


# FW: Small Business, Enterprise and Employment Bill: Pubs Code & Adjudicator

04 August 2015  
15:34

Subject	<b>FW: Small Business, Enterprise and Employment Bill: Pubs Code &amp; Adjudicator</b>
Attachments	 Small Busi...

**From:** Jonathan Mail [redacted]  
**Sent:** 23 January 2015 16:59  
**To:** [redacted]  
**Cc:** Tim Page  
**Subject:** Re: Small Business, Enterprise and Employment Bill: Pubs Code & Adjudicator

Dear [redacted]

Thank you very much for sending this information through to us yesterday.

Please find attached the briefing which CAMRA has today sent to all Peers.

We are keen to fully understand the impact of the Government's proposal before we take a definitive view of the Government's amendments. To that end we are urging that Peers press the Government to consider withdrawing the amendments at committee stage before bring them back at Report.

We very much look forward to meeting with you a week on Monday.

Many thanks

Jonathan Mail  
Head of Public Affairs  
CAMRA, The Campaign for Real Ale

[redacted]

On 22 January 2015 at 11:54, [redacted]> wrote:

Many thanks to those of you who attended the roundtable discussion with Jo Swinson on 8 January about the Market Rent Only clause in the Small Business Bill.

I wanted to let you know that yesterday the Government tabled amendments to the Bill, including the MRO clause, in advance of Lords Committee consideration of the Pubs Code and Adjudicator measures - see link  
<http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0057/amend/su057-V-rev-a.htm>

The attached note, prepared for MPs and Peers, explains the approach the Government has taken to the MRO amendments. The note makes clear that the amendments are designed to ensure the MRO clause is workable and legally robust, and to minimise the risk of

unintended consequences. They do not change the original policy intent of the amendments made at Commons Report stage. The attached flowchart shows some of our initial thinking on the MRO process.

Regards

[redacted]

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BIS: working together for growth

# Small Business Bill

## Lords Grand Committee Stage

# CAMRA Briefing



CAMPAIGN  
FOR  
REAL ALE

### INTRODUCTION

The Small Business, Enterprise and Employment Bill ("Small Business Bill") introduces a new independent Pubs Code and Adjudicator to protect tied publicans in England and Wales.

At Report Stage in the House of Commons, MPs voted by a majority of 25 to incorporate into the Bill a Market Rent Only option for tenants tied to the large pub companies. The Market Rent Only option is crucial to delivering a fair deal for tenants tied to the large pub companies, 57% of whom currently report earning less than £10,000 a year (compared with just 25% of free of tie tenants).

CAMRA supports the Bill as it stands and we urge you to oppose any amendments that weaken the provisions, or which introduce loopholes that could be exploited.

### MARKET RENT ONLY OPTION

The Market Rent Only option as passed by the House of Commons will allow tenants tied to large pub companies to choose between a tied agreement and a non tied agreement. The trigger points for the Market Rent Only option are:

- At contract renewal, rent review or five years from the date of the previous rent review
- In the event of a significant increase in the price of tied products
- When the freehold of the pub is sold or the pub company goes into administration
- In the case of an event outside the tenant's control that significantly impacts trading ability.

The Market Rent Only option is a market solution to the problem of the large pub companies forcing their tenants to purchase beer at prices inflated by a typical 50% - 70%.

It will place tenants in a far stronger negotiating position when agreeing terms with the large pub companies and have an energising effect on the relationship between pub companies and their tenants. The effect of tenants being able to negotiate improved terms will be an increase in funds available to invest in pubs which will allow the pub sector to prosper. As a result we will see more tenant-led investment in pubs, lower prices for consumers and ultimately fewer pub closures.

### BACKBENCH AMENDMENTS OF CONCERN TO CAMRA – PLEASE OPPOSE

Several amendments have been tabled which could seriously undermine the Bill as passed in the Commons. We urge you to oppose all amendments tabled in the name of Lord Hodgson, and in particular the following:

Amendment 82 which would introduce an ability for tenants to opt out of taking the Market Rent Only option at a later date. This is a major threat as pub companies could exploit such an opt-out provision by refusing to issue any new lease agreement unless tenants agree to opt out of ever availing themselves of the Market Rent Only option.

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Amendments 95 and 96 which seek to exclude temporary ("Tenancy at Will") agreements and Franchise agreements respectively. We are concerned that both of these amendments create loopholes which could be exploited by the large pub companies. Exempting Tenancy at Will agreements risks pub companies seeking to run a proportion of their pubs on a rolling programme of short term agreements. Exempting Franchise agreements risks pub companies replacing unfair tied agreements with equally unfair franchise agreements.

Amendments 75 and 88 which may allow pub companies to discriminate against any tied tenant opting to become free of tie by insisting they sign a new tenancy on less favourable terms.

### GOVERNMENT AMENDMENTS – PLEASE URGE GOVERNMENT TO WITHDRAW

On 22<sup>nd</sup> January the Government tabled a raft of amendments in the name of Baroness Neville-Rolfe. Due to the lack of scrutiny and dialogue around these proposals, we urge you to request that the Government withdraws these amendments and retables them at Report Stage when interested parties have had an opportunity to properly consider their implications.

In particular, we urge Peers to resist Government amendment 89A. This amendment deletes from the Bill the entirety of the Market Rent Only option clause which MPs voted to add to the Bill. Whilst elements of the Government's replacement clause are encouraging, it does not provide sufficient certainty on the circumstances in which tenants may choose to become free of tie.

The Government are seeking to remove much of the certainty currently in the Bill, but promising to replace much of this at a later date by regulation. Given the proximity of the General Election we are not satisfied that promises given by Government on the content of regulations will be binding on the next Government.

Over the coming weeks CAMRA will be seeking discussions with the Government. Following this and wider consultation, we will form a view on whether it is necessary for us to continue to oppose the Government's amendments.

### HOW CAN YOU SHOW YOUR SUPPORT

Please support pub tenants and consumers by attending the Bill's Grand Committee stage, likely taking place in the Moses Room next Wednesday 28<sup>th</sup> January. Please support the Pubs Code, Adjudicator and Market Rent Only option and oppose any amendment to weaken these provisions.

### CONTACT CAMRA

For more information, visit [www.camra.org.uk/pubco-reform](http://www.camra.org.uk/pubco-reform), or contact CAMRA:

Jonathan Mail  
Head of Public Affairs

Emily Ryans  
Senior Campaigns Manager

# FW: FOI - FW: Small Business, Enterprise and Employment Bill: Pubs Code & Adjudicator

05 August 2015

09:39

[redacted]

**From:** Simon Clarke

**Sent:** 22 January 2015 12:39

**To:** [redacted]

**Subject:** Re: Small Business, Enterprise and Employment Bill: Pubs Code & Adjudicator

Dear [redacted]

Thanks for this. I have been wading through the amendment proposals this morning no doubt there will be a number of queries but one struck me straight away.

As was muted earlier Govt have proposed the MRO triggers of Administration and Sale are removed. In practical terms if [redacted] sold [redacted] to say [redacted] then [redacted] would have a catastrophic change in the range of brands [redacted] able to sell and as micro beer sales are [redacted] USB [redacted] would suffer all the consequences of a trigger event outlined in your new clause 42(9) but be denied MRO option as [redacted] fall under the threshold.

Also - what is the effect of amendment proposal to clause 157 ? Does it intend to make MRO operable two months after implementation of the Bill ? I am not sure it can given the references in clause 42 to the code which would not be in effect yet but if not then I don't see the purpose of the change.

Obviously we would probably support an earlier implementation of an MRO rather than having to wait until code implementation 12 months later if that were possible.

S

-----Original Message-----

**From:** [redacted]

**To:** [redacted]

**Sent:** Thu, 22 Jan 2015 11:54

**Subject:** Small Business, Enterprise and Employment Bill: Pubs Code & Adjudicator

Many thanks to those of you who attended the roundtable discussion with Jo Swinson on 8 January about the Market Rent Only clause in the Small Business Bill.

I wanted to let you know that yesterday the Government tabled amendments to the Bill, including the MRO clause, in advance of Lords Committee consideration of the Pubs Code and Adjudicator measures - see link <http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0057/amend/su057-V-rev-a.htm>

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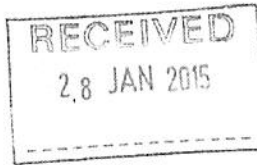
[redacted]



# Jonathan Mail (CAMRA) to Lord Livingston - 28 January 2015

18 August 2015

14:29



Campaign for Real Ale  
230 Hatfield Road  
St Albans  
Hertfordshire  
AL1 4LW

**CAMPAIGN  
FOR  
REAL ALE**

www.camra.org.uk

IO

Lord Livingston of Parkhead  
House of Lords  
London  
SW1A 0PW

23<sup>rd</sup> January 2015

Dear Lord Livingston,

**Small Business Bill Grand Committee Stage – Wednesday 28<sup>th</sup> January**

We are writing ahead of the Grand Committee Stage of the Small Business Bill, which is expected to consider amendments to Part 4 of the Bill ("The Pubs Code Adjudicator and the Pubs Code") on Wednesday 28<sup>th</sup> January in the Moses Room.

As well as introducing a new independent Pubs Code and Adjudicator to protect tied publicans in England and Wales, the Bill includes a Market Rent Only option for tenants tied to the large pub companies. The Market Rent Only option was voted for by a majority of 25 MPs in the House of Commons, and is crucial to delivering a fair deal for tenants tied to the large pub companies, 57% of whom currently report earning less than £10,000 a year

CAMRA supports the Bill as it stands and we urge you to oppose any amendments that weaken the provisions, or which introduce loopholes that could be exploited.

Please support pub tenants and consumers by attending the Bill's Grand Committee stage and supporting the Pubs Code, Adjudicator and Market Rent Only option.

We are enclosing a full briefing. Please do get in touch if you would like to discuss these issues further.

Yours sincerely,

Jonathan Mail  
CAMRA Head of Public Affairs

Emily Ryans  
CAMRA Senior Campaigns Manager



Campaigning for real ale, pubs and drinkers' rights since 1971  
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# Small Business Bill

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# CAMRA Briefing



### INTRODUCTION

The Small Business, Enterprise and Employment Bill ("Small Business Bill") introduces a new independent Pubs Code and Adjudicator to protect tied publicans in England and Wales.

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Several amendments have been tabled which could seriously undermine the Bill as passed in the Commons. We urge you to oppose all amendments tabled in the name of Lord Hodgson, and in particular the following:

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[www.camra.org.uk](http://www.camra.org.uk)



# FW: ALMR Views

04 August 2015

16:46

[redacted]

**From:** Kate Nicholls [redacted]  
**Sent:** 27 January 2015 13:41  
**To:** [redacted]  
**Cc:** [redacted]  
**Subject:** FW: Small Business Bill amendments

[redacted]

Thank you for the call on Friday late afternoon – much appreciated. I have now shared the Government's thinking with members and have confirmation from them that they are broadly supportive and that, as I intimated, the briefing we will be submitting to Peers will be around the fact that these are sensible, pragmatic steps to ensure internal consistency within the Bill and to make the MRO option workable.

Two issues have arisen which I think are best dealt with through secondary legislation – but I wanted to flag them with you soonest. I am not sure yet the degree to which they will feature in our briefing, but if highlighted as concerns they will be referencing the need to resolve in subsequent discussions:

- Parallel Rent Assessments – there is a lot of concern around the restriction of PRAs. Many existing lessees who are content to be tied and who would not otherwise seek an MRO feel that they will have no option but to use the trigger because otherwise they will have no mechanism for ensuring that their tied rent is fair. There are also legitimate concerns that as a PRA will only be available if you lodge a request with the Adjudicator at the point of negotiating a new lease that landlords will simply withdraw lease offers if this is used. We believe that the process of asking for a PRA should be reviewed in the Code as a result.
- Sale or transfer of title – my members are content to see the MRO trigger removed in these circumstances but there is potential loophole arising as a result. If the sale or transfer takes place between large landlords then the lessee is protected as they can trigger an exceptional rent review under the Code. However, if the sale or transfer is to a small pub company outside the scope of the Code, does the lessee still have that right? Does the Code form part of the original contractual terms of the lease and therefore be transferred with it – this is the case with IFC 6 where a deed of variation is effected on point of transfer.

**Kate Nicholls**  
**Chief Executive**

[redacted]

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Hi Kate,

Please see the Government [amendments](#), tabled by Baroness Neville-Rolfe today, to be debated in the House of Lords tomorrow below. Liam is out of the office today but will call you to discuss the

scope of a possible briefing.

## Schedule 1

*Baroness Neville-Rolfe*

Page 148, line 13, leave out from beginning to “require” in line 15 and insert “The Adjudicator may, for the purposes of exercising functions in relation to the offer of a market rent option or the provision of parallel rent assessment”.

## Clause 41

*Baroness Neville-Rolfe*

Page 37, line 37, leave out “all provisions of the Pubs Code are” and insert “the Pubs code is”

Page 38, line 20, leave out “large”

Page 38, line 21, after “tenants” insert “falling within section 67(1)(b)”

## Clause 42

Leave out Clause 42 and insert the following new Clause—

### **“Pubs Code: market rent option**

(1) The Pubs Code must require pub-owning businesses to offer their tied pub tenants falling within section 67(1)(a) a market rent option in specified circumstances.

(2) A “market rent option” means the option for the tied pub tenant—  
(a) to occupy the tied pub under a tenancy or licence which is MRO-compliant, and  
(b) to pay the market rent in respect of that occupation.

(3) The Pubs Code may specify—  
(a) circumstances in which a market rent option must or may be an option to occupy under a tenancy;  
(b) circumstances in which a market rent option must or may be an option to occupy under a licence.

(4) A tenancy or licence is MRO-compliant if—  
(a) taken together with any other contractual agreement entered into by the tied pub tenant with the pub-owning business in connection with the tenancy or licence it—  
(i) contains such terms and conditions as may be required by virtue of subsection (5)(a),  
(ii) does not contain any product or service tie other than one in respect of insurance in connection with the tied pub, and  
(iii) does not contain any unreasonable terms or conditions, and  
(b) it is not a tenancy at will.

(5) The Pubs Code may specify descriptions of terms and conditions—  
(a) which are required to be contained in a tenancy or licence for it to be MRO-compliant;  
(b) which are to be regarded as reasonable or unreasonable for the purposes of subsection (4).

(6) Provision made under subsection (1) may, in particular, require a pubowning business to offer a tied pub tenant a market rent option—

(a) in connection with the renewal of any of the pub arrangements;

(b) in connection with a rent assessment or assessment of money payable by the tenant in lieu of rent;

(c) in connection with a significant increase in the price at which any product or service which is subject to a product or service tie is supplied to the tied pub tenant where the increase was not reasonably foreseeable—

(i) when the tenancy or licence was granted, or

(ii) if there has been an assessment of a kind mentioned in paragraph (b), when the last assessment was concluded;

(d) after a trigger event has occurred.

(7) The Pubs Code may specify what “renewal” means in relation to a tenancy or a licence for the purposes of subsection (6).

(8) In subsection (6) “pub arrangements”, in relation to a tied pub, means—

(a) the tenancy or licence under which the tied pub is occupied, and

(b) any other contractual agreement which contains an obligation by virtue of which condition D in section 65 is met in relation to the premises.

(9) In this Part a “trigger event”, in relation to a tied pub tenant, means an event which—

(a) is beyond the control of the tied pub tenant,

(b) was not reasonably foreseeable as mentioned in subsection (6)(c),

(c) has a significant impact on the level of trade that could reasonably be expected to be achieved at the tied pub, and

(d) is of a description specified in the Pubs Code.

(10) In this Part “market rent”, in relation to particular premises at any time, means the rent which the premises might reasonably be expected to fetch at that time in the open market, on the assumption that condition B in section 65 continues to be met.”

#### **After Clause 42**

Insert the following new Clause—

#### ***“Market rent option: procedure***

(1) The Pubs Code may—

(a) make provision about the procedure to be followed in connection with an offer of a market rent option (referred to in this Part as “the market rent option procedure”);

(b) confer functions on the Adjudicator in connection with that procedure.

(2) Provision made under subsection (1) may, in particular—

(a) make provision for the tied pub tenant to give notice to the pubowning business that the tenant—

(i) considers that circumstances are such that the pub-owning business is required to offer the tenant a market rent option, and

(ii) wishes to receive such an offer;

(b) require the appointment of a person (referred to in this Part as an

“independent assessor”) to determine the market rent of the premises concerned in a case where the pub-owning business and the tied pub tenant cannot agree on that market rent;

- (c) require that appointment to be made by the pub-owning business and the tied pub tenant acting jointly or (where they cannot agree on a person to appoint) by the Adjudicator;
- (d) require the Adjudicator to set criteria which a person must satisfy in order to be appointed as an independent assessor;
- (e) specify that the determination of the market rent by the independent assessor must be conducted in accordance with provisions of documents specified in the Pubs Code;
- (f) where any document is specified for the purposes of paragraph (e), refer to the provisions of the document as amended from time to time.

(3) The Pubs Code may make provision for—

- (a) the tenancy or licence under which the tied pub is occupied, and
- (b) any other contractual agreement entered into by the tied pub tenant with the pub-owning business in connection with the tenancy or licence,

as they are in force when a notice is given by virtue of subsection (2)(a), to continue to have effect until such time as the market rent option procedure has come to an end (regardless of whether any of the agreements would or could otherwise cease to have effect before that time).

(4) The Pubs Code may, for the purposes of subsection (3), specify the circumstances in which the market rent option procedure is to be treated as having come to an end.”

Insert the following new Clause—

***“Market rent option: disputes***

(1) The Secretary of State may by regulations confer functions on the Adjudicator in connection with the resolution of disputes relating to the offer of a market rent option.

(2) The regulations may, in particular, make provision concerning the resolution of disputes about whether—

- (a) circumstances are such that a pub-owning business is required to offer a tied pub tenant a market rent option;
- (b) a proposed tenancy or licence is MRO-compliant;
- (c) a determination of the market rent of a tenancy or licence made by an independent assessor has been made in accordance with the Pubs Code;
- (d) any other requirement of the market rent option procedure has been complied with.

(3) The regulations may, in particular, confer on the Adjudicator the function of determining the market rent of a tenancy or licence in such circumstances as may be specified in the regulations.

(4) Nothing in sections 45 to 49 applies in relation to provision made by virtue of section (Pubs Code: market rent option) or (Market rent option: procedure) but the regulations may include provision which is similar to that contained in or made under those sections.”

## Clause 65

Page 49, line 34, at end insert—

“(5A) But condition D is not met if the contractual obligation is a stocking requirement.

(5B) The contractual obligation is a stocking requirement if—

(a) it relates only to beer or cider (or both) produced by the landlord or

by a person who is a group undertaking in relation to the landlord,

(b) it does not require the tied pub tenant to procure the beer or cider from any particular supplier, and

(c) it does not prevent the tied pub tenant from selling at the premises beer or cider produced by a person not mentioned in paragraph (a).

(5C) In subsection (5B), “beer” and “cider” have the same meanings as in the Alcoholic Liquor Duties Act 1979 (see section 1 of that Act).”

## Clause 66

Page 49, line 39, leave out subsection (1) and insert—

“(1) A person is a “pub-owning business” for the purposes of this Part—

(a) in the period beginning with the day on which the Pubs Code

comes into force and ending with the following 31 March, if immediately before the Pubs Code comes into force the person was

the landlord of 500 or more tied pubs;

(b) in any subsequent financial year, if for a period of at least 6 months in the previous financial year the person was the landlord of 500 or more tied pubs.

(1A) For the purposes of calculating the number of tied pubs of which a person (“L”) is the landlord, any tied pub the landlord of which is a person who is a group undertaking in relation to L is treated as a tied pub of which L is the landlord.”

Page 50, line 1, leave out “But regulations may” and insert “The Secretary of State may by regulations”

Page 50, line 2, leave out “such a landlord” and insert “a pub-owning business”

Page 50, line 5, leave out “the landlord” and insert “any other person”

Page 50, line 7, leave out subsections (3) to (5)

## Clause 69

Page 51, line 33, at end insert—

““independent assessor” has the meaning given by section (Market rent option: procedure);

“market rent” and “market rent option” have the meanings given by section (Pubs Code: market rent option);

“market rent option procedure” has the meaning given by section (Market rent option: procedure);

“MRO-compliant”, in relation to a tenancy or licence, has the meaning given by section (Pubs Code: market rent option);”

Page 51, line 35, at end insert—

““product or service tie” means a product tie or a service tie;”

Page 51, line 36, leave out “or service”

Page 51, line 36, after “obligation” insert “, other than a stocking requirement,”

Page 51, line 43, leave out paragraph (b)

Page 51, line 45, at end insert—

“service tie” means any contractual obligation of a tied pub tenant to receive a service supplied by—

(a) the landlord of the tied pub or a person who is a group

undertaking in relation to the landlord, or  
(b) a person nominated by the landlord or by a person who is a  
group undertaking in relation to the landlord;  
“stocking requirement” has the meaning given by section 65.”

Page 51, line 45, at end insert—

“( ) In this Part, references to “rent”, in relation to a licence to occupy, are to be  
read as references to the fee payable in respect of the licence.”

Page 52, line 1, leave out subsection (2)

[redacted]



# FW: House of Lords Grand Committee - Small Business, Enterprise & Employment Bill, Section 4 Pub Companies 28.1.15

04 August 2015  
16:45

Subject	<b>FW: House of Lords Grand Committee - Small Business, Enterprise &amp; Employment Bill, Section 4 Pub Companies 28.1.15</b>
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Small Busi...

**From:** Neville-Rolfe MPST  
**Sent:** 28 January 2015 10:55  
**To:** [redacted]; McLynchy Julie (CCP); [redacted]  
**Cc:** [redacted]; Neville-Rolfe MPST  
**Subject:** FW: House of Lords Grand Committee - Small Business, Enterprise & Employment Bill, Section 4 Pub Companies 28.1.15

All,

Please find the letter from the ALMR.

Kind regards,

[redacted]

**From:** Michael Clarke  
**Sent:** 28 January 2015 10:41  
**To:** Neville-Rolfe MPST  
**Subject:** House of Lords Grand Committee - Small Business, Enterprise & Employment Bill, Section 4 Pub Companies 28.1.15

Dear Baroness Neville-Rolfe,

Given your involvement with the Small Business Bill, I hope that the attached briefing from the Association of Licensed Multiple Retailers may be helpful.

Regards,

**Michael Clarke**  
**Public Affairs Executive**





**SMALL BUSINESS, ENTERPRISE & EMPLOYMENT BILL, SECTION 4 – PUB COMPANIES**  
**HOUSE OF LORDS GRAND COMMITTEE 28.1.15**

- Section 4 of the Small Business, Enterprise & Employment Bill has been substantially amended during Report Stage in the House of Commons, with the introduction of a new clause allowing tenants of large pub companies to request a market rent only lease at certain trigger points.
- Since the introduction of the new clause, the ALMR has been working with all parties to ensure that the new regulatory structure for our sector is clear, workable and capable of being swiftly implemented. It needs to **minimise impact upon the long term sustainability of the sector as a whole particularly on investment and confidence**. More importantly, the new regime must ensure that fair, mutually beneficial models of the tie continue to be available and work to encourage and facilitate sustained joint investment in the property, people and offer of the individual pub to **ensure the consumer benefits from these changes**.

***New Clause 42 & 43***

- The Government has today tabled amendments to remove Clause 42 as introduced at Report Stage in the House of Commons. This new clause is necessary in order to ensure consistency with other aspects of the Bill and to provide clarity and certainty as to its interpretation. **We believe that, in the main, the Government's amendments are both pragmatic and sensible and mitigate against the unforeseen consequences of reform for both landlord and lessee.**
- We support new clause 42 and 43. We note the small revisions to the triggers for an MRO request to be made – **while this will avoid creating unnecessary uncertainty and undermining investment but it will be important to ensure that the Statutory Code protections are sufficiently robust to protect lessees in these circumstances, particularly where there succeeding landlord falls outside the Statutory regime.**

***Clause 66***

- We support the revision to the definition of a large pub company to ensure consistency in the de minimis threshold between MRO and Statutory Code. We believe that **500 tied pubs is an appropriate threshold.**

***Statutory Code***

- The ALMR has always supported the tied house model. Operated professionally and fairly, it is an extremely valuable and beneficial business relationship which allows both parties to invest in the business, work together to maximise the earnings of the pub in order to generate an appropriate and fair share of the economic benefits for each. Our objective for **any new regulatory structure is that it fosters entrepreneurship**. It should encourage commercial flexibility and competition amongst landlords; support the offering of genuine choice of lease terms and operating model – including a continuation of the tie where appropriate; equip lessees with the information they need fully to understand the commercial SWOT accompanying that choice; and provide for transparency in rent setting.
- We are therefore **concerned at the suggestion that the availability of parallel rent assessments may be restricted** to existing lessees. The ALMR has long been clear that greater transparency in the form of a PRA is essential to address outstanding issues of concern. Failure to provide PRAs to existing lessees as originally envisaged in the Government's proposals will simply result in more MRO triggers being applied. We would hope that these concerns may be addressed through the consultation on secondary legislation.
- Finally, **we urge that the new Code is swiftly implemented** via secondary legislation within 12 months following the enactment of the Bill. In short, as the Bill progresses we need to **ensure that it secures the best of the existing model, reforms what is needed and eliminates bad practice**. The sector needs stability and consistency to ensure a fair, free and flexible market and its continued ability to promote jobs and growth right across the UK.


The ALMR is the only national trade body dedicated solely to representing the needs and concerns of the broad range of licensed hospitality operators. Between them our 175 member companies operate just under 14,500 outlets, employing 350,000 staff; together they account for almost all managed pubs in the UK.

For more information, contact Kate Nicholls, CEO



# FW: SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT BILL - GRAND COMMITTEE - PART 4 PUBS

30 July 2015  
14:55

Subject	<b>FW: SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT BILL - GRAND COMMITTEE - PART 4 PUBS</b>
Attachments	 Small Busi...

[redacted]

**From:** simon clarke [redacted]

**Sent:** 28 January 2015 12:10

**Subject:** Fwd: SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT BILL - GRAND COMMITTEE - PART 4 PUBS

The Grand Committee are due to consider Part 4 (Pubs Code and Adjudicator) of the Bill TODAY, the 28th January 2015, at 3.30pm.

Please see attached a briefing note that we hope is of interest and use to you when considering the debate.

Should you have any queries please do not hesitate to contact me.

Simon Clarke

[redacted]

## **The Fair Pint Campaign**

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**SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT BILL****COMMITTEE STAGE - HOUSE OF LORDS - GRAND COMMITTEE - 28TH JANUARY 2015****PART 4 - THE PUBS CODE ADJUDICATOR AND THE PUBS CODE****Proposed Amendments to Small Business Bill****WE ASK YOU TO:**

- REJECT ALL AMENDMENTS MOVED BY OTHER PEERS TO DATE.
- REJECT THE AMENDMENT MOVED BY GOVERNMENT.
- SUPPORT THE ORIGINAL CLAUSE 42 AND BILL.

On 18th November 2104 the House of Commons voted in favour of 'New Clause 2', now clause 42 of part 4 of the Bill, this would enable pub tenants being treated unfairly the opportunity to police their own agreements and if they felt it necessary, upon notice, to source their products from any supplier whilst paying a, genuinely determined, open market rent - a market rent only (MRO) option. This would promote more viable, sustainable, pubs and deny those large pub owning companies exploiting the tied terms the opportunity to take more than a fair share of a pubs profits.

The principle of presenting a *detailed* new clause to the House of Commons to be incorporated into the Bill, rather than a vague proposed amendment, was to ensure MP's knew, and understood, what they were voting for and to ensure that as little as possible was left to the vagaries and risk of dilution by secondary legislation. The Governments new proposed, amended, new clause 42 seeks to undermine this principle intent.

Government promised, and Baroness Neville Rolfe reiterated, that they would consult with the industry on any amendments they were considering proposing - they did not. **We are not against necessary amendments to the Bill but these need to be consulted upon properly and drafted accordingly and we encourage peers to indicate they are "not content" in order to promote appropriate discussions between now and Report Stage.**

Between the 2nd reading in the upper House and now, a series of amendments have been moved by peers, and most recently by the Government. The latter, particularly, seek to water down the new clause 42 and effectively demand the House of Lords to vote on obliterating the detailed primary legislation that was supported the House of Commons for something vague and yet to be determined.

The 'formula' that Members voted for has now reached an almost unrecognised form rendering it vulnerable to pubco lobbying and ultimate manipulation.

- **Parallel rent Assessment (PRA)** Needs to be available to all tied tenants. This was a major breakthrough informing and empowering tenants and leveling the negotiating playing field with their pub owning companies. This is a tool enabling a tenant to consider whether the primary objective of the Bill is satisfied - to ensure that a tied tenant is no worse off than if they were free of tie. PRA is also needed before a tenant considers a Market Rent Only option, to establish whether their tied terms are fair or not.
- **Threshold of applicability of MRO (now proposed by Government at 500 'tied' pubs)** Our drafted threshold ensures MRO is available to ALL tenants and lessees of pub-owning companies that own more than 500 leased and tenanted pubs of any type (leased, tenanted, franchised, managed etc.). Ensuring that once above a certain market threshold of pub ownership (500 about 1%) a pub owning company is obliged to comply with, and offer, the protection of the new legislation to all their tenants.

**Government proposed threshold promotes rolling program of acquisition and tenant eviction.** A company can stay under 500 tied pubs enabling them to game the legislative intent. With the Gov't proposed threshold, a pub owning company can aggressively acquire and expand to 1000's of pubs, have a massive market share, and be immune from

legislative intent, just like the outcome of the Beer Orders in 1989. we should have learned this lesson from the Beer Orders in 1989.

- **Trigger Points for MRO**

Existing statutory provisions are NOT effective protection to tied tenants. The obligations, unique to tied agreements, permit pub companies to restrict product choice and alter price, at will, to any level. Developers and brewers are using these terms to effectively 'evict' existing tenants where they desire vacant possession either for redevelopment or, in the case of brewers, to absorb into their managed estate, circumventing the tenant's protection and legislative intent of the Landlord and Tenant Act 1954. MRO would offer a protection against such rapacious behaviour.

Government are proposing leaving out two of the drafted Bill triggers enabling the MRO process to be initiated, if a pub owning company goes into administration and sale of title.

**Administration MRO trigger**

Some directors of Enterprise are now registered as directors of around 20 companies - many off the shelf and dormant. Our view is this is a prelude to administrating and splintering the company to game the legislation.

An administrator is required by the Insolvency Act to perform functions with the objective of achieving the three-tier statutory purpose of the administration. The value of a pub should not be affected by triggering MRO. If it is being said that it does, then there is an admission that the intangible income from profit from the tie has been inappropriately, possibly illegally, factored into valuations. We anticipate the presence of this trigger event for MRO will deter prospective purchasers who's intent is to exploit the tied terms and restrain pubcos from gaming the legislation.

**Transfer of title MRO trigger**

The presence of this trigger event for MRO will deter prospective purchasers who's intent is to exploit the tied terms and it ensures that we do not simply see a property swap from pubcos to brewers, unless the tied terms are first agreed with the tenant in occupation.

The removal of Transfer of Title as a trigger event invites ambiguity in circumstances in which the new owner might (and almost certainly would) change the range of products being made available and/or the price. The combination of the loss of this trigger and the Government proposed threshold, leave the tenant with no legal recourse if a pub company use the tied terms to undermine their viability and force their financial instability.

Fair Deal for Your Local believes that the MRO process, and the majority of the rest of the Bill should remain as intended. A few procedural amendments to iron out the difficulty of inserting a whole new far-reaching clause into a previously drafted Bill may be required and we would welcome the opportunity to discuss these with Government before Report Stage. Government proposed their recent amendments without the dialogue with tenants expressed by Baroness Neville Rolfe at Second Reading.

Our solution provides a fair platform which encourages, IS NOT against, a balanced product tie, and ensures a fairer split of the revenue of a pub with fair rents.

**FURTHER INFORMATION**

Should you have any queries or require any additional information during the process please do not hesitate to contact :

Simon Clarke

**The Fair Pint Campaign**



# FW: Negotiations

12 August 2015

11:39

-----Original Message-----

From: Dave Mountford  
Sent: 29 January 2015 14:12  
To: McLynchy Julie (CCP)  
Subject: Re: Negotiations

Julie

Thanks for this - myself and Simon have discussed this at length and I wanted to let you know that we both feel, that whilst you wish to be seen to be in discussions with all parties, another protracted round table discussion with numerous individuals could waste time.

We are more than happy to meet with you as soon as possible and discuss the pro's and cons of each important amendment, working within the existing framework that we have as at today.

I look forward to hearing from you soon.

Dave

> On 29 Jan 2015, at 13:08, McLynchy Julie (CCP) <[redacted]> wrote:

>

> Dave

>

> Thank you - yes I've picked up your voicemail message too. We're working out at the moment how best to take things forward in terms of the different discussions that need to take place and will be in touch soon.

>

> Best wishes

> Julie

>

> Julie McLynchy [redacted]

> -----Original Message-----

> From: Dave Mountford  
> Sent: 29 January 2015 11:52  
> To: McLynchy Julie (CCP)  
> Subject: Negotiations

>

> Julie

>

> Morning - i have left a message on your answer phone along with a couple of your colleagues, but i felt it important enough to follow it up with this e mail.

>

> Having been involved with Labour's discussions regarding the Lord's amendments it is my understanding that we are now potentially entering into a period of discussions to make sure that this bill proceeds and is both workable and avoids every opportunity to be circumvented once in place.

>

> I am obviously very keen to represent the GMB as part of that process and hopefully look forward to hearing from you so that myself and Simon can discuss the practicalities from the point of view of tenants.

>

> Speak soon hopefully

>

>

> Dave Mountford

## FW: SMALL BUSINESS BILL - PART 4 PUBS.

30 July 2015

14:38

**From:** McLynchy Julie (CCP)  
**Sent:** 29 January 2015 18:11  
**To:** siclarke; Swinson MPST; Cable MPST  
**Cc:** [redacted]  
**Subject:** RE: SMALL BUSINESS BILL - PART 4 PUBS.

Simon

Thank you for this. As you can imagine we are urgently working out how best to take this forward, so that we have a process which makes the best use of everyone's time and maximises the chances of reaching agreement. I agree we need to get meetings arranged quickly and we will be in touch soon.

Best wishes  
Julie

[redacted]

**From:** Simon Clarke  
**Sent:** 29 January 2015 14:19  
**To:** Swinson MPST; Cable MPST  
**Cc:** McLynchy Julie (CCP); [redacted]  
**Subject:** SMALL BUSINESS BILL - PART 4 PUBS.

Dear Dr Cable

I following with great interest the House of Lords Grand Committee debate yesterday.

Clearly there are a number of issues from various parties both with the clause as FDFYL proposed and now with the amendment proposal to replace it Government.

Government have persuaded that the replacement clauses offered to replace clause 42, as it stood, provide a 'cleaner' platform for negotiation and dialogue. On an undertaking from Baroness Neville Rolfe, the peers, somewhat reluctantly, permitted the Government amendment to pass on to the Report Stage on the face of the Bill.

I have to say the last round table meeting with BIS seemed somewhat uncoordinated, there was no agenda and, rightly or wrongly, it was the distinct impression of the representative organisations that BIS had called the meeting in order to presented for discussion the Governments proposed amendments, later tabled at the Lords. This is not what ended up happening and many very much felt the spirit of the promise, to have meaningful dialogue and consult, had not been achieved, especially when the Government proposed amendments came to light with no pre warning. I would hate to see a re run of that event as I think we all need to be working together on this to avoid ping pong between the Houses and delays to the Bills passing.

It is my understanding that the Report Stage will be around the end of February/early March and to that end I think it would be good to commence meaningful dialogue as soon as possible.

As you hopefully know we are keen to work with Government on a workable package for tenants of large pub owning companies and to that end I would propose that a small contingent of representatives meet with BIS officials fro a preliminary discussion concerning outstanding issues and seek to prepare agreed objectives before now and report stage. The ultimate goal is surely to have a finished product that tenant groups can support and ease the passage of the Bill in its entirety through the peers Report Stage, and indeed when the Bill arrives back in the Commons.

The nature of the process at this stage seems stressful and uncertain for all concerned and therefore I hope there will be an opportunity to meet with BIS officials next week to start the ball rolling as early as possible towards what I hope will be a common objective.

Yours sincerely

SIMON CLARKE

[redacted]

**THE FAIR PINT CAMPAIGN**

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# FW: Meeting following Lords Committee

30 July 2015

11:41

**From:** McLynchy Julie (CCP)  
**Sent:** 30 January 2015 17:24  
**To:** Simon Clarke; Dave Mountford; george scott; Tim.page  
**Cc:** [redacted]  
**Subject:** Meeting following Lords Committee

Dear Tim, Simon, George, and Dave

Following the Lords Committee debate on Wednesday, we are arranging further consultation meetings with our stakeholders to talk through in more detail concerns with the MRO clauses (in particular) and areas where you think we should be considering making government amendments. I'm keen to meet as soon as we can and to that end would like to invite you to a meeting at BIS on Wednesday 4 Feb from 1.30-2.30. The meeting will be with officials (me and my team and our lawyers). We are keeping these meetings deliberately smaller than the roundtables we've previously held but because of time constraints we are proposing to meet in small groups rather than lots of individual meetings.

We do not have a list to talk through, rather in the light of the current draft of the Bill we'd like:

- a sense of the issues which are your top priorities,
- those which are more of a 'nice to have' and
- given that issues were raised in Committee on both sides of the argument, any thoughts you have on issues where we might try to find common ground among the different positions in the sector.

I hope we will see you on Wednesday – please let me know whether you can make it (I am out on Monday however so will come back to you on Tuesday if there are any problems)

Kind regards  
Julie

[redacted]



## FW: Meeting following Lords Committee Stage

29 July 2015

14:09

**From:** McLynchy Julie (CCP)  
**Sent:** 30 January 2015 16:53  
**To:** Kate Nicholls; Martin Caffrey; 'Tim Hulme ([redacted])'  
**Cc:** [redacted]  
**Subject:** Meeting following Lords Committee Stage

Dear Kate, Martin and Tim

Following the Lords Committee debate on Wednesday, we are arranging further consultation meetings with our stakeholders to talk through in more detail concerns with the MRO clauses (in particular) and areas where you think we should be considering making government amendments. I'm keen to meet as soon as we can and to that end would like to invite you to a meeting at BIS on Wednesday 4 Feb from 11am-midday. The meeting will be with officials (me and my team and our lawyers). We are keeping these meetings deliberately smaller than the roundtables we've previously held but because of time constraints we are proposing to meet in small groups rather than lots of individual meetings.

We do not have a list to talk through, rather in the light of the current draft of the Bill we'd like:

- a sense of the issues which are your top priorities,
- those which are more of a 'nice to have' and
- any thoughts you have on issues where we might try to find common ground among the different positions in the sector.

I hope we will see you on Wednesday – please let me know whether you can make it (I am out on Monday however so will come back to you on Tuesday if there are any problems)

Many thanks

Julie

[redacted]

