



Pubs Code
Adjudicator

RESPONSE 15





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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:

Organisation (if applicable):

Address:

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="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?

We believe that the proposal exceeds the requirements of the Pubs Code and HMRC Excise Notice 226.

Schedule 2. 5(c) requires POBs to provide details of the volume of alcohol on which duty has been paid; it does not require details of the actual duty paid. The proposal refers to the duty paid, this requirement exceeds both the requirements under Excise Notice 226 and the current requirements of the Code and the information is not relevant in respect of providing clarity to the TPT in accounting for the volume of alcohol on which duty has been paid.

The Pubs Code Regulations Schedule 2. 5 (c) refers to the difference between the volume of alcohol purchased and, if different, the volume of alcohol in respect of which duty was paid in the last 3 years.

Excise Notice 226 relates to the volume of undrinkable product and the volume of beer on which duty has been charged. It does not require the brewer to notify the customer of the amount of duty paid.

The proposal would remove the option within Excise Notice 226 to provide this information on the delivery note only, which may be the preferred option of some parties.

The proposal is more prescriptive than Excise Notice 226 and the proposed changes are unnecessary as compliance with Excise Notice 226 will ensure that the TPT is provided with the necessary information in relation to the volume on which duty paid has been paid, where known, and that the POB is compliant with HMRC regulations.

The PCA requirements should replicate the provisions within the Excise Notice 226.

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

We are of the opinion that the proposal exceeds the provisions of Excise Notice 226 and fails to take into account Reg. 16 (2) in respect of rent proposals, which states 'A pub-owning business is not required to comply with paragraph (1) (c) in respect of any information in Schedule 2, which is not reasonably available to the pub-owning business. Reg 20 (1) (b) makes the same stipulation in respect of rent assessments.

There will be instances where information is not available i.e. products are supplied by third parties, the Code recognises this and these provisions should apply where relevant.

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 foresee unintended consequences with smaller brewers, in particular, those in receipt of small business duty allowance may not be able to implement these changes and are not party to or subject to the Pubs Code. The proposal increases red tape and the bureaucratic burden being place on brewers. This may lead to a

reduction in choice of products available to Tied Pub Tenants. There may also be cost implications to implement any changes.

Accounting for Waste

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

We confirm that we are willing to agree to account for sediment and operational waste separately. We would confirm that we have always made an allowance for waste in our forecast profit and loss statements provided as part of our rent proposals and rent assessment proposals.

Changes to the method of accounting for waste will however entail significant changes to our valuation model which will take time to implement.

There are potentially different ways to account for both elements of waste within the valuation, as long as any information required is included together with an explanation then individual POB should be able to choose how they incorporate the information into the valuation.

The proposal will add further complexity to the profit and loss calculation and is unlikely to have a significant effect on the valuation, as an allowance in respect of waste, albeit a composite figure, is already included within the calculation.

Question 5: If not, please explain your objections.

N/A

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?

We currently provides TPT with details of sediment in cask- conditioned products. We also make an allowance for waste in our rent proposals and rent assessment proposals. Whilst each of our tied pub tenants will continue to receive a consistent approach in respect of sediment. Each POB will operate in a different manner as they are separate commercial organisations. There will therefore be potential differences between the individual approaches adopted by each POB.

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

We believe that flexibility to implement any additional requirements in respect of profit and loss calculations by POB will enable each POB to provide the requisite information in a clearer manner within their own individual rent assessment/ proposal formats.

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?

N/A

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?

We believe that the separating of sediment and operational waste will provide clarity between the two elements of waste.

However the proposal that operational waste is calculated on a site by site basis, with regard to the specific bar and cellar configuration at the individual premises, taking into account the length and arrangement of beer lines and cleaning systems will in itself introduce more inconsistencies, due to the differing circumstances and operational methods adopted at the individual sites.

It is assumed that the reasonably efficient operator will implement the most effective and efficient methods of working.

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

We are of the opinion that a single operational wastage line within the profit and loss assessment taking into account the proposed factors and providing an explanation would providing the clarity required, without over complicating the proposed changes in the rental assessment. The TPT would have clarity in respect of operational waste.

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?

We would request that sufficient time to implement any changes required be provided in order to ensure that the changes implemented are done in an effective and efficient manner.

Training and Support

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

We believe that this proposal exceeds the requirements of the Pubs Code which stipulates that the POB must advise all tied pub tenants entering into a substantive agreement to undertake re-entry training prior to entering into their agreement (Regulation 9 (1)) unless they qualify for a training waiver in accordance with Regulation 9.3.

The Code places an obligation on the POB to commit to 'professional development and improvement' in respect of its BDM's Reg 41 (5) (a). It does not place an obligation on the POB to provide continuing and ongoing training in respect of the TPT.

Ongoing training to TPT's is currently provided as and when considered appropriate. TPT's have individual training needs relating to their own requirements and business trading format.

We provide stocktaking services to our Franchise partners. We do provide stocktaking support on a bespoke basis and if required we can arrange these for tenants, however it remains their own responsibility. We recommend that all lessees and tenants have stocktakes

We do currently provide Ongoing training and additional tools to TPT's, however this is very much done as and when considered appropriate. Each TPT has individual training needs relating to their own requirements and business trading format.

It is unclear what other technical and support services the proposal is suggesting.

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

We believe that this proposal training exceeds the requirements within the Pubs Code.

The definition of a Business Development Manager within Regulation 41 (6) (a) a person who is employed as such by a pub-owning business or (b) any other person who represents the pub-owning business in negotiations with tied pub tenants in connection with the matters listed in regulation 41 (4) (a).

Regulation 41 (3) states ' where a business development manager is responsible for conducting rent assessments or assessments of monies payable in lieu of rent, the pub-owning business must ensure that the business development manager receives appropriate training before conducting such assessment.'

Training should be undertaken by those Business Development Managers, as defined by Regulation 41 (3), who are actually dealing with providing information in relation to forecast profit and loss accounts. This will ensure training is provided to those who are actually involved in the process and accords with the requirements under the legislation.

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:

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