



BRITISH INSTITUTE OF INNKEEPING

**Response to seeking seeks views on  
measures to improve the practical  
operation of the Pubs Code.**

**September 2021**

## Introduction

The BII (British Institute of Innkeeping) is the leading independent membership organisation for individuals working in the licensed retail sector, with over 9,000 individual members running premises across the UK - predominantly tenanted, leased, managed and freehold pubs. We exist to inspire, develop and support our members, keeping pubs thriving at the heart of every community in the UK.

The organisation provides expert helplines, online business support, and guidance on key industry issues, as well as expert advice and savings for members through the Trusted Partners programme. It is the only organisation of its kind to represent the individuals working at the front line of licensed retail and shares best practice across its member network via regular email communications, quarterly members' magazine and social media platforms.

Since the introduction of the Pubs Code we have taken over 1800 calls to the licensee's helpline, with circa 80% coming from licensees of the six companies covered by the Code.

As an organisation we welcomed the establishment of the Pubs Code Adjudicator's office.

- 1. What are your views about Parallel Rent Assessments for prospective tied tenants? Please provide the reason(s) for your answer.** When the Pubs Code was first proposed, Parallel rent assessments were in the proposal but were later dropped in favour of allowing a tenant/lessee to apply for the Market Rent Option when they receive their tied rent proposal. Members tell us they are happy with the process but the BII would like to see the 21 day application period extended to 35 days and that there should be more information given to tenants on their rights when a trigger point occurs.
- 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.** Tenants have professional and expert support available to them as they set out to take on a tenancy or lease, as well as full details of the premises they are taking as directed by the Pubs Code. Some of the pub code companies offer a break clause to the tenant allowing them to resign in the first 6 months which we believe offers more protection to a new tenant than a trial period.



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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.** We agree that the current Code could result in a Pub Company that goes over the 500 site limit, not being subject to the code for 15 months. We believe that this is too long and we would support a reduction but the Code needs to give companies the time to comply with the provisions of the Code. A minimum of 6 months would seem reasonable.
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.** We do not have a major view on this, the main concern for us is that the rights granted by the Pubs Code to the tenant should pass to the new company.
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.** We do not see how this would be possible as all companies outside of the Pubs Code are not subject to offering a free of tie alternative.
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.** We would like to see the timings within the Code be made easier to understand and to give more time. The initial period of 21 days should be extended to 35 to avoid tenants caught up in busy periods like Christmas and Easter missing deadlines. All timings should be separated, for example it is confusing for tenants that within the 56 day negotiating period the first 14 days allows an objection to the terms and after 28 of the 56 days you can take the rent to a third party. We firmly believe this process can be made much easier to understand.
7. **What are your views about requiring the inclusion of rent in an MRO proposal? Please provide the reason(s) for your answer. Consultation on proposals to amend the Pubs Code etc. Regulations 2016 21.** We agree that the rent and terms should be provided at the same time.



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- 8. What are your views about removing the requirement that terms should not be 'uncommon'? Please provide the reason(s) for your answer.** This requirement should be maintained as part of providing agreements that are reasonable. Greater clarity on what is deemed reasonable would be helpful for all parties.
- 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.** We do not have a strong view on this 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.** A pub company has no control over taxes and duties imposed and we agree they should be removed as long as the Code restricts any commercial advantage being gained from any such tax increase. This should be kept under review with any material changes to taxation policies.
- 11. What are your views about excluding other unavoidable costs from the significant price increase calculations? Please provide the reason(s) for your answer.** Pub companies increase their prices to cover the impact of any increases they have been subject to during the past year such as fuel, product rises etc. We cannot see how you could start to offset one and not another so we are not in agreement to this request.
- 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.** We have no strong view on this other than that any appeals should be at the lowest possible cost to a tenant/lessee.
- 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.** Our answer to questions 13 and 14 is that mediation would be far cheaper for a tenant/lessee than arbitration. This is afforded to the tenants under the Under 500 codes via PICA Services. We would be more than happy to set this up if required using existing expertise amongst our Chartered Surveyors many of whom are trained mediators.