

**DELEGATED POWERS AND REGULATORY REFORM COMMITTEE
SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT BILL**

Supplementary Memorandum by the Department for Business, Innovation and Skills

Introduction

1. This Supplementary Memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee by the Department for Business, Innovation and Skills.
2. It identifies amendments to delegated powers in the Government amendments tabled in the House of Lords on 21 January 2015 and should be read in conjunction with the Delegated Powers Memorandum submitted to the Delegated Powers and Regulatory Reform Committee on 20 November 2014, and the Supplementary Memoranda submitted on 19 December 2014 and 7 January 2015.

Part 4: The Pubs Code Adjudicator and the Pubs Code

Substituted clause 42: Pubs Code: market rent option and new clause (Market rent option: procedure)

Power conferred on: the Secretary of State

Power exercised by: Regulations (amendment to power in clause 41 of Bill as introduced into the Lords)

Parliamentary procedure: Affirmative Resolution Procedure

Context and purpose

3. These provisions will require the Pubs Code to require pub-owning businesses to offer their tied pub tenants a market rent option in such circumstances as may be specified in the Pubs Code. This is a significant amendment to the existing power to make regulations at clause 41, in that it extends the requirements that must be included in the Pubs Code.
4. The amendments reflect a change of policy from the Bill as introduced in the House of Commons. The amendments are the Government's adoption of the non-Government amendments made in the Commons. They are to allow an existing tied pub tenant the right to be offered a market rent option, which means the option to occupy the tied pub under a tenancy or licence which is MRO-compliant and to pay the market rent in respect of their occupation.
5. This change of policy requires amendments to be made to the power to make the Pubs Code, so as to ensure that the right to a market rent option is incorporated. Other amendments are necessary to be able to enforce and to operate the right, including provision for a mandatory independent assessment of the market rent. This involves new definitions, a procedure for market rent to be determined and a dispute resolution procedure.
6. After the market rent option is triggered, the pub-owning company must offer a market rent only agreement, which the tenant will either accept or which will provide the basis

for negotiation between them, and if accepted, will lead to a new agreement between the tenant and the pub-owning company.

Justification for delegation

7. As with the previous policy, the Government considers the delegation of power necessary because of the detail required in of the Code and because the requirements placed on pub-owning businesses are more suitable for secondary legislation.

Justification for procedure selected

8. As before, the Government considers that the affirmative resolution procedure provides the safeguards necessary in relation to issuing a Pubs Code.

New clause after clause 42: Market rent option: disputes

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Affirmative resolution procedure

Context and purpose

9. The power to confer functions on the Adjudicator in connection with the resolution of disputes relating to the offer of a market rent option is necessary to allow the Adjudicator to be able to hear disputes in relation to the market rent option, including those brought by the pub-owning company. This is a discrete power to make regulations rather than simply a power to make provision in the Pubs Code.
10. Regulations can provide for resolution of disputes about whether a trigger for the market rent option has been met; whether a proposed tenancy or licence is MRO-compliant; whether the way in which the market rent has been determined by an independent assessor has breached the Pubs Code and whether other procedural requirements relating to the market rent option procedure have been complied with. Provisions which mirror those in clauses 45 to 49 of the Bill relating to arbitration might also be provided for in these regulations.

Justification for delegation

11. The Government considers the delegated power necessary as the detail required in these provisions are more suitable for secondary legislation.

Justification for procedure selected

12. The content of these regulations are likely to have important consequences for both pub-owning companies and for tenants and the safeguards afforded by the affirmative procedure are felt to be justified.