

13th January 2015



Jo Swinson MP
Parliamentary Under Secretary of State
Department for Business, Innovation & Skills
1 Victoria Street,
London
SW1H 0E

British Beer & Pub Association
Ground Floor
Brewers' Hall
Aldermanbury Square
London, EC2V 7HR

pub.com
www.beerandpub.com

Dear Jo

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT BILL
Pub Companies

[REDACTED]



No Worse Off

Parallel Rent Assessments and MROs on new agreements

We argued that with the new MRO clause, there was no need for a Parallel Rent Assessment too. You suggested that this should still be available in new agreements, and were clear that the MRO does not apply to new agreements. On reflection we think that the protections offered by the Statutory Code, and the ability to complain to the Adjudicator about any behaviour under the Code, are sufficient. The Statutory Code makes provision for incoming tenants to take both business and valuation advice, with the obligation on the Pub Company to ensure that this has taken place. RICS were clear that they did not support Parallel Rent Assessments, not least because of the complicated methodology and the inability to compare with very few free-of tie-leases and no free of tie tenancies. The latter simply do not exist. The retention of Parallel Rent Assessments would in our view overly complicate the system and would lead to more work for the Adjudicator.

[REDACTED]

With best wishes,

Yours sincerely,

Brigid

Brigid Simmonds OBE
Chief Executive

Small Business, Enterprise and Employment Bill

Proposed amendments from the British Beer & Pub Association

Amendment number	Clause to be amended	Explanation	Specific wording or deletion	Tracked wording
69	Clause 41 (6) (Remove)	The requirement for companies to offer 'parallel rent assessments' to tenants becomes irrelevant with the insertion of the 'market rent only' option. This was already an unwieldy and complicated process and now creates a further layer of unnecessary red tape and as such should be removed from the face of the Bill.	Page 38, line 20, leave out subsection (6)	<p>"The Pubs Code may require large pub-owning businesses to provide parallel rent assessments in relation to their tied pub tenants in specified circumstances, and in connection with such provision—</p> <p>(a) may confer on the Adjudicator functions in relation to parallel rent assessments,</p> <p>(b) may require the payment of a fee by tied pub tenants to the Adjudicator in connection with the exercise of those functions, and</p> <p>(c) may make provision corresponding to that</p>


[illegible]

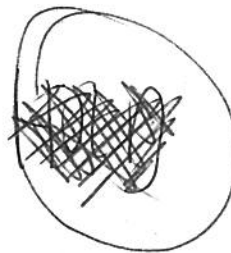
②

Position statement

21 December 2015

14:03

Subject	Position statement
From	<u>Kate Nicholls</u>
To	[REDACTED]
Cc	[REDACTED]
Sent	20 January 2015 09:02
Attachments	 BII FLVA a...



[REDACTED]

[REDACTED]

Kate Nicholls
Chief Executive

@ALMRInfo

[REDACTED]

[REDACTED]

- It is worth noting in this context that the lessee renegotiating a contracted out lease/tenancy would receive the same protection as a new lessee – namely the right to receive a parallel rent assessment and refer the rent to a Statutory Adjudicator to ensure that a fair tied deal was reached if the breakdown in negotiations was attributed to the rental valuation. They would also be subject to subsequent MRO triggers.

[REDACTED]

3



Department
for Business
Innovation & Skills

Peers,
The House of Lords
London SW1A 0PW

Baroness Neville-Rolfe DBE CMG
Minister for Intellectual Property
Parliamentary Under-Secretary-of-State

1 Victoria Street
London
SW1H 0ET

T +44 (0) 20 7215 5000
E enquiries@bis.gov.uk

www.gov.uk/bis

21 January 2015

Dear All,

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT BILL: PUBS

Part 4 of the Small Business, Enterprise and Employment Bill introduces measures to establish a Statutory Code and Adjudicator to govern the relationship between pub-owning companies and their tied tenants. In advance of Committee consideration of these measures, **I would like to invite you to a briefing session I am holding on Tuesday 27 January between 2.00 pm and 3.00 pm in Committee Room 2A, House of Lords.**

I enclose a summary of the measures, as well as a note on the approach the Government has taken to the Market Rent Only clause (Clause 42). This clause was added to the Bill at Report Stage following a vote in the House of Commons and gives tied tenants of large pub-owning companies the right to go free-of-tie in certain circumstances. It enables those tenants to pay their pub company a market rent for the pub and then purchase drinks and other goods and services from whomever they wish.

While the Government had resisted the clause partly on the basis that it could have unintended consequences for the sector, I confirmed at Second Reading of the Bill on 2 December that the Government accepted in principle the introduction of a Market Rent Only option. This was in view of the strength of feeling in Parliament on the issue and as many people believe that pub-owning companies need the threat of tenants going free-of-tie before they will offer their tenants a fair tied deal.

Since then, our focus has been on making this option workable. As part of this, ministers and officials have been meeting with tenants' organisations, pub-owning companies and their representatives to make sure that we get this right. The Government will be tabling a number of amendments at Lords Committee to Clause 42 of the Bill. These are designed to ensure that the Market Rent Only clause is workable and legally robust, and to mitigate unintended consequences. The amendments do not change the original policy intent of the amendment on which the Government was defeated.

I look forward to the opportunity to discuss this further with you next week. Please RSVP to:
mpst.neville-rolfe@bis.gsi.gov.uk.

A handwritten signature in black ink, reading "Lucy Neville-Rolfe". The script is cursive and elegant, with the first name "Lucy" written in a slightly larger and more prominent hand than the surname.

BARONESS NEVILLE-ROLFE DBE CMG

Pubs Code and Adjudicator

- A Statutory Code of Practice to govern the relationship between large pub-owning companies and their tied tenants, and an independent Adjudicator to enforce the Code.
- The measures are a huge step forward for tied tenants – for the first time they will have a Code of Practice they can rely on, with independent enforcement and real sanctions attached. The measures are a proportionate and targeted response to the longstanding problems in the industry.
- The measures will address the imbalance in bargaining power between large pub-owning companies – those with 500 or more tied pubs - and the thousands of tenants that run tied pubs across England and Wales, who are often sole traders and small businesses.
- The Code should be interpreted in the light of two core principles: (i) fair and lawful dealing and (ii) that a tied tenant should be no worse off than a free-of-tie tenant.
- The Code will provide tenants with increased transparency, fair treatment, and the right to request a rent review if they have not had one for five years. It will also require pub-owning companies to provide a parallel free-of-tie rent assessment for prospective tied tenants upon request if rent negotiations fail, which should make clear whether the deal being offered would leave the tenant no worse off than a free-of-tie tenant.
- Following the Government's defeat in the Commons, the Code will require pub-owning companies to offer tied tenants the option to go free-of-tie at rent review or other specified circumstances. The tenant would pay a market rent for the pub but would be free to source beer and other products from any source - known as the Market Rent Only option.
- Tied tenants will have the right to take disputes to a new independent Adjudicator. The Adjudicator will have powers to arbitrate disputes (including ensuring rent assessments are carried out in line with the requirements of the Code), initiate investigations into systemic abuses of the Code and impose sanctions after an investigation.
- Six pub-owning companies (Admiral Taverns, Enterprise Inns, Greene King, Marston's, Punch Taverns and Star Pubs and Bars) with 500 or more tied pubs in England and Wales will have to comply with the Code. Around 13,000 tied tenants will be protected by the Code.
- Following the Government's defeat at Commons Committee, around 6,000 tied tenants of 60 pub-owning companies/family brewers with fewer than 500 tied pubs will not be protected by the Code.

Annex B

Factsheet

Pubs Code & Adjudicator measures Small Business, Enterprise and Employment Bill

Summary

This note provides briefing on the Pubs Code and Adjudicator measures in the Small Business, Enterprise and Employment Bill. In particular, the note sets out the Government's proposed approach to adopting amendments voted in to the Bill by the House of Commons, which introduce a Market Rent Only option. This option gives tied tenants of large pub-owning companies the right to go free-of-tie in certain circumstances.

As the Government made clear at Second Reading of the Bill in the House of Lords on 2 December, the Government accepts in principle the introduction of a Market Rent Only option. The Government's approach, as set out in this note, is focussed on making this option workable, to ensure that tied tenants are no worse off than free-of-tie tenants and that we minimise the risks of unintended consequences.

Background

The Pubs Code & Adjudicator measures

The Pubs Code and Adjudicator measures introduce a Statutory Pubs Code and independent Adjudicator to address the imbalance in bargaining power between large pub owning companies and their tied tenants. The Code and Adjudicator will help ensure fair treatment for the sole traders and small businesses that run thousands of tied pubs across England and Wales.

Introduction of Market Rent Only

During Report Stage of the Small Business, Enterprise and Employment Bill the House of Commons voted to introduce a Market Rent Only option, which would give tied tenants of large pub companies the right to go free-of-tie in certain circumstances. The Government resisted the clause partly on the basis that it could have unintended consequences for the sector. However, the Government recognises the strength of feeling in Parliament on this issue and understands that many people believe that pub-owning companies need the threat of tenants going free-of-tie before they will offer their tenants a fair tied deal. That is why the Government confirmed at Second Reading of the Bill in the House of Lords on 2 December that we accept in principle the introduction of a Market Rent Only option.

What is Market Rent Only (MRO)?

Tied pub tenants pay a property rent for the pub ("dry rent") and are obliged to purchase products from their pub-owning company ("wet rent"). At the heart of this model is the notion that the tied tenant will pay an above market price for their tied beer products in exchange for countervailing benefits.

The Market Rent Only option requires pub-owning companies to offer their tied tenants the option to go free-of-tie at rent review or other specified circumstances. The tenant would then pay a market rent for the pub but would be free to source beer and other products from any source.

Key features of the Government's amended MRO clause

In adopting the Market Rent Only option the Government has sought to retain the original policy intent behind the amendment voted into the Bill by the House of Commons, and to ensure that MRO is workable and minimises the risks of unintended consequences.

The Government's amended MRO clauses, and the other protections of the Statutory Code, apply to tied tenants of the **6 pub-owning companies which have 500 or more tied pubs**. This is the part of the market where Government and the BIS Select Committee have seen the most evidence of problems in the relationship between tied tenants and their pub-owning companies.

The Statutory Code and Adjudicator will address the imbalance of power in this relationship by providing the **13,000 or so tied tenants** of large pub-owning companies with increased transparency, fair treatment, and the right to request a rent review if they have not had one for five years.

The Government's amended MRO clauses provide further protection, by also providing tenants with the **right to a Market Rent Only agreement at certain trigger points**. The clauses set out the definition of MRO and the trigger points at which it applies; enables the Pubs Code to set out the procedure for MRO; and provides for regulations to set out dispute resolution for MRO.

The points at which the tenant would be entitled to a Market Rent Only agreement are:

- At rent review (or 5 years after the tenant's latest rent review, whichever is the sooner)
- If the tenant renews their lease
- When there is a significant and unexpected increase in the price of the tied products supplied to the tenant
- When an economic event occurs which is beyond the tenant's control and has a significant impact on the tenant's ability to operate the pub

At any of these trigger points the tenant may request a Market Rent Only assessment from their pub-owning company. Following a period of negotiation the tenant can either agree to remain tied or agree a Market Rent Only agreement with their pub-owning company.

If the tenant and pub-owning company are unable to agree a Market Rent Only agreement then the tenant has the right to request that the market rent be determined by an independent assessor, in line with the MRO amendment tabled in the House of Commons.

The Government's approach to amending the MRO clause

The Government has made changes to the Market Rent Only option in a number of distinct areas to ensure that MRO is workable and that we minimise the risks of unintended consequences. Where the Government has made changes, these are explained below.

Detail of triggers for MRO

The Government **intends to set out the detailed definition of trigger points for the Market Rent Only option in the Statutory Code**, which will be secondary legislation made by affirmative order. This will enable the Government to consult stakeholders on the precise wording of these triggers as part of the wider consultation on the Code following Royal Assent, to ensure that the triggers function as intended.

In particular, Government intends to consult on the precise wording of trigger points when:

- The pub-owning company imposes a significant increase in the price of the tied products supplied to the tenant
- An event outside of the tenant's control impacts significantly on the tenant's ability to trade

In the case of the 'significant price increase' trigger the Government intends that this would not, for example, include circumstances when a pre-agreed discount period ends. The Government envisages that the 'an event outside of the tenant's control' would encompass situations in which local economic factors impact on trade (e.g. the closure of a local factory) rather than macro-economic events (e.g. the recession) or personal circumstances. Public consultation on the specific phrasing of these triggers will help the Government to ensure that the trigger points are appropriately defined.

Detail of process for MRO

The MRO clause voted into the Bill outlined some of the process associated with obtaining a Market Rent Only assessment and taking up a Market Rent Only offer. The Government's intention is to follow the outline of this process. The initial stage of the process would require the pub-owning company to provide a Market Rent Only assessment which the

tenant and pub-owning company will negotiate on. If they are unable to agree a Market Rent Only deal then the tenant may choose to progress to the second stage, at which the tenant and pub-owning company would engage an independent assessor to determine the Market Rent Only deal.

The Government considers that **the detail of the MRO process is better suited to secondary legislation**. As the MRO clause was introduced to the Bill at a relatively late stage, setting out the detailed process for MRO in secondary legislation will enable Government to consult publicly to ensure that the process works as intended.

Treatment of prospective tenants

The drafting of the MRO clause voted into the Bill did not explicitly state whether the right to Market Rent Only would apply to prospective tenants. Prospective tenants are not bound to any particular pub-owning company and therefore have more scope than existing tenants to shop around for pubs which are available to lease on terms which are favourable to them. The transparency provisions of the Statutory Code will ensure that these prospective tenants receive the information that they need to make an informed decision as to whether a particular tied deal is right for them. For this reason, the Government's amended MRO clauses make clear that **prospective tenants will not have the right to request a Market Rent Only offer**.

The Bill previously required pub-owning companies to provide tied tenants with a parallel free-of-tie rent assessment (PRA) at certain trigger points. As the Government's amended MRO clauses provide existing tied tenants with the right to Market Rent Only at these same trigger points, the Government considers that retaining the PRA requirements would be a disproportionate burden on pub companies and has therefore decided to **remove the PRA requirements for existing tenants**.

As prospective tied tenants do not have the right to a Market Rent Only offer, the Government intends to **retain the protection of the PRA for prospective tenants**. This means that prospective tenants may request a PRA following rent negotiations with their pub company and upon paying £200. The PRA will enable prospective tenants to assure themselves that their tied rent offer is fair and that they are no worse off than they would be if they were free-of-tie.

Coverage: pub-owning companies with 500 or more tied pubs

The purpose of the Pubs Code and Adjudicator measures is to address a clearly defined problem in the relationship between pub-owning companies and their tied tenants. The difficulties particular to the tied relationship have been evidenced by the findings of the BIS Select Committee in four reports over the course of ten years.

The Pubs Code therefore applies to pub-owning companies with 500 or more tied pubs, so as to target regulation on that part of the market where we have evidence of problems, namely in the relationship between tied tenants and their pub-owning companies.

As drafted, the MRO clause voted into the Bill by the House of Commons applies to pub-owning companies with 500 pubs of any kind and 1 leased or tenanted pub. This threshold would extend the Pubs Code beyond the tied market to also include pub companies' free-of-tie pubs.

The Government considers that there is insufficient evidence of a problem in the relationship between free-of-tie tenants and their pub-owning companies. Adopting a threshold of 500 pubs of any kind and 1 leased or tenanted pub may also be open to challenge as being irrational if a pub owning business with 501 pubs none of which is tied was subject to regulation, whereas a pub owning business with 499 tied pubs was not. The amended MRO clauses therefore **focus the measures on pub-owning companies with 500 or more tied pubs, to target tied relationships, where the BIS Select Committee and Government have evidence of a problem.**

Trigger point: transfer of title

As originally drafted, the MRO clause voted into the Bill requires pub-owning companies to offer a Market Rent Only option when the company 'implements, or gives notice of, a transfer of title'. The Government understands that the purpose of this trigger point was to avoid any possibility that the new owner of the pub could exploit the contractual arrangements with the tenant and to provide greater certainty for the tenant as to the future of the business.

The Government considers that this trigger point is not necessary, as other – more proportionate – protections already exist for tenants when their pub is sold to another owner. Any new owner of the pub would be bound by the tenant's existing contractual rights and, where the new owner is covered by the Pubs Code, any attempt to later significantly increase prices or carry out a rent review to the tenant's detriment would trigger Market Rent Only by virtue of the other trigger points set out in the Bill.

Government also has regard to the impact that this trigger would have on the sale of pub properties for continuing use as pubs. The trigger would be likely to make the sale of pubs

as going concerns less appealing to potential buyers, on the basis that the Market Rent Only option may be triggered before the sale is complete.

The Government has therefore **removed this trigger point from the amended MRO clauses**, as it would afford negligible extra protection for tenants and could reduce the likelihood of pubs being sold for continuing use as pubs.

Trigger point: administration

Under the MRO clauses voted into the Bill, the Market Rent Only option would be triggered if a pub-owning company goes into administration. The Government has **decided not to include this trigger point in the amended MRO clauses**, on that basis that it would provide negligible extra protection for tenants and would be likely to significantly complicate and imperil the rescue of a pub-owning company as a going concern.

The role of the administrator in the event of a pub-owning company going into administration is to rescue the company as a going concern, and any administrator would be required to honour the pub-owning company's existing agreement with the tenant. In such an instance the tenant's interests are already protected. In the event of administration, the potential for significant numbers of tenants choosing to request a Market Rent Only option would be likely to devalue the pub estate in the eyes of potential administrators and runs the risk of encouraging the company to opt for liquidation, which would not be in the interests of the company or its tied tenants.

For these reasons, the Government has removed the administration trigger point from the amended MRO clause, as it does not offer significant extra protections for tenants, and could well run contrary to their interests in the event of administration.

Brewers' route to market

The MRO clause voted into the Bill by the House of Commons sets out that pub-owning company which is also a brewer may require that if one of their pubs takes up the Market Rent Only option, that pub must continue to sell products produced by that brewer, but the tenant must be free to purchase those products from any source. In the amended MRO clauses the Government intends to ensure that this provision is compliant with competition law requirements and will clarify that it is **limited to requiring that the pubs in question stock the brewer's beer and cider, not other products**. This is in line with what pub-owning companies tell us are the products which concern them.

Regulations by affirmative order

The Government is keen to ensure that any changes to the Pubs Code and Adjudicator measures are subject to proper scrutiny. While the MRO clause inserted into the Bill by the House of Commons provides for regulations to be made by negative procedure to implement Market Rent Only and change the types of agreement which are subject to MRO, the Government's amended clauses ensure that **regulations relating to MRO are subject to affirmative procedure**. This is in line with the recommendation of the Delegated Powers and Regulatory Reform Committee.

(4)



Department
for Business
Innovation & Skills

Jo Swinson MP
Minister for Employment Relations and
Consumer Affairs and Minister for Women
and Equalities

1 Victoria Street
London
SW1H 0ET

Toby Perkins MP
Shadow Minister, Business, Innovation and Skills
House of Commons
London
SW1A 0AA

T +44 (0) 20 7215 5000
E enquiries@bis.gov.uk

www.bis.gov.uk

23 January 2015

Dear Toby,

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT BILL: PUBS

As you know, during Report Stage of the Small Business, Enterprise and Employment Bill, the House of Commons voted to introduce a Market Rent Only option, which would give tied tenants of large pub-owning companies the right to go free-of-tie in certain circumstances.

While the Government resisted the clause partly on the basis that it could have unintended consequences for the sector, Baroness Neville-Rolfe confirmed at Lords Second Reading that the Government accepted in principle the introduction of a Market Rent Only option. This was in view of the strength of feeling in Parliament on this issue and as many people believe that pub-owning companies need the threat of tenants going free-of-tie before they will offer their tenants a fair tied deal.

This week we have tabled a number of amendments to the clause. These are designed to ensure that the Market Rent Only clause is workable and legally robust, and to mitigate unintended consequences. The amendments do not change the original policy intent of the amendment. The attached note summarises the approach Government has taken.

If you would like to discuss this further, I would be happy to meet you next week.

JO SWINSON MP
Minister for Employment Relations and Consumer Affairs

Pubs Code & Adjudicator measures - Factsheet

This note sets out the Government's approach to adopting amendments voted in to the Bill by the House of Commons, which introduced a Market Rent Only (MRO) option.

Key features of the Government's amended MRO clauses

The Government's amended MRO clauses, and the other protections of the Statutory Code, apply to tied tenants of the **6 pub-owning companies which have 500 or more tied pubs**. The Statutory Code and Adjudicator will provide the **13,000 or so tied tenants** of these large pub-owning companies with increased transparency, fair treatment, and the right to request a rent review if they have not had one for five years.

The Government's amended MRO clauses also provide tenants with the added protection of the **right to a Market Rent Only agreement at certain trigger points**:

- At rent review (or 5 years after the tenant's latest rent review, whichever is the sooner)
- If the tenant renews their lease
- When there is a significant and unexpected increase in the price of the tied products supplied to the tenant
- When an economic event occurs which is beyond the tenant's control and has a significant impact on the tenant's ability to operate the pub

At any of these trigger points the tenant may request a Market Rent Only assessment from their pub-owning company. Following a period of negotiation the tenant can either agree to remain tied or agree a MRO agreement with their pub-owning company. If the tenant and pub-owning company are unable to agree a MRO deal then the tenant has the right to request that the market rent be determined by an independent assessor.

The Government's approach to amending the MRO clause

As the Government made clear at Second Reading in the Lords, we accepted in principle the introduction of a MRO option. The Government amendments seek to retain the original policy intent behind the Market Rent Only option, and to ensure that MRO is workable, legally robust and minimises the risks of unintended consequences.

Coverage: pub-owning companies with 500 or more tied pubs

The purpose of the Pubs Code and Adjudicator measures is to address a clearly defined problem in the relationship between pub-owning companies and their tied tenants. The difficulties particular to the tied relationship have been evidenced by the findings of the BIS Select Committee.

The MRO clause voted into the Bill by the House of Commons would have extended the Pubs Code beyond the tied market to also include pub companies' free-of-tie pubs. The Government considers that there is insufficient evidence of a problem in the relationship between free-of-tie tenants and their pub-owning companies. Adopting the threshold proposed in the clause could also be open to challenge as being irrational, as a pub owning business with 501 pubs none of which is tied could be subject to regulation, whereas a pub owning business with 499 tied pubs would not be. The Government's amended MRO clauses therefore **focus the measures on pub-owning companies with 500 or more tied pubs, to**

target tied relationships, where the BIS Select Committee and Government have evidence of a problem.

Detail of triggers for MRO

The Government **will set out the detailed definition of trigger points for the MRO option in the Statutory Code**, which will be secondary legislation made by affirmative order. This will enable the Government to consult stakeholders on the precise wording of these triggers as part of the wider consultation on the Code following Royal Assent, to ensure that the triggers function as intended.

Detail of process for MRO

The Government intends to follow the outline of the process for taking up a MRO offer set out in the MRO clause voted into the Bill, but considers that **the detail of this process is better suited to secondary legislation**. This will enable Government to consult publicly to ensure that the process works as intended.

Treatment of prospective tenants

Prospective tenants are not bound to any particular pub-owning company and therefore have more scope than existing tenants to shop around for pubs on favourable terms. The Government's MRO clauses therefore make clear that **prospective tenants will not have the right to request a Market Rent Only offer**. While the Government has **removed the Parallel Rent Assessment (PRA) requirements for existing tenants**, as those tenants now have the protection of Market Rent Only, the Government will **retain the protection of the PRA for prospective tenants**, so they can assure themselves that their tied offer is fair.

Trigger point: transfer of title

The MRO clause voted into the Bill would have required pub-owning companies to offer a Market Rent Only option when the company 'implements, or gives notice of, a transfer of title'. The Government considers that this trigger point would afford negligible extra protection for tenants and could reduce the likelihood of pubs being sold for continuing use as pubs. Any new owner of the pub would be bound by the tenant's existing contractual rights, and this trigger would be likely to make the sale of pubs as going concerns less appealing to buyers, as the Market Rent Only option may be triggered before the sale is complete. The Government has therefore **removed this trigger point**.

Trigger point: administration

Under the MRO clauses voted into the Bill, the Market Rent Only option would be triggered if a pub-owning company goes into administration. The Government has **decided not to include this trigger point in the amended MRO clauses**, on the basis that it would provide negligible extra protection for tenants and would be likely to complicate and imperil the rescue of a pub-owning company as a going concern. This would not be in the interests of the company or its tied tenants.

Brewers' route to market

The MRO clause allows brewers to require that their pubs continue to sell their products once they have opted for the Market Rent Only option, but the tenant must be free to purchase those products from any source. We have clarified that this is **limited to requiring that the pubs in question stock the brewer's beer and cider, not other products**. This is in line with what pub-owning companies tell us are the products which concern them.

(5)

RE: Small Business Bill amendments

21 December 2015

14:12

Subject	RE: Small Business Bill amendments
From	[REDACTED]
To	Kate Nicholls
Cc	[REDACTED]
Sent	29 January 2015 10:31

[REDACTED]

From: Kate Nicholls [REDACTED]

Sent: 27 January 2015 13:41

To: [REDACTED]

Cc: [REDACTED]

Subject: FW: Small Business Bill amendments

[REDACTED]

[REDACTED]

Two issues have arisen which I think are best dealt with through secondary legislation – but I wanted to flag them with you soonest. I am not sure yet the degree to which they will feature in our briefing, but if highlighted as concerns they will be referencing the need to resolve in subsequent discussions:

- Parallel Rent Assessments – there is a lot of concern around the restriction of PRAs. Many existing lessees who are content to be tied and who would not otherwise seek an MRO feel that they will have no option but to use the trigger because otherwise they will have no mechanism for ensuring that their tied rent is fair. There are also legitimate concerns that as a PRA will only be available if you lodge a request with the Adjudicator at the point of negotiating a new lease that landlords will simply withdraw lease offers if this is used. We believe that the process of asking for a PRA should be reviewed in the Code as a result.

[REDACTED]


Kate Nicholls
Chief Executive

[REDACTED]

(6)
**FW: SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT BILL -
GRAND COMMITTEE - PART 4 PUBS**

21 December 2015

14:14

Subject	FW: SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT BILL - GRAND COMMITTEE - PART 4 PUBS
From	Neville-Rolfe MPST
To	McLynchy Julie (ED); [REDACTED]; Harries Rhiannon (BIS); [REDACTED]
Sent	28 January 2015 13:04
Attachments	 Small Busi...

[REDACTED]

From: simon clarke [REDACTED]

Sent: 28 January 2015 12:10

Subject: Fwd: SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT BILL - GRAND COMMITTEE - PART 4 PUBS

The Grand Committee are due to consider Part 4 (Pubs Code and Adjudicator) of the Bill TODAY, the 28th January 2015, at 3.30pm.

Please see attached a briefing note that we hope is of interest and use to you when considering the debate.

Should you have any queries please do not hesitate to contact me.

Simon Clarke

[REDACTED]

The Fair Pint Campaign

[REDACTED]

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT BILL

COMMITTEE STAGE - HOUSE OF LORDS - GRAND COMMITTEE - 28TH JANUARY 2015

PART 4 - THE PUBS CODE ADJUDICATOR AND THE PUBS CODE

[REDACTED]

- **Parallel rent Assessment (PRA)** Needs to be available to all tied tenants. This was a major breakthrough informing and empowering tenants and leveling the negotiating playing field with their pub owning companies. This is a tool enabling a tenant to consider whether the primary objective of the Bill is satisfied - to ensure that a tied tenant is no worse off than if they were free of tie. PRA is also needed before a tenant considers a Market Rent Only option, to establish whether their tied terms are fair or not.

[REDACTED]

Simon Clarke

The Fair Pint Campaign

[REDACTED]

②

Meeting between BIS officials and pub tenants' representatives

4 February 2015

Tim Page (TP) – Camra

Simon Clarke (SC) – Fair Pint

George Scott (GS) – Licensees supporting Licensees

Dave Mountford (DM) – GMB

Julie McLynchy (JML), Binnie Goh (BG) [REDACTED]

[REDACTED]

Introducing the meeting, JML said that its purpose was to hear about priorities and concerns. A balance would need to be struck between the different views and no one was likely to get everything that they wanted. The role of officials was to give ministers coherent advice about these views and then it was for ministers to make decisions. Officials could not seek to strike a deal but were looking for areas of common ground so that they could advise ministers.

The timetable was very tight. Report stage was likely to start on 3 March which meant that any amendments would need to be tabled or addressed after February Recess. In turn this meant that ministers would be making decisions during Recess so there were just two weeks from now in which to gather the information for them to make those decisions. JML said it was quite likely that there would be insufficient time after Recess to communicate those decisions to stakeholders before the deadline for amendments, though the team would try. There were other meetings happening on the same day this week and she wanted to schedule a second round of meetings in a week's time to share thinking before the discussion went into the political realm.

GS said they had four priority issues and some points for clarification:

- [REDACTED]
- Parallel Rent Assessments (PRA)
- [REDACTED]

[REDACTED]

Parallel Rent Assessment

JML noted that hitherto, there had been no support for a PRA from either pubcos or tenants as it was deemed to be too complicated. There had been a clear message that the MRO was a better way to ensure "no worse off".

GS and DM said that before the MRO was agreed, securing MRO had been their priority. But now that MRO was in the Bill, they wanted PRA included as part of the MRO process and offered to work with BIS to see how that could be done – this was a top priority for them. It could perhaps be absorbed into the first stage of the MRO.

JML agreed to consider this issue further.

[REDACTED]

8

Meeting with representatives of pubcos and brewers, 4 February 2015

Stephen Billingham (SB), Andy Slee (AS) – Punch
Kevin Georgel (KG) – Admiral Taverns
Clive Chesser (CC) – Greene King
Chris Welham (CW) – Spirit
David Paterson (DP) – Heineken
Brigid Simmonds (BS) – BBPA
Andy Tighe (AT) – BSPA
Julie McLynchy (JML) , Binnie Goh (BG), [REDACTED]

[REDACTED]

Parallel Rent Assessment

JML offered to relay the feedback from tenants' groups earlier that day simply in the spirit of being open. There had not been time to digest or form a view about any of it.

Some of the tenants groups were unhappy that the MRO removed some of the flexibility they would otherwise have had with a PRA and they worried that requesting an MRO might damage the relationship they had with their landlords – they thought that requesting a PRA would be less adversarial.

Some other tenants groups saw the PRA as a first step towards MRO. If the sale or administration triggers for a MRO were dropped, an exceptional rent review triggered for other reasons would give the right to a PRA.

JML invited views - if there were circumstances that would trigger an exceptional rent review but not an MRO then could a PRA be put in place? Also, could a PRA be a first step in an MRO process?

BS thought there was already protection through the adjudicator being able to make an independent review but agreed to consider this.


[REDACTED]

9

Meeting following Lords Committee Stage

21 December 2015

14:24

Subject	Meeting following Lords Committee Stage
From	[REDACTED]
To	McLynch Julie (ED)
Cc	[REDACTED]
Sent	04 February 2015 09:52
Attachments	 Paper for ...

Dear Julie

Tim Hulme has requested I send the enclosed paper to you.

Kind regards

[REDACTED]

www.bii.org

www.biiab.org

[REDACTED]

**BII**

BRITISH INSTITUTE OF INNKEEPING

From : British Institute of Innkeeping (BII)**To:** Department for Business, Innovation & Skills**Date:** 4 February 2015**Subject:** Pubs Code & Adjudicator Legislation**Meeting:** Stakeholder Consultation**Issues considered to be our top priority****[REDACTED]**

3. Parallel rent assessments – *(in support of the comments made by Kate Nicholls in her e mail dated 30.1.15)* The BII is of the view that PRAs should be made available to all tenants not able to call for an MRO for transparency purposes (not just new lets). This would see a tenant automatically receive two valuations, a 'tied' and 'free of tie' in order to make an informed decision.

This means pub companies will have to adapt their ways of working in order to show the true value of the SCORFA benefit provided to the tenant for free of tie rent comparison purposes.

Perhaps the RICS should be asked to provide clearer guidelines on PRA

[REDACTED]

FW: Sale or Administration and the MRO

21 December 2015

14:25

Subject FW: Sale or Administration and the MRO

From: Brigid Simmonds [REDACTED]
Sent: 06 February 2015 11:52
To: McLynch Julie (CCP); [REDACTED]
Cc: Andrew Tighe; Jim Cathcart
Subject: Sale or Administration and the MRO

Dear Julie and [REDACTED],

Thank you again for seeing us all last week.

[REDACTED]

Parallel Rent Assessments

As you know we have real concerns about the use of Parallel Rent Assessments because comparisons are so difficult. There are very few free-of-tie agreements with which to compare and so many pubs are unique. These concerns are shared by RICS. We are therefore not at all keen to extend the right to a PRA to existing tenants and believe that the right to an MRO is sufficient.

We would be particularly concerned about the introduction of a PRA which was triggered by the sale of a property and as we said at the meeting interfering in the commercial arrangements between two pub companies will lead to more pubs being sold for alternative use, where the restrictions do not exist.

At the end of the day, we believe that the combination of protections from continued access to an MRO if a pub is sold to another company with more than 500 tied pubs, or the softer approach provided by members of IFBB and a potential deed of variation if sold to an independent owner, are sufficient protection for the lessee.

I am sure we will continue to discuss next week!

Best wishes. Brigid

Brigid Simmonds
Chief Executive
British Beer & Pub Association


[REDACTED]

FW: Letter attached from Andy Slee

21 December 2015

14:27

(11)

Subject	FW: Letter attached from Andy Slee
From	McLynch Julie (ED)
To	[REDACTED]; Goh Binnie (LEGAL B); [REDACTED]
Sent	15 February 2015 23:19
Attachments	 Julie McLy...

[REDACTED]

From: [REDACTED]

Sent: 13 February 2015 16:47

To: McLynch Julie (CCP)

Cc: Andy Slee

Subject: Letter attached from Andy Slee

Dear Julie

Please see attached for a letter from Andy which has also been sent in the post.

Kind regards

[REDACTED]

AS/BV

13th February 2015

Ms Julie McLynch
Deputy Director, Consumers & Markets
Department of Business, Innovation & Skills
1 Victoria Street
London SW1H 0ET

Dear Julie

Small Business, Enterprise and Employment Bill

[REDACTED]

PRAs

As things stand, PRAs are to return on the face of the Bill to act as a guide to tenants who do not want MRO but want a better tied deal. You got the sense of incredulity from the room that having won the MRO argument tenants seem to now "want their cake and eat it."

Our initial thoughts are;

1. PRA is an undefined process, fraught with uncertainty and dispute. RICS have stated it is not possible to arbitrate.
2. It would wrap the sector in untold red tape. Remember, there are c.4,000 rent events per annum.
3. It magnifies the role of the adjudicator beyond recognition. Have you and the team done an impact analysis on their scope and office cost?

We suggested that an MRO valuation process could work in any eventuality.

[REDACTED]

Yours

Andy Slee

Deputy Director



Department
for Business
Innovation & Skills

12
1 Victoria Street
London SW1H 0ET

T
E

[REDACTED]

www.bis.gov.uk

Our ref
Your ref

Andy Slee
External Affairs Director
Punch Taverns
Jubilee House
Second Avenue
Burton upon Trent
DE14 2WF

17 February 2015

Dear Andy,

SMALL BUSINESS. ENTERPRISE & EMPLOYMENT BILL

[REDACTED]

You suggest that we have lost sight of the no worse off principle. Nothing could be further from the truth. The no worse off principle remains a cornerstone of the Government's intervention in the relationship between pub-owning companies and their tied tenants. It has and continues to be one of the two core principles of the Pubs Code, alongside fair and lawful dealing. The MRO option and Parallel Rent Assessment are both mechanisms for delivering the no worse off principle.

[REDACTED]

Yours sincerely

Julie McLynchy

JULIE MCLYNCHY

Ministerial meeting tomorrow

21 December 2015

14:30

13

Subject	Ministerial meeting tomorrow
From	Kate Nicholls
To	[REDACTED]; McLynchy Julie (ED)
Sent	25 February 2015 16:26

Apologies again that I cannot make tomorrow's meeting with the Ministers. As promised, I have attached below my comments back on the 5 areas that we discussed last week and should be happy to provide additional commentary on any issue arising from the meeting.

[REDACTED]

- **PRA and MRO:** as I mentioned at the meeting, I do not believe it will be possible to incorporate a PRA and an MRO into one document to provide lessees with both sets of information at all rent negotiations. As noted below, we accept that this would impose a significant administrative burden on all parties and would introduce delay into the proceedings, particularly for routine negotiations. We remain of the view that PRA's have a role to play in facilitating negotiated settlements and that they should be available to tenants where an MRO trigger does not apply.

[REDACTED]

From: Kate Nicholls [REDACTED]

Sent: 05 February 2015 09:55

Thank you for sparing the time to meet with ALMR, BII and FLVA yesterday to discuss potential additional Government amendments to the Small Business Bill. You identified three key areas of concern which you needed to advise Ministers on and asked for our input in developing practical solutions to address them. We thought it would be helpful to reconfirm our joint position in these areas:

[REDACTED]

- **PRA availability:** we know that there are significant concerns raised by some at the wholesale removal of PRA provisions from the Bill and the Code. We agree with the Government's approach which differentiates between MRO triggers and PRA requirements, with the latter only being available where an MRO trigger does not apply. At present, the only gap relates to exceptional rent review provisions in the Code – some by not all of which are MRO triggers. We believe the ability to request an exceptional rent review without an MRO trigger attached is an important one and to build dialogue and negotiation throughout the relationship. We believe that it is important that these are retained as originally drafted and a PRA may be appropriate.

We also discussed the use of PRAs for new and prospective tenants and our concern that the wording of the Bill and Code requires a negotiation to have broken down completely before a PRA can be requested and then only at the intervention of the Adjudicator. We believe that this will create a climate of confrontation and also result in landlords removing deals from the table at a very late stage. Our preference would be for a PRA to be provided if requested rather than at a breakdown stage and that as this is a tool to improve transparency and negotiations, it should be free to new and prospective tenants to allow them to ensure that

they receive a fair deal.

[REDACTED]

Kate Nicholls
Chief Executive

@ALMRInfo

[REDACTED]