



## EDITORIALS

## Minimum unit pricing for alcohol clears final legal hurdle in Scotland

Health and social benefits are likely to follow implementation next year

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Scotland's journey to a minimum unit price for alcohol has taken 10 years. It can be traced to a 2007 report by SHAAP, the coalition of Scottish Medical Royal Colleges and Faculties.<sup>1</sup> The Scottish minority government made it a central aim in its 2009 alcohol strategy,<sup>2</sup> but an attempt to pass legislation to implement a 50 pence (€0.56; \$0.66) minimum unit price in 2010 failed. The multinational beverage giant SABMiller gifted crates of beer to opposition politicians in a show of gratitude.<sup>3</sup>

The policy fared better two years later when the new majority government passed the Alcohol (Minimum Pricing) (Scotland) Act 2012. Opposition was reduced by including a review clause requiring ministers to report to parliament on the operation and effect of the policy after five years and a sunset clause terminating the policy after six years unless renewed.

Legislative success was followed by a five year legal battle with alcohol industry trade bodies. At the heart of the case was the question of whether the policy meets the stipulation in EU law that public health policies restricting the free movement of goods must be appropriate to meet their stated aims and that these aims cannot be achieved through existing measures that are less restrictive of free trade.<sup>4</sup> The case went through the Scottish Outer Court of Session (2012-13), appeals to the Scottish Inner Court of Session (2013-16), a referral to the European Court of Justice (2014-15), and, finally, an appeal to the UK Supreme Court (2016-17), which dismissed the industry's case. Scotland will now be the first nation to introduce a minimum unit price, with implementation expected in the first half of 2018.

Health and social benefits are likely to follow.<sup>5,6</sup> We estimate that with a 50 pence minimum, alcohol consumption will fall by 3.5%, leading to 120 fewer alcohol attributable deaths, 1200 fewer hospital admissions, and a saving of £12.1m to the Scottish NHS each year.<sup>7</sup>

Many critics argue the policy is unfair to responsible low income drinkers. Our analyses show that the 71% of moderate drinkers (drinking no more than 14 units a week for women, 21 for men) would spend on average only an extra £1.88 a year as a result of the policy.<sup>7</sup> This is because the minimum unit price targets the low cost, high strength products disproportionately purchased

by harmful drinkers, particularly those with low incomes. Harmful drinkers make up 5% of the Scottish population but consume 29% of all alcohol sold. On average, they spend £2300 a year on alcohol. Our analyses also show that the policy will substantially reduce health inequalities.<sup>7-9</sup>

The Scottish government has commissioned NHS Health Scotland to do a full independent evaluation of the effect of minimum unit pricing to establish whether these benefits are realised. This evaluation will assess retailer compliance, changes in alcohol consumption and harm across the population and among harmful drinkers, effects on household expenditure and public attitudes, economic effects on the alcohol industry, the experiences of drinkers' families and carers, and crossborder trading or switching to other sources of alcohol or illegal drugs.<sup>10</sup>

Meanwhile, developments are being watched closely by public health stakeholders nationally and internationally, who may seek to follow in Scotland's footsteps. The governments of Wales and the Republic of Ireland have formulated concrete legislative plans, Northern Ireland has previously stated its intention to pass legislation, and there are live policy debates across Europe as well as in Australia, New Zealand, and Canada.

Legality is not guaranteed, even within the EU, as the European court's judgment made clear that minimum unit pricing could be legal in one state and illegal in another depending on the domestic court's assessment of the tests outlined above.<sup>11</sup> However, the UK Supreme Court's interpretation of EU law is striking and of potentially great importance to public health policy beyond alcohol. It states that courts should give national governments considerable discretion in their valuation of health relative to free trade:

*[The] proposed comparison is, in the present case, between two essentially incomparable values. One is the value of health, [the] other is the market and economic impact on producers, wholesalers and retailers of alcoholic drinks ... it is not for any court to second-guess the value which a domestic legislator may decide to put on health. ... Would or should a*

*court intervene because it formed the view that the number of deaths or hospitalisations ... was not "proportionate to" the degree of EU market interference? I very much doubt it.*<sup>4</sup>

As Scotland finally moves to implement minimum unit pricing after five years of delay, public health advocates urge the rest of the UK to follow suit as soon as possible, highlighting the many lives lost needlessly to alcohol in that time. But the court process has not been without value. It has shown the crucial importance of including public health over-ride functions in international trade deals. Furthermore, the UK Supreme Court has made clear that, under the correct circumstances, EU countries can seek to introduce policies that value public health over protection of free trade. The question for the future is will they choose to do so?

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