

2022 No. 341

ENTERPRISE, ENGLAND AND WALES

**The Small Business, Enterprise and Employment Act 2015 and
Pubs Code etc. (Amendment) Regulations 2022**

Made - - - - *16th March 2022*

Coming into force *1st April 2022*

The Secretary of State in exercise of the powers conferred by sections 42(1), 43(1), 43(3), 43(5), 43(6), 44, 45(1), 45(2), 45(3), 48(3), 69(9)(a), 71(1) and 161(2) of the Small Business, Enterprise and Employment Act 2015^(a), makes the following Regulations.

In accordance with sections 73(1) and 161(4) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Small Business, Enterprise and Employment Act 2015 and Pubs Code etc. (Amendment) Regulations 2022 and come into force on 1st April 2022.

(2) These Regulations extend and apply to England and Wales.

Amendment of the Small Business, Enterprise and Employment Act 2015

2. Schedule 1 contains an amendment to the Small Business, Enterprise and Employment Act 2015.

Amendment of the Pubs Code etc. Regulations 2016

3. Schedule 2 contains amendments to the Pubs Code etc. Regulations 2016^(b).

Transitional provision

4.—(1) The Pubs Code etc. Regulations 2016 continue to apply to a “transitional case” as if the amendments in paragraphs 1 to 14 and 19 to 20 of Schedule 2 had no effect.

(2) In paragraph (1) a “transitional case” means a case in which an event specified in regulations 24 to 27 of the Pubs Code etc. Regulations 2016 occurs before the day on which these Regulations come into force.

16th March 2022

Paul Scully
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial Strategy

(a) 2015 c. 26, amended by Enterprise Act 2016 (c. 12); there are other amending instruments, but none is relevant.
(b) S.I. 2016/790.

SCHEDULE 1

Regulation 2

Amendment of the Small Business, Enterprise and Employment Act 2015

1. For section 69(1)(b) of the Small Business, Enterprise and Employment Act 2015 substitute—
 - “(b) in any subsequent financial year, if for a period of—
 - (i) at least 6 months in the previous financial year, in the case of a subsequent financial year ending before 1 April 2023, or
 - (ii) at least 3 months in the previous financial year, in the case of a subsequent financial year ending after 31 March 2023,the person was the landlord of 500 or more tied pubs.”.

SCHEDULE 2

Regulation 3

Amendment of the Pubs Code etc. Regulations 2016

Introduction

1. The Pubs Code etc. Regulations 2016 are amended as follows.

Amendment of regulation 2 (general interpretation)

- 2.—(1) Regulation 2(1) is amended as follows.
 - (2) After the definition of “period of response” insert—

““procedural or event dispute” has the meaning given in regulation 32(6);”.
 - (3) After the definition of “pubs entry training” insert—

““referral period” has the meaning given in regulation 35(5);”.
 - (4) After the definition of “rent review date” insert—

““required full response” has the meaning given in regulation 33(3);

“resolution period” has the meaning given in regulation 32A(2);

“response under the relevant provisions” has the meaning given in regulation 30(3);”.
 - (5) In the definition of “revised response” for “regulation 33(3)” substitute “regulation 33A(1), (2), (4) and (5)”.
 - (6) Omit the definition for “subsequent proposed tenancy or licence”.
 - (7) After the definition of “trigger event” insert—

“;

“updated period of response” has the meaning given in regulation 32B(2);

“updated full response” has the meaning given in regulation 32B(3).”.

Amendment of regulations 3, 4, 5 and 6 (significant price increase)

3. In each of regulations 3(4)(d), 4(4)(d), 5(4)(d) and 6(4)(d) for “ending” substitute “beginning”.

Amendment of regulation 23 (the MRO notice)

4. In regulation 23(2)(b) after “beginning with” insert “the day after”.

Amendment of regulation 29 (effect of tenant’s notice)

5.—(1) Regulation 29 is amended as follows.

(2) In paragraphs (3)(b) and (c) omit “which is MRO-compliant”.

(3) After (3)(c) insert—

“;

(d) a statement of the proposed rent or money payable in lieu of rent payable in respect of the tied pub tenant’s occupation of the premises concerned under the proposed tenancy or licence.”.

(4) After paragraph (5) insert—

“(5A) Where a full response includes a proposed tenancy or licence that tenancy or licence must be MRO-compliant.”.

(5) In paragraphs (7) and (8) after “begins with” insert “the day after”.

(6) In paragraph (9)(b) for “on the day on which” substitute “the day after the day on which”.

Amendment of regulation 30 (terms and conditions required in proposed MRO tenancy)

6.—(1) Regulation 30 is amended as follows.

(2) In paragraph (1)(c) for the words “a full response” to the end substitute “a response under the relevant provisions”.

(3) After paragraph (2) insert—

“(3) In these Regulations a “response under the relevant provisions” refers to—

(a) a full response under regulation 29(3);

(b) an updated full response;

(c) a required full response; or

(d) a revised response.”.

Amendment of regulation 31 (terms and conditions regarded as unreasonable in relation to proposed MRO tenancy etc)

7. In regulation 31(1)(c) and (5)(c) for the words “a full response” to the end substitute “a response under the relevant provisions”.

Substitution of regulation 32 (MRO response: procedural or event dispute)

8. For regulation 32 substitute—

“MRO response: procedural or event dispute

32.—(1) This regulation applies where a pub-owning business has received an MRO notice.

(2) Where there is a procedural or event dispute the tenant or pub-owning business may refer the matter to the Adjudicator.

(3) Paragraph (4) applies where the tied pub tenant or the pub-owning business intends to make a referral under paragraph (2).

(4) Before the referral is made the tenant, or, as the case may be, the pub-owning business must notify the other, in writing, of that intention.

(5) A referral under paragraph (2) must be made within the period of 14 days beginning with the earlier of—

(a) the day after the day on which the tied pub tenant receives a full response under regulation 29(3) or (4) (whether or not regulation 29(5A) is complied with); or

(b) the day after the end of the period of response.

(6) In these Regulations a “procedural or event dispute” is, subject to paragraph (7), where—

- (a) the pub-owning business does not send a full response under regulation 29(3) or (4) within the period of response;
- (b) the tied pub tenant considers that the pub-owning business’s full response does not comply with the other requirements of regulation 29; or
- (c) the tied pub tenant disagrees with the pub-owning business’s reasons under regulation 29(4)(b).

(7) A procedural or event dispute does not include a situation where the tied pub tenant considers that a proposed tenancy or licence in the full response is not MRO-compliant.”.

Insertion of regulation 32A to 32C

9. After regulation 32 insert—

“The resolution period

32A.—(1) From the beginning of the resolution period to the end of the MRO procedure, the tied pub tenant and pub-owning business must seek to agree a tenancy or licence that is MRO-compliant and must seek to agree the rent or money in lieu of rent that is to be payable in respect of the occupation of the premises concerned under the proposed tenancy or licence.

(2) In these Regulations the “resolution period” means the period which begins at the time specified in paragraph (3) or (7) and ends at the time specified in paragraphs (4) to (6).

(3) Unless paragraph (7) applies, the resolution period begins with the earlier of—

- (a) the day after the day on which the tied pub tenant receives a full response under regulation 29(3); or
- (b) the day after the day on which the period of response ends.

(4) The resolution period ends with the earliest of—

- (a) the period of 3 months beginning with the day on which the resolution period began;
- (b) the day on which the tied pub tenant communicates to the pub-owning business, in writing, a decision to accept a tenancy or licence proposed by the pub-owning business; or
- (c) the period specified in paragraph (6).

(5) During the resolution period, the tied pub tenant may give notice in writing to the pub-owning business of the tenant’s intention to end the resolution period.

(6) Where the tied pub tenant gives notice under paragraph (5), the resolution period ends with the later of the following—

- (a) the period of 7 days beginning with the day after the day on which the pub-owning business receives the notice; or
- (b) the period of 21 days after the day on which the resolution period began.

(7) A new resolution period begins in the circumstances and at the time described in regulation 33(1) and (2) in relation to, respectively, a full response and a required full response, and, save for paragraph (3), the provisions in this regulation apply to such a period.

The updated full response

32B.—(1) Within the updated period of response, the pub-owning business may send to the tied pub tenant an updated full response.

(2) In these Regulations the “updated period of response” means the period of 7 days beginning with the day after the day on which the resolution period ends.

(3) In these Regulations an “updated full response” means a response to the MRO notice that—

- (a) is sent by the pub-owning business within the updated period of response;
- (b) includes the information mentioned in regulation 29(3)(d);
- (c) includes the information mentioned in regulation 29(3)(b) or (c) (as the case may be); and
- (d) complies with the requirement in regulation 29(5A).

(4) A response under paragraph (1) replaces any full response sent under regulation 29(3).

Referrals to the Adjudicator for MRO non-compliance, etc.

32C.—(1) Where the tied pub tenant considers that—

- (a) the proposed tenancy or licence in the pub-owning business’s full response sent under regulation 29(3), updated full response or required full response is not MRO-compliant; or
- (b) the updated full response does not comply with the requirements of regulation 32B(3)(b) or (c),

the tenant or the pub-owning business may refer the matter to the Adjudicator.

(2) Paragraph (3) applies where the tied pub tenant or the pub-owning business intends to make a referral under paragraph (1).

(3) Before the referral is made the tenant, or, as the case may be, the pub-owning business must notify the other, in writing, of that intention.

(4) A referral under paragraph (1) must be made within the period of 21 days beginning with the day after the day on which the updated period of response ends.”.

Substitution of regulation 33 (MRO procedure where a matter is referred to the Adjudicator in connection with the full response)

10. For regulation 33 substitute—

“MRO procedure: referrals in respect of procedural or event disputes

33.—(1) Where—

- (a) a matter is referred to the Adjudicator under regulation 32(2) (procedural or event dispute); and
- (b) the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) rules that no failure has occurred in connection with the full response,

the full response provided by the pub-owning business under regulation 29(3) or (4) is deemed to have been received by the tied pub tenant on the day of the Adjudicator’s or appointed person’s ruling, and in relation to a response provided under regulation 29(3) a new resolution period begins on the day after that day.

(2) Where—

- (a) a matter is referred to the Adjudicator under regulation 32(2); and

- (b) the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) rules that the pub-owning business must provide a required full response to the tied pub tenant,

the pub-owning business must provide that required full response within the period of 21 days beginning with the day after the day of the Adjudicator's or appointed person's ruling or by such day as may be specified in the ruling, and a new resolution period begins on the day after the day on which the tenant receives the response.

(3) In these Regulations a "required full response" means a response which—

- (a) is required by the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) under paragraph (2);
- (b) includes the information mentioned in regulation 29(3)(a) and (d);
- (c) includes the information mentioned in regulation 29(3)(b) or (c) (as the case may be); and
- (d) complies with the requirement in regulation 29(5A).

MRO procedure: referrals in respect of disputes about MRO compliance etc.

33A.—(1) Where—

- (a) a matter is referred to the Adjudicator under regulation 32C(1) (referral to the Adjudicator for MRO non-compliance, etc.); and
- (b) the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) rules that no failure has occurred in connection with a full response, updated full response or required full response,

that response is a revised response and is deemed to be received by the tied pub tenant on the day of the Adjudicator's or appointed person's ruling and no further referral may be made under paragraph (3).

(2) Where—

- (a) a matter is referred to the Adjudicator under regulation 32C(1) (referral to the Adjudicator for MRO non-compliance, etc.); and
- (b) the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) rules that the pub-owning business must provide a revised response to the tied pub tenant,

the pub-owning business must provide a revised response within the period of 21 days beginning with the day after the day of the Adjudicator's or appointed person's ruling or by such day as may be specified in the ruling.

(3) Where—

- (a) the pub-owning business has provided a revised response under paragraph (2) or (5) of this regulation; and
- (b) the tied pub tenant considers that the proposed tenancy or licence is not MRO-compliant,

the tenant or the pub-owning business may refer the revised response to the Adjudicator within the period of 21 days beginning with the day after the day on which the revised response is received by the tied pub tenant.

(4) Where—

- (a) a matter is referred to the Adjudicator under paragraph (3); and
- (b) the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) rules that no failure has occurred in connection with the revised response,

that response is a revised response and is deemed to be received by the tied pub tenant on the day of the Adjudicator's or appointed person's ruling and no further referral may be made under paragraph (3).

(5) Where—

- (a) a matter is referred to the Adjudicator under paragraph (3); and
- (b) the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) rules that the pub-owning business must provide a revised response to the tied pub tenant,

the pub-owning business must provide that response within the period of 21 days beginning with the day after the day of the Adjudicator's or appointed person's ruling or by such day as may be specified in the ruling.

(6) A "revised response" under paragraph (2) or (5) must—

- (a) include the information mentioned in regulation 29(3)(a) and (d);
- (b) include the information mentioned in regulation 29(3)(b) or (c) (as the case may be); and
- (c) comply with the requirement in regulation 29(5A).".

Omission of regulation 34 (the negotiation period)

11. Omit regulation 34.

Substitution of regulation 35 (right to refer proposed MRO rent to the independent assessor)

12. For regulation 35 substitute—

"Right to refer proposed MRO rent to the independent assessor

35.—(1) Where the pub-owning business sends a proposed tenancy or licence to the tied pub tenant as part of a response under the relevant provisions the tied pub tenant may refer the proposed MRO rent to an independent assessor by sending a notice to the pub-owning business, in writing, of the tenant's intention to do so within the referral period.

(2) Where the tied pub tenant refers the proposed MRO rent under a tenancy or licence to an independent assessor under paragraph (1), no reference may subsequently be made to the Adjudicator in relation to the same proposed tenancy or licence, save as set out in Parts 7 and 8 of these Regulations.

(3) A referral under paragraph (1) must be in respect of the latest response under the relevant provisions that the tied pub tenant has received.

(4) No referrals may be made under this regulation at any time after the end of the MRO procedure.

(5) The referral period means the period of 21 days beginning with the day after the latest of—

- (a) the day on which the updated period of response under regulation 32B(2) ends; or
- (b) the day on which the tied pub tenant receives a revised response under regulation 33A.".

Amendment of regulation 36 (appointment of the independent assessor)

13. In regulation 36 for "regulation 35(3)" substitute "regulation 35(1)".

Amendment of regulation 39 (end of the MRO procedure)

14.—(1) Regulation 39 is amended as follows.

(2) For paragraph (4)(c) substitute—

“(c) where—

- (i) the referral period specified in regulation 35(5) ends;
 - (ii) the tied pub tenant does not, before or during that period, communicate to the pub-owning business, in writing, a decision to accept a tenancy or licence proposed by the pub-owning business;
 - (iii) the tenant does not make a reference under regulation 35 in relation to the proposed MRO rent; and
 - (iv) the time allowed under that regulation for making such a reference has expired,
- on the day on which the referral period ends;”.

(3) In paragraph (4)(e) for “Adjudicator’s ruling” substitute “Adjudicator’s or appointed person’s ruling or, if later, the day after the day on which any further right of referral under regulation 32(2) ends”.

(4) After paragraph (4)(g) insert—

“;

- (h) where the pub-owning business sends a full response under regulation 29(4) and the tied pub tenant has not made a referral under regulation 32(2) in respect of it, the day after the day on which the period specified under regulation 32(5) ends.”.

Amendment of regulation 44 (provisions of these Regulations which are not arbitrable)

15. At the end of regulation 44(c), insert—

“;

- (d) regulation 45A.”.

Insertion of regulation 45A (notification of transfers where extended protection applies)

16. After regulation 45 insert—

“Pub-owning business to notify Adjudicator of circumstances giving rise to extended protection

45A.—(1) This regulation applies where a pub-owning business intends to transfer the title of a tied pub to a person (the “transferee”) in circumstances which will give rise to or continue the tied pub tenant having extended protection in relation to the tied pub.

(2) Before the transfer of title, the pub-owning business must provide to the Adjudicator—

- (a) the name and address of the transferee;
- (b) where the transferee is a UK-registered company, the company registration number of the transferee; and
- (c) the anticipated completion date for the transfer.

(3) In paragraph (2), “company registration number” has the same meaning as “registered number” in section 1066 of the Companies Act 2006(a).”.

Amendment of regulation 53 (extended protection to last until a rent assessment is concluded)

17. In regulation 53—

(a) 2006 c. 46.

- (a) after “pub-owning business” insert “by virtue of section 69(1) of the SBEEA 2015”;
- (b) for “regulation 22(3)” substitute “regulation 22(2)”.

Amendment of regulation 56 (the investment exception)

18. In regulation 56(13) for “paragraph (4)(a)” substitute “paragraph (4)”.

Amendment of regulation 58 (referrals to the Adjudicator in connection with the MRO procedure)

19. In regulation 58, for paragraph (1)(b) substitute—

- “(b) regulation 32C(1) (disputes in connection with MRO non-compliance, etc.);
- (ba) regulation 33A(3) (disputes in connection with revised response);”.

Amendment of regulation 60 (arbitration commenced by pub-owning business)

20. In regulation 60, for paragraph (1)(c)(ii) substitute—

- “(ii) regulation 32C(1) (disputes in connection with MRO non-compliance, etc.);
- (iia) regulation 33A(3) (disputes in connection with revised response);”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Small Business, Enterprise and Employment Act 2015 and the Pubs Code etc. Regulations 2016. In addition to minor and drafting amendments, these Regulations make the following changes of substance.

Schedule 1 amends the Small Business, Enterprise and Employment Act 2015. A business becomes a pub-owning business when it has owned 500 or more tied pubs in England and Wales for a period of at least 6 months in the previous financial year. These Regulations reduce the qualification period from 6 months to 3 months in the previous financial year from 1st April 2023.

Schedule 2 amends the Pubs Code etc. Regulations 2016. Paragraph 3 amends the definition of “comparison period” for the purposes of calculating whether there has been a “significant price increase” under the Pubs Code etc. Regulations 2016. These Regulations amend the comparison period from a 13-month period to a 12-month period.

Paragraphs 4 to 14 and 19 to 20 amend the market rent only (“MRO”) option in the Pubs Code etc. Regulations 2016. Paragraph 5 introduces a requirement that the pub-owning business should include rent in a response to an MRO notice.

These Regulations introduce a new procedure when a tied pub tenant receives a response to an MRO notice. The amendments in paragraph 8 allow the tied pub tenant or pub-owning business to refer a response to the Adjudicator within 14 days of receipt if there is a procedural or event dispute. Paragraph 10 provides that if the Adjudicator finds that the response is deficient then the Adjudicator may order the pub-owning business to provide a required full response, which would re-start the resolution period.

Paragraph 9 introduces a “resolution period” of 3 months from the day after the tied pub tenant receives the original (or “full”) response, during which no referrals can be made to the Adjudicator (save for where there is a procedural or event dispute). The tied pub tenant can choose to shorten this period. At the end of the resolution period the pub-owning business may choose to provide an “updated full response”. The proposed tenancy or licence in the original response or updated full response can be referred to the Adjudicator to determine whether it is MRO-compliant, or if the updated full response fails to meet a procedural requirement.

Paragraph 12 provides for a “referral period” which enables referrals to the independent assessor to determine MRO rent in relation to a response provided by the pub-owning business to be made

at any time within this period. Once a proposal has been referred to the independent assessor it cannot be subsequently referred to the Adjudicator, save in relation to rent.

Paragraphs 15 and 16 introduce a requirement for a pub-owning business to notify the Adjudicator of the transferee's name, address, company number and anticipated completion date where the pub-owning business intends to transfer its title in the tied pub in circumstances that will give rise to extended protection under section 69(4) of the Small Business, Enterprise and Employment Act 2015.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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