



Pubs Code  
Adjudicator

## RESPONSE 22



# **Pubs Code Adjudicator**

Accounting for duty  
paid on alcohol and  
volumes of unsaleable  
draught products

A submission from  
SIBA, the Society of  
Independent Brewers

**THE SOCIETY OF  
SIBA  
INDEPENDENT  
BREWERS**

*The voice of British  
independent brewing*

## About SIBA and its members

The Society of Independent Brewers was established in 1980 to represent the interests of the growing number of independent breweries in Britain. Now, SIBA has around 750 member breweries committed to brewing the very best quality beer anywhere in the world. Our members represent around 6-7% of the beer produced and consumed in the UK and represent around 80-85% of the total of professional independent breweries (by beer volumes) in the UK.

Our vision is to deliver the future of beer as the voice of British independent brewing. As well as representing our independent craft brewing members in the press and engaging with government and industry stakeholders on their behalf, SIBA also run regional and national independent beer awards, host regional meetings for the benefit of brewers as well as the UK's biggest beer and brewing trade event, BeerX.

In 2018 SIBA breweries made 506 million pints of beer in total. Cask beer into the pub trade represents around 65.8% of this total. Bottled beer represents 18.7%, keg 11.4% and can 4.1%. Overall, the total amount of cask beer being produced as a proportion of overall output is in steady decline, with other formats (particularly can and keg) growing strongly as consumers adapt and change their preferences. However, cask is still the most important format for our members.

### SIBA's principles within this consultation:

1. **Simplification:** All changes should seek to reduce (or minimise where possible) the regulatory burden placed upon brewers, TPTs, POBs, HMRC and the PCA itself. The PCA and HMRC could consider further changes not raised in this consultation with industry stakeholders.
2. **Market access/ distortion:** Any changes to the statutory guidance should not have the effect of reducing the choice and availability of beer from small breweries to TPT's through additional regulatory burden, or otherwise.
3. **Fairness:** TPTs should receive the most accurate information *reasonably* possible to support their businesses and allow for accurate forecasts.

## General Comments

We are grateful for the opportunity to respond to this consultation, and for the Adjudicator and Deputy Adjudicator agreeing to meet with SIBA once the consultation period has closed to discuss the detail in this submission further.

### Standardising the sediment allowance

For smaller, independent brewers selling their cask beers into TPTs through POBs this consultation raises a wider, significant and important question about developing a simpler, less burdensome and fairer system for calculating sediment allowance which may benefit all groups. Whilst this question is not part of this consultation, we wish to raise the idea here, subject to further discussion in industry and with SIBA members.

We believe there are strong arguments for standardising the sediment allowance across all brewers so pubs have certainty, clarity and simplicity on how many pints they can expect to sell and HMRC to receive duty from.

The main factors which determine the exact percentage of sediment within a cask of beer are:

1. The shape and size of a container;
2. The type and style of beer within it;
3. The time beer has spent in stillage and general cellaring quality;
4. But more than any other factor; the yeast strain being used, its viability, its flocculation/sedimentation characteristics and if the beer has been fined.

Whilst these factors can mean the amount of sediment varies slightly, for the vast majority of brewers using standard casks, with a 4.0% cask ale with good production methods, yeast control and cellaring, most casks of beer will have very similar amounts of sediment remaining. From a 72 pint firkin, most independent brewers declare between 69 and 70 pints of viable, saleable beer if the pub are serving full 568ml pints consistently.

At present, HMRC do not give a prescribed method to brewers for calculating sediment allowance in section 226, only that the method used must give equitable and repeatable results for each brewer. Often, brewers do not need a full-scale laboratory but just a desktop microscope to accurately estimate the yeast within a beer before the beer is raked. Most brewers know the range in which they are aiming for, and this is normally somewhere between 0.5 and 1.0 million cells per ml. Some brewers use different methods for declaring their sediment, including declaring on 72 pints in a firkin, then sending out casks and measuring the 'bottoms' which return from pubs, then claiming that back from HMRC on a regular basis.

Sediment levels for each beer and container size must be regularly monitored by brewers and reviewed or amended (as necessary) at least annually and notified to HMRC. In practice, these notifications do not give detailed information about the method used, or the specific



numbers, but just that a notification is made and the process has been completed. Similarly, any changes to recipes or ingredients during the year, which would significantly affect sediment levels, must be notified to HMRC and the allowance adjusted accordingly.

Whilst not current official SIBA policy, we would welcome further conversations with both HMRC and the PCA about the viability of **standardising the sediment allowance** across all cask beers at a combined average percentage level. We recognise that this decision is not within the PCA's authority or within the parameters of this consultation but we urge the PCA to support a HMRC consultation as a means of ensuring SIBA's principles set out here can be met. Legislative changes may be required to Notice 226 to enable this measure. We do not have a fixed proposal for percentage might be and we would welcome further engagement with industry on what a 'fair' percentage would be given there is variance. SIBA will be consulting its members in due course on this issue.

This proposal could be received by all brewers in the UK including those who fall outside the EU definition of a small brewer (up to 200,000hl).

It is possible that 'exceptions declarations' could be made for specialty beers which have significantly more, or significantly less sediment based on their style or production method.

### Advantages of standardising the allowance

#### **1. We believe this proposal could benefit consumers, pub tenants, brewers, HMRC and the PCA.**

Tenants would benefit by having consistency and certainty of the expected number of pints they could sell from every cask regardless if it came from a large tied brewer, or a small brewer. During a rent assessment or rent proposal for a TPT, it would be much easier for a POB and a TPT to calculate the volume of alcohol in respect of which duty was paid for the last three years (given the ABV). Therefore, tenants benefit by being more easily able to calculate what is fair within a rent assessment or rent proposal. HMRC can have consistency in the declared dutiable contents on each cask, making predicting revenue easier.

#### **2. POBs and small brewers benefit by removing a significant regulatory burden.**

POBs would remain compliant with the pubs code by being more easily able to give TPTs the information they need. Brewers would benefit by not needing to declare or record the sediment on each and every cask (other than specialty beers with exceptions to sediment) to HMRC or to the end customer. HMRC would benefit by having one less piece of information to record when auditing a brewery and a more consistent and predictable level of revenue coming in from cask beer sales. It would effectively be a tax simplification measure introduced in recognition of how the number of brewers has grown exponentially in recent years. It is possible that due to the decreased regulatory burden, cost savings could be passed onto tenants and the customer. Brewers benefit by having a level playing field in which to operate. Due to the lack of a prescribed method for calculating sediment allowance and the lack of readily available and widespread data on declared sediment across breweries, some breweries may have been overestimating, some under-estimating for many years or

decades. A standardised allowance would force some breweries to get better control of their yeast counts and brewing processes, improving the overall quality of cask beer.

### Potential disadvantages to standardising the sediment allowance

The level at which the allowance is set would have to be carefully researched in order to ensure that there was no significant and negative impact on the exchequer, or on brewers or tenants. Some brewers would lose the ability to define their own sediment allowance because they have significantly differing production methods. But as stated above, exception declarations could be applied within a defined margin of error and most casks have a broadly similar amount of sediment anyway. Widely differing sediment numbers would become the exception, not the norm.

### Keg beers

While the issue of sediment allowance is most relevant to cask beers, keg beers could also benefit from a standardised but smaller allowance. Modern hazy beers stored in kegs can also have a small amount of sediment, as with casks is unsaleable. A smaller allowance for keg beers could also be applied.

### An updated duty placed on POBs to provide sediment information to TPTs

If guidance is to be updated as proposed from April 2019 this consultation document raises a significant unintended consequence, notwithstanding a potential proposal to standardise the allowance which cannot, of course, result from this consultation. The consultation clarifies a new duty on POBs to disclose the duty paid (and therefore the sediment allowance) on every product sold to consumers by each TPT.

***“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. This should be published on the POB’s tenant-accessible website; and should also be provided to TPTs on at least an annual basis. This price list should be updated to reflect changes in the products it contains; and should be reviewed annually.”***

This is a new, and significant undertaking for brewers and POBs and represents a significant new regulatory burden. SIBA members, through our commercial beer distribution business, BeerFlex supply around 4500 different beers to the TPTs of five of the six POBs that fall under the Pubs Code.

We agree the impetus behind this change in that it is vitally important that TPTs have the most up to date and accurate information for determining their rent assessments and rent proposals are fair. TPTs should be able to secure the fairest rent for their pubs to ensure they remain viable sustainable businesses and community hubs. But we are unconvinced that this new requirement will make much difference to TPTs in doing so. As part of this consultation response we have consulted with POBs and TPTs. Through that process it was clear that no-

one wishes to place any hurdles or burdens on small brewers to access pub estates. But this new requirement could do just that.

### **About BeerFlex**

A wholly-owned subsidiary of SIBA, BeerFlex has grown into a distribution company turning over £12 million per year, delivering 40,000 BBL of British, Independent Beer mainly to pubs tied to large POBs. BeerFlex operates on a not-for-profit basis and ensures that small, independent brewers have access to tied pub estates, retailers and POB's where they wouldn't otherwise. Working in partnership with POB customers it is a partial solution to the foreclosure of the market to small brewers. All surplus revenue is reinvested back into the SIBA trade association to support activities helping to represent small brewers' views and interests. BeerFlex aims to ensure that brewers receive the best access at the best achievable prices, with beer delivered directly in the freshest, most cost-effective and environmentally friendly way. It ensures that consumers can enjoy a local beer in many pubs across the UK where they wouldn't otherwise and provides an important access point for those brewers who choose to participate.

The majority of BeerFlex's volume is generated from BeerFlex DDS (Direct Delivery Scheme). Founded in 2002, DDS now runs the sale of over 4,500 draught and bottled beers from around 450 participating SIBA brewers to 12 national pub companies and off-trade retailers. The operation is very simple. BeerFlex DDS receives orders from a company, tenant or outlet direct via EDI, e-mail, telephone or via SIBA's Online Order Portal and we distribute them on a daily basis to BeerFlex brewing members. SIBA BeerFlex DDS reports centrally on all deliveries made and provides consolidated invoices to the customer Head Office, which will then produce any appropriate documentation for the individual outlet. Lack of access to market for small independent brewers has always been a significant issue for our members. BeerFlex DDS is one way in which SIBA helps secure that access for its members through a commercial solution. SIBA currently works with Admiral Taverns, Ei Group, Greene King, Punch and Star Pubs and Bars to deliver local, independent cask beer to consumers giving them better choice.

### **Regulatory burden and restricting access to market**

At the moment those POBs only see the total beer supplied by SIBA members in volume by ABV, and POBs don't automatically record information of what individual brands were supplied. SIBA does record this information, but we do not at present record the declared sediment allowance on each cask by each brewer.

In a few cases this declared amount might vary throughout the year on the same beer, in the same cask from the same brewer due to a change in method, ingredients, or other factors and should be reported to HMRC in line with 226. This adds another layer of complexity. The SIBA range of beers available is so vast it would be almost impossible for POBs to individually maintain the duty and sediment figure for all brands sold by small brewers who either sell directly to them or through BeerFlex hence our concerns about the unintended consequence



of reduced access for small brewers if POBs responded to the proposed changes by reducing range, for fear of being found in breach of the code.

For POBs that open up their estates to small brewers via Beerflex the direct relationship is between the POB and with SIBA, not the individual brewers. This means the POBs don't have the information and couldn't record the information for the huge array of SIBA SKUs to allow them to calculate at a product level.

This raises the prospect that either a POB could be found to be in breach of the code for failing to supply this information after April 2019, or a POB would have to mandate the removal of SIBA members beers from pubs across the country and their estates to prevent them from being found in breach.

**POBs, SIBA members, TPTs and consumers do not want to see that happen.** This requirement could result in a significant restriction of market access to small brewers to pubs, forced unintentionally by a well-intentioned policy to help TPTs secure good rent assessments.

#### Notice 226

Notice 226 states that:

*11.3.5*

*[...]*

*your customer (for example, the publican) is made fully aware in writing, at or before the time of receipt, of the quantity of beer on which duty has been charged. If, for example, a barrel (163.7 litres) contains 2.3 litres of undrinkable sediment, the customer must be made aware, by a statement on the label, delivery note or price list and so on, that duty has been charged on 161.4 litres (a copy of the notification to customers must be retained)*

In reality, most TPTs should have some form of access to this data anyway if not in a unified, organised form. Whilst we understand the logic of mandating POBs to provide this data to TPTs in the way proposed to make it easier to easier for them, the measure is going further than what legally notice 226 requires.

#### A potential solution to this issue for BeerFlex

If the PCA were to go ahead, a solution would be required to prevent POBs being found in breach of the code, or a dramatic drop in access to market for small brewers and in consumer choice. SIBA is currently consulting with our customer POBs on a technical solution to the problem raised by the consultation. Currently, TPTs order their 'guest beers' through a 'beer manager' online portal. SIBA then facilitates this transaction, processes the invoice and a local brewer delivers the beer to the pub.

SIBA holds a national database of all the beers available (including other data like ABV) so TPTs across the UK have an updated list to choose from. At present, we do not request that brewers who sell their beers through BeerFlex input the declared sediment allowance on each cask.

A potential solution being investigated by SIBA is to add a new field within the 'beer manager' software, asking brewers to input the sediment allowance when they list a product for sale. This would enable the transfer of information between; Brewer → SIBA → POB → TPT as the updated guidance requires of the POB. By doing this, SIBA would hold the best and most up to date information on the range of declared sediment in the UK.

This solution, however, has four distinct problems if guidance is to be updated and enforced from April 2019;

1. It will take time for brewers to update and input this data (a minimum of one month)
2. It will take time for us to update and test our systems.
3. It will take time to properly consult with brewers and POBs, and POBs with their TPTs.
4. The additional regulatory burden and cost this places on SIBA, POBs, TPTs and brewers.

We would **therefore formally request from the PCA that an implementation period** be allowed for SIBA, its members and customers to:

1. Update and test our systems to work up a viable solution;
2. Consult across POBs, brewers and TPTs;
3. And Input the data required on every product.

In order to ensure that;

1. TPTs and their consumers continue to have access to great local beers;
2. Small brewers maintain an important route to market;
3. And POBs remain compliant with the Pubs Code.

The intention would be that once we have collected this information, SIBA would be able to provide it to POBs, who would then be able to provide it to TPTs (on a monthly, quarterly, or annual) basis as required by the updated guidance. We are happy to discuss any element of this with PCA officials, BEIS officials, customers and brewers.

## Answers to Specific Consultation Questions

- 1. Do you believe that these proposals will ensure that TPT's are fully informed of the duty that has been paid on the alcohol supplied to them under their tied agreement?**

As outlined above, we do not agree with the PCA's assessment that (6.2) '*the PCA considers that this information is likely to be reasonably available*'. We remained unconvinced that providing the information in this way will have a material impact on rent assessments. It is more easily accessible to all of those products which are provided by the POB to tenants through the tie, but not for 'guest' products provided by small brewers through SIBA BeerFlex which amounts to 4500 product lines and around 40,000 BBL annually to five of the six POBs covered by the code. As outlined above, the information is fragmented, not held centrally and not easily accessible to POBs in order to meet their new requirements under the code.

We agree with the premise and the intention of the consultation which will ensure that TPTs have the most up to date, and accurate information but we remain very concerned that without time to consult and develop a proper solution, this requirement could constitute a significant loss of access to market if POBs feel they would be in breach of the code and delist SIBA members beers. We would encourage the PCA to pause, and work with us to find a solution.

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

Please refer to 'general comments' above which detail our proposals for ensuring POBs compliance with the pubs code and not reducing market access for small brewers.

- 3. Can you foresee any unintended ways in which these proposals might have a detrimental effect on TPTs? If so, how might such effects be mitigated?**

Please refer to 'general comments' above.

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

We agree that it is extremely important that the sediment and operational loss allowances be kept separate (subject to comments above) to avoid any confusion on the part of the TPT.

- 5. If not, please explain your objections.**

Whilst there are can be significant differences in the operations pubs in terms of beer line length, cleanliness, cellaring equipment and staff training/competency which could result in substantially different estimates for operational and sediment figures pub to pub, there is a

widespread focus across the industry on ensuring each and every pub serves cask beer in the best possible condition and in the most economic and profitable way possible for brewer, tenant and POB. This comes from staff training, access to market and a dialogue between the brewer and the tenant so publicans understand the product they are serving and how to get the best from it. Generally speaking if a requirement to account for sediment and operational waste separately were to be included, this would help the TPT if the TPT had a full understanding of the information being proposed and what this means, but this must be done in a way that is as easy as possible for all stakeholders to comply and minimizes regulatory burden.

- 6. Do you believe that these proposals will ensure that TPTs 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?**

Other than the concerns raised in 'general comments' we agree it will. We think a standardised allowance for all cask products supplied makes more sense and enable TPTs to have a more 'clear and consistent' approach.

- 7. If not, please explain what additional or different approached you think would ensure compliance with the Pubs Code requirements.**

NA

- 8. Can you foresee any unintended ways in which these proposals might have a detrimental effect on TPTs? If so, how might such effects be mitigated?**

Please refer to 'general comments' above.

- 9. Do you believe that these proposals will ensure that TPTs have clear and consistent information about the volume of draught products supplied under their agreement that will unsaleable for reasons of operational waste?**

We believe that it will. We think that the allowance for operational waste being based on the performance of a TPT with 'reasonably efficient operator status' should go hand in hand with a publican who has had the required training and has the required understanding to serve cask beer in its best possible condition.

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

We do not have any suggestions here.

- 11. Can you foresee any unintended ways in which these proposals might have a detrimental effect on TPTs? If so, how might such effects be mitigated?**

Please refer to 'general comments' section above.

**12. Do you have any comments on the proposed approach to access to training for TPTs?**

Training courses for the provision and cellaring of good cask ale could contain an element of the code requirements in this area for pub managers, staff or TPTs themselves. We suggest that POBs and the PCA speak to training providers in this area to see if these requirements could be built into existing training courses.

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

BDM's could, and should be made aware of the specific issues with guest beers provided to TPTs via BeerFlex subject to consultation and further discussion between SIBA, POBs and the PCA.

## **Glossary**

BBL – a unit of measure in beer. A ‘brewers barrel’ equal to 288 pints  
BeerFlex – the commercial arm of SIBA, providing access to market to tied estates for hundreds of small brewers  
BDM’s – Business development managers, working for pub operating companies  
Firkin – a container commonly used for cask beer. Contains 9 gallons, or 72 pints  
HMRC – Her Majesty’s Revenue and Customs  
PCA – Pubs Code Adjudicator  
POB – Pub Operating Business (commonly referred to as Pub Companies, or PubCos)  
Racking – the process of transferring beer from a fermentation vessel to a cask or other container  
SIBA – the Society of Independent Brewers  
SKUs – stock keeping units. A standard way in which to assign numbers to different products.  
TPT – Tied Pub Tenant