

## Submission to Home Office consultation on: 'delivering the Government's policies to cut alcohol fuelled crime and anti-social behaviour'.



### Background/Overview

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The Scottish Parliament passed the Alcohol (Minimum Pricing) (Scotland) Act<sup>1</sup> ('the Act') on Thursday 24 May 2012. The Act set out how a minimum unit price (MUP) for alcohol, below which alcohol could not be sold, would operate in Scotland. The then Cabinet Secretary for Health and Wellbeing Nicola Sturgeon MSP indicated that she intended to set the MUP at 50p per unit<sup>2</sup>, a change from her initial indication that the MUP would be set at 45p per unit, and committed to fixing the MUP at this level for 2 years.

Scottish Conservatives supported the Alcohol (Minimum Pricing) (Scotland) Act, however we opposed a similar MUP measure when it was presented in the previous session (2007-2011) of the Scottish Parliament as part of the Alcohol etc. (Scotland) Act 2010<sup>3</sup>. At that stage we had very real concerns about the legislation, these included:

- The introduction of a further alcohol tax before the non-tax measures (contained in this legislation) had been tried and in place for a sufficient time to allow a proper evaluation of their impact on alcohol consumption.
- The lack of detailed and robust evidence on the impact of the introduction of a MUP.
- The lack of robust evaluation criteria for the MUP measure, and a clear indication that if it didn't work it would be scrapped.
- The questionable legal status of such a measure in terms of, in particular, EU regulations on the operation of the internal market and international trade rules.
- How any 'windfall' from such a measure could be usefully collected and used to address alcohol misuse.

This consultation response will focus on the issue of a minimum unit price of alcohol. While we certainly have an experience of some of the other issues raised in this consultation, in particular the ban on multi-buy promotions, it is MUP on which I wish to focus. In doing so I concentrate on three main areas:

1. Evaluating the success of such a policy and ensuring that if it doesn't work, that it falls.
2. The legality of such a measure, and its compatibility with trade rules.
3. The potential for a 'windfall' levy.

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<sup>1</sup> <http://www.legislation.gov.uk/asp/2012/4/contents/enacted>

<sup>2</sup> [http://www.scottish.parliament.uk/S4\\_HealthandSportCommittee/Inquiries/Letter\\_from\\_Cab\\_Sec\\_to\\_DM\\_50p\\_minimum\\_price.pdf](http://www.scottish.parliament.uk/S4_HealthandSportCommittee/Inquiries/Letter_from_Cab_Sec_to_DM_50p_minimum_price.pdf)

<sup>3</sup> <http://www.legislation.gov.uk/asp/2010/18/contents>

A large volume of evidence was presented to the Health and Sport Committee of the Scottish Parliament in relation to this bill, although much of it focussed on the public health arguments rather than the wider issues I will touch on in this submission. Much of the evidence received in support of the Alcohol (Minimum Pricing) (Scotland) Act is still available on the Scottish Parliament website<sup>4</sup>.

### **Evaluation of the impact of MUP**

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One of my principal concerns about the MUP measure was to ensure that, as a market distorting mechanism, were it to fail to achieve its primary objective of reducing alcohol consumption in Scotland, particularly among hazardous and dangerous drinkers, it would be withdrawn. One of the amendments which we tabled to the bill, and secured, was a 5 year sunset clause to ensure that the measure had to be positively reaffirmed by the Scottish Parliament if it is to stay on the statute book.

However, measuring the success or otherwise of this kind of measure is not straightforward. There are a number of forces which affect the level and distribution of alcohol consumption beyond the price of alcohol; most notably social and cultural factors. During the passage of the bill, I was concerned to ensure that in the evaluation of this measure, we did everything we could to isolate the contribution to the level and composition of alcohol consumption.

It is clear that there are other factors which affect the level of alcohol consumed, for instance, between 2010 and 2011, per adult sales of pure alcohol in Scotland fell by 4%<sup>5</sup>. We wished to ensure that Parliament could properly evaluate the impact of MUP on alcohol consumption, as distinct from other factors and influences. If this measure is going to continue in effect we wished to ensure that if alcohol consumption did decrease after MUP was introduced, we knew whether or not this was a causal relationship.

Following discussions with the Cabinet Secretary for Health and Wellbeing, and evidence to the Scottish Parliament Health and Sport Committee, an agreement was reached to evaluate the impact of this measure using another region of the UK as a control region (the North East of England was the principal suggestion). This will allow us to control for UK wide factors affecting the consumption of alcohol, and compare a region with MUP with a region without MUP.

MUP is an innovative public health measure, but just as its novelty is often taken as an advantage, it must also be recognised that there is a great deal of uncertainty surrounding its impact on the market and on public health.

### **Legal issues and trade rules**

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<sup>4</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/43354.aspx>

<sup>5</sup> <http://www.bbc.co.uk/news/uk-scotland-19409201>

One issue which, I feel, that the Scottish Parliament gave too little attention in its scrutiny of this legislation was consideration of the wider market implications of the measure; principally its impact and its compatibility with the EU internal market, and with international trade more generally. This measure could, in my view, easily be taken to be an import tariff.

During 2012, together with my colleague Struan Stevenson MEP, I met with industry figures and politicians from across Europe in Brussels and Strasbourg to better understand their view on the impact of this measure on the internal market and external trade. While some industry figures do not accept the public health argument behind the MUP measure, a position with which I do not agree, their arguments related to the impact on trade were more persuasive.

During the passage of the legislation, I reached an agreement with the Cabinet Secretary for Health and Wellbeing that Stage Three of the legislation she would undertake to make MUP the subject of a “voluntary notification” to the European Commission under the Technical Standards Directive<sup>6</sup>. The initial response of the European Commission shortly thereafter was that the proposed MUP measure was not acceptable under existing EU rules, specifically:

*"The commission is fully aware of the importance of reduction of alcohol consumption among the population as a whole, and in particular among the harmful drinkers. The commission further acknowledges that the measure proposed is within member states' competence and, from a public health point of view, within the scope of the goals and objectives of the EU strategy to support member states in reducing alcohol-related harm. However, the measure at issue raises doubts as to its compatibility with the principle of proportionality...an increase of excise duty appears to be a better option to reach the goals sought...[and there are]...other additional measures which the Scottish government could adopt<sup>7</sup>".*

The Scottish Government is currently engaged in a dialogue with the European Commission on this issue and enjoys support from HM Government in its position, so perhaps it would be sensible to await resolution before commencing legislation elsewhere in the UK. I do not doubt the public health rationale behind this measure, Scotland has an appalling relationship with alcohol, but any measure implemented to address this problem must be compatible with our existing trade obligations. Considerably more expert evidence is required.

## Windfall levy

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<sup>6</sup> Notification documentation is available online here:

[http://ec.europa.eu/enterprise/tris/pisa/app/search/index.cfm?fuseaction=pisa\\_notif\\_overview&sNlang=EN&iyear=2012&inum=394&lang=EN&iBack=3](http://ec.europa.eu/enterprise/tris/pisa/app/search/index.cfm?fuseaction=pisa_notif_overview&sNlang=EN&iyear=2012&inum=394&lang=EN&iBack=3)

<sup>7</sup> <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-20533189>

There is a legitimate concern that by simply mandating that alcohol retailers maintain a unit price floor for alcohol this will lead to increased profitability for the retailers who will be able to use MUP to achieve greater margins on alcohol. This issue is arguably particularly problematic in the case of larger retailers who, given the high volume of alcohol they sell, will be expected to benefit most from any windfall arising. This issue was considered by the Scottish Parliament in the context of 'the Act'. An amendment was lodged (S4M-02305.1), and subsequently defeated, which would have required the Scottish Government to:

*"...bring forward proposals to eliminate the windfall to large retailers arising from the minimum unit price by means of the proposed public health levy or other targeted levy<sup>8</sup>."*

There are a number of problems with a windfall levy or other similar device. These include:

1. What the contribution of increased profitability from alcohol, assuming that there is a 'windfall' arising, will be to the profitability of a retail outlet or business, and how this can be calculated?
2. On the basis that the policy itself is successful, we would expect to see a decline in retail sales of alcohol and hence profits. What then is the purpose of such a levy?

The first point is something which I think dooms any attempt to introduce such a levy. How can it be fairly determined which part of a supermarket's profits relate directly to the sale of alcohol? To take a couple of examples: some alcoholic drinks are sold chilled, do the costs of chilling those drinks need to be included in any calculation of the profits from that sale compared to drinks sold that are not chilled? The sale of alcoholic products also requires additional security and staffing resources to ensure that licensing laws are properly complied with, but how are these costs to be included in any calculation of the profits from alcohol sales compared to the profits from groceries?

In the parliamentary debate at Stage 1, a SNP MSP, and member of the Health & Sport Committee, Gil Paterson tackled the second point directly:

*"We have been told that the introduction of minimum pricing will create a bonus for retailers—the alcohol windfall, as it is commonly known. That is a totally bogus claim that is without foundation; submissions to the committee never actually said that there will be such a bonus, but only that there might be such a bonus."*

*I will explain why I think the claim is bogus. When minimum pricing is introduced, consumption will fall. That means that production will fall and costs per unit will increase. Does any member who has a basic knowledge of market forces really think that manufacturers will be generous enough not to put up*

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<sup>8</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=7211>

*costs at the factory to compensate for lost revenues on sales? I do not think so. What will happen is that as margins are calculated they will be shared relative to costs. I predict a profit-neutral situation, within reason, for all concerned, whatever sector we are talking about. No one will get particularly rich as a result of the policy<sup>9</sup>."*

This really is the crux of this issue. The market will inevitably be in flux post the introduction of a MUP as consumers and producers respond to the new levy, but how the burden of this new tax will fall between producers, retailers and consumers is largely unknown. Gil Paterson may be correct that producers will seek to pass on this tax burden to retailers in order to maintain their own profits in the face of decreased sales. Similarly however, retailers may take measures to undermine this strategy in order to maintain their own profit margins.

There are two issues here, the practical and the unknown. The practical problems relate to the difficulty in quantifying what the so-called 'windfall' tax actually is for a particular retailer. I can't see how this can be made to work in a cost effective and fair manner. Then there are the unknowns. There are inevitable unknowns with the introduction of any new tax. What we have in this case though is the introduction of an 'alcohol profit' tax to counteract the hypothesised impact in terms of retailer's profitability of a MUP tax. We don't know what the impact on the market of the MUP tax will be, never mind the impact on profitability within the industry itself (i.e. in terms of producers, retailers etc.).

I understand the popular and political appeal of such a measure, but to introduce an alcohol profit tax when it is not clear what the impact of the MUP tax will be is, I believe, premature and potentially very damaging. There may well be a 'windfall' from the introduction of a MUP for alcohol, but to whom the windfall will accrue, and at what level, is far from clear. If clear evidence emerges after the introduction of MUP of such a retailer's windfall, I am not opposed to taking appropriate steps to capture some or all of it, perhaps in consultation with the industry, and directing it towards alcohol harm reduction initiatives. However, I do not think that we can, with any certainty, plan such a measure in advance of the introduction of MUP and knowing whether it proves to be successful enough to remain on the statute book.

### **Concluding remarks**

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The purpose of my submission to this consultation is to share my experience of the recently passed minimum unit pricing legislation in Scotland. While the legislation is not currently in force and is awaiting an EU judgement on its legality, we are now at the end of the process which the UK Government is now beginning.

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<sup>9</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=7211>

I tried to address three of the most important issues in this debate in some detail; the market distorting nature of this measure and the need to properly evaluate its impact after it has been in force for a reasonable amount of time, the compatibility of this measure with trade agreements and rules, and the conjectured 'windfall' tax that may accrue from this measure.

There are other issues which are also important in this debate. For instance what weight can be placed on modelling work done to evaluate the potential impact of the measure and the impact of cross border sales and internet sales on the responsiveness of consumption to a change in the price brought about by the introduction of a minimum unit price. These are issues which should be the focus of evidence gathering during the progress of any legislation, just as was attempted in Scotland.

Given the seriousness of excessive alcohol consumption in Scotland, I am, while still sceptical, supportive of giving minimum unit pricing a chance to prove its value, but there are significant challenges and uncertainties in its delivery and success. It will not be a panacea for our alcohol ills, but reducing the affordability of high strength alcohol- through whatever means- arguably has a role to play in re-balancing Scotland's relationship with alcohol.