

Declarations by Pub-Owning Businesses on Preserving Tied Pub Tenants' Pubs Code Rights During the COVID-19 Emergency

The PCA recognises that everyone in the regulated tied pub sector may need to focus all of their energies on meeting the current challenges safe in the knowledge that Pubs Code rights are preserved and can still be activated once the COVID-19 emergency is over. The Pubs Code Adjudicator and Deputy Pubs Code Adjudicator have therefore urgently engaged with each of the six pub-owning businesses (POBs) covered by the Pubs Code¹ to seek to pause and protect the Code rights of tied pub tenants that will arise, or are ongoing, during the COVID-19 emergency period.

Measures have been formalised in a declaration signed up to by a Director of each of the POBs and the text is published on the [PCA website](#). To help tenants understand this legal declaration, here is a summary of what it means in practice. Tenants can contact the PCA or their POB for further information.

This declaration applies from 16th March 2020, when the Prime Minister advised the public not to visit pubs in England and Wales, and will run until 30 June 2020, subject to further review. The PCA will ensure that clear notice is given to tenants about the end of the period to which this declaration operates and the deadlines that then apply, so that they can understand by when they have to act. To ensure you receive any updates please sign up to the PCA alerts [here](#).

The Adjudicator and Deputy Adjudicator are actively monitoring the impact of the COVID-19 emergency on the regulated tied sector and will take further steps to support and maintain tenant's Pubs Code rights as and when these become necessary.

Non-MRO Rights

The time limit for bringing a referral for arbitration in respect of all Pubs Code rights, except those relating to the Market Rent Only (MRO) provisions, is four months. Each of the POBs has made a commitment which has the effect of stopping the clock on that four-month period during the emergency period.

Rent Assessment Proposals and Rent Proposals

Failure by a POB to serve a Rent Assessment Proposal (RAP) when required to do so would be a breach of the Code. The declaration means that the right of the tenant to refer for arbitration any failure to serve a RAP, or any dispute over the compliance of a RAP which is served, is preserved until after the emergency period. The same applies in respect of default in serving Rent Proposals.

MRO Gateways – Serving a MRO Notice

- RAP - The declaration means that the 21-day clock for serving a MRO notice is stopped where a RAP is received before or during the emergency period.

¹ Admiral Taverns; Ei Group / Stonegate; Greene King; Marston's; Punch Pubs; Star Pubs & Bars (Heineken UK)

- Renewals - POBs have said that they will not serve section 25 LTA notices during the emergency period. Any right of a tenant who has received a section 25 notice to serve a MRO notice is preserved until after the end of the emergency period.²
- POBs have agreed to tell the PCA if they intend to notify tenants of any price increases during the emergency period so that the regulator can consider whether additional measures to protect Code rights are required.
- Covid-19 cannot in and of itself be a trigger event as it affects all pubs in England and Wales. However, in relation to any trigger event, the emergency period will not count towards the period for serving a relevant analysis.

MRO Rights

Failure to serve a MRO full response when required to do so would be a breach of the Pubs Code, and where a POB defaults it will itself make a referral for arbitration to the PCA so that the tenant does not have to. The POB will ask for that referral to be stayed and for a ruling that it should serve a revised response after the emergency period.

Where the tenant is served with a MRO full response, any right to refer it for arbitration within the emergency period will be preserved until after the emergency period ends.

Regulation 28

Each POB has committed to ensure that tenants whose service of a MRO notice is delayed in circumstances covered by the declaration will get the benefit of the protection of regulation 28 of the Code from when they would otherwise have been expected to serve their MRO notice.

Market rent determinations

The declaration does not apply to an independent assessment of the market rent in the MRO process, and these may be dealt with on a case by case basis, based on the circumstances of the case and in line with the professional judgement of the independent assessor and the existing Code processes.

Arbitrations

In addition to the above, where the D/PCA is arbitrating disputes they are providing/ extending stays until 30 September 2020, subject to those in which the alternative arbitrator recommendation process has commenced. However, in all arbitrations either party may ask that the case proceed and not be stayed. The PCA has indicated the PCA's own approach to alternative arbitrators so that they may consider how best to manage their cases.

² Where a section 26 notice under the Landlord and Tenant Act 1954 (LTA) is served, the tenant should ensure they discuss with their legal advisors whether to serve a MRO Notice under the Code. Where a tenancy is contracted out of the LTA, but the terms provide a right to renew, the tenant should contact their pub company before that right to renew arises.