



Department for  
Business, Energy  
& Industrial Strategy

# Consultation on options to amend the Pubs Code

Government response

November 2021



© Crown copyright 2021

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

Any enquiries regarding this publication should be sent to us at: [enquiries@beis.gov.uk](mailto:enquiries@beis.gov.uk)

---

# Contents

Ministerial foreword	4
Executive summary	6
Summary of responses	8
Prospective tied tenants - Parallel Rent Assessment and voluntary trial period	8
Scope	9
Notification to the PCA of tenants with extended protection	10
Right to a Parallel Rent Assessment for tenants with extended protection	11
Market Rent Only (MRO) process – timing and inclusion of rent	12
Uncommon terms	15
Significant price increase and comparison period	16
Alternative appeal route	17
Annex A – Respondents to the review	20

## Ministerial foreword



I am happy to publish this Government response to the consultation which sought stakeholders views on a number of options to improve the practical operation of the Pubs Code. These reflected the commitments as set out in the Government's report published in November 2020 which concluded the first statutory review of the effectiveness of the Code.

I would like to thank respondents for taking the time and effort to respond to the consultation. Following consideration, these have enabled the Government to decide which changes to the Code are necessary to improve how it operates in practice and decide which ones not to pursue.

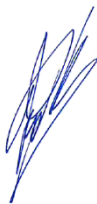
The events of the last 18 months or so have highlighted the importance of pubs at the heart of our local communities and as an essential part of our high streets. The pub industry makes a valuable economic contribution to national and, importantly, wider local economies where a pub can draw visitors that also bring custom to neighbouring businesses in the area.

The Code maintains a careful balance in establishing rights and protections for tied tenants and the property rights of pub-owning businesses. The changes the Government therefore intends to make are carefully considered to ensure this balance remains in place so that tied pub tenants are able to grow their business and pub-owning businesses can continue to invest in their tied pub estates.

The statutory review found that most stakeholders thought the process by which the tied tenant can seek a free-of-tie tenancy was not working as well as it should. They asked the Government to address the restrictive timelines which, while intending to minimise delays in the process, had in fact appeared to disadvantage some tied pub tenants. The Government therefore plans to amend the process to create a longer period for the parties to negotiate the proposed free-of-tie tenancy and associated rent in its entirety. I am confident that the streamlined process will work better in practice and will reduce the number of cases being referred for arbitration.

We have decided not to pursue some of the proposals in the consultation at this time because of insufficient evidence on whether or what changes are needed, including how to help ensure prospective tied tenants are making informed decisions.

We will explore some of these issues further as part of the next statutory review which will cover the period up to 31 March 2022.

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

**Paul Scully MP**

Minister for Small Business, Consumers & Labour Markets  
Minister for London

## Executive summary

1. The consultation paper entitled ‘Consultation on proposals to amend the Pubs Code’<sup>1</sup> was published on 12 July 2021 and the period for responses closed on 5 September 2021. This report summarises respondents’ views on the proposed options to amend the Code and sets out the Government’s response and next steps.
2. The Pubs Code (‘the Code’) regulates the relationship between pub-owning businesses, who own 500 or more tied pubs in England and Wales, and their tied pub tenants. The first statutory review of the Code was completed in November 2020 with the publication of the Secretary of State’s report on the review which committed the Government to consult on a number of options to amend the Code in order to improve its practical operation. A total of 22 responses to the consultation were received, mainly from representative organisations and other bodies with an interest in the Code. Following the consideration of these responses, the Government has decided:
  - to require a regulated pub-owning business that sells a tied pub to a business in circumstances that gives the tenant extended protection under the Code to inform the Pubs Code Adjudicator (PCA) of the name, address, anticipated completion date and, if available, the company number of the new owner;
  - to shorten the qualification period, so that a business will come under the Code if it owned 500 or more tied pubs in England and Wales for at least 3 months (rather than 6 months) in the previous financial year;
  - to streamline the process enabling the tied tenant to secure a compliant offer to change to a free-of-tie tenancy and to encourage negotiation and agreement between the parties;
  - to require the inclusion of the proposed rent, along with the proposed terms, in a free-of-tie offer to ensure the offer can be considered in its entirety from early on in this process; and
  - to amend the comparison period used to determine whether a significant price increase for a tied product or a tied service has occurred, so this does not compare prices more than 12 months apart.
3. Furthermore, following the overall support for an alternative appeal route for the Pubs Code, the Government will undertake additional work to develop proposals which will require further consultation.
4. As a result of this consultation, the Government does not intend to pursue:
  - parallel rent assessments for prospective tied tenants;
  - parallel rent assessments for tenants with extended protection;

---

<sup>1</sup> <https://www.gov.uk/government/consultations/options-to-amend-the-pubs-code>

- the removal of the requirement that terms proposed as part of the free-of-tie offer should not be 'uncommon'; and
  - the exclusion of taxes and duties or other unavoidable costs from the significant price increase calculations
5. A list of respondents is provided at Annex A. This response is available online and can be accessed at <https://www.gov.uk/government/consultations/options-to-amend-the-pubs-code>.

## Next steps

6. The changes to the regulations are subject to debates in both Houses of Parliament and will be made when parliamentary time allows.

# Summary of responses

## Prospective tied tenants - Parallel Rent Assessment and voluntary trial period

7. The consultation sought views about requiring pub-owning businesses to supply a parallel rent assessment (PRA) to prospective tied tenants to enable them to compare a tied offer with a notional free-of-tie scenario for that same pub. The consultation document noted that such information could serve to confuse a person unfamiliar with the Code or running a tied pub, invited views on a voluntary trial period and examples of industry-led approaches that might enable a new tenant to make an informed decision about their tied offer.
8. Some respondents said they would welcome the introduction of a PRA to enable prospective tied tenants to compare rent and earnings under the tied and free-of-tie model to help them determine whether the proposed tenancy met the 'no worse off' principle. It was suggested that a PRA might improve decision-making by prospective tied tenants and that any confusion of the process could be addressed through pre-entry awareness training. Some respondents thought that a PRA could be helpful in setting out the type of support provided by a pub-owning business to a tenant new to running a tied pub and quantify such support. Some of the respondents supporting the introduction of a PRA felt this should be subject to independent scrutiny and verification so that the information provided accurately reflected the market place.
9. Most respondents did not support the introduction of a PRA, cautioning against this for a number of reasons, such as additional complexity and the likely confusion created by a notional free-of-tie scenario which could lead a prospective tenant to either seek additional professional advice, increasing time and costs, or to ignore the PRA. Some respondents highlighted the Code's positive impact on the professionalisation of the entry process for prospective tied tenants, which had resulted in better recruitment and on-boarding of licensees with improved transparency, making a PRA unnecessary. Some felt that a PRA would add to the already voluminous information provided to a prospective tenant (as required by Schedule 1 of the Code), which included detailed information relating to the premises, the business, training and marketing support. Other concerns raised included delays to the induction process of new tenants and potential high annual costs for the pub-owning businesses such as increased estate managers roles, additional managerial and administrative time and appointment costs for external agents, at a time when the tied pub sector was focussed on overcoming the financial impact of the Covid-19 pandemic.
10. Some respondents considered the direct comparison between a tied and free-of-tie not to be a straight-forward, binary assessment where terms used in a free-of-tie tenancy tended to be different from those used in a tied tenancy, such as repairing obligations, quarterly rent, indexation and upward only rent review. Also raised was the difficulty in



estimating the cost of products the tenant might choose to sell once they were free of the tied arrangements.

11. With regard to encouraging voluntary trial periods for prospective tied tenants, while some respondents thought this could potentially be useful in helping the tenant make informed decisions, a period of three months was considered too short in the context of issues relating to seasonal fluctuations in trade, such as Christmas. However, most respondents did not support a voluntary trial period due to likely unintended consequences, such as creating further uncertainty in respect of Code rights and protections and lead to further complexities. Some respondents provided insight of the industry-led approach of the recruitment processes applied by pub-owning businesses, such as ensuring parties' mutual suitability prior to signing, the use of a variety of short-term agreements serving as a trial period which could be converted into a longer tied tenancy, and the provision of additional support, training and advice particularly during the first year which was generally seen as most challenging. Some respondents shared that, with the exception of cases of agreed investment, it was common for most tenancies to contain a break clause, most typically at a 3 or 6 month stage. Some respondents shared that a number of pub-owning businesses have paid the fee for membership of the British Institute of Innkeepers (BII) for their tied tenants to enable them to access advice and support through the BII, such as its panel of accredited experts, including Chartered Surveyors, accountants and solicitors.

### Government response

12. While the Government recognises and shares the aim for informed decision-making, the responses reinforced initial concerns as set out in the consultation document about additional information potentially being confusing and has noted the possible increased costs associated with providing a parallel rent assessment. The Government further welcomes the insight provided into the recruitment processes, the additional support provided particularly to tenants new to running a tied pub and the use of break clauses during the early stages of the tied agreement to enable the parties to end the commercial contract. It has therefore concluded that a requirement for pub-owning businesses to provide parallel rent assessments for prospective tied tenants would not be helpful. However, the Government does wish to better understand the decision-making process of prospective tied tenants, the value of trial periods and break clauses and whether they have sufficient access to good quality advice. As noted in the report on the Statutory Review, we will work with the PCA on ways to find out more about new tenants' understanding of their Code rights and what informed their decision to enter into a tied tenancy agreement.

### Scope

13. A business becomes a pub-owning business when it has owned 500 or more tied pubs for at least 6 months in the previous financial year. In practice, this can present a period from between 6 and nearly 18 months before the business becomes a regulated "pub-

owning business”. The consultation invited views on shortening this qualification period, using existing powers in the legislation.

14. Some respondents disagreed, considering the existing qualification period to be reasonable whereas others did not state a preference. However, most respondents welcomed shortening the period to bring tied pub tenants of new businesses more quickly within the Code’s rights and protections. Suggestions ranged from reducing the ‘6-month’ period to ‘3-months’ for the previous financial year, to removing the reference to ‘financial year’, leaving either a 3 or 6 month qualification period, to no qualification period once the threshold of 500 tied pubs was met.

## Government response

15. The Code maintains a careful balance between the property rights of pub-owning businesses and the rights and protections of tied pub tenants. The Government therefore considers the retention of the qualification period important to allow businesses time to prepare for regulation under the Code. There is also value in the alignment of the qualification period with the financial year and the annual levy paid to the PCA to aid business planning. The Government believes that 18 months is too long for tenants to wait to benefit from the protection of the Pubs Code.
16. The Government also considered that this change could mean that if an existing regulated pub-owning business were to reduce its number of tied pubs below the threshold, it would remain for longer within the scope of the Code than it currently would. However, tied tenants who remain with the business which has reduced its tied estate to below 500 have no control over fluctuations in the number of tied pubs owned and when they lose their Code rights. This amendment serves to increase the minimum period of protection for such tenants from 6 months to 9 months.
17. The Government will therefore amend the ‘6 months’ period to ‘3 months’ in the previous financial year, creating a new maximum period of 15 months and a minimum of a 3-month qualification period which should leave sufficient time for a business to comply with the provisions of the Code.

## Notification to the PCA of tenants with extended protection

18. When a regulated tied tenant’s pub is sold to an unregulated landlord, the new owner becomes a regulated pub-owning business, regardless of its size. The Small Business, Enterprise and Employment Act 2015 (the “Act”) provides for the tied tenant to retain some of the rights and protections of the Code until the tenancy ends or a rent assessment has been concluded. While these rights are arbitrable, the PCA is not ordinarily made aware of the number of tenants with extended protection or when extended protection has ended.
19. Most respondents agreed the selling landlord should be required to notify the PCA of tied tenants with extended protection as the PCA should be aware of the number of

tenants in scope of the Code. Some respondents shared that the PCA already received data on a quarterly basis in respect of the number of tied pubs sold to unregulated landlords, although some others highlighted that, as there is no requirement for pub-owning businesses to notify the PCA of the identity of the purchaser, the PCA was unable to identify those entities for the purposes of the Code. Some respondents felt the tied tenant should be informed of such changes, as opposed to the PCA, whereas others said that the pub-owning businesses already inform their tenants when their pub is sold and extended protection applies. While some respondents agreed that the PCA should be informed when extended protection had ended some felt that, as tenants would assign their leases, data held by the PCA would quickly become inaccurate.

## Government response

20. The Government considers that the PCA should be able to identify the entities regulated by the Code, which it is unable to do at present. The Government will seek to amend the Code to require the landlord selling the tied pub to notify the PCA of the name, address and, if applicable, the company number of the new owner, as well as an anticipated date for the transfer of title. This will enable the PCA to take steps as it considers necessary to ensure the new owner is aware of Code rights and protections for their tenant with extended protection.
21. The Government also considered whether to require that the tied tenant be informed of the change but considered this was usually already provided for. The Government will not require a new owner to notify the PCA when extended protection has ended as the PCA would be able to establish that upon contacting them.

## Right to a Parallel Rent Assessment for tenants with extended protection

22. The consultation sought views whether a right to a PRA might help a tenant with extended protection negotiate their rent or new tenancy with the new owner. Some respondents supported PRA as a tool to help set a fair rent and ensure informed decision making, provided this met accountancy standards. Most respondents did not support the requirement of a PRA, citing additional complexity, confusion, costs, further delay and the potential inhibition on merger and acquisition activity. Some respondents questioned the purpose of a PRA where a free-of-tie would not be available and why a PRA might leave the tenant with extended protection in a stronger negotiating position. Some referred to Schedule 2 of the Code which ensured the tied rent for a tenant with extended protection would be provided with certain information in the rent assessment.
23. Some respondents felt that where a new owner followed the Pub Governing Body's voluntary code, the tenant could rely on its provisions to address any issues and, where the agreement was protected by the Landlord and Tenant Act 1954, the tenant would have a right to referral to the Court. Some also felt that a requirement for a PRA would bring with it extra regulatory requirements which would impact the PCA's levy amount

and methodology in future years. Due to the little available insight about how extended protection works for such tenants, some suggested that it would be proportionate to improve the information about the treatment and experiences of tenants with extended protection prior to introducing further provisions.

## Government response

24. While the Government agrees that giving the tenant access to information is important, it has noted stakeholders' observations and concerns and decided that, in the first instance, further data about the treatment and experiences of tenants with extended protection is necessary. The Government will therefore not introduce new measures, such as a PRA, for tied tenants with extended protection at this time.

## Market Rent Only (MRO) process – timing and inclusion of rent

25. The consultation sought views about changes to improve the MRO process – which gives a tied tenant the right to change to a free-of-tie tenancy or can be used as a tool to re-negotiate existing tied agreements – which stakeholders had previously described as unduly restrictive. To aid consideration, the consultation:
- set out two examples allowing additional time for the parties to negotiate agreement before referring a dispute to the PCA and invited other suggestions for how the process could be changed using existing powers;
  - invited views on enabling the tied tenant to identify the factors they considered relevant to the reasonableness of an MRO proposal, obliging the pub-owning business to take these into account and provide a reasoned response where it disagreed;
  - invited views on requiring the explicit inclusion of the MRO rent with the MRO proposal; and, allowing for the extension of the MRO period by mutual consent where this might help parties reach agreement.
26. With the exception of some respondents, who felt the MRO process should be removed in its entirety to allow for an offer of a free-of-tie offer to be instigated by the tied tenant at any time, most respondents welcomed more time in the process to allow for agreement to be reached without undue recourse to the PCA. Some added that the process itself should be simplified, creating a clear and settled statutory timetable for all parties while enabling them to conduct meaningful negotiations but to avoid lengthening the procedure and delay conclusions.
27. Some respondents felt that example one (as set out in the consultation paper) would create clearer time limits and more control for the tied pub tenant to move the process forward where they felt negotiations had stalled. Some stressed the need for clear requirements regarding the form of offer to be made to the tied tenant in response to their MRO notice and, if a number of offers were made, clarity about which proposal could be referred to the PCA for arbitration. Some respondents referenced the PCA's

introduction of a 3-month stay of proceedings to allow for the parties' continued negotiations (which had recently been withdrawn) as a suitable period for parties to negotiate the proposal whereas others thought a 56-day period to be more appropriate.

28. Some respondents preferred example two (in the consultation paper) which enabled the tied tenant to set out, in the MRO notice, the factors to be included in the MRO proposal. However, most respondents cautioned against measures which they thought could lead to further dispute, complexity and higher costs, particularly for the tied tenant. Some viewed this as making the current simple process for completing an MRO notice more complex, leading the tenant to have to seek professional advice and deterring them from pursuing their right to an MRO offer when the Code already places a duty on the pub-owning business to ensure the reasonableness of their MRO proposal. Although some respondents welcomed the ability for the parties to agree to extend the period of negotiation, others felt that extending the period could disadvantage the tied tenant by delaying the completion of the MRO process, add bureaucracy and allow for further dispute on how consent to extend the period might have been reached.
29. Some respondents felt that neither of the two examples fully achieved the right effect and proposed a period of 28 days, after receipt of the MRO proposal, before a formal referral to the PCA could be made to allow time for the tenant to consider the offer and meaningful discussions to take place. Other main suggestions for amendment to the MRO process included a longer period for the completion of the MRO notice, a longer period for the pub-owning business to provide an updated offer at the end of the period for negotiation, a longer referral period to the PCA after the new period for negotiation, a requirement for the tied tenant to set out any alleged deficiencies of the MRO offer when referring this to the PCA and to allow for the earlier referral to an Independent Assessor where terms have been agreed. Some respondents further suggested that statutory guidance on reasonable terms and conditions should be issued.
30. In respect of requiring the inclusion of the proposed rent in the MRO proposal, some respondents said that the pub-owning businesses already did this and questioned the need for a legal requirement. However, most respondents thought there should be a clear requirement for the rent to be included along with the proposed MRO terms to speed up and help conclude negotiations by enabling the tied tenant to make a full assessment of the MRO proposal. Where some respondents sought to add additional information requirements to be included in the proposed rent, others limited their agreement to its inclusion provided there were no additional obligations.

## Government response

31. The Government has noted respondents' request for clarity of the MRO process in the Code and the support for creating a single longer period during which the parties can negotiate the terms and the rent at the same time. This will need to be balanced with the other timings to ensure the overall period is not unduly lengthened. Subject to the approval of Parliament, the Government will amend the MRO process in order to encourage and enable the parties to negotiate the proposed MRO terms and the

proposed rent during a resolution period of three months. These changes therefore focus on improving the process before a formal dispute can be referred to the PCA or the Independent Assessor. The Government believes that the new proposed process will be easier to use, encourage both parties to seek to negotiate compliant MRO terms and rent and reduce the number of referrals for arbitration.

## Overview of the proposed amended MRO process

- a. The tied pub tenant to ensure receipt of an MRO notice by the pub-owning business within the period of 21 days after the day on which an MRO event occurred;
  - b. The pub-owning business to send its full response (the compliant MRO terms and the proposed rent) no later than 28 days after the receipt of the MRO notice;
  - c. A resolution period of 3 months to begin with the day after the tied pub tenant receives the full response from the pub-owning business so the parties can negotiate the offer in its entirety;
  - d. No referrals to the PCA or the Independent Assessor to be made during the resolution period (save in the case of a procedural or event dispute – see paragraph 31 below);
  - e. The tied tenant to be able to end the resolution period after a minimum of 21 days or at any other point during the 3-month period, by providing 7 days' written notice to the pub-owning business;
  - f. The pub-owning business to be able to provide an updated full response to the tied tenant within 7 days after the end of the resolution period;
  - g. The tied tenant to be able, within 21 days from the day after which the pub-owning business could provide an updated full response:
    - refer the terms of the updated full response to the PCA if the tenant considered these to be not MRO-compliant; or
    - where an updated full response was not provided, the terms of the original full response if the tenant considered these to be not MRO-compliant; or
    - refer the rent to the Independent Assessor to determine the market rent (although no subsequent referral can then be made to the PCA in respect of terms).
  - h. If a referral is made to the PCA, the PCA will determine disputes in respect of the terms as per the current process;
  - i. Following a referral to the PCA, the tied tenant may refer the rent to an Independent Assessor within 21 days after a PCA determination or a revised response from the pub-owning business (or a period otherwise specified by the PCA).
32. The current 14-day referral period to the PCA will be retained where there is a procedural or event dispute. A procedural or event dispute is where the pub-owning business either disagreed with the tenant that an MRO event occurred, failed to reply to



an MRO notice or failed to include the proposed rent (or some other requirement) in its full response. It does not include a dispute about whether the response is MRO-compliant.

33. In such a case, the tied pub tenant will have a period of 14 days, after the day the full response was received or due to have been received, to refer the matter to the PCA to determine the dispute. Where the PCA determines that the pub-owning business failed to provide a full response or that there has been an MRO event, the pub-owning business must provide a required full response within 21 days after the PCA's decision (or a period otherwise specified by the PCA). A resolution period of 3 months would begin with the day after the tied pub tenant receives the required full response from the pub-owning business, followed by the process as of point (d) above at paragraph 30.

## Uncommon terms

34. The consultation paper sought views on the removal of the requirement that MRO terms should not be 'uncommon' and instead to leave the MRO terms to be subject solely to the 'reasonableness' test. Some respondents considered that determining an uncommon term in the free-of-tie market can be difficult and costly for the tied tenant and that its removal might serve to simplify the process. Other suggestions included that it could be demoted to one of the factors set out in the PCA Regulatory Handbook as assisting in determining the reasonableness of proposed terms or that the onus should be on the pub-owning business to justify the inclusion of a term that is challenged as unreasonable.
35. However, most respondents disagreed with its removal as the 'uncommon' test was seen to offer certain safeguards against the inclusion of unique and novel terms that might otherwise be difficult for the tenant to challenge as part of a 'reasonableness' test. Some also considered that its removal could lead to greater uncertainty about the compliance of an MRO proposal for both the tenant and the pub-owning business. Some respondents felt that the requirement for MRO terms not to be 'uncommon' further ensured that proposed MRO terms remained consistent with those offered in a free-of-tie market and its removal could prevent the appropriate comparison between the two models. Also suggested was for the identification and specification of the core classes of terms that characterise free-of-tie tenancies which might then be considered 'common'.

## Government response

36. The Government has considered stakeholders' responses and has, on balance, decided to retain the provision for the MRO proposal not to contain 'uncommon terms' due to the potential greater uncertainty of MRO compliance if this requirement was removed and potentially reducing the ability of the tied tenant to challenge this. However, the Government also recognises the difficulties for tied tenants to determine whether a term is common or not and may review this further in future.

## Significant price increase and comparison period

37. The consultation sought views on reducing the comparison period used to determine whether a significant difference in price had taken place as an MRO event from the current 56 weeks to 52 weeks. While most respondents held no strong views, of those expressing a preference, there was consensus to amend the comparison period so that recent invoices are compared to the same goods bought over a 4-week period starting 12 months previously (rather than the 4 week period ending 12 months before that date) in order to reduce complexities in business planning and annual price changes.
38. The consultation further invited views on the exclusion of taxes, duties and other unavoidable costs, such as increased supplier prices, from the significant increase in price calculations. As excise duty and VAT are already excluded, some respondents supported the exclusion of taxes and duties to enable pub-owning businesses to pass these costs on to the tied tenants without these counting towards the calculations for an MRO event. However others indicated that they would accept a change to the calculation provided there would be no commercial benefit for the pub-owning business. Some respondents also suggested that changes to fiscal policy could further serve to increase prices within scope of the calculations. Some respondents opposed amending the formula arguing the pub-owning businesses were able to pass on cost changes through the tolerance included in the current formulae.
39. Most respondents did not support excluding other unavoidable costs from the calculations, such as supplier price changes or wider regulatory costs, on the basis that the existing formula enabled some price increases to be passed to tied tenants without triggering an MRO event. Some felt that pub-owning businesses could apply their purchasing power to negotiate lower price changes from suppliers or suggested that unavoidable external costs due to price changes would be difficult to isolate in practice.

## Government response

40. The Government will amend the Code so that the comparison period will reflect a 52-week period as opposed to the current 56-week period.
41. The Government recognises that the emergence of unexpected tax changes and similar unavoidable external costs can create pressure for all businesses. However, the inclusion of significant price increase as an MRO event is not just to protect tied tenants from unreasonable price increases, but recognises that significant price increases in tied products may undermine the assumptions that were made on sales volume and profitability when the tenant signed up to their tied deal. In such circumstances, the tied tenant may want to consider whether they are worse off than if they were free-of-tie.
42. The Government is of the view that the current allowances set out in the significant price increase calculations (which already exclude VAT and alcohol duty) allow scope for increased costs to be passed to tied tenants where necessary, without triggering the significant increase in price MRO event. For example, the significant price increase



calculation for non-alcoholic drinks is the consumer price index (CPI) + 20%. This would appear to be sufficient to cover increased costs as a result of a tax increase without triggering the significant price MRO event. The Government will therefore not amend the Code to exclude taxes and duties and unavoidable costs from the significant increase in price calculations.

## Alternative appeal route

43. The dispute resolution mechanism for the Code is statutory arbitration and, as this falls under the Arbitration Act 1996, any appeals in relation to arbitration awards (decisions) issued by the PCA or external arbitrators, are brought to the High Court. As some stakeholders considered this to be an imposing and expensive way for the tied tenant to challenge an award, the consultation invited views on whether there should be an alternative appeal route, what that might be and whether there were other ways to make the appeal route more accessible and less costly.
44. Some respondents thought there was no need for an alternative appeal route as the Arbitration Act 1996 sets out clear and established principles for challenge. Some considered appeals in High Court to date to have been decisive and provided clarity, particularly where the outsourcing to external arbitrators had, they believed, led to some inconsistencies in arbitration awards, principles and costs. It was further suggested that the expense and high bar to challenge had dissuaded frivolous and disproportionate challenges and ensured strong commercial and legal reasons prior to pursuing a challenge.
45. However, most respondents responded in favour of a change to the current appeal route, which some viewed as prohibitively expensive for the tied tenant and had led some to accept an arbitration award that might otherwise have been appealed. As arbitration awards are published only where both parties agreed to waive confidentiality, some felt that appeal rulings were necessary to outline how the Code may be interpreted. Some considered the financial advantages of pub-owning businesses over tied tenants meant that the high costs had exacerbated the imbalance for the tied tenant in accessing the means to challenge an arbitration award. Some supported an alternative route with wider grounds for appeal to allow for the review of arbitration awards to create legal precedents and avoid repeat inconsistencies among arbitrators' decisions in respect of similar disputes. As the appellate procedure requires the tied tenant to be named as the respondent, some noted this had exposed the tenant to expenses and placed further strains on the tied partnership. Some respondents thought this process should be amended to enable the PCA or the Independent Assessor to be the respondent and defend their decision, particularly where a tied tenant did not wish to be party to an appeal.
46. Regarding alternative appeal routes, respondents' suggestions included:

- the First-tier Tribunal Property Chamber – due to its dealings with land registration, it was considered to be knowledgeable in dealing with landlord and tenant issues. Some thought this tribunal may allow wider grounds for appeal than the High Court and could result in lower costs for both parties and allowed for more than one respondent to be named. It was further noted that hearings by the First-tier Tribunal were held in public and, while not establishing case law, would build a bank of informative decisions. Some respondents welcomed the First-tier Tribunal jurisdiction to reconsider an issue afresh by way of a rehearing, however this point also elicited concern for others in undermining the arbitration process where, for example, an original referral held to be unfounded during arbitration, could be re-opened and revisited, leading to further complications. Some were concerned that as the First-tier Tribunal did not generally operate as an appellate Court and its decisions do not set a legal precedent, this could delay closure where a decision by the First-tier Tribunal could be subject to a further appeal to the Upper Tribunal;
- a third-party procedure – to conduct a review procedure where the arbitrator would be the respondent and the involvement of either the tenant or the pub-owning business (depending on the appellant) to be discretionary. However, some considered such an alternative still to be subject to challenge through the court system;
- Upper Tribunal (Lands Chamber) - as a senior Court equivalent to the High Court, dealing with property matters; and
- Magistrate’s Court –providing an appeal by way of “case stated”.

47. Some respondents noted the effective co-operation between the pub-owning businesses and the PCA outside of statutory intervention, such as the agreement to remove anonymity in certain cases to allow the publication of arbitration awards and the agreement by the pub-owning businesses to notify the PCA when an appeal has been lodged regarding an award issued by an external arbitrator. In respect of making the existing appeal route more accessible and less costly, the following were proposed:

- improving the accessibility for appeals by limiting a tied tenant’s exposure to adverse costs in a similar way as referral costs to the PCA are capped, thereby avoiding changes to the balance of the current system;
- mediation, as a cheaper alternative to arbitration afforded to tied tenants not in scope of the Code under the PICA Services;
- free expert legal support;
- an appellate board of specialist arbitrators with experience of the Code where an award issued by an arbitrator can be reviewed;
- an advice service, similar to the Advisory, Conciliation and Arbitration Service (Acas); and
- greater guidance from the PCA in the form of ‘golden threads’ to reduce the need for repeated referrals around the same points of dispute.

## Government response

48. Taking account of the overall support for an alternative appeal route, the Government will undertake further work to explore viable options. These will consider the points raised by respondents and will require further consultation should proposals be developed.

# Annex A – Respondents to the review

## List of respondents

### Pub-owning businesses with 500 or more tied pubs

Admiral Taverns

Ei Group t/a Stonegate Group

Greene King

Marston's

Punch Pubs & Co

Star Pubs & Bars (Heineken UK)

### Interest groups, trade bodies and other organisations

British Beer and Pub Association

British Institute of Innkeeping

Campaign for Pubs

Campaign for Real Ale

Forum of British Pubs

Pubs Advisory Service

Pubs Code Adjudicator

Society of Independent Brewers

The Licensees Association

UK Hospitality

UK Pubs Observatory

The names of people within those organisations or individual respondents, such as tenants, have been withheld for legal reasons, in particular the protection of personal data. Individual responses can be provided on request (subject to Freedom of Information guidelines).

## Categories of respondents

<b>Respondent type</b>	<b>Total*</b>
Tied pub tenant	3
Non-tied tenant	3
Pub-owning business with 500 or more tied pubs in England and Wales	6
Other pub-owning business	0
Tenant representative group	4
Trade association	2
Consumer group	2
Business representative organisation/ trade body	2
Charity or social enterprise	1
Individual	0
Legal representative	0
Consultant/adviser	0
Trade union or staff association	0
Surveyor	0
Other	3

\* Where respondents identified with more than one category these have each been reflected as indicated and accounts for the total number of responses above exceeding the 22 respondents who replied to the review. Where no indication was given, where possible, the content of the response was used to determine the most appropriate category.

---

This publication is available from: [www.gov.uk/government/consultations/options-to-amend-the-pubs-code](http://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](mailto:enquiries@beis.gov.uk). Please tell us what format you need. It will help us if you say what assistive technology you use.