



A minimum price for alcohol?

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In public debate the term “minimum pricing” has been used generically to refer to two different policies. The first is to set a *minimum price per unit* of alcohol. The second is to ban the sale of alcohol *below cost price*.

The Government’s *Alcohol Strategy* (March 2012) included a commitment to introduce a minimum unit price for alcohol. There would be consultation on the actual price but, once introduced, it would be illegal for alcohol to be sold for less than the set price.

In November 2012, the Home Office published *A consultation on delivering the Government’s policies to cut alcohol fuelled crime and anti-social behaviour*. This recommended a minimum unit price of 45p, to be introduced through primary legislation. The paper claimed that a unit price of 45p would lead to an estimated reduction in consumption across all product types of 3.3%, a reduction in crime of 5,240 per year, a reduction in 24,600 alcohol-related hospital admissions and 714 fewer deaths per year after ten years.

On 17 July 2013, following analysis of the consultation’s responses, the Government announced that it would *not* be proceeding with minimum unit pricing. The policy would “remain under consideration”, but at present there was not enough “concrete evidence” that it would be effective in reducing the harms associated with problem drinking “without penalising people who drink responsibly”. The Government would instead ban the sale of alcohol below the level of alcohol duty plus VAT. This would mean that it would no longer be legal to sell a can of ordinary-strength lager for less than 40p.

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1 Introduction

Governments, first in Holyrood and now in Westminster, have sought ways to set a “minimum price” for alcohol. This 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, allowing irresponsible drinkers to be able to get drunk cheaply.¹

The term “minimum pricing” has often been used generically to refer to two different policies. The first is to set a *minimum price per unit* of alcohol. The second is to ban the sale of alcohol *below cost price*.

In June 2010 NICE (the National Institute for Health and Clinical Excellence) called for alcohol to be made less affordable by introducing a minimum price per unit; this price, they argued, should be regularly reviewed so that alcohol does not become more affordable over time.²

¹ 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

² “Nice recommends action to reduce alcohol-related harm”, NICE press release, 2 June 2010

Alcohol Concern has been campaigning for a minimum price per unit of alcohol; its preferred option is a price of 50p.³

2 Developments under the Labour Government

A Code of Practice for alcohol retailers in England and Wales containing mandatory conditions for alcohol sale was introduced from April 2010. The Code was the subject of a public consultation exercise in 2009, and the power to introduce it was granted through the *Policing and Crime Act 2009*.⁴ Although the code bans irresponsible promotions, it is silent on the issue of minimum pricing. This may be because the previous Government was less than enthusiastic about the idea.⁵ When the *Policing and Crime Bill* was in the Lords, Baroness Miller of Chilthorne Domer (Liberal Democrat) unsuccessfully moved an amendment which would have given licensing authorities powers to take action against premises which persistently sold alcohol at below cost price. As before in debates on minimum pricing, the then Government repeated its position that:

It would be quite unfair if responsible drinkers had to pay significantly more for their alcohol because of a small minority of people who drink irresponsibly.⁶

In his 2009 annual report on the state of the nation's health, the 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:

There is a clear relationship between price and consumption of alcohol. As price increases consumption decreases, although not equally across all drinkers. Price increases generally reduce heavy drinkers' consumption by a greater proportion than they reduce moderate drinkers' consumption. The specific means of increasing prices can be targeted further to minimise the impact on those who drink at low-risk levels while significantly decreasing the consumption of those who drink above these levels. This is possible because those who drink more tend to choose cheaper drinks. Introducing a minimum price per unit of alcohol would therefore affect heavier drinkers far more than those who drink in moderation.⁷

Even before the CMO's report was published, it was clear that the idea did not find favour with the Labour Government. The *Times* quoted a "source close to the Prime Minister" as saying:

I do not think this is where we are going. The majority of sensible drinkers should not have to pay the price for the irresponsible and excessive drinking by a small minority.⁸

David Cameron, then Leader of the Opposition, said that his preferred option was for tax increases to be targeted at the high-alcohol drinks favoured by binge drinkers:

It seems to me that what we should do is what we suggested before the last Budget, which is to try to target the problem drinkers and the problem drinks.⁹

³ Alcohol Concern, *Briefing paper on alcohol pricing policies*, December 2011, p1

⁴ See Library Standard Note SN/HA/5351, *Mandatory conditions for alcohol sale*

⁵ 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
Minimum pricing did not appear in the Labour manifesto for the 2010 Election.

⁶ Lord West of Spithead at [HL Deb 5 November 2009 c458](#)

⁷ Dept of Health, *150 years of the Chief Medical Officer: on the state of public health 2008*, March 2009, p22

⁸ "Brown won't buy 50p-a-unit alcohol plan", *Times*, 16 March 2009, p3

Shortly before the end of the last Parliament, the Health Select Committee looked at the choice between using tax or minimum pricing to reduce alcohol abuse. In their January 2010 report, the Committee supported the use of minimum pricing 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.¹⁰ The Committee’s report noted that, while the Campaign for Real Ale gave evidence in favour, “much of the alcohol industry and most supermarkets were against.”¹¹

3 Government policy

The Conservative manifesto for the 2010 Election included a commitment to “ban off-licences and supermarkets from selling alcohol below cost price”.¹²

In their manifesto, the Liberal Democrats “support[ed] a ban on below-cost selling, and are in favour of the principle of minimum pricing, subject to detailed work to establish how it could be used in tackling problems of irresponsible drinking”.¹³

3.1 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.¹⁴ The Home Office’s July 2012 [consultation](#) on “rebalancing” the *Licensing Act* sought views on:

- Simple and effective ways to define the ‘cost’ of alcohol
- Effective ways to enforce a ban on below cost selling and their costs
- The feasibility of using the Mandatory Code of Practice to set a licence condition that no sale can be below cost, without defining cost.¹⁵

Responses to the consultation “indicated a wide range of views...with no overall consensus.”¹⁶

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

The Parliamentary Under-Secretary of State for the Home Department (James Brokenshire): Today, we are announcing our intention to deliver on this commitment by introducing a ban on sales of alcohol below the rate of duty plus VAT.

(...) As part of our consideration of how to deliver the coalition commitment to deliver a ban on below cost sales, the Home Office and Treasury have carried out respective reviews of alcohol pricing and taxation. These confirmed a consensus that pricing controls can be an effective way of both improving public health and reducing violent crime.

⁹ “Chief Medical Officer vows to press on with anti-alcohol campaign, despite No 10 rebuff”, *Times*, 17 March 2009

¹⁰ Health Select Committee, *Alcohol*, HC 151 2009-10, January 2010, section 10

¹¹ *Ibid*, para 309

¹² *Invitation to join the government of Britain: the Conservative Manifesto*, 2010, p56

¹³ *Liberal Democrat manifesto*, 2010, pp41-2

¹⁴ HM Government, *The Coalition: our programme for government*, May 2010, p13

¹⁵ 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

¹⁶ Home Office, *Responses to consultation: Rebalancing the Licensing Act*, 2010, p11

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.

We intend to take forward measures to deliver this commitment without delay subject to the Government's regulatory assessment and clearance process.¹⁷

The effect of this measure would be to prevent retailers from selling a 1 litre bottle of vodka (37.5 per cent abv) for less than £10.71 and a 440ml can of lager (4.2 per cent abv) for less than 38p.

Home Office Minister James Brokenshire said that "subject to parliamentary procedures the ban will come into force on 6 April 2012. It will be a new condition of the Mandatory Code of Practice in the Licensing Act 2003."¹⁸

3.2 Alcohol strategy (March 2012): a minimum unit price

The *Government's Alcohol Strategy*, published on 23 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 - the proposed ban on *below cost* price would therefore not be implemented.¹⁹ The Prime Minister's foreword claimed a minimum unit price would reduce both crime and alcohol-related deaths:

(...) When beer is cheaper than water, it's just too easy for people to get drunk on cheap alcohol at home before they even set foot in the pub. So 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.

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...²⁰

In her [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".²¹ She also said that the assumptions of the strategy were based on a minimum unit price of 40p.²²

¹⁷ [HC Deb 18 January 2011 c34WS](#)

¹⁸ [HC Deb 27 October 2011 c312W](#)

¹⁹ [The Government's Alcohol Strategy](#), Cm 8336, March 2012, p7

²⁰ *Ibid*, p2

²¹ [HC Deb 23 March 2012 c1072](#)

²² [HC Deb 23 March 2012 c1076](#)

Yvette Cooper, the Shadow Home Secretary, said that many of the policies in the alcohol strategy were “sensible” and that it was “the right time to try minimum pricing”.²³

Comment

The charity [Alcohol Concern](#) has been campaigning for a minimum unit price and said it was “very pleased” with the Government’s plans.²⁴

The [Alcohol Health Alliance](#)²⁵ “congratulate[d] the government for looking at the strong evidence to support MUP and proposing to introduce this targeted policy that promises to save thousands of lives and prevent tens of thousands of crimes”.²⁶

Andrew Opie of the British Retail Consortium claimed that a minimum unit price would be “a tax on responsible drinkers”.²⁷

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”.²⁸ Greene King and Waitrose, in evidence to the Health Committee, strongly supported the introduction of a minimum unit price.²⁹ Further industry opinion can be found on the website of the *Morning Advertiser*, the weekly trade publication.³⁰

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”.³¹ 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.³² In its [response](#), the Government said it would consider the issues raised by the Committee as it moved towards implementing minimum pricing.³³

The Wine and Spirit Trade Association told the Health 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”.³⁴

The Office of Fair Trading told the Health Committee 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.

²³ [HC Deb 23 March 2012 c1073](#)

²⁴ Alcohol Concern, [Briefing paper on the Government’s alcohol strategy](#), March 2012, p1

²⁵ A group of 32 organisations working to reduce the damage caused to health by alcohol misuse

²⁶ “[Health bodies say government must stand firm on minimum unit pricing](#)”, Alcohol Health Alliance news release, 13 March 2013

²⁷ “[Minimum alcohol price planned for England and Wales](#)”, *BBC News*, 23 March 2012

²⁸ *Ibid*

²⁹ Health Select Committee, [Government’s Alcohol Strategy](#), July 2012, p20

³⁰ “[Alcohol minimum pricing: the industry responds](#)”, *Morning Advertiser*, 28 November 2012; see also “[Hot topics – minimum pricing](#)”

³¹ Health Select Committee, [Government’s Alcohol Strategy](#), HC 132 2012-13, July 2012, p22

³² *Ibid*, p22

³³ [Cm 8439](#), September 2012, p4

³⁴ Health Select Committee, [Government’s Alcohol Strategy](#), p19

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. The OFT understands that this is currently a live issue in relation to proposals for minimum alcohol in Scotland, and it is possible that there may be legal action which would clarify the position.³⁵

The assumptions of the ‘Sheffield Alcohol Policy Model’, sometimes cited in calls for minimum pricing, were challenged in a November 2012 paper published by the Adam Smith Institute.³⁶

3.3 Home Office consultation (November 2012)

On 28 November 2012, the Home Office published *A consultation on delivering the Government’s policies to cut alcohol fuelled crime and anti-social behaviour*. The consultation, which closed on 6 February 2013, sought views on five policy areas; one of these was for minimum unit pricing to ensure “for the first time that alcohol can only be sold at a sensible and appropriate price.”³⁷ A price of 45p per unit was recommended:

5.3 The purpose of minimum unit pricing is to reduce excessive alcohol consumption, particularly by the most hazardous and harmful drinkers who tend to show a preference for the cheapest alcohol products. Unlike moderate drinkers, they are less likely to switch to cheaper drinks, if prices rise. Crucially, evidence enables researchers to estimate in a statistically robust way (as set out in the Impact Assessment) that harmful drinkers in particular reduce their consumption more as a result of a minimum unit price set at a proportionate level than moderate drinkers.

5.4 As a result, we can estimate that there will be a reduction in the associated crime and health harms, especially the numbers of hospital admissions, alcohol-related deaths and alcohol-related crimes. Minimum unit pricing is not intended to disproportionately affect responsible drinkers or particular social groups but to reduce the availability of alcohol sold at very low or heavily discounted prices.

5.5 The actual impact of minimum unit pricing will depend on the price per unit of alcohol. The Government wants to ensure that the chosen price level is targeted and proportionate, whilst achieving a significant reduction of harm. The Government is therefore consulting on the introduction of a recommended minimum unit price of 45p. The table below [available on p16 of the consultation paper] shows the best available estimated impacts of this level of minimum unit price. This includes an estimated reduction in consumption across all product types of 3.3%, a reduction in crime of 5,240 per year, a reduction in 24,600 alcohol-related hospital admissions and 714 fewer deaths per year after ten years.³⁸

The consultation paper observed that “as the level of minimum unit price rises, it affects moderate drinkers’ consumption more and so is less targeted. Further, the expected reduction in alcohol consumption following the introduction of a minimum unit price would also reduce the amount of alcohol duty received by the Government, with consequences for

³⁵ Health Select Committee, *Government’s Alcohol Strategy*, p19

³⁶ John C Duffy and Christopher Snowdon, *The Minimal Evidence for Minimum Pricing: the fatal flaws in the Sheffield Alcohol Policy Model*, Adam Smith Research Trust, November 2012

³⁷ Home Office, *A consultation on delivering the Government’s policies to cut alcohol fuelled crime and anti-social behaviour*, November 2012, p4

³⁸ Ibid, p15 (footnotes removed)

the public purse.”³⁹ The paper therefore also sought views on the *mechanism* for adjusting the minimum price over time and on the *impact* of a minimum unit price.

A Home Office [Impact Assessment](#) (IA) gives three reasons for preferring minimum unit pricing (MUP) over using 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.⁴⁰

A summary of the costs of alcohol misuse are set out in the IA:

The cost of alcohol misuse in England is estimated to be around £21bn per year made up of the following:

- 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).

The impact of alcohol on health is a significant issue. 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 the three biggest lifestyle risk 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.⁴¹

On the link between alcohol price and harm, the IA observes:

³⁹ Ibid, p16

⁴⁰ Home Office, [Impact Assessment on a minimum unit price for alcohol](#), 1 November 2012, pp3-4

⁴¹ Ibid, pp5-6 (footnotes removed)

No other country has yet implemented a minimum unit price for alcohol. There is, however, 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. In addition, recent analysis of the effectiveness of „social reference pricing“ in a Canadian province found that a 10% increase in the minimum price of any given alcoholic product reduced its consumption by between 14.6% and 16.1%.

The impact of a change in alcohol price specifically on alcohol-related crime and disorder has been less researched than the impact on health. However, a recent rapid evidence assessment by Sheffield University found that increases in alcohol price were associated with reductions in overall crime, violent crime, sexual assault and criminal damage/property offences.

As part of the commitments contained in the Alcohol Strategy, the Government aims to reduce, in particular, the consumption of harmful and hazardous consumers. There is evidence to suggest that pricing policies have a similar or stronger effect for the identified at-risk groups (young people under 18, young adult binge drinkers, and harmful consumers) and may thus be especially suitable for reducing overall harms in these groups. Price elasticities used in the Sheffield University model are consistent with the international evidence base on alcohol and price interventions. Based on these, the Sheffield model findings are that the heaviest consumers (those drinking regularly more than twice the NHS guidelines) reduce their consumption most in response to a MUP focused on raising the price of the cheapest drinks.⁴²

The IA notes an increase in the purchase of alcoholic drinks for consumption in the home as well as the problems caused by ‘pre-loading’:

There has also been a 45% increase in purchasing alcoholic drinks for consumption in the home, from 527ml per person per week in 1992 to 762ml in 2010. In contrast, the overall volume of alcoholic drinks purchased for consumption outside the home decreased by 44% from 733ml per person per week in 2001/02 to 413ml in 2010.

There is a growing body of evidence linking „pre-loading“ to alcohol-related harm, particularly alcohol-related crime and disorder. Two recent small scale studies provide some indication of the scale and impact of pre-loading. Two thirds (66%) of 17-30 year olds arrested in a city in England claimed to have pre-loaded before a night out, with the majority (83%) buying alcohol from a supermarket, in advance, in preparation for pre-loading. A further study found that pre-loaders were two and half times more likely to be involved in violence than other consumers.

MUP is intended to curb practices such as “pre-loading” and help to reduce crime and disorder in or around the on-trade without unfairly penalising responsible on trade businesses where there is a controlled and heavily regulated licensing environment. MUP is also intended to help tackle the health harms associated with binge drinking.⁴³

According to the IA, “Using the most recently available data, alcohol in 2011 was 45% more affordable than it was in 1980, highlighting the overall trend of increasing affordability over the period...It is important to note that this does not take into account the change in affordability of other products.”⁴⁴

⁴² Ibid, p6 (footnotes removed)

⁴³ Ibid, p7 (footnotes removed)

⁴⁴ Ibid, p7

3.4 Government response to alcohol consultation (July 2013)

In a [statement](#) to the House on 17 July 2013,⁴⁵ Home Office Minister Jeremy Browne announced the publication of the [Government's plans](#)⁴⁶ following its analysis of the responses to the November 2012 consultation. Mr Browne said that the Government would *not* be proceeding with minimum unit pricing, although it would “remain under consideration”, because there was not enough “concrete evidence that its introduction would be effective in reducing harms associated with problem drinking - this is a crucial point - without penalising people who drink responsibly”.⁴⁷ There would instead be a ban on the sale of alcohol below the level of alcohol duty plus VAT, to come into effect no later than spring 2014. The ban would be introduced through secondary legislation and would mean that a can of 4% ABV lager could not be sold for less than 40p.⁴⁸

Labour's Shadow Crime and Security Minister, Diana Johnson, said the Government had made a policy U-turn and 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”.⁴⁹

A number of other measures to tackle excessive drinking and alcohol related crime were set out in the Government's plans. These include making the mandatory licensing conditions more effective, particularly those regulating irresponsible sales and promotions. The alcohol industry would also be challenged to take further voluntary action - for example, promoting and displaying alcohol responsibly in shops and tackling high strength products.⁵⁰

A detailed analysis of consultation responses was published by the Home Office; chapter 2 looks at those relating to minimum unit pricing.⁵¹

4 Policy in Scotland

The Scottish Government announced plans for a minimum price per unit of alcohol in February 2009. This was prompted by concerns about high levels of drinking and its effect on public health and order.⁵² The policy was welcomed by a variety of bodies in Scotland (for example, the British Medical Association, the Association of Chief Police Officers, Alcohol Concern) whose comments were quoted in a Scottish Government press notice.⁵³ Although the press notice also quoted approving comments from the Scottish Licensed Trade Association, a letter to the *Scotsman* from the Wine and Spirit Trade Association, CBI Scotland and other retail bodies sounded a note of caution, urging politicians to examine fully the implications and scale of the proposals.⁵⁴

⁴⁵ [HC Deb 17 July 2013 c1113-4](#)

⁴⁶ Home Office, [Next steps following the consultation on delivering the Government's alcohol strategy](#), July 2013

⁴⁷ [HC Deb 17 July 2013 c1113](#)

⁴⁸ Home Office, [Next steps following the consultation on delivering the Government's alcohol strategy](#), p9

⁴⁹ [HC Deb 17 July 2013 c1115](#)

⁵⁰ Home Office, [Next steps following the consultation on delivering the Government's alcohol strategy](#), chapters 1 & 2

⁵¹ 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

⁵² See the Scottish Government's white paper, [Changing Scotland's relationship with alcohol: a framework for action](#), February 2009

⁵³ “[Tackling alcohol misuse](#)”, Scottish Government news release, 2 March 2009

⁵⁴ “[Changes to Scotland's drinking laws branded 'not acceptable'](#)”, *Scotsman*, 9 March 2009

4.1 The Scottish Government's original proposals

Alcohol licensing is a devolved matter, and the Scottish Government attempted to introduce a minimum unit price by way of a change to its licensing laws.⁵⁵

The *Licensing (Scotland) Act 2005* came into effect from 1 September 2009 and introduced a range of measures designed to protect communities from alcohol-related harm. It established the following 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 Westminster legislation which governs alcohol licensing in England and Wales. However, one difference is that the Scottish Act has an additional “licensing objective” – “protecting and improving public health”. In this respect the Scottish Act is somewhat more prescriptive than its English equivalent. There are also more mandatory conditions to be applied to all licences than is the case in England.

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. Licensing boards are also able to apply additional licence conditions. In relation to the “pricing of alcohol”, Schedule 3(7)(b) provides that the price of alcohol should not be varied for a period of less than 72 hours; this is intended to address the issue of “happy hours” in licensed premises, which the Act refers to as “irresponsible drinks promotions” (as defined in [schedule 3\(8\)\(2\)](#)).

Schedule 3 also provides Scottish Ministers with the power, via regulations, to add further descriptions of irresponsible drinks promotions or to modify the list.

The original intention was to add a new mandatory condition by Order to Schedule 3(7), “Pricing of alcohol”, to prescribe a minimum price per unit of alcohol.

4.2 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 Parliament.⁵⁶

On 25 November 2009, primary legislation was therefore introduced by Scottish Health Secretary Nicola Sturgeon. The *Alcohol etc (Scotland) Bill* sought to insert a new paragraph 6A into 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.⁵⁷

⁵⁵ England and Wales have the same licensing laws. Licensing is a devolved matter in Scotland and Northern Ireland

⁵⁶ “SNP crackdown on discount alcohol is delayed by a year”, *Scotsman*, 10 March 2009

⁵⁷ “MSPs split on party lines over alcohol pricing”, *Times*, 28 May 2010

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.⁵⁸

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.⁵⁹

The Scottish Parliament Information Centre (SPICe) published a detailed briefing paper on the Bill.⁶⁰

4.3 The Alcohol (Minimum Pricing)(Scotland) Act 2012

The *Alcohol (Minimum Pricing) (Scotland) Bill*, introduced on 31 October 2011, was the second attempt to legislate for a minimum price per unit of alcohol. A SPICe briefing paper was again published and provides an overview of the Bill as well as setting out the differing opinions on the legality of minimum pricing policy under EU law.⁶¹

The Bill was finally passed on 24 May 2012, paving the way for the introduction of a minimum price of 50p per unit.⁶²

4.4 Legal action by the Scottish Whisky Association

The Scottish Whisky Association (SWA) believes 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 complaint to the European Commission and filed a petition for judicial review with the Scottish Court of Session.⁶³

In a [ruling](#) of 3 May 2013, the Court refused the SWA's petition.⁶⁴ 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 has said it will appeal the ruling:

The view from Europe is very different to that expressed by the court and we are not alone in having concerns about the legality of Minimum Unit Pricing (MUP). We are joined in our legal action by spiritsEUROPE and Comite Vins. The European Commission and more than 10 member states have expressed their concerns that MUP contravenes European Union trading rules and their opposition to the Scottish proposals.⁶⁵

⁵⁸ "Health committee split on alcohol pricing", *BBC News*, 27 May 2010

⁵⁹ "MSPs pass Alcohol Bill without minimum drink pricing", *BBC News Scotland*, 10 November 2010

⁶⁰ SPICe Briefing 10/13, *The Alcohol etc (Scotland) Bill*, 18 February 2010

⁶¹ SPICe Briefing 12/01, *Alcohol (Minimum Pricing)(Scotland) Bill*, 5 January 2012

⁶² "Alcohol minimum pricing bill passed", Scottish Government press release, 24 May 2012

⁶³ "Scotch Whisky industry challenges minimum pricing of alcohol", SWA press release, 19 July 2012

⁶⁴ <http://www.scotcourts.gov.uk/opinions/2013CSOH70.html>

⁶⁵ "Minimum Unit Pricing (MUP) of alcohol – Court of Session decision", SWA press release, 3 May 2013

5 European comparisons

In its discussion of below-cost sales, the Home Office consultation document of 2010 commented:

9.05. There are a number of ways in which such a ban might work, and Government must find an approach which is compatible with EU trade and competition laws and realistic to enforce. Most EU countries which have tried similar policies have banned selling below 'net invoice price' where the reference price is broadly the unit price on the invoice.⁶⁶

Research undertaken for the European Commission noted that:

There are regulations in a small number of European countries (both EU and other European states) that act as 'proxies' for minimum price regulations. For example, in Germany the so-called Apple Juice law states that in the on-premise trade, at least one alcohol-free beverage must be cheaper than the cheapest alcoholic beverage available. In Switzerland in some cantons (provinces) all restaurants are obliged by law to offer *at least three* non-alcoholic drinks cheaper than the cheapest alcoholic beverage for the same quantity. (...)

Alcohol sales below cost and other alcohol sales promotions are common in many countries across the EU (Baumberg and Anderson 2008). Different countries, however, have different approaches to these; while some countries ban sales below cost and/or alcohol sales promotions, in others there are no regulations applying to these, or only self-regulation is in place.

In Belgium, Luxembourg and Poland, for example, laws on commercial practices and consumer protection ban alcohol sales below cost. Some Spanish provinces, such as Castilla y Leon and Cataluña, have banned alcohol promotions that 'directly incite' excessive alcohol consumption. In Ireland, there was a ban on sales below cost, but this was removed in 2006, although bans on 'happy hours' and 'two for one' promotions in on-trade premises are still in place. In addition, a code of practice is being developed between retailers and the Irish government on the placement and promotion of alcohol in stores. (...)

Within Scandinavia, differences between the countries are evident in their approach to alcohol promotions. In Finland, while sales below cost are not banned, quantity discounts are, both in on- and of-premise sales, as well as advertising of alcohol discount prices outside on-trade premises unless the prices advertised are valid for two months or more. The scope of this regulation, however, is limited: 'happy hours' are still allowed, but *advertising* of 'happy hours' outside a bar or restaurant is not. In Sweden, national legislation stipulates that the price of alcohol cannot be lower than the cost price plus a 'reasonable addition'. The Swedish Institute of Public Health recommends that this addition should be of 25% or over the cost price. Norway, like Sweden, has a ban on the use of alcohol as a loss-leader in off-premise sales, as well as on 'happy hours' and other price promotions.

Finally, alcohol promotions are subject only to self-regulation only in a number of countries. In The Netherlands, for example, the Dutch Foundation for the Responsible Use of Alcohol (STIVA) – an industry organisation – developed an advertising code containing rules for alcohol promotions. For example, according to the code premises are not allowed to sell alcohol for less than half its normal price, or to offer it free of charge, or to offer more than one alcohol discount promotion per customer (Van Hoof

⁶⁶ Home Office, *Rebalancing the Licensing Act: a consultation on empowering individuals, families and local communities to shape and determine local licensing*, July 2010

et al. 2008). Another industry body, the Royal Dutch Catering Industry, also developed its own code of good practice in alcohol sales, and supports a ban on alcohol discounts as a measure to prevent nuisance behaviour and violence (*ibid.*). In many Spanish provinces, only self-regulation is in place to control alcohol sales promotions.⁶⁷

6 Selected further reading

- Home Office, *The likely impacts of increasing alcohol prices: a summary review of the evidence base*, January 2011
- BDRC Continental, *Public perceptions of alcohol pricing: market research report*, November 2010
- Priscilla Hunt *et al* for the Home Office, *Preliminary assessment of the economic impacts of alcohol pricing policy options in the UK*, June 2010
- John C Duffy and Christopher Snowdon, *The minimal evidence for minimum pricing: the fatal flaws in the Sheffield alcohol policy model*, Adam Smith Research Trust, 2012
- University of Sheffield, *Alcohol pricing and criminal harm: a rapid evidence assessment of the published research literature*, c2010
- ScHARR University of Sheffield, *Alcohol pricing and promotion effects on consumption and harm: independent review of the effects of alcohol pricing and promotion: part A: systematic reviews*, September 2008

⁶⁷ Lila Rabinovich *et al*, *The affordability of alcoholic beverages in the European Union: understanding the link between alcohol affordability, consumption and harms*, RAND Europe, 2009, pp90-2