

**TITLE OF REPORT:**        **The introduction of a minimum unit price in Scotland.**

**REPORT OF:**        **Paul Dowling, Strategic Director, Communities and Environment**

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**1.     Purpose of the Report**

To provide Members with an update on the recent ruling by the UK Supreme Court.

**2.     Background**

The Supreme Court ruling in London on 15 November 2017 was the final stage of a five-year legal battle, with the case having already passed through courts in Edinburgh and Luxembourg.

MSPs at the Scottish Parliament passed The Alcohol (Minimum Pricing) (Scotland) Act 2012 in May 2012, setting a 50p minimum unit price as part of an effort to tackle alcohol misuse.

The Scotch Whisky Association (SWA) took action against the proposal, which it said would breach European law and, after an initial challenge at the Court of Session failed in 2013, the SWA appealed to the European Court of Justice (ECJ).

In December 2015 a European court said the legislation might break EU law if other tax options would prove as effective, but said it was "ultimately for the national court to determine" whether they did.

The case then returned to the Scottish courts and in October 2016 the Court of Session in Edinburgh ruled against the challenge by the Scotch whisky industry,. Scottish judges Lord Carloway, Lord Brodie and Lord Menzies ruled that the plans to introduce a minimum unit price were legally sound.

However, in December 2016 the three judges allowed the Scottish Whisky Association to go to the UK Supreme Court after hearing from the organisation's advocate Aidan O'Neill QC, who argued that the original ruling misunderstood European law.

The two-day hearing in July 2017 in the Supreme Court was the final point of appeal for the case in UK courts. Seven Supreme Court judges considered the arguments and in a unanimous judgment announced on 15 November 2017, said the legislation did not breach European Union law.

The judges ruled the measure was a "proportionate means of achieving a legitimate aim".

The judges at the Supreme Court rejected the Scotch Whisky Association's claim that an excise duty or tax would be an equally effective way of achieving the government's objectives.

Their judgment said minimum pricing targeted "the health hazards of cheap alcohol and the groups most affected in a way that an increase in excise or VAT does not".

Ministers are expected to make Scotland the first country in the world to establish a minimum price per unit of alcohol, possibly early next year.

### **3. Recommendation**

The Committee Members are asked to note the content of this report.