Department for Business, Energy & Industrial Strategy

Consultation on proposals to amend the Pubs Code

Response form

The consultation is available at: https://www.gov.uk/government/consultations/options-to-amend-the-pubs-code

The closing date for responses is 5 September 2021, 23:45.

Please return completed forms to:

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

Email: pcareview@beis.gov.uk

Please be aware that we intend to publish all responses to this consultation, subject to redactions we may make for legal reasons.

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes. Please see the consultation document for further information.

If you want information, including personal data, that you provide to be treated as confidential, please explain to us below why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we shall take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

I want my response to be treated as confidential ☐

Comments: Click here to enter text.

About You

Name: [Redacted]
Organisation: Marston's PLC
Address: [Redacted]

	Respondent type
☐	Tied pub tenants
☐	Non-tied tenants (please indicate, if you have previously been a tied tenant and when)
☒	Pub-owning businesses with 500 or more tied pubs in England and Wales
☐	Other pub owning businesses (please describe, including number of tied pubs in England and Wales)
☐	Tenant representative group
☐	Trade associations
☐	Consumer group
☐	Business representative organisation/trade body
☐	Charity or social enterprise
☐	Individual
☐	Legal representative
☐	Consultant/adviser
☐	Trade union or staff association
☐	Surveyors
☐	Other (please describe)

Questions

Question 1

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

Prospective new tenants are provided with detailed pre-entry information that complies with the letting requirements of the Code and contains the information referred to in schedules 1 and 2. All new prospective tenants are advised to seek their own independent professional advice and to have regard to the information we have supplied.

Parallel rent assessments add an additional layer of complexity which is likely to cause unnecessary confusion to many prospective new tenants, whilst also increasing costs and burden. Integration of systems to facilitate such a requirement will take time. They are currently supplied with a tied rent assessment, supported by the detailed information relating to the premises, including business, training and marketing support. All in all, this provides an opportunity for a prospective tenant to engage with us, discuss the proposal and make an informed choice.

This has no relevance to a turnover share / franchise agreement where no rent is payable.

Question 2

What are your views about encouraging a trial period – for example 3 months - to help a prospective tied tenant to 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 had 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.

Prospective tenants do often operate our pubs initially under a Tenancy at Will. This is a short agreement that can be determined at any time by either party, it does not have a fixed period of occupancy and is not a tenancy. Whilst there can be no implied continuance, the reality is it can and is used as an effective 'trial'. TAW operators often convert to a substantive tenancy within a period of weeks or months.

Some prospective tenants favour this TAW opportunity, and it enables them to be able to leave at short notice if they do not wish to progress with a new tenancy.

Offering a formal trial period of occupation would require contracting out of the Landlord & Tenant Act '54, to protect the landlord's tenure rights. This adds another layer of

complication for the prospective tenant, would be a slower process to implement the agreement and would add more cost for them.

In a substantive agreement we can provide a break clause, to give some comfort to a prospective tenant should they choose not to remain for the whole term of the agreement.

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.

The practical implementation of the Pubs Code for a business that becomes a pub-owning business takes time and resource to implement. Integration of the new processes into the required systems can be complex and time-consuming. The current 6-month period is reasonable.

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.

We notify the PCA of numbers of any package disposals and provide figures on a quarterly basis of the numbers of tied pubs that have been sold in that quarter. If tenants of disposed pubs are made aware of their extended protections, it is not clear what benefit notifying the PCA would add.

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 right for MRO is excluded for such a tenant, so providing a Parallel Rent Assessment seems unnecessary and would likely add confusion and delay.

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.

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.

Example 1:

An obligation for parties to agree an MRO option for a defined period from receipt of the MRO notice could help to engage the parties and encourage more meaningful negotiation. More time in this early stage removes pressure off the tenant to refer without such engagement. This could help to avoid unnecessary referrals and associated cost. Where negotiation ends without agreement, the process should revert to the timelines required in the Code.

Example 2:

This provides an opportunity for a TPT to suggest an array of MRO terms; the likelihood is it could frustrate negotiations and unnecessarily delay the whole process, adding further layers of complexity and cost. Tenant could refer at any stage to the PCA within the 3 months negotiation period which will lead to an increase in referrals to safeguard the ability to challenge the MRO proposal. If there is a negotiation period, no party should be able to refer to the PCA until the end of that period.

Question 7

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

We always include rent in our 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.

Our view is the requirement should not be removed.

Ultimately the market determines the MRO terms; comparable evidence of similar properties in the market will influence this. If the requirement that terms should not be 'uncommon' is removed, this could lead to artificial market terms and suggests subjective preferential terms for an individual operator. The terms in an MRO agreement should not be personal as they are assessed for the premises, assuming the TPT is a reasonably efficient operator.

In addition, removing this takes away the key anchor for the MRO lease, namely by reference to rights and obligations consistent with other FOT tenants and could potentially distort competition significantly if MRO tenants are provided with much more favourable lease terms than other FOT tenants. Commonness is a sensible and fair barometer across the industry, whereas the tendency to ignore commonness and focus on perceived

subjective fairness can cause problems and distortions between types of tenants. Removing commonness entirely would exacerbate this even further and make MRO tenants far better off than FOT tenants, which was never the intention for the Code.

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.

We currently adopt a 13-month pricing period, as a minimum. It would be helpful if the comparison period could reduce and begin 12 months before the relevant invoice. More in line with annual planning and to tie in with price rises implemented from our own suppliers throughout that period.

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.

Additional taxes, tariffs and duties in our view should be excluded. It seems unreasonable to have such costs that impact us but are outside our control, reflected in the significant price increase calculations.

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.

Unavoidable costs should be excluded from the significant price increase calculations. Cost of goods increasing beyond CPI inflation can unfairly limit our ability to maintain as wide a choice of products to tied tenants.

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.

The arbitration process takes place under the long established legislation of the Arbitration Act, which has clear and established principles for challenge. It would require wholesale changes to the Code referral procedures in order to realistically depart from such rules, possibly even taking the Code dispute resolution mechanism out of the ambit of arbitration entirely. However, even alternatives such as expert determination are still subject to challenges through the court system.

If the appeal process was simplified it could lead to more unreasonable claims from tenants and POBs and unnecessary delay. The expense and high bar to a challenge

dissuades frivolous and disproportionate challenges and ensures that parties must have very strong reasons, both commercially and legally, before embarking on a challenge.

Using Regulation 37(10) as an example, this provides an alternative route of appeal, without any detail whatsoever of the standard of error required or even the basis on which a challenge can be brought. This encourages spurious challenges and provides no clarity on the principles and process for either the parties or the arbitrator to follow. Regulation 37(10) should be revised as soon as possible, to prevent major delays, uncertainty and increased costs for tenants and POBs.

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.

The appeal route is fine if the drafting of the Code itself is improved to remove some of the ambiguity that results in appeals.

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.

As above.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply ☒

At BEIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

☒Yes ☐No