

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT PUBS CODE ETC. REGULATIONS 2016

*Wednesday 13 July 2016*

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**The Committee consisted of the following Members:**

*Chair:* MR DAVID HANSON

- |   |  |
|---|--|
| † Baker, Mr Steve ( <i>Wycombe</i> ) (Con)                    | † Robinson, Mary ( <i>Cheadle</i> ) (Con)                                      |
| † Barclay, Stephen ( <i>North East Cambridgeshire</i> ) (Con) | † Soubry, Anna ( <i>Minister for Small Business, Industry and Enterprise</i> ) |
| † Elmore, Chris ( <i>Ogmore</i> ) (Lab/Co-op)                 | † Stevenson, John ( <i>Carlisle</i> ) (Con)                                    |
| † Esterson, Bill ( <i>Sefton Central</i> ) (Lab)              | † Stewart, Bob ( <i>Beckenham</i> ) (Con)                                      |
| † Jones, Gerald ( <i>Merthyr Tydfil and Rhymney</i> ) (Lab)   | † Whately, Helen ( <i>Faversham and Mid Kent</i> ) (Con)                       |
| † Knight, Sir Greg ( <i>East Yorkshire</i> ) (Con)            | † Woodcock, John ( <i>Barrow and Furness</i> ) (Lab/Co-op)                     |
| † Menzies, Mark ( <i>Fylde</i> ) (Con)                        |  |
| † Morden, Jessica ( <i>Newport East</i> ) (Lab)               | Jennifer Burch, Katy Stout, <i>Committee Clerks</i>                            |
| † Pawsey, Mark ( <i>Rugby</i> ) (Con)                         |  |
| † Rees, Christina ( <i>Neath</i> ) (Lab)                      | † <b>attended the Committee</b>  |

# Fifth Delegated Legislation Committee

Wednesday 13 July 2016

[MR DAVID HANSON *in the Chair*]

## Draft Pubs Code etc. Regulations 2016

2.30 pm

**The Chair:** If Members wish to remove their jackets, they may do so.

**The Minister for Small Business, Industry and Enterprise (Anna Soubry):** I beg to move,

That the Committee has considered the draft Pubs Code etc. Regulations 2016.

I can already see and hear that there is an outbreak of people being a bit demob happy as we reach the final stages of what has been, by any standard, an interesting—sometimes rather difficult—few months. May I say how sorry I am that we were not able to implement the pubs code by the original deadline of 26 May? As some hon. Members will know, a small number of technical drafting errors were identified in the regulations originally made in April, which meant that some tied tenants would not have had a right they were absolutely entitled to under the Small Business, Enterprise and Employment Act 2015, which was passed not without some controversy in the previous Parliament. We were clear that we wanted the group of tenants covered by the Landlord and Tenant Act 1954 to have the right to the market rent only option. We felt that was important.

Frankly, we could have pressed on, though that would have been out of order and, if anything, somewhat dishonest. Even though it meant there would be a delay, we were adamant it was important that all tenants who should be included in the regulations were included. We were not prepared to introduce the regulations knowing that there was that flaw only to have to come back in a few months' time to rectify it. Therefore, with regret, we pulled the regulations at that stage.

The Secretary of State and I had a meeting with the various pubco businesses—the big brewers and owners of many pubs—and we also met representatives of the tenants. I really want to pay tribute to them, because in the meeting I had with them I thought they were so good, so fair and so reasonable in listening as we explained why we kept having to pull the regulations.

We had to amend the regulations in a number of ways, which we have now done. We have corrected the error in relation to the 1954 Act, which would have affected regulation 30 in particular. The regulations now refer to “protected tenancies”, which means tied tenancies where certain rights under the 1954 Act in relation to renewal of a tenancy apply. The drafting ensures that those tenants have and will retain a protected or contracted-in status once they have chosen the MRO option.

We also took the opportunity to add some clarification to the regulations and to improve the mechanism for assessing what constitutes a significant increase in price

for the purposes of triggering the right to request the market rent only option. The changes to that significant increase in price are expected to give greater clarity on how calculations are carried out and reduce the potential for unintended consequences. Specifically, we have replaced the Office for National Statistics' producer price index with the consumer prices index. I was really grateful to the tenants, who were so helpful when we met them, and I went through and explained what we wanted to do. Many groups and representatives said in particular that CPI was the right way forward. Changes were also made to exclude excise duty and temporary promotions from the calculation of price changes, which again is important; increase the tolerance in the “alcoholic drink other than beer” category from six to eight percentage points; and ensure that any products that are the same and sold in the same units are compared as like for like.

Other changes to the regulations following their withdrawal were mainly in response to comments and queries received from the Joint Committee on Statutory Instruments and its legal advisers. Again, I thank that Committee. We struggled, because unfortunately its Chair was unwell. It was rightly concerned, as you would expect, Mr Hanson, about this secondary legislation, and it wanted to make sure we get it right. I pay tribute to everybody who has looked at the regulations to make sure they are right while doing everything they can to expedite them so we can give tenants the rights that we as Parliament said they should have as swiftly as possible.

**Sir Greg Knight (East Yorkshire) (Con):** Paragraph 12 of the explanatory memorandum, which the Minister's Department produced, says that there will be a review and that the first review period will end on 31 March 2019. I note what she says, but if the regulations turn out to have an unanticipated undesirable effect, is there a mechanism in place to allow her to review the code earlier than 2019?

**Anna Soubry:** I see no reason why not, unless somebody from my excellent team says otherwise. I pay tribute to all the people who sit next to me; they have worked remarkably hard. The Government and I, as the lead Minister, have been absolutely adamant that we must do the right thing by everybody. We are doing what Parliament clearly intended should be done in that controversial decision. We are reflecting what Ministers and Back Benchers from both sides of the House said. That has been absolutely at the heart of what my officials and I have done. We want to be sure we are true to the will of Parliament. That is incredibly important.

It is also important that we are fair to both sides. Unfortunately—I would like to think that this is no longer the case—there have been two sides: the pubcos on the one side and the tenants on the other. We have been absolutely clear that we must do the right thing for both sides. Once Parliament accepted MRO, we had to get on with it. Frankly, the pubcos have got to grasp the reality and do the right thing by the tenants. I am happy to report that we will keep the code under review. I give my word that, if I am still in this job in the forthcoming months, I will make sure we do that.

Other changes to the regulations following their initial withdrawal were mainly made in response to the JCSI's comments and queries, for which I thank it. I confirm

that the regulations deliver the requirements of the provisions of the governing legislation—part 4 of the 2015 Act. They reflect the commitments made by Ministers at the time and the will of Parliament.

As the regulations suggest, the relationships between tied pub tenants and pub-owning businesses are not always straightforward. Let us be honest: they have not always been fair. I believe that the pubs code is proportionate and balanced in its approach, and that it will allow pubs to operate in a fair environment so they can thrive. They are all, of course, small businesses, and as the Minister for Small Business I want them to do well—*[Interruption.]*

**The Chair:** Order.

**John Woodcock** (Barrow and Furness) (Lab/Co-op): I am sorry; that was meant to be a heckle. I withdraw that remark.

**Anna Soubry:** I am more than happy to take an intervention.

**John Woodcock:** I was just saying that what the Minister is saying is very interesting. I am conscious that this could be her final appearance in this role before she goes on to greater things. We would love her to take more time, rather than rush through her speech.

**Anna Soubry:** I think that is the first time an Opposition Member has asked me not to rush through a speech. In the steel debate earlier, which the hon. Member for Sefton Central and I both attended, I observed that I could end up on the Back Benches. That may not be welcomed by Opposition Members, because I could end up on a few Select Committees and they would not want that.

I think the pubs code is proportionate and balanced in its approach. It will allow pubs to operate in a fair environment so they continue to play an important part in all our lives and provide a positive experience to many visitors to this country. As we know, the pub is at the heart of most communities. We want good pubs to continue, not just for the sake of our economy—as I say, they are great small businesses that employ people—but because they are so important to so many communities. Soap operas are the stuff of fiction, but it is interesting that there is a pub in every single one. That is a serious point, because it reflects the reality of modern life—and, indeed, traditional life—in our country and is a recognition of the hugely important role that pubs play in communities up and down our land.

The Government have worked hard to ensure that the pubs code is fair and proportionate and can be enforced effectively. We want to ensure that tied tenants of the largest pub-owning businesses are no worse off than free-of-tie tenants and there is fair and lawful dealing between pub-owning businesses and their tied tenants. We must ensure that we deliver those principles without placing undue burdens on business, and I believe that the regulations achieve that balance.

The regulations set out the processes for the MRO option and confer functions on the Pubs Code Adjudicator relating to disputes about that option. This is an extremely

complex area, but I believe that in implementing the MRO option we have successfully balanced the interests of tenants and pub-owning businesses. For example, the draft regulations provide that the right to an MRO option at rent assessment is not dependent on an increased rent being offered. That represents a change in policy from the original proposal, which would have had the unintended consequence of preventing significant numbers of tied tenants from receiving an MRO offer. It was the will of Parliament that tenants should be able to have such an offer, and we were keen and determined to be true to the wishes and the force of Parliament.

We have also delivered the ability for tenants to have a rent assessment and MRO option in parallel and have not imposed a requirement for a separate parallel rent assessment, and we have delivered an exemption from the MRO for fairer pub franchise agreements while ensuring that that does not result in a loophole exempting them from all code protections.

As well as the MRO, the code addresses many other important aspects of the relationship between tied tenants and pub-owning businesses. For example, it ensures that tied-pub tenants receive the information that they need to make informed decisions about taking on and operating their pubs, which I think we would all agree is critical. Many of us will know from our constituency work that some people who have taken on a pub tenancy should have had much better, honest information about what they were taking on and the consequences of not having the support or the ability to run that pub. That is an important part of the regulations.

Tied pub tenants can also ask to have their rent reassessed if they have not had a review for five years, and can expect fair treatment in dealings with pub company business development managers. People in the sector will know—I am not stereotyping, because some breweries in particular are very good, as are some of the pubcos—that it is really important that such companies ensure that they have good, competent people right the way through their managerial structures so they can properly advise those who want to take on pubs. Many people still have that dream, but as those of us who have ever had any experience of pubs know, taking on a pub is an almost seven-day-a-week and sometimes more than 12-hour-a-day job. It is a proper hard job, a real commitment. We should always remember that and pay huge credit and give our thanks to all the tenants who take on that work. I know they get a reward from it, but my goodness, they don't half put the hours in.

In all those areas, transparency is essential—both parties must be fully aware of what is involved and what they are committing to—but that transparency must be backed by the enforcement of fair dealing. A tenant who believes that a pub-owning business has breached the code therefore has the right to refer that alleged breach to the independent Pubs Code Adjudicator, who is empowered to award redress.

As you may know, Mr Hanson, some people have been a bit controversial, and in my Twitter timeline—I think that is what it is called—there are still a few tweets that I have received, although they are not quite as vile as some of the other tweets that I have received. We do not need to go into all that. I believe with almost a passion that in Paul Newby we have appointed an adjudicator who will do an excellent job. He has 30 years' experience of the pub sector and has acted on behalf of

[Anna Soubry]

tenants and pub company landlords during his career. I am confident he will do an excellent job as the adjudicator and ensure that the statutory code achieves its objectives. We must now ensure that the code comes into force as soon as possible.

As I have come to learn, the debate around the pubs code has been polarised and sometimes it has not been the most pleasant of debates, although I think it is at its core, because there is a desire to do the right thing to ensure fairness and a thriving pubs business.

I know that there may still be points on which one side or another might not be perfectly happy and they could wrangle on about that, but I genuinely believe we have now achieved regulations that reflect the will of Parliament and that are balanced and proportionate. The time has come to put differences and bitter arguments to one side and to get on and implement the code as soon as possible, so that we can get on with what we all want: a successful, thriving and fair pubs industry. I commend the regulations to the Committee.

2.46 pm

**Bill Esterson** (Sefton Central) (Lab): It is always a pleasure to serve under your chairmanship, Mr Hanson. I welcome the Minister introducing the pubs code regulations, in the spirit of cross-party support that has been in evidence for some time. I am pleased that we are where we are. I express my thanks for the cross-party support there has been over the past two years and more, and for the fine work done by the Campaign for Real Ale in support of the code and by others, including the British Pub Confederation, who deserve much credit for getting us to this stage.

The Minister talked about the importance of the code. I completely agree that it is about creating a level playing field, a fair market and the right balance between pub-owning companies and the tied pub tenants.

I have a number of questions to ask, but first, the Minister was right to apologise for the delay in the implementation of the code, and I thank her for that. We are talking about the right of tied pub tenants to the MRO option, so that they are no worse off as a tied tenant than if they paid only a market rent. That is a really important step forward in this sector for community pubs, which are at the heart of all of our communities.

The Minister also mentioned the Pubs Code Adjudicator, who has been in post for some time. We have had the rather absurd situation of an adjudicator without a code to adjudicate on. We have debated that a few times. He is in post, however controversial and however many concerns there are about the potential for conflicts of interests because he acted overwhelmingly for the pub-owning companies in the past, and we must wish he is a success now that the code is coming into place.

Will the Minister answer these questions? She said the code would be in place as soon as possible. What does she mean by that? Does she have a date in mind? She mentioned 26 May as the date the code was supposed to come in. According to CAMRA, some 13,000 tied tenants due for rent reviews since 26 May have not had the MRO option available to them. What can she say to

those 13,000 tenants and any others who will be delayed until the code is up and running? What support can she give them?

Will the Minister say more about the parallel rent assessment and how the code will ensure that that process happens without the formal element, as requested by so many during our previous deliberations? She rightly talked about the opportunities that we now have. There is a waiver period available as well, in which a tied tenant can waive their right to MRO, on the basis that they are going to receive investment from a pub-owning company. What can she say about guaranteeing to those tied tenants that, if they waive their rights, they will receive that investment? How can she ensure that the adjudicator, if it is his responsibility, will ensure that that investment happens?

I welcome reaching this point today and I look forward to the Minister's answers. I am sure that this will not be her last appearance on the Front Bench. Somehow, I cannot see that happening— [Interruption.] I have been known to be wrong in the past, and this may well be my last Front-Bench appearance. Who knows what the future will bring? I say no more than that.

The Minister said that the time has come to put bitter arguments behind us, although I do not think that she and I had any bitter arguments over the issue. However, the time has come to enjoy a pint of bitter together.

2.51 pm

**John Woodcock:** Likewise, it is a great pleasure to serve under you, Mr Hanson. I want briefly to add my welcome to the regulations on behalf of my constituency and the Furness branch of CAMRA, which, as hon. Members may be aware, has as its logo a cask of beer converted into a submarine, which is fitting. I also welcome the regulations on behalf of all the independent pubs in the Furness area, which are doing so well in gathering together, having beer festivals and promoting their trade, although they find themselves struggling against the big corporations.

I am a frequenter of Wetherspoon's The Furness Railway. A certain point is reached on a Friday or Saturday evening when some of my constituents want to take selfies and I have to take on good faith the door policy of not admitting anyone under age, in case they turn up on Facebook the next day. I am all in favour of fair competition. What the Government are doing, albeit slowly, is really welcome. To finish, I shall quote one of the founders of CAMRA all those years ago, Michael Hardman. Recently on BBC Radio, he urged people, "Come to Barrow-in-Furness and taste heaven in glass." That will be made a little bit easier by the regulations, which I am delighted to support.

2.53 pm

**Anna Soubry:** A great danger in such debates is hon. Members from all parties standing up to give the most blatant plugs—not only to the various pubs that they enjoy, but to the great brewers in their constituencies. Never one to miss an opportunity, I have to say that there is no debate: the Blue Monkey Brewery is one of the most outstanding craft breweries in the country. No doubt other hon. Members might want to intervene, but we will not go down that route.

We should genuinely pay tribute to Britain's beer industry, because we brew the most outstanding beer. I was interviewed recently by one of the trade newspapers, and I think the interviewer was quite shocked at the number of pubs that I clearly frequent and the number of beers I have, in my past, enjoyed, most notably Jennings, which is an exceptional ale from the part of the country represented by the hon. Member for Barrow and Furness.

However, the Whip has reminded me that we are not here to discuss ale. Instead, we are here to ensure that we protect our great British pubs. The hon. Member for Sefton Central asked a number of questions, but I will have to write to him in response to some of those. However, he might have put the comma in the wrong place, as it is not 13,000 tenants who have missed out, by any stretch of the imagination. According to my excellent officials, 13,000 would amount to more than all the pubs in scope. We do not doubt that, unfortunately, a small number of tenants will have missed this opportunity over the past two months, but certainly not such a number.

The hon. Gentleman asked what "as soon as possible" means. The timetable anticipates that everything will be effectively finished by the time the House rises next week. That is certainly the aim. *[Interruption.]* I have helpfully been passed a note about the waiver period. The code sets out the requirements for an investment agreement, which includes protections. Disputes about the assessment, when not agreed, can be referred to the adjudicator, which is where he really comes in.

On the parallel rent assessment, I assure the Committee that when tied tenants request an MRO option they may also consider a tied-rent assessment at the same time. In other words, they can look at that in parallel to this. I express my thanks for all the contributions made and hope that the motion will be agreed to by the Committee so that the regulations can progress and come into force before the House rises next week.

*Question put and agreed to.*

2.55 pm

*Committee rose.*

