



Pubs Code
Adjudicator

RESPONSE 23





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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

Response Form



Annex C: Response Form

Name: [REDACTED] (Star Pubs & Bars)

Organisation (if applicable): Star Pubs & Bars (HEINEKEN UK)

Address: 3-4 Broadway Park, South Gyle Broadway,
Edinburgh, EH12 9JZ

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 checked="" type="checkbox"/>
Tied pub tenant	<input type="checkbox"/>
Interest group, trade body or other organisation	<input type="checkbox"/>
Other (please describe)	

Accounting for Duty Paid

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

As a brewer and pub company, we are well placed to understand the requirements to inform our licensees about duty that has been paid on cask ale supplied to them.

While we believe that it is important that tied pub tenants are fully informed of the duty that has been paid on the alcohol supplied to them, it is also important to state our view that no Star Pubs & Bars licensee has been disadvantaged due to our approach to sediment and wastage to date. It has been alleged in the media by some campaigners that tied pub tenants are being misled and rents are being set which are unfair due to sediment not being properly accounted for. We wholly reject this argument.

Not only do we operate a generous waste allowance across all draught beer and cider, we also explain this to our tenants. We support transparency, but it is also

important that the PCA does not require additional complexity where it is not necessary and adds little value, or makes it more difficult for POBs to offer a wide range of local cask beers brewed by small brewers.

As a brewer and pub company, we are well placed to understand the requirements to inform our licensees about duty that has been paid on the alcohol supplied to them and HMRC 'Excise Notice 226: Beer Duty' allows breweries to exclude an agreed quantity of beer (cask ale) from paying duty, as, due to the cask conditioning process, it will not be drinkable as it will contain sediment. It is a mandatory requirement for us to communicate to licensees the quantity of beer (cask ale) on which we have paid duty.

We believe paragraph 6.2 of the consultation document misrepresents the requirements of brewers under 11.3.5 of 'Excise Notice 226: Beer Duty'. The brewer is only under an obligation to inform the customer of the *quantity* of beer (cask ale) on which duty is paid. This also only relates to beer where *cask* sediment allowance is taken. There is no obligation to inform the customer of the *value* of duty paid on any alcohol supplied to the customer. What the PCA is asking for is beyond the obligations of Excise Notice 226.

Paragraph 6.3 of the consultation goes on to state that *"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."* However, Schedule 2 only requires pub companies to provide details of the *volume* of alcohol on which duty has been paid, where that differs from it being on the full volume of that product i.e. applicable to cask ale where sediment allowance relief has been claimed by the producer. It does not require details of the actual duty *paid*. We believe that paragraph 6.3 appears beyond the scope of this consultation - any issues of compliance with Excise Notice 226 should be addressed by HMRC. We note HMRC are not on the list of organisations consulted as part of this review process.

Paragraph 6.4 goes significantly beyond the requirements of HMRC that are relevant to all brewers. Compliance to Excise Notice 226 should be addressed by HMRC. Brewers can notify customers in many ways (price list, delivery notes, container labels). There is not a requirement to specifically label kegs or to notify customer of dutiable volumes in products (other than cask beer where sediment allowance has been utilised).

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

N/A

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

We interpret the proposals that if we didn't comply with these new provisions, we wouldn't be able to supply certain products to our pubs, which is very concerning. Even if larger brewing businesses (such as ourselves) were able to implement these changes, it would take us time and add cost and complexity to our systems and processes.

Smaller producers who supply POBs may not be able to implement these changes at all. This would restrict the choice of beer available to our licensees (and ultimately the end consumer). Our main concern is therefore around the unintended consequences the proposals would have on our partnership with the Society of Independent Brewers (SIBA) as well as other third party products which we supply to our pubs.

We provide all our leased and tenanted licensees the opportunity to purchase third party products and access the SIBA Beerflex scheme, where (mainly cask) beers are delivered directly to licensees by a small brewer participating in the scheme. We are invoiced via SIBA and do not currently have access to details of the sediment allowance for all these brewers. We understand SIBA are planning to collect this information from Beerflex participants and then provide them to us but this is not yet in place and will take some time to set up and collect from several hundred small brewers. We hope that these proposals will not limit the ability of our licensees to access a broad choice of beers into our pubs.

Cask beer sales remain a relatively small proportion of sales value for most pubs, and it is important therefore that the PCA is pragmatic. We would recommend that the PCA consults in detail with SIBA to understand the full implications and considers the relative importance of whether the exact sediment allowance is known for an individual cask with the simplicity and pragmatic approach of allowing an average or indicative allowance.

Accounting for Waste

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

It is fair and reasonable that licensees know how pub companies calculate sediment allowance and operational wastage in rent assessments. We believe we operate a generous and transparent wastage policy (sediment allowance and waste combined) which benefits our tenants, and this is detailed below.

All licensees should be aware of sediment issues around beer in casks as a key part of running their business. This is not a new issue – it is normal in the pub industry and has always been the case. What is being suggested is a move away from how the industry has operated in the past and will require some fundamental changes to systems. We have always accounted for sediment allowance and wastage allowance together before, and have never had any issues or concerns from licensees about that. We would therefore question the need for change and benefit that this will bring to licensees.

Our rent assessments are calculated according to RICS guidelines, and based on a variety of factors relevant to that individual pub. They illustrate the overall picture of wet and dry sales, profitability and costs as achieved by a reasonably efficient operator on that specific agreement. The valuation assumes they will get more yield on certain products such as lager, and lower yields on other products due to waste. Licensees have an understanding of how adjustments have been incorporated within different parts of the P&L account, and therefore how this impacts profitability calculations.

In principle, we have no issue with the proposal to account for sediment and operational waste separately. We do, however, have some concerns with the proposed implementation timings. Given we will not know the outcome of this consultation until March, our preference would be for an implementation date in the Autumn. This is a complex issue and it will take time to work the changes into the variables of our rent modelling process.

We have always accounted for beer sediment in our rent assessments in an open and transparent manner, and believe we operate a generous wastage policy which benefits our tenants. Our explicit wastage allowance (sediment allowance and waste combined) is calculated by assuming 8 out of 288 pints (2.78%) are unsaleable. The net sales value of these wasted pints are calculated and then deducted from the gross wet profit of beer and cider sales.

The 2.78% allowance is only taken from draught beer & cider products. We have included below a simplistic calculation highlighting the principle below – the key point to note here is by applying an allowance based on sales value to a gross profit amplifies the financial benefit of the waste allowance. In this example the effective yield is circa 95% or effective loss of 16 pints out of 288.

	Net RSP	Barrels Sold	Net Sales Total	Barrels Purchased	Purchase Cost	GP Value	GP%	
Draught Sales	2.92	213.75	179,550	213.75	85,500	94,050	52.38%	
Packaged Sales	2.92	11.25	9,450	11.25	4,500	4,950	52.38%	
Wastage						-4991.49		<i>2.78% of Draught sales</i>
B&C Sales		225.00	189,000	225	90,000	94,009	49.74%	
W/S/Mins			47,250.00			31,185	66%	
Total Wet			236,250			125,194	52.99%	

Our current practice for accounting for waste has been agreed with and accepted by tenants groups over many years. It is also consistent with RICS Valuation Guidance and importantly complies with paragraph 5 (f) of Schedule 2 of the Code – accounted for in the gross profit margin.

In summary, whilst we are happy with this proposal in principle, we would ask for additional time to implement any changes. We hope that greater clarity and transparency on how these calculations are made should allay concerns on this issue. Whether they are calculated together or separately is not something that concerns us, we would just welcome additional time to implement any proposed changes.

Question 5: If not, please explain your objections.

See above.

Sediment Waste

Question 6: Do you believe that these proposals will ensure that tied pub tenants 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?

This question assumes information about unsaleable beer was not clear before these proposals were put forward. We believe this information was clear – each pub owning business may calculate the allowance slightly differently but the overarching principle of saleable volume remains the same. It's like baking a cake – it's the same ingredients put in a different order but it still makes the same cake. As stated above, we would request additional time to implement any proposed changes. An extension to the timetable would not be at the detriment of licensees.

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

N/A

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

It could be argued that these proposals – to provide more information on duty allowances and how wastage is calculated - is a SCORFA benefit. The Act states that a tied licensee should be no worse off than a free of tie licensee. An unintended consequence of these proposals could be that a free of tie licensee could be worse off than a tied licensee, and it advantages a tied pub tenant. This is not the purpose of the Act.

Operational Waste

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

Whilst a more detailed presentation may provide greater clarity, we would question whether the proposals provide more consistency. We can't guarantee that products supplied under their agreement will be saleable or unsaleable. Operational wastage will vary from pub to pub. Whilst we can make assumptions, the effect of the distance from cellar to dispense we can't control, and nor should we influence the way a licensee runs their own business. Ultimately the question should be how does a licensee monetarise their stock purchases. Whilst sediment and operational wastage are two considerations, there are many other variables that can also influence that outcome.

Furthermore, as stated in previous answers, we are unaware of issues around this and have not received concerns from our licensees.

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

N/A

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

As we have outlined above, changes to account systems and internal processes will take some time. The deadline for the proposals to be implemented by 1 April 2019 should be made more realistic to ensure changes do not incur disproportional costs.

Training and Support

Question 12: Do you have any comments on the proposed approach to access to training for tied pub tenants?

We already provide training on cellar management through both our Inside Knowledge Course as well as our Passion for Quality Courses.

Inside Knowledge is a one week residential workshop which is mandatory for all new Star Pubs & Bars licensees and is all about getting their pub off to the best possible start. It is an interactive course covering all areas of compliance. As part of the programme in house cellar training is included plus access to the one day workshops Star Pubs & Bars run throughout the year which include cellar management and beer quality.

Our Passion for Quality workshops run by Edward Theakston cover all aspects of the bar and cellar management including key information like how to get the best of your cask ales in terms of quality and yield. This is open to all licensees to attend and is run on a regular basis.

We already provide training and refresher training for licensees and believe businesses should be given the flexibility to develop their own approaches.

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

The definition of the BDM role under the code is wide and covers a number of roles within pub company organisations. Our view is that training should only be relevant to roles involved in business development and rental matters. Consequently the BDM role as defined in the code needs to be narrowed in respect of this training requirement.

Office of the Pubs Code Adjudicator

This document can be accessed at 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 Floor
Victoria Square House
Victoria Square
Birmingham
B2 4AJ

Tel: 0800 528 8080

Email: office@pubscodeadjudicator.gov.uk

