

dti

SUNDAY TRADING ACT 1994

Christmas Day Trading – a consultation on a proposal to regulate the opening of large shops (internal floor area of over 280 square metres or 3,000 square feet) on Christmas Day.

April 2003

FOREWORD BY ALAN JOHNSON, MINISTER OF STATE FOR EMPLOYMENT RELATIONS, INDUSTRY AND THE REGIONS

I am inviting views from a wide range of stakeholders on a proposal to prohibit large stores (as defined by the Sunday Trading Act 1994) from opening on Christmas Day.

The Sunday Trading Act 1994, which regulates opening by stores in England and Wales, prohibits large stores from opening on Christmas Day when it falls on a Sunday. The Government propose an amendment to the Act to prohibit large stores from opening on Christmas Day falling on any day.

The possibility of widespread opening by large stores on Christmas Day is a source of concern. The Government believe that it would seriously undermine the special nature of the day as well as having an adverse effect on employees. It also believes that legislation now will avoid a problem arising at a later date.

The Government wishes to hear the views of all key stakeholders before proceeding with new regulation. I urge you, therefore, to carefully consider this consultation document and forward your comments as directed.

A handwritten signature in black ink that reads "Alan Johnson". The signature is written in a cursive style with a large, sweeping initial 'A'.

ALAN JOHNSON

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1. INTRODUCTION

PURPOSE OF CONSULTATION

1.1 This consultation document seeks views on proposed new regulation to prohibit large stores (ie those over 280 sq m/3,000 sq ft) from opening on Christmas Day falling on any day of the week

RESPONSES

1.2 How to respond to this consultation:

by Email: ChristmasDay@dti.gov.uk

by post: David Swepson
Consumer and Competition Policy Directorate
Room V 426
Department of Trade and Industry
1 Victoria Street
London, SW1H 0ET

Questions and a form on which to provide responses are at **Annex A**

CLOSING DATE

1.3 Responses must be received by **2 July 2003**.

OUTCOME

1.4 We aim to publish the outcome of this consultation by September 2003.

CONFIDENTIALITY

1.5 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 this in your response. 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

1.6 This document is being brought to the attention of the Consultees listed in **Annex B**. Please do bring it to the attention of others who would be interested in responding or let us know their details so that we can do so. It is also available by request from the contact quoted in paragraphs 1.2 and 1.7.

HELP WITH QUERIES

1.7 If you would like help with queries or further information about this consultation please contact David Swepson (e mail: david.swepsopn@dti.gsi.gov.uk; Tel: 020 7215 3805)

2. SUMMARY

2.1 Shop opening hours in England and Wales are regulated by the Sunday Trading Act 1994. The Act prohibits large stores (those over 280 sq m/3,000 sq ft) from opening on Christmas Day when it falls on a Sunday but not when it falls on other days in the week.

2.2 The proposal is that there should be new regulation to prohibit large stores from opening on Christmas Day falling on any day of the week.

2.3 The purpose of new regulation would be to maintain the special nature of Christmas Day. The Government believes that large stores opening on Christmas Day would seriously undermine that special nature as well as having an adverse effect on employees.

2.4 The Government currently sees no need to review the operation of the 1994 Act in respect of Sunday trading.

3. THE PROPOSAL - BACKGROUND AND CONTEXT

3.1 The Sunday Trading Act 1994 applies the following limits to shop opening hours in England and Wales:

- Small shops (under 280 sq m/3,000 sq ft) - no restrictions on opening
- Large shops (over 280 sq m/3,000 sq ft)
 - Monday to Saturday - no restrictions
 - Sunday - Opening for 6 hours only, between 10am and 6pm
 - Easter Sunday - closed
 - Christmas Day (when on a Sunday) - closed

3.2 The Sunday Trading Act 1994 was a compromise between strongly held and competing views. The partial deregulation of Sunday trading introduced by the Act appears to have provided a reasonable and enforceable balance. The Government has stated that it will continue to monitor operation of the Act to ensure it continues to meet current needs. It currently sees no need to review the operation of the 1994 Act in respect of Sunday trading or to re-open the debate which preceded it.

3.3 However, the possibility of widespread opening by large stores on Christmas Day is a source of concern. Christmas Day remains a special day for all UK citizens, and the Government wishes to maintain its special nature. Opening by large stores would have a direct impact on the quality of national life as well as on the employees concerned.

3.4 The provision of the 1994 Act which prohibits large shops from opening on Christmas Day when the latter falls on a Sunday (in addition to Easter Sunday) arose from an amendment tabled during the passage of the Bill. At that time Parliament accepted that this amendment would leave the majority of Christmas Days unaffected. The Government believes that this position is no longer tenable.

3.5 To inform consideration of further action, the Secretary of State wrote to major retailers last year to ask about their plans for Christmas Day opening, in 2002 and future years. The majority of large retailers had no current plans to open in 2002 or future years, although opening by competitors would lead to plans being reviewed in some cases. The Government believes it is necessary to act now to avoid a gradual process of opening by large stores, for example as a result of perceived competitive pressure. It also believes that legislation is the only way to ensure that large stores will remain closed on Christmas Day in the future.

3.6 Regulation of Christmas Day trading raises issues across a wide range of interests and the Government wishes to capture the views of all key stakeholders before proceeding with legislation. With this and the Regulatory impact Assessment included in Section 4 in mind, consultees are asked to offer their views on the questions and using the form included at **Annex A**.

4. REGULATORY IMPACT ASSESSMENT

REGULATION OF OPENING BY LARGE SHOPS ON CHRISTMAS DAY

Purpose and objectives of Regulation

4.1 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.

4.2 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.

Options

4.3 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.

4.4 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.

4.5 New regulation by amending the 1994 Act 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.

Benefits

4.6 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.

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

Cost implications

4.8 We welcome costed estimates from consultees to contribute to the assessment below:

Cost to large shops of not being able to open

4.9 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.

4.10 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. There may actually be savings to stores in the long term from making the same overall profit but, in the absence of overtime, premium payments, normal lighting or heating costs, at a lower cost.

4.11 In practice, since so few large stores currently open, this cost is expected to be negligible. The survey of large shops in 2002 suggested that very few had 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.

4.12 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

4.13 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.

4.14 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

4.15 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

4.16 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.

4.17 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 would be 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.

Evaluation of financial costs

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

4.19 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.

Comparison with business estimates

4.20 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.

Impact on enforcement/advisory bodies

4.20 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.

4.21 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.

Competition Filter

4.22 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.

4.23 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.

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

<http://www.ofst.gov.uk/nr/rdonlyres/e4vqn5yy4wa5xbjnhp353vadzxjffq6gbvouf h2fohfnw6ge4azkdilsvumt3fo5egvqgx7teyjvq7oplk2erck6c/ofst355.pdf>

Impact on Small Business

4.25 This should certainly not be adverse. We believe the advantage given to SME shops is, however, so minimal in terms of improved profitability as to be negligible. We are prepared to consider any evidence to the contrary.

Results of consultations

4.26 The first is now underway and this RIA is attached along with a request for any suggested improvements.

Summary and recommendations

4.27 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.

Enforcement, sanctions and review

4.28 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.

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

Paul Stocker
Assistant Director
Consumer and Competition Policy Directorate

8 April 2003

RESPONSE FORM

Respondent Details	Please return by 2 July 2003
Name: Organisation: Address: Postcode: Telephone: Fax: Email: Date: 2003	David Swepson Department of Trade and Industry Consumer & Competition Policy Room V 426 1 Victoria Street London SW1H 0ET Email: ChristmasDay@dti.gsi.gov.uk Tel: 020-7215 3805 Fax: 020-7215 3833

If you are replying on behalf of a representative group please summarise the people or organisations your group represents:

Tick this box if you are requesting non-disclosure of your response

Consultees are encouraged to set out the reasons for their answers as fully as possible under "comment".

Question 1 - Do you agree in principle with maintaining the special nature of Christmas Day?

Yes

No

Don't know

Comment:

Question 2 - Do you agree that the special nature of the day would be undermined by large stores (ie over 280 sq m/3,000 sq ft) opening on that day?

Yes

No

Don't know

Comment:

Question 3 - Do you believe that large stores should be prohibited by law from opening on Christmas Day?

Yes

No

Don't know

Comment:

Question 4 - Do you believe that regulating Christmas Day trading by large stores would create any anomalies?

Yes

No

Don't know

Comment:

Question 5 - Do you have any comments on the Regulatory Impact Assessment (Section 4) contained in this consultation document (for example evidence of additional costs in terms of lost profits or earnings)? Please provide as much detail as possible.

Yes

No

Comment:

Question 6 - Do you have any other comments on the proposal?

LIST OF CONSULTEES

Retail

British Retail Consortium
British Shops and Stores
Association
Confederation of British Industry
Association of Convenience Stores
Alliance of Independent Retailers
The Retail Enterprise Network
Federation of Small Businesses in
Wales
Rural Shops Alliance
Independent Retail Consortium
National Pharmaceutical
Association
Major Retailers consulted by the
Secretary of State in 2002 (**See
Appendix**)

Retail and Distributive Staff

Union of Shop, Distributive and
Allied Workers
GMB
T&G
Amicus - AEEU
United Road Transport Union
TUC
Wales TUC Cymru

Consumers and Enforcement

Consumers' Association
National Consumer Council
Welsh Consumer Council
National Association of Citizen's
Advice Bureaux (NACAB)
Trading Standards Institute
Local Authorities Coordinators of
Regulatory Services (LACORS)
Office of Fair Trading

Christian and Non-Christian Groups

Church of England
Church of England Synod
Catholic Church in England and
Wales
Christian Brethren
Methodist Church
Evangelical Alliance
Christian Institute
Inner Cities Faith Council
CCLA Investment Management (For
the Ethical Investment Advisory
Group of the Church of England)
Union of Welsh Independents
Board of Deputies of British Jews
National Association of Hindu
Temples
Muslim Council of Great Britain
Union of Muslim Organisations of
UK and Eire
FAIR (Forum against
Islamophobia)
Sikh Cultural Society
Inter Faith Network
British Humanist Association
The National Secular Society

Government Bodies

The Wales Assembly Government
Wales Office
Cabinet Office (Social Exclusion)
Department of Health (Pharmacy
Services)

Other

Commission for Racial Equality
The Samaritans

Appendix to Annex B

MAJOR RETAILERS CONSULTED BY THE SECRETARY OF STATE IN 2002

Adams Childrenswear	Furniture Village plc	Orange Retail
Aldi	Furnitureland Ltd	Peacock Group plc
Alexon Group	Gap	Pets at Home
Alldays	H & M Hennes Ltd	Brown & Jackson/ Poundstretcher
Allders	Habitat	Powerhouse
Alliance Unichem	Harrods Holdings	Primark Stores Ltd
Allied Carpets	Harvey Nichols Group	River Island Clothing
All:Sports (Retail) Ltd	HMV Media	Robert Dyas
Alpha Retail	Homebase	Safeway
Arcadia Group	Homestyle Group plc	Selfridges
Argos Ltd	House of Fraser	Service Point UK
Asda Group	Iceland Group	Signet
Austin Reed Ltd	Ikea	Somerfield
Bargain Booze	J Sainsbury	Spar
Beale plc	James Beattie plc	Specsavers
Bentalls plc	JD Sports plc	Sports Soccer
Bhs	Jessops	Staples UK
Blacks Leisure/Millets	Jewsons	Stylo
Blockbuster Entertainment	JH Leeke	Superdrug
Body Shop	JJB Sports	T&S Stores
Boxclever	John Lewis Partnership	Tesco
Brown & Jackson	Kingfisher plc	The Boots Company
BT Shop	Laura Ashley	The Disney Store
Budgens	Liberty plc	The Games Store Group
C&J Clark	Lidl & Schwarz	The HomeForm Group
Carpentryright	Littlewoods	Time Group
Carphone Warehouse	Magnet	TK Maxx
Cellar 5	Makro	TM Group
Co-operative Group	Maplin Electronics (Saltire plc)	Topps Tiles
Courts plc	Marks and Spencer	Toys R Us
Debenhams	Matalan	Trage Mills
DFS Furniture	Moss Bros	Virgin Retail
Dolland & Aitchison	Morrisons	Vision Express (UK) Ltd
Dunnes Stores	Moss Pharmacy	Vodafone
Early Learning Centre	Mothercare	Warner Brothers Stores
Etam plc	N Brown	WH Smith
Fads Holdings	Netto Foodstores	
Farmfoods	New Look Group plc	
Fenwick	Next	
First Quench Retailing	Office World	
Focus Group	Oldrid and Co Ltd	

THE CONSULTATION CRITERIA

The criteria in the Code of Practice on Written Consultation issued by the Cabinet Office are as follows:

- A 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.
- B It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
- C 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.
- D 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.
- E 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.
- F 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.
- G 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 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 P Martin, DTI Consultation Co-ordinator, Room 725, 1 Victoria Street, London SW1H 0ET or telephone him on 020 7215 6206 or email philip.martin@dti.gsi.gov.uk.

