



Pubs Code and Pubs Code Adjudicator: statutory review

Response form

The consultation is available at: www.gov.uk/government/consultations/pubs-code-and-pubs-code-adjudicator-statutory-review

The closing date for responses is 22 July 2019.

Please return completed forms 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

Personal / Confidential information

Please be aware that we intend to publish all responses to this consultation.

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes. Please see the consultation document for further information.

If you want information, including personal data, that you provide to be treated as confidential, please explain to us below why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we shall take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

I want my response to be treated as confidential ☐

Comments: [Click here to enter text.](#)

About You

[Redacted]

	Respondent type
<input checked="" type="checkbox"/>	Tied pub tenants
<input type="checkbox"/>	Non-tied tenants (please indicate, if you have previously been a tied tenant and when)
<input type="checkbox"/>	Pub-owning businesses with 500 or more tied pubs in England and Wales
<input type="checkbox"/>	Other pub owning businesses (please describe, including number of tied pubs in England and Wales)
<input type="checkbox"/>	Tenant representative group
<input type="checkbox"/>	Trade associations
<input type="checkbox"/>	Consumer group
<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Consultant/adviser
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Surveyors
<input type="checkbox"/>	Other (please describe)

Questions

Part A: The Pubs Code

Question 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?

Comments: It does not appear to have operated particularly well. This is not from personal experience, but is based on what seems to be overwhelmingly negative press and media feedback.

Question 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?

Comments: Once again, not having any direct experience of dealing with the adjudicator or my Pub Co in this regard, it is difficult to comment. However in principle the Code seems to be consistent with fair and lawful dealing.

Question 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?

Comments: It seems to me highly unlikely that the Pub Code in its present operational form is consistent with the principle that tenants should not be worse off than if free of tie. My only evidence for this is that Pub Co's are not obviously making the free of tie option readily available. The implication being that they are financially better off with the tie in place. Ergo the tied tenant is worse off.

Question 4

What, if anything, do you think needs to change to make the Pubs Code operate more effectively and/or better support the principles?

Comments: It seems to me there are currently too many grey areas within the Code which makes it difficult for a tied tenant to assess firstly what their options are and secondly which options are best for them. This lack of clarity seems to give the Pub Co's an opportunity to be less than open about their legal obligations. Better Direct communication from the Adjudicator with tenants and the appointment of a Government approved list of Pub Code advisors / experts (to assist tenants) would make the process easier and clearer

Part B: The Pubs Code Adjudicator

Question 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.

Comments: Instinctively I would say insufficient powers to oblige Pub Co's to be open with their tenants about the tenants rights and the Pub Co's obligations

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.

Comments: No comment

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; Difficult to say with out direct experience, but judging by media coverage fairly ineffective
- investigating non-compliance with the Code; Difficult to say with out direct experience, but judging by media coverage fairly ineffective
- where non-compliance is found, requiring publication of information, imposing financial penalties or making enforceable recommendations; and Difficult to say with out direct experience, but judging by media coverage fairly ineffective
- arbitrating disputes under the Code. Difficult to say with out direct experience, but judging by media coverage fairly ineffective
- Comments: Difficult to say with out direct experience, but judging by media coverage fairly ineffective

Question 6

Do you think the regulations relating to costs, fees and financial penalties should be amended? If so, how and why?

Comments: Initial fees applicable to tenants who are often cash poor are clearly too high. I imagine there are numerous tenants who have stopped at this first hurdle.

Part C: Pubs Code Regulations

Question 7

There are two sets of regulations that relate to the Pubs Code: The Pubs Code etc Regulations 2016¹ and the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016².

You may have commented on some of these provisions in response to questions in parts A and B of this consultation³, 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.

Comments: The whole process needs more clarity and a framework for government assistance to enable tenants to exercise their legal rights and to ensure the Pubs Code does what it was intended to do.

¹ <https://www.legislation.gov.uk/uksi/2016/790/contents/made>

² <https://www.legislation.gov.uk/uksi/2016/802/contents/made>

³ 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.

Part D: Impact Assessment and other information

Question 8

The review will consider the key assumptions made in the Impact Assessments⁴ 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.

Comments: Once again, clarity, assistance for tenants, better enforced compliance with the code and it's principles for the Pub Co's is essential. While the free of tie option may not be the best option for many, at the moment it is very hard for a tenant to make a judgment. Proper application of the Code should at once give those tenants who are better off free of tie, an easy route to that end and at the same time oblige the Pub Co's to offer better terms to their tied tenants and leaseholders. The intention of the act, was presumably to level the playing field, make things fairer for the tenant, whilst not making the business inoperable for the Pub Co's and crucially ensuring the future of the British Pub (reducing closures). Of course the act is not the only factor here. Government needs to look at other issues affecting the viability of the pub trade (business rates etc.) at the same time.

⁴ <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>

Part E: Other comments

Question 9

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

Comments: I would like to say that as a tenants of 3.5 years firstly with [Redacted] and subsequently with [Redacted], I have pretty much entirely positive feedback regarding my business relationship with both companies. They have assisted me at all times in trying to achieve my goals. It has so far been a thoroughly enjoyable and productive relationship. I am looking forward, in the coming months, to negotiate a new tenancy or lease with [Redacted] that will hopefully see that relationship, my business and theirs prosper. As my initial 5 year agreement with [Redacted] was outside the act, I am not currently in a position to opt for a free of tie lease (as far as I understand it), but am doubtful if such an option would at this time be financially attractive. Nonetheless, it seems to me that there is a lot of work to do to ensure that the intention of the act is more than just intention and becomes fit for purpose.

Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

I was sent this form by my BDM fro [Redacted], which shows a certain amount of good intention on their part. I have to ask why I wasn't sent it by government?