

WITHDRAWN - COVID- 19 Declaration

1. This declaration by each of the pub-owning businesses (POBs) regulated by the Pubs Code Adjudicator (PCA) under the Pubs Code etc Regulations 2016 (the Pubs Code) and the Small Business Enterprise and Employment Act 2015 (the 2015 Act), is in response to the disruption and extreme circumstances caused by the COVID-19 emergency. It relates to measures in respect of access to rights under the Pubs Code, including statutory arbitration arising under the Pubs Code or 2015 Act (Pubs Code arbitrations) between 16 March and 30 June 2020 (the emergency period). Each POB agrees to act in good faith and within the letter and spirit of this declaration in its dealings in relation to Pubs Code matters.
2. The arrangements in this declaration come into effect from the date on which this document has been signed by representatives for all POBs, and the PCA also has confirmed in writing to the Code Compliance Officers of the POBs that the arrangements have come into effect.
3. For the avoidance of doubt, nothing in this declaration will prevent a TPT from exercising any right under the Pubs Code and 2015 Act which would otherwise have been available to them notwithstanding the emergency period, this includes making a referral for arbitration or serving any notice.

Arbitration Referrals

4. It is agreed by each POB that because of the COVID-19 emergency, any dispute which could otherwise have been referred by a tied pub tenant (TPT) to the PCA for arbitration under s.48 of the 2015 Act (in relation to non-MRO breaches of the Pubs Code) will be treated as though it could in fact not have been referred during the emergency period for the purposes of calculating the time in which a TPT must make a referral under s.49(4) of the 2015 Act and the days of the emergency period will not count in the calculation of time.
5. It is agreed for the purposes of making a referral under s.48 of 2015 Act that time will not run during the emergency period for the purposes of the calculation of the four-month period in s.49(4) of the 2015 Act. For the avoidance of doubt, each POB waives any right to raise any objection within the meaning of s.73(1) of the Arbitration Act 1996 or otherwise which relates to any assertion that a TPT is out of time to make a referral or that the PCA does not have statutory jurisdiction to determine any part of a referral made under s.48 of the 2015 Act due to the passing of time during the emergency period, including in relation to any right to refer arising either before or during the emergency period.
6. It is agreed that in any situation arising during the emergency period where a TPT has served a MRO notice under regulation 23 of the Pubs Code before or during the emergency period and the POB knows that it will not provide a full response under regulation 29 of the Pubs Code within the timescales specified in the Pubs Code, the POB will make a self-referral for arbitration to the PCA under regulation 32 of the Pubs Code in respect of that failure as soon as reasonably practicable and in any

event within 14 days of the breach. Such self-referral to include the agreed wording at Annex A to this declaration. That wording includes a request that such a referral be stayed in the first instance by the PCA until 30 September 2020, subject to considering any request to lift the stay by either party. That wording includes a request for a ruling by the arbitrator, at the latter of the end of the emergency period or the stay being lifted, under regulation 33(2)(b) of the Pubs Code, that the POB must provide a revised response to the TPT, in respect of which it is agreed by the POB the TPT will have a right of referral under regulation 32 of the Pubs Code in the event of any dispute as to the compliance of that revised response.

7. It is agreed that where the MRO negotiation period (as defined in regulation 34(4) of the Pubs Code) is ongoing at the date these arrangements come into effect, in circumstances where at the start of the emergency period the TPT had a right to make a referral to the PCA under regulation 32 of the Pubs Code but has not exercised that right, the POB's "full response" (as set out at regulation 29(5) of the Pubs Code) will be deemed to be re-served as a subsequent proposed tenancy or licence for the purpose of regulation 35(2) of the Pubs Code on a date which is the same number of days before the end of the emergency period as the full response was served before the commencement of the emergency period.
8. It is agreed that where a POB serves a "full response" (as set out at regulation 29(5) of the Pubs Code) and a right for a TPT to make a referral to the PCA under regulation 32 of the Pubs Code arises during the emergency period but the TPT does not exercise that right, the POB's "full response" will be deemed to be re-served as a subsequent proposed tenancy or licence for the purpose of regulation 35(2) of the Pubs Code on the day after the last day of the emergency period.

Rent Assessment Proposals and Rent Proposals

9. It is agreed that in each case, where at the start of the emergency period a TPT has been served with a Rent Assessment Proposal (RAP) under regulation 20 of the Pubs Code, and at that date had a right to serve a MRO notice following receipt of that RAP and has not exercised that right, then the RAP is deemed re-served on the TPT on a date which is the same number of days before the end of the emergency period as the RAP was served before the commencement of the emergency period. It is agreed that where a RAP is served by a POB during the emergency period and the TPT has as a result a right arising during the emergency period to serve a MRO notice in accordance with regulation 23(1) of the Pubs Code, but the TPT does not exercise that right, the RAP is deemed re-served on the TPT on the day after the last day of the emergency period.
10. For the avoidance of doubt, nothing in this document will prevent a TPT in receipt of a RAP from electing to complete the rent review.
11. In relation to any Rent Proposal (RP) under regulation 15 of the Pubs Code due to be served during the emergency period, but not served, the POB will serve the RP within 28 days of the end of the emergency period.

MRO Gateways (other than RAPs)

12. With respect to regulation 25 of the Pubs Code, it is agreed by each POB that:
 - a. If, at the start of the emergency period the TPT was entitled and in time to serve a relevant analysis, then they will not challenge a relevant analysis as being served late, if it was served within a 56 day period starting from the last day of the emergency period, excluding from the calculation any days that occurred before or during the emergency period; or
 - b. If a trigger event occurs during the emergency period, they will not challenge a relevant analysis as being served late, if it is served within a 56-day period starting from the last day of the emergency period.

13. With respect to regulation 26(2)(a) of the Pubs Code, it is agreed that for the purposes of calculating the date on which a pub arrangement is renewed for regulation 26(1), where the period of 21 days from service of a notice under s.25(1) of the Landlord and Tenant Act 1954 expires during the emergency period and the TPT had a right to serve a MRO notice but had not done so within that 21 days, that s.25 notice is deemed, for the purpose only of calculating the date of the event set out in regulation 26(1) of the Pubs Code, to have been received by the TPT on the day after the last day of the emergency period.

Regulation 28

14. In the event a TPT serves a MRO Notice after 16 March 2020 to which this declaration applies, the POB will ensure as soon as reasonably possible after the service of that MRO Notice that the TPT has the benefit of regulation 28 from a period that begins on the 21st day after the date on which the MRO gateway arose or would have arisen but for the emergency period or the failure of the POB to serve a RAP within the emergency period.

Conclusion

15. This declaration is signed by an authorised Director of each of the POBs and each POB agrees to adhere to it.