 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	27 January 2015	
RPC opinion date and reference	19 February 2015	RPC13-BIS-1717(5)
Departmental assessment		
One-in, Two-out status	IN	
Estimate of the equivalent annual net cost to business (EANCB)	£2.76 million	
RPC overall assessment	GREEN	
<p>RPC comments</p> <p>The IA is fit for purpose. The RPC rated a previous IA fit for purpose prior to the Government introducing the legislation into Parliament. This adjusted IA amends the analysis to take account of Parliament’s decision to require large pub companies to offer existing tenants a ‘<i>mandatory free of tie / market rent only (MRO)</i>’ option in some circumstances, with the previously proposed parallel rent assessments applying for new tenants.</p> <p>The RPC can validate the equivalent net cost to business of £2.76 million each year as robust. The cost has increased marginally from the £2.69 million each year prior to inclusion of the MRO option. The Department explains that the additional cost is justified on the basis that many people believe that pub-owning companies need the threat of tenants going free-of-tie before they will offer a fair tied deal. The increased cost of MRO is expected to be partially offset by fewer parallel rent assessments than in the previous analysis.</p>		
<p>Background (extracts from IA)</p> <p>What is the problem under consideration? Why is government intervention necessary?</p> <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</i></p>		

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 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 principles of: ‘fair and lawful dealing’ and that the tied tenant should be no worse off than a free of tie tenant.”

Comments on the robustness of the OITO assessment

The IA says this is a regulatory proposal that would impose a net cost on business (an IN), with an estimated equivalent annual net cost to business of £2.76 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 businesses owning fewer than 500 pubs would be exempt from the more burdensome aspects of a statutory code and from being required to offer market rent only options.

Pub tenants, largely small and micro-businesses, are the beneficiaries of this proposal.

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. Parliament’s decision to require large pub companies to offer a mandatory free of tie option, while adding to the burden on business, is also intended to reduce unfairness in the market. Where pub companies are required to offer an MRO option, and there are disputes regarding the level of market rent, there will be recourse to independent assessment jointly funded by the tenant and the pub company. The intention is to drive fairer behaviour by pub companies and ensure tied tenants are likely to be no worse off than free of tie tenants. The IA estimates that 24,000 of the 50,000 pubs in England and Wales are owned by pub companies and managed by tied tenants.

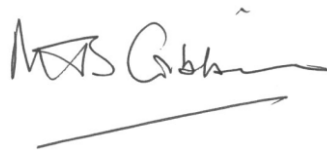
The IA estimates that, once the system is established, independent assessments in relation to disputed MROs will cost pub companies £2 million each year, with parallel rent assessments for new tenants costing pub companies £0.3 million and tenants £60,000 each year. The IA estimates that the adjudicator will cost £0.5 million to set up and £1.6 million to operate each subsequent year. The RPC is able to validate the equivalent annual cost to business of £2.76 million.

The IA also sets out other expected impacts that do not affect the net costs of the proposal. In particular, the Department has identified that the proposal is likely to result in a transfer of profits from pub companies to tenants where contracts are currently operating unfairly. In these cases, the proposal would result in benefits to tenants and lost profits to pub companies. As the Department has correctly assessed these as transfers between two businesses, there is no net impact on business.

Because there is significant uncertainty regarding the level of unfairness in the market, the Department has not sought to estimate the exact level of the impact. However, for illustrative purposes, the IA states that, if all 24,000 tenants were currently being treated unfairly, the upper bound of this impact could be £140 million each year (nearly £6,000 per pub each year).

The IA also recognises that requirements to offer free of tie options are likely to impact on the profitability of the ownership of some pubs for pub companies. This is likely to result in a number of pubs being sold, with a proportion of these closing. The IA estimates that the lost profit to business, as a result of these pub closures, is likely to rise over time to £16.7 million each year. In line with the Better Regulation Framework Manual and previous RPC opinions, the Department has assessed these as indirect costs of the proposal.

Signed



Michael Gibbons, Chairman