



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 (if applicable): [Redacted]

Address: [Redacted]

	Respondent type
<input checked="" type="checkbox"/>	Tied pub tenants
<input checked="" type="checkbox"/>	Non-tied tenants (please indicate, if you have previously been a tied tenant and when)
<input 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: We are not new to the trade and this is directed to new entrants. I would say that any new entrant needs to be appraised of the alternatives but the issue is that a POB is unlikely to offer free-of-tie alternatives at the start of an agreement – it is not in their commercial interest to do so and therefore the point is moot.

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: A probation period may be useful but 3 months is a very short timeframe in the context of an agreement – it is not even a full calendar year with the seasonal issues of Christmas, winter, summer, etc. A period of 12 months makes more sense but there are commercial commitment issues in the way. For example, if an agreement is predicated on the notion of a POB carrying out significant capital works prior to agreement, how can they do that if the tenant can uncommit later? And is this a one way option? I think both parties need to inform themselves sufficiently to commit to the long term without options to bale out. Maybe the emphasis needs to be on educating new tenants, understanding the risks, and making both parties do enough due diligence.

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: I am not aware that this has even happened anywhere. I think that 3 months works but the event seems very unlikely. A far better solution would be to reduce the number of pubs under the code to include some of the smaller landlords who can be equally guilty of mistreating tenants.

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: I see no reason why PCA should not be informed – it can only help to regulate fair play in the market. I think that the PCA protection should extend if the ownership of the freehold changes.

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: I see no point in the PRA if an FOT deal is not available. I think that the MRO option at review should continue to be available and that the PCA protection should follow the agreement. If you think about it, it could create a diminution of value in the lease if someone pays a premium for an assignment with a future MRO option, only to find it has passed to a tied POB outside of the Code.

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: This is a huge issue. We have missed out twice on the basis of timing errors. It is way too complicated for an average tenant to understand and also, anything involving 14 day notice periods always runs the risk of being missed by people on holidays, etc. Either example works but all references to 14 days need to be 21 days

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: You have to include it. It is the most important part of the whole process and has to form some basic information against which to judge the proposals. A better idea would be to let a third party determine the rent at the outset and give guidance that may be challenged by independent arbitration later, but at least it gives a steer. One issue (particularly for smaller vulnerable tenants) is that POB's send in rent valuations designed

to put off the tenant. They basically add the foregone discount to the original tied rent and make that their starting point. Independent estimate would stop that practice.

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: Do not remove the requirement. To do so would open up tenants to abuse via unfair contract terms.

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: I seriously doubt this has ever been an issue but I see no reason to change the current rule.

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: Absolutely agree. The price rises imposed by brewers are entirely masked by duty, rendering the percentage calculations incorrect. The tax rates are outside of the control of the parties so should be excluded.

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: No. Other than taxes, these should be included. It works both ways. At the start of the last decade, grain and oil prices rose and we suffered significant price rises. When the grain and oil prices fell again around 2013/14, brewers still increased prices. It is not fair to let the producing brewers take advantage like this.

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: The risk of High Court action and the associated costs are a massive deterrent to tenant remedy. An alternative fixed cost method would be more accessible.

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: It is tricky because it depends on what the case relates to. If it is a matter of property, then arbitration is the direction. If a point of law, then more legal routes are required to enable the matter to be properly settled. These matters may set precedent too so they must be robust in their process. I believe that the PCA should determine what route is applicable and help fund the process.

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: It is hard to ask people to give up their rights under the law. My answer to 13 applies.

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