

# **SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 4: THE PUBS CODE ADJUDICATOR AND THE PUBS CODE**

##### **Supplementary**

##### ***Section 68: Tied Pub***

352. This section defines a “tied pub” as premises occupied under a tenancy or licence, with a premises licence to sell alcohol for consumption on the premises and where that is also the main activity or one of the main activities, and where the tenant has a contract for some or all of their alcohol to be supplied from the landlord or the group undertaking to which the landlord belongs or someone nominated by the landlord or the group undertaking.
353. Subsections (6)-(8) define a ‘stocking requirement’. This is relevant for when a tied pub chooses the Market Rent Only option (see sections 43-45). Section 43(4)(a)(ii) stipulates that a MRO-compliant tenancy or licence must not include any product or service tie (other than one relating to insurance of the pub). Subsection (6) makes clear that a stocking requirement is not a tie. Thus subsection (7) allows pub-owning businesses that are breweries to impose a stocking requirement on tenants and licensees with MRO-compliant tenancies or licences. The stocking requirement applies only to beer and cider produced by the pub-owning business, and the tenant must be able to buy the beer or cider from any supplier of their choosing. The stocking requirement also allows the pub-owning business to impose restrictions on sales of competing beer and cider in line with prevailing competition law, so long as the restrictions do not prevent the tenant from selling such products.

##### ***Section 69: “Pub-owning business”***

354. Subsection (1) defines a “pub-owning business” as the landlord of 500 or more tied pubs. For the purpose of this calculation any pubs owned by a group undertaking in relation to the landlord are included in the figure (subsection (2)).
355. Subsections (3)-(7) cover circumstances a) in which a tied pub is sold by a pub-owning business to a new owner who does not own 500 or more tied pubs or b) when a tied pub is protected by the Pubs Code and Adjudicator by virtue of being owned by a pub-owning business but then the business no longer qualifies as a pub-owning business – for example, through selling sufficient pubs to drop below the 500 tied pub threshold. In both these circumstances the tied pub would have “extended protection” and its owner would be considered a “pub-owning business” under this legislation, in respect of that pub until the pub’s next rent review or until the end of the tenancy/licence, whichever is sooner. A business that is a pub-owning business solely because of these circumstances would not be covered by sections 43-45 (Market Rent Only option) or sections 53-59

(Investigations) but would be covered by all the remaining sections of this Part of the Act, including those relating to parallel rent assessments and arbitrations.

356. Subsection (8) allows the Secretary of State by regulations to expand the remit of the Pubs Code and Adjudicator to cover group undertakings rather than just the individual pub-owning business concerned. In this way they would ensure the legislation is sufficiently flexible to encompass adequately any parent or subsidiary companies.
357. Subsection (9) allows the Secretary of State by regulations to amend the number of tied pubs, the qualifying period for categorisation as a pub-owning business and the method of calculating the number of tied pubs. This is intended as a safeguard against unforeseen changes in circumstances or pub-owning business behaviour. Any changes would require approval by both Houses of Parliament through the affirmative resolution procedure, following consultation.

### ***Section 70: “Tied pub tenant”, “landlord”, “tenancy” and “licence”***

358. This section clarifies that a “tied pub tenant” includes someone negotiating for a prospective tied tenancy, that “tenancy” covers different kinds of tenancy, licence and leasing agreements, including a tenancy at will, and that “landlord” refers to the immediate landlord or licensor, not to a person or organisation that leases premises to a pub-owning business, i.e. a superior landlord.
359. The definition of “tenancy” in the Act includes a tenancy under which a fee is paid instead of rent (for example, a fee related to turnover, as is the case with some pub franchises).

### ***Section 71: Power to grant exemptions from the Pubs Code***

360. As there may be circumstances where it is necessary to exempt from the Pubs Code dealings between a specified pub-owning business or pub-owning business of a specified description with a particular type of tenant, or in relation to particular types of pub premises, this section gives the Secretary of State a power to make appropriate regulations. Also, the regulations may set out circumstances in which a tied pub fitting a specified description is not counted for the purpose of calculating whether a business is a pub-owning business under this legislation
361. The Government intends to use this power to introduce regulations to exempt tenancies at will and temporary agreements that are genuinely short-term from coverage by the Pubs Code. The Government will consult on what the maximum duration of such an agreement should be in order to qualify for the exemption.
362. The Government also intends to use this power to exempt franchised pubs from the Market Rent Only provisions (sections 43 to 45) and will consult on the appropriate definition of a franchise pub for this purpose.

### ***Section 72: Interpretation: other provision***

363. This section provides for the definition of “the Adjudicator”, “arbitration agreement”, “financial year”, “independent assessor”, “market rent”, market rent only option”, “MRO procedure”, “MRO-compliant”, “parallel rent assessment”, “product or service tie”, “product tie”, “the Pubs Code”, “service tie” and “stocking requirement”.