

CHRISTMAS DAY AND NEW YEAR'S DAY TRADING (SCOTLAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1: Large shops not to open on Christmas Day

5. **Section 1** prevents a large shop from opening on Christmas 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.
6. 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: Application of section 1 to New Year's Day

7. **Section 2** provides that the Scottish Ministers can apply section 1 of the Bill to New Year's day. They may do so by laying a draft order before the Parliament. However before they can lay the order, they must consult with the persons referred to in sub-section 2(4). They are also required to lay before the Parliament a report about economic impact and the impact on family life plus a statement of reasons.

Section 3: Exemptions

8. In addition to those shops which do not exceed the qualifying size, further premises are exempt by section 3 of the Act.
9. The exemption at sub-paragraph 3(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 3(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. **Paragraph 3(b)** exempts registered pharmacies, but only to enable prescriptions to be dispensed.
11. The exemption at paragraph 3(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 paragraph 3(d) covers motorway service areas, and paragraph 3(e) allows for the sale of fuel and other products retailed by filling stations to motorists.

Section 4: 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 5: Offences by bodies corporate etc.

13. **Section 5** applies the offence under the Act 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 6: Defence of due diligence

15. **Section 6** provides a defence for anyone accused of the offence in section 5. 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.