



Department for
Business, Energy
& Industrial Strategy

PUBS CODE AND PUBS CODE ADJUDICATOR

Statutory Review - Invitation to Contribute
Views and Evidence

Closing date: 22 July 2019



OGL

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Any enquiries regarding this publication should be sent to us at: PCAreview@beis.gov.uk

Foreword

I am pleased to launch the first Statutory Review of the Pubs Code and the Pubs Code Adjudicator ('PCA'). Pubs are an important part of the economy and to their local communities and the Government has been supporting them through freezing beer duty, cutting business rates for many pubs and supporting community pubs through changes to planning law and by funding Pub is the Hub's pub diversification work.



As Small Business Minister, and having run my own small business, I know how important it is to ensure tied pub tenants are treated fairly by large pub owning businesses, but also that regulation is effective and proportionate.

Government intervenes in commercial relationships only where necessary, so when it does so it is important that the intervention achieves its aims. In the case of the Pubs Code this means that the principles of the Code are being delivered and that the Code is being implemented effectively by the Pubs Code Adjudicator.

I have heard mixed views about how well the Code is operating in practice and I want this review to find the evidence to show what is working well and what changes might make it work better. I am approaching this review with an open mind and want to hear from a wide range of interests, in particular those who have used the Code or have engaged with the Pubs Code Adjudicator over the last three years.

I look forward to receiving your views and comments.

A handwritten signature in blue ink that reads "Kelly Tolhurst".

Kelly Tolhurst MP

Parliamentary Under Secretary of State, Minister for Small Business, Consumers and Corporate Responsibility

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General information

Why we are seeking views?

In a tied pub the tenant is obliged to buy all or some of the alcohol to be sold at the premises from the business which owns the pub. A pub owning business might be a brewing business selling its own products through the pubs it owns or a pub company selling products it has bought through negotiating deals with brewers and other producers.

Part 4 of the Small Business, Enterprise and Employment (SBEE) Act 2015¹ provided for the establishment of the Pubs Code which regulates the tenancies of large estates of tied pubs in England and Wales. The Act and its Regulations require the Secretary of State regularly to review the Code and certain other provisions and the Adjudicator's performance. The first review covers the period to 31 March 2019. The Secretary of State must publish a report of the findings of the review and lay this before Parliament "as soon as practicable" after the end of the review period.

Review questions

This document sets out the Terms of Reference for the statutory review of the Pubs Code and the Pubs Code Adjudicator. There are several review requirements in the legislation, covering the Code itself and the performance of the Pubs Code Adjudicator. For ease of reference, the term "the Pubs Code Review" will be used to cover all the review requirements.

We would welcome responses to the questions set out in parts A to E which mirror the Terms of Reference (Annex A). Parts A – C cover specific review requirements set out in legislation. Part D is an opportunity to provide and comment on the wider impact of the Code and there is an opportunity in part E to record any general thoughts or other information which you think might be relevant to the Pubs Code Review. We appreciate that some issues may relate to more than one of the terms of reference – for example, an issue might be about the Code but also how it has been enforced by the PCA. In assessing contributions, we will consider relevance against all the Terms of Reference, regardless of which part respondents answer. We would welcome qualitative and quantitative evidence where possible.

¹ See <http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted>

Issued: 30 April 2019

Respond by: 22 July 2019

Enquiries to:

Pubs Code Review Team
Department for Business, Energy and Industrial Strategy
1st Floor,
Orchard 3
1 Victoria Street
London
SW1H 0ET

Email: PCAreview@beis.gov.uk

Consultation reference:

www.gov.uk/government/consultations/pubs-code-and-pubs-code-adjudicator-statutory-review

Audiences:

We are seeking views from all those with an interest in the operation of the Pubs Code and the effectiveness of the Pubs Code Adjudicator. This includes, but is not restricted to, the Pub Operating Businesses covered by the Code, tied (and previously tied) tenants and those representing their interests, trade bodies and the Pubs Code Adjudicator.

Territorial extent:

The Pubs Code and the Pubs Code Adjudicator apply to England and Wales.

How to respond

A response form available on the GOV.UK page:

www.gov.uk/government/consultations/pubs-code-and-pubs-code-adjudicator-statutory-review

Email to: PCAreview@beis.gov.uk

Write to:

Pubs Code Review Team
Department for Business, Energy and Industrial Strategy
1st Floor,
Orchard 3
1 Victoria Street
London
SW1H 0ET

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, although further comments and evidence are also welcome.

Confidentiality and data protection

Information you provide in response to this document, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

Please be aware that the Government intends to publish all responses to this document. If you want the information that you provide to be treated as confidential please tell us but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable UK and EU data protection laws. See our [privacy policy](#).

We will publish all responses and a summary on [GOV.UK](#). The published information will include names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This invitation to the public and stakeholders to provide comments and evidence has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this exercise has been conducted, please email: beis.bru@beis.gov.uk.

Background

The Pubs Code and Pubs Code Adjudicator

The Pubs Code

- This is found in the Pubs Code etc Regulations 2016² at Parts 2 to 10 inclusive, and governs the relationship between large pub owning businesses³ (“POBs”) and their tied tenants; and
- gives tenants the right at certain times to exercise a “Market Rent Only” (MRO) option, under which their rent is set at the market level and they are allowed to buy products from the open market.

The Code is based on

- the principle of fair and lawful dealing by pub owning businesses in relation to their tied pub tenants; and
- the principle that tied tenants should not be worse off than they would be if they were not subject to any product or service tie.

The SBEE Act 2015 requires the Secretary of State to appoint a Pubs Code Adjudicator. The Adjudicator’s powers include:

- giving advice and guidance;
- investigating non-compliance with the Code;
- where non-compliance is found, requiring publication of information, imposing financial penalties or making enforceable recommendations; and
- arbitrating disputes under the Code.

² SI 2016/790 (see <https://www.legislation.gov.uk/uksi/2016/790/contents/made>)

³ Those with 500 or more tied tenanted pubs in England and Wales

Review questions

Part A: The Pubs Code

1. How well do you think the Pubs Code has operated between 21 July 2016 and 31 March 2019? What evidence do you have to support your view?
2. To what extent do you think the Pubs Code is consistent with the principle of fair and lawful dealing by pub-owning businesses in relation to their tied pub tenants? What evidence do you have to support your view?
3. To what extent do you think the Pubs Code is consistent with the principle that tied pub tenants should not be worse off than they would be if they were not subject to any product or service tie. What evidence do you have to support your view?
4. What, if anything, do you think needs to change to make the Pubs Code operate more effectively and/or better support the principles?

Part B: The Pubs Code Adjudicator

5. How effective do you think the Pubs Code Adjudicator has been between 2 May 2016 to 31 March 2019 in enforcing the Pubs Code?

Please comment in particular on:

- a) Whether the PCA has sufficient and proper powers to enforce the Code effectively.
 - b) How effective the PCA has been in exercising his powers. What has been done well and what do you think could be done differently.
 - c) How effective the PCA has been in enforcing the Code. In particular, how effective has the PCA been in undertaking the following:
 - giving advice and guidance;
 - investigating non-compliance with the Code;
 - where non-compliance is found, requiring publication of information, imposing financial penalties or making enforceable recommendations; and
 - arbitrating disputes under the Code.
6. Do you think the regulations relating to costs, fees and financial penalties should be amended? If so, how and why?

Part C: Pubs Code Regulations

7. There are two sets of regulations that relate to the Pubs Code: The Pubs Code etc Regulations 2016⁴ and the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016⁵.

You may have commented on some of these provisions in response to questions in parts A and B⁶, but please provide any additional views on the regulations. If you think changes are needed to the regulations, please explain why and how you think they should be changed.

Part D: Impact Assessment and other information

8. The review will consider the key assumptions made in the Impact Assessments⁷ which were published alongside the legislation and regulations. This will include wider impacts, non-monetised impacts or unintended consequences of the changes made. Specifically, we plan to consider any related impact on:

- costs to businesses and potential pub closures;
- redistribution of income from pub companies to tenants;
- changes in industry structure or ownership status; and
- wider industry trends such as employment and investment.

We welcome any evidence to support the analysis of these areas, or if there are any other elements of the Impact Assessments you think we should consider revisiting as part of this review.

Part E: Other comments

9. Please add any points that you feel you have not been able to make in response to the earlier questions.

⁴ <https://www.legislation.gov.uk/ukxi/2016/790/contents/made>

⁵ <https://www.legislation.gov.uk/ukxi/2016/802/contents/made>

⁶ Some elements of the Regulations are covered by review provisions in the SBEE Act 2015, for example, Parts 2 to 10 of the Pubs Code etc Regulations 2016 make up the Pubs Code and must be reviewed under s.46 review provision in the SBEE Act. The review of the Adjudicator set out in s.65 of the SBEE Act states that the review may consider whether it would be desirable to amend regulations about costs, fees and financial penalties.

⁷ <https://www.parliament.uk/documents/impact-assessments/IA15-002.pdf>

<https://www.legislation.gov.uk/ukdsi/2016/9780111146330/impacts>

<https://www.legislation.gov.uk/ukdsi/2016/9780111146323/impacts>

Next steps

Comments made in response to this review will be considered by the Pubs Code and PCA Review Team in BEIS and will inform the final report by the Secretary of State. We may contact you if, for example, we have a query in respect of your response. A final report covering the reviews will be laid before Parliament and published on the GOV.UK website at:

www.gov.uk/government/consultations/pubs-code-and-pubs-code-adjudicator-statutory-review

The Government intends to publish a single report covering all the statutory review requirements. As required by the SBEE Act, the report will set out:

- the extent to which, in the Secretary of State's opinion, the Pubs Code is consistent with the principles set out in section 42(3);
- any revisions of the Pubs Code which, in the Secretary of State's opinion, would enable the Pubs Code to reflect more fully those principles;
- how effective the Adjudicator has been in enforcing the Pubs Code;
- whether it would be desirable to amend or replace the regulations setting out fees, costs and financial penalties under Sections 51(2) or (7) or 58(6); and
- whether the Secretary of State intends to give guidance to the Pubs Code Adjudicator under Section 65 or if he intends to use the powers in Section 66 (abolition of the Adjudicator).

The review provisions in the SBEE Act require the Secretary of State to publish the report of his review, and lay the report in Parliament, as soon as practicable after the review period ends. Responses to this document form part of the review and the report will be published once the Secretary of State has been able to consider the responses and other evidence.

The government consultation principles published by the Cabinet Office, which we are following for this part of the review, state that responses to consultations should be published within 12 weeks of the consultation closing. The Government aims to publish a report of the review, which will also be its response to the views submitted, as soon as practicable within that timescale.

Annex A: Terms of Reference

Statutory Review of the Pubs Code and Pubs Code Adjudicator

Terms of Reference

The terms of reference take account of the requirements of the legislation to review both the Pubs Code (the Code) and the performance of the Pubs Code Adjudicator (PCA).

Term of Reference 1

In accordance with section 46 of the SBEE Act 2015⁸, consider the operation of the Pubs Code (as set out in Parts 2 – 10 of the Pubs Code etc Regulations 2016, as read with the SBEE Act 2015) from 21 July 2016 to 31 March 2019, in particular, the extent to which the operation of the Code is consistent with:

- the principles of fair and lawful dealing by pub-owning businesses in relation to their tied pub tenants, and
- the principle that tied tenants should not be worse off than they would be if they were not subject to any product or service tie.

Term of Reference 2

In accordance with section 65 of the SBEE Act, consider the PCA's performance from 2 May 2016 to 31 March 2019, in particular how effective the Adjudicator has been in enforcing the Pubs Code and whether it would be desirable to amend or replace any regulations relating to costs, fees and financial penalties.

Term of Reference 3

To review the provision of the Pubs Code etc Regulations 2016⁹ and the Pubs Code and the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016¹⁰ which are not covered by review provisions in the SBEE Act 2015.

Term of Reference 4

To review the assumptions made in the impact assessments for the Pubs Code provision in the SBEE Act¹¹, the Pubs Code etc Regulations 2016¹² and the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016¹³.

⁸ <http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted>

⁹ SI 2016/790 - see <https://www.legislation.gov.uk/uksi/2016/790/contents/made>

¹⁰ SI 2016/802 – see <https://www.legislation.gov.uk/uksi/2016/802/contents/made>

¹¹ <https://www.parliament.uk/documents/impact-assessments/IA15-002.pdf>

¹² <https://www.legislation.gov.uk/ukdsi/2016/9780111146330/impacts>

¹³ <https://www.legislation.gov.uk/ukdsi/2016/9780111146323/impacts>

The Review will be informed by a range of evidence including (but not confined to):

- responses to an invitation for views document available at www.gov.uk/government/consultations/pubs-code-and-pubs-code-adjudicator-statutory-review;
- evidence submitted as part of this review;
- PCA MRO Questionnaire;
- PCA Tenants survey;
- reports prepared by the PCA and other relevant material available on the PCA's website;
- impact assessments published with the SBEE Act 2015 in relation to the pubs code provisions, and the Regulations made under those provisions;
- publicly available industry data and information; and
- any other relevant publicly available information.

Following the reviews

While the review periods have different start dates, the statutory review requirements all cover the period up to 31 March 2019. As soon as practicable after the review period the Secretary of State must publish a report of the findings of the reviews and lay a report before Parliament.

The Government intends to publish a single report covering all the statutory review requirements. As required by the SBEE Act, the report will set out:

- the extent to which, in the Secretary of State's opinion, the Pubs Code is consistent with the principles set out in section 42(3);
- any revisions of the Pubs Code which, in the Secretary of State's opinion, would enable the Pubs Code to reflect more fully those principles;
- how effective the Adjudicator has been in enforcing the Pubs Code; and
- whether it would be desirable to amend or replace the regulations setting out fees, costs and financial penalties under section 51(2) or (7) or 58(6).

As a result of the findings of the section 65 review the Secretary of State may also:

- give guidance to the Adjudicator about any matter relating to the Adjudicator's functions, which the Adjudicator must take account of in carrying out functions; and
- by regulations abolish the (office of) Adjudicator if the Secretary of State is satisfied that the Adjudicator has not been sufficiently effective in securing compliance with the Pubs Code to justify the continued existence of an Adjudicator or that it is no longer necessary for there to be an Adjudicator to secure compliance with the Pubs Code or if the Pubs Code is revoked and not replaced.

This document is available from: www.gov.uk/government/consultations/pubs-code-and-pubs-code-adjudicator-statutory-review

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