



Minimum Price for Alcohol in Scotland

BRIEFING

Introduction

The Alcohol (Minimum Pricing) (Scotland) Bill, introduced in the Scottish Parliament in October 2011, seeks to establish a minimum price for the sale of alcohol.

The policy was originally considered under the Alcohol etc (Scotland) Bill, introduced in November 2009. However, it was not sufficiently supported within the Scottish Parliament. The issue has been revisited with the Scottish Government determining it to be the most effective measure to counter the impact of alcohol misuse on health, crime, social and economic growth.

If the Bill is enacted, an additional condition agreeing not to sell alcohol below the minimum price will be added to premises licences in Scotland.

A minimum price for alcohol

The Scottish Government intends to sell alcohol at a minimum 45 pence per unit. The minimum price of alcohol will be calculated using the following formula: 45p minimum price per unit (MPU); multiplied by the strength of the alcohol (S); multiplied by the volume of the alcohol in litres (V); multiplied by 100:

$$\text{MPU} \times \text{S} \times \text{V} \times 100$$

Example 1: Minimum price for a standard sized (700ml) bottle of spirits at 37.5% ABV:

$$0.45 \times 37.5/100 \times 0.7 \times 100 = \text{£}11.81$$

Example 2: Minimum price for a standard sized (750ml) bottle of wine at 12.5% ABV:

$$0.45 \times 12.5/100 \times 0.75 \times 100 = \text{£}4.22$$

Example 3: Minimum price for a case of 24 cans (440ml) of beer at 4% ABV

$$0.45 \times 4/100 \times 0.440 \times 24 \times 100 = \text{£}19.01$$

Example 4: Minimum price for a strong pint (568ml) of lager at 5% ABV

$$0.45 \times 5/100 \times 0.568 \times 100 = \text{£}1.28$$

Explanatory Notes prepared by the Scottish Government, which do not form part of the Bill and are not endorsed by Parliament, state that the minimum price for cocktails and mixed drinks would be established by considering each alcoholic component.

In addition, the Explanatory Notes also state that where alcohol is sold as a meal deal, "the minimum price would be the minimum price that would apply to the alcohol if sold on its own". It is not clear however, how this will affect the overall price of the meal deal.



The Scottish response

Whilst a Scottish Government consultation revealed 43% in opposition to a minimum alcohol price, few endeavours have been made to gauge public opinion.

Nonetheless, the health and social sectors have embraced a minimum price of alcohol, the Scottish Health and Sport Committee finding 85% in favour of the measure.

It is anticipated that the licensing authorities and on-trade sector will support the proposal, which is perceived to bring the on and off trade sectors more in line with each other. The on-trade sector will also be encouraged by the Scottish Government's suggestion that the increased pricing will compensate any fall in consumption levels; which is supported by the University of Sheffield's estimation that a minimum price of 45p per unit will stimulate the industry, creating a windfall of £104million.

However, the mood is polarised by opposition from the off-trade sector and manufacturers, who argue that higher minimum prices and less consumption, will reward retailers alone. Opponents fear that a minimum pricing structure will have the following affects:

- Demand for certain drinks will decline, resulting in redundancies and harming the economy

- Scottish trade will suffer from "cross border alcohol tourism" and thriving internet alcohol sales
- The Scotch Whisky Association ("SWA") argues that a minimum pricing policy would affect an estimated 14.5% of whisky exports. This is disputed by Alcohol Focus Scotland, which refers to the SWA's record 2011 export figures as evidence that the minimum pricing debate has not affected exports

Compatibility with EU law

Controversy has arisen as to whether the Scottish proposal on minimum alcohol pricing is compatible with EU free trade legislation.

The EU forbids member states from adopting strategies which restrict the free movement of goods. It is argued that that a minimum price of alcohol impedes the free trade of alcohol between member states.

Nonetheless, the issue is complicated by the availability of the public health defence. To use this, the Scottish Government will need to show that the minimum price policy is "proportionate" and does not cause "arbitrary discrimination".

Anne Milton, Parliamentary Under Secretary of State for Public Health, has stated that a minimum unit pricing policy is "probably illegal". However, clarification on the compatibility of minimum pricing with EU law, as well as the breadth of the public health defence, will only be achieved once the issue has been referred to the EU.



Conclusion

At present, the Bill is passing through the first of three Stages, with the Scottish Health and Sport Committee intending to publish its report of the oral evidence sessions by the end of February 2012.

The key hurdle for the policy will be the EU's ruling on its compatibility with free trade legislation, whenever this may be determined. This will be of great interest to David Cameron who has supposedly asked for plans to incorporate a similar minimum price policy for the sale of alcohol in England.

Should the policy progress beyond an EU ruling, keen interest will focus on how it influences Scotland's economic position, with an alcohol industry forced to adapt to the ambitions of its Government.

For further information please contact:

Robert Botkai

Partner: Winckworth Sherwood
DT 020 7593 5004
rbotkai@wslaw.co.uk