

Edinburgh, London, Brussels: what Scotland's alcohol pricing policy tells us about multi-level governance



The Scottish government's plans for a minimum unit price for alcohol were vehemently opposed by the alcohol industry leading to a six-year delay in implementation after legislation was passed. [Benjamin Hawkins](#) explains the consequences of devolution and European Union membership for the development of this policy in Scotland through the concepts of multi-level governance, veto points, and venue shifting.

Scotland experiences significant alcohol-related health inequalities [internally](#) and in comparison with the rest of the [UK](#) and [Europe](#). Reducing alcohol related harms was identified as a key objective of the Scottish National Party (SNP) government elected in 2007. The international [consensus](#) indicates that the most effective and cost-effective ways of addressing alcohol-related harms are via measures that restrict availability (e.g. restricting which outlets can sell alcohol and at what time), restrict marketing (e.g. restricting television advertising), and increase price. However, as these measures reduce the total volume of alcohol sold across the population, they are strongly opposed by vocal and economically powerful sections of the global alcohol industry, including the whisky sector.

The Scottish Government's 2008 [alcohol strategy](#), which sought to implement a minimum unit price (MUP) for alcohol, represented a seminal moment in UK alcohol policy. Having failed to pass MUP into law as a minority government via the Alcohol Etc. (Scotland) Act in 2010, the majority SNP administration, elected in 2011, reintroduced MUP legislation to the Scottish Parliament and the Alcohol (Minimum Pricing) (Scotland) Act received Royal Assent in June 2012. This was followed by the Alcohol (Minimum Price per Unit) (Scotland) Order 2013, which set the level of MUP at 50p per unit. In March 2012, MUP was adopted in the UK Government's [alcohol strategy](#) for England to the great surprise of many policy makers and advocates. However, it was announced in July 2013 that the government would not bring forward measures to implement the policy, citing the need for more evidence of its effects, a decision that was strongly criticised by public health actors.

Industry opposition

Alcohol industry actors opposed MUP at [every stage of the policy process](#), seeking to intervene in all relevant decision-making forums in Edinburgh, London, and Brussels. They first attempted to play off the competing priorities of health- and non-health-related departments within the Scottish government and between Scotland and Westminster (e.g. international trade versus health) to put pressure on the Scottish Government to draw back. This strategy proved largely unsuccessful given the political commitment to the policy at the highest levels of the Scottish Government. This led their strategy to shift to the European level, first during the technical consultation process in the legislative phase and subsequently during the protracted legal challenge to the adopted measures.

Following the Scottish Parliament's enactment of the MUP legislation, the Scotch Whisky Association (SWA) launched a case for judicial review, arguing that MUP breached EU single market and competition law. The Outer House of the Court of Session in Edinburgh found in favour of the Scottish Government in May 2013, a decision which was appealed by the SWA to the Inner House (the Scottish Court of Appeal), which referred the case to the Court of Justice of the European Union (CJEU) for a preliminary ruling on the relevant points of EU law in April 2014. In light of the CJEU opinion in December 2015 that it was for the national courts to be the ultimate arbiters of the case, the Inner House confirmed that MUP was legal in October 2016. In December 2016, the SWA was granted leave to appeal the decision of the Scottish courts to the UK Supreme Court. In its ruling in November 2017, the court again found in favour of the Scottish Government, finally exhausting the legal avenues open to the SWA in opposing the policy. MUP came into effect in May 2018; a delay of six years between legislation and implementation.

Multi-level governance

The case of MUP offers an interesting case study of the dynamics of multi-level governance in the UK prior to its exit from the European Union in January 2020, and the ways in which the existence of [multiple decision-making forums](#) can both facilitate and stymie policy development. On the one hand, devolution, and the creation of new polities such as that centred around the Scottish Parliament and Scottish Government, create additional sites of policy entrepreneurship which may spread horizontally and vertically to other decision-making forums. This led MUP to come onto the policy agenda in Scotland and transfer to Westminster. In addition, the specific form that these alcohol pricing measures took – i.e. minimum pricing versus tax-based alternatives – reflects the fact that health protection was devolved to Scotland while the relevant tax raising powers (i.e. excise duty and value added tax) were retained by Westminster.

On the other hand, the interconnectedness between different levels of governance – in Scotland, at the UK level, and the European level – created additional [veto points](#) at which such policy initiatives, particularly at lower levels of the constitutional structure, may be opposed and potentially halted. In the case of MUP, policy co-ordination mechanisms at the EU level and the capacity for judicial review were identified as potential mechanisms through which the Scottish Government's MUP proposals had to pass, and which industry actors sought to exploit in order to prevent, or at least slow, its implementation.

Venue shifting

In complex systems of multi-level governance, sophisticated and well-resourced political actors, such as trans-national corporations, may seek to prevent unfavoured policies through processes of [venue shifting](#). During the MUP policy process, venue shifting took three forms:

1. **intra-institutional venue shifting** sought to engage policy actors within the Scottish and UK governments, as well as within the Commission, who were business or trade oriented and may seek to marginalise health actors which were more supportive of MUP;
2. **multi-level venue shifting** sought to shift the locus of the decision-making from Scotland to the UK and/or EU levels;
3. **modal venue shifting** sought to shift decision-making from the political to the legal realm, using judicial review to overturn the adopted policy. Industry actors enjoyed limited success in their efforts to shift policy debates to London or play off UK level policy-makers against those in Scotland in the policy sphere, but enjoyed far greater success shifting decisions to the EU level and into the judicial sphere.

The alcohol industry expended significant resources engaging national- and EU-level actors throughout the policy process, and pursuing the legal challenges to the very last possible venue. This is in keeping with previous studies of the [tobacco industry](#), which identified how systems of multi-level governance can create additional opportunities for industry actors to influence decision-making processes through venue shifting and multi-dimensional lobbying strategies.

Resisting industry opposition

Given the scale of their resources, resisting industry influence required co-ordinated activity by policy-makers at different levels, and an alliance with civil society actors including health advocates. Well-developed networks and collaborative working relationships between health policy-makers and health advocates in Edinburgh, London, and Brussels were able to counter industry efforts to oppose MUP in multiple forums. The Scottish and UK Governments worked effectively together, in alliance with NGOs, to counter industry attempts to stymie MUP at the EU level, particularly during the CJEU proceedings in which the UK government was a party. These findings on alcohol policy again align with the findings of previous studies of [tobacco advocacy](#), highlighting the importance of integrated governmental and civil society action across policy settings to counter industry opposition.

Systems of multi-level governance such as the UK and the EU offer institutional structures which can facilitate the rapid transfer of innovative policy ideas such as MUP both horizontally (e.g. between EU member states) and vertically (i.e. between sub-state and state-level polities). On the other hand, they extend the range of veto points and the resources required of both state and sub-state actors to implement policy innovations, particularly in the face of concerted opposition by transnational corporations. As such, they create both opportunities and threats for public health actors seeking to implement effective health policies and industry actors seeking to resist them. Moreover, this debate highlights the need for high-level political commitment – evident in Scotland and absent in England – as well as collaboration between policy actors at different levels, in government and civil society, to see controversial policy proposals such as MUP through to fruition.

Note: the above draws on the author's co-authored work [published](#) in *The British Journal of Politics and International Relations*.

About the Author



Benjamin Hawkins is Associate Professor at the London School of Hygiene and Tropical Medicine.

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