Alcohol (Minimum Pricing) (Scotland) Bill

Wine and Spirit Trade Association

The Wine and Spirit Trade Association (WSTA) is the UK organisation for the wine and spirit industry representing over 340 companies producing, importing, transporting and selling wines and spirits. We want a future for our industry in which it remains competitive and contributes to the UK’s economic growth – and one in which our products are made, sold and enjoyed responsibly.

Summary

- It is wrong in principle to introduce a measure that assumes a link between price and reducing harm that is not supported by the evidence. Consumption in Scotland has been dropping since 2004 but the anticipated reduction of alcohol related health harms have not followed.
- It is wrong in principle to propose a measure which unnecessarily impacts all consumers of alcoholic drinks regardless of whether or not they have anything to do with alcohol misuse. Policy on alcohol misuse should address those who have the problem, not the majority who don’t
- We think it is inconsistent with the operation of the free market for the state to intervene on price. This view is supported by European Competition Law, itself intended both to prevent barriers to free trade and to protect the consumer interests
- Minimum unit pricing could have a number of unintended consequences including reducing choice for consumers, increasing internet, cross border and illicit sales. We would urge the committee to consider the impact these unintended consequences could have on the presumed effectiveness of the policy and the impact a growing illicit trade could have on health in Scotland.

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

1.1 The WSTA opposes the introduction of a minimum alcohol sales price based on a unit of alcohol as there is no evidence to suggest that minimum unit pricing will be effective in tackling alcohol misuse, and there are substantial grounds to believe the policy breaches EU law.

Hitting the majority of the consumers and those who can least afford it most

1.2 We believe that the most effective way to address the problem is to focus attention and resource on those who mis-use alcohol rather than the majority of responsible drinkers. The most recent statistics published by the Scottish Government demonstrate that progress is being made, over the past two years alcohol-related hospitable discharges have declined by 8.8% from 43,054 in 2007/08 to 39,278 in
2009/10. The Government’s own statistics show that the majority of people in Scotland are drinking within the Chief Medical Officer’s recommended weekly limits – with 73% of men and 82% of women drinking within the limits. Why waste resources on punishing the responsible majority when a more targeted approach could have a greater impact on reducing alcohol related harm in Scotland.

1.3 A minimum unit price of 50p would hit 73% of alcohol sold in the off-trade in Scotland affecting the vast majority of consumers. 92% of vodka, 72% of whisky, 77% of beer and 63% of wine prices in the off-trade would rise overnight as a result of a 50p minimum unit price. In the current economic climate consumers are particularly concerned about the impact of inflation on their weekly grocery bills and minimum unit pricing will push up prices for the majority of consumers in Scotland.

1.4 This scenario is particularly concerning when we look at the impact of a minimum unit price on the lowest income groups. The recent report by the Institute for Fiscal Studies (IFS) showed that ‘A minimum price would have a larger effect on low-income households.’ Even though ‘Poorer households are less likely to consume alcohol and pay lower prices when they do.’ The Government has been clear that minimum unit pricing will have the biggest impact on those in low income groups even though its own statistics show that 76% of men and 84% of women in the lowest income quintile do not drink or drink moderately. We would urge the Committee to look closely at the impact of minimum unit pricing on those that can least afford it.

1.5 The Sheffield Study data predicted a smaller drop in consumption at 50 pence per unit than has already been achieved. At 50 pence per unit the study predicted a 6.7% drop in overall consumption; however the data also shows that consumption in Scotland has dropped by 9.3% since 2003 without any price intervention. If consumption is already dropping why is the Scottish Government pushing ahead with a policy that will have little additional impact, is this a proportionate and fair response?

Lack of evidence to support a link between price and harm

1.6 Minimum unit pricing assumes a link between price and harm that is not supported by evidence. No one disputes the notion that there is a link between price and sales; all available research points to lower prices resulting in increased sales. While studies do not prove the

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1 Scottish Health Statistics, 2010
3 Institute for Fiscal Studies, Briefing note BN12, Alcohol Pricing and Taxation Policies
reverse it seems safe to assume that if a bottle of wine was suddenly priced at £20 rather than £4 then unit sales would decline. However, we vigorously dispute the notion that lower prices cause irresponsible consumption and harm. Evidence from across the world substantiates this view that there is no simple link between price and alcohol misuse. In fact, in Europe alone, it seems that those countries with the highest taxes on alcohol and the highest prices are those where alcohol misuse is a problem. World Health Organisation statistics show binge-drinking in Italy and Spain, where prices are low, at a much lower level than in Finland or Iceland where prices are high. Alcohol is one of the most heavily taxed products in the UK, with 82% of the average price of a bottle of vodka and 57% of the average price of a bottle of wine, accounted for by tax. Despite these high taxes and prices we are yet to see the corresponding drops in alcohol related harm that health experts predict.

1.7 The Sheffield model estimated that a 1% fall in alcohol consumption would yield a saving per year of £0.2514bn. This is comprised of a reduction in crime harms, health harms and employment harms from alcohol misuse. Official statistics show that alcohol consumption in the UK has been falling since 2004. In fact over a seven year period it is down by 12% (Scottish consumption dropped by 9.3% since 2003). If the Sheffield formula was correct this decline should have been accompanied by a corresponding decrease in the numbers admitted to hospital for alcohol-related problems and a reduction of £9bn in the costs of alcohol related harm. Yet we are consistently told by Government and health professionals that more people are requiring hospital attention for alcohol-related problems and the financial burden arising from alcohol-related harms is increasing. This would strongly suggest that there is no direct correlation between overall levels of alcohol consumption and alcohol harm.

Impact on problem drinkers

1.8 We fear that minimum unit pricing will have little impact on those who misuse alcohol and we would urge the committee to look at the impact the policy will have on problem drinkers specifically. The Sheffield study shows that heavier drinkers are less responsive to price changes than moderate drinkers, in terms of their overall consumption. The study suggests a 10% general price increase across alcohol products would lead to a 2.1% reduction in alcohol consumption for heavy drinkers. The evidence suggests that a heavy drinker both accustomed to regular consumption and wishing to continue consuming at this level is less likely to be deterred by general price rises. Minimum unit pricing is likely to have the perverse effect of both failing to address those who have a problem with alcohol and punishing all those on low incomes, regardless of whether or not they have a problem.

5 HMRC data. See https://www.uktradeinfo.com/index.cfm?task=bulletins
Legality

1.9 We support the calls from the Subordinate Legislation Committee for the Scottish Government to announce the price at which it intends to set the minimum unit price. Our legal advice thus far suggests that minimum unit pricing conflicts with the terms of UK and European Competition law and World Trade Organisation rules. In the Business and Regulatory Impact Assessment of the Bill the Scottish Government indicates that it has been keeping the European Commission and the Office of Fair Trading informed about its proposals. We would urge the Scottish Government to publish the legal advice it has received about its proposals and any advice it has received from the European Commission and the Office of Fair Trading. It is important to note that UK Health Minister, Anne Milton MP recently confirmed that the Department of Health’s legal advice is that the Scottish Government’s proposal will prove to be illegal under European Law.7

1.10 The Law Society of Scotland has also indicated that the policy could be subject to Legal challenge. Minimum pricing on spirits was ruled illegal by the European Court of Justice in 1978. Article 28 of the EU Treaty and Article III of the rules governing world trade (GATT) regard minimum pricing as a barrier to trade. At a European level the then Vice President of the European Commission Mr Verheugen, in a written answer referred to the Court of Justice and points out that it: “has ruled that national rules fixing retail prices for alcoholic beverages could constitute measures having an equivalent effect to quantitative restrictions on imports contrary to Article 28 EC. This would be the case if, for example, prices were set at such a level that imported products were placed at a disadvantage in relation to identical domestic products, either because they could not profitably be marketed in the conditions laid down or because the competitive advantage conferred by lower cost prices was cancelled out. In other words, a minimum price fixed at a specific amount may, according to the circumstances, have an adverse effect specific to the marketing of imported products and thus constitute an obstacle to the free movement of goods within the Internal Market.”8

1.11 John Fingleton, Chief Executive of the UK’s Office of Fair Trading, made clear that setting a minimum price on a product “has a number of undesirable effects”. He said: “It would reduce the incentives of firms to compete, innovate and cut costs. So the dynamic benefits of competition are lost………….It is the job of competition authorities to

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7 Oral Evidence, House of Commons Science and Technology Committee, 26 October 2011, Q92: http://www.publications.parliament.uk/pa/cm201012/cmselect/cmsctech/uc1536-ii/uc153601.htm

8 http://www.eurocare.org/library/latest_news/european_commission_responds_to_question_on_minimum_alcohol_retail_prices
highlight to government where such a short term fix can have serious and long-lasting negative effects.\(^9\)

**Unintended consequences**

1.12 Introducing a minimum unit price for alcohol would artificially alter the shape of the market place with some interesting and unintended consequences. The IFS points to a number of unintended consequences of the policy as follows “Consumers can of course react in other ways: for example, cross-border shopping (buying alcohol in other countries where it is sold more cheaply and bringing it back to the UK), buying cheaper illicit alcohol where no UK tax is paid or even home-brewing.”\(^10\)

**Cross Border**

1.13 In areas close to the border there will be an added incentive to shop in England as opposed to Scotland. It is likely that as well as buying alcohol consumers will also choose to buy their weekly groceries in England. This will have a significant impact on retailers with stores in the Scottish Borders. The creation of differing pricing structures within the UK market could lead to significant shifts in consumer behaviour where people choose to travel, or access the black market, to buy products at a lower price. Indeed, the First Minister of Wales recently acknowledged this problem saying: “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.”

1.14 Parallels can be drawn with the situation in Newry, Northern Ireland which saw significant increases in sales when Irish duty rates were increased by 50 euro-cents duty on a bottle of wine in October 2008. If prices were to be higher in Scotland than the rest of the UK it is likely that consumers may travel to England to access lower prices. Ultimately, the level of cross border trade was such that the Republic of Ireland reduced its excise duty rates on alcohol in 2009 with the Finance Minister Brian Lenihan stating: “Recent CSO data show that 44 per cent of cross border shoppers buy alcohol. To protect exchequer revenue and stem the flow of cross border shopping, I have decided to reduce excise duty on alcohol products.” It is disingenuous of the Scottish Government to say that groceries and not alcohol was the main driver of cross border trade between Eire and Northern Ireland.

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\(^10\) Institute for Fiscal Studies, Briefing note BN12, Alcohol Pricing and Taxation Policies
Internet sales

1.15 Internet sales are the fastest growing part of the market with an estimated value of approximately £800 million. It is unrealistic for the Government to assume that consumers will not seek to purchase their alcohol from internet providers based outside of Scotland where they can take advantage of better offers. A recent report from the British Retail Consortium shows that general on-line sales are a significant and growing part of UK sales: *“In 2010, total non-store retail sales in the UK were estimated at £30.3bn, of which internet sales comprised £23.4bn. By the beginning of 2011, the internet was responsible for nearly 10% of all retail sales, up from 6% in 2009. A quarter of the UK’s most popular websites are online retail sites.”*¹¹

1.16 Whilst these figures are UK wide it would be fair to assume that a significant proportion of Scottish sales are already made online and the introduction of minimum unit pricing is likely to encourage Scottish consumers to look for offers on-line from retailers based outside of Scotland to the detriment of Scottish based businesses. Ofcom’s consumer research in April 2011 suggested that 72% of adults used their broadband connection for purchasing goods and services, making it the third most popular online activity after emailing and web browsing.

Illicit trade

1.17 There is a risk that if some people are priced out of the legitimate market, they will simply turn to illicit sources from which to obtain their drinks. There is very strong evidence to suggest that price increases fuel illicit trade in alcohol, particularly where there is a disparity between one country and another¹².

1.18 We know this too from our experience in the UK when high tax on alcohol and high prices helped cross-Channel buying in France. Research carried out by the industry with the Treasury at that time showed that people were coming from as far afield as Aberdeen in vans to cross the channel to purchase large quantities of alcohol. At its height the cross-channel industry represented approximately 13% of all UK alcohol consumption.

1.19 HMRC considers lost duty to the Treasury from black market sales of alcohol to be a significant problem. It is unrealistic to say that this is not a problem in Scotland and one which would not be exacerbated by the introduction of minimum unit pricing. We would urge the Government to take this issue seriously and put in place a clear action plan to ensure that minimum unit pricing does not bring with it an increase in duty fraud.

¹¹ British Retail Consortium (Oxford Economics & Oxford Institute of Retail Management) UK Retail: Leading Globally, Serving Locally
Putting jobs at risk and reducing choice

1.20 Introducing a minimum price for alcohol would artificially alter the shape of the market place with some interesting and unintended consequences. It would undoubtedly put further jobs at risk within the UK’s alcohol industry.

1.21 Consider the impact for example on products which sell at the less expensive end of the market. In the case of spirits this segment includes both own brand and a range of less expensive non-marketed brands. A minimum price of 50p per unit of alcohol would mean that a 1 litre bottle of own-brand spirits at 40% abv would cost £20. At such a level the own-brand product has lost its competitive advantage and would be competing in the same price range as branded products which are supported by large marketing and advertising budgets. Who is going to buy own-brand products or those that traditionally retailed at a lower price, when for the same price you can buy premium branded product? Reducing competition between brands will also have an impact on consumers as experience shows that competition helps to drive wider benefits for consumers.

1.22 Minimum unit pricing will have a differential impact on wines according to country of origin by virtue of their alcoholic strength. Wine strength varies widely, with hotter climates such as Chile and Australia characteristically producing wines of 13% abv or more compared to wines from cooler Northern European climates of around 9% abv to 11% abv. A minimum unit price would make the former more expensive per bottle. Notwithstanding the possible competition law issues this raises, the implications are fairly obvious. It seems unlikely that countries whose products now face an unfavourable market in which to compete, courtesy of minimum pricing, will wish to look favourably towards UK exports, such as Scotch Whisky.

1.23 These market distortions would undoubtedly impact on jobs. Producers of less expensive and own-brand products employ thousands of people in the UK. It would seem particularly odd during such testing economic circumstances to pursue a policy which risks further job losses.

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

2.1 There is no evidence to suggest that minimum unit pricing will be effective in tackling alcohol misuse, and there are substantial grounds to believe the policy breaches EU law. It is for Government to make a policy decision based on the evidence available to it and the Scottish Government has been clear about its intent to introduce minimum unit pricing in Scotland, it will therefore be for Government to set the price and the justification for why the price has been set a specific level.
2.2 However, as minimum unit pricing is untested we do believe that any new legislation should be assessed and evaluated for its impact and effectiveness. This is in line with best regulatory practice and will provide Scottish Ministers with an opportunity to intervene should many of the concerns that the industry has highlighted come to fruition such as, the adverse impact on lower-income groups, increases in cross-border or illicit sales.

3. Any other aspects of the Bill

3.1 When assessing the likely impact of minimum unit pricing it is important to take into account the wider legislative environment. For instance a number of changes to the promotion and sale of alcohol were introduced on 1 October and it is important to take account of the impact of these changes before introducing further legislation. Similarly the Scottish Government has also announced its intention to introduce an additional tax on large retailers selling alcohol and tobacco. No regulatory impact assessment has been published to accompany the proposal but it is important to note that a tax that seeks to raise £30-40 million per year from retailers would require them to make additional sales of at least £1 billion to cover the costs of the additional tax to their business.

3.2 Any proposal to introduce minimum unit pricing should maintain the sunset clause which was introduced in the Alcohol etc (Scotland) Act 2010 to ensure that the policy’s effectiveness is independently reviewed against evidence based criteria and the objectives set out by Government for the policy. If the independent assessment determines that minimum unit pricing is not having the effect the Government intended, the policy should be repealed.

3.3 We are opposed to the suggestion that Ministers can raise the level at which a minimum unit price should be set at regular intervals. It is important with any legislative change that reasonable time is given for the impact to be fully considered before more significant changes are made. We would also urge that any future increases to the level at which a minimum unit price should be set would be subject to consultation with the industry and subject to a full debate and vote in parliament. Ministers have talked about minimum unit pricing as a mechanism to reduce the amount of alcohol being sold. Our view is that policy should be focussed on tackling the minority of consumers who mis-use alcohol where as minimum unit pricing is a general policy impacting on all consumers.

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