admiral
TAVERNS

Pubs Code and Pubs Code Adjudicator: A Government Consultation - Parts 1 and 2

Response from Admiral Taverns

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

X	**Pub owning company with 500 or more tied pubs**
	Tied tenant
	Interest group, trade body or other organisation
	Other (please describe)

Admiral Taverns has no objection to this response being made public.

Introduction

Admiral Taverns ("Admiral") operates an estate of 900 leased and tenanted pubs across England, Wales and Scotland. It was awarded Leased and Tenanted Pub Company of the Year in 2013 at the Publican's Morning Advertiser Awards and has been shortlisted for the 2016 awards.

Admiral operates an estate of community, wet-led public houses and the majority of our agreements are tenancy agreements (3-5 years) which are shorter in term than many other pub-owning companies. We believe that this highly supported shorter agreement is the most appropriate agreement for the pubs which we own. Under this style of agreement, Admiral provides high quality support and additional benefits to our licensees. We believe that this support is valued by our licensees and this is borne out in the annual, independent Tenant Track results. This survey is conducted annually by Allegra Strategy and interviews are conducted with circa 30% of our licensees on long term agreements.

Over the last 4 years, Admiral has achieved high levels of advocacy from our licensees and on a comparison basis is the most respected pub company out of all national estates and is on a par with the regional family brewer scores. The current year's survey is currently being collated but our results have been shared with us and show:

- Over 80% of licensees would be 'very likely' or 'likely' to recommend Admiral to other licensees;
- 2 out of 3 licensees classed their BDM as 'very useful';
- Admiral's overall rating was 7.7 out of 10.

Where reference has been made to the 'Regulations' in this response, any reference is made to the draft Pubs Code in the Consultation – Part 2. Unless otherwise stated, any reference to clauses in the consultation document will relate to the consultation document which is relevant to the question.

Consultation questions – part 1

Rent assessments

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

1.1. We agree with the definition of rent assessment set out in the consultation document and agree with the proposals that the rent assessment should be a process and not a fixed point in time. We would however welcome more detail around this within the transitional arrangements to be issued in the near future. In general, we agree with the definitions used in 6.9 of the first consultation of the right for a rent assessment although we do have some concerns over the interrelationship between this right and other legal aspects of the landlord and tenant agreement. This concern would include opposed renewals under section 25 and section 26 of the Landlord and Tenant Act 1954 ("LTA") and forfeiture action taken against the licensee. It would be completely wrong in our mind for the licensee to claim MRO before these matters have been resolved.

1.2. We also have a concern over the ability for the licensee to request a rent assessment under 8 (2) (a) where 'an assessment has not been concluded within 5 years prior to the date of the request'. It is our opinion that a licensee who has been provided with a rent assessment but has not elected for a market rent under the timeline set out in Regulation 13 should not be able to refuse to agree the proposed tied rent to enable the licensee to request a further rent assessment purely because the first rent assessment has not been concluded within five years of the prior rent assessment. This would allow a licensee two opportunities to select MRO at the time of a scheduled rent review.

1.3. We do not agree with the requirement for all rent assessments to be signed off by 'a suitably qualified valuer who is registered with the RICS' to ensure that it has been conducted in accordance with guidance issued. We fully support the requirement for a relevantly qualified individual to sign off the rent assessment but believe that this individual should be a 'member or fellow of the RICS'. A registered valuer would be someone who is engaged in asset valuations under the 'Red Book' and this is not relevant to rental evaluations.

Market Rent Only option

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

2.1. We agree in general with the definitions used in Regulation 14 and 8.7 of the first consultation regarding the right for MRO under the renewal of a pub agreement. However, we are extremely concerned by the relationship between the LTA and the licensee's ability to request MRO. We do not consider that the pub company should be required to follow the MRO process where the pub company has served a notice under section 25 of the LTA to oppose the renewal of the agreement. This matter must be determined by the Courts in advance of the MRO process starting. The same would be the case for a section 26 notice by the licensee which is opposed by the landlord.

2.2. We concur with the inability for licensees to apply for MRO on renewal for those agreements which are contracted out of the LTA even if the pub company and the licensee are able to agree terms for a new tenancy agreement at the expiry of the current agreement.

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

3.1. We would agree that the wholesale price is the right baseline for determining a significant price increase. However, we would make the following points:

- There are a small number of relatively small brewers who do not issue a wholesale price and therefore it will not be possible to determine a movement in wholesale price. The volume of these products will be low in any one site.
- It is possible that a brewer may decide to reset their wholesale price for a product at a significantly higher or lower price. This was seen when Guinness replaced their wholesale price with a 'list price' in 2000, effectively reducing the wholesale price by circa £100 / brewer's barrel.
- Given the confidential nature of pricing between pub companies and brewers, it will be extremely difficult for pub companies to evidence increases in their purchase price under Regulation 3 (6) (a).

3.2. Under the proposals, it would only take one low volume product to have a significant price increase for MRO to be triggered across the whole of the estate to whom this product is available, even if the product is only purchased by a small number of licensees. As such, we believe that the measure should be based upon a weighted average price increase across all products purchased by the licensee to ensure that only licensees who are actually affected by a significant price increase across all brands purchased have the ability to elect for MRO.

3.3. In addition, it is unclear how short term promotions will impact on the definition of a significant price increase. For example, if there is a 2 week promotion running on a product at the time a licensee enters a new agreement, it could be possible for that licensee to claim a significant price increase when this promotion ends even though the licensee had been made aware that the product was under a promotion when he entered the new agreement. This would be completely unfair to the pub company and these promotions need to be excluded from the definition or this would result in pub companies removing promotions from their estates. This could be resolved by using the weighted average price of beer products purchased over the whole of the 6 months rather than just at the one point in time.

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?

4.1. We would agree with the use of 5% above the increase in wholesale price as the threshold before a significant price increase could be used as a lever for MRO (after any adjustment for the pub company increase in purchase price and increases from tax and duty). However, as stated above, we believe that this

should be based upon the weighted average price increase of all products purchased by the licensee.

4.2. For clarity, we believe that the definition of A in the calculation of significant price increase should be stated as the wholesale price immediately after the price increase to avoid any confusion of whether 'at the time of the price increase' means before or after the increase.

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?

5.1. Yes this is absolutely fair given that price increases from duty or taxes or other matters outside the control of the pub company should not negatively impact on the long term agreement with the licensee. We would be concerned by market price increases which are outside of the control of the pub company if this was not the case. For example, if there was a poor apple harvest resulting in an increase in cider prices across the marketplace, it would be unfair for pub companies to be constrained in the amount of this increase which could be passed onto licensees when licensees elsewhere in the industry would have to purchase at the higher price.

5.2. There is reference to RPI in this question although we do not see how this is actually included in the Regulations.

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.

6.1. We would agree that this is a reasonable measure for significant price increases in tied non-beer products.

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?

7.1. Yes, we would agree that the more impact that the product or service has on the licensee's business, the lower the increase that should be allowed before a significant increase is identified.

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

8.1. Although the first consultation refers to 30% and 40% increases, the Regulations refer to 20% and 30%. We believe that these lower percentages are appropriate as long as a pub company is able to share confidential information on price increases from suppliers with the Adjudicator to substantiate these increases without this confidential information being shared with the licensee and confidentiality agreements being broken.

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?

9.1. This reference period would be appropriate although we would note that any concession / promotion at the reference point (6 months previously or at the time the licensee agreed to the original price) should be excluded. As an example, Admiral may concede the whole of the insurance rent charged to a licensee for the first couple of weeks for a new tenant and reverting to the normal charge should not result in a significant price increase when this was set out at the start of the agreement.

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

10.1. We agree with the majority of the principles of significant impact trigger.

10.2. However the Regulations do not appear to differentiate between a positive impact and a negative impact. We recognise that regulation 2 (2) (b) (vi) excludes a positive impact which lasts over 12 months but we do not believe that something which positively impacts on the licensee's trade for less 12 months should be considered to be a trigger event, as currently allowed by the Regulations.

10.3. We also do not consider a short term negative impact to be a trigger event. The first consultation refers to a requirement for a permanent change to trading conditions under 8.35 (i) but this does not appear to have been replicated in the Regulations. In our view, it would be unreasonable if the licensee were able to opt for MRO and amend the long term relationship with the pub company purely because there has been a short term event affecting the site. On this point, the Regulations do require the licensee to prepare a forecast for a period of 12 months or more but the Regulations do not require this forecast to be reasonable or demonstrate that the event will impact the trade for the whole of the 12 months.

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?

11.1. We believe that the definition is adequate as drafted in the Regulations other than adjustments referenced in the answer to question 10.

MRO-compliant agreements

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?

12.1. This is one of the most fundamental areas of concern for Admiral within the consultation and has been raised on a number of occasions. We have been assured throughout the process by the Minister, BIS officials and Baroness

Neville-Rolfe that there is no intention to create a new hybrid free of tie ("FOT") agreement.

12.2. To understand our concern, it is relevant to explain the types of long term agreement which are offered in the tied pub market. These can be split into two main areas:

- Leases - generally have a term of 10 years to 30 years, place all or the majority of the repairing obligations on the licensee and allow the licensee to assign the agreement to another party; and
- Tenancies - generally are much shorter in term with the majority being 3 or 5 years, require the licensee to maintain the internal decorations of the property and do not allow the agreement to be assigned to another party.

12.3. Historically, the majority of Admiral's agreements have been 3 or 5 year tied tenancy agreements which are protected by Part 2 of the LTA and therefore allow the licensee to renew their agreement.

12.4. Currently, there is only one company which is only issuing a FOT agreement and this is Wellington Pub Company. This agreement is a 20 year FOT agreement, fully repairing for the licensee and assignable and is similar to the lease referred to above other than it does not have a product tie. It is also very similar to a normal commercial property lease other than having user restrictions limited to a public house. In addition, where tied pub companies do issue FOT agreements, these agreements tend to be very similar to the Wellington Pub Company FOT agreement as this is the standard FOT agreement in the market.

12.5. The major concern for Admiral comes from the first consultation paragraph 9.13 which effectively would allow a licensee on a 3 or 5 year LTA protected agreement to apply for renewal to the Courts and then ask for the tie provisions to be removed. This would create a new hybrid agreement where a licensee could be granted a 3 or 5 year protected FOT tenancy agreement which maintains a number of benefits for the licensees which would not normally be included in a FOT agreement (e.g. the pub company would still be responsible for the majority of repairs in the property). This agreement does not exist in the pub market and we do not believe that the Regulations are trying to distort the marketplace in this way.

12.6. The draft Regulations in the first consultation did not provide any guidance on what an MRO compliant agreement would look like on renewal. This was because Regulation 22 (1) (b) referred to Regulation 15 to 17 (thereby excluding circumstances where the licensee selects MRO on renewal). We were pleased to see that this was amended in the second consultation to refer to Regulation 14 to 17 and it has been confirmed to us verbally that this should have been the referencing in the first consultation. We firmly believe that this is the correct position and in line with the premise of paragraph 9.4 of the first consultation that 'MRO agreement to be modelled on the standard types of commercial agreements that are already common for free of tie tenants'.

12.7. Given the difference in the first consultation between clause 9.4 and 9.13, we believe it would be helpful if the response to the consultation gave some further clarity to this area and the intention of the Regulations, including confirmation

that a 3 year tied tenant may be required to sign a free of tie agreement on standard commercial terms and for a term which is standard for commercial free of tie agreements if they elect for MRO.

12.8. To confirm this in the Regulations, we would recommend that Regulation 22 (2) (c) is amended to 'are terms which are not standard terms of business and are not standard length of agreements between pubs....'.

12.9. Given that a licensee who selects an MRO agreement at renewal is not technically renewing their agreement under the LTA but is surrendering their agreement and being granted a new agreement (whilst retaining their LTA protection), we believe that any concerns that a licensee is not being offered a fully MRO-compliant agreement should be referred to the Adjudicator and not the Courts.

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

13.1. Given the comments made in the first consultation paragraph 9.4 that MRO compliant agreements should be in line with what is available for FOT tenants currently, we find it contradictory that the Government is considering imposing terms for MRO compliant agreements which are not necessarily included in the FOT market. We are of the opinion that the market should determine what is appropriate and therefore if 5 year upward only market rent reviews are common in the market place, then they should be permitted in MRO compliant agreements. If the open market FOT agreements change over time to an open market, upward and downward rent reviews, this should be reflected in the MRO compliant agreement.

13.2. It is not appropriate in our view that a licensee under an MRO compliant agreement should be better off than a licensee under a freely negotiated market FOT agreement. Therefore the MRO compliant agreement must reflect what is available in the commercial market.

MRO procedure

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?

14.1. We believe the documentation set out in 10.23 provides the assessor with adequate information subject to the following points.

14.2. Item 1.

Agreed. We believe 3 years previous trading to be sufficient. However, this must be subject to a contingency that the pub company can only provide information in its possession. The pub company cannot be held accountable on a statutory

basis for information that is reliant on the co-operation of a previous owner. This will have been provided to the licensee in the rent proposal.

14.3. Item 2.
Agreed. We believe a realistic analysis should be in the form of an FMT rent assessment which provides annualised figures for the trading potential of the site. This will have been provided to the licensee in the rent proposal.

14.4. Item 3.
We have reservations as to how this would work in practice. It is unrealistic to expect competitors to provide confidential business information in the locality and thus this would be impossible to provide with any degree of reliability or speed. If Admiral was requested to provide this information, we would need to get permission from the licensee before we released confidential information about our trading relationship with that licensee to another party. This requirement should be removed from Schedule 3.

If it is deemed necessary then it must come with a caveat to use reasonable endeavours to make such enquiries of relevant third parties and only provide information which is not confidential. It should be noted that the requirement to provide this information is on a tight timetable and again bringing in the assistance of a third parties is going to delay the information being provided.

14.5. Item 4.
Not agreed. We believe a list of SCORFA benefits within the tied model should be provided without a value being allocated to each individual service. It is crucially important to recognise the very differing natures of the supported, de-risked, tied tenanted model and the commercial free of tie lease. For that reason it is impossible to quantify a SCORFA benefit on any meaningful basis or for a tenant to challenge the same as each tied pub is uniquely different and its needs and requirements will fluctuate depending on the skills of the individual operator and the needs and demands of the business.

For example, how do you place a value on the comfort a self-employed business person takes from knowing there is nothing that can go substantially wrong with their premises for which they will fall liable thus allowing them to focus on their business?

How do you assess the value of business advice and emotional support that is provided by BDMs to tied tenants as they develop their business and have to overcome the various challenges, be they business related, personal life or health issues?

14.6. Item 5.
Agreed subject to availability.

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

15.1. We believe the timescales are tight but understandably so to ensure that the MRO process is completed in a timely fashion.

15.2. We have concerns that the timescales for providing a rent assessment pursuant to a significant price increase or trigger event (i.e. an unforeseen request) are particularly tight and highlight the difficulties in providing information which is not already in the possession of the pub company. It is easy to see difficulties arising if external requests for information are required and the pub company should not be held accountable in such situations.

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

16.1. We believe that the procedure makes sense save that the MRO procedure does not end if the tied rent has been agreed. Regulation 34 and Regulation 24 (4) require the tied pub tenant to inform the pub company that it is ending the MRO procedure. Therefore, even if the tied rent is agreed on a rent review, if the licensee does not notify the pub company that the MRO process has ended, the licensee is still entitled to continue to pursue MRO. We believe that the MRO procedure should automatically terminate once the new rent has been documented.

16.2. Similarly, if the parties complete a new tied tenancy agreement early within the renewal process (with a forward start date), to leave the MRO process open in such circumstances creates unnecessary uncertainty.

MRO disputes

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.

17.1. No. As is proposed in the first consultation paragraph 11.4, we believe that both parties should be allowed to refer MRO disputes to the Adjudicator. The key for all parties is that these disputes are handled swiftly and in a cost effective manner which allows ongoing business relations to be maintained beyond the dispute.

Waiver from MRO in return for significant investment

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.

18.1. Given that everyone accepts that capital investment is required to develop trade, maintain and improve standards and compete in a tough trading environment,

we believe that 'qualifying investment' should be defined as wide as possible to ensure that investment is maintained in estates and is not stopped due to the future risk of MRO.

18.2. As an example, a licensee may not be able to fund statutory compliance repairs which may be their responsibility under the occupational agreement. The landlord may have been willing to complete these works and recover this investment in the site through rent over 7 years. The investment however would not be deemed 'qualifying investment' due to the type of investment under Regulations 12 (2) (c) and is likely to fall below the level of investment under Regulations 12 (2) (b). Therefore the pub company will be unable to ask for an investment waiver and is therefore unlikely to wish to complete these works as they will be unsure of recovering the monies with the risk of a potential MRO. As Admiral's FCA licence does not extend to loans for this type of investment, we are unlikely to be able to assist the licensee at all.

18.3. We believe that there are adequate safeguards for licensees in the Regulations, including that the licensee must receive independent professional advice before agreeing to an investment waiver.

18.4. We would therefore prefer to see limited constraints around investment that would qualify for an investment waiver. Our main concern is regarding the definition of the 'types' of investment which qualify (see question 19).

18.5. If a constraint is deemed to be required around the level of investment, we would propose that investments above 1 year's (dry) rent should qualify for an investment waiver. We recognise that there is no perfect way of identifying a limit but believe that the different sizes and types of property means that a fixed number for all sites is not possible.

18.6. We would strongly urge that wet rent is not considered as this will add complexity in proving the value of the wet rent to each licensee and therefore the reference to 'amount payable' should be amended to 'rent amount payable' in Regulation 12 (2) (b).

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.

19.1. As stated above in the answer to question 18, we believe that there should be minimal constraints to continuing investment by pub companies. As illustrated above, there are other investments which are required which may be prevented by the restricted definition proposed in the Regulations. It does appear perverse that where a licensee requests an investment that would not be covered by the definition of a 'qualifying investment' and an adequate return would not be made by the pub company before MRO could be selected, that this investment will be delayed or never completed when it was requested by the licensee.

19.2. Given that the licensee is required to take professional advice before entering an investment agreement and the pub company is not permitted to include costs that would be their responsibility, we would encourage removal of the definition of 'qualifying investment' in terms of 'type'.

19.3. We are aware that some parties have stated that this would leave open the ability for pub companies to 'coerce' licensees to enter investment agreements but neither Admiral nor other pub companies would consider significant investment in a site where they have coerced licensees during the investment discussions. A licensee will also have the protection of the Adjudicator to refer to regarding discussions between the licensee and the pub company.

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.

20.1. The proposed definition of an investment period starts with the date an investment agreement is signed and ends at some point between 5 years and 7 or 10 years after the investment waiver is signed.

20.2. Given that an investment agreement will be signed before the works have been ordered with the contractor, the pub company will only start to achieve a return on the investment some 3-6 months after the investment waiver has been signed.

20.3. We would therefore recommend that the investment period would be for as long as possible or open for agreement between the landlord and the licensee (who will be taking independent professional advice).

20.4. If it is decided that a longstop must be included in the Regulations, we would recommend that it would be 10 years.

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?

21.1. We agree with the proposed role of the Adjudicator in disputes regarding the investment agreement.

21.2. We have a slight concern over the wording used in Regulations 12 (5) (a). We would recommend that (i) is expanded to confirm that the expected return is the return expected by the licensee following the investment. We do not believe that this should be construed to include the return made by the pub company as this may require the disclosure of confidential information. If our understanding is correct, we are unsure what additional information would be required under (ii) that would not be provided under (i).

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?

22.1. Our main concern regarding 'qualifying investment' is that this should not constrain future investment in estates and we are concerned that the 'types' of investment included in the Regulations may reduce the levels of future investment.

22.2. We therefore continue to propose that the final Regulations at least remove restrictions on the 'type' of investment meeting the definition of 'qualifying investment'.

Consultation questions – part 2

Market Rent Only option and Parallel Rent Assessments

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.**

   1.1. We agree that the proposed MRO procedure fulfils the objectives of a PRA and delivers the requirement for fair and lawful dealing and adheres to the no worse off principle. The MRO process gives the tenant the option to compare a free of tie rent proposal alongside a tied rent proposal at an early juncture in the assessment process enabling them to understand which model best suits their business and risk profile. However, we remain concerned about the relationship between the tenant's rights of renewal and timings under the LTA and the MRO process at renewal of an agreement.

   1.2. Firstly, we believe that if a S25 notice opposing renewal of a tenancy is served then the right to MRO should be suspended pending the resolution of the LTA query. This allows the tenant the opportunity to see the tied rent at the end of the LTA process and FOT rent through the MRO process at the same time. As the process stands the MRO rent will be received ahead of the LTA rent but may be superfluous if there is no right to the new agreement.

   1.3. The same principle of suspension should apply if a landlord opposes a S26 notice within the 2 month period. For the sake of both parties and the unnecessary costs incurred, this LTA right must be determined by the Court before the MRO process is progressed.

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.**

   2.1. We are confused by the reference in the question to 'allow tenants to make an informed judgment'. The information in Schedule 3 and in the second consultation paragraph 10.23 is only expected to be made available to the independent assessor after they have been appointed.

   2.2. If consideration is being given to providing the information in Schedule 3 to a licensee with the rent assessment, we believe that this duplicates some of the information in Schedule 2 and would not be feasible in other areas. The additional information may need to be provided to a licensee within 21 days, such as receipt by the pub company of a written analysis of a trigger event, and

we do not believe that this would be possible with all the other information under Schedule 2 (and potential Schedule 1).

2.3. Taking each item in turn:

2.4. Item 1
This information on the tied pubs level of trade for the last 3 years would already have been provided in the rent proposal.

2.5. Item 2
We do not believe that a forecast is required but the licensee would have already received our FMT estimate for the level of trade at the site.

2.6. Item 3
Although this is information that a pub company will try to collect and provide, it is obviously subject to confidentiality restrictions and the goodwill of third parties to provide this information (see our response at paragraph 14.4 above).

2.7. Item 4
As we have stated from the start of the process, it is exceptionally difficult for a pub company to allocate values to the SCORFA benefits received by a licensee. Each licensee will have different needs and therefore the benefits will be valued by each licensee in a different way (see our response at paragraph 14.5 above).

2.8. Item 5
Evidence of housing and other commercial properties in the local area may be appropriate to understand and review other rents in the area although the licensee is likely to have access to this information anyway.

2.9. Given the points above, we would propose that the information in Schedule 3 is not required to be provided to the licensee at the same time as a rent assessment.

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.

3.1. We believe the current proposals which allow the tenant the benefit of either a tied or free of tie agreement with corresponding information disclosure does adequately provide the tenant with the information to make an informed decision and thus delivers the 'no worse off principle'.

Availability of the Market Rent Only option at rent assessment

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?

4.1. The original proposal to only allow MRO on rent reviews where the rent was proposed to increase was not a proposal made by Admiral (or to our knowledge, any other pub company) and as such was a surprise to see it included in the first consultation. However, we understood that there was good logic to this as it

would have resulted in licensees knowing that their rent would never increase above RPI for the balance of the term or, if it did, the licensee would have the ability to elect for MRO at that time. This proposal would have continued to allow tied rent reviews to reduce the rent if the market tied rent was lower than that currently charged. This would provide some certainty for both the pub company and the licensee.

4.2. We are aware that there has been significant unease at the original proposal from other parties. Given that this proposal was not one promoted by Admiral, we would be relaxed about it being removed from the final Regulations.

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.

5.1. Given that the majority of Admiral's agreements are tenancies of 3 or 5 year terms (as opposed to leases of 10+ year term) which do not have a rent review, this whole area is not one which has a major impact on Admiral.

5.2. In the 3 years from December 2012 to November 2015, we have completed 89 open market tied rent reviews. Of these 39 have resulted in a freezing or reduction in the rent (44%) although this is weighted towards the earlier rent reviews when the wider economic environment was tougher. In the 18 months to November 2015, only 9 rent reviews have resulted in a reduction or a freezing of the rent (28%).

5.3. As stated above, given the high percentage of 3-5 year tenancy agreements, there are only 175 tied agreements which contain a rent review. Of these, 52 do not contain an annual indexation provision (30%).

5.4. Other than increases agreed with licensees in reference to capex completed by the landlord, Admiral does not have any other inter-review rent changes other than annual indexation. Annual indexation is completed by reference to the latest RPI increase at the relevant date and Admiral has unilaterally confirmed that if RPI is negative, this will result in the rent reducing even though historic tenancy agreements contained provisions that rent could not be reduced by RPI.

5.5. Given that RPI is currently 1.1% and our average rent on an agreement that will be covered by the Pubs Code is £18,000, this will result in an average increase of only £198 pa.

<u>The Pubs Code - Information requirements</u>

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

6.1. We are fully supportive of the need for a prospective tenant to be provided with the necessary information at an early stage in the process to allow them to

prepare an approved business plan. It is what Admiral do presently under our voluntary Code of Practice.

6.2. However, we must emphasise the need for the prospective tenant to be a suitable candidate and we believe that the conditions set out in Regulations 5 (5) (a) and (b), in relation to the tenant physically viewing the pub and then confirming their interest, do not go far enough and could potentially lead to uncertainty, with both pub company and licensee wasting their time and resources. The information requirements of Schedule 1 are onerous and place a heavy administrative burden on both the pub company (in preparing) and the licensee (in reviewing) this information and incurring the cost of independent professional advice.

6.3. Therefore, before getting to the stage of statutory protection (i.e. entitlement to receive the Schedule 1 information), it must be in the interests of all parties that the tenant has been accepted as a suitable applicant. This should mean that an application form has been submitted along with credit check information and this has been deemed acceptable by the pub company.

6.4. If the applicant is, for example, a bankrupt, what purpose does it serve either party to proceed down a route that may be inappropriate? Therefore, while it is absolutely correct for the prospective tenant to have visited the site and confirmed their interest, the trigger for statutory protections should be that the pub company has confirmed in writing (email sufficient) that the application to be considered a prospective tenant has been successful. This also makes it crystal clear to all parties that the tenant now has the protection of the Pubs Code and the right to receive the information in the specified form.

6.5. This revision would also reduce the amount of people who would receive potentially sensitive information. Admiral will often hold open days at pubs which are available for let and have 20-30 people attend the day, of which 10 people may express a provisional interest in the site. Under the consultation proposals, all of these people would be entitled to receive the whole of the information in Schedule 1. We have produced a provisional pack for Schedule 1 and it is over 350 pages. Given that a number of these licensees will also view and express an interest in other pubs with Admiral and other pub companies, this becomes a hugely bureaucratic administrative process, is unlikely to be read by the prospective licensee and adds no value if the pub company is not going to progress with an applicant.

6.6. We would add as a separate and stand-alone point that Schedule 1 information should be allowed to be provided in electronic, email or online form irrespective of the clauses in tenancy agreement. We would recommend that this is specifically stated in the Regulations otherwise the Adjudicator may be required to hear disputes in this area.

6.7. We would further add that it must be recognised that a prospective tenant may quite reasonably have their own vision of a public house and what they may consider to be <u>their business plan</u> well in advance of even talking to the pub company. The definition of a 'business plan' under the Regulations must mean an approved business plan which is accepted as such by the pub company after the licensee has received independent professional advice.

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?**

7.1. Yes, subject to the point made in 6 above that a tenant may already have prepared a business plan. The key point is that the business plan is carried out or ratified with the benefit of the Schedule 1 information and appropriate business advice and is accepted by the pub company as the Business Plan for the purpose of that letting.

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?**

8.1. We believe Regulation 7 requires clarification and the word 'rental' should be inserted before 'amount' in 7 (1) (a).

8.2. Presently Regulation 7 (1) (a) refers to 'any change in the amount payable by a tied pub tenant under the tenancy' – it does not specify rent although we presume that it should. As currently stated, it could be interpreted that any increase in any prices obligated under the tenancy, however small, requires a rent proposal.

8.3. For example, a £10 increase in service charge based upon a £10 increase in the cost of a premises licence may fall within this description. This would be the same for an increase in beer prices due to duty rises or supplier wholesale price increases. We do not believe that these scenarios should require a rent proposal nor that this is what was intended by the legislation. Additional support to our position is that pub companies are given no warning of duty price increases and yet Regulation 7 (1) (a) means that if a duty increase is caught by the clause, the duty increase could not be passed onto the licensee for another 14 days.

8.4. Our belief of what is intended (i.e. that Regulation 7 relates to a change in rent) is supported by Regulation 7 (2) (a) which does talk about a change in 'rent' payable under the tenancy or licence.

8.5. On the assumption that 7 (1) (a) does apply to increases in rent only, it would still create a huge administrative burden if a rent proposal and thus the information required in Schedule 2 (and an update on Schedule 1 as is currently proposed), is required for a previously agreed contractual RPI increase or stepped rent. These are contractually agreed at the outset of a tenancy agreed and taken into consideration by the tenant and their business advisor in the business plan when the initial rent assessment was conducted.

8.6. Similarly, we do not believe a rent proposal should be required on any decrease in rent (outside of a set rent review date or renewal) unless there are compensatory changes in the nature of the deal through a reduced discount or increased tie. Under the current proposals, a discretionary rent concession (either temporary or permanent) by the pub company and the corresponding return to the passing rent at the end of the concession period would require a rent proposal to be produced at both the concession start and concession end. We do not believe that it is required at either date.

8.7. Stepped rents and concessions are designed to assist tenants with cash flow issues as they build up their business or face a local challenge during the term of the agreement. There should be no obstacles to these being granted. We believe that it is imperative that a rent proposal is not required for RPI increases, stepped rents and concession related matters.

8.8. We propose that aside from the events that lead to the MRO option being available (rent review, renewal, significant price increase and trigger events), a rent proposal would be utilised for a non-qualifying capital investment scheme where a smaller capital investment leads to a corresponding rent increase. It would also be used where rent is increased for the release of product tie or increased discount and thus the nature of the overall deal needs to be re-assessed. We would have no objection to the information set out in Schedule 2 to be provided on such occasions.

8.9. We further query the wording and intention of Regulation 8 (5) which removes the areas specified in 8 (5) (a) to (d) from being deemed rent reviews for the purpose of rent assessments.

8.10. Specifically Regulation 8 (5) (a) refers to 'an annual or periodic indexation of rent in connection with the price of a tied product or service'. We presume this means an annual indexation of the rent payable under a tied agreement (normally by reference to RPI or CPI) but could be interpreted as rent indexation directly related to the price of product or service. We believe the words 'in connection with the price of a tied product or service' are unnecessary.

8.11. We believe that for clarity, stepped rents agreed with the licensee at the time when a rent is being agreed should be specifically excluded under 8(5) (a) also. If the final Regulations also remove Regulation 15 (b) (rent review is only a rent assessment when the rent increases), rent amendments from concessions should also be specifically excluded from being a rent review under Regulation 8 (5).

8.12. We do not believe the information detailed in Schedule 1 is relevant to the revised rent proposal and again would create a totally unnecessary administrative burden. As an example, why is it relevant for an updated Schedule of Condition to be produced (and the cost of producing this recharged to the licensee) when the landlord and tenant are agreeing a release in product tie for certain products in exchange for a rent increase.

8.13. In summary, we would agree that a rent proposal and Schedule 2 information (not Schedule 1) should be provided if the parties agree to a small capital development scheme which fell outside the definition of a 'qualifying investment'

which necessitated a change in rent or any change in rent based upon a change in discounts or release of the tie. We do not however agree that a rent assessment or rent proposal should be required for contractual RPIs or stepped rents or concessions, being granted or removed, which are standard business practice between a supportive landlord and tenant.

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)?**

9.1. We strongly disagree that a rent proposal and therefore Schedule 2 information is required in every instance that there is a change in rent.

9.2. As per our response to question 8 above, we are firmly of the view that automatic or agreed changes (such as RPI or pre-agreed stepped rentals) should be excluded. The same applies to discretionary rent reductions or concessions whether being granted or full rent being re-applied.

9.3. The requirement to provide Schedule 2 information in the circumstances outlined above serves no purpose and would create a totally unnecessary and huge administrative and cost burden for both pub company and tenant with RICS qualified persons required to affirm indexation increases or pre-agreed contractual commitments.

9.4. Schedule 1 information is broadly irrelevant on any rent proposal as it relates to the property itself. The necessary information for a rent proposal is provided in Schedule 2.

<u>The Pubs Code – repair provisions</u>

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?**

10.1. We fully agree that repairing obligations should be identified clearly to the licensee in advance of the licensee entering a tenancy agreement. Where investment is going to be completed by the pub company or the licensee this should be specified so all parties are clear on their respective obligations.

10.2. As stated above, Admiral's standard agreement is either a 3 or 5 year tenancy agreement which only requires the licensee to repair the internal elements of the property and places no obligation on the licensee regarding the external fabric or replacement of mechanical or electrical items within the site. As such there is no need for a Schedule of Condition to be included in the tenancy agreement to identify the state of the property and understand the future work that may be required by the licensee. This schedule could cost the landlord several hundred pounds each time it is produced and, if Schedule 1 is required to be updated each time a rent proposal is produced, this is going to be very

expensive for no gain. We fully understand that this is required where the licensee is taking on a full or majority repairing obligation of the site.

10.3. A Schedule of Condition is also largely irrelevant regarding the landlord's repairs as the landlord is required to maintain the site under the tenancy agreement and, if the landlord does not comply with this requirement, the licensee may refer the matter to the Adjudicator.

The Pubs Code – arbitrable provisions

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.

11.1. We believe that only material breaches or disputes should be referred for arbitration.

11.2. Other than time critical events specific in the Regulations, both parties should be given the opportunity to resolve the issue amicably before involving the Adjudicator. Involvement of the Adjudicator should not be used as a threat or negotiating tactic in discussions between the pub company and licensee. For example, if the pub company has failed to provide information from Schedule 1 or Schedule 2, the licensee should request the missing information from the pub company before involving the Adjudicator.

Contractual inconsistencies with the code

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

12.1. We are comfortable with the proposals for void or unenforceable terms in new tenancy agreements which commence after the commencement of the legislation or any deemed transitional arrangement date.

12.2. However, we believe a distinction needs to be made for historic tenancy agreements which pre-date the outset of the legislation and transitional arrangements should be considered.

12.3. Provisions within existing arrangements should not become void or unenforceable immediately (save for the provisions of Regulation 41 (1) (a) which would go against the spirit and intention of the Pub Code).

12.4. Instead the pub company should have the opportunity to make potentially void or unenforceable clauses in historic agreements compliant by offering the tenant a Deed of Variation to make those clauses compliant.

12.5. If the tenant having been offered the right to vary the agreement, then declines, then the clause should stand.

12.6. Such a provision may include the historic clause that a landlord is able to request a rent review and release the tie if the beer tie is made unlawful by statute. It would be a simple variation to amend such clause so that either party could request a rent review in such instance.

12.7. Similarly, clarification could be provided with a company Code of Practice as to how certain processes are to be delivered on existing arrangements.

12.8. We believe that the implementation of the Pub Code should mean that the provisions of Version 6 of the Industry Framework Code ("IFC") become void. It is unfair and unnecessarily difficult if pub companies are held to both the IFC and voluntary Code of Practice which were designed to exist in the absence of statutory legislation. Admiral has incorporated the IFC within its contractual tenancy agreements (as required by the IFC) and this would mean that it would be required to contribute to the costs of the Adjudicator and PIRRS and PICAS and could be required to resolve rent and other disputes through the Adjudicator as well as PIRRS and PICAS.

Extension of code protections

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

13.1. We believe the provisions provide a reasonable balance between the rights of the pub owning business and its successors and those of the occupational licensee.

13.2. We believe the extension of the Code protection should terminate at the end of the current tenancy agreement when each party will have their own separate rights under the LTA.

Group undertakings

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

14.1. The provisions around group undertakings are reasonable and workable.

14.2. Our only concern relates to the financial penalties levied by the Adjudicator and this is dealt with in answer to question 23.

Exemptions from the Pubs Code – genuine franchise agreements

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.

15.1. We are comfortable with the listed characteristics of genuine franchise agreements and agree with the decision to exclude such agreements from the MRO provisions within the legislation.

15.2. We would not propose that any further characteristics are necessary.

15.3. We do take exception to the comments made in paragraph 12.4 of Part 2 of the consultation with regard to 'mischiefs'. This is not our experience of the traditional tied pub arrangements and for us this is borne out from the lack of any PIRRS or PICAS referrals and the fact that we have never had a single rent set by the Courts, independent expert or arbitrator.

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

16.1. We believe it is sensible to ensure that the proposed franchise model is able to be successful and agree that more than one pilot unit should be taken as the sample size.

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.

17.1. We agree that information requirements should remain for genuine franchise agreements.

<u>Exemptions from the Pubs Code – tenancy at will and short-term agreements</u>

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.

18.1. We entirely agree with the proposal in the consultation that short term / temporary agreements should be excluded from the Pubs Code until the licensee has entered agreements which entitle him / her to occupation of the tied pub for a period of 12 months or more. For clarity, where a short term agreement has a break notice provision on behalf of the landlord, the entitlement to occupation will only reach 12 months when the tenant is entitled to a combined period of occupancy of 12 months or more even assuming a break notice is served immediately.

18.2. We believe it is important to consider the reasons why pub companies use short term agreements. In the majority of cases, it is used to keep a site open and trading following a licensee leaving and whilst a new long term licensee is recruited. In these cases, the short term agreement will have a low rent and is sub-optimal for the pub company and therefore it is not in their interest for this to continue for long periods. A period of 12 months is therefore appropriate to ensure that the right licensee has been found or if this is not possible, any licensee who has been in occupation of the site for 12 months should be covered by the protections of the Pubs Code.

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.

19.1. As noted above, licensees entering a pub on a short term agreement may do so at short notice to ensure that the site does not close. This may not be possible if the current pre-entry awareness training ("PEAT") was a requirement before taking on the short term agreement.

19.2. We have recently had an example where this is relevant. A highly experienced and successful licensee held two sites with Admiral. Unfortunately, the licensee passed away from cancer and a family member who had worked in the pubs wanted to take on the sites immediately. Unfortunately, there had been no need for her to take PEAT previously and therefore she would have been unable to take on the sites until she had completed PEAT if this had been a requirement. The pubs would have been forced to close until she had been able to deal with funeral arrangements and then complete PEAT. As this is not a current requirement of taking a short term agreement, she has taken the sites on a short term agreement and will complete PEAT in a few weeks and then progress onto a long term agreement.

19.3. PEAT is a 4-6 hour online course and test. 90% of the content is directed at long term agreements and it is therefore not focused on short term agreements. It is therefore not fit for purpose for these agreements.

19.4. As a reasonable solution, we would propose one of:

- basic details being provided to the licensee to ensure that they understand the position with regards to security of tenure, inability to rely on the Pubs Code and the short notice period; or
- A new PEAT-lite course which would be focused only on short term agreements and would take about 30 minutes to complete. We would propose that this is done within the first 14 days of occupation. We are aware that BII would be prepared to produce this course but they would like to discuss with BIS before starting to produce this course.

19.5. It is clear from our experience that if the hurdle is set too high, licensees will not take on sites and a number of pubs will be forced to shut with the possible risk of not re-opening. We believe that the proposals above would enable pubs to remain open which should be in the interests of all.

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?

20.1. Again, our concern is that the more information that is required, the longer it will take to produce and the more likely it is that the site will close. It should also be expected that if a short term licensee is taking on a site for a couple of weeks to keep it open before a new licensee is found, the less likely it is that they will read swathes of information provided to them.

20.2. We are pleased that BIS recognise this fact and are not proposing to include an information requirement in the Pubs Code for short term agreements. If advice is proposed on what should be available to a short term licensee, we would propose that it is limited to the basics of the short term tenancy agreement including rent, product pricing and discounts and the additional charges to be made for insurance, service charge or other areas.

Enforcing the Pubs Code – fee for arbitration

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.

21.1. We believe that the balance to be struck in identifying the correct arbitration fee is to be low enough not to prevent a genuine request for arbitration but high enough to prevent vexatious and spurious claims which can be used as a threat against a fully compliant position.

21.2. We, therefore, take no issue with the fee level of £200 but by way of reference compare the cost for an individual to issue a claim for £5,000 in the County Court (£455 minimum) or alternatively, a minor employment tribunal issue and hearing fee (£390) and suggest that £200 will not discourage a spurious claim and may leave the arbitration service over-worked. If £200 is the arbitration fee at the start of the Pubs Code, we would encourage the Adjudicator to review these fees when there is evidence of the number of matters referred to the Adjudicator.

Enforcing the Pubs Code – costs of arbitration

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.

22.1. We believe that £2,000 is a reasonable figure for the repayment of costs for a tied tenant to pay a pub company. However, equally, we feel the same figure should be reciprocal on the assumption that both parties have acted reasonably.

22.2. The figure should be reciprocal as if not, it potentially creates an in-balance between the negotiating position of the parties should a tied tenant use expensive professional advice. It should not be the case where one party can recoup costs in excess of those of the other party.

22.3. In the interest of the ongoing business relationship between the landlord and the tenant, it would be preferable if costs were encouraged to be minimised as part of this process as at the end of the arbitration it would be hoped that in many instances a business partnership for the successful running of the public house will still need to exist.

Enforcing the Pubs Code – proposed maximum financial penalty

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% 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.

23.1. In principle, we do not agree that this is the correct basis for a financial penalty. As Admiral is currently entirely focused on the supported tied model, this has no effect on our business. A number of other pub companies, however, have a number of different business segments including breweries, brands, managed houses, commercial leases as well as the tied leased and tenanted business. We struggle to see why these other business segments should be included in the turnover used to calculate the maximum financial penalty.

23.2. If, however, it is impossible to see audited accounts which identify the turnover from each of the business segments across each affected pub company, we understand why BIS has been required to consider the UK group turnover to ensure consistency across each pub company. As a compromise solution, it may be feasible to ask any company that does not provide turnover for the tied segment of its business in its annual accounts to provide an auditor certified statement to the Adjudicator each year end showing the turnover from the relevant business segment.

24. General Comments not fully covered above

24.1. The following represents a number of inconsistent referencing and duplicates within the Regulations:

- Regulation 6 (2) (a) refers to where 5 (5) (a) and (b) arise. We believe that this should be where 5 (5) (a) and (b) have not occurred.
- The same reference to 5 (5) is made in 7 (1) (c). Again we believe that the reference should be where 5 (5) (a) and (b) have not occurred.
- The same reference to 5 (5) is made in 7 (7). Again we believe that the reference should be where 5 (5) (a) and (b) have not occurred.
- Regulation 22 (2) (b) is replicated in 22 (3).
- Regulation 22 (1) (b) in the first consultation refers to Regulations 15 – 17. In the second consultation, the reference is 14 – 17, which we believe to be correct.
- Regulation 34 (b) (vi) duplicates the referencing under (v).
- Regulation 26 (d) refers to 24 (7). This Regulation does not exist and we believe should be 24 (6).
- The contents page of the Regulations has incorrect referencing as it is missing Part 3 – Duties to provide a rent proposal.
- Regulation 19 (2) should refer to Part 2 and not Chapter 2 of the Landlord and Tenant Act 1954.
- Regulation 21 (3) and 21 (4) effectively duplicate each other.

24.2. Regulation 10 (5) requires the person preparing the assessment to have visited the site 'within the period of 3 months beginning with the day on which the rent review proposal is provided'. We assume that this Regulation is trying to require the person to visit in advance of the rent proposal being provided and therefore

should read 'within the period of 3 months ending with the day on which the rent review proposal is provided'.

24.3. At the current time, there is no information regarding transitional arrangements. Given that we are only 4 months from the start date, we would welcome a release of this information as quickly as possible.

24.4. Under Regulation 5 (1), we understand that a licensee may not enter a new agreement without a business plan and the business plan cannot be produced without considering independent professional advice. If the licensee is on a protected agreement under Part 2 of LTA, the pub company has no right to insist on a business plan in advance of the new agreement as the tenant's rights to renewal are under the LTA. Clarity is required how the pub company can deal with this scenario as it is unable to force the licensee to prepare a business plan before allowing the licensee to renew.

24.5. Under Regulation 4 (5) (b), PEAT must be accredited by the Office of Qualifications and Examinations Regulations. In discussions with the British Institute of Innkeeping, we have been made aware that their PEAT course does not meet this accreditation standard. Given that there are no PEAT courses which meet this standard, we would request that the definition is changed to 'is provided by an Office of Qualifications and Examinations Regulations accredited body or Qualification Wales accredited body.'

24.6. As stated above, we are concerned by the tight timelines involved in rent assessments and rent proposals under the Regulations. We would welcome clarity within the Regulations that email communications are an accepted provision of information (irrespective of the wording in tenancy agreements) as this would provide evidence of data provision / communication, would speed up communication and reduce printing and postage costs.

24.7. Regulation 53 requires the pub owning business to notify the landlord if there is a proposed sale of the freehold or long leasehold of the premises. As a private limited company, this would require Admiral to inform the licensee as soon as preparations had begun regarding a future sale. Given that the majority of disposals with an occupational tied tenant involve the sale of a batch of sites, this would make a disposal very difficult to conclude as the whole process would be in the open market. Recently Admiral acquired a package of 111 tied pubs from Star Pubs & Bars ("Star") and we find it very difficult to envisage that this transaction would have occurred under these proposed Regulations as Star would not have wanted to conduct a sale process in a public environment. This will stifle the future for a number of sites and result in closed pubs. Admiral is investing significant sums into the acquired estate which had been identified as not meeting the future strategy for Star. A licensee's tenancy agreement would be unaffected by a disposal and therefore it is far from clear why there is a need for this disclosure.

24.8. Under paragraph 4 (b) of Schedule 2, this requires the pub company to provide a forecast of the profit and loss for the tied pub for 12 months following the rent assessment. This is not correct and we do not believe that it would comply with the requirements of a rent assessment under RICS guidelines. RICS guidelines is not a forecast profit and loss but an assessment of the fair maintainable trade using a hypothetical 'reasonably efficient operator'.

24.9. Under paragraph 4 (d) of Schedule 2, there is a requirement to include the costs of a manager where the tied pub tenant is not the manager. This is not valid as the cost of the manager should only be included where it is felt that the site is suited only to the operation by a multiple pub tenant. We have a number of pubs within the Admiral estate which are run by a company which runs a number of different sites although they recognise that the site is suitable to be run by an individual licensee and therefore recognise that a manager's salary should not be included in the operating costs under a fair maintainable assessment.

24.10. Under paragraph 4 (f) of Schedule 2, it is required to list out any costs which have not been accounted for separately. The literal reading of this clause means that every individual element of this cost must be broken out, however small. We would suggest that the Adjudicator is given the requirement to determine which costs are required to be shown separately within operating costs rather than leaving this clause which is completely open and is extremely difficult to be satisfied.

24.11. Under paragraph 6 (b) of Schedule 2, the landlord is required to provide typical costs of operating a tied pub and explain any variances between the referred to costs and the pub company's cost estimate. We are very concerned by the need to explain 'any' variances, irrespective of the size of these variances. At the current time, under the IFC, explanations are provided for significant variances and Admiral provides an overview where the variance is more than 3% across all costs.

24.12. We recognise that the Adjudicator must specify the criteria a person must satisfy in order to be appointed as an independent assessor. We would propose that minimum standards are set for independent assessors, including professional qualification in rent valuations and the Adjudicator produces a list of approved assessors for selection in a similar manner to the current list of approved assessor under PIRRS.

24.13. Under Regulation 5 (2) (c) there is a requirement for the licensee to provide a financial forecast for the duration of the tenancy. If we are negotiating a 20 year tied agreement, surely it is not expected that the licensee will prepare a business plan and sensitivity for the whole of the 20 years. This needs to have a time limit on the requirement of 3 years or the duration of the tenancy if shorter.

24.14. There are a number of agreements in the Admiral estate which have a penultimate day rent review. This rent review clause was to allow the rent to be adjusted if there was a delay in finalising a renewal agreement. This effectively means that there is a rent review on one day and a renewal on the following day. We do not believe that this should result in two separate rent assessments with 2 separate rent proposals but that one rent assessment (including one rent proposal) should be used for both events.

24.15. Regulation 49 (2) (a) requires the pub owning business to inform the licensee if the insurance charge exceeds the amount payable by the pub owning business. Admiral has historically acquired a bulk policy which insures all sites within the estate. This insurance policy has a higher deductible than the contribution required from the licensee for any insurance works and Admiral will meet the difference between the insurance deductible and the licensee's contribution. It is therefore impossible to confirm whether the insurance charge will be higher than the premium paid (as it is not allocated by site) nor the premium paid plus deductible taken by Admiral. We completely agree that a licensee should be able to 'price match' but will be unable to provide the confirmation under Regulation 49 (2) (a) as this requires information on future events.