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Hard to Avoid but Difficult to Sustain: Scotland’s Innovative Health Tax on Large Retailers Selling Tobacco and Alcohol

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Declaration of authorship

MH and KS jointly conceived and wrote this paper with input from AW. MH and KS also jointly undertook the interviews described in this paper. MH led the documentary searches and analysis, KS led the coding and analysis of the interview data and AW led the media analysis. A longer, more in-depth account of this research has been provided to the funders, Cancer Research UK.
Hard to Avoid but Difficult to Sustain: Scotland’s Innovative Health Tax on Large Retailers Selling Tobacco and Alcohol
Policy points

- The Scottish Government’s Public Health Supplement (a levy on large retailers selling alcohol and tobacco) was an innovative tax that was successful in generating predictable revenues but failed to stimulate substantial behavioural change among retailers (e.g. decisions to stop selling alcohol or tobacco).

- A tax may be considered a ‘health’ tax on the basis that it raises revenue for health spending and/or is intended to achieve health aims (e.g. behavioural change among suppliers or consumers of health-damaging products) but there is likely to be tension between these goals in terms of policy design.

- Although framing a tax as a ‘health’ measure may increase public support, where the substantive health content is limited, or questionable, such a measure may be difficult to sustain in the face of industry criticism and a lack of competing support from health interests.
Abstract

Context: In the context of increasing health spending and a constrained budget, the Scottish Government levied a new ‘health’ tax on large retailers selling alcohol and tobacco in April 2012. This innovative tax, the ‘Public Health Supplement’, had the potential to finance additional health spending while discouraging retailers from selling tobacco. We present a case study of the levy, examining how it evolved over time, what impacts it had, and why, in 2015, the government decided to discontinue the policy, considering how this experience might inform future strategies for addressing tobacco and alcohol harms via taxes on retailers.

Methods: We employed three data sources: policy documents (both documents in the public domain and documents obtained via Freedom of Information requests); media coverage of the debates surrounding the Public Health Supplement; and key informant interviews. We analysed these data collectively, in chronological order, triangulating between sources.

Findings: When the Supplement was announced in 2011, a clear health rationale was advanced. However, the policy, as subsequently implemented, was not designed to elicit a behavioural response from retailers in terms of alcohol or tobacco sales. It was a successful in generating a predictable revenue stream, but there was no evidence that this was earmarked for health. Hence, the substantive ‘health’ content of the policy was questionable, a fact that was highlighted by industry opponents of the tax, while there was and a lack of competing support from health interests. The industry’s campaign was influential in the Government’s subsequent decision to reduce the rate of the tax and restrict its duration to three years.

Conclusions: A tax may be considered a ‘health’ tax on the basis that it raises revenue for health spending and/or that it helps achieve health aims (e.g. behavioural change) but there may be tension between these goals in policy design. Framing a tax as a ‘health’ measure may increase public support in the short term, but this may not be sustained if such framing is insufficiently justified.
Keywords

Alcohol, tobacco, taxes, retailers/supermarkets.
1. Introduction

In September 2011, the Scottish (majority Scottish National Party - SNP) Government announced a new health tax, the ‘Public Health Supplement’ (henceforth the *Supplement*). This tax, which was in place between April 2012 and March 2015, was levied on retail premises in Scotland selling *both* alcohol and tobacco that had a rateable value of over £300,000. It was an innovative tax which, in contrast to traditional tobacco and alcohol excise taxes, targeted large supermarkets selling alcohol and tobacco products. As far as we are aware, this was the first tax of its kind.

The Supplement was first announced on 21st September 2011 as part of the *Spending Review 2011 and Draft Budget 2012-13*. In that document, the aims were recorded as addressing the health and social problems associated with alcohol and tobacco use and generating income for preventative spending. Three key factors appear to explain the Scottish Government’s interest in developing this kind of tax. First, within the UK, Scotland has a relatively high burden of smoking and alcohol related problems. In economic terms, alcohol misuse is estimated to cost £3.6 billion a year in Scotland, whilst tobacco is estimated to cost £1.1 billion a year. In health terms, recent data suggest that alcohol contributes to approximately 1,000 deaths a year in Scotland, while around 13,000 deaths a year are attributable to smoking. Second, although responsibility for health policy in Scotland has been devolved since 1998 (following the creation of a new Scottish Parliament), the Scottish Government’s ability to raise revenue via taxation was limited, until further devolution of tax raising powers in 2016. The parameters of the Scottish Government’s spending plans were set by UK-level decisions on public spending, a constraint which had become increasingly salient in the context of a Scottish Government criticism of the UK government’s austerity agenda cuts. Third, following its ‘first mover’ status in areas such as smoke-free regulation and legislating for a Minimum Unit Price for alcohol, the Scottish...
Government had developed a reputation as something of a health policy leader in the UK. 69

The Scottish Government initially predicted that the levy would raise £110m over three years. This estimate was subsequently revised down to £95m over three years. In 2015, for reasons that were not made clear, the Scottish Government decided not continue the levy into the next three-year budgeting period. No formal evaluation of the Supplement has been undertaken. Indeed, as far as we are aware, this paper presents the first analysis of this notable measure, using a case study approach to examine the process through which the policy was developed, its evolution over the period in which it was implemented, the resulting outcomes and the subsequent decision to discontinue the policy. Drawing on this case study, we consider how these experiences can inform future strategies for policymakers and advocates interested in addressing tobacco and harmful alcohol through new taxes on retailers.

2. Methods

We employed a qualitative case study approach, drawing on three key data sources (relevant policy documents, media coverage and key informant interviews), triangulating the results across these sources. For the documentary analysis, we began by searching the Scottish Government and Scottish Parliament websites for documents concerning the Supplement. The most relevant sources of information from these searches were downloaded and saved for analysis. We also submitted a Freedom of Information request to the Scottish Government to access information on the nature and extent of government-industry interactions in the period between the Supplement being announced in September 2011 and the statement of the finalised policy in February 2012. In addition, we searched the internet more widely to try to identify documents relating to the Supplement produced by interested stakeholders, focusing on those produced by large retailers. We also searched for documents cited in media reports
that appeared to be of interest and asked all interviewees to let us know about any potentially useful documents. We analysed the resulting documents collectively, in chronological order, to ascertain which actors were involved in discussions about the Supplement, to understand the details of this policy’s development and to assess how discussions about the Supplement changed over time. Box 1 identifies the key documents included in our analysis.

**Box 1: Key documents included in our analysis**

- Scottish Spending Review 2011 and Draft Budget 2012-13;
- Budget Speech by Finance Minister, John Swinney 2012;
- Oral and Written answers to Oral and Written questions in the Scottish Parliament;
- Information received via Freedom of Information request, including emails and letters between the Scottish Government and Tesco, CBI (the Confederation of British Industry) and SRC (the Scottish Retail Consortium) regarding the Public Health Supplement, along with minutes of related meetings;
- Information related to meetings between the Scottish Government and other policy actors in the public domain;
- Reports of Scottish Parliamentary scrutiny of the 2011 Spending Review and 2012-13 Draft Budget;
- Oral and Written Evidence to Scottish Parliamentary Committee inquiries; and
- Regulations and Executive Note for the Public Health Supplement.

A limitation is that we were not able to obtain copies of all of the documents we identified as relevant. One important document that we were not able to obtain was a report conducted by CEBR (Centre for Economics and Business Research), a consultancy organisation, on behalf of Asda (one of the large supermarkets affected by the supplement) which was widely referred to in media coverage of the Supplement and which we know was drawn on by large retailers in their efforts to mobilise against the Supplement. We submitted requests to both Asda and CEBR for a copy of the report and also asked interviewees whom we knew had seen copies of the report and journalists who had written articles that cited the report but none of these routes proved successful. The coverage of this report in the media
provided us with information about the report’s contents but, without the full report, we were not able to analyse specific claims made in this document in any detail.

At the same time, we undertook searches for relevant media articles in two databases: Factiva and ProQuest (specifically the ABI/INFORM Complete and ISSB databases). These databases were selected (following discussions with a qualified librarian) for their breadth of media coverage, both geographically and in terms of the types of media suggested (i.e. including trade journals and other specialist media). After undertaking an initial analysis, we developed search strings (outlined in Box 1) that included the various phrases that we identified as being used to describe the Supplement in media discussions, and combined these with ‘Scotland’ (because these were our geographical focus and this helped exclude non-relevant articles).

**Box 1: Media Analysis Search Strings**

<table>
<thead>
<tr>
<th>Databases:</th>
</tr>
</thead>
<tbody>
<tr>
<td>A) Database: Factiva</td>
</tr>
<tr>
<td>Search String: (“public health levy” OR “public health tax” OR “public health supplement” OR “large retailer’s tax” OR “large retailer’s levy” OR “Tesco tax” OR “supermarket tax”) AND Scotland</td>
</tr>
<tr>
<td>Filter: 2010-2015</td>
</tr>
<tr>
<td><strong>AND</strong></td>
</tr>
<tr>
<td>B) Database: ProQuest (ABI/INFORM Complete and ISSB)</td>
</tr>
<tr>
<td>Search string: (&quot;public health levy&quot; OR &quot;public health tax&quot; OR &quot;public health supplement&quot; OR &quot;large retailer's levy&quot; OR &quot;supermarket tax&quot; OR &quot;Tesco tax&quot;) AND Scotland</td>
</tr>
<tr>
<td>Filter: Exclude Scholarly Journals</td>
</tr>
</tbody>
</table>

The media searches were conducted in July 2015 (i.e. several months after the Public Health Supplement had been discontinued). The combined results were screened for
relevance and relevant articles (n=151) were then analysed thematically, using a data extraction table that focused on identifying: (i) which actors were involved in debates about the Supplement; and (ii) what the main claims and arguments being put forward about the Supplement were.

Using the results of the documentary and media analysis, we then identified a list of potential interviewees (and we subsequently asked all interviewees to identify other potentially relevant interviewees). In total, we approached 32 individuals with a request for an interview, of which only nine agreed to participate. This is a relatively low response rate, but is reflective of the fact, as shown below, that the Supplement was conceived and designed by a small number of individuals working within the Finance Directorate of the Scottish Government, and many of the actors we had anticipated would have a view on the Supplement did not feel they had engaged with the policy sufficiently to be able to provide a useful interview (this was the reason given for declining our interview request by individuals at NHS Health Scotland, local authorities and health focused NGOs, as well as several opposition MSPs). Indeed, two of the health focused NGOs contacted stated that they did not view the supplement as a public health measure (something we discuss in more detail later in the paper). Others (especially the large retailers, SNP MSPs, Ministers and Special Advisors approached) tended either not to reply or to say that they did not have time for an interview on this topic. A summary of the professional location of potential and actual interviewees is provided in Table 1.

Table 1: The professional location of individuals with whom we requested an interview and summary response

<table>
<thead>
<tr>
<th>Professional location of interviewees</th>
<th>Number of interviewees approached</th>
<th>Number of interviewees who accepted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finance Minister, John Swinney, and relevant</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Role</td>
<td>N (face-to-face)</td>
<td>N (email)</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-----------------</td>
<td>-----------</td>
</tr>
<tr>
<td>special advisor</td>
<td></td>
<td>1 (plus email correspondence with 1 other)</td>
</tr>
<tr>
<td>Individuals responsible for Scottish policy at 6 large supermarkets affected by supplement</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Local Government organisations</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>MSPs (from Conservative, Labour, Liberal Democrat and SNP parties)</td>
<td>6</td>
<td>2 (both Labour Party, i.e. opposition MSPs)</td>
</tr>
<tr>
<td>NHS Health Scotland (special health board with responsibility for public health in Scotland)</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Non-governmental organisations (with health focus)</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>Scottish Government civil servant - Health</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Scottish Government civil servant- Finance/Local Government</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Senior staff at trade organisations representing large supermarkets</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Transnational Tobacco Company (the only one for which we identified any evidence of interest in policy debates around the supplement)</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>32</strong></td>
<td><strong>9</strong></td>
</tr>
</tbody>
</table>

Interviews were undertaken by one or both of the lead authors (wherever possible, we undertook interviews jointly but the limited availability of some interviewees meant that we had to conduct four of the interviews on an individual basis). All interviews were digitally recorded and professionally transcribed, with the written consent of interviewees. The one exception to this was the interview with a member of staff at NHS Health Scotland (this was an extremely short interview due to the informant’s lack of specific knowledge about the Supplement; summary notes were therefore deemed more appropriate). Interview transcripts were uploaded to the qualitative data analysis software programme, NVivo, where they were
thematically coded using a coding framework that reflected our primary interests: i.e. to understand the rationale for implementing, and later discontinuing, the Public Health Supplement and identifying the key actors and arguments involved in debates about the measure.

To contextualise the specific findings of this project, we undertook two, linked systematic searches for relevant literature concerning health taxes, focusing on: (i) taxes intended to change the costs of supplying or consuming health-damaging products; and (ii) taxes intended to be hypothecated for health-related objectives. We discuss the results of these literature searches in more detail elsewhere ([reference removed for anonymity in review]). In the context of the current paper, it is sufficient to note that we were unable to identify any similar taxes on retailers of tobacco and alcohol, suggesting that the Supplement represents an innovative health policy, and that this analysis is therefore an important opportunity to reflect on the lessons that might be learned from this novel form of taxation.

3. Results

3.1 How was the Public Health Supplement perceived by key stakeholders?

The stated aims of the Supplement, when it was announced on 21st September 2011, were to address “the health and social problems associated with alcohol and tobacco use” and to generate income for “preventative spend measures.”

Our media analysis shows that the policy was initially welcomed by public health NGOs, which tended to regard it as a means of reducing the supply of alcohol and tobacco while raising revenue for health spending:

“Scotland has again shown leadership in acting to curb the harm from this lethal and addictive product and to invest in our health”. (ASH Scotland)
In contrast, our interview data show that retail sector representatives viewed the Supplement as no more than a re-labelled form of an earlier attempt to increase tax revenues from large retailers – a measure that had not contained any explicit public health content or framing:

“In the previous Parliament they had brought forward a proposal [...] for a larger retailers levy [...] but there was no linkage at all in name or otherwise to public health, booze, tobacco or anything like that. There were several different reasons given at the time. One was to tilt the balance in favour of smaller retailers, [...] others it was about out of town retailers. [...] And obviously ultimately they lost that vote. And then in subsequent Parliament when they got a majority, it miraculously became something to do with health.” (Retail trade group employee)

From this perspective, the Supplement was seen as no more than a means of raising additional revenue in order to address a financing gap in the Spending Review which, as noted, was written in a context in which the block grant awarded to Scotland by the UK was being reduced, in real terms, for the first time since devolution.¹¹ Our interview data show that, over time, the perception that the Supplement was largely a revenue-raising measure and had no substantive public health content became dominant across all policy stakeholders.

In accordance with this interpretation, it is notable that health-related actors were not included in discussions about the policy’s development, even within the Scottish Government. An interviewee from the Scottish Government health directorate stated that the Supplement was developed within the Finance Directorate and that no health officials had been involved. In addition, documents show that NHS Health Scotland – the national health agency tasked with improving health in the country - was not consulted¹² in the development of the Supplement and our attempts to interview individuals working at NHS Health Scotland
confirmed this. Similarly, an employee of a public health NGO that we interviewed said they had not been consulted on the policy and had had no “advance warning” of it before its announcement in the Spending Review.

Perhaps as a consequence of this, other interviewees suggested there was no strong lobby in favour of the Supplement, with one opposition MSP reflecting that this was surprising, ‘if it was a genuine health Supplement.’

**3.2 How did large retailers respond to the Supplement?**

The announcement of the Supplement elicited an intense and sustained response from large retailers that sell alcohol and tobacco (Asda, the Co-operative Group, Morrison’s, Sainsbury’s and Tesco) and their representative bodies. Responses included: (i) oral and written responses to the Scottish Parliament Committees; (ii) direct lobbying of John Swinney, the then Finance Minister, and his officials, particularly during the period from the draft budget’s publication on 9th September 2011 to the final budget speech on 8th February; and (iii) direct lobbying of the Health Directorate - even though, as outlined above, it had not been involved in developing the policy. The industry also engaged in a sustained campaign in the media, in which quotations that were critical of the Supplement were prominent, as Figure 1 shows.

*Figure 1: Comparing the number of positive, negative and neutral views on the Public Health Supplement by individual quotations within media stories*
As Figure 2 illustrates, there was a large increase in media coverage of the Supplement in the initial days and months following the announcement. The number of relevant media articles then decreased significantly over the next four years and, notably, did not peak in the run up to the announcement to discontinue the Supplement, suggesting that most of the public lobbying undertaken in relation to the levy occurred immediately after the measure had been announced and before the details of the measure were confirmed. Between 2013-2015, the small number of media articles published appeared almost exclusively in newspapers, with only one article in a retail trade magazine published in 2013, which suggests that, although efforts to gain media attention were limited in this period, they remained outward facing.
Figure 2: Number of news articles concerning the Public Health Supplement by year

![Histogram showing the number of news articles concerning the Public Health Supplement by year. The x-axis represents the year, ranging from 2011 to 2015, and the y-axis represents the number of articles, ranging from 0 to 100. The bars show the number of articles for each year: 91 in 2011, 41 in 2012, 9 in 2013, 9 in 2014, and 1 in 2015.]

Taken together, our data sources identify eight distinct arguments employed against the Supplement, as summarised in Table 2. The frequency with which specific arguments were deployed, and their use across different sectors, varied. In the following sub-sections, we explain each of the arguments against the Supplement in detail.

Table 2: The Eight Distinct Arguments Used Against Public Health Levy

<table>
<thead>
<tr>
<th>Argument Against the Public Health Levy</th>
<th>No. of Times Argument Made in Media</th>
<th>Type of Interviewees making argument</th>
<th>Argument evident in documents?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Harmful economic impacts</td>
<td>55</td>
<td>Large retailers and trade organisations</td>
<td>Yes</td>
</tr>
<tr>
<td>2. Unfair targeting of part of the retail sector</td>
<td>31</td>
<td>Large retailers and trade organisations</td>
<td>Yes</td>
</tr>
<tr>
<td>3. Criticism of presentation as a health tax</td>
<td>20</td>
<td>All interviewees</td>
<td>Yes</td>
</tr>
<tr>
<td>4. Lack of Impact Assessment</td>
<td>18</td>
<td>Large retailers and trade organisations</td>
<td>Yes</td>
</tr>
<tr>
<td>5. Setting a worrying precedent</td>
<td>10</td>
<td>Large retailers and trade organisations</td>
<td>No</td>
</tr>
<tr>
<td>6. Lack of consultation</td>
<td>7</td>
<td>Large retailers and trade organisations</td>
<td>Yes</td>
</tr>
<tr>
<td>7. Increased prices for consumers</td>
<td>7</td>
<td>No interviewees made this argument</td>
<td>No</td>
</tr>
<tr>
<td>8. Not a legal measure</td>
<td>1</td>
<td>No interviewees made this argument</td>
<td>Yes</td>
</tr>
</tbody>
</table>
In a letter to John Swinney, obtained via a Freedom of Information request (24th November 2011), CBI Scotland claimed the Supplement would “reduce rates of return and make it more expensive for retail to invest in Scotland than elsewhere in the UK or indeed abroad.” Asda commissioned the consultancy organisation, Centre for Economics and Business Research (CEBR), to produce a report on the likely impacts of the Supplement, focusing on negative economic impacts (it is perhaps worth noting that CEBR had previously been commissioned by the alcohol producer, SABMiller, to produce a report that assessed the economic modelling undertaken by academics at the University of Sheffield, which was being used to support Scottish Government plans for minimum unit pricing for alcohol). This report (which we have been unable to obtain, despite written requests to Asda and CEBR, among other organisations) was employed by the sector in subsequent lobbying efforts and its findings were summarised in some of the media coverage. From this coverage, it appears that the Supplement was framed in this report as an “economically irrational tool”, and estimates were put forward that the affected retailers would lose 8-10% of their profits.

The interview data suggest that the predictions of negative economic impacts set out in the CEBR report were subsequently drawn on by large retailers and their representative groups in direct lobbying activities. One interviewee from a large retailer (not Asda) stated:

“You have to look at the effect [of the Supplement] on the profitability of particular stores, and profitability is the reason that investors decide where to put their money and where to invest, and the evidence [from the Asda commissioned CEBR report] suggested that the impact on store profitability was something like 10% of store operations, a store operation’s profit, or 10% of the particular company’s profitability across a group of stores. Now that is a massive impact compared with
other places that people or companies could invest. And there were concerns about the impact, what message that sent to investors.”

Claiming that the Supplement would have negative economic impacts was also the most frequently employed argument against the policy in the media coverage. For example, as the above quotation hints, opponents argued that the Supplement would be a disincentive for investment by large retailers in Scotland, slowing their rate of expansion, and that it would harm their ability to sustain their contributions to the economy by providing jobs. Overall, the Supplement was positioned as directly counterproductive to the Scottish Government’s overarching economic goals. These were articulated in a forward to the Spending Review, authored by the then finance minister John Swinney, as “accelerating economic recovery to create the jobs that our people need” (p.5).

The lack of public health substance to the Supplement was also a major theme in the attempts of large retailers to lobby against it. In a letter to the Scottish Government (dated 8 November 2011), jointly written by the Scottish Retail Consortium, CBI Scotland, the Wine and Spirit Trade Association, and the Scottish Chambers of Commerce, which we obtained via a request made under the Freedom of Information Act, these trade representatives argued:

“The link between the levy and preventative health measures is tenuous […] There must be robust evidence that the levy will fund measurable, well-defined and evidence-based preventative health measures.”

This was also a major theme in media coverage. For example:
“The Scottish Government has a hole in its local authority budget and has chosen the retail sector to fill it, simply because supermarkets are profitable businesses. The public-health justification for this levy is completely unfounded.” – Jane Bevis, SRC Communications Director, 18 October 2011

The claims by opponents of the levy also highlighted the lack of a commitment to ring-fencing the revenue raised through the levy for public health purposes:

"A true health measure would be properly evidence-based, would not discriminate in this arbitrary way and the revenue would be ring-fenced for health purposes" – SRC Spokesperson, 5 October 2011

In addition to threats about investment and the economy, our analysis suggests that opponents also argued that the levy was discriminatory on the basis that it targeted only one part of one sector and that it could easily be extended to others:

"This levy still sets an alarming precedent by singling out one part of one sector, and businesses of all kinds will fear what future revenue-raising schemes might be devised." - Ian Shearer, SRC Director, 8 February 2012

There were three elements to this argument as presented by large retailers in the media coverage. One was to question the health basis of the Supplement’s exclusive focus on larger retailers, given that many people purchase tobacco and alcohol products from smaller retailers. Another was to suggest that the Supplement potentially set a precedent for other sectors (an argument that appears to have been intended to quash any policy
support from smaller retailers, as discussed in more detail below). A third was to claim that large retailers had a good reputation in the area of alcohol and tobacco sales, and participation in health-related initiatives, and to position the Supplement as undermining these efforts. In the Scottish Government itself, there was some sympathy with this latter argument. For example, the official we interviewed from the Scottish Government Health Directorate indicated that the Supplement had interfered with more public health-related conversations between the Scottish Government and large retailers:

“If you take it out of large retailers, so what? Do smokers stop smoking because it’s not in large retailers? No, well large retailers would argue you just displace where their shoppers go and […] they’re already losing customers to other places. Now some of those places don’t sell tobacco, but just often will drive it into small shops, middling shops. So unless you’re really going to make the whole thing not available, it’s tougher.”

Efforts were also made to position large supermarkets as ‘vulnerable’ entities that were being victimised by the levy, and to suggest that this would lead to price rises for consumers.20

There were also a set of arguments against the Supplement that related to the process via which the policy had been developed (arguments 4 and 6 in Table 2); because of its alleged economic effects, large retailers and their lobbyists argued, in the media, documents and interviews (see Table 2), that the Supplement should have been subject to a Business Regulatory Impact Assessment (a tool to help policymakers
consider the impacts of policy proposals on economic actors) and to far greater consultation. For example:

“*Well there’s a whole set of principles, core regulation principles. And clearly if you’re going to do a major policy like that, then you should do some evidence beforehand, you should do some research, some assessment of what the costs and benefits would be. And there was no regulatory assessment at all, and John Swinney specifically said he wasn’t going to do one, which completely contradicted all the guidelines about better regulation.*” (Interviewee from trade group representing large retailers)

The strong and frequent emphasis that business actors placed on ‘better regulation’ guidelines and the need for a business impact assessment is interesting in the context of research demonstrating business (including tobacco company) involvement in shaping and promoting the better regulation agenda and impact assessment tools in the UK and the European Union.

In addition, in the aforementioned letter from the Scottish Retail Consortium, CBI Scotland, the Wine and Spirit Trade Association, and the Scottish Chambers of Commerce, to the Scottish Government (dated 8 November 2011), obtained under the Freedom of Information Act, the trade bodies argued that the Supplement was “a completely new form of taxation” for large retailers and business in general – and required close scrutiny as such. In the weeks following the announcement of the Supplement, as it became clear that the Scottish Government did not intend to carry out a Business Regulatory Impact Assessment on the levy, this became an major focus of media stories about the levy and was linked to the idea (briefly mentioned above) that the policy might, at any moment, be expanded to other sectors:
“No wonder business suspects a hidden agenda on business rates - what the SNP are doing to supermarkets today they may well be doing to other businesses tomorrow.” – Lewis MacDonald, Labour Party Infrastructure Spokesman, 18 October 2011

Our data suggests that the alleged potential for the Supplement to create a “worrying precedent” for other forms of business taxation served to harden industry opposition to the measure. Media coverage suggests that, initially, representatives of smaller retailers supported the Supplement. Both the Federation of Small Businesses and the Glasgow Chamber of Commerce were reported to be supportive. While interviewees from large retailers described how small retailers were encouraged to change their view. For example:

“There was a bit of [support for the Supplement from smaller retail businesses] until it was pointed out that some of them: the levy applies today to one group, and the rateable value threshold could quite easily be lowered more particularly if the minister needed some more money in the following year. And that is actually, instead of just, when they were slightly enlightened as to looking at horizon scanning and looking forward a little bit and started to realise actually it might not be such a good thing, they began to change their tune.” (Interviewee from a large retailer)

It is clear from the intensity of the industry’s response evidence in the documents we obtained via Freedom of Information requests, the media coverage of the Supplement, and the comments made in interviews, that large retailers had not expected anything similar to the
previous large retailer levy to emerge. The lack of consultation was felt to be particularly damaging in the area of tax policy:

“For tax policy, you should do the evidence beforehand, and you should produce the consultations and explain what the policy is trying to do, and then you should consult tax professionals and other people about how a tax is best designed, and then you should draft some legislation and then consult on that. And that’s standard policymaking inside government.” (Interviewee from trade group representing large retailers)

This argument was also evident in the initial media coverage of the Supplement, with retailers and their trade group representatives expressing their concern over the lack of consultation, especially in the context of Scottish Government commitments to working in ‘partnership’ with the business community:

"It's difficult to work in partnership with somebody who keeps bringing surprises with very large bills attached to them…. There is an awful lot of missing detail at the moment. We want to understand what the consultation process is going to be given that there was nothing up until now.” – Jane Bevis, SRC Communications Director

Both the documentary data and the interviews we undertook indicate that the main actors lobbying against the Supplement were large retailers and the trade groups representing their interests. None of the individuals we interviewed suggested that tobacco or alcohol
manufacturers had been active on this issue. However, we did identify evidence that parts of the tobacco industry may have been considering a legal challenge to the policy.

On 12 March 2012, Gallaher Limited (now part of Japan Tobacco International) wrote to Scottish Ministers requesting they disclose: (i) any “assessment, consideration or discussion” of the legality of the Supplement in terms of the competence of the Scottish Government under the Scotland Act 1998, its effect on competition and/or trade in the European Union; and (ii) why the Supplement had not been notified to the European Commission. Scottish Ministers responded on 30th March 2012, informing Gallaher that they were withholding the information requested under a number of exemptions in Freedom of Information legislation. Gallaher appealed the government’s decision to the Scottish Information Commissioner but the appeal was ultimately unsuccessful. None of the individuals we interviewed said they were aware of tobacco industry lobbying about the Supplement or of a potential legal challenge.

3.3 Changes to the Supplement between announcement and implementation

In the period between the initial announcement of the Supplement and the confirmation of its inclusion in the final budget, in April 2012, the technical content of the policy and its framing changed in important ways. Specifically, changes were made to: (i) the ‘public health’ rationale, which was progressively de-emphasised by the Scottish Government; (ii) the rate at which the tax would be paid, and therefore the predicted revenue from it; and (iii) the period of time in which the Supplement would remain in place. In this section, we explain these three changes in more detail, and comment on the extent to which they are connected to the strong, negative responses of large retailers following the policy’s initial announcement.

The presentation by the Scottish Government of the rationale for the Supplement changed between the initial announcement and its implementation. This is reflected in emails
and letters between the Scottish Government and three key industry actors, Tesco, the CBI and the Scottish Retail Consortium (the two main trade groups representing large retailers in these debates), as well as Scottish Government minutes of meetings with these and other industry actors, were obtained through Freedom of Information requests. These documents reveal that, in a meeting on 17th October 2011 with the trade groups in addition to executives from Asda, Morrison’s, the Co-op and Tesco, Swinney is minuted to have stated:

“The levy is not an attempt to limit sales or to force retailers to cease sale of these goods, but is to establish a new funding stream to support the long term sustainability of public services.”

In a meeting with executives of Tesco on 10th November 2011, John Swinney once again emphasised the focus on income generation via the Supplement, stating (according to a minute of that meeting drafted by officials) that:

“the Scottish Government [is] willing to work with Tesco to consider any alternative suggestions for income generation (echoing comments made earlier that day by Mr Swinney during his visit to the new Shettleston Tesco store and his commitment to meet again with Tesco)”

We know from emails between Scottish Government officials and Tesco that the latter followed up on this offer, and produced a report (which we have not been able to obtain) with a proposal to expand the scope of the tax to include a wider range of large businesses. In a letter from John Swinney to David North of Tesco on 8th February 2012 (the morning before the Budget speech in which the details of Supplement were confirmed), he thanked the
company for the “constructive dialogue” over the Supplement and for the “alternative proposals” that Tesco had suggested. He added:

“While I have not pursued these in full, I have given them full consideration and some elements of your suggestions have been taken on board”.29

He then confirmed that the details of the Supplement would be confirmed in parliament that afternoon, including “some changes to our original proposals”, stating:

“Having reflected upon your comments and within the constraints of delivering a balanced budget, I have reduced the original amount paid by individual retailers and limited the length of time that the Supplement will apply. This will have the overall effect that the estimated income generated by the Public Health Supplement will reduce by £15 million, to £95 million, over the 3 year period to 2015. This will be raised by setting a fixed rate Supplement of 9.3 pence in 2012-13 and 13 pence in 2013 and 2014-15. […] In addition, I can confirm that the Public Health Supplement will be a temporary measure and will apply for the three years of the spending review only, from 2012-13 to 2014-15… I hope these measures will go some way to alleviating the concerns expressed by the retail sector about future investment and that we will continue to work together constructively in future.”29

To summarise, the documents relating to this period suggest that the ‘public health’ framing of the Supplement, and the spending intentions regarding the revenue to be accrued through this initiative, began to shift as a direct result of the lobbying and scrutiny of large retailers, moving away from any clear commitment to public health or hypothecation,
towards a rather vaguer connection between the Supplement and agreements with local 
authorities to increase ‘preventative spending’.

3.4 Assessing the impacts of the Public Health Supplement

3.4.1 Contribution to public sector spending (and public health spending in particular)

Given that the rationale for the Supplement was, ultimately, to raise revenue, it is important 
to note that in this respect the policy was successful: the revenues received by public 
authorities in Scotland were in line with the (revised, post-budget) estimates. The measure 
raised £95.9m over its three-year duration - £0.9m higher than the amount anticipated when 
the policy was introduced (information provided by the Scottish Parliament Information 
Centre, in an email from Malcolm Chisholm MSP, received by authors on 9th February 2015). 
However, the Scottish Government has not provided detail of how this money was spent, 
stating that: “The estimated additional income was factored into the total resources available 
in the Spending Review 2011 and contributed to the preventative spend measures introduced 
at that time.”

Several interviewees expressed the view that the Supplement was designed in such a 
way that it was uneconomic for large retailers to avoid – and hence the scale of the revenues 
to be received could be predicted with accuracy. Indeed, interviewees noted that it was 
precisely because avoiding the Supplement was so difficult to avoid that behaviour change 
among retailers (i.e. opting not to sell tobacco or alcohol) was unlikely to occur. (It is 
apparent that, if it does not make economic sense to avoid a tax, in this case by ceasing to sell 
alcohol or tobacco, then a rational (i.e. profit-maximising) retailer will not do so.)

Although many of the interviewees claimed that tobacco was not particularly 
profitable for retailers, they also suggested it was profitable enough to continue selling 
despite the Supplement, and independently of the so-called ‘footfall effect’:

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“We modelled it. We looked and said there are \([X \text{ affected}]\) stores. We looked at, the analysis was done on the level of tobacco sales in each store, and even looking at the tobacco sales and the cost it was still worth our while to sell the tobacco, even before you take into account the value of tobacco to us as a driver of footfall. So we looked at it and yeah, it was a no brainer to be honest, carry on doing what we were doing.”

(Large retailer)

This suggests that, if a similar policy were ever intended to encourage retailers to stop selling tobacco (or alcohol), it would need to be set at a substantially higher level.

In terms of the policy’s link to preventative public health spending, we could find no evidence of hypothecation. This reflects, in part, a general difficulty of tracing the relationship between specific sources of government revenue and spending on specific activities. However, in this case, it appears that the relationship was particularly indirect. As a senior civil servant in the Scottish Government’s Finance Directorate reflected:

“Well, the rationale for the supplement, I mean it gets called the public health levy, public health supplement I suppose is what they more officially tend to call it, but it was really to fund this general shift to prevention. It wasn’t necessarily to fund public health policy measures as such. We just said that this shift to prevention that we’re allocating more money to, this is one of the funding sources. And yes, because it was linked to alcohol and tobacco, I guess that’s where the public health supplement badge came from.”

The picture is further complicated by the fact that the money was raised, not by the Scottish Government, but by local authorities in Scotland. Further, local authorities were
expected, alongside central government and the National Health Service, to contribute to a £500 million shift to preventative spending, including through three so-called “change funds” - one focusing on early years, one on reducing reoffending, and one on older people’s care. It could be argued that some of these funds relate to the social determinants of health, and that consequently some of the revenue generated by the Supplement may have been spent on public health-related activities. However, due to the ‘fungibility’ of money\(^{31}\) (i.e. the fact that any unit of money is substitutable for another), it is difficult to trace the flow between this specific income stream and the change funds: thus, an increase in funding from the Supplement may be have been offset by a reduction in other forms of funding by local authorities, and central government funding of local authorities. In either case, this would, in effect, mean that there had not been any net increase in the resources available for public health).

### 3.4.2 Broader economic impacts

The broader economic impacts of the Supplement are even harder to assess, especially in a context in which the large supermarkets were already beginning to change their investment patterns in Scotland. This change was partly a response to challenges from changing economic circumstances, competition from cheaper supermarkets, such as Aldi and Lidl (which were unaffected by the Supplement as neither sell tobacco), and the move to online retail. As a senior policymaker in the Scottish Government’s Health Directorate reflected:

> “What they [large retailers] would claim was, when we are looking at way to invest in stores, we do the maths, and actually [the Supplement] might not look very much but our margins are so low so we might choose to open a store somewhere elsewhere. […] Did I ever fully believe those things? It struck me as unlikely that that margin in
itself was likely to be absolutely instrumental to many decisions whether or not to proceed with a store or not...”

This (and other data) suggest that, although the Scottish Government decided to reduce the level of the Supplement and restrict its implementation to three years (as described above), this decision does not appear to have been taken on the basis that Scottish Government officials were persuaded by arguments about the negative economic impacts of the Supplement and was more likely a reflection of a desire to recover the broader relationship between the government and large retailers (as discussed in more detail in section 3.4.4).

3.4.3 Public Health Impacts

The Scottish Government was asked by the Economy, Energy and Tourism Committee, in a report published on 9 October 2011, to “monitor the impact of the levy on sales of the targeted products, and to report back to Parliament within 18 months on the effectiveness of the measures in terms of (a) public health (b) revenue generation and (c) employment in the retail sector.”32 Just over a month later, in a letter to the Scottish Retail Consortium, dated 15 November 2011 (obtained under the Freedom of Information Act), John Swinney stated that: “Robust mechanisms for measuring effectiveness [of the Supplement] will be developed and implemented by the Scottish Government in consultation with its stakeholders.”33 We were, however, unable to find any evidence of such reporting. The clerk of the committee confirmed to us that no action had been taken by the committee to follow up on its request (Wands, personal communication (email), received by authors 9th 2015).

Nonetheless, the media analysis we undertook confirmed that one large supermarket company, Sainsbury’s, had decided to stop selling tobacco for a period of time in a small number of stores and that the company had presented this as a response to the Supplement:
"[T]he impact of the levy introduced by the Scottish Government has led us to undertake a review of the sale of tobacco in our Scottish stores. Earlier this year we removed tobacco from three of our Scottish supermarkets and one convenience store. This trial has been extended to a further six supermarkets.” – Sainsbury’s Spokesperson, 11 November 2012

The extent to which the impetus for Sainsbury’s decision to stop selling tobacco in 10 stores really lay with the Supplement is, however, unclear. Industry interviewees expressed scepticism about the stated rationale for this decision. One interviewee from a competitor supermarket company claimed that several of the chosen stores were large, out of town premises, which also had a separate petrol forecourt in which tobacco continued to be sold, but which was small enough not to be subject to the Supplement:

“So what [Sainsbury’s] did is they stopped selling tobacco in their stores, so their supermarket, but they continued selling tobacco in the kiosk. So when people drove out to the petrol station, filled up their car, they could buy the tobacco there. But because the petrol station and your store are two separate entities in terms of rateable value, so Sainsbury’s, people say that's an example of, that was a really good, shows what can be achieved - it achieved nothing.”

Sainsbury’s representatives did not agree to be interviewed by us about the Supplement and their response to it.
3.4.4 The Scottish Government’s credibility, and relationship, with the business community

According to most of our interviewees, one clear impact of the Supplement was damage to the relationship between the Scottish Government and the business community (or, at least, large retailers):

“It harmed the credibility of the Scottish government with the large retailers. [...] I don’t know about other sectors but with food retailers we feel the relationship is not particularly cooperative. Compared to the relationship, say, with Westminster, [which] is far more engaging and, if you think about the public health responsibility deal, there are critics [...] [but] what that has achieved is that there is an on-going dialogue between business and the Department of Health about how best to move things forward. [...] Things are done to retailers in Scotland, whereas in Westminster it’s more collaborative.” [interviewee’s emphasis] (Large retailer)

Indeed, the process of developing and implementing the Supplement was described by one of the interviewees from a trade group representing large retailers as, “one of the worst examples of policymaking I’ve seen”.

Although it is hard to provide a definitive account of why, in 2014, the Scottish Government decided to announce that the Supplement would not be continued beyond the initial three year period, some interviewees suggested that this decision reflected a perceived need by the Scottish Government to improve the relationship with the business community in the context of the 2014 referendum for Scottish Independence:

“I would love to tell you it was my fantastic lobbying. I would love to tell you that he’d heard all the arguments [but] I think the independence referendum had a huge
bearing on it, because it did not fit with narrative that in Scotland we’d have a low corporate tax regime. And that was the big message they were playing at that particular juncture, and they went this doesn’t sit, this is going to be a bit of an Achilles Heel when we come out and talk about independent Scotland cutting corporation tax. What about, ‘you just increased it £95 million on these other guys’? It didn’t sit well, so I think this was a general clearing of the decks ahead of the referendum. So great, huge benefits [of] having the referendum.” (Interviewee working for a trade group representing large retailers)

4. Concluding discussion

When the Public Health Supplement was first announced in the Spending Review 2011 and Draft Budget 2012-13 (September 2011), a clear public health rationale for this new tax was advanced: to reduce the economic desirability for large retailers of selling alcohol and tobacco products and increase revenues for preventative health spending. This was also how the Supplement was understood in the public health community, at least initially. In practice, our analysis suggests the Supplement was not designed in such a way as to stimulate behavioural change among retailers, and that the revenues were not hypothecated for health, but used to address a gap in the Scottish Government’s Spending Review proposals. It could therefore be argued (as many of our interviewees did argue) that the presentation of the Supplement as a ‘public health’ measure was misleading.

After the announcement of the Supplement, large retailers mobilised to lobby against it – through campaigns in the media, Parliament and through direct lobbying of Scottish Government ministers and officials. Although some public health focused
NGOs welcomed the measure with brief comments in early media coverage, the absence of genuine health content in the Supplement diminished the involvement of public health advocates, resulting in no sustained attempt to balance the industry’s criticism. The lobbying efforts focused on the period between the announcement of the Supplement in September 2011 and its implementation in April 2012, at the end of which major concessions were made by the Scottish Government to the industry – including a decision to reduce the tax take from the measure and limit its duration to a three year period. This appears to have been a direct result of what John Swinney labelled the “constructive dialogue” initiated via the lobbying campaign.29

In this regard, the experience of the Public Health Supplement in Scotland shares some similarities with Denmark’s short-lived ‘fat tax’. Both met with strong opposition from the commercial sector and in neither case was this opposition countered by support from public health interests.35 36 In both cases, the result was a decision not to continue the tax, despite the fact that both could, by some measures, be considered ‘successful’ (the Supplement successfully raised revenue, and the Danish fat tax contributed to reducing the consumption of saturated fat, which was its primary aim36). In April 2012, the revenue to be generated by the Supplement was forecast at £95 million. In practice, the amount raised was £95.9 million. The accuracy of the forecast highlights the fact that the tax rate was set at a level that supermarkets would be unlikely to seek to avoid (i.e. by ceasing to sell alcohol or tobacco) in the context of the profits earned from such sales. For the same reasons, the Supplement was unlikely to change behaviour vis-à-vis retailers’ decision to sell alcohol and tobacco. Consistent with this, we did not identify any evidence to suggest that alcohol or tobacco manufacturers were involved in lobbying against the Supplement. However, we did identify evidence to suggest at least one major tobacco manufacturer, Gallaher Limited (now part of Japan Tobacco International), was considering a legal challenge to the policy. This
may indicate that a policy that was more directly targeted at trying to achieve retail behavior change with regard to tobacco sales may face legal challenges from this sector.

Given the predictability of the revenues raised through the Supplement, it would have been possible for the Scottish Government to develop clear spending proposals, to be funded through this new measure. However, as outlined above, our findings indicate that the Supplement was used to address a gap in the Scottish Government’s budget rather than to fund any specific set of activities or services. Since these spending plans were already focusing on a shift towards ‘preventative spending’, it is plausible that the Supplement helped to support this shift (and this is the way in which one of the Scottish Government officials we interviewed framed the outcomes from spending). It is clear, however, that the revenue raised from the Supplement was not meaningfully hypothecated - and indeed it seems likely that there was never any intention to formally hypothecate for health purposes the revenue the Supplement was projected to raise.

In this regard, there are similarities between the experience of the Supplement and many other health taxes that have been initially presented as measures that will raise revenue for spending on particular activities. A systematic review of tobacco industry interests in tobacco taxation has, for example, identified several examples of tobacco tax increases where initial promises of hypothecation for particular purposes were not implemented as planned, with funds often being diverted for other causes.37 This provided tobacco industry interests with an additional argument against hypothecated tax increases.37 Although it would not be fair to suggest that Scottish Government officials ever made a clear statement of their intent to hypothecate the revenue to public health purposes, the initial framing of the measure implied this would occur, and the failure to do so left the tax with limited support within the public health community.
Our evaluation of the Supplement provides a number of lessons for policy actors who are considering developing, or advocating for, future ‘health’ taxes. The Supplement, as a tax on large retailers selling alcohol and tobacco products, was innovative and, from a health point of view, it had some valuable attributes. While it was opposed by large retailers, there does not appear to have been any notable public opposition to the measure. It raised a very predictable revenue stream for the Scottish Government, which could have been channelled to serve health objectives (even if, in this particular case, this did not occur). On the other hand, while health taxes on particular products are often intended to stimulate behaviour change, this was not the intention of the Supplement and, indeed, there does not appear to have been any sustainable behaviour change among retailers. Our findings highlight a possible tension between the use of taxes to achieve, on the one hand, revenue objectives (which may or may not be health related), and, on the other, public health objectives related to product supply and demand. It is plausible that a similar measure, with a higher tax rate, could be effective in encouraging retailers to stop selling tobacco products though in this case, the predictability of the revenue stream would necessarily diminish. To ascertain at what rate such a measure would need to be set would require detailed scenario modelling.

In addition, it is possible that the extent of behaviour change would have been greater had the measure been extended to smaller retailers – though, in this case, it is also possible that the measure would have faced stronger, and broader, opposition (it is perhaps worth noting that, at the same time Scotland implemented the Public Health Supplement, the Northern Irish Executive chose to introduce a tax on larger retailers, without any ‘health’ focus, and positioned this as part of a smaller business agenda38). It also seems feasible that, as has been suggested with health taxes on particular products, such a measure could be supported by subsidies to ‘healthy businesses’, helping to reduce the likely opposition to such a scheme. For example, businesses that volunteered to stop selling tobacco and/or alcohol
products could be offered a ‘healthy business’ subsidy that would be funded by the tax on retailers that continued to sell these products. Again, some detailed scenario modelling of possible options would be required to examine this idea in more detail. Such a measure could, in principle, be self-financing if the revenue stream from the levy was hypothecated, in whole or in part, to that purpose. At the very least, Scotland’s experience with the Public Health Supplement provides a starting point for developing proposals for policies intended to limit the availability of tobacco and alcohol products (proposals which are likely to be of particular interest to those working in contexts in which there appears to be an existing over-supply, as is the case for Scotland, especially in deprived areas\textsuperscript{39}).

Overall, our findings suggest that it would be worth considering a future health tax of a similar design and level to the Supplement if the objective is to raise revenue for health spending. If the objective is to change retail behaviour (e.g. to encourage retailers to stop selling tobacco products), then further research is required in order to ascertain the likely level at which change would occur and also to better understand whether retailer concerns about such a policy might be diminished by linking the revenue to a ‘healthy retailer’ subsidy.

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