



Campaign for Pubs

Promote, Support and Protect Pubs

Fiona Dickie
Pubs Code Adjudicator
Lower Ground
Victoria Square House
Victoria Square
Birmingham
B2 4AJ

27th April 2022

Dear Fiona,

Incorrect and unfair interpretation of the Pubs Code position on gaming machine

We are writing in response to your article dated 3rd March 2022 in the Morning Advertiser about gaming machines and the announcement you have made in there.

The Gaming Machine issue has been contested since the Code was implemented in 2016 and the regulated pubcos (Pub Owning Businesses) have taken a number of approaches including charging tenants more rent if they opted not to include a gaming machine tie in their new agreement, which we believe clearly is at odds with the original intentions.

We are astonished and appalled at your interpretation of this aspect of the Pubs Code, which is clearly not what the Government intended, nor what is laid down in the Code itself. Your interpretation is unfounded and unacceptable and we are writing to urge you to change it and to instead interpret the Code in the way that was clearly intended by Government (and Parliament).

You have stated that the choice for a tied tenant, covered by the Pubs Code, is either to have tied gaming machines or to have no machines at all.

We contest your view and we would request full details of how you have reached these conclusions.

The Government were clear in the consultation that the choice was that 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”, see the section in the Government response to the consultation in 2014:

Gaming Machines

45. 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.¹

This was intended to mean that there must be the option for the tenant to be *either* tied *or* free-of-tie on their gaming machines.

This cannot reasonably be interpreted in the way you have, which is to suggest that the only option for tenants who do not wish to be tied is not to have machines!

Your interpretation, as you must surely understand, means that regulated pub companies can continue to insist on a tie, if tenants wish to have gaming machines. That is not what parliament intended. The intention

¹ [Pub Companies and Tenants Consultation: A Government Response 2014 \(p. 148\)](#)

was that tenants could choose whether to be tied on their gaming machines, as part of an agreement that overall they were happy with, or could opt to be free-of-tie on gaming machines.

The regulation in the Pubs Code that refers to gaming machines is as follows:

REGULATION 47

Gaming machines

47. A pub-owning business—

- (a) must not enter into a new tenancy or licence; and
- (b) must not renew a tenancy or a licence,

which requires a tied pub tenant to purchase or rent gaming machines.²

Whilst this regulation in the Code doesn't directly state that a tied tenant can either be tied or free-or-tie on gaming machines, it does not state, as you have chosen to interpret, that tied tenants can only have gaming machines if these are tied.

We do not agree that Regulation 47 only prohibits a POB from requiring tenants to have gaming machines in a pub premises. Indeed, we consider that to be a highly erroneous suggestion and contradicts the background to the original Government consultation that you have detailed in the article.

Regulation 47 has three components:-

- (1) it prohibits POBs from a specific act,
- (2) that act is to enter into a new agreement that imposes upon a tenant a specific requirement; and
- (3) that specific requirement is "to *purchase or rent* gaming machines".

Once again, this does not justify the interpretation you have made, which is that tenants may either have tied gaming machines, or no gaming machines at all.

It is also important to read all of Regulation 47 in the context that it applies to an agreement which is ostensibly to tenant a property.

A new property agreement that includes a gaming machine tie is undoubtedly a property agreement "*which requires a pub tenant to purchase or rent gaming machines*". That a tenant may choose not to have gaming machines at the property does not change the nature of the property agreement. We would conclude, therefore, that any new agreement for a tied pub premises that includes a requirement to purchase or rent gaming machines is in breach of Regulation 47.

We are therefore both astonished and appalled that you have chosen to interpret the rules in the way you have, to dictate that tied tenants may only have gaming machines if they are tied. This decision only increases the perception amongst tied tenants that you are not on their side. You certainly do not seek to uphold the rights of tenants as was envisaged by Parliament. You claim in the same Morning Advertiser article to "protect tenants' rights", yet this is a very stark example of how you yourself, through your own chosen and deeply questionable interpretation, are actually undermining an important right of tenants, envisaged by Government. It really is extraordinary.

We would also question why the first time that many tenants and tenants' organisations hear of this extraordinary, flawed and wholly unacceptable interpretation of the Code is via an article in the media. This is

² <https://www.legislation.gov.uk/ukdsi/2016/9780111146330/regulation/47>

akin to Ministers making announcements via the press, not to Parliament and we do not believe it is acceptable.

You claim to want to improve communication with tenants, yet there is no sense that you have even consulted over your interpretation of the Pubs Code regulation 47. We must therefore also ask if you have consulted with organisations regarding this decision and if so which organisations. Neither the Campaign for Pubs nor the British Pub Confederation are aware of any consultation with groups representing pub tenants and we wish to know/for you to publish what consultation you have had with tied tenants and representative groups over this issue.

The gaming machine issue has been contested since the Code was implemented in 2016 and POBs have taken a number of approaches including charging tenants more rent if they opted not to include a gaming machine tie in their new agreement. Your wholly unjustifiable interpretation will only make the situation worse for tenants, as you have now given the regulated pubcos carte blanche to continue to enforce the gaming machine tie, which is a disgrace.

Please also advise how you intend to resolve this historical error which has had significant cost implications for tenants.

We look forward to hearing from you.

Yours sincerely,



Gary Murphy
Director



Dawn Hopkins
Vice-Chair