A minimum price for alcohol?

Standard Note: SN/HA/5021
Last updated: 1 March 2012
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Section: Home Affairs

In public debate the term “minimum pricing” has been used generically to refer to two different policies. The first is to set a *minimum price per unit* of alcohol. The second is to ban the sale of alcohol *below cost price*.

The Coalition Agreement contained a pledge to ban the sale of alcohol below cost price. This was originally expected to find expression in the *Police Reform and Social Responsibility Bill*, which was introduced in December 2010. In the event, minimum pricing did not appear in the Bill, but in January 2011 the Government announced its intention to “take forward measures to deliver this commitment without delay”. This will take the form of a ban on sales of alcohol below the rate of duty plus VAT. The ban is expected to be in force from 6 April 2012.

The Scottish Government is attempting to legislate for the introduction of a minimum price per unit of alcohol. There have been calls for a similar measure in England and Wales, as recommended, for example, by the Chief Medical Officer for England and the Health Select Committee in the last Parliament. Alcohol Concern is now campaigning for a minimum price of 50p per unit of alcohol.

In some parts of the country, local solutions have been proposed: Middlesbrough, for example, is using its latest Licensing Policy Statement to encourage licensees to apply a 50p minimum unit price to the alcoholic products they sell. Other approaches have been tried in the countries of continental Europe.
1 Introduction

Governments, first in Holyrood and now in Westminster, have sought ways to set a “minimum price” for alcohol. This has been prompted by concerns about high levels of drinking, its effect on public health and public order, and a widespread belief that most of the alcohol which contributes to drunken behaviour is irresponsibly priced and sold, allowing irresponsible drinkers to be able to get drunk cheaply.¹

In public debate the term “minimum pricing” has been used generically to refer to two different policies. The first, favoured by the Scottish Government, is to set a minimum price per unit of alcohol. The second, is to ban the sale of alcohol “below cost”, where “cost” is defined in an agreed and recognised way. In January 2011 the Coalition Government announced that it planned to ban the sale of alcohol below the rate of duty plus VAT. This is expected to be in force from 6 April 2012.

Alcohol Concern is currently campaigning for a minimum price of 50p per unit of alcohol; background to the campaign can be found here.

2 Policy in Scotland

The Scottish Government announced plans for a minimum price per unit of alcohol in February 2009. This was prompted by concerns about high levels of drinking and its effect on public health and order. A February 2009 white paper stated:

44. We do not underestimate the challenge of balancing competing interests to develop a proportionate, effective and legally robust framework in introducing minimum pricing. However, we are strongly of the view that it is an appropriate response to the

¹ Home Office, Rebalancing the Licensing Act: a consultation on empowering individuals, families and local communities to shape and determine local licensing, July 2010, p20
scale of the problem, and a measure that is necessary to protect and improve public health. We will therefore:

- Pursue the introduction of a minimum price per unit of alcohol as a mandatory condition of Premises Licences and Occasional Licences granted under the Licensing (Scotland) Act 2005.
- We will work with economists and researchers to consider the modelling work around specific minimum prices per unit of alcohol.
- We will continue to discuss with the UK Government arrangements for controlling pricing and promotions of alcohol bought remotely and delivered to Scotland from England and Wales or beyond.\(^2\)

The policy was welcomed by a variety of bodies in Scotland (for example, the British Medical Association, the Association of Chief Police Officers, Alcohol Concern) whose comments were quoted in a Scottish Government press notice.\(^3\) Although the press notice also quoted approving comments from the Scottish Licensed Trade Association, a letter to the Scotsman from the Wine and Spirit Trade Association, CBI Scotland and other retail bodies sounded a note of caution, urging politicians to examine fully the implications and scale of the proposals.\(^4\)

2.1 The Scottish Government’s original proposals

Alcohol licensing is a devolved matter, and the Scottish Government attempted to introduce the above measure by way of a change to its licensing laws.\(^5\)

The Licensing (Scotland) Act 2005 came into effect from 1 September 2009. It provides an overhaul of the existing licensing arrangements and is intended to introduce a range of measures to protect communities from alcohol-related harm. It establishes the following five “licensing objectives”:

- protecting and improving public health
- preventing crime and disorder
- protecting public safety
- protecting children from harm
- preventing public nuisance

In many respects the Scottish Act replicates features of the Licensing Act 2003, the Westminster legislation which governs alcohol licensing in England and Wales. However, one difference is that the Scottish Act has an additional “licensing objective” – “protecting and improving public health”. In this respect the Scottish Act is somewhat more prescriptive than its English equivalent. There are also more mandatory conditions to be applied to all licences than is the case in England.

\(^3\) Scottish Government news release, Tackling alcohol misuse, 2 March 2009
\(^4\) “Changes to Scotland’s drinking laws branded ‘not acceptable’”, Scotsman, 9 March 2009
\(^5\) England and Wales have the same licensing laws. Licensing is a devolved matter in Scotland and Northern Ireland.
Section 27 of the *Licensing (Scotland) Act 2005* states that all premises licences will be subject to mandatory conditions; these are detailed in Schedule 3 to the Act. Section 27 allows Scottish Ministers, via regulations, to set out further national mandatory or discretionary conditions to be attached to premises licences. In addition, licensing boards will be able to apply additional licence conditions. Schedule 3 details the mandatory conditions which will apply in relation to:

- compliance with the operating plan
- the role of the premises manager
- authorised sales of alcohol
- training of staff
- the pricing of alcohol
- irresponsible drinks promotions
- provision of non-alcoholic drinks
- payment of annual or recurring fees

In relation to the “pricing of alcohol”, Schedule 3(7)(b) provides that the price of alcohol should not be varied for a period of less than 72 hours; this is intended to address the issue of “happy hours” in licensed premises, which the Act refers to as “irresponsible drinks promotions”.

An “irresponsible drinks promotion” is defined by Schedule 3(8)(2) as being when a drinks promotion involves any of the following:

- relates specifically to an alcoholic drink likely to appeal largely to persons under the age of 18
- involves the supply of an alcoholic drink free of charge or at reduced price on the purchase of a drink e.g. two drinks for the price of one
- involves the supply free of charge or at a reduced price of one or more extra measures of an alcoholic drink on the purchase of a one or more measures of a drink
- involves the supply of unlimited amounts of alcohol for a fixed charge (including any charge for entry to premises)
- encourages, or seeks to encourage, a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume,
- is based on the strength of alcohol
- rewards or encourages, or seeks to reward or encourage, drinking alcohol quickly
- offers alcohol as a reward or prize, unless the alcohol is in a sealed container and consumed off the premises

Schedule 3 also provides Scottish Ministers with the power, via regulations, to add further descriptions of irresponsible drinks promotions or to modify the list.
The original intention was to add a new mandatory condition by Order to Schedule 3(7), "Pricing of alcohol", to prescribe a minimum price per unit of alcohol. Since licensing is a devolved matter, such a move would not require the consent of UK Ministers.

2.2 A change of direction

The original proposals to introduce the change by secondary legislation did not find favour with Opposition parties in the Scottish Parliament, as explained in a Scotsman article in March 2009:

The introduction of minimum prices for alcohol will be delayed until next year, in a blow for the SNP.

Opposition parties yesterday forced the Scottish Government to introduce primary legislation from scratch for its proposals to tackle Scotland's problems with alcohol.

The move means that a plan to introduce minimum pricing by Christmas using existing laws and devolved powers has been scuppered.

(...)

The Scottish Government had hoped to tag minimum pricing on to the 2005 Licensing Act, which is about to come into force, and make it a mandatory condition for off-licences.

But at a meeting of Holyrood's business bureau, where future debates and parliamentary business are decided, the three main opposition parties said all the proposals would be thrown out unless the Scottish Government introduced primary legislation.

This means minimum pricing cannot be rushed through and is unlikely to come into force until next year at the earliest.

It will also raise further questions about the legality of minimum pricing, which is already concerning the UK government and legal experts because of the possibility it breaks European competition law.

It had been thought that the SNP was avoiding new legislation to get round any legal challenges, as well as to speed up the measure.

Opposition party chief whips said that a major change, such as the one proposed by the Scottish Government, needed proper scrutiny.

Mike Rumbles, the Liberal Democrat chief whip, said: "It is ironic that it is Scottish Nationalists that are wilfully disregarding our national parliament and a key national industry. These are controversial measures that could have a devastating impact on the whisky industry."

Labour's business manager, Michael McMahon, said: "It's not that we are necessarily against these measures, but we cannot have a sea change like this without proper parliamentary scrutiny."

(...)
A spokesman for the First Minister said: “The allocation of the Scottish Government’s alcohol measures through the various processes of parliamentary scrutiny will be determined in due course when these matters are brought forward.”

### 2.3 The Alcohol etc (Scotland) Act 2010

Accordingly, primary legislation, in the form of an Executive Bill, was introduced by Scottish Health Secretary Nicola Sturgeon MSP on 25 November 2009. The *Alcohol etc (Scotland) Bill* sought to insert a new paragraph 6A into schedule 3 to the 2005 Act and introduce a further mandatory condition of premises licences granted under that Act. The condition was that alcohol must not be sold on the premises at a price below the minimum price. The Bill did not state what that unit price should be but would have given Ministers the power to set it in regulations. A new inserted paragraph 6A(3) set out the formula by which the minimum price was to be calculated as minimum price per unit (MPU) x strength of the alcohol (S) x volume of the alcohol in litres (V) x 100.

The Scottish Parliament Information Centre (SPICe) published a detailed briefing paper on the Bill.

The measure did not enjoy cross-party support in Parliament: SNP Members were in favour but Labour, Liberal Democrat and Conservative MSPs were opposed.

The Health Committee’s stage 1 report on the proposed legislation recommended that the Scottish Parliament support the general principles of the Bill but urged the Government to specify a minimum price on the face of the Bill. It confirmed that MSPs remained divided over whether minimum pricing would be effective.

The opposition continued throughout the Bill’s passage, with Labour, Conservatives and Liberal Democrats arguing that the move would penalise responsible drinkers and might be illegal under European competition law. Although the Health Secretary attempted to re-insert minimum pricing into the legislation after it was removed at an earlier stage, Parliament opposed the move and the Bill was finally passed without the minimum pricing provision.

### 2.4 The Alcohol (Minimum Pricing)(Scotland) Bill

The *Alcohol (Minimum Pricing) (Scotland) Bill* was introduced on 31 October 2011 and is the Scottish Government’s second attempt at legislating to introduce a minimum price per unit of alcohol. Details of the Bill and its progress can be found on the Scottish Parliament website.

A SPICe briefing paper on the Bill has again been published and provides the following overview:

The 2011 SNP manifesto pledged to reintroduce legislation to implement a minimum price at which alcohol could be sold in Scotland. This was following the rejection of a previous attempt during the passage of the *Alcohol etc. (Scotland) Act 2010*.

Section 1 of the Bill seeks to amend the Licensing (Scotland) Act 2005 to make it a mandatory condition of a licence that a unit of alcohol will not be sold under a certain price. The minimum price per unit is not specified in the Bill but instead would be

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6. “SNP crackdown on discount alcohol is delayed by a year”, *Scotsman*, 10 March 2009
7. SPICE Briefing 10/13, *The Alcohol etc (Scotland) Bill*, 18 February 2010
8. “MSPs split on party lines over alcohol pricing”, *Times*, 28 May 2010
10. “MSPs pass Alcohol Bill without minimum drink pricing”, *BBC News Scotland*, 10 November 2010
stipulated by Ministerial order. The price of a drink would be calculated using the following formula:

Minimum Price per Unit x Strength of the Alcohol x Volume in Litres

Section 2 of the Bill seeks to remove section 1 of the Alcohol etc. (Scotland) Act 2010 which is the “sunset clause” on the original minimum pricing provision that was contained in that Bill. This section of the Act was mistakenly voted through during stage 3 of the Bill after the minimum pricing section was removed. Therefore it is a sunset clause on a provision that does not exist.

There is no similar “sunset clause” proposed in this bill.\(^\text{11}\)

The SPICe paper also sets out the differing opinions on the legality of the minimum pricing policy under EU law.\(^\text{12}\)

3 Proposals in England and Wales

A Code of Practice for alcohol retailers in England and Wales containing mandatory conditions for alcohol sale was introduced from April 2010. The Code was the subject of a public consultation exercise in 2009, and the power to introduce it was granted through the Policing and Crime Act 2009, which received Royal Assent in November 2009.\(^\text{13}\) Although the code bans irresponsible promotions, it is silent on the issue of minimum pricing. This may be because the previous Westminster government was less than enthusiastic about the idea.\(^\text{14}\) When the Policing and Crime Bill was in the Lords, Baroness Miller of Chilthorne Domer (Lib Dem) unsuccessfully moved an amendment which would have given licensing authorities powers to take action against premises which persistently sold alcohol at below cost price. As before in debates on minimum pricing, the then Government repeated its position that:

It would be quite unfair if responsible drinkers had to pay significantly more for their alcohol because of a small minority of people who drink irresponsibly.\(^\text{15}\)

In his 2009 annual report on the state of the nation’s health, the Chief Medical Officer (CMO) for England, Sir Liam Donaldson, recommended setting a minimum price for alcohol at 50p per unit. Newspapers estimated that this would have the effect of doubling the cost of a £10 pack of lager, nearly doubling the cost of a bottle of vodka to £20 and setting the minimum price for a bottle of wine at £4.50.\(^\text{16}\) The CMO’s report argued that the policy would target harmful “binge” drinking, while leaving the more moderate drinker unaffected:

There is a clear relationship between price and consumption of alcohol. As price increases consumption decreases, although not equally across all drinkers. Price increases generally reduce heavy drinkers’ consumption by a greater proportion than they reduce moderate drinkers’ consumption. The specific means of increasing prices can be targeted further to minimise the impact on those who drink at low-risk levels while significantly decreasing the consumption of those who drink above these levels. This is possible because those who drink more tend to choose cheaper drinks.

\(^{11}\) SPICe Briefing 12/01, The Alcohol (Minimum Pricing)(Scotland) Bill, 5 January 2012, p5
\(^{12}\) Ibid, pp20-3
\(^{13}\) See Library Standard Note SN/HA/5351, Mandatory conditions for alcohol sale, 19 February 2010
\(^{14}\) According to press reports, Andy Burnham, former Health Secretary, was in favour while Lord Mandelson was not. See “Cost of cheap alcohol will double to curb binge drinking”, Daily Telegraph, 14 January 2010. Minimum pricing did not appear in the Labour manifesto for the 2010 Election.
\(^{15}\) Lord West of Spithead at HL Deb 5 November 2009 c458
\(^{16}\) “Government to reject proposals to set minimum prices for alcohol”, Guardian, 15 March 2009
Introducing a minimum price per unit of alcohol would therefore affect heavier drinkers far more than those who drink in moderation.\textsuperscript{17}

Even before Sir Liam’s report was published, it was clear that the idea did not find favour with the Labour Government. The \textit{Times} quoted a “source close to the Prime Minister” as saying:

\begin{quote}
“I do not think this is where we are going. The majority of sensible drinkers should not have to pay the price for the irresponsible and excessive drinking by a small minority”.\textsuperscript{18}
\end{quote}

David Cameron, then Leader of the Opposition, said that his preferred option was for tax increases to be targeted at the high-alcohol drinks favoured by binge drinkers:

\begin{quote}
“It seems to me that what we should do is what we suggested before the last Budget, which is to try to target the problem drinkers and the problem drinks.”\textsuperscript{19}
\end{quote}

Shortly before the end of the last Parliament, the Health Select Committee looked at the choice between using tax or minimum pricing, in reducing alcohol abuse. In their report, published in January 2010, the Committee supported the use of minimum pricing, and, in the longer term, a significant increase in duty rates – facilitated by an increase in the minimum alcohol duty rates set across the EU.\textsuperscript{20} The Committee’s report noted that, while the Campaign for Real Ale gave evidence in favour, “much of the alcohol industry and most supermarkets were against.”\textsuperscript{21}

In June 2010 NICE (the National Institute for Health and Clinical Excellence) called for alcohol to be made less affordable by introducing a minimum price per unit; this price, they argued, should be regularly reviewed so that alcohol does not become more affordable over time.\textsuperscript{22}

4 Government policy

The Conservative manifesto for the 2010 Election declared an intention to “ban off-licences and supermarkets from selling alcohol below cost price”.\textsuperscript{23} In their manifesto, the Liberal Democrats’ stated intention was to:

\begin{quote}
Reduce the ill health and crime caused by excessive drinking. We support a ban on below-cost selling, and are in favour of the principle of minimum pricing, subject to detailed work to establish how it could be used in tackling problems of irresponsible drinking. We will also review the complex, ill-thought-through system of taxation for alcohol to ensure it tackles binge drinking without unfairly penalising responsible drinkers, pubs and important local industries.\textsuperscript{24}
\end{quote}

The \textbf{Coalition Agreement} of May 2010 stated:

\begin{quote}
We will ban the sale of alcohol below cost price.
\end{quote}

\begin{thebibliography}{9}
\bibitem{17} Dept of Health, \textit{150 years of the Chief Medical Officer: on the state of public health 2008}, March 2009, p22
\bibitem{18} “Brown won’t buy 50p-a-unit alcohol plan”, \textit{Times}, 16 March 2009, p3
\bibitem{19} “Chief Medical Officer vows to press on with anti-alcohol campaign, despite No 10 rebuff”, \textit{Times}, 17 March 2009
\bibitem{20} Health Committee, \textit{First Report : Alcohol}, 8 January 2010 HC 151 2009-10, \textit{section 10}
\bibitem{21} Health Committee, \textit{First Report : Alcohol}, 8 January 2010 HC 151 2009-10, para 309
\bibitem{22} \textit{Nice recommends action to reduce alcohol-related harm}, Press release, 2 June 2010
\bibitem{23} Conservative Party, \textit{Invitation to join the government of Britain: the Conservative Manifesto}, 2010, p56
\bibitem{24} \textit{Liberal Democrat manifesto}, 2010, pp41-2
\end{thebibliography}
We will review alcohol taxation and pricing to ensure it tackles binge drinking without unfairly penalising responsible drinkers, pubs and important local industries.\textsuperscript{25}

In July 2010 the Home Office launched a consultation on “rebalancing” the \textit{Licensing Act 2003}. One of the options on which views were sought was to ban the sale of alcohol “below cost”:  

Consultation Question 24: For the purpose of this consultation we are interested in expert views on the following.

a. Simple and effective ways to define the ‘cost’ of alcohol
b. Effective ways to enforce a ban on below cost selling and their costs
c. The feasibility of using the Mandatory Code of Practice to set a licence condition that no sale can be below cost, without defining cost.\textsuperscript{26}

According to the summary of responses issued later by the Home Office:

Responses [have] indicated a wide range of views on the subject with no overall consensus. Many respondents raised issues of commercial confidentiality and the feasibility of enforcing a ban which did not contain a clear and simple definition of cost.\textsuperscript{27}

The definition of “below cost” favoured by many in the off-licence trade is “duty plus VAT”.\textsuperscript{28}

Government briefing in the early days of the Coalition stated that the pledge to ban the sale of alcohol below cost price would be enacted by way of a \textit{Police Reform and Social Responsibility Bill}. However, when the Bill was published in November 2010, it contained no measures on alcohol price control. The Home Office \textit{Business Plan} was published in the same month. One of the “Actions” listed in the document was to “introduce legislation, if necessary, in the second session of Parliament to implement changes to alcohol pricing” in May 2012.\textsuperscript{29} In January 2011 the Government indicated a faster pace of change:

\textbf{Alcohol Sales (Coalition Commitment)}

\textbf{The Parliamentary Under-Secretary of State for the Home Department (James Brokenshire):} Today, we are announcing our intention to deliver on this commitment by introducing a ban on sales of alcohol below the rate of duty plus VAT.

The Government acknowledge the growing concern over how cheaply some alcohol drinks are being sold, and they are themselves concerned about the link between alcohol and crime and disorder-in many cases as a result of “pre-loading” in preparation for a night out.

As part of our consideration of how to deliver the coalition commitment to deliver a ban on below cost sales, the Home Office and Treasury have carried out respective reviews of alcohol pricing and taxation. These confirmed a consensus that pricing

\textsuperscript{25} HM Government, \textit{The Coalition: our programme for government}, May 2010, p13 \hfill \textsuperscript{26} Home Office, \textit{Rebalancing the Licensing Act: a consultation on empowering individuals, families and local communities to shape and determine local licensing}, July 2010, p20 \hfill \textsuperscript{27} Home Office, \textit{Responses to consultation: Rebalancing the Licensing Act}, 2010, p11 \hfill \textsuperscript{28} “Tesco still sells alcohol below cost price”, \textit{Morning Advertiser}, 4 June 2010. The article reports that this definition is “disputed by groups such as the British Beer & Pub Association”. \hfill \textsuperscript{29} Home Office, \textit{Business Plan 2011-2015}, November 2010, p14
controls can be an effective way of both improving public health and reducing violent crime.

Banning the sale of alcohol below the rate of duty plus VAT is the best starting point for tackling the availability of cheap alcohol and will send a clear signal to retailers and the public that Government take this issue seriously. They will effectively set a minimum level below which alcoholic products cannot be sold and will stop the worst instances of deep discounting which result in alcohol being sold both cheaply and harmfully. Importantly this system will have a limited burden on business and can be delivered at low cost to the taxpayer.

We intend to take forward measures to deliver this commitment without delay subject to the Government's regulatory assessment and clearance process.\textsuperscript{30}

The effect of this measure would be to prevent retailers from selling a 1 litre bottle of vodka (37.5 per cent abv) for less than £10.71 and a 440ml can of lager (4.2 per cent abv) for less than 38p. The \textit{Guardian} reported the following reactions to the announcement:

... (H)ealth campaigners and the beer and pub industries warned that the minimum price was being set too low to have any impact. They claimed it would still mean beer and lager being available at "pocket money" prices in supermarkets, and argued that a 50p per unit minimum could save more than 3,000 lives a year.

The Home Office minister, James Brokenshire, said the government was targeting the "deep discounting" of alcohol and warned that minimum unit pricing would "effectively penalise everybody, rather than being focused on either those products or people who may be consuming alcohol in a way that is harmful to society".

Gavin Partington, of the Wine and Spirit Trade Association, also backed the formula, describing it as a "pragmatic solution" that addressed concerns about cheap alcohol without affecting moderate drinkers. (...)

Professor Ian Gilmore of the Royal College of Physicians, said the government’s proposal was an extremely small step in the right direction, adding: "It will have no impact whatsoever on the vast majority of cheap drinks sold in supermarkets."\textsuperscript{31}

Later in January 2011, Home Office Minister Baroness Neville-Jones said that the Government had “no intention of introducing minimum unit pricing”:

We feel duty plus VAT is the best starting point for tackling the availability of below-cost alcohol and stopping the worst instances of deep discounting.

We acknowledge the views of supporters of minimum unit pricing but recognise that there are a number of real challenges to delivering such a policy. These include issues of legality, proportionality and fairness and the cost and burden to businesses. However, we continue to keep all policy under review.\textsuperscript{32}

In July 2011 the Home Secretary said that “banning the sale of alcohol below the floor price of duty plus VAT is an important step that will tackle the worst instances of deep discounting.”\textsuperscript{33} On the timing of the ban, Home Office Minister James Brokenshire said that “subject to parliamentary procedures the ban will come into force on 6 April 2012. It will be a

\textsuperscript{30} HC Deb 18 January 2011 c34WS
\textsuperscript{31} “UK drinking out of control, say public: study comes as cut-price booze ban details emerge”, \textit{Guardian}, 19 January 2011, p15
\textsuperscript{32} HL Deb 26 January 2011 c163WA
\textsuperscript{33} HC Deb 11 July 2011 c61W
new condition of the Mandatory Code of Practice in the Licensing Act 2003. The policy will apply to all alcohol retailers in England and Wales."

Arguments for and against minimum pricing were put forward during a February 2012 Westminster Hall debate on alcohol strategy. At the end of the debate, Anne Milton, Minister for Public Health, commented that the “debate is very timely, because it marks the start of a big push by the Government to get information to people about the harm that alcohol can cause.” She said that “pricing will continue to be an issue”:

(...) There are some misconceptions about the use of the phrase “minimum unit price”, although Members have probably used it accurately today and described well what they meant. The fact is that shops sell alcohol at a loss to get customers through the door, and that can encourage binge drinking. That is why we are committed to banning the sale of alcohol below cost, and that is an important first step. There are many different ways to achieve that aim, and we will continue to review all the evidence. The alcohol strategy will outline what steps we are taking to tackle the issue...

The compatibility of minimum pricing with EU law was raised during the Westminster Hall debate and a number of parliamentary questions have concerned the legal advice that the Government has received. In March 2011, for example, Karen Lumley asked:

Karen Lumley: To ask the Secretary of State for the Home Department what legal advice she has received on the introduction of (a) a voluntary and (b) a mandatory minimum price for alcohol.

James Brokenshire: The Secretary of State for the Home Department has received legal advice on alternative forms of alcohol pricing. This included advice about the risk of minimum unit pricing being found to be unlawful under EU Law and advice on a prohibition on below cost sales including if the floor price is set at duty plus VAT. However, the content of legal advice is subject to legal professional privilege and it is not appropriate to set it out at this stage other than in terms of the areas to which it relates.

And in November 2011, in response to another question, James Brokenshire reiterated that the Government would not be disclosing the advice “or any summary of it”.

During the Westminster Hall debate on 7 February, Anne Milton said that the Government’s alcohol strategy would “be published in the coming weeks.” There has been speculation that this may contain further measures on alcohol pricing.

34 HC Deb 27 October 2011 c312W
35 HC Deb 7 February 2012 cc25-49WH
36 HC Deb 7 February 2012 c47WH
37 HC Deb 7 February 2012 c48WH
38 HC Deb 21 March 2011 c775-6W
39 HC Deb 28 November 2011 c719W
40 HC Deb 7 February 2012 c47WH
41 See, for example: “David Cameron to launch attack on Britain’s ‘boozing scandal’”, Telegraph, 14 February 2012; Tim Montgomery, “Cameron focuses on Britain’s £17 billion alcohol problem”, ConservativeHome website, 15 February 2012
5 The evidence base

As part of their consideration of how to implement the ban on below cost sales, the Home Office and Treasury carried out reviews of alcohol pricing and taxation respectively. These were published to coincide with the January 2011 announcement:

- HM Treasury, *Review of alcohol taxation*, November 2010

Among the findings of the Home Office study were the following:

On balance the evidence shows that increases in alcohol prices are linked to decreases in harms related to alcohol consumption. However, alcohol price is only one factor affecting levels of alcohol consumption with individual, cultural, situational and social factors also influential.

Available evidence suggests that increases in alcohol prices tend to be associated with reductions in crime. However, this relationship is not straightforward and linear and the evidence base is not able to support a causal relationship between alcohol pricing and crime.

(...)

Focus groups, designed to test reactions to pricing policies, reported an overall consensus of respondents not wanting to see an increase in the price of alcohol. There was conflict between a belief that only large price increases would have an impact on crime and disorder and a reluctance to be subject to such price increases.

(...)

The evidence supports the general principle that increasing alcohol price reduces alcohol consumption by young people and also suggests that binge, hazardous, harmful and younger drinkers tend to choose cheaper alcoholic beverages.

(...)

Evidence around how the alcohol industry may be affected by pricing policies is limited to findings from one small scale study, which only provides an indication of the way in which the UK alcohol market may react. Evidence from this study indicates that major retailers may benefit more from pricing policies than producers, and that both producers and supermarkets (and to some degree the on trade) may adopt strategies to avoid potential losses or to keep prices the same following an introduction of a pricing policy.42

In early 2010, the previous Government commissioned three pieces of research on alcohol pricing. According to the Home Office, this research was also considered as part of the Coalition Government’s review of alcohol pricing; the individual reports were made public in January 2011:

- Priscilla Hunt *et al* for the Home Office, *Preliminary assessment of the economic impacts of alcohol pricing policy options in the UK*, June 2010

Research commissioned earlier by the Department of Health concluded from surveying the published evidence that:

An increase in the price of alcohol has been found to reduce alcohol consumption, hazardous and harmful alcohol consumption, alcohol dependence, the harm done by alcohol, and the harm done by alcohol to others than the drinker. (...) The exact size of this impact varied between countries and a major limitation of the evidence base is that most studies examining the impact of such policies have been conducted in the United States. 43

More recently, in February 2012, the BBC reported the results of a Newcastle University study which claimed that a ban on the sale of alcohol below cost price would have a limited impact on alcohol pricing. The lead researcher was quoted as follows:

The effect of price on alcohol consumption has been documented clearly: when the price of alcohol increases, consumption decreases; whereas when price decreases, consumption increases.

Setting the minimum alcohol price at below cost price will not deter binge drinkers, as very little alcohol on sale will actually have to increase in price.

Our results indicate that the current government proposal to ban sales of alcohol at below 'cost' price is likely to affect very few products and so would be unlikely to have a substantial effect on purchasing and consumption.

In contrast, a minimum price of 50p per unit would impact on more than one quarter of the price discounts we identified. 44

6 Action at local level

Several local authorities have expressed interest in setting a minimum price at local level, one of which is Middlesbrough Council. Under section 5 of the Licensing Act 2003, a licensing authority is required every three years to prepare and publish a statement of its licensing policy. Middlesbrough Council consulted on its draft third Policy Statement prior to its approval by the council in January 2011. The document asserts that action is needed because the mandatory alcohol code which the Government introduced does not tackle cheap supermarket deals. 45 The Middlesbrough plan is designed to “protect” the on-trade from supermarkets and would have “no effect on the average price of a pint of draught beer”.

The document explains:

9.24 The Licensing Authority will encourage all licensed premises to apply a minimum unit price of 50p to all alcoholic products sold under their premises licence. (The unit pricing will be reviewed in line with national Guidance.) Where the premises are found to be selling alcohol below this price, and problems associated with that premises are

43 ScHARR University of Sheffield, Alcohol pricing and promotion effects on consumption and harm: independent review of the effects of alcohol pricing and promotion: part A: systematic reviews, September 2008, p38
44 “Newcastle University alcohol study rejects cost-price plan”, BBC News, 23 February 2012
45 Middlesbrough Council’s licensing policy statement of principles in relation to the Licensing Act 2003 2011-2014, October 2010
in breach of the licensing objectives, a responsible authority or interested party may bring a review. Following the review, the Licensing Committee may impose a condition in relation to the pricing of alcohol, in order to uphold the licensing objectives.

The Licensing Authority will expect applicants to demonstrate in their operating schedule how the pricing of alcohol products on sale in their premises will not negatively impact on the licensing objectives.

9.25 (...) The mandatory conditions brought in to force in April 2010, may address the issue of irresponsible drinks promotions in on licence premises where it is likely to adversely affect the licensing objectives. However, the Council is also aware of the impact of the availability of cheap alcohol sold through off licence premises, particularly products aimed at binge drinking, problem and underage drinking.

Guidance issued to local authorities by the Home Office rules out the imposition of “blanket conditions” other than those laid down in statute:

10.38 Licensing authorities should not attach standardised blanket conditions promoting fixed prices for alcoholic drinks to premises licences or club licences or club premises certificates in an area as this is likely to breach competition law. It is also likely to be unlawful for licensing authorities or the police to promote generalised voluntary schemes or codes of practice in relation to price discounts on alcoholic drinks, ‘happy hours’ or drinks promotions. (...) 

13.20 Statements of policy should also make it clear that a key concept underscoring the 2003 Act is for conditions to be tailored to the specific premises concerned. This effectively rules out standardised conditions (...)

Mandatory conditions for the sale of alcohol were introduced from April 2010 by means of secondary legislation under the 2003 Act. These include banning irresponsible promotions, such as drinking games, speed drinking, “women drink for free”, and “all you can drink for £10”. However, the Government did not include minimum pricing in these conditions. In its licensing policy, Middlesbrough admits that it is therefore “departing” from the statutory guidance in seeking to promote minimum pricing:

9.27 The Guidance recommends that licensing authorities, police, local trade and partners should discuss and reach agreement as to how the mandatory conditions translate to actual promotions in the local area. It is the view of this Licensing Authority, the Police and Trading Standards in Middlesbrough that it is the general pricing of alcohol which affects its level of consumption, not solely the “happy hours” or other drinks promotions. (...) 

There have been suggestions in the trade press that actions of the type proposed in Middlesbrough could be open to legal challenge. The Morning Advertiser reminds its readers that the UK’s Office of Fair Trading “has always taken an interest” in attempts by official bodies such as local authorities or the police to impose a pricing structure on the

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46 Home Office, Amended guidance issued under section 182 of the Licensing Act 2003, October 2010
47 Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010 SI 2010/860
48 See Library Standard Note SN/HA/5351, Mandatory conditions for alcohol sale, 19 February 2010
49 Middlesbrough Council’s licensing policy statement of principles in relation to the Licensing Act 2003 2011-2014, October 2010
50 “Middlesbrough plans minimum prices”, Morning Advertiser, 19 August 2010, p1
A European dimension is also mentioned by many commentators. Research commissioned by the European Commission notes that:

Minimum pricing practices have tended to be seen as trade-distorting by the European courts (as setting an artificial price floor amounts to resale price maintenance, limiting and distorting price competition), and therefore not typically put in place in the EU.\footnote{“Cost control is on the cards”, \textit{Morning Advertiser}, 12 August 2010, p23}

The \textit{Guardian} reported in February 2012 that a minimum price of 50p per unit has been proposed on Merseyside although details of a plan have not been agreed.\footnote{Lila Rabinovich et al, \textit{The affordability of alcoholic beverages in the European Union: understanding the link between alcohol affordability, consumption and harms}, RAND Europe, 2009, p90}

7 European comparisons

In its discussion of below-cost sales, the Home Office consultation document of 2010 comments:

9.05. There are a number of ways in which such a ban might work, and Government must find an approach which is compatible with EU trade and competition laws and realistic to enforce. Most EU countries which have tried similar policies have banned selling below ‘net invoice price’ where the reference price is broadly the unit price on the invoice.\footnote{“David Cameron hints at minimum alcohol price”, \textit{Guardian}, 14 February 2012}

Research undertaken for the European Commission noted that:

There are regulations in a small number of European countries (both EU and other European states) that act as ‘proxies’ for minimum price regulations. For example, in Germany the so-called Apple Juice law states that in the on-premise trade, at least one alcohol-free beverage must be cheaper than the cheapest alcoholic beverage available. In Switzerland in some cantons (provinces) all restaurants are obliged by law to offer \textit{at least three} non-alcoholic drinks cheaper than the cheapest alcoholic beverage for the same quantity.

Alcohol sales below cost and other alcohol sales promotions are common in many countries across the EU (Baumberg and Anderson 2008). Different countries, however, have different approaches to these; while some countries ban sales below cost and/or alcohol sales promotions, in others there are no regulations applying to these, or only self-regulation is in place.

In Belgium, Luxembourg and Poland, for example, laws on commercial practices and consumer protection ban alcohol sales below cost. Some Spanish provinces, such as Castilla y Leon and Cataluña, have banned alcohol promotions that ‘directly incite’ excessive alcohol consumption. In Ireland, there was a ban on sales below cost, but this was removed in 2006, although bans on ‘happy hours’ and ‘two for one’ promotions in on-trade premises are still in place. In addition, a code of practice is being developed between retailers and the Irish government on the placement and promotion of alcohol in stores. (…)

Within Scandinavia, differences between the countries are evident in their approach to alcohol promotions. In Finland, while sales below cost are not banned, quantity discounts are, both in on- and of-premise sales, as well as advertising of alcohol discount prices outside on-trade premises unless the prices advertised are valid for two

\footnote{Home Office, \textit{Rebalancing the Licensing Act: a consultation on empowering individuals, families and local communities to shape and determine local licensing}, July 2010}
months or more. The scope of this regulation, however, is limited: ‘happy hours’ are still allowed, but advertising of ‘happy hours’ outside a bar or restaurant is not. In Sweden, national legislation stipulates that the price of alcohol cannot be lower than the cost price plus a ‘reasonable addition’. The Swedish Institute of Public Health recommends that this addition should be of 25% or over the cost price. Norway, like Sweden, has a ban on the use of alcohol as a loss-leader in off-premise sales, as well as on ‘happy hours’ and other price promotions.

Finally, alcohol promotions are subject only to self-regulation only in a number of countries. In The Netherlands, for example, the Dutch Foundation for the Responsible Use of Alcohol (STIVA) – an industry organisation – developed an advertising code containing rules for alcohol promotions. For example, according to the code premises are not allowed to sell alcohol for less than half its normal price, or to offer it free of charge, or to offer more than one alcohol discount promotion per customer (Van Hoof et al. 2008). Another industry body, the Royal Dutch Catering Industry, also developed its own code of good practice in alcohol sales, and supports a ban on alcohol discounts as a measure to prevent nuisance behaviour and violence (ibid.). In many Spanish provinces, only self-regulation is in place to control alcohol sales promotions.55

55 Lila Rabinovich et al, The affordability of alcoholic beverages in the European Union: understanding the link between alcohol affordability, consumption and harms, RAND Europe, 2009, pp90-2