

# Briefing on Minimum Unit Pricing

February 2018



On Wednesday 15th November 2017, the UK Supreme Court unanimously dismissed the appeal by the Scotch Whisky Association and others, **ruling that the Alcohol (Minimum Pricing) (Scotland) Act 2012 does not breach EU law, and that minimum pricing is appropriately targeted, lawful and proportionate.** Once implemented, Scotland will become the first country in the world to establish a minimum unit price for alcohol (some states in Canada operate variants of minimum pricing).

The Scottish Government **consulted on their proposed minimum unit price of 50p per unit** from 1 December 2017 to 26 January 2018. The Scottish Government intends to lay regulations before Parliament on 1 March 2018, with an implementation date of 1 May 2018.

AFS **supports the speedy implementation of this policy** and calls on all MSPs to support the Scottish Government in their efforts to implement this policy as quickly as possible. We have sought a commitment from the Scottish Government to **review the minimum unit price per unit within two years, once the policy has become embedded**, to ensure that the benefits of this life-saving policy are fully realised.

## Background to Minimum Unit Pricing (MUP)

### *What is minimum pricing?*

A minimum price for alcohol sets the lowest price an alcoholic drink can be sold for. In Scotland, it is proposed that the minimum price will be 50p per unit of alcohol. For example, a can of lager or cider containing 2 units of alcohol will have to cost at least £1.<sup>1</sup> Minimum pricing won't affect every alcoholic drink – only those sold at less than 50p per unit. Drinks like strong white cider, super strength lager and own brand vodka or gin will be affected. It is possible to buy a 3 litre bottle of cider for £3.99: equivalent to 18p per unit.<sup>2</sup> Minimum pricing will not affect pubs, clubs and restaurants because their drinks are already sold at more than 50p a unit.

### *Why do we need minimum pricing in Scotland?*

Alcohol is 60% more affordable today than it was 30 years ago. Scots buy the vast majority of their alcohol from shops and supermarkets.<sup>3</sup> When something becomes more affordable, people tend to buy (and consume) more of it. The more people drink, the more alcohol-related diseases and social problems increase. Alcohol consumption and deaths are significantly higher in Scotland than the rest of the UK; Scots drink 17% more than the English/Welsh<sup>4</sup> and our deaths rates are twice the level of England and Wales.<sup>5</sup>

Once implemented, Scotland will become the first country in the world to establish a minimum unit price for alcohol (some states in Canada operate variants of minimum pricing). Legislation to establish a minimum price is currently under active consideration by the National Assembly for Wales and by the Irish Oireachtas.



## *What difference will it make?*

### **1. Minimum pricing will save lives. In the first year alone, minimum pricing could prevent 60 alcohol-related deaths, 1,600 hospital admissions and 3,500 crimes.<sup>6</sup>**

Modelling by the University of Sheffield suggests that minimum pricing will save lives, improve health and reduce crime. The most recent Sheffield research (April 2016) estimated that the proposed minimum price of 50p per unit would result in the following benefits<sup>7</sup>:

- Reduction in alcohol consumption of 3.5% or 26.3 units per drinker per year
- Alcohol related deaths would fall by about 120 per year by year twenty of the policy (full effect)
- A fall in hospital admissions of 2,000 per year by year twenty of the policy (full effect).

### **2. Minimum pricing targets the heaviest drinkers. Minimum pricing targets harmful drinkers because they buy most of the cheapest, strongest alcohol like white cider and own-brand spirits.**

Minimum pricing is particularly effective at reducing the amount of alcohol drunk by harmful drinkers as they tend to buy most of the cheap alcohol that is affected by minimum pricing<sup>8</sup> (impact on moderate drinkers is estimated to be around an extra £2.25 per year).<sup>9</sup>

A minimum unit price of 50p per unit is expected to result in a 10% reduction in alcohol consumption in harmful drinkers, and almost 5% reduction in consumption by hazardous drinkers.<sup>10</sup> For people drinking heavily, even small reductions in consumption can have big health benefits. Minimum pricing will also help to prevent alcohol problems from developing in the first place.

### **3. Minimum pricing will particularly benefit hazardous and harmful drinkers living in poverty.**

Though poorer households are less likely to buy and consume alcohol, they are disproportionately more likely to suffer the harms associated with drinking.<sup>11</sup> Those living in Scotland's most deprived areas are 6 times more likely to die and 8 times more likely to be hospitalised due to alcohol than those in our least deprived communities.<sup>12</sup>

Harmful drinkers in poverty drink markedly more and spend a little more on alcohol than those not in poverty.<sup>13</sup> Health gains of minimum pricing are greatest in hazardous and particularly harmful drinkers in poverty, with 90% of the lives saved by a minimum unit price from lower socio-economic groups.<sup>14</sup> Similar patterns are observed for hospital admissions.<sup>15</sup>

### **4. Minimum pricing only affects shops and supermarkets.**

Drinks in pubs and restaurants already cost more than 50p per unit so won't change under minimum pricing. The impact on alcohol consumption and harm will be significant however, as the majority (73%) of alcohol is bought from shops and supermarkets for consumption at home.<sup>16</sup>

### **5. Minimum pricing is widely supported.**

Minimum pricing is supported by the public, politicians, doctors, police, homelessness services, children's charities and parts of the licensed trade.

## The Appeal and Ruling of the Supreme Court

### ***What was the appeal about?***

The Alcohol (Minimum Pricing) (Scotland) Act 2012 was passed unopposed by the Scottish Parliament in June 2012. The legislation has not yet been implemented due to a legal challenge led by the Scotch Whisky Association (SWA). The first challenge was made to the Outer House of the Court of Session which ruled in May 2013 that minimum unit pricing was lawful. The SWA then appealed to the Inner House of the Court Session, which heard the case and referred it to the Court of Justice of the European Union (CJEU) in April 2014. The CJEU gave their opinion on the 23 December 2015, ruling that it was for the Scottish Inner House of the Court of Session to decide on minimum unit pricing.

The case then returned to the Inner House in July 2016, and they upheld the Outer House decision. The Scotch Whisky Association requested leave to appeal to the UK Supreme Court in September 2016 and permission was granted in December 2016. The Supreme Court hearing took place on 24/25 July 2017. The ruling of the Supreme Court is final and determined that minimum pricing can be implemented in Scotland. A summary of the court process is available [here](#).

### ***What was the ruling of the Supreme Court?***

The Supreme Court unanimously ruled that the Alcohol (Minimum Pricing) (Scotland) Act 2012 does not breach EU law, and that minimum pricing is a proportionate means of achieving a legitimate aim.<sup>17</sup>

The full judgment is available to read [here](#) and the press summary is available [here](#).

### ***Key findings of the ruling:***

#### ✓ ***Taxation would not achieve the same objectives as minimum pricing***

One of the main arguments made by the SWA and other appellants was that a tax would be a less restrictive and equally effective way of achieving the government's objectives. This was rejected by the Court:

*"...taxation would impose an unintended and unacceptable burden on sectors of the drinking population...In contrast, minimum alcohol pricing will much better target the really problematic drinking to which the Government's objectives were always directed"*<sup>18</sup>

#### ✓ ***Minimum pricing is proportionate: the benefits of free EU trade and competition cannot outweigh the health benefits intended by minimum pricing***

The argument that MUP would disproportionately affect the operation of the EU market was also rejected:

*"That minimum pricing will involve a market distortion, including of EU trade and competition, is accepted. However, I find it impossible...to conclude that this can or should be regarded as outweighing the health benefits which are intended by minimum pricing."*<sup>19</sup>

### ***What happens now?***

A Ministerial Statement was delivered to Parliament on 21<sup>st</sup> November, laying out the Scottish Government's plans for implementation. The Scottish Government consulted from 1 December 2017 to 26 January 2018 on the draft Scottish statutory instrument, proposing to set the minimum unit price at 50p per unit.

The Scottish Government will refresh the Business and Regulatory Impact Assessment (BRIA) that is required by Parliament. The order will then be laid before Parliament on 1 March 2018, with an implementation date of 1 May 2018.

**Following the appropriate parliamentary scrutiny, and assuming that the Parliament votes to bring the price-setting order into force, no alcohol in Scotland will then be sold for less than the specified minimum unit price from 1 May 2018. The proposed minimum unit price will be 50p per unit.**

The legislation also contains what is known as a 'sunset clause'. This means that it will expire after the sixth year of implementation unless the Scottish Parliament votes for it to continue. To inform this decision there is a 'review clause' requiring that the Minister presents a review report to parliament on the impact of MUP after five years of its operation.

[Read AFS's response to the Scottish Government consultation on the draft regulations for MUP.](#) The Scottish Government's plans to introduce minimum unit pricing as quickly as possible should be supported, and appropriate training should also be made available to those responsible for enabling implementation and monitoring compliance.

**We have called on the Scottish Government to commit to setting a review period for the minimum unit price of alcohol, within the first two years of implementation, to ensure that the price remains proportionate and the benefits of the policy can be fully realised.**

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<sup>1</sup> Price of a product = price per unit (0.50) x strength of alcohol x volume (litres) x 100. For example, the minimum price for a standard sized (700ml) bottle of spirits at 37.5% ABV would be £13.13 (0.50 x 37.5/100 x 0.7 x 100 = £13.13).

<sup>2</sup> Alcohol Focus Scotland (2016), *Scottish Alcohol Price Survey 2016*: <http://www.alcohol-focus-scotland.org.uk/media/152485/Scottish-price-check-2016.pdf>

<sup>3</sup> Giles, L., & Robinson, M. (2017). *Monitoring and Evaluating Scotland's Alcohol Strategy: Monitoring Report 2017*. Edinburgh: NHS Health Scotland.

<sup>4</sup> NHS Health Scotland (2017). *Alcohol Price in Scotland 2016*. Edinburgh: NHS Health Scotland.

<sup>5</sup> Office of National Statistics, November 2017, *Alcohol-specific deaths in the UK: registered in 2016*: <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/causesofdeath/bulletins/alcoholrelateddeathsintheunitedkingdom/registeredin2016#main-points>

<sup>6</sup> Meng, Y., Hill-McManus, D., Brennan, A., & Meier, P. (2012). *Model-based appraisal of Alcohol Minimum Pricing and Off-Licensed trade discount bans in Scotland using the Sheffield Alcohol Policy Model (v 2): Second Update based on newly available data*. Sheffield: SchARR, University of Sheffield.

[https://www.sheffield.ac.uk/polopoly\\_fs/1.150021!/file/scotlandupdatejan2012.pdf](https://www.sheffield.ac.uk/polopoly_fs/1.150021!/file/scotlandupdatejan2012.pdf)

<sup>7</sup> Angus, C., Holmes, J., Pryce, R., Meier, P. & Brennan, P. (2016). *Model-based appraisal of the comparative impact of Minimum Unit Pricing and taxation policies in Scotland An adaptation of the Sheffield Alcohol Policy Model version 3*. SchARR, University of Sheffield, [https://www.sheffield.ac.uk/polopoly\\_fs/1.565373!/file/Scotland\\_report\\_2016.pdf](https://www.sheffield.ac.uk/polopoly_fs/1.565373!/file/Scotland_report_2016.pdf)

<sup>8</sup> Ibid

<sup>9</sup> The University of Sheffield (17 April 2015), Alcohol Research FAQs, accessed on 20/11/17,

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

<sup>10</sup> Meng et al, (2012)

<sup>11</sup> Smith, K. & Foster, J. (2014) *Alcohol, Health Inequalities and the Harm Paradox: Why some groups face greater problems despite consuming less alcohol*. London: Institute of Alcohol Studies.

<sup>12</sup> Giles & Robinson (2017), op cit.

<sup>13</sup> Angus et al (2016), op cit.

<sup>14</sup> Meier, P. et al (2016), Estimated Effects of Different Alcohol Taxation and Price Policies on Health Inequalities: A Mathematical Modelling Study, *PLOS Medicine*. doi: <http://dx.doi.org/10.1371/journal.pmed.1001963>

<sup>15</sup> Ibid.

<sup>16</sup> Giles & Robinson (2017), op cit.

<sup>17</sup> UK Supreme Court Press Summary, *Scotch Whisky Association and others (Appellants) v The Lord Advocate and another (Respondents)(Scotland)* [2017] UKSC 76 On appeal from [2016] CSIH 77

<https://www.supremecourt.uk/cases/docs/uksc-2017-0025-press-summary.pdf>

<sup>18</sup> *Scotch Whisky Association and others v The Lord Advocate and another* UKSC [2017] UKSC 76, para 63

<https://www.supremecourt.uk/cases/docs/uksc-2017-0025-judgment.pdf>

<sup>19</sup> Ibid.