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Dear Colleague

STATUTORY REVIEW OF THE PUBS CODE AND PUBS CODE ADJUDICATOR

I am writing to inform you that we have today begun the statutory review of the Pubs Code (the Code) and the Pubs Code Adjudicator (PCA) through the launch of an invitation to all those with an interest to provide their views and experiences of the operation of the Code and the effectiveness of the PCA. I attach a document setting out the Terms of Reference for the review, which will also be laid in the House library.

The Pubs Code was introduced to address concerns about an imbalance in the relationship between large pub owning businesses and their tied tenants (those who are contractually obliged to purchase some or all of the alcohol sold at the premises from the business owning the pub, usually in return for lower rent). The Code gives tied tenants certain rights, including the right at certain times to exercise a “Market Rent Only” option, under which their rent is set at the market level and, in return, they are no longer required to buy products from their pub owning business.

Pubs are a vital part of communities across the country. The Government has been supporting them through freezing beer duty, cutting business rates for many pubs and supporting community pubs through changes to planning law and by funding Pub is the Hub’s pub diversification work.

A number of colleagues have written to me about several issues affecting pubs in their constituencies, including whether the Pubs Code is delivering the policy goal of protecting tied tenants’ rights under the Code. The Secretary of State and I want to look at a wide range of evidence to inform the review and give all those with an interest the opportunity to contribute.

The invitation to submit comments and evidence will run for 12 weeks and can be accessed through the GOV.UK website. Stakeholders have until 22 July 2019 to respond. We will engage with tenant and pub company representatives during the review to ensure it is robust and identifies what is working well and what changes might make it work better. Following this, we will analyse the responses and other evidence as set out in the Terms of Reference. A report on the findings of the review will then be published as soon as practicable and laid before Parliament by the Secretary of State.

I welcome colleagues' input into the review and hope you will encourage stakeholders in your constituency to contribute.

A handwritten signature in blue ink that reads "Kelly Tolhurst". The signature is written in a cursive style with a horizontal line underlining the name.

KELLY TOLHURST MP

Minister for Small Business, Consumers & Corporate Responsibility

Statutory Review of the Pubs Code and Pubs Code Adjudicator

Terms of Reference

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

Term of Reference 1

In accordance with section 46 of the SBEE Act 2015¹, consider the operation of the Pubs Code (as set out in Parts 2 – 10 of the Pubs Code etc Regulations 2016, as read with the SBEE Act 2015) from 21 July 2016 to 31 March 2019, in particular, the extent to which the operation of the Code is consistent with:

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

Term of Reference 2

In accordance with section 65 of the SBEE Act, consider the PCA's performance from 2 May 2016 to 31 March 2019, in particular how effective the Adjudicator has been in enforcing the Pubs Code and whether it would be desirable to amend or replace any regulations relating to costs, fees and financial penalties.

Term of Reference 3

To review the provision of the Pubs Code etc Regulations 2016² and the Pubs Code and the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016³ which are not covered by review provisions in the SBEE Act 2015.

Term of Reference 4

To review the assumptions made in the impact assessments for the Pubs Code provision in the SBEE Act⁴, the Pubs Code etc Regulations 2016⁵ and the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016⁶.

¹ <http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted>

² SI 2016/790 - see <https://www.legislation.gov.uk/uksi/2016/790/contents/made>

³ SI 2016/802 – see <https://www.legislation.gov.uk/uksi/2016/802/contents/made>

⁴ <https://www.parliament.uk/documents/impact-assessments/IA15-002.pdf>

⁵ <https://www.legislation.gov.uk/ukdsi/2016/9780111146330/impacts>

⁶ <https://www.legislation.gov.uk/ukdsi/2016/9780111146323/impacts>

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

- responses to an invitation for views document available at <https://www.gov.uk/government/consultations/pubs-code-and-pubs-code-adjudicator-statutory-review> ;
- evidence submitted as part of this review;
- PCA MRO Questionnaire;
- PCA Tenants survey;
- reports prepared by the PCA and other relevant material available on the PCA's website;
- impact assessments published with the SBEE Act 2015 in relation to the pubs code provisions, and the Regulations made under those provisions;
- publicly available industry data and information; and
- any other relevant publicly available information.

Following the reviews

While the review periods have different start dates, the statutory review requirements all cover the period up to 31 March 2019. As soon as practicable after the review period the Secretary of State must publish a report of the findings of the reviews and lay a report before Parliament.

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

- the extent to which, in the Secretary of State's opinion, the Pubs Code is consistent with the principles set out in section 42(3);
- any revisions of the Pubs Code which, in the Secretary of State's opinion, would enable the Pubs Code to reflect more fully those principles;
- how effective the Adjudicator has been in enforcing the Pubs Code; and
- whether it would be desirable to amend or replace the regulations setting out fees, costs and financial penalties under section 51(2) or (7) or 58(6).

As a result of the findings of the section 65 review the Secretary of State may also:

- give guidance to the Adjudicator about any matter relating to the Adjudicator's functions, which the Adjudicator must take account of the guidance in carrying out functions; and
- by regulations abolish the (office of) Adjudicator if the Secretary of State is satisfied that the Adjudicator has not been sufficiently effective in securing compliance with the Pubs Code to justify the continued existence of an Adjudicator or that it is no longer necessary for there to be an Adjudicator to secure compliance with the Pubs Code or if the Pubs Code is revoked and not replaced.