

REGULATORY IMPACT ASSESSMENT

REGULATION OF OPENING BY LARGE SHOPS ON CHRISTMAS DAY

1. Purpose and objectives of Regulation

1.1 The purpose of the proposed regulation is to maintain the special nature of Christmas Day. The Government believes that widespread opening by large shops (over 3000 sq foot/280 sq m) opening on Christmas Day would seriously undermine that special nature as well as having an adverse effect on large shop employees.

1.2 This Regulatory Impact Assessment assesses the likely costs and benefits to those affected by the regulation being proposed, which would prohibit large shops opening on any Christmas Day rather than only when it fell on a Sunday as now.

2. Options

2.1 Leaving existing regulation unchanged would allow large stores to open in six out of seven years, when Christmas Day fell on a day other than Sunday. It is foreseeable, therefore, that large stores could consider opening at some time in the future, eg because of perceived commercial advantage or competitive pressure.

2.2 The Government would have liked to address the issue of Christmas Day opening without recourse to new regulation. But consideration of alternative approaches produced no viable options. Although some form of voluntary consensus on the part of retailers might have delivered the desired result in theory, in practice such a consensus would have contravened Competition Law.

2.3 Primary legislation, with relevant amendments to the Sunday Trading Act 1994, is considered the only way to guarantee that large stores remain closed. It is believed that it is preferable and easier to take this action now rather than at some later date in response to increased opening by stores.

3. Benefits

3.1 Regulation is expected to ensure that the special nature of Christmas Day will be maintained by preventing competitive pressures causing widespread opening by large stores.

3.2 It follows that employees in large stores would not be at risk of being expected to work on Christmas Day in the future.

4. Cost implications

4.1 We invited costed estimates from consultees to contribute to the assessment below. No additional costings were presented.

Cost to large shops of not being able to open

4.2 Large shops which might have opened on the permitted Christmas Days might be perceived as forgoing profit which they might have made. They will still have to meet fixed costs such as heating, lighting, etc albeit perhaps at a lower level (e.g. lighting may be cut back). But it can also be argued that any lost profit is likely to be recovered on other days of trading in practice.

4.3 If, in the short term, a few large stores were opening on Christmas Day, then there could be some advantage to those stores and some lost profit to them, but not to the economy as a whole. If in the longer term other stores also opened, the advantage would be reduced or disappear

4.4 In practice, since the great majority of large stores currently do not open, this cost is expected to be negligible. The survey of large shops in 2002 suggested that most had no plans to open on any future Christmas Day. On one in seven Christmas Days (when Christmas Day falls on a Sunday) the cost of the proposed legislation is zero.

4.5 Since there is only a finite amount of consumer spend available in any period, a ban on all large shops opening seems unlikely to disadvantage any stores (certainly with regard to large rivals) in any major way. Stores are geared to consumers spending what they intend to spend over the Christmas period either before or after, but not on, Christmas Day. However, we would be prepared to consider estimates what profit large stores might forgo, for example:

- (i) to smaller (below 3000 sq ft) rivals who open, or
- (ii) from the spending of additional earnings for working on Christmas Day, or
- (iii) from spending by overseas visitors present in the UK on Christmas Day.

We also welcome estimates for other possible scenarios that we have failed to highlight.

Cost to staff of forgone overtime or premium payments

4.6 Staff in those large shops which might open, would forgo any overtime or premium payments which might have been on offer. This will rule out any positive multiplier effect of their overtime or premium payments in the areas in which they normally shop.

4.7 Large shops in areas where local tradition has been that such shops are open may be more affected by the proposed regulation. However, since few large shops currently open, these costs are also expected to be negligible. On one in seven Christmas Days (when Christmas Day falls on a Sunday) the cost of a ban on opening is zero.

Cost to other business sectors

4.8 We will welcome costed evidence from any other business sectors that believe they will be adversely hit by the proposed regulation. These might include transport firms (taxis, car parks); energy providers (electric, gas and oil direct or indirect suppliers to large shops); caterers and food/beverage suppliers and, possibly, many others. Care should be taken not to include lost business that would be recouped on alternative days anyway.

Social cost

4.9 Retail Stores may provide additional services to a locality, such as pharmacies or petrol stations. Comments on the effect of a prohibition on opening by large stores on such services would be helpful.

4.10 Christmas can be a particularly difficult time for those living alone and this might be alleviated by the social interaction to be found in visiting shops. We were interested to hear, eg from those involved in the Social Exclusion debate, any views on how far a ban on opening might impact on individual members of society. No comments were received.

5. Evaluation of financial costs

5.1 Since few large shops currently open, or plan to, on Christmas Day, the recurring policy costs of new regulation are estimated to be negligible.

5.2 In addition, it is difficult to envisage what, if any, one-off non-recurring costs, arising from the need to make changes after the introduction of any legislation, might be generated.

6. Comparison with business estimates

6.1 Since our survey of large shops in 2002 suggested that very few had plans to open on any future Christmas Days this confirms DTI's estimate of negligible costs.

7. Impact on enforcement/advisory bodies

7.1 There should be no non-recurring introductory costs on local authorities. The publicity around the time of transposition may generate an increased demand for advice but enquiry-servicing costs should be negligible.

7.2 Recurring enforcement costs should be negligible unless large shops decide on a path of civil disobedience such as was seen before the liberalisation of the Sunday Trading laws in 1994. However, since the 2002 confidential survey of large shops suggested that very few had plans to open on any future Christmas Day this should not occur.

8. Competition Filter

8.1 The Competition Filter has been carried out and found to acknowledge that the proposed regulation would not impact on the competitive process. In all cases the nine questions registered a "No" answer and so there was no need to proceed to a detailed Competition Assessment. The market assessed was the general retail sector.

8.2 The market is characterised by a multitude of firms and market dominance by either one or a combination is not a problem in relation to proposed regulation. The Competition Filter's concern with any such linkage can, therefore, be discounted. The legislation will not impact adversely on any particular firms more than others. Similarly, the legislation will not affect market structures nor inhibit market entry, on either initial or on-going cost grounds, nor affect sourcing decisions.

8.3 The nine questions can be found on the following site, on the page numbered 19:

<http://www.offt.gov.uk/nr/rdonlyres/e4vqn5yy4wa5xbjnhp353vadzxjfffq6gbvouf h2fohfnw6ge4azkdllisvumt3fo5egvqgx7teyjyq7oplk2erck6c/oft355.pdf>

9. Impact on Small Business

9.1 Small Business Service agree that the proposal would not have an adverse effect on small shops. Responses to the consultation suggested no evidence that the proposal would be anything except an advantage to small shops. However, any advantage is likely to be so minimal in terms of improved profit as to be negligible. The Association of Convenience Stores endorse the regulation of large stores, on the understanding that the future would not hold extension of a similar prohibition to them.

10. Results of consultation

10.1 In response to the public consultation, 97% of respondents supported keeping Christmas Day special and agreed that large shops should remain closed. The remaining 3%, all from individual members of the public, opposed the proposal on the grounds that it was discriminatory against other religions. Their view also was that shops of all sizes should be allowed to decide when they opened.

10.2 Of the responses logged, 18% were from major retailers, 6% of were from small stores and retail staff organisations, answering on behalf of their members. 4% were received from Christian groups, no non-Christian religious groups responded. The remaining 72% of responses were from private individuals.

10.3 Six recurring comments were raised in support of the Government's proposals:

- Christmas Day is an important time for families to spend time together, irrespective of religious belief.
- The cost to large stores opening on that day would outweigh any potential profits.
- Large stores opening would increase the need for other services allied to retail, such as wholesale, clerical, manufacturing and transport.
- If large stores were to open staff would be put under pressure to provide adequate cover.
- Due to competitive pressure, if some large stores opened on Christmas Day others would follow.
- Convenience stores are open if there is a need for any last minute or emergency purchases.

11. Summary and recommendations

11.1 It is the Government's view that the proposed regulation will help maintain the special status of Christmas Day as well as benefiting those employees in large shops who do not want to work, as they will no longer be at risk of having to work on Christmas Day.

12. Enforcement, sanctions and review

12.1 The proposed regulation would be enforced by Trading Standards as with the current prohibition on large shops opening on one Christmas Day in seven. The sanctions will remain as for the latter.

12.2 DTI will welcome any future representations on the working of the proposed regulation if passed, and will review its functioning at a reasonable juncture.

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13. DECLARATION

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed

Date

Gerry Sutcliffe
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Department of Trade and Industry