

Policy and Sustainability Committee

10.00am, Tuesday, 3 August 2021

Scottish Government Consultation – New Year’s Day Trading

Executive/routine	Executive
Wards	All
Council Commitments	<u>2</u>

1. Recommendations

- 1.1 It is recommended that Policy and Sustainability Committee:
 - 1.1.1 Note the ongoing Scottish Government consultation on whether to extend the prohibition on large retailers in Scotland to close on Christmas Day to also apply on New Year’s Day; and
 - 1.1.2 Approve the draft response to the consultation, as outlined in Appendix 2, for submission to the Scottish Government.

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Scottish Government Consultation – New Year’s Day Trading

2. Executive Summary

- 2.1 This report provides an overview of the Scottish Government consultation on a legislative closure of large retail premises on New Year’s Day (1 January) with Appendix 2 including a proposed response from the Council to this consultation.

3. Background

- 3.1 The [Christmas Day and New Year’s Day Trading \(Scotland\) Act 2007](#) (the Act) currently prohibits shops operating from premises over 280m² in size from opening to customers on Christmas Day (25 December) in Scotland.
- 3.2 The Act applies to retail, but not other sectors which often trade or work at that time of year, such as hospitality, leisure, and public services. There are also exemptions for certain retailers, such as fuel stations, pharmacies and retailers within a port/railway station/commercial airport or at a motorway service area.
- 3.3 The provision for New Year’s Day was not brought into force but Schedule 2 of the Act gives Scottish Ministers an order-making power to provide that the prohibition should apply on New Year’s Day.
- 3.4 The Act does not place public authorities under a duty to enforce the restrictions. Therefore, any enforcement activity the Council would undertake is discretionary.
- 3.5 On 24 March 2021 the then Minister for Business, Fair Work and Skills, Jamie Hepburn MSP, announced that the Scottish Government would take forward a consultation, seeking views on the value to staff and business of New Year’s Day trading. This consultation would also meet the pre-conditions of the existing order should ministers look to take forward legislation through that mechanism.
- 3.6 The consultation went live on 15 June 2021, for a period of 10 weeks (until 24 August 2021), and seeks views of retail employees, retail businesses, local authorities, trade unions, business organisations and others. It aims to gather evidence of current practice amongst businesses and to gauge impact on employees and businesses of introducing legislation to close large retail stores on 1 January.

4. Main report

- 4.1 The consultation asks four questions:
- 1 Do you support the introduction of legislation that will close large retailers to customers on New Year's Day?
 - 2 What is your assessment of the economic and/or social impacts of enacting such legislation?
 - 3 Can you foresee this legislation impacting on those with a protective characteristic? If so, in what way?
 - 4 Are there any particular regional or geographic consequences that should be considered that would have a bearing on enacting this legislation?
- 4.2 Council officers have reached out to internal and external stakeholders for a view on what impact such legislation would have on businesses, citizens and the Council.
- 4.3 The Lothian Valuation Joint Board have confirmed that there are currently 685 retail stores in the City of Edinburgh Council area that have a net internal area of 280m² or more. To ascertain how many of these properties have 'relevant floor area' (how much of the floor area of a shop is used for making retail sales or for the display of goods in connection with such sales) of 280m² or more would require a manual check of each property's records, which was not possible to undertake in preparing the draft response to this consultation.
- 4.4 It is assumed that, if the relevant section of the Act is brought into force, there would be a number of businesses enquiring around the application of the Act on their premises so a review is likely to be required, with a record kept of the relevant premises for future reference.
- 4.5 The Act stipulates that opening in contravention of the legislation is an offence and the person responsible for opening would be liable, on summary conviction, to a fine not exceeding £50,000. Although the mandatory Christmas Day closure is well established and generally well adhered to, it is likely that a New Year's Day closure would require some enforcement at least initially. There is currently a very small number of officers from the Council's Regulatory Services team who work on New Year's Day, dealing only with emergencies. Therefore, should the New Year's Day restriction be brought into force and given that the enforcement of the Act is discretionary, there would be no scope for proactive enforcement to be carried out.
- 4.6 Median hourly rates for different occupations in UK (Appendix 1) show that hourly rates for sales and retail assistants, cashiers and check out workers are around £8.74 - £8.87 (the UK average was £13.22) and that 65.6% - 72.3% of sales and retail assistants, cashiers and checkout workers in the workforce are female (across all sectors in UK the percentage of the workforce which is female was 50%). This indicates that the proposed policy could disproportionately impact low wage workers (those receiving a lower than average hourly rate) and may further impact disproportionality on women.

- 4.7 With regards to access, the [High Street in Great Britain study 2020](#) provides stats on the different population groups living close to a high street, which could be taken as a proxy for access to services from small retail units. The key points for Edinburgh are that:
- 4.7.1 The majority of people living on or around high streets in Edinburgh are aged 16 - 64 years old (2nd highest in UK); and
 - 4.7.2 A relatively low share of people aged above 65 years live on or around high streets (8.9% in Edinburgh) compared to those that live away from the high street (16.5%). Generally, people in this age group tend to live in more suburban areas.
- 4.8 This implies that the closure of large retailers might impact on older age groups, who live away from high streets, and will be more dependent on larger retailers located out of town.
- 4.9 The Federation of Small Businesses' view is that the legislation "could cut either way for small businesses in that if larger shops are forced to close on New Year's Day, it could be good news for some small businesses. However, we'd want to be sure that the definition of 'large retail store' is realistic and appropriate. As the consultation says, 280m² is roughly the size of a tennis court but whilst that might be a large customer space for a newsagent or even a convenience store, it may not be that large for a bookshop or gallery, where a lot of the stock is on display. It might also seem a much smaller area where the sales space is spread over two floors, such as the ground floor and basement units common in Edinburgh."
- 4.10 Edinburgh Chamber of Commerce said some of their members pointed out the consistent demand from both local and international brands for stores to open on New Year's Day and that it is important to highlight that retail doesn't exist in a vacuum – it's very intertwined with hospitality and leisure, particularly in mixed use developments like the new St. James Quarter, and on shopping streets (for example on George Street) and, as part of this ecosystem, New Year's Day opening also impacts public transport. Their view is also that New Year's Day opening helps to generate employment and earning opportunities, especially for part time/casual/hourly paid staff.
- 4.11 Edinburgh Social Enterprise Network also highlighted that the definition of 'large retailer' seemed quite small but agreed that the closure of larger units may benefit smaller retailers and possibly pushes consumers to smaller/more local traders. They did, however, point out that the change may be detrimental to overall turnover given current challenges re trading, i.e. extent of closures last year, competition with online trading and that there could possibly be a negative impact on city centre and other businesses (bars and cafes) as shops draw people into the city centre.
- 4.12 Essential Edinburgh, representing businesses in the city centre where many retailers have a large floorspace, have confirmed that they do not support the proposed legislation for a number of reasons: first and foremost as they believe that it should be the businesses' choice as to whether to open or not, dependent on demand. They also highlight the importance of Bank holidays as shopping days,

and Edinburgh's position as a major tourist destination for Hogmanay celebrations with city centre retailers wishing to benefit from the customers who are in the city centre.

- 4.13 Capital City Partnership (CCP), who are engaged with both employers and employees/job seekers pointed out that, due to the move to online shopping which would require packing and shipping support in warehouses and delivery etc, closing an actual physical site for one day would not necessarily support all employees of that retailer or particularly lead to better working conditions. Their suggestion was that, if the drive is to improve Fair Work including working hours, then it would be better to focus on that than to target a small sector element that is changing how it operates anyway. With regards to those with protected characteristics, CCP's experience is that larger retailers tend to have more flexible work patterns available, which often suits those with protected characteristics better. Again, they suggested that working towards minimum contractual hours or giving those with protected characteristics more work pattern flexibility under Fair Work would make a better impact.
- 4.14 All the parties we conferred with also highlighted the impact of Covid-19 on retailers and the additional barriers this legislation would impose on businesses who have already been through a very difficult 18 months.
- 4.15 While not directly consulted for the purposes of this report, officers have also reviewed the petition from Union of Shop, Distributive and Allied Workers (USDAW) which was the trigger for the consultation, as well as their subsequent petitioner submissions and the Scottish Trade Union Congress (STUC) submission. Both highlight the benefits to businesses from having employees with a good work-life balance which helps to avoid employee stress and burnout, which correlates with the strong feelings among their members that they are not getting the time off they need to enjoy New Year with their family and friends. The original petition refers to a survey made with 1,473 USDAW members across Scotland where 99% of members agreed that stores in Scotland should close on New Year's Day. The survey also highlighted that 72% of members felt they or their colleagues were under pressure to work on New Year's Day and 39% did not receive a premium for working on New Year's Day.
- 4.16 The STUC also suggests in their petition that "banning large shops from opening on New Year's Day will reduce the need for workers in other industries, such as public transport, emergency services and hospitality to attend work on this date. As such, it is likely that the benefits of New Year's Day closures in retail will spread to other sectors of the economy."

5. Next Steps

- 5.1 Committee is asked to approve the proposed response to this consultation which is set out in Appendix 2.

6. Financial impact

- 6.1 There are no financial impacts arising from responding to this consultation.
- 6.2 If the legislation is passed, a further financial impact assessment will be required if enforcement of legislation is deemed to be under Council jurisdiction.

7. Stakeholder/Community Impact

- 7.1 The Council has consulted other stakeholders, as asset out above in the report, on the consultation proposals.

8. Background reading/external references

- 8.1 [Christmas Day and New Year's Day Trading \(Scotland\) Act 2007](#)
- 8.2 [Petition and petition submissions for PE01780: Consultation on the closure of large shops on New Year's Day](#)

9. Appendices

- 9.1 Appendix 1: ONS Occupations and ability to work from home
- 9.2 Appendix 2: Consultation response, City of Edinburgh Council

Appendix 1

Occupations and ability to work from home data

UK SOC 2010 Code	Occupation title	Exposure	Interaction	Location	Physical Activities	Tools/ Protective Equipment	Ability to homework score	Median hourly pay (£)	Total in employment	Percentage of the workforce that are female(%)	Percentage of the workforce that are aged 55+ (%)	Percentage of the workforce that are BAME (%)
1254	Shopkeepers and proprietors – wholesale and retail	0.3	0.43	0.22	0.28	0.43	1.66	12.98	112000	40.9	24.1	24.4
7111	Sales and retail assistants	0.27	0.56	0.37	0.47	0.5	2.17	8.74	1004000	65.6	13.3	13.1
7112	Retail cashiers and check-out operators	0.19	0.64	0.06	0.43	0.43	1.75	8.87	165000	72.3	18.8	18.4

1. Some occupations are excluded due to no homeworking measures being available
2. Please note the ability to homework score was calculated by O*NET prior to the coronavirus (COVID-19) outbreak, therefore will not reflect any changes to working practices implemented since the outbreak.
3. This measure of pay comes from the 2019 Annual Survey of Hours and Earnings (ASHE). It is hourly earnings excluding overtime. It's calculated as gross pay /basic paid hours. The pay period in question was not affected by absence. It includes people aged 16+ both full-time and part-time
4. Characteristics are from the Annual Population Survey (APS). Data are for the period April 2019 to March 2020
5. The BAME group includes: Mixed/Multiple ethnic groups; Indian; Pakistani; Bangladeshi; Chinese; any other Asian background; Black/African/Caribbean/Black British
6. For the percentage of women in each occupation, figures have been grouped together for percentages greater than 95% for disclosure reasons

Key

- Data are based on low sample numbers and should be treated with caution.
- x The sample size is too small to produce a reliable estimate.
- Estimates are consider acceptable
- Estimates are considered reasonably precise

Consultation Response, City of Edinburgh Council

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

City of Edinburgh Council (the Council) can see how introducing such legislation could have many benefits as well as downsides and will support any decision made by Parliament.

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, and on the impact on Local Authorities' Regulatory services if the legislation is to be enforced through them.

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 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 does not necessarily support all employees of that retailer or improve 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, though, that although many retail workers do not wish to work on New Year's Day, there are many who appreciate the opportunity to work extra on public holidays as it is often higher paid and may, in some cases, alleviate loneliness which can be particularly hard at that time of the year.

The Council therefore considers that, should trading on New Year's Day not be banned, it is imperative that legislation is brought in to protect working conditions and staff welfare in these circumstances, ensuring that workers are paid to reflect the public holiday working and the additional asks this entails of staff.

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 group, who could 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.