

New Year's Day Trading for Large Retailers: Annex B - Equality Impact Assessment

October 2021

EQUALITY IMPACT ASSESSMENT - RESULTS

Title of Policy	New Year's Day Trading for Large Retailers: Consultation
Summary of aims and desired outcomes of Policy	To assess the impact on people with protected characteristics of the potential closure of large retail units to customers on New Year's Day.
Directorate: Division: team	Economic Development Directorate Local Economic Development Retail Policy

Executive summary

The Scottish Government has held a consultation on whether large stores - defined as those with a trading floor area exceeding 280 square metres – should be closed on New Year's Day as they currently are on Christmas Day.

The policy intent of legislating would be to provide retail workers with time off from work on what is a traditional Scottish holiday when many families and communities gather together to celebrate New Year's Day. The consultation sought the views of retail organisations, trade unions, retailers and employees, local authorities and others with an interest in this issue to ensure their opinions were captured.

Background

The Christmas Day and New Year's Day Trading (Scotland) Act 2007 (the Act) prohibits large shops from opening for the purpose of retail trading on Christmas Day. Section 2 of the Act confers power on Scottish Ministers to make an Order that would prohibit large shops from also opening on New Year's Day.

The Act:

- Makes it a criminal offence for a large shop to open for the purpose of making retail sales on Christmas Day.

- Confers power on Scottish Ministers to make it a criminal offence for a large shop to open for retail trade on New Year's Day. This cannot take place until a consultation has taken place and a [report on the economic impact and impact on family life on large stores opening on New Year's Day](#), and a statement on why the Order is being made, is laid in the Scottish Parliament.
- Exempts specified trades or businesses and shops at specified places from closing.
- Defines who commits the offence and provides a due diligence defence.

When the Act came into force in 2007, an Order under Section 2 was not made at that time. In January 2020 the trade union Usdaw lodged a petition in the Scottish Parliament asking that the Scottish Government hold a consultation on whether large stores should close on New Year's Day. Shortly after this came the national lockdown due to Covid-19 and a decision on holding a consultation was deferred to allow the retail sector to focus on the safety of workers and customers and on the supply and delivery of essential goods. The question of a consultation was reconsidered once the vaccination programme was in place and retail businesses were able to reopen fully.

A public consultation was subsequently launched on 15 June 2021 and remained open for 10 weeks, closing on 24 August.

The Scope of the EQIA

Research was undertaken to identify the numbers of people with protected characteristics that worked in retail. (The information is not available on whether people work in large or small stores.)

In addition an assessment on the impact of working on New Year's Day on family life was carried out, informed in part by answers to questions in the Scottish Government consultation.

Through the web-based platform Citizen Space, the public consultation was designed to capture the views of retail business, shop workers and their families and consumers on whether large stores should close to customers on New Year's Day. This consultation was promoted in national and social media outlets and through business organisations.

To ensure a broad range of responses was gathered, the Scottish Government wrote directly to business organisations, trades unions, shopping centre managers, community and family organisations and each of Scotland's 32 local

authorities inviting them to participate to the consultation. A total of 91 organisations were contacted this way.

Key Findings

Some key characteristics of retail employees:

- Women are more likely than men to work in the retail sector. In Jan-Dec 2020, it was estimated that women made up 60.7% of those in employment aged 16+ in the retail sector in Scotland, up slightly from 60.5% in 2019.
- A comparatively high proportion of the workforce are young people. In Jan-Dec 2020, it was estimated that young people (16-24) made up 28.7% of those in employment in the retail sector in Scotland compared to 11.1% for all sectors in Scotland. In Jan-Dec 2019, it was estimated that 26.0% of those in employment in the retail sector were aged 16-24 compared to 12.3% for all sectors in Scotland.
- In Jan-Dec 2020, it was estimated that 28.9% of those in employment in the retail sector in Scotland were aged 50 or over compared with 33.0% for all sectors in Scotland. In Jan-Dec 2019, it was estimated that 25.6% of those in employment in the retail sector were 50 years old or older compared with 33.0% for all sectors in Scotland.
- In Jan-Dec 2020, it was estimated that 6.2% of those in employment aged 16+ in the retail sector in Scotland were minority ethnic compared with 4.5% for all sectors in Scotland. In Jan-Dec 2019, it was estimated that 6.4% of those in employment in the retail sector were minority ethnic compared with 4.3% for all sectors in Scotland.
- In Jan-Dec 2020, it was estimated that 27.9% of those in employment aged 16-64 in the retail sector in Scotland had a condition/illness lasting 12 months or more, compared with 27.2% of workers in all sectors in Scotland. In Jan-Dec 2019, it was estimated that 28.5% of those in employment in the retail sector in Scotland had a condition/illness lasting 12 months or more, compared with 27.5% of workers in all sectors in Scotland.
- In Jan-Dec 2019, it was estimated that 27.6% of those in employment aged 16-64 in the retail sector in Scotland were parents of dependent children aged 0-18, slightly lower than the share for all sectors in Scotland (31.8%).

- In Jan-Dec 2019, it was estimated that 17.2% of those in employment aged 16-64 in the retail sector in Scotland were Equality Act Disabled, higher than the share for all sectors in Scotland (13.6%).

In regards to pay and working patterns:

- Median weekly pay – excluding overtime – for full-time employee jobs in the retail industry (SIC 2007 – division 47) in Scotland was £393 in April 2020. This is significantly lower than the equivalent median value across all industries and services in Scotland, which stood at £576. Part-time employees in the retail industry earned £159 compared to £212 across all industries and services in Scotland.
- Employees in the retail sector are paid less than average and are less likely to earn the real living wage than the average for all industries in Scotland. In 2019, 42.5% of employees aged 18+ in the wholesale, retail, repair of vehicle industry (SIC Section G) earned less than the real living wage (£9.00), compared with 16.9% of all employees in Scotland.
- In the period April to June 2021, 10% of employees were on zero hours contracts in the wholesale and retail sector in the UK. Large employers are also more likely to make use of zero hours contracts than smaller firms according to research from 2017.
- The gender pay gap median for the retail sector in Scotland stood at 5.8 in 2020 compared to 10.9 for Scotland as a whole. The gender pay gap is estimated here as the difference between average hourly earnings (excluding overtime) of men and women as a proportion of average hourly earnings of men. In this case, a median gender pay gap of 5.8 for the retail sector means that women earn 5.8% less, on average, than men.
- 63.1% of employees in the retail sector in Scotland worked part-time in 2019 compared to 34.0% of the total employee population. The proportion of part-time employees in the retail sector has remained broadly stable since 2015. Employees working in the predominantly food retail sub-sector (69.8%) are more likely to work part-time than those in other retail (58.1%).
- In Jan-Dec 2020, it was estimated that 94.5% of employees aged 16+ in the retail sector in Scotland were in contractually secure employment

(employees employed on a permanent contract), only marginally lower than all sectors in Scotland (94.6%).

- In Jan-Dec 2019, it was estimated that 13.9% of those working in the retail sector were self-employed compared to 12.4% for all sectors in Scotland.

The consultation responses:

The consultation generated a total of 1,861 responses: 1,838 through Citizen Space and 23 directly from stakeholders. Of the Citizen Space respondents, 1,468 identified as retail employees, 49 as employers, 77 as family members of retail workers and 199 as others.

The majority of respondents to the online consultation (93.5%) were in favour of large retail closing on New Year's Day with 3% opposed and 3.5% either unsure or did not answer the question.

Almost 72% of all respondents identified as employees who worked in stores that open on New Year's Day compared to 8.9% who work in stores that close. More than three quarters of all respondents (79%) identified as employees who worked in food retail (e.g. supermarkets and mixed retail, which offers food as a primary purchase).

Of those who work on New Year's Day, 58% reported receiving additional compensation (for example premium payment or time off in lieu) while 42% said they received no additional compensation above their usual pay (i.e. it was treated as a normal working day).

The Scottish Government is mindful of the requirement to have due regard to the three needs of the Public Sector Equality Duty (PSED) - eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity between people who share a protected characteristic and those who do not, and foster good relations between people who share a protected characteristic and those who do not.

It recognises while new policy measures may positively impact on one or more of the protected characteristics, the introduction of such measures may also have a disproportionate negative impact on one or more of the protected characteristics. The consultation sought to understand any negative impacts that were identified, and consider what measures may be taken to

mitigate/eliminate these. We are also mindful that the equality duty is not just about negating or mitigating negative impacts, as we also have a positive duty to promote equality, which we considered on conclusion of the consultation.

To understand the impact that this legislation may have on those people with a protected characteristic, a specific question was asked of those organisations who were proactively invited to participate in the consultation. It was “Can you foresee this legislation impacting on those with a protective characteristic? If so, in what way?” Of the 23 off-line responses received, none addressed the question directly, although the impact that closure of large stores may have on people who live in economically deprived areas was highlighted.

Recommendations and Conclusion

There is nothing within the Act that differentiates treatment of people with protected characteristics. The Act does not differentiate what can and cannot be carried out within a store on New Year’s Day other than making it a criminal offence for a large shop to open for the purpose of making retail sales. Other operational activities are able to continue, such as fulfilling online delivery orders, unloading deliveries or preparing stock for sale the following day.

Employment terms and conditions are outside the scope of the Act, meaning that arrangements for paid time off and annual leave are subject to contractual agreement between employees and employers.

The Scottish Government is supportive of actions that promote a positive work-life balance for retail workers and their families and for society as a whole. However, the Christmas Day and New Year's Day Trading (Scotland) Act 2007 is limited in terms of its ability to achieve this policy intent for the following reasons:

- The Act would not give all retail workers a day off on 1 January. The legislation simply restricts trading in certain retail premises with a trading space of 280 square metres or more. Estimates are that 1,353 large stores would come within the scope of this legislation leaving over 21,000 stores out of scope and therefore not required to close. Whilst many will be smaller independent stores, smaller supermarkets and convenience stores will be included in this number.

- The legislation would not stop all work in large stores, it only prohibits stores from opening to customers. An estimated 141,000 retail workers (roughly 61%) may work in large stores although the number of staff who may actually receive a day off is likely to be much lower. Non-customer-facing activities such as restocking, picking and deliveries can continue under the Act, as can online shopping which now accounts for 26% of all retail sales compared to 3% in 2007 when the Act was passed. This means a significant number of staff may still be required to work despite the legislation if enacted closing large retail stores for the purposes of retail sales.
- There is also no guarantee that those who do get the day off will be paid for it. In addition, from the consultation, 58% of employees who work on New Years day do so in receipt of additional compensation such as overtime or premium payment. Closure would limit the opportunity for this additional compensation for employees which could be financially impactful to employees who work within a sector with more than double the Scottish average not being paid the Real Living wage.
- Making this Order could result in the creation of different treatment for employees. For example, those working for an employer in a large store and those working for the same employer in the same role but in a small store could be treated differently under this legislation.

Consequently, the recommendation is not to make an Order under Section 2 of the Act but to pursue alternative means of supporting retail workers through actions such as the adoption of progressive Fair Work policies.

Equalities Impact Assessment approved by:

Debbie McCall,
Deputy Director, Local Economic Development

Signature:

Date approved: