

# **CHRISTMAS DAY AND NEW YEAR'S DAY TRADING (SCOTLAND) BILL**

---

## **EXPLANATORY NOTES**

### **(AND OTHER ACCOMPANYING DOCUMENTS)**

#### **CONTENTS**

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Christmas Day and New Year's Day Trading (Scotland) Bill introduced in the Scottish Parliament on 20 March 2006:

- Explanatory Notes;
- a Financial Memorandum; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 59–PM.

## **EXPLANATORY NOTES**

### **INTRODUCTION**

2. These Explanatory Notes have been prepared by the Non-Executive Bills Unit on behalf of Karen Whitefield the member in charge of the Bill. They have been prepared in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

### **SUMMARY OF AND BACKGROUND TO THE BILL**

4. The Bill prohibits large shops from opening for the purpose of retail trading on both Christmas day and New Year's day. At present there is no legislation in place in Scotland to stop shops of any size from trading on any day of the year.

5. The Bill does this by:

- Making it a criminal offence for a large shop to open for the purpose of making retail sales on either of these days.
- Defining a large shop as one with a trading floor area exceeding 280 square metres.
- Exempting specified trades or businesses and shops at specified places
- Defining who commits the offence and providing a due diligence defence.

### **COMMENTARY ON SECTIONS**

#### **Section 1: Large shops not to open on Christmas Day or New Year's Day**

6. Section 1 prevents a large shop from opening on Christmas day or New Year's day for the purpose of retail trading unless that large shop is exempt under section 2. A large shop is defined in section 6 as one with a relevant floor area over 280 square metres. The relevant area is defined as the area being used for making retail sales or displaying goods in connection with such sales. The definition of "retail sale" makes clear that it is opening for the purpose of retailing goods to the general public unconnected to a trade or business that is being prohibited.

7. The area to qualify as a large shop is taken from the Sunday Trading Act 1994. A similar description was also used in the Christmas Day (Trading) Act 2004. Neither measure applies to Scotland.

#### **Section 2: Exemptions**

8. In addition to those shops which do not exceed the qualifying size, further premises are exempt by section 2 of the Bill.

9. The exemption at sub-paragraph 2(a)(i) relates to the sale of meals, refreshments or alcohol on the premises in which they are sold for consumption. As a consequence restaurants, cafes, public houses and any other sit-in eateries are exempt even when they exceed the 280 square metre size limit. Sub-paragraph 2(a)(ii) relates to meals or refreshments prepared to order but consumed away from the premises and thus take-away eateries are exempt (again even where they exceed the size limit).

10. Sub-paragraph 2(b) exempts registered pharmacies, but only to enable prescriptions to be dispensed.

11. The exemption at sub-paragraph 2(c) covers shops at ports, railway stations or commercial airports in order to cater principally, although not exclusively, for the needs of passengers in transit. Similarly the exception at sub-paragraph 2(d) covers motorway service areas, and 2(e) allows for the sale of fuel and other products retailed by filling stations to motorists.

### **Section 3      Offence**

12. This section provides that the occupier and any person responsible for controlling or managing the shop operations commit an offence if they allow a shop to trade in breach of section 1. The section also sets out that prosecution for any offence is by summary criminal procedure with a maximum penalty of a fine up to £50,000.

### **Section 4      Offences by bodies corporate etc.**

13. Section 4 applies the offence under the Bill to bodies corporate, partnerships, trustees and unincorporated associations to ensure that all who control shops opening can be found liable.

14. Where an offence has been committed by such a body of persons with the consent or involvement of a person concerned in the management or control of the body such as a director, partner, officer or employee (or any other person specified) of a corporate body or similar, that person will be guilty of an offence as well as the organisation itself. This arises when they consent to, or connive in, the commission of an offence by the organisation, or if their negligence results in the commission of an offence by the organisation.

### **Section 5      Defence of due diligence**

15. Section 5 provides a defence for anyone accused of the offence in section 4. That defence is that they or anyone working for them or representing them had taken all reasonable precautions and had tried to the best of their ability to avoid committing the offence. It is considered that this will require the taking of positive measures such as training staff in their responsibilities. It will therefore not be a defence for accused persons to solely argue that they did not know the shop was in fact open for trade.

## **FINANCIAL MEMORANDUM**

### **INTRODUCTION**

16. This document relates to the Christmas Day and New Year's Day Trading in Scotland Bill introduced in the Scottish Parliament on 20 March 2006. It has been prepared by Karen Whitefield MSP, who is the member in charge of the Bill, to satisfy Rule 9.3.2 of the Parliament's Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

17. There are no direct costs resulting from the provisions of the Bill. Since so few large shops currently open on Christmas day and New Year's day, any costs are estimated to be negligible.

18. A Policy Memorandum is printed separately as SP Bill 59-PM.

### **COSTS ON THE SCOTTISH ADMINISTRATION**

19. There would be zero cost on the Scottish Administration if the prevailing festive season trading environment is preserved i.e. the vast majority of large shops open neither on Christmas day nor New Year's day.

20. The only possible cost would be if the Scottish Executive saw a need to inform large shops of the prohibition and the penalty for breaking that prohibition.

21. However given the wide press coverage the Bill can be expected to receive and the public interest in the policy (as measured by the scale of various petitions on the issue as promoted by USDAW in recent years on both sides of the border), awareness of the Bill should be high.

22. If it is judged necessary to inform large shops of the provisions of the Bill, it is suggested that this could still be achieved at minimum cost to the public purse. It could be done by the Executive utilising its links with business stakeholders and disseminating information via representative bodies such as the Scottish Retail Consortium and CBI Scotland.

### **COSTS ON LOCAL AUTHORITIES AND OTHER PUBLIC BODIES**

23. The Bill's enforcement measure exists under the auspices of the criminal law i.e. it will fall to the police to take action if a large shop breaks the prohibition and chooses to trade on one or both of these days.

24. Therefore no costs will fall to local authorities as they do in England and Wales where there exists a duty to enforce the Bill via a model of local authority appointed inspectors. That was the system adopted under Sunday Trading legislation and followed by the Christmas Day Trading Act 2004. Such a model does not exist in Scotland and the Bill does not create one.

25. An approach mirroring the inspectorate model could, it is suggested, have added an unnecessary layer of local authority bureaucracy and incurred not insignificant costs in the immediate and longer term for councils.
26. As regards possible costs to the police, who might consider themselves already overly stretched resource-wise with other more pressing aspects of law enforcement, these should be absolutely minimal.
27. The fact that most large shops do not open on Christmas day and New Year's day suggests that policing effort in enforcing the Bill need not be significant. Furthermore for those few instances when large shops do open their doors for business it is the nature of retail trade that they will wish to advertise the fact rather than acting surreptitiously. Detection therefore should not be taxing.
28. Furthermore, it can be anticipated that employees and those unions representing shop workers may notify the authorities of instances where large shops are in the process of breaking or intending to break the prohibition.
29. Identifying those who are over the size criteria and determining whether shops meet the specified relevant floor area of 280 square metres should not be a major undertaking for the enforcement authorities. The prohibition is directed at department stores, supermarkets, and other major retailers, identification of which will not, it is suggested, pose any serious challenge.
30. It is not anticipated that in order to determine the size of shops that do open the police will need to be equipped with electronic measuring devices or expected to conduct themselves in the manner of surveyors. Size information is already likely to be available, on request, from local valuation authorities – those bodies responsible for non-domestic rates evaluation (floor space being an element of such) and maintaining the local valuation roll.
31. Enforcement costs therefore should be negligible unless large shops embarked on a path of civil disobedience as was seen in England and Wales before the liberalisation of the Sunday Trading laws in 1994. This would seem unlikely.
32. In 2002 the Secretary of State for Trade & Industry wrote to major U.K. retailers asking about their plans for Christmas day opening the following year and in future years. The majority of such retailers stated they had no current plans to open at that time or in future years although in some cases they said opening by competitors would lead to a review of their plans.
33. In the Scottish context, the Member's consultation revealed that large corporations were neutral about being closed on Christmas day but generally opposed to being required to remain closed on New Year's day. It is interesting to note however despite this opposition that Debenhams appears to be the only large shop to have opened for business on New Year's day to date.

## **COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES**

34. Costs would accrue to large shops only in respect of forgoing the profits they could have made had they chosen to open on Christmas day and New Year's day. However, presently most do not open on these days and there appears neither a sufficient profit motive nor indeed a public demand for them to do so.

35. Paragraph 33 above outlines what the Member's consultation revealed about the views of large corporations to opening on both days. Their view on New Year's day in particular was informed by the claim that the traditional nature of 1<sup>st</sup> January created opportunities for trading. Again it is interesting to note that to date only one of those consulted has actually acted upon that belief.

36. Of course large shops will still have to meet fixed costs such as heating, lighting etc. on these days, albeit perhaps at a lower level (if lighting is cut back for example).

37. In the short term, if a handful of large shops opened on Christmas day and/or New Year's day then some advantage may be accrued to those shops but likely not to the economy as a whole. If in the longer timeframe other shops opened then any advantage would soon diminish or disappear.

38. There may even be an advantage from savings for those shops that chose not to open on these days. In the long term they would likely be making the same profit but, without overtime payments for staff to work on such significant holidays or normal lighting or heating costs, at a lower cost.

39. If one accepts the premise that there can only be a finite amount of consumer spend available in any period then a prohibition of opening appears unlikely to disadvantage any large shops. Shops expect and plan on the basis that consumers spend what they intend to spend over the festive period either before or after, but not on, Christmas day and New Year's day.

40. It might be claimed employees would lose out from prohibition in respect of forgoing any overtime or premium payments that might have been on offer. This would also rule out any positive multiplier effect of these extra payments in the areas in which they themselves normally shop. However, the unions suggest any such overtime or premium payments are likely to diminish or disappear over time, which has been the experience from Sunday trading.

41. Other business sectors may be impacted upon by large shops not opening on Christmas day and New Year's day – transport firms, energy providers, caterers, food and beverage suppliers etc. However, given that most large shops do not open on these days at present any measure of that adverse affect can be estimated as negligible.

42. Certainly the provision of emergency public services would need to be increased if people are moving around more for the purpose of shopping on these two days. Police, doctors, nurses, firemen etc. tend to function with limited staff cover but if Christmas day and New

Year's day were to see large shops open on a scale close to every other day of the year then clearly emergency services would need to increase their staffing on these days accordingly.

43. Evidently any such stepping up from a skeleton staffing level would also increase costs. Transport services would likewise be significantly impacted upon.

44. Impact on small businesses should not be adverse. Those exempt from the prohibition – either from not meeting the size criteria of a large shop (floor space exceeding 280 square metres) or falling into the several categories specifically exempt from the Bill's provisions (pharmacies, filling stations, restaurants, pubs, take away eateries, and shops within airports, ports, railway stations and at filling stations and service stations) – may even enjoy a modest advantage over their larger rivals in terms of short term profitability.

### **POTENTIAL BENEFITS ACCRUED**

45. Prohibition can ensure that the special nature of Christmas day and New Year's day is preserved by the prevention of competitive pressures or perceived commercial advantage causing widespread opening by large shops.

46. Trying to identify costs and benefits in relation to work is always problematic as much depends upon estimates and assumptions. For example, there are immeasurable costs and benefits which undoubtedly accrue in terms of work/life balance.

47. It is acknowledged that workers in the UK work long hours compared with their counterparts in the rest of Europe but a study by the Chartered Institute for Personnel and Development (CIPD) indicates that this culture is changing to the extent that some workers value holidays above cash payments<sup>1</sup>.

48. Benefits to large shops, in their role as employers, from remaining closed for trade on Christmas day and New Year's day could include enhanced employer image and even better recruitment and retention of staff. Other benefits include creating a more positive employee attitude which, in turn, of course can have a positive impact on productivity.

---

### **PRESIDING OFFICER'S STATEMENT ON LEGISLATIVE COMPETENCE**

49. On 9 March, the Presiding Officer (George Reid MSP) made the following statement:

“In my view, the provisions of the Christmas Day and New Year's Day Trading (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

---

<sup>1</sup> Chartered Institute for Personnel and Development, Flexible Working: Impact and Implementation, 2005

*These documents relate to the Christmas Day and New Year's Day Trading (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 20 March 2006*

# **CHRISTMAS DAY AND NEW YEAR'S DAY TRADING (SCOTLAND) BILL**

## **EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)**

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2006.

Applications for reproduction should be made in writing to the Licensing Division,  
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ  
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary  
Corporate Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

ISBN 1-4061-1961-X

