Alcohol (Minimum Pricing)(Scotland) Bill
Response to the Health and Sport Committee’s call for Written Evidence from
The Edrington Group

Introduction

The Edrington Group owns some of the leading Scotch whisky and golden rum brands in the world, including The Famous Grouse, The Macallan, Brugal, Cutty Sark and Highland Park. Edrington is headquartered in Scotland and is an international business employing over 2,300 worldwide, with over 60 per cent employed overseas.

The Group is owned by a charitable trust, The Robertson Trust, which donated £11.4m to a variety of charitable causes last year. We welcome the opportunity to make this submission to the Committee.

1. The Edrington Group agrees that attitudes in Scotland to alcohol misuse must change and alcohol-related harm must be reduced. The Group actively promotes responsible consumption of alcohol. Edrington successfully operates its Code of Practice on responsible marketing and is a signatory to the Portman Group Code of Practice. The Group is also a member of Drinkaware and participates in “Why let good times go bad?”, the all-industry responsible consumption campaign. Edrington has taken alcohol awareness into the workplace through the company alcohol policy and its support for the Scottish Government’s Alcohol Awareness Week.

2. The Group has made several pledges in support of the UK Government’s Health Responsibility Deal.

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

3. The Scottish Government has in place a comprehensive strategy to reduce alcohol-related harm, the key pillars of which are the ‘Framework for Action’, the Licensing (Scotland) Act 2005 and the Alcohol Etc (Scotland) Act 2010, the latter only coming into force on 1 October 2010.

4. We note the Scottish Government wishes to proceed with minimum pricing at a time when alcohol consumption in Scotland has been stable for 6 years\(^1\) and indicators of health harm show a decline:
   a. Alcohol-related deaths have declined 15% in the last 5 years and deaths in 2010 were the second lowest the last decade\(^2\).
   b. Deaths from alcoholic liver disease have also declined since 2006\(^3\).
   c. Alcohol-related hospital discharges have declined over the past two years (2007/08-2009/10) from 43,054 to 39,278, a reduction of 8.8\(^4\).

5. This would indicate the measures already put in place are having a positive impact. More importantly these measures have only been in place for a relatively short period of time and have not yet been fully assessed, with the measures under the Alcohol etc (Scotland) Act 2010 only recently introduced. It appears therefore premature to introduce yet further measures and restrictions.

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\(^1\) MESAS: An update of alcohol sales and price band analyses. August 2011
\(^2\) Alcoholic-Related Deaths, GROS 5 August 2011
\(^3\) MESAS Setting the Scene. Theory of change and baseline picture. March 2011
6. The Edrington Group remains committed to working to tackle alcohol misuse but is opposed to minimum pricing. We believe that minimum pricing will have little effect on harmful consumption. There is no trustworthy evidence that misuse can be positively impacted through pricing measures.

7. We believe minimum pricing is likely to be illegal.

8. We believe that minimum pricing will damage the Scotch Whisky industry at home and abroad with negative consequences for the wider economy.

Overall, minimum pricing will cause a number of negative unintended consequences.

Effectiveness

9. There is no strong evidence as to the effectiveness of minimum pricing as a policy to reduce alcohol-related harm. It is often portrayed as a targeted measure having greatest impact on problem drinkers with limited impact on moderate drinkers. A recent report from the Institute for Fiscal Studies rejected these assertions finding that MUP will hit responsible drinkers and, in particular, those on lower incomes at a time when household budgets are already under extreme pressure.

10. The case for minimum pricing relies heavily on the Government commissioned ‘Sheffield’ modelling. The updated Sheffield report commissioned by the Scottish Government showed those drinking most heavily will have to spend less than the price of one pint of beer a week more and will be the least likely to change their drinking patterns and behaviour.

11. The Sheffield report has three categories of drinker - moderate, hazardous and harmful. All drinkers within a category are assumed to hold the same characteristics. No assessment is made for age, gender, ethnicity, social grouping or different drinking patterns. For example, it is assumed that all hazardous and harmful drinkers buy on price alone, which is clearly not the case.

12. The Scottish Government’s strategy is very much based on a total population approach; the theory being that by reducing per capita consumption the proportion of problem drinkers in the population will be reduced. Although the Sheffield modelling work shows precise numbers on a range of potential impacts, nowhere does it state the reduction in the actual number of hazardous and harmful drinkers that would be achieved. In fact the proportion of hazardous and harmful drinkers remains unchanged.

13. Tackling alcohol misuse will take concerted effort over many years. It should be based on a multi-component approach, involving all relevant stakeholders targeting those drinking heavily and inappropriately. It is estimated 80% of alcohol is consumed by 30% of the population, therefore targeting hazardous and harmful drinkers offers the greatest opportunity to reduce harm. Reducing the number of hazardous and harmful drinkers will reduce per capita consumption; we have no issue with that outcome. Reducing consumption without significantly reducing the number of heavy drinkers, while

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6 Alcohol Pricing and taxation polices, IFS Briefing Note NB 124, 2011
7 University of Sheffield,: Model-Based Appraisal of Alcohol Minimum Pricing and Off-Licensed Trade Discount Bans in Scotland Using the Sheffield Alcohol Policy Model (v2): An Update Based on Newly Available Data. April 2010
undermining a major Scottish industry and its contribution to the economy, is not a policy that is in the national interest.

**Legality**

14. Concerns over the legality of introducing a Scottish minimum pricing regime have never been addressed by the Government. In all European Court of Justice cases involving minimum pricing, of which we are aware, the Court has never found in favour of such a measure, even when there is a claimed health objective.

15. The Scottish Government believes a case can be made for Minimum Unit Pricing (MUP). However, evidence from Anne Milton, the UK Public Health Minister, to the Commons Science and Technology Committee stated that the UK Government has contrary legal advice which indicates that MUP is probably illegal.

16. The Swiss Government has also obtained a legal opinion on minimum pricing\(^8\). It clearly states that minimum pricing would breach EU obligations and that a health exemption would not be likely to succeed.

17. That minimum pricing is illegal is consistent with papers published by campaigners for minimum pricing who while supporting the principle are not convinced of the legality\(^9\).

18. To address this legal uncertainty, the industry believes the Scottish Government should notify the Bill to the European Commission through the technical notification procedure (Directive 98/34). The Government has refused to do so to date claiming the Bill does not require a change to the product. We believe this is incorrect and that the Bill is a *de facto* technical measure. Some EU producers exporting to Scotland whose current price point may increase under MUP will be able to minimise the impact by reducing the strength of their product and the number of units of alcohol it contains.

19. Even if the Scottish Government does not consider that it must notify the Bill this does not preclude them from doing so. Notification of the Bill would allow for full scrutiny by EU Member States and by the Commission itself. If the Scottish Government is confident in their legal advice, it is surprising they are reluctant to open up the Bill to this scrutiny when they have said they want MSPs to be allowed full scrutiny of the principle and price.

20. Minimum pricing is recognised as a barrier to the free movement of goods. We believe it is likely to be found illegal under the EU Treaty (Article 34), and likely to be in breach of World Trade Organisation rules (GATT Art.III). These rules have allowed Scotch Whisky exports to grow and underpin future industry success. Scotch Whisky accounts for around 90% of Scottish food and drink exports. If Government action in Scotland undermined EU and WTO rules, the knock on effect would be hugely damaging for Scotch Whisky and the wider Scottish economy, reducing exports by as much as a half a billion pounds a year.

21. A Scottish system might attempt to overcome EU and WTO trade law by seeking a public health exemption, but no such exemption has ever been secured for any product. If Scotland were to secure an exemption, this would establish a precedent that would give other countries the opportunity to introduce spurious ‘public health’ justifications for keeping Scotch Whisky out of vital export markets, undermining the industry, employment in Scotland and the Scottish economy.

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\(^8\) Prof Dr A. Epiney et al, On the Compatibility of a Legal Minimum Price for Alcohol with the Free Trade Agreement Switzerland-EU and Economic Freedom. Legal Opinion on Behalf of the Swiss Alcohol Board, October 2009

22. Exports of premium brands would be adversely affected overseas by a Scottish initiated trade barrier. Attempts to open up new markets would be stalled. Econometric analysis suggests that 14.5% of Scotch Whisky exports could be put at risk. At home, value brands and supermarket own label products favoured by those on lower incomes would see immediate price rises. Companies specialising in this sector, which represent 26% of Scotch Whisky sales in Scotland, fear a significant loss of business, leading to job losses and closures. At a 50p a unit price, an average priced bottle of Scotch would increase by 18.6%.

Unintended consequences

23. All price fixing measures distort the market. MUP is no different in that respect and will significantly distort the Scottish market. Any additional profits that may result from any increase in prices due to MUP will be retained by retailers, and not passed back to producers. The suggestion that retailers can be levied to return these windfall profits to Government is noble but fails to understand the dynamics of the multiple off-trade. Retailers will offset any levy by passing this request on to producers in the form of demands for incremental profit margin.

24. There is no consideration of the impact of minimum pricing on cross border sales, illicit supply, organised crime and fraud in the Sheffield Report.

25. Our experience in the Nordics shows those markets which deploy over stringent control policies see a greater incidence of cross border “alcohol tourism” and illegal production of alcohol. We would expect greater cross-border shopping with England where consumers will be able to source their preferred brands not only cheaper, but will also have access to quantity discounts.

26. Internet shopping is increasing for all types of goods. Internet sales for alcohol products sourced from outwith Scotland are not subject to the licensing provisions and therefore MUP, we expect to see increased alcohol Internet sales.

27. A key objective of the Government’s alcohol strategy is reduced consumption. An increase in cross border purchases, Internet and illegal sales of alcohol as a result of the introduction of MUP could see the Government’s goal being significantly undermined.

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

28. The Edrington Group is opposed to the introduction of MUP, but as a matter of principle any decisions over the appropriate minimum unit price and the administration of the scheme should be transparent, made free of bias or undue influence by any stakeholder, whether industry, Government or NGO. The scheme’s effectiveness should be subject to annual review, against clearly understood, transparent and objectively evidenced criteria, and the scheme should be discontinued should the review demonstrate its ineffectiveness or its introduction leading to undesirable consequences, viz illegal activity/illicit market.

Any other aspect of the Bill

29. The scope of the Bill is very tightly drawn. We believe the ‘sunset clause’ which clause 2 of the Bill will remove should be retained.