

# Twenty years on: the estate of play

Two decades have passed since the Tory Government's introduction of the Beer Orders. **Phil Mellows** investigates the far-reaching effects of that dramatic intervention on the British pub and brewing industry

**I**n the closing weeks of 1989 the Berlin Wall fell, communist regimes crumbled across eastern Europe and the UK government published the Supply of Beer (Tied Estate) Order, speedily and drily dubbed the Beer Orders.

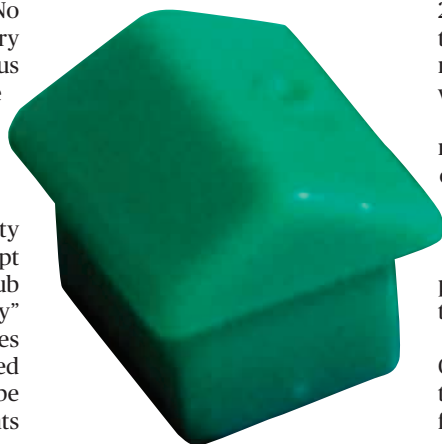
As world-historic events go, the Beer Orders may not have been up there with the collapse of communism, but for UK brewing it was an unprecedented, unexpected and mostly unwelcome example of state intervention. The next day, *Guardian* columnist Peter Rodgers called it "the most radical and interventionist move that the Government has made on British industry".

Nine months earlier the Orders had been conceived in a Monopolies & Mergers Committee (MMC) report that had itself had a prolonged gestation in an inquiry prompted by an Office of Fair Trading referral in 1986.

The brewers had been there many times before with little result. No fewer than 15 reports on the industry had been published in the previous 20 years. Besides, the Tories were in government. And the Tories had always been friends of the brewers. There wasn't too much to worry about.

The MMC report was a weighty document, but its conclusions leapt off the pages. The brewing and pub industry was a "complex monopoly" that required dilution. Pub estates owned by brewers should be capped at 2,000 houses, loan ties should be outlawed and big brewery tenants

**“**  
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should be allowed a guest cask ale.

Worse, in a phrase that sent a chill down the industry spine, trade secretary Lord Young said he was "minded to accept" the MMC recommendations.

## **The watering down**

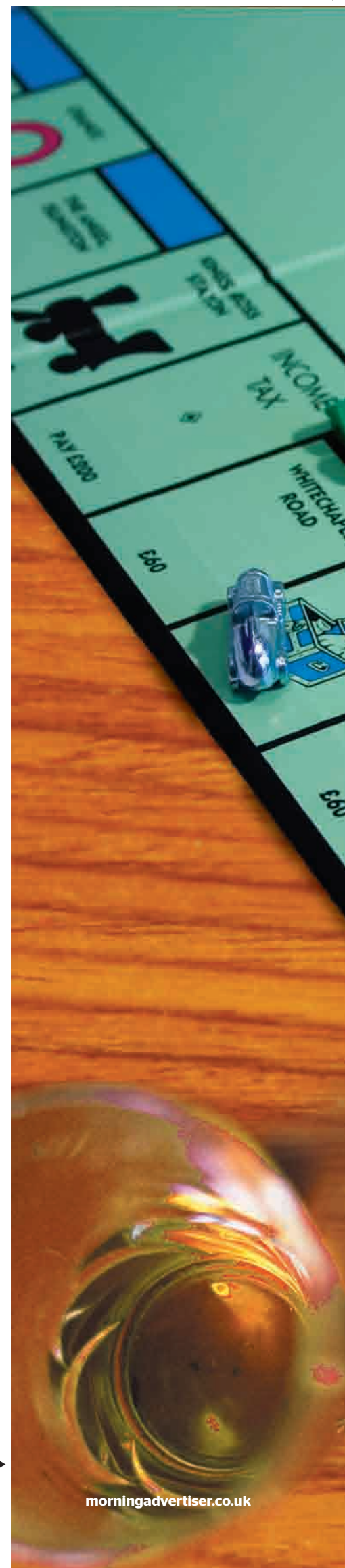
What had gone wrong? Complacency hadn't helped. One insider recalls a Brewers' Society meeting about the looming disaster.

A senior member of what was known as the "Beverage" chipped in that he was lunching with the Queen Mother at the weekend and would put in a word.

Some proper lobbying got under way, though, and by the summer it became clear that the proposals would be watered down. The Big Six brewers – Bass, Whitbread, Allied, Grand Met, Courage and Scottish & Newcastle, which between them owned 33,000 pubs – would have to sell off half the number above the 2,000 threshold within two years of the Beer Orders. Loan ties would remain legal. The guest beer clause would stay.

So 11,000 pubs flooded onto the market. Prices fell and money was cheap. The first pubcos were created, quite often by former brewery executives who did trading agreements with their old company, maintaining what was, effectively, a tie.

On the brewing side the Beer Orders accelerated a split from retail that made the major brewers targets for global consolidation in the indus-





## 42 Beer orders

try. The national brewers are now international brewers.

The commercial logic that ended vertical integration at the national level also made sense for a lot of regionals.

Many made a choice between brewing and pubs and most ended up disappearing altogether. It's more of a surprise that so many regional brewers have survived.

### Repercussions

The repercussions of the Beer Orders continue to reverberate through the industry, most obviously in the latest Government probe into the tied house system. But mystery still surrounds the events of 1989. The question that has never been properly answered is why?

The MMC's most explicit aim, to keep down the price of beer at the bar by weakening the brewers' monopoly, has been an abject failure. Another goal, which fitted the Thatcherite ideology of entrepreneurialism if not the "old Tory" loyalty to big brewing, was to encourage small business.

At first it looked like a thousand flowers really were going to bloom as the new wave of pubcos established small estates that, it was believed, would be more responsive to the



Unintended consequences: the strong gobbled up the weak

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**Many of us were stunned by the commission's analysis and conclusions**

consumer and able to shop around for deals. But that romantic vision reckoned without the raw forces of capitalism.

Pubs sold from the bottom ends of the big brewery estates struggled to survive in the recession of the early 1990s, the strong gobbled up the weak, and Punch Taverns and Enterprise Inns finished up owning more

tied pubs than any of the Big Six.

It is an example, some say, of the law of unintended consequences, and no doubt there have been plenty of those.

Yet there is a sense in which the Beer Orders were merely hurrying along a process that was inevitable, and had indeed already begun.

Curiously, only a couple of hours before the results of its investigations into the supply of beer was published, the MMC produced another report that effectively blocked a proposed takeover of Scottish & Newcastle by Elders IXL, the Australian brewer of Foster's.

Globalisation was pressing on an uncompetitive UK industry that was stuck in an outmoded business model.

If Britain's brewers were to stand their corner in the wider world they would have to shape up and, among other things, realise the huge value locked up in sprawling pub estates that before 1989 were little more than a way of guaranteeing beer volumes and themselves encouraged complacency.

Yet if the Beer Orders were designed to kick the Beerage into the modern age they did so brutally and messily, and it was the pub tenant who suffered the most.

### Jeremy Allen

#### Poppleston Allen

Is it really 20 years since the Beer Orders? Susanna Poppleston and I were at the time building our licensing practice, mainly dealing with the late-night sector.

A considerable number of licensed premises were owned by brewers who looked after their tenants in a paternalistic way.

We were unable to get much work in this sector as it tended to go, on an old chums basis, to solicitors who had looked after them for many years.



Gradually, following the Beer Orders, we became involved with a number of companies that had purchased pubs from brewers.

In the mid to late 1990s many city-centre pubs wanted to trade later and we became experts in obtaining late-night licences. We also opposed them on behalf of the late-night industry.

Since then two vast pub-owning companies, with a different relationship to the tenant, have replaced the traditional brewer-owned estates.

The recent argument over tenancies and the tie raises considerable doubts as to whether the Beer Orders served their purpose.

On the other hand, the British Beer & Pub Association's (BBPA) agreed reform package may help solve some of the problems.

### Alistair Arkley

#### New Century Enterprises

My relationship with the Beer Orders was as something of a gamekeeper turned poacher.

As managing director of Camerons Brewery I opposed the idea of forcing brewers to sell off pubs because I'm a firm believer in market forces creating change rather than risking the unintended consequences of Government interference. In any case the brewers were already moving towards separating the various elements of their business.

Of course, when the Orders became reality I was without doubt one of those who benefited, exploiting the forced sell-off by establishing, floating – and subsequently selling – Century Inns.

The Beer Orders were supposed to create more choice, but the reality has been the reverse – we now have fewer,



bigger brands, pubs closing weekly and an industry still in the hands of a few key players, now mostly foreign-owned!

The pubcos, having borrowed too much at too high rates, are forced to bankrupt tenants to survive. That's bad for the industry, bad for customers and bad for communities who face the loss of their local pubs.

It's an irony that the only real winners from the change are the City financiers who bank-rolled the creation of the pubcos and are still enjoying returns. The glimmer of hope is that microbrewers are growing.

## Tony Brookes

### Head of Steam

At best, the Beer Orders were a mixed blessing. Yes, they opened up the market for the independent brewers and that trend continues today.

Even some of the biggest pubcos now see the benefit of having a larger range of real ales on sale.

But on the negative side the emergence of the large pubcos has been a bad result, bringing in ultra-capitalist power at the expense of many pub tenants, who have to buy over-priced products – often within a

strict tie – and pay very high rents.

The power of the big vertically integrated brewers has been diminished, but that power has, in large part, simply been transferred to the big pubcos.

As a result, the lot of the pub tenant and manager is much harder now than it was in 1989, and it is a good thing now to see the power of the biggest pubcos declining somewhat.

The Beer Orders also allowed a wave of small pub companies, such as our own, to emerge and these have generally been well received by the public, as they are usually better at providing what customers actually want.

If I were in charge, would I do the Beer Orders again? Yes, but in a different, more egalitarian way.



## Phil Dixon

### BII

It was a true moment in history when the Conservative Party really did “bite the hand that fed it”. Yet the six pub-owning and Conservative Party-donating brewers who had around 78% of the market have been replaced by four global giants who appear to have more than 80% of the market. Hardly a result!

The guest beer provision in the Orders was welcomed by many licensees, but not by those such as Marston's licensees who suddenly saw Pedigree being sold by tenants of the major companies when they had no right themselves to a guest.

Much as I personally enjoyed the improved access to cask-ale brands I doubt the legislation would have ever survived an EU challenge since the guest beer had to be cask – which is only produced in the UK.

Licensees have certainly had

greater choice since the Beer Orders, but the Tory Government denied sitting licensees protection and this led to widespread abuse by landlords and helped destroy the National Licensed Victuallers Association.

The question that has never been answered is why did regional and family brewers not snap up more of the pubs that were available? Ted Tuppen and others simply had the courage and will to take a risk that established and financially buoyant brewers amazingly failed to.



## Barry Gillham

### Fleurets

When Lord Young decided in 1989 that he was “minded to accept” the recommendations of the MMC it created greater turmoil in the pub industry than we can imagine, even today.

Mass pub disposals drove down the price of the worst pubs and there were funders around to allow the creation of dozens of pubcos each owning 200 to 250 pubs – generally run by former brewery directors.

There were problems finding tenants and lessees and some pubcos employed relief agencies and what became known as

“revolving door licensees”.

Meanwhile, many better pubs were run as managed houses by other ex-brewery personnel in smaller groups that became founders of the Association of Licensed Multiple Retailers.

During the ensuing 20 years, economies of scale have seen the big get bigger. Pubcos now operating tied estates are bigger than the national brewers in the days before the Beer Orders. In truth, very little has changed.

Most apparent, though, was the loss of the cosy relationship between brewers and tenants (though, to be honest, full property rents had started well before 1989). The current strife may be as much a result of the poor economy as the ownership of pubs, with both sides fighting to maintain their share of a diminishing cake.

But I can't help thinking it was not what Lord Young had in mind in 1989.



## Robert Humphreys

### All-Party Parliamentary Beer Group

When the MMC report was unveiled many of us in the industry – I was working for Charringtons at the time – were stunned by the commission's analysis and conclusions.

Even the slightly less Draconian measures that followed the long period of lobbying were, on any assessment, an astonishing intervention in the market outside of wartime, more remarkable in my view than the post-war Labour Government's nationalisation programme, or the privatisations of Margaret Thatcher's first Government.

There can be little dispute that some good followed, such as the explosion in beer choice that has been sustained beyond the Beer Orders' lifetime.

The balance of market power has shifted, though not in the way the MMC intended or expected.

The power of the old major brewers leached away, but until recently much of that market influence shifted to the pub companies rather than to a new generation of wholesalers, as the MMC expected, or to local and regional players, as was anticipated by the DTI.

And now we find ourselves in Groundhog Day. Weird!



## Ian Payne

### Bay Restaurant Group

I was working for Bass (now Mitchells and Butlers) in 1989 and took part in lobbying about the MMC report dangers. We warned that the recommendations would not deliver promised increases in competition and reduction in the retail price of beer.

But the Beer Orders ignored the major brewers – with the exception of a minority report from Leif Mills, which showed great prescience in forecasting the likely impact.

Over the years our worst fears have become reality. There were six major UK brewers in

1989, all British-owned. There are now four major brewers, all foreign owned. All six major brewers owned tied estates, but none of them owned as many pubs as Enterprise or Punch own today. The price of beer in the on-trade has outstripped inflation every year since 1989.

Have there been any benefits? Some cite the growth of independent brewers, but I would point to the USA where the craft-brewers emerged 10 years earlier. Some say that Wetherspoon's growth is a benefit, but try telling that to

hosts where they open. Roger Protz and co argue that the demise of the Big Six is a benefit, but we sold more cask ale then than now.

The real lesson is that Government intervention is almost always a bad thing. The industry should do everything possible to prevent further interference.



## Brian Rees

### Guild of Master Victuallers

As the then chairman of the Bass National Tenant Stream, I pleaded with the brewery not to sell off pubs to comply with the Beer Orders, but to free tenants of the tie. I was convinced 90% would have stayed with Bass because that's what their customers wanted.

Keeping the tie meant a lot of unviable pubs were sold. Tenants lost their business, their home, their pension. Some I knew topped themselves. And it's never stopped. We're still dealing

# 90%

**predicted number of tenants that would have stayed with Bass if freed from the tie**



with the effects of the Beer Orders now.

The old tenancy system was the cheapest way of getting your own business. But when full repairing leases came in there was no cash flow for the licensees. The prices at the pumps had to go up and that made the supermarkets stronger.

Pubs are now closing at the rate of seven a day and without a doubt that's a result of the Beer Orders. I left my Punch pub two years ago and I think I came out at the right time. I can't see a future for back-street pubs now.

## Peter Thomas

### Mitchells & Butlers

The fact that so many commentators, police and the public still refer to pub owners as "the brewery" makes one wonder what really happened.

The Beer Orders were not a well-produced piece of work. Tenants needed security and a better retail offering and paid a heavy price for it.

As the Orders took effect there was a recession and rent levels bit.

Training, improved standards and higher amenity levels did not follow – a great opportunity was missed.

Pubs needed to be owned by operators rather than property people.

There were companies – like the Bass Lease business, Vanguard, Whitbread and many regional brewers – that did help and support lessees.

"Working together" was a strapline that did matter in the 1990s and it is even more valid today.

If the trade had been left alone without interference, the good operators would have sorted out many of the problems for themselves.

The Beer Orders did not allow evolution nor business development.

Consequently it has not proven to be a successful review.



## Rupert Thompson

### ex-Refresh UK

The implications didn't immediately filter down to us on the brewing side of Bass where I worked at the time, and when they did there was real surprise.

The politicians had rightly identified a system that wasn't working perfectly, but they stumbled in with too drastic a solution to be applied in too short a time frame.

There was also a strong sense that our leaders had failed us.

There was a failure over a long period to recognise reasonable points of criticism and to adjust. The industry was too rigid and uncompromising at key points.

If the brewers were unwilling to bend, perhaps the regulators had little choice.

That's something the likes of Punch and Enterprise today should have learned from after the TISC report.



You have to think strategically, look at the bigger picture.

When you look back over the past 20 years you realise that a huge swathe of shareholder value has been lost and the lives of thousands of pub tenants and their families ruined.

That's very sad, and lot of it unnecessary.

With better government and a willingness to compromise from industry leaders we could have been in a much better position than the parlous state we're in today.