

The Statutory Code and MRO Q & A

Q. Who is affected by the Statutory Code?

A. The rules apply to companies owning 500 or more tied pubs – currently Greene King, Punch, Enterprise, Admiral, Marston's and Star Pubs & Bars.

Q. When did the new regulations for companies with more than 500 pubs come into force

A. 21 July 2016

Q. I am intending to request the MRO assessment. Does my company have to provide me with a rent assessment under my current terms so I can compare them?

A. Yes. You must wait for the pub company to send you your tied rent proposal or if renewing your agreement, a Section 25 notice before you can trigger the MRO process. You will be able to see both assessments which will help you make your decision.

Q. When can I request an MRO assessment?

A. You can request MRO

1. At your next rent review providing it was due after 21st July 2016 and you have not already completed the tied review process. This will apply whether your rent is staying the same, increasing or decreasing. The trigger point is the date on which you receive your tied rent proposal.
2. On renewal of your agreement providing your agreement is contracted into the Landlord and Tenant Act and the renewal date is after 21st July and you have not already completed the process. The trigger point is the serving of a renewal notice (Section 25 Notice) or by you serving notice you wish to stay (Section 26 Notice)
3. If there has been a significant increase in price (See explanation below)
4. If there has been a substantial change in circumstances. (See explanation below)
5. If you have not had a rent review in the last 5 years

Q. What do I need to do?

A. You must request an MRO proposal in writing within 21 days of one of the first four trigger events listed above. There is a standard format which the request must meet. If you don't request an MRO within this time-period or fail to provide all necessary information, you will lose your right until the next trigger event occurs. (There are example letters on our websites)

Q. When I make an MRO request how long does my pubco have to provide it.

A. When one of the trigger events above occurs, you must make your request in writing with a number of details specified in the code within 21 days. This is calculated by calendar, not working day and the request must be received before 4.30pm on the 21st day. If you miss this deadline, your MRO request will be invalid. Your pubco must then respond within 28 days either with a new MRO proposal or explaining why they think the MRO trigger is not met. You then have up to 56 days to negotiate and try to agree a free of tie rent. If you cannot agree, you can decide to appoint an independent assessor to determine the market rent for you. There are strict timetables governing each step which must be met. (A full timetable is on our websites)

Q. I have received my MRO proposal but I am concerned about the terms on which it is being offered what can I do.

A. The terms on which an MRO rent is offered and the information to be provided are set out in law. The PCA website provides guidance on what is and is not permissible. If you think these have not been met or you have concerns about the nature of the lease being proposed, you

can lodge a case with the Pub Code Adjudicator's office and ask them to adjudicate. You must be specific about why you believe your new agreement proposal is non compliant. This must be done as soon as possible and no later than 14 days after receipt of the MRO proposal

Q. I have filed an objection to the Pub Code Adjudicator that the new lease being offered is not compliant does the 56 day negotiating period become suspended whilst I wait for an adjudication.

A. Yes the PCA have confirmed negotiations are suspended during the period of adjudication.

Q. What happens to my tied rent or renewal proposal if I trigger MRO - do I lose it and have to take a free of tie agreement?

A. No. Your tied rent proposal remains on the table throughout the MRO process and you can decide to accept or reject the MRO offer and revert to the tied offer at any time. However, if you accept a tied rent offer at any point during the negotiation period, your MRO process comes to an end

Q. Will my repairing liabilities and benefits change under an MRO agreement.

A. Almost certainly. You can expect that an MRO agreement will be on a full repairing basis and the majority of benefits enjoyed under any present agreement will be removed. We expect the new MRO agreements to be strictly run on a property based basis. This will mean that apart from property inspections and rent collection processes you are unlikely to receive any other communication with the owning company. An MRO compliant lease may not, however, contain any clauses which are not common in other commercial free of tie pub leases.

Q. I have been told that if I choose MRO, I can only get a 5 year agreement – is that correct?

A. No. The new agreement must be at least the same length as the remainder of your original tied lease and the pubco cannot change the nature of your tenure e.g. require you to have a contracted out tenancy. In addition, there is a general catch all which protects the tenant from being disadvantaged as a result of using the new rights.

Q. If I choose an MRO agreement, does any part of the tie remain?

A. No, an MRO agreement contains no tie of any kind. This would not stop you trying to negotiate a partial tie release or Free of Tie pricing as part of your tied rent negotiations. However, if you are a tenant of a brewing company, a stocking requirement may apply.

A stocking requirement is defined in the Small Business Enterprise and Employment Act 2015. This is a term that relates to either beer and/or cider produced by the landlord and does not require the tenant to buy that beer or cider from a particular supplier, nor prevent that tenant from selling beer or cider produced by another (whether or not it restricts such sales).

Tied pub tenants can refer a MRO proposal to the PCA for arbitration if they consider the proposal not to be MRO compliant. So, for example, if a tenant considers the stocking requirement to be unreasonable they can refer the case for arbitration. The arbitrator will consider whether it is unreasonable on a case-by-case basis. This means you will be free to purchase all products from whomsoever you wish but the brewery landlord could require you to stock their branded products as part of the MRO offer.

Q. I've been told my beer prices will go up by 3% this year – is that a significant price increase?

A. If the price of tied beer, other tied alcoholic products or other tied products or services is increased by an amount over and above CPI then this may be considered significant and you may be able to ask for a mid-term MRO assessment. However, you will need to be able to demonstrate that a genuine price increase has taken effect and that this has resulted in a cost increase across all tied product

Firstly, you must demonstrate that you have been notified of a change in the contractual price. Secondly, you must show that this price has taken effect on an invoice you have received. Finally, you must demonstrate that the effect of this is to increase the price not just of the relevant product but of all tied product in the relevant category – by more than 3 percentage points above CPI for tied beer, CPI + 8 for other tied alcoholic product or CPI +20 for other tied products or services.

In all cases, you must make a comparison of the net unit price of all tied beer ie the on invoice price netted off of VAT, duty and non-contractual discounts over a 4 week period when the price increase took effect and compared to the same period 12 months previously. The comparison is like for like – same name, same unit – and any product not appearing in both 4 week comparison periods should not be included in the calculation of price increase. So a change in price due to the ending of a promotional discount or a decision to change to a premium product should not trigger MRO.

Q. Only one of my tied beers has seen a big hike in price – what does that mean?

A. This may still trigger an MRO request if the change is significant enough, but you need to compare the average price at which you bought all tied beer 12 months ago with the average new price of all tied beer before comparing it to CPI. So, for example, draught Peroni and bottled Peroni would be different products and the change in price from changing from one to another would not be considered a price increase. Equally, if you previously bought John Smiths, Guinness and Kronenbourg and subsequently bought Adnams, Guinness and Peroni, you would only make a comparison of the price per unit of Guinness. So a price increase in one product may not be sufficient to trigger an MRO request.

Q. What is a substantial change in circumstances

A. You can request an MRO assessment mid term and outside a normal rent event if there has been an event which has a significant impact on trade on your pub or pubs in your immediate local area. This must be an event that will see long term change to local economic, environmental or employment factors **or** as a direct consequence of changes in the tie imposed by a pub owning business for example the removal or a particular tied product. You will have to provide written evidence and forecast the impact it will make on trade for the next 12 months to justify the request.

Q. I have a long lease at present what term does my company have to offer me on renewal or at rent review if I opt for MRO.

A. An MRO-compliant tenancy must be for at least the remainder of your tied agreement. So, if you have a 25 year lease which expires in 2030 and you opt for MRO at rent review in 2020, the pubco cannot give you an MRO agreement of less than 10 years. Equally, the pubco cannot remove contracted in rights when you switch to MRO.

Q. Will I still be tied for Gaming Machines

A. Yes if your lease pre-dates 21st July 2016 and already contained a gaming machine tie. From that date, no new lease or tenancy may contain a gaming machine tie, but you are still free to enter into a supply agreement with your pubco to purchase or rent machines. Your pubco can still insist the machines are supplied by one of their nominated suppliers even though you are free from the tie on them.

Q. I am being offered a Tenancy at Will (TAW) will the new Code apply?

A. No. Agreements of less than 12 months will not be covered by the new Code. (There is a helpful guide on the BII website re taking a TAW and we encourage anyone considering a TAW to read it).

Q. I am taking on a TAW what information must I be supplied with.

A. You must receive the following

1. Information on your repairing liabilities including maintenance of the Inventory
2. The condition the owning company expects the pub to be in on termination.
3. Details on who is paying for electric, gas, water, sewerage and any obligations regarding environmental impact and health and safety.
4. Details of the extent of the tie, current price lists, discounts applicable to the agreement and terms on which any machines are offered on.
5. Full details of the rent and any deposit required.
6. Details of any other fees, service charges etc that may be payable by the TAW.
7. Obligations under Transfer of Undertaking Protection of Employment Regulations (TUPE).

You must have completed Pre Entry Awareness Training (PEAT) unless you have held a tied lease in the past or can demonstrate business abilities in another industry.

Q. My Company says I am a franchisee and am exempt from the Code, is this true.

A. If the agreement is a genuine franchise then you are exempt from the MRO provisions but other parts of the Code will still apply. To be a genuine franchise, the agreement must :

1. allow you to sell the business to a third party at market value.
2. You are permitted by the owning company to use the relevant business model which you may pay a for and where there is an element of IP involved in running that model
3. You receive a fixed share of turnover or a relevant share of turnover
4. Your pub owning company offers marketing, training and other business support.
5. You are not required to you pay to the pub-owning business any other amount in respect of your occupation
6. Your owning company does not require you to make any other payments in connection with the supply of products or the services unless you have agreed to do so.

Q. What can I do if I disagree with my pubco on any of these points?

A. The new Statutory Adjudicator has been set up to arbitrate on disagreements over any aspect of the new Code, including behaviour. It costs £200 to lodge a case with the Adjudicator and the maximum amount of costs which may be awarded against the tenant if they are unsuccessful is £2000.

Q. Do you know if there will be any assistance given to understand the new regulations?

A. The ALMR, BII and FLVA all have helplines for their members which you can access.

Q. Will the Pre Entry Awareness Training (PEAT) be available for new tenants?

A. Yes, the new PEAT for England and Wales and a separate version for Scotland is available at <http://www.cple-learning.co.uk/courses/763/BII-PEAT> .

All tenants will be obliged to complete appropriate training before taking on a new agreement unless they hold a current tied tenancy, have 3 years' previous business experience or are a previous tenant of the pubco.