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GENERAL COMMITTEES

Public Bill Committee

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT BILL

Tenth Sitting

Tuesday 28 October 2014

(Afternoon)

CONTENTS

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Saturday 1 November 2014

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: † Mr Graham Brady, Martin Caton, Nadine Dorries, John Robertson

Blackwood, Nicola *(Oxford West and Abingdon)* (Con)
† Colvile, Oliver *(Plymouth, Sutton and Devonport)* (Con)
† Doughty, Stephen *(Cardiff South and Penarth)* (Lab/Co-op)
† Esterson, Bill *(Sefton Central)* (Lab)
Garnier, Mark *(Wyre Forest)* (Con)
† Gilbert, Stephen *(St Austell and Newquay)* (LD)
† Gilmore, Sheila *(Edinburgh East)* (Lab)
† Griffiths, Andrew *(Burton)* (Con)
† Hancock, Matthew *(Minister for Business and Enterprise)*
McDonald, Andy *(Middlesbrough)* (Lab)
† Morris, Anne Marie *(Newton Abbot)* (Con)
† Murray, Ian *(Edinburgh South)* (Lab)
† Murray, Sheryll *(South East Cornwall)* (Con)
† Perkins, Toby *(Chesterfield)* (Lab)
† Simpson, David *(Upper Bann)* (DUP)
† Stride, Mel *(Central Devon)* (Con)
† Swinson, Jo *(Parliamentary Under-Secretary of State for Business, Innovation and Skills)*
† White, Chris *(Warwick and Leamington)* (Con)
† Wright, Mr Iain *(Hartlepool)* (Lab)

Fergus Reid, *Committee Clerk*

† attended the Committee

Public Bill Committee

Tuesday 28 October 2014

(Afternoon)

[Mr Graham Brady *in the Chair*]

Small Business, Enterprise and Employment Bill

Amendment proposed (this day): 69, in clause 36, page 31, line 1, leave out subsection (4).—*(Sheryll Murray.)*

2 pm

Question again proposed, That the amendment be made.

The Chair: I remind the Committee that with this we are discussing the following:

Amendment 59, in clause 36, page 31, line 11, leave out subsection (5)(b)(ii).

Amendment 60, in clause 36, page 31, line 18, leave out "their tied pub tenants" and insert "such assessments".

Amendment 193, in clause 36, page 31, line 19, at end insert—

> "(g) require large pub-owning companies as defined in section 60 of this Act to provide a list to their tenants of any products and services they provide to tied tenants which such a company considers to have a monetary value; and a statement of what that amount is and how it was calculated; and the Secretary of State or any tied tenant may refer that amount to the adjudicator for an assessment of the accuracy of any estimate or the reasonableness of any assumption in relation to each amount.".

Amendment 68, in clause 37, page 31, line 45, at end insert—

"(5A) Changes to the Pubs Code pursuant to section 37 shall be made by order. Such an order is subject to affirmative resolution procedure."

Amendment 194, in clause 38, page 32, line 12, at end insert—

> "(d) which purport to give only the pub-owning company the right to break a tie agreement.".

Amendment 61, in clause 38, page 32, line 15, leave out from "(1)" to end of line 17 and insert

"only apply to new agreements or at agreed break points such as rent reviews within current agreements".

Amendment 67, in clause 62, page 42, line 15, leave out from "tie" to end of line 16.

Toby Perkins (Chesterfield) (Lab): If you had been here this morning, Mr Brady, you would have heard me talking about the pressure on the large pub-owning companies, to which the hon. Member for South East Cornwall referred, that bought their stock and became established at the top of the market. The industry has changed tremendously, and the value of that stock, in comparison with other property portfolios, has fallen significantly. That in no way excuses their doing some of the things that were reported to the Business, Innovation and Skills Committee and others, but we must understand that they face pressures that are not faced by long-established family brewers that have owned their stock of pubs for considerably longer.

Many people have asked whether the Government are likely to achieve the aims of their principle that tied tenants should be no worse off than free-of-tie tenants. A chief executive of one of the major pub companies told me that he is unable to see how any Government can demonstrate in a coherent or statistically satisfactory way that tied tenants are no worse off. He said that the offer available for tied tenants is so different from the offer for free-of-tie tenants that it would be very difficult to prove that with statistical analysis. I agree entirely, which is why we concluded that we must allow the market to decide whether tenants are better off tied or free-of-tie. Therefore, we suggested a mandatory free-of-tie option, under which licensees would have the right to go free of tie when signing a new contract or renewing an existing deal. That option would force pub companies to offer customers the best deal, because if they did not, landlords would be free to try their hands on the open market.

It is unsurprising that the Government's response to their consultation on the statutory code, which was printed in June, concluded that,

"a mandatory free-of-tie option—also known as the market rent only option—is popular with many tenant groups and might arguably offer the simplest way of ensuring a tied tenant is no worse off than a free-of-tie tenant."

The Government decided not to pursue that option, although they concluded it would work and would be easy to implement. Therefore, we are keen to press the Government on how they see the "no worse off" option working.

Members of the Committee will have noticed that the Opposition have not tabled an amendment containing the mandatory free-of-tie option for tenants of large pub-owning companies, which could have been a feature of clause 36. The Government suggested that the clause will achieve the aims of the principle that no tenant will be worse off than if they were free of tie. The mechanism with which they hope to achieve that aim is in the draft statutory code, but it appears, on the face of it, to be complex, incomplete and unclear. The Government would have us believe that under their proposals tenants will have more transparency due to their right to ask their pub company to show them how much their rent would be under a free-of-tie scheme. The proposals that the Minister brought forward offer new tenants the right, for a fee, to ask for a parallel rent assessment. Following Royal Institution of Chartered Surveyors guidelines, but not subject to any particular oversight, a pub company employee will offer tenants a "Here's what you could have won" rent assessment. All the information is held by the pub company, all the calculations crunched by their accountants, the valuations done by their employees and all the final estimates derived from them. Even if they reveal that the landlord would have been better off free of tie, they have no right to demand that option.

Our objective going into Committee was to attempt to ensure that the principle of "no worse off" is really fulfilled. I am open to being persuaded by the Minister—or any other members of the Committee—that things have moved on and there is a way that we can say for sure that that principle will be fulfilled because of some new

and substantial evidence from her. In advance of seeing what would be an unexpected and exciting development, our view is that the potential benefits that market rent only could bring remain and we look forward to scrutinising the Government's "no worse off" offer.

Andrew Griffiths (Burton) (Con): I understand the argument that the hon. Gentleman makes for the MRO free-of-tie option. I do not agree with it, but I understand the points he makes. He is not a shy and retiring politician, so if he has the courage of his convictions and he believes that free of tie is the solution for our publicans, why has he not had the guts to table an amendment on it today? Why can we not debate it today? What is he afraid of?

Toby Perkins: That is a very confrontational way to start the afternoon's proceedings. We have come to the Committee in a spirit of compromise and reconciliation, attempting to forgive the hon. Gentleman's previous sins and those of the Government. It is precisely in that spirit that we tabled the amendment, but there might be further opportunities during the Bill's passage to debate alternative options if we remain unconvinced by the Government's approach. I would say to him that it is not over until the fat lady sings; let us see where we go during the progress of the Bill. Maybe we will be persuaded today that the "no worse off" option that the Government are bringing forward is capable of being delivered.

I should be interested to hear the Minister's response to a number of questions on that line. First, given that the whole basis of the tied model is that rent is cheaper but the beer is more expensive, how does having a free-of-tie assessment showing that the tenants could be paying more rent if they went free of tie offer empowerment to the tenant?

Secondly, will there be any requisite requirement on the pub-owning company to show what the free-of-tie beer price would be? How would that be established? Will it be comparable with discounts offered to other free-of-tie tenants on the open market?

Thirdly, will additional benefits—such as training, websites and managerial support—be included in the assessment figure? Does the Minister not realise that the point at which most tenants discover that, from their perspective, they were sold a pup is often near to the point where they are running out of time and money? The likelihood of a new tenant wanting to pay for a parallel assessment before they have even started on the tenancy and before they know whether what they have been told is likely to be true, seems pretty low. Once a tenant is in crisis, are they likely to have either the money or the inclination to take up an unenforceable parallel assessment? We understand that the parallel assessment can be triggered at any time, but at what point in the process does the Minister expect it to be triggered? If the assessor is being employed by the big pub-owning companies, how is she going to convince sceptical critics of the pubs code that there will be a real validity to the figures anyway?

Ian Murray (Edinburgh South) (Lab): I am delighted that my hon. Friend has given way, because he brings up the point about comparing rent with tie and what that comparison looks like in terms of the overall income, expenditure and profit of that individual business. I declare an interest. Having been a tenant of Enterprise Inns, the Greene King Group and the G1 Group, I have some experience of tied leases. He will know that while giving up on one they sometimes gain on the other: I bought my own packaged tie out for a £1,500 increase in my annual rent. There was no independent assessment; it was just a figure plucked out of the air, so there has to be some assessment of what is fair and what is not fair in terms of the tie that is involved in those leases.

Toby Perkins: I appreciate my hon. Friend's intervention. He is absolutely right that there has to be an assessment. He went into the industry with far more knowledge than many tenants, who do not have the experience that he had of the industry prior to taking on a tenancy. Often people have just been made redundant or they have had some other life-changing experience and they decide to put their wherewithal into owning a pub. They often have a fair bit of experience of pubs from the other side of the bar and think that it is something they would be good at. They have to go into it largely on a basis of trust, so the information they have on which to make an assessment is incredibly important.

I have a few final questions for the Minister. Who will monitor whether certain assessors overvalue the free-of-tie rent? What will be the professional sanction of an assessor found to have wrongly applied RICS guidelines? It is a matter of considerable regret that the finalised code was not presented to the Committee. Will we get an updated code prior to the further stages of the Bill? Will the Minister also confirm whether the statutory, enhanced codes will be finalised in time for Report? Does she see that as relevant to the decision that we are asking the Committee to make today?

Pubcos often claim a series of incidental services and products, from website advertising to business support, training and poster promotions, as one of the key financial benefits of being in a tied pub. Yet the process is open to little if any scrutiny. We take the Government's word that they are serious about using transparency and openness in meeting their objective, so will the Minister consider requiring large pubcos to list on their websites the full package of benefits and their estimated monetary value? Having these in the public domain and open to challenge by landlords who feel they have not received the advertised level of benefit will help tenants to have confidence that they are not worse off than if they were free of tie. Neither pubcos nor the Government should have anything to fear from that process. If the pubcos are right and the additional services they provide work out to be much cheaper for landlords than taking on all those tasks themselves or attempting to make their way in the market without those supports, then a strong public case will have been made for the beer tie. I hope that all members will back amendment 193 on that basis.

Amendment 194 focuses on the fact that although we have not brought forward the mandatory free-of-tie option that we considered, the free-of-tie option as an alternative to the tied model does exist in most pub company contracts, but only on the basis that the pub company can trigger it. Tied agreements often have terms permitting release from the tie, accompanied by an open-market rent review—essentially the MRO option—triggered by the pubco and not the tenant. Amendment 194 seeks to suggest that pub companies

[Toby Perkins]

should not have the right to say, on the one hand, that the free-of-tie option is some kind of dangerous threat to civilisation as we know it while, on the other hand, saying, "We can make you free of tie should we choose to."

Andrew Griffiths: The hon. Gentleman obviously does not want to get into a debate about the free-of-tie option, although he kept mentioning it in his very interesting speech. The London Economics report, which was produced on behalf of the Department for Business, Innovation and Skills, suggested that a free-of-tie option would lead to the closure of thousands of pubs across the United Kingdom. What does he say about that?

2.15 pm

Toby Perkins: I have to say that I thought very little of the London Economics report. I did not believe that it was a credible document. That report worked on the basis that the pubcos have an existing model and, because that model does not change, this makes no difference to their way of operating and therefore has no impact. There might be some validity in that very narrow definition. However, the whole purpose of having the free-of-tie option is that it would force pub companies to change. It would force them to ensure that their huge buying power and all the advantages they list to their tenants of being tied rather than free-of-tie would be brought to bear in order to ensure they were better off. That is the principle of the mandatory free-of-tie option. The hon. Gentleman said that I did not want to debate the free-of-tie option, but I never said that; I just said that I had not tabled an amendment on it. It is an important aspect which could have been included in the clause. However, the Government chose not to. In discussing the clause, it is right to consider what the free-of-tie option may have offered.

We believe that it is fairer that contracts are either binding on both parties—meaning that pubcos must fulfil their obligation to the licensee for the duration of the agreement—or that either side can break the arrangement if it is not working for them. Amendment 194 ensures that the unilateral opportunity to send a pub from being tied to free-of-tie is not something that pub companies can have in their contracts and then deny the tenant the same right. In order for pubcos to be truly incentivised to offer the best deal and continue providing a good service to their tenants throughout the life cycle of a contract, such provisions are needed. That is one reason I was very disappointed to read amendment 61, which would only allow such changes to be made at the end of contracts or "agreed break points". It seems to fly in the face of many of the existing principles in the current contracts. Those points could be several years away, providing licensees with no power and little hope. That is why we will not support that amendment.

I now turn to the other amendments proposed by the hon. Member for South East Cornwall. We are pleased that the Government seem to finally accept the need for reform and acknowledge that tied tenants can face severe difficulties through no fault of their own. However, amendment 69 would go in the opposite direction by removing the principle of "no worse off" than free-of-tie from the Bill altogether. If the hon. Members for South East Cornwall and for Burton are proposing that because they suspect that the principle is undeliverable—the hon. Lady did not expand on that in the introduction to her amendment—I would potentially have to agree with their analysis. However, given the entire principle of the Bill and that the Secretary of State has spoken for two and a half years about that principle being delivered, attempting to remove it from the face of the Bill seems a staggering amendment.

Andrew Griffiths: I would not wish to put words in the mouth of my hon. Friend the Member for South East Cornwall, and I am sure that the hon. Gentleman does not wish to either. She said that she wanted more detail about how the Government intend to achieve a "no worse off" option. The principle is one we all support; this is about how we achieve it in practice. Through amendment 69, which my hon. Friend said she will not push, we are looking for the Minister to elucidate.

Toby Perkins: I share the hon. Gentleman's thirst for information; hopefully, we will both have our thirsts quenched. Nevertheless, the hon. Lady could have asked for the information without proposing an amendment that would undermine the whole principle of the Bill. Frankly, she is starting her quest for information on fairly shaky ground if her method for probing the Government for details on how they are going to achieve something is to propose that they do not set out to achieve it. That is worrying.

The point is important because Government Members have tabled some amendments with which I have some sympathy. However, there is a sense that many of their amendments are attempts to undermine elements of the Bill that the Opposition support, which gives us considerable pause for thought.

Sheryll Murray (South East Cornwall) (Con): The hon. Gentleman is referring to amendments tabled in my name. I want to reassure him that I certainly did not intend to remove any of the protections given by the clause. The amendment is probing in nature, but I am certain that his amendments will achieve far more than mine has, which is why I said that I was not going to push it to a vote when I moved it.

Toby Perkins: I feel as if I am doing the Minister's job for her—I am killing amendments before our very eyes; she will have little left to respond to. Nonetheless, I appreciate what the hon. Lady said and am glad that she will not push the amendment to a vote. I hope that she will consider what I have said about the message sent by amendments that would undermine the principles of the Bill.

That brings me to amendments 59 and 67, which would scupper even the Government's own modest system of parallel rent assessments for tied tenants. The proposals in these two amendments, which may well be evaporating as I speak, would mean that there was no comparison for a tied tenant package. If the proposals in amendments 59 and 67 had been delivered, it is hard to see how the proposal in amendment 69—to remove the principle that a tied tenant should be no worse off—would not have been delivered as well. If that was the case, we would have to question why we should do the whole thing in the first place.

Amendment 60 would prevent the Secretary of State from drawing up regulations that confer duties on pub companies in relation to their tied tenants, which would make any regulations relatively meaningless, with no recourse for victims regarding the unfair relationship with their pub company. We will therefore vote against the amendment if given the opportunity.

Andrew Griffiths: I would like to make the point, gently, that the hon. Gentleman has been on his feet discussing my amendments for more than 45 minutes. I would be delighted to defend my amendments if he would get on and give me the chance.

Toby Perkins: Frankly, had the hon. Gentleman stopped intervening, we would probably be at that point already.

I want briefly to discuss amendment 68, which would make it much more difficult to change the code, once it is published, by subjecting any changes to the affirmative resolution procedure. We believe that the trend of 31 pubs closing a week simply cannot be allowed to continue. Anything that ties the Secretary of State's hands or limits his or her ability to address the problem head on should not be supported. In fact, the flexibility of the code's drafting is one tool at the Government's disposal to ensure that errant companies are kept in check.

I intend to push amendments 193 and 194 to a vote when the opportunity arises. Clause 36 is very important; it is probably the pivotal clause in the entire Bill. We look forward to hearing what the Minister has to say in response to our questions and hope that she is able to convince us that she can deliver the principles in the Bill.

Andrew Griffiths: It is a delight to serve under your chairmanship, Mr Brady, and to get to my amendments at last. There is a great deal for us to cover, so I will be as brief as possible. Some of the amendments are at the heart of trying to get clarity about the role and objectives of the adjudicator. I think we all agree that we want the adjudicator to be able to defend the interests of tenants and bring some confidence to how the system operates.

Key to that is the role of the parallel rent assessment and my amendment 67. We need to be clear about what we are trying to achieve with those assessments. The function conferred on the adjudicator in relation to parallel rent assessments is vague and I would like more detail about the aims and objectives. The Minister said in the evidence session that the assessments were for transparency, with the adjudicator as the backstop. I am keen to know more details about how that will operate.

My concern is that, having rejected a free-of-tie option, which I think is the right thing to do, we could be introducing a new free-of-tie option through the back door or by stealth, which the Department for Business, Innovation and Skills has rejected. I want any system that we introduce to work properly—to be efficient and effective. I draw the Minister's and the Committee's attention to the evidence provided to the Committee by the Royal Institute of Chartered Surveyors, the professional body that will be administering these provisions. It will produce guidelines for all property valuations, including pubs. It is important to look at the evidence presented to the Committee, in which RICS said:

"The reason the pub market is specialist is because each public house is a unique business entity...It is rare for two public houses to be the same…Valuation is an art not a science. The courts have historically allowed latitude in a valuer's opinion of value when considering professional negligence of 10%…greater…where there are complex matters involved".

With pub valuations, some or all of the following factors, or variables, might apply: the length of the agreements; the repair obligations of the tenants; or the rent adjustment period. There can be ties in place for a whole host of things, be that beer, lager, cider, wine, spirits or soft drinks. Certain discounts are available to some tenants and not to others. The level of tenant investment is also key. This is clearly a complex matter, more complex than any other commercial rent agreements, such as those of retail shops or offices. Comparable rent assessments are not easily available, as they are for offices or shops.

The RICS evidence states:

"RICS notes that under paragraph 12(a)i the POB must ensure that the tenant has taken independent professional advice, including business, legal, property and rental valuation advice".

In relation to the parallel rent assessment, the evidence goes on to state:

"Tied and free of tied rental markets in the leased sector are very different in many ways. It is therefore difficult to compare rental assessments from across the two markets. Additionally, in order to compare a tied lease with a free of tie lease the valuer would need to have sight of the full accounts and stock sheets from the free of tie tenant of comparable properties; this information is not available. As a result a realistic rental assessment on this alternative basis is not achievable. RICS therefore questions what the Parallel Free of Tie Rent Assessment will achieve".

2.30 pm

My point about the assessment is not that it is not important to have information or transparency, but that we must have an element of caution when we intend to intervene in the marketplace—and, from what I can see, when we intend for the Government adjudicator to intervene to set rents. Can the Minister advise me of a business relationship in any other sector where an adjudicator intervenes to set a rent in this way? It would be unthinkable for an adjudicator to interfere in the rent paid by a McDonald's franchisee. What is the difference in the business agreement here?

What are parallel rent assessments? They will be open only to tenants of large pubcos, because they will be in the enhanced code. Tenants have the right to apply to the adjudicator for a parallel rent assessment in the event that rent is not agreed with a pubco, either for new agreement or renewal. They are then completed by the pubco. Parallel rent assessments compare the tied deal for the specific pub with a free-of-tie deal. We have heard how difficult that is going to be for the RICS surveyor to complete. The hon. Member for Chesterfield talked about that difficulty. I am convinced that he would not cast any aspersions on RICS, the professional body that undertakes this process, but I am sure he would agree that there are some serious challenges to overcome if this is going to work.

On 5 August, the Minister, in her note to fellow MPs, suggested that the parallel rent assessments would be subject to arbitration with consequential potential for value transfer. That was a new proposal, an addition that had not been mentioned before. It certainly had not been discussed with the industry; nor was it in any of the discussions that I had been involved in. My concern is not that we are not making tenants aware of

the obligations, nor that we are not making crystal clear what people are signing up to, but that we are interfering in the marketplace in a questionable way.

In a letter to one of the pubcos just last week, BIS officials suggested that 2,700 rent assessments could take place every year. That is very positive. If there are 2,700 rent assessments, that is 2,700 tenants with full information about the obligations and whether the deal is good for them. They are empowered to make the correct business decision. However, if the Minister is suggesting that the Government are going to get between a potential tenant and a landlord—a pub owner—to negotiate that rent down, I will have major concerns about the ability of the adjudicator to cope with that level and complexity of work. I have great worries that this will cause the adjudicator to collapse.

It is worth looking at where RICS sees the problems. It talks about market intelligence; a significant part of any rent-setting is gathering detailed information on the local market, in much the same way as an estate agent might look at other comparable houses on a road when they are valuing a home. However, there is in effect no free-of-tie tenant market for surveyors to compare with. I understand that there is only one pubco—Wellington pubco, which has some 800 pubs—that operates this model. Where is the RICS surveyor going to get the information from?

In his speech, the hon. Member for Chesterfield spoke about benefits and working out their value. That is also something that the Minister needs to clarify and consider. In any free-of-tie assessment, RICS believes that the tenant does not enjoy the benefit of any landlord support, which is of course special commercial or financial advantages. The challenge is then how the benefits given to the tied tenant are quantified; the hon. Gentleman alluded to that earlier.

Of course, some benefits are easy to quantify—we can work out how much free training is valued at, the cost to buy or savings passed on from bulk buying of non-drink items, card-processing machines and so on—but many are not. Those are mainly financial, and relate to things such as cash-flow help and flexible credit terms, which are not available on the open market. For example, if a pubco allows more flexible credit terms, perhaps allowing a tenant to have more barrelage and pay at a later date or over a longer period, that is a quantifiable benefit for the tenant, but it is difficult to pin down and put a price on from the pubco's point of view.

The hon. Gentleman talked about free trade beer pricing. It is not as simple as he suggests to look at what a tenant is paying in a tied model and at what the same beer can be bought for from Costco or whatever cash-and-carry might sell it. There are a number of features. Geography is key; some brands are stronger in some parts of the country. In my area, Carling sells incredibly well, whereas it sells less well in London.

Popular brands command a price; there are discounts on market leaders and fewer on others. Brewer involvement in the pub is a relevant factor; a brewer supplying the lager, three cask ales and the Guinness to a pub may do a better deal than if it was just supplying one-off items. It is difficult for the hon. Gentleman—and, indeed, RICS, as it points out—to work out the value of that help. Credit terms are important. Those who pay cash at the cash-and-carry are very different, and would expect a lower price, from those taking extended credit terms from a pub company or a family brewer, and that is understandable. We have to be aware of where that leads us.

Toby Perkins: Many of the hon. Gentleman's points are similar to mine, but he comes to a different conclusion. He is laying out many challenges that face the Government in trying to deliver a statistical viewpoint that demonstrates whether someone is better off free of tie. I was reflecting on that myself. Does he think that the Government have succeeded in creating such a statistical viewpoint?

Andrew Griffiths: As I have already said, this is about empowering the small business person who is taking on the pub to ensure that they are taking on the right deal. Pub companies make tenants go through due diligence—talking to their lawyer, financial adviser and bank manager, putting together their business plan, being made thoroughly aware of how many barrels of beer that pub sold last year under the previous tenant and how much profit they made. If all that information is at their fingertips and they have their parallel rent assessment, which allows them very clearly to see whether it is a good deal for them, what more can the Government and the pub companies do to assist them? Tenants are adults; they are business people who must be trusted to make the correct decision when all that information is laid out clearly in front of them. Parallel rent assessments have a huge role to play and can be very helpful in that. However, as RICS itself said:

"It is an art, not a science."

To say that the adjudicator will transfer value and cut the price of rent as a result of a parallel rent assessment is an unprecedented intervention in the marketplace. Where do we go with that? My big concern is that it will lead the Government to a legal challenge. I have already heard that discussed and would be interested to know what the Minister thinks about it.

I will rattle quickly through my other amendments. Amendment 59 outlines the pub code's requirement that businesses provide assessments relating to tied tenants. Part 2 is unclear what

"assessments of money payable by the tenant in lieu of rent"

actually means. I tabled the amendment to get clarity. Perhaps the Minister and her officials will explain it to me today or write to me in the coming days.

On amendment 60, clause 36 as currently worded would apply to anything in the landlord-tenant relationship. I am concerned that it risks introducing unnecessary and disproportionate measures into the code. We are basically writing a blank cheque as to what else could be added to the code. One of the frustrations that I alluded to earlier is that if we saw the code in more detail, it might address that concern.

Clause 68 mentions the code and industry consultation. We have already heard Labour Members say that they are champing at the bit—that if they get into power at the next election, they may introduce a market rent only option. Of course, in government, one is perfectly capable of doing so, but tenants and the industry want some certainty. If there are to be changes, we owe it to the industry to ensure that there is proper consultation and discussion of any changes. Perhaps the hon. Member for Chesterfield would like to intervene to tell me whether Labour intends to do that at the next general election; I would be interested to know.

Toby Perkins: I am not entirely certain of the challenge that I have just been set.

Andrew Griffiths: Are you going to introduce market rent only?

Toby Perkins: Are we minded to? As I said, until now, nothing that I have heard has changed my view that a mandatory rent-only option is the best way forward. After the Minister has responded and we have moved on from this point, it might return in the Bill or at some point in future. Obviously, if the Bill was in and working, we would see how things were working, but I have seen nothing yet that would suggest to me that a mandatory rent-only option would not—

Andrew Griffiths: I thank the hon. Gentleman for that helpful intervention.

Amendment 61 is a probing amendment to understand what resilience the Government will have in place for the adjudicator. We have already heard that there are 22,000 tied pubs across the country, and that from natural rent assessments, just by general churn, we expect 2,700 parallel rent assessments every year. However, it is possible that on day one, there could be a rush to the adjudicator. Thousands upon thousands of tenants could apply to the adjudicator. If that is the case—I see nothing that leads me to think that it might not happen—does the Minister feel confident that any adjudicator she puts in place will have the capacity to deal with it? What modelling has the Department done on what it believes will be the initial take-up of the adjudicator's help and advice?

Toby Perkins: I am interested in the point that the hon. Gentleman is making. When the Pubs Independent Conciliation and Arbitration Service was introduced, there was no giant rush by the entire industry to adjudication. Why does he think that it would be different this time?

2.45 pm

Andrew Griffiths: Because for the first time we have this option of parallel rent assessment, which introduces a new factor into the equation. I genuinely believe that this brings an incredible, fantastic amount of transparency into this business sector. That is a good thing, and that is why I support parallel rent assessments. The more information with which we can empower tenants—who are new business people—when they take on these pubs, the more we will prevent them from making the wrong decision.

I support the parallel rent assessments, but my concern is that, if it is adjudicable, we could see this being snarled up in lengthy court cases and perhaps even judicial reviews, to which the Minister alluded. We want an adjudicator that is fast on its feet, that can respond quickly to concerns, and that can intervene where it sees wrongdoing in the marketplace and where it sees pubcos' behaviour going wrong, as I said earlier. If pubcos are behaving wrongly, they deserve to have the full might of the adjudicator come down upon them.

However, I do not think that it is the role of the adjudicator to set rents or force a pubco to rent a property at a value at which it does not want to do so. The choice to the tenant is to rent another pub, and all they will have lost is their £200 application fee for their parallel rent assessment. If the adjudicator finds on their side, that fee would be refunded to them anyway. We have to look at the role of Government here, which should not be to get involved in every single rent negotiation. However, we have an important role in bringing transparency to this industry.

I have explained the reasons behind my probing amendments. I hope that I have now provided the Minister with some food for thought, and that she can come back and—to continue the food metaphor—put more meat on the bones of how this adjudicator is going to work. I do not intend to press these amendments to a vote, but I look forward to listening to the Minister.

The Parliamentary Under-Secretary of State for Business, Innovation and Skills (Jo Swinson): I am delighted to serve under your chairmanship again this afternoon, Mr Brady. There has obviously been a wide-ranging debate on a whole range of issues, and I will endeavour to respond to the Committee and provide reassurance on the various issues that have been probed.

It makes sense for me to start with the prime principle of tenants being no worse off. The question was very fairly posed by my hon. Friend the Member for South East Cornwall, "What is the no worse off principle?" For many of those who have been deeply involved with the various reports produced by the Select Committee on Business, Innovation and Skills and who have followed this issue over many years, this has become almost a term that trips off the tongue.

However, it is useful for us to go back and ask what this principle is all about. It does what it says on the tin, and says that a tenant should not be worse off as a result of being in a tied agreement. Basically, a tenant's projected profit under the tied scenario should be equal to or greater than their projected profit under a free-of-tie scenario. If that is not the case, it is up to the pub-owning company to provide a reasonable justification as to why the tied balance should be lower. In particular, this is the trade-off between the dry rent and the wet rent. If they are charging a tied tenant higher prices for beer, which is the basic situation of the tied model, that is compensated for by a combination of a lower overall rent and, indeed, quantifiable benefits to the tenant. That could be free goods such as a TV, or it could be other training and support or business practices which are provided.

For many tenants this works perfectly well, and they are very happy with that trade-off as it is provided. Indeed, perhaps they trade a higher marginal cost for greater certainty and lower fixed costs, and that model is perfectly reasonable in itself. Obviously, that rent needs to be calculated in accordance with fair and open market principles, if people are making that comparison. There are different ideas about how that principle can be enshrined to ensure that that happens. Although the Opposition did not table any amendments to the clause, they said that a free-of-tie, market-rent-only option is a way of guaranteeing that principle.

Toby Perkins: I believe it is also the policy of the Minister's party, as proved by the Liberal Democrat conference. Will she confirm that?

Jo Swinson: I will happily do so. I am delighted that the hon. Gentleman is such an avid follower of Liberal Democrat conferences. It certainly is our position. However, we are obviously in a coalition Government, so we have looked at how the principle can be delivered through the actions that the Government are taking. We came forward with the alternative mechanism of having parallel rent assessments for pub companies that have 500 or more tied pubs. Our proposal would allow prospective tenants who are unhappy with their negotiations with a large pub company and do not think they have been fairly treated to request from the company a parallel rent assessment to set out clearly what their rent would be under the tied model and the free-of-tie model, so that they can make a decision. If they have concerns about how the assessment is calculated, the adjudicator is in a position to arbitrate.

Toby Perkins: To repeat the question that I was asked by the hon. Member for Burton, does it follow that at the end of this process the Liberal Democrat manifesto will call for a change to the Bill to reflect the Minister's party's policy?

Jo Swinson: Our manifesto will be published shortly before the election, and many of our policies will end up in it. I am not going to write the Liberal Democrat manifesto for the Committee right now. As joyous as that would be, I suspect you would chastise me for doing so, Mr Brady, so the hon. Gentleman will have to wait. However, I confirm that that is the party's policy. That said, if the system that we are putting forward is able to deliver the principle that most people who are campaigning on this issue want to see achieved, tenants will be in a much stronger position.

Toby Perkins *rose—*

The Chair: Mr Perkins, I trust that you are not going to pursue the point about the Liberal Democrat manifesto.

Toby Perkins: Thank you for the direction, Mr Brady. I simply want to clarify that the Minister considers that her proposal may be a way of satisfying what she was just talking about.

Jo Swinson: I am determined that we deliver on the "no worse off" principle, and the parallel rent assessment process should be a way of doing that. It will support the many vulnerable tenants who have been badly done by and deal with some of the problems that were eloquently outlined in the Select Committee reports.

The hon. Member for South East Cornwall mentioned family brewers. I confirm that the wording of clause 36(4), which her amendment would remove, makes it clear that the provisions relating to the "no worse off" principle will apply

"only in relation to large pub-owning businesses",

so most of the companies she talked about will not be caught by the clause.

Amendment 59, tabled by my hon. Friend the Member for Burton, would remove the obligation on pub-owning companies to provide the equivalent of a rent assessment for tied tenants who pay a fee of any kind for their pub rather than a traditional rent, which are often called franchise agreements. We recognise that franchises are often different from traditional tenancies, in that they seek to replicate a uniform brand across all their pubs. All the franchise models we are aware of—there are currently only a few of them, but it is a growing model—include the tying of beer and other products. Therefore, although they have use a different method to charge the tenant, setting a fee rather than a traditional rent, we believe there is the same potential for abuse, so they should be governed by the provisions of the pubs code. Otherwise, we risk writing a loophole into the legislation before it is even on the statute book. If my hon. Friend has questions, I am happy for him to discuss the matter further with officials.

Amendment 60 is about the pubs code imposing obligations on pub-owning businesses only in relation to rent assessments. I understand that my hon. Friend's aim is to limit the impact of the pubs code on pub-owning businesses. The draft pubs code is based on the industry's voluntary code, so I get slightly frustrated when people talk about not having much opportunity to look at it. It is on pages 130 to 150 of the Government's response to the consultation, published in June, so it is available for any Committee member or indeed any member of the public who wants to look at it. The draft code has a range of different protections and obligations, including those in relation to rent assessments and other issues such as information. We do not have any intention of imposing obligations beyond what it is in the draft code, but I think that by agreeing to amendment 60, we would in fact slim down the voluntary code, which the industry is pretty happy with, so we do not want the amendment to be accepted.

As the hon. Member for Chesterfield said, flexibility in the code is important. Changes deemed necessary in the future might be slightly different and not related to rent assessments. We would not want to tie the hands of the Secretary of State in terms of their ability to make such a change, albeit with parliamentary approval through the affirmative procedure. That would give MPs and other stakeholders an opportunity to have their say through the normal consultation process. Limiting it to rent assessments would be too restrictive.

Amendment 61 is about delaying the applications of regulations under clause 38 to void any tenancy terms that are incompatible with the code. It suggests that that should apply only to new tied agreements or at agreed break points in existing agreements. The difficulty with that is that many tied agreements in this sector are long-term leases. If the amendment was passed, it would mean that tenants with those kinds of lease would have to wait many years—20 years, in some cases—before they would be protected from incompatible terms or terms that penalised them for using the code.

Andrew Griffiths: The Minister will know that most tied tenancies have a break clause at either three or five years. I have never heard of a tenancy that does not have a break clause in 20 years.

Jo Swinson: We are talking about some 20,000 tenancies up and down the country. My hon. Friend suggests that some tenants who are struggling on a day-to-day basis, and who are potentially in a very unfair situation, should have to wait another five years for their protections. I do not think that that is appropriate.

Amendment 67 suggests that parallel rent assessments would not assume that all other elements of the tenancy would remain the same, other than the tie. Parallel rent

assessments are intended to provide the tenant with transparency, so that they can make a proper comparison and decide whether they would be better off under the tie or with a free-of-tie option and therefore a lower price for their beer but a higher rent. If we start having all sorts of other things that are not comparable, that becomes a rather blunt instrument which is not able to deliver what we seek to deliver, which is for tenants to be able to make an informed decision and for pub companies to have to offer a decent tied arrangement in the first place. That tied arrangement will be compared against a free-of-tie option, therefore delivering the "no worse off" principle. It has to be a meaningful comparator.

3 pm

Andrew Griffiths: I spoke at great length about the RICS evidence and its concerns about the parallel rent assessment. Has the Minister met with RICS to discuss its concerns? If not, will she be doing so?

Jo Swinson: I have not personally met with RICS, but I know my officials have been in regular contact. I want to turn to the questions the hon. Gentleman raised about the RICS guidance and the issues he pointed out.

In talking about how those parallel rent assessments are put together, we are making an assumption that pub owning business have a reasoned basis for the tied rents that they are setting in the first place—that they are not figures plucked out of thin air, but they have known costs that are relied on where possible, and where precise costs cannot be known, they are making some kind of reasoned assumption about them. It must therefore be possible for them to be able to calculate a free of tie equivalent rent.

In terms of the valuing of benefits, the hon. Gentleman made the point that it is difficult to put a value and a figure on the benefits, sometimes referred to as the SCORFA—special commercial or financial advantages. If in the negotiations both sides agree that the deal is a good one that they are happy with, there is no need to put a value on those benefits: the tenant is happy to sign up, the pub company is happy to agree to the terms that have been put forward and everything proceeds in perfect harmony. That is what the pub companies tell us happens in the vast majority of cases. Although we know there are significant numbers of cases where that does not happen, our evidence from the consultation shows that lots of tenants are quite happy with the way the system works. Therefore, in many cases, there will not need to be a figure put on those benefits.

Andrew Griffiths: The Minister is being generous in giving way and I appreciate that. Does she understand that the implications of what she is suggesting is that every single rent agreement will be up for negotiation on day one of the introduction of the adjudicator's code? That is the implication of what she is saying.

Jo Swinson: I disagree with the hon. Gentleman's interpretation, but I will come to that point in a second. To finish the point I was making about the benefits, if his point is that he does not think the pub companies can justify the benefits that are being offered and put a value on them that stacks up, that may speak volumes about where some of the difficulties lie in the industry.

On the specific points that RICS has made about the challenges of putting together a parallel rent assessment, it talked about how it would need to be produced without being backed up by any market evidence. In fact, there is nothing in our definition that rules out the use of market information that is easily available. The hon. Member for Chesterfield asked how the prices would be put together in a parallel rent assessment—how much would be paid for beer. That is a good example of the type of market information that is readily available. There are lots of different websites where people can find out how much it would cost to buy on the open market a particular brand of beer. That information is something that can be used in putting together parallel rent assessments.

We recognise the genuine points that RICS has put forward. In the code that we have published we have included a profit and loss account to show the type of information that would be required for a parallel rent assessment. RICS and other stakeholders have come back to us with some advice on how that can be improved and we stand ready to take that on board. We hope to work with them in preparing the final draft.

My hon. Friend the Member for Burton suggested that parallel rent assessments were new and arbitrable and somehow that became known on 5 August. It is not new. It is clear from the legislation and the draft code. Clause 39(5) makes it clear that the pubs code can be arbitrated on except where provisions are specifically designated as being non-arbitrable. Parallel rent assessments are also clearly in the draft pubs code. That information is clear already.

I am glad that amendment 69 will not be pressed. I accept what my hon. Friend says about not pushing it to a vote, but I put to him that the combined effect of many of the other amendments that he has tabled would undermine the "no worse off" principle, which is central to the Bill and which we are keen to ensure we maintain. He mentioned that there could be a huge surge in complaints to the adjudicator right at the start, after its introduction, and I said that I disagree. We estimate the number of rent reviews that become due in any given year to be about 4,200; not all would end up even asking for parallel rent assessments, and of those that did a lower number would end up going to the adjudicator. Basically, only those rent reviews generally coming up for renewal would be subject to parallel rent assessments. Section 25 in part 7 of the draft code, on page 143 of the Government's response, sets out the two circumstances in the code in which a rent review could otherwise take place: if there is

"a significant alteration to the price"

at which tied products are supplied, or if there has been

"an event outside…the Tenant's control and unpredicted…that impacts significantly on the Tenant's ability to trade."

A very large employer closing down very close by and that having a massive impact on the business would perhaps be one example. It would not be the case that on day one every single tenancy in the country would be going to the adjudicator.

Amendments 193 and 194 were tabled by the hon. Member for Chesterfield. With amendment 193, he is basically emphasising the importance of tenants having the information that they need. Clearly, that is something that we want to achieve through the parallel rent

[Jo Swinson]

assessments. I hope that he has been somewhat reassured by our discussion about parallel rent assessments showing the tenant what the situation would be if they were free of tie, so the information would have to be put to them.

Sheryll Murray: The Minister has just said that in exceptional circumstances someone could ask for a rent review. Could she explain, perhaps using her example of a large business closing down, the difference between the impact on, say, a local shop and the impact on a local pub? She seems to me to be saying that someone in a local pub could go and ask for a rent review and the Government would intervene if that was not allowed to happen. What about a local shop or any other business that is affected?

Jo Swinson: Clearly, there will be different leases of different lengths for different types of property. One of the differences with many pubs is of course that people tend to be living where they have their livelihood. Often, tenants live there with their entire family; it is not purely a business proposition. The other key thing is of course that we have seen over the last 10 years or so Select Committee report after Select Committee report pointing out the difficulties in the pub sector. We are seeking to address those difficulties. Had those challenges not been created in this sector, we would not be having this discussion today; we would be on a different part of the Bill because part 4 would not have been required.

To return to amendments 193 and 194, the parallel rent assessment will ensure that the information has to be set out where negotiations have broken down. That is the key point. When this is happening between a tenant and their pub company and it is agreeable, there is no need to put this additional step in the process. It is where those negotiations break down that we want to target it.

Toby Perkins: There were two points behind the amendment. First, there may well be things that always have a certain amount of value placed on them by the pub companies—the value of the website, the value of the training and so on. If that was just assessed once, it would not need continually to be reassessed, and doing it once would save the pub companies a lot of money. Secondly, can the Minister clarify whether she was including all those incidentals as part of the judgment that would potentially go to an adjudicator on whether the tenant genuinely was no worse off?

Jo Swinson: On the second point, the calculation about whether the tenant is or is not worse off does absolutely need to include those other benefits and some allocation of value to them, but that needs to be done in a reasonable way. The hon. Gentleman makes a very good point: it could save companies a lot of money to do some of the calculations for the benefits that they offer. Perhaps they could even put that on their website as a marketing tool. There may be companies that want to take up that suggestion. Whether it should be required through the code is a different question. Some will be specific to individual pubs, so the benefits might vary. From a city centre pub to a very rural pub, circumstances will vary in terms of the size of the pub and so on, so there needs to be a requirement to take the specific circumstances into account. In general terms, providing that information may be something that companies want to take up.

Amendment 194 concerns terms of an agreement that can be made unenforceable if they give only the pub-owning company the right to break the tie agreement. Clause 38 is all about ensuring that tenants can have the protections of the code and will not be denied those protections as a result of having tenancy agreements that contain provisions which are inconsistent with the code. We are keen to consult on these regulations and will do so after Royal Assent. They will also be subject to the affirmative procedure. I encourage hon. Members to get involved in that exercise if they have ideas about the terms that should be in those regulations.

The hon. Member for Chesterfield asked how realistic it is to expect new tenants to go for parallel rent assessment. He is right to highlight, as we heard in evidence, that optimism bias is one of the factors at play in this industry. That is why we have information requirements in the code—a pub company has to make sure that tenants have thought things through, that they have a business plan and so on—designed to address that point. Obviously, tenants will have access to parallel rent assessment if they wish. Obviously, when negotiations fail there can be a new agreement; equally, however, in a regular rent review, if negotiations fail a PRA can be triggered 21 days later. As I mentioned a few moments ago, section 25 in part 7 of the draft code outlines other circumstances.

The hon. Gentleman asked if an updated code will be published before Report. I reiterate my intention to do that. We have the draft code, I sent a letter to the Committee on Friday setting out some of the changes I think should be made, but I also want to take account of our discussion this afternoon in drawing up a revised code before Report. He asked whether that will be the finalised code. I caution the Committee against hoping that it will be set in stone before the Bill becomes law. He mentioned the advantage of having some degree of flexibility in the code, which means that it has to be in secondary legislation. By definition, therefore, it has to be put into legislation after the primary legislation has been passed. That also, of course, gives us the opportunity to have further consultation on that secondary legislation before bringing it into effect. I hope that our discussion as the Bill progresses will ensure that we have something pretty near to the final form.

Sheryll Murray: What assurance can my hon. Friend give the pubcos and small family brewers that they will be protected under the code? Clearly, all the small family brewers with fewer than 500 pubs expected to be exempt, yet there does not seem to be any assurance in the Bill that what she is promising in the statutory code after Royal Assent will protect them.

Jo Swinson: I do not want to trespass too much on to the next group of amendments, but, in summary, there is already clarity in the draft code that the parallel rent assessment section does not apply to those that do not fall into the definition of "large pub-owning businesses". My letter to the Committee on Friday set out other changes that I have committed to make to the code and we will discuss whether there are other areas that we

should also move to the enhanced code that are only applicable to those larger companies. I hope that is reassuring.

As I said to my hon. Friend in response to an earlier intervention, before the Bill is finalised the only way to have absolute clarity is to put the draft code in primary legislation. I do not think that she would want us to do that; I do not think that that is the best way for Government to regulate when they intervene. I am sure that she does not wish us to go for that solution to the dilemma she outlined.

3.15 pm

Toby Perkins: I got the sense that the Minister was approaching the end of her remarks. Before she does, I wanted to ensure that she responded to the following two issues. How will she convince us that there will be real validity to the figures? Will there be any professional sanction for an assessor who was found to have wrongly applied the RICS guidelines?

Jo Swinson: The hon. Gentleman pre-empts me. On validity of assessments, a wide range of information is already out there, which can be used to back up the assessments. As I said, we think that there has to be a basis on which pub companies make these calculations when they put together their tied agreement offers in the first place, so clearly they can put in some of that information as part of the parallel rent assessment. Of course, those involved in the industry who already follow existing guidance show that there can be confidence. However, the ultimate back-stop of the adjudicator will also provide some reassurance.

On sanctions if the RICS guidance is not followed, if the person doing an assessment is a RICS member and they do not follow the guidance, that is partly a question for RICS on how it qualifies its assessors. However, if an assessment is produced that is not in line with RICS guidance and the adjudicator arbitrated and that was found to be the case, the adjudicator ultimately has the power, for example, to set the rent or to correct the wrong assumptions. It can then send the parties back to continue the negotiation with the correct assumptions.

Andrew Griffiths: On a point of clarity, my understanding is that it is not the pub company that values these benefits but the RICS surveyor. The onus will be on the RICS surveyor to attach a value to those benefits, not the other way round.

Jo Swinson: Clearly, the RICS guidance is available to pull together the rental information, but the pub companies will be in an ideal position to value the benefits that they provide. I expect that they would share that information with not only their tenants, but those involved in the process—ultimately including the adjudicator, if necessary—and be able to back that up.

Toby Perkins: The hon. Member for Burton described them as RICS assessors, but the point is that these are employees of pub companies: they are not necessarily approved by RICS, but they follow its guidelines. The worst thing that can happen to an employee of a pub company if they get it wrong is that the adjudicator might tell them that they have got it wrong. That is not a huge sanction. If we have a system that is based largely on the fact that a pub company employee will give a fair assessment and there is no sanction if they do not, we can understand why people might not be confident.

Jo Swinson: I think I can reassure the hon. Gentleman on that point. The ways that companies do this varies from company to company. He is quite right that often it will be an employee of the pub company—who sometimes might be RICS qualified and sometimes might not—who will pull together these assessments in line with RICS guidance.

We all accept that in every job there will sometimes be a situation whereby somebody gets something wrong. That is the purpose of arbitration and it can be put right. If any kind of systemic pattern emerges, that is where the difference between an arbitration and an investigation comes in. The adjudicator will have the power to open an investigation if they believe that there is any kind of pattern of breaking the code. They would view an individual case where a valuation was wrong quite differently: those things happen and the arbitration process is there to get that right. If there was a situation where, as the hon. Gentleman suggested, a pub company felt that not much would happen and it systematically tried to get a wrong assessment past as many tenants as possible, the adjudicator would view that pretty dimly. They would certainly have the power to launch an investigation. If they found that to be the case, they would have the sanctions to be able to make recommendations, publish information—effectively naming and shaming—and ultimately issue a financial penalty. Those powers exist and the adjudicator will have the ability to choose the right mechanism to remedy the situation.

I hope that those explanations have reassured the Committee and I urge hon. Members not to press their amendments.

Sheryll Murray: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Sheryll Murray: I beg to move amendment 151, in clause 36, page 31, line 2, leave out "large"

The Chair: With this it will be convenient to discuss the following:

Amendment 152, in clause 36, page 31, line 2, leave out "also"

Amendment 162, in clause 36, page 31, line 4, at end insert—

"(b) the Secretary of State shall ensure that provisions of the Pubs Code which carry costs which smaller businesses would find difficult to absorb, as prescribed, do not fall upon those pub-owning companies who own less than 500 premises,

(c) such provisions to be prescribed may include—

(i) the duty to employ a Code Compliance Officer, and to file annual Code Compliance Reports,

(ii) the duty to employ a business development manager and provide training thereto,

(iii) the duty to provide parallel free of tie rent assessments"

This amendment exempts small family brewers from certain aspects of the draft Pub Companies Code published in "Pub Companies and Tenants: Government Response to the Consultation" by BIS in June 2014.

[The Chair]

Amendment 70, in clause 36, page 31, line 20, leave out "large"

Amendment 157, in clause 59, page 40, line 30, leave out "D" and insert "E"

Amendment 158, in clause 59, page 40, line 40, at end insert—

'(6) Condition E is that the premises is owned by a "pub owning business" or a "large pub owning business" as defined in section 60 (1) (2) and (3).

(7) A premises which may meet conditions A-E, but is a premises that was not intended to be subject to the pubs code as defined in section 36(1) and (2) is excluded"

This amendment further clarifies the subject of the Code as being a premises which is part of a pub owning company or a large pub owning company.

Amendment 154, in clause 60, page 41, leave out lines 5 and 6.

Amendment 71, in clause 60, page 41, line 6, leave out "one" and insert "500"

Amendment 155, in clause 60, page 41, line 8, leave out "pub-owning"

Amendment 72, in clause 60, page 41, line 8, leave out "large"

Amendment 159, in clause 60, page 41, line 10, leave out "tied"

Amendment 156, in clause 60, page 41, line 12, leave out "pub-owning"

Amendment 73, in clause 60, page 41, line 12, leave out "large"

Amendment 160, in clause 60, page 41, line 15, leave out "tied"

Amendment 161, in clause 60, page 41, line 16, leave out subsection (4)

Amendment 192, in clause 61, page 41, line 31, leave out paragraph (b) and insert—

"(b) who is party to negotiations which have reached the stage of a provisional trading agreement for the prospective tenancy of a premises which are, or expected to be, a tied pub ahead of any final terms of the agreement being agreed.".

Amendment 66, in clause 61, page 41, line 42, leave out

"and includes a tenancy at will"

and insert—

"but excluding tenancies at will and agreements of less than 12 months"

Sheryll Murray: I want to deal first with amendments 151, 152 and 70. They would amend clause 36, about which we have engaged in quite a lengthy discussion. These are enabling amendments, should the amendments to clause 60 be adopted. I will deal, in particular, with amendments 154 and 71 to clause 60. I notice that amendments 70, 71 and 72 and amendments 154, 155 and 156 appear to do very similar things. I reassure the Committee that I will not consider all the amendments. We seem to have two sets of very similar amendments because of some confusion with the tabling of the original amendments.

The amendments that I want to discuss aim to protect family brewers. They would amend the Bill to ensure that pub companies with fewer than 500 tied tenants are removed from the constraints of the statutory code. Indeed, the Secretary of State for Business, Innovation and Skills has been quite consistent in giving his undertaking that companies with fewer than 500 tied pubs would be exempt from a statutory code. In response to a question from the hon. Member for Chesterfield on 11 September, he stated:

"We have no wish to create problems for the small, family-owned pubs, which are an extremely important part of the industry."—[*Official Report*, 11 September 2014; Vol. 585, c. 1064.]

The original BIS consultation said that the regulations would only apply to pubcos with 500 pubs or more, and

"would target those companies with the greatest market power and exempt smaller companies, about whom very few complaints have been received."

Family brewers running traditional tied pubs had been led to believe that they would not be subject to any legislation as the self-regulation was working effectively within their estates. Many of them, as I mentioned earlier, have operated with tied tenancy models for decades—and it has been a lot longer than that in the case of the family brewery owned by my constituent, James Staughton, although the brewery that he owns is not in my constituency but in that of my hon. Friend the Member for St Austell and Newquay. In that respect they agree that individual tenants require protection and advice, and are fully committed to continuing on a voluntary basis the pubs independent rent review scheme and PICAS, which already exist within the voluntary code.

Toby Perkins: Does the hon. Lady have any assessment of the extent of the cost base if PICAS and PIRRS keep going, but without the contribution of big pub companies, which would be in an entirely different adjudication system—particularly for micro-brewers, who probably would suddenly face making a significantly higher contribution for perhaps three or four pubs? What would the impact be in relation to the cost base?

Sheryll Murray: The Independent Family Brewers of Britain have assessed that it will cost in the region of £90 per pub per year. I will come on to how much of a financial burden inclusion in a statutory code might impose on those small businesses. I shall certainly seek an answer to that question from my hon. Friend the Minister.

A survey of 2,971 tenants, about the voluntary code, was conducted by IFBB pubs, and 2,770 responded. It showed that in 2012-13 only two applications had been made to PIRRS; and none had been made to PICAS. Only five formal complaints were made about business development managers, all of which were settled by internal grievance procedures without the need for outside intervention.

Anne Marie Morris (Newton Abbot) (Con): I am extraordinarily interested in the statistics that my hon. Friend has given. It seems to me that the family companies need all the help they can get. If problems are on as small a scale as she has said—I have never heard of anything so small—she is right in tabling her amendment, to try to protect them from over-regulation.

Sheryll Murray: The Bill is all about helping small businesses, and that is what I want to do. I am grateful for my hon. Friend's support for the amendments.

Of the 2,770 tenants who responded, 100% were committed to funding the continuation of PICAS and PIRRS. I have been shown a copy of a letter from the Secretary of State to my right hon. Friend the Member for Wokingham (Mr Redwood), in which he states that evidence suggests that larger pub-owning companies may no longer continue to fund the voluntary mechanism once the statutory code comes into force, which could soon render the voluntary system unviable. The IFBB have given a clear undertaking to continue to operate under the voluntary code, and I hope that the Minister will acknowledge that.

The Minister sent a letter to Committee members on Friday. I thank her for ensuring that her office rang mine, to make sure I received it. It was kind of her and I know she is aware of my interest in the matter. My constituent James Staughton, who is the owner of St Austell Brewery, a family brewery located in the constituency of my hon. Friend the Member for St Austell and Newquay, had joint discussions with my hon. Friend and myself on this subject. We undertook considerable joint discussions on the matter of the statutory code and the cost and excessive regulatory implications for family breweries.

3.30 pm

As far as I can tell from her letter, the Minister has made one concession, outlined in paragraph 1, which is to move the annual compliance report into the enhanced code. I am unable to find any further changes to the Bill in this lengthy letter, but I stand to be corrected. Perhaps she will expand on any further changes.

As the Secretary of State confirmed to the House:

"The Government have introduced a number of measures to support pubs, including ending the beer duty escalator and cutting beer duty".—[*Official Report*, 11 September 2014; Vol. 585, c. 1063.]

That reduces, of course, the cost of a pint. I am sure that it is not the Minister's intention to undo the good work we have already done for the beer trade by imposing costly bureaucracy on small family breweries. We should be supporting small businesses and encouraging entrepreneurship.

Many pubs in my constituency are owned by local family breweries which treat their tied tenants with respect. It is very clear that the Bill introduces diseconomies of scale. The inclusion of smaller companies within the scope of the legislation will have the reverse effect of the deregulatory intention of the Bill. It will, instead, introduce costly compliance burdens which are disproportionate and damaging to family brewers, which are not the focus of the complaints, as acknowledged in the evidence to the Committee by Fair Pint and the Campaign for Real Ale. Family brewers believe that their inclusion in the Bill will encourage transfers of pubs from tenancy to management and will reduce the opportunity for entrepreneurs to enter the pub business.

I want to ensure the future of pubs in my constituency that are owned by local family breweries which treat their tenants with respect, and that the partnership relationships between the small breweries and their tenants are able to continue without the added burden of so much bureaucracy. It is in this spirit that I give notice that I will be pressing amendments 71, 72 and 73 to a vote. I hope that Committee members from all parties will vote to support the small, family-owned pubs that the Secretary of State described as,

"an extremely important part of the industry"—[*Official Report*, 11 September 2014; Vol. 585, c. 1064.]

while ensuring that the larger companies, under the statutory code, can move towards engaging in a similar partnership relationship with their tenants.

Toby Perkins: I am very pleased to speak in support of amendment 162 in my name and those of my hon. Friends the Members for Edinburgh South and for Hartlepool. The broad body of campaigners, from CAMRA to the Forum of Private Business, the Federation of Small Businesses and the GMB trade union, recognise that regulation should fall only on those who have done most to contribute to the problem and are most able to absorb the costs of new regulation. That is why, throughout the several years that we have been involved in the campaign, the measure of 500 pubs has been used to distinguish the large pub companies—about which we, as MPs, receive most complaints from our constituents—from smaller, independent, local or family brewers. For example, back in January 2013, a day before Labour's Opposition day debate on the subject, a letter from the Secretary of State stated:

"In order to place the most proportionate burden on business"

the Government are proposing that

"this new regulatory regime should apply to all pub companies"

with more than 500 pubs. The BIS Committee report of July 2013 supported the 500-pub threshold, but recommended including

"a level of flexibility in any Bill to allow the Secretary of State subsequently to alter the threshold in the interests of the industry."

CAMRA's super-complaint to the Office of Fair Trading in 2010, which did much to focus the attention of policy makers on the issue, highlighted the organisation's concern that restricted and distorted competition in the UK pub market, due to the unfair implementation of the beer tie in certain circumstances and other exclusive purchasing obligations, is artificially inflating the consumer price of beer, reducing consumer amenity in pubs and increasing the rate of pub business failures. Again, the complaint only focused on pubcos that impose a beer tie on 500 or more pubs.

That was surprising, having been so reluctant to regulate at all for so long.

Andrew Griffiths: The hon. Gentleman mentioned a super-complaint that was made by CAMRA and I think we have all read that. Will he tell us what the response to that super-complaint was?

Toby Perkins: The OFT's response was that, in the context of consumers, there was not a competition issue. While I understand why CAMRA attempted to make that case, I do not think the central point we have ever been making has been about the impact that the pub companies have on consumer choice. Many of the pub companies have a wide range of beers available and have been contributory factors in the growth of some of the brewers. From our perspective, it is perfectly consistent to say that the OFT were right to come to the conclusion that there was not an impact on consumer choice of beer, but still think there was an impact on the choice of people attempting to get into the industry as a tenant.

As I was saying, the Government having been reluctant to regulate at all for so long, it was a surprise to me when the Government's draft regulatory code, released

[Toby Perkins]

in June, made the statutory code binding on all companies that owned tied pubs, no matter what their size or market share. The Government's proposals have an enhanced feature that only applies to those with more than 500 tied pubs, yet that is one part—part 8 of the 13-part draft code—that would not apply equally to small family brewers and large pub-owning companies. That is a strange approach and we have attempted, with our amendments, to greatly reduce the burdens of it.

We have been consistently saying that we did not see this process as being about a significant regulatory regime being placed on the smallest independent brewers. We have always said that they should have been exempt from the most onerous effects of regulation. However, attempting to extricate them from the Bill, as the Minister is doing, is quite problematic. The Government have so clearly set themselves in favour of a core and enhanced code, and given our reservations that the code currently only exists for companies that have 500 tied pubs, I suspect that if we started delivering on what the hon. Lady is proposing—not withstanding my support in general principle for what she is saying—we would end up seeing many companies that we would expect to be covered by the code, not being covered. Because of the two combining features of only those with tied premises being affected and the 500-pub limit, we could potentially create a lot of loopholes and undermine the potential of the legislation to achieve what we hope it will.

If the hon. Lady gave us an indication that she was minded to support our amendment—which makes it clear that it should be any pub-owning company with over 500 pubs—that would set my mind at rest on the complete exemption that she talks about. In the event of her amendment not carrying the day, I would be interested to hear her thoughts about our more specific approach of removing a significant number of onerous steps from the statutory code and adding them to the enhanced code.

Sheryll Murray: The hon. Gentleman asked about costs. The Minister will hopefully come up with how much it will cost for small family brewers, but does he have any figures to share with us? If the family brewers are still included in a statutory code, what would the cost implications be for them? I shared with him that the cost of them funding the voluntary code was £90 per pub. Does he have any indication of whether the statutory code he talks about would be of a similar cost?

Toby Perkins: I think I understand what the hon. Lady is saying. I believe she is asking about the cost of the Government's proposals for small family brewers. She might do better to ask the Minister. The principle of the original legislation was to create a code for pub-owning companies with over 500 pubs. If we had drafted the legislation, we would have worked precisely on that basis. The Government made two changes, in terms of what we expected the legislation to look like and what it actually looked like. The first, as the hon. Lady pointed out, independent family brewers were dragged into something that they had no expectation of being dragged into. The second important change was that the Government chose to say, "This is about 500 tied pubs," rather than purely about 500 pubs. The combination of those two things and how the code has been written makes it much more difficult to achieve the carve-out and exemption that the hon. Lady seeks.

Andrew Griffiths: I am struggling to understand what the hon. Gentleman is trying to achieve with this amendment. He has articulated a problem with the tied model; I do not agree with that. However, he suggests that pub companies with no tied pubs should be caught up within the legislation. Companies such as Wetherspoon's or Mitchells & Butlers, which have no tied pubs, would be regulated by a piece of legislation that aims to deal with alleged abuses of the tied system. Why?

Toby Perkins: I will come on to that. If it was as simple as every pub-owning company either having tied pubs or not—as the hon. Gentleman suggests with his example of Wetherspoon's—his approach might make sense. We would all imagine a company such as the Spirit Pub Company to be covered by the code. It is a pub-owning company with 1,200 pubs but it actually only has 430 on a leased model. It is partly about market share and the dominance that comes from having a significant number of pubs. As a collective, the five or six major companies own a substantial number of the pubs in the industry. It is also about trying to prevent loopholes to ensure that pub companies that we all expect to be covered by the Bill are not able to exempt themselves by creating alternative models—whether they call them franchises or anything else. The more wriggle room we create, the more likely it is that pub companies will say that they are not covered.

3.45 pm

I say to the hon. Members for Burton and for South East Cornwall, and the other hon. Members whose names the amendments are in, that it is decision time. If they accept our point about the size of the market and support our amendments, which address the issue of the measure covering not only people who have tied pubs, their amendment would be a lot less concerning. We must decide whether we take the sensible step that we are proposing, which is to say, "Okay, there is a code, but the way it is drafted makes it difficult to create the carve-out that the Government are attempting." I do not believe the proposed carve-out would survive the rest of the legislative process, because it is like attempting to unscramble an omelette. The principles that the Government are laying out are important for independent family brewers, but the practical concerns that those brewers have raised with me about how onerous the code will be for them would be overcome by our amendment.

For us not to object to the hon. Lady's proposal, we would need to be assured that the issue of the 500 tied pubs was dealt with. Otherwise, businesses are likely to exempt themselves from this measure, which we all expect to cover them.

Sheryll Murray: If the hon. Gentleman's amendment were accepted, what would happen if a pub company had 300 tenants that are protected by the pubs code, whether it is voluntary or compulsory, and another 201 pubs that have managers in? With my amendment, the 300 tenants would be subject to the voluntary code,

which would not impose any restrictions on them, but if the company had a further 201 pubs with managers in, they would be brought into the statutory code, because those managers are employed on a completely different basis. Will the hon. Gentleman explain how he would get around that problem if he removed the tied option from the 500?

Toby Perkins: Very easily. If the company had 500 pubs, it would be subject to the enhanced code. It is as simple as that. The point is that if the company had more than 500 pubs, and 300 of them were on a lease model, it would be brought inside the enhanced code and subject to its requirements.

Andrew Griffiths: Allow me to bring some clarity to the hon. Gentleman's thinking. He needs to understand that there is a fundamental difference in law between a lease and a tie. He is suggesting that we regulate businesses that have not had a single complaint made against them—indeed, they do not operate those kinds of business arrangements in any way, shape or form—simply to ensure that we catch businesses that he perceives to be wrongdoers. Had he thought it through, he might have had an argument if he had said, "500 leased or tied tenancies"—there is an intellectual argument behind that. But he is suggesting that a deregulating Government, who want to lessen the red tape and the burdens on business, should impose extra and expensive regulation on businesses that have not had a single complaint made against them. That is not something that I, for one, could justify to the pub trade or to the businesses affected. I struggle to see how he could, either.

Toby Perkins: As I was saying, the central question is what extra burdens we would be placing on companies that do not have any leased or tenanted arrangements. The truth is that, in practical terms, those burdens would be minimal to the point of being non-existent.

To return to a point I raised earlier, the real danger is that many of the amendments tabled by the hon. Members for Burton and for South East Cornwall have sought to weaken the code. The principle behind amendment 151 would lead to a situation in which companies that all of us who prepared and support the code expected to be covered by it could end up finding ways of getting out of being covered. We anticipated six or seven companies being regulated, but the number could end up being only three or four; perhaps those companies might then find alternative ways to get out of being covered by the code. We could be left with Rolls-Royce legislation without any petrol in the tank, as no company would be covered by it.

The hon. Members for Burton and for South East Cornwall have to decide, ultimately, which side they are on. Are they going to support the small pub companies, and accept that one of the costs of doing so is to ensure that all the companies we anticipated being brought inside the code are actually brought inside it, or—for the sake of protecting the big pub companies and allowing them additional wriggle room—are they going to choose not to back the code and so see their intentions for independent family brewers go undelivered? If they are not willing to do as I suggest and remove the provision about the tie, will they instead consider our amendment 162, which would remove the regulatory burdens on independent family brewers? It lists a number of things that such brewers would not be expected to do. Will they support us on that?

Amendments 159 to 161 are intended to make it clear that large pub-owning companies are those that own over 500 pubs of any kind, something that the all-party Save the Pub group has clearly and consistently called for during the campaign. Without those amendments, the Bill and the code will take no account of market share or market powers, which must provide the true definition of large pub-owning companies. Amendment 151 would mean that a pub-owning company with 1,200 pubs, 400 of which were owned on a lease model, would not be described as a pub-owning company under the Bill. That is a significant issue that we must address.

The chair of the all-party save the pub group, the hon. Member for Leeds North West (Greg Mulholland), warned on 16 July in the Chamber that it is crucial to prevent some of the companies that we want to be subject to the statutory code from moving out of that obligation. He said that if the 500-pub limit applies to tied premises only, the likelihood of businesses exempting themselves from the code will grow. As a result, the desire of the House to make the requirements more rigid is likely to grow, not recede. That relates to the principle of what the hon. Members for South East Cornwall and for Burton have been saying.

I mentioned Spirit Pub Company, which has 1,200 pubs, only 450 of which have what they would describe as a tied arrangement. Everyone would expect Spirit to be included in the enhanced code, but under the amendments proposed by the hon. Members for South East Cornwall and for Burton, it would not. If all of Labour's amendments were accepted, they would come within the code. If only the amendment to exempt independent brewers and pub-owning companies but not larger pub-owning companies was pursued, Spirit would be left out, because it has fewer than 500 pubs with tied arrangements. They are important amendments, and Members will have to consider carefully the conclusion that they come to. The amendments would ensure that we do not subject thousands of pub company tenants to further delay as businesses that we all expected to have to comply with the code find different ways to dodge it.

The Government's response on the issue seems a bit confused, and the sense that there is a battle about it on the coalition side of the Committee does not do anything to give the certainty that the industry is looking for. The Government's consultation document proposed that the new regulatory regime should apply only to pub companies with more than 500 pubs, so I am interested to hear from the Minister why it has been drafted as it has. It said that for the companies within the scope of the code, it should apply only to their non-managed pubs. The Government even grouped consultation responses using those definitions, yet they decided to change the definition to 500 tied pubs during the process. We disagree with that conclusion, and we are giving the Government and the hon. Members for South East Cornwall, for Burton, for St Austell and Newquay, for Plymouth, Sutton and Devonport, and for Newton Abbot the opportunity to put those things right today and support our amendment. It would make a significant

[Toby Perkins]

difference to the Bill's impact on family brewers and, indeed, on any pub-owning company with fewer than 500 pubs.

We are concerned that there is an attempt to water down an already limited set of proposals, which would mean that fewer companies would be covered by the provisions of the code. That is certainly true of amendment 192, which would tighten the list of people who are considered tied tenants under the Bill before a final tenancy agreement is signed. Under the Bill, those entering negotiations for a premises that is currently a tied pub would be covered. That would give them the right to see further information about their costs if they were to request to be free of tie, and it would increase transparency from the beginning of the process. If the amendment were accepted, that would be limited to those who have reached a trading agreement, by which time it might be too late.

Likewise, amendment 66 would remove from the provisions of the Bill tenancies at will—those with no definitive end point—and those of less than 12 months, potentially disfranchising many licensees and limiting their rights. Just as it is not right for those on temporary contracts or short-term deals to be discriminated against in the workplace, nor should tenants on short-term contracts be excluded from the protection of the pubs code. I anticipate pressing amendments 157 to 161 to a vote, and I eagerly anticipate the support of the Committee in ensuring that those important clarifications, which offer greater certainty to the industry, are approved.

4 pm

Stephen Gilbert (St Austell and Newquay) (LD): It is a pleasure to follow the hon. Member for Chesterfield, although what he suggests is somewhat mealy-mouthed support for the family brewers sector. He says that there is a tension in the coalition, but the only tension on the Government Benches is because we want to get this right.

As my hon. Friend the Member for South East Cornwall said, there have been only two applications to PIRRS in the family brewers sector, and no applications at all to PICAS. As my right hon. Friend the Secretary of State has said, we do not want to overburden family brewers with compliance when the issue that we are trying to tackle is in the pubcos, as the hon. Member for Chesterfield knows. The hon. Gentleman is inviting the Committee to back his amendment, which would not exclude independent family brewers from the provisions that he wishes to set up. In fact, his amendment 162 would just move some of the provisions into the enhanced code. As we know from the letter my hon. Friend the Minister sent to the Committee earlier this week—I have to congratulate her on the way in which she has engaged with my concerns, those of my hon. Friend the Member for South East Cornwall and those of others—she is minded to move a whole bunch of provisions into the enhanced code.

Sheryll Murray: Will my hon. Friend give way?

Stephen Gilbert: If my hon. Friend will hold on a second, I will deal with her point in passing.

My hon. Friend the Minister sets out clearly in her letter that the requirement to produce an annual compliance report will be moved into the enhanced code, and that requirements for business development managers to record conversations will be qualified to material matters such as rent, repairs and other such stuff that is directly relevant to the licensee. The information requirements regarding PIRRS and informing tenants who are contracted out of the Landlord and Tenant Act 1985 will be reviewed ad nauseam. My hon. Friend concludes by saying that she is open-minded on requirements for other areas where compliance would overburden smaller, family businesses also to be moved into the enhanced code. I am afraid that the hon. Member for Chesterfield is inviting us to do nothing that my hon. Friend the Minister has not already said she will do.

Toby Perkins: I invite the hon. Gentleman to consider the chronology of this: we tabled the amendments on Thursday, and by Friday we had a letter saying that the Government were minded to support many of them. He might be putting the credit in the wrong place.

Stephen Gilbert: If the hon. Gentleman reads the letter, he will find that the chronology was meetings between myself and the Minister, and between my hon. Friend the Member for South East Cornwall and the Minister, before the point he mentions.

We have all shared our aspiration to reduce compliance burdens on the family brewing sector. The 29 long-established brewing and pub-operating companies across the country that are part of the IFBB have about 3,000 tenanted and leased pubs. I encourage my hon. Friend the Minister, my right hon. Friend the Secretary of State and others to think about moving those companies entirely out of the statutory code. That is why I support the amendments tabled by myself and my hon. Friend the Member for South East Cornwall.

The hon. Member for Chesterfield is not asking us to do anything that the Government have not already offered. If he actually wants to stand up for family brewers, I invite him to join us in exempting those under with 500 pubs from the provisions of the Bill.

Andrew Griffiths: Time is short, so I will briefly deal with my hon. Friend's amendments, with the issue of family brewers and with the contribution made by the Opposition spokesman for pubs. I am open mouthed at the lack of understanding of the industry that the hon. Member for Chesterfield has just demonstrated. This is a tenanted and leased pubs Bill, but his amendment encompasses every pub business and every pub company in the country, whether they have leased and tenanted pubs or not. That shows a complete lack of understanding of the way the industry operates. The hon. Gentleman expects companies such as Wetherspoon's and M&B, which have none of these agreements in any of their pubs, to be caught up in the Bill, this burden and this regulation. I cannot see the sense in that. I look forward to the hon. Gentleman's discourse with Tim Martin, the owner of Wetherspoon's. I am sure he will take great delight in educating the hon. Gentleman about the implications of including his business in the Bill and what that would do to it.

I am disappointed. Had he wanted to, the hon. Gentleman had the opportunity to table an amendment that applied only to tenanted and leased pubs. That

would have solved his problem, but he missed the opportunity, either by not understanding it or not seeing that that was the way forward. He has demonstrated that he wants to play politics with the issue rather than help family brewers and all the people they employ throughout the country. He has made a huge mistake in making that so obvious to everyone who reads the debate.

I understand what my hon. Friend the Member for St Austell and Newquay said about the Minister's desire to find a solution. I understand that, with her letter and her intent to put more of the burdens into the enhanced code, she has made strides forward. Nevertheless, like my hon. Friend the Member for South East Cornwall, who moved amendment 151, I still feel that I must do what I can to support the family brewers, because that was definitely the mood that came through from Parliament when we debated this issue on Second Reading. That is why I will support her amendment.

Of the other two amendments that I tabled in the group, the most important is the one dealing with tenancies at will, which, the Committee will remember, we discussed at some length when we were taking evidence. Tenancies at will are established in emergencies due to death, divorce or pestilence; when something goes wrong with a tenant, pub companies use them to fill the gap. If the tenant is affected by a divorce, death or illness, then rather than enforcing its contract and insisting that the tenant fulfils their obligations, the pub company will often let the tenant go.

I hope that the Committee will take it as read, but if not, I can read out many examples of tenants who went through illness, divorce or family breakdown and so had no choice but to get out of the pub. If the pub companies had not had tenancies at will available, they would have had two options: first, they could have shut the pub until they found a full-time tenant; or, secondly, they could have continued to charge the tenant, racking up their debt. Tenancies at will allow pub companies to fill a pub with a tenant on a short-term basis. Indeed, some companies and individuals do only that. They are the caretaker: they go into a pub and do the bare minimum—keeping the doors open and the beer flowing—while the pub company is going through the process of finding a new tenant.

In the evidence sessions, we heard about the due diligence that we all want pub companies to do to ensure that tenants are properly informed. They must ensure that the prospective tenants understand how the business operates, their legal position and their lease; that they have a business plan; and that they are fit and proper people to run a business. All that takes time. We heard that it can take up to six months. If we do away with tenancies at will, pubs will have to close because no one will be able to go in and run them between long-term tenancies.

The reality is that the people who go in for tenancies at will understand the situation. They understand that it is a short-term gig, they have fewer responsibilities, and they are often better remunerated because they are the emergency care. My real worry is that, if we do away with tenancies at will, as the Bill currently suggests, we will not only see more pubs closing in the short term—because the pub companies will have no choice but to lock the doors and board them up—but when the company does find a tenant to take over the pub, it will be more difficult for the tenant because, as always, if a pub closes, people go to the one down the road or in the next village. Closing the pub risks losing regular customers, which is going to cost the business.

I want to draw to the Committee's attention the evidence that we received from the Association of Licensed Multiple Retailers, an organisation that one might think would want to see an end to tenancies at will. It said:

"Following the oral evidence…members of the…Committee might be forgiven for thinking that tenancies at will…are commonplace in the sector and large numbers of inexperienced tenants use them as 'tasters' before rolling them over and using them as their entry into the business. Our experience and understanding contrasts with this markedly. TAW agreements are always temporary in nature and usually fixed in term—they are a short term, expedient measure to keep a pub open when there has been an exceptional event".

4.10 pm

Sitting suspended for a Division in the House.

4.30 pm

On resuming—

Andrew Griffiths: I will bring my comments to a close as quickly as I can. I was talking about tenancies at will and quoting the evidence from the ALMR, which said:

"A TAW is rarely used as a 'try before you buy' device as suggested at the oral evidence session and there is no possibility of a TAW being rolled into a longer term substantive agreement without the Code's due diligence being applied in full."

What I am suggesting with my amendment is that we keep in place these temporary, flexible agreements, but two things would happen. First, any of these tenancies at will that rolled over to more than 12 months would automatically become a tenancy encapsulated in this Bill and part of the adjudicator's realm. The second point to make is that if someone goes to a substantive agreement thereafter—after a month or two months—the moment they sign that substantive agreement, they would be covered anyway. I understand the Minister's concern that there is room for abuse, but I think that we have demonstrated that the safeguards are in place, and that the role that these tenancies at will play in keeping pubs open are so important that they should be exempted.

In speaking about my final amendment, I will be as brief as possible. The aim is to clarify an anomaly that I see in the Bill and that I am sure is a case of unintended consequences. As it stands, anyone is covered by the code the moment they pick up the phone and speak to the pub company. Therefore, if someone was window shopping—it is the equivalent of walking into an estate agent's, talking to the girl and asking for a set of particulars—they would be covered by the adjudicator. They would be able to take that company to the adjudicator and have a ruling against it just from that very short, initial discussion.

Companies such as Admiral Taverns tell me that they receive up to 5,000 inquiries every year. I am sure that it is not the Minister's intention that that should be covered by the Bill. The scope of this clause as drafted would, I think, impose unnecessary and excessive burdens on pub companies, with very limited benefit for tenants and prospective tenants. The clause should clarify that advisers to the principals in a negotiation are not themselves party to the negotiation and do not benefit from the provision. Yes of course, when a negotiation is begun,

[Andrew Griffiths]

when substantive negotiations happen, those people should be covered by the code. I accept that, but there needs to be some semblance of sense here that a negotiation begins when two parties begin intense negotiations, not when someone picks up the telephone.

I do not intend to press the amendments to a vote today, simply because the Labour party has indicated that it is opposed to exempting tenancies at will, but I hope that the Minister will understand the amendments in the spirit in which they are meant. This is not a way of pub companies wriggling out of their responsibilities or trying to avoid giving tenants the rights that they deserve. This is a vital tool that is used to keep pubs open. That is something that I am sure everyone on the Committee wants to see and I know the Minister wants to see.

Motion made, and Question put, That further consideration be now adjourned.—*(Mel Stride.)*

The Committee divided: Ayes 8, Noes 6.

Division No. 9]

AYES

Colvile, Oliver	Murray, Sheryll
Gilbert, Stephen	Stride, Mel
Griffiths, Andrew	Swinson, Jo
Morris, Anne Marie	White, Chris

NOES

Doughty, Stephen	Murray, Ian
Esterson, Bill	Perkins, Toby
Gilmore, Sheila	Wright, Mr Iain

Question accordingly agreed to.

4.35 pm

Adjourned till Thursday 30 October at half-past Eleven o'clock.

Written evidence reported to the House

SB 46 Spirit Pub Company PLC

SB 47 Stephen Beales

SB 48 The Punch Tenant Network

SB 49 Shepherd Neame

SB 50 Fair Pint

SB 51 Letter from Mr George Mudie to all Chairs of the Bill Committee