Christmas Day and New Year’s Day Trading in Scotland

Consultation on a proposal to regulate shop opening on Christmas Day and New Year’s Day in Scotland by Karen Whitefield MSP

www.usdaw.org.uk
Contents

Foreword

1. Introduction

2. Summary

3. Details of the proposal
   3.1 Current position in Scotland
   3.2 History of trading hours regulations in UK context
   3.3 Who is affected?
   3.4 Possible financial implications
   3.5 Enforcement
   3.6 Voluntary Option

4. Summary

5. Bibliography

List of Consultees

Response Form and Consultation Questions

Page 2
Page 3
Page 4
Page 4
Page 4
Page 4
Page 4
Page 4
Page 4
Page 4
Page 4
Page 4
Page 6
Page 7
Page 7
Page 8
Page 8
Page 9
Pull-out
I am pleased to be able to begin the consultation process for my proposed Bill to prevent trading in large retail outlets on Christmas Day and New Year’s Day. I firmly believe that we, in Scotland, should protect the special nature of these public holidays. I also believe that those shopworkers who work tirelessly throughout the year deserve the right to spend these two important days at home with their family.

I would like to thank all of those who have helped in the production of this consultation document. In particular, I would like to thank Usdaw for their continued support and the Non-Executive Bills Unit at the Scottish Parliament for their invaluable guidance.

I hope that as many people as possible will take part in this consultation process so that we can move with confidence and increased understanding to the process of taking the Bill through Parliament.

Karen Whitefield MSP

In today’s 24-hour per day, 7 day per week lifestyle we need to safeguard some time to take a collective break – special days when most people can take a breather.

In Scotland these are Christmas Day and New Year’s Day. However, retail trading on these days is threatening their special nature. Usdaw is campaigning for legislation to stop this growing trend.

We are delighted that Karen Whitefield MSP has decided to promote a Bill that will help to maintain the special nature of Christmas Day and New Year’s Day by preventing large stores from opening on 25 December and 1 January.

I hope that that you will make your views known on this issue by responding to the consultation.

John Hannett
General Secretary
Union of Shop, Distributive and Allied Workers (Usdaw)
1. Introduction

1.1. Karen Whitefield MSP – the Labour Member for Airdrie and Shotts – invites views on a proposal to prohibit large stores (over 280 square metres) in Scotland from opening on Christmas Day and New Year’s Day.

1.2. A proposal has been lodged in the Scottish Parliament, which is the prelude to introducing legislation.

1.3. The proposal originates from the Protect Christmas Day and New Year’s Day in Scotland Campaign run by the Union of Shop, Distributive and Allied Workers (Usdaw). It seeks to stop retailers from opening large stores on these days.

1.4. This consultation encourages all individuals, organisations and businesses, with an interest in the issue, to respond. Questions and a form on which to provide responses are in the centre page pull-out.

All responses should be sent by post to:

Karen Whitefield MSP
Scottish Parliament
Edinburgh EH99 1SP

or by e-mail to: christmas@karenwhitefield.com

The closing date for responses is: Monday 7 February 2005.

1.5. To help inform debate on the matters covered by this paper, and in the interests of openness, the responses submitted on this consultation document will be made public.

1.6. It will be assumed that responses can be made public unless the respondent indicates that his or her response is confidential. Confidential responses will nevertheless be included in any summary or statistical analysis, which does not identify individual responses.

1.7. This document is being sent to the consultees listed at the back of this document.

1.8. Please do bring it to the attention of others who would be interested in responding or let us know their details so we can do so. It is also available by request from the contact quoted in paragraph 1.4.

1.9. This document is also available to be downloaded from the internet by visiting: www.karenwhitefield.com/christmas.shtml
2. Summary

2.1. Currently there is no legislation that applies to Scotland on the restriction of shops’ opening hours or days when they are required to be closed.

2.2. The proposal would prohibit large stores from opening on Christmas Day and New Year’s Day.

2.3. Large shops are defined in other legislation as those with a sales area over 280 square metres (3,000 square feet). This size was determined by the Sunday Trading Act 1994 and it is thought that shops over this size generally require employees to staff their shop.

2.4. The purpose of the proposal is to maintain the special nature of Christmas Day and New Year’s Day. This special nature could be seriously undermined by the opening of large stores on these days, impacting adversely on workers and their families.

3. Details of the proposal

3.1. Current position in Scotland

3.1.1. Scotland has no laws regulating when shops cannot open for trading.

3.2. History of trading hours regulations in UK context

3.2.1. During the 1980s and 1990s shop trading hours were politically contentious.

3.2.2. In 1986 the UK Government brought a Bill to the House of Commons to introduce complete deregulation of trading hours, which was defeated at second reading.

3.2.3. In 1994 the Sunday Trading Act introduced partial deregulation. The provisions of the 1994 Act do not apply in Scotland. Traditionally in Scotland there has been almost complete freedom to trade on Sundays and the practice is now widespread.

3.3. Who is affected?

3.3.1. Shopworkers

3.3.1.1. The Union of Shop, Distributive and Allied Workers (Usdaw), Scotland’s biggest representative of shopworkers, is seriously concerned about the possibility of Christmas Day and New Year’s Day trading. Not least because in recent years a number of retail companies have experimented with Christmas Day trading. Also, in 2004, for the first time one company opened two of its large stores on New Year’s Day.

3.3.1.2. Usdaw contends that these recent developments make the need for legislation to protect Christmas Day and New Year’s Day absolutely necessary.
3.3.1.3. In a survey of Usdaw shopworkers from across the UK (Usdaw’s Response to a DTi Consultation on Christmas Day Trading – 2 July 2003), 94% responded that they felt that at sometime in the future they will be forced to work on Christmas Day if legislation is not passed to prevent large stores from opening.

3.3.1.4. Usdaw believes that whilst employers may start by asking for volunteers and will offer premium pay, this will not last. Stores will find it difficult to generate enough volunteers. Managers particularly will have little or no choice to work where a company has decided to trade on Christmas Day or New Year's Day. Usdaw also believes that premium pay will disappear making it less attractive to volunteer to work on Christmas Day and New Year's Day.

3.3.1.5. Usdaw organised a major campaign for legislation to prevent large stores from opening on Christmas Day and New Year's Day. The campaign attracted considerable support amongst shopworkers and the shopping public, with nearly 14,000 people signing a petition calling for legislation to stop large stores from opening on Christmas Day and New Year's Day.

3.3.1.6. This was presented to the Scottish Parliament's Petitions' Committee on 8 January 2004 and considered at a meeting on 21 January 2004. At that meeting the Committee agreed by division to support the general principles of the petition (For 6, Against 0, Abstentions 2) and subsequently agreed to pass a copy of the petition to Karen Whitefield MSP as part of this consultation on her proposal.

3.3.2. Retailers

3.3.2.1. The vast majority of retailers that operate in Scotland operate across the UK. In 2003 they were consulted by the DTi about a proposal to prevent large stores from opening on Christmas Day. The responses to this consultation showed there is a mix of views from retail employers. Some wholeheartedly backed the proposal. The majority, although they didn't want to open on Christmas Day, said they would seriously consider doing so if their competitors opened. They favoured legislation to ensure nobody is allowed to open on that day. A minority were seriously considering Christmas Day trading. (DTi's Response to a Submissions to their Consultation on Christmas Day Trading – August 2003).

3.3.2.2. Evidence on views about New Year's Day opening are not yet clear. However, in common with Christmas Day, the overwhelming majority of retailers do not open on New Year's Day. The highest profile exception is Debenhams, who, for the first time opened two stores on 1 January 2004.

3.3.2.3. The Scottish Retail Consortium (SRC), which represents many retail employers, has already indicated that they support the proposal for Christmas Day, but are opposed to the proposal for
New Year’s Day. Their press release of 10 October 2003 says, “Whilst Christmas Day opening is insignificant with large stores having no intention of opening for business, so Karen Whitefield MSP’s members bill would have no impact in this area, but New Year’s Day is vastly important to both the retail sector and tourism.”

3.3.3. **Customers**

Experience of campaigners suggests that Karen Whitefield’s proposal is popular amongst Scotland’s shopping public. When campaigning in shopping centres MSPs and Usdaw activists have found shoppers keen to sign a petition calling for legislation to protect Christmas Day and New Year’s Day by preventing large stores opening. However, we are keen to hear from Scotland’s shopping public.

3.3.4. **Retail Ancillary Workers**

3.3.4.1. Workers whose jobs are dependent on or affected by the retail industry include banking and call centre staff, street cleaners, parking attendants, public transport workers, etc. Most of these workers normally have Christmas Day and New Year’s Day as holidays. If shops opened on those days, more of them would be required to work.

3.3.4.2. Emergency service and hospital workers normally operate with skeleton staffing on Christmas Day and New Year’s Day. However if shops were to open then staffing levels would have to be increased in these sectors as the increased volume in traffic necessitates higher emergency service cover.

3.4. **Possible financial implications**

3.4.1. **Cost to large shops of not being able to open**

3.4.1.1. Large shops that might have opened on Christmas Day and/or New Year’s Day may be seen to have forgone profit they could have made. It can also be argued that any lost profit is likely to be recovered on other days of trading.

3.4.1.2. In the short term, a few large stores opening on Christmas Day and/or New Year’s Day could give some advantage to those stores. However in the longer term other competitor stores would feel compelled to open and any advantage would disappear.

3.4.2. **Cost to staff of forgone overtime or premium payments**

3.4.2.1. Staff in those large shops, which might have opened, could be seen to have forgone any overtime or premium payments that might have been on offer.
3.4.2.2. However Usdaw contends that any premiums for working on Christmas Day or New Year’s Day would quickly disappear should the practice become commonplace, as happened with Sunday trading.

3.4.2.3. A group of eight retail employers (Asda, Tesco, WH Smiths Group, Argyll Group plc, J Sainsbury plc, Boots, Dixons and Kingfisher) under the umbrella of an organisation called The Shopping Hours Reform Council agreed a voluntary code for retailers on premium payments for Sunday working. They guaranteed that existing arrangements on Sundays would continue for the foreseeable future. That agreement lasted less than one year, with Asda breaking rank first and now most have either reduced or abolished their Sunday premium pay.

3.4.2.4. Usdaw believes that the same will happen with any premium pay promised by retail employers for Christmas Day and New Year’s Day in Scotland.

3.4.3. Cost to public funds

We would welcome costed estimates from public service providers that believe they may be adversely affected by widespread retail trading on Christmas Day and/or New Year’s Day, or by the proposed regulation. These might include emergency services, health services, street cleansing operations, policing, banking and call centre staff, etc.

3.5. Enforcement

3.5.1. Other shop trading legislation has always stated specific levels of fines for breach of shop trading hours. For example, the current fine is £50,000 for breach of the Sunday Trading Act 1994.

3.5.2. We are proposing the same enforcement arrangement. Please let us have your view on this matter.

3.6. Voluntary option

3.6.1. Although in theory some form of voluntary consensus on the part of retailers might deliver the desired result, in practice such a consensus would have the following drawbacks:

3.6.1.1. After discussions between the Office of Fair Trading (OFT) and the DTi it was decided that to try and adopt such an approach would be seen as an encouragement to breach Chapter 1 of the Competition Act 1998. The creation of such a cartel could be seen as being anti-competitive and therefore illegal.

3.6.1.2. It is unlikely that every retailer would sign up to such an agreement, therefore rendering it worthless.

3.6.1.3. Such an agreement would not, and probably could not, be binding to the parties involved. Therefore any individual retailer could walk away from it at anytime, as has happened with other voluntary codes of practice (see paragraph 3.4.2.3).
4. Summary

Thank you for taking the time to read this consultation document. Like Usdaw and the 14,000 people who signed their petition, Karen Whitefield MSP believes that the special nature of Christmas Day and New Year's Day is something worth preserving. You are invited to give us your views by answering the questions set out on the separate pull-out pages in the centre of this document.

5. Bibliography

5.1. Usdaw's Protect Christmas Day and New Year's Day in Scotland Campaign
www.usdaw.org.uk

5.2. Sunday Trading Act 1994

5.3. The Shops (Sunday Trading &c.) (Northern Ireland) Order 1997

5.4. Sunday Working (Scotland) Act 2003

5.5. Department of Trade & Industry (DTi) Consultation on Christmas Day Trading
http://www.dti.gov.uk/ccp/consultpdf/xmascon.pdf

5.6. Summary of Responses to the DTi Consultation on Christmas Day Trading
http://www.dti.gov.uk/ccp/consultpdf/xmasresp.pdf

5.7. DTi Regulatory Impact Assessment of a proposal to regulate Christmas Day Trading
http://www.dti.gov.uk/ccp/consultpdf/sundayria.pdf

5.8. Shops Act 1950
Chapter 28

5.9. Deregulation and Contracting Out Act 1994

5.10. Shops (Early Closing Days Act) 1965
Chapter 35

5.11. Usdaw Protect Christmas Day and New Year's Day Petition (PE700)
http://www.scottish.parliament.uk/business/petitions/docs/PE700.htm
List of Consultees

Retail Organisations

- Scottish Retail Consortium
- British Retail Consortium
- Scottish Grocers’ Association
- British Shops and Stores Association
- Confederation of British Industry
- Association of Convenience Stores
- Alliance of Independent Retailers
- The Retail Enterprise Network
- Federation of Small Businesses in Scotland
- Rural Shops Alliance
- Independent Retail Consortium
- National Pharmaceutical Association

Trade Union Organisations

- Union of Shop, Distributive and Allied Workers (Usdaw)
- GMB
- Transport and General Workers’ Union (T & G)
- United Road Transport Union (URTU)
- Trades Union Congress (TUC)
- Scottish TUC
- Unifi

Religious Groups

- Church of Scotland
- Church of Scotland Synod
- Catholic Church in Scotland
- Christian Brethren
- Methodist Church
- Evangelical Alliance
- Christian Institute
- Inner Cities Faith Council
- Board of Deputies of British Jews
- National Association of Hindu Temples
- Muslim Council of Great Britain
- Union of Muslim Organisations of UK and Eire
- FAIR (Forum against Islamophobia)
- Sikh Cultural Society
- Inter Faith Network
- British Humanist Association
- The National Secular Society
- Mothers’ Union
- Women’s Institute

Consumers and Enforcement

- Consumers’ Association
- National Consumer Council
- Scottish Consumer Council
- National Association of Citizen’s Advice Bureau (NACAB)
- Trading Standards Institute
Government Bodies

- The Scottish Executive
- The Scottish Office
- Department of Trade & Industry

Other

- Equal Opportunities Commission
- Commission for Racial Equality
- National Association of One-Parent Families
- The Samaritans

Major Retailers

- Adams Childrenswear Ltd
- Aldi Stores Ltd
- Alexon Group plc
- All Sports (Retail) Ltd
- Allders Department Stores Ltd
- Allied Carpets Group
- Alpha Retail
- Arcadia Group Ltd
- Argos Retail Group
- Asda Stores Ltd
- Austin Group plc
- Bargain Booze
- Beale plc
- Bentalls plc
- Bhs Ltd
- Blacks Leisure Group plc
- Blockbuster Entertainment Ltd
- Boots the Chemists Ltd
- Box Clever
- Brown & Jackson plc
- Budgens Stores Ltd
- C&J International
- Carpetright plc
- Clydebank Co-operative Society
- Co-operative Groups (CWS) Ltd
- Courts plc
- Debenhams plc
- DFS Trading plc
- Dolland & Aitchison Ltd
- Dunnes Stores
- Early Learning Centre
- Etam plc
- Fads
- Farmfoods Ltd
- Fenwick Ltd
- First Quench Retailing Ltd
- Focus Wickes
- Furniture Village plc
- Furnitureland
- Games Store Group
- Greggs plc
- H & M Hennes Ltd
- Habitat UK Ltd
- Harrods Ltd
- Harvey Nichols Group Ltd
- HMV UK Ltd
- Homebase Ltd
- Homeform Group Ltd
- Homestyle Group plc
- House of Fraser Ltd
- Iceland Foods
- Ikea
- J Sainsbury plc
- James Beattie plc
- JD Sports plc
- Jewson Ltd
- JH Lecke & Sons Ltd
- JJB Sports plc
- John Lewis plc
- Kingfisher plc
- Laura Ashley Holdings plc
- Liberty plc
- Lidl UK
- Littlewoods plc
- Lothian Borders & Angus Co-operative
- Magnet Ltd
- Makro Self Service Wholesalers Ltd
- Maplin Electronics Ltd
- Marks and Spencer plc
- Matalan Retail Ltd
- Moss Bros Group plc
- Moss Pharmacy
- Mothercare plc
- Musselburgh & Fisherton Co-operative
- N Brown Group plc
- Netto Foodstores Ltd
- New Look Group plc
- Next plc
- Nith Valley Co-operative
- Office World
- Oldrid and Co Ltd
- Orange Retail Ltd
- Peacock Group plc
- Pets at Home Group Ltd
- Poundstretcher Ltd
- Powerhouse Retail Ltd
- Primark Stores Ltd
- River Island Clothing Co Ltd
- Robert Dyas Holdings Ltd
- Scottish Midland Co-operative Society Ltd
- Selfridges & Co Ltd
- Signet Group plc
- Somerfield Stores Ltd
- Spar (UK) Ltd
- Specsavers Optical Group Ltd
- Sports Soccer
- Staples (UK) Ltd
- Stylo plc
- Superdrug Stores plc
- Tesco Stores Ltd
- The Body Shop
- The Carphone Warehouse Ltd
- The Disney Store Ltd
- The Edinburgh Woolen Mill Ltd
- The Gap
- The Jessop Group Ltd
- Time Group
- TJ Hughes plc
- TK Maxx
- TM Retail
- Topps Tiles plc
- Toys R Us
- Trag Mills Group
- Virgin Retail UK
- Vision Express (UK) Ltd
- Vodaphone Group plc
- Warner Bros Studio Stores
- WH Smith Ltd
- Wm Morrison Supermarkets plc
- Woolworths Group plc