

Draught Beer and Cider

Public Consultation on Proposals to Tighten
Consumer Protection against Short Measure

No: CA 003/02

**A Submission from CAMRA, The Campaign
for Real Ale**

June 2002

Executive Summary

- We believe that the 95% minimum option would increase the prevalence of short measure. **We therefore believe that the 95% minimum option is worse than the status quo.**
- Our preferred option remains the 100% average approach.
- Our view is that putting an end to short measure would not lead to retail price rises and neither the Industry nor the DTI have substantiated the claim that retail price rises would occur.
- The 95% minimum proposal is incompatible with existing legislation and industry guidelines governing the supply of beer.
- Consumers are being defrauded of £400 million annually by the practice of serving short beer measures and the 95% minimum proposals fail to address this.

1.0. Introduction

- 1.1. We dispute the assertion in the consultation paper that the revised proposal for a 95% minimum will “tighten consumer protection against short measure”. It is our view that the 95% minimum option would lead to less protection for consumers and an increased prevalence of short beer measures. **We believe that the 95% minimum option would lead to a situation worse than the status quo.**
- 1.2. Our preferred option remains the 100% average approach.
- 1.3. The consultation document fails to substantiate the claim that ensuring consumers receive full pints of beer would necessitate an increase in the retail price of beer and cider.
- 1.4. The 95% minimum proposal is incompatible with current legislation that states that beer meters must deliver a full liquid pint of beer to within 0.5% in deficiency and 1% in excess.¹ It is also incompatible with existing industry guidelines that state that where line measure glasses are in use a full liquid pint must be dispensed.²
- 1.5. We believe that the consultation process has failed to give due weight to the views of individual consumers. We note that only four of the organisations on the list of consultees could be considered to represent consumers and that no efforts have been made to invite the views of individual consumers.
- 1.6. We note that the Trading Standards Institute have stated that the addition of the conventional prosecution tolerance to the proposed 95% minimum would make it impossible for them to prosecute for deficiencies less than 10%.
- 1.6. The consultation paper highlights the fact that licensees who short measure their customers collectively manage to sell 200 million more pints annually than they buy from brewers or wholesalers. Based on a retail price of £2.00 per pint this means that **consumers are being defrauded of £400 million annually by the practice of serving short beer measures.**

¹ SI 1983/1656

² The Brewers Society (now the BBPA) Guidance Notes on the Dispense of Draught Beer by Free Flow and Hand Pull (October 1993)

2.0. The Case Against a 95% minimum

2.1. We believe that the proposal to define a correct pint measure as not less than 95% would lead to the worsening of the current position for consumers for the following reasons:

- a. Drinkers of products such as lager and cider that are not conventionally served with heads would be in a worse position. At present it would be clear breach of the law to serve a flat pint of cider 5% deficient yet under the Government's proposal it would become entirely lawful. Furthermore we do not believe this objection could be overcome by stating in law that the 5% deficiency must consist of froth, because such a move would artificially drive the market to produce frothy lagers and ciders.
- b. There will be no incentive for those brewers who currently serve correct measures to continue to do so. In particular, were Wolverhampton and Dudley Breweries to reverse their commitment to serving full pints as a result of the Government's policy, as we believe that they inevitably would, then tens of thousands of drinkers in the Midlands would be worse off as a direct result of Government policy.
- c. By entrenching in statute that a 95% pint represents a correct measure, the Government would be giving a green light to large pub chains to put immense pressure on their managers and tenants to maximize profits by serving pints up to 5% short.
- d. Consumers will be even less likely to risk the embarrassment of requesting a top up if licensees can point to the fact that the Government have decreed that 95% of a pint is an acceptable measure.

2.2. The entire rationale of the 95% minimum option is based on the untested assumption that so as never to serve less than a 95% measure, licensees would have to serve at least 97%. The reality however is that for bar staff faced with numerous different styles of glasses and beers it will be impossible for them to reliably judge what is 95% or indeed 97%. The consultation paper itself notes that the consumer is unlikely to be able to tell the difference between 94% and 97% liquid. We do not see why it should be any easier for bar staff to tell the difference.

2.3. At present most ciders and lagers are not served with large frothy heads. However, the 95% minimum option would create an incentive for brewers to brew frothier ciders and lagers in order to generate a larger frothy head to maximise profits. This has already been attempted in the ales sector with the emergence of a new type of beer (nitrokeg) that is specifically designed to have a large frothy head which then forms an integral part of the product's marketing pitch.

3.0. Retail Price Rises

- 3.1. We do not accept that putting an end to short beer and cider measures by adopting the 100% average approach would necessitate any retail price rises, and both the Industry and the DTI have failed to provide any evidence to substantiate this claim.
- 3.2. Our research clearly shows that those pubs that consistently serve full pints by using either line measure glasses or metered dispense are able to charge lower prices than competing pubs in their locality.³
- 3.3. The Competition Commission have estimated that the costs of brewing and wholesaling represent only 13% of the retail price of beer.⁴ As the actual cost of brewing and wholesaling the beer is minimal, we see no reason why those licensees that currently serve short measure would need to increase their prices.
- 3.4. The costs of supplying additional beer to consumers would represent a straight transfer from licensees to brewers, thus increasing the profit margins for brewing operations. However, we believe that market forces would lead to wholesalers and pub chains being able to negotiate a reduction in price per barrel on the grounds that the yield per barrel will be less.
- 3.5. The use of line measure glasses for frothy beers would significantly reduce spillage over the top of the glass during serving. This would also help reduce the need to purchase extra beer and therefore reduce the need for price rises.
- 3.6. We believe market forces would ensure that the requirement for all pubs to serve full liquid beer measures would not lead to additional price rises. It is worth noting that Local Authorities did not find any correlation between the quantity of liquid served and the price charged per pint.⁵ There has been a clear increase in the prevalence of short measure over the past two decades with the widespread switch to brim measure glasses by and the emergence of new frothy beers. However there is no evidence that licensees have passed savings from short measure to consumers. **It can therefore be concluded that the cost of serving a full liquid pint is insignificant. The only other explanation would be that certain retailers have deliberately sought to short change consumers in order to gain an unfair competitive advantage over their competitors.**
- 3.7. Ensuring that beer and cider is served in a uniform measure of a full liquid pint would make it easier for consumers to compare prices and therefore transfer their custom elsewhere if they are unhappy with the price. At present it is almost impossible for consumers to make accurate price comparisons because of the uncertainty of the measure served.

³ CAMRA – Will ensuring consumers receive full beer measures lead to higher prices (July 2001)

⁴ Competition Commission – Interbrew and Bass PLC (January 2001)

⁵ DTI – Public Consultation to tighten consumer protection against short measure (DTI, March 2002)

4.0. Comments on Summary of Consultation Paper

- 4.1. We strongly dispute the claim that these proposals would act to strengthen consumer protection against being served short measures. Indeed we believe these proposals are demonstrably worse than the status quo.
- 4.2. We do not consider that this proposal strikes a balance between the interests of consumers and the interests of the industry. There was not a single response from either an individual consumer or consumer group to the previous DTI consultation paper “Measures of draught beer and cider” (December 2000) that in any way indicated support for the 95% minimum approach.
- 4.3. We do not believe that this proposal will ensure consumers receive a 95% minimum liquid pint. As there will be no offence committed until less than 95% liquid is served, the addition of the conventional “prosecution tolerance” would result in the likelihood of no legal action being taken for deficiencies less than 10%.
- 4.4. We remain strongly opposed to the idea that requesting a top up is in anyway a solution. It is naïve to expect consumers will not be embarrassed to ask for a top up, especially in a busy pub where others are waiting to be served.

5.0. Comments on the Main Consultation Text

- 5.1. Provided either line measure glasses or metered dispense are used bar staff will easily be able to serve a full liquid pint regardless of froth. (1)
- 5.2. We believe that earlier consultations have clearly demonstrated unanimous support by consumers and trading standards officers for the proposal that licensees should serve 100% liquid on average. Weights and Measures legislation exists to give protection to consumers and ensure that the free market can operate effectively. The Trade is effectively seeking to persuade the Government to fundamentally alter the spirit of Weights and Measures legislation to allow them to continue a practice of defrauding the consumer.(4)
- 5.3. In their evidence the Small Business Service has clearly neglected the impact of short measure on small brewers who are based in predominantly rural areas. Putting an end to short beer measures would increase the sales of small brewers, many of whom are struggling to survive in a very tough marketplace. (5)
- 5.4. It is our view that this proposal would redefine a pint as only 95% liquid and that it is naive to suggest otherwise. (7)
- 5.5. When line measure glasses or metered dispense are used there is no practical difficulty in serving a full liquid pint. However, redefining a pint as not less than 95% liquid will make pulling an accurate measure much more difficult as glasses do not have a 95% of a pint line. (8)
- 5.6. For the reasons outlined in section 3 we do not accept that obliging all pubs to serve the correct 100% liquid pint measure would lead to price rises. (9)
- 5.7. The reality is that, regardless of any guidance issued to licensees and customers by the DTI, most people will continue to feel embarrassed to ask for a top up however dissatisfied they are with the measure that they have been served. (11)

6.0 Regulatory Impact Assessment

- 6.1. We note the DTI's estimate that licensees collectively sell 200 million more "pints" per year than they purchase. On the basis of an average price per pint of £2.00 short measure therefore costs consumers £400 million annually.
- 6.2. We fully support the 100% average option and support all the benefits of this option as highlighted in the consultation paper.
- 6.3. We believe that the implementation costs of the 100% average option in terms of new glasses and staff training could be wholly absorbed into the normal business cycle.
- 6.4. We note that the DTI estimate the ongoing cost to retailers in purchasing additional beer to address short measure to be £133 million per annum. It is however our view that this sum would be significantly reduced as retailers sought to renegotiate beer supply agreements to reflect a reduced yield of each barrel of beer.
- 6.4. The assessment of the 95% minimum option is in our view flawed as it assumes there would be total compliance with a 95% minimum. Given the existence of "prosecution tolerances" we simply do not believe that this would be the case.
- 6.5. As stated in section two we are concerned that the 95% minimum approach would have the unintended consequence of making the problem of short measure worse than it currently is.

7.0 Conclusions

- 7.1 Our view remains that the 100% average option represents a pragmatic solution for both consumers and the industry.
- 7.2 We strongly oppose the 95% minimum option because it fails to offer any additional protection to the consumer and also gives legitimacy to the practice of serving short measures in order to maximise profits.
- 7.3 Furthermore it is our view that the 95% minimum option is actually worse than the current situation because it would give a green light to large companies to put measures in place to ensure that consumers are consistently and routinely short measured.

The Campaign for Real Ale
June 2002

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About CAMRA

CAMRA, The Campaign for Real Ale, is a not-for-profit independent voluntary consumer body founded in 1971 and its membership currently exceeds 64,000.

CAMRA's mission is to act as the champion of the consumer in relation to the UK and European drinks industry. Its aims are as follows:

Maintain consumer rights

Promote quality, choice and value for money

Support the public house as a focus of community life

And campaign for greater appreciation of traditional beers, ciders and perries as part of national heritage and culture