
DRAFT STATUTORY INSTRUMENTS

2016 No.

The Pubs Code etc. Regulations 2016

PART 12

Exemptions from these Regulations

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.