Pubs Code Adjudicator

What Tied Pub Tenants Need to Know

Market Rent Only (MRO) Rights

How to use this factsheet:

This factsheet is for tied pub tenants who want to know more about the **Market Rent Only (MRO) option** and their rights in relation to this**.**

It provides information to support tenant understanding. It is not a substitute for the Pubs Code legal framework.

You can find technical guides on our website which provide more detailed information about the Pubs Code provisions. We recommend that you refer to these guides if you would like more information and/or are considering accessing your rights under the Pubs Code.

Our website also contains other useful information about accessing your Pubs Code rights: www.gov.uk/pca

Terms and abbreviations

Term/abbreviation	What it means
Code	The Pubs Code etc. Regulations 2016
IA	Independent Assessor – someone who meets the criteria the PCA has set for independently determining the market rent.
PCA	Pubs Code Adjudicator (references to PCA include Deputy Pubs Code Adjudicator)
POB	Pub-owning Business (often referred to as pub companies)
TPT	Tied Pub Tenant
MRO	Market Rent Only
MRO Rent	The rent (or money payable instead of rent) for you to occupy the premises under a MRO-compliant tenancy.
Market Rent	The estimated rent it would be reasonable for you to pay to occupy the premises under a MRO-compliant tenancy.
MRO Option	The option for you to occupy the tied pub under a MRO-compliant tenancy and to pay a rent you have agreed with the POB in line with the MRO procedure or, failing such agreement, the market rent.
MRO Notice	A written notice you give to the POB to request the MRO option when an event occurs that gives you the right to make this request, as set out in the Code.
MRO Full Response	The POB's response to your MRO notice. If the POB agrees you have the right to pursue the MRO option, this response must include a proposed MRO-compliant tenancy.
Negotiation Period	The period of 56 days starting on the date you receive a MRO full response from the POB (or the date you receive a revised response where the arbitrator orders the POB to provide one).
Pubs Code Framework	The legal framework that regulates the relationship between the large pub-owning businesses and their tied pub tenants. It is made up of the Small Business, Enterprise and Employment Act 2015 (Part 4), The Pubs Code etc Regulations 2016, and The Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016.

Market Rent Only (MRO) Option

What is the MRO Option?

The MRO option is the right for you to:

- choose to occupy the tied pub under a **tenancy that is MRO-compliant** - see section: **What is a MRO-compliant tenancy?**

and pay either:

- the **rent agreed** between you and the POB in line with the MRO procedure; or
- the **market rent** (if you cannot agree the rent)

The MRO option is also known as the choice to go **"free of tie".**

When can I ask for the MRO Option?

There are **four** circumstances under the Pubs Code where you can ask for the MRO option. The Code calls these **MRO events** (also known as MRO gateways).

1. You receive a rent assessment proposal

A Rent Assessment Proposal (RAP) is the document in which the POB proposes the new rent you will pay in relation to your existing tenancy. When you receive a RAP, this starts the rent assessment (or assessment of money payable instead of rent).

The MRO event occurs when you receive the RAP.

Note: A RAP is different to a rent proposal.

For **more information** about:

- **Rent assessments** (including when the POB must send you a RAP, and the difference between this and a rent proposal) see factsheet:

  What Tied Pub Tenants Need to Know – Rent Assessments and Rent Assessment Proposals.

- **Rent proposals** see: Technical Guide No. 2

2. Renewal of your pub arrangement (e.g. your tenancy)

Your **pub arrangement** is:

- the tenancy under which you occupy the tied pub; and
- any other contractual agreement, which includes an obligation that the landlord supplies some or all the alcohol to be sold at the premises*.

*This extends to supply by any person the landlord nominates and any group undertakings in relation to the landlord.

The MRO event occurs when your pub arrangement (e.g. your tenancy) is renewed.

When is my tenancy renewed?

For a MRO event, the Code treats renewal of a tenancy as the first day the tenancy **may be** renewed under its terms. This applies unless it is a protected tenancy under the Landlord and Tenant Act 1954 ("1954 Act").

A protected tenancy generally gives you the right to occupy the premises after the lease expires, unless the court orders otherwise.

If you have a **protected tenancy** under the 1954 Act**,** the Code treats renewal of the tenancy as either:

- the day you receive the POB's notice under section 25(1) of the 1954 Act, proposing to end the tenancy; or

- the day the landlord receives your request under section 26 of the 1954 Act for a new tenancy.

If the MRO event is the renewal of your pub arrangement or you have received a RAP, you cannot send a MRO notice if the **investment exception applies.**

For **more information** about the investment exception see: **Technical Guide No. 9**

3. You are notified of a significant increase in the price at which a tied product or tied service is supplied to you.

The MRO event occurs when you receive the invoice that shows there has been a significant increase in the price at which a tied product or tied service is supplied to you. Once you receive the invoice, you are treated as having been notified.

An increase must meet specific requirements for it to amount to a **significant increase in price**.

For **more information** about how to work out if there has been a significant increase in price see: **Technical Guide No. 8**

4. You send a relevant analysis to the POB which demonstrates that a trigger event has occurred that will have a significant impact on trade

To show there has been a trigger event you must send the POB a written analysis of the forecasted level of trading from the day the trigger event occurred to at least 12 months later. This is your **relevant analysis**.

You have **56 days** to send your relevant analysis to the POB, starting the day after the trigger event.

The MRO event occurs when you send your relevant analysis to the POB.

When something happens that will affect trade, it must meet specific requirements for it to amount to a **trigger event.**

For **more information** about what amounts to a trigger event see: **Technical Guide No. 7**

MRO Procedure

The Pubs Code sets the procedure to be followed in connection with the offer of a market rent only option. This is the **MRO Procedure**.

It is important to note in this factsheet the circumstances under which the MRO procedure will end. When this happens, you can no longer continue with the MRO option in connection with that particular MRO notice (unless it has ended because you have entered into a MRO tenancy).

How do I ask for the MRO Option?

You must first notify the POB that you want it to offer you the MRO option. This is your **MRO notice**.

Your MRO notice must be in writing.

You can find a **template MRO notice** on our website.

For **more information** about sending a MRO notice see: **Technical Guide No. 4**

Note: Once you have given the POB a MRO notice, you cannot send another one for the same pub until the MRO procedure ends in relation to your first notice.

How long do I have to send my MRO notice?

The POB must **receive** your MRO notice within **21 days** of the MRO event, starting the day the MRO event occurred.

You must **include** the following in your MRO notice:

- ☑ Your name, postal address, email address (if any) and telephone number.
- ☑ The date you are sending the notice.
- ☑ The name and address of the tied pub to which the request relates.
- ☑ The date of the MRO event*
- ☑ A description of the event which in your opinion shows it is a MRO event.

*For a trigger event, the MRO event is when you send your relevant analysis to the POB.

What must the POB do in response to my MRO notice?

The POB must:

- **acknowledge** your MRO notice in writing as soon as it reasonably can; and
- send you its **full response**.

When must the POB send me its full response?

The POB must send its full response within **28 days**, starting the day it receives your MRO notice.

This is the **period of response.**

Note: The start of the period of response may be different if you are renewing a protected 1954 Act tenancy – see below.

Protected tenancy under the Landlord and Tenant Act 1954 ("1954 Act")

Where the MRO event is a tenancy renewal and:

- you have received the POB's notice under **section 25(1**) of the 1954 Act to end the tenancy, or the landlord has received your request under **section 26** for a new tenancy;

  and

- the POB opposes any application to the court for a new tenancy under **section 24(1)** of the 1954 Act, or it applies for a court order to end your tenancy under **section 29(2)**.

the 28-day period of response starts on the day the court makes the **order for the grant of a new tenancy.**

Where the landlord has received your request under **section 26** for a new tenancy**,** and the POB has not taken any action as outlined above, the 28-day period starts **two months after the day you made the section 26 request**.

The POB has not sent me its full response in the 28-day period. What can I do?

If the POB does not send you its full response within the 28-day period of response, you (or the POB) have **14 days,** starting the day after the end of the period of response to make an **arbitration referral to the PCA**.

You must **notify** the POB **in writing** if you intend to make an arbitration referral to the PCA. Likewise, if the POB is making the referral, it must notify you.

If the arbitrator decides **the circumstances are not such that the POB must offer you a MRO option,** the MRO procedure ends on the day of the arbitrator's decision. Otherwise, the arbitrator can order the POB to provide you with its full response.

What must the POB include in its full response?

The information the POB must include in its full response depends on whether it agrees with your opinion that a MRO event has occurred.

Where the POB **agrees** that a MRO event has occurred

The full response must include:

- ☑ a statement confirming it agrees that a MRO event has occurred; and
- ☑ a proposed tenancy which is MRO-compliant

See section: **What is a MRO-compliant tenancy?**

Where the POB **disagrees** that a MRO event has occurred

The full response must include:

- ☑ a statement confirming it disagrees that a MRO event has occurred; and
- ☑ its reasons for disagreeing.

What is a MRO-compliant tenancy?

For a tenancy to be MRO-compliant, its terms and conditions must meet **certain requirements** under the Code. This applies to a tenancy that the POB proposes as part of a full response, revised response, or any subsequent proposed tenancy.

The terms and conditions of the proposed MRO tenancy must be considered **together** with any other contractual agreement between you and the POB in connection with the tenancy.

When considered together, the terms and conditions must not be **unreasonable** and **must not** include any **product or service tie**, other than on buildings insurance.

Length of tenancy

Where the MRO notice relates to any of the following MRO events:

- rent assessment proposal
- significant increase in price
- trigger event

the length of the proposed tenancy must be at least the same length as the **remaining term** of the existing tenancy.

Unreasonable terms and conditions

Terms and conditions will automatically be **unreasonable** if, together with any other contractual agreement between you and the POB in connection with the tenancy, they:

☒ include **a break clause** for the MRO tenancy which **only the POB** can use.

☒ impose a **service tie on insurance** (other than buildings insurance).

☒ are **not common terms** in agreements between landlords and pub tenants who are **not** subject to product or service ties.

Where the existing tenancy is a **protected 1954 Act tenancy**, the terms and conditions will be unreasonable if, together with any other contractual agreement between you and the POB in connection with the tenancy, they:

☒ exclude the provisions of sections 24 to 28 of the Landlord and Tenant Act 1954 in relation to the proposed MRO tenancy.

Note: A **tenancy at will** is not MRO compliant.

A tenancy that includes a **stocking requirement** can be MRO-compliant, but the stocking requirement must:

- be reasonable;
- only relate to beer and/or cider that is produced by the landlord or a group undertaking of the landlord; and
- not require you to buy the beer or cider from any particular supplier.

For the PCA's published **advice** on code matters visit our website.

The POB has sent me its full response. What happens now?

After the POB has sent you its full response, you enter into the **Negotiation Period.**

The negotiation period is **56 days**, starting the date you receive the POB's full response.

Although the negotiation period is for a set amount of time, the Code requires that you and the POB try to agree a MRO-compliant tenancy **until the end of the MRO procedure.**

When you have told the POB, in writing, that you accept a proposed tenancy, you and the POB must enter into that tenancy **as soon as reasonably practicable.**

If you do not, either you or the POB may **refer this to the PCA**.

The MRO procedure ends on the date you enter into the tenancy.

In what circumstances can I refer the POB's full response to the PCA for arbitration?

You (or the POB) can refer the full response to the PCA if either:

- the POB has not included what it is required to in its full response (which could be a proposed tenancy that is not MRO-compliant).
- You do not agree with the POB's statement confirming it disagrees with your opinion that a MRO event has occurred.

To make an **arbitration referral** to the PCA, please complete our **Referral Form.**

When can I refer the POB's full response to the PCA?

You, or the POB, must make the arbitration referral to the PCA within **14 days**, starting the day after the **end of the 28-day period of response**.

Note: The 14-day period does not start when you receive the full response.

You must **notify** the POB **in writing** if you intend to make an arbitration referral to the PCA. Likewise, if the POB is making the referral, it must notify you.

Where the POB proposes another tenancy in the negotiation period, this is called a **subsequent proposed tenancy.**

If you do not think the subsequent proposed tenancy is MRO-compliant, you may make an **arbitration referral** to the PCA within **14 days**, starting the day after you receive the tenancy. The negotiation period and time for referring the MRO rent to an IA **does not** start again when you receive a subsequent proposed tenancy.

Note: A subsequent proposed tenancy is **not** a **revised response.**

The arbitrator can decide the POB must provide you with a revised response following a referral to the PCA.

See section: **I (or the POB) have made an arbitration referral to the PCA. What could happen?**

I do not agree with the MRO rent in the proposed tenancy. What can I do?

If you do not agree with the proposed MRO rent, you or the POB can ask an independent assessor (IA) to determine the market rent. You can do this from day 29 of the negotiation period until 7 days after the negotiation period ends.

Tenancy terms need to be settled (either by agreement or as may be ordered by the arbitrator) before you or the POB can make an IA referral. This is because the IA needs to be certain about the terms on which the rent is to be determined.

If you do not make a referral to the PCA or an IA, or accept a tenancy during the negotiation period, the MRO procedure will end on the day after the time for referral expires.

For **more information** about making a referral to an IA, see factsheet:

What Tied Pub Tenants Need to Know - Rent under a Market Rent Only (MRO) compliant tenancy and Independent Assessors

I (or the POB) have made an arbitration referral to the PCA. What could happen?

You should still try to reach an agreement with the POB, even after there has been an arbitration referral. Remember, the Code requires you and the POB to try to agree a MRO-compliant tenancy until the end of the MRO procedure.

If you cannot reach an agreement with the POB, the arbitrator will decide the arbitration claim.

No failure in connection with the full response

If the arbitrator decides there has been **no failure** in connection with the full response, the Code treats the full response as having been received by you on the day of the arbitrator's decision. This means, where there was no dispute that the MRO event occurred, the 56-day negotiation period starts again.

Where the arbitrator agrees with the POB's full response that there was no MRO event, the MRO procedure ends on the date of the arbitrator's decision.

Revised Response

The arbitrator can require the POB to send you a **revised response** (for example, if they decide the proposed tenancy is not MRO-compliant).

The POB must include in its revised response the same information that it is required to give you in a full response. That is:

- ☑ a statement confirming it agrees that a MRO event has occurred; and
- ☑ a proposed tenancy which is MRO-compliant.

The POB must provide its **revised response:**

- **within 21 days** of the arbitrator's decision; or
- **by another date** the arbitrator decides.

If the arbitrator decides the POB must send you a **revised response,** the 56-day negotiation period starts again following receipt of the revised response.

Your Tied Tenancy during the MRO procedure

There are **restrictions** on the POB's rights during the MRO procedure in relation to your tied rent, and your product and/or service ties.

Note: the following restrictions do not apply if the MRO notice relates to the renewal of a pub arrangement and the pub is occupied under a protected 1954 Act tenancy.

Tied Rent

If your rent (or money payable instead of rent) becomes payable at a higher rate after you give the POB your MRO notice, it must **not exercise any right to recover** the additional amount from you **during the MRO procedure.**

> **The MRO Procedure ends** if, within any tied **rent assessment** (or assessment of money payable instead of rent), you **agree the new rent in writing**.

Product or Service Ties

During the MRO procedure, the POB must not:

- **apply** a product or service tie to any products or services that were not tied when you gave your MRO notice.
- **remove** the tie from products or services that were tied when you gave your MRO notice.

> **If the MRO procedure ends** and you have **not** agreed a MRO option, the restrictions on the tied rent and any product or service ties **no longer apply**. If you accept the MRO option, the restrictions remain in place.
>
> Where you and the POB disagree as to whether it can recover an amount at the end of the MRO procedure, either of you may **refer this to the PCA.**

For the PCA's **published advice** on code matters visit our **website**.

What happens if my tied tenancy ends during the MRO procedure?

> **The MRO procedure will end** on the day your tied tenancy ends. This means you can no longer continue with the MRO option under the Pubs Code.

Questions about this factsheet

For **general queries** about the information in this factsheet, you may contact our enquiry service.

Please note, we can provide information about your rights, the Code and our processes. We cannot advise you about your case.

Complete our **online enquiry form** at www.gov.uk/pca

Email: enquiries@pubscodeadjudicator.gov.uk

Call **0800 528 8080** to request a call back

This factsheet provides information to support tenant understanding. It is not a substitute for the Pubs Code framework.

You may find it helpful to take independent professional advice before making any decisions that may affect you and your business.