

#MUP saves lives



SHAAP

SCOTTISH HEALTH ACTION ON ALCOHOL PROBLEMS
www.shaap.org.uk

eurocare

European Alcohol Policy Alliance

Research and Policy Briefing

Nº 14 May 2018

Welcome to the 14th Research and Policy Briefing published by SHAAP – Scottish Health Action on Alcohol Problems.

SHAAP provides a coordinated, coherent and authoritative medical and clinical voice on the need to reduce the impact of alcohol-related harm on the health and wellbeing of people in Scotland.

Our aims are:

- To raise awareness and understanding of the alcohol-related health problems with health practitioners, policy makers and the public.
- To evaluate current research and identify strategies to reduce alcohol-related health damage based on the best available evidence.
- To work together with key organisations in the alcohol field in Scotland, the rest of the UK and worldwide, in tackling alcohol misuse.

SHAAP was set up in 2006 by the Scottish Medical Royal Colleges, through their Scottish Intercollegiate Group (SIGA). We are advised by a Steering Group made of members of the Royal Colleges and invited experts.

Chair Dr Peter Rice, former Consultant Psychiatrist, NHS Tayside Alcohol Problems Service

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Introduction

Welcome to this special 'MUP issue'. In 2016, SHAAP celebrated its 10th anniversary. One of its main policy campaigns from the start has been on Minimum Unit Pricing (MUP), with the five-year-long legal battle for its implementation in Scotland finally having been settled on 15th November 2017 by the definitive ruling of the UK Supreme Court. This date will go down as one of the most important events in the history of alcohol policy; the legislation can now be enacted, and takes effect from 1st May 2018. Scotland is leading the world in this important area of public health policy and to celebrate this achievement, we look in this issue at the story of MUP, its supporters, the evidence and the alcohol industry's role; and ask what next for this element of Scotland's alcohol strategy.

#MUPsaveslives

#MUP saves lives

1 Reactions to the ruling



Dr Peter Rice, Chair of Scottish Health Action on Alcohol Problems (SHAAP):

"This is great news for the health and well-being of people in Scotland. Frontline staff from health and other sectors see the damage caused by alcohol on a daily basis. This harm is disproportionately caused by the cheapest alcohol which Minimum Unit Pricing will remove.

"The scientific and clinical evidence supporting Minimum Pricing assembled by SHAAP and others has stood up against a rigorous analysis over a series of legal challenges led by the Scotch Whisky Association and it has been dispiriting to see them place their self-interest ahead of the public good over the five years since the Scottish Parliament passed this law. We look forward to the swift implementation of this life-saving measure."



Dr Eric Carlin, Director of Scottish Health Action on Alcohol Problems (SHAAP):

"At long last this important life-saving measure can be enacted. I am grateful to the Scottish Government, and the First Minister in particular, as well as partners across the health and voluntary sectors in the UK and Europe, for championing MUP, against ferocious, cynical opposition by the Scotch Whisky Association and its backers.

"The opponents to MUP have shamed the reputation of their industry by prioritising profits over people's lives. As MUP has been delayed, we have seen the tragic, premature deaths of 24 people every week in Scotland as a result of alcohol misuse, many of them in our poorest communities, and affecting families across our nation. I strongly urge the global alcohol producers to now cease their activities to undermine public health in pursuit of profit here and across the globe.

"I look forward to MUP coming into effect as part of a refreshed package of measures to reduce alcohol-related harm in Scotland. Hopefully, the other nations of the United Kingdom will also implement similar policies."



Chief Medical Officer for Scotland, Dr Catherine Calderwood:

"Last year, I and the other UK chief medical officers published new alcohol guidelines, recommending that both men and women drink no more than 14 units per week. Those 14 units can be bought for just £2.52 – alcohol is being sold for as little as 18p a unit. That's why I'm convinced minimum unit pricing is the most proportionate and effective way to reduce the harm caused by cheap, high strength alcohol."



Eurocare's Secretary General, Mariann Skar

"I'm delighted with the Supreme Court's ruling. Minimum Unit Pricing (MUP) is a targeted measure to address alcohol-related harm in deprived communities. This policy is bound to make a real difference in Scotland. Eurocare now stresses the need for proper evaluation in order to ascertain whether MUP is required elsewhere."

2 How the MUP campaign started

Scottish Health Action on Alcohol Problems (SHAAP) was established in 2006 as a partnership of the Scottish Medical Royal Colleges, concerned about the growing number of hospitalisations and deaths due to alcohol in Scotland. At that time, alcohol-related death rates in Scottish men were double those in the rest of the UK.

On 27th September 2007, SHAAP convened an expert workshop to consider action that the government could take on pricing policy to reduce alcohol-related harm in the population. Prior to the workshop, SHAAP undertook an extensive literature review of the evidence on alcohol consumption, harm and price. Expert participants from Scotland, England and the Republic of Ireland participated in the production of evidence summaries to inform the workshop. The discussion was also informed by expert legal opinions commissioned by SHAAP. Written submissions were received from alcohol industry interests, including the Scottish Licensed Trade Association, the British Retail Consortium and the Scotch Whisky Association. As a

result, SHAAP and its partners made one of the first public calls for action to introduce MUP to tackle the problem of cheap alcohol that was doing heavy damage to the most vulnerable drinkers and their families. In conclusion, the report on the workshop's findings stated:

*'In convening the expert workshop, SHAAP sought to identify policy measures that Scottish Ministers could implement and were most likely to reduce alcohol harm in Scotland. Expert participants also identified the need for policy action at a UK level. In this context, SHAAP acknowledges that Scotland is already showing leadership in the UK by enshrining a public health principle in the new licensing legislation; acknowledging that **alcohol is no ordinary commodity**; and outlawing irresponsible drinks promotions in pubs and clubs.*

The purpose of Scottish alcohol policy is to reduce levels of harm which are regarded by experts and politicians – as well as the public – as being much too high. Whilst it is tempting to hope that Scottish drinking culture can be changed through school education and TV campaigns, the reality is that these measures by themselves are unlikely to have a significant impact on drinking behaviour. By contrast, the evidence on price and tax policy suggests that it is one of the most effective ways of reducing alcohol-related harm...'

MUP Calculator

- 1 UK unit of alcohol = 10mls or 8g of alcohol -

50p x volume (cl) x strength of alcohol (%) = minimum price of item, below which it cannot be sold

Whisky - £14 (each) for a 70cl bottle, 40%

Vodka - £13.13 for a 70cl bottle, 37.5%

Lager - £1 for a 40 cl can, 4%

Wine - £4.69 per bottle, 13%

Cider - £2.50 for a 1 litre bottle, 5%

Strong (white) cider - £11.25 for 3L bottle, 7.5%

After 2nd May 2018 - The Minimum Price for alcohol in Scotland will be 50p per 10mls pure alcohol



TIMELINE: HOW WE GOT HERE

2005

Licensing (Scotland) Act, which makes provision for regulating the sale of alcohol, and for regulating licensed premises and other premises on which alcohol is sold; and for connected purposes

2008

A public consultation on the Government's alcohol strategy, including minimum pricing, was conducted in 2008. Almost two thirds (65%) of all responding organisations were in favour of minimum pricing, while just under a quarter (23%) were opposed. Nine out of ten (90%) health organisations supported minimum pricing, as did over eight out of ten (84%) local government bodies. Six out of ten (61%) trade and business sector organisations were opposed. Views amongst individual respondents were more mixed, with 49% who expressed an opinion in favour and 43% against.

2009

The Scottish Government published its alcohol strategy **'Changing Scotland's relationship with alcohol: A Framework for Action'** which included MUP as well as Alcohol Brief Interventions, investment in treatment and care services, banning multibuy promotions in supermarkets – all policies aimed at reducing alcohol consumption amongst the population as a whole.

2010

The **Alcohol (Scotland) Act**; a bill to introduce a MUP of 45p in Scotland failed because it did not obtain the necessary majority in Parliament. Other measures described below are enacted.

2011

A ban on shop and supermarket offers such as buy-one-get-one-free and multi-buy discounts on wine now took effect; the Act also restricted price/advertising promotions around off-licensed premises, brought in age verification checks and a new tax on some licence holders.

NHS Health Scotland was tasked by the Scottish Government to lead the evaluation of Scotland's alcohol strategy through the **Monitoring and Evaluating Scotland's Alcohol Strategy (MESAS)** programme and published its first report in 2011. It has been a collaboration between NHS Health Scotland and National Services Scotland Information Services Division. It has published four further annual reports, the most recent in June 2017, and several discrete study reports.

TIMELINE: HOW WE GOT HERE

2012

As part of the research backing up a new Bill, a **Business Regulatory Impact Assessment (BRIA)** was carried out. This found strong evidence from numerous studies conducted in 15 European countries, America, Canada, New Zealand and elsewhere, that levels of alcohol consumption in the population are closely linked to the retail price of alcohol. Put simply, as alcohol becomes more affordable, consumption increases; as consumption increases, harm increases.

Alcohol (Minimum Pricing) (Scotland) Act - another attempt, this time with a MUP of 50p, was made in 2012 with cross-party support (except for Labour, which abstained with the exception of Malcolm Chisholm MSP who voted in favour); and now the Scottish Parliament passed the Minimum Pricing (Alcohol) (Scotland) Act 2012 into law. However, for six years this Act could not be implemented due to a series of legal challenges brought and funded by global alcohol producers (cf Chapter 5/Page 7)

2014

New drink-driving regulations of 50mg/100ml blood came into force for Scotland

2016

Reset of recommended drinking guidelines of 14 units per week for both men and women by the Chief Medical Officers in Scotland and the UK

2017

15th November: UK Supreme Court ruled that MUP is legal as a proportionate measure in achieving the legitimate public health goal of reducing alcohol harm

2018

1st May: MUP implemented in Scotland

3 Key partners at home and abroad

Some of our partners in Scotland:



... and some of our UK and international collaborators:



Eurocare, MUP and Brussels



Eurocare and EPHA were actively involved in the campaign for MUP from an early stage. A first request for a meeting with the European Commission was sent from Eurocare to DG Sante in June 2009 regarding the Scottish proposal for MUP. Eurocare wanted to discuss the possible problems that could arise at EU level when the Scottish Government introduces MUP. There seemed to be a risk of the initiative failing because of competition-related issues. MUP would be an important step forward in the prevention and reduction of alcohol-related harm at national level and Eurocare wanted to make sure it would be supported at EU level. The meeting was held on 1st July 2009, and was well-attended from both the legal department and several other Directorate Generals in the Commission.

This was followed up a year later in **June 2010** at the 4th European Alcohol Policy Conference, with a plenary presentation by the late Evelyn Gillan, then Chief Executive of Alcohol Focus Scotland. The meeting was also addressed by representatives from the World Health Organisation, Eurosafe, APYN and other NGOs. Until the Scottish Parliament passed the Alcohol (Minimum Pricing) (Scotland) Act in 2012, the campaign focussed on evidence gathering, letter writing and responding to European consultations... but now the alcohol industry sprang into action by lodging a complaint at the Commission. Paul Skehan, then-Director General of spiritsEUROPE, argued that “European law was clear”, and that “minimum pricing was an illegal barrier to trade.”

When the Scottish proposal was referred to the Commission under the Technical Standards Directive (98/34/EC), ten European Union Member States raised objections to the proposal: France, Italy, Portugal, Spain, Bulgaria, Austria, Germany, Poland, Romania and Denmark. The Commission itself raised concerns and comments against MUP. On **12th September 2012**, the industry organised an event in the European Parliament in Strasbourg, hosted by Conservative MEP Struan Stevenson on ‘MUP’s unintended consequences for the EU and international trade’.

From **2012–2014**, Eurocare and sympathetic European and UK-based NGOs continued their campaign of letter-writing, evidence-gathering and meetings with political representatives of all parties in Scotland and the UK.

This included a cross-party conference organised by SHAAP at the European Parliament in Brussels, entitled: ‘Calling time on Europe’s alcohol problems. Using pricing policies to protect public health in Europe. A challenge for democracy?’ to which the following speakers contributed: Nick Sheron (Royal College of Physicians London), Tim Stockwell (University of Victoria, BC, Canada), Alex Neil MSP (Scottish Cabinet Minister for Health), Monika Kosinska (Secretary General of EPHA), Franco Sassi (OECD), Henrik Thiesen (FEANTSA), Olivier Hoederman (corporate European Observatory) and Evelyn Gillan (Alcohol Focus Scotland).

In **May 2014**, when the MUP appeal as part of the Scottish Act was referred to the ECJ, Eurocare, EPHA, BMA Europe and SHAAP called a planning meeting to organise NGO health advocacy at European level and coordinate ‘model’ responses, scoping support, lobbying MEPs, planning MUP advocacy meetings and an international media strategy. The next major event was in September of the same year, called ‘Scotland the Brave! Alcohol Policy in Scotland’ and held in Brussels. Speakers included Donald Henderson, Head of Public Health at the Scottish Government; Dr Peter Rice, SHAAP Chair; Professor Nick Sheron (see above), Paul Bartlett, Group Marketing Director of the C&C Group and Paul Waterson, Chief Executive of the Scottish Licensed Trade Association. In **November 2014**, the 6th European Alcohol Policy Conference was held, with Neil, Rice and Henderson giving presentations and a representative of PARPA talking about how MUP could be translated into the Polish context.

Throughout **2016**, representations on behalf of MUP continued at all levels of European legislators at regular intervals, culminating in the 7th European Alcohol Policy Conference in November, where the Scottish Government received the 1st European Alcohol Policy Award for its commitment to introduce MUP. Speakers included Thomas Babor (University of Connecticut, USA), Konstantin Vyshinskiy (Federal Medical Research Centre for Psychology and Neurology, Russia), Eric Carlin (Director, SHAAP), Lars Moller (WHO – European office), and David McDaid (London School of Economics).

Our work is not over yet but in the meantime, we wish to thank all our partners in the UK and beyond, who have fought so hard over the past nine years to realise our common aim of implementing minimum pricing policy as one of the WHO’s ‘best buys’ in the efforts to reduce international alcohol harm.

Mariann Skar, Secretary General, Eurocare

4 The evidence for MUP

Research by the School of Health and Related Research at the University of Sheffield was commissioned in 2009 by the Scottish Government to appraise the potential impact of different minimum unit prices for alcohol and increases in alcohol taxation on levels of alcohol consumption, spending on alcohol, Exchequer and retailer revenue, and alcohol-related health outcomes in Scotland among population subgroups as defined by baseline level of drinking and income.

The specific policies analysed in an updated (2016) version of this report were minimum unit price (MUP) policies with thresholds of 30p, 40p, 50p, 60p and 70p per unit of alcohol and alcohol tax increases based on the duty and VAT rates effective from 23rd March 2015. Levels of tax increases were identified which would achieve the same reduction in the following outcomes as a 50p MUP price:

- 1 Annual deaths due to alcohol;
- 2 Annual deaths due to alcohol among hazardous and harmful drinkers;
- 3 Annual deaths due to alcohol among harmful drinkers;
- 4 Annual deaths due to alcohol among hazardous and harmful drinkers in poverty;
- 5 Annual deaths due to alcohol among harmful drinkers in poverty.

The report's main conclusions

Estimates from the April 2016 report: *'Model-based appraisal of the comparative impact of Minimum Unit Pricing and taxation policies in Scotland - An adaptation of the Sheffield Alcohol Policy Model'* indicate:

- 1 A 50p minimum unit price would be effective in reducing alcohol consumption among hazardous and, particularly, harmful drinkers. These consumption reductions would lead to reductions in alcohol-related mortality and hospitalisations.
- 2 Moderate drinkers would experience only small impacts on their alcohol consumption and spending as a result of introducing a 50p minimum unit price. This is because they tend to buy alcohol which would be subject to little or no increase in price following introduction of the policy.
- 3 To achieve the same reduction in alcohol-related deaths among hazardous and harmful drinkers as a 50p minimum unit price, a 28% increase in alcohol taxation would be required. Compared to a 50p minimum unit price, a 28% increase in alcohol taxes would lead to slightly larger reductions in alcohol consumption among

moderate and hazardous drinkers but smaller reductions in consumption among harmful drinkers and, particularly, harmful drinkers in poverty. Harmful drinkers in poverty are the group at greatest risk from their alcohol consumption.

- 4 Increases in consumer spending on alcohol would be modest under a 50p MUP and spending would decline for harmful drinkers in poverty. Larger changes in consumer spending would be seen under a 28% tax increase and spending would increase in all groups including among harmful drinkers in poverty.

International experience

Across the world, where minimum pricing has been implemented, experience shows that alcohol harm is reduced. Some US states and Canadian provinces already use various price control measures, including taxation for alcoholic drinks which are much more heavily regulated than in the UK. A series of studies by Stockwell et al in British Columbia between 2002-2009, when there were three increases in minimum prices for beer & four for spirits, found that, in the first year, a 10% increase in average minimum price was associated with a 9% reduction in alcohol-related hospital admissions and a 32% reduction in wholly alcohol-related deaths. [Stockwell T, Thomas G. Is alcohol too cheap in the UK? Setting the case for a Minimum Unit Price for alcohol. Institute of Alcohol Studies 2013].

Scotland will be the first country as a whole to enact minimum unit pricing in 2018 and our experience will be watched carefully by many countries, especially in Eastern Europe and throughout the English-speaking world.

Further reading: BMJ 2017;359:j5372 doi: 10.1136/bmj.j5372 (Published 21 November 2017) - BMJ Editorial, authored by members of the School of Health and Health Research team at the University of Sheffield

5. Legal challenges



The Alcohol (Minimum Pricing) (Scotland) Act 2012 is an Act of the Scottish Parliament that introduces a statutory minimum price for alcohol, initially 50p per unit, as one element in the strategy to counter alcohol problems. The Act could not take effect because it was subjected to a series of legal challenges by global alcohol producers which lasted over five years:

May 2013

A legal challenge to the minimum pricing legislation by the Scotch Whisky Association (SWA) failed at the Court of Session in Edinburgh. The question to be decided was, whether the policy meets the stipulation of EU law that public health policies restricting the free movement of goods must be appropriate to meet their stated aims, and that these aims cannot be achieved through existing measures that are less restrictive of free trade. The SWA, the Confédération Européenne des Producteurs de Spiritueux and the Comité Européen des Entreprises Vins appealed the judgement with a legal challenge being referred to the Court of Justice of the European Union (ECJ) by the Court of Session.

December 2015

The decision of the ECJ was that such legislation would only be lawful if **alternative, national** policies such as higher taxes would not be effective in protecting public health. Scottish judges were required to consider evidence on this point and the case was referred back to the Scottish courts.

October 2016

The Court of Session in Edinburgh ruled that "The advantage of the proposed minimum pricing system, so far as protecting health and life was concerned, was that it was linked to the strength of the alcohol. Current EU tax arrangements related to different types of product (wine, spirits, beer and cider etc) each of which had a range of alcohol strength....there was evidence which demonstrated that the alternative of increased tax, with or without a prohibition on below-cost sales, would be less effective than minimum pricing." The industry fronted by SWA appealed this judgement once again and it was referred to the Supreme Court of the UK.

November 2017

The Supreme Court, sitting in July, found **unanimously** against the industry's challenge, thereby supporting previous rulings by the Scottish courts and the ECJ in favour of the Scottish Parliament's MUP legislation contained in the Alcohol (Minimum Pricing) (Scotland) Act 2012.

Note: There is considerable support for MUP within the alcohol industry, particularly among the pub trade and smaller producers. The opposition comes from producers who operate globally and from large retailers, in particular supermarkets, and it has been those large organisations which have dominated the perception of the diverse industry interests. At a European event held by SHAAP in September 2014, industry supporters of MUP from the Scottish Licensed Trade Association and the C&C group which produces Tennent's Lager, spoke of the harm which the proliferation of cheap supermarket alcohol caused to UK business and growth, whilst health experts spoke of the health harm.

6 What the Supreme Court ruling says and what happens next

The Supreme Court ruled that the legislation was 'appropriate' in terms of a national jurisdiction's duty to protect the health and life of its citizens and that 'where the national measure constitutes a breach of the principle of the free formation of selling prices ..., the principle of proportionality requires that the national measure must actually meet the objective of the protection of human health and must not go beyond what is necessary in order to attain that objective'.

The Act was finally implemented in Scotland on **1st May 2018**, initially for six years with a sunset clause after five years, when the outcome of research into the effects/impact of MUP will be presented to the Scottish Parliament, which will then have to decide again on whether to continue with the legislation; otherwise it falls. There is a commitment in the Act to evaluate and report to Parliament, and NHS Health Scotland has commissioned a number of research projects which will include the participation of some treatment services.

Scottish Health Secretary Shona Robison MSP, announcing the date from which MUP will take effect in Scotland, said:

'With alcohol on sale today at just 18 pence a unit, we have to act to tackle the scourge of cheap, high-strength drink that causes so much damage.'

'Research shows a minimum unit price of 50 pence would cut alcohol-related deaths by 392 and hospital admissions by 8,254 over the first five years of the policy.'

The evaluation work will look at whether MUP has contributed to reducing alcohol harms and the theory of change for public health; the impact on the alcohol industry

and spending habits of consumers. Specifically it will have to evaluate the impact MUP has on the following areas:

- 1 Compliance
- 2 Impact on price and product range
- 3 Study of small retailers (Commissioned. Led by University of Stirling)
- 4 Impact on population alcohol consumption and attributable health harms
- 5 Impact on those drinking at harmful levels (Commissioned. Led by University of Sheffield)
- 6 Impact on crime, public safety and public nuisance
- 7 Impact on children & young people
- 8 Impact on attitudes to MUP
- 9 Economic impact on the alcohol industry.

The Scottish Government has since consulted publicly on a preferred minimum unit price. SHAAP along with 129 other respondents contributed to the consultation in January 2018: www.parliament.scot/S5_HealthandSportCommittee/General%20Documents/20180226_Final_Consultation_Report.pdf

When the legislation was first proposed in 2009, the unit price was set at 45p and this was updated to 50p in the 2012 Act. The consultation responses showed that almost three-quarters of respondents (74.3%) supported a minimum price of 50p; and 70.0% of those who commented on the proposed price wanted the 50 pence rate to be reviewed after a period of time and then upgraded to account for economic factors such as inflation. This was also SHAAP's position.

What's happening in other parts of the UK and further afield?

Wales

The Public Health (Minimum Price for Alcohol) (Wales) Bill: introduced in autumn 2017, the Welsh Assembly agreed its general principles with a big majority in March 2018. It is currently before the Health Committee and no major amendments are expected. It is hoped to be enacted in summer 2018.

Northern Ireland

Northern Ireland has committed to introducing MUP in line with the Republic of Ireland (see below); but this is now likely to be delayed until NI's current constitutional impasse is resolved...

Ireland

The Public Health (Alcohol) Bill passed its second stage in the Dáil in March 2018 despite intense industry lobbying and will proceed to Committee reading after April. It is hoped to be enacted in summer 2018.

England

The UK Government's position remains that MUP is under review for England pending the outcome in other parts of the UK. Advice from supportive MPs on the Government side is that support from opposition parties, in particular Labour, would be key to any progress in England. However, since the Supreme Court's ruling on MUP, the industry has stepped up its lobbying (behind the scenes) and the government has gone quiet on this issue.

Australia

The government of the Northern Territories has also announced its intention to implement MUP.

The last word for this special edition goes to Dr Eric Carlin, Director of SHAAP:

"It's taken a long time and lots of passion, effort and intelligence from so many people but we made it! Thank you to everyone who has contributed, here, in Europe and globally."

WATCH THIS SPACE!



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