



Department for Business, Innovation & Skills

AnnexD: 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: Jonathan Mail

Organisation (if applicable): Campaign for Real Ale (CAMRA)

Address: Campaign for Real Ale, 230 Hatfield Road, St Albans, Hertfordshire, AL1 4LW

Email: Jonathan.mail@camra.org.uk

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 type="checkbox"/>	Tied tenant
<input checked="" type="checkbox"/>	Interest group, trade body or other organisation
<input type="checkbox"/>	Other (please describe)



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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 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?

CAMRA are supportive of the Government's proposed definition of a rent assessment, and recognise the importance of providing a clear definition to ensure the greatest possible clarity for tenants and pub companies affected by the Code.

It is reasonable that annual indexation, changes related to an agreed variation of terms, ad hoc rent reductions and benefit in kind changes are specified as not constituting a rent assessment.

With regards to the frequency at which a rent assessment can be requested by a tenant under the draft Code, CAMRA believes that five years is an appropriate amount of time. This would ensure that a tied tenant has the right to a regular review of their rent, whilst not placing an unnecessary administrative burden on pub companies and tenants alike. This reflects current industry practice.

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?



The circumstances set out appear comprehensive.

Question 3

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

The wholesale market price for beer is suggested in the consultation document as being defined as: 'the wholesale market price published by breweries' which is not widely available and also does not accurately reflect actual sale prices due to widespread discounts. Ultimately there is no definitive 'brewery list price'. The wholesale price lists provided by breweries could be construed as false benchmarks as only a very small number of buyers will pay these prices.

An alternative baseline for calculating a significant price increase in relation to tied beer would be the Producer Price Index (PPI)[1], which is provided by National Statistics and measures wholesale beer inflation.

[1]BBPA Statistical Handbook 2015 p.44

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?

The draft Code defines 'a significant increase' in the price of tied beer as 5% above wholesale price inflation in any 6 month period.

As a result of this definition, it is likely that no-tied tenants will be able to request a Market Rent Only (MRO) option due to a significant tied price increase, yet could still be subjected to very large price increase for their tied beer. This could dramatically reduce personal earnings very quickly in a short period of time.

CAMRA are concerned that pub companies might seek to increase the price of tied beer substantially, in order to negate losses from a decision not to increase tied rents above inflation so that tied tenants are unable to trigger the MRO option.

While an increase of 5% above wholesale inflation in the price of tied beer may not seem unreasonable as a stand-alone figure, the cumulative impact of repeated increases is clear, especially when considering that tied tenants are currently paying inflated costs for beer.



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In 2010, CAMRA undertook a review of tied and non-tied beer prices. This review found that tied licensees are paying between 60% - 70% more for Fosters than free of tie licensees. Furthermore, tied licensees are paying up to 67% more for the lowest price real ale (3.5% abv+) than free of tie licensees.

CAMRA is concerned that an increase of 5% in tied beer every six months over a five year period will represent an actual increase of 63% above wholesale inflation. Therefore CAMRA is urging the Government to either reduce the percentage by which tied beer prices can be raised, or to significantly extend the minimum length of time that must pass before a further price increase can be made.

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?

Yes, this would be appropriate and all of these costs would be incorporated in general wholesale increases.

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.

Due to the varying type and cost of products and services other than beer which may be subject to a tie, CAMRA believe that opting to calculate a significant price increase using a two tier system, as a percentage, is the most appropriate approach that the Government can take.

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?

CAMRA are of the opinion that a two tier approach is proportionate due to the varying degrees in costs for tied products and services. The Government's proposal



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of using the 20% of turnover threshold is reasonable.

Question 8

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

CAMRA's view is that these percentages are too high and should therefore be dramatically reduced.

To put the proposals into context, a 30% increase every six months over five years would result in a cumulative price increase of 1279%. A 40% increase every six months over the same period would result in a cumulative price increase of 2793%.

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?

CAMRA agrees that a significant price increase should be calculated by reference to the price paid by the tenant at a fixed point in the past. However, as outlined above, through the demonstration of cumulative price increases, CAMRA feel that a more appropriate time measure would be at least 12 months.

Question 10

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

Condition iii, which requires that any impact only applies to a specific pub, is of concern as the closure of a major local employer or major road works would be likely to impact on several pubs in the locality. CAMRA's preference would be that condition iii is removed.

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?



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It is CAMRA's understanding that the regulation would be expected to be used rarely, due to the proposed definition of what would be considered as a "significant impact".

However, an event which would severely impact trading for a prolonged length of time, but would not be permanent, would not fall under the proposed definition in the Code. A circumstance such as this could be a major infrastructure or construction project, for example the expansion of an airport, which can typically take in excess of ten years to complete. In long term situations such as these, tenants should be provided with the right to request a rent assessment.

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?

CAMRA agrees with the distinction drawn by the Government between an MRO compliant agreement that arises from a request at renewal, and an MRO compliant agreement that arises from a request during the course of a tenancy.

As tenants who are contracted out under Part Two of the Landlord and Tenant Act 1954 have no legal right to tenancy renewal, the pub company will not be required to offer a new tenancy. Therefore the terms of an MRO agreement would be unenforceable.

With regards to an MRO request during the course of a tenancy, CAMRA supports the approach the Government has adopted. When an MRO request arises during the course of a tenancy, a tenant who is contracted in under the Landlord and Tenant Act 1954 will not have the same right to negotiate the terms of their contract through the courts which a contracted in tenant has at renewal. Therefore the further provisions proposed by the Government are important to ensure delivery of the 'no worse off' principle. It would however be difficult for these provisions to also apply to MRO requests at tenancy renewal as this would create a conflict between the Pubs Code and the Landlord and Tenant Act 1954.

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



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effect of such a requirement on the commercial relationship between the tenant and the pub owning business in an MRO agreement.

It should be a requirement that an MRO compliant tenancy agreement provides for an open market rent review every five years. CAMRA believes that this is a necessary requirement for ensuring delivery of the 'no worse off' principle. Tied tenants under the Code will have the right to a rent assessment every five years, therefore tenants who choose the MRO option should also have the same right.

If this is not present, tied tenants may be disincentivised to pursue the MRO option if doing so means they would lose their current contractual rights to regular rent reviews.

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?

This list contains the key evidence that an independent assessor would require to produce a rent assessment.

Question 15

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

The overall timescale for the MRO procedure is reasonable and in most cases will prove adequate. However, CAMRA are concerned that some of the specific deadlines for tenants are too short. This will make it difficult for them to source independent advice.

Firstly, it is a concern that tenants will only have a window of 14 days from the pub company issuing the tied rent assessment within which to request an MRO rent assessment. CAMRA believe that this period should be increased to at least 21 days to provide a better opportunity for tenants to seek independent professional advice.

Secondly, a provision should be added to extend the negotiation period provided both parties agree. This may be necessary in cases where the tenant can seek



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further advice on a revised pubco offer made towards the end of the negotiation period, or because both parties agree that agreement is close.

To ensure that a tenant has the ability to renegotiate their tied rent, and in the absence of Parallel Rent Assessments (PRA) from the Code, costs should only be incurred by the tenant at the start of the Independent Assessment Period (IAP).

At the end of the IAP, CAMRA believe that tied tenants should have longer than the proposed seven days in which to decide whether to accept the Independent Assessor's assessment. A period of at least 21 days would give tenants a greater chance to seek independent professional advice.

Question 16

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

It must be explicit in the Code that one outcome of the negotiation period is that the tenant remains tied by positive choice through re-negotiation of the tied rent. It should be clear that the negotiation period is the process by which a tenant is deciding between remaining tied or accepting a free of tie offer.

As mentioned above, to allow a tenant time to seek independent advice, the Code should provide an option for the tenant to extend the negotiation period.

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.

CAMRA believe the proposals set out for resolution of disputes by the Adjudicator relating to the MRO procedure to be reasonable and appropriate.

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



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reference to the type of rent payment and percentage which should be used, with evidence to support your response.

CAMRA supports the practice of pub companies investing in their estates. This is vital to the growth and success of the industry.

CAMRA support the view that the minimum "amount" of investment for the purposes of a "qualifying investment" should not be fixed but should be worked out as a percentage of the rent paid. This would reflect the variation in size of pubs, and therefore what would constitute a "significant investment" will differ greatly between pubs.

For the purposes of calculating the "qualifying investment" CAMRA support the use of dry rent only, rather than wet rent or the total of both. Dry rent of a pub is a known figure, as opposed to wet rent, the amount of which could easily be disputed by either the tenant or the pub company. CAMRA believes a "qualifying investment" should be defined as an amount equivalent to or greater than 200% of the dry rent of the site.

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.

The consultation document sets out the following criteria for an investment to be qualifying for a MRO waiver:

- "a) Relate to the infrastructure of the pub premises. For examples, the building of a new extension or a kitchen refurbishment (rather than new furniture); or*
- b) Be expected to increase trade/the trading capacity of the pub by an increase in the trading area or changes to the trading nature of the site. For example, an extension to the premises that provided a second bar area or expanded the dining area; or*
- c) Relate to a project which requires official approval. For example, planning consent."*

CAMRA support the efforts of the Government to ensure that a waiver from the MRO option is only granted when an investment is an actual improvement to the pub, rather than routine maintenance or repair of existing facilities, and should not



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be part of a contractual obligation which the pub company is required to provide.

A test of whether it is realistic to think that expenditure would result in increased profits should be carried out before any tenant is required to waive their right to MRO in return for an investment in their pub. Therefore the safeguards in Regulation 12(3) of the draft Code are welcomed. However, we believe that to ensure fair protection under the Code, these safeguards need to be strengthened and all three conditions set out above must be met rather than just one of the three.

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.

The proposal that the waiver period should not be fixed or unlimited, but subject to a maximum length is supported by CAMRA. However, the maximum proposed waiver of ten years is an unacceptable amount of time for a tied tenant to wait for a rent assessment, especially considering that tied rents in some regions of England are decreasing at rent review.

CAMRA are of the opinion that a shorter maximum waiver period could help achieve the principle of 'no worse off' through provision of rent assessments, whilst still allowing pub companies sufficient time to recover their investments in their estates.

Example:

In 2014, Enterprise Inns reported a 19% return on investment (ROI) from schemes administered in the previous 12 months¹. This means that within six years the investment costs would have been recouped, and within seven years, up to one third profit of the original investment will have been made.

CAMRA therefore believe that seven years is an appropriate length for an investment waiver. This would give the pub company sufficient time to recoup and earn profit from their original investment, whilst not imposing an unfair amount of time for a tied tenant to have to wait for a rent assessment.

¹ Enterprise Inns plc Annual Report and Accounts for the year ended September 30th 2014
<http://www.enterpriseinns.com/investor-results-documents/annual-report-2014.pdf>



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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?

CAMRA supports the power for the Adjudicator to arbitrate breaches of the MRO waiver provisions. However, we believe these powers should be extended to cover disputes over whether the pub company has actually undertaken the agreed investment to an acceptable standard.

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?

As outlined in Question 18, CAMRA supports setting the minimum “qualifying investment” at 200% of the dry rent.

CAMRA is concerned that a lower “qualifying investment” would result in unambitious investment projects, allowing pub companies to be incentivised to push for the MRO investment waiver under these conditions; and not engage with the MRO process. As the Code is seeking to install a better balance in power in the relationship between the pub company and the tenant, a lower “qualifying investment” threshold would undermine the potential of the investment waiver.

An unintended consequence of not allowing the Adjudicator to arbitrate on disputes over whether investment work has been carried out to the required standard might be that investments are completed to a lower standard in order to reduce costs.

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.



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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 ☐

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: Jonathan Mail

Organisation (if applicable): Campaign for Real Ale (CAMRA)

Address: 230 Hatfield Road, St Albans, Hertfordshire, AL1 4LW

Email: Jonathan.mail@camra.org.uk

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 type="checkbox"/>	Tied tenant
<input checked="" 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.

Provided that at rent review all tied tenants are able to trigger the Market Rent Only (MRO) procedure, and not just restricting the right to those tenants who are facing a rent increase, CAMRA's view is that the procedure laid out in the consultation will give tenants the ability to make an informed judgement as to whether they will be better off tied or untied.

Although Parallel Rent Assessments (PRAs) have been removed from the draft Code, CAMRA are encouraged that tied tenants will still be able to compare a tied rent offer with a non-tied rent offer through triggering the MRO option. Therefore, we agree that the objectives of a PRA will be achieved.

Regulation 10(9) of the draft Code states that:

"A suitably qualified valuer who is registered with the RICS^[1] must confirm that the rent assessment has been conducted in accordance with guidance issued by that institution"

This is an important safeguard. However there appears to be no such requirement regarding pub companies' initial MRO offers. It is important that there are safeguards to ensure that the initial MRO option offered to tenants is produced in accordance with RICS guidance. Otherwise pub companies might produce initial MRO offers which are excessive, resulting in inflated MRO rents across the sector. This would not provide a fair and reflective guide for those seeking to renegotiate their tied rent.

[1] Royal Institute of Chartered Surveyors

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.

In addition to the documents listed there should also be a requirement for information on rents of comparable pubs in the locality in so far as the parties are able to provide these.

Currently, Schedule 3 of the Code specifies the need to provide "evidence of the value of housing". As pub rents are not calculated in relation to house prices we believe that the "value of housing" should be deleted from the list of specified documents.

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.

CAMRA believe that the combination of current proposals can adequately deliver the 'no worse off' principle, and do so in a proportionate way, providing that the following two provisions are added to the Code:

- i) All MRO offers made to tenants should have to be signed off by a RICS registered valuer to ensure that pub companies are offering an honest and fair comparison of tied and untied rents. This will reduce reliance on, as well as time and costs associated with, the involvement of Independent Assessors. This could also reduce the number of Adjudicator interventions required.
- ii) There should be no fees incurred by the tenant during the notification period or the subsequent negotiation period. Tenants who are pursuing an MRO offer as a means to re-negotiate their tied rent should not be charged. This would ensure fair access in the absence of Parallel Rent Assessments as an independent mechanism within the Code.

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?

It is vital that this condition is removed from the draft Code so that tied tenants are able to start the MRO procedure regardless of the tied rent assessment provided by the pub company. Restricting access to the MRO procedure to situations where the pub company proposes an above inflation rent increase would be contrary to the Act.

It would also have the potential to distort the market by encouraging pub companies to cap rents whilst increasing tied product prices further in order to compensate.

Section 6.1 of Part One of the consultation document[1] states that:

'The Pubs Code will provide around 13,000 tied tenants in England and Wales with increased transparency, fair treatment, and the right to request a rent assessment if they have not had one for five years.'

However CAMRA are concerned that under the current proposals, the number of tied tenants able to trigger the MRO option would actually be much lower. Under Regulations 13 and 15 of the draft Code, the tied tenant will gain the right to request an MRO offer following the receipt of a rent review proposal – so long as the rent proposed by the pub is higher than the existing rent that the tenant is paying.

This means that tied tenants will only be able to opt for MRO rent in circumstances where the pub company increases the rent beyond the rate of inflation.

This will dramatically reduce the number of tenants able to seek the MRO option at rent review and also create a perverse incentive for pub companies to impose above-inflation price rises for tied beer and other products in exchange for forgoing above-inflation rent increases.

This does not follow the spirit of the Small Business Act[2] which states that:

"43 (6) Provision made under subsection (1) must include provision requiring a pub owning business to offer a tied pub tenant a market rent only option –

(b) in connection with a rent assessment or assessment of money payable by the tenant in lieu of rent

Example

The Fleurets Rental Survey 2015[3] provided the following breakdown of rent reviews for the year:

Fleurets Rent Reviews 2015 – Tied rents

Region	Average Rent (£)	Average Increase	Decrease	No Change	Increase
London	83,058	11%	34%	9%	57%
Midlands	45,021	-23%	82%	0%	18%
North	48,032	-4%	33%	34%	33%
South & West	46,800	19%	53%	16%	31%

Therefore the following percentage of tenants would be unable to request an MRO option based on rent increase:

Region	% of tenants unable to request MRO
London	43%

Midlands	72%
North	67%
South & West	69%

London would be the only part of the country in which the majority of tied tenants would benefit from the option of the MRO procedure at rent review.

CAMRA therefore strongly supports the removal of the condition in the draft Code which requires that there must be a proposal for an increase in rent at rent assessment before a tenant may exercise the MRO option.

[1] Pubs Code and Pubs Code Adjudicator: Delivering 'No Worse Off' October 2015
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471766/BIS-15-522-pubs-consultation-part-1.pdf

[2] Small Business, Enterprise and Employment Act 2015
http://www.legislation.gov.uk/ukpga/2015/26/pdfs/ukpga_20150026_en.pdf

[3] Fleurets Rental Survey October 2015
<http://www.fleurets.com/market-intelligence/2015/october/rental-survey-2015>

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.

The most up to date evidence of changes at rent review which CAMRA is aware of is the Fleurets Rental Survey, which is detailed above.

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?

The information requirements are a key mechanism within the Code which will provide the prospective tenant with the ability to assess whether a tied agreement will leave them better off than free of tie alternatives. However CAMRA appreciate the burden that unnecessary requests could have on pub companies under the Code.

The Code should seek to ensure that prospective tenants have a genuine interest in the site before it is mandatory for the pub owning company to provide the required information. The two conditions set out seem reasonable.

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?

The Government's proposals on the requirements surrounding provision of business plans to pub companies under the Code are adequate.

The Pubs Code – arbitrable provisions

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?

A full revised rent proposal should be provided to a tied tenant where a change in rent is proposed during the course of the tenancy agreement. To ensure delivery of the 'no worse off' principle, a tied tenant should always be in a position to negotiate their rent when a change is proposed, and be provided with sufficient information to enable this.

It is CAMRA's opinion that as a minimum, the full information in Schedule 2 should be provided, and not just the elements that have changed. This will provide the tenant with all relevant information to assess the new proposed rent.

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)?

In the situations outlined it would be beneficial if tenants were provided with a documented rent proposal to give them a full understanding of the ongoing rental changes and to offer an opportunity for informed negotiation. The only exception to

this would be in the case of automatic increases, such as indexation rises provided for in the lease agreement, where there is not an opportunity for negotiation.

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?

Consumers benefit from well maintained and presented pubs and it is therefore essential that pub companies fulfil their contractual repair and maintenance obligations.

CAMRA therefore welcomes the fact that failure by a pub company to fulfil their repair and maintenance obligations would be a breach of the Code.

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.

CAMRA are concerned that the principle of delivering the 'no worse off' commitment is not explicitly enshrined within the Code, and that the Adjudicator will not have sufficient power to investigate if the principle is being delivered across the industry or by a particular company.

The draft Code should be amended so that the Adjudicator is provided with non-arbitrable powers to investigate whether the 'no worse off' principle is being delivered, and that the application of the Code is fair and lawful.

Contractual inconsistencies with the code

Question 12

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

CAMRA are in agreement with the proposals relating to contractual inconsistencies with the Code, and welcome the Government's efforts to ensure that all tied tenants can benefit from the full range of rights provided by the Code. We also agree with the measures to limit the scope of pub companies to restrict the new rights that tenants

will receive under the Code. These are very important provisions which will make it harder for pub companies to discriminate against tenants who exercise their new rights.

Under the current proposals, a tenant having taken a 20 year tied lease will be entitled to a rent assessment after five years, and be able to consider a new MRO agreement, paying market rent only and severing the tied terms.

The provision mentioned in paragraph 9.11 means that in the scenario where the tenant has 15 years to run on a tied agreement, they would have to surrender the protection of the remaining time on their lease under the MRO option, and accept a new five year MRO agreement only.

This conflicts with paragraph 9.5 of the consultation document, which states that the minimum requirements are in place 'to ensure that a tenant enjoys no less - but no more - protection or security of tenure under their new MRO agreement than they previously had under their old tied agreement.'

Furthermore, assuming a tenant is at lease renewal, which is at the end of the term of their agreement (as opposed to rent review which is periodic throughout the term) they are entitled, if they are protected tenants, to renew on the same terms and conditions as their previous agreement and have an MRO option.

In a normal process, if a tenant uses the courts to negotiate a contract with their landlord (in this case, the pub company) the court will determine a new agreement of at least equal length to the old agreement - whichever is the greater. The Government must seek to maintain and protect this within the Code.

The Code should ensure that tied tenants have the same rights at rent review in terms of agreement length as they would at renewal as a result of the Landlord and Tenant Act 1954. In line with the Small Business Act, tied tenants at rent review should be enabled to accept a MRO rent without being required to sacrifice property rights generally in the order of 10 to 15 years of an unexpired lease.

Extension of code protections

Question 13

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

CAMRA welcomes the fact that tenants will not immediately lose all the protections of the Code in situations where the pub company no longer meets the definitions set out in the Act.

It is disappointing that the right to MRO is lost in these circumstances but it is positive that the other Code protections are retained until after the next rent assessment has occurred.

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?

CAMRA welcomes the steps being taken to prevent pub companies re-arranging their corporate structures to avoid obligations under the Code. For the purposes of assessing whether a pub company is subject to the Code it is vital that tied pubs owned by parent businesses and subsidiaries are assessed together.

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.

The most important characteristics of a genuine franchise are:

- i) no rent is being paid
- ii) the profit of franchisees cannot be reduced by arbitrary increases in the cost of tied products.

Question 16

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

Ensuring a correct definition of 'reasonable piloting' is essential to protecting tenants of franchise pubs where the business model has not been thoroughly tested. In order to be granted an exemption from the Code, a franchise business model must have been proven to be successful and profitable for the franchisees.

CAMRA agrees with the Government's proposal which suggests that a franchise model must be piloted for a minimum of 12 months to qualify for exemptions from parts of the Code. It is essential that a model must be piloted to test seasonal factors, especially the Christmas peak period, and a 12 month minimum will ensure that this happens.

The British Franchise Association (BFA) Franchising Code of Ethics^[1] sets out the following guidance on the piloting of franchise schemes:

"The concept should be operated in at least one pilot unit. The expression "at least" is very important since one unit in a unique location will not prove that the concept is capable of being franchised elsewhere. What is needed is such a number of pilot units in locations typical of those in which franchisees will operate to be able to satisfy prospective franchisees that the business concept could be successful in the location where they propose to open for business."

Based on this guidance, CAMRA suggest that the definition of 'reasonable piloting' under the Pubs Code should include a provision that the pilot scheme has been operated in at least two different geographical locations and for at least 12 months.

[1] Franchising Code of Ethics, British Franchise Association:
<http://www.thebfa.org/about-bfa/code-of-ethics>

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.

Whilst a tied tenant under a genuine franchise agreement will not be able to request the MRO option, it is important that they are still provided with information that will enable them to re-negotiate their contract with the pub company.

Access to information (such as the trading potential of a site) will allow a tied franchisee to negotiate a fair contract and ensure that the principle of 'no worse off' is delivered.

It would be impractical to try and apply provisions on rent assessments to franchise agreements where no rent is actually payable.

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.

A maximum exemption period of six months would be preferable to the proposed 12 months. An exemption period of six months would be sufficient to provide pub companies with the flexibility to keep pubs open as well as sufficient time for a longer term agreement to be made.

CAMRA welcomes the provision which states that in the case of a pub company offering a number of short-term tenancies for the same premises, the agreements will be measured in terms of cumulative length. This will prevent the exploitation of a number of tenants on short-term rolling contracts who would otherwise not be protected by the Code.

[1] Pubs Code and Pubs Code Adjudicator: A Government Consultation - Part 2

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.

Due to the ease of undertaking pre-entry training and the basic knowledge provided, it would be reasonable to require that a tenant entering a tenancy at will or agreement has completed this training.

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?

The absolute minimum amount of information provided should include recent trading history; a schedule of dilapidations; details of the premises licence; and details of enforcement by any public authority within the previous two years

[1] The Pubs Code (Draft Regulations)

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.

A fee of £200 to refer a case to the Adjudicator is reasonable and will help ensure referrals to the Adjudicator are well considered. The proposed fee is unlikely to discourage a significant number of genuine complainants from making a referral.

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.

Tenants who are genuine complainants, but lack knowledge of the legal process, may be deterred from submitting a complaint due to the fear of being potentially liable for costs above £2,000. Therefore the maximum costs that a tied tenant should have to pay to a pub company should be set at an absolute maximum of £2,000. There should be no exceptions to this cap.

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.

CAMRA supports the approach adopted by the Government on maximum financial penalties that can be imposed by the Adjudicator for breaches of the Code.

An approach that sets a maximum figure as a percentage of turnover, rather than a fixed sum, ensures that pub companies in breach of the Code can be penalised proportionately, and that larger pub companies can still be impacted by financial penalties imposed by the Adjudicator.

A maximum financial penalty of 1% of annual UK turnover of all group undertakings of the pub companies provides the Adjudicator with significant power and will act as a strong deterrent for pub companies not to breach the Code.

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:

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 ☐

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

