



# 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](mailto: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 (if applicable): Admiral Taverns

Address: Milton Gate, 60 Chiswell Street, London, EC1Y 4AG

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

## Questions

### Question 1

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

Comments:

Admiral Taverns strongly believes that the Pubs Code has had a positive impact and generally works well. We have worked hard to ensure that the Pubs Code, and its spirit, has been adopted throughout the business and believe that this is seen through the minimal number of complaints and referrals over the first five years. It is also pleasing to see the recognition of this approach, both through comments made by the Pubs Code Adjudicator and the industry-leading scores in the Licensee Index. However, we are not complacent and recognise that we must continually look to improve our processes and information provided to existing and new licensees.

Whilst we accept this requirement for continuous improvement, we do not consider a Parallel Rent Assessment ('PRA') to be an effective mechanism for new tenants to use to satisfy themselves that the tied proposal meets the 'no worse off' principle.

A PRA is likely to create unnecessary confusion at an important time for new tenants looking to enter into a tied agreement by providing hypothetical free of tie terms that are not being formally proposed or negotiated by the pub-owning business. In the Government's summary of the Pubs Code Statutory Review, it is acknowledged that tied tenants feel that they "*face a very large amount of new information and tended to focus on what was immediately applicable*". Therefore, it is highly likely that a PRA setting out free of tie terms (which are unavailable to the tied pub tenant) would be relegated to information deemed not to be of any immediate relevance to that tied pub tenant.

There is also the potential for the relationship between the tied pub tenant and the pub-owning business to weaken from the outset by creating the misleading impression that free of tie ('FOT') terms are available when in fact the pub-owning business is under no obligation to offer them. This is likely to create some tension where a licensee would like to explore these FOT terms in more detail, to only be informed that the terms are not available for new agreements / licensees. Moreover, there is a lack of clarity around the agreement terms that the PRA is to be based on, as well as the proposed valuation basis. As examples, we would need to consider, provide information on and explain the differences in:

- Term – would the FOT rent be based upon the same term as the tied agreement being offered? If so, potentially, we would be valuing the FOT rent on the basis of a 3 or 5 year FOT agreement when we and our professional advisors do not believe that this is common in the market;
- Repairing obligations – our typical tied tenancy agreement is internal repairing only for the licensee whilst our FOT agreement has a full repairing obligation on the licensee. It is not clear what repairing obligations would be used in this PRA. If fully repairing, this is different to tied tenancy that is being offered and if internal

repairing only for the licensee, there is no market evidence of rents for this type of FOT agreement;

- RPI – the tied tenancy agreement may include an RPI annual increase. Our standard MRO agreement currently does not include this indexation;
- Licensing – our tied tenancy would typically have the benefit of Admiral renewing the premises licence whilst our standard FOT agreement would leave this cost with the licensee.

The above are just some of the areas which would need to be considered and set out for the licensee to understand the rent and costs set out in the PRA. However, despite the time required to produce this and additional paperwork for the licensee to review and understand, the FOT agreement is not being offered. In reality, we expect almost all licensees are likely to ignore this PRA as it will be complicated to understand and is meaningless in their considerations.

SCORFA benefits of the tied model are difficult to measure and will vary greatly depending on the individual tied tenant and their time in a particular pub. We believe that new licensees are unable to accurately value SCORFA until they have worked with their pub company for some time and understand the benefits that will actually be received. Therefore, a comparison of the tied rent assessment to the PRA will not be able to accurately convey those benefits at outset. As an aside, the latest Licensee Index survey highlighted that 75% of tied tenants say that they are satisfied overall with their pub company and 7 in 10 would recommend their pub company to another licensee but a PRA would require a licensee to value these SCORFA benefits without actual knowledge.

The consultation document also claims that *“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.”* Whilst it is accepted that tied pub tenants are unable to purchase some or all of their products on the open market, the nature of the tied pub model and the collaborative commercial relationship formed between the POB and tied tenant means that support is readily available as has been the case during the COVID-19 pandemic. We do not believe that there is anything to indicate that a free of tie tenant is more likely to receive support on the open market than a tied tenant.

As a company focussed on overcoming the devastating financial impact of the COVID-19 pandemic, as well as continuing to provide support to our licensees and their businesses, the need to provide a PRA when letting our properties on a tied basis presents an unwarranted administrative and financial burden. We estimate that the cost of engaging an independent external agent to provide a free of tie valuation for each let is around £3,000, and with approximately 300 tied lets per year, this therefore represents a considerable and disproportionate cost to the Admiral business.

We believe that a more suitable and appropriate method for tied tenants to assess whether the ‘no worse off’ principle is being met is by taking reliable and consistent professional advice before entering into a tied tenancy. An independently accredited panel of such advisors would ensure that tied tenants are aware of their Code rights as well as other important considerations when running a tied pub. We have been working with the majority of other pub owning businesses (“POBs”) and the British Institute of Innkeeping (“BII”) to provide this panel of accredited experts and are close to launching this. We believe that

this would deal with concerns around information for new licensees and would hope that this Pubs Code review would support and endorse this approach and encourage all POBs to join and contribute to this approach.

## 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.

### Comments:

Our current favoured route for new-to-industry licensees taking on a tied pub is via Admiral's Business Support Agreement (BSA) – a short-term tenancy agreement which acts as a pathway to a longer term agreement; it includes a high degree of business support, training and guidance offered to the licensee. The BSA can be ended by the licensee at any time without penalty by serving 2 months' notice. Therefore via the BSA, in effect, we already operate a 'trial period' before a licensee commits to taking on a long term tied agreement and are therefore unsure of the issue that the consultation is seeking to address. Since 2019, 44% of licensees that have entered into a BSA have subsequently entered into a longer-term tied agreement with Admiral. Although we may have hoped that more licensees would have taken a long term agreement at the end of their BSA agreement, this has been affected by COVID-19 resulting in licensees coming to the end of their agreement before they have sufficient trading knowledge of the site and many have therefore moved onto other short term agreements to gain this experience. It is also noted that the balance of licensees were licensees considering a long term agreement and realised that it was not right for them and were able to leave the site without going through a potentially emotional and expensive process to extract themselves from a long term agreement.

It should also be noted that 55% of the tied agreements in our estate already include a right for the licensee to end the agreement by serving notice without penalty. However, we recognise that this includes short term agreements but confirm that almost 50% of our substantive agreements entered since 2019 have a break clause for the licensee giving them the opportunity to bring their agreement to an end should they wish. We understand that other POBs have introduced agreements with a break clause where requested by the licensee and therefore believe that this proposal has already been overtaken by the market.

However, we do not believe that a trial period should be a mandatory statutory requirement and that the parties to a transaction should be allowed to come to an agreement as to whether a similar arrangement may be necessary or not. Notwithstanding, we feel that a 3 month trial period would not be long enough for a licensee to establish whether or not their business is succeeding so any trial period would have to be for a greater duration. There are also instances where a trial period may not be appropriate, for example where the POB invests capital in the property. This could therefore have the effect of delaying investment in the property by the POB.

Finally, in the majority of cases, the pub is also the primary residence of the tied tenant and a statutory trial period could cause uncertainty around their future occupation.

### **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.**

Comments:

We believe that reducing the current 6 month qualifying period to 3 months and removing the reference to the previous financial year should provide sufficient time for a new POB to be in a position to comply with the Pubs Code.

It should be highlighted that the Pubs Code does not afford any assistance or protection for an existing POB that may acquire a non-regulated pub company, as has recently been experienced following Admiral's acquisition of Hawthorn. Upon completion of the transaction, Hawthorn became a group undertaking of Admiral and therefore had to comply with the Pubs Code with immediate effect. Due to the nature of the transaction, this left the Hawthorn management team with around 4 weeks to prepare for compliance with the Pubs Code whereas a non-regulated company that may reach the threshold of 500 tied pubs would have at least 6 months during which to prepare for compliance. Had exchange and completion taken place simultaneously, this would have allowed no time for Hawthorn to train their staff or update their policies and procedures, risking an immediate breach of the Pubs Code. This does not seem fair for existing POBs that wish to grow through corporate transactions and cannot be what was intended by the legislation, which does not allow any flexibility or provide the PCA with any powers to intervene or assist in this area.

We strongly feel that a moratorium period should be available in cases such as this to allow time for the necessary work required to meet the requirements of the Pubs Code.

### **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.**

Comments:

We provide quarterly reporting to the PCA detailing cases where a tied pub has been sold as a going concern subject to a tied tenant with extended protection and whether the purchaser was a regulated pub-owning business or not. Admiral also notify the small number of tenants benefitting from extended protection of their continued rights at the time of sale. It therefore cannot be claimed that the Government is unaware of the number of tied tenants that benefit from extended protection.

We are not aware of any issues in this area and there does not seem to be any evidence supporting the need for further statutory intervention. We are therefore unclear on what the consultation is seeking to address.

**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.

Comments:

As stated in our response to question 4, we are unclear as to what issue the consultation is seeking to address and it does not feel necessary nor proportionate to take further statutory action in this area. It is also unclear as to why a tied tenant with Extended Protection should be provided with a PRA upon a renewal or rent assessment when a tied tenant with full Pubs Code rights would not be entitled to receive the same information.

Following the sale of a tied pub as a going concern, it is common for a new owner to release the tenant from the tie or negotiate revised commercial terms in the form of a new lease. Notwithstanding our position as set out in our response to question 1, a PRA will therefore be of little to no effect and having additional strict statutory requirements for a prospective purchaser to comply with could be seen as off-putting to someone looking to acquire a single pub with the benefit of an occupational tenant.

**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.**

Comments:

The current 14 day window for referral if the tied tenant feels that the MRO proposal is non-compliant is far too restrictive and doesn't allow any meaningful time for negotiation



before the referral is made or the right to refer the matter is lost. This therefore results in a number of unnecessary protective referrals which could be avoided if there were a reasonable window of time during which the parties could negotiate freely. Admiral has recently received its first two referrals to the PCA, with one of those referrals subsequently being withdrawn and the other being agreed by consent following negotiations between the parties (with the key terms of the agreement remaining as originally proposed in the MRO offer); had there been a longer window than 14 days then we do not believe either matter would have resulted in a referral.

We therefore believe that the majority of example 1 is sensible and could be workable subject to it being tested thoroughly beforehand and clarity being provided regarding the form of offer to be made following receipt of an MRO notice. The consultation is unclear as to what should be provided to a tied tenant when entering into the defined period – should it be basic heads of terms or take the form of an interim MRO Full Response?

Whilst we do not believe that this is the intention of the wording in the consultation, there should not be an ‘obligation’ on the parties to agree an MRO option within a defined period – this implies that the parties cannot agree other terms beside an MRO agreement. We are in favour of a defined period of three months to allow the parties to negotiate, which is much needed particularly following the PCA’s recent withdrawal of the Initial Stay.

However, we believe that if the tied tenant ends negotiations before the defined period has come to an end then the pub-owning business should be afforded a period of 28 days as opposed to 14 days to table their formal MRO offer. Following the publication of the Regulatory Compliance Handbook by the PCA, the time taken to prepare an MRO-compliant proposal has increased and 14 days to prepare such a response is insufficient.

After the end of the defined period, there is still a 14 day window of referral for the tied tenant to refer the matter to the PCA if they don’t believe that the MRO proposal is compliant, once formally presented. We believe that this 14 day window should be extended to 28 days therefore giving the parties an additional 14 days to negotiate following receipt of the formal Full Response. However, this would not delay the process as if the parties are unable to agree, the tenant would be able to refer at any time during this 28 day 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.**

Comments:

Whilst the Pubs Code does not expressly require a POB to provide the MRO rent with an MRO proposal, it is heavily implied and therefore since the inception of the Pubs Code we have been providing a proposed MRO rent. More recently, MRO proposals have been accompanied by a shadow profit and loss account setting out the calculation of the proposed MRO rent.

We therefore in principle have no objection to an amendment to the legislation provided that it seeks to address this area only and does not create any additional obligations



beyond providing an MRO rent. However, it is our understanding that all POBs are already providing the MRO rent with the MRO proposal and therefore the market has already voluntarily moved to this position.

### **Question 8**

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

Comments:

We firmly believe that the requirement should remain. Removing commonality as a test is likely to lead to even more referrals over relatively minor and trivial points, with the risk of a dual free of tie market being established between non-regulated commercial landlords and regulated pub-owning businesses.

It was the intention of the legislation that an MRO-compliant agreement would follow the terms dictated by the free of tie market with MRO terms moving in line with the wider market.

Removing ‘uncommon’ is likely to create more uncertainty and referrals when our view is that referrals in this area are reducing and the arbitration process is coming to an ‘agreed’ position on terms of the MRO agreement.

### **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.**

Comments:

We believe that the comparison period should be amended to cover a 12 month period. Doing so will ensure that any price increases can be applied annually meaning certainty in terms of increase dates and business planning. The 13 month comparison period has in effect moved our annual price increases further along by a month each year, which cannot have been the intention of the legislation when it was drafted. Non-regulated pub companies do not have the same considerations and restrictions around their pricing in this respect.

To further illustrate the impact of the 13 month comparison period and confirmation that it has been applied within Admiral, annual price increases were applied in March 2017, April 2018 and May 2019. As a result of the COVID-19 pandemic and resulting lockdowns, price increases were not applied in 2020 with the latest increase being applied in February 2021. If the comparison period remains as drafted, the next annual increase will be applied in March 2022.

### **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.**

Comments:

We firmly believe that taxes, duties and tariffs should be excluded from the Significant Price Increase calculations across all tied products or services. The Government's consultation references the Soft Drinks Industry Levy and the fact that as the calculation for non-alcoholic tied products does not exclude such a levy, resulting in the inability of POBs to pass the increases from the levy onto licensees. Admiral can confirm that it did not pass on the levy in full to its licensees.

Again, this cannot be what was intended by the legislation when it was drafted and puts POBs at a disadvantage when compared to non-regulated pub companies who do not have the same considerations or restrictions when increasing their prices.

**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.**

Comments:

We believe that unavoidable costs incurred beyond the control of the pub-owning business should be excluded from the Significant Price Increase calculation. If these costs are not able to be passed on then there is a risk that certain products may be delisted from our range resulting in a narrower product range available to tied tenants.

We would also note that a Deposit Return Scheme ("DRS") may be adopted by the English and Welsh Governments. It is unclear how this would be introduced but it is likely that the list price for certain products will have to be increased. This will therefore result in a Significant Price Increase for licensees and a potential MRO event when it is absolutely not driven by the POB and is outside of the POB's control. This is only one example of such an issue and we are genuinely concerned by others that could arise and result in MRO events. This potential issue needs to be closed off within this review.

**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.**

Comments:

Since the introduction of the Pubs Code in July 2016 we have only received 2 referrals to the PCA – both of which have been made in 2021 and both of which were settled without the need for an arbitrator's ruling. We believe that our rate of referrals is a direct result of the positive working relationships that we enjoy with our licensees and formed through our

award-winning approach. As a result, we have had no exposure or practical experience with the current appeal route and it is therefore difficult to comment further in this respect.

We do recognise that the publication of arbitration awards by the PCA has been a positive step towards understanding certain aspects of the Pubs Code. However, we still feel that greater guidance from the PCA in the form of 'golden threads' could perhaps reduce the need for repeated referrals around the same points of dispute although we are of course aware that arbitration awards do not create binding precedent for other decisions to be based on.

However, it should be noted that the costs of the current arbitration process are much higher than the PICAS/PIRRS equivalent available to tied tenants of non-regulated pub companies.

### **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.**

Comments:

As stated in our response to question 12, we have had no exposure in this area and therefore cannot provide a response based upon our experience. However, we understand that the First Tier Tribunal Property Chamber may offer a suitable alternative route to dispute resolution than the High Court, with lower costs involved and quicker processes.

### **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.**

Comments:

Again, without experience of the current appeal route it is difficult for us to comment further.

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