SUPPLEMENTARY SUBMISSION FROM THE SCOTTISH RETAIL CONSORTIUM

Supermarket levy – Need for Business & Regulatory Impact Assessment (BRIA) and full consultation

1. The Scottish Retail Consortium (SRC) submitted evidence to the Committee earlier in October about the Scottish Government’s proposed supplement from April 2012 on business rates for large retail stores selling both tobacco and alcohol. We also gave oral evidence on 5 October.

2. In other written evidence now submitted to the Committee, we note the growing number of organisations which have also expressed concerns about the levy. As well as CBI Scotland, these include the Scottish Chambers of Commerce, Scottish Council for Development & Industry, Scottish Property Federation, Wine & Spirit Trade Association and the British Council of Shopping Centres. Even the Federation of Small Businesses in Scotland does not appear to be wholeheartedly supporting the levy, rightly expressing concern in its submission about the ‘link between taxation and products sold. While small businesses will not be affected by the proposal, the precedent has been set and thresholds could easily be lowered in future budgets’.

3. One of several major concerns for the wider business community is the process by which this policy is being progressed. Among other things, the Scottish Government appears to be ignoring its stated commitment to proper consultation and the principles of better regulation. At a meeting with business organisations on 17 November, the Finance Secretary stated that there will be no formal impact assessment undertaken. Since then, the SRC has raised this matter with the Regulatory Review Group (RRG) and the Chair of the RRG has responded. A copy of the correspondence is attached for the Committee’s information.

4. The Scottish Government has implied that a BRIA is ‘disproportionate’. The Committee may wish to establish (a) the estimated cost of undertaking a rigorous BRIA, and (b) how the Scottish Government knows that a major new form of taxation, with potentially far-reaching implications not only for retailers but also other sectors, and raising £110m over 3 years, would have minimal impact on retailers, investment, employment, contractors, suppliers and consumers? Also, the Scottish Government still refers to the levy equating to 0.1% of all retail turnover. As stated in our evidence, this figure is not relevant and simply highlights the need properly to assess the relationship not to turnover but to margin, profit, profitability and return on investment of Scottish store operations.

5. We hope that the Committee can strongly support the business community on this point of principle, and press the Scottish Government about the absence of a BRIA and of a standard consultation. More generally, it seems highly surprising that a BRIA is not mandatory for major new regulation of this kind – particularly in the field of taxation – and that this has also constrained the RRG from having the locus to comment on this occasion.

Scottish Retail Consortium, 31 October 2011
Dear Russel

The Scottish Government’s Spending Review and Draft Budget published on 21 September contained a number of announcements with implications from a regulatory perspective, but the one of most concern to retailers across Scotland was that a new ‘public health’ supplement is to be added to the business rates of large retail premises selling alcohol and tobacco, from April 2012. This will impose, at very short notice, significant costs onto the businesses affected, yet there is no accompanying evidence base, it has not been subject to formal consultation, and will not receive thorough parliamentary scrutiny. Crucially, at a meeting last week the Scottish Government confirmed that it will not be producing a Business and Regulatory Impact Assessment (BRIA) to accompany this proposal. This is a clear breach of the Government’s own guidance on the process for introducing regulations and we therefore press the RRG to pursue this with the Government at its earliest convenience.

The points below demonstrate why this proposed tax requires thorough scrutiny. We should be happy to expand on any of the points made and should welcome your interest and involvement in this issue.

The proposal

The Government has announced its intention to impose a business rates supplement on retail premises with a rateable value of over £300k that sell both alcohol and tobacco, immediately adding an estimated 22% or more to already significantly rising rates bills for stores, at a time when sales are flat or falling. The money raised (£110m over three years, split £30m/£40m/£40m over this period) will form part of the £500m earmarked in the Draft Budget and Spending Review for ‘preventative health measures’.

Lack of consultation

The announcement was made without prior consultation or discussion with the businesses affected or their representative bodies. The proposal did not feature in the Scottish Government’s manifesto and, in response to a Parliamentary Question in June, the Cabinet Secretary for Finance, Employment and Sustainable Growth stated that the Government had no intention to introduce a levy on large retailers.

On a number of occasions, the Government has stressed the importance of consultation before taxation changes or significant policy announcements are made.
Given the unprecedented nature of using business taxation to fund health measures, on both counts this policy change should warrant thorough consultation.

**Lack of scrutiny**

Since the announcement, we now understand that the levy will be introduced via secondary legislation, thereby not allowing full scrutiny and debate in Parliament. Of equal concern is the Government’s confirmation that it will not be undertaking a Business and Regulatory Impact Assessment. This seems to be contrary to the Government’s own guidance on when a BRIA should be undertaken.

The section of the Government’s web site relating to Better Regulation states:

> The Scottish Government is committed to consulting with all parties potentially affected by proposals for new regulation, or where any regulation is being changed significantly.

> All policy changes, whether European or domestic, which may have an impact upon business or the third sector, should be accompanied by a Business and Regulatory Impact Assessment (BRIA).

Similarly, the flowchart which the Scottish Government has produced indicating when a BRIA should be undertaken clearly demonstrates that this levy should be subject to an impact assessment.


The SRC is of the view that the Scottish Government would be breaching its own guidelines if it continues to refuse to undertake this level of scrutiny. As an independent body, we believe the RRG should press urgently for reconsideration of this position.

**Lack of evidence**

The Government has indicated that the £110m raised by this levy will form part of the £500m the Government has earmarked for ‘preventative health measures’. However, there is no detail on what this money will actually be used for, what projects are likely to receive funding, and whether this money is an amount that will genuinely meet the Government’s preventative health measures objectives, and no indication about what these might be. The only project which has yet been mentioned when discussing this levy is the ‘Change Fund’. Whilst this is an important project, it is not a preventative health measure.

The money is not ring-fenced, making it difficult to measure its impact, and is being collected via business rates, which are raised for local authorities. Local authorities, however, have no jurisdiction over public health matters, and so it is difficult to understand the process by which this money will legitimately be used for health measures.
Additionally, the business premises subject to this supplement have been targeted because they have a rateable value over £300k and sell both alcohol and tobacco. However, this money will not be spent on preventative health measures relating to smoking or excessive alcohol consumption and there is no evidence to suggest that consumption of these products purchased from larger supermarkets is worse for the consumer than obtaining them from other means.

**Potential Impact**

As the Committee will be only too aware, the economic conditions in Scotland are fragile. The SRC’s recent Scottish Retail Sales Monitor shows that August’s like-for-like sales were 2.1% lower than a year ago. Total sales reduced by 0.7% - the second worst annual drop in total sales since the monitor began in 1999. Against this backdrop, the SRC would therefore like to understand how the introduction of this tax, on one of the few sector that has continued to invest in Scotland during the economic downturn, contributes to the commitment made in the Economic Strategy to make Scotland the most competitive place to do business in the UK.

Business rates are a tax on individual properties. By increasing significantly a stores’ operating costs, and thereby reducing store profit margins, the SRC is concerned this additional tax will influence investment decisions, making investment in Scotland less attractive relative to other locations. This could have knock-on implications for consumers, employment and for other businesses across the supply chain and construction industry. These implications need to be properly examined through a comprehensive BRIA.

Retailers already contribute significantly through business rates and these are rising markedly. Total business rates in Scotland are around £2.2 billion per annum and retailers already pay one quarter of that, the highest proportion of any sector. Even without the new supplement, when sales are falling, these tax increases undermine retail’s ability to keep prices down, invest and create jobs.

It is also important to note that this tax comes on top of the supplement already paid by large retailers to fund the Small Businesses Bonus Scheme; a scheme the SRC has consistently supported.

Likewise, this tax is discriminatory. The levy will apply to between 200–250 stores operating across Scotland, but not to anyone else in the supply chain. It is difficult to understand why a levy which has been billed as for ‘public health’ does not apply to manufacturers and processors of alcohol and tobacco. Whilst the businesses targeted by the tax do sell these products, this is in addition to a large number of other goods (the average supermarket sells approximately 30,000 products) that they stock. It is only right that further scrutiny of the proposal takes place to ascertain answers to this, and the other important questions, contained in this letter.

I hope that the Regulatory Review Group will agree that the Government must undertake a BRIA as soon as possible before this proposal proceeds any further. If you would like us to expand on any points made in this letter we should be delighted to do so and would be happy to meet to discuss this with members of the RRG in
further depth, if this would be helpful. Further detail of our concerns about various aspects of the levy is also contained in evidence to parliamentary committees on the draft Budget.

With kind regards,

Yours sincerely

Ian Shearer  
Interim Director, Scottish Retail Consortium
Dear Ian

Thank you for your letter of 26 October regarding the proposals for a new public health supplement for large retail premises selling alcohol and tobacco. In fact the Regulatory Review Group (RRG) discussed this matter at our meeting earlier this week given prior media coverage.

As you know Business and Regulatory Impact Assessments (BRIAs) were introduced in 2010 following a recommendation made by RRG to improve business focus and encourage a more evidence based approach. While our initial recommendation was that they should be mandatory for any legislation which has an impact on business or the third sector, Scottish Ministers chose to retain some flexibility for exceptional situations where they considered the completion of a BRIA was not justified. Following discussion, we accepted and understood the rationale for exemptions to be possible, although this should be the exception rather than the norm, and welcome the fact that the decision rests with Government Ministers who are then accountable to the Scottish Parliament. The BRIA guidance confirms that the decision not to complete a BRIA rests with the relevant Cabinet Secretary or Minister. We understand that in this specific case that process was followed.

As you are aware, RRG is an independent group whose remit includes advising the Scottish Government on all aspects of better regulation and resolving specific problems that cause Scottish business concern. In examining specific legislation, RRG is impartial and does not comment on policy decisions made by the Scottish Government but rather looks to ensure that legislation - once approved by the Scottish Parliament - is implemented effectively and operating in a way that meets the principles of better regulation and avoids where possible adverse or unintended consequences.
Lobbying in the interests of business is properly the responsibility of Scotland’s business organisations - and it is clear that in this specific context that the Scottish Retail Consortium is fulfilling that function.

Scrutiny of legislative proposals is properly the responsibility of the Scottish Parliament. RRG has no wish - or locus - to encroach on those responsibilities but reserves the capacity to comment, as appropriate, on better regulation aspects of legislation.

Let me stress that RRG remains wholly committed to improving the regulatory environment for business: by promoting improvements in consultation on new regulations; by reviewing the implementation of existing regulation; and by promoting culture change within regulators and others, to enhance the way regulations are applied. We recognise however that in some cases, Government legislation will place costs or responsibilities on business which is both unavoidable and intended in order to achieve the desired outcomes for Scotland as a whole. Better regulation seeks to avoid unnecessary burdens and unintended consequences but accepts that they cannot always be prevented.

Finally, can I stress that the Regulatory Review Group has taken a very close interest in BRIAs since their introduction and our workplan for 2012 includes plans to review BRIA implementation and effectiveness. As part of that process we will make further recommendations to the Scottish Government if we identify opportunities to enhance current arrangements and outcomes.

Yours sincerely

Professor Russel Griggs OBE
Chair – Regulatory Review Group