



RESEARCH PAPER 04/25
17 MARCH 2004

The Christmas Day (Trading) Bill

Bill 20 of 2003-4

The purpose of the *Christmas Day (Trading) Bill* is to prohibit large shops and supermarkets from opening on 25 December. It has been introduced by Kevan Jones, MP, who came sixth in the ballot for Private Members' Bills. The Bill has Government support. It is due to be debated on second reading in the House of Commons on 26 March 2004.

The Bill follows a high-profile campaign by USDAW (the Union of Shop, Distributive and Allied Workers) to stop Christmas Day opening among some large retailers.

The Bill applies only to England and Wales.

Lorraine Conway

HOME AFFAIRS SECTION

HOUSE OF COMMONS LIBRARY

Recent Library Research Papers include:

04/09	The <i>Fire and Rescue Services Bill</i> [Bill 38 of 2003-04]	22.01.04
04/10	The <i>Sustainable and Secure Buildings Bill</i> [Bill 15 of 2003-04]	29.01.04
04/11	Economic Indicators [includes article: Consumer Borrowing]	02.02.04
04/12	The <i>Scottish Parliament (Constituencies) Bill</i> [Bill 4 of 2003-04]	03.02.04
04/13	<i>Carers (Equal Opportunities) Bill</i> [Bill 16 of 2003-04]	03.02.04
04/14	Unemployment by Constituency, January 2004	11.02.04
04/15	The <i>Gender Recognition Bill</i> [HL] [Bill 56 of 2003-04]	17.02.04
04/16	Burma	23.02.04
04/17	The <i>Gangmasters (Licensing) Bill</i> [Bill 17 of 2003-04]	25.02.04
04/18	<i>Pensions Bill</i> [Bill 57 of 2003-04]	25.02.04
04/19	Social Indicators [includes article: EU enlargement: Basic Indicators for accession countries]	01.03.04
04/20	Economic Indicators [includes article: Background to the 2004 Budget]	01.03.04
04/21	<i>Promotion of Volunteering Bill</i> [Bill 18 of 2003-04]	03.03.04
04/22	The <i>Justice (Northern Ireland) Bill</i> [HL] [Bill 55 of 2003-04]	04.03.04
04/23	Poverty: Measures and Targets	04.03.04
04/24	The <i>Cardiac Risk in the Young (Screening) Bill</i> [Bill 19 of 2003-04]	10.03.04

Research Papers are available as PDF files:

- *to members of the general public on the Parliamentary web site,
URL: <http://www.parliament.uk>*
- *within Parliament to users of the Parliamentary Intranet,
URL: <http://hcl1.hclibrary.parliament.uk>*

Library Research Papers are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. Any comments on Research Papers should be sent to the Research Publications Officer, Room 407, 1 Derby Gate, London, SW1A 2DG or e-mailed to PAPERS@parliament.uk

Summary of main points

The aim of the *Christmas Day (Trading) Bill* (Bill 20 of 2003/4) is to prohibit large shops and supermarkets from opening on Christmas Day whatever day of the week it falls. For the purposes of the Bill, a large shop is defined by reference to the *Sunday Trading Act 1994* (STA 1994). Smaller stores would be unaffected.

In the past, convention has dictated that shops do not open on Christmas Day. However, there is no legislation to prohibit Christmas Day opening other than the current restrictions affecting large stores under the STA 1994. Under the STA 1994, shops larger than 280 sq m/3,000 sq ft in size (defined under the Act as 'large') can open for six hours on a Sunday, provided they have notified the relevant local authority of their intent to do this. Large shops are required to remain closed on Easter Sunday and also on Christmas Day, but only when the 25 December falls on a Sunday. Trading is allowed when Christmas Day falls on any other day of the week.

The *Christmas Day (Trading) Bill* was introduced in the House of Commons on 7 January 2004 by Kevan Jones, Labour MP for Durham North, who came sixth in the ballot for Private Members' Bills. Explaining his reasons for choosing this Bill he 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.

I know this Bill has widespread public support, I trust with the support of fellow members this Bill will become law in time for Christmas 2004.¹

In promoting this Bill, Kevan Jones is supporting the 'Protect Christmas Day' campaign of USDAW (the Union of Shop, Distributive and Allied Workers).

The Bill has Government support. The Government wishes to see the special nature of Christmas Day maintained. It believes the special nature of the day would be undermined if opening by large shops became widespread. The Department of Trade and Industry (DTI) has published Explanatory Notes on the Bill.

The Bill is almost identical to two previous Private Members' Bills of the same title introduced by Gwyneth Dunwoody in 2001 and Kevin Hughes in 2002, to prohibit shops from opening on Christmas Day. The Bills failed to become law.

The Bill applies only to England and Wales. The position in Scotland is being considered separately by the Scottish Executive. No new legislation is being proposed for Northern Ireland at this time.

Private Members' Bills are not subject to the requirement of section 19 of the *Human Rights Act 1998* that the Minister in charge of a Bill should make a statement on its compatibility with the European Convention on Human Rights before second reading.

¹ Office of Kevan Jones Press Notice, *MP to introduce Bill to keep Christmas Day Special*, 7 January 2004

CONTENTS

I	Current legal position	7
	A. Permissible opening days	7
	B. Permissible opening hours on weekdays	8
	C. Employment protection provisions	8
II	Background to the <i>Christmas Day (Trading) Bill</i>	9
	A. The growing trend to open on Christmas Day	9
	B. Past initiatives to prohibit Christmas Day trading	11
III	Government Policy	13
IV	The main provisions of the Bill	16
V	Views of employees' and business representatives' groups	20
VI	Is there to be a further review of the STA 1994?	23
VII	The position in Scotland	24
	A. <i>Christmas Day and New Year's Day Trading (Scotland) Bill</i>	24
	B. Views of employees' and business groups	24

I Current legal position

A. Permissible opening days

There is no legislation to prohibit Christmas Day opening other than the current restrictions affecting large stores under the *Sunday Trading Act 1994* (STA 1994) when December 25th falls on a Sunday.

The STA 1994, which came into force on 26 August 1994, liberalised Sunday trading law for shops, by repealing Part IV of the *Shops Act 1950*.² It introduced a scheme of partial deregulation. It allows shops to trade in all goods on Sundays but restricts most **large shops** to six hours' trading.

Shops larger than 280 sq m/3,000 sq ft in size (defined under the Act as 'large') can open on a Sunday for a continuous six hours between 10 a.m. and 6 p.m., provided they have notified the relevant local authority of their intent to do this. All large shops are required to remain closed on Easter Sunday and on any Christmas Day which falls on a Sunday.³

A few types of large shops are exempt from the provisions of the STA 1994 and are allowed to open all day on a Sunday. These are:

- farm shops
- motor and cycle supply shops
- stands at exhibitions
- pharmacies for the sale of medicines
- shops at airports, railway stations and shops servicing ocean going ships
- shops at petrol filling stations and motorway service stations.⁴

Outlets which offer a service such as hairdressers, shoe repair businesses, restaurants, public houses and takeaways are also excluded from the restrictions on Sunday trading.

Small shops (not over 280 sq m/3,000 sq ft in size) are not covered by the restrictions of the STA 1994 and can open at any time on a Sunday. 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.

² Clause 1 of the STA 1994 provides for the repeal of the Sunday trading provisions contained in Part IV of the *Shops Act 1950* and for their replacement by the provisions in Schedule 1 which contains restrictions on the Sunday opening of large shops

³ Schedule 1 to the *Sunday Trading Act 1994*

⁴ Paragraph 3(1) of Schedule 1 of the *Sunday Trading Act 1994*

Local authorities trading standards officers enforce the STA 1994. It is an offence punishable on summary conviction by a maximum fine of £50,000, for a large shop to trade on a Sunday in contravention of the provisions of the Act.⁵

B. Permissible opening hours on weekdays

Restrictions on shop opening hours on weekday and Saturdays were completely removed for all shops by section 23 of the *Deregulation and Contracting Out Act 1994*. Restrictions on Sunday opening for smaller shops were removed by the STA 1994.

In summary, there is no law to prevent all shops, irrespective of size, from opening on Christmas Day if the 25 December falls on any day of the week other than Sunday and to remain open for as long as they like.

The provision of the STA 1994 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 *Sunday Trading Bill*. At that time Parliament accepted that this amendment would leave the majority of Christmas Days unaffected but in 1994, nobody envisaged that Christmas Day would become a viable shopping day. The Government now believes that this position is “no longer tenable.”⁶

C. Employment protection provisions

Christmas Day is a ‘common law’ holiday in England, Wales and Northern Ireland, but is a bank holiday in Scotland. Although most employers do give their staff Christmas Day off (or give them time off in lieu or extra pay or both if they are required to work on this day), this is not a statutory requirement.

Employees have no statutory entitlement to bank and public holidays. Entitlement to leave (paid or unpaid) on public holidays, including Christmas Day, is entirely a matter for the contract of employment. The *Working Time Regulations 1998*, SI 1998/1833, which implemented the *EC Working Time Directive* in the UK from 1 October 1998, give all workers (except those in the excluded sectors) the right to four weeks’ paid annual leave.⁷ This is pro rata for part time workers. However, the Regulations do not specify when this leave must be taken. Paid leave on public holidays (including Christmas Day)

⁵ Section 7(1) Schedule 1 of *Sunday Trading Act 1994*

⁶ Department of Trade and Industry, “*Christmas Day Trading – a consultation on a proposal to regulate the opening of large shops on Christmas Day*”, April 2003

⁷ The entitlement was originally to three weeks’ paid annual leave, but this has been increased to four weeks for leave years beginning on or after 23 November 1999. The excluded sectors are air, rail, road, sea, inland waterway and lake transport; sea fishing; and other work at sea. They are due to be included by August 2003.

counts towards satisfying this minimum statutory entitlement.⁸ The DTI's *Guide to Working Time Regulations*, published in September 1998, said:

7.1.5 Public holidays

There is no statutory entitlement to bank and public holidays. These are simply days where a worker may receive leave under the terms of their contract. As with other contractual leave, this can be used to discharge an employer's responsibility for providing the statutory leave under these Regulations. Where a worker is paid for a public holiday this will count towards their entitlement to leave.⁹

The STA 1994 contained specific protection (now contained in Part IV of the *Employment Rights Act 1996*) for shop workers who do not want to work on Sundays.

II Background to the *Christmas Day (Trading) Bill*

A. The growing trend to open on Christmas Day

In the past, convention has dictated that shops do not open on Christmas Day. Few large shops have so far chosen to open on Christmas Day but, according to USDAW (the Union of Shop, Distributive and Allied Workers), many shopworkers fear that it is only a matter of time before more start opening.

Stores opening on Christmas Day have been mainly confined to small convenience shops that would remain unaffected by the measures in this Bill. However, in 1999, two large supermarket chains, Sainsbury's and Budgen's, tested the market by opening some stores on Christmas Day.

In 2000, Christmas Eve and New Year's Eve both fell on a Sunday, which meant that under the STA 1994 larger stores could open legally for only six hours. Some large stores called on the Government to suspend normal Sunday trading restrictions on Christmas and New Year's Eve in a bid to open their stores earlier. For example, Asda supermarket commissioned a survey of 1,000 shoppers. This survey found that while consumers were happy with the six hours' shopping time allowed under the Sunday trading law, some 65% of customers wanted stores to open earlier than the prescribed 10 am start on the holidays.¹⁰ In fact, many large retailers, including Asda, Sainsbury, Marks & Spencer, Tesco and Safeway, introduced "browsing time" for customers before stores opened for business on Christmas Eve.

In 2000, a number of retailers also experimented with trading on Christmas Day (which fell on a Monday). It was reported, for example, that both Sainsbury's and Woolworths

⁸ http://www.dti.gov.uk/ir/work_time_regs/wtr7.htm

⁹ Department of Trade and Industry, *Guide to Working Time Regulations*, September 1998

¹⁰ "Call to suspend restrictions", *Financial Times*, 12 September 2000

broke with tradition and ran Christmas Day shopping trials in the London area.¹¹ Budgens also decided to run shopping trials on Christmas Day at 17 stores, in addition to the 49 stores that stay open 24 hours a day.¹²

On Christmas Day 2003, Woolworths reportedly opened one big store in Southall, London, on the basis that the area has a large population of ethnic minorities.¹³ A few of the supermarkets, including Sainsbury's, also opened their smaller stores attached to petrol stations.¹⁴

A campaign by USDAW has 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 is concerned that many of its members are already working longer hours over the Christmas period, often for no extra money. Many stores already open late on Christmas Eve, on Boxing Day and throughout the New Year period. USDAW is keen to see that its members are protected from this extension to trading hours, which, it claims, strikes at the heart of family-friendly employment.¹⁵

To inform consideration of further action, the Secretary of State wrote to major retailers in 2001 to ask about their plans for Christmas Day opening in 2002 and future years. The conclusion was that it was foreseeable that large stores could consider opening at some time in the future because of perceived commercial advantage or competitive pressure:

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.¹⁶

Asked in a PQ to calculate the extent of Christmas Day trading, Alan Johnson, Minister of State for Employment Relations, Industry and the Regions, estimated:

... that 13,000 shop employees worked on Christmas Day, Monday 25 December 2000. This is 0.8 per cent of the total number of shop employees in England and Wales.¹⁷

¹¹ "Union seeks ban on December 25 shop opening", *Times*, 21 December 2000

¹² Ibid.

¹³ "Christmas Day trading ban planned", BBC news, 23 December 2003, available on the BBC's website at: <http://news.bbc.co.uk/1/hi/business/3339341.stm>

¹⁴ Ibid.

¹⁵ USDAW press notice, "*Shopworkers vote against Christmas Day opening*", 30 June 2003

¹⁶ Department of Trade and Industry, *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

¹⁷ HC Deb 1 February 2002 c611W

Based on its analysis of the Labour Force Survey, the Trade Union Congress (TUC) has calculated that 964,000 people worked on Christmas Day 2000 (half of this number worked either in the nursing and social care sector or in hotels and restaurants). The TUC estimates that nearly 800,000 employees worked on Christmas Day 2003. It also estimates that three million UK workers will not receive holiday pay if they take off Christmas Day.¹⁸ The research is part of the TUC's "It's about time" campaign to end the UK's long-hours culture.

A survey for the Work Foundation found that nearly two in five men (37%) do unscheduled work over the Christmas period and a quarter (24%) of those surveyed admitted that work caused them to neglect their children in some way – for example, 21% missed their child's Christmas play in 2002.¹⁹

The STA 1994 gives employees in large stores protection when Christmas Day falls on a Sunday but none when it falls on other days of the week. In a recent debate, Ken Purchase MP made a distinction between implied and direct threats to employees to work on Christmas Day:

Mr Purchase: But does the Under-Secretary understand that the pressures to which workers are subject are often not perceived because they are different from a direct threat? There is an implied threat, especially to junior managers and supervisory staff, that their promotion chances may be diminished unless they continue to supervise and manage at Christmas. When we defended workers from having to work every Sunday, we would say, "Aren't workers entitled to one day a week?" We have now retreated so far on workers' rights that we ask, "Aren't they entitled to one day a year?"²⁰

To balance these findings it would be helpful to have reliable figures on the number of customers who use large stores on Christmas Day. However, no Government data is available.²¹

B. Past initiatives to prohibit Christmas Day trading

A Private Member's Bill to prohibit large shops from opening on Christmas Day, regardless of the day of the week it fell, was introduced by Gwyneth Dunwoody MP in 2001.²² This Bill also arose out of USDAW's campaign to 'protect Christmas Day' for

¹⁸ "All I want for Christmas is my two weeks leave", Trade Union Congress press notice, 20 December 2003, available on TUC website at: http://www.tuc.org.uk/work_life/tuc-6025-f0.cfm

¹⁹ The Work Foundation press notice, "Christmas Father is becoming a myth", 22 December 2003, http://www.employersforwork-lifebalance.org.uk/media/press_releases221203.htm

²⁰ HC Deb 11 December 2003 c1188

²¹ HC Deb 6 February 2002 c 963W

²² *The Christmas Day (Trading) Bill*, Bill No 14 of 2000-2001

shop workers. This Bill had its Second Reading and committee stage but fell on dissolution.

Lord Davies of Coity resurrected the *Christmas Day (Trading) Bill* following the 2001 General Election.²³ This time the Bill completed all its stages in the House of Lords and was sent to the House of Commons where it had its First Reading on 11 April 2002. The Bill was opposed on Second Reading and lapsed.²⁴

On the 13 and 27 November 2003, Adrian Sanders MP tabled two identical Early Day Motions (EDMs) on the subject of trading on Good Friday and Christmas Day:

That this House notes neither Good Friday nor Christmas Day are included in the *Banking and Financial Dealings Act 1971* on the grounds that they are traditional days of rest and worship; further notes that the restrictions under the *Sunday Trading Act 1994* do not apply to either of these important days in the Christmas calendar; recognises that competitive pressures find many Christians in a position where they feel compelled to work on these days, and that many Christians view commercial activities on these days as showing a disregard and disrespect for their religion; and therefore calls upon Her Majesty's Government to review existing legislation relating to the holiest days in the Christian calendar and bring forward change that will protect Christians from being compelled to engage in commercial activities on Good Friday and Christmas Day.²⁵

To date, the EDMs have received 33 and 46 signatures respectively.

On 17 December 2003, Kevan Jones MP also tabled the following EDM:

That this House cherishes Christmas Day as a special day, particularly for families and children, and welcomes the campaign by Usdaw, the shop workers' union, on behalf of 2.6 million shop workers of the United Kingdom; regrets that many shops remain open on Christmas Day because employers put undue pressure on shop workers to abandon their family responsibilities on this important religious and public holiday; notes that the vast majority of shop workers are parents who should be able to spend Christmas with their children; also notes that current law offers no protection to such workers when Christmas Day does not fall on a Sunday; further notes that Christmas is an extremely busy and stressful period for shop workers and believes that they deserve at least one day off; and calls on the Government to protect shop workers on Christmas Day.²⁶

This EDM has so far received 195 signatures.

²³ *Christmas Day (Trading) Bill*, Bill 118 of 2001-02

²⁴ On passing to the House of Commons, Kevin Hughes MP assumed responsibility for the Bill

²⁵ EDMs 54 and 145 of 2003-04

²⁶ Early Day Motion 327/ 2003-04, 17 December 2003

In December 2000, USDAW presented to Downing Street a petition of 20,000 names against Christmas Day opening. On 16 December 2003, Kevan Jones MP and Sir Bill Connor, USDAW General Secretary, presented another petition of over 250,000 signatures to Downing Street also calling for legislation to prohibit Christmas Day opening by large shops.²⁷

III Government Policy

The Government recognises that it is an anomaly of the STA 1994 that it does not allow trading on Christmas Day when it falls on a Sunday but does allow trading when it falls on any other day of the week. The basis of that Act was that Sunday is a special day, but the Government accepts that Christmas Day is also a special day.

At the time of Gwyneth Dunwoody's Bill, the Government stated its hope that the retail market would appreciate the sensitivities involved in trading on Christmas Day and would regulate itself accordingly. It agreed, however, to continue to monitor the issue.²⁸ The Government has now changed its neutral stance to one of support for the principle of prohibiting Christmas Day trading by law.

On 20 March 2003, a PQ was asked by John Bercow MP on the necessity for legislation to prevent Christmas Day trading. Alan Johnson outlined the Government's position:

Mr John Bercow: Notwithstanding the fact that many people, myself included, agree with the hon. Member for Stockport (Ms Coffey) that it seems both unfair and mean-spirited to coerce people into working on Christmas Day when they would otherwise not choose to do so, does the Minister accept that when contemplating legislation, it is essential to be sure that legislation and regulation are necessary, and that the form that they take is proportionate to the size of the problem and the level of the protest about it?

Alan Johnson: I fully accept that. My Right hon. Friend the Secretary of State wrote to retailers last year to see whether there was an alternative to regulation. If there was an agreement between the major retailers, none of whom was interested in opening on Christmas Day, that would probably breach fair trading rules, so that option has been ruled out. The hon. Gentleman makes a valid point. If there were any sensible alternatives to regulation, we would pursue them. My view at present – that is the reason for the consultation document – is that there is no alternative, and it will be beneficial regulation, not least because many retailers have said to us, “Look, we agree with you, but either put up or shut up. We will

²⁷ USDAW press notice, *A quarter of a million people say no to shops opening on Christmas Day*, 15 December 2003

²⁸ Department of Trade and Industry, *Observations of the Secretary of State for Trade and Industry on the Petitions of 20 and 21 December 2000 from the shopworkers of the UK and others for statutory protection of Christmas Day*, UP 253 2000/1

open if our competitors open, and the best way you can deal with this”, many retailers tell us, “is through regulation.”²⁹

A public consultation was launched by the DTI on 8 April 2003.³⁰ In the forward to the consultation document, Alan Johnson, explained the proposal to prohibit by legislation Christmas Day trading:

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.

A preliminary Regulatory Impact Assessment was prepared by the DTI to be included in the public consultation.³¹ This assessed the impact of such regulation on business as negligible since the vast majority of large retailers do not currently open on Christmas Day and have no immediate plans to do so. According to the DTI, comments were invited on this preliminary assessment but none was received.³²

The consultation period closed on 2 July 2003 and the DTI published a summary of responses in August 2003. According to the DTI, 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, particularly in a multi-cultural society. Their view was that shops of all sizes should be allowed to decide when they opened.³³ The responses were categorised as follows:

Of all responses received, 18% were from major retailers (this was perhaps not surprising as they had been consulted in 2002 on their plans to open on Christmas Day 2002 and beyond). 6% of responses were from small stores and retail staff organisations, who answered on behalf of their members. 4% of responses were received from Christian groups. The remaining 72% of responses were from private individuals. No non-Christian religious groups or consumer organisations responded.³⁴

²⁹ HC Deb 20 March 2003 c1080

³⁰ Department of Trade and Industry, *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. www.dti.gov.uk/ccp/consultations.htm

³¹ A final Regulatory Impact Assessment is available on the Department of Trade and Industry Consumer and Competition Policy website: www.dti.gov.uk/ccp/

³² *Christmas Day (Trading) Bill*, Bill 20 Explanatory Notes

³³ Department of Trade and Industry, *A summary of responses to the consultation on a proposal to regulate the opening of large shops (internal floor area of over 280 square feet) on Christmas Day*, August 2003

³⁴ Department of Trade and industry, *A summary of responses to the consultation on a proposal to regulate the opening of large shops (internal floor area of over 280 square feet) on Christmas Day*, August 2003

The DTI identified six recurring comments raised in support of the Government's proposals:

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

In October 2003, the Government stated its intention to introduce new legislation to prohibit Christmas Day trading as soon as Parliamentary time permits.³⁵ It proposed that new regulations would extend the present provisions of the STA 1994, by prohibiting large shops opening on Christmas Day falling on any day of the week. Smaller shops would not be affected.

In the meantime, Patricia Hewitt, Trade and Industry Secretary, urged retailers to close all bigger outlets on Christmas Day 2003:

We can't change the law in time for this Christmas, but we hope to change the law in time for next in relation to large shops opening on Christmas Day.

I hope that major retailers will continue to observe the spirit of Christmas Day before the law is changed. Even the actions of one or two retailers could have wide-ranging consequences for shopworkers this Christmas. We live in a multi-cultural, multi-faith society, but Christmas Day remains a special day for most UK citizens, either for religious or family reasons.

We want to preserve the special nature of this day and stop it being the first day of the sales. Shopworkers deserve a day with their families this Christmas.³⁶

³⁵ <http://www.dti.gov.uk/ccp/topics1/facts/christmas.htm>

³⁶ USDAW press notice "*Hewitt urges retailers do not open your large stores on Christmas Day*", 22 December 2003, http://www.usdaw.org.uk/usdaw/news/1072093045_16990.html

The Government has now given its support to Kevan Jones' *Christmas Day (Trading) Bill*. Commenting on the Bill, Gerry Sutcliffe, the Employment Relations, Consumer and Competition Minister, said:

We live in a multi-cultural, multi-faith society but Christmas Day remains unique as a special day for most UK citizens.

This Bill, which has my full support, will help ensure that thousands of shop workers and their families can enjoy Christmas Day, while also stopping it becoming the first day of the sales.

At the moment most large stores do not open and this Bill will ensure the special nature of the day is protected in the future.³⁷

IV The main provisions of the Bill

The Bill was introduced in the House of Commons by Kevan Jones MP on 7 January 2004. Explanatory Notes to the Bill have been prepared by the DTI with the consent of the Member.³⁸

This is a short Bill of only five clauses. The Bill has only one main aim: to prohibit the opening of large shops on Christmas Day. Many of the provisions of the *Christmas Day (Trading) Bill* refer directly to provisions and definitions contained in the STA 1994.

Clause 1(1) of the Bill prohibits a large shop from opening on Christmas Day for the serving of retail customers:

1. (1) A large shop must not be open on Christmas Day for the serving of retail customers.

(2) Subsection (1) does not apply to any of the shops mentioned in paragraph 3(1) of Schedule 1 to the 1994 Act (shops exempt from restrictions on Sunday trading).

Clause 1(2) of the Bill adopts the same exemptions to this general prohibition as those outlined in paragraph 3(1) of Schedule 1 of the STA 1994. This means that the Bill exempts the following shops, irrespective of their size, from the general prohibition from opening on Christmas Day:

- Any farm where the trade or business carried on consists wholly or mainly of the sale of produce from that farm.

³⁷ The office of Kevan Jones MP Press Notice, *MP to introduce Bill to keep Christmas Day special*, 7 January 2004

³⁸ Bill 20-EN

- 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 supplies and accessories; 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.³⁹

Under **clause 1(3)** of the Bill, if the general prohibition from opening on Christmas Day is contravened, the occupier of the large shop shall be liable on summary conviction to a fine not exceeding £50,000.

The Bill is to apply only to large shops; small shops can continue to open on Christmas Day. Under **clause 1 (5)** of the Bill, 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.

For the purposes of the Bill, ‘retail customer’ and ‘shop’ also have the same meanings as in Schedule 1 to the STA 1994.

³⁹ *Sunday Trading Act 1994*, schedule 1, paragraph 3(1)

Clause 2 of the Bill sets out the general enforcement provisions. Under **Clause 2(1)**, it is the statutory duty of every local authority to enforce within their area the prohibition of opening of large shops on Christmas day and the other provisions of the Bill.⁴⁰ In carrying out this duty, every local authority also has a duty under **clause 2(2)** to appoint inspectors. These inspectors may be the same persons as those appointed by the local authority to enforce Sunday trading legislation under paragraph 2 of Schedule 2 to the STA 1994. According to the Bill's Explanatory Notes (prepared by the DTI) "the enforcement of the prohibition involves a potential increase in expenditure by local authorities. However, in practice, the additional expenditure is likely to be negligible".⁴¹

Clause 2(3) of the Bill provides that inspectors will have the same powers as those appointed under the STA 1994. Specifically, clause 2(3) refers directly to paragraphs 3 and 4 of schedule 2 to the STA 1994. Paragraph 3 of schedule 2 to the STA 1994 is concerned with powers of entry. It permits an inspector, on producing identification, to enter any premises (with or without a constable) at all reasonable hours within the area of the local authority. The purpose of this right of entry is to ascertain whether there is or has been on the premises any contravention of the STA 1994. In addition to this right of entry, the inspector can require the production of, inspect and take copies of any records (in whatever form they are held) relating to any business conducted on the premises, which appear to him to be relevant in proving his case. Where those records are kept by means of a computer, the inspector can require the records to be produced in a form in which they may be taken away. The *Christmas Day (Trading) Bill* has simply adopted all these right-of-entry provisions.

Paragraph 4 of Schedule 2 to the STA 1994 is concerned with the obstruction of inspectors. It states:

Obstruction of inspectors

4. Any person who intentionally obstructs an inspector appointed under paragraph 2 above acting in the execution of his duty shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

The Bill has also adopted this provision, thereby making it an offence for any person to obstruct an inspector appointed under paragraph 2 of the schedule to the Bill.

Clause 2(4) of the Bill is concerned with miscellaneous provisions relating to offences. It refers to paragraphs 5, 6 and 7 of Schedule 2 to the STA 1994 (offences due to fault of other person, offences by bodies corporate and defence of due diligence). It states that these provisions shall also apply in respect of offences committed under the *Christmas Day (Trading) Bill*. The provisions are reproduced below:

⁴⁰ Under **clause 2(5)** of the Bill, 'local authority' has the meaning given by section 8 of the STA 1994

⁴¹ *Christmas Day (Trading) Bill*, Bill 20 EN

Paragraph 5 of Schedule 2 to the STA 1994 states:

Offences due to fault of other person

5. Where the commission by any person of an offence under this Act is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.⁴²

Paragraph 6 of Schedule 2 to the STA 1994 states:

Offences by bodies corporate

6.-(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, sub-paragraph (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.⁴³

A company is a separate legal entity in its own right. However, paragraph 6 makes it clear that in addition to the liability of the company ('the body corporate'), any officer of the company (such as a director), or any one purporting to be an officer, could also be committing an offence if the *Christmas Day (Trading) Bill* is contravened.

Paragraph 7 of Schedule 2 to the STA 1994 states:

Defence of due diligence

7.-(1) In any proceedings for an offence under this Act it shall, subject to sub-paragraph (2) below, be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(2) If in any case the defence provided by sub-paragraph (1) above involves the allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, at least seven clear days before the hearing, he has served on the prosecutor a notice in writing giving such information

⁴² *Sunday Trading Act 1994*, paragraph 5 of schedule 2

⁴³ *Sunday Trading Act 1994*, paragraph 6 of Schedule 2

identifying or assisting in the identification of that other person as was then in his possession.⁴⁴

In effect, paragraph 7 provides a defence of ‘due diligence’ to any person charged with contravening the STA 1994, but who is able to show he took all reasonable precautions to avoid the commission of the offence. This defence of ‘due diligence’ has been adopted in its entirety by the *Christmas Day (Trading) Bill*.

Clause 3 of the Bill simply deals with consequential amendments to the STA 1994. The prohibition on the opening of large shops on any Christmas Day which falls on a Sunday will now be imposed by the Bill rather than the STA 1994.

Clause 4 of the Bill states:

There is to be paid out of money provided by Parliament any increase attributable to this Act in the sums which under any Act are payable out of money so provided.

Clauses 5(3) states that the Bill (if it receives Royal Assent) will come into force on a day to be appointed by the Secretary of State by order.

Clause 5(4) states that the *Christmas Day (Trading) Bill* applies to England and Wales but not to Scotland or Northern Ireland.

The STA 1994 also applies only to England and Wales, as regulation of Sunday and Christmas Day trading is a devolved matter. The position in Scotland is being considered separately by the Scottish Executive, and is discussed in Part VI below. No new legislation on this subject is being proposed for Northern Ireland at this time.

V Views of employees’ and business representatives’ groups

For some years USDAW has campaigned to ban large shops from opening on 25 December so that shopworkers can be guaranteed the day to spend with their families. Although not many large stores have opened on Christmas Day in the past, USDAW believes it is only a matter of time before it becomes commonplace. Arguing this point, Sir Bill Connor, USDAW General Secretary, has said that legislation is essential:

Gradually, these holidays are being eroded and our members have been complaining to us. Action is needed to put a halt to it.⁴⁵

⁴⁴ *Sunday Trading Act 1994*, paragraph 7 of Schedule 2

⁴⁵ “MSP seeks ban on Christmas openings”, *Times*, 10th December 2003

Commenting on the Bill, a spokesman for USDAW said it is in favour of legislation, rather than a voluntary code, in order to provide a guarantee that large stores will not be able to open on Christmas Day:

Our belief is that shop workers simply deserve the day off and it needs to be protected.

At present any store can open on Christmas Day, unless it falls on a Sunday.

If you go back 20 years and said all the shops would be open on a Sunday, no one would have believed you.

This is our fear for Christmas Day, in that if the law is not changed now, we will reach a stage in a few years' time where opening on December 25 is a common occurrence.

This has nothing to do with religion, rather our belief that workers deserve the day off. Christmas Day is the highlight of Britain's cultural calendar and so should be protected.⁴⁶

In June 2003, following the Government's consultation on proposals to regulate Christmas Day trading, the Association of Convenience Stores (ACS) called on the Government to take small stores' interests into account. David Rae, ACS Chief Executive, said:

...the Government wishes to regulate to stop any large stores who may wish to open on Christmas Day from doing so. ACS supports this pre-emptive regulation, and our submission to the DTI has focussed on the ways in which small stores under 3,000 square feet can benefit their communities by continuing to open on Christmas Day.

We are confident that the Government will retain its position of allowing small stores to continue to provide this important emergency and top-up service on Christmas Day.⁴⁷

The Wales TUC also supports keeping Christmas Day special, in their response to the Government's consultation document they said:

The Wales TUC fully supports the submission made by the TUC and the Government's proposals. Christmas Day is very special for most people, having been a public holiday for at least a millennium.

⁴⁶ "Christmas Day trading ban planned", BBC News, 23 December 2003, available on BBC News at: <http://news.bbc.co.uk/1/hi/business/3339341.stm>

⁴⁷ Association of Convenience Stores press notice, "ACS backs small shops on trading hours", 19 June 2003

Enthusiasm for the Christmas Day holiday is not confined by the boundaries of religious belief. For many adults it is the day when far-flung members of the family get together, and for most children it is a very special day and is one that they expect to share with their parents.

In terms of numbers, the official Labour Force Survey (LFS) suggests that between 35,000 and 70,000 in the broader wholesale, retail and motor trade industry currently work on Christmas Day.

It is not possible to derive robust figures for employees in large retail stores from the LFS, but the TUC's own labour market intelligence suggests that not more than 10,000 employees would be affected by the government's proposals provided that they are introduced promptly.

Prompt action is necessary because there is a real danger that we might see a significant increase in Christmas Day trading in the near future. Such a move will not be driven by consumer demand as, unsurprisingly, very few people actually want to shop on Christmas Day. It is also particularly unlikely that the socially excluded will do so.

Rather, the expansion in Christmas Day trading might be driven by competition for market share between the major chains. The danger is that if one or two major retailers in each sub-sector decide to open on Christmas Day then their competitors will all feel that they must follow suit. The Government should act now to head off this danger.

As very few stores currently open on Christmas Day, and an extension of Christmas Day opening would be very unlikely to generate an increase in the overall volume of sales, it is very unlikely indeed that large stores would suffer any detriment if the Government prohibits Christmas Day trading in the way that is currently proposed. The Government is therefore right to say that the cost of the proposed legislation will be zero.

In contrast, if this expansion were allowed to go ahead then it would be certain to have a detrimental effect on shop workers. There is little to stop employers from simply rostering in Christmas Day as a normal day of work.⁴⁸

According to the TUC, when Christmas Day does not fall on a Sunday there is little to stop stores from making their staff work:

In contrast with other EU countries, there is no statutory right for UK employees to take public holidays as leave, or to be paid a premium rate to work on a public holiday. Summarising, it would be both simple and cheap for employers to tell their employees that they must now work on Christmas Day.

⁴⁸ The Wales Trade Union Congress, *Response to the DTI consultation document: Christmas Day Trading – regulating the opening of large shops*, 3 July 2003

However, the Government is committed to developing family friendly policies, to facilitating the achievement of a better work-life balance, and to ending the long hours culture in the UK. The current proposals to ban Christmas Day trading chime well with these aims.⁴⁹

Responding to the Bill, a Spokesperson for Sainsbury's supermarket has said:

We only ever open stores smaller than 3000 square feet on Christmas Day. Although we respect the fact that some of our customers wish to shop on Christmas Day, the very few stores we do open are our local shops which sell petrol.

We never force our staff to work on Christmas Day. They only work on a strictly voluntary basis.⁵⁰

VI Is there to be a further review of the STA 1994?

Although the DTI's consultation document on Christmas Day trading stated that the Government saw no need to review the operation of the STA 1994, there were still some responses that called for a review of Sunday and Easter Day opening hours.⁵¹

The Government has stated that, for the moment, it does not intend to review any other aspects of the STA 1994, but will continue to monitor the operation of the Act:

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.⁵²

⁴⁹ Ibid.

⁵⁰ <http://www.epolitix.com/EN/ForumBriefs/200204/BDCE2E07-2ED2-4EAA-ADCB->

⁵¹ Department of Trade and Industry, *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

⁵² Department of Trade and Industry, *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

VII The position in Scotland

A. Christmas Day and New Year's Day Trading (Scotland) Bill

Regulation of Sunday and Christmas Day trading is a devolved matter, and the position in Scotland is being considered separately by the Scottish Executive.

In Scotland, unlike England, Wales and Northern Ireland, there is no statutory regulation of shop trading hours. Should they wish to, all Scottish shops could open 24 hours a day, 365 days a year. Sundays have no special status in this context.

On 9 December 2003, Karen Whitefield, Labour MSP for Airdrie and Shotts, announced her intention to introduce a Private Members' Bill in the Scottish Parliament, calling for a ban on larger stores opening in Scotland on Christmas Day and also on New Year's Day.

Under the provisions of the *Christmas Day and New Year's Day Trading (Scotland) Bill*, stores larger than 280 sq m/3,000 sq ft would be prohibited from opening on Christmas Day and New Year's Day in Scotland. Smaller stores would be unaffected. Announcing her Bill, Karen Whitefield said:

Christmas Day and New Year's Day are very special to Scottish families. I believe that these days will not remain special if shops are allowed to open.⁵³

The proposal for the Bill was submitted to the Scottish Parliament last year. The Bill, which has the support of a number of MSPs, is now to progress to public consultation.

At present, trading in larger stores on Christmas Day and New Year's Day is not widespread. Debenhams experimented by opening two of their larger stores on Christmas Day 2003 (in Glasgow and Edinburgh). However, in a recent survey, most retailers said they had no plans to open on either of the two days – but said they might change their minds should any of their competitors choose to do so. It has been estimated that approximately 252,000 people work in shops in Scotland (1 in 10 of all workers).⁵⁴

B. Views of employees' and business groups

The Scottish Retail Consortium (SRC) said it welcomed, in principal, legislation to prevent large stores from opening on Christmas Day. However, it thinks that a lot of politicians and the public have failed to realise that the Scottish Bill goes much further than the Westminster Bill with damaging implications for industry:

Karen Whitefield has muddled the issue of Christmas Day and New Year's Day. We're happy to see a ban on Christmas Day, but 1 January is a totally different

⁵³ "MSP seeks ban on Christmas openings", *Times*, 10 December 2003

matter. It's a very busy day for somewhere like Edinburgh, which is supposed to be a capital of New Year celebrations. It sends out the wrong signal to the thousands who visit Scotland for Hogmanay.⁵⁵

According to the SRC, there is no need to extend legislation to New Year's Day:

If you ask most workers, they'd rather earn double pay and get a day off in lieu. No-one is being forced to work on 1 January.

We're going to lobby very hard on this, starting in January. A lot of MSPs have signed up for the Bill, but they haven't really thought through the impact. Retail is keeping Scotland's economy afloat.⁵⁶

In response, USDAW has repeated its support for the Bill:

The first of January has a special importance in the Scottish calendar and most of our members would prefer not to work that day.⁵⁷

Whilst conceding that few large stores open on Christmas Day, Sir Bill Connor, USDAW General Secretary, added:

Shopworkers genuinely fear that it's only a matter of time before it becomes commonplace. As there would not be enough volunteers, many shopworkers would be forced to work.⁵⁸

According to USDAW, there was overwhelming public and political support for the proposed legislation. The trade union has collected about 14,000 signatures from Scots on a petition to support the ban, calling for legislation to prevent retailers from opening on both Christmas Day and 1st January.

Scotmid, one of Scotland's biggest employers with over 3,300 staff, also supports the Bill. The company's Chief Executive Officer, Colin Bird, said:

It is important for Scotmid to be involved in the launch of this Bill. Those working in the retail industry, as with the majority of the population, should have the right to enjoy the public holidays of Christmas and New Year's Day without having to work. In addition, as an organisation with strong community links, any Bill that enables people to spend time with those close to them, and thereby promotes family values, should be supported.⁵⁹

⁵⁴ USDAW press notice, "*Jingle Bells, campaign swells, big shops must close all day*", 27 February 2004

⁵⁵ "Concern at call for closure of shops at Christmas", *The Scotsman*, 23 December 2003

⁵⁶ "Concern at call for closure of shops at Christmas", *The Scotsman*, 23 December 2003

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ USDAW press notice, *Larger Scottish stores to face ban on Christmas Day and New Year Day opening*, 9 December 2003