

*Draft Regulations laid before Parliament under sections 73(1) and 161(4) of the Small Business, Enterprise and Employment Act 2015, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2016 No. 0000**

**ENTERPRISE, ENGLAND AND WALES**

**The Pubs Code etc. Regulations 2016**

*Made - - - - 2016*

*Coming into force in accordance with regulation 1(b)*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 42(1) and (4), 43(1), (3) and (5) to (9), 44, 45, 47(1) to (3), 48(3), 69(6) and (8)(b), 71(1) (a) and (2) and 161(2) of the Small Business, Enterprise and Employment Act 2015(1).

In accordance with sections 73(1) and 161(4) of the Small Business, Enterprise and Employment Act 2015, a draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

**PART 1**

**General**

**Citation, commencement and extent**

1. These Regulations—
  - (a) may be cited as the Pubs Code etc. Regulations 2016;
  - (b) come into force on 26th May 2016 or, if later, on the day after the day on which they are made; and
  - (c) extend to England and Wales.

**General interpretation**

- 2.—(1) In these Regulations—
  - “business development manager” has the meaning given in regulation 41(6);
  - “commencement date” means the date on which these Regulations come into force;
  - “compliance officer” means a person who is appointed under regulation 42(1);

- “fixed share of turnover” has the meaning given in regulation 55(4);
- “full response” has the meaning given in regulation 29(5);
- “gaming machine” has the meaning given in section 235 of the Gambling Act 2005(2);
- “initial or revised rent” has the meaning given in regulation 16(1)(a);
- “insurance charge” has the meaning given in regulation 46(1);
- “investment agreement” has the meaning given in regulation 56(3);
- “MRO notice” has the meaning given in regulation 23(1);
- “MRO recoverable amount” has the meaning given in regulation 40(4);
- “MRO rent” means the rent or money payable in lieu of rent to be payable in respect of the tied pub tenant’s(3) occupation of the premises concerned under the proposed MRO-compliant tenancy or licence(4);
- “new agreement” means a new tenancy of, or a new licence to occupy, premises which are, or are expected to be, a tied pub but does not include a short agreement or the renewal of a tenancy or licence;
- “new rent” has the meaning given in regulation 20(1)(a);
- “period of response” has the meaning given in regulation 29(7) to (9);
- “pub franchise agreement” has the meaning given in regulation 55(2);
- “pubs entry training” has the meaning given in regulation 9(4);
- “relevant share of turnover” has the meaning given in regulation 55(5);
- “rent proposal” means a proposal made in accordance with Part 3;
- “rent assessment proposal” means a proposal made in accordance with Part 4;
- “revised response” has the meaning given in regulation 33(3);
- “rent review date” has the meaning given in regulation 21(12);
- “SBEEA 2015” means the Small Business, Enterprise and Employment Act 2015;
- “significant increase”, in relation to the price at which a product or service which is subject to a product or service tie(5) is supplied to a tied pub tenant, has the meaning given in regulations 3 to 6;
- “short agreement” means—
- (a) a tenancy at will which entitles a tied pub tenant to occupy a tied pub; or
  - (b) any other contractual agreement entitling a tied pub tenant to occupy a tied pub for no more than 12 months;
- “subsequent proposed tenancy or licence” has the meaning given in regulation 35(2);
- “the RICS” means the Royal Institution of Chartered Surveyors;
- “the RICS guidance” means guidance issued by the RICS, as amended from time to time;
- “Schedule of Condition” means the provisions in a tenancy or licence which specify the condition of the premises to which the tenancy or licence relates;
- “trigger event” has the meaning given by section 43(9) of SBEEA 2015 and regulation 7.

(2) For the purposes of these Regulations, a tied pub tenant receives notification of a significant increase in the price at which a product or service which is subject to a product or service tie is

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(2) 2005 c.19.

(3) Section 70(1) of SBEEA 2015 defines “tied pub tenant”.

(4) Section 43 of SBEEA 2015 defines “MRO-compliant”. Section 70(2) of SBEEA 2015 defines “tenancy” and “licence”.

(5) Section 72(1) of SBEEA 2015 defines “product or service tie”.

supplied to the tied pub tenant when the tied pub tenant receives the invoice the issue of which constitutes such an increase.

### Significant increase in price: beer

3.—(1) For the purposes of these Regulations, a “significant increase” in the price of beer<sup>(6)</sup> supplied to a tied pub tenant takes place on the issue to the tied pub tenant of an invoice for beer (“the relevant invoice”) where the following two conditions are met.

(2) The first condition is that—

- (a) one or more invoices for beer were issued to the tied pub tenant in the comparison period; and
- (b) those invoices included at least one for beer of the same kind as beer invoiced in the current period.

(3) The second condition is that—

$$\left( \frac{A - B}{B} \times 100 \right) > \left( \frac{C - D}{D} \times 100 \right) + 3$$

where—

A is the average unit price of current period beer;

B is the average unit price of comparison period beer;

C is the level of the producer price index on the day the relevant invoice is issued;

D is the level of the producer price index on the day 12 months before the relevant invoice is issued.

(4) In this regulation—

- (a) “beer” means beer supplied under a product tie<sup>(7)</sup>;
- (b) “current period beer” means all beer invoiced to the tied pub tenant in the current period, excluding any of a kind not invoiced to the tied pub tenant in the comparison period;
- (c) “comparison period beer” means all beer invoiced to the tied pub tenant in the comparison period, excluding any of a kind not invoiced to the tied pub tenant in the current period;
- (d) beer invoiced in a period is “of the same kind” as beer invoiced in another period if they are—
  - (i) of the same brand; and
  - (ii) sold in the same units;
- (e) “the current period” means the period of 4 weeks ending with the day on which the relevant invoice is issued;
- (f) “the comparison period” means the period of 4 weeks ending with the day 12 months before the day on which the relevant invoice is issued;
- (g) “invoice for beer” includes an invoice which covers (in addition to beer) products other than beer, or services; and references to beer being invoiced are to be read accordingly;
- (h) references to prices are to prices exclusive of value added tax but inclusive of excise duty;
- (i) “the producer price index” means the producer price index published by the Statistics Board<sup>(8)</sup> in respect of beer (including duty);

<sup>(6)</sup> Section 68(8) of SBEEA 2015 defines “beer”.

<sup>(7)</sup> Section 72(1) of SBEEA 2015 defines “product tie”.

<sup>(8)</sup> The Statistics Board is established by section 1 of the Statistics and Registration Service Act 2007 (c.18). In Welsh, the Statistics Board is known as Y Bwrdd Ystadegau.

- (j) references to the level of the producer price index on any day are to the level of that index, in the index most recently published before the end of that day, in respect of the most recent month covered by that publication.

### **Significant increase in price: alcoholic drink other than beer**

4.—(1) For the purposes of these Regulations, a “significant increase” in the price of alcoholic drink supplied to a tied pub tenant takes place on the issue to the tied pub tenant of an invoice for alcoholic drink (“the relevant invoice”) where the following two conditions are met.

- (2) The first condition is that—
- (a) one or more invoices for alcoholic drink were issued to the tied pub tenant in the comparison period; and
  - (b) those invoices included at least one for alcoholic drink of the same kind as alcoholic drink invoiced in the current period.

- (3) The second condition is that—

$$\left( \frac{A - B}{B} \times 100 \right) > \left( \frac{C - D}{D} \times 100 \right) + 6$$

where—

- A is the average unit price of current period alcoholic drink;  
B is the average unit price of comparison period alcoholic drink;  
C is the level of the producer price index on the day the relevant invoice is issued;  
D is the level of the producer price index on the day 12 months before the relevant invoice is issued.

- (4) In this regulation—
- (a) “alcoholic drink” means alcoholic drink supplied under a product tie, other than beer;
  - (b) “current period alcoholic drink” means all alcoholic drink invoiced to the tied pub tenant in the current period, excluding any of a kind not invoiced to the tied pub tenant in the comparison period;
  - (c) “comparison period alcoholic drink” means all alcoholic drink invoiced to the tied pub tenant in the comparison period, excluding any of a kind not invoiced to the tied pub tenant in the current period;
  - (d) alcoholic drink invoiced in a period is “of the same kind” as alcoholic drink invoiced in another period if they are—
    - (i) of the same category (see paragraph (5)); and
    - (ii) sold in the same units;
  - (e) “the current period” means the period of 4 weeks ending with the day on which the relevant invoice is issued;
  - (f) “the comparison period” means the period of 4 weeks ending with the day 12 months before the day on which the relevant invoice is issued;
  - (g) “invoice for alcoholic drink” includes an invoice which covers (in addition to alcoholic drink) products other than alcoholic drink, or services; and references to alcoholic drink being invoiced are to be read accordingly;
  - (h) references to prices are to prices exclusive of value added tax but inclusive of excise duty;
  - (i) “the producer price index” means the producer price index published by the Statistics Board in respect of alcoholic beverages (including duty);

- (j) references to the level of the producer price index on any day are to the level of that index, in the index most recently published before the end of that day, in respect of the most recent month covered by that publication.
- (5) For the purposes of paragraph (4)(d)(i) the “categories” of alcoholic drink are—
- (a) blended whiskies;
  - (b) single malt whiskies;
  - (c) gin;
  - (d) vodka;
  - (e) brandy;
  - (f) spirits not within any of sub-paragraphs (a) to (e);
  - (g) red wine;
  - (h) white wine;
  - (i) rose wine;
  - (j) cider<sup>(9)</sup>;
  - (k) alcoholic drink not within any of sub-paragraphs (a) to (j).

#### **Significant increase in price: products other than alcoholic drink**

5.—(1) For the purposes of these Regulations, a “significant increase” in the price of non-alcohol products supplied to a tied pub tenant takes place on the issue to the tied pub tenant of an invoice for non-alcohol products (“the relevant invoice”) where the following two conditions are met.

- (2) The first condition is that—
- (a) one or more invoices for non-alcohol products were issued to the tied pub tenant in the comparison period; and
  - (b) those invoices included at least one for non-alcohol products of the same kind as non-alcohol products invoiced in the current period.
- (3) The second condition is that, for any of the non-alcohol products producer price indices (“the applicable producer price index”)—

$$\left( \frac{A - B}{B} \times 100 \right) > \left( \frac{C - D}{D} \times 100 \right) + 20$$

where—

- A is the average unit price of current period non-alcohol products;
- B is the average unit price of comparison period non-alcohol products;
- C is the level of the applicable producer price index on the day the relevant invoice is issued;
- D is the level of the applicable producer price index on the day 12 months before the relevant invoice is issued.

- (4) In this regulation—
- (a) “non-alcohol products” means products supplied under a product tie, other than alcoholic drink;
  - (b) “current period non-alcohol products” means all non-alcohol products within the applicable producer price index invoiced to the tied pub tenant in the current period, excluding any of a kind not invoiced to the tied pub tenant in the comparison period;

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(9) Section 68(8) of SBEEA 2015 defines “cider”.

- (c) “comparison period non-alcohol products” means all non-alcohol products within the applicable producer price index invoiced to the tied pub tenant in the comparison period, excluding any of a kind not invoiced to the tied pub tenant in the current period;
  - (d) non-alcohol products invoiced in a period are “of the same kind” as non-alcohol products invoiced in another period if they are—
    - (i) of the same category (see paragraph (5)); and
    - (ii) sold in the same units;
  - (e) “the current period” means the period of 4 weeks ending with the day on which the relevant invoice is issued;
  - (f) “the comparison period” means the period of 4 weeks ending with the day 12 months before the day on which the relevant invoice is issued;
  - (g) “invoice for non-alcohol products” includes an invoice which covers (in addition to non-alcohol products) products or services other than non-alcohol products; and references to non-alcohol products being invoiced are to be read accordingly;
  - (h) references to prices are to prices exclusive of value added tax;
  - (i) “the non-alcohol products producer price indices” means—
    - (i) the producer price index published by the Statistics Board in respect of food products;
    - (ii) the producer price index published by the Statistics Board in respect of soft drinks, mineral waters and other bottled waters;
  - (j) references to the level of a producer price index on any day are to the level of that index, in the index most recently published before the end of that day, in respect of the most recent month covered by that publication.
- (5) For the purposes of paragraph (4)(d)(i) the “categories” of non-alcohol products are—
- (a) food;
  - (b) non-alcoholic drinks.

### **Significant increase in price: services**

6.—(1) For the purposes of these Regulations, a “significant increase” in the price of services supplied to a tied pub tenant takes place on the issue to the tied pub tenant of an invoice for services (“the relevant invoice”) where the following two conditions are met.

- (2) The first condition is that—
  - (a) one or more invoices for services were issued to the tied pub tenant in the comparison period; and
  - (b) those invoices included at least one for services of the same kind as services invoiced in the current period.

- (3) The second condition is that—

$$\left( \frac{A - B}{B} \times 100 \right) > \left( \frac{C - D}{D} \times 100 \right) + 20$$

where—

A is the average unit price of current period services;

B is the average unit price of comparison period services;

C is the Consumer Price Index on the day the relevant invoice is issued;

D is the Consumer Price Index on the day 12 months before the relevant invoice is issued.

- (4) In this regulation—
- (a) “services” means services supplied under a service tie<sup>(10)</sup>;
  - (b) “current period services” means all services invoiced to the tied pub tenant in the current period, excluding any of a kind not invoiced to the tied pub tenant in the comparison period;
  - (c) “comparison period services” means all services invoiced to the tied pub tenant in the comparison period, excluding any of a kind not invoiced to the tied pub tenant in the current period;
  - (d) services invoiced in a period are “of the same kind” as services invoiced in another period if they are—
    - (i) of the same category (see paragraph (5)); and
    - (ii) sold in the same units;
  - (e) “the current period” means the period of 4 weeks ending with the day on which the relevant invoice is issued;
  - (f) “the comparison period” means the period of 4 weeks ending with the day 12 months before the day on which the relevant invoice is issued;
  - (g) “invoice for services” includes an invoice which covers (in addition to services) products; and references to services being invoiced are to be read accordingly;
  - (h) references to prices are to prices exclusive of value added tax;
  - (i) “the consumer price index” means the general index of consumer prices (for all items) published by the Statistics Board;
  - (j) references to the level of the consumer price index on any day are to the level of that index, in the index most recently published before the end of that day, in respect of the most recent month covered by that publication.
- (5) For the purposes of paragraph (4)(d)(i) the “categories” of services are—
- (a) the hire of gaming machines;
  - (b) property and maintenance services (including maintenance of equipment);
  - (c) financial services (including insurance);
  - (d) business services not within any of sub-paragraphs (a) to (c).

### Trigger events

7.—(1) For the purposes of Part 4 of SBEEA 2015 (and so of these Regulations) an event is a “trigger event”, in relation to a tied pub tenant, only if (in addition to meeting the conditions in section 43(9)(a) to (c) of SBEEA 2015)—

- (a) conditions A and B are met; and
- (b) either—
  - (i) the event does not affect pubs other than the tied pub; or
  - (ii) conditions C and D are met.

(2) Condition A is that the effect of the event is to decrease the level of trade that is reasonably expected to be achieved at the tied pub in each month over a continuous period of 12 months.

(3) Condition B is that the event is not—

- (a) connected to the personal circumstances of the tied pub tenant;

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<sup>(10)</sup> Section 72(1) of SBEEA 2015 defines “service tie”.

- (b) a significant increase in the price at which a product or service which is subject to a product or service tie is supplied to the tied pub tenant;
  - (c) an extrinsic increase in the price at which a product or service which is subject to a product or service tie is supplied to the tied pub tenant;
  - (d) an event of a kind described in regulation 26 or regulation 27; or
  - (e) an event which the tied pub tenant could reasonably have prevented, or the effects of which it could reasonably have substantially mitigated.
- (4) Condition C is that the event—
- (a) affects other pubs in the local area; but
  - (b) is unlikely to affect all pubs in England or Wales.
- (5) Condition D is that the event—
- (a) is directly related to a change in the tie imposed by the pub-owning business<sup>(11)</sup> on the tied pub; or
  - (b) has an effect which is directly related to changes in the local area such as—
    - (i) changes to the local infrastructure;
    - (ii) changes to local employment;
    - (iii) long-term changes to the local economic environment;
    - (iv) changes to local environmental factors.
- (6) An “extrinsic increase” in relation to a tied product or service means an increase in the price of the product or service due to circumstances beyond the control of the pub-owning business such as—
- (a) an increase in the price at which the pub-owning business purchases the product or service;
  - (b) an increase in any tax or duty payable by the pub-owning business which arises from the pub-owning business’s purchase of the product or service; or
  - (c) an increase in any other tax or regulatory cost payable by the pub-owning business which affects the costs of the pub-owning business.

### Periods of time

- 8.—**(1) This regulation applies where—
- (a) a provision of these Regulations refers to a period of time; and
  - (b) that period is computed by reference to the occurrence of one or more of the following events—
    - (i) notifying, requesting, sending, providing or communicating changes, determinations, decisions, intentions, responses, proposals or other information;
    - (ii) the referral of a matter under regulation 59(6)(c) or (8);
    - (iii) receiving notices (including an MRO notice), notifications or requests.
- (2) The time at which the events occur, for the purposes of that provision, is to be determined in accordance with the following table.

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<sup>(11)</sup> Section 69 of SBEEA 2015 defines “pub-owning business”.



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<i>Method of notifying, requesting, accepting etc.</i>	<i>Day on which notification, request, acceptance, receipt etc. is deemed to have occurred</i>
First class post (or other service which provides for delivery on the next business day)	The second day after it was posted, left with, delivered to or collected by the relevant service provider, provided that day is a business day; or, if not, the next business day after that day.
Document exchange	The second day after it was left with, delivered to or collected by the relevant service provider, provided that day is a business day; or, if not, the next business day after that day.
Delivering a document to or leaving it at a permitted address	If it is delivered to or left at the permitted address on a business day before 4.30 pm, on that day; or in any other case, on the next business day after that day.
Fax	If the transmission of the fax is completed on a business day before 4.30 pm, on that day; or, in any other case, the next business day after the day on which it was transmitted.
Other electronic method	If the e-mail or other electronic transmission is sent on a business day before 4.30 pm, on that day; or in any other case, on the next business day after the day on which it was sent.
Personal service	If the document is served personally before 4.30 pm on a business day, on that day; or, in any other case, on the next business day after that day.

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(3) The reference in paragraph (1)(b)(iii) to receiving notifications does not include receiving notification of a significant increase in the price at which a product or service which is subject to a product or service tie is supplied to a tied pub tenant.

(4) In this regulation, “business day” means any day except—

- (a) a Saturday or Sunday;
- (b) Good Friday or Christmas Day; or
- (c) a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(12).

## PART 2

Duties of pub-owning businesses in their dealings with their tied pub tenants: general

### **Pubs entry training**

9.—(1) Before—

- (a) entering into a new agreement with a tied pub tenant; or

- (b) agreeing, with a tied pub tenant, the renewal of a tenancy to which Part 2 of the Landlord and Tenant Act 1954(13) applies,

a pub-owning business must advise the tied pub tenant to complete the appropriate pubs entry training.

(2) The pub-owning business’s duty in paragraph (1) does not apply if the tied pub tenant meets at least one of the conditions in paragraph (3).

(3) The conditions are—

- (a) that the tied pub tenant operates at least one other tied pub, other than a pub which is occupied under a short agreement, on the day on which the new agreement or the renewal is proposed by the pub-owning business or the tied pub tenant;
- (b) that the tied pub tenant can demonstrate that the tenant has at least 3 years of relevant business management experience;
- (c) that the pub-owning business has, at any time, granted the tenant a tenancy or licence in relation to a tied pub, other than a tenancy or licence in connection with a short agreement.

(4) “Pubs entry training” means training which is designed to raise awareness of the matters involved in operating a pub and entering into product ties and other agreements with landlords(14).

### A sustainable business plan

10.—(1) Before a pub-owning business—

- (a) enters into a new agreement with a tied pub tenant; or
- (b) agrees, with a tied pub tenant, the renewal of a tenancy to which Part 2 of the Landlord and Tenant Act 1954 does not apply,

the pub-owning business must ensure that the tenant has a sustainable business plan.

(2) A “sustainable business plan” is a business plan which—

- (a) has been prepared following consideration of independent professional advice, such as business, legal, property and rental valuation advice;
- (b) includes financial forecasts for the tenancy or licence period, including—
- (i) estimates of income and expenditure;
- (ii) a sensitivity analysis;
- (iii) the impact of any indexation of rent or of other costs referred to in the new agreement or in the renewal; and
- (c) contains a forecast of the income and net profit over the tenancy or licence period which, in the pub-owning business’s opinion, is reasonable for the tenant and realistic.

(3) The pub-owning business must, before the tied pub tenant prepares the business plan—

- (a) identify all reports which —
- (i) are publicly available;

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(13) 1954 c.56. Part 2 was amended by: paragraph 29 of Schedule 1 to the Agriculture Act 1958 (c.71); sections 1 to 14 of the Law of Property Act 1969 (c.59); section 47 of, and Schedule 3 to, the Land Compensation Act 1973 (c.26); Schedule 26 to the Housing Act 1980 (c.51); paragraph 4 of Schedule 33 to the Local Government, Planning and Land Act 1980 (c.65); paragraph 3 of Schedule 13, and paragraph 21 of Schedule 14, to the Agricultural Holdings Act 1986 (c.5); section 149 of, and Schedule 7 to, the Local Government and Housing Act 1989 (c.42); sections 1 and 2(2) of the Landlord and Tenant (Licensed Premises) Act 1990 (c.39); paragraph 10 of the Schedule to the Agricultural Tenancies Act 1995 (c.8); paragraphs 3 and 4(2) of Schedule 1 to the Landlord and Tenant (Covenants) Act 1995 (c.30); sections 35(2) to (4) and 36(1) of the Small Business, Enterprise and Employment Act 2015 (c.26); and S.I. 1990/1285, 2003/3096, 2009/1307, S.I. 2009/1941.

(14) Section 70(2) of SBEEA 2015 defines “landlord”.

- (ii) analyse the trading costs of tied pubs in the United Kingdom, or any area within it, and the costs of the tenancies and licences under which such pubs are occupied; and
  - (iii) provide relevant data against which the tenant can compare the performance of the tied pub for the purposes of preparing the business plan;
- (b) advise the tenant to consult those reports; and
- (c) provide to the tied pub tenant—
  - (i) the reports identified under sub-paragraph (a); or
  - (ii) information as to where, and how, the reports can be obtained.
- (4) The pub-owning business's duty in paragraph (3)(c) does not apply in relation to a report which the tied pub tenant has confirmed to the pub-owning business the tenant has read.
- (5) A "sensitivity analysis" is an analysis of—
  - (a) the potential business performance of the tied pub in the case of an increase or decrease in business income; and
  - (b) the effect of that increase or decrease on the tied pub's costs and profitability.
- (6) The "tenancy or licence period" means the period which—
  - (a) begins with the day on which the tenancy or licence first confers on the tied pub tenant the right to occupy; and
  - (b) ends with the earliest of the following days—
    - (i) the day five years after the day mentioned in sub-paragraph (a);
    - (ii) the last day on which the tenancy or licence confers on the tied pub tenant the right to occupy;
    - (iii) the rent review date.
- (7) Where a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies is renewed, the pub-owning business must—
  - (a) identify the reports mentioned in paragraph (3)(a), as if a sustainable business plan were being prepared;
  - (b) advise the tenant to consult those reports; and
  - (c) provide to the tied pub tenant, before the tenancy is renewed—
    - (i) the reports identified under paragraph (3)(a); or
    - (ii) information to the tenant as to where, and how, the reports can be obtained.

### **The required information**

- 11.**—(1) A pub-owning business must ensure that the tied pub tenant has received the information specified in Schedule 1 before the tenant considers the advice referred to in regulation 10(2)(a).
- (2) The pub-owning business is not required to comply with paragraph (1) in respect of any information specified in Schedule 1 which—
  - (a) has already been provided to the tied pub tenant by the pub-owning business in connection with the current tenancy or licence; and
  - (b) has not changed materially since it was provided.
- (3) The "current tenancy or licence" means the tenancy or licence in force at the time the tenant prepares the sustainable business plan.

### **Duty of pub-owning business where tenant intends to assign the tenancy**

12.—(1) This regulation applies where the terms of a tenancy in relation to a tied pub permit the tied pub tenant to assign the tenancy to another person.

(2) Where a tied pub tenant notifies the pub-owning business that the tenant intends to assign the tenancy, the pub-owning business must, as soon as reasonably practicable—

- (a) explain to the tenant and the proposed assignee the implications of the assignment for both; and
- (b) provide the tenant with—
  - (i) information relating to any fees payable by the tenant in respect of the assignment;
  - (ii) information relating to any dilapidations which the pub-owning business requires to be remedied before, or as a condition of, the assignment; and
  - (iii) the information in Schedule 1 or, where that information has already been provided to the tenant under regulation 11(1), any information in that Schedule which has changed materially since it was last provided.

(3) Paragraphs (4) to (7) apply where the tenancy may not be assigned without the pub-owning business's agreement.

(4) Before agreeing to an assignment, the pub-owning business must be satisfied—

- (a) that the proposed assignee has received the information which was provided to the tenant under regulation 11(1) or under paragraph (2)(b)(iii) of this regulation;
- (b) that the proposed assignee has been advised to complete pubs entry training; and
- (c) that the proposed assignee has been advised to seek independent advice, including advice from a qualified surveyor with professional experience relating to tied pubs.

(5) The pub-owning business's duty at paragraph (4)(b) does not apply if the assignee meets at least one of the conditions in paragraph (6).

(6) The conditions are—

- (a) that the assignee operates at least one other tied pub other than a pub which is occupied under a short agreement on the day on which the notice mentioned in paragraph (2) is given;
- (b) that the assignee can demonstrate that the assignee has at least 3 years of relevant business management experience;
- (c) that the pub-owning business has, at any time, granted the assignee a tenancy or licence in relation to a tied pub, other than a tenancy or licence in connection with a short agreement.

(7) Where the pub-owning business does not agree to the assignment, the pub-owning business must notify the tenant and the assignee as soon as reasonably practicable.

(8) Paragraph (9) applies where—

- (a) the tenancy may not be assigned without the pub-owning business's agreement;
- (b) the pub-owning business and the tied pub tenant have entered into an investment agreement; and
- (c) the tied pub tenant proposes to assign the tenancy.

(9) Before agreeing to the assignment, the pub-owning business must be satisfied that the assignee—

- (a) has been notified, in writing, of the investment agreement and the effect of that agreement on the assignee's right to request a rent assessment or an offer of a market rent only option<sup>(15)</sup>; and
- (b) has received a copy of that agreement.

### **Premises**

**13.**—(1) Before entering into a new agreement with a tied pub tenant, a pub-owning business must advise the tenant to—

- (a) conduct a thorough inspection of the premises to which the tenancy or licence relates, including any part of the premises intended to be used as the tenant's home; and
- (b) obtain the advice of a qualified surveyor with professional experience relating to tied pubs.

(2) Paragraph (3) applies where—

- (a) a tied pub tenant and a pub-owning business—
  - (i) enter into a new agreement; or
  - (ii) renew a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies; and
- (b) before the renewal or before entering into the new agreement, the pub-owning business or the tied pub tenant agrees to carry out any maintenance, repair or improvement works to the premises.

(3) As soon as reasonably practicable after the works are completed, the pub-owning business must update the Schedule of Condition, in the light of the works.

(4) Where, under a tenancy or licence, a tied pub tenant is required to maintain or repair the premises, or any part of the premises, to which the tenancy or licence relates, paragraphs (5) and (6) apply.

(5) Before entering into a new agreement or renewing a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies, the pub-owning business must take the Schedule of Condition into account—

- (a) during an assessment of any maintenance or repairs in respect of the premises; and
- (b) before any obligations or liabilities in respect of the condition of the premises are agreed between the pub-owning business and the tied pub tenant.

(6) The pub-owning business must ensure that the Schedule of Condition is updated and reviewed—

- (a) in accordance with the terms of the tenancy or licence; or
- (b) where the tenancy or licence does not require such a review—
  - (i) following any significant alteration to the structure of the premises; and
  - (ii) at least 6 months before the end of the tenancy or licence.

(7) A survey of the premises which is carried out by a pub-owning business for the purposes of determining the dilapidations to the premises must be carried out—

- (a) in accordance with the terms of the tenancy or licence; and
- (b) at least 6 months before the end of the tenancy or licence.

(8) Paragraph (9) applies where a pub-owning business, or a person acting on its behalf, proposes to enter a tied pub for the purposes of —

- (a) assessing repairs or maintenance required under the tenancy or licence;

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<sup>(15)</sup> Section 43(2) of SBEEA 2015 defines “market rent only option”.

- (b) carrying out such repairs or maintenance; or
- (c) assessing dilapidations in respect of the premises.

(9) The pub-owning business, or the person acting on its behalf, must not, except in an emergency, enter the pub without giving the tied pub tenant reasonable notice.

### Short agreements

**14.**—(1) Before entering into a short agreement, the pub-owning business must provide the following information to the tied pub tenant—

- (a) the amount of rent, or money payable in lieu of rent, which is to be paid under the short agreement;
- (b) the information specified in paragraphs 12 to 17, 19, 20, 28, 32 and 34 of Schedule 1;
- (c) the arrangements for the payment of utility bills.

(2) The pub-owning business must advise the tenant to complete pubs entry training before entering into a short agreement unless the tenant meets at least one of the conditions in paragraph (3).

(3) The conditions are—

- (a) that, on the day on which the short agreement is proposed, the tied pub tenant operates at least one other tied pub other than a tied pub occupied under a short agreement;
- (b) that the tied pub tenant can demonstrate that the tenant has at least 3 years of relevant business management experience;
- (c) that the pub-owning business has, at any time, granted the tenant a tenancy or licence in relation to a tied pub, other than a tenancy or licence in connection with another short agreement.

## PART 3

### Duties of pub-owning businesses in their dealings with their tied pub tenants: rent proposals

#### Duty to provide a rent proposal

**15.**—(1) Where any of paragraphs (2) to (7) apply, the pub-owning business must provide a rent proposal to the tied pub tenant.

(2) This paragraph applies where—

- (a) the tenant receives a notice from the pub-owning business under section 25(1)(**16**) of the Landlord and Tenant Act 1954;
- (b) the tenant requests a rent proposal within the period of 21 days beginning with the day on which the notice is received; and
- (c) the pub-owning business has not—
  - (i) within the time ordinarily allowed, opposed under section 24(1)(**17**) of the Landlord and Tenant Act 1954, the tenant's application for a new tenancy; and
  - (ii) within the time ordinarily allowed, applied to the court, under section 29(2)(**18**) of that Act, for an order for the termination of the tenancy.

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(16) Section 25(1) was amended by [S.I. 2003/3096](#).

(17) Section 24(1) was amended by section 3(2) of the Law of Property Act 1969 and by [S.I. 2003/3096](#).

(18) Section 29(2) was substituted by [S.I. 2003/3096](#).

- (3) This paragraph applies where—
  - (a) the tenant receives a notice from the pub-owning business under section 25(1) of the Landlord and Tenant Act 1954;
  - (b) the tenant requests a rent proposal within the period of 21 days beginning with the day on which the notice is received; and
  - (c) the pub-owning business—
    - (i) opposes the tenant’s application under section 24(1) of that Act for a new tenancy; or
    - (ii) applies to the court, under section 29(2) of that Act, for an order for the termination of the tenancy.
- (4) This paragraph applies where—
  - (a) the tenant makes a request for a new tenancy under section 26(19) of the Landlord and Tenant Act 1954;
  - (b) the tenant requests a rent proposal within the period of 21 days beginning with the day on which the request for a new tenancy is made; and
  - (c) the pub-owning business has not—
    - (i) within the time ordinarily allowed, opposed the tenant’s application for a new tenancy under section 24(1) of that Act; and
    - (ii) within the time ordinarily allowed, applied to the court, under section 29(2) of that Act.
- (5) This paragraph applies where—
  - (a) the tenant makes a request for a new tenancy under section 26 of the Landlord and Tenant Act 1954;
  - (b) the tenant requests a rent proposal within the period of 21 days beginning with the day on which the request for a new tenancy is made; and
  - (c) the pub-owning business —
    - (i) opposes, under section 24(1) of that Act, the tenant’s application for a new tenancy under section 26 of the Landlord and Tenant Act 1954; or
    - (ii) applies to the court under section 29(2) of that Act.
- (6) This paragraph applies where—
  - (a) there is a change in the amount of rent or money payable in lieu of rent payable by the tenant under the tenancy or licence except where the change is due to an annual or other periodic indexation of rent which was agreed by the tenant when the tenancy or licence was entered into; and
  - (b) the tenant requests a rent proposal within the period of 21 days beginning with the day on which the change is notified to the tenant.
- (7) This paragraph applies where the pub-owning business notifies the tenant of a proposal to negotiate a new agreement with the tenant.
- (8) A pub-owning business is not required to provide a rent proposal where—
  - (a) the event in paragraph (6) occurs; and
  - (b) regulation 19(1) applies in connection with the initial or revised rent.

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(19) Section 26 was amended by S.I. 2003/3096.

### **Contents of the rent proposal**

- 16.—(1) A rent proposal provided under regulation 15 must contain—
- (a) a proposal for, or information about the change in, the rent, or money payable in lieu of rent, which is to be paid under the tenancy or licence (“the initial or revised rent”);
  - (b) where a new tenancy or licence is proposed, any other terms of the tenancy or licence being proposed;
  - (c) the information specified in Schedule 2; and
  - (d) any other information which—
    - (i) the tenant requires to understand or negotiate the initial or revised rent in an informed manner; and
    - (ii) the pub-owning business would reasonably be expected to give to the tenant.
- (2) A pub-owning business is not required to comply with paragraph (1)(c) in respect of any information in Schedule 2—
- (a) which—
    - (i) has already been provided to a tied pub tenant in connection with the tenancy or licence; and
    - (ii) has not changed materially since it was provided; or
  - (b) which is not reasonably available to the pub-owning business.
- (3) The pub-owning business must prepare the rent proposal in accordance with the RICS guidance, and the rent proposal, when provided, must be accompanied by written confirmation, from a member or fellow of the RICS, that the proposal has been so prepared.

### **When the rent proposal must be provided**

17. A rent proposal provided under regulation 15 must be provided—
- (a) where regulation 15(2) applies, within the period of 21 days beginning with the day on which the tenant requests the proposal;
  - (b) where regulation 15(3) applies, within the period of 21 days beginning with the day on which the court makes an order for the grant of a new tenancy;
  - (c) where regulation 15(4) applies, within the period of 2 months beginning with the day on which the tenant makes the request for a new tenancy under section 26 of the Landlord and Tenant Act 1954;
  - (d) where regulation 15(5) applies, within the period of 21 days beginning with the day on which the court makes an order for the grant of a new tenancy;
  - (e) where regulation 15(6) applies, within the period of 21 days beginning with the day on which the request is made;
  - (f) where regulation 15(7) applies, before the tenant considers the advice referred to in regulation 10(2)(a).

### **Further information and advice in relation to the rent proposal**

- 18.—(1) The pub-owning business—
- (a) must comply with any reasonable request for further information which—
    - (i) is relevant to the negotiation of the initial or revised rent; or
    - (ii) may allow the tied pub tenant to understand that rent,



and which is made by the prospective tenant or a person acting on behalf of the tenant; or

- (b) must provide to the tied pub tenant, within the period of 7 days beginning with day on which the request was received, a reasonable explanation why the information required is not provided.

(2) The pub-owning business must advise the tied pub tenant to obtain independent professional advice in connection with the initial or revised rent before the tenant agrees that rent.

## PART 4

### Duties of pub-owning businesses in their dealings with their tied pub tenants: rent assessments

#### **Duty to conduct a rent assessment or an assessment of money payable in lieu of rent**

19.—(1) A pub-owning business—

- (a) must conduct a rent assessment or an assessment of money payable in lieu of rent in connection with a rent review which is required under the terms of a tenancy or licence of a tied pub of which it is the landlord; and
- (b) must conduct a rent assessment or an assessment of money payable in lieu of rent where a tied pub tenant of such a pub requests it under paragraph (2).

(2) A tied pub tenant may request a rent assessment or an assessment of money payable in lieu of rent if—

- (a) such an assessment has not ended within the period of 5 years ending with the date of the request;
- (b) there is a significant increase in the price at which a product or service which is subject to a product or service tie is supplied to the tied pub tenant; or
- (c) the tied pub tenant demonstrates that a trigger event has occurred by means of a written analysis of the level of trading which is forecast for a period of 12 months or more beginning with the day on which the tenant makes the request.

(3) A request under paragraph (2) must be made in writing and—

- (a) in the case of a request made under paragraph (2)(b), must be received by the pub-owning business within the period of 14 days beginning with the day on which the tied pub tenant receives notification of the significant increase; and
- (b) in the case of a request made under paragraph (2)(c), must be received by the pub-owning business within the period of 14 days beginning with the day on which the tied pub tenant sends the written analysis referred to in that paragraph to the pub-owning business.

(4) The following are not rent reviews for the purposes of paragraph (1)(a)—

- (a) an annual or other periodic indexation of rent;
- (b) a change in rent in connection with the receipt of a corresponding benefit from the pub-owning business;
- (c) a change in rent in connection with the freeing of the tied pub tenant from a product or service tie;
- (d) any discussions in respect of changes in rent which are carried out within a review of the business provided for under the terms of the tenancy or licence.

### **The rent assessment proposal**

**20.**—(1) Where a pub-owning business is required to conduct a rent assessment or an assessment of money payable in lieu of rent under regulation 19(1), the pub-owning business must send the tied pub tenant a document (“the rent assessment proposal”) containing—

- (a) a proposal for the rent or money payable in lieu of rent which is to be paid under the tenancy or licence at the end of the assessment (the “new rent”);
  - (b) the information specified in Schedule 2, if it is reasonably available to the pub-owning business;
  - (c) such other information as may be required to ensure that the tenant is able to negotiate, in an informed manner, the new rent.
- (2) The rent assessment proposal must be provided to the tied pub tenant—
- (a) in the case of an assessment conducted under regulation 19(1)(a), at least 6 months before the rent review date;
  - (b) in the case of an assessment conducted under regulation 19(1)(b), within the period of 21 days beginning with the day on which the tied pub tenant requests the assessment.

(3) The pub-owning business must prepare the rent assessment proposal in accordance with the RICS guidance and the rent assessment proposal, when provided, must be accompanied by written confirmation from a member or fellow of the RICS that the rent assessment proposal has been so prepared.

### **Conduct of the rent assessment or the assessment of money payable in lieu of rent**

**21.**—(1) A rent assessment or an assessment of money payable in lieu of rent begins on the day on which a pub-owning business provides a rent assessment proposal to the tied pub tenant in accordance with regulation 20.

(2) A rent assessment or an assessment of money payable in lieu of rent must be conducted in accordance with the RICS guidance.

(3) During the rent assessment or assessment of money payable in lieu of rent, the pub-owning business must—

- (a) comply with any reasonable request for further information which is relevant for the negotiation of the new rent and which is made by the tied pub tenant or by a person acting on behalf of the tied pub tenant; or
- (b) provide to the tied pub tenant, as soon as reasonably practicable, a reasonable explanation why the information required is not provided.

(4) Where a pub-owning business is required to conduct an assessment under regulation 19(1)(a), the pub-owning business must ensure that an appropriately qualified person who is involved in the preparation of the rent assessment proposal visits the tied pub within the period of 3 months ending on the day on which the rent assessment proposal is provided to the tied pub tenant.

(5) The pub-owning business must advise the tied pub tenant to obtain independent professional advice in connection with the new rent before the tenant agrees that rent.

(6) Paragraph (7) applies at the end of the assessment where—

- (a) the rent, or money payable in lieu of rent, payable under the tenancy or licence is adjusted as a result of the assessment; and
- (b) either—
  - (i) the rent review date has passed; or

- (ii) more than 6 months have elapsed since the day on which the rent assessment proposal was provided to the tied pub tenant.
- (7) Before the new rent is agreed by the tied pub tenant, the tied pub tenant and the pub-owning business must agree, in writing, how any recoverable rent is to be paid to the tied pub tenant or to the pub-owning business, as the case may be.
- (8) The tied pub tenant's agreement to the new rent must be given in writing.
- (9) A member or fellow of the RICS must confirm that the rent assessment or the assessment of money payable in lieu of rent has been conducted in accordance with guidance issued by that institution.
- (10) The "recoverable rent" is the amount of the difference between—
  - (a) the rent, or money payable in lieu of rent, which is payable under regulation 22(1) in respect of the rent recovery period; and
  - (b) the rent, or money payable in lieu of rent, which would have been payable in respect of that period if (instead of the rent or money payable in lieu of rent mentioned in subparagraph (a)) the new rent had been payable in respect of that period.
- (11) The "rent recovery period" is the period which—
  - (a) begins—
    - (i) in the case of an assessment conducted under regulation 19(1)(a), with the rent review date;
    - (ii) in the case of an assessment conducted under regulation 19(1)(b), with the day after the period of 6 months beginning with the day on which the rent assessment proposal was provided to the tied pub tenant; and
  - (b) ends with the day on which the assessment ends.
- (12) In these Regulations, the "rent review date" is the date from which the terms of the tenancy or licence require the rent, or money payable in lieu of rent, to be payable following a rent review.

### **Effect of the rent assessment or the assessment of money payable in lieu of rent**

- 22.—**(1) Where a pub-owning business conducts an assessment under regulation 19(1), the rent, or money payable in lieu of rent, which is payable under the tenancy or licence at the beginning of the assessment, is payable until the end of the assessment.
- (2) The new rent is payable with effect from the day after the end of that assessment.
  - (3) An assessment ends—
    - (a) in the case of an assessment which is conducted under regulation 19(1)(a)—
      - (i) on the rent review date;
      - (ii) if later, on the date on which the tied pub tenant and the pub-owning business agree the new rent in writing;
    - (b) in the case of an assessment which is conducted at the tied pub tenant's request under regulation 19(1)(b)—
      - (i) at the end of the period of 6 months beginning with the day on which the rent assessment proposal was provided to the tied pub tenant; or
      - (ii) if later, on the date on which the tied pub tenant and the pub-owning business agree the new rent in writing.
  - (4) But where—
    - (a) before the rent assessment is agreed, the tied pub tenant gives an MRO notice; and

(b) the tied pub tenant and the pub-owning business agree, in writing, a proposal as to the matters mentioned in regulation 34(2)(a) and (b),  
the rent assessment ends on the day on which those matters are agreed.

## PART 5

### Market rent only option: MRO notice

#### The MRO notice

**23.**—(1) A tied pub tenant may give a notice (an “MRO notice”) to the pub-owning business where—

- (a) the event specified in regulation 24 or 25 occurs; or
  - (b) the event specified in regulation 26 or 27 occurs and the investment exception does not apply (see regulation 56).
- (2) The MRO notice must be—
- (a) in writing; and
  - (b) received by the pub-owning business within the period of 21 days beginning with the day on which the event mentioned in paragraph (1) occurred.
- (3) The MRO notice must include—
- (a) the tenant’s name, postal address, email address (if any) and telephone number;
  - (b) the date on which the notice is being sent;
  - (c) the name of the tied pub in relation to which the request for an offer of a market rent only option is being made and its address;
  - (d) the date on which the event mentioned in paragraph (1) occurred; and
  - (e) a description of that event which, in the tenant’s opinion, demonstrates that it is an event specified in regulation 24, 25, 26 or 27.
- (4) A tied pub tenant may not give an MRO notice to the pub-owning business where—
- (a) the tenant has already given an MRO notice under paragraph (1); and
  - (b) the MRO procedure<sup>(20)</sup> which relates to that notice has not ended.

#### A significant increase in the price of a product or service

**24.** The event specified in this regulation is that the tied pub tenant receives notification of a significant increase in the price at which a product or service which is subject to a product or service tie is supplied to the tied pub tenant.

#### A trigger event

**25.**—(1) The event specified in this regulation is that the tied pub tenant sends the pub-owning business a relevant analysis which demonstrates that a trigger event has occurred.

(2) In paragraph (1), a “relevant analysis” means a written analysis of the level of trading which is forecast for a period of 12 months or more.

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<sup>(20)</sup> Section 44(1)(a) of SBEEA 2015 defines “MRO procedure”.

### **The renewal of a pub arrangement**

**26.**—(1) The event specified in this regulation is that a pub arrangement is renewed.

(2) For the purposes of section 43(6) of SBEEA 2015 (and so of this regulation), a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies is renewed between the tied pub tenant and the pub-owning business—

- (a) on the day on which the tied pub tenant receives the pub-owning business's notice under section 25(1) of the Landlord and Tenant Act 1954; or
- (b) on the day on which the landlord receives the tied pub tenant's request under section 26 of that Act.

(3) For the purposes of section 43(6) of SBEEA 2015 (and so of this regulation), a tenancy to which Part 2 of the Landlord and Tenant Act 1954 does not apply is renewed between the tied pub tenant and the pub-owning business on the first day on which the tenancy may be renewed under the terms of the tenancy.

### **A rent assessment or an assessment of money payable in lieu of rent**

**27.** The event specified in this regulation is that the tied pub tenant receives a rent assessment proposal sent by the pub-owning business under regulation 20(1) in respect of the tenancy or licence.

## **PART 6**

Market rent only option: procedure to be followed in connection with an offer

### **Existing arrangements continue to have effect until the end of the MRO procedure**

**28.**—(1) When a tenant gives an MRO notice—

- (a) the tenancy or licence under which the tied pub is occupied; and
- (b) any other contractual agreement entered into between the tied pub tenant and the pub-owning business in connection with the tenancy or licence,

continue to have effect, as they have effect when the notice is given, until such time as the MRO procedure has come to an end under regulation 39.

(2) Paragraph (1) does not apply when the tied pub tenant of a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies gives an MRO notice that the event specified in regulation 26 has occurred.

### **Effect of tenant's notice**

**29.**—(1) This regulation applies where a pub-owning business has received an MRO notice.

(2) The pub-owning business must send a written acknowledgement to the tied pub tenant as soon as reasonably practicable.

(3) Where the pub-owning business agrees with the tied pub tenant's opinion under regulation 23(3)(e), the pub-owning business must send the tenant—

- (a) a statement confirming its agreement;
- (b) where the MRO notice relates to a tenancy, a proposed tenancy which is MRO-compliant;
- (c) where the MRO notice relates to a licence, a proposed licence which is MRO-compliant; and
- (d) a proposed MRO rent.

(4) Where the pub-owning business disagrees with the tied pub tenant's opinion under regulation 23(3)(e), it must send the tenant—

- (a) a statement confirming its disagreement; and
- (b) its reasons for disagreeing.

(5) A response under paragraph (3) or (4) is a “full response”.

(6) The pub-owning business must send a full response within the period of response.

(7) The “period of response” is, subject to paragraphs (8) and (9), the period of 28 days which begins with the day on which the pub-owning business receives an MRO notice.

(8) Where—

- (a) the tenant gives an MRO notice that the event specified in regulation 26 has occurred;
- (b) the event is a renewal by virtue of regulation 26(2)(a); and
- (c) the pub-owning business—
  - (i) opposes the tenant's application for a new tenancy under section 24(1) of the Landlord and Tenant Act 1954; or
  - (ii) applies to the court under section 29(2) of that Act, for an order for the termination of the tenancy,

the “period of response” is the period of 28 days which begins with the day on which the court makes an order for the grant of a new tenancy.

(9) Where the tenant gives an MRO notice that the event specified in regulation 26 has occurred, and the event is a renewal by virtue of regulation 26(2)(b), the period of response is the period of 28 days which begins —

- (a) at the end of the period of two months after the day on which the tenant makes a request for a new tenancy under section 26 of the Landlord and Tenant Act 1954; or
- (b) where the pub-owning business opposes the tenant's application for a new tenancy under section 24(1) of that Act, or applies to the court under section 29(2) of that Act, on the day on which the court makes an order for the grant of a new tenancy.

### **Terms and conditions required in a tenancy which is MRO-compliant**

**30.**—(1) This regulation applies where—

- (a) a tied pub tenant is subject to a tenancy granted by the pub-owning business (the “existing tenancy”);
- (b) the tenant gives an MRO notice;
- (c) the pub-owning business provides a full response or a revised response; and
- (d) Part 2 of the Landlord and Tenant Act 1954 applies to the existing tenancy.

(2) The tenancy which is sent by the pub-owning business under regulation 29(3)(b) or 33(2) (“the proposed MRO tenancy”) is MRO-compliant only if Part 2 of the Landlord and Tenant Act 1954 applies to the proposed MRO tenancy.

(3) Where the MRO notice states that the event specified in regulation 24, 25 or 27 has occurred, the tenancy is MRO-compliant only if its term is for a period which is at least as long as the remaining term of the existing tenancy.

### **Reasonable terms and conditions**

**31.**—(1) Paragraph (2) applies where—

- (a) a tied pub tenant is subject to a tenancy granted by the pub-owning business; and

(b) the tenant gives an MRO notice.

(2) The terms and conditions of the proposed MRO-compliant tenancy sent under regulation 29(3)(b) or 33(2) are to be regarded as unreasonable for the purposes of section 43(4) of SBEEA 2015 (tenancy or licence which is MRO-compliant) if they—

- (a) insert into the tenancy a break clause which is exercisable only by the pub-owning business;
- (b) impose a service tie in respect of insurance other than buildings insurance in connection with the premises to which the tenancy relates; or
- (c) are terms which are not common terms in agreements between landlords and pub tenants who are not subject to product or service ties.

(3) Where—

- (a) a tied pub tenant is subject to a licence granted by the pub-owning business; and
- (b) an MRO notice is given,

the terms and conditions of the proposed MRO-compliant licence granted by the pub-owning business under regulation 29(3)(c) or 33(2) are to be regarded as unreasonable for the purposes of section 43(4) of SBEEA 2015 if they impose a service tie in respect of insurance other than buildings insurance in connection with the premises to which the licence relates.

#### **Failure to acknowledge the tenant’s notice, provide a full response etc.**

**32.**—(1) This regulation applies where a pub-owning business has received an MRO notice.

(2) Where—

- (a) the pub-owning business does not send a full response under regulation 29(3) or (4) within the period of response;
- (b) the tied pub tenant considers that the pub-owning business’s full response does not comply with other requirements of regulation 29; or
- (c) the tied pub tenant disagrees with the pub-owning business’s statement under regulation 29(4)(a),

the tenant or the pub-owning business may refer the matter to the Adjudicator<sup>(21)</sup>.

(3) Where the tied pub tenant or the pub-owning business intends to make a referral under paragraph (2), the tenant and the pub-owning business must notify each other, in writing, of their intention to do so before the referral is made.

(4) Where the matter is referred to the Adjudicator in the circumstances described in paragraph (2)(a) to (c), the referral must be made within the period of 14 days beginning with the day after the end of the period of response.

#### **MRO procedure where a matter is referred to the Adjudicator in connection with the full response**

**33.**—(1) Where—

- (a) a matter is referred to the Adjudicator under regulation 32(2)(b) or (c); and
- (b) the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) rules that no failure has occurred in connection with the full response,

the full response provided by the pub-owning business under regulation 29(3) or (4) is deemed to have been received by the tied pub tenant on the day of the Adjudicator’s ruling.

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(21) Section 72(1) of SBEEA 2015 defines “the Adjudicator”.

(2) Where—

- (a) a matter is referred to the Adjudicator under regulation 32(2)(a) to (c); and
- (b) the Adjudicator rules that the pub-owning business must provide a revised response to the tied pub tenant,

the pub-owning business must provide that response within the period of 21 days beginning with the day of the Adjudicator’s ruling or by such a day as may be specified in the Adjudicator’s ruling.

(3) A “revised response” is a response which includes the information mentioned in regulation 29(3)(a) to (d).

### **The negotiation period**

**34.**—(1) This regulation applies where—

- (a) the pub-owning business has provided the tenant with—
    - (i) a full response under regulation 29(3); or
    - (ii) a revised response under regulation 33(2); and
  - (b) the tied pub tenant continues to wish to pursue a market rent only option.
- (2) The tied pub tenant and the pub-owning business must seek to agree—
- (a) an MRO-compliant tenancy or licence; and
  - (b) the rent payable under that tenancy or licence.

(3) If, by the end of the negotiation period(**22**), the tied pub tenant has not communicated to the pub-owning business, in writing, a decision to accept or reject a proposal as to the matters referred to at paragraph (2)(a) and (b)—

- (a) the offer lapses; and
- (b) the tied pub tenant may not refer the MRO rent to the independent assessor(**23**) under regulation 35(3).

(4) A tied pub tenant may notify the pub-owning business, in writing, of the tenant’s intention to terminate the negotiation at any time during the negotiation period.

(5) The negotiation period is the period of 56 days beginning with the day on which the tied pub tenant receives—

- (a) a full response under regulation 29(3); or
- (b) if later, a revised response under regulation 33(2).

### **Failure to agree**

**35.**—(1) Where—

- (a) the pub-owning business sends a subsequent proposed tenancy or licence to the tied pub tenant during the negotiation period; and
- (b) the tenant considers that the tenancy or licence is not MRO-compliant,

the tenant may refer the matter to the Adjudicator within the period of 14 days beginning with the day after the day on which the subsequent proposed tenancy is received.

(2) A “subsequent proposed tenancy or licence” means a tenancy or licence which the pub-owning business has offered to the tenant as an MRO-compliant tenancy or licence during the negotiation period.

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(22) Section 44(2)(b) of SBEEA 2015 defines “negotiation period”.

(23) Section 72(1) of SBEEA 2015 defines “independent assessor”.



- (3) A tied pub tenant may refer the MRO rent to an independent assessor by sending a notice to the pub-owning business, in writing, of the tenant's intention to do so within the period—
- (a) beginning with the day 28 days after the day on which the negotiation period begins; and
  - (b) ending with the day 7 days after the day on which that period ends.

## PART 7

### Market rent only option: independent assessor

#### Appointment of the independent assessor

**36.**—(1) The Adjudicator must specify the criteria which a person must satisfy in order to be appointed as an independent assessor.

(2) The following provisions of this regulation apply where a tied pub tenant has sent a notice to the pub-owning business under regulation 35(3).

(3) The tenant and the pub-owning business must, within the period of 28 days beginning with the day on which the pub-owning business receives the tied pub tenant's notice under regulation 35(3)—

- (a) jointly, appoint an independent assessor; or
- (b) notify the Adjudicator in writing of their failure to make the appointment.

(4) Where the Adjudicator receives notification under paragraph (3)(b), the Adjudicator must, within 14 days of the notification—

- (a) appoint an assessor; and
- (b) notify the tenant and the pub-owning business of the appointment.

(5) The pub-owning business and the tied pub tenant must pay, in equal shares, the fees charged by the independent assessor in connection with the determination of the market rent<sup>(24)</sup>.

#### Independent assessor: procedure

**37.**—(1) The tied pub tenant must, within the period of 28 days beginning with the day after the day on which an independent assessor is appointed under regulation 36, provide to the independent assessor—

- (a) the MRO-compliant tenancy or licence proposed by the pub-owning business under regulation 29(3)(b) or (c); or
- (b) the subsequent proposed tenancy or licence,

associated with the MRO rent being referred.

(2) The assessor must—

- (a) determine the market rent associated with the tenancy or licence provided under paragraph (1); and
- (b) communicate that determination to the tenant and the pub-owning business.

(3) The independent assessor's determination of the market rent—

- (a) must have regard to the documents listed in Schedule 3; and
- (b) must be conducted in accordance with guidance issued by the Adjudicator, as amended from time to time.

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<sup>(24)</sup> Section 43(10) of SBEEA 2015 defines "market rent".

(4) The tenant and the pub-owning business must provide to the independent assessor any other information which they consider relevant to the determination within the period of 28 days beginning with the day after the day on which the independent assessor is appointed.

(5) The independent assessor may require the tenant and the pub-owning business to provide any other documents or information held by them which the independent assessor considers relevant for the determination.

(6) The tenant and the pub-owning business must comply with any reasonable request made under paragraph (5) as soon as reasonably practicable.

(7) Where the tenant or the pub-owning business—

(a) provides information under paragraph (4); or

(b) complies, under paragraph (6), with a request for other documents or information,

they must also provide any such information to each other within the periods specified in those paragraphs.

(8) The independent assessor must communicate a determination of the market rent to the tied pub tenant and the pub-owning business within the period of 21 days beginning with the day after the end of the period described in paragraph (4).

(9) Where the pub-owning business or the tied pub tenant considers that the independent assessor has failed to comply with paragraph (2) or (3), they may refer the matter to the Adjudicator within the period of 14 days beginning with the day on which the determination was communicated to the tenant and the pub-owning business.

(10) Where the independent assessor has not communicated the determination within the period required by paragraph (8), the tenant or the pub-owning business may refer the matter to the Adjudicator within the period of 14 days beginning with the day after the end of that period.

(11) Where—

(a) the independent assessor communicates a determination within the period required by paragraph (8); and

(b) the tied pub tenant or the pub-owning business do not refer the matter to the Adjudicator under paragraph (9),

paragraph (12) applies.

(12) The tied pub tenant must accept or reject, in writing, the determination communicated under paragraph (11)(a) and the associated tenancy or licence provided to the assessor under paragraph (1) within the period of 21 days beginning with—

(a) the day on which the determination was communicated to the tied pub tenant; or

(b) if later, the day on which any rent assessment, or assessment of money payable in lieu of rent, being carried out in respect of the tenancy or licence ends.

### **MRO procedure where a referral is made to the Adjudicator in connection with the independent assessor**

**38.**—(1) This regulation applies where a matter is referred to the Adjudicator in connection with the independent assessor's determination of the market rent.

(2) Where the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b))—

(a) directs the independent assessor under regulation 59(3)(b)(ii) to make a second determination of the market rent; or

(b) appoints another independent assessor under regulation 59(3)(b)(iii) or (6)(c) to determine the market rent,

the independent assessor must communicate the determination of the market rent to the tied pub tenant and the pub-owning business within the period of 21 days beginning with the day on which the direction or the appointment, as the case may be, occurred.

(3) Paragraphs (4) and (5) apply where—

- (a) the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) makes a determination by virtue of regulation 59(3)(b)(ii) or (iii), (6)(b) or (c) or (7)(b); and
- (b) the independent assessor determines the market rent in accordance with that determination.

(4) If the tenant or the pub-owning business considers that the independent assessor has not determined the market rent in accordance with regulation 37(3), the tenant or the pub-owning business may refer the matter to the Adjudicator within the period of 14 days beginning with the day on which the determination of the independent assessor is communicated.

(5) But if the tenant or the pub-owning business does not refer the matter under paragraph (4), the tied pub tenant must accept or reject, in writing, the independent assessor's determination and the associated tenancy or licence provided to the assessor under regulation 37(1) within the period of 21 days beginning with—

- (a) the day on which the determination of the independent assessor is communicated to the tenant; or
- (b) if later, the day on which any rent assessment, or assessment of money payable in lieu of rent, being carried out in respect of the tenancy or licence ends.

## PART 8

### End of the MRO procedure

#### End of the MRO procedure

**39.**—(1) This regulation applies where a tenant gives an MRO notice.

(2) The MRO procedure ends—

- (a) where the tied pub tenant and the pub-owning business agree, in writing, a proposal as to the matters mentioned in regulation 34(2)(a) and (b), on the day on which that agreement is signed by both parties;
- (b) where the tenancy or licence under which the tied pub is occupied at the time the MRO notice is given ends, on the day on which the tenancy or licence ends;
- (c) where the offer lapses in accordance with regulation 34(3)(a), on the day on which the negotiation period ends;
- (d) where the tied pub tenant terminates negotiations in accordance with regulation 34(4), on the day on which those negotiations are terminated;
- (e) where the tied pub tenant rejects a proposal under regulation 37(12), 38(5) or 59(2), (5) or (9), on the day on which the tenant rejects that proposal;
- (f) where—
  - (i) a matter is referred to the Adjudicator under regulation 32(2); and
  - (ii) the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) does not consider that the circumstances are such that the pub-owning business must offer the tenant a market rent only option,  
on the day of the Adjudicator's ruling;

- (g) where—
  - (i) a matter is referred in connection with any other aspect of the MRO procedure; and
  - (ii) the Adjudicator rules that the MRO procedure ends on a specified day, on the day so specified;
- (h) where the pub-owning business conducts a rent assessment or an assessment of money payable in lieu of rent, on the day on which the tenant agrees, in writing, the new rent.

### **Effect of the end of the MRO procedure**

- 40.**—(1) Where the MRO procedure ends under regulation 39(2)(a)—
- (a) the terms of the MRO-compliant tenancy have effect from the day after the end of the MRO procedure; and
  - (b) the MRO rent is payable with effect from that day.
- (2) Paragraph (3) applies where—
- (a) a market rent only option has not been agreed between the tied pub tenant and the pub-owning business by the end of the MRO procedure; and
  - (b) during the MRO procedure one of the following events has occurred (or would have occurred if the tenant had not given an MRO notice)—
    - (i) the renewal of a pub arrangement, other than a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies;
    - (ii) a rent assessment, or an assessment of money payable in lieu of rent;
    - (iii) a significant increase in the price of a product or service supplied to a tied pub tenant under a product or service tie;
    - (iv) a trigger event.
- (3) If a tied pub tenant and a pub-owning business do not agree, in writing, how any MRO recoverable amount is to be paid to the tied pub tenant or to the pub-owning business, as the case may be, at the end of the MRO procedure, the tenant or the pub-owning business may refer the matter to the Adjudicator.
- (4) The “MRO recoverable amount” is the amount of the difference between—
- (a) the amount which is payable by virtue of regulation 28(1) during the MRO procedure; and
  - (b) the amount which would have been payable under the agreements mentioned in regulation 28(1)(a) and (b) during that period as a result of one or more of the events mentioned in paragraph (2)(b) if an MRO notice hadn’t been given.

## **PART 9**

### **Business development managers and compliance officers**

#### **Business development managers**

- 41.**—(1) The pub-owning business must ensure that each of its business development managers—
- (a) receives a copy of these Regulations before the business development manager liaises with tied pub tenants over any matters relating to the Regulations;
  - (b) is provided with appropriate training in relation to the requirements of these Regulations at least once every 12 months; and

- (c) deals with tied pub tenants in a manner that is consistent with the principle referred to in section 42(3)(a) of SBEEA 2015.
- (2) A pub-owning business must provide to its tied pub tenants information about—
  - (a) the role of the business development manager; and
  - (b) the support and guidance which the business development manager will provide to the tenants.
- (3) Where a business development manager is responsible for conducting rent assessments or assessments of money payable in lieu of rent, the pub-owning business must ensure that the business development manager receives appropriate training before conducting any such assessment.
- (4) A pub-owning business must ensure that the business development manager—
  - (a) makes appropriate notes of any discussions with tied pub tenants in connection with—
    - (i) rent proposals;
    - (ii) rent assessments or assessments of money payable in lieu of rent;
    - (iii) repairs to the tied pub premises;
    - (iv) matters relating to the tied pub tenants' current or future business plans;
  - (b) provides tied pub tenants with a record of any such discussions within the period of 14 days beginning with the day on which the discussion occurred; and
  - (c) requests that the tenant respond to the business development manager if the tenant does not agree with any aspect of the record within the period of 7 days beginning with the day on which the record was received.
- (5) A pub-owning business must specify, in a document published by the pub-owning business—
  - (a) its commitment towards the continuous professional development and improvement of its business development managers; and
  - (b) how it proposes to fulfil such a commitment, referring where appropriate to relevant qualifications and training.
- (6) A “business development manager” means—
  - (a) a person who is employed as such by a pub-owning business; or
  - (b) any other person who represents the pub-owning business in negotiations with tied pub tenants in connection with the matters listed in paragraph (4)(a).

### **Duty to appoint a compliance officer**

**42.—**(1) A pub-owning business must appoint a suitably qualified employee to be the compliance officer, whose role is to verify the pub-owning business's compliance with these Regulations.

- (2) The pub-owning business must ensure that the compliance officer—
  - (a) is provided with the resources necessary to carry out his or her role, including information relating to the pub-owning business's obligations under these Regulations;
  - (b) is entitled to contact the business development managers to discuss matters relating to those obligations;
  - (c) makes himself or herself reasonably available to tied pub tenants and any other persons acting on their behalf who may have a query relating to these Regulations;
  - (d) is independent of, and is not managed by, the business development managers;
  - (e) is entitled to discuss with tied pub tenants the reasons for any decisions made by the pub-owning business under these Regulations;

- (f) is entitled to discuss with the Adjudicator matters relating to the pub-owning business's compliance with these Regulations;
- (g) for the purposes of the annual compliance report, maintains records of the training received by the business development managers.

### **Annual compliance report**

**43.**—(1) A pub-owning business must ensure that the compliance officer submits an annual compliance report to the Adjudicator relating to each financial year<sup>(25)</sup>.

(2) The annual compliance report must be submitted to the Adjudicator within the period of 4 months beginning with the day after the end of the financial year to which the report relates.

(3) Paragraph (4) applies in relation to a person who, immediately before these Regulations come into force, is the landlord of 500 or more tied pubs.

(4) The person must ensure that the first annual compliance report required under paragraph (1) relates to the period—

- (a) beginning with the day on which these Regulations come into force; and
- (b) ending on the last day of the first subsequent full financial year.

(5) Before the annual compliance report is submitted to the Adjudicator under paragraph (2), the report must be approved—

- (a) by the Chair of the Audit Committee; or
- (b) if the pub-owning business does not have an Audit Committee, by the non-executive director of the pub-owning business responsible for carrying out the functions normally associated with an Audit Committee, or, in the absence of any such non-executive director, by the pub-owning business's Chief Executive Officer, Managing Director or equivalent.

(6) The annual compliance report must include a detailed and accurate account of —

- (a) the pub-owning business's compliance with these Regulations in the period to which the report relates;
- (b) any instances where a breach or alleged breach of these Regulations has been identified by a tied pub tenant;
- (c) the steps taken in relation to any such breach, or alleged breach; and
- (d) any steps taken during the period to which the report relates to ensure compliance with these Regulations, including details of training and guidance offered to employees in connection with the Regulations.

(7) The pub-owning business must ensure—

- (a) that the compliance officer provides such other reports as are necessary to ensure that the pub-owning business's Audit Committee has an understanding of the pub-owning business's compliance with these Regulations; or
- (b) that, if the pub-owning business does not have an Audit Committee, the compliance officer reports directly to the non-executive director of the pub-owning business responsible for carrying out the functions normally associated with an Audit Committee, or, in the absence of any such non-executive director, to the pub-owning business's Chief Executive Officer, Managing Director or equivalent.

(8) A summary of the annual compliance report must be included in the pub-owning business's annual report.

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(25) Section 72(1) of SBEEA 2015 defines "financial year".

(9) If the pub-owning business does not produce an annual report, the summary of the annual compliance report must be published clearly and prominently on the pub-owning business website (if any) within the period of 4 months beginning with the day after the end of the financial year to which the report relates.

### **Provisions of these Regulations which are not arbitrable**

- 44.** The following provisions are specified for the purposes of section 48(3) of SBEEA 2015—
- (a) regulation 41(1)(b), (3) and (5);
  - (b) regulation 42;
  - (c) regulation 43.

## **PART 10**

### **Miscellaneous**

#### **Pub-owning business to notify Adjudicator and tied pub tenants of status under these Regulations**

**45.—**(1) A person who, immediately before the commencement date, is the landlord of 500 or more tied pubs, must notify that fact to—

- (a) the Adjudicator; and
- (b) its tied pub tenants,

as soon as reasonably practicable after the commencement date.

(2) A person who, at any time on or after the commencement date, becomes the landlord of 500 or more tied pubs must, as soon as reasonably practicable after that date, notify the Adjudicator and its tied pub tenants, of that fact.

(3) A person who—

- (a) gives notice under paragraph (1) or (2); and
- (b) subsequently ceases to be the landlord of 500 or more tied pubs,

must, as soon as reasonably practicable, notify the Adjudicator and its tied pub tenants, of that fact.

#### **Insurance**

**46.—**(1) Paragraphs (2) to (4) apply where a pub-owning business intends to charge a tied pub tenant an amount (“the insurance charge”) in respect of premiums for insurance in respect of the premises to which the tenancy or licence relates.

(2) The pub-owning business must inform the tied pub tenant whether—

- (a) the insurance charge exceeds the amount payable by the pub-owning business in respect of premiums for insurance in respect of the premises under the insurance policy and, if so, the amount of that excess; and
- (b) the pub-owning business, or any group undertaking<sup>(26)</sup> in relation to the pub-owning business, receives, or expects to receive, any commission or rebate in connection with that policy.

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(26) Section 72(1) of SBEEA 2015 defines “group undertaking”.

(3) Before the pub-owning business purchases, or renews, an insurance policy in respect of the premises, the pub-owning business must—

- (a) provide to the tenant full details of that policy, including the cover which is provided, the charges payable and any contributions towards a claim which the tenant is required to make;
- (b) provide to the tenant any additional information required to allow the tenant to compare the policy with other suitable, comparable policies which may be available; and
- (c) where the tied pub tenant notifies the pub-owning business that it has identified a suitable and comparable alternative policy (the “tenant’s alternative policy”), consider that policy.

(4) Where the pub-owning business is required to provide information under paragraph (3), the pub-owning business must do so—

- (a) at least 21 days before the day on which the policy has effect; or
- (b) if earlier, at least 21 days before the day on which the pub-owning business enters into the insurance.

(5) Paragraph (6) applies where the insurance charge is higher than the amount which it would be if the pub-owning business entered into the tenant’s alternative policy (the “alternative insurance charge”).

(6) The pub-owning business must—

- (a) purchase the tenant’s alternative policy; or
- (b) agree, in writing, that any difference between the insurance charge and the alternative insurance charge is not payable by the tenant.

### **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.

### **Blank template for profit and loss account**

**48.** Where the tied pub tenant so requests, the pub-owning business must provide to the tenant a blank template for completing the tied pub’s profit and loss account.

### **Sale of freehold or long leasehold**

**49.—**(1) Where the pub-owning business is aware that the holder of the freehold, or the superior landlord, of the premises to which the tenancy or licence relates has—

- (a) taken any steps to advertise the sale of the freehold or the leasehold;
- (b) placed the freehold or the leasehold on the market;
- (c) employed an agent to sell the freehold or the leasehold; or
- (d) entered into an agreement to sell the freehold or the leasehold,

the pub-owning business must comply with paragraph (2) as soon as reasonably practicable.

(2) The pub-owning business must provide to the tied pub tenant—

- (a) details of any arrangements which have been made of the kind mentioned in paragraph (1) (a) to (c); and



- (b) where an agreement of the kind mentioned in paragraph (1)(d) has been entered into, the name and address of the buyers.
- (3) The pub-owning business is not required to provide the information under paragraph (2)(a)—
  - (a) if the sale is part of a sale and leaseback transaction; or
  - (b) if a disclosure under that paragraph would breach any obligation under or by virtue of any Act.

### **Tied pub tenant not to suffer detriment**

**50.** A pub-owning business must not subject a tied pub tenant to any detriment on the ground that the tenant exercises, or attempts to exercise, any right under these Regulations.

### **Flow monitoring devices**

**51.—(1)** A pub-owning business must not subject a tied pub tenant to any detriment, or impose any liabilities on the tenant, as a result of any reading taken from a flow monitoring device, without additional evidence in connection with the purchase and stock of alcohol at the tied pub.

(2) A “flow monitoring device” means a device which is at the tied pub at the direction of the pub-owning business—

- (a) to measure the amount of alcohol<sup>(27)</sup> being sold by the tied pub tenant; and
- (b) for the purposes of verifying that the tenant does not sell alcohol at the tied pub in contravention of the terms of the tenancy or licence.

## **PART 11**

### **Extended protection under these Regulations**

#### **Extended protection to last until the end of a tenancy**

**52.** Where a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies is renewed under the provisions of that Part, the tenancy ends, for the purposes of section 69(5)(a) of SBEEA 2015—

- (a) on the date on which the tenancy is renewed under Part 2; or
- (b) if earlier, on the date on which the tenancy was due to expire before it was renewed.

#### **Extended protection to last until a rent assessment is concluded**

**53.** For the purposes of section 69(5)(b) of SBEEA 2015, a rent assessment or assessment of money payable in lieu of rent is concluded when the tenant and the landlord who is no longer a pub-owning business agree the new rent in writing under regulation 22(3).

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(27) Section 68(9) of SBEEA 2015 defines “alcohol”.

## PART 12

### Exemptions from these Regulations

#### Short agreements

54. Where a pub-owning business and a tied pub tenant—

- (a) enter into a short agreement; and
- (b) that agreement, together with all other short agreements (if any) previously entered into between the pub-owning business and the tied pub tenant entitle the tenant to occupy the tied pub for a total period of less than 12 months,

regulations 9 to 13 and Parts 3 to 10 of these Regulations do not apply to the dealings of the pub-owning business and the tenant in connection with that agreement.

#### Pub franchise agreements

55.—(1) The following provisions of these Regulations do not apply to the dealings of a pub-owning business with a tied pub tenant under a pub franchise agreement—

- (a) Parts 3 and 4 to 8;
- (b) regulation 47; and
- (c) paragraphs 20(a) and (b) and 25 of Schedule 1.

(2) A “pub franchise agreement” means an agreement between a pub-owning business and a tied pub tenant for the tenant to occupy the tied pub which—

- (a) grants the tied pub tenant a fixed share of turnover or a relevant share of turnover;
- (b) requires the pub-owning business to offer marketing, training and other business support to the tied pub tenant;
- (c) grants the tied pub tenant a right to use the relevant business model and may require the tenant to pay a fee in respect of the use of that model;
- (d) does not require the tied pub tenant to pay to the pub-owning business any other amount in respect of the tenant’s occupation of the tied pub;
- (e) does not require the tied pub tenant to make any other payments to the pub-owning business in connection with the supply of products to the tied pub tenant or the services offered to the tenant unless the circumstances in paragraph (3) arise after the parties have entered into the pub franchise agreement; and
- (f) grants the tied pub tenant a right to sell the business to a third party at market value.

(3) The circumstances mentioned in paragraph (2)(e) are that—

- (a) the tied pub tenant accepts the pub-owning business’s offer to supply, at cost price, a tied product or service which the business has not already agreed to supply under the pub franchise agreement; and
- (b) the pub franchise agreement does not require the tenant to accept such an offer.

(4) A “fixed share of turnover” means a percentage of the tied pub’s turnover, being a percentage which is fixed for the duration of the franchise agreement.

(5) A “relevant share of turnover” means a percentage of the tied pub’s turnover which —

- (a) is a percentage (“the original percentage”) specified in the agreement; or

- (b) is, where the tied pub's turnover increases beyond one or more thresholds specified in the agreement, the original percentage increased by an amount or amounts specified in the agreement.
- (6) "Relevant business model" means a model for doing business at a pub which—
  - (a) the pub-owning business has used at two or more pubs for a period of 12 months or more;
  - (b) the pub-owning business can demonstrate has the potential to succeed when applied to the tied pub; and
  - (c) includes details of intellectual property rights held by the pub-owning business and methods, procedures and other technical and industrial know-how, required for its use.
- (7) For the purposes of paragraph (6)(b), a relevant business model has the potential to succeed if it has the potential to generate, from the tied pub, a reasonable profit for the tied pub tenant and the pub-owning business.

### **The investment exception**

- 56.**—(1) The investment exception applies where—
- (a) a pub-owning business has made a qualifying investment;
  - (b) the pub-owning business and the tied pub tenant have entered into an investment agreement in relation to the qualifying investment; and
  - (c) the investment period has not ended.
- (2) A "qualifying investment" is an investment in the premises of a tied pub—
- (a) which is made in connection with a project which, when the investment agreement is signed, would be reasonably expected to—
    - (i) change the trading environment, the nature or the capacity of the premises; and
    - (ii) increase the trade and profit of the tied pub;
  - (b) which is not made in pursuance of any duty under the terms of the tenancy or licence under which the tied pub is occupied; and
  - (c) the amount of which is equal to or greater than—
    - (i) where the tenant was in occupation of the tied pub throughout the last complete financial year preceding the date on which the investment agreement was signed, twice the rent, or the money payable in lieu of rent, payable under the tenancy or licence in respect of that period;
    - (ii) where paragraph (i) does not apply but the tenant was in occupation of the tied pub throughout the period of 12 months preceding the date on which the investment agreement was signed, twice the rent, or the money payable in lieu of rent, payable under the tenancy or licence in respect of that period;
    - (iii) otherwise, twice the rent, or the money payable in lieu of rent, payable under the tenancy or licence in respect of the period of 12 months beginning with the date on which the tenancy or licence first confers on the tied pub tenant the right to occupy the tied pub.
- (3) An "investment agreement" is a written agreement between the tied pub tenant and the pub-owning business which includes—
- (a) a description of the proposed investment which demonstrates that it is a qualifying investment;
  - (b) a term specifying any proposed change to the terms of the tenancy or licence;

- (c) a list of the works to be carried out in the premises as a result of the investment which includes—
    - (i) the dates on which those works are to be completed;
    - (ii) the estimated costs of the works; and
    - (iii) confirmation that the tied pub tenant has had an opportunity to obtain alternative estimates for the works;
  - (d) a term specifying the dates on which the investment period is to begin and end;
  - (e) a term specifying—
    - (i) that at least one rent review will be conducted during the investment period; and
    - (ii) the date of that review; and
  - (f) confirmation that the tied pub tenant has obtained independent professional advice in relation to the agreement.
- (4) Before the investment agreement is signed by the pub-owning business and the tied pub tenant, the pub-owning business must provide to the tenant information which, in the pub-owning business's opinion, is necessary to demonstrate to the tenant how the investment would be reasonably expected to achieve the outcomes described in paragraph (2)(a)(i) and (ii), such as a reasonable forecast profit and loss statement for the tied pub for a period of 2 years.
- (5) For the purposes of paragraph (1) the investment agreement—
- (a) is of no effect unless the pub-owning business complies with paragraphs (3) and (4); and
  - (b) ceases to have effect if the works mentioned in paragraph (3)(c) are not completed—
    - (i) within the period of 12 months beginning with the day on which the investment agreement is signed by the pub-owning business and the tied pub tenant; or
    - (ii) if later, by the date agreed by the parties in the investment agreement.
- (6) But paragraph (5)(b) does not apply where, after the investment agreement has been signed by both parties—
- (a) an event occurs which is beyond the reasonable control of the pub-owning business;
  - (b) the event is likely to delay the date on which the works are to end;
  - (c) the pub-owning business notifies the tenant, in writing, within the period of 14 days beginning with the day on which the event occurs, of a new date by which the works are to end; and
  - (d) that new date is reasonable, given the nature of the event.
- (7) In that case, the investment agreement ceases to have effect if the works mentioned in paragraph (3)(c) are not completed by the new date mentioned in paragraph (6)(c).
- (8) For the purposes of paragraphs (5)(b) and (6), the works end when the pub-owning business provides the tenant with a practical completion notice.
- (9) Where a tied pub tenant considers that the investment agreement is of no effect for the purposes of paragraph (1) because the pub-owning business has not complied with paragraphs (3) and (4), the tenant may refer the matter to the Adjudicator within the period of 28 days beginning with the day on which the investment agreement is signed.
- (10) Where a tied pub tenant considers that the investment agreement has ceased to have effect for the purposes of paragraph (1)—
- (a) because the works specified in that agreement have not ended within the period, or on the date, specified in paragraph (5)(b) or (6)(c); or

(b) where the conditions in paragraph (6) apply, because the new date mentioned in that paragraph is not, in the tenant's opinion, reasonable,  
the tenant may refer the matter to the Adjudicator.

(11) A referral to the Adjudicator under paragraph (10) must be made—

- (a) in the case of a referral under paragraph (10)(a), within the period of 28 days beginning with the day on which the works should have ended in accordance with paragraph (5)(b); or
- (b) in the case of a referral under paragraph (10)(b), within the period of 28 days beginning with the day on which the tenant receives the pub-owning business's notice mentioned in paragraph (6)(c).

(12) The "investment period" is the period which—

- (a) begins with the day on which the investment agreement is signed by the pub-owning business and the tied pub tenant; and
- (b) ends with a date agreed between the tenant and the pub-owning business, being a date—
  - (i) which is reasonable in the light of the value of the qualifying investment;
  - (ii) which is no later than 7 years from the day on which the investment agreement is signed.

(13) For the purposes of paragraph (4)(a) a "reasonable forecast" is a forecast which is based on an assessment of the level of trading at the tied pub after the investment if it were operated by a reasonably efficient tenant.

## PART 13

### Void or unenforceable terms

#### **Void or unenforceable terms of a tenancy or licence**

**57.**—(1) A term of a tenancy or other agreement between a tied pub tenant and a pub-owning business (whether entered into before or after the commencement date) is void if it purports to—

- (a) penalise the tenant for requiring the pub-owning business to act, or not act, in accordance with Parts 2 to 10 of these Regulations; or
- (b) provide that a rent review or a review of money payable by the tenant in lieu of rent in relation to the tied pub—
  - (i) may be initiated only by the pub-owning business; or
  - (ii) may only determine that the rent or money payable in lieu of rent is to be increased.

(2) A dispute in relation to a term which is unenforceable, in that it purports to exclude, limit or otherwise modify the processes or the obligations of pub-owning businesses required under Parts 2 to 10 of these Regulations, may be arbitrated in accordance with an arbitration agreement<sup>(28)</sup>.

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(28) Section 72(1) of SBEEA 2015 defines "arbitration agreement".

## PART 14

### Disputes

#### Referrals to the Adjudicator in connection with the MRO procedure

- 58.**—(1) Paragraph (2) applies where a matter has been referred to the Adjudicator under—
- (a) regulation 32(2) (disputes in connection with the full response);
  - (b) regulation 35(1) (disputes in connection with the negotiation period);
  - (c) regulation 37(9), (10) or 38(4) (disputes in connection with the independent assessor);
  - (d) regulation 40(3) (disputes in connection with the MRO recoverable amount);
  - (e) regulation 56(9) or (10) (disputes in connection with the investment agreement).
- (2) The Adjudicator must either—
- (a) arbitrate the dispute; or
  - (b) appoint another person to arbitrate the dispute.
- (3) 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.

#### Referrals to the Adjudicator in connection with the independent assessor

- 59.**—(1) Where—
- (a) a matter is referred to the Adjudicator under regulation 37(9); and
  - (b) the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) rules that the alleged failure has not occurred,
- paragraph (2) applies.
- (2) The tied pub tenant must accept or reject, in writing, the determination provided under regulation 37(8) and the associated tenancy or licence provided under regulation 37(1) within the period of 21 days beginning with—
- (a) the day on which the determination is communicated to the tenant; or
  - (b) if later, the day on which any rent assessment or assessment of money payable in lieu of rent being carried out in respect of the tenancy or licence ends.
- (3) Where a matter is referred to the Adjudicator under regulation 37(9), and the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) rules that the alleged failure has occurred, the Adjudicator (or a person appointed under regulation 58(2)(b) or 60(4)(b)) must—
- (a) give an explanation, in writing, as to why the failure has occurred; and
  - (b) having regard to the nature of the failure—
    - (i) substitute a figure for the market rent himself or herself and provide an explanation for that substitution;
    - (ii) direct the independent assessor to make a second determination of the market rent in the light of that explanation within 21 days beginning with the day on which the direction is made; or

(iii) make such other determination as the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) considers appropriate.

(4) When making a determination under paragraph (3)(b)(iii), the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) may, in exceptional circumstances, appoint another independent assessor to conduct an assessment of the market rent; and where such an appointment is made, the appointee must determine the market rent within the period of 21 days following the appointment.

(5) A substitution of the market rent made by the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) under paragraph (3)(b)(i) is final and, once it has been communicated to the tied pub tenant, the tenant must accept or reject, in writing, the substitution and the associated tenancy or licence provided under regulation 37(1), within the period of 21 days beginning with—

- (a) the day on which the substitution made by the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) is communicated to the tenant; or
- (b) if later, the day on which any rent assessment or assessment of money payable in lieu of rent being carried out in respect of the tenancy or licence ends.

(6) Where a matter is referred to the Adjudicator under regulation 37(10), the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) must—

- (a) determine that the independent assessor requires additional information to complete the determination of the market rent;
- (b) direct the independent assessor to make the determination within a period of time specified by the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)); or
- (c) appoint another independent assessor within the period of 14 days beginning with the day of the referral to make the determination.

(7) Where the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) makes a determination under paragraph (6)(a), the Adjudicator must—

- (a) require the tied pub tenant or the pub-owning business to provide any additional information to the independent assessor; and
- (b) direct the independent assessor to complete the determination within a period of time specified by the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)).

(8) Where a matter is referred to the Adjudicator under regulation 38(4) the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) may, within the period of 21 days beginning with the day on which the referral is made, make a further determination of the market rent which is final.

(9) Where the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) makes a final determination of the market rent, the tied pub tenant must accept or reject, in writing, the final determination and the associated tenancy or licence provided under regulation 37(1) within the period of 21 days beginning with—

- (a) the day on which the determination is communicated to the tenant; or
- (b) if later, the day on which any rent assessment or assessment of money payable in lieu of rent being carried out in respect of the tenancy or licence ends.

#### **Arbitration commenced by pub-owning business**

**60.**—(1) This regulation applies where—

- (a) there is an arbitration agreement between a tied pub tenant and a pub-owning business;
- (b) the pub-owning business commences arbitral proceedings about a matter which is, or which includes, an MRO dispute between the pub-owning business and the tied pub tenant; and
- (c) the tied pub tenant would have been able to refer the MRO dispute to the Adjudicator (were it not for the commencement of arbitral proceedings by the pub-owning business) under —
  - (i) regulation 32(2) (disputes in connection with the full response);
  - (ii) regulation 35(1) (disputes in connection with the negotiation period);
  - (iii) regulation 37(9), (10) or 38(4) (disputes in connection with the independent assessor);
  - (iv) regulation 40(3) (disputes in connection with the MRO recoverable amount); or
  - (v) regulation 56(9) or (10) (disputes in connection with the investment agreement).
- (2) The tied pub tenant may, by giving notice in writing to the pub-owning business and the Adjudicator, appoint the Adjudicator to arbitrate the MRO dispute.
- (3) A notice under paragraph (2) must be given—
  - (a) 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, within the period of 21 days beginning with the day on which that person notifies the tied pub tenant of the person proposed to be appointed as arbitrator;
  - (b) otherwise, within the period of 21 days beginning with the day on which arbitral proceedings commenced.
- (4) Where the Adjudicator is appointed to arbitrate the MRO dispute (whether under paragraph (2) or otherwise) the Adjudicator must—
  - (a) arbitrate the MRO dispute; or
  - (b) appoint another person to arbitrate that dispute.
- (5) Section 14 of the Arbitration Act 1996(29) makes provision about the commencement of arbitral proceedings.
- (6) An “MRO dispute” is a dispute relating to the offer of a market rent only option.

### **Information required by the Adjudicator**

**61.**—(1) If the Adjudicator appoints another person as arbitrator under regulation 58(2)(b) or 60(4)(b), the Adjudicator may require the arbitrator, or the pub-owning business and the tied pub tenant concerned, to provide information to assist the Adjudicator in carrying out functions under this Part.

(2) The Adjudicator may enforce any requirement to provide information under this Part by bringing civil proceedings to obtain an injunction.



## PART 15

### Group undertakings

#### Adjudicator's determination during referral of a dispute

62.—(1) This regulation applies where—

- (a) a tied pub tenant has referred a dispute between the tenant and a pub-owning business (“P”) to the Adjudicator under section 48 of SBEEA 2015; and
- (b) there is evidence before the Adjudicator which suggests that a group undertaking (“U”) in relation to the pub-owning business—
  - (i) discharges, has discharged, exercises or has exercised, influence over any of P’s obligations under the tenancy or licence to which the dispute relates; or
  - (ii) is responsible for, or exercises influence over, the terms of that tenancy or licence, the financial arrangements, the charging policies or any other administrative, managerial or executive decisions of P, which affect the tied pub tenant,

in a way which is relevant to the dispute.

(2) Where this regulation applies, the Adjudicator may determine that U is to be treated as a pub-owning business, as well as or instead of P, for the purposes of the arbitration.

(3) Before the Adjudicator makes a determination under paragraph (2), the Adjudicator must consider representations from U.

(4) The Adjudicator may disregard a request from a tied pub tenant for U to be treated as a pub-owning business, where—

- (a) U is not identified by the tenant in such a way that the Adjudicator is able to establish U’s name, business address and its relationship with P;
- (b) the tied pub tenant has not notified U in writing of the dispute; or
- (c) the tenant has not forwarded a copy of the request to U.

#### Investigations by the Adjudicator

63.—(1) This regulation applies where—

- (a) the Adjudicator is conducting an investigation of a pub-owning business (“P”) under section 53 of SBEEA 2015; and
- (b) in the course of that investigation, evidence becomes available to the Adjudicator which suggests that a group undertaking in relation to P—
  - (i) discharges, has discharged, exercises, or has exercised, influence over any of P’s obligations under the tenancy or licence to which the investigation relates; or
  - (ii) is responsible for, or exercises influence over, that tenancy or licence, the financial arrangements, the charging policies or any other administrative, managerial or executive decisions of P, which affect the tied pub tenant,

in a way which is relevant to the investigation.

(2) Where this regulation applies, the Adjudicator may determine that the group undertaking is to be treated as a pub-owning business, as well as, or instead of P, for the purposes of an investigation under sections 53 to 61 of SBEEA 2015.

### **Adjudicator's determination in relation to UK businesses only**

**64.** The Adjudicator may not determine that a person who is a group undertaking in relation to a pub-owning business is to be treated as a pub-owning business unless the person—

- (a) carries on a trade or business in the United Kingdom; or
- (b) is a UK-registered company within the meaning of section 1158 of the Companies Act 2006<sup>(30)</sup>.

## **PART 16**

### **Transitional provisions**

#### **Rent proposals**

**65.—**(1) A pub-owning business is not required to provide a rent proposal under regulation 15(1) by virtue of the application of regulation 15(2), unless the event mentioned in regulation 15(2)(a) occurs on or after the commencement date.

(2) A pub-owning business is not required to provide a rent proposal under regulation 15(1) by virtue of the application of regulation 15(3), unless the event mentioned in regulation 15(3)(a) occurs on or after the commencement date.

(3) A pub-owning business is not required to provide a rent proposal under regulation 15(1) by virtue of the application of regulation 15(4), unless the event mentioned in regulation 15(4)(a) occurs on or after the commencement date.

(4) A pub-owning business is not required to provide a rent proposal under regulation 15(1) by virtue of the application of regulation 15(5), unless the event mentioned in regulation 15(5)(a) occurs on or after the commencement date.

(5) A pub-owning business is not required to provide a rent proposal under regulation 15(1) by virtue of the application of regulation 15(6), unless the event mentioned in regulation 15(6)(a) occurs on or after the commencement date.

(6) A pub-owning business is not required to provide a rent proposal under regulation 15(1) by virtue of the application of regulation 15(7), unless the notification mentioned in regulation 15(7) occurs on or after the commencement date.

#### **Rent assessments**

**66.—**(1) The reference in regulation 19(1)(a) to a rent review which is required under the terms of a tenancy or licence does not include—

- (a) a rent review where the rent review date falls before the commencement date; or
- (b) a rent review which is concluded before the commencement date.

(2) A tied pub tenant may request, on or before the 5-year anniversary date, a rent assessment or an assessment of money payable in lieu of rent under regulation 19(2)(a) if, and only if—

- (a) no rent assessment or assessment of money payable in lieu of rent has been concluded before the date of the request; and
- (b) no rent review has been concluded within the period of 5 years ending with the date of the request.

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<sup>(30)</sup> 2006 c.46.

(3) A tied pub tenant may not request a rent assessment or an assessment of money payable in lieu of rent under regulation 19(2)(b) unless the tenant first receives notification of the significant increase on or after the commencement date.

(4) A tied pub tenant may not request a rent assessment or an assessment of money payable in lieu of rent under regulation 19(2)(c) unless the tenant sends the written analysis mentioned in that paragraph on or after the commencement date.

(5) Paragraph (6) applies where—

(a) a pub-owning business is required to conduct a rent assessment or an assessment of money payable in lieu of rent under regulation 19(1)(a); and

(b) the rent review date falls before the end of the period of 6 months beginning with the commencement date.

(6) Regulation 20(2)(a) does not apply; instead, the pub-owning business must provide the rent assessment proposal to the tied pub tenant—

(a) where the rent review date falls before 1 September 2016, on or before 8 July 2016;

(b) otherwise, on or before 19 August 2016.

(7) For the purposes of this regulation—

(a) a rent review is concluded when the rent, or money payable in lieu of rent, is agreed in writing between the pub-owning business and the tied pub tenant;

(b) a rent assessment is concluded when it ends (see regulation 22).

(8) In this regulation, the “5-year anniversary date” means the date which is 5 years after the commencement date.

### **Market rent only option: the MRO notice**

67. The reference to an event occurring in regulation 23(1) does not include an event which occurred before the commencement date.

## **PART 17**

### **Review**

#### **Review of Parts 1 and 11 to 16**

68.—(1) The Secretary of State must, for each review period, carry out a review of Parts 1 and 11 to 16(31) of these Regulations.

(2) As soon as practicable after a review period, the Secretary of State must publish a report of the findings of the review for that period.

(3) The first review period is the period beginning on the commencement date and ending 2 years after the following 31 March.

(4) Subsequent review periods are each successive period of 3 years after the first review period.

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(31) Parts 2 to 10 of these Regulations are made under sections 42 to 44 of SBEEA 2015 and are, accordingly, “the Pubs Code” for the purposes of SBEEA 2015 (see section 42(2)). Section 46 of SBEEA 2015 requires the Secretary of State to review the Pubs Code.

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**Draft Legislation:** This is a draft item of legislation and has not yet been made as a UK Statutory Instrument.  
This draft has been replaced by a new draft, The Pubs Code etc. Regulations 2016 ISBN 978-0-11-114748-1

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Date

*Name*  
Parliamentary Under Secretary of State  
Department for Business, Innovation and Skills

## SCHEDULE 1

Regulations 11, 12 and 14

Information specified for the purposes of a new agreement etc.

### Regulations and code of practice

1. The Pubs Code etc. Regulations 2016.
2. Where the pub-owning business has a code of practice which is relevant to its dealings with the tied pub, a copy of that code.

### The type of tenancy or licence

3. An overview of the different tenancies or licences offered to tied pub tenants by the pub-owning business.
4. Whether the tenancy offered by the pub-owning business is a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies and the process for the renewal of such a tenancy, or any other tenancy, including when notification to renew, or otherwise, must be given.
5. Whether there is a superior landlord and, if so, the name and address of the superior landlord.
6. The length of the tenancy, licence or relevant tie agreement offered to the tied pub tenant by the pub-owning business, including the date on which the tenancy, licence or relevant tie agreement is to begin and the date on which it is to end (“the end-date”).
7. Whether the tied pub tenant or the pub-owning business may terminate the tenancy, licence or relevant tie agreement before the end-date.
8. Details of the pub-owning business’s procedures for responding to any request by the tied pub tenant to terminate the tenancy, licence or relevant tie agreement before the end-date.
9. In paragraphs 6 to 8 a “relevant tie agreement” is an agreement of the kind described in section 43(8)(b) of SBEEA 2015 where the terms of that agreement are not included in the tenancy or licence offered to the tenant.

### The premises

10. A full and clear description of the premises to which the tenancy or licence relates, including—
  - (a) details of the premises licence, within the meaning of section 11 of the Licensing Act 2003<sup>(32)</sup> and any licence conditions;
  - (b) details of any enforcement action taken by any public authority in connection with the tied pub during the previous 2 years, where known;
  - (c) details of any foreseeable material changes to the commercial conditions in the tied pub’s local area and how these might influence the costs and trading environment of the tied pub tenant;
  - (d) details of any restrictions on the use of the premises, such as planning constraints, restrictions on types of trading, restrictions on access to the premises (including details of any shared access) and hours of trading;
  - (e) a Schedule of Condition;
  - (f) details of any specific problems in the premises.

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(32) 2003 c.17.

11. Whether the fixtures and fittings in the tied pub are required to be purchased by the tied pub tenant under the tenancy or licence and, if so, the arrangements for the payment for such fixtures and fittings.

### **Maintenance and repair**

12. The respective obligations of the pub-owning business and the tied pub tenant under the tenancy or licence or pursuant to any other document, such as a code of practice, in relation to repairing and maintaining the premises to which the tenancy or licence relates.

13. The pub-owning business's procedures for discharging its obligations to repair and maintain the premises under the tenancy or licence, including the procedure by which a tied pub tenant can raise concerns about the discharge of those obligations.

14. Where the tenancy or licence requires the tied pub tenant to repair or maintain the premises to which the tenancy or licence relates, confirmation that, unless otherwise specified in the tenancy or licence, the requirement is to keep or maintain the premises in the condition set out in the Schedule of Condition.

15. The procedures to be followed in connection with the respective obligations of the pub-owning business and the tied pub tenant under the tenancy or licence in relation to assessing and making good dilapidations, including—

- (a) the time when the Schedule of Condition may be reviewed;
- (b) if applicable, the process for agreeing the works which must be carried out in the light of a review of the Schedule of Condition;
- (c) where the tenant is responsible for remedying, or paying for, any dilapidations, the period before the end of the tenancy when a survey will be carried out to determine the extent of dilapidations;
- (d) the process for resolving a dispute in connection with any obligation under the tenancy or licence to maintain, repair and make good.

16. Where, before entering into a new agreement, a short agreement, or an agreement to renew a tenancy to which Part 2 of the Landlord and Tenant Act 1954 does not apply, the pub-owning business is aware of any maintenance, repair or improvement works ("initial works") which must be carried out to the premises to which the tenancy or licence relates—

- (a) a Schedule of Condition prepared before the initial works are carried out;
- (b) a list of the initial works which must be carried out;
- (c) the respective obligations of the tied pub tenant and the pub-owning business in relation to those works under the tenancy or licence;
- (d) details of any initial works which are required to be completed before the agreement or the renewal is in force including whether the pub-owning business or the tenant will be responsible for carrying them out;
- (e) where any of the initial works—
  - (i) are to be carried out to improve the premises significantly; or
  - (ii) require a significant investment of capital,a sketch or an artist's plan (if any) of those works; and
- (f) where any of the initial works are to be carried out after the agreement has been entered into or after the renewal has been agreed —
  - (i) whether the pub-owning business or the tenant will be responsible for carrying out the works;

- (ii) the date on which the works must be completed; and
- (iii) any penalty in respect of a failure to complete the works, or to complete them by a certain date.

**17.** Any requirements under the tenancy or licence in relation to the condition in which the premises to which the tenancy or licence relates are to be returned to the pub-owning business at the end of the tenancy or licence.

**18.—(1)** The pub-owning business's policy for investing in the premises to which the tenancy or licence relates by way of improvements and refurbishments to those premises, including any policy on joint investment with its tied pub tenants.

(2) Where, at the time the information under this Schedule is sent to the tenant, the pub-owning business is considering investing in the premises, the information required under sub-paragraph (1) includes details of the potential impact of any such investment on the rent, money payable in lieu of rent or other payments which the tied pub tenant must pay under the tenancy or licence.

**19.** The respective obligations of the pub-owning business and the tied pub tenant under any enactments in relation to—

- (a) utilities at the tied pub, such as electrics, gas, water or sewerage; and
- (b) environmental impact, health and safety.

#### **Obligations in relation to the purchase of tied products and services**

**20.** Details of any obligations to purchase products or services subject to a product or service tie including—

- (a) the current price list for those products or services and notification of any imminent changes to that list;
- (b) any discounts which may be available to the tied pub tenant in connection with the purchase of those products or services;
- (c) whether the tenancy or licence authorises the tenant to purchase any food, drink or services which are not subject to a tie and, if so, the details of that authorisation;
- (d) if gaming machines are offered to the tied pub under the tenancy or licence, the terms on which they are supplied, including details of the arrangements for the distribution of income from the machines and an outline of the trading, payment and credit terms in relation to them.

#### **Assignment**

**21.** In the case of a tenancy—

- (a) whether the tenancy may be assigned or sold and, if so, the procedures which the tied pub tenant must follow to assign or sell the tenancy; and
- (b) the procedures which the pub-owning business must follow where the tied pub tenant makes a request to assign or sell the tenancy.

#### **Advice and support**

**22.—(1)** The advice and support available to the tied pub tenant during the tenancy or licence, including advice and support in respect of—

- (a) the capabilities and training needs of the tied pub tenant and the tenant's employees;
- (b) licences and any relevant training requirements in relation to those licences;

**Draft Legislation:** This is a draft item of legislation and has not yet been made as a UK Statutory Instrument.  
This draft has been replaced by a new draft, *The Pubs Code etc. Regulations 2016* ISBN 978-0-11-114748-1

- (c) brand promotion and merchandising;
- (d) provision and maintenance of dispensing equipment;
- (e) pub promotion and marketing;
- (f) other aspects of business management which are significant, in the pub-owning business's opinion;
- (g) the benefits which the tied pub tenant may expect to enjoy as a consequence of the pub-owning business's ability to procure and supply products, services and expertise to the tied pub tenant;
- (h) business rates; and
- (i) the exterior decoration of the premises, the signs, repairs to the building, car parks and gardens (where relevant).

(2) The information required under sub-paragraph (1) is not required to be provided to a tied pub tenant who is already subject to a tenancy or licence granted by the pub-owning business in relation to a tied pub unless that information has changed since the tied pub tenant received it in connection with that tenancy or licence.

**23.** The pub-owning business's policy (if any) for dealing with requests for assistance from the tied pub tenant in cases of difficulties in respect of the tenancy or licence which are beyond the tenant's control.

**24.** The circumstances (if any) in which the pub-owning business may be willing to consider amendments to its standard terms.

**25.** The events, the occurrence of which, entitle the tied pub tenant, under regulation 23, to give an MRO notice.

### **Insurance**

**26.** Whether, under the tenancy or licence—

- (a) the pub-owning business is responsible for insuring the premises and, if so, whether the pub-owning business requires an insurance charge; or
- (b) the tenant is responsible for insuring the premises.

**27.** Where the tied pub tenant is responsible for insuring the premises, any minimum requirements for insurance under the tenancy or licence.

### **Payment of rent and deposits**

**28.—**(1) The arrangements for the payment of deposits, including—

- (a) the amount of any deposit ("the deposit") payable by the tied pub tenant to the pub-owning business for the purposes of securing the tenancy or licence;
- (b) the period for which the deposit is likely to be retained by the pub-owning business;
- (c) the arrangements for paying to the tied pub tenant any interest accruing on the deposit;
- (d) the circumstances in which the deposit may be required to be increased under the tenancy or licence;
- (e) when and how the deposit will be repaid to the tied pub tenant;
- (f) how the deposit is to be treated if the pub-owning business becomes insolvent.

(2) The information required under sub-paragraph (1) is not required to be provided to a tied pub tenant in connection with a tenancy which is renewed under Part 2 of the Landlord and Tenant Act



1954 unless the pub-owning business proposes to change the arrangements for the payment of rent, money payable in lieu of rent and other deposits on the renewal.

**29.** Where the tenancy or licence provides that the rent or money payable in lieu of rent is to be varied by reference to an index—

- (a) the index used;
- (b) when the indexation rate will be assessed and applied; and
- (c) an illustration of the impact which the indexation rate will have on the rent, or money payable in lieu of rent, during the tenancy or licence, using, by way of example, the indexation rate at the time the information under this Schedule is sent to the tenant.

**30.** In cases where damage to the premises to which the tenancy or licence relates impacts on the tied pub's potential for trading, the pub-owning business's policy in respect of the temporary suspension of—

- (a) rent or money payable in lieu of rent; and
- (b) minimum purchasing requirements under the tie.

**31.** Information in respect of other support available in cases where damage to the property impacts on the tied pub's potential for trading.

**32.** Details of any other fees, charges, including service charges, or financial penalties which the tied pub tenant may be required to pay during the tenancy or licence.

#### **Additional information where new agreement is a pub franchise agreement**

**33.—(1)** Where the new agreement being entered into is a pub franchise agreement—

- (a) information about any initial and ongoing fees payable by the tenant to the pub-owning business under the agreement;
- (b) details of the fixed share of turnover or the relevant share of turnover granted to the tied pub tenant;
- (c) a description of the new agreement which demonstrates that it is a pub franchise agreement; and
- (d) a forecast of a profit and loss statement for the tied pub for the period of 12 months beginning with the day on which the franchise agreement is proposed to be entered into (“the franchise forecast period”).

(2) The statement required under sub-paragraph (1)(d) must include the figures and other information specified in paragraph 5(a) to (i) of Schedule 2 to these Regulations.

(3) For the purposes of the duty under sub-paragraph (1)(d), references in paragraph 5 of Schedule 2 to the “forecast period” must be read as references to “the franchise forecast period”.

#### **Other obligations**

**34.** Information in respect of any obligation which the tied pub tenant may have in connection with the Transfer of Undertakings (Protection of Employment) Regulations 2006<sup>(33)</sup>.

#### **Breaches**

**35.** The pub-owning business's procedures for establishing whether the tied pub tenant has breached the tenancy or licence.

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(33) S.I. 2006/246, amended by S.I. 2010/93, 2014/16, 2014/386 and 2014/853.

**36.** Where a tied pub tenant is in breach of the tenancy or licence, the pub-owning business's procedures for informing the tied pub tenant that the tenant is in breach and whether the tenant will have opportunities to remedy the breach before any enforcement action is taken.

**37.** Information about the procedures which may be followed by the tied pub tenant in cases where the tenant considers that the pub-owning business has failed to comply with the provisions of these Regulations.

## SCHEDULE 2

Regulations 16 and 20

Information specified for the purposes of a rent proposal or a rent assessment proposal

**1.** A summary of the methods which must be used under the tenancy or licence to calculate the initial or revised rent or the new rent including—

- (a) the information which will be used to support those calculations;
- (b) the justification for the use of such information.

**2.** An outline of the procedure to be followed during negotiations of the initial or revised rent or the new rent between the pub-owning business and the tied pub tenant.

**3.** A list of the matters which will be considered to be relevant and irrelevant in such negotiations.

**4.** Information in respect of the cost of service charges relating to the tied pub during the last 3 years.

**5.** A forecast profit and loss statement for the tied pub for the period of 12 months beginning with the day on which the initial or revised rent or the new rent is payable ("the forecast period") and the figures and other information which have been relied on to formulate that statement, including—

- (a) the volume of alcohol, including the number of barrels of alcohol, purchased during the last 3 years from the pub-owning business or its agents;
- (b) the percentage of the tied pub's turnover during the last 3 years which the sale of this volume of alcohol represents;
- (c) if different from the figure in (a), the volume of alcohol in respect of which duty was paid during the last 3 years;
- (d) a figure for the total estimated sales and gross profit margins of the tied pub for the forecast period, with a breakdown showing separate figures for the estimated sales, gross profit margins, for—
  - (i) draught ales;
  - (ii) draught lagers;
  - (iii) packaged beers;
  - (iv) draught ciders;
  - (v) packaged ciders;
  - (vi) wines;
  - (vii) spirits;
  - (viii) flavoured alcoholic beverages; and
  - (ix) soft drinks;
- (e) the percentage of the pub's turnover for the forecast period which each drink in sub-paragraph (d)(i) to (ix) represents;

- (f) an estimate figure for the volume of draught beer and cider which will not be sold during the forecast period (including draught beer and cider wasted, unfit for sale or dispensed in promotions) where that figure has not been accounted for in the gross profit margin;
- (g) the estimated operating costs likely to affect the tied pub tenant's profit during the forecast period including, where relevant, the estimated cost of a manager during that year, where the tied pub tenant is not the manager of the tied pub;
- (h) an explanation of how estimated income during the forecast period from any gaming machine, in the tied pub has been accounted for in the statement;
- (i) a breakdown of any costs during the forecast period which have not been accounted for separately but have been included in the estimated figures for other costs (for example, the cost of cellar gas).

6. The figures which are provided under paragraph 5 must be provided net of value added tax or machine games duty (within the meaning of Schedule 24 to the Finance Act 2012<sup>(34)</sup>).

7. The profit and loss statement provided under paragraph 5 must refer to relevant and current data available publicly in connection with the typical costs of operating a tied pub in the United Kingdom and explain any variance between the costs referred to and the pub-owning business's costs estimate.

8. The statement, figures and other information which the pub-owning business provides to the tied pub tenant under paragraphs 5 to 7 must —

- (a) be sufficiently clear and detailed; and
- (b) include justification or supporting evidence for any assumptions,

to allow the tenant to understand the basis on which the estimated figures in the statement have been calculated.

9. Any information which the pub-owing business provides under paragraph 5, must be—

- (a) accurate, wherever it refers to historical data; and
- (b) reasonable, wherever it refers to projected data.

10. In paragraph 5(c) “duty” means any duty of excise charged on beer by section 36(1) or section 37(1) of the Alcoholic Liquor Duties Act 1979<sup>(35)</sup>.

11. Any information in Schedule 1 which—

- (a) the tied pub tenant has not already received; or
- (b) has changed materially since it was provided to the tenant.

12. A timetable specifying the dates on which any other information will be made available to the tied pub tenant before negotiations begin.

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<sup>(34)</sup> 2012 c.14. Schedule 24 was amended by section 124(2) to (4) of, and paragraph 31(2) to (4) of Schedule 28 to, the Finance Act 2014 (c.26).

<sup>(35)</sup> 1979 c.4. Section 36(1) was substituted by section 7(1) of the Finance Act 1991 (c.31) and then amended by paragraph 1(2) of Schedule 1 to the Finance Act 2002 (c.23). Section 37(1) was inserted by paragraph 1 of Schedule 1 to the Finance Act 2011 (c.11).

### SCHEDULE 3

Regulation 37(3)

Documents to which the independent assessor must have regard

1. Documents held by the tied pub tenant or the pub-owning business which provide evidence of the tied pub's level of trading in the last 3 years.
2. Documents held by the tied pub tenant or the pub-owning business which present a reasonable forecast of the tied pub's level of trading for the next 3 years.
3. For the purposes of paragraph 2, a "reasonable forecast" is a forecast which—
  - (a) is based on an assessment of the level of trading at the tied pub if it were operated by a reasonably efficient tenant; and
  - (b) may be based on an assessment of the pub's level of trading if it were not subject to a product or service tie.
4. Documents which describe any special commercial or financial advantages provided to the tied pub tenant under the terms of the tenancy or licence.

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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are the first to be made under sections 42 to 45, 48, 69 and 71 of the Small Business, Enterprise and Employment Act 2015 ("SBEEA 2015").

Section 42 of SBEEA 2015 requires the Secretary of State to make regulations about practices and procedures to be followed by pub-owning businesses in their dealings with their tied pub tenants. A "pub-owning business" is a landlord of 500 or more tied pubs. Parts 2 to 4 of these Regulations make provision in connection with such dealings.

Part 2 requires pub-owning businesses, before they enter into new agreements with their tied pub tenants, to advise tenants to complete appropriate training, to ensure that tenants have a sustainable business plan and to provide certain information to the tenants. This Part also places obligations on pub-owning businesses in relation to the maintenance of tied pub premises and in connection with a tenant's proposal to assign a tenancy.

Parts 3 and 4 require pub-owning businesses to provide rent proposals and rent assessments, respectively, to their tied pub tenants in certain specified circumstances and include provision about the contents and timing of such proposals and assessments.

Section 43 of SBEEA 2015 provides that regulations must be made requiring pub-owning businesses to offer certain tied pub tenants a market rent only option (an "MRO option") in circumstances specified in that section. An MRO option is an option for the tenant to occupy the tied pub under a tenancy or licence which is MRO-compliant and to pay, in respect of that occupation, a rent agreed between the parties or, failing such agreement, the market rent.

Part 5 describes the four circumstances in which a tenant may request an MRO option. Part 6 requires the pub-owning business to provide a full response to the tenant's request. It also describes the nature of an MRO-compliant tenancy or licence and the negotiation period which follows that response. Part 7 describes the involvement of the independent assessor where, during the negotiation period,

the parties fail to agree the rent to be payable under the MRO-compliant tenancy or licence. Part 8 describes the point at which this MRO procedure ends.

Part 9 describes the obligations of pub-owning businesses in respect of their business development managers and requires pub-owning businesses to appoint a compliance officer who is to submit an annual compliance report to the Pubs Code Adjudicator (“the Adjudicator”).

Part 10 places further obligations on pub-owning businesses in respect of matters such as insurance, gaming machines and flow monitoring devices.

A reference in SBEEA 2015 to “the Pubs Code” is a reference to Parts 2 to 10 of these Regulations.

Where a landlord ceases to be a pub-owning business, SBEEA 2015 provides that its tenants continue to have extended protection until the earlier of the end of the tenancy or licence concerned or until a rent assessment occurs. Part 11 of these Regulations describes, for these purposes, when a tenancy or licence ends and when a rent assessment occurs.

Part 12 exempts short agreements and pub franchise agreements from certain provisions of these Regulations. It also provides that the tenant may not request an MRO option in all four circumstances described in Part 5, where an investment agreement has been entered into between a pub-owning business and a tied pub tenant.

Part 13 describes the terms of a tenancy which will render it void.

Part 14 makes provision for the Adjudicator’s functions in connection with the resolution of disputes relating to the offer of an MRO option.

Part 15 describes the circumstances in which a person who is a group undertaking in relation to a pub-owning business may, if the Adjudicator so determines, be treated.

Part 16 makes transitional provision.

Part 17 requires the Secretary of State to carry out a review of those provisions which are not the Pubs Code.

An Impact Assessment has been prepared for these Regulations and is published at [www.gov.uk/bis](http://www.gov.uk/bis).