



Pubs Code
Adjudicator

RESPONSE 4





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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: British Beer & Pub Association

Address: Ground Floor, Brewers' Hall, Aldermanbury Square, London EC2V 7HR

Email:contact@beerandpub.com

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 type="checkbox"/>
Tied pub tenant	<input type="checkbox"/>
Interest group, trade body or other organisation	<input checked="" 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?

Paragraph 6.2 of the consultation misinterprets the requirements of brewers under 11.3.5 of Excise Notice 226. The brewer is only under an obligation to inform the customer of the quantity of beer 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 and it only relates to cask and not keg beer. If the proposed guidance is not amended to address this, the final guidance will exceed the obligations under Excise Notice 226.

Paragraph 6.3 of the consultation states 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 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. We see no benefit for TPTs in having detailed information about the value of duty paid on all keg and cask beer, what is most relevant to TPTs is the sediment allowance on cask beers

Paragraph 6.4 appears beyond the scope of this consultation, relating at it does to requirements by HMRC that are applicable to all brewers of cask ale. Any issues of compliance with Excise Notice 226 should be addressed by HMRC. Whilst some brewers will label containers with dutiable volumes, this is not a requirement of Excise Notice 226 and many will use other forms of communication allowed (e.g. price lists, delivery documents).

The proposals will not ensure that TPTs are informed of the duty that has been paid (for example small brewers may pay a reduced rate), but it should ensure that they are better informed of the volume of alcohol that is supplied to them upon which duty has been paid, where that alcohol has been provided by their POB.

However, this is reliant upon that information being provided in the first instance by the brewers and alcohol producers.

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

The Pubs Code requirements relate to the information to be provided, as far as reasonably available, for a rent proposal or a rent proposal assessment.

Not all TPTs are supplied with all of their alcohol by their POBs. Where a TPT purchases alcohol from other providers, it will not be possible for the POB to reflect the duty-paid volumes other than by estimate.

In addition, several POBs provide access to the SIBA Beerflex scheme, where (mainly cask) beers are delivered directly to tenants by a small brewer participating in the scheme but the POB is invoiced via SIBA. The POB will not have access currently for the sediment allowance for all these brewers. We understand SIBA are planning to collect this information from Beerflex participants and then provide to POBs but this is not yet in place and will take some time to set up and collect from several hundred small brewers.

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?

The existing approach to factoring in wastage allowances (both operational and sediment) are simpler and therefore by necessity include a degree of approximation and the use of averages.

Adopting the proposed approach may have the following unintended consequences:

- Resulting in a smaller allowance for some TPTs than under the current systems;

- Increasing complexity in terms of portraying the allowances and therefore a greater likelihood of confusion;
- Increased costs for the POBs in terms of administration;
- The potential that alcohol from producers that are unable (or simply don't) provide sufficient information on dutiable volumes may be excluded from the options available to TPTs. As per the response to question 2, this may mean that some smaller brewers are excluded from the range of providers because they have not provided the information that is specified in the proposal.

It is important therefore that a proportionality test is applied, for example for small volume/seasonal products, the use of averages may still be the most appropriate approach as long as any assumptions made are transparent and reasonable.

Accounting for Waste

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

We agree with this proposal to account for sediment and operational waste separately on the basis that it applies to rent assessments and rent assessment proposals and these are two distinct elements.

However, we note that the statements made in paragraphs 7.1 and 7.3 of the consultation document are inconsistent. The first paragraph (7.1) cites Schedule 2, Paragraph 5(f) which specifically states that an estimate figure for the volume of draught beer and cider which will not be sold during the forecast period is required only where that figure has not been accounted for in the gross profit margin. This contrasts with the latter paragraph (7.3) which proposes that POBs account for the amount of unsaleable draught beer and cider separately in the forecast profit and loss account, and not only as part of the gross profit calculation. There is insufficient rationale provided by the PCA as to why it believes that POBs must be subject to a requirement that exceeds Schedule 2, Paragraph 5(f) of the Code.

It would be our view that the option permitted in Schedule 2, Paragraph 5(f) of accounting for sediment and wastage within a gross profit margin meets the requirement of being “sufficiently clear and detailed” (Schedule 2, Paragraph 8) if it is accompanied by a clear justification or supporting evidence for its calculation. This option is both transparent and proportionate, and provides TPTs with sufficient information, without having to adopt the PCA's proposal in its paragraph 7.3

Additionally, we would highlight that separate entries of saleable volumes for all draught categories after an allowance for sediment allowances and operational wastage is a significant departure from current practice. This will require significant system changes from having a single operational wastage cost line and a single sediment cost line within the P&L, along with an explanation regarding the

calculation, any assumptions made and then showing the overall impact of these on turnover, profit and gross margin from wet sales in one place.

The proposal from the PCA is likely to create significant additional complexity for POBs and we would question the additional benefit to TPTs other than beyond greater granularity within the P&L. It is important to keep in mind that the calculation of a rent proposal forms the starting point of one side of a commercial negotiation. The overall rent calculation is unlikely to be impacted to any material degree and, of course, rental negotiations are determined by a wide variety of commercial factors and variables that the information provided in Schedule 2 is just one part of.

We would also note that the template P&Ls are forward-looking based on a reasonably efficient operator. Therefore, a degree of estimation would usually be required and that product/brand mix will also change over time.

Question 5: If not, please explain your objections.

See above, and we would therefore conclude that this approach should only be optional rather than a requirement. We believe any requirement should be for separate accounting for sediment and operational waste within the P&L highlighting the impact on the overall wet turnover, profit and gross margin, accompanied with a clear explanation as to how this is derived in terms of volumes and prices.

We also note that the level of detailed information being required from POBs, as set out in these proposals from the PCA, is much more granular and complex than the level of information required in similar negotiations, e.g. Free of Tie agreements. This raises a concern that the proposals will require additional information and resources that result in no real benefit to TPTs.

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?

(See also our response to Question 4 and Question 5).

We note that the proposal allows POBs some flexibility in how this information is provided to TPTs. This is important to reflect differences in company IT systems and internal processes and structures. (Paragraph 7.7 of the consultation document.) Even allowing for this, this should provide TPTs with greater clarity and comfort that there is a consistent and equitable approach across POBs.

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?

Adopting the proposed approach may have the following unintended consequences:

- Increasing complexity in terms of portraying the information and therefore a greater likelihood of confusion;
- Increased costs for the POBs in terms of administration and risk of error through greater complexity;
- The potential that alcohol from producers that are unable (or simply don't) provide sufficient information on dutiable volumes may be excluded from the options available to TPTs. For example, this may mean that some smaller brewers are excluded from the range of providers because they have not provided the information that is specified in the proposal.

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?

See also our response to Question 4 and Question 5

Whilst the more detailed presentation may provide greater clarity, it is debatable if it provides greater consistency simply because the proposal seeks to base operational waste allowances on the specifics of each TPT, and therefore the allowances are unlikely to be consistent across all TPTs simply due to the number of potential variables.

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

As outlined under question 5, rather than adjusting each draught product category, we would also like to retain the option of a single operational waste line in the P&L highlighting the impact on the overall wet turnover, profit and gross margin, accompanied with a clear explanation as to how this is derived in terms of volumes and price.

On the one hand the proposal seeks to increase the level of detail that is specific to each individual TPT, yet on the other hand accepts that wider generalisations are acceptable. In particular, the proposal requires that operational waste allowances must be based upon the bar and cellar configurations specific to each TPT (paragraph 7.13), yet it is acceptable for POBs to base the allowance on a generic assumption of a reasonably efficient operator rather than the specific past performance of the TPT (paragraph 7.14). This reinforces that there should be a degree of flexibility in how operational wastage allowances are determined as long as the basis is clear, consistent and robust.

Any changes that are made as a result of these proposals need to reflect a sensible balance between the possible benefits (e.g. increased transparency) against the likely costs (e.g. increased complexity, increased costs and time). The true value of these proposals is questionable as transparency can still be provided by adopting a more flexible and proportionate approach.

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?

Depending on the PCA's conclusions based on consultation responses, if the final guidance necessitates changes to accounting systems, to be implemented by 1st April 2019, the timescale is very likely to be too short for all POBs to make the

required changes without incurring significant and disproportionate costs. A more realistic timescale based upon the nature of the final guidance should be considered by the PCA.

Throughout these proposals, the provision of information to TPTs should be both proportionate and a clear benefit for the TPTs. It should not add unnecessary complexity that would generally be considered to be irrelevant or not having a material impact for the purposes of determining rent proposals.

Training and Support

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

We note that, other than the Pubs Code requirement for initial induction training, the proposal sets out an expectation from the PCA. Whilst POBs may decide that those expected requirements are beneficial and appropriate in some cases, it is not appropriate to establish a new, general requirement that exceeds the Pubs Code.

We note the proposal that refresher training can be provided as appropriate and agree that this flexibility for the POBs and TPTs to consider individual training needs is the correct approach.

We also note the proposal that POBs ensure that their TPTs have ongoing access to cellar management support in the form of stocktaking, technical and other professional services. In this regard it is unclear:

- If the support should be provided by the POB or a third-party;
- If the support must be free or can be charged;
- What is expected to be covered by “other professional services”.

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

Whilst supporting the general principle of adequate training for BDMs, we suggest that the requirement only extends to those BDMs that would ordinarily have a role to explain this information to TPTs as part of their job responsibilities. It should not be applied to BDMs (as defined by the Code) that do not have this role as part of their job.

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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

