be affected by minimum unit pricing, but the cheap vodka, super-strength cider and special brew lagers will go up in price".<sup>16</sup>

### Reaction

The charity Alcohol Concern welcomed the Government's plans,<sup>17</sup> as did the Alcohol Health Alliance.<sup>18</sup>

The BBC reported that some in the drinks industry, such as C&C Group which makes Magners cider and Tennent's lager, had given the Government's proposal a "cautious welcome".<sup>19</sup> Greene King and Waitrose, in evidence to the Health Committee, strongly supported the introduction of a minimum unit price.<sup>20</sup> However, Andrew Opie of the British Retail Consortium claimed it would be "a tax on responsible drinkers".<sup>21</sup>

In its July 2012 [report](#) on the Government's alcohol strategy, the Health Select Committee welcomed plans for a minimum unit price while remarking that it was "struck by how little evidence has been presented about the specific effects anticipated from different levels of minimum unit price".<sup>22</sup> The Committee also said that an appropriate mechanism would be needed to monitor and adjust a minimum price over time and recommended that there should be a "sunset clause" on any provisions for setting a price.<sup>23</sup>

The Wine and Spirit Trade Association told the Committee that it was "inconsistent with the operation of the free market for the state to intervene on price" and that minimum pricing could "therefore represent a barrier to trade and be illegal under EU law."<sup>24</sup>

<sup>15</sup> Ibid, p2

<sup>16</sup> [HC Deb 23 March 2012 c1072](#)

<sup>17</sup> Alcohol Concern, *Briefing paper on the Government's alcohol strategy*, March 2012, p1; Alcohol Concern favours a minimum price of 50p per unit.

<sup>18</sup> ["Health bodies say government must stand firm on minimum unit pricing"](#), Alcohol Health Alliance news release, 13 March 2013; the Alliance is a group of 32 organisations working to reduce the damage caused to health by alcohol misuse

<sup>19</sup> ["Minimum alcohol price planned for England and Wales"](#), *BBC News*, 23 March 2012

<sup>20</sup> Health Select Committee, [Government's Alcohol Strategy](#), HC 132 2012-13, July 2012, para 46

<sup>21</sup> ["Minimum alcohol price planned for England and Wales"](#), *BBC News*, 23 March 2012

<sup>22</sup> Health Select Committee, [Government's Alcohol Strategy](#), para 54

<sup>23</sup> Ibid, para 57

<sup>24</sup> Ibid, para 43



The Office of Fair Trading said that it was “important to distinguish between the current proposal for a statutory minimum price unilaterally imposed by Government, and the alternative of a voluntary agreement between retailers to agree prices”:

(...) A voluntary agreement on price would almost certainly infringe [The Competition Act 1998] and European competition law.

There may be constraints on minimum pricing legislation arising from wider European law. For example, minimum pricing legislation may raise issues of compatibility with European free movement rules. The OFT does not have jurisdiction over these areas of law – enforcement takes place at the European level...<sup>25</sup>

### Consultation on the strategy (November 2012)

A [consultation](#) on the Government’s alcohol strategy was published in November 2012 and sought views on five policy areas, one of which was for a minimum unit price of 45p.<sup>26</sup> According to estimates in the consultation paper, such a price would result in a reduction in consumption across all product types of 3.3%, 5,240 fewer crimes per year, a reduction in 24,600 alcohol-related hospital admissions and 714 fewer deaths per year after ten years.<sup>27</sup>

An Impact Assessment (IA) was published by the Home Office.<sup>28</sup> This used [version 2](#) of a model<sup>29</sup>, developed by the University of Sheffield’s School of Health and Related Research, for assessing the impact of alcohol pricing policies.<sup>30</sup> The IA gave the following costs of alcohol misuse in England:

- NHS costs, at about £3.5bn per year at 2009-10 costs
- Alcohol-related crime, at £11bn per year at 2010-11 costs
- Lost productivity due to alcohol, at about £7.3bn per year at 2009-10 costs (UK estimate).<sup>31</sup>

The impact of alcohol on health and crime was noted:

(...) Over the last ten years health harms have continued to grow. Alcohol-attributable deaths in England rose by 7%, from 14,000 in 2001 to 15,000 in 2010. In contrast, deaths from all causes in England fell by 7% over this period. Over the same period, alcohol-specific deaths rose by 30%. The rate of liver deaths in the UK has nearly quadrupled over 40 years, a very different trend from most other European countries. Approximately 60% of people with liver disease in England have alcoholic liver disease, which accounts for 84% of liver deaths. In addition, the rate of alcohol-related hospital admissions has also continued to rise by an average of 4% each year over the eight years 2002-03 to 2010-11. Alcohol is now one [of] the three biggest lifestyle risk

<sup>25</sup> Ibid, para 44

<sup>26</sup> Home Office, [A consultation on delivering the Government’s policies to cut alcohol fuelled crime and anti-social behaviour](#), November 2012, chapter 5

<sup>27</sup> Ibid, p16

<sup>28</sup> Home Office, [Impact Assessment on a minimum unit price for alcohol](#), November 2012

<sup>29</sup> University of Sheffield Alcohol Research Group website, [The Sheffield Alcohol Policy Model version 2](#)

<sup>30</sup> Home Office, [Impact Assessment on a minimum unit price for alcohol](#), p8

<sup>31</sup> Ibid, p5

factors for disease and death in the United Kingdom, after smoking and obesity.

There is also a strong link between alcohol and crime, particularly violent crime. In 2010/11, there were around 930,000 (44%) violent incidents in England and Wales where the victim believed the offender to be under the influence of alcohol, this rose to 58% in instances of stranger violence.<sup>32</sup>

The IA gave three reasons for preferring minimum unit pricing (MUP) over alcohol duties to achieve the same impact on alcohol prices:

1. MUP is a more targeted approach to address the problems of cheap alcohol; EU rules prevent alcohol duties being linked to their sale price. A rise in alcohol duty would affect all types of alcohol products, including the most expensive products. A MUP is intended to specifically target the sale of cheap alcohol products.

2. Alcohol duties alone could not bring about a system of minimum pricing as EU rules prevent wine and cider duties being directly linked to their alcohol content;

3. There is no requirement for retailers to pass through higher duties into prices, so higher duties will not automatically raise the price of cheap alcohol, and some evidence that in practice prices do not always rise to reflect higher duties.

It is therefore expected that MUP will be the most effective approach in terms of reducing the consumption of harmful and hazardous consumers in particular.<sup>33</sup>

On the link between alcohol price and harm, the IA acknowledged that no other country had yet implemented a minimum unit price for alcohol but that there was a “range of evidence that supports increasing the price of alcohol in order to reduce alcohol consumption and leading to reductions in alcohol harms, particularly with regard to health harms”.<sup>34</sup>

The IA referred to recent analysis of the effectiveness of “social reference pricing” in Canada which found that a 10% increase in the minimum price of any given alcoholic product reduced its consumption by between 14.6% and 16.1%.<sup>35</sup>

The IA said that MUP would help to curb the increase in “pre-loading” – or drinking at home – which studies had linked with alcohol-related crime and disorder.<sup>36</sup>

### **Government response to the consultation (July 2013)**

In July 2013 the Government announced that it would not be introducing a minimum unit price after all:

[The] consultation has been extremely useful. But it has not provided evidence that conclusively demonstrates that Minimum Unit Pricing (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

<sup>32</sup> Ibid, pp5-6 (footnotes removed)

<sup>33</sup> Ibid, pp3-4

<sup>34</sup> Ibid, p6

<sup>35</sup> Ibid, p6

<sup>36</sup> Ibid, p7



stage. We are not rejecting MUP – merely delaying it until we have conclusive evidence that it will be effective.<sup>37</sup>

The Government said that it would instead go ahead with the ban on selling alcohol below cost price.

A detailed analysis of consultation responses was published by the Home Office.<sup>38</sup> There were 1,145 responses to the question on whether a minimum unit price (MUP) of 45p was targeted, proportionate and would achieve a significant reduction in alcohol-related harm. Of these, 395 respondents (34%) agreed that such a level would achieve the aims; 638 respondents (56%) disagreed.<sup>39</sup> Respondents from public health bodies, voluntary and community organisations and local government were more likely to agree that the proposed MUP would meet its aims. The largest group of respondents were members of the public (46%, 524 respondents), the majority (73%) of whom did not agree that the MUP would achieve its aims.

A number of other measures to tackle excessive drinking and alcohol-related crime were set out in the Government's plans. These included making the mandatory licensing conditions more effective, particularly those regulating irresponsible sales and promotions.<sup>40</sup>

## Reaction

Labour's Shadow Crime and Security Minister, Diana Johnson, said the Government had made a policy U-turn on minimum unit pricing. She referred to research by the Institute for Fiscal Studies which found that a ban on the sale of alcohol "below cost" would "raise the price of less than 1% of the alcohol sold in the off-trade, with most of that sold in discount stores, not supermarkets".<sup>41</sup>

Alcohol Concern said the "best chance" of tackling the problems caused by cheap drink had "been kicked into the long grass" and that the Government had "caved in to industry lobbying."<sup>42</sup> Alcohol Research UK also accused the Government of changing policy following "sustained pressure from sections of the alcohol industry" rather than on the basis of any new evidence.<sup>43</sup>

Public Health England<sup>44</sup> said it shared "the disappointment of the public health community" that the introduction of a minimum unit price was

<sup>37</sup> Home Office, [Next steps following the consultation on delivering the Government's alcohol strategy](#), July 2013, p3

<sup>38</sup> Home Office, [Analysis of responses to the consultation on delivering the Government's policies to cut alcohol fuelled crime and anti-social behaviour](#), July 2013

<sup>39</sup> Ibid, p6

<sup>40</sup> Home Office, [Next steps following the consultation on delivering the Government's alcohol strategy](#), ch 1 & 2

<sup>41</sup> [HC Deb 17 July 2013 c1115](#)

<sup>42</sup> ["Minimum unit price for alcohol proposal shelved"](#), *Guardian*, 17 July 2013

<sup>43</sup> ["Government alcohol strategy response – Alcohol Research UK comment"](#), News release, 17 July 2013

<sup>44</sup> Public Health England was established in April 2013 to bring together public health specialists into a single public health service. It is an executive agency, sponsored by the Department of Health.



not being taken forward and noted that the evidence base for it was "strong and growing".<sup>45</sup>

The Portman Group, the "responsibility body for drinks producers in the UK", welcomed the Government's decision and gave details of the voluntary pledges that alcohol producers had made to promote responsible drinking.<sup>46</sup>

### Ban on sales below cost price introduced (May 2014)

A ban on selling alcohol below the "permitted price" was introduced through [\*The Licensing Act 2003 \(Mandatory Conditions\) Order 2014\*](#) and came into force on 28 May 2014. The schedule to the Order defines the "permitted price" as the level of alcohol duty plus VAT. This means that a can of average strength lager cannot be sold for less than 40p and a standard bottle of vodka cannot be sold for less than £8.89.<sup>47</sup>

Home Office [guidance](#) for alcohol suppliers and enforcement authorities was published in May 2014. This states that non-compliance with the ban could result in up to 6 months' imprisonment and/or a £20,000 fine.<sup>48</sup> It could also result in a licence being reviewed or the service on a premises of a closure notice.

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<sup>45</sup> ["Alcohol Strategy consultation report"](#), Public Health England response, 17 July 2013

<sup>46</sup> ["Portman Group Response to Government's Alcohol Strategy Consultation Response"](#), Portman Group news release, 29 August 2013

<sup>47</sup> 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](#), May 2014, p5

<sup>48</sup> *Ibid*, p18

### 3. Policy in Scotland

The *Alcohol (Minimum Pricing) (Scotland) Act 2012* paved the way for the introduction of a minimum price of 50p per unit.<sup>49</sup>

The Scottish Whisky Association has been challenging the legislation in the courts, claiming that minimum unit pricing is contrary to EU law.<sup>50</sup>

On 3 September 2015, the Advocate General to the European Court of Justice said that prescribing a minimum price for alcoholic drinks could only be justified to protect public health if no alternative measure - such as tax increases - could be found.<sup>51</sup>

The case will eventually return to the Scottish Court of Session. Scottish First Minister Nicola Sturgeon has said she will "vigorously make the case" for a minimum unit price.<sup>52</sup>

#### Policy development

The Scottish Government first attempted to introduce a minimum unit price by way of a change to its licensing laws.

The *Licensing (Scotland) Act 2005* introduced a range of measures designed to protect communities from alcohol-related harm. It established five "licensing objectives": protecting and improving public health; preventing crime and disorder; protecting public safety; protecting children from harm; preventing public nuisance. In many respects the Scottish Act replicates features of the *Licensing Act 2003*, the legislation which governs alcohol licensing in England and Wales. However, one difference is that the Scottish Act has the additional "licensing objective" of "protecting and improving public health".

Section 27 of the *Licensing (Scotland) Act 2005* states that all premises licences will be subject to mandatory conditions; these are detailed in Schedule 3 to the Act. Section 27 allows Scottish Ministers, via regulations, to set out further national mandatory or discretionary conditions to be attached to premises licences. The original intention was to add a new mandatory condition to Schedule 3(7), "Pricing of alcohol", to prescribe a minimum price per unit of alcohol.

#### **The *Alcohol etc (Scotland) Act 2010***

The proposal to introduce a minimum unit price through secondary legislation did not find favour with opposition parties in the Scottish

<sup>49</sup> ["Alcohol minimum pricing bill passed"](#), Scottish Government press release, 24 May 2012; for background to the Bill see SPICe Briefing 12/01, [Alcohol \(Minimum Pricing\)\(Scotland\) Bill](#), 5 January 2012

<sup>50</sup> ["Scotch Whisky industry challenges minimum pricing of alcohol"](#), SWA press release, 19 July 2012

<sup>51</sup> Europa website, [Opinion of Advocate General Bot](#), delivered 3 September 2015 (1), Case C-333/14, *The Scotch Whisky Association and Others v The Lord Advocate & The Advocate General for Scotland*

<sup>52</sup> ["FM comments on MUP"](#), Scottish Government news release, 3 September 2015



Parliament.<sup>53</sup> Primary legislation was therefore introduced in November 2009 by the then Scottish Health Secretary Nicola Sturgeon.

The *Alcohol etc (Scotland) Bill* sought to amend Schedule 3 to the 2005 Act and introduce a further mandatory condition of premises licences granted under that Act. The condition was that alcohol would not be sold on the premises at a price below the minimum price. The Bill did not state what the unit price should be but would have given Ministers the power to set it in regulations. The proposed measure did not enjoy cross-party support. SNP Members were in favour but Labour, Liberal Democrat and Conservative MSPs were opposed.<sup>54</sup>

The Health Committee's stage 1 report on the proposed legislation recommended that the Scottish Parliament support the general principles of the Bill but urged the Government to specify a minimum price on the face of the Bill. It confirmed that MSPs remained divided over whether minimum pricing would be effective.<sup>55</sup>

Opposition continued throughout the Bill's passage, with Labour, Conservatives and Liberal Democrats arguing that the move would penalise responsible drinkers and might be illegal under European competition law. Although the Health Secretary attempted to re-insert minimum pricing into the legislation after it was removed at an earlier stage, Parliament opposed the move and the Bill was finally passed without the minimum pricing provision.<sup>56</sup>

The Scottish Parliament Information Centre (SPICe) published a [briefing paper](#) on the Bill.<sup>57</sup>

### **The Alcohol (Minimum Pricing) (Scotland) Act 2012**

The *Alcohol (Minimum Pricing) (Scotland) Bill*, introduced in October 2011, was the second attempt to legislate for a minimum unit price. The Bill was passed in May 2012 and paved the way for the introduction of a minimum price of 50p per unit.<sup>58</sup>

Further background to the 2012 Act is available from the Scottish Government [website](#) and a SPICe [briefing paper](#).<sup>59</sup>

### **Legal action by the Scottish Whisky Association**

The Scottish Whisky Association (SWA) claims that minimum unit pricing is contrary to EU law, will not be effective in tackling alcohol misuse, and penalises responsible drinkers. In July 2012 the SWA lodged a

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<sup>53</sup> ["SNP crackdown on discount alcohol is delayed by a year"](#), *Scotsman*, 10 March 2009

<sup>54</sup> ["MSPs split on party lines over alcohol pricing"](#), *Times*, 28 May 2010

<sup>55</sup> ["Health committee split on alcohol pricing"](#), *BBC News*, 27 May 2010

<sup>56</sup> ["MSPs pass Alcohol Bill without minimum drink pricing"](#), *BBC News Scotland*, 10 November 2010

<sup>57</sup> SPICe Briefing 10/13, [The Alcohol etc \(Scotland\) Bill](#), 18 February 2010

<sup>58</sup> ["Alcohol minimum pricing bill passed"](#), Scottish Government press release, 24 May 2012

<sup>59</sup> SPICe Briefing 12/01, [Alcohol \(Minimum Pricing\)\(Scotland\) Bill](#), 5 January 2012



complaint with the European Commission and filed a petition for judicial review with the Scottish Court of Session.<sup>60</sup>

In a ruling of 3 May 2013, the Court refused the SWA's petition.<sup>61</sup> The Court ruled that the 2012 Act was not outside the legislative competence of the Scottish Parliament and that the proposed Order setting a minimum price per unit was within devolved competence and within the powers of the Scottish Ministers. The Court also decided that the measures were not incompatible with EU law.

The SWA appealed the decision. In April 2014 the Scottish Court of Session ruled that the case should be referred to the European Union's Court of Justice.<sup>62</sup>

On 3 September 2015, the Advocate General to the European Court of Justice said that prescribing a minimum price for alcoholic drinks could only be justified to protect public health if no alternative measure - such as tax increases - could be found.<sup>63</sup>

Scottish First Minister Nicola Sturgeon commented:

"We welcome this opinion, in which the Advocate General confirms that minimum unit pricing is not precluded by EU law, but sets out tests that the national court has to apply.

"Importantly, this initial opinion indicates it will be for the domestic courts to take a final decision on minimum unit pricing. The Advocate General finds that the policy can be implemented if it is shown to be the most effective public health measure available.

"As such, the legal process is ongoing and we await a final response from the European Court of Justice, before the case returns to the Scottish courts.

"While we must await the final outcome of this legal process, the Scottish Government remains certain that minimum unit pricing is the right measure for Scotland to reduce the harm that cheap, high-strength alcohol causes our communities. In recent weeks statistics have shown that alcohol related deaths are rising again and that consumption may be rising again after a period of decline. We believe minimum unit pricing would save hundreds of lives in coming years and we will continue to vigorously make the case for this policy."<sup>64</sup>

For discussion of the Advocate General's opinion see:

- Angus MacCulloch, ["Another Step in the Scottish Alcohol MUP Case"](#), Alcohol Policy UK, 17 September 2015
- ["Pro and anti minimum pricing groups claim good news over latest ruling"](#), Alcohol Policy UK, 9 September 2015

<sup>60</sup> ["Scotch Whisky industry challenges minimum pricing of alcohol"](#), SWA press release, 19 July 2012

<sup>61</sup> <http://www.bailii.org/scot/cases/ScotCS/2013/2013CSOH70.html>

<sup>62</sup> ["Legal challenge against Scottish Government's minimum alcohol pricing policy referred to European court"](#), *Daily Record*, 30 April 2014

<sup>63</sup> Europa website, [Opinion of Advocate General Bot](#), delivered 3 September 2015 (1), Case C-333/14, *The Scotch Whisky Association and Others v The Lord Advocate & The Advocate General for Scotland*

<sup>64</sup> ["FM comments on MUP"](#), Scottish Government news release, 3 September 2015

- Neil McKeganey, "[European alcohol pricing decision a real headache](#)", *Scotsman*, 7 September 2015

## 4. Continuing debate

Despite the introduction of a ban on below cost selling in England and Wales, alcohol charities and public health groups, as well as some academics and parliamentarians, continue to argue for the introduction of a minimum unit price.

In its [Manifesto 2015](#), the All Party Parliamentary Group on Alcohol Misuse set out details of ten policies to minimise alcohol-related harm. After claiming that the ban on below cost sales would have a "negligible" impact, the Manifesto called for a minimum unit price to "precisely target" the products consumed by harmful drinkers and children.<sup>65</sup> A specific price was not recommended.

One of Public Health England's (PHE) seven priorities is to reduce harmful drinking and alcohol-related hospital admissions. PHE has said that it will "continue to set out the evidence base for the introduction of a minimum unit price for alcohol".<sup>66</sup>

Alcohol Concern has an ongoing campaign for a minimum unit price of at least 50p.<sup>67</sup>

In a September 2014 article in the *British Medical Journal*, Alan Brennan estimated that the ban on below cost selling would have "small effects on consumption and health harm" and that a minimum unit price, if set at levels between 40p and 50p, would have an "approximately 40-50 times greater effect".<sup>68</sup>

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<sup>65</sup> All Parliamentary Party Group on Alcohol Misuse, [Manifesto 2015](#), August 2014, p5

<sup>66</sup> Public Health England, [From evidence into action: opportunities to protect and improve the nation's health](#), October 2014, p17

<sup>67</sup> Alcohol Concern website, [Minimum unit pricing](#) [accessed 25 September 2015]

<sup>68</sup> Alan Brennan et al, "[Potential benefits of minimum unit pricing for alcohol versus a ban on below cost selling in England: modelling study](#)", *British Medical Journal*, 30 September 2014



## 5. Selected further reading

- Alan Brennan et al, "[Potential benefits of minimum unit pricing for alcohol versus a ban on below cost selling in England 2014: modelling study](#)", *British Medical Journal*, 30 September 2014
- John Holmes et al, "[Effects of minimum unit pricing for alcohol on different income and socioeconomic groups: a modelling study](#)", *Lancet online*, 10 February 2014
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