

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

October 2021

Consultation Report

Introduction and Background

Since 2007, large shops¹ have by law not been able to open on Christmas Day to make retail sales under the Christmas and New Year's Day Trading (Scotland) Act 2007 ("the Act"). When the legislation came into effect it did not restrict trading on New Year's Day, but gave Scottish Ministers the ability to do so at a future date by making an Order under the Act.

In January 2020, the trade union Usdaw put forward a petition in the Scottish Parliament, urging the Scottish Government to launch a consultation on whether to implement legislation that would ban large shops from opening on New Year's Day. On 24 March 2021, the then Minister for Business, Fair Work and Skills confirmed that the Scottish Government would carry out a consultation on New Year's Day trading this year.

The Consultation Process

The consultation opened on 15 June and closed on 24 August. It sought the views of shop workers, retail businesses and others on whether the law should change so that large retail businesses must close on New Year's Day, as they currently do on Christmas Day.

Through the Citizen Space digital platform, we sought to gather information about the numbers and types of large businesses that open on New Year's Day and to understand the impact on employees and businesses of working on that day. The consultation was designed to also capture the views of family members, customers, those who worked closely with the retail sector, such as suppliers and delivery drivers, customers and members of the public.

The opening question in the consultation was intended to identify the type of respondent - employee, employer or family member/other - and direct them to answer questions that were relevant to their situation.

Employees were invited to respond to nine questions intended to identify their current working environment; to understand whether they routinely worked on New Year's Day and how that was organised in their store; whether any premium was paid for working; and what the social and financial impacts were on them if they did work on New Year's Day.

Employers were asked seven questions to understand the type of store they operated; how staff were selected for working on New Year's Day and what payment was offered; what other activities might be carried out in the store other than serving

¹ A shop which has a relevant floor area exceeding 280 square metres. The relevant floor area is the area of a shop used for making retail sales or for the display of goods in connection with those sales.

customers; if closure would impact on individuals/other businesses; and how they assessed the profitability of opening the store on New Year's Day.

The last question in the consultation was addressed to all respondents - *"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?"*

We wrote to business organisations, local authorities, trades unions and others informing them of the consultation and asking them to raise awareness of it amongst their members and stakeholders. We directly contacted a total of 91 organisations this way.

We also invited each organisation to answer four questions. These were:

- 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 protected 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?

To help understand the economic and social impacts of working in the retail sector, a report on the economic impact and the impact on family life of working on New Year's Day was also prepared using a range of economic data and research documents. A link to that report is [here](#).

Key findings from the Citizen Space consultation responses²

A total of 1,838 responses were received through the Citizen Space platform.

Breakdown of respondents by type:

Category of Respondent	Number	Percentage
Employees	1,468	79.87%
Employers	49	2.67%
Family members	77	4.19%
Other	199	10.83%
Total	1,838	100%

The majority of respondents (93.5%) were in favour of enacting the legislation compared to 3% who were not and 3.5% who either didn't answer or were not sure.

Almost 72% of all respondents identified as employees who worked in stores that open on New Year's Day compared to 9% who work in stores that close. More than three quarters of all respondents – 1,453 (79%) - identified as employees who

² This report sets out the high-level results. A detailed analysis of all Citizen Space responses will be published once that analysis has concluded.

worked in food retail (e.g. supermarkets and mixed retail, which offers food as a primary purchase).

Of those who work on New Year’s Day, 58% reported receiving additional compensation (for example premium payment or time off in lieu) while 42% said they received no additional compensation above their usual pay.

On how workplaces determine who works on New Year’s Day, 46% of responses were that volunteers were sought, whilst 45% said that rotas were used. Comments were that managers would often first seek volunteers and then fill the additional vacancies from a rota – suggesting that a significant number of employees could opt to work if they wished to do so.

The consultation contained some questions intended to establish the impact on family life for those required to work on New Year’s Day.

The most significant impacts are captured in the table below and indicated that spending time with family, work satisfaction and transport to and from work are the biggest concerns. These are experienced to a similar degree regardless whether respondents work part-time (46%) or full-time (39%).

Category	Number of responses	Employees reporting negative impacts	Percentage of all responses
Your ability to spend time with family	1,554	1,300	83.65%
Work satisfaction	1,526	1,071	70.18%
Transport to/from work	1,539	949	61.66%
Caring for family members	1,457	656	45.02%
Caring for children	1,440	524	36.38%
Financial impact	1,503	340	22.62%

Only 5% of those who answered the question said they were happy to work on New Year’s Day compared to 95% who were not.

Asked whether employees would be required to come into stores on New Year’s Day to work on other activities, 44% of those business managers/owners that responded said that staff would still be required to work.

When asked about the wider community impact that closure on New Year’s Day would have, 32% of respondents thought the impacts would be on customers’ ability to access essential goods not available locally; 20% thought the impact would be on suppliers; 23% thought the impact would be on businesses co-located in or adjacent to their store; and 45% thought the impact would be on residents in local communities.

Key findings from the written consultation responses

21 of the 91 organisations who were directly approached provided a response, with two additional written responses to the consultation received, from the Association of Convenience Stores and a large retailer.

On the question, “Do you support the introduction of legislation that will close large retailers to customers on New Year’s Day?” 57% of respondents were opposed to the introduction of legislation, with 30% in favour, and 13% expressed no firm opinion. The proportion of business organisations that responded opposing the introduction of legislation was 86%.

Breakdown of respondents by organisation:

Organisation	Responses	In favour	Against	Neither for or against
Business Organisations	7	1	6	0
Local Authority	6	2	1	3
Shopping Centres & Retail Parks	7	2	5	0
Trades Unions	2	2	0	0
Large Retailers	1	0	1	0

In addition, the Scottish Government received an open letter from the Scottish Retail Consortium and 12 other business organisations³ on 23 August. It set out their opposition to the introduction of legislation to close large stores on New Year’s Day, citing the impact that Covid has had on the sector with some businesses being closed for at least 220 days or unable to trade at capacity due to restrictions. It also raised concerns that it would adversely affect tourism and hospitality businesses, as it would diminish the attractiveness of Scotland’s cities and towns as visitor destinations. When adding the views of these organisations to the written responses the proportion of those against the restriction increases from 57% to 71%, with 94% of business organisations in opposition⁴.

The responses of the business organisations and the trades unions are taken as representing the views of their members.

The Scottish Retail Consortium’s response highlighted its concerns that the retail sector has not yet recovered from the impacts of the pandemic. It stated that sales figures remain below pre-pandemic levels, and that “*shopper footfall remains down by 30% on pre-pandemic levels⁵, shop vacancies have spiked to a new six-year high⁶, and retail sales have yet to claw their way back to pre-pandemic levels.*

³ CBI Scotland; Scottish Property Federation; Scottish Chambers of Commerce; The Scottish Tourism Alliance; Revo Scotland; Company Chemists’ Association; Scottish Newspaper Society; Scotland’s Towns Partnership; Music Industries Association; Scottish Wholesale Association; Essential Edinburgh; Aberdeen Inspired.

⁴ 2 of the 13 organisations responded separately to the consultation so the figure has been adjusted accordingly.

⁵ SRC-Shoppertrak Footfall Monitor, 12 July 2021

⁶ SRC-LDC Shop Vacancy Monitor, 30 July 2021

Indeed, stores in non-food categories are still trading at only 90% of what they did prior to the pandemic⁷, despite having been permitted to re-open since the end of April 2021.”

Many of the comments in opposition to legislation were that the decision to close should be one for the individual business to decide. One business commented, *“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 (our) 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.”*

Other arguments against legislation from the written responses include that there is no customer demand for closure; that businesses that do not have an online offering would be disadvantaged; and that more should be done to stimulate recovery and growth in the sector rather than prohibiting trade.

The impact on supply chains was also cited, as was the effect of closure on rural communities or economically deprived areas.

Economic position

Whilst the written responses opposing legislation set out the broad arguments against further restrictions on trading, there is no data available that shows clearly what the economic impact would be if large stores closed on New Year’s Day. Although the question of economic impact was specifically asked in the written consultation, and some responses asserted that businesses operated at a loss on 1 January, there was no evidence provided to support - or refute - this.

A detailed assessment of the economic impact is set out in the [Report on Economic Impact and Impact on Family Life](#).

It cites monthly GDP statistics which suggest the retail sector as a whole has now recovered from the pandemic, with output now 10.8% higher than 12 months ago (July 2020) and 4.8% higher than in July 2019, before lockdown measures were introduced⁸.

However, turnover continues to be lower than pre-pandemic levels with 21% of wholesale, retail, repair of vehicles firms in Scotland reporting reduced turnover compared to what is normally expected for this time of year⁹.

⁷ Scottish Retail Sales Monitor, 20 July 2021

⁸ [GDP Monthly Estimate: July 2021 - gov.scot \(www.gov.scot\)](#) [experimental official statistics].

⁹ Business Insights and Conditions Survey (BICS) wave 40: 20 September – 3 October 2021

Retail sales in Scotland are still below pre-pandemic levels, according to the latest figures from the Scottish Retail Consortium¹⁰ – down 9.1% in September 2021 compared with September 2019.

In addition, SRC's Footfall Monitor shows that footfall decreased by 19.9% in September 2021 compared to pre-pandemic (September 2019), but saw an increase of 1.3% from August 2021¹¹.

The retail sector in Scotland has faced varying impacts from the Covid-19 pandemic as sectors faced different restrictions to contain the spread of the virus. Impacts differed across retail sub-sectors with non-essential retail stores (e.g. clothing) required to close for prolonged periods while essential retail (e.g. food) stores were able to trade throughout.

The growth of online sales, which ramped up during the first lockdown and has remained above pre-pandemic levels, has a bearing on footfall and in-store sales. Before the first national lockdown, internet sales were 19.1% of all retail sales in the UK (Feb 2020). This figure peaked to 37.1% in November 2020 and again in January 2021, flattening out in September 2021 at 25.9%¹².

Legislative limitations

A key consideration has been whether enacting an Order under this Act would achieve the policy aim of giving Scottish retail workers the day off to spend with friends and family – the stated objective of Usdaw's campaign¹³ to ban large store from trading on New Year's Day.

The limitations of the Christmas and New Year's Day Trading (Scotland) Act 2007 are clear. While this legislation would restrict trading in certain stores, it will not give all retail workers a day off on 1 January. The Act simply restricts trading in certain retail premises with a trading space of 280 square metres or more. Estimates are that 1,353 large stores would come within the scope of this legislation leaving over 21,000 stores out of scope and therefore not required to close. Whilst many will be smaller independent stores, smaller supermarkets and convenience stores will be included in this number.

The legislation does not stop all work in large stores, it only prohibits stores from opening to customers. An estimated 141,000 retail workers (roughly 61%) may work in large stores although the number of staff who may actually receive a day off is likely to be much lower. There is also no guarantee that those who do get the day off will be paid for it.

Non-customer facing activities such as restocking, picking and deliveries can continue under the Act, as can online shopping which now accounts for 26% of all

¹⁰ [Worrying Signs for Retail as September Sales Sound Alarm Bells \(brc.org.uk\)](https://www.brc.org.uk/news/2021/09/worrying-signs-for-retail-as-september-sales-sound-alarm-bells)

¹¹ SRC-KPMG Scottish Retail Sales Monitor – September 2021.

¹² [Internet sales as a percentage of total retail sales \(ratio\) \(%\) - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/statistics/retail-trade/internet-sales-as-a-percentage-of-total-retail-sales-ratio)

¹³ [USDW - New Years Day Working in Scotland](https://www.usdaw.org.uk/campaigns/new-years-day-working-in-scotland)

retail sales compared to 3% in 2007 when the Act was passed. In this consultation alone 44% of business owners/managers suggested that there would still be a need for staff to work even if stores were closed.

It is essential that the Scottish Government does what it can to support a positive working experience for retail employees. As employment law is reserved to Westminster, the Scottish Government is unable to improve statutory rights and protections for workers. However, we are committed to using all the levers available better fair work practices and, promoting actions beyond the minimum statutory employment rights and protections.

Conclusion

The arguments for and against making an Order under the Act are complex and compelling, with strong representations to the Scottish Government's consultation from both sides of the debate.

Scottish Ministers, while sympathetic to the call from unions, have been consistently clear that a decision on New Year's Day trading will take account of the consultation, the prevailing economic conditions and the options available under this legislation in reaching a conclusion on enacting legislation.

Our analysis shows that trading conditions remain difficult for the retail sector and would seem to remain challenging for some time to come – a view reflected by business organisations in this consultation.

While the majority of shop workers that responded to the consultation were in favour of closure, they represent less than 1% of Scotland's retail workers. Further, this legislation fails to reflect the consumer shopping habits and therefore cannot deliver a day off for all retail workers, and even then cannot guarantee payment for the day off.



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