



Department for Business, Innovation & Skills

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

This closing date for this consultation is 18 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: Dave Mountford

Organisation (if applicable):

Address: The Boat Inn, Scarthin, Cromford

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

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.



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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 agree with points made by The Pubs Advisory service

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: A agree with the points made by The Pubs Advisory Service

1. Sale of a property should be included as a trigger



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Question 3

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

Comments: I agree with the points made by the PAS

Wholesale Market Prices do not exist

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: I agree with the points made by The PAS

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: A agree with the points made by The PAS



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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: I agree with the points made by The PAS

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: I agree with the points made by The PAS

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: I agree with the points made by The PAS



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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: I agree with the points made by The PAS

Question 10

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

Comments: I agree with the points made by The PAS

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: I agree with the points made by The PAS

Changes to other pubs in the vicinity – i.e – should a Pub go MRO or should a Pub change into a retail agreement



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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 agree with the points made by The PAS

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: I agree with the Points made by The PAS

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: I agree with the points made by The PAS



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Question 15

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

Comments: I agree with the points made by The PAS

Question 16

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

Comments: I agree with the points made by The PAS

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: I agree with the points made by The PAS

The adjudicator role must be big enough to act against the large number of claims that the legislation inevitably will bring



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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 completely disagree that any waiver for investment should be given. Pubcompanies do not invest in the tenanted estate – they put money in and then charge the tenant

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: I agree with the points made by the PAS

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: I agree with the points made by the PAS



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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?

Comments: I agree with the points made by The PAS

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: I agree with the points made by The PAS

Any consequences of the legislation are completely intended by the Pubcomopanies

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 see attached letter to Anna Soubry which I wish to be included as part of the consultation



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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: Dave Mountford

Organisation (if applicable):

Address:

Email:

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

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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: As long as this is unconditional – not with the increase in rent caveat

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: Comparable data on Pubs must be provided including the profit status of those pubs – it is no use using a rental figure and justifying it by saying the pub across the road has the same rent if that Pub is failing

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: How are Pubcompanies challenged to avoid them circumventing the legislation by bullying tenants out of the industry ?

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: The goal of achieving fairness will be realised and the objective of the tied tenant being no worse than free of tie will be achieved

15b part 4 has to be removed for the legislation to achieve the principle aimed for.

The explanation given for this insert that balance was being achieved is a nonsense. The balance is the MRO amendment and adjudicator

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: Not qualified to answer as to exact data but I am aware of no examples of a nil increase when the effects of RPI are taken into consideration

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

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: No – The business plan is a starting point for any compensation that the tenant may seek as this is part of the agreement of what can be achieved.

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

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

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: We consider breaches of any element of the Code should be capable of referral to the adjudicator for consideration and arbitration where necessary.
Contractual inconsistencies with the code**

Contractual inconsistencies with the code

Question 12

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

Agree with points made by The PAS

Extension of code protections

Question 13

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

Comments: Any Pubcompany sale to a smaller company should result in MRO and adjudicator protection.

The majority of Pubowning or Brewers abuse the tied model

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: See PAS submission which I agree with

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: The Pubco model is not a franchise agreement. You do not “buy” a Punch franchise, you buy a Pub that happens to be owned by Punch.

Most Brewers or Pubco’s have such a poor reputation the thought of a franchise is nonsensical

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: No – see above question 15

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: As stated I do not believe the Pubcompany offers a genuine franchise agreement – as much information as possible should be provided

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: Never – TAWs should be covered – they are long term offers used to entice the tenant into taking on a longer deal.

A minimum of a week

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 as long as the pre entry training is meaningful and effective which the current one isn't

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: all legalities, Health and safety. History of the Pub, trading levels, is it for sale

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: No – that's 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: yes

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: that's fine

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: There need to be no conditions on the MRO trigger point re rent

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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