Call for evidence response from the Scottish Retail Consortium

About the Scottish Retail Consortium

1. The Scottish Retail Consortium (SRC) is the lead trade association for retailers operating in Scotland and has been representing the interests of the retail sector since the Scottish Parliament’s inception in 1999. The SRC membership accounts for over 80 per cent of the retail sector comprising retailers large and small selling food and non-food and operating on the high street, in rural communities, out of town and online.

2. The importance of the retail sector to the Scottish economy is clear. In 2010, retail was one of the three largest contributions to services Gross Value Added (GVA), contributing £5.8 billion (10.6%) of total services.\(^1\) Scottish retail sales totalled £28bn in 2012 and over one third of consumer spending goes through shops.\(^2\) The retail sector remains one of the largest private sector employers in Scotland employing around 235,000 people.\(^3\)

Fixed Penalties

3. As a point of principle the SRC does not support the imposition of fixed penalties and sanctioning in general terms. We believe that better regulation means securing compliance through a risk, evidence and advice based approach. Fixed penalties can lead to a tick box approach to enforcement whereby businesses are reluctant to seek advice, a greater number of penalties are imposed for minor infringements and rogue retailers accept an administrative penalty as one of the costs of doing business their way. We do not, therefore, support the amendment and believe it to be somewhat ironic that it is through the Regulatory Reform Bill, propagated on better regulation, that this provision is being introduced.

4. Justice is about fairness, equity, evidence and proof, not just administrative expediency and cost. We are concerned that the introduction of fixed penalties could shift the burden of proof away from the enforcer having to prove that the retailer has infringed the regulations towards the retailer proving that it has not. Indeed the level of proof required for an administrative penalty could inevitably be lower than that required if an alleged offence is heard by a court. This is particularly problematic where, as is the case with the proposed Single Use Carrier Bags Charge (Scotland) Regulations 2014, compliance will be open to a relatively wide interpretation based quite heavily on guidance to which enforcers, legally, have no requirement to consider.

5. In addition, enforcement will be undertaken by 32 different authorities, some of which could quite conceivably reach different interpretations of the regulations and supporting guidance. Not only is this lack of consistency in enforcement counter-

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\(^1\) Scottish Government, (2012), *Scottish Annual Business Statistics 2010*
\(^2\) Extrapolated from: Office for National Statistics Retail Sales Index
\(^3\) Office for National Statistics, March 2012
productive for those retailers wanting to take a national approach to compliance, and thereby reducing compliance costs and administrative burdens, the ability to apply fixed penalties will mean that a local authority will have to make a less rigorous defence of why its interpretation differs than, for example, it would if the enforcement action went to court.

6. Finally, if there is sufficient scope for a local authority to take its own different approach to enforcement, and if the burden of proof for enforcement action is diminished, then the system could be open to the same resource-creep which has been evident with parking fines whereby fixed penalties are seen as a legitimate revenue source rather than a tool to achieve compliance in a risk, evidence and advice based approach.

7. In the event, therefore, that the Committee supports the provision to provide for fixed penalties the SRC would request that the following points are considered:

a) The level of proof required to impose a fixed penalty should be comparable as if in court.
b) There should be the opportunity and mechanism in place to allow retailers to appeal the fixed penalty.
c) All fines should be allocated to consolidated revenue.
d) Depending on severity of the offence, the decision of whether to accept a fixed penalty or proceed to court should rest with the retailer and not the enforcer.
e) In order to ensure a consistent approach to enforcement and a more proportionate application of fixed penalties The Single Use Carrier Bags Charge (Scotland) Regulations 2014 should be brought into the scope of Primary Authority arrangements if these arrangements are provided through the Regulatory Reform Bill.

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