



## **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](http://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  
1<sup>st</sup> Floor, Orchard 3, 1 Victoria Street, London SW1H 0ET

Email: [PCAreview@beis.gov.uk](mailto: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]

	<b>Respondent type</b>
<input 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 checked="" 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: Given the flaws in the drafting of the Code, as extensively pointed out by the British Pub Confederation and licensee campaign groups, it would be churlish not to acknowledge that the Code has had some success. It was always going to be the case that pub-owning business who had expended significant resources were going to game and obstruct the Code. The statistical information released bears out that particular companies have done that more than others: there have been numerous cases of systematic breaches of the Code, with all its flaws. What has been disappointing is that throughout this period and indeed until July 2019, none of these egregious attempts at evading the Code – I use the term in its correct context – have been the subject of investigation. The PCA's appointment was subject to significant objection up to and including the Select Committee [Redacted], and the office was woefully under-resourced from the outset. The result is a huge backlog of cases and a perception of incompetence of the PCA's office.

#### 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: The primary legislation in the SBEE act is, but the Code is flawed in a number of areas, principally the failure to enshrine the principle that the Adjudicator is there to adjudicate in cases where fair and lawful dealing is evidenced not to be happening.

#### 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: This is an area where the failure to deliver MRO for various reasons, as well as the gaming of the Code, has left it inconsistent.

#### 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 needs to make clear that a deed of variation is the most efficient and fairest way of creating the Market Rent Only option in most cases.



## 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 comment.

**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: The PCA has not exercised his powers of investigation at all, in spite of widespread and public evidence of the POBs breaching the Code. At the outset he simply failed to process a significant number of referrals, particularly in the matter of exercising the Market Rent Only Option. [Redacted]

**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.**

Comments: Some advice and guidance has been issued, but the PCA has been utterly ineffective in investigating non-compliance [Redacted].

### Question 6

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

Comments: The failure to implement MRO via the efficient and fair means of a Deed of Variation has served to heighten the financial imbalance suffered by tied licensees: most of whom earn less the minimum wage [CAMRA figures 2014]. Assessor fees have been levied that for many cost the equivalent of a week's wages: a disproportionate barrier to equal treatment.

## 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<sup>1</sup> and the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016<sup>2</sup>.**

**You may have commented on some of these provisions in response to questions in parts A and B of this consultation<sup>3</sup>, 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: Numerous stakeholders and individuals have raised these issues at and since 2016. Please see responses from members of the British Pub Confederation.

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

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

<sup>3</sup> 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<sup>4</sup> 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: As much of the Code has not been implemented, the aim of redistribution of income from pub companies to tenants has not taken place.

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<sup>4</sup> <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: [Click here to enter text.](#)

**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.

[Click here to enter text.](#)