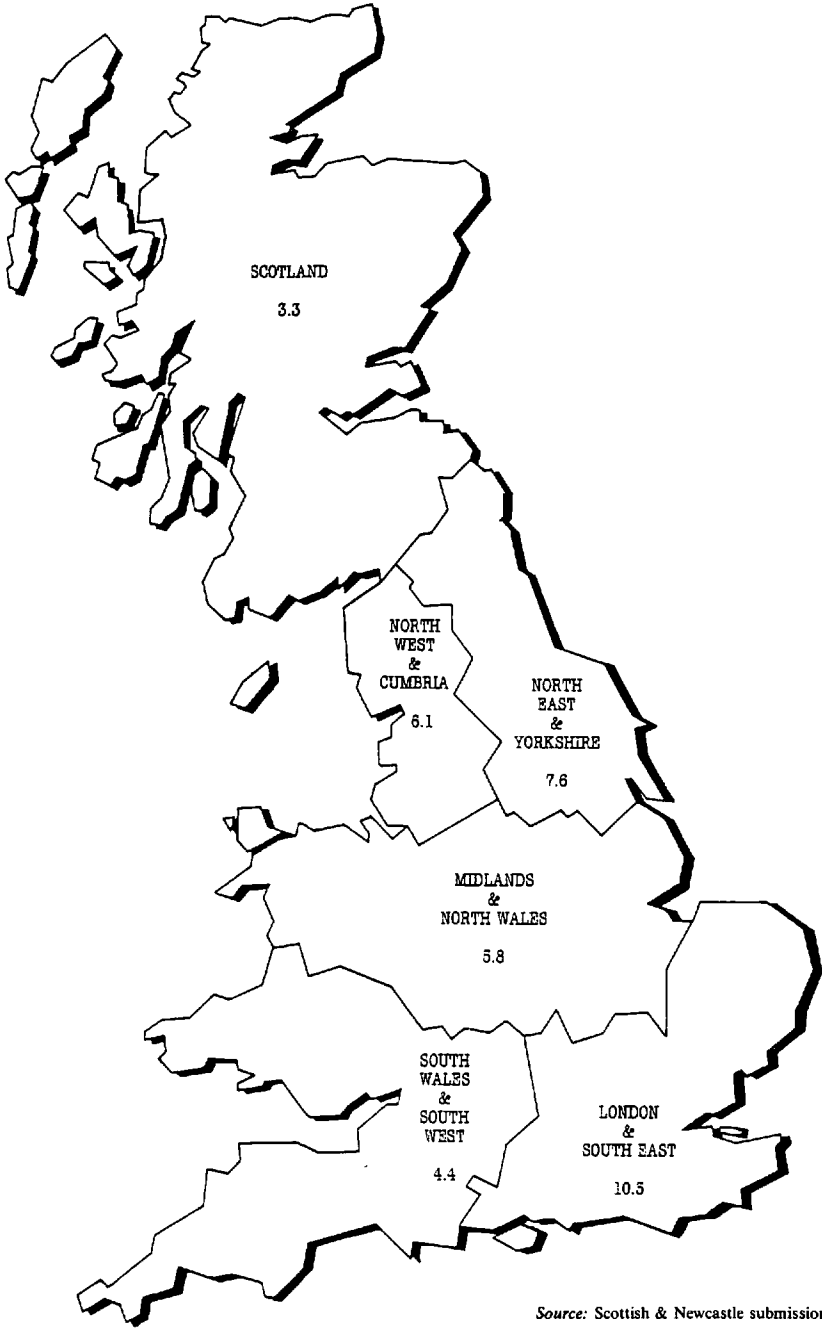


APPENDIX 2.1

(referred to in footnotes to Table 2.5 and to paragraphs 3.16 and 3.17)

**Regions of Great Britain: beer sales
(million barrels) in 1984**



Source: Scottish & Newcastle submission.

APPENDIX 2.2

(referred to in paragraphs 2.33, 3.12, 3.15, 3.16 and 4.8)

Numbers of managed and tenanted on-licences at February 1985

	<i>Great Britain</i>	<i>Scotland</i>	<i>North-East & Yorkshire</i>	<i>North-West & Cumbria</i>	<i>Midlands & North Wales</i>	<i>South Wales & South-West</i>	<i>London & South-East</i>
Five tied estate nationals	32,300	1,020	5,300	4,380	6,140	4,970	10,490
Scottish & Newcastle	1,446	542	725	87	13	7	72
Matthew Brown	527	—	22	505	—	—	—
Other regionals	12,927	58	1,733	3,328	3,347	1,323	3,138
Total	47,200	1,620	7,780	8,300	9,500	6,300	13,700

Sources: Scottish & Newcastle, Matthew Brown, The Brewers' Society.

APPENDIX 2.3

(referred to in paragraph 2.27 (footnote 2) and paragraphs 2.28 and 2.41)

Public policies in relation to the brewing industry

1. The principal public policy objectives as adopted in relation to the brewing industry since the mid-1960s have been as follows

Maintenance of fair prices

2. Throughout the period there has been a continuing interest in beer prices by Governments and public alike. In the context of the then Government's counter-inflationary policies, in April 1966 the National Board for Prices and Incomes (NBPI) reported on Costs, Prices and Profits in the Brewing Industry (NBPI Report 13— Cmnd 2965). The Board issued a further report on Beer Prices in November 1969 (NBPI Report 136— Cmnd 4227).

3. In July 1977 its successor the Price Commission reported on Beer Prices and Margins (Report No 31). The principal findings in the report are summarised in paragraph 2.27 and in paragraph 15 below. Additionally in 1978–79 the Price Commission investigated and reported upon proposed price increases by individual brewers, with recommendations as to whether such increases should be allowed. The Commission made reports on brewing and wholesaling of beer and sales in managed houses by Allied Breweries (UK) Limited (HC 415 Session 1977–78); on wholesale prices of beer and prices in managed houses of Bass Limited (HC 109 Session 1978–79); and on wholesale prices and prices in managed houses of beer, wines, spirits, soft drinks, and ciders by Whitbread and Company Limited (HC 110 Session 1978–79).

Maintenance of control over the sale of alcoholic liquor

4. The sale of alcoholic liquor, wines and spirits as well as beers, has been regulated by Governments for many centuries.¹ The licensing arrangements applying to the principal types of retail outlets are described in paragraph 2.17.

5. In their April 1966 report the NBPI noted that costs in the brewing industry were affected by its closed nature as set by the licensing laws. They suggested an inquiry be commissioned into how best the Government could maintain control over the sale of alcoholic liquor without impeding the entry of new competitors. As a result there was a reference in July 1966 to the Monopolies Commission to investigate and report on the supply of beer within the United Kingdom for retail sale on licensed premises.

6. The Commission's report, issued in April 1969, concluded (paragraph 415) that the conditions which they had found to prevail operated and may be expected to operate against the public interest since the restriction on competition involved in the tied house system operated by the brewer suppliers concerned were detrimental to efficiency in brewing, wholesaling and retailing, to

¹For an account of the historical background to the law see Appendix 8 to the Monopolies Commission 1969 Report on the Supply of Beer (HC 216 Session 1968–69) and Appendix E to the 1972 Report of the Departmental Committee on Liquor Licensing (the Erroll report— Cmnd 5154), Chapter 1 of which set out the main outlines of liquor licensing arrangements in England and Wales as they then stood. There have been no subsequent changes of significance.

the interests of independent suppliers (including potential new entrants), and to the interests of consumers. The Commission recommended (paragraph 416), by way of remedy, that the licensing system in England and Wales should be substantially relaxed, the general objective being to permit the sale of alcoholic drinks, for on or off consumption, by any retailer whose character and premises satisfied certain minimum standards.

7. Reporting to Parliament on 20 May 1969¹ the President of the Board of Trade said that, in his view, the Commission had made out a strong case on economic grounds for relaxing the existing limitation of competition which resulted from the tied house system. But the Commission in seeking a remedy for the economic defects of the system had recommended a change in the licensing law of a far-reaching character which called for a thorough examination of the important social implications. A further statement would be made in due course on this aspect of the matter. The Government would, of course, wish to discuss this general question with the brewers, and might wish to consider with them whether there was any other action which might be taken to mitigate the undesirable features of the tied house system.

8. On 1 December 1970 The Brewers' Society issued a statement² reporting on the actions it had taken after conversations with the Government to widen the choice to the public in tied houses. The principal measures are noted below.

9. On 8 December 1970 the Home Secretary announced the appointment of a committee to undertake a wide ranging review of the liquor licensing laws in England and Wales (the Erroll Committee).² This inquiry was to take account of the changes recommended by the Monopolies Commission, but was not to reconsider the Commission's analysis and conclusions on the economic effects of the tied house system.

10. In their report published in December 1972 the Erroll Committee noted (paragraph 21.30) that they had arrived, by a different route, at broadly the same conclusions as the Monopolies Commission on the need for changes in the law. Substantial social safeguards should accompany the proposed changes in the licensing law. Any other action thought necessary in relation to the tied house system should be taken under powers conferred by existing anti-monopoly legislation, and not by further amendment of the licensing law.

11. Because of public opposition no action was taken to implement the recommendations of the Erroll Committee or that of the Monopolies Commission's report. Despite the absence of legislation, the proportion of brewery-owned public houses has continued to fall. Thus in his Parliamentary statement of 2 May 1978 the Secretary of State for Prices and Consumer Protection noted

¹Reproduced in Appendix 9 to Annual Report by the Department of Employment and Productivity for the year ended 31 December 1969 on the Monopolies & Mergers Acts 1948 and 1965 (HC 159 Session 1969-70).

²Reproduced in Appendix 6 to Annual Report by the Department of Trade and Industry for the year ended 31 December 1970 on the Monopolies & Mergers Acts 1948 and 1965 (HC 291 Session 1970-71).

that The Brewers' Society had estimated that by 1981 brewery-owned public houses would account for just on one-half of all beer sold, compared with two-thirds in 1967.¹

12. The liquor licensing arrangements in Scotland had developed somewhat differently from those in England and Wales, and the motivation for their proposed amendment arising out of the publication of the Monopolies Commission report was also different. So far as Scotland was concerned the Commission had made it clear that the situation there did not provide a useful basis for comparison with England and Wales as to the economic effects of the tied house system since at that time only 27 per cent of licensed hotels and public houses in Scotland were brewer-owned compared with 86 per cent in England and Wales. The Commission noted, however, that in Scotland brewer-ownership of licensed houses had increased somewhat in recent years (paragraph 414), and that if that process were to continue the tied house system might be expected ultimately to have disadvantageous effects similar to those they had found to exist in England and Wales. The Commission presumed that, in the event of the licensing system in England and Wales being relaxed, the licensing laws in Scotland would be separately reviewed by the authorities concerned.

13. Accordingly on 8 December 1970 (the day the appointment of the Erroll Committee was announced) the Secretary of State for Scotland announced the appointment of a committee to review the liquor licensing law of Scotland (the Clayson Committee). In their report presented to Parliament in August 1973² the Committee, in the context of a general concern over the control of alcohol misuse, proposed a number of changes in the Scottish licensing law and relaxations of the way in which it should operate on specific issues. Certain of the Committee's recommendations were enacted in the Licensing (Scotland) Act 1976.

Reductions in local concentrations of public house ownership

14. Following on The Brewers' Society statement of 1 December 1970 and the Home Secretary's announcement on 8 December 1970 of the appointment of the Erroll Committee, in a Parliamentary statement on 9 December 1970³ the Parliamentary Under Secretary of State for Industry expressed particular concern about places where a large proportion of the licensed premises was owned by the same brewer. The brewers had been asked for information and for proposals to widen the choice available to the public, and The Brewers' Society was conducting a study of the matter. The study, commissioned in 1971 and undertaken by consultants, calculated that, with a 50 per cent holding of public houses in one such area, the principal brewery would not sell more than 39 per cent of all beer sold there. London Boroughs were omitted throughout because of the high mobility of population across their boundaries.

¹Official Report, written answers, cols 43 to 46. The 1981 estimate was achieved, and sales through tied houses have since continued to decline in relative importance.

²Report of the Departmental Committee on Scottish Licensing Law (Cmnd 5354).

³Reproduced in Appendix 6 to Annual Report by the Department of Trade and Industry for the year ended 31 December 1970 on the Monopolies & Mergers Acts 1948 and 1965 (HC 291 Session 1970-71).

15. In their 1977 report on Beer Prices and Margins (Report No 31) the Price Commission drew renewed public attention to the high degree of concentration in the brewing industry, to the significant barriers to entry, and to the profound effects on prices and profits. They concluded that the question which the Government must answer was whether the present situation was in the public interest or was contrary to it.

16. In his statement of 2 May 1978 the Secretary of State for Prices and Consumer Protection announced that, in the interest of developing competition, The Brewers' Society had agreed to implement a plan for scaling down brewers' local monopolies. This envisaged the reduction of public house ownership by the predominant brewer in any local government area (other than the London Boroughs) having a population of 100,000 or more where the proportion of licensed houses was in excess of 50 per cent within the Petty Sessional Divisions which included that county or district. Five national brewers (including Scottish & Newcastle) and three regional brewers participated. The Office of Fair Trading monitored the programme under section 2 of the Fair Trading Act 1973. In 1985 the Parliamentary Under Secretary of State for Corporate and Consumer Affairs accepted the Director General of Fair Trading's advice that the pub swap programme had effectively been completed, and the Director General so informed The Brewers' Society.

Abolition of restrictive covenants on sales of licensed premises

17. Prior to the Monopolies Commission's 1969 report sales of licensed premises were more or less universally the subject of restrictive covenants prohibiting their subsequent use as licensed premises. In its statement of 1 December 1970 The Brewers' Society indicated that it was considering a recommendation that members should not impose such covenants in future. This was issued in 1972. In 1983 the Society reminded members of its recommendation, and said that any exceptions should be extremely rare. The Society estimates such covenants are now down to about 2 to 3 per cent of pub sales. In 1985 the Director General of Fair Trading reported the significant reduction in the incidence of such restrictive covenants to the Parliamentary Under Secretary of State for Corporate and Consumer Affairs, who asked him to be ready to take action under the Competition Act 1980 in any case which had a detrimental effect on competition.

Enhancement of consumer choice of draught ales

18. In his May 1978 statement the Secretary of State for Prices and Consumer Protection, in noting that brewers' tied houses already sold other brewers' canned and bottled beers on a considerable scale as well as other brewers' draught stout and draught lager, had referred also to The Brewers' Society agreeing to examine the possibility of arranging for brewers to exchange draught ales. Some brewers undertook to experiment, but in the event commercial considerations restricted the extent to which such exchanges were found to be practicable. Against the background that, in any case, brewers were now offering greater variety of other brewers' products as a means of increasing their appeal to the customer, further attempts to encourage the industry to exchange draught ales have now ceased.

Restrictions on exclusive purchasing agreements

19. Following publication of the Monopolies Commission's 1969 report *The Brewers' Society* in 1970 recommended to all members that the brewer should make available to his tenanted and managed houses all wines, spirits and minerals for which there was a reasonable demand, at prices not less favourable than those charged to the free trade. The recommendation, referred to in the Society's statement of 1 December 1970, did not however apply to beers.

20. In 1977 the European Court of Justice ruled that exclusive purchasing agreements within a Member State could affect intra-Community trade and be subject to the prohibition in Article 85 (1) of the EEC Treaty, thus requiring that they should be notified to the European Community Commission. The ruling was of particular concern to the brewing industry, where agreements to purchase a particular brewer's beers and other products are a feature not only of supply to the tenants of tied houses (supplies to managed houses needing, of course, no written agreement for their enforcement), but also of sales to the free trade where, as is often the case, the purchaser is in receipt of a loan or other assistance from the brewer.

21. Following extensive consultations with Member States and with the trade, the European Commission in 1983 adopted Regulation No 1984/83 dealing with exclusive purchasing agreements. The Regulation introduced a block exemption, under Article 85(3) of the EEC Treaty, for brewery sector agreements which fulfilled certain special requirements. These can be summarised as follows:

- (a) the maximum duration of an exclusive tie for beer alone is ten years (or, if relevant, for the period of the tenancy agreement if this is longer);
- (b) where the exclusive purchasing obligation relates to beer together with other drinks (which must be specified in the agreement by brand or denomination), the maximum duration is five years; and
- (c) no products other than drinks may be included in the tie.

The Regulation takes full effect on 1 January 1989 by which date existing agreements must have been brought into line so as to retain the benefits of the block exemption. Meanwhile all new exclusive purchasing agreements (including those arising out of tied house tenancies and free trade loan agreements) created from 1 January 1984 are subject to the Regulation.

22. Coincidentally with the formulation of this Regulation, the Monopolies and Mergers Commission were inquiring into full-line forcing and tie-in sales, as practised in a number of industries including brewing. In their report, published and accepted by the Government in March 1981 (HC 212 Session 1980-81), the Commission noted that tying agreements with tenants of brewery-owned public houses were outside their terms of reference. As regards agreements between brewers and free trade customers (public houses and clubs) under which the customer as a condition of a loan is required to purchase beers, and in some cases other products, from the brewer the Commission concluded that, provided the supply agreements associated with them ceased with the repayment of the loans, they were not likely to be against the public interest.

European Community harmonisation of excise duties on alcoholic drinks

23. Although there are no European Community Directives on the harmonisation of excise duties on alcoholic drinks, Article 95 of the Treaty of Rome requires that a Member State should not tax the products of another Member State more heavily than domestic products with which they are in competition. The European Court of Justice ruled on 12 July 1983 that the United Kingdom had failed to fulfil its obligations under this provision by taxing imported table wine more heavily, in relative terms, than beer produced in the United Kingdom. The United Kingdom could have complied with this ruling by making a large reduction in wine duty, a large increase in beer duty, or a compromise between the two. The last option was adopted in the 1984 Budget which put two pence on a pint of beer and took 18 pence off a bottle of still table wine. This was designed to maintain the revenue while keeping the beer duty rise to a minimum.

24. More comprehensively the European Community Commission has been trying since 1972 to get a harmonisation agreement between all Member States on the structure of their drinks duties. The draft proposals which are currently under consideration in the European Community Council would provide among other things for the existing United Kingdom worts-based duty on beer to be replaced by a duty levied on the end product. Also, in 1985 the Commission issued a White Paper on the Completion of the Common Market. The White Paper proposes that the rates of excise duties and VAT levied by Member States should be 'approximated' so that they do not vary by more than plus or minus 2.5 per cent. Harmonisation of duty structures is a prerequisite for approximation of rates. The Commission has therefore proposed that structural harmonisation should be completed by 1986, with approximation by 1992.

25. The Commission's proposals are currently under consideration by the Council. The United Kingdom has serious reservations on important aspects of both sets of proposals.

APPENDIX 5.1

(referred to in paragraphs 3.12 and 5.56)

Scottish & Newcastle and Matthew Brown beer brands as supplied to the North-West England market

Draught ale and lager brands

*As supplied by
Matthew Brown PLC*

Matthew Brown brand ales

Lion Mild (cc and bc)*
Matty's Light (bc)
Lion Bitter (cc and bc)
John Peel Bitter (cc and bc)

Theakston brand ales

Theakston's Mild (cc and bc)
Theakston's Best Bitter (cc and bc)
Theakston's XB (cc and bc)
Old Peculier (cc and bc)

Matthew Brown brand lagers

Slalom Lager
Slalom 'D' Lager

*As supplied by
McEwan-Younger Limited*

Scottish & Newcastle brand ales

Younger's Light (bc)
Younger's Mild (bc)
Younger's Scotch Bitter (cc and bc)
McEwan's Export (bc)
Younger's Tartan Bitter (bc)
Younger's No 3 (cc)
Younger's IPA (cc)

Scottish & Newcastle produced lagers

Harp Lager
McEwan's Lager

Scottish & Newcastle marketed lagers

Beck's Bier
Kronenbourg

*Abbreviation cc: cask-conditioned.
Abbreviation bc: brewery-conditioned.

Bottled ale and lager brands

As supplied by Matthew Brown PLC

Matthew Brown brand ales

Crystal Ale
IPA Export Ale
Matty's Light Ale
Original Brown Ale
King's Ale
Lion Bitter
Lion Shandy

Theakston brand ales

Theakston Best Bitter
Theakston XB
Theakston Old Peculier

Matthew Brown brand lagers

Slalom Lager
Slalom 'D' Pils Lager
Slalom International

Other brewers' ales

Guinness
Mackeson Stout
Worthington White Shield
Marston Low 'C'

Other brewers' lagers

Barbican Alcohol Free Lager

As supplied by McEwan-Younger Limited

Scottish & Newcastle brand ales

McEwan's Export
McEwan's Strong Ale
Younger's Brown Ale
Younger's Light Ale
Younger's Sweet Stout
Younger's Double Century
Newcastle Brown Ale
Newcastle Amber Ale

Scottish & Newcastle produced lagers

Harp Lager

Scottish & Newcastle marketed lagers

Beck's Bier
Clausthaler
Amstell

Other brewers' ales

Guinness
Jubilee Stout
Mackeson Stout
Mann's Brown Ale
Courage Light
Bass Blue
Worthington 'E'
Worthington White Shield
Marston Low 'C'
Hemeling Lite
Shandy Bitter

Other brewers' lagers

Carlsberg Pilsner
Carlsberg Special
Satzbrau
Holsten Diat Pils

Sources: Scottish & Newcastle, Matthew Brown.
