



Department for
Business, Energy
& Industrial Strategy

Consultation on proposals to amend the Pubs Code

Following the first statutory review of the
Pubs Code and the Pubs Code Adjudicator

Closing date: 5 September 2021



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Ministerial Foreword



I am pleased to be able to publish this consultation seeking views on measures to improve the practical operation of the Pubs Code. These proposals reflect areas for improvement identified in the report the Government published in November 2020 on the first statutory review of the Pubs Code and the Pubs Code Adjudicator.

I am, of course, very much aware of the challenges faced by tied pub tenants and pub-owning businesses during the current exceptional circumstances. Pubs are an important part of life in the UK and the Government is keen to ensure we maintain the pub's place at the heart of our communities and continue to build on its rich heritage. This Government has provided a wide-ranging package of financial support for businesses throughout the pandemic, worth £352bn, including cash grants, VAT cuts, business rates relief and the Coronavirus Job Retention Scheme. I would like to thank all those working in the pub sector for their efforts in following the Covid rules and putting safety measures in place to help stop the spread of the virus. With the successful roll-out of vaccinations and the measured steps, led by data, to open the economy, I hope the pub sector will soon return to its usual operating levels and be able to plan more easily for the future.

Successful forward planning is facilitated with access to relevant information. One of the main challenges is ensuring tied tenants can access accurate and timely information to make informed decisions before entering into a legally binding contract or making changes to the terms of the contract during or at the end of the tied tenancy. Tenants also need to understand their rights and protections under the Code.

As part of the Government's response to the statutory review, I wrote to Fiona Dickie, the Pubs Code Adjudicator (PCA), asking her to consider a number of issues arising from the review, including those raised by respondents about tied tenant communications. I would like to take the opportunity to acknowledge the progress the PCA has made since I wrote. A number of strands of work are underway, including the publication of performance measures for the PCA, the steps undertaken to assess how its communications with stakeholders might be improved, the publication of arbitration award summaries and creating better awareness of successful regulatory interventions. These continue to benefit tied tenants in helping them to better understand their rights and the protections that the Code provides them with.

Stakeholders made a number of suggestions during the statutory review and the Government's report on the review set out which the Government would progress further and why it was not minded to pursue others. The scope of this consultation is therefore confined to the proposals the Government has committed to consider further following the statutory review, and because we wish to maintain that focus, we do not anticipate as part of this exercise developing new proposals to address other issues that may be raised in response to this consultation. The Government is required to undertake a statutory review of the effectiveness of the Code and

the performance of the PCA every three years. The next statutory review is due to commence next year and stakeholders will again be presented with an opportunity to provide evidence of how well they think the Code is working.

A handwritten signature in blue ink, appearing to read 'Paul Scully', is centered on the page.

PAUL SCULLY MP

Minister for Small Business, Consumer & Labour Markets

Minister for London

Introduction

In 2019, the Government commenced its first statutory review of the Pubs Code (the “Code”) and the Pubs Code Adjudicator (“PCA”) which were established¹ in 2016 to regulate the relationship between pub-owning business with 500 or more tied pubs and their tied pub tenants. In November 2020 the Government published its report on the review² which found the Code to be consistent with the principles that tied tenants are treated fairly and are no worse off than if they were free of their tie. The report also identified changes that could improve the practical operation of the Code. These reflected stakeholders’ responses and the publicly available evidence considered as part of the review.

The Government has since undertaken further work to identify possible options for how these improvements might be achieved and now invites interested parties’ views. It is open to alternative options that are within the Secretary of State’ powers to deliver and that might similarly achieve the intended outcome to:

- help decision-making by prospective tied tenants prior to signing a tied agreement;
- shorten the qualification period for companies to come within scope of the Code;
- require the PCA to be informed of tied tenants with extended protection;
- invite stakeholders to share information about tied tenants with extended protection, including whether such tenants should be able to determine whether their tied arrangements meet the ‘no worse off’ principle when their pub is sold;
- improve the Market Rent Only (MRO) process, such as the timings and whether to remove the requirement that terms should not be ‘uncommon’;
- amend the comparison period for the ‘significant price increase’; and
- exclude taxes, duties from the ‘significant price increase’ calculations and whether other unavoidable costs might also be excluded.

This consultation also seeks stakeholders’ views on an alternative to the High Court as the arbitration appeal route to make this a more accessible option for parties. The Government further committed to consider the creation of tailored dispute resolution rules to improve the arbitration process and increase transparency in relation to arbitration outcomes. Such rules will need to be developed with an appropriate dispute resolution body. This work will therefore be progressed in parallel to any changes to the Code and we will engage stakeholders separately.

The Government’s priority is to deliver the necessary changes to make the Code work better and seeks stakeholders’ views to determine whether the proposed changes might have the

¹ Under Part 4 of the Small Business, Enterprise and Employment Act 2015

² <https://www.gov.uk/government/publications/pubs-code-and-pubs-code-adjudicator-statutory-review-2016-to-2019>

intended effect. The Government will consider all the responses received to the questions set out in this consultation in order to finalise any amendments to the Code it would like to make.

Contents

Ministerial Foreword	3
Introduction	5
General information	8
Why we are consulting	8
Consultation details	8
How to respond	9
Confidentiality and data protection	9
Quality assurance	10
The proposals	11
Parallel Rent Assessment for prospective tied tenants	11
Qualification period	12
Extended protection	13
Market Rent Only process	14
MRO proposal to include the proposed rent	16
Terms in an MRO proposal should not be 'uncommon'	16
Significant Price Increase	17
Definition for the comparison period	17
Exclusion of taxes, duties and other unavoidable costs	18
Alternative Appeal Route for Arbitration	18
Consultation questions	20
Next steps	22

General information

Why we are consulting

Following a statutory review of the effectiveness of the Pubs Code and the performance of the Pubs Code Adjudicator, covering the period from when they were established in 2016 to March 2019, the Government published a report on the review which set out a number of proposals that might improve the practical operation of the Pubs Code.

Stakeholders who responded to the statutory review had divergent views about the Code's effectiveness. The proposals detailed within this document may impact pub-owning businesses and tied pub tenants in different ways; most of whom will not have had the opportunity to consider these more fully and share their views.

It is therefore important that all interested parties are able to have an opportunity to comment on the suggested amendments, particularly due to the Code's complexity and its potential impact on property rights. Responses may further help the Government to identify unintended consequences and may result in an alternative option being pursued in order to achieve the intended effect.

Consultation details

Issued: 12 July 2021

Respond by: 5 September 2021

Enquiries to: pcareview@beis.gov.uk

Pubs Code Team
Department for Business, Energy and Industrial Strategy
1 Victoria Street
London
SW1H 0ET

Email: pcareview@beis.gov.uk

Consultation reference: Options to amend the Pubs Code

Audience:

We are seeking views from those with an interest in the operation of the Pubs Code, in particular those who may be directly affected by the proposed changes such as tied pub tenants, pub-owning businesses and businesses who may be landlords of tied tenants with preserved Code rights upon the sale of their pub. This also includes, but is not restricted to,

representative organisations, trade bodies and any legal organisations familiar with administering the provisions of the Code.

Territorial extent:

This consultation will inform policy in England and Wales.

How to respond

A response form is available on the GOV.UK consultation page:

<https://www.gov.uk/government/consultations/options-to-amend-the-pubs-code>

Email to: pcareview@beis.gov.uk

Write to:

Pubs Code Team
Department for Business, Energy and Industrial Strategy
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, though further comments and evidence are also welcome.

Confidentiality and data protection

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

Please note that the Government intends to publish all responses to this consultation subject to any redactions we may make for legal reasons. If you want the information that you provide to be treated as confidential please tell us, preferably giving reasons, 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 data protection laws. See our [privacy policy](#).

We will publish all responses, subject to any redactions made for legal reasons, together with a summary on [GOV.UK](#). The published information will include a list of business names or

organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

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

The proposals

The Code regulates the relationship between large pub-owning businesses and their tied tenants and protects against unfairness that may arise out of their tied arrangements. The intended effect of these proposals is to streamline some of the Code's processes, create better access to information to help tied tenants make better informed decisions and allow for balanced and meaningful negotiation between the parties.

Parallel Rent Assessment for prospective tied tenants

The Government said it would reconsider the case for Parallel Rent Assessment (PRA) for prospective tied tenants as a potential mechanism to help informed decision-making by allowing prospective tenants to make a comparison between the tied offer and a notional free-of-tie tenancy for the same pub. This could help the prospective tied tenant to identify the differences between the operating models and help them to determine whether the tied offer meets the 'no worse off' principle.

The tied pub model presents an opportunity for entrepreneurs to run their own business including those with limited capital and / or limited experience. The Code requires the pub-owning business to provide certain information specific to the tied pub under consideration and advise the prospective tenant to seek professional advice prior to signing a commercial contract. However, there is some indication that those entering into a tied agreement may not always be doing so while fully appreciating the legal effect of some of the clauses in a contract or the risks if assumptions about sales levels or costs are incorrect. Unlike a free-of-tie tenant, a tied tenant is unable to negotiate and purchase their products and services on the open market to help correct any trading patterns that are different to those expected. While the responsibility for agreeing the terms in a commercial contract rests with the parties, the Government wants to encourage informed decision-making so as to avoid misunderstandings during the tied tenancy which could have been avoided.

However, in a recent report³ by the PCA, tied tenant participants said that during pubs entry training (completed before a new agreement is entered into) they faced a very large amount of new information and tended to focus on what was immediately applicable. This raises the question whether additional information provided at such an early stage of proceedings would necessarily help a prospective tied tenant. The Government is interested in stakeholders' views on whether the provision of a notional free-of-tie scenario in the shape of a PRA, could be helpful or whether it might confuse a person unfamiliar with the Code, with running a pub or with the particular circumstances of the individual pub. The Government understands that some pub-owning businesses have adopted a voluntary approach, such as agreeing a short trial period, to help a prospective tenant familiarise themselves with the reality of running a particular pub prior to signing a tied agreement. The Government is particularly interested to

³ <https://www.gov.uk/government/publications/pubs-code-adjudicator-discovery-report>

learn stakeholders' views about this and is open to suggestions for other voluntary (non-statutory) alternatives that might achieve a similar effect.

Question 1

What are your views about Parallel Rent Assessments for prospective tied tenants? Please provide the reason(s) for your answer.

Question 2

What are your views about encouraging a trial period – for example 3 months - to help a prospective tied tenant familiarise themselves with the running of a new tied pub before entering into a commercial contract? Please provide the reason(s) for your answer. As this approach is voluntary, we are interested to hear stakeholders' views about the incentives for both pub-owning businesses and tenants in agreeing this sort of trial arrangement.

We would particularly welcome comments from individual tied tenants who completed a trial period prior to signing their tied agreement and what they thought worked well and what could have been better. We would also be interested in hearing from pub-owning businesses about whether they have arrangements in place, or planned, to allow prospective and new tied tenants a trial or opt-out period before finalising a tied arrangement.

Qualification period

A business becomes a pub-owning business when it has owned 500 or more tied pubs in England and Wales for a period of at least 6 months in the previous financial year – the 'qualification period'. However, the timing in the legislation means that this can take between 6 and up to 18 months in practice. For example:

- if a company acquired enough tied pubs to meet the threshold on 30th September, it would satisfy the 6-month period in the previous financial year and become a pub-owning business from the following April onwards; or,
- if a company acquired enough tied pubs to meet the threshold on 1st October, the 6-month period would not be satisfied until the April after a full financial year had passed thereby creating a qualification period of almost 18 months.

The Government seeks stakeholders' views on whether the qualification period should be shortened to bring tied tenants more quickly within the scope of the Code rights and protections. In particular, we would welcome views on whether the '6 months' in the previous financial year could be reduced to 3 months retaining sufficient preparation time for the pub-owning company.

Question 3

What are your views about reducing the current 6-month period in the previous qualification period? Do you think that a 3-month period in the previous financial year

would be appropriate or would you support a different period? Please provide the reason(s) for your answer.

Extended protection

When a tied tenant's pub covered by the Code is sold to an unregulated landlord, the Act⁴ sets out extended protection for the tenant so they do not immediately lose all their Code protections due to an event beyond their control. The new landlord, regardless of its size or the nature of its business, is treated as a pub-owning business under the Code for the duration of the extended protection which remains in place either until the tenancy ends or the conclusion of the first rent assessment after the landlord takes ownership, to ensure a reasonable period of protection. Extended protection does not include any rights related to changing from the tied arrangements to a 'free-of-tie' tenancy (Market Rent Only or 'MRO') as the Government's view is that it would be a disproportionate infringement of the property rights of the businesses concerned for the MRO right to continue in the case of a sale.

The rights of tied tenants with extended protection are arbitrable by the PCA. However, the PCA is not ordinarily made aware of tenants who have extended protection and the Government is not aware of any data for the number of tenants with extended protection. It is therefore unclear whether new owners are complying with the retained Code requirements, for example on rent assessment and proposals.

The Government invites stakeholders' views whether the landlord selling the pub should be required, before the sale is effected, to notify the PCA of such tenants, in order to assist the PCA in planning its work within available resources. Similarly, we would welcome views on whether the new owner should be required to inform the PCA once the extended protection has ended following the end of the tenancy or licence concerned or the conclusion of the first rent assessment.

The Government would be interested in views on whether tied tenants with extended protection might benefit from having access to a parallel rent assessment (PRA) at the point of a rent review or tenancy renewal. A PRA, provided by the new landlord, would not give the tenant the right to a free-of-tie offer but might allow for the comparison of a tied offer against a free-of-tie scenario to help the tied tenant negotiate a better deal. As noted above, there is very limited information about how the extended protection measures are working and whether the information requirements around rent provide an adequate basis for tenants with extended protection to negotiate a good deal. The Government would further welcome views and evidence on how well the extended protection arrangements are working.

Should stakeholders support a right for such tenants to obtain a PRA, the Government would be interested in views on the type of information that might be set out in a PRA and whether the tied tenant with extended protection should be able to refer the PRA to the PCA for dispute resolution, and if so, on what grounds. For instance, this might be for failure to supply a PRA

⁴ The Small Business, Enterprise and Employment Act 2015

when requested, or in respect of its content. The Government would also welcome views on what might constitute an appropriate resolution in these circumstances.

Question 4

What are your views about a requirement for the landlord selling the pub to notify the PCA of any tied tenant(s) with extended protection? Should the PCA be informed when extended protection has ended? Please provide the reason(s) for your answer.

Question 5

What are your views about a Parallel Rent Assessment at the rent assessment or lease (or licence) renewal stage for tenants with extended protection? What type of information should be set out in a PRA? Should there be a right to refer disputes related to the PRA to the PCA and, if so, on what grounds? Please provide the reason(s) for your answer. The Government would in particular welcome evidence in respect of the number of tenants and pub companies dealing with matters related to extended protection in order to help decide whether this is a proportionate measure.

Market Rent Only process

The Code gives tied tenants certain rights in relation to changing their tied arrangements to a free-of-tie tenancy. The Market Rent Only ('MRO') process is the mechanism enabling the tied tenant to obtain an MRO proposal from their pub-owning business setting out a free-of-tie offer for their particular pub, allowing them to decide whether to renew their current terms, opt for the free-of-tie offer or try to negotiate a better tied deal.

The Code applies a number of timescales in order to incentivise parties to complete the MRO process efficiently. The main stages of the current process are as follows (note – the overview below of the timings does not reflect the full legal process):

- There are four different circumstances ('MRO event') that enable the tenant to commence the MRO process by giving an MRO notice to their pub-owning business which must be received 21 days of an MRO event occurring.
- The pub-owning businesses must either send a proposed tenancy that is 'MRO-compliant' or a rejection of the MRO notice – a 'full response' – within 28 days following receipt of an MRO notice⁵.
- A negotiating period of 56 days commences on the day the tenant receives the MRO proposal from their pub-owning business.
- Where the tied tenant takes issue with the full response – including if the offer sent as part of the response does not meet the requirements for an MRO proposal (that is, it is not 'MRO-compliant') – or the pub-owning business fails to send one, the tenant has 14

⁵ There are limited extensions to this in relation to the renewal ground, to reflect Landlord and Tenant Act 1954 procedures

days to challenge the pub-owning business, by making a referral to the PCA, starting with the day after the 28-day response period (for the pub-owning business's full response).

Most respondents to the statutory review considered the above timings to be unduly restrictive. In particular, the 14-day period to refer an MRO proposal to the PCA may have caused some tenants to either miss the deadline or lead to a referral to the PCA, despite negotiations not having been completed, in order to safeguard the ability to formally challenge the compliance of the MRO proposal. This may result in the referral of cases to the PCA that might otherwise have been privately resolved.

Furthermore, the current process does not provide for the tied tenant to set out which factors, in their view, are relevant in respect of the reasonableness of the MRO proposal. Being able to set this out in the MRO notice may provide insight to the pub-owning business as to what the tied tenant seeks, consider this in the MRO proposal and help facilitate meaningful negotiation.

The Government has worked up two examples on how the MRO process might be changed and invites stakeholders to comment on these, in particular any aspects they consider might not improve the MRO process. Please note, these are not mutually exclusive and different steps could be combined or amended:

Example 1 – main steps

- Tied tenant gives MRO notice within 21 days of an MRO event occurring.
- Obligation for parties to agree MRO option within defined period set out in the Code (for example, 2 or 3 months) from the receipt of the MRO notice.
- If the parties do not come to an agreement by the end of the defined period, an MRO compliant proposal setting out the tenancy terms must be issued by the pub-owning business no later than 14 days after the defined period ends.
- If the tenant decides that negotiations have come to an end before the defined period concludes, he/she can give the pub-owning business 14 days' notice to that effect, at the end of which notice period the pub-owning business must make the formal offer of an MRO option as above.
- Tenant has 14 days, from the day after the pub-owning business is required to issue an MRO compliant proposal, to accept or refer the MRO proposal to the PCA. If the pub-owning business defaults and makes no offer, the tenant can refer this to the PCA in the same timeframe. If no referral is made and the offer is not accepted, the MRO procedure comes to an end.
- All other, unamended, Code provisions would continue to apply.

Example 2 – main steps

- Tied tenant gives MRO notice within 21 days of an MRO event occurring and which may, if the tenant chooses, identify any factors the tenant considers relevant to the question of reasonableness of an MRO proposal the pub-owning business may make.

- If the ground for sending the MRO notice is accepted by the pub-owning business, it must issue an MRO proposal as per current Code requirements setting out the tenancy terms and must explain how it has addressed in its offer the reasonableness factors which the tenant had identified in the MRO notice.
- Parties to seek to agree the MRO proposal over a defined period of 3 months which is extendable by mutual consent. Either party has the right to refer the MRO offer to the PCA for arbitration, providing 7 days' notice to the other party of their intention to do so, where they consider the negotiations to have stalled, at any point during 3-month period or extended period.
- At the end of the 3 month period, or of any extension that has been agreed, the pub-owning business has 7 days to send the tenant its formal MRO proposal. The tied tenant then has 14 days either to accept the offer or to refer it to the Adjudicator. If no referral is made and the offer is not accepted, the MRO procedure comes to an end.
- All other, unamended, Code provisions would continue to apply.

Question 6

What are your views about the examples set out above and what might work or what might not work? Do you have other suggestions on how the MRO process could be changed using existing powers? Please provide the reason(s) for your answer.

MRO proposal to include the proposed rent

A pub-owning business is required to set out the terms and conditions in an MRO proposal but is not explicitly required to include the proposed rent. According to stakeholders, the inclusion of rent is common practice where terms can become acceptable to the tenant if the rent is adjusted to take account of these, and vice versa. The Government is open to stakeholders' views whether there should be a requirement for the MRO proposal to include the proposed rent, along with the proposed terms, to enable the tied tenant to consider the offer in its entirety. This might further aid meaningful negotiation, particularly if changes to the MRO timescales, as set out in the section above, were to be pursued.

Question 7

What are your views about requiring the inclusion of rent in an MRO proposal? Please provide the reason(s) for your answer.

Terms in an MRO proposal should not be 'uncommon'

The Code requires an MRO proposal to be reasonable, which is judged in the circumstances of each case, and it must not contain terms that are 'uncommon' in agreements between landlords and pub tenants who are not subject to a product or service tie. However, due to the size of pub-owning businesses' estates and the different circumstances for tied tenants, challenges in determining whether a term is 'common' or 'uncommon', or at which point the usage of a term might make it common or uncommon, has led to uncertainty about the compliance of MRO proposals for both parties in this respect.

Determining whether a term is ‘uncommon’ may not at all times be relevant to reasonableness, particularly where the inclusion of an ‘uncommon’ term might be reasonable to enable the parties to take account of certain circumstances of the tenancy or pub. The Government is therefore considering the removal of the requirement that MRO terms should not be ‘uncommon’ thereby leaving the overriding ‘reasonableness’ test to take account of specific circumstances and determine the compliance of the MRO proposal.

Question 8

What are your views about removing the requirement that terms should not be ‘uncommon’? Please provide the reason(s) for your answer.

Significant Price Increase

Definition for the comparison period

The Code describes four circumstances (or ‘MRO events’) under which a tied tenant may request an MRO proposal setting out a free-of-tie tenancy for their particular pub and commence the process enabling the tied tenant to renew their tied arrangements, re-negotiate these or change to a free-of-tie tenancy. One such circumstance is where there has been a significant increase in the price of a tied product (beer, alcoholic drink other than beer or products other than alcoholic drink) or a tied service⁶.

The Code sets out how to determine whether a significant price increase has occurred which would qualify as an MRO event. This aims to compare the latest invoiced price for products during a current period (in the “relevant invoice”) with the actual price paid for the same products over a comparison period one calendar year before:

- the ‘current period’ is the period of 4 weeks ending with the day on which a relevant invoice which increases the price of a tied product or service is issued; and
- the ‘comparison period’ is the period of 4 weeks ending with the day 12 months before the day on which the relevant invoice was issued.

In response to the statutory review, the pub-owning businesses suggested that, in practice, this definition creates a “period of 56 weeks” potentially capturing two annual price increases and potentially enabling tied tenants to exercise their MRO option based on prices more than a year apart. Pub-owning business have suggested that to avoid this unintended effect of the definition, they have to work to a revised 13 month pricing period rather than the traditional 12 months basis which is problematic for both the pub-owning business and tied tenants in business planning.

⁶ Where, after the annual change in the Consumer Price Index, the increase is more than: 3% for beer, 8% for other alcoholic drink, 20% for other tied products and, 20% for tied services.

Pub-owning businesses propose that the ‘comparison period’ defined in the Code should be brought forward by four weeks so that the comparison period should begin 12 months before the relevant invoice, as opposed to ending on that date.

Question 9

What are your views on amending the definition for the ‘comparison period’? Please provide the reason(s) for your answer including, where available, views and evidence on whether pub-owning businesses are adopting a 13-month pricing period and the impact this has on business planning.

Exclusion of taxes, duties and other unavoidable costs

While excise duty and VAT are excluded from the significant price increase calculation, other tax increases are not. Pub-owning businesses suggested that these current exclusions should be extended to other potential tax increases, duties and other unavoidable costs that are outside the pub-owning business’s control, such as higher costs of ingredients or commodities.

To illustrate their point, the pub-owning businesses referenced the Soft Drinks Industry Levy, introduced in 2018, the aim of which is to encourage companies to reformulate their soft drinks and reduce levels of added sugar. However, as the levy is not one of the tax exclusions in calculating significant price increases, pub-owning businesses are concerned that in so far as they may continue dealing in high-sugar soft drinks and they were to pass on the price increase to their tied tenants, this could potentially satisfy the conditions for the MRO event arising from a significant product price increase.

The pub-owning businesses suggested that supplier price rises should similarly be excluded from the significant price increase calculations. The Government is currently of the view that supplier increases have been adequately reflected by way of the application of the Consumer Price Index (see footnote 6 above) and the additional calculation set for each product or service, but would welcome stakeholders’ views on these two suggestions.

Question 10

What are your views on excluding taxes and duties from the significant price increase calculations? Please provide the reason(s) for your answer.

Question 11

What are your views about excluding other unavoidable costs from the significant price increase calculations? Please provide the reason(s) for your answer.

Alternative Appeal Route for Arbitration

The dispute resolution mechanism for the Code is statutory arbitration. As statutory arbitrations fall under the Arbitration Act 1996, appeals are brought to the High Court and are between the original claimant and respondent of the dispute, for these purposes, the tied pub

tenant and the pub-owning business. Grounds for appeal are limited by the Arbitration Act 1996 to:

- challenging the jurisdiction of the arbitrator;
- a serious irregularity causing substantial injustice to the applicant; or
- a point of law.

In response to the statutory review, stakeholders queried whether the appeals brought to the High Court could present a barrier, particularly for an individual tied pub tenant, as an imposing and expensive route to seek redress. Also, because the appeal involves the original parties to the arbitration, where, for example, a pub-owning business wishes to appeal an arbitration award on the basis of lack of jurisdiction on the part of the PCA, the tied tenant who wants an award in their favour upheld may effectively find themselves defending the Adjudicator's actions.

Furthermore, applications for leave to appeal an arbitration award on a point of law are private unless the Court orders otherwise, so parties in other arbitrations cannot make comparisons with their cases. Greater transparency could help to speed up the arbitration process.

To improve both access to the appeal route and transparency, the Government seeks views on alternative approaches to appeals for PCA arbitrations, including MRO arbitrations. One possibility might be the First-tier Tribunal whose jurisdiction is generally to re-hear matters afresh.

The legislative changes that will be needed depend on the alternative approach chosen and further consultation will be undertaken once proposals are developed. Such legal amendments will be pursued separately from potential changes to the Code and to a different timeframe.

Question 12

Do you think there should be an alternative appeal route to the current High Court or should the latter be retained? Please provide the reason(s) for your answer.

Question 13

If you believe that the appeal route should be changed, what do you think it should be changed to? Are there other ways to make an appeal more accessible and potentially less costly without changing the appeal route? Please provide the reason(s) for your answer.

Question 14

Are there any other ways that could be adopted to make the appeal route more accessible and potentially less costly without changing the appeal route? Please provide the reason(s) for your answer.

Consultation questions

- 1. What are your views about Parallel Rent Assessments for prospective tied tenants? Please provide the reason(s) for your answer.**
- 2. What are your views about encouraging a trial period – for example 3 months - to help a prospective tied tenant familiarise themselves with the running of a new tied pub before entering into a commercial contract? Please provide the reason(s) for your answer.** As this approach is voluntary, we are interested to hear stakeholders' views about the incentives for both pub-owning businesses and tenants in agreeing this sort of trial arrangement. We would particularly welcome comments from individual tied tenants who completed a trial period prior to signing their tied agreement and what they thought worked well and what could have been better. We would also be interested in hearing from pub-owning businesses about whether they have arrangements in place, or planned, to allow prospective and new tied tenants a trial or opt-out period before finalising a tied arrangement.
- 3. What are your views about reducing the current 6-month period in the previous qualification period? Do you think that a 3-month period in the previous financial year would be appropriate or would you support a different period? Please provide the reason(s) for your answer.**
- 4. What are your views about a requirement for the landlord selling the pub to notify the PCA of any tied tenant(s) with extended protection? Should the PCA be informed when extended protection has ended? Please provide the reason(s) for your answer.**
- 5. What are your views about a Parallel Rent Assessment at the rent assessment or lease (or licence) renewal stage for tenants with extended protection? What type of information should be set out in a PRA? Should there be a right to refer disputes related to the PRA to the PCA and, if so, on what grounds? Please provide the reason(s) for your answer.** The Government would in particular welcome evidence in respect of the number of tenants and pub companies dealing with matters related to extended protection in order to help decide whether this is a proportionate measure.
- 6. What are your views about the examples set out above and what might work or what might not work? Do you have other suggestions on how the MRO process could be changed using existing powers? Please provide the reason(s) for your answer.**
- 7. What are your views about requiring the inclusion of rent in an MRO proposal? Please provide the reason(s) for your answer.**

- 8. What are your views about removing the requirement that terms should not be 'uncommon'? Please provide the reason(s) for your answer.**
- 9. What are your views on amending the definition for the 'comparison period'? Please provide the reason(s) for your answer including, where available, views and evidence on whether pub-owning businesses are adopting a 13-month pricing period and the impact this has on business planning.**
- 10. What are your views on excluding taxes and duties from the significant price increase calculations? Please provide the reason(s) for your answer.**
- 11. What are your views about excluding other unavoidable costs from the significant price increase calculations? Please provide the reason(s) for your answer.**
- 12. Do you think there should be an alternative appeal route to the current High Court or should the latter be retained? Please provide the reason(s) for your answer.**
- 13. If you believe that the appeal route should be changed, what do you think it should be changed to? Are there other ways to make an appeal more accessible and potentially less costly without changing the appeal route? Please provide the reason(s) for your answer.**
- 14. Are there any other ways that could be adopted to make the appeal route more accessible and potentially less costly without changing the appeal route? Please provide the reason(s) for your answer.**

Next steps

Responses will be considered by the PCA Review Team and will inform the Government's response to this consultation. We may contact you if, for example, we have a query in respect of your response.

The Government's consultation principles published by Cabinet Office state that responses to consultation should be published within 12 weeks of the consultation closing. The Government aims to publish its response as soon as practicable within that timescale.

This consultation is available from: www.gov.uk/government/consultations/options-to-amend-the-pubs-code

If you need a version of this document in a more accessible format, please email enquiries@beis.gov.uk. Please tell us what format you need. It will help us if you say what assistive technology you use.