

# Draught Beer and Cider

PUBLIC CONSULTATION ON  
PROPOSALS TO TIGHTEN  
CONSUMER PROTECTION  
AGAINST SHORT MEASURE

**No: CA 003/02**

March 2002



Consumer Affairs Directorate

STRENGTHENING CONSUMERS AND BUSINESS

# **Public Consultation on Proposals to Tighten Consumer Protection Against Short Measure**

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# 1. INTRODUCTION

## PURPOSE OF CONSULTATION

1.1 The purpose of the consultation is to seek views on proposals to strengthen consumer protection against short measure.

## RESPONSES

1.2 How to respond to this consultation:

by e-mail: Greg.Vaughan@dti.gsi.gov.uk

by post: Mr G Vaughan  
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Room 459  
Department of Trade and Industry  
1 Victoria Street  
London, SW1H 0ET

## CLOSING DATE

1.3 Responses must be received by 1 July 2002.

## CONFIDENTIALITY

1.4 Your response to this consultation document may be made publicly available in whole or in part at the Department's discretion. If you do not wish all or part of your response (including your identity) to be made public, you must state in the response which parts you wish us to keep confidential. Where confidentiality is not requested, responses may be made available to any enquirer, including enquirers outside the UK, or published by any means, including on the Internet.

## CONSULTEES

1.5 We are sending this document to the consultees listed in Annex A. Please tell us if you know of others who would be interested in receiving this consultation. It is also available by request from the sources listed in paragraph 1.2 and on our website at <http://www.dti.gov.uk/cacp/ca/consulta.htm>

## HELP WITH QUERIES

1.6 If you would like help with queries or further information about this consultation please contact official named above.

## 2. SUMMARY

This consultation document sets out the Government's proposal to strengthen consumer protection against being served short measures of draught beer and cider on licensed premises.

The proposal is to amend the Weights and Measures (Intoxicating Liquors) Order 1988 (SI 1988/2039) to ensure that the quantities in which draught beer and cider are sold (pint or half pint) comprise **not less than 95% liquid, including the liquid (but not the gas) in any head of froth.**

The proposal takes account of responses from interested parties to earlier consultation. In particular, the Government has sought to strike a balance between the interests of consumers and the need to avoid adding to the costs of licensees, particularly independent small pubs.

The proposals will ensure that the consumer is served 95% liquid **as a minimum.** In practice this will mean that most pints and half pints will be 97% liquid or more.

The proposals will not prevent consumers from requesting a top up if they are dissatisfied with the quantity that they have been served.

The proposals would come into force three months after the amending legislation has been affirmed by Parliament.

### **3. MAIN CONSULTATION TEXT**

#### **The Issue**

1. It is not clear how much liquid a consumer is entitled to receive when he orders a pint of draught beer or cider. This uncertainty exists because the present legislation does not consider whether the head of froth that forms when beer and cider is drawn into a glass is part of the measure (pint or half pint). There is the added difficulty that froth makes it difficult for bar staff to determine when the glass contains a pint measure.
2. For a number of years the licensed trade has recommended that consumers should be served not less than 95% liquid measures after the collapse of the head. But local authority surveys in many parts of the country have shown that one pint in five is deficient by more than 5% liquid, and the courts have been reluctant to convict for short measure unless the deficiency exceeds 10% liquid.

#### **Earlier Consultation**

3. In the White Paper "Modern Markets: Confident Consumers" (Cm 4410, July 1999) the Government gave a commitment to clarify the law in order to strengthen consumer protection against short measure draught beer and cider. The DTI consultation paper "Fair Measure" (July 1999) on modernising the regulation of goods sold by weight or measure invited views on whether beer and cider measures should be defined as 100% liquid or not less than 95% liquid.
4. In the light of responses to the public consultation, a further DTI consultation paper "Measures of Draught Beer and Cider" (December 2000) invited comments on proposals that licensees should serve 100% liquid on average and that no measure should be less than 95%. Responses to these proposals were sharply divided. Consumer groups and trading standards departments generally welcomed the proposals, but the great majority of the licensed trade opposed the proposals. Most trade respondents argued that serving 100% liquid on average would result in increased costs to the great majority of licensees, and that these costs would be passed on to consumers by an increase in the retail price of beer and cider. The trade argued that any change to the legislation should focus on giving statutory backing to the trade's guidelines that not less than 95% liquid should be served.
5. The Small Business Service expressed concern also about the impact of the proposals on independent pubs, particularly in rural areas that have been affected by the down turn in tourism in 2001. The SBS view was that if legislation was considered necessary it should be based on serving not less than 95% liquid. Finally, the Better Regulation Task Force recommended that it should be made an offence to serve not less than 95% liquid, and that self-regulation should be strengthened by ensuring that consumers are aware that they can request a top-up if they are dissatisfied with the measures they are served.

## **Revised Proposal: Not less than 95%**

6. In the light of responses to the earlier consultation documents, DTI is now proposing that that the legislation should be amended to provide that measures of draught beer and cider comprise **not less than 95% liquid after the collapse of any head of froth**.

7. The revised proposal would **not** mean that the pint is re-defined as 95% of a pint for the sale of draught beer or cider. It would mean that licensees who served less than 95% liquid would be liable to prosecution for short measure. This represents a significant tightening of case-law, whereby the courts have accepted that 90% liquid does not constitute short measure. The proposal would also enable trading standards departments to concentrate on the worst cases of short measure.

8. It should be recognised that pulling measures of beer is not an exact science. Unlike weighing machines or petrol pumps, there is no measuring index apart from the top of the glass to guide bar staff and consumers. To avoid dropping below 95%, in practice it is likely that measures will be 97% or more. It is also the case that consumers will be able to request a top-up if they are dissatisfied with the measures that they are served.

9. In opting to give statutory backing to the trade's guidelines, DTI has been concerned to avoid imposing any disproportionate burden on licensees, particularly small independent pubs. DTI has also been concerned to avoid any increase in the retail price of draught beer and cider, as this would to a considerable extent detract from the intended benefit of strengthening consumer protection against short measure. Giving statutory backing to the trade's recommended 95% liquid minimum strikes the best balance, while leaving it open to consumers to request top-ups if they are dissatisfied with the quantity they are served.

## **Implementation, Business Guidance and Consumer Information**

10. Following public consultation, it is intended that the proposal will be implemented by an amendment to Article 2 of the Weights and Measures (Intoxicating Liquor) Order 1988 (SI 1988/2039), **to come into force three months after Parliament has affirmed the amending Order**.

11. DTI will consult with the licensed trade, consumer groups and the local authorities about issuing guidance to individual licensees on the changes and information for consumers about requesting top-ups if they are not satisfied with the measures that they are served.

## Regulatory Impact Assessment

The draft Regulatory Impact Assessment is set out in the next section of this consultation document. Consultees are invited to submit comments on the Department's assessment of the magnitude of the likely costs and benefits of the three regulatory options that have been considered.

The **benefits** of all three options are similar, and would involve: (a) brewers selling more draught beer and cider for retail than they currently do; and (b) consumers receiving more draught beer and cider per pint from licensees who at present serve short measure (as defined under each option).

The differences in the value of the benefit of the three options arise from the different definitions of short measure under each option (**Option 1**: less than 100% liquid on average. **Option 2**: not less than 100% liquid. **Option 3**: not less than 95% liquid).

The **costs** of all three options would fall on licensees who at present serve short measure (as defined under each option), although they could pass this cost on to consumers (who would receive more beer and cider).

The differences in the value of the cost of the three options arise from the different definitions of short measure under each option.

The cash value of the costs and benefits therefore match each other under each option. The differences in the cash values arise entirely from differences in the quantity of additional draught beer and cider that would have to be served to consumers under each option.

The annual cash values (in wholesale prices) of the costs and benefits are summarised in the table below. The basis upon which the figures have been arrived at is set out in Annex 2 of the draft Regulatory Impact Assessment.

<p><b>Table: Annual Cost (to Licensees) and Benefit (for Brewers and Consumers) of the Three Options</b></p>
<p>Option 1: pint must be 100% liquid on average £133 million</p>
<p>Option 2: pint must be not less than 100% liquid £200 million</p>

Option 3: pint must be not less than 95% liquid  
£38 million

# 4. REGULATORY IMPACT ASSESSMENT

## DRAUGHT BEER AND CIDER

### NEW REGULATIONS UNDER THE WEIGHTS AND MEASURES ACT 1985

#### DRAFT REGULATORY IMPACT ASSESSMENT

##### Objectives

1. The main objective is to ensure that consumers are served not less than 95% liquid of pint and half-pint measures of draught beer and cider. Achieving this objective would reduce the incidence of short measure and would facilitate price-for-quantity comparisons between competing licensed premises and between competing beers and ciders.

##### Risk Assessment

2. Licensees who serve less than full liquid measures collectively sell about 200 million more “pints” per year than they buy from brewers and wholesalers. The annual value of short measure is estimated to be about £130 million (in wholesale prices). There is no evidence to suggest that retailers pass on this saving to consumers in lower retail prices. Short measure also represents lost business for brewers and manufacturers of beer meters. Detailed costs are assessed in Annex 2. Annex 3 discusses the market characteristics that have given rise to the problem of short measure.

3. From the ethical perspective, short measure raises questions of fairness: either the consumer is served less product than he pays for; or he is charged for more product than he is served<sup>1</sup>. From the economic perspective, variations in measure distort price-per-quantity information and the relative competitiveness of licensees, brands of beer and cider (draught and bottled), and different types of measuring equipment.

4. The incidence of short measure draught beer has increased significantly since 1982, when the court found in Bennett-v-Markham that pints of bitter **deficient by 9% liquid** did not constitute short measure. The case law is summarised in Annex 1.

5. In 1982 more than 50% of licensees are estimated to have served 100% liquid measures. In 1993 the estimate fell to 25% of licensees<sup>2</sup>. The present estimate is about 5% of licensees (see paragraph 2.5 of Annex 2).

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<sup>1</sup> In the case of other products priced per standard quantity but which often cannot be weighed or measured to a precise standard quantity due to the nature of the product (e.g. potatoes), the selling price is either reduced or increased to reflect the quantity actually weighed or measured.

<sup>2</sup> In 1982 more than 50% of licensed premises are estimated to have used metered dispensers, which must discharge 100% liquid measures. In 1993 a DTI Compliance Cost Assessment on serving 100% liquid measures estimated that 25% of licensees were then using either metered dispensers or lined measure glasses.

6. Short measure has increased despite the publication of trade guidelines in 1993 which recommend that the consumer should be served **not less than 95% liquid** after the collapse of the head when the beer or cider is measured in brim measure glass; and **100% liquid** after the collapse of the head when a lined measure glass is used<sup>3</sup>.

7. Test purchases of draught beer, undertaken between 1997 and 2000 by a number of local authorities in response to complaints from consumers, indicated the following pattern of short measure:

- 20% of pints measured 100% or more liquid;
- 60% of pints measured between 95% and 99% liquid; and
- 20% of pints measured less than 95% liquid (and in some cases less than 90% liquid)<sup>4</sup>.

8. Local authority surveys undertaken in 2001 at Darlington, Hartlepool, Middlesborough, Redcar and Cleveland, Stockton-on-Tees and Wirral tested 113 pints. 13 measured 100% or more liquid. Of the 100 short measure pints, 42 were deficient by more than 5% liquid.

9. Test purchases in September 2000 by the Campaign for Real Ale in Birmingham, Bristol, Cardiff and Newcastle Cardiff found the following quantities of liquid served per pint:

<b>Beer Type</b>	<b>Average Measure</b>	<b>Smallest Measure</b>
Guinness	93%	87.5%
Real Ale (sparkler <sup>5</sup> )	93.5%	85%
Nitrokeg	95%	90%
Real Ale (no sparkler)	96%	88.75%
Lager	96.5%	90%
Cider	98%	92.5%

## **Benefits and Costs of Options**

10. The option of leaving matters as they stand (i.e. a pint may be only 90% liquid) would not address the problem of increasing incidence of short measure. Three regulatory options have been considered. All three would clarify the measures of liquid that the consumer should receive, but would have different cost implications for licensees.

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<sup>3</sup> Guidance Notes on the Dispense of Draught Beer by Free Flow and Hand Pull issued by the Brewers and Licensed Retailers Association (now the British Beer & Pub Association).

<sup>4</sup> The following authorities undertook surveys between 1997-2000: Birmingham, Conwy, Coventry, Cumbria, Darlington, Devon, Doncaster, Dudley, Durham, Halton, Hartlepool, Hertfordshire, Liverpool, Middlesborough, North Yorkshire and West Yorkshire, Redcar and Cleveland, St Helens, Sandwell, Shropshire, Solihull, South Eastern Counties of England, Staffordshire, Stockton-on-Tees, Stoke-on-Trent, Telford and Wrekin, Walsall, Wirral and Wolverhampton.

<sup>5</sup> The sparkler is a device that is fitted to the beer tap that exaggerates the heads of froth when the beer is drawn from the barrel into the glass.

### ***Option 1: 100% average option***

11. The DTI consultation paper *Measures of Draught Beer and Cider*, issued in December 2000, invited comments on whether the legislation should be amended to:

- define measures as liquid, including liquid in the head of froth but not the gas;
- require licensees to serve 100% liquid on average and never to serve less than 95% liquid;
- permit the use of brim measure glasses only if they can contain 100% liquid of the measure of beer or cider being served<sup>6</sup>.

12. These proposals sought to strike a balance between the views expressed in response to the earlier public consultation in 1999<sup>7</sup> by those who consider that the consumer should always receive a minimum of 100% liquid regardless of the size of the head of froth, and those who consider that the consumer should always receive not less than 95% liquid.

13. The benefits of Option 1 are:

- consumers would be served 100% liquid on average and never less than 95% liquid, thereby protecting them from short measure and enabling them to make more reliable price comparisons;
- retailers currently serving 100% liquid as a minimum or on average would not lose out to retailers who at present serve less than 100% liquid on average and purchase less beer and cider from brewers per pint sold to consumers;
- brewers would sell more beer to retailers who currently do not serve 100% liquid as a minimum or on average;
- manufacturers of metered dispensers would be able to compete on more equal terms with manufacturers of brim measure and lined measure glasses;
- low froth draught beers and ciders would compete with frothier draught beers and ciders on equal terms (price-per-quantity)<sup>8</sup>;
- bottled beer and cider sold for consumption on licensed premises would compete with draught beer and cider on equal terms (price-per-quantity)<sup>9</sup>.

14. The implementation costs of Option 1 **for retailers who at present serve less than 100% liquid on average** would be staff training and changing at least some measuring

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<sup>6</sup> Beers and ciders intended to be served with a frothy head would have to be served in either lined measure glasses or from metered dispensers.

<sup>7</sup> *Fair Measure: modernising the law on the sale of goods sold by quantity* (DTI consultation paper, October 1999).

<sup>8</sup> The incidence of short measure is not so high with low froth beers or ciders as it is with high froth beers.

<sup>9</sup> Bottled and canned beers must be labelled with an indication of the average liquid quantity.

instruments (from brim measures to either lined measures or metered dispensers). It was proposed to phase in the legislation over a period so as to allow the re-training and re-equipping to take place at no additional cost within the normal cycle for training (new staff, new products, new prices, etc) and glass replacement (breakage, theft, new designs, etc)<sup>10</sup>. Most trade respondents considered that a two-year phase-in period would be a reasonable period within which to make the changes within the normal business cycle. Therefore the costs to business of replacing glass stock would be negligible. Some trade respondents were concerned that staff would be confused by the gradual introduction of lined glasses, and that this confusion could be avoided only by making a complete change in one go.

15. The policy costs of Option 1 **for retailers who at present serve less than 100% liquid on average** would be the purchase of additional beer from suppliers. This is estimated at £133 million per annum and represents a simple transfer from licensees to brewers.

### ***Option 2: 100% minimum option***

16. The consultation paper also invited views on whether to ban brim measure glasses and to make metered dispensers mandatory. Respondents indicated no support for mandatory meters. But there was some support for banning brim measures, as part of a counter-proposal by one consumer group and some local authorities to require retailers to serve 100% liquid **as a minimum** rather than 100% liquid **on average** (Option 1).

17. The benefits of Option 2 are:

- consumers would be served not less than 100% liquid every time they bought a pint, thereby protecting them against short measure and enabling them to make reliable price comparisons;
- retailers currently serving 100% liquid as a minimum would not lose out to retailers who at present serve less than 100% liquid minimum and purchase less beer and cider from brewers per pint sold to the consumer;
- brewers would sell more beer to retailers who at present do not serve 100% liquid as a minimum;
- manufacturers of metered dispensers would be able to compete on advantageous terms with manufacturers of brim measure and lined measure glasses<sup>11</sup>;
- less frothy beers and ciders would compete with frothier beers and ciders on equal terms;
- bottled beer and cider sold for consumption on licensed premises would compete with draught beer and cider on advantageous terms<sup>12</sup>.

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<sup>10</sup> The average life of a beer glass is estimated to be less than a year.

<sup>11</sup> Metered dispensers would consistently serve 100% liquid, whereas brim measure and lined measure glasses would involve some over-measure in order to avoid under-measure, thereby adding to the licensee's costs.

<sup>12</sup> The statement of volume on the label refers to the average liquid quantity, not the minimum liquid quantity.

18. The implementation costs of Option 2 **for retailers who currently do not serve 100% liquid as a minimum** would be similar to Option 1 (see paragraph 14). It would not be necessary to ban brim measures, but it would be necessary to restrict their use to low froth beers and cider, as 100% minimum liquid may not be contained in a brim measure with a full frothy head.

19. The policy costs of Option 2 **for retailers who currently do not serve 100% liquid as a minimum** would be the purchase of additional beer from suppliers. This is estimated to be £200 million per annum, and represents a simple transfer from licensees to brewers.

20. There could be adverse implications for the competitiveness of brim measure and lined measure glasses if retailers considered that it would be economic to switch to metered dispensers in order to avoid the cost of serving over-measure.

### ***Option 3: 95% minimum option***

21. The great majority of trade respondents made the counter-proposal that it should be made an offence to serve **less than 95%** liquid rather than 100% liquid on average (Option 1).

22. The benefits of Option 3 are:

- consumers would be served 95% liquid as a minimum, thereby protecting them from large short measure and enabling them to make more reliable price comparisons;
- retailers currently serving 95% liquid as a minimum would not lose out to retailers who currently serve less than 95% liquid as a minimum and purchase less beer and cider from brewers per pint sold to the consumer;
- brewers would sell more beer to retailers who currently serve less than 95% liquid as a minimum;
- low froth draught beers and cider would compete with frothier beers and ciders at less price-per-quantity disadvantage<sup>13</sup>;
- bottled beer and cider would compete with draught beer and cider at less price-per-quantity disadvantage<sup>14</sup>.

23. There would be no implementation costs for Option 3.

24. The policy costs of Option 3 **for retailers who currently do not serve 95% liquid minimum** would be the purchase of additional beer from suppliers. This cost is estimated to be £38 million per annum, and represents a simple transfer from licensees to brewers.

25. There would also be indirect on-going costs **for retailers who currently do not serve 100% liquid minimum** if, as a result of the legislation, all consumers who are served less than 100% were to request top-ups. The cost would be the purchase of additional beer

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<sup>13</sup> More liquid is contained within a measuring glass of low froth beer than of frothier beer.

<sup>14</sup> The label must indicate 100% liquid on average, not 95% on average.

beyond the quantity needed to serve not less than 95%. This is estimated to be £95 million (in addition to the £38 million identified in paragraph 24), and represents a simple transfer from licensees to brewers. However, this cost would be attributable to the legislation.

### **Cost Impact of Option 3**

#### ***Business costs***

26. Local authority surveys indicate that at present about 20% of pints contain not less than 100% liquid, 60% of pints contain 95-99% liquid, and 20% of pints contain less than 95% of liquid. The proposals would ensure that all pints contain not less than 95% liquid.

Achieving this new balance would involve supplying extra beer or cider to consumers at additional wholesale cost to retailers who currently serve less than 95% liquid.

27. The cost of additional beer for each licensee would be linked directly to the quantity of short measure that each licensee currently serves. Detailed calculations are set out in Annex 2. The main findings are:

- 5% of licensees who currently serve consumers with 100% liquid as a minimum or on average should incur no additional costs;
- 85% of licensees who currently serve not less than 95% liquid as a minimum should incur no additional costs as a result of the proposals. But if all consumers were to request top ups in addition to 95%, licensees would have to serve more beer and cider per pint sold at estimated average annual wholesale costs of £1083 for a managed house and £1385 for a free house.
- 10% of licensees who currently serve less than 95% liquid minimum would have to serve more beer and cider per pint sold, at estimated average annual wholesale costs of £3655 per annum for a managed house and £4498 per annum for a free house. If consumers request top-ups in addition to 95% licensees would have to serve additional beer at estimated additional average annual wholesale costs of £1083 for a managed house and £1385 for a free house.

28. To set these costs in perspective, the average managed house and free house had an estimated annual income of £455k from all retailing activities in 1999<sup>15</sup>. The total annual value to licensees of selling more pints to consumers than they buy from brewers is estimated to be £133 million. The total annual value to licensees of selling less than 95% liquid per pint is £38 million (see Annex 2).

#### ***Small business costs***

29. DTI considered whether small licensees should be exempted from the proposals or whether the proposals should be modified to take account of any technical difficulties that small licensees might face compared with pub chains. It was concluded that the requirement to serve 95% measures would not impose any additional burden on small licensees compared with the chains.

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<sup>15</sup> Office of Fair Trading report *The Supply of Beer* on the review of the beer orders (December 2000). More data from the report is cited in Annex 2.

30. There would be no costs for small licensees who already serve 100% liquid on average or as a minimum. The costs for other independent licensees should be the same as the scale of costs listed in paragraph 27 and Annex 2, depending on the quantity currently served per pint sold at each establishment.

31. Visits were made to two independent small public houses (one in London, the other in rural West Sussex) where full measures have been served in lined measure glasses for a number of years. Neither licensee reported any difficulty with lined glasses. They did not consider that their prices were uncompetitive. On the other hand, visits by the Small Business Service to small public houses in areas badly hit by the down turn in tourism during 2001 identified low profitability as a real issue for many rural pubs, and the burden that would be imposed on small pubs if they were forced by legislation to serve 100% liquid measures as the norm.

### *Consumer costs*

32. This section considers whether the proposal to serve not less than 95% of liquid would result in an increase in the retail price of draught beer and cider.

33. Trade guidelines recommend that not less than 95% liquid should be served and local authority surveys indicate that four pints out of five are not less than 95%. It is therefore reasonable to assume that most licensees base their present prices on the expectation of serving not less than 95% liquid and will not need to increase their prices in response to the proposed legislation.

34. Although the 10% of licensees who serve shorter measures than 95% liquid will need to increase the quantity of beer they serve, in view of the existing trade guidelines there appears to be no reason why the costs of additional beer up to 95% minimum should be passed on to consumers as opposed to a cut in the licensees' margins.

### *Local authority costs*

35. The local authorities already have a statutory responsibility for enforcing weights and measures legislation, including responding to complaints from consumers about short weight or measure. LACOTS states that the proposed new legislation would not add to the costs of enforcement for local authorities.

## **Compliance and Enforcement**

36. Sales of draught beer and cider would continue to be subject to compliance and enforcement under the Weights and Measures Act 1985, as are other sales of beer and cider and other goods sold by weight, measure or number. As at present, licensees and bar staff would be responsible for complying with the legislation. Local authorities would continue to be responsible for enforcement. The sanctions (fines) would continue to be those specified under the 1985 Act.

37. In order to promote a consistent approach to compliance and enforcement, guidance notes and publicity material would be prepared by DTI in consultation with licensees and local authorities.

## Compatibility with Existing Legislation

38. Sales of beer and cider are already subject to weights and measures legislation, from the initial sale by the brewery through to the final sale at retail level. With the exception of sales to consumers in brim or lined measure glasses, statements of price and quantity (e.g. the content of a barrel or a bottle, or the calibration of a metered dispenser) refer to the quantity of liquid as opposed to the quantity of liquid and gas in the head of froth. The proposed legislation would therefore bring sales in brim and lined measure glasses more into line with all other sales of beer and cider (draught and in sealed containers).

39. Other alcoholic drinks sold on licensed premises in draught form (wine and spirits) are also subject to weights and measures legislation, in order to guarantee accurate measures and reliable price comparisons.

## Summary of Public Consultation

40. More than 200 organisations and individuals responded to the consultation paper *Measures of Draught Beer and Cider* and preliminary regulatory impact assessment. The majority of respondents can be classified under three headings: consumer groups and individual consumers; the trade, including trade associations, individual brewers and retailers of beer and suppliers of equipment for retailing beer; and the local authorities (representative organisations and individual authorities). Responses were also received from the Food Standards Agency, the Small Business Service, and the Better Regulation Task Force.

41. The Campaign for Real Ale viewed the Option 1 proposals as a pragmatic solution. The National Federation of Consumer Groups re-iterated its view that the consumer should always receive a minimum of 100% liquid, and that brim measures should be banned (the Option 2 proposals). With two exceptions, individual consumer respondents supported the Option 1 proposals.

42. Most respondents with an interest in brewing or retailing draught beer and cider (including the British Beer and Pub Association, the Association of Licensed Multiple Retailers, and the Federation of Licensed Victuallers' Associations) opposed the Option 1 proposals. They argued that the consumer is not concerned about short measure; and that the proposals would involve serving consumers extra beer at a cost of £500 million per annum, which would result in an increase in the retail price of beer. Many business respondents also expressed concern that the 100% "average" and limitation on the use of brim measures were impracticable. They argued that, if legislation is necessary, setting 95% liquid as the legal minimum (the Option 3 proposals) would enable short measure to be prosecuted and would avoid the scale of costs identified by the trade.

43. The Society of Independent Brewers, the Brewing, Food and Beverage Industry Suppliers Association, a manufacturer of metered dispensers and two bar managers (expressing personal views based on their experience) welcomed the Option 1 proposals, but argued that the negative tolerances should not be greater than the tolerances that apply to metered dispensers<sup>16</sup>.

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<sup>16</sup>Verification: half-pint  $\pm$  3 ml; pint  $\pm$  0.5%. Inspection: half-pint + 6 ml - -3 ml; pint +1% - -0.5%.

44. The Local Authorities Co-ordinating Body on Food Safety and Trading Standards (LACOTS) and the Trading Standards Institute considered the Option 1 proposals to be a pragmatic solution, but requested a simple procedure for inspecting compliance with the 100% “on average” requirement. A number of authorities called for 100% liquid as a minimum and for a complete ban on brim measure glasses (the Option 2 proposals).

45. The Food Standards Agency supported the proposals as protecting the right of consumers to get what they pay for. The Small Business Service expressed concern about the potential costs of compliance for small businesses. The Small Business Service argued that if legislation was considered necessary it should be limited to making it an offence to serve less than 95% liquid, in line with recommended trade practice. The Better Regulation Task Force recommended it should be an offence to serve less than 95% liquid, and that steps should be taken by the trade to inform consumers that they could request a top-up if dissatisfied with 95% liquid.

### **Monitoring and Review**

46. The Department would monitor and review the operation of the new legislation in consultation with the local authorities, the trade and consumer groups.

## ANNEX 1: CASE LAW ON MEASURES OF DRAUGHT BEER

1. The main cases on alleged short measure draught beer are Marshall v Searles [1964] Crim L. R. 667, Dean v Scottish and Newcastle Breweries Ltd [1978] SLT (Notes) 24 and Bennett v Markham [1982] 3 AUER 641. The most recent case is Allied Domecq Leisure Limited v Paul Graham Cooper (West Yorkshire Trading Standards Service) [1988].
2. In Marshall v Searles there were deficiencies of about **6%** in draught Guinness. The court dismissed the case, finding that reference to Guinness advertisements showed that what a member of the general public expected when he ordered a pint of Guinness was a composite article of liquid and gas.
3. In Dean v Scottish and Newcastle Breweries Ltd the froth of Tartan Special (to which carbon dioxide had been added) extended one quarter of an inch from the brim to the liquid (between approximately **4%** and **6%**, depending on the circumference of the glasses). The court dismissed the case, finding that in Scotland brewers, retailers and consumers regard the head of beer as an integral part of the beer.
4. In Bennett v Markham there were deficiencies of about **9%** in unnamed bitters. The court dismissed the case, finding that customers in West Yorkshire demanded beer with a tight creamy head, and that when they order a pint of beer which is offered in a pint brim glass, the publican purports to sell not a pint of liquid beer but a full pint glass containing liquid beer and tight creamy head.
5. The court in Bennett v Markham held that it was a matter of fact whether or not a head of froth was excessive or unreasonable. The court went wider than the earlier cases in three other respects. It found that it was the practice to provide a top up if required by the customer, but that the inspector did not request a top up. The court observed that section 19 of the Weights and Measures Act 1979 (consolidated later as section 43 of the Weights and Measures Act 1985) would not have been necessary if it was already unlawful to serve less than a full liquid measure. The court also observed that, if it were already unlawful to serve less than a full measure, it would not be lawful to sell beer with any frothy head in a brim measure glass.
6. In Allied Domecq Leisure Limited v Paul Graham Cooper (West Yorkshire Trading Standards Service), there were deficiencies of about **10%** in two named local bitters served in brim measures. The court dismissed the case, but found that the head of froth was excessive. It rejected the argument that it was a material fact that people, including the inspector, could, but did not always, ask for a top up if they felt that the head on their beer was excessive: *“The person who orders a pint is entitled to a pint. If a pint (including, if legally proper, a head) is not supplied, there is no onus on the customer to demand full measure before an offence is committed”*.

## ANNEX 2: ANNUAL COST OF SERVING FULL MEASURES

### 1. Wholesale price of draught beer and cider

1.1 This assessment is based on data in the report by the Office of Fair Trading (OFT) on the review of the Supply of Beer Orders<sup>17</sup>. Annexes E (market analysis) and G (financial performance) of the report contain information on the wholesale and retail prices of draught beer. Tables 8 and 11 in Annex G set out respectively the average **managed house** trading results in 1999 and the assumed profitability of the average **free house** in 1999 (based on the managed house trading results in 1999). The Tables list, inter alia, the **income** from and the **cost**<sup>18</sup> of the sale of draught lager and of other draught beer<sup>19</sup>.

1.2 The income figures in the Tables enable the number of pints of lager and other beers sold to be quantified by reference to the 1999 average retail prices. The wholesale price per pint can be identified from the cost of sales figures in the Tables. The annual cost to the average pub of buying an additional 1% of beer and cider can then be calculated from the total number of pints sold and the wholesale cost per pint. A scale of costs can be derived for each percentage point of short measure<sup>20</sup>.

1.3 **Average managed house: draught lager** Table 8 in Annex G shows that in 1999 the average managed house had an income of £114k from the sale of draught lager. The 1999 average retail price for draught lager was £1.85, indicating that the average managed house sold about 62,000 pints during the year in order to achieve an income of £114k. The 1999 cost of purchasing lager from the wholesaler is shown as £32k, indicating a wholesale price of 52p per pint (0.52p per 1% of a pint).

1.4 **Average managed house: other draught beers** Table 8 in Annex G shows that in 1999 the average managed house had an income of £72k from the sale of other draught beers. The 1999 average retail price for other draught beers was £1.67<sup>21</sup>, indicating that the average managed house sold about 43,000 pints during the year in order to achieve an income of £72k. The 1999 cost of purchasing other draught beers from the wholesaler is shown as £22k, indicating a wholesale price of 51p per pint (0.51p per 1% of a pint).

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<sup>17</sup> Published in December 2000 as *The Supply of Beer*. The report is available on the OFT website at: <http://www.offt.gov.uk/html/rsearch/reports/oft317.doc>

<sup>18</sup> i.e. the wholesale cost to the retailer of purchasing beer and cider from his supplier or suppliers.

<sup>19</sup> Cider is not included in other draught beers in the OFT data and has not been tested in local authority surveys. Most ciders have small heads that rapidly collapse. On the other hand, the recent CAMRA survey found that on average only 98% liquid was served (see paragraph 6 of the main text of this Regulatory Impact Assessment).

<sup>20</sup> It is not necessary to extrapolate the figures back to the supplier. He is already under a legal obligation to supply full liquid quantities on average to his customers.

<sup>21</sup> Based on unweighted averages of the monthly prices of lager and bitter reported in Table H13 of Labour Market Trends with VAT taken out.

1.5 **Average free house: draught lager** Table 11 in Annex G estimates that in 1999 the average free house had an income of £114k from the sale of draught lager, indicating - by reference to the 1999 average retail price for draught lager cited above (£1.85) - the sale of about 62,000 pints in 1999. The cost of purchasing lager from the wholesaler was estimated to be £42k, £10k higher than the cost for the average managed house<sup>22</sup>. This indicates a wholesale price of 68p per pint (0.68p per 1% of a pint).

1.6 **Average free house: other draught beers** Table 11 in Annex G estimates that in 1999 the average free house had an income of £72k from the sale of other draught beers, indicating - by reference to the 1999 average retail price for other draught beers cited above (£1.67) - the sale of about 43,000 pints in 1999. The cost of purchasing lager from the wholesaler is estimated to be £27k, £5k higher than the cost for the average managed house. This indicates a wholesale price of 63p per pint (0.63p per 1% of a pint).

## **2. Limitations on the expression of costs as aggregations**

2.1 **Price pattern** The OFT study found that the retail price of beer varies, even between licensees within close proximity to each other<sup>23</sup>. Local authority surveys did not find any direct correlation between the quantity of liquid served and the price charged per pint (i.e. the price charged for 90% liquid was not 10% less than the price charged for 100% liquid). It is therefore not possible to quantify the incidence of short measure by reference to the retail prices.

2.2 **Short measure pattern** Local authority surveys show that only about 20% of pints measure 100% or more liquid, and that 80% of pints measure less than 100% liquid. The surveys indicate that the incidence of short measure does not follow a uniform pattern, but varies between pubs and beer types, with deficiencies varying from between less than 1% to more than 10%.

2.3 **Aggregation pitfalls** Expressing the costs of complying with DTI's proposals as a nominal average would give an impression of uniformity among licensees in terms of both the quantity of beer and cider served per pint sold and the retail price charged. A nominal average would also give an impression that all licensees would have to serve a uniform additional quantity of beer at a uniform retail price in order to comply with the proposals. But the empirical evidence demonstrates that licensees do not all serve the same quantity and do not charge the same retail price per quantity. In practice, where additional beer would have to be served, the quantity would vary between licensees, depending on the quantity that each licensee serves at present<sup>24</sup>.

2.4 **Basis for meaningful aggregations** To arrive at meaningful aggregations of the quantity of additional beer that licensees would have to purchase and the costs of buying additional beer, the 120,000 licensees<sup>25</sup> can be divided into three categories, depending on the quantity of liquid they serve per pint:

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<sup>22</sup> The OFT report found that managed pubs are able to obtain beer at lower wholesale prices than free houses.

<sup>23</sup> Annex E, paragraphs E.84-E.89.

<sup>24</sup> Each licensee will know his or her yield of pints per barrel in order to work out the retail price per pint.

<sup>25</sup> The Brewers and Licensed Retailers Association (now the British Beer & Pub Association) estimated that there are about 60,000 pubs and 60,000 other licensed premises. The local authority surveys have been confined to pubs. It is assumed that a similar incidence of short measure occurs at other licensed premises for

- Category A: not less than 100% liquid on average;
- Category B: less than 100% on average but not less than 95% as a minimum;
- Category C: less than 100% on average and less than 95% as a minimum.

2.5 **Number of Category A licensees** It would be too simplistic to interpret the local authority surveys as meaning that 20% of licensees (24,000) always serve 100% or more liquid and that 80% of licensees (96,000) always serve less than 100% liquid. A DTI compliance cost assessment in 1993 estimated that about 25% of draught beer was served in lined glasses or from metered dispensers. The Brewers and Licensed Retailers Association (BLRA - now the British Beer & Pub Association) indicated in 2000 in its response to the DTI consultation paper *Fair Measure* that no more than 10% of licensees used lined glasses in 1999. Most recently, the BLRA stated in its response to the DTI consultation paper *Measures of Draught Beer and Cider* that the current proposals would impose costs on 99% of licensees, which implies that only 1% of licensed premises serve 100% liquid on average in 2001. But Wolverhampton & Dudley has a company policy serving 100% liquid in its 2000 pubs, which account for 1.5 % of all licensed premises. In addition, the CAMRA *Good Beer Guide 2001* identifies 250 non-Wolverhampton and Dudley pubs that use lined glasses among 5000 recommended pubs (i.e. 5% of the listed pubs). It may also be the case some other premises (particularly those stocking mainly low froth beers) serve 100% liquid on average but do not publicise the fact<sup>26</sup>. **For this assessment, it may be reasonable to assume that the number of Category A licensees does not exceed 5% (6000) of all licensed premises.**

2.6 **Number of category B and C licensees** It would be too simplistic to interpret the local authority surveys as meaning that (60%) of licensees (72,000) never serve less than 95% liquid and that (20%) of licensees (24,000) always serve less than 95% liquid. Licensees who claim to serve not less than 95% may in fact serve a proportion of pints at less than 95% (just as licensees who do not claim to serve 100% liquid are likely to serve a proportion of 100% pints - see penultimate sentence of paragraph 2.5). **For the purposes of this assessment it may be reasonable to assume that Category B licensees comprise 85% (102,000) of all licensed premises; and that Category C licensees comprise 10% (12,000) of all licensed premises.**

### **3. Costs and benefits for each category of licensee**

3.1 **Category A licensees** would not have to serve more liquid than they currently do. They would therefore not have to purchase additional beer and cider from their suppliers.

3.2 Category A licensees would benefit to the extent that their competitive position would be strengthened vis-à-vis category C licensees, who would have to serve more beer per pint than they currently do. Category A licensees would also benefit if consumer requests for

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the purpose of this assessment. The true position at other licensed premises could of course be better or worse than the position at pubs.

<sup>26</sup> By implication, three quarters (15%) of the one-in-five 100% liquid pints identified in the local authority surveys must be served in pubs that do not claim to serve 100% liquid.

top ups resulted in Category B and Category C licensees having to serve more than 95% liquid.

3.3 **Category B licensees** would not have to serve more liquid than they currently do, unless requests for top-ups become more widespread than they currently are.

3.4 Category B licensees use mainly brim measure glasses. As it is difficult to serve the same quantity of liquid consistently in brim measures, more than 95% liquid must be served in order to avoid serving less than the trade's recommended minimum. An average fill of 97% liquid would seem a reasonable estimate of the typical measure<sup>27</sup>.

Category B licensees could therefore find that they must serve 3% more liquid per pint (i.e. 97% + 3%). It may be reasonable to reduce this figure by 1% on account of the level of top ups that are served at present, with the net result that Category B licensees would have to serve an additional 2% liquid per pint if requests for top ups became more widespread than at present.

3.5 Taking the figures for the average managed house (see paragraphs 1.3 and 1.4), an additional 2% liquid translates into wholesale payments of 1.04p per additional pint of lager (£644.80 over the year) and 1.02p per additional pint of other draught beer (£ 438.60 over the year), **a net annual cost of £1083**. The corresponding figures for the average free house (see paragraphs 1.5 and 1.6) are 1.36p per additional pint of lager (£843.20 over the year) and 1.26p per additional pint of other draught beer (£541.80 over the year), **a net annual cost of £1385**.

3.6 Category B licensees would lose the competitive advantage they have over category A licensees by virtue of serving less beer per pint sold than category A licensees only if consumers request top ups in addition to 95%. However, this would be offset by a gain in their competitive position over category C licensees, who currently serve less beer per pint sold than category B licensees.

3.7 **Category C licensees** are assumed to serve 90.5% liquid on average for this assessment<sup>28</sup>. This would mean serving an additional 4.5% liquid on average in order to comply with DTI's proposals, which in practice would be 6.5% in order to avoid the risk of serving less than 95%<sup>29</sup>.

3.8 Taking the figures for the average managed house (paragraphs 1.3 and 1.4), an additional 6.5% liquid translates into wholesale payments of 3.6p per additional pint of lager (£2232 over the year) and 3.31p per additional pint of other draught beer (£1423 over the year), **a net annual cost of £3655**. The corresponding figures for the average free house (paragraphs 1.5 and 1.6) are 4.42p per additional pint of lager (£2740 over the year) and 4.09p per additional pint of other draught beer (£1758 over the year), **a net annual cost of £4498**.

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<sup>27</sup> The BLRA estimates that there would be 2% over-measure if the target fill became not less than 100%.

<sup>28</sup> There is no comprehensive data on the average measure served by licensees who serve less than 95%. 90.5% is an estimate based on 4.5% below 95% (the average derived from the minimum and maximum deficiencies below 95% identified in local authority surveys), plus 6% from 95% to 100% inclusive).

<sup>29</sup> 4.5% deficiency to 95%, plus 2% over-measure to 97%, as discussed for Category B licensees in paragraph 3.4.

3.9 If consumers additionally requested top ups in greater numbers than they currently do, Category C licensees could find that have to serve an additional 2% liquid per pint as assessed already for Category B licensees (see paragraphs 3.4 and 3.5). This would result in similar costs to Category C licensees (i.e. **a net annual cost of £1083 for the average managed house and £1385 for the average free house, in addition to the annual costs identified in paragraph 3.8).**

3.10 Category C licensees would lose the competitive advantage they currently have by virtue of serving less beer per pint sold than Category A and B licensees.

#### 4. Total value of short measure beer

4.1 The assessment in the previous two sections has focussed on the cost of buying additional beer and cider for individual licensees, depending on the quantity of liquid that each licensee currently serves when selling a pint. This section assesses the total market value of short measure beer.

4.2 According to the BLRA, about 6.6 billion pints are sold per year. Local authority surveys found that: 20% (1.32 billion) pints were 100% liquid or more; 60% (3.96 billion) pints were between 95-99% liquid; and 20% (1.32 billion) pints were below 95% liquid.

4.3 For this assessment, any excess measure in the 20% of pints at or above 100% liquid is set off against the deficiencies in 10% of the pints below 100%. The total value of short measure in the remaining 70% of pints is then calculated on the following basis:

**A. 50% (3.3 billion) of pints deficient by 2.5%**<sup>30</sup>

= 82.5 million pints sold to consumers but not bought from wholesalers;

ratio between sales of lager and other beers: 60:40<sup>31</sup>

= 49.5 million pints of lager/33 million pints of other beer;

ratio between managed and free houses: 12.5:87.5<sup>32</sup>

= managed house: lager, 6.2 million pints @ 52p per pint = £3.22 million

= managed house: other beer, 4.1 million pints @ 51p per pint = £2.1 million

= free house: lager, 43.3 million pints @ 68p per pint = £29.44 million

= free house: other beer, 28.9 million @ 63p per pint = £18.20 million

= wholesale value of 82.5 million pints = £52.96 million

**B. 20% of pints (1.32 billion) deficient by 9.5%**<sup>33</sup>

= 125.4 million pints sold to consumers but not bought from wholesalers;

<sup>30</sup> The mean between 96% and 100%

<sup>31</sup> Derived from OFT estimate that per annum the average house sells 62,000 pints of lager and 43,000 pints of other beer (see paragraphs 1.3 to 1.6)

<sup>32</sup> The BLRA estimates that there are 15,000 managed houses out of 120,000 licensed premises.

<sup>33</sup> See footnote 28.

ratio between sales of lager and other beers: 60:40  
= 75.64 million lager/50.16 million other beer;

ratio between managed and free houses: 12.5:87.5  
= managed house: lager, 9.4 million pints @ 52p per pint = £4.89 million  
= managed house: other beer, 6.27 million pints @ 51p per pint = £3.2 million  
= free house: lager, 65.84 million pints @ 68p per pint = £44.53 million  
= free house: other beer, 43.9 million pints @ 63p per pint = £27.66 million  
= wholesale value of 125.4 million pints: £80.28 million

**Total value of A (£52.96 million) and B (£80.28 million) = £133.24 million**

4.4 The aggregate annual value to retailers of selling to 207.9 million more pints per year than they buy from brewers amounts to £133.24 million (equivalent to about 3% of total annual retail sales).

4.5 Under DTI's proposals no pint would be less than 95% liquid. This would affect about 20% of pints which are currently served with less than 95% liquid. The total value of deficiencies below 95% is calculated as follows:

**20% of pints (1.32 billion) short of 95% by 4.5%**<sup>34</sup>  
= 59.4 million pints sold to consumers but not bought from wholesalers;

ratio between sales of lager and other beers: 60:40  
= 35.6 million pints lager/ 23.8 million pints of other beer;

ratio between managed and free houses: 12.5: 87.5  
= managed house lager: 4.45 million pints @ 52p per pint = £2.31 million  
= managed house other beers: 2.97 million pints @ 51p per pint = £1.51 million  
= free house lager: 31.15 million pints @ 68p per pint = £21.18 million  
= free house other beer: 20.82 million pints @ 63p per pint = £13.12 million  
  
= **wholesale value of 59.4 million pints = £ 38.08 million**

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<sup>34</sup> See footnote 28.

## **ANNEX 3: MARKET FAILURE AND SHORT MEASURE**

1. Beer, like other food and drink products, could potentially be served in any measure. Without standard measures it can be difficult for the customer to assess the value for money of the product, make price comparisons, and be sure that they are getting what they paid for. This can distort the market, and reduce overall welfare. Thus, without intervention (either private or public) the market for beer is likely to exhibit information problems.

### **The legislation**

2. The purpose of weights and measures legislation is to provide a common language for describing quantity by defining the units of measurement to be used for selling goods by weight or measure; and an enforcement mechanism to check that the units are used and to respond to complaints of short weight or measure. The pint is the unit of measurement to be used for selling beer and cider by draught.

3. Standard weights and measures address the information problem by enabling customers to make a price-per-quantity assessment of the good, and check that they are getting what they pay for.

### **Difficulties with precise measurement: court rulings and trade guidelines**

4. A head of froth forms on top of the liquid when beer or cider is drawn from a barrel, or poured from a bottle, into a glass. The froth contains some beer but consists mainly of trapped air. Froth on lager and cider collapses almost as soon as it forms but often lasts longer on beers. The amount of froth varies among different beers and how the beer is drawn or poured. The “sparkler” creates additional froth by pumping gas into the beer as it is drawn into a glass. The collapse of the froth can be delayed by “nucleated” glass. The presence of the head of froth complicates an assessment of the measure contained in the glass.

5. A liquid pint of beer with a large head of froth can be contained within a calibrated lined measure glass<sup>35</sup> or an uncalibrated over-size glass used with a metered dispenser<sup>36</sup>. But a large head prevents a calibrated brim measure glass<sup>37</sup> from containing a pint of liquid. This has resulted in the courts ruling, when considering prosecutions for short measure, that the “pint” in a brim measure glass may include a “reasonable” head of froth and that the consequent deficiency in liquid does not constitute short measure (see Annex 1).

6. In the absence of a clear legal definition of a reasonable head, the Brewers and Licensed Retailers Association (now the British Beer & Pub Association) published guidelines in 1993 advising that 100% liquid should be served in lined measure glasses and not less than 95% of liquid should be served in brim measure glasses, the recommended quantities in both cases including the liquid in the head after it has collapsed.

7. Local authority surveys indicate that at least one pint in five is less than 95%

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<sup>35</sup> A glass that is larger than a pint and has a line marked at the pint level.

<sup>36</sup> A metered dispenser discharges pre-measured liquid quantities.

<sup>37</sup> A glass that has a capacity of a pint or half-pint at the top of the glass. In practice, brim measures are manufactured with 2.5 % extra capacity.

liquid, which indicates some lack of voluntary compliance with the guidelines. Indeed, there have been reports of instructions to bar managers to serve more pints from barrels than the barrels contain<sup>38</sup>. Attempts by local authorities to bring prosecutions for not serving 95% liquid have failed because case law permits deficiencies of 9% or more.

### **Consumer behaviour**

8. The majority of licensees who responded to the DTI consultation paper stated that consumers like a head of froth on beer served in brim measure glasses and are not concerned about the consequent short measure. They also stated that consumers have two remedies if they think they have been served short measure: they can request a full measure by asking for the glass to be “topped up”; or they can transfer their custom to a licensed premises that serves full measure.

9. The evidence does not suggest that consumers are indifferent to short measure. Local authorities receive complaints from individual consumers. The Campaign for Real Ale (CAMRA), a subscription-based pressure group, has complained about the rising incidence of short measure for a number of years. Public surveys commissioned by CAMRA found that consumers in the north, where frothier beers are more traditional, have a marginally stronger preference for better protection against short measure than consumers from the south. This suggests that consumers do not consider that short measure should be served, even when they like the beer to be served with a head of froth<sup>39</sup>.

10. As regards the direct remedies available to consumers, requesting a full measure depends on the consumer’s perception of whether a full measure has been served<sup>40</sup>. Unlike weighing machines, petrol pumps or labels on packages, a beer glass does not give precise information about quantity. The consumer has to guess the quantity, based on the visual impression created by the glass. He may reasonably conclude that the measure is short if the glass is not full to the brim. But it is difficult to quantify short measure where there is froth to the brim. Variations in the shape and size of glasses may contribute to the difficulty in making a visual judgement about the extent of any short measure<sup>41</sup>. Given the widespread incidence of short measure identified in the local authority surveys, shopping around for pubs that serve the fullest measure may not be a realistic option in many cases. The consumer in any case unlikely to notice the difference between a pub that serves typically 94% liquid and typically 97% liquid.

### **Aggregate effects**

11. The individual consumer may conclude that a few millilitres deficiency is worth only a couple of pennies in an individual transaction, but the cumulative effect of small short measures must also be considered. The total annual savings to retailers who serve short measure amounts to £130 millions at wholesale prices, equivalent to 3% of all sales. This is a significant cost to the collective consumer. It also distorts the reliability of

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<sup>38</sup> E.g. *BBC Watchdog* (13 November 1999), *The Publican* (23 October 2000).

<sup>39</sup> It is not suggested that there is any consumer attachment to a head of froth on lager (which accounts for 60% of beer sales) or cider. But the local authority surveys indicate that short measure occurs with lager and cider, as well as with more traditional frothy beers.

<sup>40</sup> It is unrealistic to expect the consumer to be aware of the case law.

<sup>41</sup> Most glasses are wider at the top (where the froth is) than at the bottom.

price information and competition between different licensees and different types of beer, and has a negative effect on brewery sales and the market for metered dispensers.

## **5. ANNEXES**

### **Annex A**

List of consultees

### **Annex B**

Other current consultations from Consumer Affairs Directorate

# **Annex A**

## **LIST OF CONSULTEES**

**Alcohol Concern**  
**Allied Brewery Traders' Association**  
**Allied Domecq Retailing**  
**Association of Independent Businesses**  
**Association of London Government**  
**Aston Manor Brewery**  
**BB Plastics**  
**Brewers' Association of Scotland**  
**British Beer and Pub Association**  
**British Glass Manufacturers' Association**  
**British Hospitality Association**  
**British Plastics Federation**  
**Brunel University**  
**Butterworths – The Editor**  
**Campaign for Real Ale**  
**Calderdale Metropolitan Borough Council**  
**Carlsberg Tetley Brewing Ltd**  
**Catering Equipment Suppliers Association**  
**Centa Stores**  
**Co-operative Union Ltd**  
**Co-operative Wholesale Society Ltd**  
**Consort Hotels Ltd**  
**Consumers Association**  
**Convention of Scottish Local Authorities**  
**Cumbria County Council**  
**Cybeer**  
**Dema International**  
**De Montfort University, Professor David Oughton**  
**De Montfort University, Chris Willet**  
**Department of Enterprise Trade and Investment, Northern Ireland**  
**Department of Health**  
**Department of the Environment, Food and Rural Affairs**  
**Drinks Dispense and Cooling Consultants**  
**Federation of Licensed Victuallers' Associations**  
**Federation of Small Business**  
**Federation of the Retail Licensed Trade**  
**Food Standards Agency**  
**Glass Mountain Ltd**  
**H G Stephenson Ltd**  
**H P Bulmer Drinks Ltd**  
**Home Beer and Wine Mfrs Association**  
**Hotel Catering and Institutional Management Association**  
**Isle of Man Trading Standards Division**  
**John Artis Ltd**  
**J D Wetherspoon**  
**LACOTS**  
**Law Commission**  
**LVTA (West)**  
**Licensed Victuallers' Association (West)**  
**Local Government Association**  
**Local Government Association**  
**Local Government Association**  
**London School of Economics and Political Science , Mr C Scott**  
**London School of Economics and Political Science, Professor Hugh Collins**

**Manchester University**  
**National Assembly of Wales**  
**National Association of Licensed House Managers**  
**National Association of Perrymakers**  
**National Consumer Council**  
**National Consumers' Federation**  
**New College Oxford**  
**Northern Counties Chief Trading Standards Officers Group**  
**Nottingham Trent University, Department of Law**  
**Oxford University, St John's College**  
**Oxford University, Somerville College**  
**Office of Wales**  
**Plastico Ltd**  
**R L Smith Precision Engineering**  
**Rayware Ltd**  
**Restaurateurs Association of GB**  
**Scotland Office**  
**Scottish Consumer Council**  
**Scottish Licensed Trade Association**  
**Slip End Social Club**  
**Small Brewers' Association**  
**Small Business Service**  
**Society of Independent Brewers**  
**Society of Licensed Victuallers**  
**States of Jersey**  
**States of Guernsey**  
**The Association of Multiple Retailers**  
**The Crow and Plough**  
**The Editor, O'Keefe's (The Law of Weights and Measures)**  
**The Guild of Master Victuallers**  
**The Head of Steam Ltd**  
**The National Association of Cider Makers**  
**The Trading Standards Institute (Mr G C Howell)**  
**The Trading Standards Institute (Mr R Gainsford)**  
**University of Birmingham**  
**University of Dundee**  
**University of Hull**  
**University of Nottingham**  
**University of Sheffield, Mr R Bradgate**  
**University of Sheffield, Professor Geraint Howells**  
**Verrerie Cristallerie D'Arques**  
**Welsh Consumer Council**  
**West Yorkshire Trading Standards Services**  
**Whitbread PLC**  
**Working Men's Club and Institute & Union Ltd**

# Annex B

## **OTHER CURRENT CONSULTATIONS FROM CONSUMER AFFAIRS DIRECTORATE**

Consultation on UK implementation of the 25<sup>th</sup> Amendment to the Marketing and Use Directive (76/769/EEC).

Consultation on UK Implementation of the 21<sup>st</sup> Amendment to the Marketing and Use Directive (76/769/EEC).

Proposed changes to the Price Marking (Foods and Drink on Premises) Order 1979.

Transposing the revised General Product Safety Directive.

## 8.

### ***THE CONSULTATION CRITERIA***

- 1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.*
- 2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.*
- 3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.*
- 4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others) and effectively drawn to the attention of all interested groups and individuals.*
- 5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation*
- 6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and the reasons for decisions finally taken.*
- 7. Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated.**

*The complete code is available on the Cabinet Office's web site, address*

*<http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm>.*

### **COMMENTS OR COMPLAINTS**

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to Mr Philip Martin, DTI Consultation Co-ordinator, Room 564, 1 Victoria Street, London SW1H 0ET or telephone him on 020 7215 6206 or email [philip.martin@dti.gsi.gov.uk](mailto:philip.martin@dti.gsi.gov.uk)

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