



## BRIEFING PAPER

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# Trading on Christmas Day

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## Summary

In respect of England and Wales, prior to the coming into force of the [Christmas Day \(Trading Act\) 2004](#), there was no legislation to prohibit Christmas Day opening other than the restrictions affecting large stores under the [Sunday Trading Act 1994](#) ('STA 1974'). Under the STA 1974, large shops were required to remain closed on Christmas Day but only when the 25 December fell on a Sunday. Trading was allowed when Christmas Day fell on any other day of the week, although convention had dictated that large shops remain closed.

The *Christmas Day (Trading) Act 2004* was a response to a growing trend for large shops to open on Christmas Day in 2002 and 2003. A campaign by [USDAW](#) (the Union of Shop, Distributive and Allied Workers) argued that large shops should be prohibited by law from opening on Christmas Day on whatever day of the week it falls. USDAW was concerned that many of its members were already working longer hours over the Christmas period, often for no extra money. The [Christmas Day \(Trading\) Bill](#), a Private Members' Bill with Government support, was introduced in the House of Commons on 7 January 2004 by Kevan Jones MP. The Act came into force on 9 December 2004.

The *Christmas Day (Trading) Act 2004* is a straightforward Act. It prohibits large shops and supermarkets in England and Wales from opening on Christmas Day whatever day of the week it falls. For the purposes of the Act, a 'large shop' is defined as being larger than 280 sq. m/3,000 sq. ft. in size. Smaller shops (less than 280 sq. m/3,000 sq. ft.) are unaffected by the Act. In effect, a small shop could open twenty-four hours a day, every day of the year, including Christmas Day, if the owner so wished.

This short Commons briefing paper provides information on the main provisions of the *Christmas Day (Trading) Act 2004* and a summary of the background to the Act. It also outlines the position in Scotland under the [Christmas Day and New Year's Day Trading \(Scotland\) Act 2007](#).

# 1. Background (England & Wales)

Prior to the passing of the [Christmas Day \(Trading\) Act 2004](#), there was no legislation to prohibit Christmas Day opening other than the restrictions affecting large stores under the [Sunday Trading Act 1994](#) (STA 1994). Under the STA 1994 shops larger than 280 sq. m/3,000 sq. ft. in size (defined under the Act as 'large') were required to remain closed on Christmas Day, but only when the 25 December fell on a Sunday. Trading was allowed when Christmas Day fell on any other day of the week.

In the past, convention had dictated that large shops do not open on Christmas Day. However, in 2000 a number of retailers experimented with trading on Christmas Day (which fell on a Monday). It was reported, for example, that both Sainsbury's and Woolworths broke with tradition and ran Christmas Day shopping trials in the London area.<sup>1</sup> Budgens also decided to run shopping trials on Christmas Day at 17 stores, in addition to the 49 smaller stores that stay open 24 hours a day.<sup>2</sup> On Christmas Day 2003, Woolworths reportedly opened one big store in Southall, London.<sup>3</sup> A few of the supermarkets, including Sainsbury's, also opened their smaller stores attached to petrol stations.<sup>4</sup>

A campaign by [USDAW](#) (the Union of Shop, Distributive and Allied Workers) tried to stop this trend by arguing that large shops should be prohibited by law from opening on Christmas Day on whatever day of the week it falls. USDAW was concerned that many of its members were already working longer hours over the Christmas period, often for no extra money.<sup>5</sup>

USDAW campaign

A Government consultation of individual major retailers in 2002 showed that the overwhelming majority of large retailers had no immediate plans to open on Christmas Day. However, it was also apparent that opening by competitors would lead to plans being reviewed in some cases. In other words, it was foreseeable that large stores could consider opening at some time in the future because of perceived commercial advantage or competitive pressure. The Government concluded that legislation was the only way to ensure that large stores remained closed on Christmas Day in the future.<sup>6</sup>

Public consultation

A public consultation was launched on 8 April 2003 on proposed new regulation to prohibit large shops from opening on Christmas Day

<sup>1</sup> "Union seeks ban on December 25 shop opening", Times, 21 December 2000, [not online]

<sup>2</sup> Ibid

<sup>3</sup> "[Plan to ban Christmas Day opening](#)", BBC news, 19 October 2003, [online] (accessed 7 May 2017)

<sup>4</sup> Ibid

<sup>5</sup> USDAW press notice, "Shop workers vote against Christmas Day opening", 30 June 2003, [not online]

<sup>6</sup> Department of Trade and Industry (now BEIS), "Christmas Day Trading – a consultation on a proposal to regulate the opening of large shops (internal floor area of 280 square feet) on Christmas Day", URN 03/825, April 2003, [not online]



falling on any day of the week.<sup>7</sup> According to the Department of Trade and Industry (now the [Department for Business, Energy & Industrial Strategy \(BEIS\)](#)), 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.<sup>8</sup>

The [Christmas Day \(Trading\) Bill](#), was introduced in the House of Commons on 7 January 2004 by Kevan Jones, Labour MP for Durham North. This Private Member's Bill had Government support. Explaining his reasons for introducing the Bill, Kevan Jones said:

The Bill will help maintain the special nature of Christmas Day while also ensuring that staff of large stores will be guaranteed a well deserved holiday.<sup>9</sup>

In promoting the Bill, Kevan Jones was supporting the "Protect Christmas Day" campaign of [USDAW](#). The Bill was almost identical to two previous unsuccessful Private Members' bills of the same title, introduced by Gwyneth Dunwoody in 2001 and Kevin Hughes in 2002.

The Christmas Day Trading Bill had its Second and Third Reading in the House of Commons on 26 March 2004 and 18 June 2004 respectively and received Royal Assent on 28 October 2004. The Act came into force on 9 December 2004.

Private Member's  
Bill with  
Government  
support

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<sup>7</sup> Department of Trade and Industry (now BEIS), "Christmas Day Trading – a consultation on a proposal to regulate the opening of large shops (internal floor area of over 280 square feet) on Christmas Day", URN 03/825, April 2003 [not online]

<sup>8</sup> Ibid

<sup>9</sup> Office of Kevan Jones Press Notice, "MP to introduce Bill to Keep Christmas Day Special", 7 January 2004 [not online]

## 2. Main provisions of the Act

### 2.1 Prohibition of opening of large shops on Christmas Day

The [Christmas Day \(Trading\) Act 2004](#) prohibits large shops from opening on Christmas Day.<sup>10</sup> The Act applies to England and Wales only (see below).

The Act applies only to large shops; small shops can continue to open on Christmas Day. A 'large shop' is given exactly the same meaning as that given in paragraph 1 of Schedule 1 to the STA 1994. In other words, a 'large shop' means a shop that has a relevant floor area exceeding 280 sq. m or 3,000 sq. ft. under the STA 1994, the relevant floor area means the internal floor area of so much of the shop as consists of or is comprised in a building. It excludes, however, any part of the shop which is used neither for the serving of customers in connection with the sale of goods nor for the display of goods.

The Act exempts from the general prohibition from opening on Christmas Day the following shops, irrespective of their size:

- Any farm where the trade or business carried on consists wholly or mainly of the sale of produce from that farm.
- Any shop where the trade or business carried on consists wholly or mainly of the sale of intoxicating liquor.
- Any shop where the trade or business carried on consists wholly or mainly of the sale of any one or more of the following: motor or cycle supplies and accessories.
- Any shop which is a registered pharmacy, and is not open for the retail sale of any goods other than medicinal products and medical and surgical appliances.
- Any shop at a designated airport, which is situated in a part of the airport.
- Any shop in a railway station.
- Any shop at a service area within the meaning of the *Highways Act 1980*.
- Any petrol filling station.
- Any shop which is not open for the retail sale of any goods other than food, stores or other necessities required by any person for a vessel or aircraft on its arrival at, or immediately before its departure from, a port, harbour or airport.
- Any stand used for the retail sale of goods during the course of an exhibition.<sup>11</sup>

Prohibition on large shops opening on Christmas Day

Shops that are exempt from the Act and can open on Christmas Day, irrespective of their size.

<sup>10</sup> [Christmas Day Trading Act 2004](#), section 1(1)-(4)

<sup>11</sup> [Sunday Trading Act 1994](#), schedule 1, paragraph 3(1)

## 2.2 Loading and unloading early on Christmas Day

The Act also prohibits large shops located in an area designated by a local authority as a loading control area from loading and unloading before 9 a.m. on Christmas Day unless,

- (a) the relevant authority has granted consent, and
- (b) any loading or unloading is carried out in accordance with any conditions attached to that consent.<sup>12</sup>

A person who breaches the prohibition on loading and unloading shall be liable to a fine not exceeding level three on the standard scale.

### 2.3 Enforcement

Under section 3 of the [Christmas Day \(Trading\) Act 2004](#), local authorities are under a duty to enforce the prohibition of opening by large stores on Christmas Day and to appoint inspectors for this purpose. These inspectors may be the same persons as those appointed by the local authority to enforce Sunday trading legislation.<sup>13</sup> Inspectors will have the same powers as those appointed under the STA 1994 (i.e. rights of entry).<sup>14</sup>

### 2.4 Territorial extent

The [Christmas Day \(Trading\) Act 2004](#) extends to England and Wales, but not to Scotland or to Northern Ireland.

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<sup>12</sup> [Christmas Day \(Trading\) Act 2004](#), section 2(1)

<sup>13</sup> Paragraph 2 of Schedule 2, [Sunday Trading Act 1994](#)

<sup>14</sup> [Christmas Day \(Trading\) Act 2004](#), section 3(3)

### 3. Situation in Scotland

There are no restrictions on trading hours in Scotland.

However, the [\*Christmas Day and New Year's Day Trading \(Scotland\) Act 2007\*](#), enacted in 2007, prohibit the opening of large shops for the purpose of retail trading on both Christmas Day and New Year's Day. For the purposes of the Act, a large shop is defined as one with a trading floor area exceeding 280 Sq. meters. However, the Act exempts certain specified trades or businesses (e.g. a registered pharmacy) and shops at specified places (e.g. if the shop is within a port, railway station or commercial airport).<sup>15</sup>

Strict liability offence

If a large shop opens in contravention of the Act, the occupier of the shop and, if different, the person responsible for controlling or managing the operations carried on at the shop on the day in question, shall be guilty of an offence and liable on summary conviction to a fine not exceeding £50,000.<sup>16</sup> Although the offence is one of strict liability, there is a defence of due diligence.<sup>17</sup>

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<sup>15</sup> Section 3

<sup>16</sup> Section 4

<sup>17</sup> Section 6



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