



# Small Business, Enterprise and Employment Act 2015

## 2015 CHAPTER 26

### PART 4

#### THE PUBS CODE ADJUDICATOR AND THE PUBS CODE

##### *Pubs Code*

#### **43 Pubs Code: market rent only option**

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

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**Changes to legislation:** There are currently no known outstanding effects for the Small Business, Enterprise and Employment Act 2015, Section 43. (See end of Document for details)

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- (i) contains such terms and conditions as may be required by virtue of subsection (5)(a),
    - (ii) does not contain any product or service tie other than one in respect of insurance in connection with the tied pub, and
    - (iii) does not contain any unreasonable terms or conditions, and
  - (b) it is not a tenancy at will.
- (5) The Pubs Code may specify descriptions of terms and conditions—
- (a) which are required to be contained in a tenancy or licence for it to be MRO-compliant;
  - (b) which are to be regarded as reasonable or unreasonable for the purposes of subsection (4).
- (6) Provision made under subsection (1) must include provision requiring a pub-owning business to offer a tied pub tenant a market rent only option—
- (a) in connection with the renewal of any of the pub arrangements;
  - (b) in connection with a rent assessment or assessment of money payable by the tenant in lieu of rent [<sup>F1</sup>(whether or not it results in a proposal that the rent, or amount of money payable, should increase)];
  - (c) in connection with a significant increase in the price at which any product or service which is subject to a product or service tie is supplied to the tied pub tenant where the increase was not reasonably foreseeable—
    - (i) when the tenancy or licence was granted, or
    - (ii) if there has been an assessment of a kind mentioned in paragraph (b), when the last assessment was concluded;
  - (d) after a trigger event has occurred.
- (7) The Pubs Code may specify what “renewal” means in relation to a tenancy or a licence for the purposes of subsection (6).
- (8) In subsection (6) “pub arrangements”, in relation to a tied pub, means—
- (a) the tenancy or licence under which the tied pub is occupied, and
  - (b) any other contractual agreement which contains an obligation by virtue of which condition D in section 68 is met in relation to the premises.
- (9) In this Part a “trigger event”, in relation to a tied pub tenant, means an event which—
- (a) is beyond the control of the tied pub tenant,
  - (b) was not reasonably foreseeable as mentioned in subsection (6)(c),
  - (c) has a significant impact on the level of trade that could reasonably be expected to be achieved at the tied pub, and
  - (d) is of a description specified in the Pubs Code.
- (10) In this Part “market rent”, in relation to the occupation of particular premises under a tenancy or licence which is MRO-compliant, means the estimated rent which it would be reasonable to pay in respect of that occupation on the following assumptions—
- (a) that the tenancy or licence concerned is entered into—
    - (i) on the date on which the determination of the estimated rent is made,
    - (ii) in an arm's length transaction,
    - (iii) after proper marketing, and
    - (iv) between parties each of whom has acted knowledgeably, prudently and willingly, and

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(b) that condition B in section 68 continues to be met.

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**Textual Amendments**

**F1** Words in s. 43(6)(b) inserted (21.7.2016) by Enterprise Act 2016 (c. 12), ss. 39, 44(5); S.I. 2016/695, art. 4(a)

**Changes to legislation:**

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