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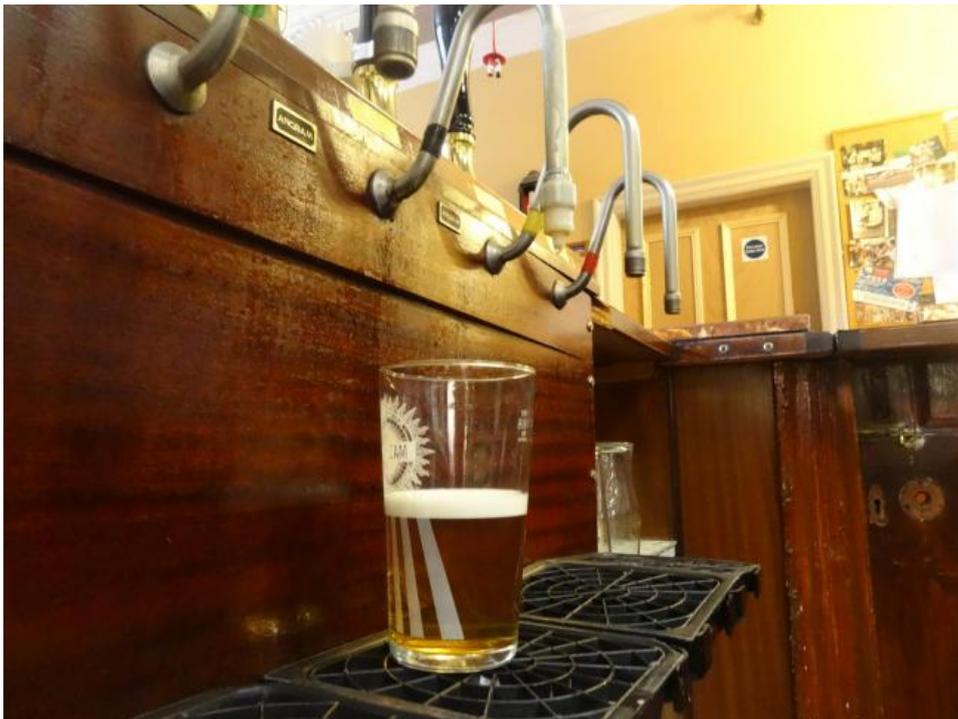
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13th August 2016

## FAO all pub tenants: Don't waste these powers that we've waited so long for



FAO all pub tenants: Don't waste these powers that we've waited so long for

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## After years of political failure, pub tenants must now grasp and use their long-overdue rights and powers, argues York publican PAUL CROSSMAN

November 18, 2014, was a momentous date for UK pubs, as Parliament unexpectedly passed a vital last minute amendment to the Small Business, Enterprise and Employment Bill.

New Clause 2 had been submitted by Leeds North West MP Greg Mulholland, and was undoubtedly the most significant legislative event relating to the pub industry since the Thatcher government's "Beer Orders" of 1989, which aimed to stimulate competition in the sector, and to some extent loosen the grip of the traditional beer tie, whereby tenant licensees were obliged to buy only the beers supplied by their brewery landlords.



*Article author Paul Crossman*

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Unfortunately the Beer Orders were subject to disruptive corporate lobbying (the bane of the UK pub industry) whereby the reforms to the beer tie itself were disastrously watered down, creating a dysfunctional new business landscape which led directly to the rapid rise of huge non-brewing pub-owning property companies (known as pubcos), who found themselves with an irresistible opportunity to “tie” thousands of tenants to a wholesale product list, and furthermore to literally name their own prices in the process.

The scale of the disaster this represented for our pub industry, and our local communities, simply cannot be underestimated. Thousands of pubco tenants soon found their beer prices and rents relentlessly escalating, and their profit margins intolerably squeezed.

Business failures inevitably ensued at an ever-increasing rate, and ultimately many of the pubs themselves, underinvested and struggling, fell into a terminal cycle of decline which all too often led to the eventual “liquidising” of the asset by the pubcos, who simply sold them off for alternative use. The problem is ongoing even now.

The behaviour of the pubcos was scrutinised and condemned by no fewer than four select committees over the years, yet political action was always minimal as industry lobbyists persuaded politicians to take a light touch approach, and to trust the industry to self regulate.

Political inaction shamefully prolonged an issue which should have been tackled many years ago, with a mountain of evidence showing that pubs were failing under the pubco model on an industrial scale.

New Clause 2 proposed a direct solution by stating that failed self-regulation should be replaced with a statutory “Pubs Code”, a new legally binding set of rules which would crucially include a new right for tenants to request a “Market Rent Only” option at certain trigger points (effectively an opportunity to “opt out” of the beer tie). Furthermore the Code was to be backed up by an Adjudicator with the power to enforce it and to impose sanctions for any breaches.



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It was passed that day, but shamefully took a further twenty months for a reluctant Government to enact, as they sent it on a tortuous route through the Parliamentary process, during which attempts to water it down were mercilessly thwarted by determined expert campaigners and their political allies. This year's May deadline was inexcusably missed, but the new Pubs Code finally, thankfully, came into force on July 21.

Pubco tenants now have significant statutory rights, and recourse to the Adjudicator where necessary, and pubcos find themselves with unavoidable new responsibilities.



The situation is still by no means perfect. For example not all tenants are covered by the Code – only those of the six largest companies, and there are also grave concerns about the current choice of Adjudicator – a person felt by

many to have fatal conflicts of interest as a former pubco surveyor), however the implementation of the Code is a hugely significant development, and an enormously significant step in the right direction.

All pub tenants would do well to ensure that they know exactly what the Code means for them and how to use it.

Detailed information **is freely available on the Government website**, and truly independent advice is offered by the excellent **Pubs Advisory Service**, whose personnel were highly instrumental in ensuring fairness for tenants throughout the drafting of the Code itself.

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