



RESEARCH PAPER 01/22
13 MARCH 2001

The Christmas Day (Trading) Bill

Bill No 14 of 2000-2001

The *Christmas Day (Trading) Bill* is designed to prohibit large shops and supermarkets from opening on 25 December. It has been introduced by Gwyneth Dunwoody, MP, who came fourth in the ballot for Private Members' Bills. It is due to have its second reading debate in the House of Commons on 16 March 2001.

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

Lorraine Conway

BUSINESS AND TRANSPORT SECTION

HOUSE OF COMMONS LIBRARY

Recent Library Research Papers include:

01/07	The <i>Social Security Contributions (Share Options) Bill</i> [Bill 8 of 2000-2001]	22.01.01
01/08	Developments in the Middle East Peace Process 1991-2000	24.01.01
01/09	The Middle East Crisis: Camp David, the 'Al-Aqsa Intifada' and the Prospects for the Peace Process	24.01.01
01/10	The <i>Criminal Justice and Police Bill</i> [Bill 31 of 2000-2001]	25.01.01
01/11	The <i>House of Commons (Removal of Clergy Disqualification) Bill</i> [Bill 34 of 2000-2001]	26.01.01
01/12	The <i>Outworking Bill</i> [Bill 11 of 2000-2001]	30.01.01
01/13	Economic Indicators	01.02.01
01/14	Parliamentary Election Timetables	05.02.01
01/15	The <i>Road Transport Bill</i> [Bill 12 of 2000-2001]	07.02.01
01/16	Unemployment by Constituency, January 2001	14.02.01
01/17	Economic Indicators	01.03.01
01/18	The <i>International Development Bill</i> [Bill 49 of 2000-2001]	01.03.01
01/19	Agriculture in Crisis?	06.03.01
01/20	<i>High Hedges Bill</i> [Bill 13 of 2000-2001]	07.03.01
01/21	The 2001 Census of Population	09.03.01

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 *Christmas Day (Trading) Bill* (Bill 14 of 2000-2001) is designed to prevent large shops and supermarkets opening on 25 December. The Bill is a response to the growing trend for retailers to open on Christmas Day.

In the past, convention has dictated that shops do not open on Christmas Day. 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). Under the STA 1994, shops larger than 280 square metres 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.¹

The *Christmas Day (Trading) Bill* is being introduced by Gwyneth Dunwoody, Labour MP for Crewe and Nantwich, who came fourth in the ballot for Private Members’ Bills. She has given the following reasons for choosing this Bill:

I have chosen the protection of Christmas Day, because I believe it strikes at the very heart of family friendly employment.

Britain is fast turning into a 24-hour, 365-day a year society and I think it’s time to apply the brakes.²

In promoting this Bill, Gwyneth Dunwoody is supporting the ‘Protect Christmas Day’ campaign of USDAW (the Union of Shop, Distributive and Allied Workers).

The purpose of this Bill is to prohibit a large shop 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*: a large shop is one that has a relevant floor area exceeding 280 square metres.³

As drafted, the Bill applies only to England and Wales.

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 Schedule 1 to the *Sunday Trading Act 1994*

² “Private Members Bill could save the day”, *Arena* (USDAW magazine), January/February 2001

³ *Sunday Trading Act 1994*, Schedule 1, paragraph 1

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>	10
	A. The growing trend to open on Christmas Day	10
	B. Government policy	12
III	Main provisions of the Bill	15
IV	Views of employees' and business representative groups	19
V	Further reading	22

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 liberalised Sunday trading law for shops, by repealing Part IV of the *Shops Act 1950*.⁴ The STA 1994 had its second and third readings in the House of Commons on 29 November 1993 and 23 February 1994 respectively. The Act received Royal Assent on 5 July 1994 and came into effect on 26 August 1994.

The STA 1994 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 square metres in size (defined under the Act as 'large') can only 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. Large shops are also required to remain closed on Easter Sunday and on Christmas Day, but only when the 25 December falls on a Sunday.⁵

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

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.⁶

Small shops (not over 280 square metres 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

⁴ 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

⁵ Schedule 1 to the *Sunday Trading Act 1994*

⁶ In certain circumstances, the Act also permits large shops occupied by people observing the Jewish religion to open all day on a Sunday

twenty-four hours a day, every day of the year including Christmas Day, if the owner so wished.

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.⁷ It is also an offence punishable on summary conviction by a fine not exceeding level 2 on the standard scale, for the occupier of a large shop to fail to display a notice of his permitted Sunday opening hours.⁸

These opening restrictions imposed on large retailers are intended to reflect the special and distinctive nature of Sunday. The retention of Sunday as a special day, distinct from the rest of the week, is regarded as important by many people. In considering the regulation of shop opening hours, Parliament took account of religious concerns and the concern of many people, whether religious or not, to preserve family life. This had to be balanced with the views of those others who wish to be able to shop at more convenient times.⁹

B. Permissible opening hours on weekdays

Restrictions on shop opening hours on weekdays and Saturdays were completely removed for all shops by section 23 of the *Deregulation and Contracting Out Act 1994* (DCOA 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. Moreover, these shops could remain open for as long as they like on Christmas Day. In part, this gap in the law has arisen because at the time of drafting the STA 1994, nobody envisaged that Christmas Day would become a shopping day.

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

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

⁸ Section 7(2) Schedule 1 of *Sunday Trading Act 1994*

⁹ The two main pressure groups at the time of the *Sunday Trading Bill* were the 'Keep Sunday Special Campaign' and the 'Retailers for Shops Act Reform'

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.¹⁰ This is pro rata for part time workers. However, they do not specify when this leave must be taken. Paid leave on public holidays (including Christmas Day) counts towards satisfying this minimum statutory entitlement.¹¹ 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.¹²

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.

¹⁰ 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.

¹¹ http://www.dti.gov.uk/ir/work_time_regs/wtr7.htm

¹² Department of Trade and Industry, *Guide to Working Time Regulations*, September 1998

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

A. The growing trend to open on Christmas Day

In recent years there has been a steady increase in the number of shops opening over the Christmas holiday period.

Last year (2000), Christmas Eve and New Year's Eve both fell on a Sunday, which meant that under the STA 1994 larger stores could only open legally for 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, the supermarket group owned by Wal-Mart, 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 10am start on the holidays.¹³ 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.

For the first time last year, a number of retailers also experimented with trading on Christmas Day. It was reported, for example, that both Sainsbury and Woolworths broke with tradition and ran Christmas Day shopping trials in the London area.¹⁴ Budgens also decided to run shopping trials on Christmas Day at seventeen stores, in addition to the forty-nine stores that stay open twenty-four hours a day.¹⁵

It was also reported that CWS opened thirty-six 'Welcome c-stores' around the country on Christmas Day as a pilot.¹⁶ The West Midlands Co-op also served 6,000 customers at fifteen convenience stores on Christmas Day 2000, this being the third year of a Christmas Day opening experiment.¹⁷ In Scotland, all forty-one outlets of the chain 'Morning Noon and Night' were open for the two weeks to 2 January (including Christmas Day), and reported an increase in sales of six per cent.¹⁸

The introduction of the *Christmas Day (Trading) Bill* follows a campaign by the shop workers union USDAW to stop the growing trend of Christmas Day opening among some retailers. 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

¹³ "Call to suspend restrictions", *Financial Times*, 12 September 2000

¹⁴ "Union seeks ban on December 25 shop opening", *Times*, 21 December 2000

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ "Union seeks ban on December 25 shop opening", *Times*, 21 December 2000

claims, strikes at the heart of family friendly employment. In December 2000, it presented to Downing Street a petition of 20,000 names against Christmas Day opening.

According to USDAW, the trend for shops to open on Christmas Day is set to escalate:

There are currently rumours circulating that one or more of the major supermarkets will open large stores this coming Christmas. All our experience as a trade union over many years indicates quite clearly that once a retailer starts to extend trading hours, the competition situation dictates that other retailers, who were originally opposed to extended hours, have to trade in order to maintain their market position. USDAW believes that the vast majority of major retailers see Christmas Day as a day on which there should be no trading, but if this becomes a growing practice the majority of them, if not all, will change their position and will quote the competition climate.¹⁹

In *The House Magazine*, Gwyneth Dunwoody MP, explained the purpose of her *Christmas Day (Trading) Bill*:

...I believe that Christmas day is special and should remain so, that is why I am supporting the campaign of Usdaw, the shopworkers union, and promoting the *Christmas Day (Trading) Bill*.

It is the one day of the year that the vast majority of people can completely escape the daily grind. Christmas day is particularly special for children and one that should not be missed by any parent.

In recent years there has been a steady increase in the number of shops opening on Christmas day. Shopworkers are left exhausted from the pre-Christmas frenzy and after-Christmas sales. They deserve at least one day off to spend Christmas with their families. After all, Christmas is a time for families.

At present there is no law to protect shopworkers on Christmas day, unless it falls on a Sunday. This is an anomaly that I intend to correct by ensuring that large stores should stay closed no matter what day of the week Christmas falls on.

A number of retailers have made it clear that they are seeking 24-hour opening, 365 days per year – complete deregulation. It is a cut-throat business that runs on very tight margins and they will take any opportunity to out-flank a competitor. First it was Sunday opening, then Bank Holiday opening, then 24-hour opening and then ‘browsing time’ on a Sunday. Now they want Christmas. One Usdaw member recently commented to me that he thought if retailers did get complete deregulation they would only go back to the government and ask them to create an eighth day in every week [...].²⁰

¹⁹ Explanatory notes published with the *Christmas Day (Trading) Bill*

²⁰ “Christmas Day (Trading) Bill”, *The House Magazine*, 5 February 2001

B. Government policy

Recent statements appear to indicate that for the moment, the Government is not prepared to make any changes to existing legislation regulating permissible shop opening days. The Government is hoping instead that the market will appreciate the sensitivities involved in trading on Christmas Day and will regulate itself accordingly. It will, however, continue to monitor the issue of Christmas Day trading.²¹

On 2 December 1999, for example, Government policy regarding Christmas Day trading was the subject of an exchange in the House of Lords:

The Lord Bishop of Oxford asked Her Majesty's Government: What steps they are taking to ensure that Christmas Day remains a day of value in the life of the nation, both as the celebration of the birth of Christ and as a shared day of rest.

The Parliamentary Under-Secretary of State, Home Office (Lord Bassam of Brighton): My Lords, it is clear that Christmas Day continues to be of great importance to the people of this country, for both religious and family reasons. In a diverse multicultural society it can, of course, be celebrated in many different ways. I believe that the present legal framework, which has effectively remained unchanged for many years, is more than adequate to enable the special nature of Christmas to be preserved.

The Lord Bishop of Oxford: My Lords, I thank the Minister for his reply. Does he share my concern that a major national food retailer is intending, in the course of time, to open 1,000 or more small convenient shops, employing more than 10,000 people and that the shops will open on Christmas Day with, as I understand it, no opt-out clause? That will undermine the general principle of a shared day of rest and enjoyment.

Lord Bassam of Brighton: My Lords, I recognise the right reverend Prelate's concerns and those of others about the decision by a supermarket last year to open one or two of its stores on Christmas Day. I am grateful to him for the information he has drawn to our attention this afternoon. However, to date the Home Office has received very few complaints about this or other matters relating to shop opening on Christmas Day. As noble Lords are aware, that is entirely within the law unless it falls on a Sunday.

Lord Elton: My Lords, will the Minister accept that that is one complaint? Does he agree that experience of legislation on Sunday trading has shown, without doubt, that changes in commercial practice entirely alter the character of the day and the ability of families of all denominations to get together on that day? Will

²¹ 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 shopworkers of the UK and others for statutory protection of Christmas Day*, UP 253 2000/1

not this change begin the process with Christmas Day that has been evident for years on Sunday? Should it not be checked by legislation?

Lord Bassam of Brighton: My Lords, the noble Lord makes some interesting comments, as a contribution to what could be a new area of debate. I am not convinced that our Sundays have changed so dramatically, as the noble Lord suggests. I quote figures from a survey by Healey & Baker, who are well respected in the field. They suggest that, while one in three people shop on a Sunday at least once a month, 45 per cent never shop on a Sunday and 20 per cent are strongly morally opposed to Sunday shopping. So there is clearly a divergence and diversity of views. Some people hold, and will continue to hold, Sunday as a special day. I do and I am sure the noble Lord does. All those with strong family commitments value the day for that and for its Christian purpose.²²

On 21 January 1999, the issue of Christmas trading had earlier been considered in the House of Lords when Lord Williams provided a written answer to a PQ asked by Lord Alton:

Lord Alton of Liverpool asked Her Majesty's Government:

What is their policy concerning the opening of supermarkets on Christmas Day and Easter Day; and what steps they intend to take to ensure that the law is enforced.

Lord Williams of Mostyn: Shops may choose their opening hours, except on Sundays if they are over 280 square metres in area. The restrictions affect Easter Sunday, but Christmas Day only when it falls on a Sunday.

We have no plans to change the present law. Enforcing it is a matter for local authorities; the courts can impose fines of up to £50,000 for a breach of the law.²³

On 30 January 2001, the Secretary of State for Trade and Industry published his observations on the Petitions (20th and 21st December) from shop workers and others of like disposition for statutory protection of Christmas Day.²⁴ He said:

The Government recognises the importance of Christmas Day, not only for the significant place it has in the Christian calendar, but also as a special time for families and friends. The Government is committed to family friendly policies, and the Working Time regulations, which has provided four weeks paid annual leave for the first time, is a key element in our legislative programme.

Some smaller retailers have always chosen to open on Christmas Day, and a small number of larger stores did so in 2000 for the first time. There are, of

²² HL Deb 2 December 1999 cc 907-908

²³ HL Deb 21 January 1999, WA116

²⁴ HC Deb. 20 December 2000,c.493 and HC Deb. 21 December 2000, c.681 respectively

course, many businesses in other sectors who work on Christmas Day, and indeed workers of non-Christian religious denominations may not be averse to working at this time.

The current arrangements, under the *Working Time Regulations*, do facilitate a flexible process that encourages workers and employers to reach agreement on time away from the workplace that suit both parties. In this respect I would hope that employers would be sympathetic to the expectations of workers over the Christmas period. We will, of course, keep a close eye on this issue in the future.²⁵

²⁵ 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 shopworkers of the UK and others for statutory protection of Christmas Day*, UP 253 2000/1

III Main provisions of the Bill

This is a very short Bill of only three clauses and one schedule. As its title would suggest, the Bill has only one main aim: to prohibit Christmas Day trading by large stores. 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. However, **clause 1(2)** outlines possible exemptions to this general prohibition:

1.-(1) Subject to subsection (2) below, a large shop shall not be open on Christmas Day for the serving of retail customers.

(2) Subsection (1) above does not apply in relation to-

(a) any of the shops mentioned in paragraph 3(1) of schedule 1 to the 1994 Act (restrictions on Sunday opening of large shops), or

(b) any shop in respect of which a notice under paragraph 8(1) of Schedule 2 to the 1994 Act (shops occupied by persons observing the Jewish religion) has effect.

In other words, the Bill adopts the same exemptions 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.
- 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.²⁶

In addition to the exemptions outlined above, shops occupied by persons observing the Jewish religion may also be exempt from the general prohibition of opening on Christmas Day provided a notice under paragraph 8(1) of Schedule 2 to the STA 1994 has effect.²⁷

Under **clause 1(3)** of the Bill, if the general prohibition from opening on Christmas Day is contravened, the occupier of the 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 2** 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 square metres. 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.

Clause 3 of the Bill states:

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

Clause 4(3) of the Bill states that the Bill will extend to England and Wales only.

The **Schedule** to the *Christmas Day (Trading) Bill* sets out, in three paragraphs, the general enforcement provisions.

Under **paragraph 1**, it is the statutory duty of every local authority to enforce within their area the provisions of the Bill. In carrying out this duty, every local authority also has a duty under **paragraph 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.

²⁶ *Sunday Trading Act 1994*, schedule 1, paragraph 3(1)

²⁷ Clause 1(2)(b) *Christmas Day (Trading) Bill*

Paragraph 3 of the Schedule to the Bill 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 *Christmas Day (Trading) 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.

Paragraph 4 of the schedule to 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:

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.²⁸

Paragraph 6 of Schedule 2 to the STA 1994 states:

Offences by bodies corporate

²⁸ *Sunday Trading Act 1994*, paragraph 5 of schedule 2

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.²⁹

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 identifying or assisting in the identification of that other person as was then in his possession.³⁰

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*.

²⁹ *Sunday Trading Act 1994*, paragraph 6 of Schedule 2

³⁰ *Sunday Trading Act 1994*, paragraph 7 of Schedule 2

IV Views of employees' and business representative groups

In promoting the *Christmas Day (Trading) Bill*, Gwyneth Dunwoody MP has said that she is supporting the campaign of the Union of Shop, Distributive and Allied Workers (USDAW).

USDAW is concerned about the extension to trading hours and the impact this has on family life. The aim of its 'Protect Christmas Day' campaign is to persuade the Government to introduce legislation to prohibit large shops from opening on Christmas Day whatever day of the week it falls. USDAW objects to Christmas day working for several reasons:

Shopworkers' traditional family Christmas would be ransacked if many of them have to go to work on Christmas Day.

Shopworkers would be forced to work on a day that they didn't want, leading to resentment, demoralisation and family pressure.

Any promises from employers about premium rates of pay for Christmas Day were likely to evaporate as quickly as they had done for Sunday working.

Employees may be pressurised by employers into working on Christmas Day against their will.³¹

For most shopworkers, Christmas is the busiest time, with both the pre-Christmas rush and after Christmas sales. Traditionally Christmas Day has always been thought of as a guaranteed day off to spend with family. According to USDAW, there are many issues affecting shopworkers, such as late working on Christmas Eve and working on Boxing Day and although these would not be directly addressed by this Bill, the Bill would:

1. Alleviate the genuine concerns of shopworkers that Christmas Day trading will soon become commonplace and compulsory (as has happened with Sunday trading).
2. Prevent a drift towards Christmas opening by large stores.
3. Ensure that Christmas Day itself remains 'special' encouraging traders to acknowledge the holiday period as a whole.

Small convenience stores would be unaffected by the Bill.

³¹ "Union campaigns against Christmas Day trading", *Arena* (USDAW magazine), November / December 2000

USDAW is concerned that once one major retailer announces the intention of opening on Christmas Day, others will immediately follow:

Recent Government statements seem to indicate that they are not prepared to make any changes to the legislation but are banking on the hope that the market will appreciate the sensitivities involved in trading on Christmas Day and therefore the matter should be self-regulated.

We understand that the Home Office has instigated an investigation into the prevalence of Christmas Day trading and would be prepared to act if it could be proved that opening was becoming prevalent.

However, we are concerned that once one major retailer announces the intention of opening on Christmas Day, others will immediately follow suit in order not to lose regular custom to a competitor. Once companies have overcome the initial barriers of Christmas opening, they will be very reluctant to turn the clocks back.

If, as the Government claims, the market is unlikely to move towards Christmas opening, then extending the regulation will do no harm. It would be a very welcome 'Christmas present' from the Government to millions of retail workers and would also be much appreciated by the Christian Community.³²

Commenting on Gwyneth Dunwoody's Bill, the General Secretary of USDAW said:

This year saw more shops open on Christmas Day than ever before. Our members in the retail industry are under increasing pressure to work more unsociable hours.

Since the introduction of the *Sunday Trading Act 1994*, we have seen retailers move to 24-hour opening, Bank Holiday opening and browsing time on Sundays.

We believe that further exploitation of our members has got to be resisted and, with the help of Gwyneth Dunwoody, we will be able to stop any extension of Christmas Day opening in its tracks.³³

According to a recent press article, the Association of Convenience Stores also welcomed the Bill:

...Although Christmas Day trading has not been too big a problem so far, it could escalate in the future.³⁴

³² http://www.usdaw.org.uk/site_pages/07_others/xmas.cfm

³³ "Private Members Bill could save the day", *Arena* (USDAW magazine), January/February 2001

³⁴ "Christmas Day trading: MP seeks Bill for a ban", *The Grocer*, 13 January 2001

However, retailers, who opened their doors on Christmas Day, point out that they are providing a service; people often need to pop out for something they may have forgotten.³⁵

Retailers argue, variously, that Christmas Day trading should be a matter of individual choice and not the subject of regulation. They argue that contracts of employment already include specific terms relating to holidays (including bank holidays) and holiday pay so employees should know the full extent of their liability to work on a bank holiday when starting a new job. In any event, if properly compensated some employees may wish to work on Christmas Day if given the choice.

They also argue that since Britain is a multicultural society, shops should not be forced to close on Christmas Day in multicultural areas. In illustration of this point, Woolworths opened a convenience general store in Balham, London on Christmas Day and two other outlets in multicultural areas were also trading on Christmas Day. Business was said to be comparable to a typical Sunday.³⁶

The British Retail Consortium (BRC) represents ninety per cent of the retail trade, by turnover in Britain. BRC members run a variety of outlets, from one-person corner shops to one-stop-shops and out of town hypermarket stores. Although the BRC has not taken a public position on this Bill, it has raised the general issue of the detrimental effect of excessive regulation on businesses.

³⁵ “Union seeks ban on December 25 shop opening”, *Times*, 21 December 2000

³⁶ *Ibid.*

V Further reading

1. “Sunday working in retail – drifting away from double-time”, *Pay and Benefits Bulletin* 372, March 1995.
2. “Toward a 24-hour economy”, *Science*, 11 June 1999.
3. “The 24-hour economy”, *Employment Policy Institute*, summer 1999.
4. “New Labour Force Survey question on working patterns”, *Labour Market Trends*, January 2000.
5. “The heartache of Sunday Trading”, publication by the *Keep Sunday Special Campaign*, 21 January 2000.
6. “”24-hour society”, *IDS Focus*, spring 2000.
7. “The 24-Hour society”, Leon Kreitzman, published by Profile Books.

The following Internet sites may also be of interest:

8. “Employers for work-life balance”, www.employersforwork-lifebalance.org.uk
9. “The Keep Sunday Special Campaign”:
<http://www.jubilee.centre.clara.net/clara.net/j/u/b/jubilee.centre/webpace/kss/>
10. USDAW: www.usdaw.org.uk
11. The British Retail Consortium: <http://www.brc.org.uk/>
11. The Association of Convenience Stores: www.acs.org.uk