

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT SMALL BUSINESS, ENTERPRISE AND
EMPLOYMENT ACT 2015 AND PUBS CODE ETC.
(AMENDMENT) REGULATIONS 2021

Tuesday 11 January 2022

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The Committee consisted of the following Members:

Chair: †JAMES GRAY

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| † Baillie, Siobhan (<i>Stroud</i>) (Con) | Keeley, Barbara (<i>Worsley and Eccles South</i>) (Lab) |
| † Baldwin, Harriett (<i>West Worcestershire</i>) (Con) | Osamor, Kate (<i>Edmonton</i>) (Lab/Co-op) |
| † Baron, Mr John (<i>Basildon and Billericay</i>) (Con) | † Scully, Paul (<i>Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy</i>) |
| Bryant, Chris (<i>Rhondda</i>) (Lab) | Sheerman, Mr Barry (<i>Huddersfield</i>) (Lab/Co-op) |
| † Buchan, Felicity (<i>Kensington</i>) (Con) | † Whittaker, Craig (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| † Davies, Dr James (<i>Vale of Chwyd</i>) (Con) | Winter, Beth (<i>Cynon Valley</i>) (Lab) |
| † Duguid, David (<i>Banff and Buchan</i>) (Con) | Guy Mathers, Rebecca Lees, <i>Committee Clerks</i> |
| † Elmore, Chris (<i>Ogmore</i>) (Lab) | |
| † Esterson, Bill (<i>Sefton Central</i>) (Lab) | |
| Evans, Dr Luke (<i>Bosworth</i>) (Con) | |
| † Fuller, Richard (<i>North East Bedfordshire</i>) (Con) | † attended the Committee |

First Delegated Legislation Committee

Tuesday 11 January 2022

[JAMES GRAY *in the Chair*]

Draft Small Business, Enterprise and Employment Act 2015 and Pubs Code Etc. (Amendment) Regulations 2021

The Chair: Members of the Committee will know that the Speaker enjoins us to wear a mask and to maintain our social distancing. I congratulate the Committee on doing just that.

9.25 am

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Paul Scully): I beg to move,

That the Committee has considered the draft Small Business, Enterprise and Employment Act 2015 and Pubs Code Etc. (Amendment) Regulations 2021.

It is a pleasure to serve under your chairmanship, Mr Gray.

The Pubs Code was introduced in 2016 to regulate the relationship between large pub-owning businesses and their tied pub tenants in order to address concerns about the treatment of some tenants. Under a tied tenancy, the tenant typically agrees to purchase beer and other stock from the landlord in return for a lower rent and other benefits. That arrangement means that both landlord and tenant have a shared interest in the success of the pub, and they should work in partnership to achieve that. It also means, however, that tenants are prevented from sourcing cheaper beer and other products if they want to, even when circumstances change.

The Pubs Code was introduced to create a number of rights and protections for tied tenants including better information prior to signing a contract; no upward-rent-only reviews; no tied gaming machines; and a right, at certain points, to break their tied arrangement and opt for a free-of-tie tenancy through the market rent only, or MRO, process.

The code regulates contractual arrangements that have been entered into freely by tenants and landlords. That sort of intervention by Government is only made when Parliament finds there is a clear public policy case for doing so. In this case, the intervention was justified in the light of evidence from tenants to several Select Committees suggesting that the tied model was subjecting tenants to abuse. The Government are committed to ensuring that tied tenants under the code are treated fairly and lawfully, and that there is a system for redress where alleged breaches of the code can be raised with the Pubs Code Adjudicator, the PCA.

The tied model is not inherently bad, and in most cases it works well. I have heard from tenants who are positive about their tied arrangements and welcome the partnership with their pub-owning business. It is therefore crucial that the code strikes the right balance between protecting the tied tenant and the right of the pub-owning

businesses to realise the value of their investments. The statutory requirement to review the operation of the code every three years provides an opportunity to review that balance.

The first review concluded with the publication of the Secretary of State's report in November 2020, which found that although there had been improvements, some tied pub tenants found it hard to exercise their rights to test the free-of-tie alternative. The restrictive timetable for the process was cited as a significant issue. The most significant changes introduced by the measure before the Committee are those designed to improve how the MRO process works in practice.

The MRO process enables the tied tenant to request a proposal from their pub-owning company setting out the terms for a free-of-tie tenancy where the tenant would pay a market rent. In most cases the rent would be higher than under a tied arrangement, but the tenant would no longer be required to buy products from the pub-owning business. The statutory instrument will improve that process by, first, requiring that the initial MRO proposal from the pub-owning business includes a rent proposal, so parties can negotiate both terms and rent at the same time. Secondly, it introduces a single resolution period of up to three months. Unlike the current process, which gives tenants only 14 days to decide whether to refer a MRO proposal to the PCA, that period allows the parties time to negotiate the proposed free-of-tie terms and the offered rent. The tenant can end that period after 21 days and refer the free-of-tie terms to the PCA or the proposed rent to an independent assessor should they feel the need.

Finally, the SI makes other changes and clarifications to the MRO process following the introduction of the resolution period. For instance, if there are procedural defects in the MRO proposal, such as omission of the rent offer, the tenant has 14 days to refer those defects to the PCA.

Harriett Baldwin (West Worcestershire) (Con): I welcome the update that the Minister is outlining, but will the amendments cover the situation that I discovered in my constituency during the pandemic when pubs were closed? I found that it was the pub-chain owner that was pocketing all the grants that were very generously provided by the Chancellor, whereas the tenant was suffering from absolute lack of business.

Paul Scully: My hon. Friend raises an important point. I do not want to start a wider debate that stretches too much from the SI, but when a tied tenancy works properly shared prosperity should occur. The pandemic proved the success and failure of the Pubs Code in that many pub-chain companies gave a lot of market discount and rent discount over and above what might have been expected from normal negotiations. They did so because they do not want empty pubs and it is in their interests. When arrangements work in both parties' interests, the process works, but I acknowledge that there have been cases where matters have not worked well. The SI provides expressly for re-referral to the PCA where the tenant considers that the pub-owning business's revised response is still not MRO-compliant.

Schedule 1 to the SI uses powers in the Small Business, Enterprise and Employment Act 2015 to amend the qualification period for a business owning tied pubs to

come into the scope of the Pubs Code. It would change the requirement from having owned 500 or more tied pubs for six months in the previous financial year to three months. No new pub-owning businesses have reached that threshold but hon. Members will be aware of the merger and acquisition activity that is a feature of the pub sector. By determining the qualifying period by reference to the previous financial year, the Act provides an important safeguard, reflecting the need for business planning and budgeting. However, currently tied tenants may wait for nearly 18 months after their landlord reaches the 500 tied pub threshold before gaining the rights and protections of the code. For example, if a pub company increased its tied pub estate to more than 500 such pubs through acquisitions in October 2022, it would not come under the code until April 2024. Under the proposed amendment, the maximum period would be reduced to 15 months. For example, a pub company that increased its tied estate in October 2022 would now come under the code in April 2023.

That change may also result in a pub-owning business that reduced its number of tied pubs to below 500 remaining regulated by the code for a longer period. That means the minimum period of full protection for the remaining tied tenants increases from six to nine months.

The amendments in schedule 2 relate to the comparison period used to determine whether a significant price increase for a tied product or a tied service has occurred. That is one of the events that allows tied tenants to request a MRO proposal and acts as a disincentive to pub-owning businesses to raise beer and other prices significantly under the tie. The Government are cautious about changing the arrangements, but there is a case for amending how the comparison period is calculated. In effect, the code created a 56-week comparison, potentially capturing two annual price increases and that raised complications for the more traditional 12-month business planning cycle. The proposed change amends that comparison period to a 52-week period, while continuing to disincentivise price increases and providing protection for tenants.

In terms of notification in relation to extended protection, that protection applies where a tied pub is transferred to a landlord that is not a regulated pub-owning business under the code. Tenants with extended protection benefit from the provisions of the code for a limited time, with the exception of the right to a MRO proposal. Currently, the PCA has no direct knowledge of such transfers. The Government propose that a regulated pub-owning business must inform the PCA when it is transferring a tied pub in circumstances that mean that the tenant will enjoy extended protection. That will allow the PCA to contact the new owners to raise awareness of their tied tenants' rights and protections.

The SI will make helpful and important changes to improve the operation of the Pubs Code, in particular by allowing the parties a meaningful period in which to negotiate and reach a resolution. I ask the Committee to approve the instrument.

9.33 am

Bill Esterson (Sefton Central) (Lab): It is a pleasure to have you in the Chair, Mr Gray.

I am grateful for the Minister's comprehensive explanation of the proposed amendments, and his analysis of some of the concerns. The Pubs Code was needed in

the first place because of the lack of balance, and I agree with the Minister about how the industry should operate. I served on the Bill Committee and I know that there was a strong consensus on the creation of the Pubs Code. I am not going to stray from the topic of the instrument, but I remember very well the reasons why the behaviour of some of the pub-owning companies led to the need for a much more fair and balanced arrangement that gave pub tenants the opportunity to run their businesses under fair terms with pub-owning companies. The hon. Member for West Worcestershire referred to bad practice and I am afraid that there were many such examples prior to the creation of the Pubs Code.

The amendments under paragraph 5 of schedule 2 relate to the ability of the tenant to understand or analyse the cost of the market-rent-only option. That has been a cause of significant concern since the initiation of the Pubs Code. The Opposition support the move to give tenants the figures related to the MRO option. The other changes outlined by the Minister will also improve the current arrangements.

I noticed that most of the respondents to the Government's consultation appeared to be—it was difficult to be absolutely sure—either pub-owning companies themselves or organisations that probably would be sympathetic to them. Some of those responses I therefore take with a slight pinch of salt. That brings me on to parallel rent assessment, which was referred to in the Government's response to the consultation on amending the Pubs Code, but I do not believe the Minister referred to it today. Tenant representatives have said that having a parallel rent assessment would allow pub tenants, or their advisers, to make a judgment on the comparative costs and benefits of remaining a tied or a market-rent-only operation.

Paragraph 7 of the Government response to the consultation states the "consultation document"—I assume that means the original consultation document sent out to consultees—

"noted that such information could serve to confuse a person unfamiliar with the Code or running a tied pub".

To me, that suggests that the Government already had a strong preference for not introducing parallel rent assessments. If we were in a court of law we might describe that as leading the witness, your honour. That concerns me. The consultation response says that the majority agreed with the assessment in paragraph 7, but, as I said, given that the majority of consultees appear to have been favourable to the pub-owning companies, that is hardly a big surprise. Perhaps the Minister can explain what is meant by

"confuse a person unfamiliar with the Code or running a tied pub".

To put that in context, anyone who is investing in a business—precisely what a pub tenant is doing—would carry out their due diligence. They would therefore want as much information as possible when making the judgment between being a tied tenant or free of tie, or notional free of tie in terms of the market rent option. I hope that the Minister can provide an explanation. It makes sense for anyone going into business or already in business to be as informed as possible when deciding which business model would best support their investment and business future. The advantage of a parallel rent assessment is that it acts as a check to ensure that the

[*Bill Esterson*]

Pubs Code meets its principle of ensuring that individual tied tenants are not worse off than they would be if free of tie. Is there a lack of information that prevents tenants or their advisers from making the necessary judgment and acting accordingly? That is my key question to the Minister.

We need to support our pubs. The pandemic has been brutally hard on pubs and pub tenants who were already struggling before it. They need as much support as possible. The local pub is a key part of our high streets and our communities, and our future prosperity, because it drives so much else in communities and brings business to fellow local businesses. Pubs are often the source of very good local activity.

The Opposition want good businesses to grow, not least our pubs. I hope that the Government will seriously consider our proposed reforms to business rates, which is a source of real concern to pubs.

The Chair: In context of this SI.

Bill Esterson: Indeed. The regulations we are considering this morning offer such support. I hope that the Minister will take note of my comments and offer some good answers particularly about parallel rent assessments and how they sit with the ability of pub tenants to make the decisions crucial to their future success.

9.41 am

Paul Scully: I will remember to heed your words, Mr Gray, and not be tempted to drift into a wider debate—

The Chair: Do not worry, I will be listening.

Paul Scully: I will not tempt you to intervene.

I agree with the hon. Member for Sefton Central about the importance of pubs to our communities and the social value they offer, so it is really important that we get the balance right. I think the code was drafted in such a way that we can balance the rights and protections of tied tenants against the property rights of pub owners to ensure that they can operate the tied pub estate and secure rents on their investment while keeping the pubs in full flow for and on behalf of the community.

On parallel rent assessment, we share the aim to achieve informed decision making. I take the hon. Gentleman's point about who actually responded to the consultation but stakeholders reinforced their concerns about additional complexity for tenants and the possible increased cost associated with providing a parallel rent assessment. Stakeholders provided valuable insight into the recruitment processes, the additional support provided particularly for tenants new to running a tied pub and the use of break clauses during the early stages of the tied agreement to enable the parties to end the commercial contract. We are working with the PCA on its tied tenants' survey to find out more about tenants' understanding of the terms. As the hon. Gentleman said, it is not only about people accessing the proper process in the first place, but their Pubs Code rights and what informed their decision to enter into a tied tenancy agreement in the first place.

Bill Esterson: My question about parallel rent assessments was trying to tease out how a tenant can make such a judgment call and what is the best way forward financially. What is the Minister's answer to the question that many tenants pose about how they can make that judgment call without being given a parallel rent assessment, so that they can then compare between the tied and non-tied option?

Paul Scully: Doubts were expressed about the parallel rent assessment by tenant representatives as well, but I take the point that we must understand exactly what type of information prospective tenants need to enter into that relationship. That is why we will work with the PCA on its tenants' survey to get to grips with that and achieve that understanding before we go further.

We believe that the amendments to the Pubs Code are proportionate in terms of improving the practical operation of the code. I appreciate the Opposition's support for our pubs and achieving the right balance for all parties, notwithstanding the hon. Gentleman's wish to go further on parallel rent assessments. We believe that the proposed changes improve things for tenants without placing undue constraints on pub-owning businesses, particularly at such a difficult time for the tied pubs and the hospitality sector. I am pleased to commend the measure to the Committee.

Question put and agreed to.

9.45 am

Committee rose.