

## MINIMUM ALCOHOL PRICING IS COMING TO SCOTLAND

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Yesterday the Scottish Parliament finally won its legal battle to introduce a legal minimum retail price for alcoholic drinks. The Supreme Court determined that introduction of a minimum price was a proportionate way of achieving the aim of protecting human health. In particular, the new law aims to target the heaviest drinkers ("harmful drinkers" being men who drink over 50 units a week, and women who drink 35 units a week), especially those in the lowest income groups.

### How will it work?

The new law requires that each unit of alcohol must not be sold at less than a specified unit price. The Scottish Parliament is likely to set that price at 50p. This would mean that a bottle of spirits would carry a minimum price of around £14 and a bottle of wine would cost at least £4.50. The law includes a provision which aims to prevent retailers from including alcohol in an offer with other products where that would effectively reduce the cost of the alcohol component below the legal level.

### When will minimum pricing apply?

Although the legislation is in place, a final decision is required from the Scottish Parliament as to when it will come into force. The law would expire 6 years after coming into force, unless extended by the Scottish Parliament. The Supreme Court considered that to be significant: the law is provisional in nature and will require the Scottish Parliament to reassess in the near future whether it is having the desired effect on Scotland's health.

### What arguments did the Scottish Parliament have to overcome?

The Supreme Court was asked to consider legal arguments involving the EU rules on free movement of goods and on competition. Specifically, whether the new law comes within permissible exceptions to those laws which allow member states to enact measures which aim to preserve the nation's health. The Supreme Court unanimously decided that the new law fell within the permitted exceptions, due to being a proportionate means of achieving the Scottish Parliament's legitimate aim of improving Scotland's health.

### What are the wider market affects likely to be?

As part of the legal process, the Scottish Parliament produced significant amounts of evidence as to the nature of Scotland's alcohol problem, and the benefits of introducing a minimum alcohol price. However, the possible effects of the new law on retailers, producers and supply chains is less clear.

It is tempting to conclude that retailers will be the immediate beneficiaries of the new law, but the reality is likely to be more complex. There are a number of potential outcomes:

- ▶ Retailers are likely to come under pressure from both producers and consumers not to be seen to be profiting from the new law. In particular, major producers are likely to seek to renegotiate trading arrangements in order to preserve the existing commercial balance.
- ▶ Prices are most likely to increase for own-brand and budget-brand products, so there may be a ripple effect on prices for premium products as retailers and premium brand owners seek to differentiate their products to avoid any potential brand damage. If there is little price differentiation, consumers may be persuaded to switch to premium brands. In the longer term, some products may even disappear altogether (or be reformulated with a lower alcohol content) if producers and retailers cannot see a way to maintain their current ranges in light of the new pricing arrangements.
- ▶ New producers (particularly from outside the UK) may face greater challenges, due to the inability to use very low prices to gain market share.
- ▶ Small retailers and independents may benefit from a more level playing field as larger retailers will not have as great an ability to attract customers through deep discounts on alcohol products.
- ▶ Loyalty schemes and other promotions operate may have to change in order to stay within the new pricing rules, although many of the major retailers already have policies in place to discourage consumption of alcohol at dangerous levels as part of a wider approach to responsible trading.

### Will we see similar laws in other parts of the UK?

Probably. The government in Wales has already indicated its intention to introduce a similar law in Wales, and there have been calls to introduce a minimum alcohol price in Northern Ireland. It is important to remember, though, that the evidence

submitted by the Scottish Government focussed on the fact that in Scotland much more alcohol is purchased than in England and other parts of the UK, and that alcohol-related deaths and health issues are greater in Scotland. In order to reduce the likelihood of legal challenge, any legislative measure would need to be backed up by clear evidence to show that the Government's aim is legitimate and that its legislative proposals are a proportionate way of achieving it.

## What about other Government measures to tackle the nation's health problems?

The UK Government plans to introduce a tax on sugary drinks, and will no doubt be scrutinising the Supreme Court's judgment carefully. It is important, though, that a key feature of the Scotch Whisky case was a debate about whether changes in taxation would have been a better way of tackling heavy drinking than a minimum price. The Scottish Parliament successfully argued that changes in taxation would affect all alcohol sales, and it is not the intention to target those who consume alcohol at safe levels. One lesson being, therefore, that any change in law must be appropriate for the nature of the harm that the Government is seeking to avoid, and that this must be backed up by evidence.

For example, one concern could be that the heaviest low-income drinkers will simply pay more for the alcohol they consume, with a detrimental impact on personal finances. However, a study commissioned by the Scottish Government from the University of Sheffield modelled the effect of a 50p minimum alcohol price, with the conclusion that harmful drinkers in poverty would drink 681 fewer units of alcohol a year, while those not in poverty would drink 181 fewer units.

It is also important that the arguments considered by the Supreme Court arose out of the UK's membership of the European Union. Before Brexit, any UK legal measure that affects trade between member states must be compatible with EU law. It is now clear that minimum pricing measures adopted with the aim of public health objectives do not automatically breach EU law, but if introduced in England would need to be justified as legitimate exceptions to the rules on free movement and competition taking into account the situation in England. After Brexit, the Government's freedom to pursue policies which aim to improve the health of the nation may depend, along with many other things, on the future relationship that it agrees with the EU.

## Who to contact

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