Department for Business Innovation & Skills

PUBS CODE AND PUBS CODE ADJUDICATOR

Government Response to the Consultation

APRIL 2016

Contents

Foreword from Anna Soubry

Pubs are an important part of life in this country. They are the hub of local communities in both rural and urban areas. Beer and pubs contribute £22 billion to UK GDP. It is crucial that pubs operate in a fair environment which allows them to thrive.

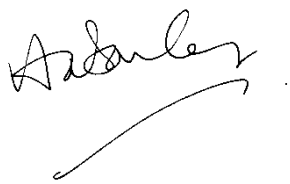
Over the last decade, tied pub tenants have raised concerns that the sector has become increasingly difficult to operate in. The key issue for them has been the relationship with large pub-owning businesses.

Some positive changes resulted from the introduction of industry self-regulation, but the measures did not go far enough. So the previous Government consulted on proposals for a statutory Pubs Code and an independent Adjudicator and enshrined these in the Small Business, Enterprise and Employment Act 2015.

Our most recent consultation process gathered views on how to implement the Pubs Code and Pubs Code Adjudicator, and on the draft Regulations. This document summarises the responses we received, and sets out the Government's response.

I have had to take some tough decisions, and I am certain that parties on different sides of the debate will find they disagree with some of the conclusions. However, it is my job to strike a balance which ensures that tied tenants of the largest pub-owning businesses are no worse off than free-of-tie tenants, that there is fair and lawful dealing between pub-owning businesses and their tied tenants and that all this takes place without placing undue burdens on businesses.

I hope all parties will agree that, on balance, this package of measures works to the benefit of our pubs sector and represents a fair outcome for all. I ask everyone in the pub business to get behind the Pubs Code, and work with the Pubs Code Adjudicator, so we can ensure that this country's pubs continue to thrive.



THE RT HON ANNA SOUBRY MP
Minister of State for Small Business, Industry and Enterprise

Executive Summary

The consultation on the Pubs Code and Pubs Code Adjudicator was carried out in two stages, from 29 October 2015 and 4 December 2015, with a common closing date of 18 January 2016.

The consultation sought views on how to implement the Pubs Code, including the detail on:

- Disputes arising in relation to the Market Rent Only (MRO) process;
- The exception from MRO entitlement in return for significant investment;
- The rent assessment trigger for the MRO option and in particular whether to remove its rent increase condition;
- Plans to ensure the regulations fulfil the objectives of a parallel rent assessment in relation to the MRO option and requirements to provide information on a tied rent offer;
- Arrangements for rent assessments;
- Types of agreement outside the scope of some or all of the code;
- The type and timing of information provided to tied tenants;
- Repair and maintenance obligations;
- Pubs Code Adjudicator fees and the maximum financial penalty for breaches of the Code; and
- Extended code protection when a tied pub's landlord stops being a 'pub-owning business' as defined in the legislation.

80 responses were received. Including from all six of the pub-owning businesses expected to come within scope of the Code; from organisations representing tenants, consumers and businesses that own pubs; from individual pub tenants/ex-tenants; and from other professionals and organisations working with the industry. Further comments and feedback were received at meetings and workshops organised by the Department of Business, Innovation and Skills for that purpose and from discussions in Parliament, particularly during the passage of the Enterprise Bill.

The Government has decided to make a number of changes and improvements as a consequence of the consultation. The principal ones are:

- to remove the proposed restriction that the MRO option should become available only when an increased rent was proposed but to allow it regardless of the level of rent proposed;
- deliver the effect of a Parallel Rent Assessment to enable tied tenants to consider a free-of-tie rent offer alongside a tied rent review proposal;
- refine and improve the basis on which a 'significant price increase' would be calculated for the purpose of triggering an MRO option;
- to change the basis on which a 'significant price increase' would be calculated for the purpose of triggering an MRO option;
- to cut back the weight of information requirements on pub-owning businesses in ways that would still offer similar protections to tied pub tenants;

- to clarify that pub-owning businesses would be permitted to carry out routine checks – though not to negotiate terms – before providing stipulated information to prospective tenants;
- Conditions for allowing an exception to the right to an MRO option in exchange for a significant investment in the tied pub through an agreement between the pub-owning business and tied tenant – including the minimum size of such an investment and the maximum period for the exception;
- The maximum length of short agreement which should be exempted from most Pubs Code provisions (12 months); and which provisions should still apply to these short agreements;
- The definition of those tied pub franchises which would be exempt from some parts of the Code;
- To make some Code provisions non-arbitrable: relating to the role and duties of compliance officers and the training of business development managers; and
- Issues about the level of fees and charges and also the financial penalty following an investigation by the Pubs Code Adjudicator.

Glossary

ALMR	Association of Licensed Multiple Retailers
AWP	Amusement with prizes machines (“gaming machines”)
BBPA	British Beer & Pub Association
BFA	British Franchise Association
BHLA	Brighton and Hove Licensees Association
BII	British Institute of Innkeeping
BIIBAS	British Institute of Innkeeping Benchmarking & Accreditation Services
BISCOM	Business, Innovation and Skills Select Committee
CAMRA	Campaign for Real Ale
FLVA	Federation of Licensed Victuallers Associations
FME	Flow monitoring equipment
FMT	Fair maintainable trade
FPB	Forum of Private Business
FPC	Fair Pint Campaign
FSB	Federation of Small Businesses
GCA	Groceries Code Adjudicator
IFBB	Independent Family Brewers of Britain
IFC	Industry Framework Code of practice for tied tenanted and leased pubs
JFL	Justice for Licensees
LTA	Landlord and Tenant Act 1954
MRO	Market Rent Only
PAS	Pubs Advisory Service
PCA	Pubs Code Adjudicator
PICAS	Pubs Independent Conciliation and Arbitration Service
PIRRS	Pubs Independent Rent Review Scheme
PRA	Parallel Rent Assessment
RICS	Royal Institution of Chartered Surveyors
SCORFA	Special commercial or financial advantages
SIBA	Society of Independent Brewers

Introduction

The Pubs Code and Pubs Code Adjudicator Consultation was published by the Department for Business, Innovation and Skills in two parts, the first on 29 October 2015 and the second on 4 December 2015. It contained draft regulations for the Code itself.

Part 1 covered the Government's proposals for MRO, the "no worse off principle", and rent assessments. Specifically, it:

- proposed how and when a rent assessment will occur;
- proposed the circumstances that will trigger the MRO option, how the MRO option will work and how related disputes will be resolved;
- proposed how a tenant could waive / postpone / exempt themselves from the right to request an MRO offer in return for a significant investment in their pub; and
- proposed that PRA would be integrated into the MRO procedure.

Part 2 covered the remaining elements of the Pubs Code and associated regulations. Specifically, it:

- clarified that the Government's approach to MRO (set out in Part 1) fulfil the objectives of a PRA;
- clarified that the Government did not intend to frustrate tied tenants' access to MRO at rent assessment and sought views on the impact of removing the proposal for rent increase condition on the availability of MRO at rent assessment;
- proposed the type, timing and frequency of information to be provided to tenants by their pub-owning businesses;
- made proposals for repair and maintenance obligations under the Pubs Code;
- described the types of agreement, such as genuine franchises, tenancies at will and short agreements of a defined length that will be outside the scope of some or all of the Code;
- proposed terms in agreements that are inconsistent with the provisions of the Code;
- looked at enforcement of the Code – including the Government's proposals for the fee to take a case to the Adjudicator, how costs should be apportioned, which provisions will be arbitrable by the Adjudicator and the maximum financial penalty that may be imposed following an investigation;
- proposed how group businesses (ie, subsidiaries and parent companies) would be treated for the purposes of enforcement; and
- defined the period of extended protection when a pub is sold to a company outside of the Code.

The Consultation Process

Publication of responses

In the consultation documents the Government explained it would publish all responses, unless specifically notified otherwise. The vast majority of responses received will be published in due course, in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 and the Data Protection Action 1998).

Limited information will be redacted, including:

a) personal information which would identify individuals, including tenants and junior pub-owning business employees;

b) information which would be likely to prejudice the commercial interests of a business if released (wherever possible we have taken into account the views of the relevant business); and

c) information provided in confidence.

Overview of Responses

The Department received 80 responses to the consultation. 54 of these gave detailed replies to questions. Information on the remaining 26 is provided below.

We received 33 responses to Part 1 and 36 responses to Part 2 of the consultation (some responded both parts, while some only responded to either Part 1 or Part 2).

For the purposes of analysis, respondents have been grouped in to four categories:

a) Pub companies and breweries with 500 or more pubs;

b) Interest groups, trade bodies and other organisations;

c) tied tenants; and

d) Others.

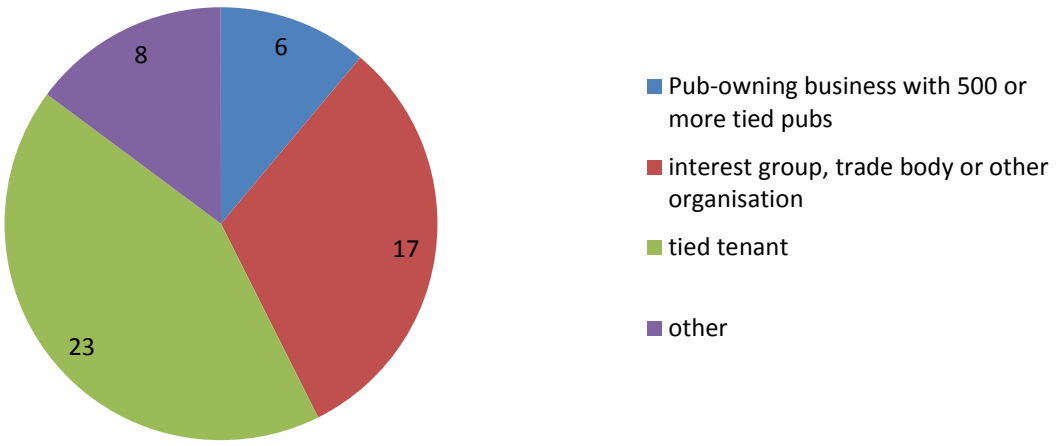
Of the 54 detailed responses

41 respondents (either to Part 1 or Part 2) used the response form provided.

13 respondents (9 tied tenants, 1 interest group, 3 other) – offered accounts of their views and experiences but did not directly answer the majority of the questions set out in the consultation.

The distribution of the 54 substantive responses is set out in Figure 1.

Figure 1: Consultation Respondent Categories



Of the 26 other responses

17 were emails which contained very little information, but expressed full support for the response from the Pubs Advisory Service.

9 were emails from stakeholders received prior to Part 2 being published, concerning the definition of the rent assessment trigger for the MRO option. This issue was subsequently addressed by Part 2 of the consultation.

Devolution

The requirements under the Small Business, Enterprise and Employment Act 2015 for a statutory Pubs Code and independent Adjudicator apply to owners of tied pubs in England and Wales only.

Only tied pubs located in England or Wales will count towards the 500 or more tied pub threshold required for a pub-owning business to become subject to the Pubs Code. This matter is devolved in Scotland and Northern Ireland, and tied pubs located there are out of scope.

Similarly, the levy to fund the PCA will be paid only by businesses owning 500 or more tied pubs in England and Wales.

Government Response

The remainder of this document summarises the responses received to the questions asked in the consultation document, and sets out the Government's response on each issue.

In analysing the responses, we have considered the merit of the different arguments and the broad level of support that proposals commanded from different stakeholder groups, rather than placing undue focus on the exact number of respondents who agreed or disagreed with a particular question. In many cases respondents – particularly tenants – offered accounts of their views and experiences but did not directly answer some or all of the questions set out in the consultation. We have also taken into account points made by stakeholders in meetings with Ministers and officials both during and since the close of the consultation, as well as correspondence we have received since the consultation closed.

Consultation Part 1 – MRO and the 'No Worse Off' principle

Parliament acted to insert a "Market Rent Only" option into the SBEE Bill in November 2014, this is an option for the tenant to receive a free of tie offer from the pub-owning business. The final MRO provisions in the Act require an MRO option to be provided to tied tenants at certain points. Together with the provisions related to rent assessments this is principally how the Pubs Code is intended to deliver the principle in the SBEE Act that "a tied tenant should be no worse off than a free of tie tenant".

Part 1 therefore set out the Government's proposals for rent assessments, and then moved on to the details of how the Code would provide MRO, when it would be available, and the procedures that would follow.

Rent Assessment

The concept of a 'rent assessment' is a central element of the statutory Pubs Code that needs to be defined to provide clarity for tenants and pub-owning businesses. Having a rent assessment will entitle an existing tenant to renegotiate their tied rent during the course of their agreement to reflect current trading. It will also entitle a tenant to request the offer of a Market Rent Only agreement. Tied rent has been, and remains, the key concern in terms of the potential unfairness that tied tenants can face. In addition the duty to provide Market Rent Only option in SBEE Act is triggered by a rent assessment. This section of the consultation asked respondents for comments on the Government's definition.

Q.1: Do you have views on the proposed definition of a rent assessment?

Consultation Responses

There was limited direct response to this question. This reflects the fact that as a concept rent assessments are well understood across the industry and Government's proposals were largely in line with existing practice. There were comments on the detail of what rent assessments might include which were directed at schedule 2 which sets out the information to be provided by pub-owning businesses. Inevitably there was more interest in how rent assessments interact with MRO.

Government Response

Responses to this question resulted in no substantive change to the Code. In relation to the tenant's ability to request a rent assessment after five years, we have maintained that a rent assessment should be available five years after the conclusion of the previous rent assessment rather than five years from the commencement of the previous rent assessment. This meets the Government's commitment to provide rent assessments at no more than 5 yearly intervals and is consistent with previous statements.

Market Rent Only - Delivering the Commitment on Parallel Rent Assessments

In Part 1 of the consultation the Government confirmed it would not require pub-owning businesses to prepare a separate Parallel Rent Assessment for tied tenants, on the basis that the right to request MRO in the circumstances required by the Code would already deliver the principle of ensuring that the rent assessment procedure would leave an existing tied tenant no worse off than a free-of-tie tenant. The information and transparency requirements in the Pubs Code would ensure that prospective tenants have all the information they needed in good time to make an informed decision on whether or not to enter into a tied agreement.

However, following publication of Part 1 concerns were expressed by stakeholders and within the House of Lords during Lords Grand Committee on the Enterprise Bill. They suggested that this decision may not have been consistent with commitments made in the previous Parliament. Further discussions with stakeholders on all sides and interested Peers served to help Government better understand the concerns i.e. that tenants would not be able to consider a tied rent offer alongside a free of tie offer under the proposed MRO procedure. Part 2 of the consultation therefore clarified the Government's position and how Government intended to integrate the application and key principles of PRA within the MRO procedure rather than have a 'Parallel Rent Assessment' as a separate 'remedy' for rent issues. It also explained the protections that would be available to prospective tenants who would not have access to MRO but would receive a rent proposal and the supporting information in support of a tied offer.

The Government sought to ensure that the principles of PRA were integrated effectively into the MRO procedure by three questions in Part 2 of the consultation (Questions 1-3):

- We believe the stated MRO procedure, that will give tenants a free-of-tie rent offer alongside a tied rent review proposal, will enable tenants to make an informed judgment as to whether they will be no worse off by remaining tied and fulfils the objectives of a Parallel Rent Assessment. If you believe that this does not achieve the goal, please give your reasons why.
- We would welcome your comments on whether, in addition to the other information requirements of the draft Pubs Code, the documents provided for in Schedule 3 of the draft Code and described in paragraph 10.23 in Part 1 of this consultation are sufficient and appropriate for calculating a meaningful free-of-tie market rent that will allow tenants to make an informed judgment as to whether they will be no worse off by remaining tied.
- If you believe that the combination of current proposals will not adequately deliver the no worse off principle or does so in a disproportionate way, please give your reasons and, where relevant, provide evidence.

Consultation Responses

Views from most respondents from all sides of the debate tended to support the view that a separate PRA was neither necessary nor desirable. Responses revealed general concerns that neither process should operate in a way that might have the effect of requiring a tenant to make a decision to go down one route or the other without a clear and definitive choice between the tied and MRO offers. Pub-owning businesses, ALMR/BII and

FLVA broadly agreed that the MRO procedure would achieve the goal set out in the first question, but were concerned that the timings of the renewal proceedings under the LTA and the MRO process would not align. CAMRA, PAS, FPC and several tied tenants agreed on the proviso that all tenants had access to MRO at rent review, not just those facing a rent increase they emphasised that the objectives of the regulations could be circumvented if this remained the case.

CAMRA also stated that a qualified valuer, registered with RICS was an important safeguard to avoid potentially inflated MRO rents across the sector. Comments on information requirements were similar to those in the response to Q14 in Part 1 of the consultation.

Government Response

The Pubs Code now ensures the tenant can consider tied and MRO offers in parallel. It provides that tenants will have no obligation to accept the outcome of a tied rent assessment until they have a result of any parallel MRO process and vice versa. The rest of the Pubs Code has been aligned accordingly. For example it places no deadline on the conclusion of the rent assessment, to place the tenant in a better position to compare offers. Also, regulation 21(10) specifically provides for the recovery of rent where the new tied rent is agreed after the rent review date. The tenant can however elect to remain tied or chose to accept the MRO offer at any point in the process.

Market Rent Only at Rent Assessment

In Chapter 8 of Part 1 of the Consultation and in Regulation 15 of the draft Pubs Code we provided for regular rent assessments – either as provided for in the tenancy agreement (usually called a rent review), or at intervals of no more than five years under the Code. Tenant stakeholders reacted strongly to the fact that the tenant would have access to the MRO option only if the rent review proposal, now called the rent assessment proposal, was for an increase in the rent they are currently paying under the tenancy agreement.

Our proposal was based on an assumption that the amount payable could be expected to rise at each rent review scheduled in the tenancy. The Government therefore intended it to be a limited and proportionate intervention. Following the publication of Part 1 we were told that the effect of existing rent indexing arrangements and current trends in rent settlement figures – in combination with draft regulation 15 (b) – would be to limit significantly the number of tied tenants who, on the basis proposed, would be able to exercise the MRO option at the time of their rent assessment. This was not the Government's intention.

We then asked for views in Part 2 of the consultation on the removal from the draft Pubs Code of the condition that there must be a proposal for a rent increase at rent assessment before a tenant may exercise the MRO option; and for evidence of the extent to which the current drafting would restrict access to the MRO option at rent assessment. The additional questions in part 2 were numbers 4 and 5:

- What would be the effect of removing from the draft Pubs Code Regulations the condition that there must be a proposal for an increase in the rent at rent assessment before a tenant may exercise the MRO option?
- It would be particularly helpful to receive evidence of the percentage of rent reviews that have resulted in a freezing or reduction of the rent over the last three years; of the prevalence of annual indexation provisions and other inter-rent review arrangements in tenancy agreements; the typical increase in the amount payable by the tenant that they result in; and the way in which these are exercised by the pub-owning business under the terms of the tenancy.

We set out that these questions complement the questions 2-11 in Part 1 and that would consider them together in preparing a response.

Consultation Responses

Tenants said the effect of retaining the requirement for an increase in the proposed rent before a rent assessment triggers MRO would be to deny access to MRO to a great number of tied tenants. BBPA commented that while such a condition could benefit both licensees and pub-owning businesses, this would be contrary to the spirit of what was previously agreed. Greene King said that if a tenant already gets the benefit of rent reduction, this reflects the trading potential of the pub and the market's view of this. To offer the option of an MRO would over-compensate the situation. Retaining the condition provides increased security of tenure to tenants and continuity of business. The unintended consequence of removing it would potentially see pub-owning businesses seek to take back leases at agreement expiry for their managed operation.

BBPA outlined that data from members showed a relatively even split between rents increasing, decreasing or frozen. Some pub-owning businesses operate RPI or CPI increases (except in the year of a rent review) for significant numbers of agreements; others do not use indexation as part of their core agreements. Greene King said that over the past two years, 60% of rent reviews in their core estate in England have had either a reduction of rent freeze. 78% of agreements within their estate include an RPI provision, many protected by an upper level cap – the exceptions being tenants-at-will, one year agreement and old leases that typically have a three year pattern.

FPC commented that the percentage of rent reviews resulting in nil or reduced rent is low and is usually where the tenant employs the services of a professional to act on their behalf. FLVA said that the Fleurets 2015 Rental Survey evidences that the Midlands (82%), North (32%) and South West (53%) showed a decrease in rental values of tied pubs. London was the only area showing most rental values increasing (57%). They believe the majority of leases currently have an indexation clause, either RPI or CPI. Of the tied rent reviews where FLVA has been directly involved over the last three years, 49% had rent decreases.

Government Response

Tenants will have the ability to request an MRO offer at rent assessment whether the rent goes up, decreases or stays the same. This is a change from the consultation position to

Government Response

make MRO available only when the rent is increased.

Market Rent Only at Renewal

Renewals

The SBEE Act provides that MRO should be available to the tenant at the renewal of the pub arrangements. Section 43(7) of the SBEE Act permits the Pubs Code to define a renewal for the purposes of triggering an MRO offer.

The consultations proposals were that where a tenancy is 'contracted in' under Part II of the Landlord and Tenant Act (LTA) 1954, a tenant will enjoy rights of renewal that are consistent with the provisions for the continuation and renewal of tenancies covered by Part II. This will be on either the day that the tenant receives the pub-owning business' notice under section 25(1) of the LTA; or the day on which the landlord receives the tenant's request under section 26 of the Act.

Q.2: Are there any other circumstances where a renewal would arise and which should trigger MRO beyond those we have set out?

Consultation Responses

There were no other circumstances identified.

During the course of the Pubs Code consultation, pub companies suggested that our proposed process for the agreeing of an MRO tenancy at renewal creates inconsistencies with the existing procedure for renewing tenancies before the courts under the LTA.

Government Response

Responses to this question resulted in no change to the Code.

We have made changes to improve the interaction between the MRO procedure and (where relevant to a specific tenancy) the process for renewal of a tenancy set out by the Landlord and Tenant Act 1954. In particular to enable the MRO procedure to be paused while the LTA court decides if there should be a new tenancy. BIS will separately explore how practice directions to courts may further assist.

Market Rent Only – A Significant Increase in Price of Tied Products and Services

The SBEE Act allows a tied pub tenant to give notice of their desire to go MRO, if the tenant receives notification of a significant increase in the price of a tied product or service. For the most important tied product, beer, the consultation document and draft Pubs Code Regulations proposed to define a significant increase in price as the percentage increase in the wholesale price (over a six month period) plus a small margin for tolerance, of 5 percentage points. The proposals for other tied products proposed the same approach with higher margins for tolerance.

We asked a number of questions about this definition, as set out below.

Q.3: Is the wholesale market price for beer the appropriate baseline for determining a significant price increase?

Consultation Responses

All respondents agreed that beer should be the principal determinant; but disagreed over the basis for the calculation. The BBPA, Admiral Taverns, Heineken, Marston's and Greene King suggested a weighted average of all the beers purchased by or supplied to the tenant. Punch Taverns and Enterprise Inns wanted a weighted average of all beers available to the tenant, including ciders. Admiral Taverns wanted the impact of short-term promotional prices excluded. The ALMR/BII also suggested including cider. Tenants all argued that brewery wholesale price lists are not available to tenants; CAMRA suggested using the Office of National Statistics' Producer Price Index (PPI) as the baseline.

Q.4: Is a five percentage point threshold above any increase in the wholesale price of beer (which will reflect any increases in inflation, taxation and other input costs), the appropriate measure?

Consultation Responses

All pub-owning businesses thought that 5% was reasonable. All of the tenants' groups said 5% was too high – the ALMR/BII argued that if there is to be a degree of tolerance, it needs to be genuinely small and in the region of 1% to 2%; CAMRA calculated that a 5% increase every 6 months for five years would mean that prices could rise by a cumulative 63% without triggering the MRO option.

Q.5: Do you agree that the calculation of a significant increase in price for tied products and services other than beer should exclude any increase in the wholesale price that results from rises in tax, duty, regulatory compliance costs or inflation (RPI)? Are there any other factors that should be excluded?

Consultation Responses

In summary, pub-owning businesses stressed the importance of the ability to pass on factors that are beyond their control. Tenants were content in principle – subject to the supervision of the Adjudicator

Q.6: Is this the appropriate way to measure a significant price increase for tied products and services other than beer? If not, please explain the alternative you would recommend.

Q.7: Is a two tier approach appropriate? If so, is the proposed threshold of contributing to 20 percent of the pub's turnover the right one?

Q.8: Are the proposed percentage increases in price (30 percent and 40 percent) appropriate? If not, please explain your reasoning and an alternative.

Consultation Responses

In response to these questions, pub-owning businesses said that the proposed approach was reasonable or had no other suggestions. Most of the tenants' groups felt that the percentages were too high – the ALMR/BII said in practice they would exclude most other tied products and services; and JFL suggested that between 5% and 10% would allow the pub-owning business a margin while encouraging competitiveness. CAMRA thought they were proportionate and reasonable.

Q.9: Do you agree that a significant price increase should be calculated by reference to the price paid by the tenant at a previous point in time? If so, should that be six months ago?

Consultation Responses

In summary, pub-owning businesses thought that 6 months was appropriate. Tenants all thought that this was too short and that the period should be at least 12 months.

Government Response

Significant Increase in Price

Tenants will have the ability to request an MRO offer following a significant increase in price for tied products and services. This will be defined as when the annual percentage increase in the price paid by the tenant exceeds the annual percentage point change in the relevant ONS Price Index by a tolerance specified in the Pubs Code. The tolerances are:

- For beer 3%
- For alcoholic drinks 6%
- For other tied products and services 20%

The relevant ONS indices are:

- Beer, including duty
- Alcoholic beverages, including duty
- Food products
- Soft drinks, mineral waters and other bottled waters
- Consumer prices index

These changes lengthen the price comparison period (from 6 months to 12 months) and

Government Response

reduce tolerance percentages, compared to the consultation proposal. The measurement of the price increase will be against goods and services purchased by the tenant, as the calculation of the impact of prices on the tenant should not be influenced by items the tenant has no interest in. The cost comparison will be on a like-for-like unit cost basis and based on the prices paid by the tenant for the same items a year apart.

MRO Trigger – A Significant Impact on Trade

Q.10: Do you have any comments on points i. to v. (significant impact trigger events) in Chapter 8?

Q.11: Can you suggest any other circumstances that would be likely to have a 'significant impact' on the expected business of a pub; and that you believe would not be covered by the proposed definition in the Code?

Consultation Responses

The most significant points raised related to the argument that the significant impact requirements were too limited. Paragraph 8.35iii says that the trigger event must have a specific impact on the tenant's pub and not others; draft regulation 2(2)(a) says that a trigger event is one that does not affect any business other than that of the tenant. Marston's asked for this to be clarified; ALMR/BII, FLVA, FPC, PAS, CAMRA, JFL, all said it is too restrictive a test (a major event may equally affect a number of pubs in the proximity) and should be removed.

The ALMR/BII have argued that the test in reg 2(2) is too strict; and that it is not reasonable that failing just one of the tests can exclude the tenant's access to the MRO option. They suggest simply replicating the exceptional circumstances that apply in respect of business rates relief under the Local Government Finance Act 1988.

Additional points were also raised:

- Greene King suggested that the tenant's evidence of the impact should be retrospective (based on 12 months audited accounts) and not a 12-month forecast.
- ALMR/BII, FLVA, FPC and PAS were uncomfortable with the proposed exclusions around prevention and mitigation. They wanted these to be permanent, subject to documentation and capable of adjudication.
- PAS suggested that a significant impact should also be capable of being caused by the imposition of restrictions imposed under the tie – e.g. the removal of a popular beer from the tied list resulting in a severe drop in their pub's trade.

Government Response

A Significant Impact on Trade

Tenants will have the ability to request an MRO offer following a significant impact on trade. This will arise where written analysis of the level of trading forecast for 12 months or more is sent to the pub owning business by the tenant which demonstrates that a trigger event has occurred. We have made changes from the consultation definition of significant impact on trade to retain the focus on local rather than national impacts, but to relax the definition to cover impacts on more than one pub.

We have clarified that the effect of the trigger event is to decrease the level of trade that can reasonably be expected to be achieved at the tie pub in each month over a continuous 12 month period.

We have made changes to the significant impact test to define the trigger event as one that either:

a) has an impact only the tenant's pub; or
b) if it has an impact on more than one pub:
   i) has a local but not a national impact;
      - Changes to local infrastructure
      - Changes to local employment
      - Long-term changes to the local economic environment
      - Local environmental factors
   ii) or can be shown to be a direct consequence of a change in the tie imposed by the pub-owning business – e.g. the removal of a popular product.

We have agreed with the respondents who said that the requirement for tenants to mitigate potential trigger events is too strict and could frustrate their entitlement to an MRO offer. Therefore we have replaced this with a duty to mitigate substantially. We also wish to clarify here that extrinsic price increases – whether national or local – cannot be trigger events.

We did not consider that evidence of impact should be retrospective rather than forecast as this would delay potential access for tenants to MRO by over a year.

Market Rent Only – MRO Compliant Agreements

Section 43 of the SBEE Act 2015 sets down parameters for assessing whether an agreement is MRO-compliant. The purpose of this is to ensure that the MRO procedure cannot be undermined by tenants being offered an MRO agreement on terms that they are unlikely to accept.

The Government expected MRO agreements to be modelled on the types of commercial agreements that are already common for free-of-tie tenants. It did however propose minimum requirements designed to ensure that a tenant enjoys no less – but also no more – protection or security of tenure under their new MRO agreement than they previously

had under their old tied agreement. This includes a provision that MRO compliant agreements should be for a minimum of five years.

Stakeholders were asked the following questions:

Q.12: Do you agree with the distinction drawn between an MRO compliant agreement that arises from a request for MRO at renewal and an MRO compliant agreement that arises from a request for MRO during the course of the tenancy?

Consultation Responses

Tenants responded that the proposal in the consultation was unreasonable and unfair. They suggested that where there was a lengthy tied tenancy left to run, the offer of a five year MRO tenancy was not one the tenant could realistically be expected to accept. They argued for duration of the greater of five years or the remaining term. Tenants have also alerted us to the existing terms in several tied agreements that permit the landlord to impose free-of-tie terms within the tenancy; but without giving the tenant the option to break the tenancy in response. CAMRA and the ALMR/BII were broadly in agreement with the approach proposed in the consultation. Greene King was the only pub company to comment. It supported these consultation proposals, including that on the minimum duration.

Q.13: Do you support the requirement that an MRO-compliant agreement should provide for an open market rent review every five years? Please explain the effect of such a requirement on the commercial relationship between the tenant and the pub-owning business in an MRO agreement

Consultation Response

There was no consensus on the suggestion that MRO-compliant agreements should provide for 5-yearly rent reviews. Pub-owning businesses said it would be an unjustified intervention in the market. There were differing views among tenants. Some said this was unnecessary as the market would provide for regular rent reviews. Other tenants made the point that these reviews are available every 5 years for tied tenants and that they should be provided to MRO tenants to prove they would be no worse off.

Government Response

The Code has been revised to provide that an MRO-compliant tenancy must be for at least the remainder of the existing tenancy in relation to all MRO events save for renewal. A maximum duration is not specified. This is a proportionate position which respects the importance of the security of tenure to tenants whose pub is not only their livelihood, but also their home; and who will have taken decisions about both their business and their family life based on the length of tenancy.

Retaining the consultation proposal that an MRO-compliant tenancy must be for a minimum of at least five years or the remainder of the existing tenancy, whichever is the shorter, would not provide a realistic MRO offer for tenants. It would create an inequality where tenants could have to exchange security of tenure in exchange for an MRO

Government Response

compliant tenancy. As against this, pub-owning businesses continue to reserve the right to unilaterally break the tie themselves in a significant number of tied tenancies.

Equally, establishing that an MRO-compliant tenancy must be for the greater of a period of at least 5 years or the remainder of the existing tied tenancy would have distorting consequences in that tenants would be able to obtain additional security of tenure through the mechanism of the MRO option.

The consultation demonstrated that the suggested 20 year maximum duration would be inappropriate. Pub companies have provided evidence that a significant number of tied tenancies are for periods of 20 years or longer. If an upper limit were imposed, this may again result in a proportion of tenants losing security of tenure whilst others maintain it.

If at rent review required under the terms of a tenancy or licence, or following a significant impact on trade and a significant increase in price, a tenant chooses to accept an MRO offer, the duration of the new MRO tenancy will be for a period at least equal to the remainder of the existing tied tenancy. This should ensure that security of tenure under the tied agreement is maintained.

On renewal the tenant will maintain security of tenure as an MRO compliant tenancy will be contracted in where the existing tied tenancy was contracted in.

Following all MRO events set out in regulations 24, 25, 26 and 27 the following terms are to be regarded as unreasonable for the purposes of an MRO compliant tenancy:

- terms that purport to give only the pub-owning business the right to exercise a break clause
- terms that impose an insurance tie for other than buildings insurance
- terms that are not common terms of business between pub-owning businesses and FOT tenants.

Government decided against providing for an open market rent review every five years as a provision of an MRO compliant agreement.

Market Rent Only – Procedure

This section of the consultation and proposed code sought to check with stakeholders that the day-to-day operation of the proposed MRO procedure was fit for purpose. This included looking at the process, sequencing and timing of the procedure. We asked the following questions.

Q.14: Does the list of required documents set out in paragraph 10.23 provide the independent assessor with all the appropriate information to make an independent assessment of the MRO rental figure? Should any other documents be added?

Consultation Responses

On the evidence of the trading history for the pub in question for the immediate preceding years, Admiral Taverns agreed this should be provided and responded that three years' worth of evidence would be sufficient but that the pub-owning business should have to supply only information in its possession. Greene King responded that pub-owning businesses will have only tied purchasing history and that tenants must provide evidence on food and accommodation.

On trading forecasts, Admiral Taverns agreed that these should be included and pointed out that the FMT rent assessment provided to the tenant will in any case be provided as part of the Schedule 2 rent assessment. Greene King said that forecasts should be based on the model of a 'reasonably efficient operator'. Enterprise Inns commented that forecasts should be for two years.

Respondents commented that it would be very difficult to obtain data enabling comparisons with similar tied pubs in the area due to commercial sensitivity and data protection.

Several pub-owning businesses were opposed to including evidence of the market value of any SCORFA currently being provided to the tenant under their tied agreement, as they said benefits are subjective and cannot be quantified. Other pub-owning businesses said benefits should only be described as they cannot be quantified. Tenants did not recognise this as an issue.

The general consensus amongst respondents to the question of whether evidence relating to the wider local commercial property market should be included was that this was not relevant.

Q.15: Do you have any comments on the timescales for the MRO procedure proposed for the Code?

Q.16: Do you have any views on the proposed circumstances in which the MRO procedure will come to an end?

Consultation Responses

Respondents were concerned about the short timescales at various points in the process. In particular, tenants expressed concerns that missing a deadline would have disproportionate consequences for tenants who might lose the right to MRO.

Pub-owning businesses thought that 14 days was too short a time in which to provide a rent proposal where the rent assessment is an unscheduled one that has been initiated by the tenant– where there has been no rent assessment for more than 5 years; in response to a significant increase in price; or where there has been a significant impact of trade. Views on the time required ranged between 21 days and 6 months. They argued that 14 days was reasonable when they knew that the RRP would have to be provided on a specified date in respect of a scheduled rent assessment; but that they would not necessarily have the information to hand when a request was received unexpectedly. Tenants did not comment directly on this point.

Tenants thought that the 70 day negotiation period was too long; and that this was having the effect of imposing tight deadlines in other parts of the procedure. They also suggested that flexibility would be introduced if the pub-owning business were able to confirm when it had made it best and final offer, so that the tenant could then proceed straight to independent assessment rather than having to wait for the expiry of the negotiation period. Pub-owning businesses raised the contrary point that a fixed end to the negotiation period might force parties down the independent assessment route, even if they are close to agreement.

Government Response

There were numerous detailed comments on the precise timing of steps in the MRO procedure. Government has assessed the merits of the arguments and sought to balance the interests of the two parties and provide a procedure that can function. The key changes are set out here:

The requirement in Schedule 3 to provide evidence of the trading history of the pub for the preceding three years has been retained and this information should be from both parties. The requirement of trading forecasts for the pub is also retained. We have additionally clarified that this relates to information in the parties' possession. Forecasts should be based on an assessment of the particular pub if operated by a reasonably efficient tenant whether tied or free of tie.

Requirements for pub-owning businesses to provide comparisons with other tied pubs in the area have been removed because information is not available or is confidential. Likewise the requirement for evidence from the parties of commercial or property values in the area has been removed because we have agreed with respondents that these have limited relevance. In addition, pub-owning businesses should describe, but are not required to quantify SCORFA. Also, Schedule 3 provides for mutual disclosure between a pub-owning business and tenant of evidence provided to the independent assessor.

We have amended the specific timing arrangements within the MRO procedure, in general to provide more time. Extending these timescales will assist with technical breaches of the Code and references to the PCA. The changes will also mean that a tenant who is pursuing both a tied and MRO rent in parallel will have an opportunity to compare offers. There will be no limit on the rent assessment period. We have extended the deadline for pub-owning businesses to provide tenants with a rent review from 14 days to 21 days upon receipt of the request. The time for parties to appoint an independent assessor will be extended from 14 to 28 days. The period for the Pubs Code Adjudicator to appoint the independent assessor will be extended from 7 days to 14 days. The deadline for tenants to provide evidence to the independent assessor will be extended from 14 days to 28 days and will apply to both the tenant and the pub-owning business. The 70- day negotiation period will reduce to 56 days. Referral to the independent assessor will be allowed from 28 days after the start of the negotiation period in relation to the MRO rent only. The terms of the MRO compliant tenancy on offer by the pub-owning businesses will be those upon which the independent assessor will consider the MRO rent. The terms of the MRO tenancy offered are at the discretion of the pub-owning business as long as they are MRO compliant.

Government Response

We have provided that parties share the costs of the independent assessor if one is appointed (50/50). This is a proportionate approach in line with the proposal made when the MRO option was entered into the Small Business, Enterprise and Employment Bill in November 2014.

Market Rent Only – Disputes

Section 45 of the SBEE Act 2015 provides for separate regulations to authorise the Adjudicator to resolve MRO disputes. It was proposed that MRO disputes be referable to the Adjudicator for arbitration to be dealt with in the same way as other Pubs Code disputes, ie, in accordance with the Arbitration Act 1996 and the Rules of the Chartered Institute of Arbitrators, which set out the powers of the arbitrator and some of the procedural requirements. The Government sought views in this section to ensure that any disputes that occur during the MRO procedure are dealt with fairly and efficiently.

Q.17: Do you have any concerns about these proposals for the resolution by the Adjudicator of disputes related to the MRO procedure? If so, please explain your concerns.

Consultation Responses

Pub-owning businesses made comments relating to the PCA's authority, costs and vexatious claims. Greene King argued that the PCA should not have the authority to over-rule the decision of the independent assessor and that the PCA should have no role in valuations as s/he will not have the expertise to make a judgement. The ALMR/BII suggested the PCA should have full jurisdiction to strike out frivolous or vexatious referrals; or expedite a matter where a party is not cooperating. FLVA asked who should pay the costs if the PCA refers the MRO rent determination to a second independent assessor. The majority of tenants commented that deadlines windows for referral to the PCA were too short in the context of a 6-month process.

Government Response

The PCA has an oversight role in relation to the independent assessment of market rent (just as he does in relation to the MRO procedure). This will allow genuine complaints to be dealt with by the PCA quickly and cheaply, without court proceedings.

In response to the consultation responses the following changes have been made:

- The parties will share the costs of independent assessments.
- The window for referral to the PCA will be extended to 14 days.
- A tenant should pay only for one fee per referral, regardless of the number of breaches of the Code complained of.
- A pub-owning business should pay a fee when referring an MRO dispute to the

Government Response

PCA.

The PCA already has general powers under the Arbitration Act to deal with applications by either side regarding alleged vexatious referrals – specifically relating to the substance of the claim or to make directions for dealing with it.

Market Rent Only – Exception in return for significant investment

During passage of the SBEE Bill Parliamentarians and stakeholders on all sides recognised the importance of investment for the pubs industry. Government shared these concerns, which is why a commitment was made to provide for an exception from the right to the offer of a Market Rent Only agreement at rent assessment and renewal in return for a significant investment in a tied pub. This would allow the two parties to agree to defer the point at which MRO is available at rent assessment and renewal. Tenants were concerned that this could lead to a loophole so Government also committed to consult on safeguards for tenants. This section of the consultation asked respondents for their views on issues such as the definition of "significant investment", the maximum length of the exception and potential unintended consequences.

Q.18: How do you believe the "amount" of investment for the purposes of "qualifying investment" should be defined? Please explain your view by reference to the type of rent payment and percentage which should be used, with evidence to support your response.

Consultation Responses

Pub-owning companies expressed a preference that no minimum amount should be stipulated, a view supported by the FLVA, ALMR/BII. CAMRA and tenants' groups expressed an opposing view. CAMRA said that setting a low qualifying amount would undermine the protections in the code; tenants' groups suggested a high bar of 400% dry rent and/or 200% dry and wet rent combined.

Q.19: Do you agree with the proposed definition of "qualifying investment" in terms of the "type" of investment? If not, please explain why not, and suggest an alternative definition, with evidence to support your response.

Consultation Responses

There was a general consensus across respondents that the definition of a "qualifying investment" should not include any investment that is the contractual responsibility of the pub-owning company.

Pub-owning companies expressed the view that tenants' contractual obligations (e.g. general repairs and maintenance) should form part of a qualifying investment if the landlord is required to pay for them. They favoured a definition that includes everything

beyond the landlord's contractual obligations. In terms of the three conditions proposed for the "type" of investment, they thought these were overly prescriptive on the basis that significant investment could be made without resulting in structural change.

Tenants' groups suggested that all three conditions proposed should be met, that landlords should not be rewarded for making essential expenditure and that investment should be trade-enhancing. Tenants also stressed the need to have more transparency and control as regards the costs of the investment.

Q.20: What do you consider should be the maximum length of the waiver period (a) 7 years; (b) 10 years; or (c) another option? Please provide an explanation for your answer and any evidence to support your case.

Consultation Responses

The majority of tenant stakeholders favoured a shorter period while pub-owning companies favoured a longer period for deferral of MRO or no maximum at all. CAMRA said that returns on investment (ROIs) of 7 years or longer should be possible if objectively justified. ALMR/BII said 7 years but 10 should be allowable. FLVA said beyond 7 years should be exceptional and 10 years should be the absolute maximum.

Q.21: Do you agree with the safeguards proposed by the Government and the role proposed for the Adjudicator? Are there other safeguards that you consider should be provided? If so, what and why?

Q.22: Do you believe that there are any unintended or undesirable consequences of the proposed definition of "qualifying investment" or of other conditions referred to in this chapter on the MRO investment waiver?

Consultation Responses

Tenants had many detailed comments on the proposed safeguards and possible consequences of exception proposals. These included suggestions for additional safeguards such as: tenants being able to get their own quotes for the building works; some form of redress if the ROI is recovered early or over-estimated, or where work has not begun or has been delayed unreasonably; additional matters to be included in investment agreements such as references to quality standards, completion dates, actual costs of the works; and, setting out clear figures to demonstrate the impact/increase in trade expected as a result of the investment.

Pub-owning companies said that it needs to be made clear that information as to the return on the investment would be the return for the licensee, not the landlord – as that would be commercially sensitive data. Pub-owning companies had read the draft regulations in detail and made the observation that they were unclear and unnecessarily overlapping. They wanted to ensure tenants had taken appropriate independent advice before entering into agreements.

Government Response

Pub-owning businesses and tied tenants can agree to defer the point at which MRO is available at a rent assessment and renewal, in cases where the pub-owning business makes a significant qualifying investment. The minimum threshold for a 'significant investment' is set at 200% of the pub's 'dry rent' and the deferral period is a maximum of 7 years.

Following the consultation, the criteria around qualifying investments have been simplified (the criteria that a qualifying investment should involve a structural change, planning permission or an increase in space has been removed), but there is a new link between the investment and an increase in trade and profit of the pub which the pub-owning business must demonstrate to the tenant. Also, both landlord and tenant contractual obligations (such as repairs and maintenance) are excluded from what can be a qualifying investment. Additional requirements for the investment agreement have been introduced and tenants will be able to seek limited redress about the content of the investment agreement and the completion period for the works, referring disputes or breaches to the Pubs Code Adjudicator. There must be at least one scheduled rent review conducted during the investment period which will have to be carried out as a rent assessment under the Code but it will not trigger MRO.

Consultation Part 2

Questions 1-5 in Part 2 of the consultation on MRO have been covered above.

Information Requirements

BIS Select Committee inquiries over the years had identified that asymmetries in information and in turn negotiating power between tied tenant and pub-owning company led to some of the unfairness that could occur in their relationship. Indeed this was something the industry voluntary code sough to address, but in the view of Government hadn't gone far enough. The consultation on the regulations proposed information requirements for pub-owning businesses to provide to their tied tenants at key points. They built on the approach taken on the voluntary code and where the evidence suggested augmented those requirements. The following questions sought views and further evidence to test these proposals.

Q.6: Do you agree that these are appropriate conditions to be met before it becomes mandatory to provide specified information to a prospective tenant?

Q.7: Do you agree that a pub-owning business may not require a prospective tenant to submit a business plan unless the tenant is a qualified person to whom it has provided the specified information?

Q.8: Do you agree that where a change in the tied rent is proposed during the course of the tenancy agreement, the tenant should be provided with a revised rent proposal? Should all of the Schedule 2 information be required; or only those elements that have been changed? Should all of the Schedule 1 information be provided at the same time?

Q.9: Should a rent proposal be required in all cases where there is a change in the rent during the tenancy? Would there be any merit in excluding changes that are automatic or agreed in advance (for example, annual indexation provisions); or that are of a temporary nature (such as rent 'holidays' to provide short-term relief to the tenant)?

Consultation Response

Pub-owning businesses criticised the number of information requirements to be provided to a prospective tied tenant early in the application process, as listed in draft Schedule 1. They also felt that the proposed requirements to provide this information again at various points was unduly onerous, especially if the information itself had not changed materially. They were concerned too about how early in the application process a tenant is able to refer a breach of the Pubs Code to the Adjudicator for arbitration and called for the right to be able to carry out basic checks before the pub-owning business is obliged to provide the applicant with the information required by the Code.

Tenants and tenants' organisations were unanimously supportive of the need for all Schedule 1 information to be provided in good time for the tenant's sustainable business plan to be prepared. Pub-owning businesses were much more divided, with some

favouring transparency and others putting forward reasons for withholding significant information until negotiations were well advanced.

Feedback from pub-owning businesses, from tenants and from their representative organisations proposed changes to various individual information requirements. On the whole, tenants identified gaps in information provision they felt should be filled. Pub-owning businesses identified draft requirements that created practical difficulties or were more wide-ranging in their impact than the Government had intended.

The proposed requirement in regard to pre-entry awareness training won considerable support for the principle of new entrants to the industry undergoing appropriate training, though there were very mixed views as to whether any existing training provision could or should be specified by statute in the Pubs Code without a statutory body providing such training.

Another major concern was to ensure that pub-owning businesses' obligations to ensure that new tenants undertake due diligence and have a sustainable business plan are practical, robust and proportionate for both parties involved, particularly regarding requirements for tenants to take independent professional advice to prepare the plan and the period that the plan should cover (Admiral, FLVA, Heineken, Punch Taverns).

Government Response

We have removed the two pre-conditions for tenants to receive information: specifically inspecting the pub premises and confirming interest, as these do not add any significant benefit or protection for either the tenant or the pub-owning business.

The Pubs Code requires the pub-owning business to ensure that a sustainable business plan has been prepared by the tenant before they are allowed to enter a new agreement. This requires the pub-owning business to ensure that business plan meets the standards set out in Regulation 10, which includes ensuring that the tenant has considered independent professional advice in preparing it. The pub-owning business must also be certain to provide the tenant with all the information required by the Code before the tenant considers that independent advice (Regulations 10 and 11). It will also need to have provided the tenant with a rent proposal (Regulation 15) by that time.

This means that before the pub-owning business provides any of that information, while it is not allowed to enter a new agreement with the tenant, it is allowed to ask the tenant to complete an application form, to interview the tenant to check for suitability, to undertake other checks, such as credit rating, references, right to work in the UK, etc.

We did not agree with the views that the Pubs Code should specify the qualifications of those providing the independent professional advice, nor should it specify exactly which sort of professional advice should be sought at this stage. While we feel it is important that a tenant should receive business, legal, property and rental valuation advice, we recognise that some of these can be very expensive and that the tenant may wish to delay – for instance, having a survey undertaken – until a later stage in the negotiations. This does not remove the obligation on the pub-owning business to ensure that a tenant has received independent professional advice before he or she writes the business plan. If the

Government Response

pub-owning business does not fulfil this obligation, it will be in breach of the Code.

We have decided against requiring tied tenants renewing their agreement under LTA 1954 to produce a new business plan and to take independent advice preparing it. We have also decided against requiring the pub-owning business to provide the Schedule 1 information again at renewal if there have been no material changes; but it will still be required to provide relevant 'benchmarking' reports – see Regulation 10(7).

We have also amended the requirement that a new tenant's business plan should cover the entire duration of the tenancy. It will be the shortest of: the duration of the tenancy, the period to the next rent assessment or 5 years.

The time allowed for BDMs to produce a note of discussions has been increased to 14 days from 7 days. We have also tightened the definition of Business Development Manager, substituting 'negotiations' for 'dealings'.

Because of the current difficulty in specifying training requirements for tenants new to the tied pubs industry without a statutory body, the Code places an obligation on pub-owning businesses to advise those tenants "to complete the appropriate pubs entry training." This duty to advise also applies to short agreements and to assignees but not where tenants have relevant tied pubs experience (Regulations 9, 12 and14). It is expected that future reviews of the Pubs Code will look at how well this is operating, the availability of appropriate training courses.

Some previously agreed rent adjustments no longer require 'rent proposals' and so requirements to provide information have been removed.

Most of the information requirements in Schedule 1 are already in or have parallels in the industry's voluntary UK Pubs Industry Framework Code. The two main additions are:

- Requirements relating to maintenance, repair or improvement works which the two parties agree before entering a new agreement.
- Issues relating to the handling of rent deposits.

We consider both of these to be vital additional protections, providing much needed transparency and clarity. We have also added the requirement to inform incoming tenants of any TUPE liabilities.

We have narrowed the circumstances where a pub-owning business must notify the tied tenant about the sale of the freehold or long leasehold (Regulation 49); we agree with the views of pub-owning businesses that the draft regulation was too wide in its scope and could unfairly inhibit valid commercial negotiations.

Repair Provision

Disputes related to repairs issues in relation to a tied tenancy has historically been a major concern to tied tenants. The consultation set out proportionate proposals for the Pubs Code to govern aspects of the relationship between tied tenants and their pub-owning businesses in relation to their respective repairs obligations.

The consultation posed the following question:

Q.10: Do you consider that these measures on repair obligations provide an appropriate balance between the rights and duties of pub-owning businesses and those of their tied tenants?

Consultation Responses

There were few comments from tenants about the proposals for repair provisions, other than that they were content with them. Some pub-owning businesses worried that tenants would refer very minor repair issues to the PCA for arbitration, for instance a pub-owning business's failure to replace a tap washer (mentioned by Marston's). Various approaches were suggested to develop rules or guidance to distinguish between major and minor repairs issues.

FLVA proposed that a prospective tenant's business plan should be revised and verified again by the pub-owning business as being sustainable if negotiations or discussions that take place after the acceptance of the original business plan lead to an agreement for works to be undertaken after the tenancy or licence agreement is signed.

There were comments from some pub-owning businesses that a schedule of condition is unnecessary and surplus to requirements where the tied tenant has no repairing or maintenance obligations or has obligations that require them to put the premises into a different state of repair than the one described in the schedule of condition. However, a schedule of condition may sometimes be of much (or more) use to a tenant – before and/or after taking on the pub – than it is to the pub-owning business. It can help the tenant assess whether to take on the pub in the first place, whether the proposed repairing terms and conditions are reasonable, whether the pub-owning business has fulfilled its own repairing and maintenance obligations and as a reference point in disputes over the extent of dilapidations. By requiring pub-owning businesses to supply a schedule of condition at the start of a tenancy, we hope to reduce the volume of repair-related allegations referred to the PCA.

Government Response

We have deleted a Code provision on procedural requirements about dilapidations that occur on premises after the final dilapidations survey.

The Code will require the pub-owning business to ensure that before it consents to an assignment (if required under a tenancy agreement); the assignee has received advice to seek independent professional advice and/or undertaken appropriate training.

Government Response

When the Code requires pub-owning businesses to provide tenants with material updates to information in Schedule 1, this will not include updating the Schedule of Condition (i.e. re-surveying the premises) unless there are major structural changes.

Assignments

Some tied pub agreements permit the tenant to assign their tenancy to another person. The consultation draft of the Code made provision with regard to the provision of information to potential assignees. There was no specific question in regard to this but stakeholders did give their views.

Consultation Responses

Some pub-owning businesses expressed their frustration at the lack of due diligence from assignees, many of whom, they claimed, had clearly not realised the commitments they had entered into. Because the assignee's contract is with the assignor (the outgoing tenant), the pub-owning business usually has only quite limited powers to interfere with or prevent the transaction.

Marston's and Heineken identified an unintended ambiguity in draft regulation 38(2)(b)(iii) and so we have now made clear that the provision of information to the tenant relating to dilapidations is not for the purpose of informing the assignee; rather, it relates to any dilapidations that the pub-owning business requires the tenant to undertake (or pay for) the dilapidations to be dealt with before, or as a condition of, the assignment.

Enterprise Inns considered that assignees should not have to receive as much information under Schedule 1 as other tenants signing a new agreement.

Government Response

The Code will require the pub-owning business to be satisfied that before it consents to an assignment (if required under a tenancy agreement), the assignee has been advised to undertake appropriate training and to seek independent professional advice, including from a qualified surveyor. A pub-owning business must also ensure that the assignee has received the information in Schedule 1 provided to the assignor. We are not stipulating who must give the assignee the advice and information – it is likely to be the assignor but it may be the pub-owning business itself or someone else. However, it will be a breach of the Code if the pub-owning business agrees to the assignment without being satisfied that the assignee has received the advice and information.

An important difference between a tied tenant agreeing a tenancy or licence directly with a pub-owning business and an assignee agreeing to take over a tenancy on assignment from an existing tenant is that the pub-owning business cannot require the assignee to submit a sustainable business plan, as that would be tantamount to third-party interference in the contract between the assignor and assignee. However, if that can be done by

Government Response

mutual consent, ideally following independent professional advice, then we consider it would be to the benefit of both parties and should be encouraged.

Non-arbitrable Provisions

Part 4 of the SBEE Act allows for sections of the Pubs Code to be designated as either arbitrable or non-arbitrable.

Q.11: In the draft Code are there any provisions that you consider should be specified as non-arbitrable? Please explain the advantages of doing so.

Consultation Responses

Many tenants said that no provision of the Pubs Code should be non-arbitrable. Some respondents said that any provisions which do not impose obligations on pub-owning businesses should be non-arbitrable. Marston's asked for provisions that do not affect tenants' profitability to be non-arbitrable. BBPA suggested that the PCA should work with stakeholders to produce a list of non-arbitrable provisions but the PCA does not have the power to make provisions of the Code non-arbitrable; only Parliament may do that.

Enterprise Inns wanted rent issues to be non-arbitrable if they were index-linked; in connection with the receipt of a corresponding benefit from the pub-owning business or the freeing of the tied tenant from any product or service tie; or if they were part of a review of the business provided for in the tenancy or licence agreement.

Punch Taverns wanted pub-owning businesses' temporary support concessions and support of tenants' obligations to be non-arbitrable. They also called for the requirement to provide tied tenants with the pub-owning business's own code of practice (if there is one), all of the section on Business Development Managers (now Regulation 41) except the requirement to provide a report of meetings, and the whole of the section on Compliance (now Regulation 42) to be non-arbitrable.

Greene King thought that the provisions dealing with the training of Business Development Managers (BDMs) should be non-arbitrable (though still subject to PCA investigations) because of the potential use by tenants of allegations of training breaches as a means to challenge, for example, rent, repairs or other matters when the real issue is not so much the training as the tenants' dislike of the BDM's stance on those issues.

Government Response

Non-arbitrable provisions

After careful consideration of the arguments we have decided to make the training provisions for BDMs non-arbitrable. We have also decided to make duties to appoint a

Government Response

Compliance Officer and to produce annual compliance reports non-arbitrable.

Contractual Inconsistencies with the Code

This part of the consultation was intended to check with stakeholders that the impact of the Pubs Code and provisions of the Act, including in relation to arbitration, will not be nullified by any agreements between pub-owning businesses and their tied tenants that contain terms that are inconsistent with the Code.

Q.12: Do you have any comments relating to the proposals for void and unenforceable terms?

Consultation Responses

A number of pub-owning businesses said they should have the right to unilaterally initiate a rent review on the basis of a release from the tie if the beer tie were to be made illegal. Some wanted transitional arrangements to allow for the terms of existing tenancies to only become Code-compliant after the tenant has accepted the offer of Deed of Variation. It was suggested that references in contracts to the IFC should become void. One pub-owning business questioned the right of the tenant to refer to the PCA an arbitration initiated by the pub-owning business under the tenancy should extend to the MRO process, as this exceeds the primary legislation. It was also argued that any term that breaches the objectives of the Act (fair and lawful dealing & no worse off) should be void & unenforceable under the Code.

Government Response

We have decided not to make references in tied pub agreements to the existing voluntary code void and unenforceable, as it was not deemed necessary. Compliance with the existing Voluntary Code can continue to the extent that it does not undermine any aspect of the Pubs Code.

Extension of Code Protections

At the time of passage of the SBEE Act Government committed to provide protection under the Pubs Code for tied tenants whose pub was sold to a pub-owning business not in scope of the Code. This was to ensure they would not immediately lose that protection as a consequence of changes either in the ownership of their tied premises or the commercial arrangements of their pub-owning business that are beyond the tenant's control. The SBEE Act therefore made express provision for extended protection. The consultation sought views from stakeholders on the proposed definitions as to when this protection would end.

Q.13: Do you have any views on the extent of the extended protection that is proposed?

Consultation Responses

A number of pub-owning businesses argued the requirements in respect of BDMs and Code Compliance Officers; and requiring sign-off by a RICS valuer – will be too onerous for small firms and family brewers. The point was made that it is unreasonable to impose complex regulation on future purchasers as it could lower the market value of the pub making its sale for a different use more likely. Also that requiring the provision of information about the sale of the freehold amounted to an unjustified interference with their possessions and freedom to buy or sell assets. It was suggested that extended protection should only be granted to tenants whose new landlord had 50 or more pubs. There was a certain amount of confusion amongst respondents as to the scope and implications of extended protections. This included whether MRO should be available under extended protection.

Government Response

The SBEE Act (sections 69(4)-(7)) entitles tenants whose pub is sold to a company not covered by the Pubs Code, to the continued protection of the Pubs Code – excluding entitlement to MRO - until the tenancy or licence ends or the conclusion of the first rent assessment, whichever is earlier. Therefore those matters were not open for consultation having already been provided in legislation, and accordingly there was no power to consider some of the suggestions received.

The draft information requirements about the sale of a tied pub's freehold or long leasehold have been amended to limit the scope. The regulations will now only require active selling to be declared (i.e. limit to adverting, placing on the market, employing a sales agent and agreement to sell).

The requirements in respect of BDMs, Code Compliance Officers and RICS valuers will not be excluded in relation to those with extended code protection. However, the wording has been revised on BDMs to enable anyone to fulfil the duties of the compliance officer and BDM, for example in the case of a small company.

Group Undertakings

This section of the consultation sought views on the proposals for the circumstances in which group undertakings (i.e. businesses related to pub-owning businesses) should be treated as pub-owning businesses under the Code. Specifically it was proposed that in certain circumstances the Adjudicator would have the discretion to treat group undertakings as a pub-owning business in relation to investigations of Code breaches, enforcement following investigations, and individual arbitrations of Code disputes.

Q.14: Are there any elements of these proposals regarding group undertakings that you think would not work as intended or that require amending?

Consultation Responses

Some pub-owning businesses wanted group undertakings to be limited to those undertakings responsible for tied pubs only. Punch Taverns wanted to restrict liability under the Code to the contractual landlord only. The main cause of concern from pub-owning businesses was in relation to the calculation of the maximum penalty following Adjudicator investigations. Others had no issue with the proposals and thought they were workable. Tenants were content with the proposals.

Government Response
There is no change to the Pubs Code on this issue.

Exemptions from the Code: franchises and short agreements

During passage of the SBEE Act Ministers committed to providing an exemption to some of the Pubs Code provisions for genuine pub franchise agreements and for short term agreements including tenancy at will agreements.

In the case of pub franchise agreements this was in recognition of the fact that depending on their precise characteristics they could represent a fairer form of tied agreement for tenants (franchisees). Government committed to consulting on the precise details of the relevant pubs code regulations required to deliver these commitments.

The consultation asked the following questions:

Q.15: Please comment on the key characteristics of a genuine franchise agreement as set out in Table 1. Where you think a characteristic should be amended or removed please set out your evidence as to why. Similarly if you think further characteristics should be added please set out your justification as to why as well as an explanation of what should be added.

Q.16: Do you agree with the Government's proposals for 'reasonable piloting' of the pub franchise model? If not, please explain your answer.

Q.17: Do you agree that the Pubs Code information requirements that are indirectly related to rent such as the signposting to sources of benchmark information and the provision of historical trade information should apply to genuine pub franchise agreements? If you disagree please clarify which requirement(s) is of concern, suggest any deletions and/or amendments and justify your arguments.

Q.18: For how long should tenancy at will or other agreements be granted exemption from the Pubs Code? Please explain the rationale for your answer and provide any evidence to support your case.

Consultation Responses

In general there was broad support for the proposed characteristics of a pub franchise agreement although there were a number of comments suggesting minor changes in certain areas. Pub-owning businesses raised questions about whether the right to sell the business should be a key characteristic. They also wanted clarification that the characteristic that provides that there should be a turnover share instead of rent would allow for the turnover to be stepped. There was also concern in relation to the fifth characteristic that there be no separate charge for goods and services on the basis that this would stifle the development of franchising and franchise models.

There was general agreement on the proposals for 'reasonable piloting' but there were some suggestions for amendments including: extending the minimum period to 18 months to 2 years; piloting the model in multiple areas; including specific detail in the regulations as to how piloting takes place.

All six pub-owning businesses supported the proposal for a 12 month exemption from the Code for tenancies-at-will or other short agreements, all giving similar reasons for why the exemption is important for these sorts of agreements, i.e. it is vital that enough time is given to find, recruit and train new tenants/lessees for substantive agreements and anytime shorter than 12 months is likely to lead to an increase in temporary closures that are extremely detrimental as outlined in previous responses. There were some suggestions that the period should be shortened to six months or removed completely on the basis that tenants would have the protection of the Code sooner.

Government Response

The following is confirmed on exemptions for genuine franchise agreements:

- The definition of reasonable piloting with respect to franchises is piloting in more than one outlet for at least a year.
- Some information requirements for pub franchise agreements that ordinarily apply to rent proposals (from which pub franchise agreements are exempt) are required to be supplied to the franchisee.
- Pub franchises will not be exempt from pubs entry training and business plan requirements.
- We have retained the criteria that: (i) the franchisor is required to teach the business format to the franchisee and (ii) the franchisee should have the right to sell the franchise.
- Stepping of the turnover share is permitted as long as it is clear at the beginning of the agreement and the tenant's share cannot drop below the initial level specified in the agreement.
- Pub-owning businesses in franchise arrangements with their tied tenants will be able to make separate charges for goods and services provided to the franchisee. This is a change from the consultation positon to make sure that franchisees and pub companies can benefit from any new products or services developed after they had signed the agreement. The franchisee is free to decide whether or not to receive these new products and services.

Government Response

The following is confirmed on exemptions for short agreements:

- A consecutive series of tenancies-at-will or short agreements that cumulatively add up to less than 12 months are taken together for the purpose of the Code exemption. This is consistent with the commitment to exempt TAWs and short term agreements from the rent provisions of the code.

Q.19: Do you think it is appropriate that a tenant entering into a tenancy at will or short-term agreement with a pub-owning business should have completed pre-entry awareness training prior to being offered the agreement? Please explain the rationale for your answer and provide any evidence to support your case.

The responses here are already covered in the Information Requirements section

Q.20: What sort of information do you consider would be useful and desirable for a new tenant to receive from the pub-owning business when entering into a tenancy at will or short-term agreement?

Consultation responses

Though several tenants wanted all tenants on short agreements to receive the same information as other tenants entering a new agreement, most respondents recognised that this could cause excessive delays and possibly temporary or even permanent closure of the pub. Pub-owning businesses were generally in favour of providing either no information or very limited information to these tenants.

Three pub-owning businesses (Admiral Taverns, Greene King and Punch Taverns) as well as ALMR/BII and FLVA made suggestions for limited amounts of information.

Government Response

The Code requires the provision of limited information under the code to new short-term tenants and tenants at will including rent, payment of utility bills, responsibility for utility and safety certificates, any TUPE liabilities, deposits, obligations for repairs, tied products and services, and other fees, charges and penalties.

Enforcing the Pubs Code

The consultation set out certain proposals in relation to some of the detailed aspects of the Code with regard to the arbitration and investigation powers of the Adjudicator. The questions were:

Q.21: If you do not agree with the proposed £200 fee please explain why and give the rationale and any evidence in support of an alternative amount.

Q.22: Do you agree with the Government's proposal that the maximum costs that tied tenants could have to pay a pub-owning business following an arbitration should be set at £2,000? If you do not agree, please suggest an alternative level of fee, explaining the rationale for the alternative and provide evidence to support your case.

Q.23: If you do not agree that the maximum financial penalty the Adjudicator should be able to impose following an investigation should be set at 1% the annual UK turnover of all group undertakings of the pub-owning business, please explain why and give the rationale and any evidence in support of an alternative amount.

Consultation Responses

The majority of pub-owning businesses agreed with a £200 fee to refer cases to the PCA, although there were concerns that it may be too low and would not prevent vexatious referrals. All tenants groups agreed with the proposal.

The majority of respondents agreed that the £2,000 cap on costs and the exceptions to the cap seemed reasonable. Some pub-owning businesses stated that the same cap should also apply to them. Also some suggested that tenants should pay full costs in cases found to be vexatious. Some pub-owning businesses expressed the view that it should be for the arbitrator to decide on the awarding of costs, and how these are split between the parties.

A significant majority of tenant interest groups and trade bodies agreed that the maximum financial penalty should be set at 1% of the annual UK turnover of all group undertakings of the pub-owning business. However, all six pub-owning businesses disagreed, all of them seeing this as unfair and disproportionate. They all agreed that in the interests of fairness, the 1% should apply to the turnover derived only from their tied estates, hence the part of their business subject to the Pubs Code and not for example any brewing operations.

Government Response

The Code – in a separate Statutory Instrument - includes the following:

- The amount of the fee should be £200. This is consistent with the figure proposed by Ministers during the passage of the SBEE Act. A pub-owning business will pay the same fee to refer an MRO dispute to the PCA.
- The maximum cost that tied tenants pay a pub-owning business following an arbitration will be £2,000. This is consistent with the figure proposed by Ministers during the passage of the SBEE Act.
- The maximum financial penalty the Adjudicator should be able to impose following an investigation is 1% of the annual UK turnover of all group undertakings. Financial penalties are imposed at the discretion of the PCA and his decisions will be made fairly and proportionately. We do not expect him to apply the maximum financial penalty unless there has been a serious or persistent breach of the Code. We believe this will act as a strong deterrent for breaching the Code.

Consultation questions – Part 1

Rent assessments

Q.1: Do you have views on the proposed definition of a rent assessment?

Market Rent Only option

Q.2: Are there any other circumstances where a renewal would arise and which should trigger MRO beyond those we have set out?

Q.3: Is the wholesale market price for beer the appropriate baseline for determining a significant price increase?

Q.4: Is a five percentage point threshold above any increase in the wholesale price of beer (which will reflect any increases in inflation, taxation and other input costs), the appropriate measure?

Q.5: Do you agree that the calculation of a significant increase in price for tied products and services other than beer should exclude any increase in the wholesale price that results from rises in tax, duty, regulatory compliance costs or inflation (RPI)? Are there any other factors that should be excluded?

Q.6: Is this the appropriate way to measure a significant price increase for tied products and services other than beer? If not, please explain the alternative you would recommend.

Q.7: Is a two tier approach appropriate? If so, is the proposed threshold of contributing to 20 percent of the pub's turnover the right one?

Q.8: Are the proposed percentage increases in price (30 percent and 40 percent) appropriate? If not, please explain your reasoning and an alternative.

Q.9: Do you agree that a significant price increase should be calculated by reference to the price paid by the tenant at a previous point in time? If so, should that be six months ago?

Q.10: Do you have any comments on points i. to v. (significant impact trigger events) in Chapter 8?

Q.11: Can you suggest any other circumstances that would be likely to have a 'significant impact' on the expected business of a pub; and that you believe would not be covered by the proposed definition in the Code?

MRO-compliant agreements

Q.12: Do you agree with the distinction drawn between an MRO compliant agreement that arises from a request for MRO at renewal and an MRO compliant agreement that arises from a request for MRO during the course of the tenancy?

Q.13: Do you support the requirement that an MRO-compliant agreement should provide for an open market rent review every five years? Please explain the effect of such a requirement on the commercial relationship between the tenant and the pub-owning business in an MRO agreement

MRO procedure

Q.14: Does the list of required documents set out in paragraph 10.23 provide the independent assessor with all the appropriate information to make an independent assessment of the MRO rental figure? Should any other documents be added?

Q.15: Do you have any comments on the timescales for the MRO procedure proposed for the Code?

Q.16: Do you have any views on the proposed circumstances in which the MRO procedure will come to an end?

MRO disputes

Q.17: Do you have any concerns about these proposals for the resolution by the Adjudicator of disputes related to the MRO procedure? If so, please explain your concerns.

Exception from MRO in return for significant investment

Q.18: How do you believe the “amount” of investment for the purposes of “qualifying investment” should be defined? Please explain your view by reference to the type of rent payment and percentage which should be used, with evidence to support your response.

Q.19: Do you agree with the proposed definition of “qualifying investment” in terms of the “type” of investment? If not, please explain why not, and suggest an alternative definition, with evidence to support your response.

Q.20: What do you consider should be the maximum length of the waiver period (a) 7 years; (b) 10 years; or (c) another option? Please provide an explanation for your answer and any evidence to support your case.

Q.21: Do you agree with the safeguards proposed by the Government and the role proposed for the Adjudicator? Are there other safeguards that you consider should be provided? If so, what and why?

Q.22: Do you believe that there are any unintended or undesirable consequences of the proposed definition of “qualifying investment” or of other conditions referred to in this chapter on the MRO investment waiver?

Consultation questions – Part 2

Market Rent Only option and Parallel Rent Assessments

Q.1: We believe the stated MRO procedure, that will give tenants a free-of-tie rent offer alongside a tied rent review proposal, will enable tenants to make an informed judgment as to whether they will be no worse off by remaining tied and fulfils the objectives of a Parallel Rent Assessment. If you believe that this does not achieve the goal, please give your reasons why.

Q.2: We would welcome your comments on whether, in addition to the other information requirements of the draft Pubs Code, the documents provided for in Schedule 3 of the draft Code and described in paragraph 10.23 in Part 1 of this consultation are sufficient and appropriate for calculating a meaningful free-of-tie market rent that will allow tenants to make an informed judgment as to whether they will be no worse off by remaining tied.

Q.3: If you believe that the combination of current proposals will not adequately deliver the no worse off principle or does so in a disproportionate way, please give your reasons and, where relevant, provide evidence.

Availability of the Market Rent Only option at rent assessment

Q.4: What would be the effect of removing from the draft Pubs Code Regulations the condition that there must be a proposal for an increase in the rent at rent assessment before a tenant may exercise the MRO option?

Q.5: It would be particularly helpful to receive evidence of the percentage of rent reviews that have resulted in a freezing or reduction of the rent over the last three years; of the prevalence of annual indexation provisions and other inter-rent review arrangements in tenancy agreements; the typical increase in the amount payable by the tenant that they result in; and the way in which these are exercised by the pub-owning business under the terms of the tenancy.

The Pubs Code - Information requirements

Q.6: Do you agree that these are appropriate conditions to be met before it becomes mandatory to provide specified information to a prospective tenant?

Q.7: Do you agree that a pub-owning business may not require a prospective tenant to submit a business plan unless the tenant is a qualified person to whom it has provided the specified information?

Q.8: Do you agree that where a change in the tied rent is proposed during the course of the tenancy agreement, the tenant should be provided with a revised rent proposal? Should all of the Schedule 2 information be required; or only those elements that have been changed? Should all of the Schedule 1 information be provided at the same time?

Q.9: Should a rent proposal be required in all cases where there is a change in the rent during the tenancy? Would there be any merit in excluding changes that are automatic or

agreed in advance (for example, annual indexation provisions); or that are of a temporary nature (such as rent 'holidays' to provide short-term relief to the tenant)?

The Pubs Code – repair provisions

Q.10: Do you consider that these measures on repair obligations provide an appropriate balance between the rights and duties of pub-owning businesses and those of their tied tenants?

The Pubs Code – arbitrable provisions

Q.11: In the draft Code are there any provisions that you consider should be specified as non-arbitrable? Please explain the advantages of doing so.

Contractual inconsistencies with the Code

Q.12: Do you have any comments relating to the proposals for void and unenforceable terms?

Extension of Code protections

Q.13: Do you have any views on the extent of the extended protection that is proposed?

Group undertakings

Q.14: Are there any elements of these proposals regarding group undertakings that you think would not work as intended or that require amending?

Exemptions from the Pubs Code – genuine franchise agreements

Q.15: Please comment on the key characteristics of a genuine franchise agreement as set out in Table 1. Where you think a characteristic should be amended or removed please set out your evidence as to why. Similarly if you think further characteristics should be added please set out your justification as to why as well as an explanation of what should be added.

Q.16: Do you agree with the Government's proposals for 'reasonable piloting' of the pub franchise model? If not, please explain your answer.

Q.17: Do you agree that the Pubs Code information requirements that are indirectly related to rent such as the signposting to sources of benchmark information and the provision of historical trade information should apply to genuine pub franchise agreements? If you disagree please clarify which requirement(s) is of concern, suggest any deletions and/or amendments and justify your arguments.

Exemptions from the Pubs Code – tenancy at will and short-term agreements

Q.18: For how long should tenancy at will or other agreements be granted exemption from the Pubs Code? Please explain the rationale for your answer and provide any evidence to support your case.

Q.19: Do you think it is appropriate that a tenant entering into a tenancy at will or short-term agreement with a pub-owning business should have completed pre-entry awareness training prior to being offered the agreement? Please explain the rationale for your answer and provide any evidence to support your case.

Q.20: What sort of information do you consider would be useful and desirable for a new tenant to receive from the pub-owning business when entering into a tenancy at will or short-term agreement?

Enforcing the Pubs Code – fee for arbitration

Q.21: If you do not agree with the proposed £200 fee please explain why and give the rationale and any evidence in support of an alternative amount.

Enforcing the Pubs Code – costs of arbitration

Q.22: Do you agree with the Government's proposal that the maximum costs that tied tenants could have to pay a pub-owning business following an arbitration should be set at £2,000? If you do not agree, please suggest an alternative level of fee, explaining the rationale for the alternative and provide evidence to support your case.

Enforcing the Pubs Code – proposed maximum financial penalty

Q.23: If you do not agree that the maximum financial penalty the Adjudicator should be able to impose following an investigation should be set at 1% the annual UK turnover of all group undertakings of the pub-owning business, please explain why and give the rationale and any evidence in support of an alternative amount.

List of Respondents

Pub-owning businesses with 500 or more tied pubs

Admiral Taverns Ltd
Enterprise Inns Plc
Greene King Plc
Heineken UK (Star Pubs & Bars)
Marston's Plc
Punch Taverns Plc

Interest groups, trade bodies and other organisations

Association of Licensed Multiple Retailers/ British Institute of Innkeepers
Brighton and Hove Licensees Association
British Pub Confederation
British Beer and Pub Association
British Franchise Association
Campaign for Real Ale
Fair Pint Campaign
Federation of Licensed Victuallers Associations
Federation of Small Businesses
Golden Lion Group
Independent Family Brewers of Britain
Justice for Licensees
Licensees Supporting Licensees
Pubs Advisory Service
Punch Tenants Network

Tied tenants

Robert Armour
Michael Ashley
Rachel Brading
Mike Crisp
Keith Marsden
Peter & Gill Tydie
Colin Yates

Other

Tony Leonard - free house and independent leasehold pub operator
David Morgan - Morgan & Clarke Chartered Surveyors
Kevin Partridge - former tied tenant

Other responses – mainly from tenants and from other individuals – have been anonymised or withheld.

This publication available from www.gov.uk/bis

Contacts us if you have any enquiries about this publication, including requests for alternative formats, at:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

Email: enquiries@bis.gsi.gov.uk

BIS/16/229