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
☒	Tied pub tenants
☐	Non-tied tenants (please indicate, if you have previously been a tied tenant and when)
☐	Pub-owning businesses with 500 or more tied pubs in England and Wales
☐	Other pub owning businesses (please describe, including number of tied pubs in England and Wales)
☐	Tenant representative group
☐	Trade associations
☐	Consumer group
☐	Business representative organisation/trade body
☐	Charity or social enterprise
☐	Individual
☐	Legal representative
☐	Consultant/adviser
☐	Trade union or staff association
☐	Surveyors
☐	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: We are well informed of it by SP&B and refer to it for guidance. We have never acted on anything based on it.

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: We are of the opinion that the law is fair, and that it is down to the lessee / tenant to ensure individual deals are fair.

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: We have always been given the option to choose prices based on different rents. We also operate in FTC sites, some of which are more expensive than the products we buy where we are financially supported by SP&B

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: Nothing that has a direct effect on our business

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: No experience of this

> **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 experience of this

> **c) How effective the PCA has been in enforcing the Code. In particular, how effective has the PCA been in undertaking the following:**

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

Comments: No experience of this

Question 6

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

Comments: No experience of this

Part C: Pubs Code Regulations

Question 7

There are two sets of regulations that relate to the Pubs Code: The Pubs Code etc Regulations 2016[1] and the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016[2].

You may have commented on some of these provisions in response to questions in parts A and B of this consultation[3], 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: No experience of this

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[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 Assessments[4] **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: Should we look to consider an MRO option we would look at this in more detail. The area we find challenging is where the costs to the lessee are unclear in a rent model. As a larger multiple operator we are aware of the actual costs of investment, however I often look and see that the 'hidden' cost of investment in opening a pub with a brewer / pub-co (i.e. floats, tills etc) is actually more than the first two years expected profits

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[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: None

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.

None