



Annex D: The Pubs Code and Pubs Code Adjudicator: Part 1 - response form

The Code of Practice on Access to Government Information provides that the Department may make available, on public request, individual responses.

Following the close of the consultation period, the Government intends to publish all of the responses received, unless specifically notified otherwise.

This closing date for this consultation is 11 January 2016.

Please return your completed form to:

The Pubs Code and Adjudicator Team
Department for Business, Innovation and Skills
2nd floor, Orchard 2
1 Victoria Street
London SW1H 0ET

Email: pubs.consultation@bis.gsi.gov.uk

The Pubs Code and Pubs Code Adjudicator: Part 1 - response form

Name: [REDACTED]

Organisation (if applicable):

Address: [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.



Department for Business, Innovation & Skills

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 7 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 ☐

Rent assessments

Question 1

Do you have views on the proposed definition of a rent assessment?

Comments: I believe continuous annual beer price increases that I as a Tied Lessee on a Full repairing and Insuring 15 Lease that is contracted outside the L&T Act have experienced over the past 10 years of which I have no say or no control over and which [REDACTED] set themselves are extortionate compared to a FOT tenant whom can re-negotiate annually with their respective suppliers. [REDACTED] now putting the beers up in Jan

Market Rent Only option

Question 2

Are there any other circumstances where a renewal would arise and which should trigger MRO beyond those we have set out?

Comments: The impending Non-Domestic Business Rates changes that the Chancellor announced in his Autumn Statement which Tenants are going to be penalised on along with the significant changes that will result in increases to Licensing, Sky& BT Sports which are all based on RV is a "trigger". If a Landlord is in the middle of a rent review, MRO should still apply if he sells the pub on in that period.



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Question 3

Is the wholesale market price for beer the appropriate baseline for determining a significant price increase?

Comments: No.

The Bar Trade is about the only trade in this Country which continuously rises its beer prices to tied tenants each year !Every other product in this Country is competitively priced and are actually cheaper in a lot of cases than they were a couple of years ago.

Question 4

Is a five percentage point threshold above any increase in the wholesale price of beer (which will reflect any increases in inflation, taxation and other input costs), the appropriate measure?

Comments: No it is excessive along with rising Business Rates Costs , Staff costs and the impending National Minimum Wage, Licensing Costs, Sky and BT Sports Costs etc

Question 5

Do you agree that the calculation of a significant increase in price for tied products and services other than beer should exclude any increase in the wholesale price that results from rises in tax, duty, regulatory compliance costs or inflation (RPI)? Are there any other factors that should be excluded?

Comments: No the duty on alcohol decreases over the past few years should have been passed on to the tied tenants



Question 6

Is this the appropriate way to measure a significant price increase for tied products and services other than beer? If not, please explain the alternative you would recommend.

Comments: No pricing has to be in line with profitability !

Question 7

Is a two tier approach appropriate? If so, is the proposed threshold of contributing to 20 percent of the pub's turnover the right one?

Comments: No it's not. It has to be based on profitability which should be shared equally between the Lessee and the Landlord

Question 8

Are the proposed percentage increases in price (30 percent and 40 percent) appropriate? If not, please explain your reasoning and an alternative.

Comments: Please see answer to Question 7



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Question 9

Do you agree that a significant price increase should be calculated by reference to the price paid by the tenant at a previous point in time? If so, should that be six months ago?

Comments: No pricing has to be done on a comparable pricing model to Free Trade pricing.

Pub Companies like [REDACTED] etc charge what they like, charge excessive tied rents, there tenants do all the work and they pocket the free trade discounts of over £300.00 per barrel. They have a bigger monopoly than the electricity companies !!

Question 10

Do you have any comments on points i. to v. (significant impact trigger events) in Chapter 8?

Comments: Please read my previous comments

Question 11

Can you suggest any other circumstances that would be likely to have a 'significant impact' on the expected business of a pub; and that you believe would not be covered by the proposed definition in the Code?

Comments: Islington Council; has brought in an Late Nite Levy which as Tim Martin from Wetherspoons calls another tax on the tenant and one on which his Company refuses to bow to or pay and has resulted in staff being laid off because of the Council's greed , thus contributing to more unemployment !



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MRO-compliant agreements

Question 12

Do you agree with the distinction drawn between an MRO compliant agreement that arises from a request for MRO at renewal and an MRO compliant agreement that arises from a request for MRO during the course of the tenancy?

Comments: I believe the reasons I have listed in my previous answers should be added to the justification for a tied tenant to request an MRO Option

Question 13

Do you support the requirement that an MRO-compliant agreement should provide for an open market rent review every five years? Please explain the effect of such a requirement on the commercial relationship between the tenant and the pub owning business in an MRO agreement.

Comments: An MRO agreement linked to either RPI or CPI with 5 yearly rent reviews is an Commercially acceptable way to run every other kind of Commercial Businesses except for the Bar Trade.

Pub Companies need to wake up and listen to theirTenants (it's the 21st Century)

MRO procedure

Question 14

Does the list of required documents set out in paragraph 10.23 provide the independent assessor with all the appropriate information to make an independent assessment of the MRO rental figure? Should any other documents be added?

Comments: The Non- Domestic Business Rates is the highest bill an average Tenant pays after Rent and these forthcoming changers are going to affect Tenant s dramatically.

[REDACTED] or [REDACTED] wont notify you of this because simply, it's the tenants that are going to get caught ! More emphasis at rent review on this point is needed



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Question 15

Do you have any comments on the timescales for the MRO procedure proposed for the Code?

Comments: Yes. I'm on a Fixed Term 15 Year Full Repairing & Insuring Lease contracted out of the L&T Act commenced [REDACTED] & Expires on [REDACTED].

My current Rent Review is due on the [REDACTED] and [REDACTED] have told me that they do not have to offer me an MRO Option, do not have to notify me of whether they are going to sell my pub before the [REDACTED]! Where do I stand ?

Question 16

Do you have any views on the proposed circumstances in which the MRO procedure will come to an end?

Comments: If a Lease was forfeited

MRO Disputes

Question 17

Do you have any concerns about these proposals for the resolution by the Adjudicator of disputes related to the MRO procedure? If so, please explain your concerns.

Comments: My main concern is actually it does not spell out in this consultation period the exact dates that the MRO and Adjudicator rules will apply from leaving many Tenants like me in the dark !



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Waiver from MRO in return for significant investment

Question 18

How do you believe the “amount” of investment for the purposes of “qualifying investment” should be defined? Please explain your view by reference to the type of rent payment and percentage which should be used, with evidence to support your response.

Comments: I believe that this is can be an overstatement by Pub companies in many cases. In my case for instance [REDACTED] done an Investment but doubled my rent for the five year period. They're Freehold now is estimated to be worth in the Region of 2.5 Million and it was on their books for K400 in 2005. When the Lease is up in [REDACTED] all I will get is twice Rateable Value as the Tenant and their pub will be worth 3.5 million and the tenant has paid for it. This is not right !

Question 19

Do you agree with the proposed definition of “qualifying investment” in terms of the “type” of investment? If not, please explain why not, and suggest an alternative definition, with evidence to support your response.

Comments: No.

A qualifying investment should be equally proportioned and the profits from it equally proportioned also

Question 20

What do you consider should be the maximum length of the waiver period (a) 7 years; (b) 10 years; or (c) another option? Please provide an explanation for your answer and any evidence to support your case.

Comments: In the middle so I would suggest 7 years



Question 21

Do you agree with the safeguards proposed by the Government and the role proposed for the Adjudicator? Are there other safeguards that you consider should be provided? If so, what and why?

Comments: Yes

Question 22

Do you believe that there are any unintended or undesirable consequences of the proposed definition of “qualifying investment” or of other conditions referred to in this chapter on the MRO investment waiver?

Comments: Not sure

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: Part 1 and Part 2 should have both came out at the same time or it should have all being part of the 1 Document



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

I'm not worried whether this is in the Public domain or not as I have been in the Licensed Trade for over 35 years and this should have happened many, many years ago

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

Please acknowledge this reply ☒

At 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

BIS/15/522/RF



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

Name: [REDACTED]

Organisation (if applicable):

Address: [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)

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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

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

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: The impending changes to the Non-Domestic Rateable Values announced in the Chancellor's Autumn Budget in November 2015 will have a serious impact on Pubs and it should be included/excepted as a material change in circumstances and should "trigger" a rent review also

It's the biggest shake up of the Rates system in over 70 years.

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: None; I do not believe that there would be any effect from a Tenants point of view.

If the MRO option is to work the way the Government has promised it to work it is an simple mechanism to work out ! Proposed Fair maintainable Trade = FOT Rent V Lesser Tied Rent & Tied Discounts. If done correctly should be the same

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: The only information I could prove on this is on "Beer Pricing Fixing".

[REDACTED] have put the Wholesale Price of the Products they supply to me up by £150.00 approx per barrel over the past 5 years & my Discounts have only gone up by £6.75 per barrel over the same period which is extortionate & they also RPI my Rent annually! Happy days for [REDACTED]! I cannot contest their pricing as a tenant

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 most certainly.

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: I believe every Tenant should now take Independent Legal Advice from an RICS appointed Surveyor before they take on any Pub whether leased/Tenanted/ Franchised/ FOT / Freehold and I believe that Pub Companies should not be allowed to Lease/Tenant Properties to prospective Tenants before a Tenant can prove they have done this.

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: Yes I do agree.

The more information provided the better and it will be far less likely that it goes wrong for the Tenant.

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: Yes

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: Yes so long as there is a Pub Repair Guide to go alongside any Lease/Tenancy that is signed and is approved by RICS

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: No it should be an open book

Contractual inconsistencies with the code

Question 12

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

NO

Extension of code protections

Question 13

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

Comments: NO

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: NO

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: I have never been involved in an Franchised operation and would prefer if others gave you there opinions on it !

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: Reasonable piloting sounds good

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: Franchising is not my speciality

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: I believe an 1 year timescale is sufficient as it gives Pub Companies enough time to sort out what they want o do with the relevant Pub

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: There are serious financial implications for Tenants not being aware of what they are liable for when they take on any business short-term/ long-term !

Timescale is not an excuse for ignorance entering in to any business !

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: Shadow P & L. Previous Trading history. TUPE undertakings. Licensing conditions. Police representations. Cellar and Real Ale training. Personal Licence Holder responsibilities. Basic Food Hygiene and First Aid Training. Understanding profitability & GP's. Cash Flow projections and VAT registration knowledge. Machine Duty implications. Trading standards etc

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: Fee seems reasonable

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: Fees seem reasonable

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: Fees seem reasonable

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: Can you please provide dates that these rules and regulations can be applied to as I'm in the middle of a Rent Review which is due on the [REDACTED] and it's the last Rent Review of my [REDACTED] year Fixed Term Agreement Full Repairing & Insuring Lease with [REDACTED] and is not covered by the L & T Act. [REDACTED] won't grant me an MRO option/wont grant me a Lease extension and they have also told me they can sell the pub to whomever/whenever/without notifying me ! Where do I stand legally ?

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

I'm not concerned whether this is in the Public domain or not as I know there are a lot of Tied Tenants in the same position as myself whom are not being given any information by there Landlords and are relying as I am, on what we are reading in the Trade Press !

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

Please acknowledge this reply ☒

At 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

BIS/15/533