

# **New Year's Day Trading for Large Retailers: Annex C – Stakeholder Responses**

**October 2021**

## NEW YEAR'S DAY TRADING CONSULTATION – STAKEHOLDER RESPONSES

In addition to the public consultation conducted on Citizen Space from 15 June to 24 August, the Minister for Public Finance, Planning and Community Wealth wrote to key stakeholders to alert them to the launch of the consultation and inviting them to respond to the following questions:

- Do you support the introduction of legislation that will close large retailers to customers on New Year's Day?
- What is your assessment of the economic and/or social impacts of enacting such legislation?
- Can you foresee this legislation impacting on those with a protective characteristic? If so, in what way?
- Are there any particular regional or geographic consequences that should be considered that would have a bearing on enacting this legislation?

Table 1 contains a list of all organisations contacted in this way.

Table 1

Local Authorities	Business Organisation	Retail Centres	Other Key Stakeholders	Family and Community Groups
Aberdeen City Council	Scottish Retail Consortium	Avenue Shopping Centre	Usdaw (Trades Union)	National Parent Forum,
Aberdeenshire Council	Scottish Grocers Federation	Buchanan Galleries	GMB (Trades Union)	One Parent Families
Angus Council	Confederation of British Industry	Braehead Burns Mall	Scottish Trades Union Congress	Scotland, Parenting
Argyll & Bute Council	Federation of Small Businesses	Clyde Shopping Centre	Stirling University (School of Retail Studies)	Across Scotland, Parent
City of Edinburgh Council	Scottish Property Federation	Cumbernauld Centre		Network Scotland,
Clackmannanshire Council	National Federation of Independent Retailers	Forge Shopping Centre		Children in Scotland,
Comhairle nan Eilean Siar	Scottish Chambers of Commerce	Fort Kinnaird		Children 1 <sup>st</sup> , Faith in
Dumfries and Galloway Council		Glasgow Fort		Community Dundee,
Dundee City Council		Govan Cross		The Poverty Truth
East Ayrshire Council		Gretna Gateway		Community, Glasgow
East Dunbartonshire Council		Howgate Centre		Poverty Truth Community,
East Lothian Council		Bon Accord Shopping Centre		North Ayrshire
East Renfrewshire Council		Kings Gate Shopping Centre		Fair for All, Shetland
Falkirk Council		Livingston Designer Outlet		Voices for Equity
		Mercat Centre		
		Motherwell Shopping Centre		
		Ocean Terminal		
		Overgate		

Glasgow City Council		Paisley Centre		
Highland Council		Piazza Paisley		
Inverclyde Council		Princes Mall, Edinburgh		
Midlothian Council		Regent Centre		
Moray Council		Rivergate Centre		
North Lanarkshire Council		Rutherglen		
Orkney Island Council		Shopping Centre		
Perth and Kinross Council		Shandwick		
Renfrewshire Council		Shopping Centre		
Scottish Borders Council		Shawlands		
Shetland Islands Council		Shopping Centre		
South Ayrshire Council		Silverburn		
South Lanarkshire Council		Springburn		
Stirling Council		Shopping Centre		
West		St Enoch Centre		
Dunbartonshire Council		St James Shopping Centre		
West Lothian Council		Stirling Thistles		
		The Centre		
		Livingston		
		The Gyle Centre		
		The Lanes Centre		
		Union Square		
		Aberdeen		
		Waverley Mall		
		Westside Plaza		

23 written responses were received, as was a single letter sent on behalf of 13 business organisations. The following respondents have agreed that their replies can be published.

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## **NEW YEAR'S DAY TRADING CONSULTATION - JOINT LETTER FROM BUSINESS AND INDUSTRY REPRESENTATIVES**

***FAO: Mr Tom Arthur MSP, Minister for Public Finance, Planning & Community  
Wealth, Scottish Government***

Dear Minister,

We are writing jointly to ask that you reject pleas to implement a permanent legislative prohibition on shops from trading on New Year's Day.

Retail has been at the epicentre of the economic storm wrought by Covid. Much of the sector has been shuttered for at least 220 days over the past seventeen months or unable to trade at capacity due to restrictions. As restrictions ease it should be down to stores to determine and assess whether there is sufficient customer demand and availability of staff to open on New Year's Day.

Curtailing this through legislation would diminish consumer choice and add to the economic pressures facing retailers, their supply chain, and our town and city centre economies. A strong, varied and open retail offering in turn benefits the wider tourism and hospitality sector as well as the recovery.

The Covid pandemic has been the most challenging period for Scottish industry in decades. As the country seeks to rebuild, rejecting a ban would send a strong and positive message that Scotland is open for business and help to promote Scotland as a visitor destination at New Year.

Yours sincerely,

Tracy Black, Director, CBI Scotland  
Robin Blacklock, Interim Director, Scottish Property Federation  
Liz Cameron OBE, Chief Executive, Scottish Chambers of Commerce  
Marc Crothall, Chief Executive, The Scottish Tourism Alliance  
Philip Goodman, Chair, Shopping Centre Management Group, Revo Scotland  
Malcolm Harrison, Chief Executive, Company Chemists' Association  
David Lonsdale, Director, Scottish Retail Consortium  
John McLellan, Director, Scottish Newspaper Society  
Phil Prentice, Chief Officer, Scotland's Towns Partnership  
Anthony Short, Executive Director, Music Industries Association  
Colin Smith, Chief Executive, Scottish Wholesale Association  
Roddy Smith, Chief Executive, Essential Edinburgh  
Adrian Watson, Chief Executive, Aberdeen Inspired

# SCOTTISH GOVERNMENT CONSULTATION ON NEW YEAR'S DAY TRADING FOR LARGE RETAILERS - SCOTTISH RETAIL CONSORTIUM RESPONSE

## ABOUT THE SRC

1. The SRC's purpose is to make a positive difference to the retail industry and the customers it serves, today and in the future. Retail is an exciting, dynamic and diverse industry which is going through a period of profound change which has been accelerated by the Covid pandemic. The trends are clear - technology is transforming how people shop; costs are increasing; and growth in consumer spending is slow.
2. The SRC is committed to ensuring the industry thrives through this period of transformation. We tell the story of retail, work with our members to drive positive change and use our expertise and influence to create an economic and policy environment that enables retail businesses to thrive and consumers to benefit. Our membership here in Scotland and across the UK comprises businesses delivering £200bn of retail sales and employing over one and half million employees. In addition to publishing leading indicators on Scottish retail sales, shopper footfall and store vacancies, our policy positions are informed by our membership and determined by the SRC's Board.
3. Retail is the largest private sector employer in Scotland with 233,000 Scots directly employed, 12.5% of the private sector workforce. The industry is one of the largest sectors of the Scottish economy, with the potential to grow by £3 billion over the next ten years to a total turnover of £28 billion. Despite the structural change the industry is going through, and the profound impact of Covid, the industry continues to play a valued role in communities - last year the industry raised £16.4 million for good causes and charities in Scotland<sup>1</sup>.
4. A thriving retail industry is good for jobs, for investment, for tax revenues, for keeping down prices for consumers, for communities, and even for our pensions. The industry is also one of the most innovative. This is evidenced over recent years through significant new investment in store formats and layouts including online, in-store technology and order points, home delivery and distribution capabilities, click and collect services, digital customer loyalty and payment arrangements, and new and refreshed own-brand products.

## OVERVIEW OF SRC'S RESPONSE

5. The past seventeen months of the Covid pandemic have been the most challenging and tumultuous period for Scotland's retail industry in recent decades. Shopper footfall remains down by 30% on pre-pandemic levels<sup>2</sup>, shop vacancies have spiked to a new six-year high<sup>3</sup>, and retail sales in Scotland while recovering have yet to claw their way back to pre-pandemic

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<sup>1</sup> Retailers raised and donated £16.4 million to Scottish good causes in 2020 - SRC report on charitable giving, May 2021

<sup>2</sup> SRC-Shoppertrak Footfall Monitor, 12 July 2021

<sup>3</sup> SRC-LDC Shop Vacancy Monitor, 30 July 2021

levels. Indeed, stores in non-food categories are still trading at only 90% of what they did prior to the pandemic<sup>4</sup>, despite having been permitted to re-open since the end of April 2021. The industry fully recognises the significant support from government for the sector during the crisis, especially the business rates waiver and grants.

6. Our objections to a permanent ban on the opening of shops to customers on New Year's Day are based on: the principle of being free to trade; the impact on consumers; and the business impact (not least given the backdrop outlined above on retail market conditions).

## **RESPONSE TO CONSULTATION QUESTIONS**

### **Q1: Do you support the introduction of legislation that will close large retailers to customers on New Year's Day?**

7. No. On a point of principle we do not support banning and prohibiting shops from trading on New Year's Day, instead shops should continue to be free to trade.
8. Where there is demand from customers and availability of staff then retailers should be able to decide themselves whether they should open some or all of their stores on New Year's Day if they so wish, rather than it be curtailed by a legislative ban. Some of our members open some of their shops on New Year's Day, some do not, and others are considering it given the dismal trading they have experienced this year. Those who do open tell us trade has improved on that day in recent years.
9. A legislative prohibition is short-sighted considering customers can shop online whenever they choose. A ban would put bricks and mortar stores at a disadvantage, which is somewhat incoherent given Ministers are seeking to reinvigorate high streets, through the Scotland Loves Local initiative, the city centres recovery taskforce, and the upcoming refresh of the town centres action plan.
10. It is also strikingly at odds with the strenuous efforts undertaken in recent years to promote Scotland as a visitor destination at New Year. Are we going to invite the world to come to Scotland for Hogmanay, but then prevent revellers spending their money in our stores the next day? Retailers have played their part during the pandemic - some remained open to supply customers and the vulnerable with essentials, whilst others shut to aid the national effort against Covid. As the country looks to rebuild, retailers stand ready to play their part again in helping to attract visitors and staycationers; policy makers can help by sending a strong message that Scotland is open for business.
11. Most retailers have been compelled to close and shuttered for at least 220 days over the past seventeen months due to the two Scotland-wide

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<sup>4</sup> Scottish Retail Sales Monitor, 20 July 2021

lockdowns. This figure is even greater for stores affected by the 3-week local lockdowns last November/December in west central Scotland, and for stores in shopping centres which had to remain closed for a further two weeks in July 2020. We estimate Scottish stores have missed out on £4.5 billion of retail sales since the onset of the pandemic. Against this backdrop, with parts of the sector facing an uncertain future, a glut of other challenges facing the industry (e.g. deposit return scheme, new packaging rules, coming rules on retailing of fireworks, and new curbs on selling HFSS products expected), and the economic legacy of Covid set to last for several years, it is startling that a fresh legislative ban on trading is even being countenanced.

12. With the protagonists behind the original Petition calling elsewhere in the UK for a ban on trading on Boxing Day<sup>5</sup> and for curbs on trading hours on Christmas Eve and on Hogmanay<sup>6</sup>, a ban on Ne'er Day could be the thin end of the wedge.
13. We are at a loss to understand why shops are being singled out, treated differently and at risk of being shackled with a legislative ban, and not other customer-facing parts of the economy (e.g. pubs, restaurants, hotels, takeaways, cinemas), public services or indeed the whole economy. The reality is service businesses have to trade at times where other workers in the economy are able to take time off - by definition, that is the time where customers can commit to shopping and leisure activities.

**Q2: What is your assessment of the economic and/or social impacts of enacting such legislation?**

14. In contrast to the petitioner's perspective, our members tell us New Year's Day is an important trading opportunity – especially in city centres and tourist destinations like Edinburgh.
15. Implementing a 280 sq feet maximum threshold or cap on the size of stores permitted to trade will mean a great many retail premises in Scotland will be barred from opening to customers on New Year's Day, or at least those who employ the vast majority of retail staff.
16. An open and available retail offering provides a complementary option to the wider Hogmanay and winter/festive celebrations that have increasingly been promoted by Government, local authorities, and tourist organisations over recent years to promote Scotland as a visitor destination at that time of year.
17. Public holidays are often a popular day for shopping, and retailers look to those holiday events as an opportunity to increase sales. The combination of two public holiday days back to back at the start of the month of January is

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<sup>5</sup> The previous Business Minister called for retailers to consider closing on Boxing Day – Scottish Parliament Official Report, 17 December 2020

<sup>6</sup> Usdaw press release: <https://www.usdaw.org.uk/About-Us/News/2021/Mar/Northern-Irish-trade-unionists-back-Usdaws-call-fo>

therefore an important retail event, historically heralding the commencement of the January sales and an opportunity to clear unsold festive stock.

18. For grocery retailers, many of whom tend to close early for Hogmanay, they often provide an essential service for those who may need items on New Year's Day (e.g. food, pharmacy) - perhaps because they work unsociable hours (e.g. in emergency services or as taxi drivers etc), perhaps because they need access to basic clothing or other provisions during emergency safeguarding procedures<sup>7</sup>, or just need their groceries or their daily newspaper or lottery ticket. Closing larger format stores could also be seen as regressive, as those stores are often best able to offer the most competitive prices, and government may wish to consider the implications of this.
19. Retail sales, especially in city centres, have struggled of late, with Scottish stores missing out on £4.5 billion of retail sales since the onset of the pandemic. It will take time for the sector to recover, to repay the various Covid loan schemes, and to pay down the rent arrears and other debts incurred whilst trading has been halted or curbed during the pandemic. Restricting trade further by banning trading on New Year's Day is incredibly unhelpful at a time when some retailers are frankly struggling for survival and when we hope to see a retail recovery over the next couple of years. One member for example opened some stores for the first time on New Year's Day at the start of this year, precisely because of the economic situation.
20. We know of a retailer in Scotland who traditionally hosts a customer focused dinner on Hogmanay in their restaurant to welcome in the New Year. They have questioned whether they would be permitted to do that or have to shut prior to the bells at midnight, should a legislative ban come in to force.
21. If the legislative ban on New Year's trading was implemented and the same exemptions applied<sup>8</sup> as they do for Christmas Day, it would appear that pharmacies which open primarily for the dispensing of medicines and prescriptions may be prevented from selling non-prescription items in store, e.g. even a bottle of water to wash down tablets. This adds a fresh layer of operational complexity.
22. Retail workers have done a marvellous job during the pandemic. However, if working on New Year's Day is something some retail workers should not be permitted to do, we struggle to understand the rationale which allows other businesses to continue to trade. For a start, we do not understand the justification for closing some shops but not others – and the protagonists behind the petition which has led to this consultation have not provided an explanation as to why retail workers in large stores are uniquely likely to face compulsion to work. Logic alone would indicate if a store has lots of workers it is easier to find volunteers than if a store has few workers.

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<sup>7</sup> See: <https://www.basw.co.uk/media/news/2020/oct/basw-cymru-urge-wales-first-minister-change-guidance-shopping-essential-items>

<sup>8</sup> Page 3 of consultation document

23. If the Government believes some retail workers should be prevented from working on New Year's Day, then presumably they will take steps to seek to apply that principle to all workers in the economy. We do not understand why it is unreasonable to ask someone to work in a shop on New Year's Day, for a shift trade unions believe is quiet, but it is reasonable to ask someone to work in a bar on Hogmanay and on New Year's Day, or in a hotel, a B&B, or a restaurant, or a visitor attraction, cinema or museum, or indeed in public services. We do not understand why it is fair to legislatively compel a shop or garden centre to close but keep a golf course or public house or nightclub open.
24. Whilst some who work in the industry may not wish to work on New Year's Day, conversely some do look for the opportunity. The Business Resilience Impact Assessment accompanying the consultation paper makes clear that the majority of frontline retail workers are part-time, and a high proportion are young, in both cases roughly twice the rate applying across the economy as a whole. The chance to earn more or higher rates of pay (e.g. time-and-a-half or double-time), or for seasonal workers the extra hours, can make working at New Year desirable for some, especially those in a younger demographic. Others welcome the opportunity to work, in order to meet colleagues and customers and minimise loneliness at that time of year. We understand from our members that demand from store colleagues often outstrips the available hours on New Year's Day. Imposing a ban on trading on that day would deny those workers the ability to take advantage of those incentives, and deny them the opportunity to take their annual leave when they choose to rather than when government deems it appropriate.
25. We note that closing stores to customers does not actually ensure there will be no one working in stores on New Year's Day, as non-customer facing work could continue. The nature of retail is that shop floor work is only a proportion of activity. Some workers may still be needed for replenishing shelves for next day's trading, accepting deliveries, preparing for January sales, or fulfilling online orders - which is increasingly done in store and not just at depots. Therefore, retailers will be accruing running costs that day without the ability to off-set that with revenue generating sales from the store.

**Q3: Can you foresee this legislation impacting on those with a protective characteristic? If so, in what way?**

26. Retailers have diverse workforces. As outlined above, banning shops from opening to customers on New Year's Day would reduce options for customers with protective characteristics, as well as deny the ability of staff with protective characteristics to earn extra money, meet colleagues, or take their holidays when they choose rather than by legislative fiat.

**Q4: Are there any particular regional or geographic consequences that should be considered that would have a bearing on enacting this legislation?**

27. The consultation paper notes the thousands of jobs in the supply chain across Scotland that retail supports, and a prohibition on trading could impact on indigenous producers and suppliers.

**Other comments**

28. If Ministers are minded to press ahead with prohibiting shops from opening to customers on New Year's Day then presumably sufficient notice would be given to retailers, their staff and suppliers.

***Scottish Retail Consortium  
July 2021***

## **REFORM SCOTLAND - RESPONSE TO THE SCOTTISH GOVERNMENT'S CONSULTATION ON CLOSING LARGE RETAILERS ON NEW YEAR'S DAY**

Reform Scotland is pleased to have the opportunity to respond to the Scottish Government's consultation.

No response to any discussion about retail in Scotland can ignore the current pandemic. Although the consultation document makes it clear that the Scottish Government chose to delay this consultation due to the pandemic and its impact on retail, it is clear that retail in Scotland is continuing to struggle. Restrictions remain in place. The virus is still here. There are reports of some shops having to close because of staff having to isolate. The First Minister has continued to warn that the pandemic is not over.

The Scottish Retail Consortium has estimated that shops in Scotland have lost out on £4.5 billion of sales since the start of the pandemic.

Prior to the pandemic retail in Scotland was already struggling, especially with the increase competition from online options. Many chains that were once a stable feature of shopping areas, such as Debenhams and Gap, have closed their doors permanently.

Therefore, we believe that this is not the time to restrict the industry, but to work with it and support it.

Reform Scotland also believes that there is an inconsistency in targeting retail to close when other non-essential public-facing businesses such as cinemas or pubs can remain open. And of course, online shopping will remain.

Furlough is due to finish at the end of September, and although the number of people remaining on the scheme is declining it is clear that many of those are from tourism industries. New Year is a time of year when Scotland particularly tries to attract visitors. It would seem strange to encourage people to come and spend time here, but deny them the ability to spend money in shops during part of that stay.

# NEW YEAR'S DAY TRADING FOR LARGE RETAILERS: CONSULTATION RESPONSE FROM THE SCOTTISH GROCERS' FEDERATION

## Introduction

The Scottish Grocers' Federation ([SGF](#)) is a trade association for the Scottish Convenience store sector. There are 5,000 (approx.) convenience stores in Scotland, which includes all the major symbol groups, co-ops and convenience multiples in Scotland.

SGF promotes responsible community retailing and works with key stakeholders to encourage a greater understanding of the contribution convenience retailers make to Scotland's communities. In total, convenience stores provide around 47,000 jobs in Scotland.

Convenience stores trade across all locations in Scotland, providing a core grocery offer and expanding range of services in response to changing consumer demands close to where people live. The valued services provided by local shops include mobile phone top-up (83%), bill payment services (73%), cashback (66%), and branches of the Post Office network (25%)<sup>9</sup>.

Over the last year, the UK convenience sector contributed over £10.1bn in GVA and over £8.9bn in taxes<sup>10</sup>. The sector is more relevant than ever to every type of customer and has key social benefits and is of key economic value to the economy.

Modern convenience stores are community assets and now more than ever – given the unique circumstances and challenges presented by the Covid-19 pandemic - have an increasingly important role in their local communities.

## Questions

SGF are responding to the four questions below as outlined by the Minister for Public Finance, Planning and Community Wealth in his letter of 17th August 2021:

### **• Do you support the introduction of legislation that will close large retailers to customers on New Year's Day?**

SGF do not support any move to close large retailers to customers on New Year's Day. The uniformity and consistency of approach currently provided by the status quo whereby both small and large retailers may remain open is in our view the best option.

While the majority of convenience stores in Scotland would not have a floor space of 280 m<sup>2</sup> or more there would be still be an impact on the sector as for example

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<sup>9</sup> [The Scottish Local Shop Report 2020 | Scottish Grocers' Federation \(SGF\) \(sgfscot.co.uk\)](#)

<sup>10</sup> [The Scottish Local Shop Report 2020 | Scottish Grocers' Federation \(SGF\) \(sgfscot.co.uk\)](#)

convenience multiples and symbol groups would have stores which would fall both within and outside the proposed criteria.

This would create dual working arrangements within the same convenience retail business as larger stores would be required to close with staff therefore having the day off while smaller stores would remain open, and staff would be required to come in to work. This does not pass the 'feels right' test.

**• What is your assessment of the economic and/or social impacts of enacting such legislation?**

The **economic impact** on convenience retailers would be significant as those deemed as large retailers would be required to close and so lose out a full day's trading and income from customers. This would also leave retailers with the problem as to how pick up on these lost sales while at the same time still having to meet the same staff costs, business rates and utilities costs.

The focus should go back to customer choice and if there is customer demand and if people are willing to work on that day the current arrangements should remain. Also, why separate one industry when people can still go the pub or a restaurant etc.

Essentially, this move would be taking income away from retailers after 1 in 4 of convenience stores have been badly affected through Covid-19 and indeed general retail has also been decimated. If everything in bricks and mortar is closed above a certain size it is driving people into on-line trading.

If the Scottish government are seeking to re-institute business rates from the end March 2022 but at the same time are legislating for retailers to close on designated days, then retailers will expect not have to have to pay full year business rates.

The proposed approach to close large retailers on New Year's Day may also raise concerns for convenience retailers as to whether a move is subsequently made over time to close retailers on other days such the Easter holidays and Bank Holidays etc.

There would also be a **social impact** as is acknowledged in the BRIA where it states that *"Depending on the location, the closing of large stores on New Year's Day where there is no alternative small store nearby could result in restrictions in accessing essential goods on that day."* This is applicable in our view not just to island communities which is the context of the above quote but in other rural areas too.

There is also an indirect social impact in that some retail workers may appreciate having the opportunity to be offered extra hours by working a shift on New Year's Day and the commensurate benefits this may bring to their family or other social circumstances.

**• Can you foresee this legislation impacting on those with a protective characteristic? If so, in what way?**

We would highlight that in the Scottish convenience sector 66% of employees are women while in terms of the age range of employees, 26% are aged between 16-24 years old<sup>11</sup>. Given this any changes made to New Year's Day trading would have a specific impact on them.

**• Are there any particular regional or geographic consequences that should be considered that would have a bearing on enacting this legislation?**

As alluded to above large stores situated in both island and rural communities could be impacted if they are the only stores in the locality and the next store is potentially not within easy reach. Our Scottish Local Shop Report 2020 indicates that 37% of convenience stores are an isolated store where no other retail/ service businesses are close by<sup>12</sup> and 20% of customers have to travel more than 1 mile to their nearest store.

During Covid-19 city centre convenience stores have been disproportionately impacted by the Covid-19 restrictions and lockdowns because they are primarily reliant on commuters and so have seen office workers, hospitality and retail clientele staying away resulting in a major drop in trade and footfall thereby impacting on their future viability. Likewise, stores located in rural areas have had their own specific challenges to deal with. Many local stores in the highlands and islands are reliant on tourism and have seen a major decline in such footfall and associated spend due to the pandemic and the uncertainty caused by lockdown restrictions. On top of this they are still having to contend with uneasy supply issues and associated increased costs.

Given the unique circumstances as outlined above, convenience retailers who have stores located in city centres and rural areas are struggling to remain viable and asking them to close on New Year's Day would simply exacerbate the challenges they are facing.

SGF – August 2021

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<sup>11</sup> [The Scottish Local Shop Report 2020 | Scottish Grocers' Federation \(SGF\) \(sgfscot.co.uk\)](https://www.scot.nhs.uk/scotnhs/sgfscot.co.uk)

<sup>12</sup> [The Scottish Local Shop Report 2020 | Scottish Grocers' Federation \(SGF\) \(sgfscot.co.uk\)](https://www.scot.nhs.uk/scotnhs/sgfscot.co.uk)

## **SOUTH AYRSHIRE COUNCIL**

- 1. Do you support the introduction of legislation that will close large retailers to customers on New Year's Day?**

Yes, I support the closure of large retailers on 1<sup>st</sup> January.

- 2. What is your assessment of the economic and/or social impacts of enacting such legislation?**

This will ensure that staff get a day off to be with their families. It will also help scale back the amount of clothing bought (there are currently more clothes on the planet than the accumulation of clothes throughout history.) which should help (even in a very modest sense) with climate change.

- 3. Can you foresee this legislation impacting on those with a protective characteristic? If so, in what way?**

This may affect staff who may not be paid for this day.

- 4. Are there any particular regional or geographic consequences that should be considered that would have a bearing on enacting this legislation?**

I cannot think of a geographic reason for this to have an adverse impact.

## **FIFE COUNCIL – NEW YEAR’S DAY TRADING CONSULTATION**

Thank you for the opportunity to respond to the Scottish Government consultation on New Year’s Day trading for large retail businesses, as set out in the provisions of the Christmas Day and New Year’s Day Trading (Scotland) Act 2007.

Fife Council welcomes the need to balance the economic benefits of trading in such businesses with the rights of shop workers to a period of rest after a traditionally busy time for the retail sector.

The Council’s responses to the consultation questions are set out below:

### **1. Do you support the introduction of legislation that will close large retailers to customers on New Year’s Day?**

The COVID-19 pandemic has seen major changes to the retail landscape, with businesses closed for extended periods and unable to trade. During this period, an attendant exponential increase in online retail has altered patterns of consumer behaviour. Retailers who did not have a substantive online offer have introduced new delivery and click and collect services, and there has been a focus on ‘spend local’ promotion, including the introduction of the Scotland Loves Local campaign.

In this context, legislation relating to the closure of larger physical retail spaces could be considered alongside any restrictions on online retail deliveries on New Year’s Day.

The petition lodged by USDAW notes the importance of New Year/Hogmanay as a Scottish holiday, and that it follows a traditionally busy period in the run up to Christmas. Patterns of consumer behaviour have also changed with the post-Christmas Boxing Day/New Year’s sales being offset by discounting periods earlier in the year such as Black Friday. This appears to be borne out in the figures reported by USDAW of shops being quiet or very quiet in respect of New Year’s day footfall in previous years.

Fife Council is committed to Fair Work, is a signatory to the UNITE Fair Work Charter for hospitality, and through the Fife Business Charter to ensuring that employees in all of Fife’s business sectors have good terms and conditions.

In relation to the categories of large retail businesses which can remain open on New Year’s Day, consideration should be given to expansion of the list to those retail sectors which were deemed essential under Coronavirus legislation, for example homeware and motor repair.

On balance, and in consideration of the above, Fife Council would support the introduction of legislation that will close large retailers on New Year’s Day.

### **What is your assessment of the economic and/or social impacts of enacting such legislation?**

The retail trade in Fife accounts for 12,300 (8.9%) of all employment in Fife as of July 2021. Whilst this is a smaller proportion than the Scottish average, it represents the third largest employment sector in the Kingdom.

As noted above, the patterns of retail sales and consumption have changed significantly, and the Coronavirus pandemic has exacerbated the decline in large retailers in town centres.

Whilst the intent of the policy, as noted in the business resilience impact assessment, is to permit staff to have an additional rest day when stores are quieter, it is recognised that larger stores do still have a role in driving footfall in town centres. There may therefore be some impact on smaller retailers who, whilst permitted to open, will not benefit from passing footfall.

The business resilience impact assessment notes that consumers can still obtain goods online, this may to some extent displace the intent of the closure approach to other workers in Fife, such as delivery drivers and warehouse staff.

The USDAW assessment notes the limited availability of public transport on New Year's Day, requiring those who need to access work to use their own transportation. The closure proposal would mean that this additional cost would not be required.

**Can you foresee this legislation impacting on those with a protected characteristic?**

There may be some limited impacts through physical shop closures for age characteristics, disabilities and those of religions/cultures where 1<sup>st</sup> January is not aligned to the start of the New Year.

**Are there any regional or geographical consequences that should be considered that would have a bearing on enacting the legislation?**

There are no major consequences envisaged within Fife if this legislation is enacted Scotland-wide. For the wider Edinburgh and South East Scotland city region, there are likely to be impacts arising from, firstly, the high number of visitors attending for Hogmanay celebrations and attendant drop in spend if larger retailers are not open on 1st January, and secondly, any displacement through travel from South East Scotland to English retail destinations, albeit this is likely to be at a small scale.

## **NORTH LANARKSHIRE COUNCIL**

### **Do you support the introduction of legislation that will close large retailers to customers on New Year's Day?**

- We do not support the introduction of this legislation at this time.

### **What is your assessment of the economic and/or social impacts of enacting such legislation?**

- Whilst it is recognised that there could be negative impacts on staff who either do not wish to work on Year's Day or who do not receive an incentive where they are required to work on New Year's Day, on balance we think the overall economic and social impact would be negative.
- There could be a detrimental economic impact on retailers who wish to be open and it therefore should be for individual businesses to determine whether they remain open or closed.
- In addition, implementation of such legislation in January 2022, in a period where the economy is still in recovery and particularly for the retail sector which has been severely impacted could have negative economic impacts. Economic recovery should continue to a primary focus and not legislation that could potentially impact it however slight this may be.
- Should the Scottish Government be minded to enact such legislation, any final decision should not be considered until well into 2022 (or even beyond) so as to allow the retail sector to recover as far as possible following the impacts of the restrictions and closures the sector has faced during the pandemic.

### **Can you foresee this legislation impacting on those with a protective characteristic? If so, in what way?**

- Yes, for some socially isolated individuals and/or communities having retail open could have a positive impact.
- There could also be implications for individuals who require access to particular services or services within some retailers (e.g. pharmacies).

### **Are there any particular regional or geographic consequences that should be considered that would have a bearing on enacting this legislation?**

- There are implications on how such a requirement would be enforced and for reliable data as to which retailers it would apply to in terms on floorspace.
- If local authorities were required to enforce this legislation this would have significant resource implications.
- It is unclear what the implications for businesses who are found to be knowingly or unknowingly in breach of the legislation.

## **CONSULTATION RESPONSE - CITY OF EDINBURGH COUNCIL (CEC)**

### **1. Do you support the introduction of legislation that will close large retailers to customers on New Year's Day?**

CEC can see how introducing such legislation could have many benefits as well as downsides and will support any decision made by Parliament.

CEC echoes trade union requests that employee working conditions be enhanced if large stores remain open but that closing larger retailers for New Year's Day would best protect conditions.

We do ask that consideration is given as to how the legislation will be enforced given that local authorities are not under a statutory duty to enforce the Act. CEC would also note the costs associated with this as pressure is already high on Local Authorities' Regulatory services, which have been reduced in scale since the original legislation was introduced.

### **2. What is your assessment of the economic and/or social impacts of enacting such legislation?**

In general, large retailers are often located in either the city centre or retail parks. Whilst a large retailer closure may bring some benefit to smaller retailers, especially in local areas, in that there is less competition from large retailers, there may also be a (perceived) increased pressure for smaller retailers to keep open in order to provide a service to their local communities. A closure of large retailers could in turn also impact on other city centre/retail park businesses, who are not required to close (especially bars and cafes), as retail shops often draw people into these areas. They may consequentially well decide not to trade on New Year's Day either, which would enable more people to have time off work, (but potentially with less things to do on their day off).

Over the last few years, and certainly following the Covid-19 pandemic, we have seen a significant move towards 'clicks before bricks' in retail and more shopping online which would require packing and shipping support. While this often takes place in warehouses, some retailers fulfil online orders from the shop floor, activities that could presumably continue to take place. This would mean that closing an actual physical site for one day doesn't necessarily support all employees of that retailer or impose better working conditions.

In terms of social impact, there is no doubt that retail workers have been impacted incredibly hard over the last 18 months and that there is a large amount of stress for anyone in the sector in December. Retail workers should be entitled to quality time off, just like any worker in other sectors. It is worth highlighting that the representative voices of workers who would be affected, their trade union USDAW and the STUC, are clear that the Scottish Government using their powers and closing large shops on New Year's Day would be beneficial for retail workers. This is based on evidence provided to them directly by their members including a headline figure of 99% of workers agreeing that large stores should close.

**3. Can you foresee this legislation impacting on those with a protective characteristic? If so, in what way?**

Our understanding, based on ONS statistics, is that hourly rates for sales and retail assistants and cashiers and check out workers are around 30% lower than UK average and that between two-thirds and three-quarters of sales and retail assistants and cashiers and checkout workers in the workforce are female. This indicates that such a policy could disproportionately impact low wage workers and women.

Anecdotally, we have found that large retail employers generally have well developed policies in place and rota systems to accommodate most working patterns, which often suit many of the more vulnerable groups. These also tend to be the ones who do pay a higher rate on Bank Holidays. Working towards ensuring fair (especially enhanced on Bank Holidays) pay and giving those with protected characteristics more work pattern flexibility would possibly make a bigger impact than a blanket one-day closure.

In terms of customer access, this may be negatively impacted if only small retailers are allowed to remain open as space to move inside the shops may be more restricted. Additionally, Edinburgh has a large proportion of over 65's that live away from local high streets - people in this age group tend to live in more suburban areas – which could imply that closure of large retailers might impact on this older age groups, who will be more dependent on larger retailers located out of town.

**4. Are there any particular regional or geographic consequences that should be considered that would have a bearing on enacting this legislation?**

The 'New Year's Day Sales' culture is very strong in Scotland and historically it has been a way for businesses to stimulate spend and make up for losses later on in the tough sales month of January. In addition, Edinburgh as a city is well known for the Hogmanay celebrations which attract an audience of thousands of people from all around the world, often seeing the New Year's Day shopping as part of their Edinburgh experience.

## **THE FORGE SHOPPING CENTRE**

I support the introduction of legislation to control New Years day trading.

I manage The Forge Shopping Centre and we close on both Christmas day and New Years Day and in my opinion, all of retail should do the same.

The financial benefits for retailers are negligible but the benefit for staff and their families is huge. While most of the country enjoy a well earned break, the same cannot be said of retail employees.

Previously there was no trading on this day and I still don't see a financial or social need for this. The public prepare for stores being closed over the holiday period.

I believe the benefit for store staff to be able to spend time with their families outways [SIC] any financial benefit.

## **ACS SUBMISSION: NEW YEAR'S DAY TRADING FOR LARGE RETAILERS**

ACS (the Association of Convenience Stores) represents over 5,000 convenience stores across Scotland including Scotmid Co-op, One Stop, BP and thousands of independent retailers, many of which trade under brands such as Spar, Costcutter and Londis.

### **Q1) What type of large store do you operate?**

Most retail stores represented by ACS and SGF are under the 280 m<sup>2</sup> trading floor space definition used by the Christmas and New Year's Day (Trading) (Scotland) Act 2007. The opening hours of convenience stores are therefore unaffected by the Act, which has no direct impact on the sector.

### **Q2) Is your store usually open on New Year's Day?**

Convenience retailers may amend New Year's Day opening hours based on local customer demands. The average convenience store is open for 13.7 hours Monday – Saturday and 11.8 hours on Sundays, with 8% closed on Sundays and 3% open 24 hours<sup>13</sup>. The convenience retail business model is predominantly based on providing a readily accessible grocery offer and range of services close to where people live and work.

### **Q3) How does your workplace determine who works on New Year's Day?**

Most convenience retailers exercise minimum notice periods for shifts of two weeks, with some adopting four-week policies. These minimum notice periods are led by assumed trading patterns, scheduled deliveries and local knowledge to inform rota management processes. Retailers recognise that colleagues benefit from a settled shift pattern and maximum notice of upcoming shifts, allowing them to organise their external commitments. Retailers often also seek to identify colleagues who would like to work additional hours and offer them shifts when some colleagues would rather not work. These individuals are typically temporary workers who are more flexible, for example students.

These dynamics around working hours extend to New Year's Day. Three-quarters (75%) of retailers plan shifts to accommodate colleague needs<sup>14</sup>. Convenience retailers struggle to compete on headline pay rates with larger grocery retailers so are increasingly seeking to differentiate themselves via adopting working hour procedures such as the above which positively impact wellbeing.

### **Q4) Do employees in your organisation receive any of the following enhancements for working on New Year's Day?**

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<sup>13</sup> [The Scottish Local Shop Report 2020 | Scottish Grocers' Federation \(SGF\)](https://www.scot.nhs.uk/scotpress/press-releases/2020/12/20201214-scottish-local-shop-report-2020/)  
([sgfscot.co.uk](http://sgfscot.co.uk))

<sup>14</sup> ACS National Living Wage Survey 2021

Premium pay for working on New Year's Day will be offered by some retailers. Premium pay has generally declined in recent years as retailers seek to mitigate above-inflation increases in employment and other key business costs.

**Q5) If your store is closed to customers on New Year's Day, are employees needed to attend work for other activities, such as receiving deliveries, replenishing shelves, fulfilling online orders?**

No.

**Q6) Would closing large retail stores on New Year's Day have an impact on any of the following: • Your customer's ability to access essential goods not available locally • Your suppliers • Other businesses co-located in or adjacent to your store • Residents in your local community**

The month after Christmas Day is typically a quiet trading period for convenience retailers. Customers tend to shop for groceries less at this time of year as they use up large quantities of ambient and frozen produce purchased in the lead up to Christmas.

Consumers would still be able to access groceries on New Year's Day via convenience stores, including in relatively isolated communities. The ACS/SGF Scottish Local Shop Report finds that the average Westminster parliamentary constituency in Scotland has 87 convenience stores, one shop per 1,082 people<sup>15</sup>. Constituencies with the fewest convenience stores are not necessarily more rural and vice versa (see table below). Only 20% of Scottish customers travel more than one-mile to visit their local shop<sup>16</sup>.

Most Convenience Stores			Least Convenience Stores		
Rank	Constituency	Stores	Rank	Constituency	Stores
1)	Argyll and Bute	159	1)	East Kilbride, Strathaven and Lesmahagow	52
2)	Ayr, Carrick and Cumnock	131	2)	Edinburgh South	52
3)	Caithness, Sutherland and Easter Ross	121	3)	East Dunbartonshire	53
4)	Dumfries and Galloway	120	4)	East Renfrewshire	55
5)	Ross, Skye and Lochaber	117	5)	Edinburgh West	55
6)	Linlithgow and East Falkirk	116	6)	Edinburgh South West	61

<sup>15</sup> [The Scottish Local Shop Report 2020 | Scottish Grocers' Federation \(SGF\) \(sgfscot.co.uk\)](https://www.scot.nhs.uk/scotpress/2020/01/16/scottish-local-shop-report-2020/)

<sup>16</sup> [The Scottish Local Shop Report 2020 | Scottish Grocers' Federation \(SGF\) \(sgfscot.co.uk\)](https://www.scot.nhs.uk/scotpress/2020/01/16/scottish-local-shop-report-2020/)

**Q7) Do you think closing large stores on New Year's Day would have an impact on your overall profitability?**

Closing large retail stores on New Year's Day would inevitably contribute towards some level of spillover in terms of sales towards convenience stores. This spillover would not significantly impact the grocery industry or market shares. It is highly unlikely consumers would travel to larger stores in England due to supermarket closures in Scotland on New Year's Day.

Evidence on the impact of trading hours on profitability for supermarkets is mixed. UK-wide supermarket operators cannot reach consensus on the commercial impact of limited Sunday trading hours in England and Wales, due to the additional operating costs associated with longer trading hours and marginal gains in terms of sales as opening hours do not affect spending power.

**Closing Q) It is currently the law that large stores close on Christmas Day. Do you think the law should change so that they close on New Year's Day too?**

Convenience may get some small benefit from closing large retail stores on New Year's Day. We recognise this could lead to some transfer of sales towards convenience stores but would highlight that New Year's Day is a quiet trading day for grocery retail.

Proceeding with closing larger stores on New Year's Day would not negatively affect consumers. Convenience stores would remain open if viable, while home delivery services would be unaffected by closing large stores.

## **SCOTTISH GOVERNMENT CONSULTATION ON NEW YEAR'S DAY TRADING FOR LARGE RETAILERS - ASDA RESPONSE, AUGUST 2021**

### **Introduction**

Asda is Scotland's second largest supermarket, serving around 1.9 million customers every week, from the Borders to the Highlands. With 61 Scottish stores and two depots, we are committed to Scotland and to up-skilling our colleagues, developing our Scottish supply chain, investing in communities and getting more people into employment and training. At a time of unprecedented competition in the sector, including from online-only retailers, and significant pressures on our supply chain, we are working hard to keep inflation down and ensure our customers continue to benefit from our low prices.

We have always been proud to play an active role in the communities we serve, but the onset of the covid-19 pandemic brought that role into the spotlight more than ever before. Alongside other essential retailers, we've been at the frontline of feeding the nation, operating our stores and home delivery services in the most challenging of circumstances. Throughout this time, our priority has been keeping our customers and colleagues safe. We've enabled vulnerable colleagues to stay at home on full pay while recruiting 23,000 temporary team members, supporting local economies. We have worked shoulder to shoulder with our suppliers to give them the certainty they've needed – with clear communication and faster payment terms. Within our communities, we've pulled together to support vulnerable customers in accessing essential groceries, including delivering rapid growth in our grocery home shopping service to meet the requirements of government shielding programmes. We have worked closely with our charity partners the Trussell Trust and FareShare to set up e-referral systems for food banks to ensure that surplus food was redistributed to those most in need.

We know that the success of our business depends on our colleagues, and we engage closely with our colleagues, our national colleague representatives and the GMB union to ensure their interests are represented at the heart of our business.

We offer all our colleagues extensive training and development opportunities, including a fully accredited apprenticeship programme with Babcock International. We provide a generous pay rate – above the statutory minimum – and a competitive package of benefits, including an annual bonus and colleague discount. We pay all our colleagues and apprentices at the same rate, regardless of their age, and we do not offer zero hours contracts. Festive bank holidays, including 1st January, are entirely voluntary and are paid at double time.

We do not believe that there is widespread colleague or customer demand for our stores to be closed on New Year's Day.

We endorse the Scottish Retail Consortium's response to this consultation.

## Consultation questions

### **1. It is currently the law that large stores close on Christmas Day. Do you think the law should change so that they close on New Year's Day too?**

No. Where there are colleagues willing to work and customers wanting to shop, it should be for retailers – not government – to decide whether we choose to open our stores on New Year's Day. The very nature of the service industry means we seek to trade at times when customers want to use us, and this includes bank holidays when other workers are more likely to be off work.

The rationale for such a move is unclear: we do not understand why large supermarkets are being singled-out for such a ban, and not any other customer-facing side of the economy. The Scottish Government has not explained the logic behind seeking to legislate to enforce a day off for some workers in large, bricks-and-mortar retailers, but not workers in large online retailers, workers in small and medium sized retailers, nor any worker in the hospitality or service industry.

### **Colleague impact**

Crucially, we do not believe there is widespread colleague support for this proposal. Working on festive bank holidays, including 1st January, is entirely voluntary for Asda colleagues and these shifts are paid at double time, nearly £19 per hour. New Year's Day is a very attractive shift for our colleagues, and demand for these shifts is high. No colleague is required to work on New Year's Day unless they explicitly choose to.

Household finances are often under pressure at the start of the year following the festive period, and to have this extra pay in January's pay packet can make a big difference. Imposing a ban on trading on New Year's Day would deny our colleagues the ability to take advantage of a substantial pay incentive, and we believe that many colleagues would be extremely disappointed to be prevented by the Scottish Government from working at this enhanced wage.

New Year's Day shifts are particularly popular amongst students and colleagues who do not celebrate Hogmanay for cultural or religious reasons. Many colleagues tell us that they enjoy the social aspect of working on this day during the long festive period, which can be isolating and lonely for some people. For colleagues with childcare responsibilities, many enjoy the chance to work a double-time shift on a day when their partner is likely to be off work to take care of the children.

Of course, forcing our shops to close will not mean that no Asda colleague has to work on New Year's Day. Our depots and our back of store operations will continue to operate to ensure we are ready to open on 2nd January, so these highly paid shifts will be available for some roles but not others, causing an unwelcome disparity between colleagues.

We question the rationale behind forcing large stores with a large workforce to close but allowing smaller stores to remain open, when smaller stores will have fewer

colleagues and therefore are more likely to require colleagues to work on New Year's Day against their wishes.

## **Customer impact**

We do not believe there is widespread customer support for this proposal. Sales in our Scottish stores on New Year's Day prove that there is significant customer demand. The majority of the sales on New Year's Day are food and drink rather than clothes or general merchandise, suggesting that most customers are not shopping for non-essential items.

Our customer insight <sup>17</sup>shows that over half of Scottish shoppers would shop for groceries on New Year's Day, with younger consumers in particular more open to shopping on this day: 76% of 18-34 year olds would shop for groceries on 1 st January. Large supermarkets are the most common types of stores consumers would think of going to on New Year's Day, with shoppers citing convenience, product range and low prices as the key benefits of large supermarkets.

As with our colleagues, many of our customers do not celebrate Hogmanay, for a wide variety of reasons including cultural and religious preferences, and do not want the Scottish Government to restrict how they spend their time. For the many people in the Scottish economy who work on New Year's Day, including NHS staff, care workers and those in the tourism and hospitality industries, a ban on large stores opening would be inconvenient.

For those customers who do celebrate a traditional Hogmanay, the ability to buy food and drink for unexpected guests was cited as a key reason for wanting to shop in large supermarkets on 1st January.

We also know that many of our shoppers, particularly older people and those without family connections, find a strong social benefit in shopping in our stores, particularly during festive periods which can be isolating and lonely. Social isolation has worsened during the pandemic and our stores have been a lifeline for many customers, some of whom may not speak to another person all day.

Our accessible locations, wide product range and low prices mean than supermarkets and our in-store pharmacies provide a crucial service for those who may need emergency items on New Year's Day, including medicines and other essential items. Store closures in Wales during the pandemic highlighted the importance of large retailers to people providing safeguarding services, as a place to buy basic clothing and emergency supplies for looked after children and young people taken into care at short notice, or women and their children fleeing domestic abuse<sup>18</sup>. We note that, unfortunately, these types of services are often in high demand over the festive period.

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<sup>17</sup> 797 Scottish grocery shoppers surveyed by Research Bods 09/08/21 – 15/08/21

<sup>18</sup> [BASW Cymru urge Wales First Minister to change the guidance on shopping for essential items | www.basw.co.uk](https://www.basw.co.uk)

The proposed trading ban would also limit choice and competition for Scottish shoppers, and disadvantage customers on low incomes by restricting customers to small-format stores which often charge higher prices than large supermarkets. We believe that customers in Scotland should be able to enjoy the same flexible access to low supermarket prices as our customers in the rest of the UK.

We would be happy to share the results of our customer insight.

## **2. Is there anything else you would wish to comment about this consultation?**

This move would worsen the already severe competitive disadvantage that bricks-and-mortar retailers face with our online competitors, and runs contrary to the Scottish Government's stated ambition to revitalise our high streets and town centres. Unlike online-only retailers, supermarkets make an enormous contribution to our local communities through local rates and regeneration investment, including raising funds for local good causes, and this proposal would exacerbate the tax-to-turnover disparity between large retailers and our online competitors that governments have otherwise been seeking to address.

Supermarkets were at the centre of the response to the pandemic, investing heavily to ensure our stores are safe environments to shop and work and to meet the enormous demand for online shopping, including from clinically extremely vulnerable customers on the Scottish Government's shielding programme. At Asda we voluntarily waived the £340million in business rates relief we were entitled to receive, asking the UK and devolved governments to redirect the benefit towards those who needed it most. We continue to face a number of significant restrictions on our ability to trade, as well as costly new challenges from the Scottish Government including the planned Deposit Return Scheme and expected restrictions on the sale and marketing of HFSS products. A ban on New Year's Day trading for large retailers would be a further burden on responsible businesses and would seem to contradict the Scottish Government's key priority to support Scotland's economy as we all work to recover from the pandemic.

## **NEW YEAR'S DAY TRADING FOR LARGE RETAILERS – USDAW CONSULTATION RESPONSE**

Usdaw welcomes the opportunity to submit comments to the Scottish Government consultation on New Year's Day trading for large retailers.

Usdaw is the UK's fifth largest trade union with around 380,000 members, and more than 55,000 members in Scotland. Usdaw represents members in the retail sector, transport, distribution, food manufacturing, chemicals and other trades.

The majority of Usdaw members work in the retail sector, mainly working in large private companies with a mixed store footprint of 'large' and 'small' retail stores. Therefore, a large proportion of our members in Scotland would come under the scope of the legislation.

Usdaw has always called on retailers to close their doors on New Year's Day. The Christmas Day and New Year's Day Trading (Scotland) Act 2007 gives the Scottish Government the power to make an order by statutory instrument to close large shops on New Year's Day. Usdaw has called on the Scottish Government to apply the relevant section of the Act for the last 14 years, and welcomes the decision of the Government to consult on this matter.

In submitting this formal response, Usdaw is doing so on behalf of our Scottish members who have repeatedly and clearly reported to the Union that this is a priority issue for them. The Union has also encouraged our members to respond directly to the public consultation.

Usdaw, and our members working in retail, are strongly in favour of the implementation of legislation requiring large stores to close on New Year's Day, and will set out in this consultation response a strong case for this legislation to be enacted.

### **Do you support the introduction of legislation that will close large retailers to customers on New Year's Day?**

Yes. Usdaw fully supports the implementation of the existing legislation to require large retailers to close on New Year's Day.

New Year's Day in Scotland is a special day, but this is not reflected in the experience of many retail workers, who are often required to work on this day. Many of our members, and those working across the retail sector, enjoy the buzz and festive spirit in the run up to Christmas. However, as a result of working so hard, retail workers are exhausted by the time it comes to Christmas Day, and many are only able to take a day or two off. They deserve to have New Year's Day off, like the majority of other workers in Scotland.

The Covid-19 pandemic has helped society and our communities recognise and value all of the key workers that provide essential services to the public, and keep our society functioning. Retail workers have rightly been identified and hailed as key workers. Retail workers have, of course, always been key workers, and will continue to be after

the pandemic has passed. They deserve to have a decent break over the festive season, and it is within the power of the Scottish Government to make this possible.

The pandemic was given as one of the reasons why the Scottish Government did not consider it the appropriate time to review the current position on New Year's Day trading. Usdaw welcomes the fact that the Government moved from this position and launched this consultation. The pandemic has caused a huge shock across society, however this will not be a permanent state of affairs, and once we are past the crisis, we should not return to the negative experiences of the past.

In considering responses to this consultation, the Scottish Government should have regard to both the evidence presented to it and the mental and physical wellbeing of retail workers.

Ushaw surveyed 1,473 of our Scottish members on their experiences of working over New Year 2018/19, and the results were clear:

- 99% of members agree that stores in Scotland should close on New Year's Day
- 79% said that they are not happy to work on New Year's Day or 2 January
- 72% said that they or their colleagues come under pressure to work on New Year's Day or 2 January
- 48% of members said that working on New Year's Day was not voluntary in their store
- 39% received no premium pay for working on New Year's Day
- 76% said that working over New Year affected their ability to enjoy the holiday
- 74% said they spend too little time with their loved ones over New Year
- 47% were unable to spend time with family who live further away during the period
- 72% of members reported their store being fairly or very quiet on New Year's Day

Ushaw surveyed our members again in January 2021, receiving 570 responses, to assess whether there had been any change in the strength of their feeling. This was by no means a 'normal' festive period, however the results were incredibly consistent with the previous survey. Many retailers were forced to close on New Year's Day due to Covid restrictions. Of those whose store was closed due to the pandemic, 76% said that this improved their ability to enjoy this special day.

Ushaw is aware that retailers feel under competitive pressure to open on New Year's Day as other retailers may or will be operating. This competitive pressure is typically not in the long-term commercial interest of retailers as consumers are unlikely to shop on New Year's Day. Our survey showed that 72% of members reported their store being fairly or very quiet on New Year's Day.

Therefore, we believe banning all large stores from opening on New Year's Day is in the best interests of retail workers and retail employers.

## **What is your assessment of the economic and/or social impacts of enacting such legislation?**

### **Economic Impacts**

Usdaw believes that any economic impact of closing large stores on New Year's Day would be minimal, and would be far outweighed by the benefits to retail workers and society more generally.

The Business Resilience Impact Assessment (BRIA) that accompanies the consultation indicates that 95.9% of retail business are registered as 'small enterprises'. Furthermore, across Scotland, the vast majority of retail premises have a rateable value of below £51,000 – ranging from 85% to 99% of premises. Therefore the vast majority of retailers would be unaffected by the legislation. Small retailers would be able to continue to trade on New Year's Day and would likely benefit from the closure of large stores, as the small number of customers who do wish to shop on the day would be more likely to visit their store.

The Scottish Retail Consortium asserted in their petition submission of 5 November 2020 that New Year's Day is an important trading opportunity. However, 72% of our members reported that their store was fairly or very quiet on New Year's Day. Usdaw understands the tourist attraction of Hogmanay and New Year's celebrations here in Scotland, however, our data would suggest that this attraction is not specifically linked to the Retail Sector.

In terms of January sales, in recent years, these types of sales have moved forward in the calendar, typically starting either before Christmas or on Boxing Day. Very few, if any, retailers wait until New Year's Day to commence post-Christmas sales. Where the SRC makes mention of essential purchases on New Year's Day, these would continue to be covered by the convenience sector which is not in scope of the relevant Act.

The SRC also made the case that retail workers want to work on New Year's Day as a way to boost their income, either through working extra hours or through premium pay. Again, Usdaw's evidence directly from retail workers refutes this – 79% said they are not happy to work on New Year's Day and 99% said that stores should close. While closing on New Year's Day may limit the opportunity to work overtime on one day of the year, the evidence is clear that retail workers would prefer to have time with their friends and family. Furthermore, those already contracted to work on the day would not be financially impacted as the time off could be taken as paid annual leave.

The Scottish Government has previously raised concerns about the impact of Brexit on the retail sector as a reason not to require large stores to close on New Year's Day. Usdaw entirely disagrees with this. Whilst Brexit is likely to have significant effects on

the Scottish economy, it has always been made clear that working people should not pay the price of any negative impact of Brexit.

In citing Brexit, the Scottish Government refers to potential impacts on the availability and affordability of products in light of possible tariffs. The truth is that, with the global nature of trade, global tariffs could be introduced at any point in time. Following our full departure from the EU customs union, the potential for tariffs with EU trading partners will potentially be ever present. As such it is a fact of Brexit that the potential for trade tariffs will possibly become the new normal. Therefore, we need to learn to adapt to this new normal, being prepared to make the right decisions for the people of Scotland rather than looking to hold up any and all future legislative proposals.

Concerns have also been raised over the economic impact of Covid-19. However, we believe this is a temporary factor affecting the sector. Recent figures from the Scottish Retail Consortium's Retail Sales Monitor shows that are now only a touch below pre-pandemic levels. There is growing optimism across the sector that as foreign holidays, larger gatherings such as weddings and office based working gets back to normal, this will further improve economic performance across the sector. As such, Usdaw is hopeful that the economy will have moved on from the immediate economic impact of Covid-19 by the time any change to legislation comes into effect, which would be New Year's Day 2022 at the very earliest.

The BRIA also sets out provisional Competition and Consumer Assessments, which Usdaw will address as part of the economic assessment:

### ***Competition Assessment***

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

Usdaw does not believe that retailers would realistically lose market share to those elsewhere in the UK. To assert this is to imply that consumers would travel long distances to visit stores elsewhere in the UK – realistically this would only be an option to those living in the Borders. It is far more likely that consumers, if they needed to shop on the day, would visit a local small store that will be able to remain open. Large stores in England have restricted trading every Sunday and are required to close on Easter Sunday. There is no evidence that consumers travel to Scotland to shop on these days.

There would clearly be no impact in relation to the EU or the rest of the world, where the only viable option for consumers would be online purchases, which would be unaffected by the legislation.

Usdaw believes that, through closing large stores on these days, and giving workers an additional day off at a time where fatigue is rife across the retail workforce, will in fact improve productivity across the sector. This in turn will help to improve the competitiveness of Scottish companies and stores based in Scotland.

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

Usdaw accepts that the number of suppliers would be directly impacted, given large stores would be closed. However this impact would be minimal, with only 2.2% of retailers classed as 'large'. Therefore consumers would still have access to the vast majority of retail outlets. Furthermore, the impact of enacting the legislation will only be felt on one day of the year, a day where the vast majority of retail workers report that stores are fairly or very quiet. As such, even in large stores, the measure is unlikely to have any more than a negligible impact on the number or range of suppliers overall.

***Will the measure limit the ability of suppliers to compete?***

The provision would present no restrictions on the ability to compete.

***Will the measure limit suppliers' incentives to compete vigorously?***

No, it will clearly still be in retailers interests to compete for custom.

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

If the legislation was enacted, consumers would be unable to shop in large stores on New Year's Day. However, their needs would be more than adequately met by small stores that could remain open – around 96% of retail stores. Large stores are already required to close on Christmas Day, and there is no evidence that this limits the choices and information available to customers in any significant way. Large stores would still be able to trade for 363 days of the year.

## **Consumer Assessment**

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

95.9% of retailers would be able to continue trading on the day, meaning that consumers would continue to have access to goods and services if needed. The BRIA states that businesses with rateable values of over £51,000 tend to be concentrated in cities. Therefore there is no evidence put forward to support the assertion that island communities may have limited other options available. Furthermore, large retailers will still be able to trade 363 days of the year, ensuring that consumers continue to have access to these stores the vast majority of the time.

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

Usdaw does not believe that the closure of bricks and mortar retailers would present opportunities for unscrupulous suppliers and cannot envisage how consumers could possibly be targeted by the closure of large retailers on New Year's Day.

## **Social Benefits**

There are clear positive social impacts of the closure of large stores on New Year's Day for retail workers, their friends and their families.

As already noted at length in this submission, there is clear evidence that retail workers want stores to close so that they can have more time off over the festive period. The run up to Christmas is the busiest time in the retail calendar, and retail workers work flat out during this period to deliver great service for customers and great profits for employers. Guaranteeing an additional day off will give retail workers the opportunity to rest and recuperate at the end of the busiest time of year.

While 95.9% of retail businesses are small, the 2.2% of retailers that are large employ 69.6% of retail workers. Closing large stores on New Year's Day would benefit the majority of retail workers, while enabling the majority of retail outlets to remain open.

This also means that the small numbers of consumers who wish to shop on New Year's Day will still be amply provided for by the small retailers that will be able to remain open.

Working on New Year's Day affects retail workers' family lives, their ability to relax, unwind and enjoy the day. Furthermore, retail workers face significant difficulties in being able to work on New Year's Day as a result of a lack of public transport and childcare provision. The majority of workers in other sectors in Scotland get to enjoy the day off, and retail workers should not be excluded from this.

This consultation must take into account the views of retail workers, who are overwhelmingly in favour of large stores closing on New Year's Day. Below are some

of the comments we received from members, highlighting in their own words why this is so important to them:

*"After the busiest time of the year it would be nice to get a proper rest without having to fight our employers for the day off.... We in retail work hard for everyone else to enjoy their Christmas and New Year, quite often being subjected to abuse from customers, while being pushed into unrealistic work demands from our employers, only to have hardly anytime with our own families and loved ones. It is demoralising."*

*"[My] company claim working is voluntary however everyone is under pressure to work one or the other...no one wants to work during these times. I want to spend the time with my family. It's very stressful and depressing. And my children get upset when I have to work during these special events."*

*"It should be respected as a Scottish Holiday to allow people to spend time with their families and switch off for at least one day."*

*"We are open every day except Christmas Day, why shouldn't retail staff get quality time with family?"*

*"Working new year makes it hard to relax and enjoy the time off. Even when you are off you are usually too tired from working long hours when very busy in the lead up... My company said it was voluntary for staff to work yet as a manager I was told I had no choice and that I must work."*

*"Working in a small community, regular customers are in agreement that staff should have this day off. The store is quiet and there is no requirement for it to be open."*

*"It totally destroys the festive period on what was once a traditional holiday day. I'm informed by my employer that they are reacting to their customers wishes. If that is to be believed then the customers are lying - they just don't turn up."*

*"All our customers are astounded that we open on New Year's Day. Almost all expect us to be closed especially here in Scotland where Hogmanay and New Year are such big celebrations."*

*"New Year is a big holiday in Scotland and retail is taking our tradition away."*

*"I am a traditionalist when it comes to New Year. ... It's about sending off the old year and bringing the new one in ... Ne'erday is as important to me as Christmas Day."*

*"Working in retail throughout the year spending very little time with family as is, the weekend is a normal working day for myself but not family. To then lose even more family time, bonding time with young so that people can buy non essentials on Christmas and New Year is beyond frustrating."*

The quotes above clearly show that retail workers believe the significance of New Year's Day in Scotland should be respected. We know that retail workers want to be

able to spend New Year's Day with loved ones, recovering from the busy run up to Christmas.

**Can you foresee this legislation impacting on those with a protective characteristic? If so, in what way?**

In this section, Usdaw will address each of the questions raised as part of the Equalities Impact assessment.

***Do you think that the policy impacts on men and women in different ways?***

Women and men working in large retail stores would not be impacted in different ways. The restriction on trading would have exactly the same impact on women and men. However, as more women work in retail than men, proportionally more women would be affected by such a change in legislation.

The provisional Equality Impact Assessment (EQIA) states that changes may have a bigger negative impact on women as a large percentage of employees in the sector are women. Usdaw disagrees that the impact would be negative and believes that this would be a positive impact. This is a view backed by our survey of retail workers. Our most recent member survey shows an overwhelming preference from both female and male retail workers for stores to close on New Year's Day, with women slightly more in favour of closure than men (97% vs 92%). Respondents to the survey reflected the gender balance in retail, and both men and women were calling for stores to be closed.

While it is recognised that stores being closed on New Year's Day could reduce the opportunity to receive premium pay, our survey indicated that 39% of retail workers do not receive a premium for the day. Retail workers would be able to take annual leave on the day, and therefore would not be out of pocket. Furthermore, our members will be fully aware of the fact that they would not receive premium pay for the day if stores close, and will have taken this into account when indicating, overwhelmingly, that they want stores to close.

The EQIA also indicates that there is an expected negative impact on promoting good relations between men and women. Usdaw completely refutes this assertion. The EQIA states that 'There may be a differential impact if legislation prohibits some customer facing activities but other work activities continue in areas that are more male-dominated, for example in loading/unloading and distribution'. Firstly, whilst we understand that, where stores are banned from opening on New Year's Day, other work may continue, our experience of similar arrangements on Christmas Day shows that this is unlikely to happen. Furthermore, women work in all areas of store, and therefore would be equally likely as men to be called in if a store did require other work to be carried out on the day.

In relation to the example of workers in the distribution network, Usdaw recognises that more men work in this sector than women, however this is a totally separate sector to retail, which is not affected by the sections of the Act that are already in force, therefore we do not believe that this should be considered as part of the consultation.

If this is considered, one could equally make comparisons between other male dominated sectors of the workforce, such as managers and directors, construction or science and engineering, where it is common practice to close on New Year's Day. Usdaw believes that the Government should be focussed on delivering the best possible provisions for workers through 'levelling-up'. However, unfortunately, the perspective outlined within the EQIA appears to be focussed on maintaining the status quo and restricting the ability of typically low paid workers to enjoy time to recuperate after a busy festive season.

When Usdaw questioned the assumption in the EQIA that the impact on women would be negative, we were advised that this also reflects recent and ongoing Trades Union-led legal action relating to equal work for equal pay. Usdaw believes that this is a wholly unrelated subject. Even if it were relevant, closing large stores on New Year's Day would not impact in any way the hourly rates of pay in retail and distribution, which is the focus of the mentioned legal claims.

***Do you think that any policy change will impact on people because of their age?***

It is clear that the retail sector provides employment to people of all ages and as such, the positive impact of closing stores on New Year's Day would be felt across all age groups. However, young workers have typically been overrepresented in the retail workforce. Usdaw believes that the impact of closing large stores on New Year's Day on young workers would be positive, for the reasons previously outlined.

The EQIA states that there is 'no evidence yet to determine whether young people would prefer to work on New Year's Day or not'. Usdaw's evidence, from our most recent member survey is clear – respondents aged 24 and under were just as likely to agree that large stores should close on New Year's Day, with 96% in favour of closure. Young members working in retail have repeatedly made the point to Usdaw that they want stores closed on New Year's Day. Usdaw's experience is that young workers are more likely to feel compelled to work on this day, this is as a result of older workers being more likely to have fixed shift patterns which can avoid New Year's Day working and young workers feeling less empowered to refuse New Year's Day working when under pressure for management.

Usdaw is clear that implementing the measure will bring significant benefits to young workers, who are most likely to be impacted by the provision.

***Do you think that the policy impacts disabled people/ on women because of pregnancy and maternity/ on people proposing to undergo, undergoing, or who have undergone a process for the purpose of reassigning their sex/ on people because of their sexual orientation/ on people on the grounds of their race/ on people because of their religion or belief/ on people because of their marriage or civil partnership?***

Usdaw agrees with the impact assessment that there would be no negative impacts on any of these groups. Usdaw believes that the closure of large stores on New Year's Day would be beneficial to all retail workers, including those with the above protected characteristics, for the reasons already outlined.

**Are there any particular regional or geographic consequences that should be considered that would have a bearing on enacting this legislation?**

Usdaw believes that the legislation should apply equally across Scotland, in the same way as the existing requirement to close on Christmas Day does. Clearly, consideration needs to be given to ensuring that remote and island communities are not adversely impacted by the closure of large retail stores on New Year's Day, however we see no evidence that this would be the case.

The evidence cited in the BRIA indicates that businesses with a rateable value above £51,000 tend to be concentrated in cities. It can also be seen that those local authorities with island communities have particularly high proportions of businesses with a rateable value of below £51,000, all of which are over 90%.

It is also noted that, of all retail businesses 95.9% are registered as 'small enterprises'. Data published in 'Business in Scotland 2020', table 11, provides information on 'accessible rural' and 'remote rural' areas, which demonstrates that there is no difference in rural areas, with small enterprises accounting for 92% and 95% of businesses in these areas respectively.

Therefore, while the exact number of 'large retailers' cannot be identified, all the evidence is clear that, across Scotland, including in remote and island communities, the majority of retail businesses would be unaffected by the legislation, and therefore consumers would still have access to services should they need this.

A further consideration would be that large retailers are already required to close on Christmas Day. There is no evidence to indicate that consumers are adversely impacted by this existing closure. They are either able to shop in a small retailer, or adapt their shopping habits to take account of the closure of large stores, which they will equally adapt to in the case of large stores closing on New Year's Day.

It should also be remembered that in rural, remote and island communities across Scotland, it is common for retailers to voluntarily close on a Sunday and in many cases have an early closing day on a Wednesday or Thursday. Whilst Usdaw does not believe that the measure will impact these communities, it is clear that such communities have shown their ability to adapt to similar provisions.

## **SCOTTISH TRADES UNION CONGRESS (STUC) - NEW YEAR'S DAY TRADING CONSULTATION RESPONSE**

The STUC is Scotland's trade union centre. Its purpose is to co-ordinate, develop and articulate the views and policies of the trade union movement in Scotland; reflecting the aspirations of trade unionists as workers and citizens.

The STUC represents over 540,000 working people and their families throughout Scotland. It speaks for trade union members in and out of work, in the community and in the workplace. Our affiliated organisations have interests in all sectors of the economy and our representative structures are constructed to take account of the specific views of women members, young members, Black members, LGBT+ members, and members with a disability, as well as retired and unemployed workers.

### **Do you support the introduction of legislation that will close large retailers to customers on New Year's Day?**

Yes, the STUC fully supports a ban on large retailers from opening on New Year's Day.

The festive period provides an opportunity for people to have a rest and enjoy the company of friends, family and loved ones. As noted by the First Minister, Nicola Sturgeon on 8 January 2020:

“Shopworkers deserve a festive break such as the rest of us get the benefit of.”<sup>i</sup>

Usdaw's survey of members in 2018/19 showed clear support from the workforce for stores to close on New Years Day.

- 99% of members agree that stores in Scotland should close on New Year's Day
- 79% said that they are not happy to work on New Year's Day or 2 January
- 72% said that they or their colleagues come under pressure to work on New Year's Day or 2 January
- 48% of members said that working on New Year's Day was not voluntary in their store
- 39% received no premium pay for working on New Year's Day
- 76% said that working over New Year affected their ability to enjoy the holiday
- 74% said they spend too little time with their loved ones over New Year
- 47% were unable to spend time with family who live further away during the period
- 72% of members reported their store being fairly or very quiet on New Year's Day

## **What is your assessment of the economic and/or social impacts of enacting such legislation?**

### *Economic Impacts*

There are a number of long-established benefits of annual leave, and evidence shows that paid leave is valued particularly highly by low-paid workers.<sup>ii</sup> Ensuring that employees can maintain a good work-life balance helps to avoid ill-health, fatigue-related accidents, employee stress and burnout, and can support a healthy, happy and productive workforce. Unfortunately, for retail workers who have to work especially hard in the busy run up to Christmas and New Year, it can prove very difficult to find time away from work. As noted by Usdaw's 2019, survey, 74% of retail workers reported that they spend too little time with loved ones over New Year. While Christmas shutdowns are still common across large areas of manufacturing, education and office based industries, workers across the retail sector find it impossible to book any quality time away from work in the build-up to the festive period. In fact, retailers frequently enforce a holiday ban through the whole of December and sometimes parts of November. It is only right then, that following the busy Christmas period, these workers benefit from a break on New Year's Day.

At a sectoral level, an enforced public holiday will also prevent retailers feeling under competitive pressure to open on New Year's Day simply because other retailers may be operating. This competitive pressure is typically not in the long-term commercial interest of retailers as evidence from retail workers shows that the vast majority of stores are either fairly or very quiet on New Year's Day. In addition, there may be a potential benefit to the 96% of retail businesses that are registered as small enterprises.

### *Social Impacts*

Spending time away from work with the people we love is crucial to good mental health. Yet, currently, retail workers are currently only guaranteed one day off over the festive period – on Christmas Day. All too often, this day can be spent catching up on sleep and attempting to recover from working excessive hours rather than enjoy time with friends and loved ones. Retail workers who do so much to ensure the rest of society can enjoy the festivities, should be provided with an opportunity to enjoy a break themselves on New Year's Day.

Given the size of the retail workforce, giving retail workers New Year's day off is an important symbol in the move to Scotland becoming a 'world-leading Fair Work Nation by 2025'.<sup>iii</sup> New Year's Day has significant historical and cultural importance in Scotland and increasing the number of workers entitled to leave on New Year's Day improves social cohesion in Scotland.

**Can you foresee this legislation impacting on those with a protective characteristic? If so, in what way?**

Low-paid women make up the majority of the workforce in large retailers. Many will have sole caring responsibilities for children or elders and are faced with significant challenges, and potentially costs, sourcing support to facilitate working on New Year's Day. While young people are disproportionately likely to work in retail, so legislation would positively benefit those with a protected characteristic.

The EQIA states that there may be a negative impact on non-customer facing activities but USDAW have questioned whether there is any evidence to support this assertion. In addition Christmas and New Year shutdowns are common across large areas of the economy that are male-dominated, such as manufacturing and this is not reflected in the EQIA.

**Are there any particular regional or geographic consequences that should be considered that would have a bearing on enacting this legislation?**

Closing on New Years Day could have a particularly beneficial impact on retail workers who live a distance from their work and may have to pay large fares for taxis to get to work on time on New Years Day.

In addition, given small retailers are still able to open, rural communities with small, independent retailers would not be adversely impacted.

The STUC believes that the legislation should apply equally across Scotland, in the same way as the existing requirement to close on Christmas Day does.

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<https://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=12448&i=112529>

ii <https://policy-practice.oxfam.org/resources/decent-work-for-scotlands-low-paid-workers-a-job-to-be-done-619740/>

iii <https://economicactionplan.mygov.scot/people/fair-work/>