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DRAFT STATUTORY INSTRUMENTS

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**2016 No.**

**The Pubs Code etc. Regulations 2016**

**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 (whether before, on or after the commencement date); 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 paragraph (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 completed;
- (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 be completed; 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 are completed 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 paragraph (4), the tenant may refer the matter to the Adjudicator.

(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 are not completed within the period, or on the date, specified in paragraph (5)(b) or (6)(c); or

(b) because the new date mentioned in that paragraph is not reasonable,

the tenant may refer the matter to the Adjudicator.

(11) Where a tied pub tenant and a pub-owning business have entered into an agreement but disagree as to whether it is an investment agreement, either of them may refer the matter to the Adjudicator.

(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.