
DRAFT STATUTORY INSTRUMENTS

2016 No.

The Pubs Code etc. Regulations 2016

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⁽¹⁾.

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 the proposed tenancy or licence to which proposed MRO rent relates.

(2) Within the period mentioned in paragraph (1)—

- (a) the tenant must provide to the independent assessor all documents listed in Schedule 3 which the tenant holds;
- (b) the pub-owning business must provide to the independent assessor all documents listed in Schedule 3 which the pub-owning business holds.

(3) The independent 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.

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

(1) Section 43(10) of SBEEA 2015 defines "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.
- (5) 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.
- (6) 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.
- (7) The tenant and the pub-owning business must comply with any reasonable request made under paragraph (6) as soon as reasonably practicable.
- (8) Where the tenant or the pub-owning business—
- (a) provides information under paragraph (2) or (5); or
 - (b) complies, under paragraph (7), 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.
- (9) 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 (5).
- (10) Where the pub-owning business or the tied pub tenant considers that—
- (a) the rent determined under paragraph (3) is not the market rent; or
 - (b) the independent assessor has failed to comply with paragraph (4),
- either of them may refer the matter to the Adjudicator within the period of 14 days beginning with the day on which the determination was communicated to them.
- (11) Where the independent assessor has not communicated the determination within the period required by paragraph (9), 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.
- (12) Paragraph (13) applies where—
- (a) the independent assessor communicates a determination within the period required by paragraph (9); and
 - (b) neither the tied pub tenant nor the pub-owning business refers the matter to the Adjudicator under paragraph (10).
- (13) The tied pub tenant must, by notice in writing to the pub-owning business, accept or reject the determination communicated under paragraph (12)(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.
- (14) If the tied pub tenant does not comply with paragraph (13), 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.

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) Where the pub-owning business or the tied pub tenant considers that—

- (a) the rent determined is not the market rent; or
- (b) the independent assessor has failed to comply with regulation 37(4),

either of them may refer the matter to the Adjudicator within the period of 14 days beginning with the day on which the determination was communicated to them.

(5) But if the tenant or the pub-owning business does not refer the matter under paragraph (4), the tied pub tenant must, by notice in writing to the pub-owning business, accept or reject 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.

(6) If the tied pub tenant does not comply with paragraph (5), 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.