

Title: New Year's Day Trading for Large Retailers: Consultation

Purpose and intended effect:

The Scottish Government has agreed to hold a consultation on New Year's Day trading for large retail businesses. The consultation will seek the views of retail organisations, trade unions, retailers and employees to ensure their opinions on this issue are captured.

This BRIA is focused on the economic impact of closing large stores, or making no change to current arrangements, on the retail sector.

Legislative Background:

The Christmas Day and New Year's Day Trading (Scotland) Act 2007¹ prohibits large shops from opening for the purpose of retail trading on Christmas day and confers power on Scottish Ministers to prohibit such shops opening on New Year's day.

The Act does this by:

- Making it a criminal offence for a large shop to open for the purpose of making retail sales on Christmas day.
- Conferring power on the Scottish Ministers to make it a criminal offence, by order to be approved by the Parliament, for a large shop to open for the purpose of making retail sales on New Year's day, following a consultation, the making of a report on the economic impact and impact on family life on large stores opening on New Year's Day, and the submission of a statement of reasons to the Parliament
- Defining a large shop as one with a trading floor area exceeding 280 square metres.
- Exempting specified trades or businesses and shops at specified places
- Defining who commits the offence and providing a due diligence defence.²

The Retail Sector:

The retail sector is a very important part of Scotland's economy and society. The retail sector (SIC Division 47) in Scotland directly employs 233,000 people (*source: Business Register Employment Survey 2019*). The retail sector has some particular features summarised below³:

- Employment was 242,480 in 2020 – 12.4% of all employment by registered private sector businesses in Scotland. (Source: [Business in Scotland 2020](#))
- Median weekly pay – excluding overtime – for full-time employee jobs in Scotland was £392.9 in April 2020. This is significantly lower than the equivalent median value across all industries and services in Scotland of £575.7.
- In March 2020, 13,790 registered enterprises⁴ operated in the Scottish retail sector.

¹ [Christmas Day and New Year's Day Trading \(Scotland\) Act 2007 \(legislation.gov.uk\)](#)

² [Section 2 of the Christmas Day and New Year's Day Trading \(Scotland\) Act 2007](#)

³ The preferred source for estimates of employee jobs by industry is the Business Register Employment Survey (2019), however demographic breakdowns are not available from BRES and are instead sourced from the Annual Population Survey (APS).

⁴ Excludes central and local government.

- Small enterprises (0-49 employees) accounted for 95.9% of businesses, but only 25.1% of employment and 18.1% of turnover. Large enterprises (250+ employees), comprised around 2.2% of enterprises, accounted for 69.6% of employment and 76.8% turnover.
- **Women** are more likely than men to work in the retail sector, making up 60.5% of the workforce in 2019. (Source: Annual Population Survey Jan-Dec 2019)
- A comparatively high proportion of the workforce are **young people**: 26.0% of the workforce is aged 16-24 compared to 12.3% of the workforce as a whole. (Source: Annual Population Survey Jan-Dec 2019)
- 6.4% of the retail workforce in Scotland were **minority ethnic**. (Source: Annual Population Survey Jan-Dec 2019)
- 63.1% of employees within retail work **part time** compared to 34.0% of the total employee population. (Source: Business Register Employment Survey 2019)
- In addition to the direct jobs in retail, the sector also supports 22,000 jobs across its diverse **supply chains**.

(Source: OCEA)

Impact of Covid-19 on the sector:

The Scottish Government's analysis of the Office for National Statistics Business impact of Coronavirus Survey (BICS) statistics for Scotland includes information on the impact of COVID-19 on the Wholesale, Retail & Repair of Vehicles sector. Key points include:

- The overall share of businesses 'currently trading' in the Wholesale, Retail & Repair of Vehicles sector was estimated as 98.5% in the period 3 to 16 May 2021, compared with 93.8% for the economy overall.
- In the period 19 April to 16 May 2021, 34.5% of businesses in the Wholesale, Retail & Repair of Vehicles sector reported experiencing a decrease in turnover compared with what is normally expected for this time of year. The comparable proportions for the economy overall is 35.5%.
- The share of the workforce on furlough leave in the Wholesale, Retail & Repair of Vehicles sector was estimated as 4.6% in the period 19 April to 6 May 2021, compared with 11.3% for the economy overall.

Source: [BICS weighted Scotland estimates: data to wave 30](#)

Comparisons with other nations:

Scotland - Large shops with a floor area greater than 280 square metres must close on Christmas Day. There is no limitation on trading hours on Sundays.

- **Northern Ireland** – Large shops with a floor area greater than 280 square metres must close on Easter Sunday and on Christmas Day. They are also limited as to the hours that they can trade on a Sunday when they can only open between 1pm and 6pm.⁵
- **England & Wales** – Large shops with a floor area greater than 280 square metres must close on Easter Sunday⁶ and on Christmas Day⁷. Large shops can open on Sundays but only for 6 consecutive hours between 10am and 6pm.⁸

⁵ nibusinessinfo.co.uk

⁶ Schedule 1 to the [Sunday \(Trading\) Act 1994](#)

⁷ [The Christmas Day \(Trading\) Act 2004](#)

⁸ [Sunday Trading Act 1994 \(legislation.gov.uk\)](#)

Conclusion – will be completed on conclusion of policy considerations

Consultation:

Public Consultation: Will be hosted on the Citizen Space website over a ten-week period from weeks commencing 14 June to 16 August. This should provide a body of evidence from which to determine the economic impact of making an Order under the legislation. No decision has been made at this time and options will be considered further once the results of the consultation are known.

Business: Through both the open (Citizens Space) consultation and direct engagement. Some prior engagement on the proposal has taken place between Scottish Ministers and Trades Unions Usdaw and GMB; the Scottish Retail Consortium (SRC) and directly with a small number of retail businesses.

The questions for the consultation were informed by input from the trade unions and the Scottish Retail Consortium.

Options:

Options that may be considered are:

- Not to make an Order Section 2 of the Christmas and New Year's Day (Trading) Act 2007, enabling large shops to remain open on New Year's Day;
- To make an Order under Section 2 of the Act that will close large stores on New Year's Day;
- To consider whether alternative legislation may be appropriate.

Scottish Firms Impact Test:

There has been engagement with Scottish retail sector in developing the consultation questions.

The majority of retail businesses operating in Scotland are micro and small businesses. It is estimated, based on the Inter-Departmental Business Register 2020 and 2019 Business Register and Employment Survey that there are 13,790 business units in the retail sector in Scotland, employing directly 233,000 people. Table 2 below shows a Scotland-level disaggregation of characteristics of areas of the retail sector that may be affected by the measures discussed in this BRIA including estimates of employment, number of businesses and business sites and number of premises.

Table 2: Breakdown of the Scottish retail sector

Sector	Employment (2019)	Number of Registered Businesses (2020)	Number of Registered Business Sites (2019)
SIC 47 Retail Trade, except of motor vehicles and motorcycles	233,000	13,790	22,340

Source: Business Register and Employment Survey; Businesses in Scotland, NDR roll.

Sector	Number of Registered Businesses	Small Registered Businesses (<49 employees)	Medium-Sized Registered Businesses (50-<249 employees)	Large Registered Businesses (250+ employees)
SIC 47 Retail Trade, except of motor vehicles and motorcycles	13,790	13,230	245	310

Source: *Businesses in Scotland 2020*.

In addition to the direct jobs in retail, the sector also supports 22,000 jobs across its diverse supply chains.

Retail businesses with a rateable value above £51,000 tends to be concentrated in cities.

Business Units

	% Rateable Value above £51000	% Rateable Value equal of below £51000
Aberdeen City	15%	85%
Aberdeenshire	5%	95%
Angus	3%	97%
Argyll and Bute	3%	97%
Clackmannanshire	5%	95%
Dumfries and Galloway	5%	95%
Dundee City	11%	89%
East Ayrshire	4%	96%
East Dunbartonshire	7%	93%
East Lothian	5%	95%
East Renfrewshire	4%	96%
City of Edinburgh	13%	87%
Na h-Eileanan Siar	1%	99%
Falkirk	6%	94%
Fife	6%	94%
Glasgow City	10%	90%
Highland	8%	92%
Inverclyde	5%	95%
Midlothian	10%	90%
Moray	6%	94%
North Ayrshire	5%	95%
North Lanarkshire	6%	94%
Orkney Islands	3%	97%
Perth and Kinross	6%	94%
Renfrewshire	11%	89%
Scottish Borders	4%	96%
Shetland Islands	2%	98%

South Ayrshire	6%	94%
South Lanarkshire	8%	92%
Stirling	10%	90%
West Dunbartonshire	9%	91%
West Lothian	13%	87%

Source: OCEA

What is the likely cost or benefit to business?

To be determined in the economic analysis that will follow the consultation

Competition Assessment:

Closure of large retailers may lead to short and long-term impacts on competitiveness outlined below.

Will it have an impact on the competitiveness of Scottish companies within the UK, or elsewhere in Europe or the rest of the world?

Retail businesses that are closed in Scotland on New Year’s Day and not in the rest of UK could lose market share and competitiveness.

Will the measure directly or indirectly limit the number or range of suppliers?

Directly. Also, potentially indirectly if supermarket concessions/smaller shopping centre units close along with larger retailers.

Will the measure limit the ability of suppliers to compete?

If an Order is made under the legislation, it will impact fairly across all large retailers. Small retailers will still be able to trade. Retailers may be able to offset some reduction in footfall through increased online sales.

Will the measure limit suppliers' incentives to compete vigorously?

n/a

Will the measure limit the choices and information available to consumers?

Whilst there is a likelihood that any closure of large retailers may limit the choices available to consumers through limited availability on New Year’s Day only, it may be possible for consumer to source alternative goods in small retail stores that would not be required to close.

Consumer Assessment:

The following sets out the Scottish Government's initial view on the impact of an Order under the Act:

Does the policy affect the quality, availability or price of any goods or services in a market?

There is a likelihood that the closure of stores will limit the choices available to consumers through limited availability and lack of locally available alternatives where retailers are required to close.

Consumers will be able to purchase from online retailers, Choice will be limited for consumers without access to small shops or online shopping services, in particular, those on island communities where there may be limited alternatives to the principle retailer.

Does the policy affect the essential services market, such as energy or water?

No

Does the policy involve storage or increased use of consumer data?

No

Does the policy increase opportunities for unscrupulous suppliers to target consumers?

TBC

Test run of business forms: N/A

Digital Impact Test: N/A

Legal Aid Impact Test: N/A

Enforcement, sanctions and monitoring: TBC

Implementation and delivery plan and post-implementation review: TBC

Conclusion:

This BRIA will set out the relative costs and benefits of options with the intended effect of closing large retailers on New Year's Day on conclusion of the consultation.

Declaration and publication:

Sign-off for BRIA:

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable interim view of the likely costs, benefits and impact of the measures set out in the regulations and guidance. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date:

Minister's name: Tom Arthur, MSP

Minister's title: Minister for Public Finance, Planning and Community Wealth