Introduction

1. The SRC represents the broad spectrum of Scottish retailing, from large multiples and department stores to smaller independents, selling a wide selection of food and non-food items through many types of outlet. Retailers employ c239,000 people in Scotland, about 9% of the workforce, and total Scottish retail turnover is estimated at £25bn per annum.

2. Official data put the value of Scottish off-licence sales of alcohol at c£1.5bn in 2009, about 6% of the £25bn figure above – though this is an artificially high percentage as unlike most other retail sales it includes a substantial element of excise duty. The corresponding on-trade figure was £2.2bn. There were over 6,000 off-licence premises in 2007, 37% of Scotland’s 17,000 total number of licensed outlets. Most grocery stores sell alcohol as part of their offering.

General comments

3. Retailers take their social responsibilities extremely seriously, and have been at the forefront of efforts to tackle alcohol misuse. SRC members led the industry in tackling under-age drinking, with the introduction of the ‘Challenge 25’ scheme well before it recently became mandatory across the licensed trade under the Alcohol etc (Scotland) Act 2010. The scheme has already made a substantial impact on consumers as well as on retail staff, and should be allowed time to prove its effectiveness.

4. Retailers have been extremely active in promoting consistent messages on responsible drinking. They were the first sector to complete the roll-out of unit information and the agreed advice from the Chief Medical Officer on their products. They have supported this through information on their web sites and at point of sale. Retailers contribute around one-third of the Drinkaware Trust’s £5m trade income, as well as their large in-kind contribution through promotion of the Trust's campaigns and materials. They have also been active in helping to address alcohol misuse at local level through the establishment of Community Alcohol Partnerships. Finally, retailers have been extensively involved in Scotland’s Alcohol Awareness Week and many other relevant initiatives, including the Scottish Government Alcohol Industry Partnership.

1 http://www.alcoholinformation.isdscotland.org/alcohol_misuse/files/alcohol_stats_bulletin_2011_updated_110413.pdf, Table 2.7
- Note: These numbers of licensed premises are believed to have reduced following the implementation in 2009 of the Licensing (Scotland) Act 2005
5. Retailers across Scotland, large and small, have recently invested millions of pounds implementing the requirements of the Licensing (Scotland) Act 2005 and the Alcohol etc (Scotland) Act 2010. The standards and procedures for compliance, including staff training, in reputable retail outlets have been exceptionally high. The SRC would suggest that the Scottish Government evaluates the effectiveness of these initiatives, both voluntary and regulatory, and all of them focussed on the retail/supply side of alcohol, before introducing new legislation. On top of this legislation, the Scottish Government is currently also proposing in its draft Budget to impose an unjustified and discriminatory new tax costing £110m over 3 years on large retailers of both alcohol and tobacco.

6. The SRC recognises the need to tackle alcohol abuse and that retailers have a role to play in that, alongside the Government and citizens. We believe, however, that action needs to be targeted and disagree with the general principle of the Scottish Government’s Framework on Alcohol which is, avowedly, ‘to adopt a whole population approach’. Whilst recognising the seriousness of alcohol-related harm, it is clear from the Government’s own statistics that the clear majority of Scots enjoy alcohol within sensible weekly guidelines. Minimum pricing penalises those who are drinking responsibly, with a particular disproportionate effect on responsible low-income consumers (as the Institute for Fiscal Studies (IFS) found in its recent research briefing on the subject) and shoppers on a tight budget. In an economic context in which households are more stretched than for many years by falling real incomes and rising costs, it has to be questioned whether average consumers will support this measure once the price of the weekly shopping basket is further raised.

7. Targeted interventions against alcohol misuse; targeted enforcement of existing law (specifically the Licensing Act 2005 and Alcohol Act 2010, the impact of which is not yet known or taken into account); a much-increased emphasis on test purchasing; and the use of education, information, campaigning and partnership working to help produce cultural change, represent the approaches to which retailers are committed, and which will work. The retail sector has pioneered further UK-wide alternatives, such as those led by the Wine & Spirit Trade Association’s Retail of Alcohol Standards Group, including involvement in Community Alcohol Partnerships and initiatives under the Westminster Department of Health’s Responsibility Deal.

**Minimum pricing**

8. Arguments for and against minimum pricing have been much debated. The basis of the SRC’s opposition is that it is an unfair and untargeted measure, penalising the majority of responsible drinkers. Despite the perception of possible increased revenues from introduction of the policy, retailers do not believe that price is or should be the principal factor in

---

3 Changing Scotland’s Relationship with Alcohol, February 2009, para. 11
tackling alcohol abuse. The sector’s test for this proposal is simply whether it will work, whether it is sufficiently targeted and whether it is legal.

9. It is accepted that since the 1980s alcohol has become more affordable relative to earnings. However, most other consumer products have also become more affordable as average incomes have exceeded price rises. Therefore it is very difficult to control prices to keep up with earnings and, if this were done, it automatically discriminates against lower earners. Furthermore, median earnings are comparatively lower in Scotland than the rest of the UK\(^5\). So alcohol is relatively less affordable here, countering assertions that Scotland’s apparently greater alcohol misuse problem is caused by affordability.

10. The link between price and the level of irresponsible alcohol consumption is not straightforward. The UK has among the highest duties in Europe, but some countries with significantly lower duties and prices also have much lower consumption. Looking within the UK, Scottish Government data suggest that the average alcohol unit price in Scotland is almost identical to that in England & Wales\(^6\). Until the recent implementation of the Alcohol Act 2010, promotions have also been generally the same. Yet alcohol-related harm appears higher in Scotland than in England. It again follows that the underlying Scottish causes are cultural factors other than price or promotion.

11. The same data also show that a clear trend from on- to off-sales in 2005-9 did not correlate to any rise in overall consumption per head\(^6\). This period is a counter-example to those who often say that recent consumer trends towards the off-trade ‘fuel’ increased overall consumption.

12. If the link between price and irresponsible drinking is examined, the main area of debate over the likely effectiveness of minimum pricing is then to what extent those drinking at hazardous or harmful levels will change their pattern of behaviour in the face of relatively modest price rises (for example, the Business & Regulatory Impact Assessment estimates the extra cost to harmful\(^7\) drinkers at 45p per unit to be £116 per annum – £2.23 per week – and says that this will cause them to reduce their consumption by 7.9%). The SRC notes that minimum pricing will have little effect on the night-time on-trade economy where prices would generally fall above the minimum, and that sections of the on-trade have stated their support for minimum pricing.

13. The SRC is concerned by approaches which distort the market between Scotland and the rest of the UK. It is inevitable that imposing this measure in Scotland will result in a significant added incentive to cross-border and

\(^7\) Defined as >50 units per week for men and >35 units per week for women
online trade, undermining the effectiveness of the measure and the UK single market, and damaging the Scottish retail sector and economy.

14. When the promotional restrictions in the Alcohol Act 2010 were recently implemented on 1 October 2010, commentators remarked that online retailers ‘got round’ the Act with promotions and deliveries to Scottish customers from England. Supermarkets were again specifically criticised despite there being many other internet-based retailers of alcohol with similar promotions. This type of online retail is not new and is a continuation of an existing marketplace. It is compliant with, not ‘evading’, all applicable legislation. During the passage of the Alcohol Bill, many business organisations consistently pointed out that applying restrictions only to licensed off-trade retailers in Scotland would not affect online retailers, and would therefore give a further incentive to Scottish consumers to purchase online, undermining the objectives and taking trade away from Scottish-based retailers. It is surprising that advocates of the new Bill argue that this experience demonstrates all the more reason why minimum pricing is needed. It will have exactly the same flaws, only to an even greater extent, and will significantly compound the online competitive advantage.

15. The Bill’s Business & Regulatory Impact Assessment is very weak on this point about online sales, noting simply that ‘the Scottish Government is aware of this possible purchasing route but considers that the type of alcohol that will be largely affected by a minimum pricing policy is not routinely purchased through the internet’. This complacency ignores the rapid growth of distance sales via personal computers and smartphones, and it appears that little or no rigorous analysis in this area has been undertaken.

16. Legitimate concern about cross-border and online effects has been consistently under-estimated and dismissed by the Scottish Government. On this general theme, the SRC also notes the very recent comments of the Welsh First Minister: ‘As regards alcohol pricing, the major problem – and this will be a problem in Scotland – is that if you have different prices either side of the border, people will just cross the border to buy alcohol on the other side. This will be a problem in Scotland if they proceed with their policy on alcohol pricing’. Some relevant evidence on cross-border effects is available from the introduction of the EU Single Market in the 1990s, and also from stores in Northern Ireland close to the border with the Irish Republic.

17. While SRC queries the link between price and irresponsible consumption and therefore does not support duty rises either, its general view is that if the state is going to intervene in the pricing mechanism, excise duty

---

9 National Assembly for Wales, First Minister’s Questions, 29 November 2011
applied on a UK-wide basis, together with a ban on sales below tax\textsuperscript{10}, would be preferable to minimum pricing as a means to do so. The IFS recently arrived at a similar conclusion\textsuperscript{11}. Duty is more flexible than a fixed price per unit for all alcohol, and can be targeted at different products depending on different perceived health, social or economic objectives. Alcohol excise duties raised £9.5bn for the Exchequer in 2010/11\textsuperscript{12} (with VAT on that alcohol providing further revenue). If a duty rise were to create additional revenue – a hypothesis which would be carefully modelled and checked by Treasury statisticians – then at least that money would accrue to the Exchequer for public services, rather than creating any further suggestion that it would be ‘pocketed’ by retailers. It would also avoid some of the competitive distortions to the UK single market and, in the current very challenging economic climate, the unwelcome and unnecessary additional burdens on business which a separate minimum pricing scheme would cause. Incidentally, any proposals for Scotland-only alcohol taxes should be resisted as they would likewise distort the market and undermine Scottish retailers by driving trade online and to England.

18. All price-based measures or tax increases add to incentives for smuggling and the black market. There is already a significant level of duty evasion (recently estimated by HMRC at 3\% of the UK market for spirits\textsuperscript{13} and a similar, although uncertain, percentage of the beer market – HMRC give no figures for other alcohol). Illicit supplies are sometimes counterfeit, and often associated with organised crime, but are afforded competitive advantage if legitimate prices increase.

19. Minimum pricing and other pricing or tax interventions penalise, and potentially alienate, the majority of responsible consumers as well as those drinking too much. Unlike the other education and enforcement alternatives, they do not narrowly target problem consumption or irresponsible retailing. The recent IFS research found that 71\% of all off-licence units of alcohol retailed for less than 45p in 2010, and that a minimum price at that level would cost at least £1 per week on average for households drinking 7 or more off-licence units per adult per week\textsuperscript{14}. One of the fundamental tenets of better regulation is that legislation should be targeted at the problem which it is aiming to solve. The Scottish Government has argued that minimum pricing is a targeted approach, but the SRC remains unconvinced that it is the most targeted approach which could be devised.

20. To the SRC’s knowledge, no other product with potentially harmful consequences if misused has in recent UK history had minimum pricing applied. Why is it the cure for society’s relationship with alcohol when it

\textsuperscript{10} The Westminster Government intends to introduce such a ban from April 2012, but in England & Wales only – SRC likewise questions why it does not cover the whole UK as a matter of reserved UK competition/sales law
\textsuperscript{11} See footnote 4 above
\textsuperscript{12} http://www.hmrc.gov.uk/about/annual-report-accounts-1011.pdf
\textsuperscript{13} http://www.hmrc.gov.uk/stats/mtg-2011.pdf
\textsuperscript{14} See footnote 4 above
has not been considered for tobacco, for example? It would set a bad precedent for state price controls over other products where government decided to intervene in the market to limit consumption.

21. The Financial Memorandum, and Business & Regulatory Impact Assessment, accompanying the Bill, give estimates of increased revenues to the alcohol trade which could result from the introduction of minimum pricing at various levels. A general comment is that the modelling undertaken by or on behalf of the Scottish Government is by its nature theoretical and does not necessarily take account of all the real complexities of the market and the ways in which both consumers could switch their spending habits, and individual companies would model their own business plans, in response to the changed market dynamics which would follow the enactment of the Bill. Some questionable figures have been quoted in the media as representing a substantial ‘annual windfall for big supermarkets’. Yet smaller retailers who sell products below the minimum price will also be affected, as well as brand owners who will benefit, rather than retailers, in the likely scenario that consumers will switch to their products. The official modelling suggests that there could be significant additional revenues to the on-trade as well the off-trade. As already noted, the modelling ignores any likely shift to online and cross-border shopping.

22. Minimum pricing squeezes out budget brands, distorting competition and the market, and reducing consumer choice. Retailers strongly refute the equation by some Government representatives of value with poor quality: the category includes many own-brand products, sought by cost-conscious shoppers. Own-brand is especially important to grocery retail members of SRC as most, if not all, have own-brand products.

23. Limiting the market for own-brand products will reduce competition between brands – competition which drives wider benefits for consumers including in quality, variety, sustainability and labelling information. It could also effectively create a barrier to new entrants, in that it will be significantly more difficult for them to enter a market dominated by established, entrenched brands if they are unable to compete on price – again reducing consumer choice.

24. Currently, the way in which competition law severely constrains retailers from deciding not to compete with each other on price (or promotion) does not appear to be well understood by the supporters of minimum pricing, who often also criticise retailers. Millions of people enjoy finding quality, choice, promotions and good value when they go shopping, whether for alcohol or anything else; and most then consume the products they buy sensibly and over a period of time. Despite the tough economic climate, retailers have been trying harder than ever to meet customer expectations and help consumers through the deepest recession for many years. Several have continued to create new employment and to invest substantially in Scotland. Increased efforts to stock Scottish products, such as whiskies, and regional ales, should also be mentioned.
25. The Scottish Government has not demonstrated the legality of minimum pricing under UK/EU/WTO competition rules. If retailers themselves were to be involved in any way in suggesting or setting a minimum price, except in the unlikely event that each company did so unilaterally, it would be called a cartel and those involved prosecuted for price-fixing. Government may seek to invoke a public interest exemption, but SRC’s general understanding is that it would need to show that there were no alternatives (eg within the framework of excise duty) which were not more proportionate and less anti-competitive. The SRC notes that the UK Government has recently stated that its advice is that minimum pricing is illegal.\textsuperscript{15}

26. Finally, the SRC is disappointed that the Scottish Government has dropped its commitment in the Bill to a statutory post-implementation review and ‘sunset clause’ for minimum pricing.

Ian Shearer  
Interim Director  
Scottish Retail Consortium  
12 December 2011

\textsuperscript{15} ‘Our advice is that in itself is probably illegal as it contravenes European free trade legislation. I know that Scotland is thinking about introducing it. They will be challenged and that will clarify the law. Our advice is that that is illegal’ – Anne Milton MP, Parliamentary Under Secretary of State for Health at the House of Commons Science & Technology Committee, 26 October 2011