



UK PUB INDUSTRY
FRAMEWORK CODE OF PRACTICE
for Tied Tenanted and Leased Pubs

January 2010

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INTRODUCTION TO FRAMEWORK CODE OF PRACTICE

This third revision of the pub industry Framework Code sets out the minimum standards and requirements that tenants/lessees should expect from a pub company, regarding the letting and operation of leased and tenanted tied pubs, which must be incorporated into individual company Codes of Practice.



The Code is intended to ensure that prospective tenants/lessees have the necessary skills, advice and knowledge to take on a pub business and to receive sufficient information to enable them to undertake a thorough evaluation of the business opportunity and prepare a detailed business plan.

The Code demands transparency and disclosure from pub companies in the setting of rents and includes forms of redress to ensure potential (and existing) tenants/leaseholders can better understand the business that they are entering and the assistance that can be sought.

The Code sets out the level of detail to be provided to the tenant/lessee at initial rent setting and subsequent rent review and introduces the Pub Independent Rent Review Scheme (PIRRS) as an alternative to rent arbitration. The Code also sets out a requirement for prospective tenants/lessees to undertake training to ensure they fully understand the implications of a pub tenancy/lease and further places obligations on lessees wishing to assign their lease.

This Code of Practice sets out the requirements for the contents of individual Company Codes of Practice. Companies offer a wide variety of different business models that fall under the general descriptions of tenancies and leases.

Tenancies are typically agreements with a short period of tenure around 3-5 years. Tenants are likely to be “tied” for all supplies of drinks with the owning company responsible for the upkeep of the property.

A lease agreement provides for longer term investment and lessees (individuals or small companies) can realise a goodwill benefit through assignment of the lease after a qualifying period. A wide variety of lease agreements are available, varying in length from five years upwards. Leases usually come with full repairing clauses and a tie for beer.

Companies may therefore offer either tenancies only, leases only, or both.

Company Codes may be written to cover both leases and tenancies but pub companies may wish to consider writing separate Codes that are focused on the type of business operated, whilst still complying with the Framework Code. Where pub companies operate both leases and tenancies, they have the option to write either separate Codes or a single Code but, either way, such Codes will still need to comply to achieve BII accreditation.

The Company Code of Practice will be signed by the tenant/lessee and the pub company, and thereby will become binding, and may be used as evidence in any disputes or subsequent court proceedings. The Code will also be binding on successors since they form part of the basis on which the original agreement was entered into.

The industry Code of Practice is not capable of being altered unilaterally and future revisions to the Code will be carried out in consultation with relevant tenant/lessee representatives (i.e. FLVA and BII). The industry Code will be periodically reviewed by agreement with these bodies.

A procedure for dealing with any disputes about the application of the Code by pub companies is described on page 14.

PUB COMPANY OBLIGATIONS

All pub companies operating tenanted or leased pubs should produce a Code of Practice based on the principles set out in this Code.

This is a requirement for membership of the British Beer & Pub Association (BBPA).

A full copy of the company's own Code of Practice must be provided to all new and existing tenants/lessees.

Pub companies must also apply to the BII (British Institute of Innkeeping), and acquire, accreditation of their Codes.¹

This industry Framework Code will be displayed on the BBPA, BII and FLVA websites as well as those of pub companies who are members of the British Beer & Pub Association.

Codes prepared by members of the BBPA shall bear the BBPA logo and the BIIBAS logo to indicate compliance with the industry Code of Practice and the BII's own standards contained within the accreditation process.

Companies meeting these requirements can be regarded as offering high standards of fairness, transparency and support to prospective tenants/lessees. Companies may wish to address other issues and provide broader benefits but must, in the first instance, comply with all the requirements of the pub industry Code.



¹ BIIBAS is the BII Benchmarking and Accreditation Service

TENANT/LESSEE PRE-ENTRY REQUIREMENTS

Before a prospective tenant/lessee is offered a substantive agreement, they **MUST** meet the following requirements:

- Hold a personal licence²
- Obtain accredited pre-entry training to enable them to evaluate and understand the contract they are seeking to enter into

Such training must meet Qualification Curriculum Authority accredited standards.



- Demonstrate they have taken proper independent professional advice prior to accepting a tenancy/lease (and during the operation of the tenancy/lease whenever the need arises)
- Take professional legal and business advice which should be used to prepare an appropriate business plan

Financial advisers should ensure their clients are made aware of the effects of changes on the business plan. For the avoidance of doubt a financial health-warning statement should be provided to the tenant/lessee, akin to the warnings attached to financial products such as endowments

- The above requirements may be waived, at the company's discretion, in cases where the acquiring tenant or leaseholder is suitably qualified through experience and achievement to rely on their judgement or is a company of sufficient standing.

² Not applicable where the prospective tenant/lessee is a company

MINIMUM REQUIREMENTS FOR COMPANY CODES OF PRACTICE

The key principles set out below must be followed to ensure sufficient information is provided to enable the “reasonably competent operator³” to understand the nature of the pub business being offered and how this will be embodied in a tenancy or lease agreement.

All contracts will be fair, reasonable and comply with all legal requirements.

Protection is afforded to tenants/lessees under Part II of the Landlord and Tenant Act 1954, as amended, for premises in England and Wales and, unless “contracted out” in accordance with the procedures set out in the Act. For premises in Scotland, protection is afforded by the provisions of the lease and the company’s policy in relation to lease expiry.

Initial heads of agreement covering the principle terms of a tenancy/lease will be supplied to prospective tenants/lessees at the outset with a full copy of the lease before they are asked to sign any commitment.



Details of the business opportunities offered by the company will be described including the types of tenancy/lease agreements available and the period of tenure, any purchase obligations such as a beer tie, amusement machine tie and any other product ties.

³ RICS Guidance © IVS GN 12, para 3.4 “A market based concept whereby a potential purchaser, and thus the valuer, estimates the maintainable level of trade and future profitability that can be achieved by a competent operator of a business conducted on the premises, acting in an efficient manner. The concept involves the trading potential rather than the actual level of trade under the existing ownership so it excludes *personal goodwill*.”

TERMS OF BUSINESS

1. **PRICE LIST:** The Pub Company's current and relevant price list will be supplied (under the terms of the agreement for tied and other products) which will include notification about any imminent changes.

Where beer is supplied under a tie details of the range of products available will be provided including the prices charged, qualifications for discount and whether the company will allow a guest beer supplied direct from a small brewer to be purchased outside the tie.



Where wet products other than beer are also supplied, the terms of the purchase obligations attached to these products will be made clear according to the type of agreement. An outline of trading terms (e.g. credit/payment terms) will also be provided.

2. **INSURANCE:** Liability for maintaining and meeting the cost of insurances required

Full details of the insurance schedule (to include all aspects of cover provided) and the charges payable to the company will be given to the tenant/lessee together with any excess applicable. Companies will offer to "price-match" on any like for like policies identified by the tenant/lessee.

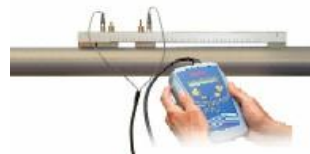
3. **AMUSEMENT MACHINES:** Company policy with regard to the supply and operation of tied amusement machines on the premises⁴



Relevant information will include the terms of supply (whether or not a machine tie exists), number and siting of machines, arrangements for the collection of cash, machine-management support provided and details of how the landlord/tenant share of machine income will be assessed

4. **CAPITAL DEVELOPMENTS:** Company policy with regard to potential opportunities for improvements/refurbishments and any implications for rent.
5. **FLOW MONITORING EQUIPMENT:** Pub companies to develop a protocol setting out the terms under which flow monitoring equipment may be installed and any further prima facie evidence available.

Suggested details for inclusion are set out at Annex A



⁴ This will include category C and D machines, skill prizes machines, pool tables and similar equipment.

PUB PREMISES

6. A full description of the pub building will be provided, including:

- details of the premises licence and any conditions attached thereto as well as any enforcement action taken during previous two years, where known.
- to the best of knowledge information about any material changes of commercial conditions likely to appear in the area⁵ and how these might influence the business opportunity available.

Details of any restrictions on the uses to which the premises may be put (e.g. planning constraints on types of trading and/or hours, disclosure of Use Classes - A3 or A4) will be provided.

Repairing Leases:

Companies will describe the nature, scope and extent of their policy with regard to repairing covenants.

Companies will provide the prospective lessee with details about the nature, scope and extent of their obligations in the Heads of Terms agreement.

Prospective lessees will be encouraged to inspect the property thoroughly, seeking independent professional advice on the structure.

RENT ASSESSMENT

7. The guidelines for rent assessment are established by an independent body (RICS) and applied to all leases and tenancies. The independent body will keep its rent assessment guidelines under review and, amongst other matters which the guidelines will need to take into account, are any resulting legislative changes and court rulings.
8. Any resultant changes arising from such developments of the guidelines will be adopted and applied to all leases and tenancies on review as and when they are published.
9. The rental assessment model will be based on a lawful application of statute and common law. Companies will ensure that the prospective tenant or lessee is aware of the basis of the rental assessment (FMT) and how the market rent for the property is established. The setting of initial rent and its subsequent review will be handled fairly, with reasonable allowances made for costs and sustainable trade.
10. The assumptions included in the rental assessment model will be explained together with assessment procedures for rent reviews, including those matters that will be taken into account or disregarded by both parties.
11. It will be made clear in the process of profit assessment that where AWP machines are tied, and the income is shared, such income will not be included in the "divisible balance".

⁵ This should include any developments to nearby premises in the pub owning company's estate.

12. When calculating gross profits for tied pubs the prices charged to the tenant or lessee by the pub company in the relevant tied price list should be used.
13. The rateable value used in the rent assessment will be the actual rates payable where available or, if not available, the estimated rates based on FMT.
14. **UPWARDS ONLY RENT REVIEW CLAUSES (UORR):** UORR clauses will not be included in leases.

Some existing agreements may contain UORR clauses and, in such circumstances, company Codes of Practice will make it clear they will not enforce them. In addition, if lessees want a side letter/deed of variation to that effect it can be provided though at the lessee's expense. Companies will also provide lessees with the opportunity to convert to new agreements if terms can be agreed.

15. **RPI:** Where a tenancy or lease refers to indexation by reference to the RPI, Pub Companies will notify their tenants or lessees that the adjustment in the rent may be upwards or downwards, according to the movement of the Retail Price Index at the time.

DISCLOSURE AND TRANSPARENCY

16. Full disclosure of all relevant information is an essential feature of the relationship between the pub company and tenant/lessee. Pub companies will provide, as a minimum, the following information to any prospective tenant or lessee at the start of a new tenancy/lease or rent review negotiation.
17. **SHADOW PROFIT AND LOSS (P&L) ACCOUNT:** A shadow profit and loss (P&L) account will be prepared by the pub company in good faith based on reasonable assumptions.

The shadow P&L will be produced and drafted by a properly competent individual.

The shadow P&L will contain sufficient detail to enable a prospective tenant or lessee to take proper professional advice upon the terms, conditions and effect of the tenancy or lease being offered.

The shadow P&L will include full details of income streams broken down into drinks⁶, food, other (including machine income) and details of cost assumptions on wages, utilities, rates, insurance, repairs and maintenance, operational costs and "other expenses", including marketing and promotions, entertainment, door staff, licensing costs and licensing conditions.

Precise history of turnover and overheads will often not be available as such information rests with the existing or former holders of the tenancy/lease. However details of volume purchased directly from the company over the past three years will be provided where available.

⁶ Includes beer, wine, spirits and minerals

Prospective tenants or lessees will be advised about the availability of industry Benchmarking Reports which may assist with the preparation of their business plan⁷.

The same information that is provided at the commencement of new lease negotiations must be provided to all lessees at the start of a rent review negotiation (including a shadow P&L containing all the information prescribed above). In addition to a breakdown of costs, detailed information on the assumptions made on turnover by income stream must also be provided.

Any further information that is requested by prospective tenants or lessees and/or their professional advisers will be supplied subject to it being available.

Further information that tenants/lessees may request is identified at Annex B. Where such information is requested and cannot be provided, pub companies should give the reason why.

RENT REVIEW

18. All rent review clauses will be capable of upwards and downwards reviews.
19. The treatment of “goodwill disregard” will follow RICS guidance.

Any goodwill attached to the premises attributable to the tenant or lessee having achieved a greater level of business than an “average competent tenant” and the effects of the tenant’s or lessee’s improvements will be disregarded.

PUB INDEPENDENT RENT REVIEW SCHEME (PIRRS):

20. Company Codes should set out the procedures available where the rent review is not agreed including the company’s internal procedures and the option for referral to an independent expert through PIRRS or arbitration.
21. Company codes must include details about the Pub Independent Rent Review Scheme and reference to the website www.pirrscheme.com
22. Irrespective of the terms of the lease the landlord grants the tenant/lessee the right to elect for a referral to the PIRRS scheme and agrees to be bound by the expert valuation delivered through the PIRRS scheme. This will not remove the right to arbitration but the tenant/lessee will waive such a right if the option to refer to the PIRRS is taken.
23. Codes must also contain the company’s commitment to support the PIRRS scheme which is a condition of BII accreditation.

BUSINESS SUPPORT

24. Company Codes will explain how the relationship between the company and the tenant/lessee will be conducted during the operation of the tenancy/lease so that the business opportunities presented by the outlet can be exploited to mutual benefit.

⁷ Including the ALMR Benchmarking Report

Codes of Practice will describe the range of support programmes and advice which may be available through the company⁸. Such support might typically include:

- Commitment to assess capabilities and training needs of tenants, lessees and staff
- Licences and any relevant training requirements
- Business management advice (tenants/lessees will be advised to obtain professional services in areas such as finance, stocktaking, book-keeping)
- Brand promotion, merchandising and provision/ maintenance of dispense equipment
- Outlet promotion and marketing
- Procurement benefits
- Rating advice
- Landlords support - external decoration, signage, building repairs (including car parks and gardens)

MATERIAL CHANGES/EXCEPTIONAL CIRCUMSTANCES

25. Company codes will set out the company's policy for dealing with requests for assistance from competent tenants/lessees arising from circumstances where they experience business difficulties which are beyond their control.

ASSIGNMENT OF LEASES

26. The assignment of leases places obligations on both the pub company and the lessee wishing to assign his lease (assignor). This is to ensure that the potential purchaser of the lease (assignee) is supplied with the same information as would be supplied by the landlord at the commencement of a lease and is able to take his own proper business decisions about the business being offered.

Lessee Obligations:

27. Lessees wishing to assign their lease (assignors) must ensure that any assignee of their lease receives the same financial information disclosed by the pub company at commencement of the assignor's interest and actual trading figures and accounts for the preceding three years where appropriate⁹. Where information is unavailable the reason for this must be disclosed.
28. The assignor must disclose information as if he were the original landlord and will inform a prospective assignee that they must:
- ***demonstrate they have complied with pre-entry training,***
 - ***obtain qualified professional advice and produce a business plan.***

⁸ Company Codes must refer to the support provided but are not bound to provide the examples listed nor are they limited by them.

⁹ See Para 17

Equally the requirement for pre-entry training or professional advice is capable of being waived by the assignor providing that evidence is sanctioned and approved by the Pub Company.

Pub Company Obligations:

29. Companies will set out clearly how they will respond timely to requests for assignment and explain the implications for disposal of the business. Full details will be provided regarding procedures, professional support/advice available and all relevant fees. Buy back arrangements, if any, will be described and an early breakdown given of any dilapidations to allow lessees time to put right before assignment.
30. All pre-entry requirements (including holding a personal licence under the Licensing Act 2003) concerning training or evidence based certification of professional or legal advice shall be capable of being waived by the Pub Company in the case of existing lessees or tenants or experienced operators, on production of suitable evidence.
31. Pub Companies will not agree to an assignment unless the above requirements have been complied with.

DILAPIDATIONS

32. Companies will provide an early breakdown of any dilapidations to allow lessees time to put right and advise whether fixtures and fittings will be purchased and, if so, arrangements for payment.

SURRENDER

33. Companies will set out how it will deal with any requests for surrender of the lease.

BUSINESS RELATIONSHIP/DEVELOPMENT MANAGERS (BRM/BDM'S)

34. Company codes will set out provisions and commitments governing the competence and future progression of BRM's/BDM's, including qualifications and on-going training¹⁰
35. Company codes will set out a procedure for complaints and a mechanism to resolve disputes arising from the relationship between the company and the tenant/lessee.
36. Codes will set out the role of BRM/BDM's and the support and professional guidance they will provide.

RESTRICTIVE COVENANTS

37. Individual Pub Companies will make their policy on restrictive covenants clear.

¹⁰ BII is developing an accredited training qualification for BRM's/BDM's

DISPUTES

Company Codes should explain the procedures to be adopted where either party feels that the provisions of the Code have not been followed. Where the tenant/lessee believes that he is the aggrieved party, the procedures should ensure that the matter is properly considered at an appropriately high level of management in the company concerned, and at a level of management higher than that at which the relevant decisions were initially taken.



38. The adoption of codes by companies in line with the framework code provides an adequate procedure for the resolution of differences. It is nevertheless acknowledged that in individual cases, lessees may feel that a company has not properly followed the procedures set out in its code.

39. In such circumstances, it will be open to him or his representative to send the BII a brief description of the circumstances with an explanation why the lessee believes the code has not been properly followed. The BII or FLVA will pass on this information to the company concerned and use its good offices to ensure, as far as possible, that there are no misunderstandings, or personality issues, that are standing in the way of a more fruitful dialogue between the company and the lessee or his representative.

USE OF FLOW MONITORING EQUIPMENT

(Suggested detail for inclusion in pub company protocol)

1. Details of data to be shared with tenant/lessee and frequency
2. Calibration/allowances and parameters for review
3. Evidence of buying-out, supported by the flow-monitoring equipment
4. Procedures to be followed by the company in establishing with the tenant/lessee that a breach has occurred
5. Penalties/sanctions to be applied in lieu of forfeiture of lease in the event that a breach is determined
6. How any charges will be applied
7. Authorisation of FME personnel to be given access to the premises and circumstances in which such access may be denied
8. Tampering with equipment.

**SOME IMPORTANT POINTS TO CONSIDER
WHEN TAKING OVER (OR LEAVING) A PUBLIC HOUSE¹¹**

1. Ensure you visit every part of the building before taking over
2. Signing a Tenancy at Will gives no security under the Landlord & Tenant Act - seek advice before signing and making any investment
3. Engage a solicitor conversant with licensed property leases
4. Get a structural survey if you are responsible for the repairs
5. Obtain a copy of the full Premises Licence (not just the summary) and carefully note details of all conditions imposed and trading hours
6. Obtain a copy of the Premises Licence plan and check areas covered for the sale of alcohol and provision of regulated entertainment. Pay attention to any outdoor areas
7. Carry out due diligence exercise by speaking to the Police, Environmental Health Officer and other appropriate responsible authorities to establish if there are any current issues
8. Check if there is a Highways Act Licence in place for outside tables and chairs
9. Copy of lease and next rent review date
10. Details of designated premises supervisor in situ
11. Engage a qualified accountant
12. Engage a qualified stocktaker
13. Draw up a business plan with relevant information - see below
14. Details of staff responsibilities (see below under TUPE)
15. Details of any possible outstanding claim against the business
16. Details of any equipment on hire purchase/rental agreement
17. Ensure you have full and correct insurance cover for the business
18. Apply for Gaming Licences/Permits
19. Apply for PRS and PPL licences and SKY TV if appropriate
20. Notification of changed address to licensing authority where you received your personal licence

OTHER IMPORTANT INFORMATION:

- The last three years accounts
- Last three years barrelage details
- Dilapidation report (if and when any outstanding work is to be completed)
- Health and safety risk assessment policy
- Fire risk assessment
- Disability discrimination audit
- Asbestos survey
- Portable electrical appliance test certificate (PAT)
- Five year full electrical report
- Gas safety certificate
- Energy performance certificate
- Service records of:
 - Fire extinguishers
 - Security system
 - Outside play equipment
 - Tills and all other equipment used in the business
- Complete inventory schedule (i.e. items to be left on the premises)

¹¹ Source: *FLVA Green Paper (November 2009)*

TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006

The above Regulations came into force in April 2006 and place responsibility on both the transferor and the transferee. At least a fortnight before a transfer of a business takes place the transferor (present employer) must pass on certain information in writing to the transferee (new employer). It is important therefore to collect the following information and arrange to meet and consult with all staff before taking over or leaving the premises. Failure to do so will be costly.

- All employees terms and conditions
 - Employees name, address and date of birth
 - Details of when employment commenced
 - Details of service with previous employers which count
 - Any break in employment
 - Job title and duties
 - Rate of pay
 - Pay intervals (hourly, weekly, monthly etc)
 - Breakdown of hours of work
 - Any outstanding holiday entitlement
 - Details of holiday entitlement and when holiday year commences
 - Sickiness scheme
 - Details of any pension scheme in operation
- Any grievance and disciplinary action that has taken place over the past two years
- Any court or tribunal cases from the last two years or any possible outstanding case the transferor might consider could be brought
- Any collective agreement that will have effect after the transfer (this might be in place when a managed house transfers to leased)
- A transferor or transferee will be held jointly responsible for the failure to consult with employees representatives, Trade Union officials or if non available then all staff

(A decision by an appeal tribunal ruled that the maximum award should be thirteen weeks pay for failure to consult with employees in a transfer.)

If the required information is not made available two weeks before the change over, the in-going licensee can take the outgoing one to a tribunal. (The award is a minimum of £500 per employee.)

It is also important to obtain details of any staff training achievements

UTILITIES (GAS AND ELECTRICITY)

When there is a changeover at a premise the in-going business person does not have to inherit the agreements with the previous owner.

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