

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: THE PUBS CODE ADJUDICATOR AND THE PUBS CODE

The Pubs Code

Section 42: The Pubs Code

281. Subsections (1) and (2) of this section provide that the Secretary of State must make regulations, to be known as the Pubs Code, within one year of this section coming into force, which will be two months after this Act receives Royal Assent – see section 165(3)(d)(i). The Pubs Code, which applies to England and Wales, must set out the practices and procedures which pub-owning businesses must follow when dealing with their tied pub tenants.
282. The Code is intended to ensure that pub tenants with an alcohol tie to a pub-owning business – as described in section 68 – are treated fairly. The Code’s purpose is to provide such tenants with increased transparency and fair treatment in their dealings with their pub-owning business, particularly in regard to rent assessments. This Act provides them with the right to take disputes on issues covered by the Code to the Adjudicator. The Code imposes obligations on pub-owning businesses with tied pub tenants, and everything else in this Part relates to that – for example, the Adjudicator’s arbitration and enforcement powers relate to whether the pub-owning business has complied with its obligations in the Code.
283. The Secretary of State must seek to ensure that the Pubs Code is in line with the principles of fair and lawful dealing and that tied tenants should be no worse off than if they were not bound by any product or service tie (subsection 3).
284. Subsection (4) sets out what the Pubs Code may cover; for example, the Code can set out requirements relating to the information which pub-owning businesses must provide to their tied tenants and can require pub-owning businesses to provide rent assessments to their tied tenants in certain circumstances. The Government plans to set out in the Code, following consultation, different rent assessment periods in situations where different amounts of substantial capital investment have been made, extending the rent assessment interval beyond the usual five years where it is appropriate to do so. This would have the effect of deferring the Market Rent Only option for that period until the next rent assessment (unless a significant price increase as set out in section 43(6)(c) or a trigger event beyond the tenant’s control as set out in section 43(9) take place. The Code will also set out the safeguards that must be met for an extended rent assessment interval to apply.

*These notes refer to the Small Business, Enterprise and Employment
Act 2015 (c.26) which received Royal Assent on 26 March 2015*

285. As some tenants make payments linked to the pub's turnover rather than a fixed rent, the Pubs Code can also require pub-owning businesses, in certain circumstances, to provide an assessment of any money payable by the tenant in lieu of rent (subsection (4)(b)(ii)).
286. The Pubs Code may also require pub-owning businesses, in certain circumstances, to provide parallel rent assessments to their tied tenants (subsection (5)). As set out in section 72(1) a "parallel rent assessment" will be defined in regulations.