



Small Business, Enterprise and Employment Act 2015

2015 CHAPTER 26

PART 4

THE PUBS CODE ADJUDICATOR AND THE PUBS CODE

The Pubs Code Adjudicator

41 The Adjudicator

- (1) A Pubs Code Adjudicator is established.
- (2) Part 1 of Schedule 1 makes provision about the Adjudicator.
- (3) Part 2 of that Schedule contains the Adjudicator's powers to require information.
- (4) Part 3 of that Schedule contains amendments consequential on the establishment of the Adjudicator.

Pubs Code

42 Pubs Code

- (1) The Secretary of State must, before the end of the period of one year beginning with the day on which this section comes into force, make regulations about practices and procedures to be followed by pub-owning businesses in their dealings with their tied pub tenants.
- (2) In this Part the regulations are referred to as “the Pubs Code”.
- (3) The Secretary of State must seek to ensure that the Pubs Code is consistent with—
 - (a) the principle of fair and lawful dealing by pub-owning businesses in relation to their tied pub tenants;

Status: This is the original version (as it was originally enacted).

- (b) the principle that tied pub tenants should not be worse off than they would be if they were not subject to any product or service tie.
- (4) The Pubs Code may, in particular—
- (a) contain requirements as to the provision of information by pub-owning businesses to their tied pub tenants;
 - (b) require pub-owning businesses, in specified circumstances, to provide the following assessments in relation to their tied pub tenants—
 - (i) rent assessments, or
 - (ii) assessments of money payable by the tenant in lieu of rent;
 - (c) make provision about the information that such assessments must contain and how they are to be calculated and presented;
 - (d) specify that such assessments must be conducted in accordance with provisions of documents specified in the Pubs Code;
 - (e) where any document is specified for the purposes of paragraph (d), refer to the provisions of the document as amended from time to time;
 - (f) impose other obligations on pub-owning businesses in relation to their tied pub tenants.
- (5) The Pubs Code may require pub-owning businesses to provide parallel rent assessments in relation to their tied pub tenants in specified circumstances, and in connection with such provision may—
- (a) confer on the Adjudicator functions in relation to parallel rent assessments,
 - (b) require the payment of a fee by tied pub tenants to the Adjudicator in connection with the exercise of those functions, and
 - (c) make provision corresponding to that mentioned in subsection (4)(c), (d) and (e).

43 Pubs Code: market rent only option

- (1) The Pubs Code must require pub-owning businesses to offer their tied pub tenants falling within section 70(1)(a) a market rent only option in specified circumstances.
- (2) A “market rent only option” means the option for the tied pub tenant—
- (a) to occupy the tied pub under a tenancy or licence which is MRO-compliant, and
 - (b) to pay in respect of that occupation—
 - (i) such rent as may be agreed between the pub-owning business and the tied pub tenant in accordance with the MRO procedure (see section 44), or
 - (ii) failing such agreement, the market rent.
- (3) The Pubs Code may specify—
- (a) circumstances in which a market rent only option must or may be an option to occupy under a tenancy;
 - (b) circumstances in which a market rent only option must or may be an option to occupy under a licence.
- (4) A tenancy or licence is MRO-compliant if—

Status: This is the original version (as it was originally enacted).

- (a) taken together with any other contractual agreement entered into by the tied pub tenant with the pub-owning business in connection with the tenancy or licence it—
 - (i) contains such terms and conditions as may be required by virtue of subsection (5)(a),
 - (ii) does not contain any product or service tie other than one in respect of insurance in connection with the tied pub, and
 - (iii) does not contain any unreasonable terms or conditions, and
 - (b) it is not a tenancy at will.
- (5) The Pubs Code may specify descriptions of terms and conditions—
- (a) which are required to be contained in a tenancy or licence for it to be MRO-compliant;
 - (b) which are to be regarded as reasonable or unreasonable for the purposes of subsection (4).
- (6) Provision made under subsection (1) must include provision requiring a pub-owning business to offer a tied pub tenant a market rent only option—
- (a) in connection with the renewal of any of the pub arrangements;
 - (b) in connection with a rent assessment or assessment of money payable by the tenant in lieu of rent;
 - (c) in connection with a significant increase in the price at which any product or service which is subject to a product or service tie is supplied to the tied pub tenant where the increase was not reasonably foreseeable—
 - (i) when the tenancy or licence was granted, or
 - (ii) if there has been an assessment of a kind mentioned in paragraph (b), when the last assessment was concluded;
 - (d) after a trigger event has occurred.
- (7) The Pubs Code may specify what “renewal” means in relation to a tenancy or a licence for the purposes of subsection (6).
- (8) In subsection (6) “pub arrangements”, in relation to a tied pub, means—
- (a) the tenancy or licence under which the tied pub is occupied, and
 - (b) any other contractual agreement which contains an obligation by virtue of which condition D in section 68 is met in relation to the premises.
- (9) In this Part a “trigger event”, in relation to a tied pub tenant, means an event which—
- (a) is beyond the control of the tied pub tenant,
 - (b) was not reasonably foreseeable as mentioned in subsection (6)(c),
 - (c) has a significant impact on the level of trade that could reasonably be expected to be achieved at the tied pub, and
 - (d) is of a description specified in the Pubs Code.
- (10) In this Part “market rent”, in relation to the occupation of particular premises under a tenancy or licence which is MRO-compliant, means the estimated rent which it would be reasonable to pay in respect of that occupation on the following assumptions—
- (a) that the tenancy or licence concerned is entered into—
 - (i) on the date on which the determination of the estimated rent is made,
 - (ii) in an arm’s length transaction,
 - (iii) after proper marketing, and

Status: This is the original version (as it was originally enacted).

- (iv) between parties each of whom has acted knowledgeably, prudently and willingly, and
- (b) that condition B in section 68 continues to be met.

44 Market rent only option: procedure

- (1) The Pubs Code may—
 - (a) make provision about the procedure to be followed in connection with an offer of a market rent only option (referred to in this Part as “the MRO procedure”);
 - (b) confer functions on the Adjudicator in connection with that procedure.
- (2) Provision made under subsection (1) may, in particular—
 - (a) make provision for the tied pub tenant to give notice to the pub-owning business that the tenant—
 - (i) considers that circumstances are such that the pub-owning business is required to offer the tenant a market rent only option, and
 - (ii) wishes to receive such an offer;
 - (b) specify a reasonable period (“the negotiation period”) during which the pub-owning business and the tied pub tenant may seek to agree the rent to be payable in respect of the tied pub tenant’s occupation of the premises concerned under the proposed MRO-compliant tenancy or licence;
 - (c) require the appointment of a person (referred to in this Part as an “independent assessor”) to determine the market rent of the premises concerned in a case where, at the end of the negotiation period, the pub-owning business and the tied pub tenant have not reached agreement as mentioned in paragraph (b);
 - (d) require that appointment to be made by the pub-owning business and the tied pub tenant acting jointly or (where they cannot agree on a person to appoint) by the Adjudicator;
 - (e) require the Adjudicator to set criteria which a person must satisfy in order to be appointed as an independent assessor;
 - (f) require that the market rent must be determined by the independent assessor within a specified reasonable period;
 - (g) specify that the determination of the market rent by the independent assessor must be conducted in accordance with provisions of documents specified in the Pubs Code;
 - (h) where any document is specified for the purposes of paragraph (g), refer to the provisions of the document as amended from time to time.
- (3) The Pubs Code may make provision for—
 - (a) the tenancy or licence under which the tied pub is occupied, and
 - (b) any other contractual agreement entered into by the tied pub tenant with the pub-owning business in connection with the tenancy or licence,

as they are in force when a notice is given by virtue of subsection (2)(a), to continue to have effect until such time as the MRO procedure has come to an end (regardless of whether any of the agreements would or could otherwise cease to have effect before that time).
- (4) The Pubs Code may, for the purposes of subsection (3), specify the circumstances in which the MRO procedure is to be treated as having come to an end.

45 Market rent only option: disputes

- (1) The Secretary of State may by regulations confer functions on the Adjudicator in connection with the resolution of disputes relating to the offer of a market rent only option.
- (2) The regulations may, in particular, make provision concerning the resolution of disputes about whether—
 - (a) circumstances are such that a pub-owning business is required to offer a tied pub tenant a market rent only option;
 - (b) a proposed tenancy or licence is MRO-compliant;
 - (c) a determination of the market rent of a tenancy or licence made by an independent assessor has been made in accordance with the Pubs Code;
 - (d) any other requirement of the MRO procedure has been complied with.
- (3) The regulations may, in particular, confer on the Adjudicator the function of determining the market rent of a tenancy or licence in such circumstances as may be specified in the regulations.
- (4) Nothing in sections 48 to 52 applies in relation to provision made by virtue of section 43 or 44 but the regulations may include provision which is similar to that contained in or made under those sections.

46 Review of Pubs Code

- (1) The Secretary of State must review the operation of the Pubs Code for each review period.
- (2) The first review period is the period beginning on the date on which the Pubs Code comes into force and ending 2 years after the following 31 March.
- (3) Subsequent review periods are each successive period of 3 years after the first review period.
- (4) As soon as practicable after a review period, the Secretary of State must—
 - (a) publish a report of the findings of the review for that period, and
 - (b) lay a copy of the report before Parliament.
- (5) In particular, the report must set out—
 - (a) the extent to which, in the Secretary of State's opinion, the Pubs Code is consistent with the principles set out in section 42(3), and
 - (b) any revisions of the Pubs Code which, in the Secretary of State's opinion, would enable the Pubs Code to reflect more fully those principles.

47 Inconsistency with Pubs Code etc

- (1) The Secretary of State may by regulations make provision about terms of a tenancy or other agreement between a pub-owning business and a tied pub tenant—
 - (a) which are inconsistent with the Pubs Code,
 - (b) which purport to penalise the tenant for requiring the business to act, or not act, in accordance with any provision of the Pubs Code with which the business is bound to comply,

Status: This is the original version (as it was originally enacted).

- (c) which purport to provide that a rent assessment or assessment of money payable by the tenant in lieu of rent in relation to the tied pub—
 - (i) may be initiated only by the business, or
 - (ii) may only determine that the rent or money payable in lieu of rent is to be increased.
- (2) The regulations may include provision about the effect of a term of a tenancy or other agreement being void or unenforceable as a result of the regulations.
- (3) Regulations under subsection (1) may make provision about terms of tenancies or other agreements entered into before the date on which the regulations come into force.
- (4) A term of any agreement between a pub-owning business and a tied pub tenant is void to the extent that it purports to—
 - (a) prevent the tenant from referring a dispute to the Adjudicator for arbitration in accordance with regulations under section 45 or in accordance with section 48, or
 - (b) penalise the tenant for making such a referral.
- (5) A term of an arbitration agreement between a pub-owning business and a tied pub tenant is unenforceable to the extent that it is inconsistent with—
 - (a) regulations under section 45,
 - (b) section 50,
 - (c) section 51, or
 - (d) regulations under section 51(7).
- (6) Subsections (4) and (5) apply to agreements entered into before the date on which those subsections come into force, as well as those entered into on or after that date.
- (7) The Secretary of State may by regulations make provision about the effect of a term of an agreement being void or unenforceable as a result of subsection (4) or (5).

Arbitration by Adjudicator

48 Referral for arbitration by tied pub tenants

- (1) In accordance with the following provisions of this section and section 49, a tied pub tenant may refer a dispute between the tenant and the pub-owning business concerned to the Adjudicator for arbitration.
- (2) If the Pubs Code specifies that particular provisions of the Pubs Code are arbitrable, a dispute may be referred to the Adjudicator only to the extent that it relates to an allegation by the tenant that the pub-owning business has failed to comply with an arbitrable provision of the Pubs Code.
- (3) If the Pubs Code specifies that particular provisions of the Pubs Code are not arbitrable, a dispute may be referred to the Adjudicator only to the extent that it relates to an allegation by the tenant that the pub-owning business has failed to comply with any other provision of the Pubs Code.
- (4) If the Pubs Code does not specify whether any of its provisions are arbitrable or not arbitrable, a dispute may be referred to the Adjudicator only to the extent that it relates to an allegation by the tenant that the pub-owning business has failed to comply with any provision of the Pubs Code.

- (5) Where a dispute is referred for arbitration under this section, the Adjudicator must either—
- (a) arbitrate the dispute, or
 - (b) appoint another person to arbitrate the dispute.

49 Timing of referral for arbitration by tied pub tenants

- (1) This section makes provision as to the period within which a tied pub tenant may refer a dispute to the Adjudicator in accordance with section 48.
- (2) Except in the case mentioned in subsection (3), the dispute may not be referred until after the expiry of the period of 21 days beginning with the date on which the tenant notifies the pub-owning business of the alleged non-compliance.
- (3) Where the Pubs Code requires a pub-owning business to provide a parallel rent assessment within a period of time specified by the Adjudicator, a dispute which relates to an allegation that the pub-owning business has failed to comply with that requirement may not be referred until the day after the day on which the specified period ends.
- (4) In all cases, a dispute may not be referred after the expiry of the period of 4 months beginning with the first date on which the dispute could have been referred.

50 Arbitration commenced by pub-owning businesses

- (1) This section applies where—
 - (a) there is an arbitration agreement between a tied pub tenant and a pub-owning business, and
 - (b) the business commences arbitral proceedings about a matter which is, or which includes, a Pubs Code dispute between the business and the tenant.
- (2) In this section a “Pubs Code dispute” means a dispute—
 - (a) which relates to an allegation by the tied pub tenant that the pub-owning business has failed to comply with a provision of the Pubs Code, and
 - (b) which the tenant would have been able to refer for arbitration by the Adjudicator in accordance with section 48 (were it not for the commencement of arbitral proceedings by the business).
- (3) Subsection (4) applies where—
 - (a) in accordance with the arbitration agreement, the Adjudicator is appointed to arbitrate the Pubs Code dispute, or
 - (b) the tied pub tenant wishes the Adjudicator to be appointed to arbitrate that dispute, and has given notice to that effect in accordance with subsections (5) to (7).
- (4) The Adjudicator must either—
 - (a) arbitrate the Pubs Code dispute, or
 - (b) appoint another person to arbitrate that dispute.
- (5) Notice under subsection (3)(b) must be given in writing to—
 - (a) the pub-owning business, and
 - (b) the Adjudicator.

- (6) In a case where the arbitration agreement provides for the arbitrator to be appointed by a person other than the pub-owning business or the tied pub tenant, notice under subsection (3)(b) must be given within 21 days beginning with the date on which that person notifies the tenant of the person proposed to be appointed as arbitrator.
- (7) In any other case, notice under subsection (3)(b) must be given within 21 days beginning with the date on which arbitral proceedings commenced.
- (8) Section 14 of the Arbitration Act 1996 makes provision about the commencement of arbitral proceedings.

51 Arbitration: supplementary

- (1) Subsection (2) applies where a tied pub tenant—
 - (a) refers a dispute to the Adjudicator under section 48, or
 - (b) gives notice as mentioned in section 50(3)(b) that the tenant wishes the Adjudicator to be appointed to arbitrate a dispute.
- (2) The tenant must pay a fee to the Adjudicator of an amount prescribed in regulations made by the Secretary of State (except in specified cases as mentioned in subsection (3)(b)).
- (3) The regulations may make further provision as to the fee, and may in particular—
 - (a) specify when the fee must be paid,
 - (b) specify cases in which the tenant is not required to pay the fee,
 - (c) specify cases in which the fee is to be refunded to the tenant.
- (4) The following subsections apply in all cases where the Adjudicator or a person appointed by the Adjudicator arbitrates a dispute.
- (5) Except where this Part makes different provision, the arbitration must be conducted in accordance with—
 - (a) the rules regarding arbitrations issued from time to time by the Chartered Institute of Arbitrators, or
 - (b) the rules of another dispute resolution body nominated by the arbitrator.
- (6) The pub-owning business concerned must pay the reasonable fees and expenses of the arbitrator in respect of the arbitration, except where—
 - (a) the arbitration follows a referral by the tenant under section 48, and
 - (b) the arbitrator concludes that the referral was vexatious.
- (7) The Secretary of State may by regulations make provision in relation to the costs payable by a tied pub tenant in respect of the arbitration, and the regulations may in particular—
 - (a) provide that those costs are limited to an amount prescribed in, or to be determined in accordance with, the regulations, and
 - (b) specify circumstances in which the arbitrator may make an award requiring the tenant to pay costs exceeding that amount.

52 Information about arbitration

- (1) If the Adjudicator appoints another person as arbitrator under section 48(5)(b) or 50(4)(b), the Adjudicator may require the arbitrator, or the pub-owning business and tied

pub tenant concerned, to provide information to assist the Adjudicator in carrying out functions under this Part.

- (2) The Adjudicator may enforce the requirement to provide information by bringing civil proceedings to obtain an injunction.

Investigations by Adjudicator

53 Investigations

- (1) The Adjudicator may investigate whether a pub-owning business has failed to comply with the Pubs Code if the Adjudicator has reasonable grounds to suspect that—
 - (a) the business has failed to comply with the Pubs Code, or
 - (b) the business has failed to follow a recommendation made under section 56.
- (2) The Adjudicator may not carry out an investigation until the guidance required by section 61(1) has been published.

54 Investigation reports

- (1) Following an investigation, the Adjudicator must—
 - (a) publish a report on the outcome of the investigation, and
 - (b) consider whether to use any of the enforcement powers mentioned in section 55.
- (2) An investigation report must, in particular, specify—
 - (a) any findings that the Adjudicator has made,
 - (b) any action that the Adjudicator has taken or proposes to take, and
 - (c) the reasons for the findings and any action taken or proposed.
- (3) An investigation report need not identify the pub-owning business concerned.
- (4) If a pub-owning business is identified in a report, the business must have been given a reasonable opportunity to comment on a draft of the report before publication.

55 Forms of enforcement

- (1) If, as a result of an investigation, the Adjudicator is satisfied that a pub-owning business has failed to comply with the Pubs Code, or has failed to follow a recommendation made under section 56, the Adjudicator may take one or more of the following enforcement measures—
 - (a) make recommendations;
 - (b) require information to be published;
 - (c) impose financial penalties.
- (2) Where an investigation concerns two or more pub-owning businesses, the Adjudicator may decide—
 - (a) to take different enforcement measures against different businesses,
 - (b) not to take any enforcement measures against one or more of the businesses.

56 Recommendations

- (1) If the Adjudicator chooses to enforce through making recommendations, that means recommending what the pub-owning business should do in order to comply with the Pubs Code, and specifying the time by which the business should do it.
- (2) The Adjudicator must monitor whether a recommendation has been followed.

57 Requirements to publish information

- (1) If the Adjudicator chooses to enforce through requiring information to be published, that means requiring the pub-owning business to publish information relating to the investigation.
- (2) The publication requirement is imposed by giving the pub-owning business written notice specifying—
 - (a) what information is to be published,
 - (b) how it must be published, and
 - (c) the time by which it must be published.
- (3) The Adjudicator may enforce the requirement to publish information by bringing civil proceedings to obtain an injunction or any other appropriate remedy or relief.

58 Financial penalties

- (1) If the Adjudicator chooses to enforce through imposing financial penalties, that means imposing a penalty on the pub-owning business of an amount not exceeding the permitted maximum (see subsection (6)).
- (2) The financial penalty is imposed by giving the pub-owning business written notice specifying—
 - (a) the grounds for imposing the penalty,
 - (b) the amount of the penalty,
 - (c) the period within which it must be paid, and
 - (d) how it must be paid.
- (3) The pub-owning business may appeal to the High Court against—
 - (a) the imposition of a financial penalty, or
 - (b) its amount.
- (4) Financial penalties under this section are recoverable by the Adjudicator as a debt.
- (5) Financial penalties received by the Adjudicator must be paid into the Consolidated Fund.
- (6) The Secretary of State must make regulations—
 - (a) specifying the permitted maximum, or
 - (b) specifying how the permitted maximum is to be determined.

59 Recovery of investigation costs

- (1) The Adjudicator may require a pub-owning business to pay some or all of the costs of an investigation (including any costs incurred in exercising the enforcement powers) if satisfied that—
 - (a) the business has failed to comply with the Pubs Code, or
 - (b) the business has failed to follow a recommendation made under section 56.
- (2) The Adjudicator may require a person to pay some or all of the costs of an investigation if—
 - (a) the Adjudicator carried out the investigation as a result of a complaint by the person, and
 - (b) the Adjudicator is satisfied that the complaint was vexatious or wholly without merit.
- (3) A requirement to pay costs is imposed by giving written notice specifying—
 - (a) the grounds for imposing the requirement to pay costs,
 - (b) how much is to be paid,
 - (c) by when the costs are to be paid, and
 - (d) how they are to be paid.
- (4) A person required to pay costs under this section may appeal to the High Court against—
 - (a) the imposition of the requirement, or
 - (b) the amount to which it relates.
- (5) Costs required to be paid under this section are recoverable by the Adjudicator as a debt.

Advice and guidance by Adjudicator

60 Advice

The Adjudicator may give advice on any matter relating to the Pubs Code to—

- (a) tied pub tenants,
- (b) any organisation representing the interests of tied pub tenants,
- (c) pub-owning businesses,
- (d) any organisation representing the interests of pub-owning businesses.

61 Guidance

- (1) The Adjudicator must publish guidance about—
 - (a) the criteria that the Adjudicator intends to adopt in deciding whether to carry out investigations,
 - (b) the practices and procedures that the Adjudicator intends to adopt in carrying out investigations,
 - (c) the criteria that the Adjudicator intends to adopt in choosing whether to use the enforcement powers and which ones, and
 - (d) the criteria that the Adjudicator intends to adopt in deciding the amount of any financial penalty under section 58.

Status: This is the original version (as it was originally enacted).

- (2) In addition, the Adjudicator may publish guidance about the practices and procedures that the Adjudicator intends to adopt in carrying out other functions.
- (3) The Adjudicator may publish guidance about—
 - (a) the application of any provision of the Pubs Code;
 - (b) steps that pub-owning businesses need to take in order to comply with the Pubs Code;
 - (c) any other matter relating to the Pubs Code.
- (4) Before publishing guidance under this section, the Adjudicator must consult any persons the Adjudicator thinks appropriate.
- (5) The Adjudicator must publish the first guidance under subsection (1)(a), (b), (c) and (d) within 6 months beginning with the day on which section 41 comes into force.
- (6) Where there is any guidance in force under this section, the Adjudicator must take account of it in carrying out functions.

Adjudicator's reporting requirements

62 Annual report

- (1) After the end of each reporting period, the Adjudicator must prepare and publish a report describing what the Adjudicator has done during the period.
- (2) The report must include a summary of—
 - (a) arbitrations conducted by the Adjudicator,
 - (b) investigations carried out by the Adjudicator,
 - (c) cases in which the Adjudicator has taken the enforcement measures mentioned in section 55, and
 - (d) cases in which the Adjudicator has exercised functions in relation to the offer of a market rent only option or the provision of parallel rent assessments.
- (3) If the Adjudicator has made recommendations under section 56, the report must include an assessment of whether they have been followed.
- (4) As well as publishing the report, the Adjudicator must send a copy to the Secretary of State.
- (5) The Secretary of State must lay a copy of the report before Parliament.
- (6) In this section “reporting period” means—
 - (a) the period beginning with the day on which section 41 comes into force and ending with the following 31 March, and
 - (b) each successive period of 12 months.

Funding of Adjudicator

63 Levy funding

- (1) The Adjudicator may require pub-owning businesses to pay in each financial year a levy towards the Adjudicator's expenses.

Status: This is the original version (as it was originally enacted).

- (2) Before imposing a levy, the Adjudicator must obtain the Secretary of State’s consent.
- (3) In deciding the amount of a levy, the Adjudicator must take into account any sums received or expected to be received from other sources.
- (4) The Adjudicator may take into account estimated as well as actual expenses.
- (5) The Adjudicator may require different pub-owning businesses or different descriptions of pub-owning businesses to pay different amounts of levy, but any differences must be based on criteria broadly intended to reflect the expense and time that the Adjudicator expects to spend in dealing with matters relating to different pub-owning businesses.
- (6) The Adjudicator must inform each pub-owning business of—
 - (a) the amount of any levy payable by the business,
 - (b) when payments are due, and
 - (c) how the levy is to be paid.
- (7) A levy required to be paid under this section is recoverable by the Adjudicator as a debt.
- (8) The Adjudicator must publish details of levies and an explanation of how the amounts have been decided (including any criteria under subsection (5)).
- (9) If the Adjudicator has a surplus, the Adjudicator may repay some or all of it to pub-owning businesses.
- (10) In subsection (9) “surplus” means money held by the Adjudicator at the end of a financial year less liabilities shown in the Adjudicator’s statement of accounts for that financial year.

64 Loans by Secretary of State

The Secretary of State may make loans to the Adjudicator.

Supervision of Adjudicator

65 Review of Adjudicator and guidance from Secretary of State

- (1) The Secretary of State must review the Adjudicator’s performance for each review period.
- (2) The first review period is the period beginning on the day on which section 41 comes into force and ending 2 years after the following 31 March.
- (3) Subsequent review periods are each successive period of 3 years after the first review period.
- (4) A review must, in particular, assess how effective the Adjudicator has been in enforcing the Pubs Code.
- (5) A review may consider whether it would be desirable to amend or replace any regulations for the time being in force under section 51(2) or (7) or 58(6).
- (6) As soon as practicable after a review period, the Secretary of State must—
 - (a) publish a report of the findings of the review for that period, and

Status: This is the original version (as it was originally enacted).

- (b) lay a copy of the report before Parliament.
- (7) As a result of the findings of a review, the Secretary of State may give guidance to the Adjudicator about any matter relating to the Adjudicator’s functions.
- (8) The Adjudicator must take account of the guidance in carrying out functions.

66 Abolition of Adjudicator

- (1) The Secretary of State may by regulations abolish the Adjudicator—
 - (a) if, as a result of the findings of a review, the Secretary of State is satisfied that the Adjudicator has not been sufficiently effective in securing compliance with the Pubs Code to justify the continued existence of an Adjudicator,
 - (b) if, as a result of the findings of a review, the Secretary of State is satisfied that it is no longer necessary for there to be an Adjudicator to secure compliance with the Pubs Code, or
 - (c) if the Pubs Code is revoked and not replaced.
- (2) The regulations may include provision transferring the Adjudicator’s property, rights and liabilities.
- (3) For the purpose of giving effect to the abolition of the Adjudicator, the regulations may amend or repeal this Part or any other enactment, including an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978.

67 Information to Secretary of State

The Secretary of State may require the Adjudicator to provide information to assist the Secretary of State in carrying out functions under this Part.

Supplementary

68 “Tied pub”

- (1) In this Part a “tied pub” means premises in relation to which conditions A to D are met.
- (2) Condition A is that the premises have a premises licence authorising the retail sale of alcohol for consumption on the premises.
- (3) Condition B is that the main activity or one of the main activities carried on at the premises is the retail sale of alcohol to members of the public for consumption on the premises.
- (4) Condition C is that the premises are occupied under a tenancy or licence.
- (5) Condition D is that the tenant or licensee of the premises is subject to a contractual obligation that some or all of the alcohol to be sold at the premises is supplied by—
 - (a) the landlord or a person who is a group undertaking in relation to the landlord, or
 - (b) a person nominated by the landlord or by a person who is a group undertaking in relation to the landlord.
- (6) But condition D is not met if the contractual obligation is a stocking requirement.

Status: This is the original version (as it was originally enacted).

- (7) The contractual obligation is a stocking requirement if—
- (a) it relates only to beer or cider (or both) produced by the landlord or by a person who is a group undertaking in relation to the landlord,
 - (b) it does not require the tied pub tenant to procure the beer or cider from any particular supplier, and
 - (c) it does not prevent the tied pub tenant from selling at the premises beer or cider produced by a person not mentioned in paragraph (a) (whether or not it restricts such sales).
- (8) In subsection (7), “beer” and “cider” have the same meanings as in the Alcoholic Liquor Duties Act 1979 (see section 1 of that Act).
- (9) In this section—
- “alcohol” has the meaning given by section 191 of the Licensing Act 2003;
 - “premises licence” has the same meaning as in that Act.

69 “Pub-owning business”

- (1) A person is a “pub-owning business” for the purposes of this Part—
- (a) in the period beginning with the day on which the Pubs Code comes into force and ending with the following 31 March, if immediately before the Pubs Code comes into force the person was the landlord of 500 or more tied pubs;
 - (b) in any subsequent financial year, if for a period of at least 6 months in the previous financial year the person was the landlord of 500 or more tied pubs.
- (2) For the purposes of calculating the number of tied pubs of which a person (“L”) is the landlord, any tied pub the landlord of which is a person who is a group undertaking in relation to L is treated as a tied pub of which L is the landlord.
- (3) A person not falling within subsection (1) and who is the landlord of a tied pub occupied by a tied pub tenant who has extended protection in relation to that tied pub is also a pub-owning business for the purposes of this Part in relation to that occupation.
- (4) A tied pub tenant has “extended protection in relation to a tied pub” if—
- (a) the tenant occupies the tied pub under a tenancy or licence at a time when the landlord is a person who is a pub-owning business by virtue of subsection (1), and
 - (b) before the end of that tenancy or licence the landlord is no longer such a person (whether because of a transfer of title or because the landlord ceases to fall within subsection (1)).
- (5) But a tied pub tenant ceases to have “extended protection in relation to a tied pub” on the earlier of—
- (a) the end of the tenancy or licence concerned, and
 - (b) the conclusion of the first rent assessment or assessment of money payable in lieu of rent to be provided after the landlord is no longer a person who is a pub-owning business by virtue of subsection (1).
- (6) The Secretary of State may for the purposes of subsections (4) and (5) by regulations specify—
- (a) when a tenancy or licence ends;

- (b) when a rent assessment or assessment of money payable in lieu of rent is concluded.
- (7) Nothing in sections 43 to 45 and sections 53 to 59 has effect in relation to a person who is a pub-owning business by virtue of subsection (3).
- (8) The Secretary of State may by regulations specify circumstances in which a person who is a group undertaking in relation to a pub-owning business—
 - (a) is to be treated, or
 - (b) may if the Adjudicator so determines be treated,
 as a pub-owning business (as well as or instead of any other person) for the purposes of any provision of or made under this Part.
- (9) The Secretary of State may by regulations—
 - (a) amend subsection (1)(a) or (b) so as to substitute a different number of tied pubs, or a different period, from the number or period for the time being specified there,
 - (b) make provision in relation to the calculation of the number of tied pubs, whether by amending subsection (2) or otherwise.

70 “Tied pub tenant”, “landlord”, “tenancy” and “licence”

- (1) In this Part a “tied pub tenant” means a person—
 - (a) who is the tenant or licensee of a tied pub, or
 - (b) who is a party to negotiations relating to the prospective tenancy of or licence to occupy premises which are, or on completion of the negotiations are expected to be, a tied pub.
- (2) In this Part—
 - “landlord” means—
 - (a) in relation to a tied pub occupied under a tenancy, the immediate landlord, or
 - (b) in relation to a tied pub occupied under a licence, the licensor;
 - “licence” means a licence to occupy premises; and “licensee” is to be construed accordingly;
 - “tenancy” means a tenancy created either immediately or derivatively out of the freehold, whether—
 - (a) by a lease or sub-lease,
 - (b) by an agreement for a lease or sub-lease,
 - (c) by a tenancy agreement or sub-tenancy agreement, or
 - (d) in pursuance of a provision of, or made under, an Act,
 and includes a tenancy at will.
- (3) Where two or more persons jointly constitute either the landlord or the tied pub tenant, any reference in this Part to the landlord or to the tied pub tenant is a reference to both or all of the persons who jointly constitute the landlord or the tied pub tenant, as the case may require.

71 Power to grant exemptions from Pubs Code

- (1) The Secretary of State may by regulations provide that the Pubs Code does not, or specified provisions of the Pubs Code do not, apply in relation to—
 - (a) the dealings of pub-owning businesses—
 - (i) with tied pub tenants of a specified description, or
 - (ii) in relation to tied pubs of a specified description;
 - (b) the dealings of a specified pub-owning business or pub-owning businesses of a specified description—
 - (i) with their tied pub tenants or tied pub tenants of a specified description, or
 - (ii) in relation to their tied pubs or tied pubs of a specified description.
- (2) Regulations under subsection (1) may, in particular, specify a description of pub-owning businesses or tied pub tenants by reference to—
 - (a) the nature of the tenancy or licence, or
 - (b) the nature of any other contractual agreement entered (or to be entered) into by the tied pub tenant with the pub-owning business, or a person nominated by that business, in connection with the tenancy or licence.
- (3) The regulations may provide for circumstances in which a tied pub of a specified description is to be disregarded for the purposes of determining under section 69 whether a person is a pub-owning business.
- (4) In this section “specified” means specified in regulations.

72 Interpretation: other provision

- (1) In this Part—
 - “the Adjudicator” means the Pubs Code Adjudicator;
 - “arbitration agreement” has the same meaning as in section 6 of the Arbitration Act 1996;
 - “financial year” means a period of 12 months beginning with 1 April and ending with 31 March;
 - “group undertaking” has the meaning given by section 1161 of the Companies Act 2006;
 - “independent assessor” has the meaning given by section 44;
 - “market rent” and “market rent only option” have the meanings given by section 43;
 - “MRO procedure” has the meaning given by section 44;
 - “MRO-compliant”, in relation to a tenancy or licence, has the meaning given by section 43;
 - “parallel rent assessment” has such meaning as may be prescribed in regulations made by the Secretary of State;
 - “product or service tie” means a product tie or a service tie;
 - “product tie” means any contractual obligation, other than a stocking requirement, of a tied pub tenant that a product to be sold at the tied pub must be supplied by—
 - (a) the landlord of the tied pub or a person who is a group undertaking in relation to the landlord, or

Status: This is the original version (as it was originally enacted).

- (b) a person nominated by the landlord or by a person who is group undertaking in relation to the landlord;
 - “the Pubs Code” means the regulations under section 42;
 - “service tie” means any contractual obligation of a tied pub tenant to receive a service supplied by—
 - (a) the landlord of the tied pub or a person who is a group undertaking in relation to the landlord, or
 - (b) a person nominated by the landlord or by a person who is a group undertaking in relation to the landlord;
 - “stocking requirement” has the meaning given by section 68.

- (2) In this Part, references to “rent”, in relation to a licence to occupy, are to be read as references to the fee payable in respect of the licence.

73 Regulations under this Part

- (1) Subject to subsection (2), regulations under this Part are subject to affirmative resolution procedure.
- (2) Regulations under section 66(1)(c) are subject to negative resolution procedure.
- (3) If a draft of an instrument containing regulations under section 71 would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed as if it were not such an instrument.