


FW: Small Business, Enterprise & Employment Bill Report Stage Debate

05 August 2015
09:26

Subject	FW: Small Business, Enterprise & Employment Bill Report Stage Debate
Attachments	 Small Busi...

[redacted]

From: Kate Nicholls [redacted]

Sent: 09 March 2015 09:21

To: [redacted]

Subject: Small Business, Enterprise & Employment Bill Report Stage Debate

In advance of today's Report Stage Debate on the Small Business, Enterprise & Employment Bill, please find attached a short briefing note from the ALMR, the trade body for pub and bar operators, on Section 4.

Kate Nicholls
Chief Executive

[redacted]

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Following Grand Committee Stage in the House of Lords the Government has tabled a number of amendments to make the Market Rent Only (MRO) option workable and legally robust. They are grouped under four headings:

Extending Code protections when a pub is sold

- The ALMR supports the Government's amendment to extend the Code protections to those tenants (whose pub is sold to a company which is not in scope of the Code) up to their next rent review (or the end of their lease if that is earlier). This would give them the right to continue to refer any breaches of the Code to the independent Adjudicator. The issue here is not the sale or disposal of property per se which gives rise to any concern but rather the behaviour of the landlord post sale.

Retaining Parallel Rent Assessment (PRA) for existing tenants

- Following the introduction of the MRO option at Commons Report, the Government restricted PRA to prospective tenants, as they would not have the right to MRO. It is important that this is readily available and not dependent on the rental negotiation breaking down. The Government has since accepted that the PRA should also be retained for existing tenants, so those who do not want to choose the MRO option can nevertheless ensure they are being offered a fair tied deal. The Government also recognises that the transparency provided by a PRA may help tenants to decide whether the MRO option is for them.
- The ALMR supports this and believes the ability to request a PRA without having to trigger MRO will build dialogue and negotiation throughout the relationship but there is a need to ensure that the two mechanisms can work effectively, to avoid duplication and unnecessary bureaucracy.

Protecting brewers' route to market

- The ALMR supports the Government's proposals to provide clarity on the face of the Bill to provide for exclusive stocking requirements for brewery owned pubs. This is important to protect investment and brand.

Permitting tenants to defer MRO in exchange for substantial investment

- The ALMR support the Government's proposal for a limited opt out from MRO triggers at contractual rent review points. We believe that the length of such an opt out should be aligned to the landlord's ROI period or the period over which the investment would be rentalised and that this should be disclosed to the lessee at the outset. We are reassured that the Government will address this through the Code and therefore believe that there is no need to set this out on the face of the Bill.
- However, we do not support the suggestion from Government that the ability to defer an MRO should be dependent upon the lessee agreeing a new lease. Were this to be the case, it would impose significant legal costs and stamp duty on the tenant and we seek reassurances from the Government that they will not make it a requirement.

Franchises

- The ALMR supports the Government's position on franchise arrangements ie that franchise pubs remain in scope of the Code and will count towards the 500 tied pub threshold. The ALMR also supports the Government's suggestion to use the powers granted in Clause 71 to exempt genuine franchise agreements.

For these reasons ALMR does not support amendments tabled by Lord Mendelsohn and Lord Stevenson to introduce a new clause after Clause 42; Lord Hodgson on Clause 42 and 43; and Lord Whitty on Clause 69.

For further information please contact: Kate Nicholls, CEO, ALMR

FW: SMALL BUSINESS EMPLOYMENT AND ENTERPRISE BILL - PART 4 - PUBS

12 August 2015
11:53

From: siclarke
Sent: 11 March 2015 15:27
To: Swinson MPST
Cc: [redacted]; McLynchy Julie (CCP)
Subject: SMALL BUSINESS EMPLOYMENT AND ENTERPRISE BILL - PART 4 - PUBS

Dear Jo

Just a quick note to you and the BIS team who have worked so hard on this issue.

I know with such distrust and suspicion between the parties we will have collectively not given you an easy task and whilst there are still some things we would like to see in the Bill I do appreciate the time and effort that has gone in thus far. I believe the Bill as it now stands is a substantial step forward and whilst I anticipate the pubco's using the consultation period to their fullest potential and cashing in where possible I am hopeful that in the medium to longer term the pub sector will become a much better place.

Please convey our thanks to Dr Vince Cable and commend the team for what I would imagine is a fairly thankless task.

I see the [redacted] are still seeking to undermine the PRA for existing tenants, it seems odd they had no real issues with it for new tenants which rather proves the point we were making, it would have had no effect if existing tenants did not have this facility. The reintroduction of PRA is a most welcome amendment.

If there are any further consultations regarding this or any other Part 4 issue I hope you will consider discussing them with a wide cross section of industry representatives. Fair Pint Campaign would certainly welcome the opportunity to continue to work with Government on any proposed amendments that may be presented at Third Reading in the House of Lords or indeed when the Bill goes back to parliament.

Kind regards.

SIMON CLARKE
THE FAIR PINT CAMPAIGN

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FW: response from Simon

30 July 2015

11:48

[redacted]

From: siclarke
Sent: 24 March 2015 13:00
To: [redacted]
Subject: RE: Comfort letter

Understood and hope you're right but thought I should mention it early on.

I suspected it may be a secondary consultation issue.

Regards.

Simon

Sent from Samsung Mobile

----- Original message -----

From: "[redacted]"
Date: 23/03/2015 18:50 (GMT+00:00)
To: [siclarke](#)
Subject: RE: Comfort letter

Hi Simon,

I think your sensible comments on 'terms' go to show the value of consulting on the secondary legislation. I think I probably agree that the fact of a change in landlord will not in of itself trigger a rent review but I'm optimistic that on that specific issue at least there will not be much argument on either side. We can't add any further interpretation to the explanatory notes as they have to be restricted to the specific meaning of what is on the face of the Bill and not the detail of what the Code will say on the issue. When we consult we will definitely be able to ensure that consultation questions are likely to generate exploration of this issue by consultees.

I understand what you are saying in your second point. What I would say is that we have been clear on why we have removed the sale trigger in terms of the concern around interference with property rights and the need to reflect the decision on the threshold in the Commons, including the concerns at not overburdening family brewers. Where we have ended up with the continuation of protections is, we think, an effective and proportionate response to the issue of how the tenant is affected by a sale.

I sincerely hope and expect that the instances will be very rare where any 'non-code' pub company purchasing a 'code' pub would seek to amend agreements in the way you suggest. As you say after two years there will be a review of the Code in terms of how successful it has been against the principles it seeks to achieve.

Thanks for raising these points and on the assumption we get Royal Assent this week I look forward to discussing these and other points as we move to the secondary.

Best Regards,

[redacted]

From: [siclarke](#)

Sent: 23/03/2015 10:26

To: [redacted]

Subject: Re: Comfort letter

[redacted]

Thanks for the email.

At the risk of reopening an issue I think there might be some necessity at some point in the future to clarify what is meant by changing 'terms'.

I'd like to avoid any unnecessary disputes when we get to Code consultation stage and I can see some interpretation issues arising here if we're not careful.

Please consider this particular paragraph from the letter :

"This means that if the purchasing 'non-Code company' offers the tenant new terms that differ from their existing terms, the tenant will have the right to a rent review in line with the statutory Code. If the tenant considers that the rent review breaches the Code (e.g. if the assumptions underpinning the Fair Maintainable Trade are unreasonable) then he or she will be able to refer the alleged breach to the Adjudicator for arbitration."

The tenants "existing terms" are enshrined in their lease/tenancy, purchasing obligations (usually a supplementary contract) and the company code on offer (which may vary from company to company).

I think it goes without saying that some 'terms' will differ, the change in landlord being one obvious one, I don't think it is the Baronesses intention to permit a rent review following a change in landlord. I would have thought the suggestion is a change in terms such as product range or price would allow the tenant to trigger a rent review.

As you know the greatest concern is product pricing and restriction of product range by an acquiring, 'non-code', landlord. Clause 43 contains trigger points for an MRO if we assumed the same trigger points applied to a rent review in these circumstances, I think we can safely say that a restriction in product choice or increase in product price by the new landlord would satisfy a) and b) of 43(9). To prove c), that it has a significant impact on trade, may be practically impossible without tenant first suffering that impact. For this reason alone I think it is better to keep it simple and allow a rent review opportunity for the tenant, if desired, if their product range or price is altered following sale.

I think it would be helpful to code consultees, and indeed the Adjudicator, if BIS could be more specific. Perhaps this can be covered in explanatory notes to the Bill ?

Of course there is a second problem, having initiated a rent review and had a PRA finding, perhaps resulting in a lower rent to compensate for the restricted product range and/or increase in price, the tenant has then had their rent review and the 'non- Code' pub owning business is then Code exempt. The day after the rebalancing rent review the landlord can simply restrict the product choice further and/or increase the product price, to an unsustainable level, putting the tenant out of business and having no fear of any consequences. An MRO opportunity before sale could have stopped this.

I am guessing the latter will be the first point of order at the Code review two years after its implementation. In the mean time, I predict it will be this gap in the legislation that allows more pub closures but it will be the legislation as a whole that is blamed by the pubcos. Let's hope I'm wrong.

Regards.

Simon

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

From: [redacted]

To: siclarke

Sent: Fri, 20 Mar 2015 15:43

Subject: RE: Comfort letter

Ok, i'm glad you got it.

BTW I've just checked and it is there now

Cheers,

[redacted]

From: siclarke

Sent: 19 March 2015 20:15

To: [redacted]

Subject: RE: Comfort letter

Hi [redacted]

No problem got the letter now although it does not seem to have arrived in the library yet.

Thanks.

Simon

Sent from Samsung Mobile

----- Original message -----

From: "[redacted]"

Date: 19/03/2015 11:07 (GMT+00:00)

To: [siclarke](#)

Subject: RE: Comfort letter

Hi Simon,

Many apologies for the delayed reply. Yesterday was a blur.

I think I said when we spoke on Friday that if a letter was sent it would be laid in the House of Lords' library. We don't normally share Ministerial correspondence unless we are circulating more widely. Would you mind perhaps sourcing it from [redacted]?

As it happens what the Minister said in the Lords chamber is pretty much what the letter says and covers the topics you and I discussed on Friday. I have attached the relevant bit of Hansard.

Hope that's ok, call me or mail again if you have any questions.

Cheers,

[redacted]

From: [siclarke](#)
Sent: 18 March 2015 08:40
To: [redacted]
Subject: Comfort letter

Hi [redacted]

Baroness Neville Rolfe and Lord Mendelsohn both made reference to the 'letter' yesterday.

It does not appear to be on the bill website. Is it possible to see a copy please ?

Regards.

Simon

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FW: MRO Opt out

12 August 2015

11:38

From: Dave Mountford [redacted]
Sent: 25 March 2015 15:28
To: McLynchy Julie (CCP)
Subject: Re: MRO Opt out

Julie

Hi – I hope you are well. Im unsure what happens to you folks at election time but I suspect its business as usual whilst you wait and see if he have new faces to whip into shape.

I spoke to [redacted] recently who helped me paint a picture of the next 12 months or so – Its clear that there is still a lot to do and following discussions with Simon, we have made some very serious attempts to reach out to those from the “other side” to see if we can make discussions slightly more mutually inclusive than previously.

I am coming to London on Wednesday 22nd and Thursday 23rd and with this in mind, was wondering if either yourself or John or both have an hour free to meet myself, Simon and George to discuss the key points that still need to be discussed.

We are very keen on finding out what your priorities are and perhaps discussing our own.

Can you get back to me – Thursday morning at this moment would be better first thing, but I can rearrange Wednesday if necessary.

Look forward to hearing from you

Best wishes

Dave Mountford

From: "McLynchy Julie (CCP)" [redacted]
Date: Wednesday, 25 February 2015 17:36
To: Dave Mountford [redacted]
Subject: RE: MRO Opt out

Hi Dave

Sorry for the delay – busy day! I've forwarded your letter to Jo Swinson as requested. Thanks for copying us in. And thank you for your kind words – it is much appreciated. Hope your appointment goes well tomorrow and we'll let you know how it goes.

Best wishes

Julie

[redacted]

From: Dave Mountford [redacted]
Sent: 25 February 2015 08:03
To: McLynchy Julie (CCP)
Subject: MRO Opt out

Dear Julie

I would be grateful if you would pass on this letter to Jo Swinson as I have notified [redacted] she was one of the individuals copied in.

I suspect it won't make a great deal of difference at this late stage but every piece of evidence is I believe, vitally important.

I would just like to take this opportunity to thank you personally for your patience and support during the last 18 months or so. Im sure you have seen what an emotive issue this is to so many people and now that it is finally coming to an end I would just like to add that, whatever the outcome at the report stage of the Lords, I always felt that the BIS officials we have met, have been incredibly sympathetic to our position and have attempted to balance the legal and political requirements of the Bill, with the obvious need for reform.

Many thanks

Dave Mountford

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FW: Pubs Code and Adjudicator Implementation

05 August 2015
09:29

From: Kate Nicholls [redacted]
Sent: 25 March 2015 17:28
To: McLynchy Julie (CCP)
Cc: [redacted]
Subject: Re: Pubs Code and Adjudicator Implementation

Thank you for the email and for your help and support over the past few months. We look forward to picking up again post Election

On 25 Mar 2015, at 17:09, "McLynchy Julie (CCP)" <[redacted]> wrote:

Dear all

As you have probably seen, the Small Business, Enterprise and Employment Bill yesterday completed its final parliamentary stage when the House of Commons accepted all the amendments made to the Bill in the Lords and did not make any further changes to the Bill. The Bill will now proceed to Royal Assent in the coming days.

I am grateful to you for your constructive engagement throughout this process including during the past few weeks as the Bill has been finalised. Our thoughts now turn to implementation and we want to ensure that you all have the opportunity to contribute, building on the engagement that has taken place before and during the Bill process.

We are about to enter the formal pre-election period ("purdah"). Whilst the government remains in place until such time as a new one is formed, Ministers are restricted in the decisions they can make during purdah. Broadly speaking, ministers' involvement in policy during purdah will be limited to economic shocks, international events requiring ministerial attendance, and responses to crises. As officials we are unable to engage externally on matters of substance during this period. So we will be in touch about implementation once there is a new government in place.

We look forward to continuing to work with you.

Best wishes

Julie

[redacted]

FW: Pubs Code and Adjudicator Implementation

04 August 2015

16:14

From: Tim Hulme [redacted]
Sent: 26 March 2015 11:38
To: McLynchy Julie (CCP)
Cc: [redacted]
Subject: RE: Pubs Code and Adjudicator Implementation

Thanks Julie and please be assured of our continued support

Regards...Tim

Tim Hulme
Chief Executive
British Institute of Innkeeping
[redacted]

From: McLynchy Julie (CCP) [redacted]
Sent: 25 March 2015 17:09
To: McLynchy Julie (CCP)
Cc:
[redacted]**Subject:** Pubs Code and Adjudicator Implementation

Dear all

As you have probably seen, the Small Business, Enterprise and Employment Bill yesterday completed its final parliamentary stage when the House of Commons accepted all the amendments made to the Bill in the Lords and did not make any further changes to the Bill. The Bill will now proceed to Royal Assent in the coming days.

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We look forward to continuing to work with you.

Best wishes

Julie

[redacted]

FW: Pubs Code and Adjudicator Implementation

04 August 2015

14:54

From: Jonathan Mail [redacted]
Sent: 26 March 2015 12:52
To: McLynchy Julie (CCP)
Cc: [redacted]
Subject: Re: Pubs Code and Adjudicator Implementation

Dear Julie -

Thank you very much to yourself and your team for all your work on the Bill. We are pleased with the outcome and believe that it be really positive for the future of the pub sector.

I look forward to being in touch after the Election. I hope that in the meantime you have an enjoyable and relaxing few weeks.

Best wishes

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

[redacted]

On 25 March 2015 at 17:08, McLynchy Julie (CCP) <[redacted]> wrote:

Dear all

As you have probably seen, the Small Business, Enterprise and Employment Bill yesterday completed its final parliamentary stage when the House of Commons accepted all the amendments made to the Bill in the Lords and did not make any further changes to the Bill. The Bill will now proceed to Royal Assent in the coming days.

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We look forward to continuing to work with you.

Best wishes

Julie

[redacted]

