



Department for  
Business, Energy  
& Industrial Strategy

# Pubs Code and Pubs Code Adjudicator

Statutory Review

Invitation to Contribute Views and Evidence

Closing date: 17 August 2022

May 2022



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# Foreword



I am pleased to launch this 12-week invitation for stakeholders' views and evidence as part of the second statutory review of the Pubs Code and the Pubs Code Adjudicator.

Significant progress has been made since the Pubs Code first came into force in England and Wales in July 2016 where, nearly 6 years on, the legislation has bedded down and both pub-owning businesses and tied pub tenants have become more familiar with its processes, the role of the Pubs Code Adjudicator, and their rights and responsibilities under the Pubs Code.

There have been some significant challenges in the pub sector since the end of first period under review in March 2019. In particular, in early 2020, the impact of the COVID-19 pandemic started to make itself felt throughout communities and all types of businesses. The role of pubs as community hubs was clear, with pubs quickly reaching out to the most vulnerable in their communities, despite having to deal with the challenges presented to the operation of their businesses. This Government responded in numerous ways – such as the development and roll-out of vaccinations, the provision of around £400 billion of direct support to the economy to safeguard jobs, businesses and public services, the 50% business rates discount for hospitality businesses for the year 2022-2023, the freezing of alcohol duties and the one-off grants of up to £6,000 for hospitality businesses.

The Government remains live to the issues faced by the pub industry and, in March of this year, passed legislation to assist landlords and tenants who have been unable to resolve their disputes over rent arrears. The Government has also committed to a review of the landlord and tenant legislation, which underpins all commercial leases, due to concerns that this legislation has not kept pace with the reality of the commercial property sector today. Further details will be announced in due course.

There was, of course, another change during the period under review with the appointment of Fiona Dickie in May 2020 as the second Pubs Code Adjudicator. Having been the Deputy Pubs Code Adjudicator prior to this date, Fiona has made significant progress in reducing the number of open arbitration cases, carrying out a first investigation into non-compliance with the Pubs Code and reaching a wider audience through her regular column in the Morning Advertiser to share information about the Pubs Code with tied tenants. The Pubs Code Adjudicator also recently undertook a survey of 600 tied tenants, conducted by Ipsos Mori, and we will consider the published outcome of that, along with other publicly available evidence, as part of this review.

Given the burden that regulation can place on business, it is important that arrangements are in place to ensure legislative interventions achieve their aim, remain appropriate and are effective. In the case of the Pubs Code, that means ensuring that it continues to operate as intended in delivering the principles set out in the Small Business, Enterprise and Employment

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Act 2015 and that we consider the performance of the Pubs Code Adjudicator in its enforcement. The review will consider a range of publicly available evidence to inform the Government's conclusions in a report to be published once the review has finished. But, as part of this review, I am also keen to ensure that interested parties again have an opportunity to share their views and would in particular welcome contributions from those who have had reason to use the Pubs Code or engaged with the Pubs Code Adjudicator over the last three years for the period from 1 April 2019 to 31 March 2022.

I look forward to receiving your views and comments.



**Paul Scully MP**

Minister for Small Business, Consumers & Labour Markets

Minister for London.

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# General information

## Why we are seeking views

The Pubs Code regulates the relationship between pub-owning businesses, which are businesses with estates of 500 or more tied pubs in England and Wales, and their tied pub tenants. In entering into a tied tenancy, the pub tenant agrees to buy all or some of the alcohol and other products to be sold at the premises from their pub-owning business, usually above market rates but in return for paying a lower rent and other benefits. Commercial contracts such as this mean that the tied tenant is unable to negotiate deals in the open market for beer and other tied products but also that the pub-owning business and the tenant have a shared interest in the success of the pub and should work in partnership to achieve it.

The Small Business, Enterprise and Employment Act 2015<sup>1</sup> (“the Act”) provided for the establishment of the Pubs Code to regulate the relationship between large pub-owning businesses and their tied tenants in England and Wales. The legislation requires the Secretary of State to review the operation of the Pubs Code, certain other provisions and the performance of the Pubs Code Adjudicator.

This statutory review covers the period from 1 April 2019 to 31 March 2022 and will consider publicly available evidence. As part of the review, the Government will again over a 12 week period invite additional views and evidence from stakeholders to help inform the review’s conclusions. The Secretary of State is required to publish a report on the findings of the review and lay this before Parliament “as soon as practicable” after the end of the review period.

Following the completion of the first statutory review in November 2020, the Government wrote to the Pubs Code Adjudicator in respect of improving certain aspects of the PCA’s functions<sup>2</sup>. The Government further conducted a public consultation which led to stakeholder support to amend certain legal provisions of the Pubs Code to improve its practical operation; most notably the Market Rent Only process by which the tenant can opt to change from a tied tenancy to a free-of-tie tenancy. The changes to the Pubs Code came into effect on 1 April 2022 and are therefore not within the scope of the period under review for this second statutory review.

The report<sup>2</sup> on the first statutory review also sets out a number of issues in relation to the effective operation of the Pubs Code that the Government continues to keep under review. Where stakeholders have evidence that is relevant to these issues, we would welcome this as part of your response to this invitation for views. The Government also continues to progress the work to tailor arbitration rules and to explore viable options for an alternative appeal route to the High Court. The Government intends to consult on any proposals developed in respect of the latter.

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<sup>1</sup> See <https://www.legislation.gov.uk/ukpga/2015/26/part/4/enacted>

<sup>2</sup> <https://www.gov.uk/government/publications/pubs-code-and-pubs-code-adjudicator-statutory-review-2016-to-2019>

## Review questions

This document sets out the Terms of Reference for the statutory review of the Pubs Code and the Pubs Code Adjudicator. There are several review requirements<sup>3</sup> in the legislation, covering the Pubs Code itself and associated regulatory provisions, and the performance of the Pubs Code Adjudicator. For ease of reference, the term “the Pubs Code review” will be used to cover all the review requirements.

We would welcome responses to the questions set out in parts A to C which mirror the Terms of Reference (Annex A) and cover specific review requirements set out in legislation. Some issues may relate to more than one of the terms of reference – for example, an issue might be about the Pubs Code but also how it has been enforced by the Pubs Code Adjudicator. In assessing responses, we will consider the relevance against the Terms of Reference, regardless of which part respondents answer.

We welcome qualitative and quantitative evidence where possible that is relevant to the period under review – from 1 April 2019 to 31 March 2022 - to support the analysis of this review.

**Issued:** 26 May 2022

**Respond by:** 17 August 2022

### Enquiries to:

Pubs Code review team  
Department for Business, Energy and Industrial Strategy  
4<sup>th</sup> floor, Victoria 2  
1 Victoria Street  
London  
SW1h 0ET

Email: [pubscodereview@beis.gov.uk](mailto:pubscodereview@beis.gov.uk)

### Consultation reference:

[www.gov.uk/government/consultations/pubs-code-and-pubs-code-adjudicator-invitation-for-views-on-the-second-statutory-review-2019-to-2022](https://www.gov.uk/government/consultations/pubs-code-and-pubs-code-adjudicator-invitation-for-views-on-the-second-statutory-review-2019-to-2022)

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<sup>3</sup> Parts 2 to 10 of the Pubs Code etc Regulations 2016 make up the “Pubs Code” and the operation of the Pubs Code must be reviewed as required under section 46 of the Act. Regulation 68 of the Pubs Code etc. Regulations 2016 requires Part 1 and Parts 11 to 16 to be reviewed. Section 65 of the Act requires the review of the PCA’s performance (in particular assessing how effective the Adjudicator has been in enforcing the Pubs Code) and that the review may consider amendments of the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016. Regulation 7 of the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016 provides for the review of fees relating to the arbitration of MROs and other disputes.

### **Audiences:**

We are seeking views from all those with an interest in the operation of the Pubs Code and the performance of the Pubs Code Adjudicator. This includes, but is not restricted to, the pub-owning businesses regulated by the Pubs Code, tied (and previously tied) pub tenants and those representing their interests, trade bodies and the Pubs Code Adjudicator.

### **Territorial extent:**

The Pubs Code and the Pubs Code Adjudicator's functions apply in England and Wales.

## How to respond

A response form is available on the GOV.UK page:

[www.gov.uk/government/consultations/pubs-code-and-pubs-code-adjudicator-invitation-for-views-on-the-second-statutory-review-2019-to-2022](https://www.gov.uk/government/consultations/pubs-code-and-pubs-code-adjudicator-invitation-for-views-on-the-second-statutory-review-2019-to-2022)

**Email to:** [pubscodereview@beis.gov.uk](mailto:pubscodereview@beis.gov.uk)

### **Write to:**

Pubs Code review team  
Department for Business, Energy and Industrial Strategy  
4<sup>th</sup> floor, Victoria 2  
1 Victoria Street  
London  
Postcode

When responding, please state whether you are responding as an individual or representing the views of an organisation. Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

## Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

Protections from disclosure under the Enterprise Act 2002 may apply to some of the information you provide, as well as data protection legislation. If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).



## Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: [beis.bru@beis.gov.uk](mailto:beis.bru@beis.gov.uk).

# Background

## The Pubs Code and Pubs Code Adjudicator

### The Pubs Code

- This is found in the Pubs Code etc. Regulations 2016<sup>4</sup> at Parts 2 to 10 inclusive, as read with Part 1, and governs the relationship between large pub-owning businesses<sup>5</sup> and their tied pub tenants.
- The Pubs Code gives tenants the right, at certain times, to exercise a “Market Rent Only” (MRO) option, to change from a tied tenancy to a free-of-tie tenancy where the rent is set at the market level and the tenant is able to buy products on the open market.

The Pubs Code is based on

- the principle of fair and lawful dealing by pub-owning businesses in relation to their tied pub tenants; and
- the principle that tied tenants should not be worse off than they would be if they were not subject to any product or service tie.

### The Pubs Code Adjudicator

The Act requires the Secretary of State to appoint a Pubs Code Adjudicator. The Adjudicator’s powers include:

- giving advice and guidance;
- investigating non-compliance with the Code;
- enforcing where non-compliance is found – which may involve requiring the publication of information, imposing financial penalties or making enforceable recommendations; and
- arbitrating disputes under the Code.

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<sup>4</sup> SI 2016/790 (see <https://www.legislation.gov.uk/uksi/2016/790/contents/made>)

<sup>5</sup> Those with 500 or more tied pubs in England and Wales

# Review questions

## **Part A: The Pubs Code**

1. How well do you think the Pubs Code has operated between 1 April 2019 and 31 March 2022? Please provide any evidence you have to support your view.
2. To what extent do you think the Pubs Code is consistent with the principle of fair and lawful dealing by pub-owning businesses in relation to their tied pub tenants? Please provide any evidence you have to support your view.
3. To what extent do you think the Pubs Code is consistent with the principle that tied pub tenants should not be worse off than they would be if they were not subject to any product or service tie? Please provide any evidence you have to support your view.

## **Part B: The Pubs Code Adjudicator**

4. How effective do you think the Pubs Code Adjudicator has been between 1 April 2019 to 31 March 2022 in discharging its functions in relation to the Pubs Code? Please comment in particular on the PCA's performance in undertaking the following:
  - a. giving advice and guidance;
  - b. investigating non-compliance with the Pubs Code;
  - c. enforcing the Code where non-compliance is found; and
  - d. arbitrating disputes under the Pubs Code.

## **Part C: Pubs Code (Fees, Costs and Financial Penalties) Regulations**

5. Do you think the regulations relating to costs, fees and financial penalties remain appropriate or should these be adjusted? Please give the reason(s) for your answer and, if you believe these regulations should be amended, please set out how.

## Next steps

Comments made in response to this review will be considered by the Pubs Code review team and, along with publicly available evidence, inform the final report by the Secretary of State. We may contact you if, for example, we have a query in respect of your response. A final report covering the review will be laid before Parliament and published on the GOV.UK website at:

[www.gov.uk/government/consultations/pubs-code-and-pubs-code-adjudicator-invitation-for-views-on-the-second-statutory-review-2019-to-2022](https://www.gov.uk/government/consultations/pubs-code-and-pubs-code-adjudicator-invitation-for-views-on-the-second-statutory-review-2019-to-2022)

The Government will publish a single report covering all the statutory review requirements. As required by the Act, the report will set out:

- the Secretary of State's review of the operation of the Pubs Code for the review period, including:
  - the extent to which, in the Secretary of State's opinion, the Pubs Code is consistent with the principles set out in section 42(3);
  - any revision(s) of the Pubs Code which, in the Secretary of State's opinion, would enable the Pubs Code to reflect more fully those principles;
- the Secretary of State's review of the Adjudicator's performance, in particular, how effective the Adjudicator has been in enforcing the Pubs Code;
- whether it would be desirable to amend or replace the regulations setting out fees, costs and financial penalties under sections 51(2) or (7) or 58(6); and
- whether the Secretary of State intends to give guidance to the Pubs Code Adjudicator under section 65 or if he intends to use the powers in section 66 (abolition of the Adjudicator).

The review provisions in the Act require the Secretary of State to publish the report of the review and lay the report in Parliament as soon as practicable after the review period ends.

The report will be published once the Secretary of State has been able to consider the publicly available evidence and respondents' views. Responses submitted to this document form part of the review and views will be summarised in the report. Named organisations will be listed in the report or, where the respondent is an individual, the category of respondent.

# Annex A: Terms of Reference

## Statutory review of the Pubs Code and Pubs Code Adjudicator

### Terms of Reference

The terms of reference take account of the requirements of the legislation to review the operation of the Pubs Code and the performance of the Pubs Code Adjudicator (PCA).

#### Term of Reference 1

In accordance with section 46 of the Act<sup>6</sup>, consider the operation of the Pubs Code (as set out in Parts 2 – 10 of the Pubs Code etc Regulations 2016 as read with Part 1) from 1 April 2019 to 31 March 2022 and, in particular, the extent to which the operation of the Pubs Code is consistent with:

- the principles of fair and lawful dealing by pub-owning businesses in relation to their tied pub tenants; and
- the principle that tied tenants should not be worse off than they would be if they were not subject to any product or service tie.

In accordance with regulation 68<sup>7</sup> of the Pubs Code, to review Parts 11 to 16 of the Pubs Code etc Regulations 2016 from 1 April 2019 to 31 March 2022.

#### Term of Reference 2

In accordance with section 65 of the Act, consider the PCA's performance from 1 April 2019 to 31 March 2022, in particular how effective the Adjudicator has been in enforcing the Pubs Code.

#### Term of Reference 3

In accordance with section 65(5) of the Act and regulation 7 of the Pubs Code and the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016<sup>8</sup> to review the costs and fees etc. in respect of MRO disputes and arbitration costs and fees in respect of disputes which are not MRO disputes, and the permitted maximum financial penalty.

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<sup>6</sup> <https://www.legislation.gov.uk/ukpga/2015/26/part/4/enacted>

<sup>7</sup> [SI 2016/790 - see https://www.legislation.gov.uk/uksi/2016/790/contents/made](https://www.legislation.gov.uk/uksi/2016/790/contents/made)

<sup>8</sup> [SI 2016/802 – see https://www.legislation.gov.uk/uksi/2016/802/contents/made](https://www.legislation.gov.uk/uksi/2016/802/contents/made)

The review will be informed by a range of evidence including (but not confined to):

- PCA's tied tenants survey;
- reports prepared by the PCA and other relevant material available on the PCA's website;
- publicly available industry data and information; and
- any other relevant publicly available information.
- responses to this invitation for views; and
- evidence submitted in response to this review.

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