

DRAFT PUBS CODE

INTRODUCTION

In the Government Consultation on Pub Companies and Tenants we consulted on a proposed Pubs Code. Having considered the responses to the Consultation we amended this draft Code and published a revised version with the Government Response to the Consultation in June 2014.

Legislation is currently before Parliament to establish a Pubs Adjudicator to enforce the Code and set out the powers it has to do so. Following Royal Assent this Code will be the subject of further consultation to ensure that the final draft will deliver its objectives. The final Code will be contained in a statutory instrument which will need to be approved by resolution of each House of Parliament before the Code comes into force.

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PART 1 - DEFINITIONS

1. In this Code:

“The Adjudicator” means the Pubs Code Adjudicator.

“Business Development Manager” means an employee of a pub-owning-business who is, from time to time, responsible for managing the relationship with, or is otherwise responsible for, the pub-owning-business’s interactions with the tenant.

“Code Compliance Officer” means an employee of a pub-owning-business who keeps records of the business’s compliance with this Code and provides such reports as necessary to the Audit Committee or appropriate governance board of the Pub-owning-business.

“Fee” means a payment in lieu of rent either on a turnover basis or by another means.

“Fee-based agreement” means a tenancy agreement where the tenant is charged a fee or other form of payment in lieu of rent.

“Fee assessment or parallel fee assessment” means any document or part of a document where the fees payable by a tenant are set out.

“Fee model” means the structure of payment of fees or other payments from the tied tenant to the pub-owning business.

“Gaming Machine” means a Category C or Category D Gaming Machine as defined by the Gambling Act 2005.

“Large pub-owning business” is as defined in the Small Business, Enterprise and Employment Bill.

“Landlord” is as defined in the Small Business, Enterprise and Employment Bill.

“Micro-business” – is as defined in the Small Business, Enterprise and Employment Bill.

“Pub-owning business” is as defined in the Small Business, Enterprise and Employment Bill.

“Premises” means the property and structures which are the subject of the tenancy.

“RICS Guidance” shall be taken to refer to the Royal Institution of Chartered Surveyors’ document *“The capital and rental valuation of public houses, bars, restaurants and nightclubs in England and Wales”* (GN 67/2010) published in December 2010 or any subsequent revisions of this guidance.

“Tenancy” is as defined in the Small Business, Enterprise and Employment Bill.

“Tied pub” is as defined in the Small Business, Enterprise and Employment Bill.

“Tied pub tenant” is as defined in the Small Business, Enterprise and Employment Bill.

PART 2 - INTERPRETATION OF THE CODE

2. All provisions of the Code should be interpreted purposively in accordance with the principles set out in the Small Business, Enterprise and Employment Bill, namely:
 - (a) The principle of 'fair and lawful dealing';
 - (b) The principle that, from the start of a new tenancy or following a rent review, a tied pub tenant of a large pub-owning-business should be 'no worse off than a free-of-tie pub tenant'.

PART 3 - GENERAL PROVISIONS

3. This Code applies only in relation to the practices of pub-owning businesses in their dealings with their tied pub tenants.
4. Parts 4, 8, 9 and 12 of this Code apply only to large pub-owning businesses.
5. Pub-owning businesses with 500 or more tied pubs must inform the Adjudicator and their tenants of such and must also inform the Adjudicator and their tenants if the number of tied pubs they own falls below 500.
6. This Code does not apply to micro-businesses. Micro-businesses may opt in to be bound by this Code by informing the Adjudicator and their tenants.
7. An attempt by a pub-owning business to discriminate against a tenant as a consequence of a tenant exercising or attempting to exercise his/her rights under this Code shall constitute a breach of the Code.

PART 4 - QUALIFIED PERSON REQUIREMENTS

8. Part 4 of this Code applies only to large pub-owning businesses.
9. Before a prospective tenant is offered a substantive agreement the pub-owning business must be satisfied that the tenant is a suitable and properly qualified person.
10. In order to demonstrate that the requirement at paragraph 9 has been met, the pub-owning business must ensure that the tenant (or joint tenants) has completed accredited pre-entry training which meets the Qualification Curriculum Authority's standards.
11. The pub-owning business is not required to comply with the requirement at paragraph 9 if the tenant agrees in writing that this obligation should be waived and the tenant:
 - (a) operates at least one other tied pub; or
 - (b) can demonstrate at least three years relevant business management experience; or
 - (c) has had a tenancy with the pub-owning business.

PART 5 - BUSINESS PLAN

12. Before a substantive agreement is offered, the pub-owning business must be satisfied that the tenant has a sustainable business plan.
13. In order to demonstrate that the requirement at paragraph 12 has been met, the pub-owning business must :
 - (a) ensure that the tenant has:
 - i. taken independent professional advice, including business, legal, property and rental valuation advice;
 - ii. produced an independent business plan, having received professional advice. The business plan must provide financial forecasts for the duration of the tenancy and it must include:
 - estimates of incomes and related costs;
 - a sensitivity analysis examining the business performance on an increase/decrease in business income and the effect of those increases/decreases on costs and profitability;
 - the impact of indexation if appropriate.
 - (b) advise the tenant to consult any relevant industry benchmarking reports which may assist with market comparisons for the preparation of the business plan.

PART 6 - INFORMATION REQUIREMENTS

14. A pub-owning business must provide a copy of this Code and the information in paragraph 15 to its tied pub tenants. This information must be supplied before reaching a substantial agreement and prior to rent negotiations and renewals.
15. Information Requirements
 - i. the types of tenancy offered by the pub-owning business.
 - ii. the period of tenure.
 - iii. details of any purchasing obligations (drink, food or services), including:
 - the national prices charged for these products;
 - qualifications for discount;
 - whether the tenant can purchase any drinks and/or food and/or services outside the tie and the process for agreeing these arrangements (if any);
 - the current and relevant price list and notification about any imminent changes;
 - if offered, the terms on which gaming machines would be supplied, arrangements for the distribution of income and outline trading, payment and credit terms.
 - iv. The nature, scope and extent of the respective repairs and maintenance obligations of the tenant and pub-owning business set out in the tenancy or another document (such as a company code of practice) during the life of the tenancy and the condition in which the premises should be returned to the pub-owning business at the end of the tenancy. This should include responsibilities for compliance with statutory requirements in relation to utilities at the pub premises, including electrics, gas, water and sewerage.
 - v. Where the tenant has repairing responsibilities the assumption will be that, unless specified in the tenancy as “put”, the requirement will be to “keep” or maintain the building in the condition set out in the schedule of condition.
 - vi. The pub-owning business’s process for discharging its repairs and maintenance responsibilities, including the process by which a tenant can raise maintenance and repairs issues for which the pub-owning business is responsible.

- vii. the procedures which tenants must follow to assign their tenancy (if applicable).
- viii. how the pub-owning business will deal with any requests for surrender of the tenancy.
- ix. the range of support programmes and advice which will be available during the operation of the tenancy, on issues such as:
 - the capabilities and training needs of the tenant and the tenant's employees;
 - licences and any relevant training requirements;
 - business management advice;
 - brand promotion and merchandising;
 - provision and maintenance of dispensing equipment;
 - pub promotion and marketing;
 - procurement benefits;
 - rating advice;
 - external decoration, signage, building repairs, car parks and gardens.
- x. the pub-owning business's policy for dealing with requests for assistance from tenants arising from circumstances where they experience business difficulties which are beyond their control.
- xi. whether the pub-owning business would be willing to consider amendments to its standard terms.
- xii. whether the tenant is afforded protection under Part II of the Landlord and Tenant Act 1954.
- xiii. the process by which a contracted-out agreement might be renewed, including the timeframe of notification to renew or otherwise.
- xiv. if the tenant has a right to a parallel rent or fee assessment under Part 8 of this Code.

- xv. specify the following information where the tenancy provides that the rent or fee is to be varied by reference to an index:
- which index will be used;
 - the date on which the rate will be assessed and applied;
 - the frequency of any adjustment;
 - that payments may be adjusted upwards or downwards, according to the movement of the index at the time; and
 - an illustration of the impact of indexation based on the current indexation rate.
- xvi. whether there is a superior landlord.
- xvii. whether the freehold or long leasehold owner (either pub-owning business or superior landlord) is actively seeking to sell the property.
- xviii. the procedures to be followed in establishing whether the tenant has breached the tenancy, the process by which a tenant will be informed that they are in breach and whether they will have opportunities to remedy the breach before legal action is taken.
- xix. information about the procedures to be adopted where the tenant feels the provisions of this Code have not been followed.

16. In addition the pub-owning business must:

- (a) provide the tenant with a blank template profit and loss account for business planning purposes if requested;
- (b) provide the tenant with a full description of the premises, including where appropriate:
 - i. details of the premises licence and any licence conditions;
 - ii. any enforcement action taken during the previous two years, where known;

- iii. information about any material changes of commercial conditions likely to appear in the pub's catchment area and how these might influence costs (e.g. service costs) and trading environment for the tenant;
 - iv. details of any restrictions on the premises' use, such as planning constraints on types of trading, access (including details of shared access), hours of trading and use classes;
 - v. a schedule of condition identifying the state in which the premises are being provided, drawing attention to any specific problems or features and clarifying what, if any, remedial work is required and expected in accordance with the terms of the tenancy and during the course of the tenancy and when this work is required.
- (c) unless otherwise specified in the tenancy, all provisions should be considered to be 'keep' not 'put';
- (d) encourage the tenant to inspect the premises thoroughly and obtain a survey of the premises ideally carried out by a professional with experience of the pub market;
- (e) advise whether fixtures and fittings will be purchased and, if so, provide information about the arrangements for payment;
- (f) where a dilapidations regime is applied under the tenancy in relation to the tenant's repair responsibilities, provide a protocol governing the treatment and procedures to be followed in dealing with dilapidations which will specify:
- i. the timetable for the review and updating of the original schedule of condition (not less than six months before the end of the tenancy);
 - ii. that any further dilapidations can be added to the schedule of condition at a later date in circumstances where there is clear evidence of new material consideration or developments which could not have been taken into account at an earlier date;
 - iii. the process for agreeing a schedule of wants and repairs in line with the schedule of condition;
 - iv. The period (not less than 12 months) before the end of the tenancy when a survey will be conducted to determine the extent of dilapidations;

- v. the process by which any dispute concerning the extent and amount of repairs and making good is resolved.
 - (g) clearly set out its policy regarding potential investment opportunities for improvements and refurbishments and any implications for rent;
 - (h) clarify whether it will maintain and meet the cost of insurances for the premises or whether the cost of such insurance is to be arranged by the pub-owning business and re-charged to the tenant or whether the tenant will be responsible for such insurance and, if the latter, any minimum requirements for insurance;
 - (i) clearly set out its policy regarding rent or fee suspensions or suspensions of minimum purchasing requirements under the tie when damage to the property impacts on its trading potential. This should also refer to any other support available.
17. Large pub-owning businesses must provide details about any rent and/or any other deposit arrangements including:
- i. the amount of the deposit;
 - ii. the period the deposit will be kept;
 - iii. arrangements for paying or accruing interest;
 - iv. circumstances in which the deposit might be increased;
 - v. when and how the deposit will be repaid to the tenant;
 - vi. how the deposit is treated in the case of pub-owning business insolvency.

PART 7 - RENT NEGOTIATIONS

18. All rent assessments for the negotiation of new tenancies, rent reviews and/or renewals must be produced, prepared and conducted in accordance with the RICS guidance prevailing at that time.¹ In addition, pub-owning businesses with 500 or more tied pubs must ensure that rent assessments must be signed by a qualified RICS valuer to this effect.
19. The assumptions included in the rental assessment model must be explained to the tenant; and supporting evidence where available must be fully justified, together with assessment procedures for rent reviews, including those matters that will be taken into account or disregarded by both parties.
20. Pub-owning businesses must provide a specific timetable for information to be provided in advance of rent negotiations, rent review and renewals.
21. Before reaching a substantive agreement and prior to rent negotiations and renewals a pub-owning business must advise the tenant to obtain independent professional advice, including rental valuation advice.
22. Upwards only rent review and/or renewals shall be considered invalid and unenforceable.
23. The pub-owning business must provide the tenant with sufficient information to allow them to negotiate rent (whether on a new tenancy, a renewal and/or a rent review) on a level playing field with the pub-owning business.
24. In order to demonstrate that the requirement at paragraph 23 has been met, the pub-owning business must ensure that Rent Assessments are accompanied by a shadow profit and loss statement and accompanying supporting information that is fully justified and explained and:
 - (a) contains sufficient detail to enable a prospective tenant to take proper professional advice upon the terms, conditions and effect of the tenancy being offered.

¹ RICS (2010) Capital and Rental Valuation of Pubs, Bars, Restaurants and Nightclubs in England and Wales

- (b) is accurate where it refers to historic data and reasonable where it refers to projected data.
- (c) includes volumes purchased from the pub-owning business or its agents over the past three years where available, including barrelage;
- (d) includes a reasonable figure for the projected sales and gross profit margins, with separate figures for: draught ales; lagers; ciders; wines; spirits; flavoured alcoholic beverages (FABs) and soft drinks;
- (e) includes a waste figure where it is not included in the gross profit margin;
- (f) includes reasonable estimates of operating costs including, where relevant, a reasonable estimated cost of a manager where the effect of such a cost will materially affect the earning potential of the tenant, for example, where the tenant is not intending to be the day to day manager;
- (g) explains how gaming machine income has been taken into account;
- (h) explains where specific costs are included as assumptions in other costs e.g. the cost of cellar gas;
- (i) expresses information as a percentage relative to turnover;
- (j) is net of Value Added Tax and Machine Games Duty;
- (k) is accompanied by the relevant national tied price lists;
- (l) references comparable benchmarks and explains the variance between the benchmark and the pub-owning-business costs estimate.

25. In addition the pub-owning business must:

- (a) provide the information at Part 6 of the Code if the tenant has not previously received this information or if the information has materially changed since it was provided to the tenant;
- (b) seek to comply with any reasonable request for further information from the tenant and/or their professional advisors relevant to the rent assessment;

(c) not unreasonably withhold information which may be used in third party determination of rent and this should be shared on request, subject to appropriate confidentiality agreements.

26. If any information is not available the pub-owning business must provide a reasonable explanation of the reason for this.
27. The pub-owning business must ensure that a responsible officer of the business or its agent involved in obtaining and/or evaluating the supporting material provided in preparing the Rent Assessment has visited the premises in question within the three months prior to the assessment being completed.
28. All relevant information including a Rent Assessment must be provided to existing tenants no less than six months before the rent review date.
29. The pub-owning business must conduct a Rent Review outside of the planned contractual rent review intervals if:
 - (a) a Rent Review has not been conducted within the previous five years or
 - (b) requested to do so by the tenant; and one of the following conditions is met:
 - i. the pub-owning business makes a significant alteration to the price at which it supplies tied products to the tenant or
 - ii. there has been an event outside of the tenant's control and unpredicted at the time of the previous rent review that impacts significantly on the tenant's ability to trade.²

² For example, the closure of an adjoining workplace which removes a considerable source of trade.

Negotiations of fees or other payments in lieu of rent

30. All fee assessments for the negotiation of new agreements, reviews, and/or renewals must be produced, prepared and conducted in accordance with the RICS guidance prevailing at that time. In addition, large pub-owning businesses must ensure that fee assessments must be signed by a qualified RICS valuer to this effect.
31. The fee model must be explained to the tenant including assessment procedures for any reviews of the fees.
32. Pub-owning businesses must provide a specific timetable for information to be provided in advance of negotiations, reviews and renewals. Before reaching a substantive agreement and prior to negotiations and renewals a pub-owning business must advise the tenant to obtain independent professional advice, including valuation advice.
33. Upwards only fee reviews and/or renewals shall be considered invalid and unenforceable.
34. The assumptions included in any fee assessment must be explained to the tenant and supporting evidence where available must be fully justified including those matters that will be taken into account or disregarded by both parties.
35. The pub-owning business must provide the tenant with sufficient information to allow them to negotiate (whether on a new agreement, a renewal and/or a fee review) on a level playing field with the pub-owning business.
36. In order to demonstrate that the requirement at paragraph 35 has been met, the pub-owning business must ensure that fee assessments are accompanied by a shadow profit and loss statement and accompanying supporting information that is fully justified and explained and:
 - (a) contains sufficient detail to enable a prospective tenant to take proper professional advice upon the terms, conditions and effect of the agreement being offered;
 - (b) is accurate where it refers to historic data and reasonable where it refers to projected data;
 - (c) includes volumes purchased from the pub-owning business or its agents over the past three years where available, including barrelage;
 - (d) includes a reasonable figure for the projected sales with separate figures for: draught ales; lagers; ciders; wines; spirits; flavoured alcoholic beverages (FABs) and soft drinks;

- (e) includes a waste figure where it is not included in the gross profit margin;
- (f) includes reasonable estimates of operating costs including, where relevant, a reasonable estimated cost of a manager where the effect of such a cost will materially affect the earning potential of the tenant, for example, where the tenant is not intending to be the day-to-day manager;
- (g) explains how gaming machine income has been taken into account;
- (h) explains where specific costs are included as assumptions in other costs e.g. the cost of cellar gas;
- (i) is net of Value Added Tax and Machine Games Duty;
- (j) is accompanied by the relevant national tied price lists; and
- (k) references comparable benchmarks and explains the variance between the benchmark and the pub-owning business's costs estimate.

37. In addition the pub-owning business must:

- (a) provide the information at Part 6 of the Code if the tenant has not previously received this information or if the information has materially changed since it was provided to the tenant;
- (b) seek to comply with any reasonable request for further information from the tenant and/or their professional advisors relevant to the fee assessment;
- (c) not unreasonably withhold information which may be used in any third party determination of fees and this should be shared on request, subject to appropriate confidentiality agreements.

38. If any information is not available, the pub-owning business must provide a reasonable explanation for this.

39. The pub-owning business must ensure that a responsible officer of the business or its agent involved in obtaining and/or evaluating the supporting material provided in preparing the fee assessment has visited the premises in question within the three months prior to the assessment being completed.

40. All relevant information including a fee assessment will be provided to existing tenants no less than six months before any fee review or renewal date

41. The pub-owning business must conduct a fee review outside of the planned contractual intervals if:

(a) a review has not been conducted within the previous five years or

(b) requested to do so by the tenant; and one of the following conditions is met:

- i. the pub-owning business makes a significant alteration to the fee model that impacts on the tenant's turnover share; or
- ii. there has been an event outside of the tenant's control and unpredicted at the time that fees were set that impacts significantly on the tenant's ability to trade.¹

¹ For example, the closure of an adjoining workplace which removes a considerable source of trade.

PART 8 - PARALLEL FREE-OF-TIE RENT ASSESSMENTS

42. Part 8 of this Code applies only to 'Large pub-owning businesses'.
43. A tied tenant of a large pub-owning business may lodge a request with the Pubs Code Adjudicator for a parallel rent assessment within 21 days of the point at which rent negotiations have failed on the basis of the initial tied offer.
44. If the request has been lodged within 21 days and the negotiations have failed, the Adjudicator will require the pub-owning business to provide to the tenant (or arrange for the provision of) a parallel rent assessment by a date which the Adjudicator will specify.
45. Rent negotiations have failed when:
 - (a) the pub-owning business has made an offer as to the rent payable under the tenancy, and
 - (b) either condition A or condition B has been met.
46. Condition A is that the Tenant has made a counter-offer which the pub-owning business has rejected.
47. Condition B is that the tenant has notified the pub-owning business that the tenant does not accept the offer, or (where the business has made one or more subsequent offers,) does not accept the latest offer and:
 - (a) the business has failed to respond within a period of 5 weeks, or
 - (b) the business has responded without making a further, improved offer which the tied tenant does not accept.
48. The tenant will pay a fee to the Adjudicator of £200.
49. A parallel free-of-tie rent assessment must be signed by a qualified RICS valuer as being conducted in accordance with the current RICS guidance.
50. The parallel rent assessment will remove product and service ties and adjust the rent payable and the costs to the tenant accordingly, setting out the necessary reasonable assumptions made.

51. It will be accompanied by a profit and loss account which will include both tied and free-of-tie scenarios. It will set out the projected trade, estimated costs of products and services and other relevant operating costs, the rent to be charged and the projected profit for the tenant.
52. The projected profit for the tenant under the tied scenario should be equal to or greater than the projected tenant profit that that tenant would receive under the free-of-tie scenario or the pub-owning business must provide a reasonable justification as to why the balance is lower.

Parallel assessments for fee agreements

53. A tied tenant with a fee-based agreement with a large pub-owning business can lodge a request with the Pubs Code Adjudicator for a parallel fee assessment within 21 days of the point at which negotiations have failed on the basis of the initial tied offer.
54. If the request has been lodged within 21 days and the negotiations have failed, the Adjudicator will require the pub-owning business to provide to the tenant (or arrange for the provision of) a parallel fee assessment by a date which the Adjudicator will specify.

Fee negotiations have failed when:

- (a) the pub-owning business has made an offer as to the fee or fees payable under the tenancy, and
 - (b) either condition A or condition B has been met.
55. Condition A is that the tenant has made a counter-offer which the pub-owning business has rejected.
 56. Condition B is that the tenant has notified the pub-owning business that the tenant does not accept the offer, or (where the business has made one or more subsequent offers,) does not accept the latest offer and:
 - (a) the business has failed to respond within a period of 5 weeks, or
 - (b) the business has responded without making a further, improved offer which the tied tenant does not accept.
 57. The tenant will pay a fee to the Adjudicator of £200.

58. The parallel fee assessment will remove product and service ties and adjust the fees payable and the costs to the tenant accordingly, setting out the necessary reasonable assumptions made.
59. It will be accompanied by a profit and loss account which will include both tied and free-of-tie scenarios. It will set out the projected trade, estimated costs of products and services and other relevant operating costs, the fees to be charged and the projected profit for the tenant.
60. A parallel free-of-tie rent assessment must be signed by a qualified RICS valuer as being conducted in accordance with the current RICS guidance.
61. The projected profit for the tenant under the tied scenario should be equal to or greater than the projected tenant profit that that tenant would receive under the free-of-tie scenario or the pub-owning business must provide a reasonable justification as to why the balance is lower.

PART 9 - BUSINESS DEVELOPMENT MANAGERS

62. Part 9 of this Code applies only to large pub-owning businesses.
63. The pub-owning business must:
- (a) provide Business Development Managers with a copy of this Code;
 - (b) provide training on the requirements of this Code to all Business Development Managers at least once every 12 months;
 - (c) publish their provisions and commitments regarding the competence and future progression of Business Development Managers, including qualifications and on-going training and their commitment to continuous professional development;
 - (d) provide information to tenants about the role of the Business Development Managers and the support and guidance they will provide.
64. The pub-owning business must ensure that Business Development Managers:
- (a) receive training before carrying out their first rent negotiations; and
 - (b) abide by the Code's overarching principle of fair and lawful dealing.
65. Business Development Managers must make a reasonable record of business discussions and agreements with tenants in respect of rent, repairs and matters impacting the tenant's business plan or future business planning purposes; and must provide the tenant with a note of the issues discussed within seven days, highlighting the need for the tenant to respond within seven days of receipt of the note if they do not agree any aspect of it.

PART 10 - MISCELLANEOUS PROVISIONS

Assignment of Tenancy

66. The pub-owning business must respond in a timely fashion to requests for assignment and explain the implications of disposal for the tenant.
67. Following a request for assignment from the tenant the pub-owning business must provide the tenant with information regarding:
 - (a) professional support and advice that is available;
 - (b) fees;
 - (c) buy-back arrangements (if any);
 - (d) any dilapidations.
68. The pub-owning business must provide the information at Part 6 of this Code to the tenant within a reasonable period, if requested by the tenant, to enable the tenant to provide this to the prospective assignee.
69. If the tenant can demonstrate that he/she has provided the prospective assignee with the information at Part 6 of this Code and that, for large pub-owning companies, the prospective assignee is a Qualified Person under Part 4 of this Code, the pub-owning business must not unreasonably withhold consent to a request for assignment. The Qualified Person waiver set out in Part 4 paragraph 10 may be used with an assignee.

Insurance

70. Where the pub-owning business charges the tenant for insurance the pub-owning business must:
 - (a) provide the tenant with full details of the insurance schedule (to include all aspects of cover provided), a summary of cover, the charges payable and any excess applicable;
 - (b) provide the tenant with any additional information to enable a comparable quotation to be sought;

- (c) price-match any like-for-like policies identified by the tenant by recompensing the monetary difference or alternatively allow the tenant to obtain their own insurance;
- (d) include insurance charges clearly and separately in the shadow profit and loss account.

Premises

- 71. The schedule of condition should be referenced when preparing wants of repair and dilapidations and it will form the basis of agreement on the repair liabilities of the tenancy offered.
- 72. In line with its repairs and maintenance contractual obligations the pub-owning business will keep the property in good and substantial repair, to the extent that there are any such obligations arising.

Gaming Machines

- 73. The pub-owning business must offer the tenant the option to be free of gaming machine purchasing obligations when agreeing or renewing a tenancy or when carrying out a Rent Review.

Flow Monitoring Equipment

- 74. Information obtained from flow monitoring equipment may be relied upon by a pub-owning business as evidence when taking enforcement action on purchasing obligations only if there is other evidence corroborating the flow monitoring data.

PART 11 - CODES OF PRACTICE

75. Where a Company Code of Practice is produced, nothing in the Company Code of Practice will exclude or otherwise adversely affect the rights of a tenant and duties of the pub-owning business set out in this Code.
76. If the pub-owning business produces a Company Code of Practice, it must be provided to all tied tenants.

PART 12 - COMPLIANCE

77. Part 12 of this Code applies only to large pub-owning businesses.
78. The pub-owning business must appoint a suitably qualified employee as the Code Compliance Officer.
79. The pub-owning business must ensure that the Code Compliance Officer:
- (a) will be provided with all resources necessary for the fulfilment of their role, including access to all documentation relating to the pub-owning business's obligations under this Code;
 - (b) has access to all the Business Development Managers to discuss issues in connection with the pub-owning business's obligations under this Code;
 - (c) will be available as a point of contact for tenants and any authority or other body making enquiries in relation to this Code;
 - (d) will be independent of, and must not be managed by, a Business Development Manager;
 - (e) will be available to discuss with the tenant the reasons for any decisions made by the pub-owning business in relation to this Code;
 - (f) will be available to discuss compliance with the Pubs Code Adjudicator;
 - (g) will keep records of the training received by Business Development Managers for inclusion in the pub-owning business's annual compliance report.
80. Pub-owning businesses must ensure that, for each complete financial year in which this Code is in force, the Code Compliance Officer delivers an annual compliance report to the Pubs Code Adjudicator, within four months of the end of the financial year to which the annual compliance report relates.

81. The annual compliance report must have been submitted to, and approved by, the chair of the pub-owning business's audit committee if an audit committee exists, and must include a detailed and accurate account, for the financial year to which the annual compliance report relates, of:
- (a) the pub-owning business's compliance with the Code in that financial year, including instances where a breach or alleged breach of the Code has been identified by a tenant, and the steps taken to rectify it;
 - (b) steps taken during the preceding year to ensure compliance with the Code, including details of employee training undertaken and guidance issued in relation to the Code.
82. The first annual compliance report required for the purposes of paragraph 80 shall cover the period from the commencement of this Code until the end of the first full financial year in which this Code is in force.
83. The pub-owning business must ensure that:
- (a) the Code Compliance Officer provides such other reports as are necessary to ensure that the pub-owning business's audit committee retains effective oversight over the pub-owning business's compliance with the Code; or
 - (b) if the pub-owning business does not have an audit committee, the Code Compliance Officer should report directly to the non-executive director of the pub-owning business who carries out the functions typically associated with an audit committee or, in the absence of such non-executive director, to the pub-owning business's Chief Executive Officer, Managing Director or equivalent.
84. A summary of the annual compliance report must be included in the pub-owning business's annual company report. If the pub-owning business does not produce an annual company report, the summary of the annual compliance report must be published clearly and prominently on the pub-owning business's website within four months after the end of the financial year to which the compliance report relates.

PART 13 - DISPUTE RESOLUTION

85. The pub-owning business must take all reasonable steps to resolve any disputes that arise under this Code swiftly.
86. Exercising rights under the Code should be interpreted as including making use of any of the dispute resolution functions of the Pubs Code Adjudicator, including making a complaint to the Pubs Code Adjudicator, referring a matter to the Pubs Code Adjudicator for information or providing information to the Pubs Code Adjudicator.
87. Information which may be used in any dispute resolution mechanisms should not be unreasonably withheld and should be shared on request, subject to appropriate confidentiality agreements.