



The Pubs Code and Pubs Code Adjudicator: Part 2 - response form

Name: [REDACTED]

Organisation (if applicable):

Address: Blacksmiths Arms [REDACTED]

Email: [REDACTED]

Please tick the box below which best describes you as a respondent to this consultation.

<input type="checkbox"/>	Pub-owning business with 500 or more tied pubs
<input checked="" type="checkbox"/>	Tied tenant
<input type="checkbox"/>	Interest group, trade body or other organisation
<input type="checkbox"/>	Other (please describe)

Please be aware that the Government intends to publish all responses to this consultation.

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes. Please see page 8 of the consultation document for further information.

If you want information, including personal data, that you provide to be treated as confidential, please explain to us below why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we shall take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

I want my response to be treated as confidential ☐

Market Rent Only option and Parallel Rent Assessments

Question 1

We believe the stated MRO procedure, that will give tenants a free-of-tie rent offer alongside a tied rent review proposal, will enable tenants to make an informed judgment as to whether they will be no worse off by remaining tied and fulfils the objectives of a Parallel Rent Assessment. If you believe that this does not achieve the goal, please give your reasons why.

Comments: I agree it would allow an informed judgement.

Question 2

We would welcome your comments on whether, in addition to the other information requirements of the draft Pubs Code, the documents provided for in Schedule 3 of the draft Code and described in paragraph 10.23 in Part 1 of this consultation are sufficient and appropriate for calculating a meaningful free-of-tie market rent that will allow tenants to make an informed judgment as to whether they will be no worse off by remaining tied.

Comments: I agree it would allow an informed judgement.

Question 3

If you believe that the combination of current proposals will not adequately deliver the no worse off principle or does so in a disproportionate way, please give your reasons and, where relevant, provide evidence.

Comments:

Availability of the Market Rent Only option at rent assessment

Question 4

What would be the effect of removing from the draft Pubs Code Regulations the condition that there must be a proposal for an increase in the rent at rent assessment before a tenant may exercise the MRO option?

Comments: Pub companies would make an offer of equal or less to avoid having to offer free of tie.

Question 5

It would be particularly helpful to receive evidence of the percentage of rent reviews that have resulted in a freezing or reduction of the rent over the last three years; of the prevalence of annual indexation provisions and other inter-rent review arrangements in tenancy agreements; the typical increase in the amount payable by the tenant that they result in; and the way in which these are exercised by the pub-owning business under the terms of the tenancy.

Comments: At the point of renewal of my lease I was offered a reduction in rent in [REDACTED]. The lease was subject to an annual RPI increase.

The Pubs Code - Information requirements

Question 6

Do you agree that these are appropriate conditions to be met before it becomes mandatory to provide specified information to a prospective tenant?

Comments: Yes I agree. Prospective tenants should be given all related information available for any pub being taken on.

Question 7

Do you agree that a pub-owning business may not require a prospective tenant to submit a business plan unless the tenant is a qualified person to whom it has provided the specified information?

Comments: All prospective tenants should submit a business plan.

Question 8

Do you agree that where a change in the tied rent is proposed during the course of the tenancy agreement, the tenant should be provided with a revised rent proposal? Should all of the Schedule 2 information be required; or only those elements that have been changed? Should all of the Schedule 1 information be provided at the same time?

Comments: As much information as possible should be given and the tenant should be given a new rent proposal.

Question 9

Should a rent proposal be required in all cases where there is a change in the rent during the tenancy? Would there be any merit in excluding changes that are automatic or agreed in advance (for example, annual indexation provisions); or that are of a temporary nature (such as rent 'holidays' to provide short-term relief to the tenant)?

Comments: Not required for the agreed annual indexation or short term relief.

The Pubs Code – repair provisions

Question 10

Do you consider that these measures on repair obligations provide an appropriate balance between the rights and duties of pub-owning businesses and those of their tied tenants?

Comments: The majority of repair obligations in the lease are with the tenant. This is reasonable if MRO is introduced.

The Pubs Code – arbitrable provisions

Question 11

In the draft Code are there any provisions that you consider should be specified as non-arbitrable? Please explain the advantages of doing so.

Comments:

Contractual inconsistencies with the code

Question 12

Do you have any comments relating to the proposals for void and unenforceable terms?

Extension of code protections

Question 13

Do you have any views on the extent of the extended protection that is proposed?

Comments:

Group undertakings

Question 14

Are there any elements of these proposals regarding group undertakings that you think would not work as intended or that require amending?

Comments:

Exemptions from the Pubs Code – genuine franchise agreements

Question 15

Please comment on the key characteristics of a genuine franchise agreement as set out in Table 1. Where you think a characteristic should be amended or removed please set out your evidence as to why.

Similarly if you think further characteristics should be added please set out your justification as to why as well as an explanation of what should be added.

Comments: Key characteristics of a genuine franchise agreement are adequate.

Question 16

Do you agree with the Government's proposals for 'reasonable piloting' of the pub franchise model. If not, please explain your answer.

Comments: Agree

Question 17

Do you agree that the Pubs Code information requirements that are indirectly related to rent such as the signposting to sources of benchmark information and the provision of historical trade information should apply to genuine pub franchise agreements?

If you disagree please clarify which requirement(s) is of concern, suggest any deletions and/or amendments and justify your arguments.

Comments: Agreed

Exemptions from the Pubs Code – tenancy at will and short-term agreements

Question 18

For how long should tenancy at will or other agreements be granted exemption from the Pubs Code?

Please explain the rationale for your answer and provide any evidence to support your case.

Comments: Until agreement is reached with the tenant as to whether the business is viable.

Question 19

Do you think it is appropriate that a tenant entering into a tenancy at will or short-term agreement with a pub-owning business should have completed pre-entry awareness training prior to being offered the agreement?

Please explain the rationale for your answer and provide any evidence to support your case.

Comments: Yes they should have completed some form of awareness training as they need to be able to make judgements on whether the business is viable. They need to be aware of the potential pitfalls.

Question 20

What sort of information do you consider would be useful and desirable for a new tenant to receive from the pub-owning business when entering into a tenancy at will or short-term agreement?

Comments: Trading history, previous rent and rates, details of utility suppliers, cellar training and general business awareness.

Enforcing the Pubs Code – fee for arbitration

Question 21

If you do not agree with the proposed £200 fee please explain why and give the rationale and any evidence in support of an alternative amount.

Comments: Agree

Enforcing the Pubs Code – costs of arbitration

Question 22

Do you agree with the Government's proposal that the maximum costs that tied tenants could have to pay a pub-owning business following an arbitration should be set at £2,000?

If you do not agree, please suggest an alternative level of fee, explaining the rationale for the alternative and provide evidence to support your case.

Comments: Agree

Enforcing the Pubs Code – proposed maximum financial penalty

Question 23

If you do not agree that the maximum financial penalty the Adjudicator should be able to impose following an investigation should be set at 1% of the annual UK turnover of all group undertakings of the pub-owning business, please explain why and give the rationale and any evidence in support of an alternative amount.

Comments: Agree

Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have. Comments on the layout of this consultation would also be welcomed.

Comments: The biggest problem is with the overcharging on the price of beer.

Please use this space to explain why you consider the information you have provided to be confidential.

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

Please acknowledge this reply ☐ x

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

☐ Yes

☐ No

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