



Department
for Business
Innovation & Skills



Department for
Communities and
Local Government

**DEVOLVING SUNDAY TRADING
RULES**

Government response

FEBRUARY 2016

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Foreword



The Government is committed to growing a strong economy by supporting our towns and cities to become economic powerhouses; creating local jobs and greater local prosperity. To realise these benefits, the Government believes that powers should be devolved to local leaders and communities as they are best placed to make decisions which affect them. Whether it's supporting their local high streets to thrive in an internet age or enabling our towns and cities to compete for lucrative international tourism trade, the Government believes that the people who live, work and do business in the local area know best what their area needs to prosper and grow. This is particularly true in relation to Sunday trading hours.

We are therefore proposing to devolve the power to extend Sunday trading rules to shire district and unitary councils across England and county councils and county borough councils in Wales, and will allow the Mayors of London and Greater Manchester (when elected) as well as Mayors established through future 'devolution deals' to hold this power. By devolving these powers we are empowering local citizens through local authorities to decide whether extending Sunday trading hours is right for their local area. No two areas are the same and so the context in which local decisions are made will differ. Local areas will be able to decide whether to extend Sunday trading hours within their area or within specific parts of their area, such as town centres or high streets. This will put local areas in the driving seat so that they can maximise the benefits for their local economy and the well-being of their citizens.

Extending Sunday trading hours will provide businesses with more flexibility in their opening hours so that they are better able to meet their customers' needs and compete with online retailers that can trade 24 hours a day, 7 days a week. It will give consumers more choice as to when and where to shop at stores that stock a wide range of products. It will offer shop workers the choice of working more on Sundays, whilst protecting and strengthening the rights of those shop workers who do not wish to take advantage of working longer Sunday hours. Providing this flexibility to local areas will improve productivity in the retail sector thereby reducing prices for all consumers.

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 Department for Business, Innovation & Skills

Executive summary

1. In August 2015, the Government launched a consultation seeking views on devolving the power to extend Sunday trading hours to local areas to give them greater choice and control of their local economy. The Government consulted on two options:
 - Devolving powers to local authorities generally across England and Wales; and/or
 - Devolving powers to, for example, metro mayors through ‘devolution deals’.
2. We received just over 7,000 responses to the consultation from a wide range of stakeholders including retail organisations, retail parks and shopping centres, Trade Unions, local authorities and religious groups. There were also a large number of responses from individual citizens.
3. The majority of responses from local authorities, large and medium sized business respondents, and business representative organisations were in favour of the proposal to devolve decision making on extending Sunday trading rules to a local level. Of this group, 76% felt that the powers should be devolved to local authorities. This included over 60 respondents from local authorities and local government organisations. However, Trade Unions, religious bodies and a number of small businesses and individuals who responded were against the proposals. A significant number of the individual respondents flagged concerns about the extension of Sunday trading hours itself as opposed to commenting specifically on devolution. This underlines that local decisions to extend Sunday trading hours must be taken sensitively, informed by the views of local communities.
4. The UK already has the largest online market in Europe and online sales continue to grow at a significant rate; by 15% last year. However, the current Sunday trading rules were introduced at a time when online retailing did not even exist. These measures will help to level the playing field, supporting our local high streets and bricks and mortar retailers to thrive against strong online competition from retailers that can trade 24 hours a day, 7 days a week.
5. Following the consultation, and in line with its drive for localism, the Government proposes to devolve the power to extend Sunday trading hours to local areas. The Government wishes to maximise the economic and consumer benefits of these changes so proposes devolving the power to extend Sunday trading rules to shire district and unitary councils across England and county councils and county borough councils in Wales, and will allow the Mayors of London and Greater Manchester (when elected) as well as Mayors established through future ‘devolution deals’ to hold this power.
6. The Government **will not** dictate what the Sunday trading hours should be in individual areas. On the contrary, the Government believes that it is for local areas to decide whether they wish to extend the opening hours in their areas, or just in specific parts of their area, such as town centres or high streets, reflecting the needs and wishes of their local communities. In their responses to the consultation, local authorities asked for these powers which will give local areas a choice as to whether

to make changes where they feel these will benefit them, or equally to make no change at all.

7. Devolving powers to extend Sunday trading hours has the potential to deliver significant economic benefits. Extended opening hours can attract more shoppers to town centres and high streets helping all local stores. In addition to the retail benefits that high streets and town centres bring, there is significant social value that comes from high quality public space. Extended Sunday trading hours will also allow retailers to get more use out of their stores increasing their productivity.
8. Devolving powers to extend Sunday trading hours to local areas will provide consumers, businesses and shop workers with greater choice, opportunities and convenience. Giving local areas the right to decide for themselves the right approach to Sunday trading hours will empower local communities and ensure any extensions reflect local preferences, shopping habits and economic conditions. In summary, we believe it will drive competition, productivity and local economic growth, as well as helping our towns and cities attract holidaymakers and compete for international tourism.
9. Whilst some shop workers will wish to take advantage of the opportunity to work longer on Sundays, the Government recognises the need to continue to protect shop workers across England, Wales and Scotland who do not. We will strengthen shop workers' protections for those wishing to opt out of working on a Sunday. We will do this by reducing the opting-out notice period from three months to one month for shop workers at large shops. Large shops are those with a retail floor area greater than 280 square metres. We will also introduce a new right for shop workers to opt out of working more than their normal Sunday hours, subject to one month notice at large shops or three months at small shops.
10. We will also update and clarify the duty on employers to notify shop workers about these rights, including introducing a requirement to inform shop workers where they can find support and advice about their rights. If an employer fails to notify their shop workers of their opt-out rights, the notice period will be reduced. We will also introduce a minimum award of two weeks' pay to be imposed by an Employment Tribunal where an employer is found to have failed to notify a shop worker of their opt-out rights.
11. Whilst these changes represent significant strengthening of shop workers' opt-out rights, the reduction in notice period at large shops will also help those businesses who wish to move rapidly to respond to extensions in Sunday trading hours once they are granted locally. The Government believes that this strikes the right balance between allowing businesses to move quickly to take advantage of longer opening hours and protecting shop workers who wish to opt-out of working Sunday hours.
12. The Sunday trading rules are devolved to Scotland and transferred to Northern Ireland. So the proposed measures in relation to the Sunday trading hours will only apply in England and Wales. Shop workers' rights contained in the Employment Rights Act 1996 extend to Scotland. So the changes to shop workers' opt-out rights will apply across England, Wales and Scotland.
13. The Government will take forward these measures through amendments to the Enterprise Bill.

1. Introduction

- 1.1 In August 2015, the Government consulted on whether to devolve the power to extend Sunday trading hours. The consultation also asked to whom the power to extend Sunday trading hours should be devolved: to local authorities and/or, for example, to metro mayors through 'devolution deals'. In addition, respondents were asked how they would be impacted by local changes to Sunday trading rules.
- 1.2 Responses were invited through an online portal (Citizen Space), e-mail and letter.

2. Analysis of responses

Summary

- There were just over 7,000 responses to the consultation from a wide range of stakeholders.
- The majority of large and medium sized business respondents and local government respondents were in favour of devolving powers to extend Sunday trading hours.
- The majority of local government respondents were in favour of devolving powers to local authorities.

2.1 There were just over 7,000 responses to the consultation. The responses were from a wide range of stakeholders, including retail businesses, retail trade bodies, owners of retail parks and shopping centres, Trade Unions, local authorities and religious groups. The majority of responses from local authorities, large and medium sized business respondents, and business representative organisations were in favour of the proposal to devolve decision making on extending Sunday trading rules to a local level. However, Trade Unions, religious bodies and a number of small businesses and individuals who responded were against the proposals. We have broken down the responses by category below.

Businesses

- 2.2 The majority of large and medium sized businesses and business representative organisations were in favour of the greater liberalisation of Sunday trading rules through the devolution of powers to extend Sunday trading hours. For example, major retailers, such as Selfridges, Harrods and many other West End and Knightsbridge retailers represented by the New West End Company, Lidl, the Horticultural Trades Association (HTA) representing garden centres, Hammerson and Intu which own a number of UK shopping centres, were all supportive.
- 2.3 The HTA estimated that exempting garden centres from the Sunday Trading Act 1994 would add £75 million in lost sales to the economy. Also, research carried out on behalf of the New West End Company estimated that the net additional sales from a two hour extension to Sunday trading by retailers in the West End and Knightsbridge, the two key London shopping locations for international visitors, would be between £190 million and £290 million annually with between 1,070 and 2,160 full time equivalent jobs being created. A poll of their employees during the Olympics showed that 50% appreciated the opportunity to work extra hours and 45% did not.
- 2.4 In addition, Intu found in a poll they commissioned that over 60% of people believed that people should be able to make their own decisions as to when they can shop and for what on a Sunday.
- 2.5 The British Retail Consortium (BRC) suggested that safeguards should be put in place to ensure consideration of local preferences and economic impact, such as

consultation with local citizens and the wider community, local impact assessments and business ballots. Businesses also expressed the view that the process for aligning planning, licensing and delivery consents with extended shopping hours should be as simple as possible.

- 2.6 Some supermarkets felt that there weren't any real business benefits for them in extending Sunday trading hours for them. Some small business organisations raised the issue of increased competition from shops which might be able to open for longer under these proposals. The Association of Convenience Stores (ACS) considered that trade could shift from convenience stores to supermarkets. ComRes research carried out on their behalf showed that 76% of the public supported shops being allowed to open for six hours; a different ComRes poll carried out on behalf of the pressure group, Open Sundays, showed that 59% of those polled would support a permanent extension of Sunday trading hours.
- 2.7 Some businesses questioned whether devolving the power to extend Sunday trading hours to local authorities might result in varying policies across local areas with differing Sunday opening hours. Some trade bodies, including the BRC, the New West End Company, and the Federation of Small Businesses (FSB), proposed devolving powers to metro mayors initially as a pilot. On the other hand, HTA and some retail park owners favoured devolution to all local authorities.
- 2.8 There were also questions raised around 'zoning' extensions to Sunday trading hours within local areas (confining any change to certain specified areas), including whether this would cause complexity in shops' Sunday opening hours.

Individuals

- 2.9 We received a large number of emails, online responses and letters from individuals, many of whom made general comments questioning further Sunday trading but didn't specifically address the questions in the consultation. Many responses reflected principled opposition to the extension of Sunday trading hours, and some specifically mentioned religious observance. A number of responses were prompted by organised campaigns. For example, we received six petitions.
- 2.10 The views expressed included comments that additional pressure would be placed on employees in the retail sector to work on Sundays, and comments about evidence of the economic benefit or appetite for this initiative.

Other stakeholders

- 2.11 A number of religious groups and others, including a number of Trade Unions, who see Sunday as a special day of rest or a family day, were against any changes to Sunday trading hours. They expressed the view that shop workers might be forced to work longer on a Sunday and considered that the opting-out provisions did not sufficiently protect shop workers who do not wish to work on Sundays.
- 2.12 Religious groups in particular cited the principle that Sunday should be a day of rest.

Local government

- 2.13 The majority of local government respondents were in favour of devolution to all local authorities. The Mayor of London and Greater Manchester Combined Authority along with over 60 local authorities and local government organisations welcomed using the power to extend Sunday trading hours, although a few local authorities did not.
- 2.14 Following the consultation, 149 Conservative Council Leaders and Councillors from across England and Wales wrote in support of our proposals. They welcomed the devolution of these powers as they said it would allow them the flexibility to make the best decisions for their local areas and attract more businesses to help revive local high streets. They considered they could use the powers to help drive growth and create jobs, thereby bringing significant economic and social benefits whilst meeting the needs and wishes of their residents.
- 2.15 Some local authorities also called for planning, licensing and delivery consents to follow changes in Sunday trading hours.

Conclusion

- 2.16 The Government's proposed reforms have prompted a strong and diverse response which confirms our view that decisions on extending Sunday trading hours are best made at a local level so that local needs and wishes can be fully assessed and taken into account.
- 2.17 The responses also underlined the need to ensure that shop workers continue to be adequately protected.
- 2.18 Our proposals for addressing these points are discussed below.

3. Proposals for devolving powers to extend Sunday trading hours

Summary

- The Government proposes to devolve the power to extend Sunday trading hours to district and unitary councils across England, to county councils and county borough councils in Wales, to the Mayor of London and Greater Manchester once elected, and the Mayors established through any future ‘devolution deals’.
- Shop workers’ rights to opt out of Sunday working will be strengthened for shop workers in England, Wales and Scotland.
- Shop workers at large shops will be able to opt out of working on Sunday by giving one month’s notice, rather than the current three months. In addition, a new opt-out right will be introduced for shop workers to opt out of working more than their normal Sunday hours.
- The duty on employers to inform shop workers of their rights to opt out will include a requirement to inform shop workers about where they can find support and advice about their rights.
- If an employer fails to notify a shop worker of their opt-out rights, the notice period will be reduced. Also, where an employer is found to have failed to notify a shop worker of their rights, an Employment Tribunal will be able to make a minimum award of two weeks’ pay.

- 3.1 The Government recognises the role of local areas in driving local growth and believes that local people are best placed to shape decisions that affect their well-being. We believe it makes sense to give local places the freedom to make their own choice about extending Sunday trading hours.
- 3.2 The UK already has the largest online market in Europe and online sales have continued to increase; 15% last year. The Government is therefore keen to help our local high streets and bricks and mortar retailers to thrive.
- 3.3 Devolving powers to extend Sunday trading hours has the potential to deliver real economic benefits. Extended opening hours can attract more shoppers to town centres and high streets, helping all local stores. In addition to the retail benefits that high streets and town centres bring, there is significant social value that comes from high quality public space. Extended Sunday trading hours will also allow retailers to get more use out of their stores increasing their productivity.
- 3.4 This is why the Government considers it is right to give local areas autonomy to make decisions on whether or not to extend Sunday trading hours reflecting the wishes of their local citizens and the needs of local businesses.

- 3.5 Devolving the power to extend Sunday trading hours to local areas will:
- i. Enable local areas to decide for themselves the right approach to extended Sunday trading hours, reflecting local preferences, shopping habits and economic conditions.
 - ii. Allow local areas to support local traders and independent shops in their high streets and town centres, helping them to compete with internet retailers which operate 24 hours a day, 7 days a week.
 - iii. Offer consumers more choice about when and where they shop locally by giving them access to a wide range of products and enabling them to shop earlier or later in the day.
 - iv. Offer businesses more flexibility on opening hours, and offer shop workers more opportunity to work on Sundays should they wish, whilst protecting and strengthening the rights of those who do not.
 - v. Improve productivity by freeing retailers to make better use of their shops, allowing them to sell more without a proportionate increase in costs, thus reducing prices and improving convenience for consumers.
 - vi. Support cities and towns to create jobs and greater prosperity, and enable them to take advantage of increased numbers of holidaymakers and compete for international tourism.
- 3.6 Devolving powers to local authorities will maximise the benefit of extending Sunday trading hours for the economy and consumers locally. On the other hand, devolving the policy to only a few areas with ‘devolution deals’ would limit the impact of the policy in economic terms, and the number of consumers who would benefit.
- 3.7 Therefore, the Government proposes to devolve the power to extend Sunday trading hours as widely as possible, as opposed to devolving to only a few areas through ‘devolution deals’. We will devolve the power to extend Sunday trading hours to shire district and unitary councils across England and county councils and county borough councils in Wales, and will allow the Mayors of London and Greater Manchester (when elected) as well as Mayors established through future ‘devolution deals’ to hold this power.
- 3.8 The Government **will not** dictate what the Sunday trading hours should be in individual areas. It will be for local areas to decide whether they wish to extend the opening hours in their areas or in specific parts of their area, such as local high streets or town centres, reflecting the needs and wishes of their local community.
- 3.9 This flexibility will enable local areas the discretion to ‘zone’ specific localities in their local area or choose which part of their local area would benefit from the longer hours, if they wish. This could be used, for example, to boost a local high street or a Business Improvement District (BID) in support of local economic development strategies. This will empower local areas to attract more shoppers to support growth in their local economy. In addition, if agreed through ‘devolution deals’, mayors of combined authorities will be able to extend hours strategically in line with other plans, subject to consultation with their constituent local authorities.
- 3.10 The Government believes that how local areas make decisions on Sunday trading hours are a matter for them, but should be based on evidence following robust

consultation with, for example, local citizens and businesses, considering factors such as the impact on the local economy and local residents.

Strengthening shop workers' rights

- 3.11 The Employment Rights Act 1996 contains rights for shop workers to enable them to opt out from working on Sundays (except those only employed to work on a Sunday)¹. Under this Act, shop workers can give their employer an opting-out notice which applies three months later and which means that a shop worker who has opted out cannot be contractually required to do shop work on Sundays. They are also legally protected from unfair dismissal or detriment as a result of exercising (or proposing to exercise) their opt-out right. Shop workers must be notified in writing of their right to opt out within two months of commencing employment. Failure to do so results in the employee's notice period for opting out being reduced to one month.
- 3.12 In our consultation we committed to ensure that the same level of protection for shop workers applies following any amendment to current Sunday trading restrictions. However, despite this commitment, views were expressed in consultation responses about the potential impact of any extension of Sunday trading hours on shop workers. We also think some businesses would want to move quickly to take advantage of longer opening hours. But it is likely that some shop workers who work regular Sunday hours may not want to extend them.
- 3.13 We will therefore strengthen shop workers' opt-out rights across England, Wales and Scotland. We will do this firstly by reducing the opting-out notice period for shop workers wishing to opt out of working on a Sunday from three months to one month at large shops, recognising that some small shops will need longer to organise alternative staffing. We will also introduce a new right for shop workers to opt out of working more than their normal Sunday hours. This new opt-out right will also be subject to one month's notice for shop workers at large shops, and three months' notice for those at small shops.
- 3.14 We will also update and clarify the duty on employers to provide written notice to their shop workers about these opt-out rights. Employers will be required to include in this notice information on where their shop workers can find support and advice about their rights.
- 3.15 Where an employer fails to notify their shop workers, the notice period will, in respect of both opt-out rights, be automatically reduced. For shop workers in large shops the notice period will be reduced from one month to seven days, or for shop workers in small shops, from three months to one month.
- 3.16 Also, where a related claim is successfully brought at an Employment Tribunal and it is found that an employer failed to notify a shop worker of their opt-out rights as required above, the tribunal will be able to award the shop worker a minimum award of two weeks' pay (or four weeks' pay where the Employment Tribunal considers it just and equitable).

¹ Shop workers who started their employment before 26 August 1994 and have to date remained continuously in that employment cannot be required to work on a Sunday, subject to certain exemptions.

- 3.17 We believe that these measures balance the needs of business with the need for strengthened protections for shop workers who do not wish to work on Sundays, or who do not wish to work more than their normal hours on Sundays.

Loading and unloading of vehicles

- 3.18 The 1994 Act also imposes restrictions on loading and unloading of vehicles at certain stores situated in a loading control area before 9am on a Sunday. However, consent can be obtained from the local authority to load and unload before this time.
- 3.19 A number of respondents, including businesses and local government organisations, indicated a desire for delivery consents to follow any changes to Sunday trading hours.
- 3.20 The process for applying for consent to load and unload before 9am is well-established and takes into account the impact on the local community. We consider that this approach strikes the right balance between a businesses' need to operate and the needs of local residents. Therefore, we have no plans to make any changes to these procedures.

Planning and licensing restrictions

- 3.21 There may be existing restrictions on opening hours of individual premises imposed through planning permissions. A number of respondents, including some businesses and local government organisations, also indicated a desire for planning and licensing consents to directly follow changes in Sunday opening hours.
- 3.22 Decisions on planning and licensing are made through well-established procedures which consider specific issues, such as noise nuisance and the number of other licensed venues in a local area. There are also well-established processes for businesses to apply for a variation of existing planning and licensing conditions.
- 3.23 Whilst we appreciate the concerns of some businesses expressed through the consultation, local authorities are well aware of the interactions between planning and licensing and Sunday opening hours and we would expect them to take a fully joined up approach to these matters when considering whether to extend Sunday hours in their area.
- 3.24 On this basis, we have no plans to make any changes to these procedures. However, we would encourage local areas to consider local policies on planning, licensing and delivery restrictions when deciding to extend Sunday trading hours within their locality.

Christmas Day and Easter Sunday

- 3.25 In the consultation, the Government made it clear that any changes to the restrictions on trading on Christmas Day or Easter Sunday were outside the scope of the consultation. The responses to the consultation have confirmed our decision not make to any changes to these restrictions.

4. Next steps

- 4.1 In conclusion, the Government proposes to take forward these measures through amendments to the Enterprise Bill.



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