
DRAFT STATUTORY INSTRUMENTS

2016 No.

The Pubs Code etc. Regulations 2016

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(10) or (11) or 38(4) (disputes in connection with the independent assessor);
 - (d) regulation 39(3) (disputes in connection with a tenancy or licence after proposal agreed);
 - (e) regulation 40 (disputes in connection with recovery of rent etc after MRO procedure);
 - (f) regulation 56(9), (10) or (11) (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(10); 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, by notice in writing to the pub-owning business, accept or reject the determination provided under regulation 37(9) 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(10), 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, by notice in writing to the pub-owning business, accept or reject 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(11), 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, by notice in writing to the pub-owning business, accept or reject 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.

(10) If the tied pub tenant does not comply with paragraph (2), (5) or (9), the tenant is treated as having rejected the determination and the associated tenancy or licence on the final day of the period mentioned in that paragraph.

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(10) or (11) or 38(4) (disputes in connection with the independent assessor);
 - (iv) regulation 39(3) (disputes in connection with a tenancy or licence after proposal agreed);
 - (v) regulation 40 (disputes in connection with recovery of rent etc after MRO procedure);
 - (vi) regulation 56(9), (10) or (11) (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(1) 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.

(1) 1996 c.23.