Scotland has amongst the highest rates of alcohol-related harms in Western Europe and over the last three decades has observed an approximate 3-fold increase in alcohol-related mortality. The Scottish Government has identified the affordability of alcohol as a key component for an effective strategy in addressing these harms. While increases in alcohol duty can be used to reduce affordability, responsibility for determining alcohol duty lies with the UK rather than Scottish Parliament so the introduction of a minimum unit price (MUP) is being considered as a more targeted alternative. Its potential introduction raises a number of important legal considerations that bear relevance to future public health legislative measures across the European Union. In this article, we outline some of the main considerations as illustrated by the case study of MUP in Scotland and discuss the implications for countries across Europe and other areas of public health policy.

Legal considerations in minimum unit pricing of alcohol

The Alcohol (Minimum Pricing) (Scotland) Act, along with subordinate legislation, will require holders of liquor licences to charge a minimum price per unit of alcohol (calculated as the minimum price charged = minimum price per unit x strength of the alcohol x volume in litres). However, the introduction of MUP has implications for the obligations of the UK as a member state of the European Union (EU). The Treaty on the Functioning of the European Union (like its predecessor treaties) includes the currently named Article 34. This article states that: ‘quantitative restrictions on imports between member states and all measures having equivalent effect shall be prohibited’. But Article 36 sets out situations where that prohibition does not apply:

The provisions of Article 34...shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans...Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

Depriving businesses of the opportunity to use their efficiency (as manufacturer or dealer) to charge lower prices than competitors is an interference with market forces that might impede cross-border trade in Europe. That makes it a ‘measure having equivalent effect’ to a quantitative restriction on imports and means it will be caught by the Article 34 prohibition, unless an Article 36 justification (in this case protection of health), renders the prohibition inapplicable.

The declared purposes of MUP are to ‘reduce alcohol consumption in Scotland, in particular reducing the consumption of alcohol by harmful drinkers, and reduce the impact that alcohol misuse has on public health’. But crucially, Article 36 cannot save a measure that falls under Article 34 prohibition, unless an Article 36 justification (in this case protection of health), renders the prohibition inapplicable.

Implications for European public health legislation

While the case study we have considered is based within Scotland, the principles apply more generally across the European Union and European Economic Area. They are also likely to influence the interpretation by the World Trade Organization of the similar provisions of Article 20 of the General Agreement on Trade and Tariffs (GATT) and therefore be of relevance to public health internationally.
Many areas of public health may benefit from legislative measures and political will is usually a necessity for their introduction. However, in addition to political factors, legal barriers may need to be considered. Many interventions apart from pricing mechanisms may be interpreted as interfering with imports and exports within the European Economic Area (and further afield) and could raise similar legal issues. These include selective taxation or tax rates (such as on sugary drinks or fatty foods) or product specification (such as plain labelling of cigarette packets). Epidemiological methods have been traditionally strong at demonstrating the extent and causes of a problem, thus highlighting areas of public health need and potential focuses for action. There is also a growing acknowledgment of the central role for the evaluation of these public health actions. However, for novel legislative interventions, modelling studies that directly compare alternative measures (some of which may be less trade-restrictive) may be of increasing use for policy. Consideration of these alternative measures, with the ability to demonstrate that this process has been carried out robustly, may therefore aid the demonstration of the legality of important future public health interventions.

**Acknowledgements**

S.V.K. conceived the idea for the article, contributed to writing and revision of the manuscript. J.M. provided expertise on legal content, contributed to writing and revision of the manuscript.

**Funding**

S.V.K. is funded by the Chief Scientist Office at the Scottish Health Directorates as part of the Evaluating Social Interventions programme at the MRC Social and Public Health Sciences Unit (MC_US_A540_0013).

**Conflicts of interest:** S.V.K. is currently involved in planning evaluation of the introduction of minimum unit pricing for alcohol in Scotland. J.M. is a member of the Law Reform Committee of the Law Society of Scotland and has provided evidence to the Health and Sport Committee of the Scottish Parliament on the topic of minimum unit pricing.

**References**


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doi:10.1093/eurpub/cks091