



THE SOCIETY OF
SIBA
INDEPENDENT
BREWERS

SIBA RESPONSE TO THE CONSULTATION ON PROPOSALS TO AMEND THE PUBS CODE

SEPTEMBER 2021

ABOUT SIBA

The Society of Independent Brewers (SIBA) was established in 1980 to represent the growing number of independent breweries in the UK. Today SIBA has around 750 brewery members, responsible for 80-85% of the country's independently brewed beer. SIBA acts as the voice of independent brewing and represents its members in the press and with Government. In addition we run a commercial operation called Beerflex which allows Tied Pub Tenants (TPT) to purchase a guest (normally cask) beer from their local brewery in limited circumstances and at the discretion of the pub owning business (POB).

ABOUT OUR MEMBERS

SIBA's membership encompasses a broad range of brewers from very small nano-breweries to larger firms owning pubs, taprooms and shops. Forty percent of SIBA members own, lease or rent pubs, in most cases with estates of fewer than 10 businesses.

In 2019 our members produced 493 million pints, approximately 6% of the beer produced and consumed in the UK. The vast majority of UK beer production is in the hands of four global breweries, which account for around 88% of the entire market. The balance in between is made up of other internationally owned brands and a number of large, regional 'family' brewers.

Small breweries in the UK employ about 6,000 full time equivalents and directly contribute around £270 million to GDP each year. The brewing sector as a whole is a major contributor to the Treasury, responsible for approximately 30% of overall alcohol receipts. Small breweries employ a considerable number of people and generate a disproportionate amount of Treasury revenue through other direct taxes as a result. They also contribute directly to local economies, local communities and are forces for good in the world.

The industry has been hit hard by the Covid-19 pandemic, with 200 million fewer pints of craft beer being produced last year with the enforced closure of pubs – representing 10 years of lost growth and a 34% fall in production. In the last quarter of 2020, brewers experienced a 45% fall in sales during the critical Christmas period. Over the past year, we have seen breweries closing for good and more are on the verge of shutting.



ABOUT BEERFLEX

A wholly-owned subsidiary of SIBA, SIBA Beerflex has grown into an established purchasing and supply solution for POBs and importantly a route to market or access for brewers. Prior to Covid-19, Beerflex was turning over £12 million per year, delivering British, independent local beer, predominantly to TPT's through their POBs but to other customers, too. Beerflex operates without profit and ensures that small independent brewers have some access to tied pub estates, retailers and POBs where they wouldn't otherwise. It allows TPTs to serve a non 'tied' local beer on their bars bringing choice, diversity and quality to local consumers. Beerflex ensures that consumers can enjoy a local beer in many pubs across the UK where they wouldn't otherwise due to the beer tie.

Most tied pub estates find it difficult to deal with the myriad of small brewers in the UK. Beerflex offers a solution, being a 'one stop shop' for both TPT's and POBs. The UK marketplace for small brewery beer is highly foreclosed and Beerflex provides a partial, if imperfect solution to that problem which benefits TPT's, POBs and the brewers who choose to use it.

Lack of access to market for small independent brewers has always been a significant issue. Beerflex is one way in which SIBA helps secure that access. SIBA campaigns for market access to be opened up and provides this commercial solution to the problem, too.

From SIBA's perspective we would prefer our members have direct access into these pub estates. Beerflex can and has acted as a 'gateway' for small brewers who have gone on to receive direct listings with these POBs and their tenants. At the time of writing, of the POBs regulated by the Pubs Code Adjudicator (PCA), SIBA Beerflex currently trades with Admiral Taverns, Ei Group, Hawthorn Community Pub Co, Greene King, Punch and Star Pubs and Bars and others to deliver local, independent beer to their pubs giving licensees better choice and small brewers improved access to market.

CONTACT INFORMATION

For further information please contact:

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INTRODUCTION

We welcome the opportunity to respond to this consultation to amend the Pubs Code. While the Government's proposed amendments could help to improve transparency and the processes for TPTs, we are disappointed that they will not provide more flexibility for TPTs or lead to greater fairness on market access for independent brewers.

SIBA believes that TPTs should have access to a wide choice of craft beers from local breweries, which is expected and demanded from customers. We are concerned by what we believe is a growing trend towards managed pubs, which restricts market access even further for small brewers.

It should be noted that the Tied Pubs (Scotland) Act is introducing a mechanism to allow a guest beer agreement, so that local brewers and TPTs can provide beer from a small brewery in the pub. In the Scottish Pubs Code, POBs will be required to offer their tenants the opportunity to sell at least one guest beer of the tenant's choosing and the tenant can change this as often as they choose. The tenant will also be able to source, stock and sell their guest beer. We would urge the Government to consider the progress of the Pubs Code in Scotland as a model for further changes to the Pubs Code in England and Wales as a matter of urgency, or as part of the next statutory review of the code.

QUESTION 1

What are your views about Parallel Rent Assessments for prospective tied tenants? Please provide the reason(s) for your answer.

SIBA supports the provision of Parallel Rent Assessments (PRA) for prospective tied tenants. This would allow them to compare rents and earnings under both the tied and free of tie models and to assess whether the tenancy meets the no worse off principle. It is important that any prospective tenant has access to clear information and advice and a transparent comparator of the different models will help them to make an informed decision.

We believe that this should be provided automatically in an easily comparable and understandable format to prospective tenants. The Government should prescribe what information must be provided and how it is presented. The original draft Pubs Code published by the Department for Business, Innovation and Skills included a template for a PRA which is a good starting point. This proposed setting out a profit and loss account with the projected trade, estimated costs of products and services and other operating costs, rent and projected profit. This should also be signed by a qualified RICS valuer.

QUESTION 2

What are your views about encouraging a trial period – for example 3 months - to help a prospective tied tenant to familiarise themselves with the running of a new tied pub before entering into a commercial contract? Please provide the reason(s) for your answer.

A trial period should be provided in addition to an automatic PRA. SIBA would like to see the trial period formalised for prospective tenants before they sign any tied lease. Within this, prospective tenants should have the ability to trial a free of tie model, where they can choose to purchase goods and services on the open market, so they can make an informed decision based on real life experience and what the local customer base wants from their pub.

QUESTION 3

What are your views about reducing the current 6-month period in the previous qualification period? Do you think that a 3-month period in the previous financial year would be appropriate or would you support a different period? Please provide the reason(s) for your answer.

The pandemic has had an impact on the whole pub sector and could result in more pub acquisitions and changes in ownership. The qualification period therefore should be shortened to ensure that POBs and their tenants are brought under the full Pubs Code as soon as possible. SIBA does not have a view on the exact time period required but believes that allowing up to 18 months as is currently possible is unfair to TPTs.

QUESTION 4

What are your views about a requirement for the landlord selling the pub to notify the PCA of any tied tenant(s) with extended protection? Should the PCA be informed when extended protection has ended? Please provide the reason(s) for your answer.

Given that the pub has extended protection under the Code and the new landlord is treated as a POB under the Code, it would be legitimate for the PCA to hold this information and this should already be occurring as a matter of course.

SIBA believes that the POB selling the pub to an unregulated landlord should make the PCA aware of this change before the completion of the sale. It would also be reasonable for the PCA to maintain records of when the extended protection has ended.

QUESTION 5

What are your views about a Parallel Rent Assessment at the rent assessment or lease (or licence) renewal stage for tenants with extended protection? What type of information should be set out in a PRA? Should there be a right to refer disputes related to the PRA to the PCA and, if so, on what grounds? Please provide the reason(s) for your answer.

Given that TPTs do not have the right to trigger an MRO under extended protection, a PRA is therefore less helpful to the decision making process as it is for a prospective tenant. It could also add additional complexity and cost and inhibit merger and acquisition activity in the sector.

QUESTION 6

What are your views about the examples set out above and what might work or what might not work? Do you have other suggestions on how the MRO process could be changed using existing powers? Please provide the reason(s) for your answer.

SIBA does not have a view on the examples provided.

QUESTION 7

What are your views about requiring the inclusion of rent in an MRO proposal? Please provide the reason(s) for your answer.

SIBA believes it should be a requirement for the MRO proposal to include the proposed rent along with the terms. Without this information it is difficult for any tenant to make an informed decision and therefore it is essential information that should be provided as a matter of course.

QUESTION 8

What are your views about removing the requirement that terms should not be 'uncommon'? Please provide the reason(s) for your answer.

The uncommon terms requirement provides an expectation that the POB should understand what is provided in the free of tie market. It requires them to understand what terms are common and to keep this knowledge current. This plays an important role in ensuring that POB understand and apply terms that are used in the comparable sector. Without this requirement it is not clear that pub-owning businesses will continue to keep up to date on comparable agreements in the free of tie market.

The PCA can play a role in determining common terms by publishing a regularly updated list of terms in agreement and a glossary explaining these terms. This would reduce the uncertainty that could be faced by POBs and provide a resource to TPTs.

QUESTION 9

What are your views on amending the definition for the 'comparison period'? Please provide the reason(s) for your answer including, where available, views and evidence on whether pub-owning businesses are adopting a 13-month pricing period and the impact this has on business planning.

SIBA does not have direct evidence whether POBs are adopting a 13 month pricing period however it seems to be, at least theoretically, possible that a price increase 13 months ago could be counted as a price rise for the MRO event.

QUESTION 10

What are your views on excluding taxes and duties from the significant price increase calculations? Please provide the reason(s) for your answer.

The current system excludes excise duties and VAT from the significant price increase calculation. However where there are additional Government levies which are intended to be passed on then there is a case to be made that these should not constitute a significant price increase. Examples include the Soft Drinks Industry Levy and the forthcoming Deposit Return Scheme. These should be dealt with on a case by case basis by the PCA in consultation with the pub-owning businesses, suppliers and relevant Government departments.

While excise duties are excluded, current planned Government changes to Small Breweries' Relief (SBR) could make the system more complex. The Government is intending to introduce a cash cap and put SBR on a cash basis, rather than a percentage. This could result in the amount of duty small brewers pays to HMRC changing outside of a Budget and result in inyear price increases of beer which would need to be passed on to POBs and onto tenants.

QUESTION 11

What are your views about excluding other unavoidable costs from the significant price calculations?

While it is understandable that pub-owning companies and suppliers do face increased costs, excluding other unavoidable costs would make the situation even more complex. It would be very difficult to reach an agreed definition of unavoidable costs or to prove what has been the reason for the increased costs.

The Government has argued that supplier increases have been adequately reflected in the calculation. However, the current calculation puts small brewers at a particular disadvantage limiting any increase to 3% compared to 8% or 20% for other suppliers. An unintended consequence of the significant price trigger has been that POBs have in some cases restricted the price paid to small independent brewers for fear of triggering an MRO event, even though, as they are not a significant component of any tied pub's wet sales, they are unlikely to do so. The Government should consider a separate increase for outside suppliers to allow small producers to sell their products at a reasonable price.

QUESTION 12

Do you think there should be an alternative appeal route to the current High Court or should the latter be retained? Please provide the reason(s) for your answer.

The current appeal process can result in TPTs facing high costs. Therefore it is logical that a lower cost and more straightforward process should be considered.



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QUESTION 13

If you believe that the appeal route should be changed, what do you think it should be changed to? Are there other ways to make an appeal more accessible and potentially less costly without changing the appeal route? Please provide the reason(s) for your answer.

SIBA does not hold a view on this question.

QUESTION 14

Are there any other ways that could be adopted to make the appeal route more accessible and potentially less costly without changing the appeal route? Please provide the reason(s) for your answer.

SIBA does not hold a view on this question.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply ☒

At BEIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

☒ Yes

☐ No