



Pubs Code  
Adjudicator

# Guidance: Accounting for duty paid on alcohol and volumes of unsaleable draught products in Pubs Code forecast profit and loss statements

Consultation under section 61(4) of the Small Business, Enterprise and Employment Act 2015



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## 1. The Pubs Code Adjudicator

- 1.1 The Pubs Code Adjudicator (the PCA) was created by Part 4 of the Small Business, Enterprise and Employment Act 2015 (the Act<sup>1</sup>). The PCA is a corporation sole and an independent office-holder carrying out functions on behalf of the Crown. The PCA is appointed by the Secretary of State, and Paul Newby took up the role of the first PCA on 02 May 2016. Fiona Dickie was appointed as Deputy Pubs Code Adjudicator on 24 October 2017.
- 1.2 The PCA's role is to encourage and enforce compliance with the Pubs Code etc Regulations 2016 (the Code<sup>2</sup>) which came into force on 21 July 2016. The Code supports two overarching principles:
- Fair and lawful dealing by pub-owning businesses (POBs) in relation to their tied pub tenants (TPTs);
  - TPTs should be no worse off than they would be if they were not subject to any product or service tie.
- 1.3 The POBs to which the Code is directed are pub companies that own 500 or more tied pubs in England and Wales. At the time that the Code was introduced there were six such companies, collectively operating around 10,500 tied tenancies:
- Admiral Taverns Ltd
  - Ei Group PLC
  - Greene King PLC
  - Marston's PLC
  - Punch Taverns PLC
  - Star Pubs & Bars (Heineken UK)
- 1.4 The PCA has a statutory power under section 61 of the Act to publish guidance about the application of any provision of the Code and on the steps that POBs need to take in order to comply with the Code. The PCA must consult any persons it thinks appropriate before publishing statutory guidance. The PCA must take account of its published statutory guidance when carrying out its functions.
- 1.5 This consultation sets out the guidance in relation to a POB's statutory obligation in connection with profit and loss statements under Schedule 2 to the Code. This guidance is designed to ensure an accurate and consistent approach to accounting for both the duty paid on alcohol supplied under a tied tenancy; and the volume of draught beer and cider that will be saleable after allowing for waste. Schedule 2 requires disclosure of these items in the forecast profit and loss statements that POBs must provide to their TPTs as

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted>

<sup>2</sup> <https://www.legislation.gov.uk/uksi/2016/790/contents/made>

part of a rent proposal under Part 3 of the Code or a rent assessment proposal under Part 4 of the Code.

- 1.6 Thank you for taking time to read and respond to this consultation. We look forward to hearing from you.

## 2. How to respond

- 2.1 This consultation will begin on 02 November 2018 and will run until 11 January 2019. Please respond using the response form at Annex C.
- 2.2 When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.
- 2.3 The response form can be submitted online at: <https://www.gov.uk/pca>  
or by email or by letter to:  
The Pubs Code Adjudicator  
Lower Ground  
Victoria Square House  
Victoria Square  
Birmingham  
B2 4AJ  
  
Email: [office@pubscodeadjudicator.gov.uk](mailto:office@pubscodeadjudicator.gov.uk)
- 2.4 A list of those organisations and individuals consulted is at Annex B. We would welcome suggestions from others who may wish to be involved in this consultation process.

### 3. Confidentiality and data protection

- 3.1 Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide, to be treated as confidential please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
- 3.2 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the PCA.
- 3.3 The data controller for your personal data is the Office of the PCA. If you have any concerns about the use of your personal data, please contact us via this mailbox: [office@pubscodeadjudicator.gov.uk](mailto:office@pubscodeadjudicator.gov.uk)
- 3.4 If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF  
Tel: 0303 1231113

Email: [casework@ico.org.uk](mailto:casework@ico.org.uk)

## 4. Help with queries

- 4.1 Questions about the policy issues raised in this document can be addressed to:

The Pubs Code Adjudicator  
Lower Ground  
Victoria Square House  
Victoria Square  
Birmingham  
B2 4AJ

Email: [office@pubscodeadjudicator.gov.uk](mailto:office@pubscodeadjudicator.gov.uk)

- 4.2 The consultation principles are at Annex A.

## 5. Overview

- 5.1 The PCA has been considering how POBs can best meet their obligations under paragraph 5(c) of Schedule 2 to the Code, in conjunction with paragraphs 7-9 of Schedule 2, to disclose as part of the forecast profit and loss statement the volume of alcohol on which duty (in line with HMRC Excise Notice 226<sup>3</sup>, currently dated July 2018) has been paid.
- 5.2 The PCA has also been considering how POBs should meet their obligation under paragraph 5(d) of Schedule 2 to the Code, again in conjunction with paragraphs 7-9 of Schedule 2, to disclose and evidence as part of the forecast profit and loss statement the estimated sales and gross profit margins for (amongst other things) draught cask ale and keg beer.
- 5.3 The PCA believes that the guidance set out in this consultation document will ensure that all TPTs are provided with accurate and transparent information during rent reviews on the duty paid on the alcohol supplied under their tied tenancy and on the saleable volumes of the draught cask and keg products that they sell.
- 5.4 The PCA's current intention is for the statutory guidance to come into effect from 01 April 2019.

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<sup>3</sup> <https://www.gov.uk/government/publications/excise-notice-226-beer-duty/excise-notice-226-beer-duty--2>



## 6. Accounting for duty paid

- 6.1 Regulations 16 and 20 in conjunction with paragraph 5(c) of Schedule 2 to the Code requires, so far as reasonably available, that the forecast profit and loss statement to be provided by the POBs as part of a rent proposal or rent assessment proposal must include the *volume of alcohol in respect of which duty was paid during the last three years* if this figure is different from the actual volume of alcohol purchased by the TPT during the same period.
- 6.2 This provision will always be relevant in respect of cask ale and the PCA considers that this information is likely to be reasonably available in all but the most exceptional of circumstances. POBs who are also brewers will have information on the amount of duty paid on their cask ales from their own submissions to HMRC in accordance with Excise Notice 226. POBs who buy in cask ales are required by paragraph 11.3.5 of Excise Notice 226 to be informed by the brewer of this information.
- 6.3 The PCA considers that compliance with Schedule 2 requires, on a business as usual basis, POBs to provide their TPTs with full details of the duty paid on all cask ales and keg beers available under the tie in a readily available full and up to date product price list. This should be published on the POB's tenant-accessible website; and should also be provided to TPTs on at least an annual basis. This price list should be updated to reflect changes in the products it contains; and should be reviewed annually.
- 6.4 In addition, the PCA considers compliance requires POBs who are also brewers to ensure that their own cask and keg products are labelled with details of the duty paid in line with Excise Notice 226 on each container and that TPTs are informed of this.

<b>Questions</b>	
<b>1.</b>	<b>Do you believe that these proposals will ensure that TPTs are fully informed of the duty that has been paid on the alcohol supplied to them under their tied agreement?</b>
<b>2.</b>	<b>If not, please explain what additional or different approaches you think would ensure compliance with Pubs Code requirements.</b>
<b>3.</b>	<b>Can you foresee any unintended ways in which these proposals might have a detrimental effect on TPTs? If so, how might such effects be mitigated?</b>

## 7. Accounting for waste

- 7.1 Paragraph 5(f) of Schedule 2 to the Code requires that the forecast profit and loss statement provided by the POB as part of a rent proposal or rent assessment proposal must include *an estimate figure for the volume of draught beer and cider which will not be sold during the forecast period* where that figure has not been accounted for in the gross profit margin.
- 7.2 Paragraph 8 of Schedule 2 additionally requires the statements, figures and information provided to be sufficiently clear and detailed and include justification or supporting evidence for any assumptions to allow the TPT to understand the basis on which the estimated figures have been calculated. Paragraph 9 requires information about projected data to be reasonable.
- 7.3 The PCA therefore believes that best practice requires POBs to account for the amount of unsaleable draught beer and cider separately in the forecast profit and loss account, and not only as part of the gross profit calculation.
- 7.4 The PCA considers that compliance requires that the estimated figure for the volume of draught beer or cider that will be unsold should be based solely on the declared volume of the cask or barrel; and should not rely on any reliance on claims of ‘over-filling’ of containers by the producer.
- 7.5 The PCA is aware of the different issues relating to sediment waste – which occurs only in cask ale and is product-specific; and operational waste – which applies to all cask and keg products and will be determined by site-specific factors.
- 7.6 To ensure maximum transparency consistent with the requirements in paragraphs 8 and 9 of Schedule 2, POBs should include as separate entries in their forecast profit and loss statements:
- a) the estimated saleable volume of the cask ales supplied after an allowance for sediment; and
  - b) the estimated saleable volume for all draught products supplied – including cask ales, keg beers and ciders – after an allowance for operational waste.

### Questions

4.	<b>Please indicate whether you agree with the proposal to account for sediment and operational waste separately.</b>
5.	<b>If not, please explain your objections.</b>

Accounting for sediment waste

- 7.7 The PCA considers that a POB will meet the requirement to account for the estimated saleable volume of cask ales after an allowance for sediment either by providing a separate figure for saleable ale in respect of each cask product supplied or by including a consolidated allowance covering the range of cask products supplied under the tied agreement.
- 7.8 Where the estimated sediment waste is consolidated into one overall allowance for a range of cask products, the PCA requires the POB to be able to demonstrate that the consolidated figure is:
- a) representative of:
    - i. the range of cask products supplied to that tied pub; and
    - ii. the proportions in which those cask products are supplied to that tied pub;
  - b) not less than the figure that would be arrived at under the same calculation based on the duty paid figures disclosed under paragraph 5(c) of Schedule 2; and
  - c) complies with the requirement in paragraphs 8 and 9 of Schedule 2 to provide sufficiently clear and detailed information, including justification and supporting evidence for assumptions.
- 7.9 As part of the wider detailed product breakdown required under paragraph 5(d) of Schedule 2, the forecast profit and loss statement should demonstrate how the declared level of undrinkable sediment will affect both the sales turnover that the TPT will use to set their prices and the gross profit calculation against which the tied rent is calculated.
- 7.10 The PCA requires, on a business as usual basis, the up to date and full product price list referred to in paragraph 6.3 above additionally to disclose (if this is different from the volume on which duty has been paid) the volume of saleable ale per cask for each cask ale product line available under the tie.

<b>Questions</b>	
<b>6.</b>	<b>Do you believe that these proposals will ensure that TPTs have a clear and consistent approach to information about the volume of cask ales supplied under their agreement that will be unsaleable for reasons of sediment waste?</b>
<b>7.</b>	<b>If not, please explain what additional or different approaches you think would ensure compliance with Pubs Code requirements.</b>

<b>8.</b>	<b>Can you foresee any unintended ways in which these proposals might have a detrimental effect on TPTs? If so, how might such effects be mitigated?</b>
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### Accounting for operational waste

- 7.11 Paragraph 5(d) of Schedule 2 requires the forecast profit and loss statement provided by a POB as part of a rent proposal or rent assessment proposal to include separate figures for – amongst other things – draught ales, draught lagers and draught ciders.
- 7.12 The PCA therefore considers compliance requires forecast profit and loss statements to include separate entries for the saleable volumes for all categories of draught products supplied after an allowance for operational waste. In the case of draught cask ales, this should be an allowance separate from (and in addition to) the allowance for sediment waste described in paragraphs 7.7 to 7.10 above.
- 7.13 The PCA considers compliance requires POBs to calculate these allowances for operational waste with reference to the bar and cellar configuration of the tied pub to which the profit and loss statement relates. This should include, but is not limited to, consideration of the length and arrangement of beer lines and the nature of the cleaning systems in use at the premises. The allowance should not be based on general assumptions applied by the POB to its estate as a whole or to parts of its estate.
- 7.14 The POBs should base the allowance for operational waste on the performance that would objectively be expected from a TPT of reasonably efficient operator status.
- 7.15 As required by paragraph 5(d) of Schedule 2, the forecast profit and loss statement must demonstrate how allowances for operational waste will affect both the *sales turnover* that the TPT will use to set their prices and the *gross profit calculation* against which the tied rent is calculated.
- 7.16 The PCA considers compliance requires the POBs to demonstrate that the allowance for operational waste complies with the requirements in paragraphs 8 and 9 of Schedule 2 to provide clear and detailed, and justified and evidenced information.

## Questions

<b>9.</b>	<b>Do you believe that these proposals will ensure that TPTs have clear and consistent information about the volume of draught products</b>
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	<b>supplied under their agreement that will be unsaleable for reasons of operational waste?</b>
<b>10.</b>	<b>If not, please explain what additional or different approaches you think would ensure compliance with Pubs Code requirements.</b>
<b>11.</b>	<b>Can you foresee any unintended ways in which these proposals might have a detrimental effect on TPTs? If so, how might such effects be mitigated?</b>

## 8. Training and support

### TPT training and support

- 8.1 The PCA expects POBs to ensure that all of their TPTs have access to the necessary training on cellar management, saleable volumes and dispensing best practice that they require to enable them to realise the sales and gross profit margins set out in the forecast profit and loss statement as part of their rent proposal or rent assessment proposal. This training should be made available both as part of the TPTs initial induction (as required under regulation 9 of the Pubs Code) and on an ongoing refresher basis as appropriate.
- 8.2 The PCA additionally expects POBs to ensure that their TPTs have ongoing access to cellar management support in the form of stocktaking, technical and other professional services. Where POBs give their TPTs access to online tools or calculators to help them with pricing and business planning, these must be consistent with the approaches to sediment and operational waste in forecast profit and loss statements set out in this guidance.

### Business Development Manager training

- 8.3 The PCA requires POBs to ensure that their Business Development Managers (BDMs) are trained to understand and explain to TPTs their company's approaches to information provided in forecast profit and loss accounts – including in relation to volumes on which duty has been paid and the assessment of sediment and operational waste in line with this guidance; and that this training is renewed on a 12-monthly basis as required by regulation 41(1)(b) of the Code.

<b>Questions</b>	
<b>12.</b>	<b>Do you have any comments on the proposed approach to access to training for TPTs?</b>
<b>13.</b>	<b>Do you have any comments on the proposed training requirements in respect of BDMs?</b>

## 9. Impact

- 9.1 This consultation fulfils the PCA's statutory obligations in the Act to consult appropriate persons in advance of publishing guidance in relation to matters referred to in s 61(3), including guidance on accounting for duty paid and unsaleable beer in profit and loss statements required by regulations 16 and 20 and Schedule 2 of the Code.
- 9.2 The impact of the introduction of the legislation to provide for a statutory Pubs Code was assessed by the Department for Business, Innovation and Skills (BIS) during the passage of the legislation.
- 9.3 The BIS impact assessment on the Pubs Code and Adjudicator (BIS0395) can be viewed at:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/408449/bis-15-64-pubs-statutory-code-and-adjudicator-final-stage-impact-assessment.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408449/bis-15-64-pubs-statutory-code-and-adjudicator-final-stage-impact-assessment.pdf)

## 10. Public Sector Equality Duty

- 10.1 No particular equality impacts arise in respect of this consultation. The PCA will, in exercising its regulatory functions, have regard to the Public Sector Equality Duty set out in section 149 of the Equality Act 2010.

## 11. What happens next?

- 11.1 This consultation will close on 11 January 2019.
- 11.2 Following the closure of the consultation period, the PCA intends to publish all of the responses received, unless specifically notified otherwise (see Chapter 3 'Confidentially & data protection' for full details).
- 11.3 The PCA will publish its response to the consultation as soon as possible setting out the decisions made in light of the consultation, a summary of the views expressed and reasons for the decisions taken.
- 11.4 The document will be published on: <https://www.gov.uk/pca>

## Annex A: Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles:

[www.gov.uk/government/publications/consultation-principles-guidance](http://www.gov.uk/government/publications/consultation-principles-guidance)

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

The Pubs Code Adjudicator  
Lower Ground  
Victoria Square House  
Victoria Square  
Birmingham  
B2 4AJ

Email: [office@pubscodeadjudicator.gov.uk](mailto:office@pubscodeadjudicator.gov.uk)



## **Annex B: List of individuals/organisations consulted**

The PCA has notified the following organisations and individuals about this consultation:

### Pub-owning businesses with 500 or more tied pubs:

- Admiral Taverns Ltd
- Enterprise Inns PLC
- Greene King PLC
- Marston's PLC
- Punch Taverns PLC
- Star Pubs & Bars (Heineken UK)

### Interest groups, trade bodies and other organisations:

- All Party Parliamentary Beer Group
- All Party Parliamentary Group on Pubs
- Association of Licensed Multiple Retailers
- Brighton and Hove Licensees Association
- British Amusement Catering Trade Association
- British Association of Pool Table Operators
- British Beer and Pub Association
- British Chambers of Commerce
- British Franchise Association
- British Institute of Innkeepers
- British Pub Confederation
- Campaign for Real Ale
- Confederation of British Industry
- Fair Deal for Your Local Campaign
- Fair Pint Campaign
- Federation of Licensed Victuallers Associations
- Federation of Small Businesses
- Forum of Private Business
- GMB Union

Guild of Master Victuallers  
Independent Family Brewers of Britain  
Independent Pub Confederation  
Justice for Licensees  
Licensees Supporting Licensees  
New River Retail (UK) Limited  
Planning for Pubs  
Plunkett Foundation / Power to Change  
Protect Pubs  
Pub is the Hub  
Pubs Advisory Service and MRO Advisory Service  
Pub Governing Body  
Punch Tenants Network  
Royal Institution of Chartered Surveyors  
Society of Independent Brewers  
Society for the Preservation of Beers from the Wood

## Annex C: Response form

**Name:**

**Organisation (if applicable):**

**Address:**

**Email:**

Please tick the box below which best describes you as a respondent to this consultation:

Pub-owning business with 500 or more tied pubs	<input type="checkbox"/>
Tied pub tenant	<input type="checkbox"/>
Interest group, trade body or other organisation	<input type="checkbox"/>
Other (please describe)	<input type="checkbox"/>

### Accounting for duty paid

**Question 1: Do you believe that these proposals will ensure that TPTs are fully informed of the duty that has been paid on the alcohol supplied to them under their tied agreement?**

**Question 2: If not, please explain what additional or different approaches you think would ensure compliance with Pubs Code requirements.**

**Question 3: Can you foresee any unintended ways in which these proposals might have a detrimental effect on TPTs? If so, how might such effects be mitigated?**

### Accounting for waste

**Question 4: Please indicate whether you agree with the proposal to account for sediment and operational waste separately.**

**Question 5: If not, please explain your objections.**

### Sediment waste

**Question 6: Do you believe that these proposals will ensure that TPTs have a clear and consistent approach to information about the volume of cask ales supplied under their agreement that will be unsaleable for reasons of sediment waste?**

**Question 7: If not, please explain what additional or different approaches you think would ensure compliance with Pubs Code requirements.**

**Question 8: Can you foresee any unintended ways in which these proposals might have a detrimental effect on TPTs? If so, how might such effects be mitigated?**

### Operational waste

**Question 9: Do you believe that these proposals will ensure that TPTs have clear and consistent information about the volume of draught products supplied under their agreement that will be unsaleable for reasons of operational waste?**

**Question 10: If not, please explain what additional or different approaches you think would ensure compliance with Pubs Code requirements.**

**Question 11: Can you foresee any unintended ways in which these proposals might have a detrimental effect on TPTs? If so, how might such effects be mitigated?**

Training and support

**Question 12: Do you have any comments on the proposed approach to access to training for TPTs?**

**Question 13: Do you have any comments on the proposed training requirements in respect of BDMs?**

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**Office of the Pubs Code Adjudicator**

This document can be accessed at [www.gov.uk/pca](http://www.gov.uk/pca)

If you require this information in an alternative format or have general enquiries about the Pubs Code Adjudicator and its work, contact:

Office of the Pubs Code Adjudicator  
Lower Ground  
Victoria Square House  
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