 Regulatory Policy Committee	Opinion	
Impact Assessment (IA)	Pubs statutory code and adjudicator	
Lead Department/Agency	Department for Business, Innovation & Skills	
Stage	Final	
IA number	BIS0395	
Origin	Domestic	
Expected date of implementation	1 October 2015 (SNR10)	
Date submitted to RPC	28 May 2014	
RPC opinion date and reference	6 June 2014	RPC13-BIS-1717(4)
Departmental assessment		
One-in, Two-out status	IN	
Estimate of the equivalent annual net cost to business (EANCB)	£2.69 million	
RPC overall assessment	GREEN	
RPC comments		
<p>The IA is fit for purpose. The IA responds positively to the points in the RPC's previous opinion dated 3 March 2014, and now provides a very clear description of the rationale for intervention. The IA also now explains very clearly how the new preferred option will correct for the market failures that have been identified.</p> <p>The IA also includes better evidence and further information on how the estimated costs to business are derived. It now correctly identifies as indirect the costs of any pub closures as a possible consequence of the proposal. As a result, the RPC can validate as robust the estimated annual net cost to business of £2.69 million (revised from £15.47 million in the previous submission).</p>		
Background (extracts from IA)		
What is the problem under consideration? Why is government intervention necessary?		
<p><i>"For many years serious concerns have been raised about the relationship between large pub companies and their tenants. Four successive select committee inquiries, in 2004, 2009, 2010 and 2011, have identified significant problems within the industry. The focus has been on tied pubs, the treatment of tenants and the share of reward gained by pub-owning companies. The Select Committee received repeated reports of delay in opening rent review negotiations, lack of transparency in such negotiations, failure to carry out repairs agreed when a tenancy began, verbal agreements being ignored, and of harassment of tenants when they were vulnerable through bereavement. Such problems occur due to inequalities of bargaining power in these business contracts. Given the evidence, ministers consider there is an equity/fairness reason to intervene in this market. A self-regulatory approach has been tried and was found wanting by the Select Committee in 2011 and the</i></p>		

Government in 2012.”

What are the policy objectives and the intended effects?

“The aim of this policy is to ensure the fair treatment of tenants by pub companies. Fairness in this context is characterised by treatment in line with the principle that a tied tenant should be no worse off than a ‘free of tie’ tenant.”

Comments on the robustness of the OITO assessment

Our previous opinion, dated 3 March 2014, stated that the IA did *“not include a section that explains the OITO assessment. It is not clear which costs and benefits of the proposal are considered to have a direct impact on business and are hence included within the estimated EANCB figure.”* The Department has fully addressed these issues. The IA now includes a very well presented and helpful OITO section that clearly and concisely sets out how the Department has calculated the OITO impacts of the proposal.

The IA says this is a regulatory proposal that would impose a net cost to business (an IN) with an estimated equivalent annual net cost to business of £2.69 million. This is consistent with the current Better Regulation Framework Manual (paragraph 1.9.10) and, based on the evidence presented, appears to provide a reasonable assessment of the likely impacts.

Comments on the robustness of the small & micro business assessment (SaMBA)

The proposals increase the scope of regulation on business. A SaMBA is therefore applicable.

The SaMBA is sufficient. It explains that all micro-businesses would be exempt from the full proposal. Those small businesses owning fewer than 500 pubs would be exempt from the more burdensome aspects of the code but would be required to comply with the core provisions of a statutory code. These provisions are similar to those in the current industry framework code, with which most small pub companies comply. For those small firms not currently part of the self-regulatory system, the cost of complying with a statutory code is estimated to be £130 per pub each year.

Quality of the analysis and evidence presented in the IA

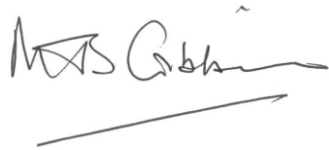
There is a variety of ownership and management structures within the pub market. Each of the ownership and management structures may be more or less appealing to prospective pub landlords depending on their access to capital, their aversion to risk, and the relative importance to them of lifestyle and profits.

The proposal would introduce a statutory code and adjudicator to ensure that tenants have access to better information when making decisions on entering into contracts with pub-owning companies. The IA describes clearly the existing market failures (paragraph 35) and how the revised proposal would address these. In responding to the comments in the RPC’s previous opinion, the proposal now

appears to be a more targeted response to the market failures identified in the IA. By removing the inclusion of a mandatory 'free of tie' option, and taking forward requirements for parallel rent assessments to be undertaken if requested by a tenant, the proposal is now clearly linked to addressing the identified information asymmetries.

In estimating the costs of setting up and running the adjudicator, the Department has enhanced its analysis, which previously relied solely on a comparison with the Groceries Code adjudicator. The IA now identifies where the functions of the Groceries Code and Pub Code adjudicators may differ and adjusts the analysis accordingly. Where a direct comparison is drawn, the IA explains why such a comparison is suitable. As such, the estimate of these costs now appears to be based on the best available evidence and is robust.

Signed

A handwritten signature in dark ink, appearing to read 'Michael Gibbons', with a long horizontal stroke extending to the right.

Michael Gibbons, Chairman