

# **‘Whisky Gloss’: The Alcohol Industry, Devolution and Policy Communities in Scotland**

## **Abstract**

Debates on devolution in the UK have been concerned both with the extent to which this has led to policy divergence and with whether devolved institutions have facilitated a more open ‘policy style’, which allows easier access to policy-makers for a greater range of actors. Further questions have been raised about the extent to which devolution has strengthened territorial boundaries, making it difficult for interest groups to circumvent devolved institutions. Drawing on a series of interviews with a range of policy actors, we investigate the impact of the minority Scottish National Party (SNP) government in Scotland between 2007 and 2011 on alcohol policy and the alcohol policy community, with specific reference to debates about the introduction of minimum unit pricing (MUP). We show that the ‘Scottish policy style’ did allow extensive access to policy-makers, but that the election of the SNP government disrupted the formerly prevailing equilibrium within the Scottish alcohol policy community. The industry was unable to escape the implications of a change in Scottish law for its interests, but industry arguments that MUP is contrary to European Union law indicate that there is still some scope for ‘venue shopping’.

## **Keywords**

Alcohol, industry, lobbying, devolution, policy styles, policy communities, Scotland

## **Introduction**

One of the key debates relating to devolution in Scotland and the other nations of the UK has been the extent to which this has resulted in policy divergence between the component parts of the UK. Divergence has been observed in a number of policy areas, although constraints upon this have also been noted (Bradbury and Mitchell, 2005; Keating, 2005a, 2006; Cairney 2006; Croall, 2006; Drakeford, 2006; Wincott, 2006). One of the main factors which has inhibited policy divergence since devolution has been the key role that the Labour Party has played in successive Scottish governments at the same time that it formed the governing party at Westminster (Parry, 2002; Mooney and Poole, 2004; Bradbury and Mitchell, 2005; Keating, 2005a; Cairney, 2006; Poole and Mooney, 2006). This changed in 2007 following the formation of the first Scottish National Party (SNP) government. As a party whose ultimate goal is independence, the entry into office of the SNP opened up the possibility of more radical and purposeful policy divergence (Parry, 2008), although this was constrained by that government's minority status prior to the 2011 election. This potential for divergence was reinforced by the formation of the Conservative-Liberal Democrat coalition government at Westminster following the May 2010 UK general election. This article focuses on one of the most distinctive policies advanced by the minority SNP Scottish Government, that of minimum unit pricing (MUP) for alcoholic beverages.

A second key debate centres on whether devolution has led to different 'policy styles' in Scotland and England (Cairney, 2008; Greer and Jarman, 2008; Keating et al, 2009). Greer and Jarman (2008: 169) point to three factors related to policy styles that 'explain policy divergence within any country': 'powers' ('what can a given government do, in terms of formal powers, financial capabilities, and access to key resources?'); 'policies' (particularly

*policy communities*, since, '[u]nderstanding who the advocates are, whether lobbyists, academics, or journalists, is key to understanding what can get and stay on the agenda'); and 'politics' ('party strategies and positions'). In terms of government powers, alcohol policy, as a key area of public health, is a devolved competence, although policies decided at Westminster (such as rates of duty and VAT) are of clear relevance to the broader issue. Indeed the decision to pursue MUP was in part dictated by the inability of the Scottish government to pursue tax based interventions on price. Similarly, European Union (EU) competition and trade law may have implications for MUP, demonstrating the importance of different levels of governance to this policy area. In relation to politics and party strategies, meanwhile, the change of governing party in Scotland after May 2007 is of great importance, as will be discussed below.

The role of policy communities is important because, as Keating (2005a: 454) notes, devolution not only transferred power from London to Edinburgh, it potentially opened up policy-making to a broader and more pluralistic policy community. The creation of a new, more open, politics was an explicit goal of Scottish devolution from its outset, and interest groups have generally expressed their satisfaction with consultative processes and the ease of access they have to top officials and ministers (Cairney, 2008). Research has suggested that devolved consultation processes differ significantly from those in the Westminster parliament (Cairney, 2008; Keating, 2005b; Keating et al, 2009). Greer and Jarman (2008) argue that much of the difference has evolved from the administrative devolution that preceded political devolution, whilst Cairney (2008) argues that the key difference is not in the degree of consultation itself, but in the extent of access to top officials prevailing in Scotland, resulting from a historical lack of capacity in policy *formulation* and facilitated by a smaller political community acting in a more concentrated arena.

In relation to policy communities in devolved polities, Keating et al (2009, p. 51) propose the concept of ‘territorial policy communities’ to designate ‘territorially bounded constellations of actors within and across policy sectors, emerging in response to the rescaling of government.’ This proposition is particularly interesting in the context of the alcohol sector, where a number of large transnational firms dominate the market. For example, the 26 largest alcoholic beverage companies globally had a total net revenue of \$155 billion in 2005, with the largest 10 accounting for 48% of sales (by volume) of globalised brands (Jernigan, 2009). In Scotland, Keating et al find that big business was initially distant from the new institutions, but by 2007 had built firm links with the Scottish Government which ‘were not affected by the change of party government that year’ (2009, p. 55). Voluntary sector actors, meanwhile, were ‘overwhelmingly pro-devolution’, seeing it as a chance to increase their influence (2009, p. 56). Keating et al (2009, p. 56) also argue that, ‘Institutional change has strengthened an existing Scottish frame of reference. There is a shared emotive commitment to the idea of Scotland and the promotion of Scottish interests.’ Ultimately, they conclude in relation to Scotland that devolution has to some extent strengthened boundaries so that groups find it ‘more difficult to circumvent devolved institutions’, although business remains mobile and able to ‘venue shop’ (2009, p. 63). However, they acknowledge that ‘we know little about how interest representation adapts to changed structures of territorial government’ (2009, p. 64).

We analyse the alcohol policy community in Scotland by examining the role of industry and public health actors in the policy making process. We focus on attempts to introduce MUP by the minority SNP government between May 2007 and May 2011. In doing so, we draw on 35 semi-structured interviews with MSPs and MPs, civil servants, alcohol

industry actors and public health actors, conducted between June and November 2010 as part of a project investigating the role of alcohol industry actors in the policy process. We also conducted an analysis of the submissions made to the Scottish Government's consultation on its 2008 green paper on alcohol (Scottish Government, 2008).

We show that the specific features of the Scottish 'policy style' did allow wide access to ministers and top officials for both industry actors and for public health advocates, but that the change of the governing party in Edinburgh after May 2007 disrupted the formerly prevailing equilibrium within the Scottish alcohol policy community, allowing public health advocates to significantly influence the policy agenda to a degree they had not done previously. Industry actors were unable to escape the implications of a change in Scottish law for their interests in Scotland or elsewhere. Instead, despite the industry's global nature and the wide range of products it manufactures and sells, they attempted to exploit a Scottish 'cognitive frame' (Keating et al, 2009) by allowing the Scotch Whisky Association to take the lead in lobbying activities. Despite easy access to decision makers and comprehensive and persistent lobbying, industry actors were frustrated in their attempts to influence policy to the same extent and through the same channels that they had previously been allowed. This necessitated a change in lobbying strategy to focus on MSPs rather than ministers and officials. Ultimately, those sectors of the industry opposed to MUP benefitted from the SNP's minority status and the consequent removal of minimum pricing provisions from the Alcohol Etc. (Scotland) Bill (2010). However, the election of a majority SNP government in Scotland in May 2011 allowed the SNP to reintroduce a bill on MUP. Following developments in Scotland, in March 2012 the UK government signalled its own intention to introduce a similar bill at Westminster.

The structure of the article is as follows. The next section examines the key arguments of public health actors and the role played by them in bringing the issue of alcohol pricing onto the political agenda. We then focus on the positions adopted by alcohol industry actors on MUP, whilst the following section examines how the global nature of the main producer organisations impacted on the position they adopted in the Scottish debates. The penultimate section then looks at the lobbying strategy of industry actors opposed to MUP and the tactics employed to facilitate its removal from the Scottish Government's alcohol bill. We conclude by analysing the significance of this case for the literature on policy communities and policy styles in devolved polities.

### **Alcohol Policy and the Role of Public Health Actors**

In 2008 the Scottish Government published the discussion paper *Changing Scotland's Relationship with Alcohol* (Scottish Government, 2008), which set out proposals to legislate for greater restrictions on the sale and marketing of alcoholic beverages and included a proposal to introduce a minimum unit price for alcohol. The recognition of price as a key driver of consumption and alcohol related harm – which had been strongly endorsed by public health advocates (see SHAAP, 2008) – marks a decisive shift in Scottish health policy. An analysis of the submissions to this consultation was published the following year (Scottish Government, 2009a) and was followed by a white paper setting out proposed legislation to introduce these measures. Despite significant opposition from some alcohol industry actors, the white paper included a commitment to introduce MUP (Scottish Government, 2009b). The Alcohol Etc. (Scotland) Bill (from here on referred to simply as 'the Bill') was passed by the Scottish Parliament on 3 November 2010 and received royal assent on the 15 December

that year. Crucially, however, the minority SNP government were unable to garner enough support in parliament from opposition MSPs to secure the adoption of its most controversial proposal. The proposal to introduce MUP had been removed by amendment during the passage of the Bill.

Interview data indicate that representatives of the public health (PH) community were of crucial importance in bringing the issue of pricing onto the political agenda and in changing the framing of the alcohol debate in Scotland. Organisations such as the British Medical Association Scotland (BMA Scotland), Alcohol Focus Scotland (AFS) and Scottish Health Action on Alcohol Problems (SHAAP) were firm advocates of MUP and helped drive the adoption of this as a policy objective by the SNP. The strategy pursued by PH advocates consisted of both political lobbying and engagement with broader societal debates through the media. Their lobbying strategy centred on meetings with ministers, MSPs and civil servants involved in the development of the legislation, as well as written contact through emails and briefing documents circulated on the rationale behind price based interventions. In addition, the BMA organised a briefing event for Scottish MPs at Westminster which, it was hoped, would help build support for the proposed policies in Scotland among the wider Scottish political community.

PH respondents argued that, prior to the launch of the 2008 consultation, policy makers in both Scotland and England had paid too much attention to the views of industry actors and too little attention to the existing evidence base on effective interventions to reduce alcohol related harm. This was reflected in policy documents in which industry actors were afforded the status of key stakeholders in the policy process, and partnership with industry was placed at the heart of alcohol policy strategies (Cabinet Office, 2004; DoH, 2007;

Scottish Executive, 2007; see also Room, 2004; Anderson, 2007). This gave the industry significant input into the alcohol policy agenda, positioning itself as a key partner in the policy process. From a PH perspective, this approach to the industry was highly problematic and led to policy outcomes for which the evidence base was weak. As a respondent from AFS explained, the key task for public health advocates was to challenge the ‘industry framing’ of the alcohol debate and to advocate for policies which drew on the existing evidence base on both the nature of alcohol related harm and effective policy interventions.

Industry actors devote extensive resources to lobbying policy makers at the Scottish, UK and European levels in order to present a framing of the alcohol problem and policy interventions which favour their commercial interests (Present Authors, forthcoming a). Consequently, a key task for PH advocates was to challenge what they saw as an industry led agenda both amongst policy makers and the wider public. There is also evidence that interventions on price were initially treated with scepticism by some within the SNP government and so the first task was to get ‘buy in’ from the politically most influential individuals in that administration before proceeding to ‘sell’ the policy to MSPs and the electorate.

The process of shifting the policy frame involved organisations such as SHAAP and AFS condensing the evidence in support of MUP and presenting it in language that politicians and officials would understand, and which could be easily translated into policy solutions. As a civil servant involved in the development of the Scottish Government’s policy explained:



SHAAP at the very early stages were pretty much instrumental in getting it on my radar. [...] SHAAP were very, very good at getting us to understand what the problem was in terms of price and what the mechanisms were for potentially dealing with it. They did a fantastic job of getting it on our agenda. Alcohol Focus, SHAAP and BMA Scotland, they've had a pretty sustained campaign through the Bill process of arguing for minimum pricing and helping us to establish the evidence, helping us to get the message out there and helping build support for the policy.

The high degree of cooperation and coordination which existed between PH actors was of crucial importance in this process. MUP presented an issue which all the main PH organisations supported and behind which they could unite. The ability to present a clear, unified and consistent message to government was important not only in informing the content of the SNP government's alcohol policy, but in explaining the policy to the general public through the media.

The process of lobbying on the issue of price had begun prior to the 2007 Scottish election and had been an important factor in shaping the policy of the SNP whilst in opposition and in concrete measures in this area being brought forward once the party entered government. As one MSP – who represents the SNP on the Scottish Parliament's Health and Sport Committee – explained:

So it started prior to forming a government. But what I would say is after we actually formed the government, it was one of the areas that the health organisations and the NGOs were very keen on pushing the government to say 'well you recognised it in opposition, now's your time to do something about it'. And they were very quick off the mark in actually pushing that...

From this respondent's perspective, the PH non-governmental organisations (NGOs) were of crucial importance in bringing about concrete policy initiatives on MUP. This view was shared by senior civil servants involved in the development of the legislation. As one respondent commented:

The SNP manifesto said something like we will end deep discounting in supermarkets, something vague. The job after the election was, right how do we turn this into some sensible policy? Just by chance I had a discussion with [a key NGO advocate of MUP]. We had a discussion there about pricing mechanisms. That led to me having a discussion with the Cabinet Secretary who was saying, 'people keep telling me that the problem is low price. What should we do?' I think I rather flippantly said, 'well we increase price'. That then prompted us to go away and look at how do we do it? What are the mechanisms? SHAAP had done a study which did look at different pricing mechanisms which was a good start on paper for us.

The specific policy proposals which emerged from this process were heavily influenced by the evidence and arguments supplied by a range of PH bodies alongside SHAAP. The close relationship which existed between the PH bodies and the Scottish Government reflected the willingness of the latter to utilise the expertise of the former and to draw on the evidence base available to inform policy decisions. Indeed, the MSP quoted above said that in all his time in the Scottish Parliament he had never seen such a strong agreement between the government and the NGO sector as on the issue of MUP. This is consistent with Cairney's observation (2008) that interest group access to top Scottish policy makers is related to the historical lack of capacity in policy formulation. This lack of capacity

would have been all the more evident in this case, where a party that had not previously been in government was embarking on a bold new initiative.

The elevated status of the PH lobby reflects also the diminished status of the industry under the SNP administration compared to the previous Labour-Liberal Democrat coalition. This has led to a degree of cynicism and suspicion amongst industry actors and some opposition MSPs. The representatives of one industry association claimed wryly that it was getting ever harder to meet with officials or ministers because they were overwhelmed with doctors demanding to meet with them to discuss alcohol pricing. Whilst it is undeniable that PH actors played a crucial role in advancing the alcohol policy debate in Scotland, and in securing support for price based interventions from the SNP government, their efforts were unable to convince a sufficient number of opposition MSPs to support the inclusion of MUP in the Bill. It is important, therefore, not to overstate either the resources available to the PH lobby, or the degree of their influence in comparison to other actors. The election of the minority SNP government was the crucial factor that allowed them increased influence in the policy process.

### **The Alcohol Industry Position**

We take the alcohol industry to include not only those organisations involved in the production and marketing of alcoholic beverages, but those involved in the sale and promotion of those products. Thus, Tesco are as much part of the alcohol industry as a pub chain like Enterprise Inns or a producer organisation such as Diageo. Most of these companies are members of trade associations such as the Wine and Spirits Trade Association

(WSTA), the Scotch Whisky Association (SWA) and the British Beer and Pub Association (BBPA). Given the wide range of actors which it includes, the alcohol industry is highly fragmented between different sectors with competing and often conflicting interests. These cleavages are clearly evident on the issue of MUP, which would affect mainly off-trade sales and those products sold principally through this channel. Consequently, most supermarkets as well as wine and spirit producers and some brewers, who sell the majority of their products through the off trade, were opposed to MUP as it would affect their marketing strategies (Present Authors, forthcoming b). On the other hand, representatives of the on-trade as well as some brewers opposed to the heavy discounting of their products in the off-trade were more supportive of MUP. In addition, there were some actors who appeared to be opposed to government intervention of this type on ideological grounds, claiming that MUP would constitute an unjustifiable interference in the functioning of the market.

In Scotland, as in England, those who rejected the proposals to introduce MUP became the dominant industry voice, presenting arguments against the policy, challenging the evidence base on which it depends and questioning the potential impact which it would have on reducing alcohol-related harm (Present Authors, forthcoming a). This involved framing the nature of alcohol related harm in very narrow terms, focusing on social order issues and an allegedly small group of hazardous and harmful drinkers. Policies, it is argued, should focus on these groups through targeted interventions and should aim to change the culture around alcohol through public awareness and educational campaigns. MUP, in contrast, is seen as failing to target these problematic drinkers and as unfair since it affects the vast majority of the population who drink normally and responsibly. Furthermore, it may have a detrimental effect on the Scottish economy since whisky is such a vital component of the economy and a provider of employment.

As the debates around MUP continued, and the determination of the Scottish Government to address the issue of price became more apparent, some industry actors that initially opposed MUP, began to shift on the issue to the point where they were prepared to consider a ban on sales below the level of Duty plus VAT as an apparent alternative approach. Off-trade retailers, including the largest high street supermarkets – whose business models would be affected by the introduction of MUP – and certain producer organisations came to advocate this approach. Even the SWA, which had voiced strong reservations about price interventions, began to consider a ban on below cost sales as an alternative to MUP, albeit with some reservations.

The motivation for advocating tax based interventions over MUP was principally that the former would not significantly impact on corporations' marketing or pricing strategies as very few products are currently sold below the level of Duty plus VAT. As one civil servant explained, this alternative was considered as an option by the Scottish Government, but was dismissed as a viable alternative to MUP as it is unable to deliver the same levels of harm reduction. A second reason for advocating a tax based approach over MUP is that taxation falls outside of the competences of the Scottish Government and would have to be dealt with at Westminster. This fact was acknowledged by supermarket representatives whose rationale for favouring tax based responses was precisely because they wanted a single policy covering the whole of the UK. Whilst presenting this as a question of efficiency and uniformity, it could be argued that it was an attempt to shift the location of the debate from Scotland – where there was sympathy amongst the government for price based interventions and an active PH lobby supporting the policy – to Westminster where there was less vocal support and a Conservative-led government sceptical about the benefits of government intervention in

the market. At that time there was little apparent sympathy for MUP at Westminster and outright opposition from key Ministers, including the Minister for Health, who promoted instead a partnership approach to industries with public health implications, based on a series of ‘responsibility deals’ (Boseley, 2012). A discreet attempt at venue shift by industry actors therefore seems evident.

### **The Global Aspects of the Scottish Debate**

Whilst devolution had opened up the possibility of policy divergence in the UK, accentuated by the election of an SNP government, the Scottish debate was not without significance for the rest of the UK and for other countries. Although the industry was divided on the issue of MUP, those opposed to the proposed measures on price seemed more vehement in the defence of their interests and more vociferous in their objections than those industry actors that were prepared to accept it. This may reflect in part the stakes at play for the largest producer organisations. As with the ban on smoking in public places which was introduced in Scotland before spreading to the rest of the UK, it was feared that MUP in Scotland may create political pressure for similar policies to be introduced elsewhere, and indeed in March 2012 the Westminster government signalled its intention to introduce a minimum price for alcohol in England and Wales (Home Office, 2012). The introduction of MUP in Scotland, were it to prove successful in reducing alcohol related harms, would also remove the argument deployed by certain industry actors that there is only weak evidence of the effects of MUP, based on models and projections rather than real world examples of the policy in action. The potential economic impacts of MUP, it was argued, could not be

justified while its impact on health was so poorly understood. As one civil servant commented:

We know that Northern Ireland, Ireland, Wales and places across the world are actually looking at this as a policy option. Yeah, I suspect that's part of ... they had a concern that it would work basically, that we would get it in place and be able to demonstrate after a few years that we were actually achieving the reductions in consumption and harm that our modelling suggested would happen. I think that's the concern, that it would be seen as successful and therefore it would be copied.

Of particular significance was the impact which this type of regulation could have for the corporate strategies of transnational alcohol corporations in overseas markets. Many producer organisations active in the UK are subsidiaries of large transnational corporations (Jernigan, 2009) which are also present in alcohol markets across the globe and seek to be present in those they are not. As with any corporation, they must constantly search for new revenue streams and new sources of profit. Whilst mature markets in high-income countries offer limited potential for growth, the increasing affluence of some middle-income countries is an opportunity to open new markets. There is a rapidly increasing desire amongst the emerging middle classes in China and India, for example, for luxury products such as Scotch whisky. The introduction of MUP in Scotland was seen as an obstacle to the ability of UK based corporations to lobby governments in these countries for market liberalisation. Fears were expressed that MUP may be seen as a trade restrictive measure designed to discriminate against foreign products and could thus lead to reciprocal measures by other governments to impede access to their markets for Scottish products. In addition, claims by corporations that they are socially responsible actors, capable of regulating their own affairs, would be

undermined if the government in their home market felt it necessary to introduce such measures to curb their activities. As one civil servant explained:

If I was working for [a large alcohol producer] lobbying the Chinese Government or the Indian Government or whoever it might be, the last thing I would want is my own country to be regulating the alcohol industry and giving the impression that the industry can't be trusted to regulate itself. They want to be in these countries saying, 'we're responsible. You let us deal with promotion and responsible messaging and everything else.' I think that's maybe part of the opposition to minimum pricing and regulations on promotions. The message that sends to other countries, that the industry must need regulating. Flashes of that came through from some discussions that we had with the industry. I think we were a couple of months into the process before we realised that this is really not just about minimum pricing in Scotland. There's much bigger issues that they're concerned about here.

### **Alcohol Industry Lobbying**

The lobbying strategy of the UK alcohol industry, it has been argued, is often very subtle in nature and focused on the development of strategic, long-term relationships with politicians and key decision makers (Present Authors, forthcoming c). This approach reflects the underlying aim of industry actors to establish themselves as partners in the policy process. The success of this strategy in Scotland prior to the elections of 2007 is reflected in the prominence afforded to the industry as key stakeholders in the Scottish Executive's alcohol strategy (Scottish Executive, 2002). Not only was the industry referred to at the very outset of



the document as making ‘valuable contributions to our economy’, the overall framing of the alcohol problem closely mirrored that of the industry. A partnership based approach to tackling alcohol related harm remained at the centre of the Scottish Executive’s updated alcohol strategy until 2007 (Scottish Executive, 2007). The clearest manifestation of this approach to regulation was the establishment of a *Partnership Agreement between the Scottish Executive and the Alcohol Industry* in parallel with the updated strategy (Scottish Executive et al, 2007; from here on referred to as ‘the partnership agreement’). The agreement, reflecting the approach to industry by the Labour-Liberal Democrat coalition, effectively formalised the central position of industry actors in the making of alcohol policy as part of a ‘collaborative approach’.

The shift in direction of alcohol policy under the SNP minority government from 2007 presented a threat not simply to the corporate interests of certain industry actors but to their entire corporate affairs strategy. The launch of the consultation on the SNP’s proposed legislation was met with a concerted campaign by industry actors, led by the SWA, to remove MUP from the alcohol Bill. The determination of the SNP to press ahead with MUP, and the reliance of the Scottish government on support from opposition parties in order to pass its legislation, led to a shift in lobbying activities from ministers and civil servants to MSPs and an attempt to shape the broader public perceptions of MUP through the media. Below, we outline industry actors’ activities in lobbying key decision-makers and how these shifted from the inner circles of civil servants and ministers to opposition MSPs and attempts to influence the broader public debate.

### *Civil Servants*

Alcohol industry actors in Scotland maintained extensive contacts with civil servants throughout the debates on the alcohol Bill. As was the case with the PH community, the culture of openness surrounding the Scottish Government and the willingness of officials to engage with stakeholders meant that there was a range of meetings held with industry actors to discuss the rationale behind the government's policy and the potential effects this may have. Even those actors strongly opposed to the government's policy were invited to attend meetings and to engage in a written dialogue with civil servants.

Alongside the official consultation procedures, there were other avenues available to industry actors to articulate their position to the government. The most obvious of these was the partnership agreement set up under the previous government to provide an established forum for discussion between government officials and industry stakeholders on various aspects of alcohol policy. The partnership agreement, whose secretariat is provided by the SWA, symbolised the partnership based approach to alcohol policy under the Labour-Liberal Democrat coalition and was favoured by industry actors. The recognition of the industry as a key stakeholder in the policy process is reflected in the fact that the current Corporate Social Responsibility Manager at a large alcohol producer had previously worked at the Scottish Executive on secondment from the firm.

During the debates on the alcohol Bill, the partnership agreement was used by industry actors as a bargaining chip in the debates surrounding MUP, arguing that the proposed measures may jeopardise the partnership based approach which the industry claimed had produced effective responses to alcohol related harm. A representative from AFS, for example, claimed this argument was used to exert pressure on civil servants to back away from the price-based measures:

I got phoned by civil servants saying that they had been put under pressure by [...] the Head of Corporate Affairs at [a large drinks producer] at the time who was saying: 'This is threatening the government's industry partnership.' So, quite bullying tactics behind the scenes. On the face of it: 'We're round the table, we want to work with everyone, we're much smarter than the tobacco industry.' Behind the scenes: 'Shut up the medical people because we are going to pull out of this partnership if you...', they are saying this.

As well as the representations made to officials by the corporations themselves and their UK based trade associations, one civil servant respondent indicated that representations were received from organisations based outside the UK, such as the Irish Spirits Association and an international spirits organisation. The approaches made to officials by these organisations repeated the arguments of producer organisations in Scotland and appeared to draw heavily on the materials submitted by individual companies and the UK based trade associations. As the civil servant continued:

when we got all this correspondence in from them, you could tell that it was exactly the same stuff that we'd heard before. When we looked at the membership of all the organisations, they were pretty much identical. They were trying to play an international argument to say, well it's not just us that's saying it. These people are concerned about the effect on their industry. We had to say to ministers, if you look at the membership of these, it's all the same producers that are part of each of these trade organisations.

In addition to the collaboration between domestic and international trade associations, industry trade associations appeared to recruit foreign governments with a perceived interest in the issue of alcohol pricing to make representations on their behalf:

We also had a fantastic exchange of correspondence with the Chilean Government who were most concerned about the impact on their wine. That was the Wine and Spirits Trade Association, you could tell I think. One of the letters didn't even make an effort to disguise the wording. It was just a cut and paste from some briefing notes. We had a prolonged exchange between the First Minister and the Chilean Ambassador.

The engagement of overseas bodies in the policy debates in Scotland reflects not only the global nature of the alcohol industry and the extent of the lobbying resources available to industry actors, but the potential ramifications they felt that developments in Scotland may have for their interests elsewhere in the world. It also casts some doubt on Keating et al's (2009) concept of 'territorial policy communities'.

### *Ministers*

The open door policy exercised by civil servants in the Scottish Government applied also to ministers, meaning it was possible for industry actors, as for PH advocates, to gain access to ministers with whom they requested meetings. However, this openness to representations from the industry did not equate to influence, once the SNP government had resolved to press ahead with MUP:

But what they decided to do was try and pick off individual ministers, regardless of what their portfolio was. [...] They came in, they argued their case to the minister responsible, she wasn't persuaded. Then they just went through week after week, going through the same process of making the same points with different ministers. The organisations like the Scotch Whiskey Association, they would generally get a meeting with ministers if they ask for one. But it was the same stuff over and over and over again. When they realised that they weren't making much progress with ministers, that it had been a collective decision that had been made and we were progressing with this policy, they went into senior official level.

According to the same respondent, the approach to lobbying involved highlighting the effects of the policy for ministers' own constituencies, where they contained a distillery or bottling plant which it was claimed would be affected by the introduction of MUP.

However, lobbying the current SNP government posed a new challenge for the industry. The party had never previously been in government and industry actors had not built the relationships with incoming ministers that they had with the previous Labour-Liberal Democrat coalition. In addition, key figures in the SNP government, including Justice Secretary Kenny MacAskill who initially led the push towards price-based interventions, appeared unwilling to afford the industry the same status in the policy process as under the previous administration. The establishment of the partnership agreement, and the broader framing of the policy debate under the Labour-Liberal Democrat coalition, had identified industry actors as key partners in the policy process. Whilst industry actors were not excluded following the 2007 election and SNP ministers continued to meet with them, their input into the policy process was placed on the same footing as that of any other stakeholder. This created a particular challenge for industry lobbyists, which led to a shift in strategy and an

increased focus on the Scottish Parliament and the MSPs responsible for enacting the legislation.

### *MSPs*

The fact that the legislation introducing MUP was introduced by a minority government allowed industry actors to refocus their lobbying on legislators. Opposition MSPs, for their part, had an incentive to inflict political damage on the SNP government by stymieing their flagship policy, creating an opportunity for industry lobbyists. Whilst the Conservative Party in Scotland opposed MUP from the outset, the Labour Party and the Liberal Democrats were ideologically more receptive to the idea of price-based interventions. Ultimately, however, neither party supported the introduction of MUP and the Bill was amended in parliament to remove this measure from the legislation passed in 2010. A number of respondents claimed that industry lobbying played a crucial role in convincing certain MSPs to oppose MUP. One MSP commented that the lobbying campaign directed at MSPs by the industry on the issue of alcohol pricing was the most concerted and consistent campaign to undermine the credibility of a policy that he had witnessed in 11 years in the Scottish Parliament:

I almost feel as though the alcohol industry and some of the retailers have bullied our position in this matter, and I regret that some members of this parliament have allowed themselves to be bullied by the industry into making what I think was the wrong choice. Now they'll strongly disagree with that. They'll be perfectly entitled to do that, but I think the behaviour of both the retailers and the, what do you call it, and the...suppliers to the industry itself has been nothing more than bully tactics which

some people have been politically quite happy to buy into; quite happy to buy in to for political expediency.

The industry was able to supply arguments against MUP to MSPs keen to oppose the government's policy for party-political reasons. As the MSP continued:

You know I've witnessed in committees quite literally some of the committee members almost reading out word for word the questions that some of these alcohol companies and retail companies have actually been putting out in their press releases; you know, and you're left saying to yourself, you know, what is the point of this if you're just allowing yourself to be completely manipulated by these organisations.

As was the case with ministers, the arguments employed by industry actors were framed in terms of the economic impact of the policy on MSP's own constituencies and the political ramifications for them of supporting this. As one civil servant commented:

But my impression is that they took the same view as they took with ministers, that it would be done through the constituency side of things as well as through the minister as being the party spokesperson for Health or Justice. I think all the major companies were in to see the opposition spokespeople for Justice and Health. In addition to that there were opposition members who have bottling plants in their constituency and those individual companies were in to see them. In fact I passed a few colleagues from industry in the corridors when I was leaving the Cabinet Secretary's office. They were heading up the Labour corridor to see somebody there. Yeah, there's no doubt that that was quite a big part of it. To what extent that informed the position

taken by Labour and the Liberal Democrats we'll never know. But yeah that was part of the process, absolutely.

Industry strategy in opposing MUP was therefore influenced by the post-devolution institutional settlement which delivered a minority government following the 2007 election. The ability of opposition MSPs to block legislation opened a new channel into the policy process for industry actors now unable to influence the content of policy at an earlier stage. MSPs were lobbied to oppose MUP and the removal of measures on pricing from the final legislation suggests that this strategy had some success.

### *Media Campaigning*

In addition to their lobbying campaign, industry actors attempted to engage in the broader debates surrounding MUP within the local and national media. The aim of this was to discredit the policy in the eyes of the public and to highlight the effects it may have on consumers in terms of higher prices and potential job losses. This, it was hoped, would make the policy unpopular in the eyes of voters and thus politically more challenging for ministers seeking to introduce it. Similarly, back-bench MSPs seeking re-election, it was believed, would be less likely to support a controversial policy such as MUP that was opposed by their constituents. As a respondent from the AFS comments:

What then happened was the Scotch Whisky Association and the Wine and Spirit Trade Association both commissioned public affairs consultancies. The brief that they sent round the public affairs consultancies that were tendering for the work found its way into the press and basically what was written in the brief was that the task that the public affairs consultancies were charged with was to remove minimum pricing from



the alcohol legislation before it goes into stage one. So they increased their resources that they were spending on opposing these evidence based policies. [...] Their target was general public. They had key messages like: ‘This is going to penalise moderate drinkers. You’re going to be affected. The poor pensioner that buys ...’ and it was all nonsense. When you actually looked at it, it was complete nonsense. But the messages were all about the public are going to be affected.

This account was echoed by civil servants we interviewed. The key role of these agencies was to engage with the broader debates round the policy conducted in the media rather than to engage in direct lobbying. According to industry respondents, whilst agencies were used to engage in media debates, contacts with governments were mainly kept in house or channelled through trade associations. The attention paid to the wider public debate, as with the shift to lobbying opposition MSPs, may be seen as an indication of the lack of influence industry actors had with the SNP government.

### *Strategic Role of the Scotch Whisky Association*

Within the most recent debates on alcohol policy in Scotland a vital role has been played by the SWA. Whilst it is normal for trade associations to be at the forefront of the industry’s representations to government, and for there to be a degree of coordination between trade associations in terms of their government affairs strategies (Present Authors, forthcoming b), the role of the SWA in Scotland has been of particular significance. The SWA appeared to act as the mouthpiece of the entire producer sector if not all alcohol industry actors opposed to MUP in Scotland. As one civil servant commented, they appeared to see themselves as ‘interlocutors’ for the entire producer sector. A second official supported

this analysis, highlighting the important role played by the SWA alongside the WSTA . Other associations such as the Gin and Vodka Association (GVA), meanwhile, were almost silent on the issue of MUP, despite the fact that vodka producers would be greatly impacted by its introduction.

On the one hand, the rationale behind this approach is the same as that of any trade association representing its members: that it is most effective to speak to government with a single voice. On the other hand, it must be recognised that whisky has a particular resonance within the debates in Scotland, and a broader cachet within Scottish society as both an iconic national product and an important economic commodity. Whisky is one of Scotland's principal export products and the whisky industry is a key provider of employment for many communities. It could be argued, therefore, that voters would be more concerned about a policy that could negatively impact on the whisky industry than other sectors such as brewers or vodka producers. Since many of the leading producers of whisky are also the main producers of white grain spirits such as vodka, it was a sound tactical move by producers to present the interests of the whisky industry as synonymous with those of the alcohol industry more generally and to channel the political and media campaigns through the SWA. As one civil servant commented:

The interesting thing though is we've always had our suspicions about the position of some of these trade bodies because their membership make an awful lot more than whisky. What we've found in this debate is that the Gin and Vodka Association have been completely silent. Now their members would be affected by minimum pricing. There are cheap vodka brands which would have been hit by the 45 pence minimum price. But other than initial consultation response, they just didn't have any part in this

debate at all which we found quite odd. That made us wonder whether the other trade organisations had basically said, ‘well just leave this to us, we’ll deal with this.’ The arguments which were given a whisky gloss were actually more about other products within the same companies.

The choice of the SWA as the principal conduit for the industry’s lobbying campaign against MUP reflects the extent to which industry actors tailored their political strategy to the specific policy context in which they were operating.

## **Conclusions**

In relation to debates about policy styles and their relationship to policy communities, it is clear that devolution has opened up new channels of access to policy-makers for both public health groups and industry actors. However, the case presented here demonstrates the importance of politics and parties to the policy process, notwithstanding the overall policy style. It also demonstrates that access to policymakers by organised interests does not always equal influence. It was the election of the SNP minority government in 2007 that broke the party-political and policy community equilibrium on alcohol policy that had held since devolution, allowing PH groups to present their case in a fresh way to a willing audience. The presence of an SNP administration with less extensive contacts with the alcohol industry, and prepared to place the industry on an equal footing with other stakeholders such as the PH lobby, created an environment in which new and innovative policy solutions to the enduring problem of alcohol related harm could come on to the agenda. The incoming government was prepared to move away from the partnership based approaches advocated by industry actors,

which had previously been at the centre of alcohol policies both South and North of the border, and adopt price-based interventions supported by PH campaigners and the existing scholarly literature. In this case, Keating et al's observation that business links with the Scottish Government 'were not affected by the change of party government' (2009, p.55) in 2007 is not borne out.

It is a bone of contention between industry actors and PH campaigners as to who had the greater input into alcohol policy. Whilst the officials interviewed contend that their open door policy affords equal access to government for all stakeholders, PH campaigners point to the size and resources of the industry, as well as the status afforded to them in the partnership agreement as evidence of the influence they were able to exert over policy. Industry actors, meanwhile, point to the similarities between the policies pursued by the SNP government and those advocated by the PH lobby as evidence of their influence. The results of the present study demonstrate that both groups have played crucial roles in the development of the current government's alcohol policy and the content of the legislation it passed in late 2010. Whilst PH advocates were instrumental in bringing the issue of pricing onto the political agenda, explaining the rationale behind the policy and providing evidence to the incoming SNP government, alcohol industry actors, especially producer organisations represented through trade bodies such as the SWA and the WSTA, mounted a vigorous and concerted lobbying and media campaign against MUP, which aimed at removing the measures on price from the final legislation.

Although the change of governing party was key to the attempt to introduce MUP, institutions and their respective powers remain central to understanding this process, since they determine what governments can and cannot do and help to shape party competition. As

noted above, the decision to introduce MUP was determined in part by the fact that taxation is a reserved competence, precluding the option of pursuing price interventions through that route. Indeed, even in the case of tobacco control, where the introduction of smoking bans across the UK appeared to suggest that this was an ‘idea whose time has come’, Cairney (2009) has argued that significant differences in the development of policy within each territory demonstrate the way in which policy is mediated by political systems. Notwithstanding this, the experience of smoke free legislation spreading from Scotland to other parts of the UK provides a clear example of the potential for policy transfer to other parts of the UK and beyond, of which alcohol industry actors were acutely aware. This supports the ‘race to the top’ proposition that devolved polities can introduce innovative policies which, if successful and popular, may lead others to emulate them (Keating, 2009, p. 280). Business is thus wary of the introduction of new regulations that may have the potential to impact it elsewhere, not just in the territory in question.

The key difference between tobacco policy and alcohol policy prior to 2012 was that whilst the influence of the tobacco industry relative to that of public health advocates had considerably diminished across the UK (Cairney, 2009, p.480), alcohol industry actors continued to enjoy an influential position, especially at Westminster. In contrast to the policies of the SNP, alcohol policy at Westminster under all governing parties was marked by substantial deference to the views and interests of the industry (Hawkins et al, 2012). This appeared to change somewhat in March 2012, when the Conservative-Liberal Democrat coalition announced plans to introduce MUP (Home Office, 2012), marking a break with previous policy at Westminster and apparently realising the worst fears of those industry actors opposed to it. What role the Scottish initiative on MUP played in the adoption of the policy at Westminster is hard to assess, but the UK government’s policy turn appears to

support the argument that devolved institutions can help set the agenda beyond their own territories. Nevertheless, the Westminster cabinet was far from united on the policy and industry actors remained at the heart of Westminster policy making through the Department of Health's so-called 'responsibility deals' (Boseley, 2012).

Questions concerning institutional powers and, crucially, which levels of government can take action in a given policy area become central where, as in this case, transnational interests are at stake. The potential ramifications of MUP in Scotland for the global marketing strategies of transnational producer organisations were crucial in explaining the vehemence of the campaign against it, demonstrating the complexity of the interaction between devolved political institutions and processes on the one hand and the global economy on the other (Keating, 2009). Industry actors presented the policy as doing particular harm to Scotland's iconic whisky industry whilst simultaneously mobilising industry opponents from outside Scotland and the UK. Rather than being 'territorially bounded' (Keating et al, 2009), it was the global nature of the industry that led it to seek to prevent a precedent being set in Scotland. Industry actors thus utilised a 'Scottish frame of reference' in an instrumental way rather than internalising it, exploiting the 'shared emotive commitment to the idea of Scotland and the promotion of Scottish interests' noted by Keating et al (2009, p. 56).

The potential for 'venue shopping' was limited to the extent that large companies saw potential Scottish introduction of MUP as impacting on its overseas sales and as a potential 'domino' that may lead to policy change elsewhere. They could not, therefore, escape the implications of a change in Scottish law for their interests elsewhere. However, the willingness of some sections of the industry to accept a ban on sales below Duty plus VAT

seems to indicate an attempt to shift responsibility for the policy to Westminster, whilst simultaneously promoting a largely ineffective ‘solution’. Similarly, industry arguments that MUP is contrary to EU competition law signal the possibility of shifting the focus of decision-making to the EU level. Indeed, whilst the election of a majority SNP Scottish government in 2011 allowed the party to reintroduce legislation on MUP and the Westminster government signalled its intention to follow suit in March 2012, the industry subsequently raised the likelihood of a legal challenge to the policy on these very grounds (Carrell, 2011). These findings suggest the need for more research on the impact of multi-level governance structures in this and other policy sectors where industry interests are prominent, particularly on how industry and other actors seek to navigate these different levels and utilise them to their optimum advantage.

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