

PE1780/G

Minister for Business, Fair Work and Skills submission of 17 December 2020

I am writing in response to your letter of 16 December in regards to the above mentioned petition. I am sorry that I wasn't able to respond by your requested time of the end of yesterday, but I am sure you will appreciate that was a tight timescale.

Before I respond in detail to the specific points set out in your letter I would like to set out that I am, like all of us, hugely appreciative of the efforts of our retail workers who have been extremely diligent throughout the pandemic. This has been a year like no other and no one should underestimate the impact of those circumstances on those working on the front line of retail. I agree that employers should show their appreciation to their staff in a way that acknowledges their endeavours, including through allowing those that want to be able to take time off to spend with their families over the coming holiday period and considering the necessity of opening on New Year's Day.

On the matters detailed in your letter, in the first instance I want to respond to what I felt was a sense from some on the committee that the Scottish Government is opposed to exercising the power under Section 2 of the Christmas Day and New Year's Day (Trading) (Scotland) Act 2007. I want to reassure you that this is not the case. I greatly appreciate the time that Usdaw has taken in petitioning the Parliament on this matter and the deliberations of your Committee in considering it.

When I last wrote to you on 6 November I provided a commitment that I was seeking further views and opinions from unions and retailers on the issue and would advise the committee of my findings. I note that Usdaw's submission to the committee of 3 December welcomed that response.

I have continued that process of engagement – which has included meeting with representatives from Usdaw, the Scottish Retail Consortium and a few of their larger members. This latter meeting was to help understand the operational approach taken by retailers in terms of staffing arrangements on New Year's Day – primarily whether they were achieved through compulsory or voluntary means. I have a further meeting with Usdaw and the Scottish Retail Consortium scheduled for 21 December.

In addition I met with Neil Bibby MSP and representatives of the GMB union on Friday 11 December with a particular focus on implementing the provisions of the Act in time for 1 January 2021. This was of course a feature of your deliberations yesterday as set out in your letter. It may be helpful if I set out some of the issues around that matter.

As I believe you acknowledged during your discussion on Wednesday, there are indeed a number of challenges in the limited time left before 1st January 2021 to enable the law to be enacted. To say the least, this would be an exacting timescale in any circumstance, but there are specific provisions in the Act that essentially render it impossible to use it as a vehicle to close large retailers on that date.

As mentioned above Section 2 of the Christmas Day and New Year's Day Trading (Scotland) Act (the Act) contains provisions enabling the Parliament to prohibit New Year's Day trading. As you discussed, the Act states that before the statutory instrument can be laid there must be a consultation, involving local authorities, retail sector representatives and others who may be affected. Part of your discussion yesterday focussed on the ability of undertaking such a process in a very short timeframe as the Act doesn't specify any period for this.

Whilst that is technically correct, given we are less than a week away from the end of the Parliamentary session, I do not believe that any serious consultation could be done. That of course could be subject to a matter of opinion, but even allowing for that, the process involved is not as simple as consulting on the matter and then determining to implement any measure.

In addition to the process of consultation the Act prescribes that there must also be reports prepared on the economic impact of closing large retailers on New Year's Day and of the impact on family life of the proposal. These reports must be submitted to the Parliament along with a formal statement of the Scottish Government's findings and recommendation. That simply would not be possible in the timescale we have.

Again though, even allowing for that to be a possibility, as unlikely as I consider it, the Act also prescribes that once the order to put into effect the closure of large retailers on New Year's Day is laid, Standing Orders requires a minimum period of 40 days for it to proceed through the committee process, plenary session and voting process.

We are of course only a fortnight away from the end of the year. On the basis of the above, utilising the Act as a means by which to put in place the closure of large retailers on New Year's Day is I am afraid to say not possible.

It is also important that I highlight the limitations within the Act of achieving what has been the central thrust of the argument for the closure of large retailers; that being that all shop workers would receive a day off. The legislation would only stop those shops from opening to the public. Whilst I of course recognise that this would reduce demand for employees to be required to work on New Year's Day, a retailer could still require them to be at work. By way of example this could include those involved in restocking, warehousing and fulfilment and transportation of online orders may still be required to work by their employer. And it is of course the case that smaller retailers would, of course, not be required to close and their workforce could still be required to work.

Nevertheless I would reiterate that I do have a great deal of sympathy with the objective of the petition. I am continuing to actively engage with unions and retailers about the proposition in the petition and will give the matter full consideration with what I can assure you is an open mind. I am conscious that undertaking a consultation doesn't necessarily commit the Scottish Government to a specific course of action but could serve to better inform any such decision. I do believe that speaking with those in the sector to be properly informed on what any such consultation exercise might look like, should that be the course of action determined, is important. Once I have reached a definitive conclusion on both scope and timing of a possible formal consultation, I will write to the Committee again.

I hope that this has been helpful in setting out not only some of the challenges with moving at pace but also in providing you with assurance of my intent.

I am of course happy to offer further clarity on any of these points if that is helpful.

JAMIE HEPBURN